









# UNITED STATES CODE

1940 EDITION

CONTAINING THE GENERAL AND PERMANENT LAWS  
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ON JANUARY 3, 1941

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by the Committee on Revision of the Laws of the House of  
Representatives, Eugene J. Keogh, Chairman



VOLUME TWO  
TITLE 17—COPYRIGHTS  
TO  
TITLE 33—NAVIGATION AND NAVIGABLE WATERS

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HOUSE OF REPRESENTATIVES**

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## PREFACE—1940 EDITION

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This third edition of the United States Code has been prepared and published pursuant to the act of May 29, 1928, ch. 910, as amended March 2, 1929, ch. 586, and contains a consolidation and codification of all the general and permanent laws of the United States in force on January 3, 1941. By statutory authority this edition may be cited "U. S. C. 1940 ed." Previous editions were published in 1926 and 1934.

The title and chapter structure of the 1934 edition, together with Supplement V thereto, has been almost completely preserved, the only changes made having been necessitated by the enactment of legislation during the 3d session of the 76th Congress. Any errors discovered in the 1934 edition or Supplement V have been corrected.

Because of the number of laws and additional notes included and by reason of the use of a more legible type than that used in the 1934 edition, it has been decided to publish this edition in four volumes, the first three containing the text of the laws and the fourth containing the tables and index. It is believed that the new arrangement will prove a great deal more convenient to the users of the Code.

The actual work of preparing and editing the material for this edition has been done by the West Publishing Co. of St. Paul, Minnesota, and the Edward Thompson Company of Brooklyn, New York, under the supervision of the Committee on Revision of the Laws of the House of Representatives. These companies prepared the original Code which Congress enacted in 1926 and have continuously served the Committee since that time in the preparation of the authorized Supplements to the Code. Grateful acknowledgment is made to the staffs of both publishing companies, and to Charles J. Zinn of the New York and District of Columbia bars, representing the Committee on Revision of the Laws, for their untiring efforts to make this edition as nearly perfect as possible; also to Captain Harold L. Allen, of New York, for his technical assistance in the revision of Title 10, Army; also to W. H. McClenon, of the Legislative Reference Service of the Library of Congress and to the various officers of the Government departments and agencies for their helpful suggestions and criticisms.

The Committee on Revision of the Laws again invites criticisms or suggestions with the view of improving the Code wherever possible. It is fervently hoped that the program of enacting the Code into positive law, title by title, to improve its present status as merely prima facie evidence of the law, will meet with success in the not too distant future.

EUGENE J. KEOGH,

*Chairman,*

*Committee on Revision of the Laws.*

WASHINGTON, D. C., *June 30, 1941.*

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## TITLE 17.—COPYRIGHTS

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| <p><b>Sec.</b></p> <ol style="list-style-type: none"> <li>1. Exclusive rights as to copyrighted works.</li> <li>2. Rights of author or proprietor of unpublished work</li> <li>3. Protection of component parts of work copyrighted; composite works or periodicals.</li> <li>4. All writings of author included.</li> <li>5. Classification of works for registration.</li> <li>6. Copyright on compilations of works in public domain or of copyrighted works; subsisting copyrights not affected.</li> <li>7. Copyright not to subsist in works in public domain, or published prior to July 1, 1909 and not already copyrighted, or Government publications; publication by Government of copyrighted material.</li> <li>8. Authors or proprietors, entitled; aliens.</li> <li>9. Publication of work with notice.</li> <li>10. Registration of claim and issuance of certificate</li> <li>11. Works not reproduced for sale.</li> <li>12. Deposit of copies after publication; action or proceeding for infringement.</li> <li>13. Same; failure to deposit; demand; penalty.</li> <li>14. Same; postmaster's receipt; transmission by mail without cost.</li> <li>15. Mechanical work to be done in United States</li> <li>16. Affidavit to accompany copies.</li> <li>17. Making false affidavit.</li> <li>18. Notice; form.</li> <li>19. Same; place of application of; one notice in each volume or number of newspaper or periodical.</li> <li>20. Same; effect of accidental omission from copy or copies.</li> <li>21. Ad interim protection of book published abroad.</li> <li>22. Same; extension to full term</li> <li>23. Duration; renewal and extension.</li> <li>24. Same; renewal; subsisting copyrights.</li> <li>25. 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Register, assistant register, and subordinates.</li> <li>49. Same; deposit of moneys received; reports.</li> <li>50. Same; bond.</li> <li>51. Same; annual report.</li> <li>52. Seal of copyright office.</li> <li>53. Rules for registration of claims.</li> <li>54. Record books in copyright office.</li> <li>55. Certificate of registration; effect as evidence; receipt for copies deposited.</li> <li>56. Catalogues of copyright entries; effect as evidence</li> <li>57. Same; distribution and sale; disposal of proceeds.</li> <li>58. Records and works deposited in copyright office open to public inspection; taking copies of entries.</li> <li>59. Disposition of articles deposited in office.</li> <li>60. Destruction of articles deposited in office remaining undisposed of; removal of by author or proprietor; manuscripts of unpublished works.</li> <li>61. Fees.</li> <li>62. Terms defined.</li> <li>63. Repealed.</li> <li>64. Registration of prints and labels.</li> <li>65. Renewal of copyrights registered in Patent Office under section 63.</li> </ol> <p style="text-align: center;"><b>CROSS REFERENCES</b></p> <p>Actions and proceedings under copyright laws:<br/>         Exclusive jurisdiction of Federal courts, see section 371 of Title 28, Judicial Code and Judiciary.<br/>         Jurisdiction of district courts, see section 41 (7) of Title 28, Judicial Code and Judiciary.<br/>         Power of the Congress to regulate copyrights, see Constitution, Article I, § 8.</p> <p><b>§ 1. Exclusive rights as to copyrighted works.</b></p> <p>Any person entitled thereto, upon complying with the provisions of this title, shall have the exclusive right:</p> <ol style="list-style-type: none"> <li>(a) To print, reprint, publish, copy, and vend the copyrighted work;</li> <li>(b) To translate the copyrighted work into other languages or dialects, or make any other version thereof, if it be a literary work; to dramatize it if it be a nondramatic work; to convert it into a novel or other nondramatic work if it be a drama; to arrange or adapt it if it be a musical work; to complete, execute, and finish it if it be a model or design for a work of art;</li> <li>(c) To deliver or authorize the delivery of the copyrighted work in public for profit if it be a lecture, sermon, address, or similar production;</li> <li>(d) To perform or represent the copyrighted work publicly if it be a drama or, if it be a dramatic work and not reproduced in copies for sale, to vend any manuscript or any record whatsoever thereof; to make or to procure the making of any transcription or record thereof by or from which, in whole or in part, it may in any manner or by any method be exhibited, performed, represented, produced, or re-</li> </ol> |
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produced; and to exhibit, perform, represent, produce, or reproduce it in any manner or by any method whatsoever;

(e) To perform the copyrighted work publicly for profit if it be a musical composition and for the purpose of public performance for profit; and for the purposes set forth in subsection (a) hereof, to make any arrangement or setting of it or of the melody of it in any system of notation or any form of record in which the thought of an author may be recorded and from which it may be read or reproduced: *Provided*, That the provisions of this title, so far as they secure copyright controlling the parts of instruments serving to reproduce mechanically the musical work, shall include only compositions published and copyrighted after July 1, 1909, and shall not include the works of a foreign author or composer unless the foreign state or nation of which such author or composer is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States similar rights. And as a condition of extending the copyright control to such mechanical reproductions, that whenever the owner of a musical copyright has used or permitted or knowingly acquiesced in the use of the copyrighted work upon the parts of instruments serving to reproduce mechanically the musical work, any other person may make similar use of the copyrighted work upon the payment to the copyright proprietor of a royalty of 2 cents on each such part manufactured, to be paid by the manufacturer thereof; and the copyright proprietor may require, and if so the manufacturer shall furnish, a report under oath on the 20th day of each month on the number of parts of instruments manufactured during the previous month serving to reproduce mechanically said musical work, and royalties shall be due on the parts manufactured during any month upon the 20th of the next succeeding month. The payment of the royalty provided for by this section shall free the articles or devices for which such royalty has been paid from further contribution to the copyright except in case of public performance for profit. It shall be the duty of the copyright owner, if he uses the musical composition himself for the manufacture of parts of instruments serving to reproduce mechanically the musical work, or licenses others to do so, to file notice thereof, accompanied by a recording fee, in the copyright office, and any failure to file such notice shall be a complete defense to any suit, action, or proceeding for any infringement of such copyright.

In case of the failure of such manufacturer to pay to the copyright proprietor within thirty days after demand in writing the full sum of royalties due at said rate at the date of such demand, the court may award taxable costs to the plaintiff and a reasonable counsel fee, and the court may, in its discretion, enter judgment therein for any sum in addition over the amount found to be due as royalty in accordance with the terms of this title, not exceeding three times such amount.

The reproduction or rendition of a musical composition by or upon coin-operated machines shall not be deemed a public performance for profit unless a fee is charged for admission to the place where

such reproduction or rendition occurs. (Mar. 4, 1909, ch. 320, §§ 1, 64, 35 Stat. 1075, 1088.)

## § 2. Rights of author or proprietor of unpublished work.

Nothing in this title shall be construed to annul or limit the right of the author or proprietor of an unpublished work, at common law or in equity, to prevent the copying, publication, or use of such unpublished work without his consent, and to obtain damages therefor. (Mar. 4, 1909, ch. 320, § 2, 35 Stat. 1076.)

## § 3. Protection of component parts of work copyrighted; composite works or periodicals.

The copyright provided by this title shall protect all the copyrightable component parts of the work copyrighted, and all matter therein in which copyright is already subsisting, but without extending the duration or scope of such copyright. The copyright upon composite works or periodicals shall give to the proprietor thereof all the rights in respect thereto which he would have if each part were individually copyrighted under this title. (Mar. 4, 1909, ch. 320, § 3, 35 Stat. 1076.)

## § 4. All writings of author included.

The works for which copyright may be secured under this title shall include all the writings of an author. (Mar. 4, 1909, ch. 320, § 4, 35 Stat. 1076.)

## § 5. Classification of works for registration.

The application for registration shall specify to which of the following classes the work in which copyright is claimed belongs:

- (a) Books, including composite and cyclopedic works, directories, gazetteers, and other compilations.
- (b) Periodicals, including newspapers.
- (c) Lectures, sermons, addresses (prepared for oral delivery).
- (d) Dramatic or dramatico-musical compositions.
- (e) Musical compositions.
- (f) Maps.
- (g) Works of art; models or designs for works of art.
- (h) Reproductions of a work of art.
- (i) Drawings or plastic works of a scientific or technical character.
- (j) Photographs.
- (k) Prints and pictorial illustrations including prints or labels used for articles of merchandise.
- (l) Motion-picture photoplays.
- (m) Motion pictures other than photoplays.

The above specifications shall not be held to limit the subject matter of copyright as defined in section 4 of this title, nor shall any error in classification invalidate or impair the copyright protection secured under this title. (Mar. 4, 1909, ch. 320, § 5, 35 Stat. 1076; Aug. 24, 1912, ch. 356, 37 Stat. 488; July 31, 1939, ch. 396, § 2, 53 Stat. 1142.)

### AMENDMENTS

1912—Subsections (l) and (m) were added by act August 24, 1912, cited to text.

1939—Subsection (k) was amended by act July 31, 1939, cited to text.

**§ 6. Copyright on compilations of works in public domain or of copyrighted works; subsisting copyrights not affected.**

Compilations or abridgments, adaptations, arrangements, dramatizations, translations, or other versions of works in the public domain, or of copyrighted works when produced with the consent of the proprietor of the copyright in such works, or works republished with new matter, shall be regarded as new works subject to copyright under the provisions of this title; but the publication of any such new works shall not affect the force or validity of any subsisting copyright upon the matter employed or any part thereof, or be construed to imply an exclusive right to such use of the original works, or to secure or extend copyright in such original works. (Mar. 4, 1909, ch. 320, § 6, 35 Stat. 1077.)

**§ 7. Copyright not to subsist in works in public domain, or published prior to July 1, 1909, and not already copyrighted, or Government publications; publication by Government of copyrighted material.**

No copyright shall subsist in the original text of any work which is in the public domain, or in any work which was published in this country or any foreign country prior to July 1, 1909, and has not been already copyrighted in the United States, or in any publication of the United States Government, or any reprint, in whole or in part, thereof. The publication or republication by the Government, either separately or in a public document, of any material in which copyright is subsisting shall not be taken to cause any abridgment or annulment of the copyright or to authorize any use or appropriation of such copyright material without the consent of the copyright proprietor. (Mar. 4, 1909, ch. 320, §§ 7, 64, 35 Stat. 1077, 1088.)

**CROSS REFERENCE**

Copyright by Postmaster General of black and white illustrations of United States and foreign postage stamps for philatelic purposes authorized, see section 371 of Title 39, The Postal Service.

**§ 8. Authors or proprietors, entitled; aliens.**

The author or proprietor of any work made the subject of copyright by this title, or his executors, administrators, or assigns, shall have copyright for such work under the conditions and for the terms specified in this title: *Provided, however*, That the copyright secured by this title shall extend to the work of an author or proprietor who is a citizen or subject of a foreign State or nation only:

(a) When an alien author or proprietor shall be domiciled within the United States at the time of the first publication of his work; or

(b) When the foreign State or nation of which such author or proprietor is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens, or copyright protection, substantially equal to the protection secured to such foreign author under this title or by treaty; or when such foreign State or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agree-

ment the United States may, at its pleasure, become a party thereto.

The existence of the reciprocal conditions aforesaid shall be determined by the President of the United States, by proclamation made from time to time, as the purposes of this title may require: *Provided, however*, That all works made the subject of copyright by the laws of the United States first produced or published abroad after August 1, 1914, and before the date of the President's proclamation of peace, of which the authors or proprietors are citizens or subjects of any foreign State or nation granting similar protection for works by citizens of the United States, the existence of which shall be determined by a copyright proclamation issued by the President of the United States, shall be entitled to the protection conferred by the copyright laws of the United States from and after the accomplishment, before the expiration of fifteen months after the date of the President's proclamation of peace, of the conditions and formalities prescribed with respect to such works by the copyright laws of the United States: *Provided further*, That nothing herein contained shall be construed to deprive any person of any right which he may have acquired by the republication of such foreign work in the United States prior to March 4, 1909. (Mar. 4, 1909, ch. 320, § 8, 35 Stat. 1077; Dec. 18, 1919, ch. 11, 41 Stat. 369.)

**AMENDMENTS**

1919—Act December 18, 1919, cited to text, added provisos in second paragraph of subsection (b).

**PRESIDENTIAL PROCLAMATIONS**

February 14, 1927—Poland. (Effective Feb. 16, 1927, including protection under Sec. 1 (e).) February 14, 1927, 44 Stat. 2634.

April 27, 1927—Czechoslovakia. (Effective Mar. 1, 1927, including protection under Sec. 1 (e).) April 27, 1927, 45 Stat. 2906.

May 14, 1928—Rumania. May 14, 1928, 45 Stat. 2949.

December 15, 1928—Finland. (Effective Jan. 1, 1929, including protection under Sec. 1 (e).) December 15, 1928, 45 Stat. 2980.

September 28, 1929—Irish Free State (effective Oct. 1, 1929, including protection under Sec. 1, (e)). September 28, 1929, 46 Stat. 3005.

February 23, 1932—Greece (effective Mar. 1, 1932, including protection under Sec. 1 (e)). Proclamation No. 1990, February 23, 1932, 47 Stat. 2502.

September 29, 1933—Palestine (excluding Trans-Jordan) (effective Oct. 1, 1933, including protection under Sec. 1 (e)). Proclamation No. 2058, September 29, 1933, 48 Stat. 1713.

April 7, 1934—Danzig (Free City of) (including protection under Sec. 1 (e)). Proclamation No. 2079, April 7, 1934, 48 Stat. 1737.

August 23, 1934—Argentina (including protection under Sec. 1 (e)). Proclamation No. 2095, August 23, 1934, 48 Stat. 3413.

**UNDER SECTION 1 (E)**

November 18, 1925—Chile. (Effective July 1, 1925.) November 18, 1925, 44 Stat. 2590.

February 14, 1927—Poland. (Effective Feb. 16, 1927.) February 14, 1927, 44 Stat. 2634.

April 27, 1927—Czechoslovakia. (Effective Mar. 1, 1927.) April 27, 1927, 45 Stat. 2906.

May 14, 1928—Rumania. May 14, 1928, 45 Stat. 2949.

December 15, 1928—Finland. (Effective Jan. 1, 1929.) December 15, 1928, 45 Stat. 2980.

September 28, 1929—Irish Free State. (Effective Oct. 1, 1929.) September 28, 1929, 46 Stat. 3005.

February 23, 1932—Greece. (Effective Mar. 1, 1932.) Proclamation No. 1990, February 23, 1932, 47 Stat. 2502.

September 29, 1933—Palestine (excluding Trans-Jordan) (effective Oct. 1, 1933). Proclamation No. 2058, September 29, 1933, 48 Stat. 1713.

April 7, 1934—Danzig (Free City of). Proclamation No. 2079, April 7, 1934, 48 Stat. 1737.

August 23, 1934—Argentina. Proclamation No. 2095, August 23, 1934, 48 Stat. 3413.

October 10, 1934—Spain. Proclamation No. 2102, October 10, 1934, 49 Stat. 3420.

#### § 9. Publication of work with notice.

Any person entitled thereto by this title may secure copyright for his work by publication thereof with the notice of copyright required by this title; and such notice shall be affixed to each copy thereof published or offered for sale in the United States by authority of the copyright proprietor, except in the case of books seeking ad interim protection under section 21 of this title. (Mar. 4, 1909, ch. 320, § 9, 35 Stat. 1077.)

#### § 10. Registration of claim and issuance of certificate.

Such person may obtain registration of his claim to copyright by complying with the provisions of this title, including the deposit of copies, and upon such compliance the register of copyrights shall issue to him the certificates provided for in section 55 of this title. (Mar. 4, 1909, ch. 320, § 10, 35 Stat. 1078.)

#### § 11. Works not reproduced for sale.

Copyright may also be had of the works of an author, of which copies are not reproduced for sale, by the deposit, with claim of copyright, of one complete copy of such work if it be a lecture or similar production or a dramatic, musical, or dramatico-musical composition; of a title and description, with one print taken from each scene or act, if the work be a motion-picture photoplay; of a photographic print if the work be a photograph; of a title and description, with not less than two prints taken from different sections of a complete motion picture, if the work be a motion picture other than a photoplay; or of a photograph or other identifying reproduction thereof, if it be a work of art or a plastic work or drawing. But the privilege of registration of copyright secured hereunder shall not exempt the copyright proprietor from the deposit of copies, under sections 12 and 13 of this title, where the work is later reproduced in copies for sale. (Mar. 4, 1909, ch. 320, § 11, 35 Stat. 1078; Aug. 24, 1912, ch. 356, 37 Stat. 488.)

#### AMENDMENTS

1912—Act August 24, 1912, amended section by including dramatico-musical compositions, motion-picture photoplays, and motion pictures, other than photoplays.

#### § 12. Deposit of copies after publication; action or proceeding for infringement.

After copyright has been secured by publication of the work with the notice of copyright as provided in section 9 of this title, there shall be promptly deposited in the copyright office or in the mail addressed to the register of copyrights, Washington, District of Columbia, two complete copies of the best edition thereof then published, or if the work is by

an author who is a citizen or subject of a foreign State or nation and has been published in a foreign country, one complete copy of the best edition then published in such foreign country, which copies or copy, if the work be a book or periodical, shall have been produced in accordance with the manufacturing provisions specified in section 15 of this title; or if such work be a contribution to a periodical, for which contribution special registration is requested, one copy of the issue or issues containing such contribution; or if the work is not reproduced in copies for sale there shall be deposited the copy, print, photograph, or other identifying reproduction provided by section 11 of this title, such copies or copy, print, photograph, or other reproduction to be accompanied in each case by a claim of copyright. No action or proceeding shall be maintained for infringement of copyright in any work until the provisions of this title with respect to the deposit of copies and registration of such work shall have been complied with. (Mar. 4, 1909, ch. 320, § 12, 35 Stat. 1078; Mar. 28, 1914, ch. 47, § 1, 38 Stat. 311.)

#### AMENDMENTS

1914—Act March 28, 1914, inserted provisions governing works of foreign author.

#### CROSS REFERENCE

Proof of deposit of copies by persons objecting to importation of copyrighted articles, see section 33 of this title.

#### § 13. Same; failure to deposit; demand; penalty.

Should the copies called for by section 12 of this title not be promptly deposited as provided in this title, the register of copyrights may at any time after the publication of the work, upon actual notice, require the proprietor of the copyright to deposit them, and after the said demand shall have been made, in default of the deposit of copies of the work within three months from any part of the United States, except an outlying territorial possession of the United States, or within six months from any outlying territorial possession of the United States, or from any foreign country, the proprietor of the copyright shall be liable to a fine of \$100 and to pay to the Library of Congress twice the amount of the retail price of the best edition of the work, and the copyright shall become void. (Mar. 4, 1909, ch. 320, § 13, 35 Stat. 1078.)

#### § 14. Same; postmaster's receipt; transmission by mail without cost.

The postmaster to whom are delivered the articles deposited as provided in sections 11 and 12 of this title shall, if requested, give a receipt therefor and shall mail them to their destination without cost to the copyright claimant. (Mar. 4, 1909, ch. 320, § 14, 35 Stat. 1078.)

#### § 15. Mechanical work to be done in United States.

Of the printed book or periodical specified in section 5, subsections (a) and (b) of this title, except the original text of a book of foreign origin in a language or languages other than English, the text of all copies accorded protection under this title, except as below provided, shall be printed from type set within the limits of the United States, either by hand



or by the aid of any kind of typesetting machine, or from plates made within the limits of the United States from type set therein, or, if the text be produced by lithographic process, or photo-engraving process, then by a process wholly performed within the limits of the United States, and the printing of the text and binding of the said book shall be performed within the limits of the United States; which requirements shall extend also to the illustrations within a book consisting of printed text and illustrations produced by lithographic process, or photo-engraving process, and also to separate lithographs or photo-engravings, except where in either case the subjects represented are located in a foreign country and illustrate a scientific work or reproduce a work of art: *Provided, however,* That said requirements shall not apply to works in raised characters for the use of the blind, or to books of foreign origin in a language or languages other than English, or to books published abroad in the English language seeking ad interim protection under this title, or to works printed or produced in the United States by any other process than those above specified in this section. (Mar. 4, 1909, ch. 320, § 15, 35 Stat. 1078; July 3, 1926, ch. 743, 44 Stat. 818.)

#### AMENDMENT

1926—Act July 3, 1926, affected proviso at end of section

#### § 16. Affidavit to accompany copies.

In the case of the book the copies so deposited shall be accompanied by an affidavit under the official seal of any officer authorized to administer oaths within the United States, duly made by the person claiming copyright or by his duly authorized agent or representative residing in the United States, or by the printer who has printed the book, setting forth that the copies deposited have been printed from type set within the limits of the United States or from plates made within the limits of the United States from type set therein; or, if the text be produced by lithographic process, or photo-engraving process, that such process was wholly performed within the limits of the United States and that the printing of the text and binding of the said book have also been performed within the limits of the United States. Such affidavit shall state also the place where and the establishment or establishments in which such type was set or plates were made or lithographic process, or photo-engraving process or printing and binding were performed and the date of the completion of the printing of the book or the date of publication. (Mar. 4, 1909, ch. 320, § 16, 35 Stat. 1079.)

#### § 17. Making false affidavit.

Any person who, for the purpose of obtaining registration of a claim to copyright, shall knowingly make a false affidavit as to his having complied with the above conditions shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$1,000, and all of his rights and privileges under said copyright shall thereafter be forfeited. (Mar. 4, 1909, ch. 320, § 17, 35 Stat. 1079.)

#### § 18. Notice; form.

The notice of copyright required by section 9 of this title shall consist either of the word "Copyright" or the abbreviation "Copr.", accompanied by the name of the copyright proprietor, and if the work be a printed literary, musical, or dramatic work, the notice shall include also the year in which the copyright was secured by publication. In the case, however, of copies of works specified in subsections (f) to (k), inclusive, of section 5 of this title, the notice may consist of the letter C inclosed within a circle, thus: ©, accompanied by the initials, monogram, mark, or symbol of the copyright proprietor: *Provided,* That on some accessible portion of such copies or of the margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear. But in the case of works in which copyright was subsisting on July 1, 1909, the notice of copyright may be either in one of the forms prescribed herein or may consist of the following words: "Entered according to Act of Congress, in the year —, by A. B., in the office of the Librarian of Congress, at Washington"; or, at his option the word "Copyright", together with the year the copyright was entered and the name of the party by whom it was taken out; thus, "Copyright, 19—, by A. B." (June 18, 1874, ch. 301, § 1, 18 Stat. 79; Mar. 4, 1909, ch. 320, §§ 18, 64, 35 Stat. 1079, 1088.)

#### CODIFICATION

The last sentence contains forms which were prescribed in act June 18, 1874, cited to text, and which were incorporated herein upon authority of reference in last sentence of section 18 of act March 4, 1909, which read: "But in the case of works in which copyright is subsisting when this act shall go into effect, the notice of copyright may be either in one of the forms prescribed herein or in one of those prescribed by the act of June eighteenth, eighteen hundred and seventy-four."

#### § 19. Same; place of application of; one notice in each volume or number of newspaper or periodical.

The notice of copyright shall be applied, in the case of a book or other printed publication, upon its title page or the page immediately following, or if a periodical either upon the title page or upon the first page of text of each separate number or under the title heading, or if a musical work either upon its title page or the first page of music. One notice of copyright in each volume or in each number of a newspaper or periodical published shall suffice. (Mar. 4, 1909, ch. 320, § 19, 35 Stat. 1079.)

#### § 20. Same; effect of accidental omission from copy or copies.

Where the copyright proprietor has sought to comply with the provisions of this title with respect to notice, the omission by accident or mistake of the prescribed notice from a particular copy or copies shall not invalidate the copyright or prevent recovery for infringement against any person who, after actual notice of the copyright, begins an undertaking to infringe it, but shall prevent the recovery of damages against an innocent infringer who has been misled by the omission of the notice; and in a suit for infringement no permanent injunction shall be had unless the copyright proprietor shall reimburse to the innocent infringer his reasonable outlay innocently in-

curred if the court, in its discretion, shall so direct. (Mar. 4, 1909, ch. 320, § 20, 35 Stat. 1080.)

#### § 21. Ad interim protection of book published abroad.

In the case of a book first published abroad in the English language, the deposit in the copyright office, not later than sixty days after its publication abroad, of one complete copy of the foreign edition, with a request for the reservation of the copyright and a statement of the name and nationality of the author and of the copyright proprietor and of the date of publication of the said book, shall secure to the author or proprietor an ad interim copyright, which shall have all the force and effect given to copyright by this title, and shall endure until the expiration of four months after such deposit in the copyright office. (Mar. 4, 1909, ch. 320, § 21, 35 Stat. 1080; Dec. 18, 1919, ch. 11, 41 Stat. 369.)

#### AMENDMENT

1919—Act December 18, 1919, cited to text, among other minor changes substituted "sixty days" for "thirty days" and "four months" for "thirty days."

#### § 22. Same; extension to full term.

Whenever within the period of such ad interim protection an authorized edition of such book shall be published within the United States, in accordance with the manufacturing provisions specified in section 15 of this title, and whenever the provisions of this title as to deposit of copies, registration, filing of affidavit, and the printing of the copyright notice shall have been duly complied with, the copyright shall be extended to endure in such book for the term provided in this title. (Mar. 4, 1909, ch. 320, § 22, 35 Stat. 1080.)

#### § 23. Duration; renewal and extension.

The copyright secured by this title shall endure for twenty-eight years from the date of first publication, whether the copyrighted work bears the author's true name or is published anonymously or under an assumed name: *Provided*, That in the case of any posthumous work or of any periodical, cyclopedic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or of any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom such work is made for hire, the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work, the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of twenty-eight years when application for such

renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in default of the registration of such application for renewal and extension, the copyright in any work shall determine at the expiration of twenty-eight years from first publication. (Mar. 4, 1909, ch. 320, § 23, 35 Stat. 1080; Mar. 15, 1940, ch. 57, 54 Stat. 51.)

#### AMENDMENT

1940—Act March 15, 1940, cited to text, affected second proviso.

#### § 24. Same; renewal; subsisting copyrights.

The copyright subsisting in any work on July 1, 1909, may, at the expiration of the term of twenty-eight years from the time of recording the title thereof as provided by former law, be renewed and extended by the author of such work if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then by the author's executors, or in the absence of a will, his next of kin, for a further period of twenty-eight years. If the work be a composite work upon which copyright was originally secured by the proprietor thereof, then such proprietor shall be entitled to the privilege of renewal and extension granted under this section: *Provided*, That application for such renewal and extension shall be made to the copyright office and duly registered therein within one year prior to the expiration of the existing term. (R. S. § 4953; Mar. 4, 1909, ch. 320, §§ 24, 64, 35 Stat. 1080, 1088.)

#### CODIFICATION

The provision of R. S. § 4953 which stipulated copyrights should be granted for a term of 28 years was incorporated in this section upon authority of reference in section 24 of act March 4, 1909, which read "at the expiration of the term provided for under existing law."

#### § 25. Infringement.

If any person shall infringe the copyright in any work protected under the copyright laws of the United States such person shall be liable:

##### (a) Injunction.

(a) To an injunction restraining such infringement;

##### (b) Damages and profits; amount; other remedies.

(b) To pay to the copyright proprietor such damages as the copyright proprietor may have suffered due to the infringement, as well as all the profits which the infringer shall have made from such infringement, and in proving profits the plaintiff shall be required to prove sales only, and the defendant shall be required to prove every element of cost which he claims, or in lieu of actual damages and profits, such damages as to the court shall appear to be just, and in assessing such damages the court may, in its discretion, allow the amounts as hereinafter stated, but in case of a newspaper reproduction of a copyrighted photograph, such damages shall not exceed the sum of \$200 nor be less than the sum of \$50, and in the case of the infringement of an undramatized or nondramatic work by means of motion pictures, where the infringer shall show that

he was not aware that he was infringing, and that such infringement could not have been reasonably foreseen, such damages shall not exceed the sum of \$100; and in the case of an infringement of a copyrighted dramatic or dramatico-musical work by a maker of motion pictures and his agencies for distribution thereof to exhibitors, where such infringer shows that he was not aware that he was infringing a copyrighted work, and that such infringements could not reasonably have been foreseen, the entire sum of such damages recoverable by the copyright proprietor from such infringing maker and his agencies for the distribution to exhibitors of such infringing motion picture shall not exceed the sum of \$5,000 nor be less than \$250, and such damages shall in no other case exceed the sum of \$5,000 nor be less than the sum of \$250, and shall not be regarded as a penalty. But the foregoing exceptions shall not deprive the copyright proprietor of any other remedy given him under this law, nor shall the limitation as to the amount of recovery apply to infringements occurring after the actual notice to a defendant, either by service of process in a suit or other written notice served upon him.

First. In the case of a painting, statue, or sculpture, \$10 for every infringing copy made or sold by or found in the possession of the infringer or his agents or employees;

Second. In the case of any work enumerated in section 5 of this title, except a painting, statue, or sculpture, \$1 for every infringing copy made or sold by or found in the possession of the infringer or his agents or employees;

Third. In the case of a lecture, sermon, or address, \$50 for every infringing delivery;

Fourth. In the case of a dramatic or dramatico-musical or a choral or orchestral composition, \$100 for the first and \$50 for every subsequent infringing performance; in the case of other musical compositions \$10 for every infringing performance;

(c) Impounding during action.

(c) To deliver up on oath, to be impounded during the pendency of the action, upon such terms and conditions as the court may prescribe, all articles alleged to infringe a copyright;

(d) Destruction of infringing copies and plates.

(d) To deliver up on oath for destruction all the infringing copies or devices, as well as all plates, molds, matrices, or other means for making such infringing copies as the court may order.

(e) Royalties for use of mechanical reproduction of musical works.

(e) Whenever the owner of a musical copyright has used or permitted the use of the copyrighted work upon the parts of musical instruments serving to reproduce mechanically the musical work, then in case of infringement of such copyright by the unauthorized manufacture, use, or sale of interchangeable parts, such as disks, rolls, bands, or cylinders for use in mechanical music-producing machines adapted to reproduce the copyrighted music, no criminal action shall be brought, but in a civil action an injunction may be granted upon such terms as the court may impose, and the plaintiff shall be

entitled to recover in lieu of profits and damages a royalty as provided in section 1, subsection (e), of this title: *Provided also*, That whenever any person, in the absence of a license agreement, intends to use a copyrighted musical composition upon the parts of instruments serving to reproduce mechanically the musical work, relying upon the compulsory license provision of this title, he shall serve notice of such intention, by registered mail, upon the copyright proprietor at his last address disclosed by the records of the copyright office, sending to the copyright office a duplicate of such notice; and in case of his failure so to do the court may, in its discretion, in addition to sums hereinabove mentioned, award the complainant a further sum, not to exceed three times the amount provided by section 1, subsection (e), by way of damages, and not as a penalty, and also a temporary injunction until the full award is paid.

Rules of procedure.

Rules and regulations for practice and procedure under this section shall be prescribed by the Supreme Court of the United States. (Mar. 4, 1909, ch. 320, § 25, 35 Stat. 1081; Aug. 24, 1912, ch. 356, 37 Stat. 489.)

AMENDMENT

1912—Act August 24, 1912, cited to text, amended subsection (b) generally, adding last sentence thereto.

FEDERAL RULES OF CIVIL PROCEDURE

Application of rules, see Rule 81, following § 723c of Title 28, Judicial Code and Judiciary.

Form of complaint, see Form 17, Appendix, following Rule 86, in note under section 723c of Title 28, Judicial Code and Judiciary.

§ 26. Jurisdiction of courts in enforcing remedies.

Any court given jurisdiction under section 34 of this title may proceed in any action, suit, or proceeding instituted for violation of any provision hereof to enter a judgment or decree enforcing the remedies herein provided. (Mar. 4, 1909, ch. 320, § 26, 35 Stat. 1082.)

§ 27. Joinder of proceedings for different remedies.

The proceedings for an injunction, damages, and profits, and those for the seizure of infringing copies, plates, molds, matrices, and so forth, aforementioned, may be united in one action. (Mar. 4, 1909, ch. 320, § 27, 35 Stat. 1082.)

§ 28. Willful infringement for profit.

Any person who willfully and for profit shall infringe any copyright secured by this title, or who shall knowingly and willfully aid or abet such infringement, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not exceeding one year or by a fine of not less than \$100 nor more than \$1,000, or both, in the discretion of the court: *Provided, however*, That nothing in this title shall be so construed as to prevent the performance of religious or secular works such as oratorios, cantatas, masses, or octavo choruses by public schools, church choirs, or vocal societies, rented, borrowed, or obtained from some public library, public school, church choir, school choir, or vocal society, provided the performance is given for charitable or educational purposes and not for profit. (Mar. 4, 1909, ch. 320, § 28, 35 Stat. 1082.)

**§ 29. Fraudulent notice of copyright, or removal or alteration of notice.**

Any person who, with fraudulent intent, shall insert or impress any notice of copyright required by this title, or words of the same purport, in or upon any uncopyrighted article, or with fraudulent intent shall remove or alter the copyright notice upon any article duly copyrighted shall be guilty of a misdemeanor, punishable by a fine of not less than \$100 and not more than \$1,000. Any person who shall knowingly issue or sell any article bearing a notice of United States copyright which has not been copyrighted in this country, or who shall knowingly import any article bearing such notice or words of the same purport, which has not been copyrighted in this country, shall be liable to a fine of \$100. (Mar. 4, 1909, ch. 320, § 29, 35 Stat. 1082.)

**§ 30. Importation of article bearing false notice or piratical copies of copyrighted work.**

The importation into the United States of any article bearing a false notice of copyright when there is no existing copyright thereon in the United States, or of any piratical copies of any work copyrighted in the United States, is prohibited. (Mar. 4, 1909, ch. 320, § 30, 35 Stat. 1082.)

**§ 31. Importation, during existence of copyright, of piratical copies, or of copies not produced in accordance with section 15 of this title.**

During the existence of the American copyright in any book the importation into the United States of any piratical copies thereof or of any copies thereof (although authorized by the author or proprietor) which have not been produced in accordance with the manufacturing provisions specified in section 15 of this title, or any plates of the same not made from type set within the limits of the United States, or any copies thereof produced by lithographic or photo-engraving process not performed within the limits of the United States, in accordance with the provisions of section 15 is prohibited: *Provided, however,* That, except as regards piratical copies, such prohibition shall not apply:

(a) To works in raised characters for the use of the blind.

(b) To a foreign newspaper or magazine, although containing matter copyrighted in the United States printed or reprinted by authority of the copyright proprietor, unless such newspaper or magazine contains also copyright matter printed or reprinted without such authorization.

(c) To the authorized edition of a book in a foreign language or languages of which only a translation into English has been copyrighted in this country.

(d) To any book published abroad with the authorization of the author or copyright proprietor when imported under the circumstances stated in one of the four subdivisions following, that is to say:

First. When imported, not more than one copy at one time, for individual use and not for sale; but such privilege of importation shall not extend to a foreign reprint of a book by an American author copyrighted in the United States.

Second. When imported by the authority or for the use of the United States.

Third. When imported, for use and not for sale, not more than one copy of any such book in any one invoice, in good faith, by or for any society or institution incorporated for educational, literary, philosophical, scientific, or religious purposes, or for the encouragement of the fine arts, or for any college, academy, school, or seminary of learning, or for any State, school, college, university, or free public library in the United States.

Fourth. When such books form parts of libraries or collections purchased en bloc for the use of societies, institutions, or libraries designated in the foregoing paragraph, or form parts of the libraries or personal baggage belonging to persons or families arriving from foreign countries and are not intended for sale: *Provided,* That copies imported as above may not lawfully be used in any way to violate the rights of the proprietor of the American copyright or annul or limit the copyright protection secured by this title, and such unlawful use shall be deemed an infringement of copyright. (Mar. 4, 1909, ch. 320, § 31, 35 Stat. 1082.)

**§ 32. Forfeiture and destruction of articles prohibited importation.**

Any and all articles prohibited importation by this title which are brought into the United States from any foreign country (except in the mails) shall be seized and forfeited by like proceedings as those provided by law for the seizure and condemnation of property imported into the United States in violation of the customs revenue laws. Such articles when forfeited shall be destroyed in such manner as the Secretary of the Treasury or the court, as the case may be, shall direct: *Provided, however,* That all copies of authorized editions of copyright books imported in the mails or otherwise in violation of the provisions of this title may be exported and returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury, in a written application, that such importation does not involve willful negligence or fraud. (Mar. 4, 1909, ch. 320, § 32, 35 Stat. 1083.)

**§ 33. Importation of prohibited articles; regulations; proof of deposit of copies by complainants.**

The Secretary of the Treasury and the Postmaster General are hereby empowered and required to make and enforce individually or jointly such rules and regulations as shall prevent the importation into the United States of articles prohibited importation by this title, and may require, as conditions precedent to exclusion of any work in which copyright is claimed, the copyright proprietor or any person claiming actual or potential injury by reason of actual or contemplated importations of copies of such work to file with the Post Office Department or the Treasury Department a certificate of the Register of Copyrights that the provisions of section 12 of this title, as amended, have been fully complied with, and to give notice of such compliance to postmasters or to customs officers at the ports of entry in the United States in such form and accompanied by such exhibits as may be deemed necessary for the

practical and efficient administration and enforcement of the provisions of sections 30 and 31 of this title. (Mar. 4, 1909, ch. 320, § 33, 35 Stat. 1083; Apr. 11, 1940, ch. 81, 54 Stat. 106.)

#### AMENDMENT

1940—Act April 11, 1940, cited to text, inserted matter requiring certificate of compliance with requirements of section 12 of this title and the giving of notice thereof.

#### § 34. Jurisdiction of actions under laws.

All actions, suits, or proceedings arising under the copyright laws of the United States shall be originally cognizable by the district courts of the United States, the district court of any Territory, the district court of the United States for the District of Columbia, the district courts of Alaska, Hawaii, and Puerto Rico, and the courts of first instance of the Philippine Islands. (Mar. 4, 1909, ch. 320, § 34, 35 Stat. 1084; Mar. 3, 1911, ch. 231, § 24, 36 Stat. 1092; May 17, 1932, ch. 190, 47 Stat. 158; June 25, 1936, ch. 804, 49 Stat. 1921.)

#### AMENDMENTS

1936—Act June 25, 1936, cited to text, changed the name of the "Supreme Court of the District of Columbia" to "district court of the United States for the District of Columbia".

1911—Act March 3, 1911, cited to text, conferred original jurisdiction of copyright matters on district courts of the United States.

#### § 35. District in which actions may be brought.

Civil actions, suits, or proceedings arising under this title may be instituted in the district of which the defendant or his agent is an inhabitant, or in which he may be found. (Mar. 4, 1909, ch. 320, § 35, 35 Stat. 1084.)

#### CROSS REFERENCE

Civil suits to be brought only in district of defendant's residence, see section 112 of Title 28, Judicial Code and Judiciary.

#### § 36. Injunctions; service and enforcement.

Any such court or judge thereof shall have power, upon bill in equity filed by any party aggrieved, to grant injunctions to prevent and restrain the violation of any right secured by this title, according to the course and principles of courts of equity, on such terms as said court or judge may deem reasonable. Any injunction that may be granted restraining and enjoining the doing of anything forbidden by this title may be served on the parties against whom such injunction may be granted anywhere in the United States, and shall be operative throughout the United States and be enforceable by proceedings in contempt or otherwise by any other court or judge possessing jurisdiction of the defendants. (Mar. 4, 1909, ch. 320, § 36, 35 Stat. 1084.)

#### § 37. Transmission of certified copies of papers for enforcement of injunction by other court.

The clerk of the court, or judge granting the injunction, shall, when required so to do by the court hearing the application to enforce said injunction, transmit without delay to said court a certified copy of all the papers in said cause that are on file in his office. (Mar. 4, 1909, ch. 320, § 37, 35 Stat. 1084.)

#### § 38. Review of orders, judgments, or decrees.

The orders, judgments, or decrees of any court mentioned in section 34 of this title arising under the copyright laws of the United States may be reviewed on appeal in the manner and to the extent now provided by law for the review of cases determined in said courts, respectively. (Mar. 4, 1909, ch. 320, § 38, 35 Stat. 1084; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

#### § 39. Limitation of criminal proceedings.

No criminal proceeding shall be maintained under the provisions of this title unless the same is commenced within three years after the cause of action arose. (Mar. 4, 1909, ch. 320, § 39, 35 Stat. 1084.)

#### § 40. Costs; attorney's fees.

In all actions, suits, or proceedings under this title, except when brought by or against the United States or any officer thereof, full costs shall be allowed, and the court may award to the prevailing party a reasonable attorney's fee as part of the costs. (Mar. 4, 1909, ch. 320, § 40, 35 Stat. 1084.)

#### § 41. Copyright distinct from property in object copyrighted; effect of sale of object, and of assignment of copyright.

The copyright is distinct from the property in the material object copyrighted, and the sale or conveyance, by gift or otherwise, of the material object shall not of itself constitute a transfer of the copyright, nor shall the assignment of the copyright constitute a transfer of the title to the material object; but nothing in this title shall be deemed to forbid, prevent, or restrict the transfer of any copy of a copyrighted work the possession of which has been lawfully obtained. (Mar. 4, 1909, ch. 320, § 41, 35 Stat. 1084.)

#### § 42. Assignments and bequests.

Copyright secured under this title or previous copyright laws of the United States may be assigned, granted, or mortgaged by an instrument in writing signed by the proprietor of the copyright, or may be bequeathed by will. (Mar. 4, 1909, ch. 320, § 42, 35 Stat. 1084.)

#### § 43. Same; executed in foreign country; acknowledgment and certificate.

Every assignment of copyright executed in a foreign country shall be acknowledged by the assignor before a consular officer or secretary of legation of the United States authorized by law to administer oaths or perform notarial acts. The certificate of such acknowledgement under the hand and official seal of such consular officer or secretary of legation shall be prima facie evidence of the execution of the instrument. (Mar. 4, 1909, ch. 320, § 43, 35 Stat. 1084.)

#### § 44. Same; record.

Every assignment of copyright shall be recorded in the copyright office within three calendar months after its execution in the United States or within six calendar months after its execution without the limits of the United States, in default of which it

shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, whose assignment has been duly recorded. (Mar. 4, 1909, ch. 320, § 44, 35 Stat. 1084.)

**§ 45. Same; certificate of record.**

The register of copyrights shall, upon payment of the prescribed fee, record such assignment, and shall return it to the sender with a certificate of record attached under seal of the copyright office, and upon the payment of the fee prescribed by this title he shall furnish to any person requesting the same a certified copy thereof under the said seal. (Mar. 4, 1909, ch. 320, § 45, 35 Stat. 1085.)

**CROSS REFERENCE**

Fees payable to register of copyrights, see section 61, post.

**§ 46. Same; use of name of assignee in notice.**

When an assignment of the copyright in a specified book or other work has been recorded the assignee may substitute his name for that of the assignor in the statutory notice of copyright prescribed by this title. (Mar. 4, 1909, ch. 320, § 46, 35 Stat. 1085.)

**§ 47. Copyright office; preservation of records.**

All records and other things relating to copyrights required by law to be preserved shall be kept and preserved in the copyright office, Library of Congress, District of Columbia, and shall be under the control of the register of copyrights, who shall, under the direction and supervision of the Librarian of Congress, perform all the duties relating to the registration of copyrights. (Mar. 4, 1909, ch. 320, § 47, 35 Stat. 1085.)

**§ 48. Register, assistant register, and subordinates.**

There shall be appointed by the Librarian of Congress a register of copyrights, and one assistant register of copyrights, who shall have authority during the absence of the register of copyrights to attach the copyright office seal to all papers issued from the said office and to sign such certificates and other papers as may be necessary. There shall also be appointed by the Librarian such subordinate assistants to the register as may from time to time be authorized by law. (Mar. 4, 1909, ch. 320, § 48, 35 Stat. 1085; Mar. 4, 1923, ch. 265, § 1, 42 Stat. 1488.)

**AMENDMENT**

1923—Act March 4, 1923, cited to text, known as the Classification Act of 1923, supplanted the provisions of section 48 of act March 3, 1909, fixing the salary of the register at \$4,000 and the assistant register at \$3,000.

**§ 49. Same; deposit of moneys received; reports.**

The register of copyrights shall make daily deposits in some bank in the District of Columbia, designated for this purpose by the Secretary of the Treasury as a national depository, of all moneys received to be applied as copyright fees, and shall make weekly deposits with the Secretary of the Treasury, in such manner as the latter shall direct, of all copyright fees actually applied under the provisions of this title, and annual deposits of sums received which it has not been possible to apply as copyright fees or to return to the remitters, and shall also make

monthly reports to the Secretary of the Treasury and to the Librarian of Congress of the applied copyright fees for each calendar month, together with a statement of all remittances received, trust funds on hand, moneys refunded, and unapplied balances. (Mar. 4, 1909, ch. 320, § 49, 35 Stat. 1085.)

**§ 50. Same; bond.**

The register of copyrights shall give bond to the United States in the sum of \$20,000, in form to be approved by the General Counsel for the Department of the Treasury and with sureties satisfactory to the Secretary of the Treasury, for the faithful discharge of his duties. (Mar. 4, 1909, ch. 320, § 50, 35 Stat. 1085; May 10, 1934, ch. 277, § 512, 48 Stat. 758.)

**TRANSFER OF FUNCTIONS**

Office of Solicitor of the Treasury was abolished and its functions and duties transferred to that of the General Counsel by act May 10, 1934, cited to text.

**§ 51. Same; annual report.**

The register of copyrights shall make an annual report to the Librarian of Congress, to be printed in the annual report on the Library of Congress, of all copyright business for the previous fiscal year, including the number and kind of works which have been deposited in the copyright office during the fiscal year, under the provisions of this title. (Mar. 4, 1909, ch. 320, § 51, 35 Stat. 1085.)

**§ 52. Seal of copyright office.**

The seal used in the copyright office on July 1, 1909, shall be the seal of the copyright office, and by it all papers issued from the copyright office requiring authentication shall be authenticated. (Mar. 4, 1909, ch. 320, § 52, 35 Stat. 1085.)

**§ 53. Rules for registration of claims.**

Subject to the approval of the Librarian of Congress, the register of copyrights shall be authorized to make rules and regulations for the registration of claims to copyright as provided by this title. (Mar. 4, 1909, ch. 320, § 53, 35 Stat. 1085.)

**§ 54. Record books in copyright office.**

The register of copyrights shall provide and keep such record books in the copyright office as are required to carry out the provisions of this title, and whenever deposit has been made in the copyright office of a copy of any work under the provisions of this title he shall make entry thereof. (Mar. 4, 1909, ch. 320, § 54, 35 Stat. 1086.)

**§ 55. Certificate of registration; effect as evidence; receipt for copies deposited.**

In the case of each entry the person recorded as the claimant of the copyright shall be entitled to a certificate of registration under seal of the copyright office, to contain the name and address of said claimant, the name of the country of which the author of the work is a citizen or subject, and when an alien author domiciled in the United States at the time of said registration, then a statement of that fact, including his place of domicile, the name of the author (when the records of the copyright office shall

show the same), the title of the work which is registered for which copyright is claimed, the date of the deposit of the copies of such work, the date of publication if the work has been reproduced in copies for sale, or publicly distributed, and such marks as to class designation and entry number as shall fully identify the entry. In the case of a book, the certificate shall also state the receipt of the affidavit, as provided by section 16 of this title, and the date of the completion of the printing, or the date of the publication of the book, as stated in the said affidavit. The register of copyrights shall prepare a printed form for the said certificate, to be filled out in each case as above provided for in the case of all registrations made after March 2, 1913, and in the case of all previous registrations so far as the copyright office record books shall show such facts, which certificate, sealed with the seal of the copyright office, shall, upon payment of the prescribed fee, be given to any person making application for the same. Said certificate shall be admitted in any court as prima facie evidence of the facts stated therein. In addition to such certificate the register of copyrights shall furnish, upon request, without additional fee, a receipt for the copies of the work deposited to complete the registration. (Mar. 4, 1909, ch. 320, §§ 55, 64, 35 Stat. 1086, 1088; Mar. 2, 1913, ch. 97, 37 Stat. 724.)

#### AMENDMENT

1913—Act March 2, 1913, enlarged the scope of the certificate of registration.

#### § 56. Catalogues of copyright entries; effect as evidence.

The register of copyrights shall fully index all copyright registrations and assignments and shall print at periodic intervals a catalogue of the titles of articles deposited and registered for copyright, together with suitable indexes, and at stated intervals shall print complete and indexed catalogues for each class of copyright entries, and may thereupon, if expedient, destroy the original manuscript catalogue cards containing the titles included in such printed volumes and representing the entries made during such intervals. The current catalogues of copyright entries and the index volumes herein provided for shall be admitted in any court as prima facie evidence of the facts stated therein as regards any copyright registration. (Mar. 4, 1909, ch. 320, § 56, 35 Stat. 1086.)

#### § 57. Same; distribution and sale; disposal of proceeds.

The said printed current catalogues as they are issued shall be promptly distributed by the copyright office to the collectors of customs of the United States and to the postmasters of all exchange offices of receipt of foreign mails, in accordance with revised lists of such collectors of customs and postmasters prepared by the Secretary of the Treasury and the Postmaster General, and they shall also be furnished in whole or in part to all parties desiring them, at a price to be determined by the register of copyrights for each part of the catalogue, not exceeding \$10 for the complete yearly catalogue of copyright entries and not exceeding \$1 per annum for the catalogues issued during the year for any one class of subjects.

The consolidated catalogues and indexes shall also be supplied to all persons ordering them at such prices as may be determined to be reasonable, and all subscriptions for the catalogues shall be received by the Superintendent of Public Documents, who shall forward the said publications; and the moneys thus received shall be paid into the Treasury of the United States and accounted for under such laws and Treasury regulations as shall be in force at the time. (Mar. 4, 1909, ch. 320, § 57, 35 Stat. 1086; May 23, 1928, ch. 704, § 1, 45 Stat. 713.)

#### AMENDMENT

1928—Act May 23, 1928, cited to text, among other minor changes, substituted \$10.00 for \$5.00.

#### § 58. Records and works deposited in copyright office open to public inspection; taking copies of entries.

The record books of the copyright office, together with the indexes to such record books, and all works deposited and retained in the copyright office, shall be open to public inspection; and copies may be taken of the copyright entries actually made in such record books, subject to such safeguards and regulations as shall be prescribed by the register of copyrights and approved by the Librarian of Congress. (Mar. 4, 1909, ch. 320, § 58, 35 Stat. 1086.)

#### § 59. Disposition of articles deposited in office.

Of the articles deposited in the copyright office under the provisions of the copyright laws of the United States, the Librarian of Congress shall determine what books and other articles shall be transferred to the permanent collections of the Library of Congress, including the law library, and what other books or articles shall be placed in the reserve collections of the Library of Congress for sale or exchange, or be transferred to other governmental libraries in the District of Columbia for use therein. (Mar. 4, 1909, ch. 320, § 59, 35 Stat. 1087.)

#### § 60. Destruction of articles deposited in office remaining undisposed of; removal of by author or proprietor; manuscripts of unpublished works.

Of any articles undisposed of as above provided, together with all titles and correspondence relating thereto, the Librarian of Congress and the register of copyrights jointly shall, at suitable intervals, determine what of these received during any period of years it is desirable or useful to preserve in the permanent files of the copyright office, and, after due notice as hereinafter provided, may within their discretion cause the remaining articles and other things to be destroyed: *Provided*, That there shall be printed in the Catalogue of Copyright Entries from February to November, inclusive, a statement of the years of receipt of such articles and a notice to permit any author, copyright proprietor, or other lawful claimant to claim and remove before the expiration of the month of December of that year anything found which relates to any of his productions deposited or registered for copyright within the period of years stated, not reserved or disposed of as provided for in this title. No manuscript of an unpublished work shall be destroyed during its term of copyright without specific notice to the copyright proprietor of record, permitting him to



claim and remove it. (Mar. 4, 1909, ch. 320, § 60, 35 Stat. 1087.)

#### § 61. Fees.

The register of copyrights shall receive, and the persons to whom the services designated are rendered shall pay, the following fees: For the registration of any work subject to copyright, deposited under the provisions of this title, § 2, which sum is to include a certificate of registration under seal: *Provided*, That in the case of any unpublished work registered under the provisions of section 11, the fee for registration with certificate shall be \$1, and in the case of a published photograph the fee shall be \$1 where a certificate is not desired. For every additional certificate of registration made, \$1. For recording and certifying any instrument of writing for the assignment of copyright, or any such license specified in section 1, subsection (e), or for any copy of such assignment or license, duly certified, \$2 for each copyright office record-book page or additional fraction thereof over one-half page. For recording the notice of user or acquiescence specified in section 1, subsection (e), \$1 for each notice of not more than five titles. For comparing any copy of an assignment with the record of such document in the copyright office and certifying the same under seal, \$2. For recording the renewal of copyright provided for in sections 23 and 24, \$1. For recording the transfer of the proprietorship of copyrighted articles, 10 cents for each title of a book or other article, in addition to the fee prescribed for recording the instrument of assignment. For any requested search of copyright office records, indexes, or deposits, \$1 for each hour of time consumed in making such search: *Provided*, That only one registration at one fee shall be required in the case of several volumes of the same book deposited at the same time. (Mar. 4, 1909, ch. 320, § 61, 35 Stat. 1087; May 23, 1928, ch. 704, § 1, 45 Stat. 714.)

#### § 62. Terms defined.

In the interpretation and construction of this title "the date of publication" shall in the case of a work of which copies are reproduced for sale or distribution be held to be the earliest date when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority, and the word "author" shall include an employer in the case of works made for hire. (Mar. 4, 1909, ch. 320, § 62, 35 Stat. 1087.)

§ 63. Repealed. July 31, 1939, ch. 396, § 1, 53 Stat. 1142.

#### REPEAL

Section, act of June 18, 1874, ch. 301, § 3, 18 Stat. 79, was repealed effective at the close of business June 30, 1940. The repealing act further provided that all original or renewal copyrights effected under this section should continue in full force and effect for the balance of the respective unexpired terms, subject to all the rights and remedies accorded by existing copyright law.

See sections 5, 64 and 65 of this title.

#### CROSS REFERENCES

Duties of Commissioner of Patents, see section 6 of Title 35, Patents.

Patent fees, see section 78 of Title 35, Patents.

#### § 64. Registration of prints and labels.

Commencing July 1, 1940, the Register of Copyrights is charged with the registration of claims to copyright properly presented, in all prints and labels published in connection with the sale or advertisement of articles of merchandise, including all claims to copyright in prints and labels pending in the Patent Office and uncleared at the close of business June 30, 1940. All such pending applications and all fees which have been submitted or paid to or into the Patent Office for such pending applications, and all funds deposited and at the close of business June 30, 1940, held in the Patent Office to be applied to copyright business in that Office, shall be returned by the Commissioner of Patents to the applicants. There shall be paid for registering a claim of copyright in any such print or label not a trade-mark \$6, which sum shall cover the expense of furnishing a certificate of such registration, under the seal of the Copyright Office, to the claimant of copyright. (July 31, 1939, ch. 396, § 3, 53 Stat. 1142.)

#### CODIFICATION

This section is not a part of the Copyright Act of 1909 which is set out as sections 1-62 of this title.

#### § 65. Renewal of copyrights registered in Patent Office under section 63.

Subsisting copyrights originally registered in the Patent Office prior to July 1, 1940, under section 63 of this title, shall be subject to renewal in behalf of the proprietor upon application made to the Register of Copyrights within one year prior to the expiration of the original term of twenty-eight years. (July 31, 1939, ch. 396, § 4, 53 Stat. 1142.)

#### CODIFICATION

This section is not a part of the Copyright Act of 1909 which is set out as sections 1-62 of this title.



## TITLE 18.—CRIMINAL CODE AND CRIMINAL PROCEDURE

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### Chapter 1.—OFFENSES AGAINST EXISTENCE OF GOVERNMENT

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#### § 1. (Criminal Code, section 1.) Treason.

Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason. (Mar. 4, 1909, ch. 321, § 1, 35 Stat. 1088.)

#### DERIVATION

R. S. § 5331, which was revised from act Apr. 30, 1790 ch. 9, 1 Stat. 112, and repealed by act Mar. 4, 1909, ch. 321 § 341, 35 Stat. 1153.

#### § 2. (Criminal Code, section 2.) Same; punishment.

Whoever is convicted of treason shall suffer death: or, at the discretion of the court, shall be imprisoned not less than five years and fined not less than \$10,000, to be levied on and collected out of any or all of his property, real and personal, of which he was the owner at the time of committing such treason, any sale or conveyance to the contrary notwithstanding; and every person so convicted of treason shall, moreover, be incapable of holding any office under the United States. (Mar. 4, 1909, ch. 321, § 2, 35 Stat. 1088.)

#### DERIVATION

R. S. § 5332, which was revised from act July 17, 1862, ch. 195, 12 Stat. 589, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 3. (Criminal Code, section 3.) Misprision of treason; punishment.

Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be imprisoned not more than seven years and fined not more than \$1,000. (Mar. 4, 1909, ch. 321, § 3, 35 Stat. 1088.)

#### DERIVATION

R. S. § 5333, which was revised from act Apr. 30, 1790 ch. 9, 1 Stat. 112, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 4. (Criminal Code, section 4.) Inciting rebellion or insurrection.**

Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be imprisoned not more than ten years or fined not more than \$10,000, or both; and shall, moreover, be incapable of holding any office under the United States. (Mar. 4, 1909, ch. 321, § 4, 35 Stat. 1088.)

**DERIVATION**

R. S. § 5334, which was revised from act July 17, 1862, ch. 195, 12 Stat. 590, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 5. (Criminal Code, section 5.) Criminal correspondence with foreign governments; redress of private injuries excepted.**

Every citizen of the United States, whether actually resident or abiding within the same, or in any place subject to the jurisdiction thereof, or in any foreign country, who, without the permission or authority of the Government, directly or indirectly, commences or carries on any verbal or written correspondence or intercourse with any foreign government or any officer or agent thereof, with an intent to influence the measures or conduct of any foreign government or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the Government of the United States; and every person, being a citizen of or resident within the United States or in any place subject to the jurisdiction thereof, and not duly authorized, who counsels, advises, or assists in any such correspondence with such intent, shall be fined not more than \$5,000 and imprisoned not more than three years; but nothing in this section shall be construed to abridge the right of a citizen to apply, himself or his agent, to any foreign government or the agents thereof for redress of any injury which he may have sustained from such government or any of its agents or subjects. (Mar. 4, 1909, ch. 321, § 5, 35 Stat. 1088; Apr. 22, 1932, ch. 126, 47 Stat. 132.)

**DERIVATION**

R. S. § 5335, which was revised from act Jan. 30, 1799, ch. 1, 1 Stat. 613, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 6. (Criminal Code, section 6.) Seditious conspiracy.**

If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined not more than \$5,000 or imprisoned not more than six years, or both. (Mar. 4, 1909, ch. 321, § 6, 35 Stat. 1089.)

**DERIVATION**

R. S. § 5336, which was revised from acts July 31, 1861, ch. 33, 12 Stat. 284; Apr. 20, 1871, ch. 22, 17 Stat. 13, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 7. (Criminal Code, section 7.) Recruiting for service against United States.**

Whoever recruits soldiers or sailors within the United States, or in any place subject to the jurisdiction thereof, to engage in armed hostility against the same, or opens within the United States, or in any place subject to the jurisdiction thereof, a recruiting station for the enlistment of such soldiers or sailors to serve in any manner in armed hostility against the United States, shall be fined not more than \$1,000 and imprisoned not more than five years. (Mar. 4, 1909, ch. 321, § 7, 35 Stat. 1089.)

**DERIVATION**

R. S. § 5337, which was revised from act Aug. 6, 1861, ch. 56, 12 Stat. 317, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 8. (Criminal Code, section 8.) Enlisting to serve against United States.**

Every person enlisted or engaged within the United States or in any place subject to the jurisdiction thereof, with intent to serve in armed hostility against the United States, shall be fined \$100 and imprisoned not more than three years. (Mar. 4, 1909, ch. 321, § 8, 35 Stat. 1089.)

**DERIVATION**

R. S. § 5338, which was revised from act Aug. 6, 1861, ch. 56, 12 Stat. 317, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 9. Subversive activities; undermining loyalty, discipline, or morale of armed forces.**

(a) It shall be unlawful for any person, with intent to interfere with, impair, or influence the loyalty, morale, or discipline of the military or naval forces of the United States—

(1) to advise, counsel, urge, or in any manner cause insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States; or

(2) to distribute any written or printed matter which advises, counsels, or urges insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States.

(b) For the purposes of this section, the term "military or naval forces of the United States" includes the Army of the United States, as defined in section 2 of Title 10, the Navy, Marine Corps, Coast Guard, Naval Reserve, and Marine Corps Reserve of the United States; and, when any merchant vessel is commissioned in the Navy or is in the service of the Army or the Navy, includes the master, officers, and crew of such vessel. (June 28, 1940, ch. 439, title I, § 1, 54 Stat. 670.)

**SEPARABILITY CLAUSE**

Section 40 of act June 28, 1940, cited to text, provided as follows: "If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances, shall not be affected thereby."

**SHORT TITLE**

Section 41 of act June 28, 1940, cited to text, provided: "This Act (sections 9-13 of this title and sections 137, 155, 156a, 451-460 of Title 8, Aliens and Nationality) may be cited as the 'Alien Registration Act, 1940.'"

**§ 10. Same; advocating overthrow of Government by force.**

(a) It shall be unlawful for any person—

(1) to knowingly or willfully advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or by the assassination of any officer of any such government;

(2) with the intent to cause the overthrow or destruction of any government in the United States, to print, publish, edit, issue, circulate, sell, distribute, or publicly display any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence;

(3) to organize or help to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any government in the United States by force or violence; or to be or become a member of, or affiliate with, any such society, group, or assembly of persons, knowing the purposes thereof.

(b) For the purposes of this section, the term "government in the United States" means the Government of the United States, the government of any State, Territory, or possession of the United States, the government of the District of Columbia, or the government of any political subdivision of any of them. (June 28, 1940, ch. 439, title I, § 2, 54 Stat. 671.)

**SEPARABILITY CLAUSE; SHORT TITLE**

Separability clause and short title, see note to section 9 of this title.

**§ 11. Same; attempting or conspiring to commit prohibited acts.**

It shall be unlawful for any person to attempt to commit, or to conspire to commit, any of the acts prohibited by the provisions of sections 9–13 of this title. (June 28, 1940, ch. 439, title I, § 3, 54 Stat. 671.)

**SEPARABILITY CLAUSE; SHORT TITLE**

Separability clause and short title, see note to section 9 of this title.

**§ 12. Same; searches and seizures.**

Any written or printed matter of the character described in section 9 or section 10 of this title, which is intended for use in violation of this act,<sup>1</sup> may be taken from any house or other place in which it may be found, or from any person in whose possession it may be, under a search warrant issued pursuant to the provisions of sections 611–633 of this title. (June 28, 1940, ch. 439, title I, § 4, 54 Stat. 671.)

<sup>1</sup>See sections 9–13 of this title and sections 137, 155, 156a, 451–460 of Title 8, Aliens and Nationality.

**SEPARABILITY CLAUSE; SHORT TITLE**

Separability clause and short title, see note to section 9 of this title.

**§ 13. Same; penalties.**

(a) Any person who violates any of the provisions of sections 9–13 of this title shall, upon conviction

thereof, be fined not more than \$10,000 or imprisoned for not more than ten years, or both.

(b) No person convicted of violating any of the provisions of sections 9–13 of this title shall, during the five years next following his conviction, be eligible for employment by the United States, or by any department or agency thereof (including any corporation the stock of which is wholly owned by the United States). (June 28, 1940, ch. 439, title I, § 5, 54 Stat. 671.)

**SEPARABILITY CLAUSE; SHORT TITLE**

Separability clause and short title, see note to section 9 of this title.

**§ 14. Organizations carrying on subversive political and civilian military activities; definitions.**

For the purposes of sections 14–17 of this title—

(a) The term "Attorney General" means the Attorney General of the United States;

(b) The term "organization" means any group, club, league, society, committee, association, political party, or combination of individuals, whether incorporated or otherwise, but such term shall not include any corporation, association, community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes;

(c) The term "political activity" means any activity the purpose or aim of which, or one of the purposes or aims of which, is the control by force or overthrow of the Government of the United States or a political subdivision thereof, or any State or political subdivision thereof;

(d) An organization shall be deemed to be engaged in "civilian military activity" if (1) it gives instruction to, or prescribes instruction for, its members in the use of firearms or other weapons or any substitute therefor, or military or naval science, or (2) it receives from any other organization or from any individual instruction in military or naval science, or (3) it engages in any military or naval maneuvers or activities, or (4) it engages, either with or without arms, in drills or parades of a military or naval character, or (5) it engages in any other form of organized activity which in the opinion of the Attorney General constitutes preparation for military action; and

(e) An organization shall be deemed "subject to foreign control" if (1) it solicits or accepts financial contributions, loans, or support of any kind, directly or indirectly, from, or is affiliated directly or indirectly with, a foreign government or a political subdivision thereof, or an agent, agency, or instrumentality of a foreign government or political subdivision thereof, or a political party in a foreign country, or an international political organization, or (2) its policies, or any of them, are determined by or at the suggestion of, or in collaboration with, a foreign government or political subdivision thereof, or an agent, agency, or instrumentality of a foreign government or a political subdivision thereof, or a political party in a foreign country, or an international political organization. (Oct. 17, 1940, ch. 897, § 1, 54 Stat. 1201.)

## SEPARABILITY AND EFFECTIVE DATE

Sections 5 and 6 of act October 17, 1940, cited to text, which act enacted sections 14-17 of this title, provided as follows:

"Sec. 5. If any provision of this Act (adding sections 14-17 of this title), or the application thereof to any person or circumstances, is held invalid, the remainder of the act (adding sections 14-17 of this title), and the application of such provisions to other persons or circumstances, shall not be affected thereby.

"Sec. 6. This Act (sections 14-17 of this title) shall take effect on the ninetieth day after the date of its enactment, except that prior to such ninetieth day the Attorney General may make, amend, or rescind such rules and regulations as may be necessary to carry out the provisions of this Act (sections 14-17 of this title)."

**§ 15. Same; registration—(a) Organizations required to register.**

The following organizations shall be required to register with the Attorney General as hereinafter provided:

- (1) Every organization subject to foreign control which engages in political activity;
- (2) Every organization which engages both in civilian military activity and in political activity;
- (3) Every organization subject to foreign control which engages in civilian military activity; and
- (4) Every organization, the purpose or aim of which, or one of the purposes or aims of which, is the establishment, control, conduct, seizure, or overthrow of a government or subdivision thereof by the use of force, violence, military measures, or threats of any one or more of the foregoing.

Every such organization shall register by filing with the Attorney General, on such forms and in such detail as the Attorney General may by rules and regulations prescribe, a registration statement containing the information and documents prescribed in subsection (c) and shall within thirty days after the expiration of each period of six months succeeding the filing of such registration statement, file with the Attorney General, on such forms and in such detail as the Attorney General may by rules and regulations prescribe, a supplemental statement containing such information and documents as may be necessary to make the information and documents previously filed under this section accurate and current with respect to such preceding six months' period. Every statement required to be filed by this section shall be subscribed, under oath, by all of the officers of the organization.

**(b) Organizations exempt from registration.**

Nothing in subsection (a) shall be deemed to require registration or the filing of any statement with the Attorney General by (1) the armed forces of the United States, or (2) the organized militia or National Guard of any States, Territory, District, or possession of the United States, or (3) any law-enforcement agency of the United States or of any Territory, District, or possession thereof, or of any State or political subdivision of a State, or of any agency or instrumentality of one or more States, or (4) any duly established diplomatic mission or consular office of a foreign government which is so recognized by the Department of State, or (5) any nationally recognized organization of persons who

are veterans of the armed forces of the United States, or affiliates of such organizations.

**(c) Registration statements.**

Every registration statement required by subsection (a) to be filed by any organization shall contain the following information and documents:

- (1) The name and post-office address of the organization in the United States, and the names and addresses of all branches, chapters, and affiliates of such organization;
- (2) The name, address, and nationality of each officer, and of each person who performs the functions of an officer, of the organization, and of each branch, chapter, and affiliate of the organization;
- (3) The qualifications for membership in the organization;
- (4) The existing and proposed aims and purposes of the organization, and all the means by which these aims or purposes are being attained or are to be attained;
- (5) The address or addresses of meeting places of the organization, and of each branch, chapter, or affiliate of the organization, and the times of meetings;
- (6) The name and address of each person who has contributed any money, dues, property, or other thing of value to the organization or to any branch, chapter, or affiliate of the organization;
- (7) A detailed statement of the assets of the organization, and of each branch, chapter, and affiliate of the organization, the manner in which such assets were acquired, and a detailed statement of the liabilities and income of the organization and of each branch, chapter, and affiliate of the organization;
- (8) A detailed description of the activities of the organization, and of each chapter, branch, and affiliate of the organization;
- (9) A description of the uniforms, badges, insignia, or other means of identification prescribed by the organization, and worn or carried by its officers or members, or any of such officers or members;
- (10) A copy of each book, pamphlet, leaflet, or other publication or item of written, printed, or graphic matter issued or distributed directly or indirectly by the organization, or by any chapter, branch, or affiliate of the organization, or by any of the members of the organization under its authority or within its knowledge, together with the name of its author or authors and the name and address of the publisher;
- (11) A description of all firearms or other weapons owned by the organization, or by any chapter, branch, or affiliate of the organization, identified by the manufacturer's number thereon;
- (12) In case the organization is subject to foreign control, the manner in which it is so subject;
- (13) A copy of the charter, articles of association, constitution, bylaws, rules, regulations, agreements, resolutions, and all other instruments relating to the organization, powers, and purposes of the organization and to the powers of the officers of the organization and of each chapter, branch, and affiliate of the organization; and

(14) Such other information and documents pertinent to the purposes of sections 14–17 of this title as the Attorney General may from time to time require.

All statements filed under this section shall be public records and open to public examination and inspection at all reasonable hours under such rules and regulations as the Attorney General may prescribe. (Oct. 17, 1940, ch. 897, § 2, 54 Stat. 1202.)

#### SEPARABILITY AND EFFECTIVE DATE

See note under section 14 of this title.

#### § 16. Same; rules and regulations.

The Attorney General is authorized at any time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of sections 14–17 of this title, including rules and regulations governing the statements required to be filed by said sections. (Oct. 17, 1940, ch. 897, § 3, 54 Stat. 1203.)

#### SEPARABILITY AND EFFECTIVE DATE

See note under section 14 of this title.

#### § 17. Same; penalties.

Any violation of any of the provisions of sections 14–17 of this title shall be punishable by a fine of not more than \$10,000 or by imprisonment for not more than five years, or both. Whoever in a statement filed pursuant to section 15 willfully makes any false statement or willfully omits to state any fact which is required to be stated, or which is necessary to make the statements made not misleading, shall, upon conviction, be subject to a fine of not more than \$2,000 or to imprisonment for not more than five years, or both. (Oct. 17, 1940, ch. 897, § 4, 54 Stat. 1204.)

#### SEPARABILITY AND EFFECTIVE DATE

See note under section 14 of this title.

### Chapter 2.—OFFENSES AGAINST NEUTRALITY

Sec.

21. Accepting commission to serve against friendly power.
22. Enlisting in foreign service; exceptions.
23. Arming vessels against friendly powers; forfeiture of vessel.
24. Augmenting force of foreign armed vessel.
25. Organizing military expedition against friendly power.
26. Enforcement by courts; employment of land or naval forces.
27. Compelling foreign vessels to depart.
28. Bonds from armed vessels on clearing.
29. Detention by collectors of customs.
30. Construction of chapter; transient aliens; prosecutions for treason or piracy.
31. Enforcement of neutrality; withholding clearance papers from vessels.
32. Same; detention of armed vessels.
33. Same; sending out armed vessel with intent to deliver to belligerent nation.
34. Same; statement from master that cargo will not be delivered to other vessels.
35. Same; forbidding departure of vessels.
36. Same; unlawful taking of vessel out of port.
37. Same; internment of person belonging to armed land or naval forces of belligerent nation; arrest; punishment for aiding escape.
38. Same; enforcement of sections 25, 27, and 31–37 of this title.
39. Same; United States defined; jurisdiction of offenses; prior offenses; partial invalidity of provisions.

#### § 21. (Criminal Code, section 9.) Accepting commission to serve against friendly power.

Every citizen of the United States who, within the territory or jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, state, colony, district, or people, in war, by land or by sea, against any prince, state, colony, district, or people, with whom the United States are at peace, shall be fined not more than \$2,000 and imprisoned not more than three years. (Mar. 4, 1909, ch. 321, § 9, 35 Stat. 1089.)

#### DERIVATION

R. S. § 5281, which was revised from act Apr. 20, 1818, ch. 88, § 3 Stat. 447, and repealed act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 22. (Criminal Code, section 10.) Enlisting in foreign service; exceptions.

Whoever, within the territory or jurisdiction of the United States, enlists or enters himself, or hires or retains another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people as a soldier or as a marine or seaman on board of any vessel of war, letter of marque, or privateer shall be fined not more than \$1,000 and imprisoned not more than three years: *Provided*, That this section shall not apply to citizens or subjects of any country engaged in war with a country with which the United States is at war, unless such citizen or subject of such foreign country shall hire or solicit a citizen of the United States to enlist or go beyond the jurisdiction of the United States with intent to enlist or enter the service of a foreign country. Enlistments under this proviso shall be under regulations prescribed by the Secretary of War. (Mar. 4, 1909, ch. 321, § 10, 35 Stat. 1089; May 7, 1917, ch. 11, 40 Stat. 39.)

#### DERIVATION

R. S. § 5282, which was revised from act Apr. 20, 1818, ch. 88, § 3 Stat. 448, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 23. (Criminal Code, section 11.) Arming vessels against friendly powers; forfeiture of vessel.

Whoever, within the territory or jurisdiction of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming of any vessel, with intent that such vessel shall be employed in the service of any foreign prince, or state, or of any colony, district, or people, to cruise, or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or whoever issues or delivers a commission within the territory or jurisdiction of the United States for any vessel, to the intent that she may be so employed, shall be fined not more than \$10,000 and imprisoned not more than three years. And every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores which may have been procured for the building and equipment thereof, shall be forfeited; one half to the use of the informer

and the other half to the use of the United States. (Mar. 4, 1909, ch. 321, § 11, 35 Stat. 1090.)

#### DERIVATION

R. S. § 5283, which was revised from act Apr. 20, 1818, ch. 88, § 3 Stat. 448, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 24. (Criminal Code, section 12.) Augmenting force of foreign armed vessel.

Whoever, within the territory or jurisdiction of the United States, increases or augments, or procures to be increased or augmented, or knowingly is concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel, in the service of any foreign prince or state, or of any colony, district, or people, or belonging to the subjects or citizens of any such prince or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger caliber, or by adding thereto any equipment solely applicable to war, shall be fined not more than \$1,000 and imprisoned not more than one year. (Mar. 4, 1909, ch. 321, § 12, 35 Stat. 1090.)

#### DERIVATION

R. S. § 5285, which was revised from act Apr. 20, 1818, ch. 88, § 3 Stat. 448, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 25. (Criminal Code, section 13.) Organizing military expedition against friendly power.

Whoever, within the territory or jurisdiction of the United States or of any of its possessions, knowingly begins or sets on foot or provides or prepares a means for or furnishes the money for, or who takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace, shall be fined not more than \$3,000 or imprisoned not more than three years, or both. (Mar. 4, 1909, ch. 321, § 13, 35 Stat. 1090; June 15, 1917, ch. 30, title V, § 8, 40 Stat. 223.)

#### DERIVATION

R. S. § 5286, which was revised from act Apr. 20, 1818, ch. 88, § 3 Stat. 440, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 26. (Criminal Code, section 14.) Enforcement by courts; employment of land or naval forces.

The district courts shall take cognizance of all complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof. In every case in which a vessel is fitted out and armed, or attempted to be fitted out and armed, or in which the force of any vessel of war, cruiser, or other armed vessel is increased or augmented, or in which any military expedition or enterprise is begun or set on foot, contrary to the provisions and prohibitions of sections 21-30 of this title; and in every case of the capture of a vessel within the juris-

isdiction or protection of the United States as before defined; and in every case in which any process issuing out of any court of the United States is disobeyed or resisted by any person having the custody of any vessel of war, cruiser, or other armed vessel of any foreign prince or state, or of any colony, district, or people, or of any subjects or citizens of any foreign prince or state, or of any colony, district, or people, it shall be lawful for the President or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such vessel, with her prizes, if any, in order to enforce the execution of the prohibitions and penalties of sections 21-30 of this title, and the restoring of such prizes in the cases in which restoration shall be adjudged; and also for the purpose of preventing the carrying on of any such expedition or enterprise from the territory or jurisdiction of the United States against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace. (Mar. 4, 1909, ch. 321, § 14, 35 Stat. 1090.)

#### DERIVATION

R. S. § 5287, which was revised from act Apr. 20, 1818, ch. 88, § 3 Stat. 449, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 27. (Criminal Code, section 15, amended.) Compelling foreign vessels to depart.

It shall be lawful for the President to employ such part of the land or naval forces of the United States, or of the militia thereof, as he may deem necessary to compel any foreign vessel to depart from the United States or any of its possessions in all cases in which, by the law of nations or the treaties of the United States, it ought not to remain, and to detain or prevent any foreign vessel from so departing in all cases in which, by the law of nations or the treaties of the United States, it is not entitled to depart. (Mar. 4, 1909, ch. 321, § 15, 35 Stat. 1091; June 15, 1917, ch. 30, title V, § 10, 40 Stat. 223.)

#### DERIVATION

R. S. § 5288, which was revised from act Apr. 20, 1818, ch. 88, § 9, 3 Stat. 449, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 28. (Criminal Code, section 16.) Bonds from armed vessels on clearing.

The owners or consignees of every armed vessel sailing out of the ports of, or under the jurisdiction of, the United States, belonging wholly or in part to citizens thereof, shall, before clearing out the same, give bond to the United States, with sufficient sureties, in double the amount of the value of the vessel and cargo on board, including her armament, conditioned that the vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace. (Mar. 4, 1909, ch. 321, § 16, 35 Stat. 1091.)

#### DERIVATION

R. S. § 5289, which was revised from act Apr. 20, 1818, ch. 88, § 3 Stat. 449, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 29. (Criminal Code, section 17.) Detention by collectors of customs.**

The several collectors of the customs shall detain any vessel manifestly built for warlike purposes, and about to depart the United States, or any place subject to the jurisdiction thereof, the cargo of which principally consists of arms and munitions of war, when the number of men shipped on board, or other circumstances, render it probable that such vessel is intended to be employed by the owners to cruise or commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, until the decision of the President is had thereon, or until the owner gives such bond and security as is required of the owners of armed vessels by section 28 of this title. (Mar. 4, 1909, ch. 321, § 17, 35 Stat. 1091.)

**DERIVATION**

R. S. § 5290, which was revised from act Apr. 20, 1818, ch. 88, 3 Stat. 450, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 30. (Criminal Code, section 18.) Construction of chapter; transient aliens; prosecutions for treason or piracy.**

The provisions of sections 21–29 of this title shall not be construed to extend to any subject or citizen of any foreign prince, state, colony, district, or people who is transiently within the United States and enlists or enters himself on board of any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such, or hires or retains another subject or citizen of the same foreign prince, state, colony, district, or people who is transiently within the United States to enlist or enter himself to serve such foreign prince, state, colony, district, or people on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people. Nor shall they be construed to prevent the prosecution or punishment of treason, or of any piracy defined by the laws of the United States. (Mar. 4, 1909, ch. 321, § 18, 35 Stat. 1091.)

**DERIVATION**

R. S. § 5291, which was revised from act Apr. 20, 1818, ch. 88, 3 Stat. 448, 450, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 31. Enforcement of neutrality; withholding clearance papers from vessels.**

During a war in which the United States is a neutral nation, the President, or any person thereunto authorized by him, may withhold clearance from or to any vessel, domestic or foreign, which is required by law to secure clearance before departing from port or from the jurisdiction of the United States, or, by service of formal notice upon the owner, master, or person in command or having charge of any domestic vessel not required by law to secure clearances before so departing, to forbid its departure from port or from the jurisdiction of the United States, whenever there is reasonable cause to believe that any such vessel, domestic or foreign, whether requiring clearance or not, is about to carry fuel,

arms, ammunition, men, supplies, dispatches, or information to any warship, tender, or supply ship of a foreign belligerent nation in violation of the laws, treaties, or obligations of the United States under the law of nations; and it shall thereupon be unlawful for such vessel to depart. (June 15, 1917, ch. 30, title V, § 1, 40 Stat. 221.)

**CROSS REFERENCE**

Restrictions on use of American ports where evidence insufficient under this section, see section 450 of Title 22, Foreign Relations and Intercourse.

**§ 32. Same; detention of armed vessels.**

During a war in which the United States is a neutral nation, the President, or any person thereunto authorized by him, may detain any armed vessel owned wholly or in part by American citizens, or any vessel, domestic or foreign (other than one which has entered the ports of the United States as a public vessel), which is manifestly built for warlike purposes or has been converted or adapted from a private vessel to one suitable for warlike use, until the owner or master, or person having charge of such vessel, shall furnish proof satisfactory to the President, or to the person duly authorized by him, that the vessel will not be employed by the said owners, or master, or person having charge thereof, to cruise against or commit or attempt to commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with which the United States is at peace, and that the said vessel will not be sold or delivered to any belligerent nation, or to an agent, officer, or citizen of such nation, by them or any of them, within the jurisdiction of the United States, or, having left that jurisdiction, upon the high seas. (June 15, 1917, ch. 30, title V, § 2, 40 Stat. 221.)

**§ 33. Same; sending out armed vessel with intent to deliver to belligerent nation.**

During a war in which the United States is a neutral nation, it shall be unlawful to send out of the jurisdiction of the United States any vessel built, armed, or equipped as a vessel of war, or converted from a private vessel into a vessel of war, with any intent or under any agreement or contract, written or oral, that such vessel shall be delivered to a belligerent nation, or to an agent, officer, or citizen of such nation, or with reasonable cause to believe that the said vessel shall or will be employed in the service of any such belligerent nation after its departure from the jurisdiction of the United States. (June 15, 1917, ch. 30, title V, § 3, 40 Stat. 222.)

**§ 34. Same; statement from master that cargo will not be delivered to other vessels.**

During a war in which the United States is a neutral nation, in addition to the facts required by sections 91, 92, and 94 of Title 46 to be set out in the masters' and shippers' manifests before clearance will be issued to vessels bound to foreign ports, each of which sections is hereby declared to be and is continued in full force and effect, every master or person having charge or command of any vessel, domestic or foreign, whether requiring clearance or not, before departure of such vessel from port shall deliver to



the collector of customs for the district wherein such vessel is then located a statement, duly verified by oath, that the cargo or any part of the cargo is or is not to be delivered to other vessels in port or to be transshipped on the high seas, and, if it is to be so delivered or transshipped, stating the kind and quantities and the value of the total quantity of each kind of article so to be delivered or transshipped, and the name of the person, corporation, vessel, or government to whom the delivery or transshipment is to be made; and the owners, shippers, or consignors of the cargo of such vessel shall in the same manner and under the same conditions deliver to the collector like statements under oath as to the cargo or the parts thereof laden or shipped by them, respectively. (June 15, 1917, ch. 30, title V, § 4, 40 Stat. 222.)

**§ 35. Same; forbidding departure of vessels.**

Whenever it appears that the vessel is not entitled to clearance or whenever there is reasonable cause to believe that the additional statements under oath required in section 34 of this title are false, the collector of customs for the district in which the vessel is located may, subject to review by the Secretary of Commerce, refuse clearance to any vessel, domestic or foreign, and by formal notice served upon the owners, master, or person or persons in command or charge of any domestic vessel for which clearance is not required by law, forbid the departure of the vessel from the port or from the jurisdiction of the United States; and it shall thereupon be unlawful for the vessel to depart. (June 15, 1917, ch. 30, title V, § 5, 40 Stat. 222.)

**§ 36. Same; unlawful taking of vessel out of port.**

Whoever, in violation of any of the provisions of sections 25, 27, and 31-38 of this title, shall take, or attempt or conspire to take, or authorize the taking of any such vessel, out of port or from the jurisdiction of the United States, shall be punished by imprisonment for not more than ten years and may, in the discretion of the court, be fined not more than \$10,000; and, in addition, such vessel, her tackle, apparel, furniture, equipment, and her cargo shall be forfeited to the United States. (June 15, 1917, ch. 30, title V, § 6, 40 Stat. 222; Mar. 28, 1940, ch. 72, § 5, 54 Stat. 79.)

**AMENDMENT**

Term of imprisonment was increased by act March 28, 1940, cited to text

**§ 37. Same; internment of person belonging to armed land or naval forces of belligerent nation; arrest; punishment for aiding escape.**

Whoever, being a person belonging to the armed land or naval forces of a belligerent nation or belligerent faction of any nation and being interned in the United States, in accordance with the law of nations, shall leave or attempt to leave said jurisdiction, or shall leave or attempt to leave the limits of internment in which freedom of movement has been allowed, without permission from the proper official of the United States in charge, or shall willfully overstay a leave of absence granted by such official, shall be subject to arrest by any marshal or deputy marshal of the United States, or by the military or

naval authorities thereof, and shall be returned to the place of internment and there confined and safely kept for such period of time as the official of the United States in charge shall direct; and whoever, within the jurisdiction of the United States and subject thereto, shall aid or entice any interned person to escape or attempt to escape from the jurisdiction of the United States, or from the limits of internment prescribed, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. (June 15, 1917, ch. 30, title V, § 7, 40 Stat. 223.)

**§ 38. Same; enforcement of sections 25, 27, and 31-37 of this title.**

The President may employ such part of the land or naval forces of the United States as he may deem necessary to carry out the purposes of sections 25, 27, and 31-37 of this title. (June 15, 1917, ch. 30, title V, § 9, 40 Stat. 223.)

**§ 39. Same; United States defined; jurisdiction of offenses; prior offenses; partial invalidity of provisions.**

The term "United States", as used in sections 25, 27, and 31-38 of this title, includes the Canal Zone, and all territory and waters, continental or insular, subject to the jurisdiction of the United States. The several courts of first instance in the Philippine Islands and the district court of the Canal Zone shall have jurisdiction of offenses under said sections 25, 27, and 31-38 committed within their respective districts, and concurrent jurisdiction with the district courts of the United States of offenses thereunder committed upon the high seas, and of conspiracies to commit such offenses, as defined by section 88 of this title, and the provisions of said section 88, for the purposes of sections 25, 27, and 31-38 of this title, are extended to the Philippine Islands and to the Canal Zone. Offenses committed and penalties, forfeitures, or liabilities incurred prior to June 15, 1917, under any law embraced in or changed, modified, or repealed by sections 25, 27, and 31-38 may be prosecuted and punished, and suits and proceedings for causes arising or acts done or committed prior to June 15, 1917, may be commenced and prosecuted, in the same manner and with the same effect as if said sections 25, 27, and 31-38 had not been passed. If any clause, sentence, paragraph, or part of sections 25, 27, and 31-38 shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered. (June 15, 1917, ch. 30, title XIII, §§ 1-4, 40 Stat. 231.)

**Chapter 3.—OFFENSES AGAINST ELECTIVE FRANCHISE AND CIVIL RIGHTS OF CITIZENS**

**GENERAL PROVISIONS**

**Sec.**

51. Conspiracy to injure persons in exercise of civil rights.
52. Depriving citizens of civil rights under color of State laws.



Sec.

- 53. Repealed.
- 53a. Unlawful searches by officer, agent or employee of United States.
- 54. Conspiring to prevent officer from performing duties.
- 55. Unlawful presence of troops at polls.
- 56. Intimidation of voters by officers or other persons of the Army or Navy.
- 57. Army or Navy officers prescribing qualifications of voters.
- 58. Interfering with election officers by officers or other persons of the Army or Navy.
- 59. Additional punishment.

## PERNICIOUS POLITICAL ACTIVITIES

- 61. Intimidation and coercion of voters in elections of certain officers.
- 61a. Administrative employees of United States or any State, use of official authority to influence elections.
- 61b. Political activity; promise of employment, compensation or other benefit.
- 61c. Same; deprivation of employment, compensation or other benefit.
- 61d. Assessments; contributions; solicitation from benefit recipients.
- 61e. List of benefit recipients; furnishing.
- 61f. Appropriations, official authority, use in coercing voters.
- 61g. Penalties.
- 61h. Executive employees; use of official authority; political activity; penalties.
- 61i. Federal employees; membership in political parties; penalties
- 61j. Effect on existing law.
- 61k. Separability clause.
- 61l. Employees of State or local agencies financed by loans or grants from United States.
  - (a) Influencing elections, officer or employee defined.
  - (b) Investigations by Civil Service Commission; removal of employees; withholding grants from States.
  - (c) Court review of determination of Commission.
  - (d) Rules and regulations; subpoena of witness and documentary evidence; depositions.
  - (e) Employees of agencies not financed by United States as exempt.
  - (f) Definitions.
- 61m. Financial aid to candidates.
  - (a) Contributions.
  - (b) Definitions.
  - (c) Purchases where proceeds inure to benefit of candidate or political organization.
  - (d) Penalties.
  - (e) Existing laws as unaffected.
- 61m-1. Same; persons or firms negotiating for or performing Government contracts.
- 61n. District of Columbia employees as employees of United States.
- 61o. Activities prohibited on part of civil-service employees as prohibited on part of other Government and State employees.
- 61p. Political campaigns in localities where majority of voters are Government employees.
- 61q. State employees running for public office; resignation upon election.
- 61r. Elections not specifically identified with national or State issues or political parties.
- 61s. State defined.
- 61t. Maximum contributions to and expenditures by political committees; penalties.

## GENERAL PROVISIONS

§ 51. (Criminal Code, section 19.) Conspiracy to injure persons in exercise of civil rights.

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exer-

cise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than \$5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States. (Mar. 4, 1909, ch. 321, § 19, 35 Stat. 1092.)

## DERIVATION

R. S. § 5508, which was revised from act May 31, 1870, ch. 114, § 6, 16 Stat. 141, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 52. (Criminal Code, section 20.) Depriving citizens of civil rights under color of State laws.

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000, or imprisoned not more than one year, or both. (Mar. 4, 1909, ch. 321, § 20, 35 Stat. 1092.)

## DERIVATION

R. S. § 5510, which was revised from act May 31, 1870, ch. 114, § 17, 16 Stat. 144, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153

§ 53. Repealed Aug. 27, 1935, ch. 740, § 1, 49 Stat. 872.

Section was derived from act Nov. 23, 1921, ch. 134, § 6, 42 Stat. 223.

§ 53a. Unlawful searches by officer, agent or employee of United States.

Any officer, agent, or employee of the United States engaged in the enforcement of any law of the United States who shall search any private dwelling used and occupied as such dwelling without a warrant directing such search, or who, while engaged in such enforcement, shall without a search warrant maliciously and without reasonable cause search any other building or property, shall be guilty of a misdemeanor and upon conviction thereof shall be fined for a first offense not more than \$1,000, and for a subsequent offense not more than \$1,000, or imprisoned not more than one year, or both such fine and imprisonment: *Provided*, That nothing herein contained shall apply to any officer, agent, or employee of the United States serving a warrant of arrest, or arresting or attempting to arrest any person committing or attempting to commit an offense in the presence of such officer, agent, or employee, or who has committed, or who is suspected on reasonable grounds of having committed, a felony. (Aug. 27, 1935, ch. 740, § 201, 49 Stat. 877.)

§ 54. (Criminal Code, section 21.) Conspiring to prevent officer from performing duties.

If two or more persons in any State, Territory, or District conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, Territory, District, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined not more than \$5,000, or imprisoned not more than six years, or both. (Mar. 4, 1909, ch. 321, § 21, 35 Stat. 1092.)

#### DERIVATION

R. S. § 5518, which was revised from acts July 31, 1861, ch. 33, 12 Stat. 284; Apr. 20, 1871, ch. 22, 17 Stat. 13, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 55. (Criminal Code, section 22.) Unlawful presence of troops at polls.

Every officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, who orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held in any State, unless such force be necessary to repel armed enemies of the United States, shall be fined not more than \$5,000 and imprisoned not more than five years. (Mar. 4, 1909, ch. 321, § 22, 35 Stat. 1092.)

#### DERIVATION

R. S. § 5528, which was revised from act Feb. 25, 1865, ch. 52, 13 Stat. 437, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 56. (Criminal Code, section 23.) Intimidation of voters by officers or other persons of the Army or Navy.

Every officer or other person in the military or naval service of the United States who, by force, threat, intimidation, order, advice, or otherwise, prevents, or attempts to prevent, any qualified voter of any State from freely exercising the right of suffrage at any general or special election in such State shall be fined not more than \$5,000 and imprisoned not more than five years. (Mar. 4, 1909, ch. 321, § 23, 35 Stat. 1092.)

#### DERIVATION

R. S. § 5529, which was revised from act Feb. 25, 1865, ch. 52, 13 Stat. 437, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 57. (Criminal Code, section 24.) Army or Navy officers prescribing qualifications of voters.

Every officer of the Army or Navy who prescribes or fixes, or attempts to prescribe or fix, whether by proclamation, order, or otherwise, the qualifications of voters at any election in any State shall be punished as provided in section 56 of this title. (Mar. 4, 1909, ch. 321, § 24, 35 Stat. 1092.)

#### DERIVATION

R. S. § 5530, which was revised from act Feb. 25, 1865, ch. 52, 13 Stat. 437, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 58. (Criminal Code, section 25.) Interfering with election officers by officers or other persons of the Army or Navy.

Every officer or other person in the military or naval service of the United States who, by force, threat, intimidation, order, or otherwise, compels, or attempts to compel, any officer holding an election in any State to receive a vote from a person not legally qualified to vote, or who imposes, or attempts to impose, any regulations for conducting any general or special election in a State different from those prescribed by law, or who interferes in any manner with any officer of an election in the discharge of his duty, shall be punished as provided in section 56 of this title. (Mar. 4, 1909, ch. 321, § 25, 35 Stat. 1092.)

#### DERIVATION

R. S. § 5531, which was revised from act Feb. 25, 1865, ch. 52, 13 Stat. 437, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 59. (Criminal Code, section 26.) Additional punishment.

Every person convicted of any offense defined in sections 55–58 of this title shall, in addition to the punishment therein prescribed, be disqualified from holding any office of honor, profit, or trust under the United States; but nothing therein shall be construed to prevent any officer, soldier, sailor, or marine from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote. (Mar. 4, 1909, ch. 321, § 26, 35 Stat. 1093.)

#### DERIVATION

R. S. § 5532, which was revised from act Feb. 25, 1865, ch. 52, 13 Stat. 437, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

### PERNICIOUS POLITICAL ACTIVITIES

§ 61. Intimidation and coercion of voters in elections of certain officers.

It shall be unlawful for any person to intimidate, threaten, or coerce, or to attempt to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives at any election held solely or in part for the purpose of selecting a President, a Vice President, a Presidential elector, or any Member of the Senate or any Member of the House of Representatives, Delegates or Commissioners from the Territories and insular possessions. (Aug. 2, 1939, 11:50 a. m. E. S. T., ch. 410, § 1, 53 Stat. 1147.)

§ 61a. Administrative employees of United States or any State, use of official authority to influence elections.

It shall be unlawful for (1) any person employed in any administrative position by the United States, or by any department, independent agency, or other agency of the United States (including any corporation controlled by the United States or any agency

thereof, and any corporation all of the capital stock of which is owned by the United States or any agency thereof), or (2) any person employed in any administrative position by any State, by any political subdivision or municipality of any State, or by any agency of any State or any of its political subdivisions or municipalities (including any corporation controlled by any State or by any such political subdivision, municipality, or agency, and any corporation all of the capital stock of which is owned by any State or by any such political subdivision, municipality, or agency), in connection with any activity which is financed in whole or in part by loans or grants made by the United States, or by any such department, independent agency, or other agency of the United States, to use his official authority for the purpose of interfering with, or affecting, the election or the nomination of any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, or Delegate or Resident Commissioner from any Territory or insular possession. (Aug. 2, 1939, 11:50 a. m. E. S. T., ch. 410, § 2, 53 Stat. 1147; July 19, 1940, ch. 640, § 1, 54 Stat. 767.)

**§ 61b. Political activity; promise of employment, compensation or other benefit.**

It shall be unlawful for any person, directly or indirectly, to promise any employment, position, work, compensation, or other benefit, provided for or made possible in whole or in part by any Act of Congress, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in any election. (Aug. 2, 1939, 11:50 a. m. E. S. T., ch. 410, § 3, 53 Stat. 1147.)

**§ 61c. Same; deprivation of employment, compensation or other benefit.**

Except as may be required by the provisions of subsection (b), section 61h of this title, it shall be unlawful for any person to deprive, attempt to deprive, or threaten to deprive, by any means, any person of any employment, position, work, compensation, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes, on account of race, creed, color, or any political activity, support of, or opposition to any candidate or any political party in any election. (Aug. 2, 1939, 11:50 a. m. E. S. T., ch. 410, § 4, 53 Stat. 1147.)

**§ 61d. Assessments; contributions; solicitation from benefit recipients.**

It shall be unlawful for any person to solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose whatever from any person known by him to be entitled to or receiving compensation; employment, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes. (Aug. 2, 1939, 11:50 a. m. E. S. T., ch. 410, § 5, 53 Stat. 1148.)

**§ 61e. List of benefit recipients; furnishing.**

It shall be unlawful for any person for political purposes to furnish or to disclose, or to aid or assist in furnishing or disclosing, any list or names of persons receiving compensation, employment, or benefits provided for or made possible by any Act of Congress appropriating, or authorizing the appropriation of, funds for work relief or relief purposes, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee, or campaign manager, and it shall be unlawful for any person to receive any such list or names for political purposes. (Aug. 2, 1939, 11:50 a. m. E. S. T., ch. 410, § 6, 53 Stat. 1148.)

**§ 61f. Appropriations, official authority; use in coercing voters.**

No part of any appropriation made by any Act, heretofore or hereafter enacted, making appropriations for work relief, relief, or otherwise to increase employment by providing loans and grants for public-works projects, shall be used for the purpose of, and no authority conferred by any such Act upon any person shall be exercised or administered for the purpose of, interfering with, restraining, or coercing any individual in the exercise of his right to vote at any election. (Aug. 2, 1939, 11:50 a. m. E. S. T., ch. 410, § 7, 53 Stat. 1148.)

**§ 61g. Penalties.**

Any person who violates any of the provisions of sections 61–61f of this title upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. (Aug. 2, 1939, 11:50 a. m. E. S. T., ch. 410, § 8, 53 Stat. 1148.)

**§ 61h. Executive employees; use of official authority; political activity; penalties.**

(a) It shall be unlawful for any person employed in the executive branch of the Federal Government, or any agency or department thereof, to use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates. For the purposes of this section the term “officer” or “employee” shall not be construed to include (1) the President and Vice President of the United States; (2) persons whose compensation is paid from the appropriation for the office of the President; (3) heads and assistant heads of executive departments; (4) officers who are appointed by the President, by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws.

(b) Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for

such position or office shall be used to pay the compensation of such person. (Aug. 2, 1939, 11:50 a. m. E. S. T., ch. 410, § 9, 53 Stat. 1148; July 19, 1940, ch. 640, § 2, 54 Stat. 767.

#### AMENDMENT

Subsection (a) was amended by act July 19, 1940, cited to text, which added "and candidates" at end of third sentence.

#### § 61i. Federal employees; membership in political parties; penalties.

(1) It shall be unlawful for any person employed in any capacity by any agency of the Federal Government, whose compensation, or any part thereof, is paid from funds authorized or appropriated by any Act of Congress, to have membership in any political party or organization which advocates the overthrow of our constitutional form of government in the United States.

(2) Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person. (Aug. 2, 1939, 11:50 a. m. E. S. T., ch. 410, § 9A, 53 Stat. 1148.)

#### § 61j. Effect on existing law.

The provisions of this subchapter shall be in addition to and not in substitution for any other provision of law. (Aug. 2, 1939, 11:50 a. m. E. S. T., ch. 410, § 10, 53 Stat. 1149; July 19, 1940, ch. 640, § 3, 54 Stat. 767.)

#### § 61k. Separability clause.

If any provision of sections 61-61k of this title, or the application of such provision to any person or circumstance, is held invalid, the remainder of said sections, and the application of such provision to other persons or circumstances, shall not be affected thereby. (Aug. 2, 1939, 11:50 a. m. E. S. T., ch. 410, § 11, 53 Stat. 1149.)

#### § 61l. Employees of State or local agencies financed by loans or grants from United States—

##### (a) Influencing elections; officer or employee defined.

(a) No officer or employee of any State or local agency whose principal employment is in connection with any activity which is financed in whole or in part by loans or grants made by the United States or by any Federal agency shall (1) use his official authority or influence for the purpose of interfering with an election or a nomination for office, or affecting the result thereof, or (2) directly or indirectly coerce, attempt to coerce, command, or advise any other such officer or employee to pay, lend, or contribute any part of his salary or compensation or anything else of value to any party, committee, organization, agency, or person for political purposes. No such officer or employee shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates. For the purposes of the second sentence of this subsection, the term "officer or employee" shall not be construed

to include (1) the Governor or the Lieutenant Governor of any State or any person who is authorized by law to act as Governor, or the mayor of any city; (2) duly elected heads of executive departments of any State or municipality who are not classified under a State or municipal merit or civil-service system; (3) officers holding elective offices.

##### (b) Investigations by Civil Service Commission; removal of employees; withholding grants from States.

(b) If any Federal agency charged with the duty of making any loan or grant of funds of the United States for use in any activity by any officer or employee to whom the provisions of subsection (a) are applicable has reason to believe that any such officer or employee has violated the provisions of such subsection, it shall make a report with respect thereto to the United States Civil Service Commission (hereinafter referred to as the "Commission"). Upon the receipt of any such report, or upon the receipt of any other information which seems to the Commission to warrant an investigation, the Commission shall fix a time and place for a hearing, and shall by registered mail send to the officer or employee charged with the violation and to the State or local agency employing such officer or employee a notice setting forth a summary of the alleged violation and the time and place of such hearing. At such hearing (which shall be not earlier than ten days after the mailing of such notice) either the officer or employee or the State or local agency, or both, may appear with counsel and be heard. After such hearing, the Commission shall determine whether any violation of such subsection has occurred and whether such violation, if any, warrants the removal of the officer or employee by whom it was committed from his office or employment, and shall by registered mail notify such officer or employee and the appropriate State or local agency of such determination. If in any case the Commission finds that such officer or employee has not been removed from his office or employment within thirty days after notice of a determination by the Commission that such violation warrants his removal, or that he has been so removed and has subsequently (within a period of eighteen months) been appointed to any office or employment in any State or local agency in such State, the Commission shall make and certify to the appropriate Federal agency an order requiring it to withhold from its loans or grants to the State or local agency to which such notification was given an amount equal to two years' compensation at the rate such officer or employee was receiving at the time of such violation; except that in any case of such a subsequent appointment to a position in another State or local agency which receives loans or grants from any Federal agency, such order shall require the withholding of such amount from such other State or local agency: *Provided*, That in no event shall the Commission require any amount to be withheld from any loan or grant pledged by a State or local agency as security for its bonds or notes if the withholding of such amount would jeopardize the payment of the principal or interest on such bonds or notes. No-

tice of any such order shall be sent by registered mail to the State or local agency from which such amount is ordered to be withheld. The Federal agency to which such order is certified shall, after such order becomes final, withhold such amount in accordance with the terms of such order. Except as provided in subsection (c), any determination or order of the Commission shall become final upon the expiration of thirty days after the mailing of notice of such determination or order.

**(c) Court review of determination of Commission.**

(c) Any party aggrieved by any determination or order of the Commission under subsection (b) may, within thirty days after the mailing of notice of such determination or order, institute proceedings for the review thereof by filing a written petition in the district court of the United States for the district in which such officer or employee resides; but the commencement of such proceedings shall not operate as a stay of such determination or order unless (1) it is specifically so ordered by the court, and (2) such officer or employee is suspended from his office or employment during the pendency of such proceedings. A copy of such petition shall forthwith be served upon the Commission, and thereupon the Commission shall certify and file in the court a transcript of the record upon which the determination or the order complained of was made. The review by the court shall be on the record entire, including all of the evidence taken on the hearing, and shall extend to questions of fact and questions of law. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceedings and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Commission, the court may direct such additional evidence to be taken before the Commission in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings of fact or its determination or order by reason of the additional evidence so taken and shall file with the court such modified findings, determination, or order, and any such modified findings of fact, if supported by substantial evidence, shall be conclusive. The court shall affirm the Commission's determination or order, or its modified determination or order, if the court determines that the same is in accordance with law. If the court determines that any such determination or order, or modified determination or order, is not in accordance with law, the court shall remand the proceeding to the Commission with directions either to make such determination or order as the court shall determine to be in accordance with law or to take such further proceedings as, in the opinion of the court, the law requires. The judgment and decree of the court shall be final, subject to review by the appropriate circuit court of appeals as in other cases, and the judgment and decree of such circuit court of appeals shall be final, subject to review by the Supreme Court of the United States on certiorari or certification as provided in sections 346 and 347 of Title 28. If any provision of this

subsection is held to be invalid as applied to any party with respect to any determination or order of the Commission, such determination or order shall thereupon become final and effective as to such party in the same manner as if such provision had not been enacted.

**(d) Rules and regulations; subpoena of witness and documentary evidence; depositions.**

(d) The Commission is authorized to adopt such reasonable procedure and rules and regulations as it deems necessary to execute its functions under this section. The Civil Service Commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence relating to any matter pending, as a result of this subchapter before the Commission. Any member of the Commission may sign subpoenas, and members of the Commission and its examiners when authorized by the Commission may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States at any designated place of hearing. In case of disobedience to a subpoena, the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to appear before the Commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The Commission may order testimony to be taken by deposition in any proceeding or investigation, which as a result of this subchapter, is pending before the Commission at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence before the Commission as hereinbefore provided. No person shall be excused from attending and testifying or from producing documentary evidence or in obedience to a subpoena on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify, or produce evidence, documentary or otherwise, before the Commission in obedience to a subpoena issued by it: *Provided*, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

**(e) Employees of agencies not financed by United States as exempt.**

(e) The provisions of the first two sentences of subsection (a) of this section shall not apply to any

officer or employee who exercises no functions in connection with any activity of a State or local agency which is financed in whole or in part by loans or grants made by the United States or by any Federal agency.

(f) Definitions.

(f) For the purposes of this section—

(1) The term "State or local agency" means the executive branch of any State, or of any municipality or other political subdivision of such State, or any agency or department thereof.

(2) The term "Federal agency" includes any executive department, independent establishment, or other agency of the United States (except a member bank of the Federal Reserve System). (Aug. 2, 1939, ch. 410, § 12, as added July 19, 1940, ch. 640, § 4, 54 Stat. 767.)

§ 61m. Financial aid to candidates—(a) Contributions.

(a) It is hereby declared to be a pernicious political activity, and it shall hereafter be unlawful, for any person, directly or indirectly, to make contributions in an aggregate amount in excess of \$5,000, during any calendar year, or in connection with any campaign for nomination or election, to or on behalf of any candidate for an elective Federal office (including the offices of President of the United States and Presidential and Vice Presidential electors), or to or on behalf of any committee or other organization engaged in furthering, advancing, or advocating the nomination or election of any candidate for any such office or the success of any national political party. This subsection shall not apply to contributions made to or by a State or local committee or other State or local organization.

(b) Definitions.

(b) For the purposes of this section—

(1) The term "person" includes an individual, partnership, committee, association, corporation, and any other organization or group of persons.

(2) The term "contribution" includes a gift, subscription, loan, advance, or deposit of money, or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make a contribution.

(c) Purchases where proceeds inure to benefit of candidate or political organization.

(c) It is further declared to be a pernicious political activity, and it shall hereafter be unlawful for any person, individual, partnership, committee, association, corporation, and any other organization or group of persons to purchase or buy any goods, commodities, advertising, or articles of any kind or description where the proceeds of such a purchase, or any portion thereof, shall directly or indirectly inure to the benefit of or for any candidate for an elective Federal office (including the offices of President of the United States, and Presidential and Vice Presidential electors) or any political committee or other political organization engaged in furthering, advancing, or advocating the nomination or election of any candidate for any such office or the success of any national political party: *Provided*, That nothing in this sentence shall be construed to

interfere with the usual and known business, trade, or profession of any candidate.

(d) Penalties.

(d) Any person who engages in a pernicious political activity in violation of any provision of this section, shall upon conviction thereof be fined not more than \$5,000 or imprisoned for not more than five years. In all cases of violations of this section by a partnership, committee, association, corporation, or other organization or group of persons, the officers, directors, or managing heads thereof who knowingly and willfully participate in such violation, shall be subject to punishment as herein provided.

(e) Existing laws as unaffected.

(e) Nothing in this section shall be construed to permit the making of any contribution which is prohibited by any provision of law in force on the date this section takes effect. Nothing in this subchapter shall be construed to alter or amend any provisions of sections 241–256 of Title 2, or any amendments thereto. (Aug. 2, 1939, ch. 410, § 13, added July 19, 1940, ch. 640, § 4, 54 Stat. 767.)

§ 61m–1. Same; persons or firms negotiating for or performing Government contracts.

(a) No person or firm entering into any contract with the United States or any department or agency thereof, either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof, or selling any land or building to the United States or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress, shall, during the period of negotiation for, or performance under such contract or furnishing of material, supplies, equipment, land, or buildings, directly, or indirectly, make any contribution of money or any other thing of value, or promise expressly or impliedly to make any such contribution, to any political party, committee, or candidate for public office or to any person for any political purpose or use; nor shall any person knowingly solicit any such contribution from any such person or firm, for any such purpose during any such period. Any person who violates the provisions of this section shall, upon conviction thereof, be fined not more than \$5,000 or imprisoned not more than five years.

(b) Nothing in this section shall be construed to permit any action which is prohibited by any provision of law in force on the date this section takes effect. (July 19, 1940, ch. 640, § 5, 54 Stat. 772.)

SOURCE

This section was not enacted as part of the Hatch Political Activity Act.

§ 61n. District of Columbia employees as employees of United States.

For the purposes of this subchapter, persons employed in the government of the District of Columbia shall be deemed to be employed in the executive branch of the Government of the United States, except that for the purposes of the second sentence

of section 61h (a) of this title the Commissioners and the Recorder of Deeds of the District of Columbia shall not be deemed to be officers or employees. (Aug. 2, 1939, ch. 410, § 14, as added July 19, 1940, ch. 640, § 4, 54 Stat. 767.)

**§ 61o. Activities prohibited on part of civil-service employees as prohibited on part of other Government and State employees.**

The provisions of this subchapter which prohibit persons to whom such provisions apply from taking any active part in political management or in political campaigns shall be deemed to prohibit the same activities on the part of such persons as the United States Civil Service Commission has heretofore determined are at the time this section takes effect prohibited on the part of employees in the classified civil service of the United States by the provisions of the civil-service rules prohibiting such employees from taking any active part in political management or in political campaigns. (Aug. 2, 1939, ch. 410, § 15, as added July 19, 1940, ch. 640, § 4, 54 Stat. 767.)

**§ 61p. Political campaigns in localities where majority of voters are Government employees.**

Whenever the United States Civil Service Commission determines that, by reason of special or unusual circumstances which exist in any municipality or other political subdivision, in the immediate vicinity of the National Capital in the States of Maryland and Virginia or in municipalities the majority of whose voters are employed by the Government of the United States, it is in the domestic interest of persons to whom the provisions of this subchapter are applicable, and who reside in such municipality or political subdivision, to permit such persons to take an active part in political management or in political campaigns involving such municipality or political subdivision, the Commission is authorized to promulgate regulations permitting such persons to take an active part in such political management and political campaigns to the extent the Commission deems to be in the domestic interest of such persons. (Aug. 2, 1939, ch. 410, § 16, as added July 19, 1940, ch. 640, § 4, 54 Stat. 767.)

**§ 61q. State employees running for public office; resignation upon election.**

Nothing in the second sentence of section 61l (a) of this title shall be construed to prevent or prohibit any officer or employee of a State or local agency (as defined in section 61l (f)) from continuing, until the election in connection with which he was nominated, to be a bona fide candidate for election to any public office and from engaging in any political activity in furtherance of his candidacy for such public office, if (1) he was nominated before the date of the enactment of this subchapter, and (2) upon his election to such public office he resigns from the office or employment in which he was employed prior to his election, in a State or local agency (as defined in section 61l (f)). (Aug. 2, 1939, ch. 410, § 17, as added July 19, 1940, ch. 640, § 4, 54 Stat. 767.)

**§ 61r. Elections not specifically identified with National or State issues or political parties.**

Nothing in the second sentence of section 61h (a) or in the second sentence of section 61l (a) of this title shall be construed to prevent or prohibit any person subject to the provisions of this subchapter from engaging in any political activity (1) in connection with any election and the preceding campaign if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected, or (2) in connection with any question which is not specifically identified with any National or State political party. For the purposes of this section, questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of a similar character, shall not be deemed to be specifically identified with any National or State political party. (Aug. 2, 1939, ch. 410, § 18, as added July 19, 1940, ch. 640, § 4, 54 Stat. 767.)

**§ 61s. State defined.**

As used in this subchapter, the term "State" means any State, Territory, or possession of the United States. (Aug. 2, 1939, ch. 410, § 19, as added July 19, 1940, ch. 640, § 4, 54 Stat. 767.)

**§ 61t. Maximum contributions to and expenditures by political committees; penalties.**

No political committee shall receive contributions aggregating more than \$3,000,000, or make expenditures aggregating more than \$3,000,000, during any calendar year. For the purposes of this section, any contributions received and any expenditures made on behalf of any political committee with the knowledge and consent of the chairman or treasurer of such committee shall be deemed to be received or made by such committee. Any violation of this section by any political committee shall be deemed also to be a violation of this section by the chairman and the treasurer of such committee and by any other person responsible for such violation. Terms used in this section shall have the meaning assigned to them in section 241 of Title 2, and the penalties provided in sections 241-256 of Title 2 shall apply to violations of this section. (Aug. 2, 1939, ch. 410, § 20, as added July 19, 1940, ch. 640, § 6, 54 Stat. 772.)

**Chapter 4.—OFFENSES AGAINST OPERATIONS OF GOVERNMENT**

**Sec.**

71. Making, forging, counterfeiting, or altering letters patent.
72. Making, forging, counterfeiting, or altering bonds, bids, or public records; transmitting such papers.
73. Making, forging, counterfeiting, or altering deeds or powers of attorney; transmitting such papers.
74. Possession of false papers.
75. Officer making false acknowledgments.
76. Falsely pretending to be United States officer.
- 76a. Prohibition of reproduction of official badges, identification cards, and other insignia.
- 76b. Same; punishment.
- 76c. Falsely pretending to be member or agent of 4-H Clubs; fraudulent use of insignia or emblems



- Sec.  
 76d. Same; "person" defined.  
 76e. Veterans' organizations, unauthorized manufacture, sale, or use of insignia; penalties.  
 77. Repealed.  
 77a. Impersonating officer, agent or employee of United States and making arrest or search.  
 78. False personation of holder of public stocks or pensioner.  
 79. False demand on fraudulent power of attorney.  
 80. Presenting false claims.  
 81. False affidavits and papers; false certificate to papers.  
 82. Purloining, stealing, or injuring property of United States or property manufactured under contract for War or Navy Departments.  
 83. Conspiracy to defraud United States in regard to allowance or payment of false claims.  
 84. Unauthorized delivery of certificate, voucher, receipt, etc., for military or naval property.  
 85. Unauthorized delivery of money or property for military or naval service.  
 86. Unlawful purchase of military, naval, or veterans' facilities property.  
 87. Embezzling arms and stores.  
 88. Conspiring to commit offense against United States.  
 89. Threats against President.  
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§ 71. (Criminal Code, section 27.) Making, forging, counterfeiting, or altering letters patent.

Whosoever shall falsely make, forge, counterfeit, or alter any letters patent granted or purporting to have been granted by the President of the United States; or whoever shall pass, utter, or publish, or attempt to pass, utter, or publish as genuine, any such forged, counterfeited, or falsely altered letters patent, knowing the same to be forged, counterfeited, or falsely altered, shall be fined not more than \$5,000 and imprisoned not more than ten years. (Mar. 4, 1909, ch. 321, § 27, 35 Stat. 1094.)

DERIVATION

R. S. § 5416, which was revised from act Mar. 3, 1825, ch. 65, 4 Stat. 119 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 72. (Criminal Code, section 28.) Making, forging, counterfeiting, or altering bonds, bids, or public records; transmitting such papers.

Whoever shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly aid or assist in the false making, altering, forging, or counterfeiting, any bond, bid, proposal, contract, guarantee, security, official bond, public record, affidavit, or other writing for the purpose of defrauding the United States; or shall utter or publish as true, or cause to be uttered or published as true, or have in his possession with the intent to utter or publish as true, any such false, forged, altered, or counterfeited bond, bid, proposal, contract, guarantee, security, official bond, public record, affidavit, or other writing, for the purpose of defrauding the United States, knowing the same to be false, forged, altered, or counterfeited; or shall transmit to, or present at, or cause or procure to be transmitted to or presented at, the office of any officer of the United



States, any such false, forged, altered, or counterfeited bond, bid, proposal, contract, guarantee, security, official bond, public record, affidavit, or other writing, knowing the same to be false, forged, altered, or counterfeited, for the purpose of defrauding the United States, shall be fined not more than \$1,000 or imprisoned not more than ten years, or both. (Mar. 4, 1909, ch. 321, § 28, 35 Stat. 1094.)

## DERIVATION

R. S. § 5418, which was revised from act Apr. 5, 1866, ch. 24, 14 Stat. 12 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

R. S. § 5479, which was revised from act June 8, 1872, ch. 385, 17 Stat. 294. R. S. § 5479 was amended by act Feb. 27, 1877, ch. 69, 19 Stat. 253 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 73. (Criminal Code, section 29.) Making, forging, counterfeiting, or altering deeds or powers of attorney; transmitting such papers.

Whoever shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly aid or assist in the false making, altering, forging, or counterfeiting, any deed, power of attorney, order, certificate, receipt, contract, or other writing, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive, from the United States, or any of their officers or agents, any sum of money; or whoever shall utter or publish as true, or cause to be uttered or published as true, any such false, forged, altered, or counterfeited deed, power of attorney, order, certificate, receipt, contract, or other writing, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited; or whoever shall transmit to or present at, or cause or procure to be transmitted to or presented at, any office or officer of the Government of the United States, any deed, power of attorney, order, certificate, receipt, contract, or other writing, in support of or in relation to any account or claim, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited, shall be fined not more than \$1,000 and imprisoned not more than ten years. (Mar. 4, 1909, ch. 321, § 29, 35 Stat. 1094.)

## DERIVATION

R. S. § 5421, which was revised from act Mar. 3, 1823, ch. 38, 3 Stat. 771, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

## CROSS REFERENCE

Section extended to apply to Home Owners' Loan Corporation, see section 1467 (d) of Title 12, Banks and Banking

§ 74. (Criminal Code, section 30.) Possession of false papers.

Whoever, knowingly and with intent to defraud the United States, shall have in his possession any false, altered, forged, or counterfeited deed, power of attorney, order, certificate, receipt, contract, or other writing, for the purpose of enabling another to obtain from the United States, or from any officer or agent thereof, any sum of money, shall be fined not more than \$500 or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, § 30, 35 Stat. 1094.)

## DERIVATION

R. S. § 5422, which was revised from act Mar. 3, 1823, ch. 38, 3 Stat. 772, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

## CROSS REFERENCE

Section extended to apply to Home Owners' Loan Corporation, see section 1467 (d) of Title 12, Banks and Banking.

§ 75. (Criminal Code, section 31.) Officer making false acknowledgments.

Whoever, being an officer authorized to administer oaths or to take and certify acknowledgments, shall knowingly make any false acknowledgment, certificate, or statement concerning the appearance before him or the taking of an oath or affirmation by any person with respect to any proposal, contract, bond, undertaking, or other matter submitted to, made with, or taken on behalf of the United States, and concerning which an oath or affirmation is required by law or regulation made in pursuance of law, or with respect to the financial standing of any principal, surety, or other party to any such proposal, contract, bond, undertaking, or other instrument, shall be fined not more than \$2,000 or imprisoned not more than two years, or both. (Mar. 4, 1909, ch. 321, § 31, 35 Stat. 1094.)

§ 76. (Criminal Code, section 32.) Falsely pretending to be United States officer.

Whoever, with intent to defraud either the United States or any person, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States, or any department, or any officer of the Government thereof, or under the authority of any corporation owned or controlled by the United States, and shall take upon himself to act as such, or shall in such pretended character demand or obtain from any person or from the United States, or any department, or any officer of the Government thereof, or any corporation owned or controlled by the United States, any money, paper, document, or other valuable thing, shall be fined not more than \$1,000 or imprisoned not more than three years, or both. (Apr. 18, 1884, ch. 26, 23 Stat. 11; Mar. 4, 1909, ch. 321, § 32, 35 Stat. 1095; Feb. 28, 1938, ch. 37, 52 Stat. 83.)

## DERIVATION

Act Apr. 18, 1884, ch. 26, 23 Stat. 11, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

## CROSS REFERENCE

Section extended to apply to Home Owners' Loan Corporation, see section 1467 (d) of Title 12, Banks and Banking.

§ 76a. Prohibition of reproduction of official badges, identification cards, and other insignia.

Hereafter the manufacture, sale, or possession of any badge, identification card, or other insignia, of the design prescribed by the head of any department or independent office of the United States for use by any officer or subordinate thereof, or of any colorable imitation thereof, or the photographing, printing, or in any other manner making or executing any engraving, photograph, print, or impression in the likeness of any such badge, identification card, or other insignia, or of any colorable imitation thereof, is prohibited, except when and as authorized under

such regulations as may be prescribed by the head of the department or independent office of which such insignia indicates the wearer is an officer or subordinate. (June 29, 1932, ch. 306, § 1, 47 Stat. 342; May 22, 1939, ch. 141, 53 Stat. 752.)

**§ 76b. Same; punishment.**

Any person who offends against the provisions of section 76a of this title shall, upon conviction, be punished by a fine not exceeding \$250 or by imprisonment for not exceeding six months, or by both such fine and imprisonment. (June 29, 1932, ch. 306, § 2, 47 Stat. 342.)

**§ 76c. Falsely pretending to be member or agent of 4-H clubs; fraudulent use of insignia or emblems.**

It shall be unlawful for any person falsely and with intent to defraud to hold himself out as or represent or pretend himself to be a member of, associated with, or an agent or representative for the 4-H clubs, an organization established by the Extension Service of the United States Department of Agriculture and the land grant colleges, for any purpose whatsoever; or for any person with intent to defraud to wear or display the sign or emblem of said 4-H clubs or any insignia in colorable imitation thereof for the purpose of inducing the belief that he is a member of, associated with, or an agent or representative for said 4-H clubs. It shall be unlawful for any person other than said 4-H clubs and those duly authorized by them, the representatives of the United States Department of Agriculture, the land grant colleges, and persons authorized by the Secretary of Agriculture, to use within the territory of the United States of America and its exterior possessions, for the purpose of trade or as an advertisement to induce the sale of any article whatsoever or for any business or charitable purpose, the recognized emblem of said 4-H clubs, consisting of a green four-leaf clover with stem and the letter H in white or gold on each leaflet, or any sign, insignia, or symbol in colorable imitation thereof, or the words "4-H Club" or "4-H Clubs" or any combination of these or other words or characters in colorable imitation thereof. If any person violates any provision of sections 76a-76d of this title, he shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$300 or imprisoned not more than six months, or both, for each and every offense. (June 5, 1939, ch. 184, § 1, 53 Stat. 809.)

**§ 76d. Same; "person" defined.**

The term "person" includes individuals, partnerships, corporations, and associations. (June 5, 1939, ch. 184, § 2, 53 Stat. 809.)

**§ 76e. Veterans' organizations, unauthorized manufacture, sale, or use of insignia; penalties.**

The manufacture, sale or purchase for resale, either separately or appended to, or to be appended to, or the reproduction on any article of merchandise manufactured or sold, of the badge, medal, emblem, or other insignia or any colorable imitation thereof, or the reproduction thereof for commercial purposes, of any veterans' organization incorporated by Act

of Congress, or the printing, lithographing, engraving or other like reproduction on any poster, circular, periodical, magazine, newspaper, or other publication, or the circulation or distribution of any such printed matter bearing a reproduction of such badge, medal, emblem, or other insignia or any colorable imitation thereof, of any such veterans' organization, is prohibited except when authorized under such rules and regulations as may be prescribed by such organization so incorporated. Any person who knowingly offends against any provision of this section shall on conviction be punished by a fine not exceeding \$250 or by imprisonment not exceeding six months, or by both such fine and imprisonment. (June 25, 1940, ch. 426, 54 Stat. 571.)

**§ 77. Repealed Aug. 27, 1935, ch. 740, § 1, 49 Stat. 872.**

Section was derived from act Nov. 23, 1921, ch. 134, § 6, 42 Stat. 224.

**§ 77a. Impersonating officer, agent or employee of United States and making arrest or search.**

Whoever not being an officer, agent, or employee of the United States shall falsely represent himself to be such officer, agent, or employee, and in such assumed character shall arrest or detain any person or shall in any manner search the person, buildings, or other property of any person, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000 or imprisoned for not more than one year, or by both such fine and imprisonment. (Aug. 27, 1935, ch. 740, § 201, 49 Stat. 877.)

**§ 78. (Criminal Code, section 33.) False personation of holder of public stocks or pensioner.**

Whoever shall falsely personate any true and lawful holder of any share or sum in the public stocks or debt of the United States, or any person entitled to any annuity, dividend, pension, prize money, wages, or other debt due from the United States, and, under color of such false personation, shall transfer or endeavor to transfer such public stock or any part thereof, or shall receive or endeavor to receive the money of such true and lawful holder thereof, or the money of any person really entitled to receive such annuity, dividend, pension, prize money, wages, or other debt, shall be fined not more than \$5,000 and imprisoned not more than ten years. (Mar. 4, 1909, ch. 321, § 33, 35 Stat. 1095.)

**DERIVATION**

R. S. § 5435, which was revised from act Mar. 3, 1825, ch. 65, 4 Stat. 120, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 79. (Criminal Code, section 34.) False demand on fraudulent power of attorney.**

Whoever shall knowingly or fraudulently demand or endeavor to obtain any share or sum in the public stocks of the United States, or to have any part thereof transferred, assigned, sold, or conveyed, or to have any annuity, dividend, pension, prize money, wages, or other debt due from the United States, or any part thereof, received, or paid by virtue of any false, forged, or counterfeited power of attorney, authority, or instrument, shall be fined not more than

\$5,000 and imprisoned not more than ten years. (Mar. 4, 1909, ch. 321, § 34, 35 Stat. 1095.)

#### DERIVATION

R. S. § 5436, which was revised from act Mar. 3, 1825, ch. 65, 4 Stat. 120, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 80. (Criminal Code, section 35 (A).) Presenting false claims.

Whoever shall make or cause to be made or presented or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both. (Mar. 4, 1909, ch. 321, § 35, 35 Stat. 1095; Oct. 23, 1918, ch. 194, 40 Stat. 1015; June 18, 1934, ch. 587, 48 Stat. 996; Apr. 4, 1938, ch. 69, 52 Stat. 197.)

#### DERIVATION

R. S. § 5438, as amended by act May 30, 1908, ch. 235, 35 Stat. 555, which was revised from act Mar. 2, 1863, ch. 67, 12 Stat. 696, 698, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### AMENDMENT

Act April 4, 1938, cited to text, divided section 35 of the Criminal Code into lettered subsections (A), (B), (C). Subsection (A) constitutes sections 80, 83, 84, and 85 of this title. Subsections (B) and (C) constitute sections 86 and 82, respectively, of this title.

Act April 4, 1938, cited to text, reenacted section without change, except for omission of comma after "entry" in fifth line from end, and insertion of comma before "shall be fined" in next to last line.

§ 81. False affidavits and papers; false certificate to papers.

Every person who knowingly or willfully makes or aids, or assists in the making, or in any wise procures the making or presentation of any false or fraudulent affidavit, declaration, certificate, voucher, or paper or writing purporting to be such, concerning any claim for pension or payment thereof, or pertaining to any other matter within the jurisdiction of the Administration of Veterans' Affairs or of the Secretary of the Interior, or who knowingly or willfully makes or causes to be made, or aids or assists in the making, or presents or causes to be presented any paper required as a voucher in drawing a pension, which paper bears a date subsequent to that upon which it was actually signed or ac-

knowledge by the pensioner, and every person before whom any declaration, affidavit, voucher, or other paper or writing to be used in aid of the prosecution of any claim for pension or bounty land or payment thereof purports to have been executed who shall knowingly certify that the declarant, affiant, or witness named in such declaration, affidavit, voucher, or other paper or writing personally appeared before him and was sworn thereto, or acknowledged the execution thereof, when in fact such declarant, affiant, or witness did not personally appear before him or was not sworn thereto, or did not acknowledge the execution thereof, shall be punished by a fine not exceeding five hundred dollars or by imprisonment for a term of not more than five years. (R. S. §§ 4746, 4766; July 7, 1898, ch. 578, 30 Stat. 718; Aug. 17, 1912, ch. 301, § 1, 37 Stat. 312; July 3, 1930, ch. 863, § 2, 46 Stat. 1016.)

§ 82. (Criminal Code, section 35 (C).) Purloining, stealing, or injuring property of United States or property manufactured under contract for War or Navy Departments.

Whoever shall take and carry away or take for his use, or for the use of another, with intent to steal or purloin, or shall willfully injure or commit any depredation against, any property of the United States, or any branch or department thereof, or any corporation in which the United States of America is a stockholder, or any property which has been or is being made, manufactured, or constructed under contract for the War or Navy Departments of the United States, shall be punished as follows: If the value of such property exceeds the sum of \$50, by a fine of not more than \$10,000 or imprisonment for not more than ten years, or both; if the value of such property does not exceed the sum of \$50, by a fine of not more than \$1,000 or by imprisonment in a jail for not more than one year, or both. Value, as used in this section, shall mean market value or cost price, either wholesale or retail, whichever shall be the greater. (Mar. 4, 1909, ch. 321, § 35, 35 Stat. 1095; Oct. 23, 1918, ch. 194, 40 Stat. 1015; June 18, 1934, ch. 587, 48 Stat. 996; April 4, 1938, ch. 69, 52 Stat. 197.)

#### DERIVATION

R. S. § 5438, as amended by act May 30, 1908, ch. 235, 35 Stat. 555, which was revised from act Mar. 2, 1863, ch. 67, 12 Stat. 696, 698, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### AMENDMENT

See note under section 80 of this title.

#### CROSS REFERENCE

Section extended to apply to Home Owners' Loan Corporation, see section 1467 (d) of Title 12, Banks and Banking.

§ 83. (Criminal Code, section 35 (A).) Conspiracy to defraud United States in regard to allowance or payment of false claims.

Whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, shall be fined not more

than \$10,000 or imprisoned not more than ten years, or both. (Mar. 4, 1909, ch. 321, § 35, 35 Stat. 1095; Oct. 23, 1918, ch. 194, 40 Stat. 1015; June 18, 1934, ch. 587, 48 Stat. 996; Apr. 4, 1938, ch. 69, 52 Stat. 197.)

#### DERIVATION

R. S. § 5438, as amended by act May 30, 1908, ch. 235, 35 Stat. 555, which was revised from act Mar. 2, 1863, ch. 67, 12 Stat. 696, 698, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### AMENDMENT

Act April 4, 1938, cited to text, reenacted section without change.

See note under section 80 of this title.

#### CROSS REFERENCE

Section extended to apply to Home Owners' Loan Corporation, see section 1467 (d) of Title 12, Banks and Banking.

§ 84. (Criminal Code, section 35 (A).) Unauthorized delivery of certificate, voucher, receipt, etc., for military or naval property.

Whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property used or to be used in the military or naval service, shall make or deliver the same to any other person without a full knowledge of the truth of the facts stated therein and with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both. (Mar. 4, 1909, ch. 321, § 35, 35 Stat. 1095; Oct. 23, 1918, ch. 194, 40 Stat. 1015; June 18, 1934, ch. 587, 48 Stat. 996; Apr. 4, 1938, ch. 69, 52 Stat. 197.)

#### DERIVATION

R. S. § 5438, as amended by act May 30, 1908, ch. 235, 35 Stat. 555, which was revised from act Mar. 2, 1863, ch. 67, 12 Stat. 696, 698 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### AMENDMENT

Act April 4, 1938, cited to text, reenacted section without change.

See note under section 80 of this title.

§ 85. (Criminal Code, section 35 (A).) Unauthorized delivery of money or property for military or naval service.

Whoever, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, or willfully to conceal such money or other property, shall deliver or cause to be delivered to any person having authority to receive the same any amount of such money or other property less than that for which he received a certificate or took a receipt, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both. (Mar. 4, 1909, ch. 321, § 35, 35 Stat. 1095; Oct. 23, 1918, ch. 194, 40 Stat. 1015; June 18, 1934, ch. 587, 48 Stat. 996; Apr. 4, 1938, ch. 69, 52 Stat. 197.)

#### DERIVATION

R. S. § 5438, as amended by act May 30, 1908, ch. 235, 35 Stat. 555, which was revised from act Mar. 2, 1863, ch.

67, 12 Stat. 696, 698 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### AMENDMENT

Act April 4, 1938, cited to text, reenacted section without change.

See note under section 80 of this title.

§ 86. (Criminal Code, section 35 (B).) Unlawful purchase of military, naval, or veterans' facilities property.

Whoever shall purchase, or receive in pledge from any person any arms, equipment, ammunition, clothing, military stores, or other property furnished by the United States under a clothing allowance or otherwise, to any soldier, sailor, officer, cadet, or midshipman in the military or naval service of the United States or of the National Guard or Naval Militia, or to any person accompanying, serving, or retained with the land or naval forces and subject to military or naval law; or to any former member of such military or naval service at or by any hospital, home, or facility maintained by the United States; having knowledge or reason to believe that the property has been taken from the possession of the United States or furnished by the United States under such allowance, or otherwise, shall be fined not more than \$500 or imprisoned not more than two years, or both. (Mar. 4, 1909, ch. 321, § 35, 35 Stat. 1095; Oct. 23, 1918, ch. 194, 40 Stat. 1015; June 18, 1934, ch. 587, 48 Stat. 996; Apr. 4, 1938, ch. 69, 52 Stat. 197; Apr. 30, 1940, ch. 164, 54 Stat. 171.)

#### DERIVATION

R. S. § 5438, as amended by act May 30, 1908, ch. 235, 35 Stat. 555, which was revised from act Mar. 2, 1863, ch. 67, 12 Stat. 696, 698, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### AMENDMENT

Act April 4, 1938, cited to text, reenacted section without change.

See note under section 80 of this title.

§ 87. (Criminal Code, section 36.) Embezzling arms and stores.

Whoever shall steal, embezzle, or knowingly apply to his own use, or unlawfully sell, convey, or dispose of, any ordnance, arms, ammunition, clothing, subsistence, stores, money, or other property of the United States, furnished or to be used for the military or naval service, shall be punished as prescribed in sections 80 and 82-86 of this title. (Mar. 4, 1909, ch. 321, § 36, 35 Stat. 1096.)

#### DERIVATION

R. S. § 5439, which was revised from act Mar. 2, 1863, ch. 67, 12 Stat. 696, 698, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 88. (Criminal Code, section 37.) Conspiring to commit offense against United States.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both. (Mar. 4, 1909, ch. 321, § 37, 35 Stat. 1096.)

## DERIVATION

R. S. § 5440, as amended by act May 17, 1879, ch. 8, 21 Stat. 4, which was revised from act Mar. 2, 1867, ch. 169, 14 Stat. 484, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

## CROSS REFERENCES

Espionage conspiracies as punishable under this section, see section 34 of Title 50, War.

Section extended to apply to Home Owners' Loan Corporation, see section 1467 (d) of Title 12, Banks and Banking.

Section extended to apply to Philippine Islands and Canal Zone, see section 39 of this title.

## § 89. Threats against President.

Any person who knowingly and willfully deposits or causes to be deposited for conveyance in the mail or for delivery from any post office or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat to take the life of or to inflict bodily harm upon the President of the United States, or who knowingly and willfully otherwise makes any such threat against the President, shall upon conviction be fined not exceeding \$1,000 or imprisoned not exceeding five years, or both. (Feb. 14, 1917, ch. 64, 39 Stat. 919.)

## § 90. (Criminal Code, section 38.) Interfering with delivery of prize property.

Whoever shall willfully do, or aid or advise in the doing, of any act relating to the bringing in, custody, preservation, sale, or other disposition of any property captured as prize, or relating to any documents or papers connected with the property, or to any deposition or other document or paper connected with the proceedings, with intent to defraud, delay, or injure the United States or any captor or claimant of such property, shall be fined not more than \$10,000, or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, § 38, 35 Stat. 1096.)

## DERIVATION

R. S. § 5441, which was revised from act June 30, 1864, ch. 174, 13 Stat. 315, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153

## § 91. (Criminal Code, section 39.) Bribery of United States officer.

Whoever shall promise, offer, or give, or cause or procure to be promised, offered, or given, any money or other thing of value, or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof, or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud,

on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be fined not more than three times the amount of money or value of the thing so offered, promised, given, made, or tendered, or caused or procured to be so offered, promised, given, made, or tendered, and imprisoned not more than three years. (Mar. 4, 1909, ch. 321, § 39, 35 Stat. 1096.)

## DERIVATION

R. S. § 5451, which was revised from acts Feb. 26, 1853, ch. 81, 10 Stat. 171; Mar. 3, 1863, ch. 76, 12 Stat. 740; July 13, 1866, ch. 184, 14 Stat. 168; July 18, 1866, ch. 201, 14 Stat. 186, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

## CROSS REFERENCE

Section extended to apply to Home Owners' Loan Corporation, see section 1467 (d) of Title 12, Banks and Banking.

## § 92. (Criminal Code, section 40.) Unlawfully taking or using papers relating to claims.

Whoever shall take and carry away, without authority from the United States, from the place where it has been filed, lodged, or deposited, or where it may for the time being actually be kept by authority of the United States, any certificate, affidavit, deposition, written statement of facts, power of attorney, receipt, voucher, assignment, or other document, record, file, or paper, prepared, fitted, or intended to be used or presented in order to procure the payment of money from or by the United States, or any officer or agent thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States, whether the same has or has not already been so used or presented, and whether such claim, account, or demand, or any part thereof, has or has not already been allowed or paid; or whoever shall present, use, or attempt to use, any such document, record, file, or paper so taken and carried away, in order to procure the payment of any money from or by the United States, or any officer or agent thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States, shall be fined not more than \$5,000, or imprisoned not more than ten years, or both. (Mar. 4, 1909, ch. 321, § 40, 35 Stat. 1096.)

## DERIVATION

R. S. § 5454, which was revised from act Feb. 5, 1867, ch. 26, § 7, 14 Stat. 384, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

## § 93. (Criminal Code, section 41.) Interested persons acting as Government agents.

No officer or agent of any corporation, joint-stock company, or association, and no member or agent of any firm, or person directly or indirectly interested in the pecuniary profits or contracts of such corporation, joint-stock company, association, or firm, shall be employed or shall act as an officer or agent of the United States for the transaction of business with such corporation, joint-stock company, association, or firm. Whoever shall violate the provision of this section shall be fined not more than \$2,000 and imprisoned not more than two years. (Mar. 4, 1909, ch. 321, § 41, 35 Stat. 1097.)

## DERIVATION

R. S. § 1783, which was revised from act Mar. 2, 1863, ch. 67, 12 Stat. 698, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 94. (Criminal Code, section 42.) Enticing desertion from Army or Navy.

Whoever shall entice or procure, or attempt or endeavor to entice or procure, any soldier in the military service, or any seaman or other person in the naval service of the United States, or who has been recruited for such service, to desert therefrom, or shall aid any such soldier, seaman, or other person in deserting or in attempting to desert from such service; or whoever shall harbor, conceal, protect, or assist any such soldier, seaman, or other person who may have deserted from such service, knowing him to have deserted therefrom, or shall refuse to give up and deliver such soldier, seaman, or other person on the demand of any officer authorized to receive him, shall be imprisoned not more than three years and fined not more than \$2,000. (Feb. 27, 1877, ch. 69, § 1, 19 Stat. 253; Mar. 4, 1909, ch. 321, § 42, 35 Stat. 1097.)

## DERIVATION

R. S. § 1553, which was revised from act July 1, 1864, ch. 204, 13 Stat. 343, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

R. S. § 5455, as amended by act Feb. 27, 1877, ch. 69, 19 Stat. 253, which was revised from acts Mar. 3, 1863, ch. 75, 12 Stat. 735; July 1, 1864, ch. 204, 13 Stat. 343, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 95. (Criminal Code, section 43.) Enticing workmen from arsenals or armories.

Whoever shall procure or entice any artificer or workman retained or employed in any arsenal or armory to depart from the same during the continuance of his engagement, or to avoid or break his contract with the United States; or whoever, after due notice of the engagement of such workman or artificer, during the continuance of such engagement, shall retain, hire, or in anywise employ, harbor, or conceal such artificer or workman, shall be fined not more than \$50, or imprisoned not more than three months, or both. (Mar. 4, 1909, ch. 321, § 43, 35 Stat. 1097.)

## DERIVATION

R. S. § 1668, which was revised from act May 7, 1800, ch. 46, 2 Stat. 61 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 96. (Criminal Code, section 44.) Injuries to fortifications or harbor defenses; jurisdiction of offenses committed within Canal Zone or defensive sea areas.

Whoever shall willfully trespass upon, injure, or destroy any of the works or property or material of any submarine mine or torpedo or fortification or harbor-defense system owned or constructed or in process of construction by the United States, or shall willfully interfere with the operation or use of any such submarine mine, torpedo, fortification, or harbor-defense system, or shall knowingly, willfully, or wantonly violate any duly authorized and promulgated order or regulation of the President governing persons or vessels within the limits of defensive sea areas, which defensive sea areas are

hereby authorized to be established by order of the President from time to time as may be necessary in his discretion for purposes of national defense, shall be punished on conviction thereof in a district or circuit court of appeals of the United States for the district or circuit in which the offense is committed, or into which the offender is first brought, by a fine of not more than \$5,000, or by imprisonment for a term not exceeding five years, or by both, in the discretion of the court. Offenses hereunder committed within the Canal Zone or within any defensive sea areas which the President is authorized to establish by this section, shall be cognizable in the District Court of the Canal Zone, and jurisdiction is hereby conferred upon said court to hear and determine all such cases arising under this section and to impose the penalties herein provided for the violation of any of its provisions. (Mar. 4, 1909, ch. 321, § 44, 35 Stat. 1097; Mar. 4, 1917, ch. 180, 39 Stat. 1194; May 22, 1917, ch. 20, § 19, 40 Stat. 89.)

## DERIVATION

Act July 7, 1898, ch. 576, § 1, 30 Stat. 717, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 97. (Criminal Code, section 45.) Unlawfully entering military reservation, fort, or arsenal.

Whoever, within the territory or jurisdiction of the United States, including the Canal Zone, Puerto Rico, and the Philippine Islands, shall go upon any military reservation, Army post, fort, or arsenal, for any purpose prohibited by law or military regulation made in pursuance of law, or whoever shall reenter or be found within any such reservation, post, fort, or arsenal, after having been removed therefrom or ordered not to reenter by any officer or person in command or charge thereof, shall be fined not more than \$500, or imprisoned not more than six months, or both. (Mar. 4, 1909, ch. 321, § 45, 35 Stat. 1097; Mar. 28, 1940, ch. 73, 54 Stat. 80.)

## AMENDMENT

Act March 28, 1940, cited to text, extended application of act to the Canal Zone, Puerto Rico, and the Philippine Islands.

§ 98. Possession or control of property or papers in aid of foreign government designed or intended for violating penal statutes, treaty rights, or obligations of United States; or rights under law of nations.

Whoever, in aid of any foreign government, shall knowingly and willfully have possession of or control over any property or papers designed or intended for use or which is used as the means of violating any penal statute, or any of the rights or obligations of the United States under any treaty or the law of nations, shall be punished by imprisonment for not more than ten years and may, in the discretion of the court, be fined not more than \$1,000. The words "foreign government", as used in this section, shall be deemed to include any government, faction, or body of insurgents within a country with which the United States is at peace, which government, faction, or body of insurgents may or may not have been recognized by the United States as a government. (June 15, 1917, ch. 30, title VIII, § 4, 40 Stat. 226, June 15, 1917, ch. 30, title XI, § 22, 40 Stat. 230; Mar. 28, 1940, ch. 72, § 8, 54 Stat. 80.)

## AMENDMENT

Term of imprisonment was increased by act March 28, 1940, cited to text.

## CODIFICATION

The first sentence is from section 22 of title XI, the second sentence from section 1 of title XIII, and the third sentence from section 4 of title VIII of act June 15, 1917, cited to text.

## CROSS REFERENCES

Jurisdiction of offenses under this section, see section 574 of this title.

The provisions of section 4 of title VIII of the act of June 15, 1917, cited to text, so far as they apply to different sections of the Criminal Code and other sections of the act of June 15, 1917, are set out in sections 288 and 349 of this title, section 235 of Title 22, Foreign Relations and Intercourse, and section 41 of Title 50, War; and the provisions of section 1 of title XIII in sections 39, 98, 133, 346, 381, 502, and 632 of this title, and section 40 of Title 50, War.

§ 99. (Criminal Code, section 46.) Robbery of personal property of United States.

Whoever shall rob another of any kind or description of personal property belonging to the United States, or shall feloniously take and carry away the same, shall be fined not more than \$5,000, or imprisoned not more than ten years, or both. (Mar. 4, 1909, ch. 321, § 46, 35 Stat. 1097.)

## DERIVATION

R. S. § 5456, which was revised from act Mar. 2, 1867, ch. 193, 14 Stat. 557 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

## CROSS REFERENCE

Power of court to impose hard labor as part of punishment, see section 572 of this title.

§ 100. (Criminal Code, section 47.) Embezzling public moneys or other property.

Whoever shall embezzle, steal, or purloin any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, shall be fined not more than \$5,000, or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, § 47, 35 Stat. 1097.)

## DERIVATION

Act Mar. 3, 1875, ch. 144, 18 Stat. 479, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 101. (Criminal Code, section 48.) Receiving stolen public property.

Whoever shall receive, conceal, or aid in concealing, or shall have or retain in his possession with intent to convert to his own use or gain, any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, which has theretofore been embezzled, stolen, or purloined by any other person, knowing the same to have been so embezzled, stolen, or purloined, shall be fined not more than \$5,000, or imprisoned not more than five years, or both; and such person may be tried either before or after the conviction of the principal offender. (Mar. 4, 1909, ch. 321, § 48, 35 Stat. 1098.)

## DERIVATION

Act Mar. 3, 1875, ch. 144, § 2, 18 Stat. 479, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 102. Stealing, defacing, etc., books, pamphlets, or manuscripts in Library of Congress or other public libraries.

Any person who shall steal, wrongfully deface, injure, mutilate, tear, or destroy any book, pamphlet, or manuscript, or any portion thereof, belonging to the Library of Congress, or to any public library in the District of Columbia, whether the property of the United States or of any individual or corporation in said district, or who shall steal, wrongfully deface, injure, mutilate, tear, or destroy any book, pamphlet, document, manuscript, print, engraving, medal, newspaper, or work of art, the property of the United States, shall be held guilty of a misdemeanor, and, on conviction thereof, shall, when the offense is not otherwise punishable by some statute of the United States, be punished by a fine not less than \$10 nor more than \$1,000, and by imprisonment for not less than one nor more than twelve months, or both, for every such offense. (June 19, 1878, ch. 317, 20 Stat. 171.)

§ 103. (Criminal Code, section 49.) Timber depredations on public lands; rights of entrymen.

Whoever shall cut, or cause or procure to be cut, or shall wantonly destroy, or cause to be wantonly destroyed, any timber growing on the public lands of the United States; or whoever shall remove, or cause to be removed, any timber from said public lands, with intent to export or to dispose of the same; or whoever, being the owner, master, or consignee of any vessel, or the owner, director, or agent of any railroad, shall knowingly transport any timber so cut or removed from said lands, or lumber manufactured therefrom, shall be fined not more than \$1,000, or imprisoned not more than one year, or both. Nothing in this section shall prevent any miner or agriculturist from clearing his land in the ordinary working of his mining claim, or in the preparation of his farm for tillage, or from taking the timber necessary to support his improvements, or the taking of timber for the use of the United States. And nothing in this section shall interfere with or take away any right or privilege under any existing law of the United States to cut or remove timber from any public lands. (Mar. 4, 1909, ch. 321, § 49, 35 Stat. 1098.)

## DERIVATION

Act June 3, 1878, ch. 151, § 4, 20 Stat. 90, as amended by act Aug. 4, 1892, ch. 375, § 2, 27 Stat. 348, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 103a. Coal land of United States; trespass; penalty.

It shall be unlawful to mine and remove coal of any character, whether anthracite, bituminous, or lignite, from beds or deposits in lands of the United States, or in deposits or beds reserved to the United States, with the intent wrongfully to appropriate, sell, or dispose of the same, and every person who shall violate any of the provisions of this section shall be deemed guilty of misdemeanor and fined not more than \$1,000 or imprisoned not more than one year, or both. (July 3, 1926, ch. 780, § 1, 44 Stat. 891.)



§ 103b. Same; existing rights; no interference.

Nothing in section 103a of this title, however, shall interfere with any right or privilege conferred by existing laws of the United States. (July 3, 1926, ch. 780, § 2, 44 Stat. 891.)

§ 104. (Criminal Code, section 50.) Timber depredations on public lands; Indian lands or trust allotments.

Whoever shall unlawfully cut, or aid in unlawfully cutting, or shall wantonly injure or destroy, or procure to be wantonly injured or destroyed, any tree, growing, standing, or being upon any land of the United States which, in pursuance of law, has been reserved or purchased by the United States for any public use, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under the authority of the United States, or any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be fined not more than \$500, or imprisoned not more than one year, or both. (Mar. 4, 1909, ch. 321, § 50, 35 Stat. 1098; June 25, 1910, ch. 431, § 6, 36 Stat. 857.)

#### DERIVATION

R. S. § 5388, as amended by act June 4, 1888, ch. 340, 25 Stat. 166, which was revised from act Mar. 3, 1859, ch. 78, 11 Stat. 408 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

Act Mar. 3, 1875, ch. 151, § 1, 18 Stat. 481, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 105. (Criminal Code, section 51.) Boxing trees for turpentine.

Whoever shall cut, chip, chop, or box any tree upon any lands belonging to the United States, or upon any lands covered by or embraced in any unperfected settlement, application, filing, entry, selection, or location, made under any law of the United States, for the purpose of obtaining from such tree any pitch, turpentine, or other substance, or shall knowingly encourage, cause, procure, or aid in the cutting, chipping, chopping, or boxing of any such tree, or shall buy, trade for, or in any manner acquire any pitch, turpentine, or other substance, or any article or commodity made from any such pitch, turpentine, or other substance, when he has knowledge that the same has been so unlawfully obtained from such trees, shall be fined not more than \$500, or imprisoned not more than one year, or both. (Mar. 4, 1909, ch. 321, § 51, 35 Stat. 1098.)

#### DERIVATION

Act June 4, 1906, ch. 2571, 34 Stat. 208, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 106. (Criminal Code, section 52.) Setting fire to timber on public lands.

Whoever shall willfully set on fire, or cause to be set on fire, any timber, underbrush, or grass upon the public domain, or shall leave or suffer fire to burn unattended near any timber or other inflammable material, shall be fined not more than \$5,000, or imprisoned not more than two years, or both. (Mar. 4, 1909, ch. 321, § 52, 35 Stat. 1098.)

#### DERIVATION

Act Feb. 24, 1897, ch. 313, 29 Stat. 594, as amended by act May 5, 1900, ch. 349, 31 Stat. 169, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 107. (Criminal Code, section 53.) Failing to extinguish fires.

Whoever shall build a fire in or near any forest, timber, or other inflammable material upon the public domain, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under the authority of the United States, or upon any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall, before leaving said fire, totally extinguish the same; and whoever shall fail to do so shall be fined not more than \$1,000, or imprisoned not more than one year, or both. (Mar. 4, 1909, ch. 321, § 53, 35 Stat. 1098; June 25, 1910, ch. 431, § 6, 36 Stat. 857.)

#### DERIVATION

Act Feb. 24, 1897, ch. 313, § 2, 29 Stat. 594, as amended by act May 5, 1900, ch. 349, 31 Stat. 170, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 108. (Criminal Code, section 54.) Fines paid into school funds.

In all cases arising under sections 106 and 107 of this title the fines collected shall be paid into the public-school fund of the county in which the lands where the offense was committed are situated. (Mar. 4, 1909, ch. 321, § 54, 35 Stat. 1099.)

#### DERIVATION

Act Feb. 24, 1897, ch. 313, § 3, 29 Stat. 594, as amended by act May 5, 1900, ch. 349, 31 Stat. 170, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 109. (Criminal Code, section 55.) Trespassing on Bull Run National Forest.

Whoever, except forest rangers and other persons employed by the United States to protect the forest, Federal and State officers in the discharge of their duties, and the employees of the water board of the city of Portland, State of Oregon, shall knowingly trespass upon any part of the reserve known as Bull Run National Forest, in the Cascade Mountains, in the State of Oregon, or shall enter thereon for the purpose of grazing stock, or shall engage in grazing stock thereon, or shall permit stock of any kind to graze thereon, shall be fined not more than \$500, or imprisoned not more than six months, or both. (Mar. 4, 1909, ch. 321, § 55, 35 Stat. 1099.)

#### DERIVATION

Act Apr. 28, 1904, ch. 1774, 33 Stat. 526, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 110. (Criminal Code, section 56.) Breaking fences or driving cattle on inclosed public lands.

Whoever shall knowingly and unlawfully break, open, or destroy any gate, fence, hedge, or wall inclosing any lands of the United States which, in pursuance of any law, have been reserved or purchased by the United States for any public use; or whoever shall drive any cattle, horses, hogs, or other livestock upon any such lands for the purpose of destroying the grass or trees on said lands, or where



they may destroy the said grass or trees; or whoever shall knowingly permit his cattle, horses, hogs, or other livestock, to enter through any such inclosure upon any such lands of the United States, where such cattle, horses, hogs, or other livestock may or can destroy the grass or trees or other property of the United States on the said lands, shall be fined not more than \$500, or imprisoned not more than one year, or both. Nothing in this section shall be construed to apply to unreserved public lands. (Mar. 4, 1909, ch. 321, § 56, 35 Stat. 1099.)

## DERIVATION

Act Mar. 3, 1875, ch. 151, §§ 2, 3, 18 Stat. 481, 482, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 111. (Criminal Code, section 57.) Injuring or removing survey marks.**

Whoever shall willfully destroy, deface, change, or remove to another place any section corner, quarter-section corner, or meander post, on any Government line of survey, or shall willfully cut down any witness tree or any tree blazed to mark the line of a Government survey, or shall willfully deface, change, or remove any monument or bench mark of any Government survey, shall be fined not more than \$250, or imprisoned not more than six months, or both. (Mar. 4, 1909, ch. 321, § 57, 35 Stat. 1099.)

## DERIVATION

Act June 10, 1896, ch. 398, § 1, 29 Stat. 343, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 112. (Criminal Code, section 58.) Interrupting surveys.**

Whoever in any manner, by threats or force, shall interrupt, hinder, or prevent the surveying of the public lands, or of any private land claim which has been or may be confirmed by the United States, by the persons authorized to survey the same, in conformity with the instructions of the Commissioner of the General Land Office, shall be fined not more than \$3,000 and imprisoned not more than three years. (Mar. 4, 1909, ch. 321, § 58, 35 Stat. 1099.)

## DERIVATION

R. S. § 2412, which was revised from act May 29, 1830, ch. 163, 4 Stat. 417 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 113. (Criminal Code, section 59.) Agreement to prevent bids at land sales.**

Whoever, before or at the time of the public sale of any of the lands of the United States, shall bargain, contract, or agree, or attempt to bargain, contract, or agree with any other person, that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof; or whoever by intimidation, combination, or unfair management shall hinder or prevent, or attempt to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than \$1,000, or imprisoned not more than two years, or both. (Mar. 4, 1909, ch. 321, § 59, 35 Stat. 1099.)

## DERIVATION

R. S. § 2373, which was revised from act Mar. 31, 1830, ch. 48, 4 Stat. 392 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 114. Willful and false representations to intending purchasers of public lands.**

Any person who, for a reward paid or promised to him in that behalf, shall undertake to locate for an intending purchaser, settler, or entryman any public lands of the United States subject to disposition under the public-land laws, and who shall willfully and falsely represent to such intending purchaser, settler, or entryman that any tract of land shown to him is public land of the United States subject to sale, settlement, or entry, or that it is of a particular surveyed description, with intent to deceive the person to whom such representation is made, or who, in reckless disregard of the truth, shall falsely represent to any such person that any tract of land shown to him is public land of the United States subject to sale, settlement, or entry, or that it is of a particular surveyed description, thereby deceiving the person to whom such representation is made, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding \$300 or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment. (Feb. 23, 1917, ch. 115, 39 Stat. 936.)

**§ 115. Inducing conveyances by Indians of trust interests in lands.**

It shall be unlawful for any person to induce any Indian to execute any contract, deed, mortgage, or other instrument purporting to convey any land or any interest therein held by the United States in trust for such Indian, or to offer any such contract, deed, mortgage, or other instrument for record in the office of any recorder of deeds. Any person violating this provision shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding \$500 for the first offense, and if convicted for a second offense may be punished by a fine not exceeding \$500 or imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court. This section shall not apply to any lease or other contract authorized by law to be made. (June 25, 1910, ch. 431, § 5, 36 Stat. 857.)

**§ 116. (Criminal Code, section 60.) Injuries to telegraph lines.**

Whoever shall willfully or maliciously injure or destroy any of the works, property, or material of any telegraph, telephone, or cable line, or system, operated or controlled by the United States, whether constructed or in process of construction, or shall willfully or maliciously interfere in any way with the working or use of any such line, or system, or shall willfully or maliciously obstruct, hinder, or delay the transmission of any communication over any such line, or system, shall be fined not more than \$1,000, or imprisoned not more than three years, or both. (Mar. 4, 1909, ch. 321, § 60, 35 Stat. 1099.)

## DERIVATION

Act June 23, 1874, ch. 461, 18 Stat. 250, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 117. (Criminal Code, section 61.) Counterfeiting weather forecasts.**

Whoever shall knowingly issue or publish any counterfeit weather forecast or warning of weather conditions falsely representing such forecast or warning to have been issued or published by the Weather Bureau, United States Signal Service, or other branch of the Government service, shall be fined not more than \$500, or imprisoned not more than ninety days, or both. (Mar. 4, 1909, ch. 321, § 61, 35 Stat. 1100.)

**DERIVATION**

Acts Aug. 8, 1894, ch. 238, 28 Stat. 274; Mar. 2, 1895, ch. 169, 28 Stat. 737; Apr. 25, 1896, ch. 140, 29 Stat. 108; act Mar. 3, 1905, ch. 1405, 33 Stat. 864, which were repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 118. (Criminal Code, section 62.) Molesting Animal Industry employees; using deadly weapon.**

Whoever shall forcibly assault, resist, oppose, prevent, impede, or interfere with any officer or employee of the Bureau of Animal Industry of the Department of Agriculture in the execution of his duties, or on account of the execution of his duties, shall be fined not more than \$1,000, or imprisoned not more than one year, or both; and whoever shall use any deadly or dangerous weapon in resisting any officer or employee of the Bureau of Animal Industry of the Department of Agriculture in the execution of his duties, with intent to commit a bodily injury upon him or to deter or prevent him from discharging his duties, or on account of the performance of his duties, shall be fined not more than \$1,000, or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, § 62, 35 Stat. 1100.)

**DERIVATION**

Act Mar. 3, 1905, ch. 1496, § 5, 33 Stat. 1265, which though not specifically repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153, was impliedly repealed by its incorporation in this section.

**§ 119. (Criminal Code, section 63.) Forging customs entry certificates.**

Whoever shall forge, counterfeit, or falsely alter any certificate of entry made or required to be made in pursuance of law by any officer of the customs, or shall use any such forged, counterfeited, or falsely altered certificate, knowing the same to be forged, counterfeited, or falsely altered, shall be fined not more than \$10,000 and imprisoned not more than three years. (Mar. 4, 1909, ch. 321, § 63, 35 Stat. 1100.)

**DERIVATION**

R. S. § 5417, which was revised from act Mar. 1, 1823, ch. 21, 3 Stat. 737 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 120. (Criminal Code, section 64.) Concealing or destroying invoices.**

Whoever shall willfully conceal or destroy any invoice, book, or paper relating to any merchandise liable to duty, which has been or may be imported into the United States from any foreign port or country, after an inspection thereof has been demanded by the collector of any collection district, or shall at any time conceal or destroy any such invoice, book, or paper for the purpose of suppressing any evidence of fraud therein contained, shall be fined not more

than \$5,000, or imprisoned not more than two years, or both. (Mar. 4, 1909, ch. 321, § 64, 35 Stat. 1100.)

**DERIVATION**

R. S. § 5443, which was revised from act Mar. 3, 1863, ch. 78, 12 Stat. 740 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 121. (Criminal Code, section 65.) Resisting revenue officers, rescuing or destroying seized property; using deadly weapon.**

Whoever shall forcibly assault, resist, oppose, prevent, impede, or interfere with any officer of the customs or of the internal revenue, or his deputy, or any person assisting him in the execution of his duties, or any person authorized to make searches and seizures, in the execution of his duty, or shall rescue, attempt to rescue, or cause to be rescued, any property which has been seized by any person so authorized; or whoever before, at, or after such seizure, in order to prevent the seizure or securing of any goods, wares, or merchandise by any person so authorized, shall stave, break, throw overboard, destroy, or remove the same, shall be fined not more than \$2,000 or imprisoned not more than one year, or both; and whoever shall use any deadly or dangerous weapon in resisting any person authorized to make searches or seizures, in the execution of his duty, with intent to commit a bodily injury upon him or to deter or prevent him from discharging his duty shall be imprisoned not more than ten years. (Mar. 4, 1909, ch. 321, § 65, 35 Stat. 1100.)

**DERIVATION**

R. S. § 5447, which was revised from act July 18, 1866, ch. 201, 14 Stat. 179 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**CROSS REFERENCE**

Resisting, interfering with, or assaulting Federal officer to subject offender to fine and imprisonment, see section 254 of this title.

**§ 122. Obstructing revenue officers by masters of vessels.**

If the master of any vessel shall obstruct or hinder, or shall intentionally cause any obstruction or hindrance to any officer in lawfully going on board such vessel, for the purpose of carrying into effect any of the revenue or navigation laws of the United States, he shall for every such offense be liable to a penalty of not more than \$2,000 nor less than \$500. (R. S. § 3068; Aug. 5, 1935, ch. 438, title III, § 307, 49 Stat. 528.)

**§ 123. (Criminal Code, section 66.) Falsely assuming to be revenue officer.**

Whoever shall falsely represent himself to be a revenue officer, and, in such assumed character, demand or receive any money or other article of value from any person for any duty or tax due to the United States, or for any violation or pretended violation of any revenue law of the United States, shall be fined not more than \$500 and imprisoned not more than two years. (Mar. 4, 1909, ch. 321, § 66, 35 Stat. 1100.)

**DERIVATION**

R. S. § 5448, which was revised from act Mar. 2, 1867, ch. 169, 14 Stat. 494 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 124. (Criminal Code, section 67.)** Offering presents to customs officer.

Whoever, being engaged in the importation into the United States of any goods, wares, or merchandise, or being interested as principal, clerk, or agent in the entry of any goods, wares, or merchandise, shall at any time make, or offer to make, to any officer of the revenue, any gratuity or present of money or other thing of value, shall be fined not more than \$5,000 or imprisoned not more than two years, or both. (Mar. 4, 1909, ch. 321, § 67, 35 Stat. 1100.)

**DERIVATION**

R. S. § 5452, which was revised from act Mar. 3, 1863, ch. 76, 12 Stat. 740 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 125. (Criminal Code, section 68.)** Admitting entries for less than legal duty.

Whoever, being an officer of the revenue, shall, by any means whatever, knowingly admit or aid in admitting to entry, any goods, wares, or merchandise, upon payment of less than the amount of duty legally due thereon, shall be removed from office and fined not more than \$5,000 or imprisoned not more than two years, or both. (Mar. 4, 1909, ch. 321, § 68, 35 Stat. 1101.)

**DERIVATION**

R. S. § 5444, which was revised from act Mar. 3, 1863, ch. 76, 12 Stat. 739 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 126. (Criminal Code, section 69.)** Securing false entry of goods.

Whoever, by any means whatever, shall knowingly effect, or aid in effecting, any entry of goods, wares, or merchandise, at less than the true weight or measure thereof, or upon a false classification thereof as to quality or value, or by the payment of less than the amount of duty legally due thereon, shall be fined not more than \$5,000 or imprisoned not more than two years, or both. (Mar. 4, 1909, ch. 321, § 69, 35 Stat. 1101.)

**DERIVATION**

R. S. § 5445, which was revised from act Mar. 3, 1863, ch. 76, 12 Stat. 739 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 127. (Criminal Code, section 70.)** False certification by consular officer.

Whoever, being a consul, or vice consul, or other person employed in the consular service of the United States, shall knowingly certify falsely to any invoice, or other paper, to which his certificate is by law authorized or required, shall be fined not more than \$10,000 and imprisoned not more than three years. (Mar. 4, 1909, ch. 321, § 70, 35 Stat. 1101.)

**DERIVATION**

R. S. § 5442, which was revised from act Mar. 3, 1835, ch. 33, 4 Stat. 773 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 128. (Criminal Code, section 71.)** Taking seized property from revenue officer.

Whoever shall dispossess or rescue, or attempt to dispossess or rescue any property taken or detained by any officer or other person under the authority of any revenue law of the United States, or shall aid or assist therein, shall be fined not more than \$300

and imprisoned not more than one year. (Mar. 4, 1909, ch. 321, § 71, 35 Stat. 1101.)

**DERIVATION**

R. S. § 5446, which was revised from acts Apr. 30, 1790, ch. 9, 1 Stat. 117; July 13, 1866, ch. 184, 14 Stat. 171 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 129. (Criminal Code, section 72.)** Forging or altering ship's or customhouse papers.

Whoever shall falsely make, forge, counterfeit, or alter any instrument in imitation of, or purporting to be, an abstract or official copy or certificate of the recording, registry, or enrollment of any vessel, in the office of any collector of the customs, or a license to any vessel for carrying on the coasting trade or fisheries of the United States, or a certificate of ownership, pass, passport, sea letter, or clearance, granted for any vessel, under the authority of the United States, or a permit, debenture, or other official document granted by any collector or other officer of the customs by virtue of his office; or whoever shall utter, publish, or pass, or attempt to utter, publish, or pass, as true, any such false, forged, counterfeited, or falsely altered instrument, abstract, official copy, certificate, license, pass, passport, sea letter, clearance, permit, debenture, or other official document herein specified, knowing the same to be false, forged, counterfeited, or falsely altered, with an intent to defraud, shall be fined not more than \$1,000 and imprisoned not more than three years. (Mar. 4, 1909, ch. 321, § 72, 35 Stat. 1101.)

**DERIVATION**

R. S. § 5423, which was revised from act Mar. 3, 1825, ch. 65, 4 Stat. 120 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 130. Counterfeiting Government seal; fraudulently or wrongfully affixing seal of executive departments to certificate or instrument or wrongfully using such certificate or instrument.**

Whoever shall fraudulently or wrongfully affix or impress the seal of any executive department, or of any bureau, commission, or office of the United States, to or upon any certificate, instrument, commission, document, or paper of any description; or whoever, with knowledge of its fraudulent character, shall with wrongful or fraudulent intent use, buy, procure, sell, or transfer to another any such certificate, instrument, commission, document, or paper, to which or upon which said seal has been so fraudulently affixed or impressed, shall be fined not more than \$5,000 or imprisoned not more than five years, or both. (June 15, 1917, ch. 30, title X, § 1, 40 Stat. 227.)

**CROSS REFERENCE**

Jurisdiction of offenses under this section, see section 574 of this title

**§ 131. Falsely making or forging seal of executive department.**

Whoever shall falsely make, forge, counterfeit, mutilate, or alter, or cause or procure to be made, forged, counterfeited, mutilated, or altered, or shall willingly assist in falsely making, forging, counterfeiting, mutilating, or altering the seal of any executive department, or any bureau, commission, or office of the United States, or whoever shall knowingly use, affix,

or impress any such fraudulently made, forged, counterfeited, mutilated, or altered seal to or upon any certificate, instrument, commission, document, or paper, of any description, or whoever with wrongful or fraudulent intent shall have possession of any such falsely made, forged, counterfeited, mutilated, or altered seal, knowing same to have been so falsely made, forged, counterfeited, mutilated, or altered, shall be fined not more than \$5,000 or imprisoned not more than ten years, or both. (June 15, 1917, ch. 30, title X, § 2, 40 Stat. 228.)

#### CROSS REFERENCE

Jurisdiction of offenses under this section, see section 574 of this title.

#### § 132. Falsely making or forging naval, military, or official pass.

Whoever shall falsely make, forge, counterfeit, alter, or tamper with any naval, military, or official pass or permit, issued by or under the authority of the United States, or with wrongful or fraudulent intent shall use or have in his possession any such pass or permit, or shall personate or falsely represent himself to be or not to be a person to whom such pass or permit has been duly issued, or shall willfully allow any other person to have or use any such pass or permit, issued for his use alone, shall be fined not more than \$2,000 or imprisoned not more than five years, or both. (June 15, 1917, ch. 30, title X, § 3, 40 Stat. 228.)

#### CROSS REFERENCE

Jurisdiction of offenses under this section, see section 574 of this title.

#### § 133. United States defined.

The term "United States", as used in sections 130-132 of this title, includes the Canal Zone and all territory and waters, continental or insular, subject to the jurisdiction of the United States. (June 15, 1917, ch. 30, title XIII, § 1, 40 Stat. 231.)

#### § 134. (Criminal Code, section 73.) Forging, etc., military bounty-land warrants.

Whoever shall falsely make, alter, forge, or counterfeit any military bounty-land warrant, or military bounty-land warrant certificate, issued or purporting to have been issued by the Administrator of Veterans' Affairs under any law of Congress, or any certificate or duplicate certificate of location of any military bounty-land warrant, or military bounty-land warrant certificate upon any of the lands of the United States, or any certificate or duplicate certificate of the purchase of any of the lands of the United States, or any receipt or duplicate receipt for the purchase money of any of the lands of the United States, issued or purporting to have been issued by the register and receiver at any land office of the United States or by either of them; or whoever shall utter, publish, or pass as true any such false, forged, or counterfeited military bounty-land warrant, military bounty-land warrant certificate, certificate or duplicate certificate of location, certificate or duplicate certificate of purchase, receipt or duplicate receipt for the purchase money of any of the lands of the United States, knowing the same to be false, forged, or counterfeited, shall

be imprisoned not more than ten years. (Mar. 4, 1909, ch. 321, § 73, 35 Stat. 1101; July 3, 1930, ch. 863, § 2, 46 Stat. 1016.)

#### DERIVATION

R. S. § 5420, which was revised from act Feb. 5, 1859, ch. 23, 11 Stat. 381 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 135. Repealed. Oct. 14, 1940, ch. 876, title I, subchap. V, § 504, 54 Stat. 1172.

Repeal of section, act Mar. 4, 1909, ch. 321, § 74, 35 Stat. 1102, was effective from and after 90 days from October 14, 1940.

Present provisions are contained in section 746 (a) of Title 8, Aliens and Nationality.

#### § 136. Forging certificate of discharge from military or naval service or using such forged certificate.

Whoever shall forge, counterfeit, or falsely alter any certificate of discharge from the military or naval service of the United States, or shall in any manner aid or assist in forging, counterfeiting, or falsely altering any such certificate, or shall use, unlawfully have in his possession, exhibit, or cause to be used or exhibited, any such forged, counterfeited, or falsely altered certificate, knowing the same to be forged, counterfeited, or falsely altered, shall be fined not more than \$1,000 or imprisoned not more than one year, or both, in the discretion of the court. (Mar. 4, 1917, ch. 180, 39 Stat. 1182.)

#### §§ 137-143. Repealed. Oct. 14, 1940, ch. 876, title I, subchap. V, § 504, 54 Stat. 1172.

The repeal of these sections was effective from and after 90 days from October 14, 1940 by virtue of section 601 of act October 14, 1940, ch. 876, 54 Stat. 1172.

These sections were based upon the following acts:

Sec. 137.—Acts June 29, 1906, ch. 3592, § 17, 34 Stat. 602; Mar. 4, 1909, ch. 321, § 75, 35 Stat. 1102; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737.

Sec. 138.—Act Mar. 4, 1909, ch. 321, § 76, 35 Stat. 1102.

Sec. 139.—Acts Mar. 4, 1909, ch. 321, § 77, 35 Stat. 1102; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737; June 10, 1933, Ex. Ord. No. 6186, § 14.

Sec. 140.—Act Mar. 4, 1909, ch. 321, § 78, 35 Stat. 1103.

Sec. 141.—Act Mar. 4, 1909, ch. 321, § 79, 35 Stat. 1103.

Sec. 142.—Act Mar. 4, 1909, ch. 321, § 80, 35 Stat. 1103.

Sec. 143.—Act Mar. 4, 1909, ch. 321, § 81, 35 Stat. 1103.

Present provisions are contained in section 746 of Title 8, Aliens and Nationality.

#### § 144. (Criminal Code, section 82.) Shanghaiing sailors.

Whoever, with intent that any person shall perform service or labor of any kind on board of any vessel engaged in trade and commerce among the several States or with foreign nations, or on board of any vessel of the United States engaged in navigating the high seas or any navigable water of the United States, shall procure or induce, or attempt to procure or induce, another, by force or threats or by representations which he knows or believes to be untrue, or while the person so procured or induced is intoxicated or under the influence of any drug, to go on board of any such vessel, or to sign or in anywise enter into any agreement to go on board of any such vessel to perform service or labor thereon; or whoever shall knowingly detain on board of any such vessel any person so procured or induced to go on board thereof, or to enter into any agreement to go on board thereof, by any means herein defined; or whoever shall knowingly aid

or abet in the doing of any of the things herein made unlawful, shall be fined not more than \$1,000, or imprisoned not more than one year, or both. (Mar. 4, 1909, ch. 321, § 82, 35 Stat. 1103.)

#### DERIVATION

Act June 28, 1906, ch. 3583, §§ 1-3, 34 Stat. 551, as amended by act Mar. 2, 1907, ch. 2539, 34 Stat. 1233, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 145. (Criminal Code, section 84.) Hunting or taking eggs on bird breeding grounds.

Whoever shall hunt, trap, capture, willfully disturb, or kill any bird or wild animal of any kind whatever, or take or destroy the eggs of any such bird on any lands of the United States which have been set apart or reserved as refuges or breeding grounds for such birds or animals by any law, proclamation, or Executive order, except under such rules and regulations as the Secretary of Interior may, from time to time, prescribe, or who shall willfully injure, molest, or destroy any property of the United States on any such lands shall be fined not more than \$500, or imprisoned not more than six months, or both. (Mar. 4, 1909, ch. 321, § 84, 35 Stat. 1104; Apr. 15, 1924, ch. 108, 43 Stat. 98; Reorg. Plan No. II, § 4 (f), 4 Fed. Reg. 2731, 53 Stat. 1433.)

#### DERIVATION

June 28, 1906, ch. 3585, 34 Stat. 536, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### TRANSFER OF FUNCTIONS

Functions of Secretary of Agriculture relating to conservation of wildlife, game, and migratory birds were transferred to Secretary of Interior by Reorg. Plan No. II, § 4 (f), cited to text, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See also sections 401-404 of said plan for provisions relating to transfer of functions, records, property, personnel, and funds.

#### § 146. Counterfeiting, altering, or uttering Government transportation requests.

Whoever shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or shall willingly aid or assist in falsely making, forging, or counterfeiting, in whole or in part, any form or request in similitude of the form or request provided by the Government for requesting a common carrier to furnish transportation on account of the United States or any department or branch thereof, or shall knowingly alter, or cause or procure to be altered, or shall willingly aid or assist in so altering, any form or request provided by the Government for requesting a common carrier to furnish transportation on account of the United States or any department or branch thereof, or whoever shall knowingly pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, any such false, forged, counterfeited, or altered form or request, shall upon conviction be fined not more than \$5,000, or imprisoned not more than ten years, or both. (Dec. 11, 1926, ch. 2, § 1, 44 Stat. 917.)

#### § 147. Same; possession of plates and use thereof; printing.

Whoever, except by lawful authority, shall have control, custody, or possession of any plate, stone, or other thing, or any part thereof, from which has

been printed or may be printed any form or request for Government transportation, or shall use such plate, stone, or other thing, or knowingly permit or suffer the same to be used in making any such form or request or any part of such a form or request, or whoever shall make or engrave or cause or procure to be made or engraved, or shall assist in making or engraving, any plate, stone, or other thing, in the likeness of any plate, stone, or other thing designated for the printing of the genuine issues of the form or request for Government transportation; or whoever shall print, photograph, or in any other manner make, execute, or sell, or cause to be printed, photographed, made, executed, or sold, or shall aid in printing, photographing, making, executing, or selling, any engraving, photograph, print, or impression in the likeness of any genuine form or request for Government transportation, or any part thereof; or whoever shall bring into the United States or any place subject to the jurisdiction thereof, any plate, stone, or other thing, or engraving, photograph, print, or other impression of the form or request for Government transportation, shall upon conviction be fined not more than \$5,000, or imprisoned not more than ten years, or both. (Dec. 11, 1926, ch. 2, § 2, 44 Stat. 918.)

#### § 148. Same; detecting violations; use of Secret Service Division.

The Secretary of the Treasury is hereby authorized to direct and use the Secret Service Division of the Treasury Department to detect, arrest, and deliver into custody of the United States marshal having jurisdiction any person or persons violating any of the provisions of sections 146 and 147 of this title. (Dec. 11, 1926, ch. 2, § 3, 44 Stat. 918.)

#### § 149. Payments made for influence exerted in procuring appointive public office prohibited.

It shall be unlawful to pay or offer or promise to pay any sum of money, or any other thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence, whatsoever, to procure any appointive office under the Government of the United States for any person whatsoever. (Dec. 11, 1926, ch. 3, § 1, 44 Stat. 918.)

#### § 150. Payments received for influence exerted in obtaining appointive public office prohibited.

It shall be unlawful to solicit or receive from anyone whatsoever, either as a political contribution, or for personal emolument, any sum of money or thing of value, whatsoever, in consideration of the promise of support, or use of influence, or for the support or influence of the payee, in behalf of the person paying the money, or any other person, in obtaining any appointive office under the Government of the United States. (Dec. 11, 1926, ch. 3, § 2, 44 Stat. 918.)

#### § 151. Punishment for violating provisions of sections 149 and 150.

Anyone convicted of violating sections 149 and 150 of this title shall be punished by imprisonment of not more than one year, or by a fine of not more than \$1,000, or by both such fine and imprisonment. (Dec. 11, 1926, ch. 3, § 3, 44 Stat. 918.)

## Chapter 5.—OFFENSES RELATING TO OFFICIAL DUTIES

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### § 171. (Criminal Code, section 85.) Extortion.

Every officer, clerk, agent, or employee of the United States, and every person representing himself to be or assuming to act as such officer, clerk, agent, or employee, who, under color of his office, clerkship, agency, or employment, or under color of his pretended or assumed office, clerkship, agency, or employment, is guilty of extortion, and every person who shall attempt any act which if performed would make him guilty of extortion, shall be fined not more than \$500 or imprisoned not more than one year, or both. (Mar. 4, 1909, ch. 321, § 85, 35 Stat. 1104.)

### DERIVATION

R. S. § 5481, as amended by act June 28, 1906, ch. 3574, 34 Stat. 546, which was revised from act Mar. 3, 1825, ch. 65, 4 Stat. 118 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

### § 172. (Criminal Code, section 86.) Requiring receipts for larger sums than are paid.

Whoever, being an officer, clerk, agent, employee, or other person charged with the payment of any appropriation made by Congress, shall pay to any clerk or other employee of the United States a sum less than that provided by law, and require such employee to receipt or give a voucher for an amount greater than that actually paid to and received by him, is guilty of embezzlement, and shall be fined in double the amount so withheld from any employee of the Government and imprisoned not more than two years. (Mar. 4, 1909, ch. 321, § 86, 35 Stat. 1105.)

### DERIVATION

R. S. § 5483, which was revised from act Mar. 3, 1853, ch. 104, 10 Stat. 239 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

### § 173. (Criminal Code, section 87.) Disbursing officers unlawfully using public money.

Whoever, being a disbursing officer of the United States, or a person acting as such, shall in any manner convert to his own use, or loan with or without interest, or deposit in any place or in any manner, except as authorized by law, any public money intrusted to him; or shall, for any purpose not prescribed by law, withdraw from the Treasurer or any authorized depositary, or transfer, or apply, any portion of the public money intrusted to him, shall be deemed guilty of an embezzlement of the money so converted, loaned, deposited, withdrawn, transferred, or applied, and shall be fined not more than the amount embezzled or imprisoned not more than ten years, or both. (Mar. 4, 1909, ch. 321, § 87, 35 Stat. 1105; May 29, 1920, ch. 214, § 1, 41 Stat. 654.)

### DERIVATION

R. S. § 5488, which was revised from act June 14, 1866, ch. 122, 14 Stat. 64 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

### § 174. (Criminal Code, section 88.) Failure of depositaries to safely keep public deposits.

If the Treasurer of the United States or any public depositary fails safely to keep all moneys deposited by any disbursing officer or disbursing agent, as well as all moneys deposited by any receiver, collector, or other person having money of the United States, he shall be deemed guilty of embezzlement of the moneys not so safely kept and shall be fined in a sum equal to the amount of money so embezzled and imprisoned not more than ten years. (Mar. 4, 1909, ch. 321, § 88, 35 Stat. 1105; May 29, 1920, ch. 214, § 1, 41 Stat. 654.)

### DERIVATION

R. S. § 5489, which was revised from act Mar. 3, 1857, ch. 114, 11 Stat. 249 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

### § 175. (Criminal Code, section 89.) Unlawful use of public moneys by custodians.

Every officer or other person charged by any Act of Congress with the safe-keeping of the public

moneys who shall loan, use, or convert to his own use, or shall deposit in any bank or exchange for other funds, except as specially allowed by law, any portion of the public moneys intrusted to him for safe-keeping, shall be guilty of embezzlement of the money so loaned, used, converted, deposited, or exchanged, and shall be fined in a sum equal to the amount of money so embezzled and imprisoned not more than ten years. (Mar. 4, 1909, ch. 321, § 89, 35 Stat. 1105.)

## DERIVATION

R. S. § 5490, which was revised from act Aug. 6, 1846, ch. 90, 9 Stat. 63, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 176. (Criminal Code, section 90.) Failure to render accounts.**

Every officer or agent of the United States who, having received public money which he is not authorized to retain as salary, pay, or emolument, fails to render his accounts for the same as provided by law shall be deemed guilty of embezzlement and shall be fined in a sum equal to the amount of the money embezzled and imprisoned not more than ten years. (Mar. 4, 1909, ch. 321, § 90, 35 Stat. 1105.)

## DERIVATION

R. S. § 5491, which was revised from acts Aug. 6, 1846, ch. 90, 9 Stat. 63; July 17, 1862, ch. 199, 12 Stat. 593; Res. Mar. 2, 1867, No. 48, 14 Stat. 571; act July 15, 1870, ch. 295, 16 Stat. 334, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 177. (Criminal Code, section 91.) Failure to deposit as required.**

Whoever, having money of the United States in his possession or under his control, shall fail to deposit it with the Treasurer or some public depository of the United States, when required so to do by the Secretary of the Treasury or the head of any other proper department, or by the General Accounting Office, shall be deemed guilty of embezzlement thereof and shall be fined in a sum equal to the amount of money embezzled and imprisoned not more than ten years. (Mar. 4, 1909, ch. 321, § 91, 35 Stat. 1105; May 29, 1920, ch. 214, § 1, 41 Stat. 654; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

## DERIVATION

R. S. § 5492, which was revised from acts Aug. 6, 1846, ch. 90, 9 Stat. 63; Mar. 3, 1857, ch. 114, 11 Stat. 249, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 178. (Criminal Code, section 92.) Persons affected.**

The provisions of sections 173–177 of this title shall be construed to apply to all persons charged with the safe-keeping, transfer, or disbursement of the public money, whether such persons be indicted as receivers or depositaries of the same. (Mar. 4, 1909, ch. 321, § 92, 35 Stat. 1105.)

## DERIVATION

R. S. § 5493, which was revised from act Aug. 6, 1846, ch. 90, 9 Stat. 63, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 179. (Criminal Code, section 93.) Record evidence of embezzlement.**

Upon the trial of any indictment against any person for embezzling public money under any provision of sections 173–178 of this title, it shall be sufficient

evidence, *prima facie*, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the General Accounting Office, as required in civil cases, under the provisions for the settlement of accounts between the United States and receivers of public money. (Mar. 4, 1909, ch. 321, § 93, 35 Stat. 1105; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

## DERIVATION

R. S. § 5494, which was revised from act Aug. 6, 1846, ch. 90, 9 Stat. 63 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 180. (Criminal Code, section 94.) Prima facie evidence of embezzlement.**

The refusal of any person, whether in or out of office, charged with the safe-keeping, transfer, or disbursement of the public money to pay any draft, order, or warrant, drawn upon him by the General Accounting Office, for any public money in his hands belonging to the United States, no matter in what capacity the same may have been received, or may be held, or to transfer or disburse any such money, promptly, upon the legal requirement of any authorized officer, shall be deemed, upon the trial of any indictment against such person for embezzlement, *prima facie* evidence of such embezzlement. (Mar. 4, 1909, ch. 321, § 94, 35 Stat. 1106; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

## DERIVATION

R. S. § 5495, which was revised from act Aug. 6, 1846, ch. 90, 9 Stat. 63 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 181. (Criminal Code, section 95.) Evidence of conversion.**

If any officer charged with the disbursement of the public moneys accepts, receives, or transmits to the General Accounting Office to be allowed in his favor any receipt or voucher from a creditor of the United States without having paid to such creditor in such funds as the officer received for disbursement, or in such funds as he may be authorized by law to take in exchange, the full amount specified in such receipt or voucher, every such act is an act of conversion by such officer to his own use of the amount specified in such receipt or voucher. (Mar. 4, 1909, ch. 321, § 95, 35 Stat. 1106; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

## DERIVATION

R. S. § 5496, which was revised from act Aug. 6, 1846, ch. 90, 9 Stat. 63 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 182. (Criminal Code, section 96.) Banker receiving unauthorized deposit of public money.**

Every banker, broker, or other person not an authorized depository of public moneys, who shall knowingly receive from any disbursing officer, or collector of internal revenue, or other agent of the United States, any public money on deposit, or by way of loan or accommodation, with or without interest, or otherwise than in payment of a debt against the United States, or shall use, transfer, convert, appropriate, or apply any portion of the public money for any purpose not prescribed by law; and every president, cashier, teller, director, or other officer



of any bank or banking association who shall violate any provision of this section is guilty of embezzlement of the public money so deposited, loaned, transferred, used, converted, appropriated, or applied, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both. (Mar. 4, 1909, ch. 321, § 96, 35 Stat. 1106.)

## DERIVATION

R. S. § 5497, as amended by act Feb. 3, 1879, ch. 42, 20 Stat. 280, which was revised from act June 14, 1866, ch. 122, 14 Stat. 65 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 183. (Criminal Code, section 97.) Embezzlement by internal revenue officer.**

Any officer connected with, or employed in, the Internal Revenue Service of the United States, and any assistant of such officer, who shall embezzle or wrongfully convert to his own use any money or other property of the United States, and any officer of the United States, or any assistant of such officer, who shall embezzle or wrongfully convert to his own use any money or property which may have come into his possession or under his control in the execution of such office or employment, or under color or claim of authority as such officer or assistant, whether the same shall be the money or property of the United States or of some other person or party, shall, where the offense is not otherwise punishable by some statute of the United States, be fined not more than the value of the money and property thus embezzled or converted, or imprisoned not more than ten years, or both. (Feb. 3, 1879, ch. 42, 20 Stat. 280; Mar. 4, 1909, ch. 321, § 97, 35 Stat. 1106.)

## DERIVATION

R. S. § 5497, as amended by act Feb. 3, 1879, ch. 42, 20 Stat. 280, which was revised from act June 14, 1866, ch. 122, 14 Stat. 65 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 184. (Criminal Code, section 98.) Officer contracting beyond specific appropriation.**

Whoever, being an officer of the United States, shall knowingly contract for the erection, repair, or furnishing of any public building, or for any public improvement, to pay a larger amount than the specific sum appropriated for such purpose, shall be fined not more than \$2,000 and imprisoned not more than two years. (Mar. 4, 1909, ch. 321, § 98, 35 Stat. 1106.)

## DERIVATION

R. S. § 5503, which was revised from act July 25, 1868, ch. 233, 15 Stat. 177 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 185. (Criminal Code, section 99.) Court officers failing to deposit money; delivery on security.**

Whoever, being a clerk or other officer of a court of the United States, shall fail forthwith to deposit any money belonging in the registry of the court, or hereafter paid into court or received by the officers thereof, with the Treasurer or a designated depository of the United States, in the name and to the credit of such court, or shall retain or convert to his own use or to the use of another any such money, is guilty of embezzlement, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both; but nothing herein shall be

held to prevent the delivery of any such money upon security, according to agreement of parties, under the direction of the court. (Mar. 4, 1909, ch. 321, § 99, 35 Stat. 1106; May 29, 1920, ch. 214, § 1, 41 Stat. 654.)

## DERIVATION

R. S. § 5504, as amended by Feb. 18, 1875, ch. 80, 18 Stat. 320, which was revised from act Mar. 24, 1871, ch. 2, 17 Stat. 1, 2 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 186. Court officers appropriating money.**

Any United States marshal, clerk, receiver, referee, trustee, or other officer of a United States court, or any deputy, assistant, or employee of any such marshal, clerk, receiver, referee, trustee, or other officer who shall, after demand by the party entitled thereto, unlawfully retain or who shall convert to his own use or to the use of another any moneys received for or on account of costs or advance deposits to cover fees, expenses, or costs, deposits for fees or expenses in bankruptcy cases, composition funds or money of bankrupt estates, fees in naturalization matters, or any other money whatever which has come into his hands by virtue of his official relation or by the fact of his official position or employment shall be deemed guilty of embezzlement and shall, where the offense is not otherwise punishable by some statute of the United States, be fined not more than double the value of the money thus retained or converted or imprisoned not more than ten years, or both; and it shall not be a defense in such a case that the accused person had an interest, contingent or otherwise, in some part of such moneys or of the fund from which they were retained or converted. (May 29, 1920, ch. 212, 41 Stat. 630.)

**§ 187. (Criminal Code, section 100.) Receiving loan from court officer.**

Whoever shall knowingly receive, from a clerk or other officer of a court of the United States, as a deposit, loan, or otherwise, any money belonging in the registry of such court, is guilty of embezzlement, and shall be punished as prescribed in section 185 of this title. (Mar. 4, 1909, ch. 321, § 100, 35 Stat. 1107.)

## DERIVATION

R. S. § 5505, which was revised from act Mar. 24, 1871, ch. 2, 17 Stat. 2 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 188. (Criminal Code, section 101.) Failure to make returns or reports.**

Every officer who neglects or refuses to make any return or report which he is required to make at stated times by any Act of Congress or regulation of the Department of the Treasury, other than his accounts, within the time prescribed by such Act or regulation, shall be fined not more than \$1,000. (Mar. 4, 1909, ch. 321, § 101, 35 Stat. 1107.)

## DERIVATION

R. S. § 1780, which was revised from act July 18, 1866, ch. 201, 14 Stat. 188 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 189. False entries in accounts or records, or false reports of public or trust moneys or securities.**

Whoever, being an officer, clerk, agent, or other person holding any office or employment under the



Government of the United States and, being charged with the duty of keeping accounts or records of any kind, shall, with intent to deceive, mislead, injure, or defraud the United States or any person, make in any such account or record any false or fictitious entry or record of any matter relating to or connected with his duties, or whoever with like intent shall aid or abet any such officer, clerk, agent, or other person in so doing; or whoever, being an officer, clerk, agent, or other person holding any office or employment under the Government of the United States and, being charged with the duty of receiving, holding, or paying over moneys or securities to, for, or on behalf of the United States, or of receiving or holding in trust for any person any moneys or securities, shall, with like intent, make a false report of such moneys or securities, or whoever with like intent shall aid or abet any such officer, clerk, agent, or other person in so doing, shall be fined not more than \$5,000 or imprisoned not more than ten years, or both. (Mar. 4, 1911, ch. 270, 36 Stat. 1355.)

§§ 190, 191. Repealed. June 17, 1930, ch. 497, § 651 (a) (1), 46 Stat. 762.

Section 190 was based upon act Sept. 21, 1922, ch. 356, title III, § 305 (b), 42 Stat. 937.

Similar provisions were contained in R. S. § 1785; act July 24, 1897, ch. 11, § 17, 30 Stat. 209 which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153; act Mar. 4, 1909, ch. 321, § 102, 35 Stat. 1107; and act Oct. 3, 1913, ch. 16, § IV, G, subsec. 2, 38 Stat. 195 which was repealed by act Sept. 21, 1922, ch. 356, title III, § 321, 42 Stat. 947.

Section 191 was based upon act Sept. 21, 1922, ch. 356, title III, § 305 (c), 42 Stat. 937.

Present provisions contained in section 1305 of Title 19, Customs Duties.

§ 192. (Criminal Code, section 103.) Trading in public property by collecting or disbursing officer.

Whoever, being an officer of the United States concerned in the collection or the disbursement of the revenues thereof, shall carry on any trade or business in the funds or debts of the United States, or of any State, or in any public property of either, shall be fined not more than \$3,000 or imprisoned not more than one year, or both, and be removed from office, and thereafter be incapable of holding any office under the United States. (Mar. 4, 1909, ch. 321, § 103, 35 Stat. 1107.)

#### DERIVATION

R. S. §§ 1788, 1789, which were revised from acts Sept. 2, 1789, ch. 12, 1 Stat. 67; May 8, 1792, ch. 37, 1 Stat. 281; Mar. 2, 1799, ch. 22, 1 Stat. 695 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 193. (Criminal Code, section 104.) Court officials purchasing fees at less than face value.

Whoever, being a judge, clerk, or deputy clerk of any court of the United States, or of any Territory thereof, or a United States district attorney, assistant attorney, marshal, deputy marshal, commissioner, or other person holding any office or employment, or position of trust or profit under the Government of the United States shall, either directly or indirectly, purchase at less than the full face value thereof, any claim against the United States for the fee, mileage, or expenses of any witness, juror, deputy marshal, or any other officer of the court whatsoever, shall be

fined not more than \$1,000. (Mar. 4, 1909, ch. 321, § 104, 35 Stat. 1107.)

#### DERIVATION

Act Feb. 25, 1897, ch. 316, 29 Stat. 595, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 194. (Criminal Code, section 105.) Falsely certifying as to record of deeds.

Whoever, being an officer or other person authorized by any law of the United States to record a conveyance of real property or any other instrument which by such law may be recorded, shall knowingly certify falsely that such conveyance or instrument has or has not been recorded, shall be fined not more than \$1,000, or imprisoned not more than seven years, or both. (Mar. 4, 1909, ch. 321, § 105, 35 Stat. 1107.)

§ 195. (Criminal Code, section 106.) Other false certificates.

Whoever being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, shall knowingly make and deliver as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined not more than \$500, or imprisoned not more than one year, or both. (Mar. 4, 1909, ch. 321, § 106, 35 Stat. 1107.)

§ 196. (Criminal Code, section 107.) Steamboat inspectors taking illegal fees.

Every inspector of steamboats who, upon any pretense, receives any fee or reward for his services, except what is allowed to him by law, shall forfeit his office, and be fined not more than \$500, or imprisoned not more than six months, or both. (Mar. 4, 1909, ch. 321, § 107, 35 Stat. 1107.)

#### DERIVATION

R. S. § 5482, which was revised from act Aug. 30, 1852, ch. 106, 10 Stat. 74 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 198. (Criminal Code, section 109.) Officers interested in claims against United States.

Whoever, being an officer of the United States, or a person holding any place of trust or profit, or discharging any official function under, or in connection with any executive department of the Government of the United States, or under the Senate or House of Representatives of the United States, shall act as an agent or attorney for prosecuting any claim against the United States, or in any manner, or by any means, otherwise than in discharge of his proper official duties, shall aid or assist in the prosecution or support of any such claim, or receive any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted, in the prosecution of such claim, shall be fined not more than \$5,000, or imprisoned not more than one year, or both. (Mar. 4, 1909, ch. 321, § 109, 35 Stat. 1107.)

## CODIFICATION

First sentence is from act March 4, 1909, cited to text and second sentence is from act March 1, 1901, cited to text.

## DERIVATION

R. S. § 5498, which was revised from act Feb. 26, 1853, ch. 81, 10 Stat. 170, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 198a. Same; exception as to National Guard of District of Columbia.

Members of the National Guard of the District of Columbia who receive compensation for their services as such shall not be held or construed to be officers of the United States, or persons holding any place of trust or profit, or discharging any official function under or in connection with any Executive Department of the Government of the United States within the provisions of section 198 of this title. (Mar. 1, 1901, ch. 670, § 1, 31 Stat. 844; Mar. 3, 1905, ch. 1406, § 1, 33 Stat. 911.)

§ 199. (Criminal Code, section 110.) Accepting bribe by Member of Congress.

Whoever, being elected or appointed a Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, directly or indirectly, ask, accept, receive, or agree to receive, any money, property, or other valuable consideration, or any promise, contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value to him or to any person with his consent, connivance, or concurrence, for his attention to, or services, or with the intent to have his action, vote, or decision influenced, on any question, matter, cause, or proceeding, which may at any time be pending in either House of Congress or before any committee thereof, or which by law or under the Constitution may be brought before him in his official capacity, or in his place as such Member, Delegate, or Resident Commissioner, shall be fined not more than three times the amount asked, accepted, or received, and imprisoned not more than three years; and shall, moreover, forfeit his office or place, and thereafter be forever disqualified from holding any office of honor, trust, or profit under the Government of the United States. (Mar. 4, 1909, ch. 321, § 110, 35 Stat. 1108.)

## DERIVATION

R. S. § 1781, which was revised from acts July 16, 1862, ch. 180, 12 Stat. 577; Feb. 25, 1863, ch. 61, 12 Stat. 696, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

R. S. §§ 5500, 5502, which were revised from act Feb. 26, 1853, ch. 81, 10 Stat. 171, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 200. (Criminal Code, section 111.) Offering bribe to Member of Congress.

Whoever shall promise, offer, or give, or cause to be promised, offered, or given, any money or other thing of value, or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value, to any Member of either House

of Congress, or Delegate to Congress, or Resident Commissioner, after his election or appointment and either before or after he has qualified, and during his continuance in office, or to any person with his consent, connivance, or concurrence, with intent to influence his action, vote, or decision, on any question, matter, cause, or proceeding which may at any time be pending in either House of Congress, or before any committee thereof, or which by law or under the Constitution may be brought before him in his official capacity or in his place as such Member, Delegate, or Resident Commissioner, shall be fined not more than three times the amount of money or value of the thing so promised, offered, given, made, or tendered, and imprisoned not more than three years. (Mar. 4, 1909, ch. 321, § 111, 35 Stat. 1108.)

## DERIVATION

R. S. § 5450, which was revised from act Feb. 26, 1853, ch. 81, 10 Stat. 171, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 201. Use of appropriations to pay for personal service to influence Member of Congress to favor or oppose legislation.

No part of the money appropriated by any Act shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers and employees of the United States from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

Any officer or employee of the United States who, after notice and hearing by the superior officer vested with the power of removing him, is found to have violated or attempted to violate this section, shall be removed by such superior officer from office or employment. Any officer or employee of the United States who violates or attempts to violate this section shall also be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than \$500 or by imprisonment for not more than one year, or both. (July 11, 1919, ch. 6, § 6, 41 Stat. 68.)

§ 202. (Criminal Code, section 112.) Member of Congress taking consideration for procuring contract.

Whoever, being elected or appointed a Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, or being an officer or agent of the United States, shall directly or indirectly take, receive, or agree to receive, from any person, any money, property, or other valuable consideration whatever, for procuring, or aiding to procure, any

contract, appointive office, or place, from the United States or from any officer or department thereof, for any person whatever, or for giving any such contract, appointive office, or place to any person whomsoever; or whoever, directly or indirectly, shall offer, or agree to give, or shall give, or bestow, any money, property, or other valuable consideration whatever, for the procuring, or aiding to procure, any such contract, appointive office, or place, shall be fined not more than \$10,000 and imprisoned not more than two years; and shall, moreover, be disqualified from holding any office of honor, profit, or trust under the Government of the United States. Any such contract or agreement may, at the option of the President, be declared void. (Mar. 4, 1909, ch. 321, § 112, 35 Stat. 1108.)

## DERIVATION

R. S. § 1781, which was revised from acts July 16, 1862, ch. 180, 12 Stat. 577; Feb. 25, 1863, ch. 61, 12 Stat. 696 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

## CROSS REFERENCES

Application to contracts or agreements, with the Federal Crop Insurance Corporation under the Federal Crop Insurance Act, chapter 36 of Title 7, Agriculture, see section 1514 (f) of that title.

Application to Federal Deposit Insurance Corporation and Home Owners' Loan Corporation, see sections 264 (w) and 1467 (d) of Title 12, Banks and Banking.

§ 203. (Criminal Code, section 113.) Receiving pay by Member of Congress in matters affecting United States; retired officers of armed forces.

Whoever, being elected or appointed a Senator, Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, or being the head of a department, or other officer or clerk in the employ of the United States, shall, directly or indirectly, receive, or agree to receive, any compensation whatever for any services rendered or to be rendered to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party or directly or indirectly interested, before any department, court martial, bureau, officer, or any civil, military, or naval commission whatever, shall be fined not more than \$10,000 and imprisoned not more than two years; and shall moreover thereafter be incapable of holding any office of honor, trust, or profit under the Government of the United States.

Retired officers of the Army, Navy, Marine Corps, and Coast Guard of the United States, while not on active duty, shall not by reason of their status as such be subject to the provisions of this section: *Provided*, That nothing herein shall be construed to allow any retired officer to represent any person in the sale of anything to the Government through the department in whose service he holds a retired status. (Mar. 4, 1909, ch. 321, § 113, 35 Stat. 1109; Oct. 8, 1940, ch. 762, 54 Stat. 1021.)

## DERIVATION

R. S. § 1782, which was revised from act June 11, 1864, ch. 119, 13 Stat. 123 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

## AMENDMENT

Last paragraph was added by act Oct. 8, 1940, cited to text.

## CROSS :

Application to contracts or agreements with the Federal Crop Insurance Corporation under the Federal Crop Insurance Act, chapter 36, of Title 7, Agriculture, see section 1514 (f) of that title.

Application to Federal Deposit Insurance Corporation and Home Owners' Loan Corporation, see sections 264 (w) and 1467 (d) of Title 12, Banks and Banking.

§ 204. (Criminal Code, section 114.) Member of Congress interested in public contracts; contracts void.

Whoever, being elected or appointed a Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, directly or indirectly, himself, or by any other person in trust for him, or for his use or benefit, or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract or agreement, made or entered into in behalf of the United States by any officer or person authorized to make contracts on its behalf, shall be fined not more than \$3,000. All contracts or agreements made in violation of this section shall be void; and whenever any sum of money is advanced by the United States, in consideration of any such contract or agreement, it shall forthwith be repaid; and in case of failure or refusal to repay the same when demanded by the proper officer of the department under whose authority such contract or agreement shall have been made or entered into, suit shall at once be brought against the persons so failing or refusing and his sureties for the recovery of the money so advanced. (Mar. 4, 1909, ch. 321, § 114, 35 Stat. 1109.)

## DERIVATION

R. S. § 3739, which was revised from act Apr. 21, 1808, ch. 48, 2 Stat. 484 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

## CROSS REFERENCES

Application to contracts or agreements with the Federal Crop Insurance Corporation under the Federal Crop Insurance Act, chapter 36 of Title 7, Agriculture, see section 1514 (f) of that title.

Application to Federal Deposit Insurance Corporation, see section 264 (w) of Title 12, Banks and Banking.

Application to loans or payments made under sections 590h and 590c of Title 16, Conservation, and the Agricultural Adjustment Act of 1938, chapter 35 of Title 7, Agriculture (except section 1383 (a)) see section 1586 of that title.

Contracts not affected by this section, see section 206 of this title.

§ 205. (Criminal Code, section 115.) Making official contract with Member of Congress.

Whoever, being an officer of the United States, shall on behalf of the United States, directly or indirectly, make or enter into any contract, bargain, or agreement, in writing or otherwise, with any Member of or Delegate to Congress, or any Resident Commissioner, after his election or appointment as such Member, Delegate, or Resident Commissioner, and either before or after he has qualified, and during his continuance in office, shall be fined not more than \$3,000. (Mar. 4, 1909, ch. 321, § 115, 35 Stat. 1109.)

## DERIVATION

R. S. § 3742, as amended by act Feb. 27, 1877, ch. 69, 19 Stat. 249, which was revised from act Apr. 21, 1808, ch. 48, 2 Stat. 484 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

## CROSS REFERENCES

Application to contracts or agreements with the Federal Crop Insurance Corporation under the Federal Crop Insurance Act, chapter 36 of Title 7, Agriculture, see section 1514 (f) of that title.

Application to Federal Deposit Insurance Corporation, see section 264 (w) of Title 12, Banks and Banking.

Application to loans or payments made under sections 590h and 590c of Title 16, Conservation, and the Agricultural Adjustment Act of 1938, chapter 35 of Title 7, Agriculture (except section 1383 (a)) see section 1586 of that title.

Contracts not affected by this section, see section 206 of this title.

§ 206. (Criminal Code, section 116, as amended.) Contracts not affected.

Nothing contained in sections 204 and 205 of this title shall extend, or be construed to extend, to any contract or agreement made or entered into, or accepted, by any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company; nor to the purchase or sale of bills of exchange or other property by any Member of or Delegate to Congress, or Resident Commissioner, where the same are ready for delivery, and payment therefor is made, at the time of making or entering into the contract or agreement. Nor shall the provisions of such sections apply to any contracts or agreements entered into under the Agricultural Adjustment Act,<sup>1</sup> the Federal Farm Loan Act,<sup>2</sup> the Emergency Farm Mortgage Act of 1933,<sup>3</sup> the Federal Farm Mortgage Corporation Act,<sup>4</sup> the Farm Credit Act of 1933,<sup>5</sup> and the Home Owners' Loan Act of 1933,<sup>6</sup> and shall not apply to contracts or agreements of a kind which the Secretary of Agriculture may enter into with farmers: *Provided*, That such exemption shall be made a matter of public record. (Mar. 4, 1909, ch. 321, § 116, 35 Stat. 1109; Jan. 25, 1934, ch. 5, 48 Stat. 337; June 27, 1934, ch. 847, title V, § 510, 48 Stat. 1264; Aug. 26, 1937, ch. 821, 50 Stat. 838.)

<sup>1</sup> See sections 601-608c, 608d-612, 613-619, 620, 623, 624 of Title 7, Agriculture.

<sup>2</sup> Distribution of Federal Farm Loan Act, see note under section 641 of Title 12, Banks and Banking.

<sup>3</sup> See sections 347, 462b, 636, 637, 723, 771, 781, 810, 821, 823 note, 963a, 992, 993, 1016-1019 of Title 12, Banks and Banking, section 609c of Title 15, Commerce and Trade, and sections 403, 404 of Title 43, Public Lands.

<sup>4</sup> See sections 347, 355, 723 (f), 772, 781, 897, 992a, 1016 (b), (g), 1020-1020h, 1131i (a) (2), (e), 1138b, 1138d, 1161 of Title 12, Banks and Banking.

<sup>5</sup> For distribution of the Farm Credit Act of 1933 in this code, see note under section 639 of Title 12, Banks and Banking.

<sup>6</sup> See sections 1424 (a), 1461-1463, 1464-1468 of Title 12, Banks and Banking.

## DERIVATION

R. S. § 3740, as amended by act Feb. 27, 1877, ch. 69, 19 Stat. 249, which was revised from act Apr. 21, 1808, ch. 48, 2 Stat. 484 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

## CROSS REF.

Application to contracts or agreements with the Federal Crop Insurance Corporation under the Federal Crop Insurance Act, chapter 36 of Title 7, Agriculture, see section 1514 (f) of that title.

Application to Federal Deposit Insurance Corporation, see section 264 (w) of Title 12, Banks and Banking.

§ 207. (Criminal Code, section 117.) Official accepting bribe.

Whoever, being an officer of the United States, or a person acting for or on behalf of the United States, in any official capacity, under or by virtue of the authority of any department or office of the Government thereof; or whoever, being an officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses thereof, shall ask, accept, or receive any money, or any contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be fined not more than three times the amount of money or value of the thing so asked, accepted, or received, and imprisoned not more than three years; and shall, moreover, forfeit his office or place and thereafter be forever disqualified from holding any office of honor, trust, or profit under the Government of the United States. (Mar. 4, 1909, ch. 321, § 117, 35 Stat. 1109.)

## DERIVATION

R. S. § 5501, which was revised from acts Feb. 26, 1853, ch. 81, 10 Stat. 171; Mar. 3, 1863, ch. 76, 12 Stat. 740; July 13, 1866, ch. 184, 14 Stat. 168; July 18, 1866, ch. 201, 14 Stat. 186; Mar. 3, 1875, ch. 144, 18 Stat. 479 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

R. S. § 5502 which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

## CROSS REFERENCES

Application to contracts or agreements with the Federal Crop Insurance Corporation under the Federal Crop Insurance Act, chapter 36 of Title 7, Agriculture, see section 1514 (f) of that title.

Application to Federal Deposit Insurance Corporation and Home Owners' Loan Corporation, see sections 264 (w) and 1467 (d) of Title 12, Banks and Banking.

§ 208. (Criminal Code, section 118.) Political contributions; solicitation.

It is unlawful for any Senator or Representative in, or Delegate or Resident Commissioner to, Congress, or any candidate for, or individual elected as, Senator, Representative, Delegate, or Resident Commissioner, or any officer or employee of the United States, or any person receiving any salary or compensation for services from money derived from the Treasury of the United States, to directly or indirectly solicit, receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any other such officer, employee, or person. (Mar. 4, 1909, ch. 321, § 118, 35 Stat. 1110; Feb. 28, 1925, ch. 368, § 312, 43 Stat. 1073.)

## DERIVATION

Act Jan. 16, 1883, ch. 27, § 11, 22 Stat. 406, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

## CROSS REFERENCE

This section is part of the "Federal Corrupt Practices Act." See sections 241-256 of Title 2, The Congress.

§ 209. (Criminal Code, section 119.) Same; not to be received in public offices.

No person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in section 208 of this title, or in any navy yard, fort, or arsenal, solicit in any manner whatever or receive any contribution of money or other thing of value for any political purpose whatever. (Mar. 4, 1909, ch. 321, § 119, 35 Stat. 1110.)

#### DERIVATION

Act Jan. 16, 1883, ch. 27, § 12, 22 Stat. 407, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 210. (Criminal Code, section 120.) Same; immunity from official proscription.

No officer or employee of the United States mentioned in section 208 of this title shall discharge, or promote, or degrade, or in any manner change the official rank or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose. (Mar. 4, 1909, ch. 321, § 120, 35 Stat. 1110.)

#### DERIVATION

Act Jan. 16, 1883, ch. 27, § 13, 22 Stat. 407, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 211. (Criminal Code, section 121.) Same; making to officials.

No officer, clerk, or other person in the service of the United States shall, directly or indirectly, give or hand over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of or Delegate to Congress, or Resident Commissioner, any money or other valuable thing on account of or to be applied to the promotion of any political object whatever. (Mar. 4, 1909, ch. 321, § 121, 35 Stat. 1110.)

#### DERIVATION

Act Jan. 16, 1883, ch. 27, § 14, 22 Stat. 407, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 212. (Criminal Code, section 122.) Same; punishment.

Whoever shall violate any provision of sections 208-211 of this title shall be fined not more than \$5,000, or imprisoned not more than three years, or both. (Mar. 4, 1909, ch. 321, § 122, 35 Stat. 1110.)

#### DERIVATION

Act Jan. 16, 1883, ch. 27, § 15, 22 Stat. 407, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 213. Same; removal from office.

Any executive officer or employee of the United States not appointed by the President, with the advice and consent of the Senate, who shall request, give to, or receive from, any other officer or employee of the Government any money or property or other thing of value for political purposes shall be at once discharged from the service of the United States. (Aug. 15, 1876, ch. 287, § 6, 19 Stat. 169.)

Employees to be removed from classified civil service only for cause, see section 652 of Title 5, Executive Departments and Government Officers and Employees.

§ 214. (Criminal Code, section 123.) Officials giving advance information of crop reports.

Whoever, being an officer or employee of the United States or a person acting for or on behalf of the United States in any capacity under or by virtue of the authority of any department or office thereof, and while holding such office, employment, or position shall, by virtue of the office, employment, or position held by him, become possessed of any information which might exert an influence upon or affect the market value of any product of the soil grown within the United States, which information is by law or by the rules of the department or office required to be withheld from publication until a fixed time, and shall willfully impart, directly or indirectly, such information, or any part thereof, to any person not entitled under the law or the rules of the department or office to receive the same; or shall, before such information is made public through regular official channels, directly or indirectly speculate in any such product respecting which he has thus become possessed of such information, by buying or selling the same in any quantity, shall be fined not more than \$10,000, or imprisoned not more than ten years, or both. No person shall be deemed guilty of a violation of any such rule, unless prior to such alleged violation he shall have had actual knowledge thereof. (Mar. 4, 1909, ch. 321, § 123, 35 Stat. 1110.)

§ 215. (Criminal Code, section 124.) Official knowingly issuing false crop reports.

Whoever being an officer or employee of the United States and whose duties require the compilation or report of statistics or information relative to the products of the soil, shall knowingly compile for issuance, or issue, any false statistics or information as a report of the United States, shall be fined not more than \$5,000, or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, § 124, 35 Stat. 1111.)

§ 216. Disclosing operations of manufacturers, and income-tax returns.

It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged

from employment. (R. S. § 3167; Aug. 27, 1894, ch. 349, § 34, 28 Stat. 557; Oct. 3, 1913, ch. 16, § II, 38 Stat. 177; Sept. 8, 1916, ch. 463, § 16, 39 Stat. 773; Feb. 24, 1919, ch. 18, § 1317, 40 Stat. 1146; Nov. 23, 1921, ch. 136, § 1311, 42 Stat. 311; June 2, 1924, 4:01 p. m., ch. 234, § 1018, 43 Stat. 345; Feb. 26, 1926, ch. 27, §§ 1115, 1200 (a), 44 Stat. 117, 125.)

#### REPEALED

Insofar as this section related exclusively to internal revenue it was repealed and incorporated as sections 85 (f) (1), 4047 (a) (1) of Title 26, Internal Revenue Code. See section 4 (a) of enacting sections of Internal Revenue Code preceding Subtitle A of Title 26.

### Chapter 6.—OFFENSES AGAINST PUBLIC JUSTICE

- |       |   |
|-------|---|
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#### § 231. (Criminal Code, section 125.) Perjury.

Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than \$2,000 and imprisoned not more than five years. (Mar. 4, 1909, ch. 321, § 125, 35 Stat. 1111.)

#### DERIVATION

R. S. § 5392, which was revised from acts Apr. 3, 1790, ch. 9, 1 Stat. 116; Mar. 3, 1825, ch. 65, 4 Stat. 118 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 232. (Criminal Code, section 126.) Subornation of perjury.

Whoever shall procure another to commit any perjury is guilty of subornation of perjury, and punishable as in section 231 of this title, prescribed. (Mar. 4, 1909, ch. 321, § 126, 35 Stat. 1111.)

#### DERIVATION

R. S. § 5393, which was revised from acts Apr. 30, 1790, ch. 9, 1 Stat. 116; Mar. 3, 1825, ch. 65, 4 Stat. 118 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 233. (Criminal Code, section 127.) Stealing or altering process; procuring false bail.

Whoever shall feloniously steal, take away, alter, falsify, or otherwise avoid any record, writ, process, or other proceeding, in any court of the United States, by means whereof any judgment is reversed, made void, or does not take effect; or whoever shall acknowledge, or procure to be acknowledged in any such court, any recognizance, bail, or judgment, in the name of any other person not privy or consenting to the same, shall be fined not more than \$5,000, or imprisoned not more than seven years, or both; but this provision shall not extend to the acknowledgment of any judgment by an attorney, duly admitted, for any person against whom such judgment is had or given. (Mar. 4, 1909, ch. 321, § 127, 35 Stat. 1111.)

#### DERIVATION

R. S. § 5394, which was revised from act Apr. 30, 1790, ch. 9, 1 Stat. 115 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 234. (Criminal Code, section 128.) Destroying public records.

Whoever shall willfully and unlawfully conceal, remove, mutilate, obliterate, or destroy, or attempt to conceal, remove, mutilate, obliterate, or destroy, or, with intent to conceal, remove, mutilate, obliterate, destroy, or steal, shall take and carry away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined not more than \$2,000, or imprisoned not more than three years, or both. (Mar. 4, 1909, ch. 321, § 128, 35 Stat. 1111.)

#### DERIVATION

R. S. § 5403, which was revised from act Feb. 26, 1853, ch. 81, 10 Stat. 170 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 235. (Criminal Code, section 129.) Destroying records by officer in charge.

Whoever, having the custody of any record, proceeding, map, book, document, paper, or other thing specified in section 234 of this title, shall willfully and unlawfully conceal, remove, mutilate, obliterate, falsify, or destroy any such record, proceeding, map, book, document, paper, or thing, shall be fined not more than \$2,000, or imprisoned not more than three years, or both; and shall moreover forfeit his office and be forever afterward disqualified from holding any office under the Government of the United States. (Mar. 4, 1909, ch. 321, § 129, 35 Stat. 1112.)

#### DERIVATION

R. S. § 5408, which was revised from act Feb. 26, 1853, ch. 81, 10 Stat. 170 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 236. (Criminal Code, section 130.) Forging or counterfeiting signature of judge or seal of court.

Whoever shall forge the signature of any judge, register, or other officer of any court of the United

States, or of any Territory thereof, or shall forge or counterfeit the seal of any such court, or shall knowingly concur in using any such forged or counterfeit signature or seal, for the purpose of authenticating any proceeding or document, or shall tender in evidence any such proceeding or document with a false or counterfeit signature of any such judge, register, or other officer, or a false or counterfeit seal of the court, subscribed or attached thereto, knowing such signature or seal to be false or counterfeit, shall be fined not more than \$5,000 and imprisoned not more than five years. (Mar. 4, 1909, ch. 321, § 130, 35 Stat. 1112.)

## DERIVATION

R. S. § 5419, which was revised from act Mar. 2, 1867, ch. 176, 14 Stat. 539 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 237. (Criminal Code, section 131.) Bribery of judicial officer.**

Whoever, directly or indirectly, shall give or offer, or cause to be given or offered, any money, property, or value of any kind, or any promise or agreement therefor, or any other bribe, to any judge, judicial officer, or other person authorized by any law of the United States to hear or determine any question, matter, cause, proceeding, or controversy, with intent to influence his action, vote, opinion, or decision thereon, or because of any such action, vote, opinion, or decision, shall be fined not more than \$20,000, or imprisoned not more than fifteen years, or both; and shall forever be disqualified to hold any office of honor, trust, or profit under the United States. (Mar. 4, 1909, ch. 321, § 131, 35 Stat. 1112.)

## DERIVATION

R. S. § 5449, which was revised from act Apr. 30, 1790, ch. 9, 1 Stat. 117 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 238. (Criminal Code, section 132.) Accepting bribe: judicial office.**

Whoever, being a judge of the United States, shall in anywise accept or receive any sum of money, or other bribe, present, or reward, or any promise, contract, obligation, gift, or security for the payment of money, or for the delivery or conveyance of anything of value, with the intent to be influenced thereby in any opinion, judgment, or decree in any suit, controversy, matter, or cause depending before him, or because of any such opinion, ruling, decision, judgment, or decree, shall be fined not more than \$20,000, or imprisoned not more than fifteen years, or both; and shall be forever disqualified to hold any office of honor, trust, or profit under the United States. (Mar. 4, 1909, ch. 321, § 132, 35 Stat. 1112.)

## DERIVATION

R. S. § 5499, which was revised from act Apr. 30, 1790, ch. 9, 1 Stat. 117 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 239. (Criminal Code, section 133.) Same; juror or referee.**

Whoever, being a juror, referee, arbitrator, appraiser, assessor, auditor, master, receiver, United States commissioner, or other person authorized by any law of the United States to hear or determine

any question, matter, cause, controversy, or proceeding, shall ask, receive, or agree to receive, any money, property, or value of any kind, or any promise or agreement therefor, upon any agreement or understanding that his vote, opinion, action, judgment, or decision shall be influenced thereby, or because of any such vote, opinion, action, judgment, or decision, shall be fined not more than \$2,000, or imprisoned not more than two years, or both. (Mar. 4, 1909, ch. 321, § 133, 35 Stat. 1112.)

**§ 240. (Criminal Code, section 134.) Same; witness.**

Whoever, being, or about to be, a witness upon a trial, hearing, or other proceeding, before any court or any officer authorized by the laws of the United States to hear evidence or take testimony, shall receive, or agree or offer to receive, a bribe, upon any agreement or understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial, hearing, or other proceeding, or because of such testimony, or such absence, shall be fined not more than \$2,000, or imprisoned not more than two years, or both. (Mar. 4, 1909, ch. 321, § 134, 35 Stat. 1113.)

**§ 241. (Criminal Code, section 135.) Attempting to influence witness, juror, or officer.**

Whoever corruptly, or by threats or force, or by any threatening letter or communication, shall endeavor to influence, intimidate, or impede any witness, in any court of the United States or before any United States commissioner or officer acting as such commissioner, or any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States commissioner or officer acting as such commissioner, in the discharge of his duty, or who corruptly or by threats or force, or by any threatening letter or communication, shall influence, obstruct, or impede, or endeavor to influence, obstruct, or impede, the due administration of justice therein, shall be fined not more than \$1,000, or imprisoned not more than one year, or both. (Mar. 4, 1909, ch. 321, § 135, 35 Stat. 1113.)

## DERIVATION

R. S. § 5399, which was revised from act Mar. 2, 1831, ch. 99, 4 Stat. 488 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

R. S. § 5404, which was revised from act June 10, 1872, ch. 420, 17 Stat. 378 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 241a. (Criminal Code, section 135a.) Protection of witnesses appearing before agencies of United States.**

Whoever corruptly, or by threats or force, or by any threatening letter or communication, shall endeavor to influence, intimidate, or impede any witness in any proceeding pending before any department, independent establishment, board, commission, or other agency of the United States, or in connection with any inquiry or investigation being had by either House, or any committee of either House, or any joint committee of the Congress of the United States, or who corruptly or by threats or force, or by any threatening letter or communication shall influence, obstruct, or impede, or endeavor to influence,



obstruct, or impede the due and proper administration of the law under which such proceeding is being had before such department, independent establishment, board, commission, or other agency of the United States, or the due and proper exercise of the power of inquiry under which such inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress of the United States shall be fined not more than \$1,000 or imprisoned not more than one year, or both. (Mar. 4, 1909, ch. 321, § 135a, as added Jan. 13, 1940, ch. 1, § 4 Stat. 13.)

**§ 242. (Criminal Code, section 136.) Conspiring to intimidate party, witness, or juror.**

If two or more persons conspire to deter by force, intimidation, or threat, any party or witness in any court of the United States, or in any examination before a United States commissioner or officer acting as such commissioner, from attending such court or examination, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or on account of his being or having been such juror, each of such persons shall be fined not more than \$5,000, or imprisoned not more than six years, or both. (Mar. 4, 1909, ch. 321, § 136, 35 Stat. 1113.)

**DERIVATION**

R. S. § 5406, which was revised from act Apr. 20, 1871, ch. 22, 17 Stat. 13 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 243. (Criminal Code, section 137.) Attempt to influence juror by writing.**

Whoever shall attempt to influence the action or decision of any grand or petit juror of any court of the United States upon any issue or matter pending before such juror, or before the jury of which he is a member, or pertaining to his duties, by writing or sending to him any letter or any communication, in print or writing, in relation to such issue or matter, shall be fined not more than \$1,000, or imprisoned not more than six months or both. (Mar. 4, 1909, ch. 321, § 137, 35 Stat. 1113.)

**DERIVATION**

R. S. § 5405, which was revised from act June 10, 1872, ch. 420, 17 Stat. 378 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 244. (Criminal Code, sections 138, 139.) Allowing prisoner to escape.**

Whenever any marshal, deputy marshal, ministerial officer, or other person has in his custody any prisoner by virtue of process issued under the laws of the United States by any court, judge, or commissioner, and such marshal, deputy marshal, ministerial officer, or other person voluntarily suffers such prisoner to escape, he shall be fined not more than \$2,000, or imprisoned not more than two years, or both. This section shall apply not only to cases in which the prisoner who escaped was charged or found guilty

of an offense against the laws of the United States and to cases in which the prisoner may be in custody charged with offenses against any foreign government with which the United States have treaties of extradition, but also to cases in which the prisoner may be held in custody for removal to or from the Philippine Islands as provided by law. (Feb. 6, 1905, ch. 454, § 2, 33 Stat. 698; Mar. 4, 1909, ch. 321, §§ 138, 139, 35 Stat. 1113.)

**DERIVATION**

R. S. §§ 5409, 5410, which were revised from act June 21, 1860, ch. 164, 12 Stat. 69 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 245. (Criminal Code, section 140.) Obstructing process or assaulting officer.**

Whoever shall knowingly and willfully obstruct, resist, or oppose any officer of the United States, or other person duly authorized, in serving, or attempting to serve or execute, any mesne process or warrant, or any rule or order, or any other legal or judicial writ or process of any court of the United States, or United States commissioner, or shall assault, beat, or wound any officer or other person duly authorized, knowing him to be such officer, or other person so duly authorized, in serving or executing any such writ, rule, order, process, warrant, or other legal or judicial writ or process, shall be fined not more than \$300 and imprisoned not more than one year. (Mar. 4, 1909, ch. 321, § 140, 35 Stat. 1114.)

**DERIVATION**

R. S. § 5398, which was revised from act Apr. 30, 1790, ch. 9, 1 Stat. 117 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 246. (Criminal Code, section 141.) Rescuing prisoner; concealing person from arrest.**

Whoever shall rescue or attempt to rescue, from the custody of any officer or person lawfully assisting him, any person arrested upon a warrant or other process issued under the provisions of any law of the United States, or shall, directly or indirectly, aid, abet, or assist any person so arrested to escape from the custody of such officer or other person, or shall harbor or conceal any person for whose arrest a warrant or process has been so issued, so as to prevent his discovery and arrest, after notice or knowledge of the fact that a warrant or process has been issued for the apprehension of such person, shall be fined not more than \$1,000, or imprisoned not more than six months, or both. (Mar. 4, 1909, ch. 321, § 141, 35 Stat. 1114.)

**DERIVATION**

R. S. § 5401, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

R. S. § 5516, which was revised from act May 31, 1870, ch. 114, 16 Stat. 142 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 247. (Criminal Code, section 143.) Rescue of prisoner.**

Whoever, by force, shall set at liberty or rescue any person who, before conviction, stands committed for any capital crime; or whoever, by force, shall set at liberty or rescue any person committed for or convicted of any offense other than capital, shall be fined not more than \$500 and imprisoned not more



than one year. (Mar. 4, 1909, ch. 321, § 143, 35 Stat. 1114.)

**DERIVATION**

R. S. § 5401, which was revised from act Apr. 30, 1790, ch. 9, 1 Stat. 117 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 248. (Criminal Code, section 142.) Rescue at execution.

Whoever, by force, shall set at liberty or rescue any person found guilty in any court of the United States of any capital crime, while going to execution or during execution, shall be fined not more than \$25,000 and imprisoned not more than twenty-five years. (Mar. 4, 1909, ch. 321, § 142, 35 Stat. 1114.)

**DERIVATION**

R. S. § 5400, which was revised from act Apr. 30, 1790, ch. 9, 1 Stat. 117 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 249. (Criminal Code, section 144.) Rescue of dead body of executed offender.

Whoever, by force, shall rescue or attempt to rescue, from the custody of any marshal or his officers, the dead body of an executed offender, while it is being conveyed to a place of dissection, as provided by section 543 of this title, or by force shall rescue or attempt to rescue such body from the place where it has been deposited for dissection in pursuance of that section, shall be fined not more than \$100, or imprisoned not more than one year, or both. (Mar. 4, 1909, ch. 321, § 144, 35 Stat. 1114.)

**DERIVATION**

R. S. § 5402, which was revised from act Apr. 30, 1790, ch. 9, 1 Stat. 113 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 250. (Criminal Code, section 145.) Extortion by informer.

Whoever shall, under a threat of informing, or as a consideration for not informing, against any violation of any law of the United States, demand or receive any money or other valuable thing, shall be fined not more than \$2,000, or imprisoned not more than one year, or both. (Mar. 4, 1909, ch. 321, § 145, 35 Stat. 1114.)

**DERIVATION**

R. S. § 5484, which was revised from act July 13, 1866, ch. 184, 14 Stat. 146 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 251. (Criminal Code, section 146.) Misprision of felony.

Whoever, having knowledge of the actual commission of the crime of murder or other felony cognizable by the courts of the United States, conceals and does not as soon as may be disclose and make known the same to some one of the judges or other persons in civil or military authority under the United States, shall be fined not more than \$500, or imprisoned not more than three years, or both. (Mar. 4, 1909, ch. 321, § 146, 35 Stat. 1114.)

**DERIVATION**

R. S. § 5390, which was revised from act Apr. 30, 1790, ch. 9, 1 Stat. 113 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 252. Aiding escape from or mutiny in penal institution; introduction of dangerous instrumentalities into prison or part thereof.

Any person employed at any Federal penal or correctional institution as an officer or employee of the United States, or any other person who instigates, connives at, wilfully attempts to cause, assists in, or who conspires with any other person or persons to cause any mutiny, riot, or escape at such penal or correctional institution; or any such officer or employee or any other person who, without the knowledge or consent of the warden or superintendent of such institution, conveys or causes to be conveyed into such institution, or from place to place within such institution, or knowingly aids or assists therein, any tool, device, or substance designed to cut, abrade, or destroy the materials, or any part thereof, of which any building or buildings of such institution are constructed, or any other substance or thing designed to injure or destroy any building or buildings, or any part thereof, of such institution; or who conveys or causes to be conveyed into such institution, or from place to place within such institution, or aids or assists therein, or who conspires with any other person or persons to convey or cause to be conveyed into such institution, or from place to place within such institution, any firearm, weapon, explosive, or any lethal or poisonous gas, or any other substance or thing designed to kill, injure, or disable any officer, agent, employee, or inmate thereof, shall be punished by imprisonment for a period of not more than ten years. (May 18, 1934, ch. 303, § 1, 48 Stat. 782.)

§ 253. Killing Federal officer; penalty.

Whoever shall kill, as defined in sections 452 and 453 of this title, any United States marshal or deputy United States marshal or person employed to assist a United States marshal or deputy United States marshal, any officer or employee of the Federal Bureau of Investigation of the Department of Justice, post-office inspector, Secret Service operative, any officer or enlisted man of the Coast Guard, any employee of any United States penal or correctional institution, any officer, employee, agent, or other person in the service of the customs or of the internal revenue, any immigrant inspector or any immigration patrol inspector, any officer or employee of the Department of Agriculture or of the Department of the Interior designated by the Secretary of Agriculture or the Secretary of the Interior to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any officer or employee of the National Park Service, any officer or employee of, or assigned to duty in, the field service of the Division of Grazing of the Department of the Interior, or any officer or employee of the Indian field service of the United States, while engaged in the performance of his official duties, or on account of the performance of his official duties, shall be punished as provided under section 454 of this title. (May 18, 1934, ch. 299, § 1, 48 Stat. 780; Feb. 8, 1936, ch. 40, 49 Stat. 1105; June 26, 1936, ch. 830, title I, § 3, 49 Stat. 1940; Reorg. Plan No. II, § 4 (f), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1433; June 13, 1940, ch. 359, 54 Stat. 391.)

## AMENDMENT

Act June 13, 1940, cited to text, expanded section to include persons employed to assist a United States marshal or deputy marshal and officers and employees of Department of Interior designated by the Secretary of Interior to enforce any act of Congress for conservation of wildlife.

**§ 254. Resisting, interfering with, or assaulting Federal officer; penalty.**

Whoever shall forcibly resist, oppose, impede, intimidate, or interfere with any person designated in section 253 of this title while engaged in the performance of his official duties, or shall assault him on account of the performance of his official duties, shall be fined not more than \$5,000, or imprisoned not more than three years, or both; and whoever, in the commission of any of the acts described in this section, shall use a deadly or dangerous weapon shall be fined not more than \$10,000, or imprisoned not more than ten years, or both. (May 18, 1934, ch. 299, § 2, 48 Stat. 781.)

**Chapter 7.—OFFENSES AGAINST CURRENCY, COINAGE, ETC.**

- Sec.  
 261. "Obligation or other security of the United States" defined.  
 262. Counterfeiting securities.  
 263. Counterfeiting national bank notes.  
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 289. Circulating bills of expired banks; circulation permitted.  
 290. Imitating national bank notes with advertisements thereon.  
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 293. Issuing notes less than \$1.

**§ 261. (Criminal Code, section 147.) "Obligation or other security of the United States" defined.**

The words "obligation or other security of the United States" shall be held to mean all bonds, certificates of indebtedness, national bank currency, coupons, United States notes, Treasury notes, gold certificates, silver certificates, fractional notes, certificates of deposit, bills, checks, or drafts for money,

drawn by or upon authorized officers of the United States, stamps and other representatives of value, of whatever denomination, which have been or may be issued under any Act of Congress, and canceled United States stamps. (Mar. 4, 1909, ch. 321, § 147, 35 Stat. 1115; Jan. 27, 1938, ch. 10, § 3, 52 Stat. 7.)

## DERIVATION

R. S. § 5413, as amended by acts Feb. 18, 1875, ch. 80, § 1, 18 Stat. 320; Feb. 27, 1877, ch. 69, 19 Stat. 253, which was revised from acts June 30, 1864, ch. 172, 13 Stat. 222, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

Act Feb. 28, 1878, ch. 20, § 3, 20 Stat. 26.

## CROSS REFERENCES

Applicability of this section and section 288 to false, counterfeited, etc., representations, see sections 415 and 416 of this title.

Application to contraband articles, see section 788 of Title 49, Transportation.

**§ 262. (Criminal Code, section 148.) Counterfeiting securities.**

Whoever, with intent to defraud, shall falsely make, forge, counterfeit, or alter any obligation or other security of the United States shall be fined not more than \$5,000 and imprisoned not more than fifteen years. (Mar. 4, 1909, ch. 321, § 148, 35 Stat. 1115.)

## DERIVATION

R. S. § 5414, which was revised from act June 30, 1864, ch. 172, 13 Stat. 221, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 263. (Criminal Code, section 149.) Counterfeiting national bank notes.**

Whoever shall falsely make, forge, or counterfeit, or cause or procure to be made, forged, or counterfeited, or shall willingly aid or assist in falsely making, forging, or counterfeiting, any note in imitation of, or purporting to be in imitation of, the circulating notes issued by any banking association now or hereafter authorized and acting under the laws of the United States; or whoever shall pass, utter, or publish, or attempt to pass, utter, or publish, any false, forged, or counterfeited note, purporting to be issued by any such association doing a banking business, knowing the same to be falsely made, forged, or counterfeited; or whoever shall falsely alter, or cause or procure to be falsely altered, or shall willingly aid or assist in falsely altering, any such circulating notes, or shall pass, utter, or publish, or attempt to pass, utter, or publish as true, any falsely altered or spurious circulating note issued, or purporting to have been issued, by any such banking association, knowing the same to be falsely altered or spurious, shall be fined not more than \$1,000 and imprisoned not more than fifteen years. (Mar. 4, 1909, ch. 321, § 149, 35 Stat. 1115.)

## DERIVATION

R. S. § 5415, which was revised from acts Feb. 25, 1863, ch. 58, 12 Stat. 680; June 3, 1864, ch. 106, 13 Stat. 117, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

Act June 3, 1864, ch. 106, 13 Stat. 99, was part of the National Bank Act. See section 38 of Title 12, Banks and Banking.

**§ 264. (Criminal Code, section 150.) Using plates to print notes without authority; distinctive paper.**

Whoever, having control, custody, or possession of any plate, stone, or other thing, or any part thereof,

from which has been printed, or which may be prepared by direction of the Secretary of the Treasury for the purpose of printing, any obligation or other security of the United States, shall use such plate, stone, or other thing, or any part thereof, or knowingly suffer the same to be used for the purpose of printing any such or similar obligation or other security, or any part thereof, except as may be printed for the use of the United States by order of the proper officer thereof; or whoever by any way, art, or means shall make or execute, or cause, or procure to be made or executed, or shall assist in making or executing any plate, stone, or other thing in the likeness of any plate designated for the printing of such obligation or other security; or whoever shall sell any such plate, stone, or other thing, or bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, any such plate, stone, or other thing, except under the direction of the Secretary of the Treasury or other proper officer, or with any other intent, in either case, than that such plate, stone, or other thing be used for the printing of the obligations or other securities of the United States; or whoever shall have in his control, custody, or possession any plate, stone, or other thing in any manner made after or in the similitude of any plate, stone, or other thing, from which any such obligation or other security has been printed, with intent to use such plate, stone, or other thing, or to suffer the same to be used in forging or counterfeiting any such obligation or other security, or any part thereof; or whoever shall have in his possession or custody, except under authority from the Secretary of the Treasury or other proper officer, any obligation or other security made or executed, in whole or in part, after the similitude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same; or whoever shall print, photograph, or in any other manner make or execute, or cause to be printed, photographed, made, or executed, or shall aid in printing, photographing, making or executing any engraving, photograph, print, or impression in the likeness of any such obligation or other security, or any part thereof, or shall sell any such engraving, photograph, print, or impression, except to the United States, or shall bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, any such engraving, photograph, print, or impression, except by direction of some proper officer of the United States; or whoever shall have or retain in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States, shall be fined not more than \$5,000, or imprisoned not more than fifteen years, or both. (Mar. 4, 1909, ch. 321, § 150, 35 Stat. 1116.)

## DERIVATION

R. S. § 5430, which was revised from act June 30, 1864, ch. 172, 13 Stat. 221, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

## § 265. (Criminal Code, section 151.) Uttering forged obligations.

Whoever, with intent to defraud, shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or shall bring into the United States or any place subject to the jurisdiction thereof, with intent to pass, publish, utter, or sell, or shall keep in possession or conceal with like intent, any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined not more than \$5,000 and imprisoned not more than fifteen years. (Mar. 4, 1909, ch. 321, § 151, 35 Stat. 1116.)

## DERIVATION

R. S. § 5431, which was revised from act June 30, 1864, ch. 172, 13 Stat. 221, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

## § 266. (Criminal Code, section 152.) Taking impressions of tools or implements.

Whoever, without authority from the United States, shall take, procure, or make, upon lead, foll, wax, plaster, paper, or any other substance or material, an impression, stamp, or imprint of, from, or by the use of any bedplate, bed piece, die, roll, plate, seal, type, or other tool, implement, instrument, or thing used or fitted or intended to be used in printing, stamping, or impressing, or in making other tools, implements, instruments, or things to be used or fitted or intended to be used in printing, stamping, or impressing any kind or description of obligation or other security of the United States now authorized or hereafter to be authorized by the United States, or circulating note or evidence of debt of any banking association under the laws thereof, shall be fined not more than \$5,000 or imprisoned not more than ten years, or both. (Mar. 4, 1909, ch. 321, § 152, 35 Stat. 1117.)

## DERIVATION

R. S. § 5432, which was revised from act Feb. 5, 1867, ch. 26, 14 Stat. 383, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

## § 267. (Criminal Code, section 153.) Unlawful possession of impressions.

Whoever, with intent to defraud, shall have in his possession, keeping, custody, or control, without authority from the United States, any imprint, stamp, or impression, taken or made upon any substance or material whatsoever, of any tool, implement, instrument, or thing used or fitted, or intended to be used, for any of the purposes mentioned in the preceding section; or whoever, with intent to defraud, shall sell, give, or deliver any such imprint, stamp, or impression to any other person, shall be fined not more than \$5,000 or imprisoned not more than ten years, or both. (Mar. 4, 1909, ch. 321, § 153, 35 Stat. 1117.)

## DERIVATION

R. S. § 5433, which was revised from act Feb. 5, 1867, ch. 26, 14 Stat. 384, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

## § 268. (Criminal Code, section 154.) Dealing in counterfeit securities.

Whoever shall buy, sell, exchange, transfer, receive, or deliver any false, forged, counterfeited, or

altered obligation or other security of the United States, or circulating note of any banking association organized or acting under the laws thereof, which has been or may hereafter be issued by virtue of any Act of Congress, with the intent that the same be passed, published, or used as true and genuine, shall be fined not more than \$5,000 or imprisoned not more than ten years, or both. (Mar. 4, 1909, ch. 321, § 154, 35 Stat. 1117.)

## DERIVATION

R. S. § 5434, which was revised from act Feb. 5, 1867, ch. 26, 14 Stat. 383, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 269. (Criminal Code, section 155.) Secreting or embezzling tools and materials for printing securities.

Whoever, without authority from the United States, shall secrete within, embezzle, or take and carry away from any building, room, office, apartment, vault, safe, or other place where the same is kept, used, employed, placed, lodged, or deposited by authority of the United States, any bed piece, bed-plate, roll, plate, die, seal, type, or other tool, implement, or thing used or fitted to be used in stamping or printing, or in making some other tool or implement used or fitted to be used in stamping or printing any kind or description of bond, bill, note, certificate, coupon, postage stamp, revenue stamp, fractional currency note, or other paper, instrument, obligation, device, or document, now or hereafter authorized by law to be printed, stamped, sealed, prepared, issued, uttered, or put in circulation on behalf of the United States; or whoever, without such authority, shall so secrete, embezzle, or take and carry away any paper, parchment, or other material prepared and intended to be used in the making of any such papers, instruments, obligations, devices, or documents; or whoever, without such authority, shall so secrete, embezzle, or take and carry away any paper, parchment, or other material printed or stamped, in whole or part, and intended to be prepared, issued, or put in circulation on behalf of the United States as one of the papers, instruments, or obligations hereinbefore named, or printed or stamped, in whole or part, in the similitude of any such paper, instrument, or obligation, whether intended to issue or put the same in circulation or not, shall be fined not more than \$5,000 or imprisoned not more than ten years, or both. (Mar. 4, 1909, ch. 321, § 155, 35 Stat. 1117.)

## DERIVATION

R. S. § 5453, which was revised from act Feb. 5, 1867, ch. 26, 14 Stat. 384 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 270. (Criminal Code, section 156.) Counterfeiting foreign securities.

Whoever, within the United States or any place subject to the jurisdiction thereof, with intent to defraud, shall falsely make, alter, forge, or counterfeit any bond, certificate, obligation, or other security in imitation of, or purporting to be an imitation of, any bond, certificate, obligation, or other security of any foreign government, issued or put forth under the authority of such foreign government, or any

treasury note, bill, or promise to pay issued by such foreign government, and intended to circulate as money, either by law, order, or decree of such foreign government; or whoever shall cause or procure to be so falsely made, altered, forged, or counterfeited, or shall knowingly aid or assist in making, altering, forging, or counterfeiting, any such bond, certificate, obligation, or other security, or any such treasury note, bill, or promise to pay, intended as aforesaid to circulate as money, shall be fined not more than \$5,000 and imprisoned not more than five years. (Mar. 4, 1909, ch. 321, § 156, 35 Stat. 1117.)

## DERIVATION

Act May 16, 1884, ch. 52, § 1, 23 Stat. 22, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 271. (Criminal Code, section 157.) Uttering counterfeit foreign securities.

Whoever, within the United States or any place subject to the jurisdiction thereof, knowingly and with intent to defraud, shall utter, pass, or put off, in payment or negotiation, any false, forged, or counterfeited bond, certificate, obligation, security, treasury note, bill, or promise to pay, mentioned in section 270 of this title, whether the same was made, altered, forged, or counterfeited within the United States or not, shall be fined not more than \$3,000 and imprisoned not more than three years. (Mar. 4, 1909, ch. 321, § 157, 35 Stat. 1118.)

## DERIVATION

Act May 16, 1884, ch. 52, § 2, 23 Stat. 23, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 272. (Criminal Code, section 158.) Counterfeiting notes of foreign banks.

Whoever, within the United States or any place subject to the jurisdiction thereof, with intent to defraud, shall falsely make, alter, forge, or counterfeit, or cause or procure to be so falsely made, altered, forged, or counterfeited, or shall knowingly aid and assist in the false making, altering, forging, or counterfeiting of any bank note or bill issued by a bank or corporation of any foreign country, and intended by the law or usage of such foreign country to circulate as money, such bank or corporation being authorized by the laws of such country, shall be fined not more than \$2,000 and imprisoned not more than two years. (Mar. 4, 1909, ch. 321, § 158, 35 Stat. 1118.)

## DERIVATION

Act May 16, 1884, ch. 52, § 3, 23 Stat. 23, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 273. (Criminal Code, section 159.) Uttering counterfeit notes of foreign banks.

Whoever, within the United States or any place subject to the jurisdiction thereof, shall utter, pass, put off, or tender in payment, with intent to defraud, any such false, forged, altered, or counterfeited bank note or bill, mentioned in section 272 of this title, knowing the same to be so false, forged, altered, and counterfeited, whether the same was made, forged, altered, or counterfeited within the United States or not, shall be fined not more than \$1,000 and imprisoned not more than one year. (Mar. 4, 1909, ch. 321, § 159, 35 Stat. 1118.)

## DERIVATION

Act May 16, 1884, ch. 52, § 4, 23 Stat. 23, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 274. (Criminal Code, section 160.) Possession of counterfeit foreign securities.

Whoever, within the United States or any place subject to the jurisdiction thereof, shall have in his possession any false, forged, or counterfeit bond, certificate, obligation, security, treasury note, bill, promise to pay, bank note, or bill issued by a bank or corporation of any foreign country, with intent to utter, pass, or put off the same, or to deliver the same to any other person with intent that the same may thereafter be uttered, passed, or put off as true, or shall knowingly deliver the same to any other person with such intent, shall be fined not more than \$1,000 and imprisoned not more than one year. (Mar. 4, 1909, ch. 321, § 160, 35 Stat. 1118.)

## DERIVATION

Act May 16, 1884, ch. 52, § 5, 23 Stat. 23, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 275. (Criminal Code, section 161.) Possession of counterfeit plates of foreign securities.

Whoever, within the United States or any place subject to the jurisdiction thereof, except by lawful authority, shall have control, custody, or possession of any plate, stone, or other thing, or any part thereof, from which has been printed or may be printed any counterfeit note, bond, obligation, or other security, in whole or in part, of any foreign government, bank, or corporation, or shall use such plate, stone, or other thing, or knowingly permit or suffer the same to be used in counterfeiting such foreign obligations, or any part thereof; or whoever shall make or engrave, or cause or procure to be made or engraved, or shall assist in making or engraving, any plate, stone, or other thing in the likeness or similitude of any plate, stone, or other thing designated for the printing of the genuine issues of the obligations of any foreign government, bank, or corporation; or whoever shall print, photograph, or in any other manner make, execute, or sell, or cause to be printed, photographed, made, executed, or sold, or shall aid in printing, photographing, making, executing, or selling, any engraving, photograph, print, or impression in the likeness of any genuine note, bond, obligation, or other security, or any part thereof, of any foreign government, bank, or corporation; or whoever shall bring into the United States or any place subject to the jurisdiction thereof any counterfeit plate, stone, or other thing, or engraving, photograph, print, or other impressions of the notes, bonds, obligations, or other securities of any foreign government, bank, or corporation, shall be fined not more than \$5,000 or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, § 161, 35 Stat. 1118.)

## DERIVATION

Act May 16, 1884, ch. 52, § 6, 23 Stat. 23, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

## CROSS REFERENCES

Printing and publishing of illustrations in black and white of foreign postage or revenue stamps from defaced plates and illustrations of portions of United States stamps not forbidden by this section, see section 350 of this title.

§ 276. (Criminal Code, section 162.) Connecting parts of different bills.

Whoever shall so place or connect together different parts of two or more notes, bills, or other genuine instruments issued under the authority of the United States, or by any foreign government, or corporation, as to produce one instrument, with intent to defraud, shall be deemed guilty of forgery in the same manner as if the parts so put together were falsely made or forged, and shall be fined not more than \$1,000 or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, § 162, 35 Stat. 1119.)

§ 277. (Criminal Code, section 163.) Counterfeiting gold or silver coins or bars.

Whoever shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or shall willingly aid or assist in falsely making, forging, or counterfeiting any coin or bars in resemblance or similitude of the gold or silver coins or bars which have been, or hereafter may be, coined or stamped at the mints and assay offices of the United States, or in resemblance or similitude of any foreign gold or silver coin which by law is, or hereafter may be, current in the United States, or are in actual use and circulation as money within the United States; or whoever shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, knowing the same to be false, forged, or counterfeit, with intent to defraud any body politic or corporate, or any person or persons whomsoever, or shall have in his possession any such false, forged, or counterfeited coin or bars, knowing the same to be false, forged, or counterfeited with intent to defraud any body politic or corporate, or any person or persons whomsoever, shall be fined not more than \$5,000 and imprisoned not more than ten years. (Mar. 4, 1909, ch. 321, § 163, 35 Stat. 1119.)

## DERIVATION

R. S. § 5457, as amended by act Jan. 16, 1877, ch. 24, 19 Stat. 223, which was revised from act Feb. 12, 1873, ch. 131, 17 Stat. 434 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 278. (Criminal Code, section 164.) Counterfeiting minor coins.

Whoever shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or shall willingly aid or assist in falsely making, forging, or counterfeiting any coin in the resemblance or similitude of any of the minor coins which have been, or hereafter may be, coined at the mints of the United States; or whoever shall pass, utter, publish, or sell, or bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, or have in his possession any such false, forged, or counterfeited coin, with intent to defraud any person whomsoever, shall be fined not more than \$1,000 and imprisoned not more than three years. (Mar. 4, 1909, ch. 321, § 164, 35 Stat. 1119.)

## DERIVATION

R. S. § 5458, which was revised from act Feb. 12, 1873, ch. 131, 17 Stat. 434 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 279. (Criminal Code, section 165.) Falsifying, mutilating, or lightening coins.**

Whoever, fraudulently, by any art, way, or means, shall deface, mutilate, impair, diminish, falsify, scale, or lighten, or cause or procure to be fraudulently defaced, mutilated, impaired, diminished, falsified, scaled, or lightened, or willingly aid or assist in fraudulently defacing, mutilating, impairing, diminishing, falsifying, scaling, or lightening, the gold or silver coins which have been, or which may hereafter be, coined at the mints of the United States, or any foreign gold or silver coins which are by law made current or are in actual use or circulation as money within the United States or in any place subject to the jurisdiction thereof; or whoever shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, knowing the same to be defaced, mutilated, impaired, diminished, falsified, scaled, or lightened, with intent to defraud any person whomsoever, or shall have in his possession any such defaced, mutilated, impaired, diminished, falsified, scaled, or lightened coin, knowing the same to be defaced, mutilated, impaired, diminished, falsified, scaled, or lightened, with intent to defraud any person whomsoever, shall be fined not more than \$2,000 and imprisoned not more than five years. (Mar. 4, 1909, ch. 321, § 165, 35 Stat. 1119.)

**DERIVATION**

R. S. § 5459, as amended by act Mar. 3, 1897, ch. 377, 29 Stat. 625, which was revised from act Feb. 12, 1873, ch. 131, 17 Stat. 434 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 280. (Criminal Code, section 166.) Debasing coins by officers or employees of the Mint.**

If any of the gold or silver coins struck or coined at any of the mints of the United States shall be debased, or made worse as to the proportion of fine gold or fine silver therein contained, or shall be of less weight or value than the same ought to be, pursuant to law, or if any of the scales or weights used at any of the mints or assay offices of the United States shall be defaced, altered, increased, or diminished through the fault or connivance of any officer or person employed at the said mints or assay offices, with a fraudulent intent; or if any such officer or person shall embezzle any of the metals at any time committed to his charge for the purpose of being coined, or any of the coins struck or coined at the said mints, or any medals, coins, or other moneys of said mints or assay offices at any time committed to his charge, or of which he may have assumed the charge, every such officer or person who commits any of the said offenses shall be fined not more than \$10,000 and imprisoned not more than ten years. (Mar. 4, 1909, ch. 321, § 166, 35 Stat. 1120.)

**DERIVATION**

R. S. § 5460, which was revised from act Feb. 12, 1873, ch. 131, 17 Stat. 43, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 281. (Criminal Code, section 167.) Making or uttering coins resembling money.**

Whoever, except as authorized by law, shall make or cause to be made, or shall utter or pass, or attempt to utter or pass, any coins of gold or silver or other metal, or alloys of metals, intended for the use and purpose of current money, whether in the resemblance of coins of the United States or of foreign countries, or of original design, shall be fined not more than \$3,000, or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, § 167, 35 Stat. 1120.)

**DERIVATION**

R. S. § 5461, which was revised from act June 8, 1864, ch. 114, 13 Stat. 120, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 282. (Criminal Code, section 168.) Making or uttering devices of minor coins.**

Whoever, not lawfully authorized, shall make, issue, or pass, or cause to be made, issued, or passed, any coin, card, token, or device in metal, or its compounds, which may be intended to be used as money for any 1-cent, 2-cent, 3-cent, or 5-cent piece, now or hereafter authorized by law, or for coins of equal value, shall be fined not more than \$1,000 and imprisoned not more than five years. (Mar. 4, 1909, ch. 321, § 168, 35 Stat. 1120.)

**DERIVATION**

R. S. § 5462, which was revised from acts Apr. 22, 1864, ch. 66, 13 Stat. 55; May 16, 1866, ch. 81, 14 Stat. 47, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 283. (Criminal Code, section 169.) Counterfeiting dies for United States coins.**

Whoever, without lawful authority, shall make, or cause or procure to be made, or shall willingly aid or assist in making, any die, hub, or mold, or any part thereof, either of steel or plaster, or any other substance whatsoever, in likeness or similitude, as to the design or the inscription thereon, of any die, hub, or mold designated for the coining or making of any of the genuine gold, silver, nickel, bronze, copper, or other coins of the United States, that have been or hereafter may be coined at the mints of the United States; or whoever, without lawful authority, shall have in his possession any such die, hub, or mold, or any part thereof, or shall permit the same to be used for or in aid of the counterfeiting of any of the coins of the United States hereinbefore mentioned, shall be fined not more than \$5,000 and imprisoned not more than ten years. (Mar. 4, 1909, ch. 321, § 169, 35 Stat. 1120.)

**DERIVATION**

Act Feb. 10, 1891, ch. 127, § 1, 26 Stat. 742, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 284. (Criminal Code, section 170.) Counterfeiting dies for foreign coins.**

Whoever, within the United States or any place subject to the jurisdiction thereof, without lawful authority, shall make, or cause or procure to be made, or shall willingly aid or assist in making, any die, hub, or mold, or any part thereof, either of steel or of plaster, or of any other substance whatsoever, in the likeness or similitude, as to the design or the in-

scription thereon, of any die, hub, or mold designated for the coining of the genuine coin of any foreign government; or whoever, without lawful authority, shall have in his possession any such die, hub, or mold, or any part thereof, or shall conceal, or knowingly suffer the same to be used for the counterfeiting of any foreign coin, shall be fined not more than \$2,000, or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, § 170, 35 Stat. 1120.)

#### DERIVATION

Act Feb. 10, 1891, ch. 127, § 2, 26 Stat. 742, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 285. (Criminal Code, section 171.) Making, importing, or possessing tokens similar to United States or foreign coins.

Whoever within the United States or any place subject to the jurisdiction thereof shall make, or cause or procure to be made, or shall bring therein from any foreign country, or shall have in possession with intent to sell, give away, or in any other manner use the same, any business or professional card, notice, placard, token, device, print, or impression, or any other thing whatsoever, in the likeness or similitude as to design, color, or the inscription thereon of any of the coins of the United States or of any foreign country that have been or may be issued as money, either under the authority of the United States or under the authority of any foreign government, shall be fined not more than \$100. But nothing in this section shall be construed to forbid or prevent the printing and publishing of illustrations of coins and medals or the making of the necessary plates for the same to be used in illustrating numismatic and historical books and journals and school arithmetics and the circulars of legitimate publishers and dealers in the same. (Mar. 4, 1909, ch. 321, § 171, 35 Stat. 1121; Feb. 15, 1912, ch. 38, 37 Stat. 64.)

#### DERIVATION

Act Feb. 10, 1891, ch. 127, § 3, 26 Stat. 742, as amended by act Mar. 3, 1903, ch. 1015, 32 Stat. 1223, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 286. (Criminal Code, section 172.) Forfeiture of counterfeit obligations, etc.; failure to deliver.

All counterfeits of any obligation or other security of the United States or of any foreign government, or counterfeits of any of the coins of the United States or of any foreign government, and all material or apparatus fitted or intended to be used, or that shall have been used, in the making of any such counterfeit obligation or other security or coins hereinbefore mentioned, that shall be found in the possession of any person without authority from the Secretary of the Treasury or other proper officer to have the same, shall be taken possession of by any authorized agent of the Treasury Department and forfeited to the United States, and disposed of in any manner the Secretary of the Treasury may direct. Whoever having the custody or control of any such counterfeits, material, or apparatus shall fail or refuse to surrender possession thereof upon request by any such authorized agent of the Treasury Department shall be fined not more than \$100, or imprisoned not more than one year, or both.

Except as to counterfeits, material, and apparatus referred to in the preceding paragraph, all articles and devices and any other thing whatsoever made, possessed, or in any manner used in violation of any of the provisions of sections 261–287, 289–293 or sections 328, 347, 348, 349, 349a, of this title, or in respect to which a violation of any such provision has occurred, and all material or apparatus fitted or intended to be used, or that shall have been used, in the making of such articles, devices, or other things, that shall be found in the possession of any person without authority from the Secretary of the Treasury or other proper officer to have the same, shall be taken possession of by any authorized agent of the Treasury Department and forfeited to the United States and disposed of in any manner the Secretary of the Treasury may direct. Whoever having the custody or control of any such articles, devices, or other things, material, or apparatus shall fail or refuse to surrender possession thereof upon request by any such authorized agent of the Treasury Department shall be fined not more than \$100 or imprisoned not more than one year, or both. Whenever any person interested in any article, device, or other thing, or material or apparatus seized under this paragraph files with the Secretary of the Treasury, before the disposition thereof, a petition for the remission or mitigation of such forfeiture, the Secretary of the Treasury, if he finds that such forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or the mitigation of such forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just. (Feb. 10, 1891, ch. 127, § 4, 26 Stat. 742; Mar. 4, 1909, ch. 321, § 172, 35 Stat. 1121; Jan. 27, 1938, ch. 10, § 4, 52 Stat. 7.)

#### DERIVATION

Act Feb. 10, 1891, ch. 127, § 4, 26 Stat. 742, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### CROSS REFERENCES

Printing and publishing of illustrations in black and white of foreign postage or revenue stamps from defaced plates and illustrations of portions of United States stamps not forbidden by this section, see section 350 of this title.

Vessels, vehicles, and aircrafts used in counterfeiting forfeited, see section 781 et seq. of Title 49, Transportation.

§ 287. (Criminal Code, section 173.) Search warrant for suspected counterfeits; forfeiture.

The several judges of courts established under the laws of the United States and United States commissioners may, upon proper oath or affirmation, within their respective jurisdictions, issue a search warrant authorizing any marshal of the United States, or any other person specially mentioned in such warrant, to enter any house, store, building, boat, or other place named in such warrant, in which there shall appear probable cause for believing that the manufacture of counterfeit money, or the concealment of counterfeit money, or the manufacture or concealment of counterfeit obligations or coins of the United States or of any foreign government, or the manufacture or concealment of dies, hubs, molds, plates, or other things fitted or intended to be used for the manufacture of counterfeit money, coins, or obligations of the United



States or of any foreign government, or of any bank doing business under the authority of the United States or of any State or Territory thereof, or of any bank doing business under the authority of any foreign government, or of any political division of any foreign government, is being carried on or practiced, and there search for any such counterfeit money, coins, dies, hubs, molds, plates, and other things, and for any such obligations, and if any such be found, to seize and secure the same and to make return thereof to the proper authority; and all such counterfeit money, coins, dies, hubs, molds, plates, and other things, and all such counterfeit obligations so seized shall be forfeited to the United States. (Mar. 4, 1909, ch. 321, § 173, 35 Stat. 1121.)

DERIVATION

Act Feb. 10, 1891, ch. 127, § 5, 26 Stat. 743, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153

CROSS REFERENCE

Vessels, vehicles, and aircrafts used in counterfeiting forfeited, see section 781 et seq., of Title 49, Transportation.

§ 288. "Foreign government" defined.

The words "foreign government", as used in sections 270, 271, 275, and 284-287 of this title, shall be deemed to include any government, faction, or body of insurgents within a country with which the United States is at peace, which government, faction, or body of insurgents may or may not have been recognized by the United States as a government. (June 15, 1917, ch. 30, title VIII, § 4, 40 Stat. 226.)

CROSS REFERENCES

Applicability of this section and section 261 to false, counterfeited, etc., representations, see sections 415 and 416 of this title.

The provisions of act June 15, 1917, cited to text so far as they defined the words "foreign government" as used in sections of the act of June 15, 1917, and the Criminal Code, other than the sections mentioned in this section, are set out in sections 98 and 349 of this title, section 235 of Title 22, Foreign Relations and Intercourse, and section 41 of Title 50, War.

§ 289. (Criminal Code, section 174.) Circulating bills of expired banks; circulation permitted.

In all cases where the charter of any corporation which has been or may be created by Act of Congress has expired or may expire, if any director, officer, or agent of the corporation, or any trustee thereof, or any agent of such trustee, or any person having in his possession or under his control the property of the corporation for the purpose of paying or redeeming its notes and obligations, shall knowingly issue, reissue, or utter as money, or in any other way knowingly put in circulation any bill, note, check, draft, or other security purporting to have been made by any such corporation whose charter has expired, or by any officer thereof, or purporting to have been made under authority derived therefrom, or if any person shall knowingly aid in any such act, he shall be fined not more than \$10,000, or imprisoned not more than five years, or both. But nothing herein shall be construed to make it unlawful for any person, not being such director, officer, or agent of the corporation, or any trustee thereof, or any agent of such trustee, or any person having in his possession or under his control the property of the corporation for the purpose hereinbefore set forth, who has received or may hereafter receive such

bill, note, check, draft, or other security, bona fide and in the ordinary transactions of business, to utter as money or otherwise circulate the same. (Mar. 4, 1909, ch. 321, § 174, 35 Stat. 1122.)

DERIVATION

R. S. § 5437, which was revised from act July 7, 1838, ch. 185, 5 Stat. 297 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 290. (Criminal Code, section 175.) Imitating national bank notes with advertisements thereon.

It shall not be lawful to design, engrave, print, or in any manner make or execute, or to utter, issue, distribute, circulate, or use any business or professional card, notice, placard, circular, handbill, or advertisement in the likeness or similitude of any circulating note or other obligation or security of any banking association organized or acting under the laws of the United States which has been or may be issued under any Act of Congress, or to write, print, or otherwise impress upon any such note, obligation, or security, any business or professional card, notice or advertisement, or any notice or advertisement of any matter or thing whatever. Whoever shall violate any provision of this section shall be fined not more than \$100, or imprisoned not more than six months, or both. (Mar. 4, 1909, ch. 321, § 175, 35 Stat. 1122.)

DERIVATION

R. S. § 5188, which was revised from act Feb. 5, 1867, ch. 26, 14 Stat. 383 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 291. (Criminal Code, section 176.) Mutilating national bank notes.

Whoever shall mutilate, cut, deface, disfigure, or perforate with holes, or unite or cement together, or do any other thing to any bank bill, draft, note, or other evidence of debt, issued by any national banking association, or shall cause or procure the same to be done, with intent to render such bank bill, draft, note, or other evidence of debt unfit to be reissued by said association, shall be fined not more than \$100, or imprisoned not more than six months, or both. (Mar. 4, 1909, ch. 321, § 176, 35 Stat. 1122.)

DERIVATION

R. S. § 5189, which was revised from act June 3, 1864, ch. 106, 13 Stat. 117 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

Act June 3, 1864, ch. 106, 13 Stat. 99, was part of the National Bank Act. See section 38 of Title 12, Banks and Banking.

§ 292. (Criminal Code, section 177.) Imitating securities or printing advertisements thereon.

It shall not be lawful to design, engrave, print, or in any manner make or execute, or to utter, issue, distribute, circulate, or use, any business or professional card, notice, placard, circular, handbill, or advertisement, in the likeness or similitude of any bond, certificate of indebtedness, certificate of deposit, coupon, United States note, Treasury note, gold certificate, silver certificate, fractional note, or other obligation or security of the United States which has been or may be issued under or authorized by any Act of Congress heretofore passed or which may hereafter be passed; or to write, print, or otherwise impress upon any such instrument, obligation, or security, any business or professional card, notice, or



advertisement, or any notice or advertisement of any matter or thing whatever. Whoever shall violate any provision of this section shall be fined not more than \$500. (Mar. 4, 1909, ch. 321, § 177, 35 Stat. 1122.)

## DERIVATION

R. S. § 3708, which was revised from act Feb. 5, 1867, ch. 26, 14 Stat. 383 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 293. (Criminal Code, section 178.) Issuing notes less than \$1.

No person shall make, issue, circulate, or pay out any note, check, memorandum, token, or other obligation for a less sum than \$1, intended to circulate as money or to be received or used in lieu of lawful money of the United States; and every person so offending shall be fined not more than \$500, or imprisoned not more than six months, or both. (Mar. 4, 1909, ch. 321, § 178, 35 Stat. 1122.)

## DERIVATION

R. S. § 3583, which was revised from act July 17, 1862, ch. 196, § 2, 12 Stat. 592 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

### Chapter 8.—OFFENSES AGAINST POSTAL SERVICE

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§ 301. (Criminal Code, section 231.) Definition.

The words "postal service", wherever used in this chapter, shall be held and deemed to include the "Post Office Department." (Mar. 4, 1909, ch. 321, § 231, 35 Stat. 1134.)

§ 302. (Criminal Code, section 179.) Conducting post office without authority.

Whoever, without authority from the Postmaster General, shall set up or profess to keep any office or place of business bearing the sign, name, or title of post office, shall be fined not more than \$500. (Mar. 4, 1909, ch. 321, § 179, 35 Stat. 1123.)

## DERIVATION

R. S. § 3829, which was revised from act June 8, 1872, ch. 335, 17 Stat. 292 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 303. (Criminal Code, section 180.) Illegal carrying of mail by officials.

Whoever, being concerned in carrying the mail, shall collect, receive, or carry any letter or packet, or cause or procure the same to be done, contrary to law, shall be fined not more than \$50 or imprisoned not more than thirty days, or both. (Mar. 4, 1909, ch. 321, § 180, 35 Stat. 1123.)

## DERIVATION

R. S. § 3981, which was revised from act June 8, 1872, ch. 335, 17 Stat. 311 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 304. (Criminal Code, section 181.) Conveying mail by private express; delivery to post office allowed.

Whoever shall establish any private express for the conveyance of letters or packets, or in any manner cause or provide for the conveyance of the same by regular trips or at stated periods over any post route which is or may be established by law, or from any city, town, or place to any other city, town, or place, between which the mail is regularly carried, or whoever shall aid or assist therein shall be fined not more than \$500 or imprisoned not more than six months, or both. Nothing contained in this section shall be construed as prohibiting any person from receiving and delivering to the nearest post office, postal car, or other authorized depository for mail matter any mail matter properly stamped. (Mar. 4, 1909, ch. 321, § 181, 35 Stat. 1123.)

## DERIVATION

R. S. § 3982, which was revised from act June 8, 1872, ch. 335, 17 Stat. 311 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

Act Mar. 3, 1879, ch. 180, § 1, 20 Stat. 356, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 305. (Criminal Code, section 182.) Transporting persons unlawfully conveying mail.

Whoever, being the owner, driver, conductor, master, or other person having charge of any stagecoach, railway car, steamboat, or other vehicle or vessel, shall knowingly convey or knowingly permit the conveyance of any person acting or employed as a private express for the conveyance of letters or packets, and actually in possession of the same for the purpose of conveying them, contrary to law, shall be fined not more than \$150. (Mar. 4, 1909, ch. 321, § 182, 35 Stat. 1124.)

## DERIVATION

R. S. § 3983, which was revised from act June 8, 1872, ch. 335, 17 Stat. 311 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 306. (Criminal Code, section 183.) Sending letters by private express.

Whoever shall transmit by private express or other unlawful means, or deliver to any agent thereof, or deposit or cause to be deposited at any appointed place, for the purpose of being so transmitted, any letter or packet, shall be fined not more than \$50. (Mar. 4, 1909, ch. 321, § 183, 35 Stat. 1124.)

## DERIVATION

R. S. § 3984, which was revised from act June 8, 1872, ch. 335, 17 Stat. 311 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 307. (Criminal Code, section 184.) Carrying letters out of the mail over post routes.

Whoever, being the owner, driver, conductor, master, or other person having charge of any stagecoach, railway car, steamboat, or conveyance of any kind which regularly performs trips at stated periods on any post route, or from any city, town, or place to any other city, town, or place between which the mail is regularly carried, and which shall carry, otherwise than in the mail, any letters or packets, except such as relate to some part of the cargo of such steamboat or other vessel, to the current business of the carrier, or to some article carried at the same time by the same stagecoach, railway car, or other vehicle, except as otherwise provided by law, shall be fined not

more than \$50. (Mar. 4, 1909, ch. 321, § 184, 35 Stat. 1124.)

## DERIVATION

R. S. § 3985, which was revised from act June 8, 1872, ch. 335, 17 Stat. 311 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 308. (Criminal Code, section 185.) Carrying letters out of the mail on vessels.

Whoever shall carry any letter or packet on board any vessel which carries the mail, otherwise than in such mail, except as otherwise provided by law, shall be fined not more than \$50, or imprisoned not more than one month, or both. (Mar. 4, 1909, ch. 321, § 185, 35 Stat. 1124.)

## DERIVATION

R. S. § 3986, which was revised from act June 8, 1872, ch. 335, 17 Stat. 311 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 309. (Criminal Code, section 186.) When conveyance by private persons is lawful.

Nothing in this chapter shall be construed to prohibit the conveyance or transmission of letters or packets by private hands without compensation, or by special messenger employed for the particular occasion only: *Provided*, That whenever more than twenty-five such letters or packets are conveyed or transmitted by such special messenger, the requirements of section 500 of Title 39 shall be observed as to each piece. (Mar. 4, 1909, ch. 321, § 186, 35 Stat. 1124; June 22, 1934, ch. 716, 48 Stat. 1207.)

## DERIVATION

R. S. § 3992, which was revised from act June 8, 1872, ch. 335, 17 Stat. 312 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 310. (Criminal Code, section 187.) Wearing carrier's uniform without authority.

Whoever, not being connected with the letter-carrier branch of the Postal Service, shall wear the uniform or badge which may be prescribed by the Postmaster General, to be worn by letter carriers, shall be fined not more than \$100, or imprisoned not more than six months, or both. (Mar. 4, 1909, ch. 321, § 187, 35 Stat. 1124.)

## DERIVATION

R. S. § 3867, which was revised from act June 8, 1872, ch. 335, 17 Stat. 296 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 311. (Criminal Code, section 188.) Vehicles claiming to be mail carriers.

It shall be unlawful to paint, print, or in any manner to place upon or attach to any steamboat or other vessel, or any car, stagecoach, vehicle, or other conveyance, not actually used in carrying the mail, the words "United States Mail", or any words, letters, or characters of like import; or to give notice, by publishing in any newspaper or otherwise, that any steamboat or other vessel, or any car, stagecoach, vehicle, or other conveyance, is used in carrying the mail, when the same is not actually so used; and every person who shall violate, and every owner, receiver, lessee, or managing operator thereof, who shall cause, suffer, or permit the violation of any provision of this section, shall be liable, and shall be fined not more than \$1,000, or imprisoned not more than two years, or both. (Mar. 4, 1909, ch. 321, § 188, 35 Stat. 1124.)

## DERIVATION

R. S. § 3979, which was revised from act June 8, 1872, ch. 335, 17 Stat. 310 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 312. (Criminal Code, section 189.) Injuring mail bags.**

Whoever shall tear, cut, or otherwise injure any mail bag, pouch, or other thing used or designed for use in the conveyance of the mail, or shall draw or break any staple or loosen any part of any lock, chain, or strap attached thereto, with intent to rob or steal any such mail, or to render the same insecure, shall be fined not more than \$500, or imprisoned not more than three years, or both. (Mar. 4, 1909, ch. 321, § 189, 35 Stat. 1124.)

## DERIVATION

R. S. § 5476, which was revised from act June 8, 1872, ch. 335, 17 Stat. 321, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 313. (Criminal Code, section 190.) Stealing post-office property.**

Whoever shall steal, purloin, or embezzle any mail bag or other property in use by or belonging to the Post Office Department, or shall appropriate any such property to his own or any other than its proper use, or shall convey away any such property to the hindrance or detriment of the public service, shall be fined not more than \$200, or imprisoned not more than three years, or both. (Mar. 4, 1909, ch. 321, § 190, 35 Stat. 1124.)

## DERIVATION

R. S. § 5475, which was revised from act June 8, 1872, ch. 335, 17 Stat. 320, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 314. (Criminal Code, section 191.) Stealing or forging mail locks or keys.**

Whoever shall steal, purloin, embezzle, or obtain by any false pretense, or shall aid or assist in stealing, purloining, embezzling, or obtaining by any false pretense, any key suited to any lock adopted by the Post Office Department and in use on any of the mails or bags thereof, or any key to any lock box, lock drawer, or other authorized receptacle for the deposit or delivery of mail matter; or whoever shall knowingly and unlawfully make, forge, or counterfeit, or cause to be unlawfully made, forged, or counterfeited, any such key, or shall have in his possession any such mail lock or key with the intent unlawfully or improperly to use, sell, or otherwise dispose of the same, or to cause the same to be unlawfully or improperly used, sold, or otherwise disposed of; or whoever, being engaged as a contractor or otherwise in the manufacture of any such mail lock or key, shall deliver or cause to be delivered, any finished or unfinished lock or key used or designed for use by the department, or the interior part of any such lock, to any person not duly authorized under the hand of the Postmaster General and the seal of the Post Office Department, to receive the same, unless the person receiving it is the contractor for furnishing the same or engaged in the manufacture thereof in the manner authorized by the contract, or the agent of such manufacturer, shall be fined not more than \$500 and imprisoned not more than ten years. (Mar. 4, 1909, ch. 321, § 191, 35 Stat. 1125.)

## DERIVATION

R. S. § 5477, which was revised from act June 8, 1872, ch. 335, 17 Stat. 321, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 315. (Criminal Code, section 192.) Breaking into and entering post office.**

Whoever shall forcibly break into or attempt to break into any post office, or any building used in whole or in part as a post office, with intent to commit in such post office, or building, or part thereof, so used, any larceny or other depredation, shall be fined not more than \$1,000 and imprisoned not more than five years. (Mar. 4, 1909, ch. 321, § 192, 35 Stat. 1125.)

## DERIVATION

R. S. § 5478, which was revised from act June 8, 1872, ch. 335, 17 Stat. 321, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 316. (Criminal Code, section 193.) Unlawfully entering post-office car.**

Whoever, by violence, shall enter a post-office car, or any apartment in any car, steamboat, or vessel, assigned to the use of the mail service, or shall willfully or maliciously assault or interfere with any postal clerk in the discharge of his duties in connection with such car, steamboat, vessel, or apartment thereof, or shall willfully aid or assist therein, shall be fined not more than \$1,000, or imprisoned not more than three years, or both. (Mar. 4, 1909, ch. 321, § 193, 35 Stat. 1125.)

## DERIVATION

Act Mar. 3, 1903, ch. 1009, § 5, 32 Stat. 1176, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 317. (Criminal Code, section 194.) Stealing, secreting, or embezzling mail matter, or attempting to do so.**

Whoever shall steal, take, or abstract, or by fraud or deception obtain, or attempt so to obtain, from or out of any mail, post office, or station thereof, or other authorized depository for mail matter, or from a letter or mail carrier, any letter, postal card, package, bag, or mail, or shall abstract or remove from any such letter, package, bag, or mail, any article or thing contained therein, or shall secrete, embezzle, or destroy any such letter, postal card, package, bag, or mail, or any article or thing contained therein; or whoever shall steal, take, or abstract, or by fraud or deception obtain any letter, postal card, package, bag, or mail, which has been left for collection upon or adjacent to a collection box or other authorized depository of mail matter; or whoever shall buy, receive, or conceal, or aid in buying, receiving, or concealing, or shall unlawfully have in his possession, any letter, postal card, package, bag, or mail, or any article or thing contained therein, which has been so stolen, taken, embezzled, or abstracted, as herein described, knowing the same to have been stolen, taken, embezzled, or abstracted; or whoever shall take any letter, postal card, or package out of any post office or station thereof, or out of any authorized depository for mail matter, or from any letter or mail carrier, or which has been in any post office or station thereof, or other authorized depository, or in the custody of any letter or mail carrier, before it has been delivered to the person to whom it was directed, with a design to ob-

struct the correspondence, or to pry into the business or secrets of another, or shall open, secrete, embezzle, or destroy the same, shall be fined not more than \$2,000 or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, § 194, 35 Stat. 1125; Feb. 25, 1925, ch. 318, 43 Stat. 977; Aug. 26, 1935, ch. 693, 49 Stat. 867; Aug. 7, 1939, ch. 557, 53 Stat. 1256.)

## DERIVATION

R. S. §§ 3892, 5469, which were revised from act June 8, 1872, ch. 335, 17 Stat. 302, 318, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

R. S. § 5470, as amended by act Feb. 27, 1877, ch. 69, 19 Stat. 253, which was revised from act June 8, 1872, ch. 335, 17 Stat. 319, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 318. (Criminal Code, section 195.) Postmaster or employee detaining, destroying, or embezzling mail matter.

Whoever, being a postmaster or other person employed in any department of the Postal Service, shall unlawfully detain, delay, or open any letter, postal card, package, bag, or mail intrusted to him or which shall come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any carrier, messenger, agent, or other person employed in any department of the Postal Service, or forwarded through or delivered from any post office or station thereof established by authority of the Postmaster General; or shall secrete, embezzle, or destroy any such letter, postal card, package, bag, or mail; or shall steal, abstract, or remove from any such letter, package, bag, or mail, any article or thing contained therein, shall be fined not more than \$500, or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, § 195, 35 Stat. 1125.)

## DERIVATION

R. S. §§ 3890, 3891, 5467, which were revised from act June 8, 1872, ch. 335, 17 Stat. 301, 302, 318, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 319. (Criminal Code, section 196.) Detaining or destroying newspapers.

Whoever, being a postmaster or other person employed in any department of the Postal Service, shall improperly detain, delay, embezzle, or destroy any newspaper, or permit any other person to detain, delay, embezzle, or destroy the same, or open, or permit any other person to open, any mail or package of newspapers not directed to the office where he is employed; or whoever shall open, embezzle, or destroy any mail or package of newspapers not being directed to him, and he not being authorized to open or receive the same; or whoever shall take or steal any mail or package of newspapers from any post office or from any person having custody thereof, shall be fined not more than \$100, or imprisoned not more than one year, or both. (Mar. 4, 1909, ch. 321, § 196, 35 Stat. 1126.)

## DERIVATION

R. S. § 5471, which was revised from act June 8, 1872, ch. 335, 17 Stat. 320, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 320. (Criminal Code, section 197.) Assaulting mail or money custodian; robbery; wounding custodian.

Whoever shall assault any person having lawful charge, control, or custody of any mail matter or of

any money or other property of the United States, with intent to rob, steal, or purloin such mail matter, money, or other property of the United States, or any part thereof, or shall rob any such person of such mail matter, or of any money, or other property of the United States, or any part thereof, shall, for the first offense, be imprisoned not more than ten years; and if in effecting or attempting to effect such robbery he shall wound the person having custody of such mail, money, or other property of the United States, or put his life in jeopardy by the use of a dangerous weapon, or for a subsequent offense, shall be imprisoned twenty-five years. (Mar. 4, 1909, ch. 321, § 197, 35 Stat. 1126; Aug. 26, 1935, ch. 694, 49 Stat. 867.)

## DERIVATION

R. S. §§ 5472, 5473, which were revised from act June 8, 1872, ch. 335, 17 Stat. 320, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 321. (Criminal Code, section 198.) Injury to letter boxes.

Whoever shall willfully or maliciously injure, tear down, or destroy any letter box or other receptacle intended or used for the receipt or delivery of mail on any mail route, or shall break open the same, or shall willfully or maliciously injure, deface, or destroy any mail deposited therein, or shall willfully take or steal such mail from or out of such letter box or other receptacle; or shall willfully aid or assist in any of the aforementioned offenses, shall for every such offense be punished by a fine of not more than \$1,000 or by imprisonment for not more than three years. (Mar. 4, 1909, ch. 321, § 198, 35 Stat. 1126; May 18, 1916, ch. 126, § 10, 39 Stat. 162; July 28, 1916, ch. 261, § 1, 39 Stat. 418; May 7, 1934, ch. 220, § 1, 48 Stat. 667.)

## DERIVATION

R. S. §§ 3869, 5466, which were revised from acts June 8, 1872, ch. 335, 17 Stat. 296, 318; Apr. 21, 1902, ch. 563, § 1, 32 Stat. 113, as amended by act Mar. 3, 1903, ch. 1009, § 3, 32 Stat. 1175, which were repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 321a. Deposit of statements of accounts, advertising matter, etc., in letter box without postage and with intent to evade payment thereof.

Whoever shall knowingly or willfully deposit any mailable matter such as statements of accounts, circulars, sale bills, or other like matter, on which no postage has been paid, in any letter box established, approved, or accepted by the Postmaster General for the receipt or delivery of mail matter on any mail route with intent to avoid payment of lawful postage thereon; or shall willfully aid or assist in any of the aforementioned offenses, shall for every such offense be punished by a fine of not more than \$300. (May 7, 1934, ch. 220, § 2, 48 Stat. 667.)

## CODIFICATION

Section is not part of chapter 8 of Criminal Code.

§ 322. (Criminal Code, section 199.) Deserting the mail.

Whoever, having taken charge of any mail, shall voluntarily quit or desert the same before he has delivered it into the post office at the termination of the route, or to some known mail carrier, messenger, agent, or other employee in the Postal Service

authorized to receive the same, shall be fined not more than \$500, or imprisoned not more than one year, or both. (Mar. 4, 1909, ch. 321, § 199, 35 Stat. 1126.)

## DERIVATION

R. S. § 5474, which was revised from act June 8, 1872, ch. 335, 17 Stat. 320, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 323. (Criminal Code, section 200.) Delivery of letters by master of vessel.**

The master or other person having charge or control of any steamboat or other vessel passing between ports or places in the United States, arriving at any such port or place where there is a post office, shall deliver to the postmaster or at the post office, within three hours after his arrival, if in the daytime, and if at night, within two hours after the next sunrise, all letters and packages brought by him or within his power or control and not relating to the cargo, addressed to or destined for such port or place, for which he shall receive from the postmaster two cents for each letter or package so delivered, unless the same is carried under a contract for carrying the mail; and for every failure so to deliver such letters or packages, the master or other person having charge or control of such steamboat or other vessel, shall be fined not more than \$150. (Mar. 4, 1909, ch. 321, § 200, 35 Stat. 1126.)

## DERIVATION

R. S. § 3977, which was revised from act June 8, 1872, ch. 335, 17 Stat. 312, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 324. (Criminal Code, section 201.) Obstructing the mail.**

Whoever shall knowingly and willfully obstruct or retard the passage of the mail, or any carriage, horse, driver, or carrier, or car, steamboat, or other conveyance or vessel carrying the same, shall be fined not more than \$100, or imprisoned not more than six months, or both. (Mar. 4, 1909, ch. 321, § 201, 35 Stat. 1127.)

## DERIVATION

R. S. § 3995, which was revised from act June 8, 1872, ch. 335, 17 Stat. 312, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 325. (Criminal Code, section 202.) Ferryman delaying mail.**

Whoever, being a ferryman, shall delay the passage of the mail by willful neglect or refusal to transport the same across any ferry, shall be fined not more than \$100. (Mar. 4, 1909, ch. 321, § 202, 35 Stat. 1127.)

## DERIVATION

R. S. § 3996, which was revised from act June 8, 1872, ch. 335, 17 Stat. 313, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 326. (Criminal Code, section 203.) Letters carried in foreign vessel to be deposited in post office; failure; duty of steamship companies to carry mail tendered.**

All letters or other mailable matter conveyed to or from any part of the United States by any foreign vessel, except such sealed letters relating to such vessel or any part of the cargo thereof as may be

directed to the owners or consignees of the vessel, shall be subject to postage charge, whether addressed to any person in the United States or elsewhere, provided they are conveyed by the packet or other ship of a foreign country imposing postage on letters or other mailable matter conveyed to or from such country by any vessel of the United States; and such letters or other mailable matter carried in foreign vessels, except such sealed letters relating to the vessel or any part of the cargo thereof as may be directed to the owners or consignees, shall be delivered into the United States post office by the master or other person having charge or control of such vessel when arriving, and be taken from the United States post office when departing, and the postage justly chargeable by law paid thereon; and for refusing or failing to do so, or for conveying such letters or other mailable matter, or any letters or other mailable matter, intended to be conveyed in any vessel of such foreign country, over or across the United States, or any portion thereof, the party offending shall be fined not more than \$1,000.

Except as otherwise provided by treaty or convention the Postmaster General may require the transportation by any steamships of mail between the United States and any foreign port at the compensation fixed under authority of law. Upon refusal by the master or the commander of such steamship or vessel to accept the mail, when tendered by the Postmaster General or his representative, the collector or other officer of the port empowered to grant clearance, on notice of the refusal aforesaid, shall withhold clearance until the collector or other officer of the port is informed by the Postmaster General or his representative that the master or commander of the steamship or vessel has accepted the mail or that conveyance by his steamship or vessel is no longer required by the Postmaster General. (Mar. 4, 1909, ch. 321, § 203, 35 Stat. 1127; Feb. 6, 1929, ch. 157, 45 Stat. 1153.)

## DERIVATION

R. S. § 4016, which was revised from act June 8, 1872, ch. 335, 17 Stat. 317, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 327. (Criminal Code, section 204.) Vessels to deliver letters at post office before entry; oath; failure.**

No vessel arriving within a port or collection district of the United States shall be allowed to make entry or break bulk until all letters on board are delivered to the nearest post office, and the master or other person having charge or control thereof has signed and sworn to the following declaration before the collector or other proper customs officer:

I, A. B., master ———, of the ———, arriving from ———, and now lying in the port of ———, do solemnly swear (or affirm) that I have to the best of my knowledge and belief delivered to the post office at ——— every letter and every bag, packet, or parcel of letters which was on board the said vessel during her last voyage, or which were in my possession or under my power or control.

And any master or other person having charge or control of such vessel who shall break bulk before he has delivered such letters shall be fined

not more than \$100. (Mar. 4, 1909, ch. 321, § 204, 35 Stat. 1127.)

DERIVATION

R. S. § 3988, which was revised from act June 8, 1872, ch. 335, 17 Stat. 311, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 328. (Criminal Code, section 205.) Using canceled stamps.

Whoever shall use or attempt to use in payment of postage, any canceled postage stamp, whether the same has been used or not; or shall remove, attempt to remove, or assist in removing, the canceling or defacing marks from any postage stamp, or the superscription from any stamped envelope, or postal card, that has once been used in payment of postage, with the intent to use the same for a like purpose, or to sell or offer to sell the same, or shall knowingly have in possession any such postage stamp, stamped envelope, or postal card, with intent to use the same, or shall knowingly sell or offer to sell any such postage stamp, stamped envelope, or postal card, or use or attempt to use the same in payment of postage; or whoever unlawfully and willfully shall remove from any mail matter any stamp attached thereto in payment of postage; or shall knowingly use or cause to be used, in payment of postage, any postage stamp, postal card, or stamped envelope, issued in pursuance of law, which has already been used for a like purpose; shall, if he be a person employed in the Postal Service, be fined not more than \$500, or imprisoned not more than three years, or both; and if he be a person not employed in the Postal Service, shall be fined not more than \$500, or imprisoned not more than one year, or both. (Mar. 4, 1909, ch. 321, § 205, 35 Stat. 1127.)

DERIVATION

R. S. §§ 3922-3925, which were revised from acts June 8, 1872, ch. 335, 17 Stat. 305, 322; Mar. 3, 1879, ch. 180, § 28, 20 Stat. 362 which were repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 329. (Criminal Code, section 206.) False returns to increase compensation.

Whoever, being a postmaster or other person employed in any branch of the Postal Service, shall make, or assist in making, or cause to be made, a false return, statement, or account to any officer of the United States, or shall make, assist in making, or cause to be made, a false entry in any record, book, or account, required by law or the rules or regulations of the Post Office Department to be kept in respect of the business or operations of any post office or other branch of the Postal Service, for the purpose of fraudulently increasing his compensation or the compensation of the postmaster or any employee in a post office; or whoever, being a postmaster or other person employed in any post office or station thereof, shall induce, or attempt to induce, for the purpose of increasing the emoluments or compensation of his office, any person to deposit mail matter in, or forward in any manner for mailing at, the office where such postmaster or other person is employed, knowing such matter to be properly mailable at another post office, shall be fined not more than \$500, or imprisoned not more

than two years, or both. (Mar. 4, 1909, ch. 321, § 206, 35 Stat. 1128.)

DERIVATION

Act June 17, 1878, ch. 259, § 1, 20 Stat. 141, which was revised from act Aug. 4, 1886, ch. 901, § 8, 24 Stat. 221 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 330. (Criminal Code, section 207.) Collecting unlawful postage.

Whoever, being a postmaster or other person authorized to receive the postage of mail matter, shall fraudulently demand or receive any rate of postage or gratuity or reward other than is provided by law for the postage of such mail matter, shall be fined not more than \$100, or imprisoned not more than six months, or both. (Mar. 4, 1909, ch. 321, § 207, 35 Stat. 1128.)

DERIVATION

R. S. § 3899, which was revised from act June 8, 1872, ch. 335, 17 Stat. 322 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 331. (Criminal Code, section 208.) Unlawful pledging or sale of stamps; inducing purchases to increase pay.

Whoever, being a postmaster or other person employed in any branch of the Postal Service, and being intrusted with the sale or custody of postage stamps, stamped envelopes, or postal cards, shall use or dispose of them in the payment of debts, or in the purchase of merchandise or other salable articles, or pledge or hypothecate the same, or sell or dispose of them except for cash; or sell or dispose of postage stamps or postal cards for any larger or less sum than the values indicated on their faces; or sell or dispose of stamped envelopes for a larger or less sum than is charged therefor by the Post Office Department for like quantities; or sell or dispose of, or cause to be sold or disposed of, postage stamps, stamped envelopes, or postal cards at any point or place outside of the delivery of the office where such postmaster or other person is employed; or induce or attempt to induce, for the purpose of increasing the emoluments, or compensation of such postmaster, or the emoluments or compensation of any other person employed in such post office or any station thereof, or the allowances or facilities provided therefor, any person to purchase at such post office or any station thereof, or from any employee of such post office, postage stamps, stamped envelopes, or postal cards; or sell or dispose of postage stamps, stamped envelopes, or postal cards, otherwise than as provided by law or the regulations of the Post Office Department, shall be fined not more than \$500, or imprisoned not more than one year, or both. (Mar. 4, 1909, ch. 321, § 208, 35 Stat. 1128.)

DERIVATION

R. S. § 3920, which was revised from acts June 8, 1872, ch. 335, 17 Stat. 305; June 17, 1878, ch. 259, § 1, 20 Stat. 141 which were repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 332. (Criminal Code, section 209.) Failing to account for postage due.

Whoever, being a postmaster or other person engaged in the Postal Service, shall collect and fail to account for the postage due upon any article of mail matter which he may deliver, without having previ-

ously affixed and canceled the special stamp provided by law, or shall fail to affix such stamp, shall be fined not more than \$50. (Mar. 4, 1909, ch. 321, § 209, 35 Stat. 1128.)

#### DERIVATION

Act Mar. 3, 1879, ch. 180, § 27, 20 Stat. 362, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 333. (Criminal Code, section 210.) Issuing unpaid-for money orders.

Whoever, being a postmaster or other person employed in any branch of the Postal Service, shall issue a money order without having previously received the money therefor, shall be fined not more than \$500. (Mar. 4, 1909, ch. 321, § 210, 35 Stat. 1129.)

#### DERIVATION

R. S. § 4030, which was revised from act June 8, 1872, ch. 335, 17 Stat. 297, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 334. (Criminal Code, section 211.) Mailing obscene matter.

Every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character, and every article or thing designed, adapted, or intended for preventing conception or producing abortion, or for any indecent or immoral use; and every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for preventing conception or producing abortion, or for any indecent or immoral purpose; and every written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, or how, or from whom, or by what means any of the hereinbefore-mentioned matters, articles, or things may be obtained or made, or where or by whom any act or operation of any kind for the procuring or producing of abortion will be done or performed, or how or by what means conception may be prevented or abortion produced, whether sealed or unsealed; and every letter, packet, or package, or other mail matter containing any filthy, vile, or indecent thing, device, or substance; and every paper, writing, advertisement, or representation that any article, instrument, substance, drug, medicine, or thing may, or can, be used or applied for preventing conception or producing abortion, or for any indecent or immoral purpose; and every description calculated to induce or incite a person to so use or apply any such article, instrument, substance, drug, medicine, or thing, is hereby declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier. Whoever shall knowingly deposit, or cause to be deposited, for mailing or delivery, anything declared by this section to be nonmailable, or shall knowingly take, or cause the same to be taken, from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof, shall be fined not more than \$5,000, or imprisoned not more than five years, or both. The term "indecent" within the intentment of this section shall include matter of a character tending to incite arson,

murder, or assassination. (Mar. 4, 1909, ch. 321, § 211, 35 Stat. 1129; Mar. 4, 1911, ch. 241, § 2, 36 Stat. 1339.)

#### DERIVATION

R. S. § 3893, as amended by acts July 12, 1876, ch. 186, 19 Stat. 90; Sept. 26, 1888, ch. 1039, § 2, 25 Stat. 496; May 27, 1908, ch. 206, 35 Stat. 416, which was revised from acts June 8, 1872, ch. 335, 17 Stat. 302; Mar. 3, 1873, ch. 258, 17 Stat. 599, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 335. (Criminal Code, section 212.) Mailing libelous and indecent matter on wrappers or envelopes.

All matter otherwise mailable by law, upon the envelope or outside cover or wrapper of which, or any postal card upon which, any delineations, epithets, terms, or language of an indecent, lewd, lascivious, obscene, libelous, scurrilous, defamatory, or threatening character, or calculated by the terms or manner or style of display and obviously intended to reflect injuriously upon the character or conduct of another, may be written or printed or otherwise impressed or apparent, are hereby declared nonmailable matter, and shall not be conveyed in the mails nor delivered from any post office nor by any letter carrier, and shall be withdrawn from the mails under such regulations as the Postmaster General shall prescribe. Whoever shall knowingly deposit or cause to be deposited, for mailing or delivery, anything declared by this section to be nonmailable matter, or shall knowingly take the same or cause the same to be taken from the mails for the purpose of circulating or disposing of or aiding in the circulation or disposition of the same, shall be fined not more than \$5,000, or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, § 212, 35 Stat. 1129.)

#### DERIVATION

Act June 18, 1888, ch. 394, § 2, 25 Stat. 187, as amended by act Sept. 26, 1888, ch. 1039, § 1, 25 Stat. 496, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 336. (Criminal Code, section 213.) Lottery, or gift enterprise circulars not mailable; place of trial.

No letter, package, postal card, or circular concerning any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance; and no lottery ticket or part thereof, or paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance; and no check, draft, bill, money, postal note, or money order, for the purchase of any ticket or part thereof, or of any share or chance in any such lottery, gift enterprise, or scheme; and no newspaper, circular, pamphlet, or publication of any kind containing any advertisement of any lottery, gift enterprise, or scheme of any kind offering prizes dependent in whole or in part upon lot or chance, or containing any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes, shall be deposited in or carried by the mails of the United States, or be delivered by any postmaster or letter carrier. Whoever shall know-



ingly deposit or cause to be deposited, or shall knowingly send or cause to be sent, anything to be conveyed or delivered by mail in violation of the provisions of this section, or shall knowingly deliver or cause to be delivered by mail anything herein forbidden to be carried by mail, shall be fined not more than \$1,000, or imprisoned not more than two years, or both; and for any subsequent offense shall be imprisoned not more than five years. Any person violating any provision of this section may be tried and punished either in the district in which the unlawful matter or publication was mailed or to which it was carried by mail for delivery according to the direction thereon or in which it was caused to be delivered by mail to the person to whom it was addressed. (Mar. 4, 1909, ch. 321, § 213, 35 Stat. 1129.)

## DERIVATION

R. S. § 3894, as amended by acts July 12, 1876, ch. 186, § 2, 19 Stat. 90; Sept. 19, 1890, ch. 908, § 1, 26 Stat. 465, which was revised from act June 8, 1872, ch. 335, 17 Stat. 302 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

Act Mar. 2, 1895, ch. 191, §§ 1, 2, 28 Stat. 963, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 337. (Criminal Code, section 214.) Official acting as lottery agent.**

Whoever, being a postmaster or other person employed in the Postal Service, shall act as agent for any lottery office, or under color of purchase or otherwise, vend lottery tickets, or shall knowingly send by mail or deliver any letter, package, postal card, circular, or pamphlet advertising any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any ticket, certificate, or instrument representing any chance, share, or interest in or dependent upon the event of any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes awarded by means of any such scheme, shall be fined not more than \$100, or imprisoned not more than one year, or both. (Mar. 4, 1909, ch. 321, § 214, 35 Stat. 1130.)

## DERIVATION

R. S. § 3851, which was revised from act June 8, 1872, ch. 335, 17 Stat. 294 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 338. (Criminal Code, section 215.) Using mails to promote frauds; counterfeit money.**

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, bank note, paper money, or any obligation or security of the United States, or of any State, Territory, municipality, company, corporation, or person, or anything represented to be or intimated or held out to be such counterfeit or spurious article, or any scheme or artifice to obtain money by or through correspondence, by what is commonly called the "sawdust swindle", or "counterfeit-money fraud", or by dealing or pretending to deal in what is commonly called "green articles", "green coin",

"green goods", "bills", "paper goods", "spurious Treasury notes", "United States goods", "green cigars", or any other names or terms intended to be understood as relating to such counterfeit or spurious articles, shall, for the purpose of executing such scheme or artifice or attempting so to do, place, or cause to be placed, any letter, postal card, package, writing, circular, pamphlet, or advertisement, whether addressed to any person residing within or outside the United States, in any post office, or station thereof, or street or other letter box of the United States, or authorized depository for mail matter, to be sent or delivered by the post-office establishment of the United States, or shall take or receive any such therefrom, whether mailed within or without the United States, or shall knowingly cause to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such letter, postal card, package, writing, circular, pamphlet, or advertisement, shall be fined not more than \$1,000, or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, § 215, 35 Stat. 1130.)

## DERIVATION

R. S. § 5480, as amended by act Mar. 2, 1889, ch. 393, § 1, 25 Stat. 873, which was revised from act June 8, 1872, ch. 335, 17 Stat. 323 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

## CROSS REFERENCE

Prohibition on foreign divorce matter as limitation on section, see sections 338c, 338d of this title.

**§ 338a. Mailing threatening communications.**

(a) Whoever shall knowingly deposit or cause to be deposited in any post office or station thereof, or in any authorized depository for mail matter, to be sent or delivered by the Post Office Establishment of the United States, or shall knowingly cause to be delivered by the Post Office Establishment of the United States according to the direction thereon, any written or printed letter or other communication, with or without a name or designating mark subscribed thereto, addressed to any other person, and containing any demand or request for ransom or reward for the release of any kidnaped person; or whoever, with intent to extort from any person any money or other thing of value, shall deposit, cause to be deposited, or cause to be delivered, as aforesaid, any letter or other communication containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both.

(b) Whoever shall knowingly deposit or cause to be deposited in any post office or station thereof, or in any authorized depository for mail matter, to be sent or delivered by the Post Office Establishment of the United States, or shall knowingly cause to be delivered by the Post Office Establishment of the United States according to the direction thereon, any written or printed letter or other communication with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to kidnap any person or any threat to injure the person of the addressee or of



another shall be fined not more than \$1,000, or imprisoned not more than five years, or both.

(c) Whoever, with intent to extort from any person any money or other thing of value, shall knowingly deposit or cause to be deposited in any post office or station thereof, or in any authorized depository for mail matter, to be sent or delivered by the Post Office Establishment of the United States, or shall knowingly cause to be delivered by the Post Office Establishment of the United States according to the direction thereon, any written or printed letter or other communication, with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to injure the property or reputation of the addressee or of another, or the reputation of a deceased person, or any threat to accuse the addressee or any other person of a crime shall be fined not more than \$500, or imprisoned not more than two years, or both.

(d) Any person violating this section may be prosecuted in the judicial district in which such letter or other communication is deposited in such post office, station, or authorized depository for mail matter, or in the judicial district into which such letter or other communication was carried by the United States mail for delivery according to the direction thereon: *Provided*, That any defendant in an indictment hereunder, relating to communications originating in the United States, shall, upon motion duly made, be entitled as a matter of right to be tried in the district court of the United States in which the matter mailed or otherwise transmitted was first set in motion; that is, in the mails or in commerce between the States. (July 8, 1932, ch. 464, § 1, 47 Stat. 649; June 28, 1935, ch. 326, 49 Stat. 427; May 15, 1939, ch. 133, § 1, 53 Stat. 742.)

#### CODIFICATION

Section is not part of chapter 8 of the Criminal Code.

#### § 338b. Same; mailing in foreign country for delivery in United States.

(a) Whoever shall knowingly deposit or cause to be deposited in any post office or station thereof, or in any authorized depository for mail matter, of any foreign country any written or printed letter or other communication addressed to any person within the United States, for the purpose of having such communication delivered by the Post Office Establishment of such foreign country to the Post Office Establishment of the United States and by it delivered to such addressee in the United States, and as a result thereof such communication is delivered by the Post Office Establishment of such foreign country to the Post Office Establishment of the United States and by it delivered to the address to which it is directed in the United States, and containing any demand or request for ransom or reward for the release of any kidnaped person; or whoever, with intent to extort from any person any money or other thing of value, shall deposit or cause to be deposited, as aforesaid, any letter or other communication for the purpose aforesaid, containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined not more than

\$5,000 or imprisoned not more than twenty years, or both.

(b) Whoever shall knowingly deposit or cause to be deposited in any post office or station thereof, or in any authorized depository for mail matter, of any foreign country any written or printed letter or other communication addressed to any person within the United States, for the purpose of having such communication delivered by the Post Office Establishment of such foreign country to the Post Office Establishment of the United States and by it delivered to such addressee in the United States, and as a result thereof such communication is delivered by the Post Office Establishment of such foreign country to the Post Office Establishment of the United States and by it delivered to the address to which it is directed in the United States, and containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

(c) Whoever, with intent to extort from any person any money or other thing of value, shall knowingly deposit or cause to be deposited in any post office or station thereof, or in any authorized depository for mail matter, of any foreign country any written or printed letter or other communication, addressed to any person within the United States for the purpose of having such communication delivered by the Post Office Establishment of such foreign country to the Post Office Establishment of the United States and by it delivered to such addressee in the United States, and as a result thereof such communication is delivered by the Post Office Establishment of such foreign country to the Post Office Establishment of the United States and by it delivered to the address to which it is directed in the United States, and containing any threat to injure the property or reputation of the addressee or of another, or the reputation of a deceased person, or any threat to accuse the addressee or any other person of a crime, shall be fined not more than \$500 or imprisoned not more than two years, or both.

(d) Any person violating this section may be prosecuted either in the district into which such letter or other communication was carried by the United States mail for delivery according to the direction thereon, or in which it was caused to be delivered by the United States mail to the person to whom it was addressed: *Provided*, That any defendant in an indictment hereunder, relating to communications originating in the United States, shall, upon motion duly made, be entitled as a matter of right to be tried in the district court of the United States in which the matter mailed or otherwise transmitted was set first in motion; that is, in the mails or in commerce between the States. (July 8, 1932, ch. 464, § 2, 47 Stat. 649; May 15, 1939, ch. 133, § 1, 53 Stat. 742.)

#### CODIFICATION

Section is not part of chapter 8 of the Criminal Code.

#### § 338c. Mailing foreign divorce matter; penalty.

Every written or printed card, circular, letter, book, pamphlet, advertisement, or notice of any kind, giving or offering to give information concerning where or

how or through whom a divorce may be secured in a foreign country, and designed to solicit business in connection with the procurement thereof, is hereby declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier. Whoever shall knowingly deposit, or cause to be deposited, for mailing or delivery, anything declared by this section to be nonmailable, or shall knowingly take or cause the same to be taken from the mails for the purpose of circulating or disposing thereof, shall be fined not more than \$5,000 or imprisoned for not more than five years, or both. (Aug. 10, 1939, ch. 638, § 1, 53 Stat. 1341.)

CODIFICATION

Section is not part of chapter 8 of the Criminal Code.

§ 338d. Section 338c as limitation on section 338.

Nothing contained in section 338c and this section shall be construed to preclude criminal prosecution under the provisions of section 338 of this title, in any case in which the mails are used by any person in furtherance of any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises. (Aug. 10, 1939, ch. 638, § 2, 53 Stat. 1341.)

CODIFICATION

Section is not part of chapter 8 of the Criminal Code.

§ 339. (Criminal Code, section 216.) Using fraudulent fictitious address.

Whoever, for the purpose of conducting, promoting, or carrying on, in any manner, by means of the post-office establishment of the United States, any scheme or device mentioned in section 338 of this title or any other unlawful business whatsoever, shall use or assume, or request to be addressed by, any fictitious, false, or assumed title, name, or address, or name other than his own proper name, or shall take or receive from any post office of the United States, or station thereof, or any other authorized depository of mail matter, any letter, postal card, package, or other mail matter addressed to any such fictitious, false, or assumed title, name, or address, or name other than his own proper name, shall be punished as provided in section 338 of this title. (Mar. 4, 1909, ch. 321, § 216, 35 Stat. 1131.)

DERIVATION

Act Mar. 2, 1889, ch. 393, § 2, 25 Stat. 873, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 340. (Criminal Code, section 217.) Poisons or explosives not mailable; packing permitted; intoxicating liquors; mailing; injurious intent.

All kinds of poison, and all articles and compositions containing poison, and all poisonous animals, insects, and reptiles, and explosives of all kinds, and inflammable materials, and infernal machines, and mechanical, chemical, or other devices or compositions which may ignite or explode, and all disease germs or scabs, and all other natural or artificial articles, compositions, or material, of whatever kind, which may kill or in anywise hurt, harm, or injure another, or damage, deface, or otherwise injure the

mails or other property, whether sealed as first-class matter or not, are hereby declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or station thereof, nor by any letter carrier; but the Postmaster General may permit the transmission in the mails, under such rules and regulations as he shall prescribe as to preparation and packing, of any articles hereinbefore described which are not outwardly or of their own force dangerous or injurious to life, health, or property: *Provided*, That the transmission in the mails of poisonous drugs and medicines may be limited by the Postmaster General to shipments of such articles from the manufacturer thereof or dealer therein to licensed physicians, surgeons, dentists, pharmacists, druggists, cosmetologists, barbers, and veterinarians, under such rules and regulations as he shall prescribe: *Provided further*, That all spirituous, vinous, malted, fermented, or other intoxicating liquors of any kind are hereby declared to be nonmailable and shall not be deposited in or carried through the mails. Whoever shall knowingly deposit or cause to be deposited for mailing or delivery, or shall knowingly cause to be delivered by mail, according to the direction thereon, or at any place at which it is directed to be delivered by the person to whom it is addressed, anything declared by this section to be nonmailable, unless in accordance with the rules and regulations hereby authorized to be prescribed by the Postmaster General, shall be fined not more than \$1,000 or imprisoned not more than two years, or both; and whoever shall knowingly deposit or cause to be deposited for mailing or delivery, or shall knowingly cause to be delivered by mail, according to the direction thereon or at any place to which it is directed to be delivered by the person to whom it is addressed, anything declared by this section to be nonmailable, whether transmitted in accordance with the rules and regulations authorized to be prescribed by the Postmaster General or not, with the design, intent, or purpose to kill or in anywise hurt, harm, or injure another, or damage, deface, or otherwise injure the mails or other property, shall be fined not more than \$10,000 or imprisoned not more than twenty years, or both. (Mar. 4, 1909, ch. 321, § 217, 35 Stat. 1131; May 25, 1920, ch. 196, 41 Stat. 620; Jan. 11, 1929, ch. 53, 45 Stat. 1072; June 19, 1934, ch. 650, 48 Stat. 1063.)

DERIVATION

R S § 3878, which was revised from acts June 8, 1872, ch. 335, 17 Stat. 300; Jan. 9, 1873, ch. 21, 17 Stat. 406; Mar. 3, 1879, ch. 180, § 20, 20 Stat. 360; June 8, 1896, ch. 370, 29 Stat. 262.

§ 341. Repealed. June 25, 1936, ch. 815, § 9, 49 Stat. 1930.

Section was derived from acts Mar. 3, 1917, ch. 162, § 5, 39 Stat. 1069; Mar. 4, 1917, ch. 192, 39 Stat. 1202; Feb. 24, 1919, ch. 18, § 1407, 40 Stat. 1151; Oct. 28, 1919, ch. 85, title II, § 17, 41 Stat. 313; Jan. 11, 1934, ch. 1, title I, § 12, 48 Stat. 316.

Similar subject matter is now covered by section 223 of Title 27, Intoxicating Liquors.

§ 342. Construction of former section 341.

This section, act Oct. 3, 1917, ch. 63, § 1110, 40 Stat. 329, limited the application of former section 341 of this title.

**§ 343. Certain letters or writings nonmailable; opening letters.**

Every letter, writing, circular, postal card, picture, print, engraving, photograph, newspaper, pamphlet, book, or other publication, matter or thing, of any kind, in violation of any of the provisions of sections 25, 27, 31-38, 98, 130, 131, 288, 381, 502, 611-633, of this title, sections 213, 220, 221, and 222, 231-233, 234, 235, and 238-245 of Title 22, and sections 31-42 and 191-194 of Title 50 is hereby declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier; but no person other than an employee of the Dead Letter Office, duly authorized thereto, or other person upon a search warrant authorized by law, shall be authorized to open any letter not addressed to himself. (June 15, 1917, ch. 30, title XII, § 1, 40 Stat. 230.)

## CODIFICATION

Section is not part of chapter 8 of the Criminal Code.

**§ 344. Letters or writings advocating treason declared nonmailable.**

Every letter, writing, circular, postal card, picture, print, engraving, photograph, newspaper, pamphlet, book, or other publication, matter or thing, of any kind, containing any matter advocating or urging treason, insurrection, or forcible resistance to any law of the United States, is hereby declared to be nonmailable. (June 15, 1917, ch. 30, title XII, § 2, 40 Stat. 230.)

## CODIFICATION

Section is not part of chapter 8 of the Criminal Code.

**§ 345. Using or attempting to use mails for transmission of matter declared nonmailable by title; jurisdiction of offense.**

Whoever shall use or attempt to use the mails or Postal Service of the United States for the transmission of any matter declared by sections 343 and 344 of this title to be nonmailable, shall be punished by imprisonment for not more than ten years and may, in the discretion of the court, be fined not more than \$5,000. Any person violating any provision of said sections may be tried and punished either in the district in which the unlawful matter or publication was mailed, or to which it was carried by mail for delivery according to the direction thereon, or in which it was caused to be delivered by mail to the person to whom it was addressed. (June 15, 1917, ch. 30, title XII, § 3, 40 Stat. 230; Mar. 28, 1940, ch. 72, § 9, 54 Stat. 80.)

## CODIFICATION

Section is not part of chapter 8 of the Criminal Code.

**§ 346. United States defined.**

The term "United States", as used in sections 343, 344, and 345 of this title, includes the Canal Zone, and all territory and waters, continental or insular, subject to the jurisdiction of the United States. (June 15, 1917, ch. 30, title XIII, § 1, 40 Stat. 231.)

## CODIFICATION

Section is not part of chapter 8 of the Criminal Code.

**§ 347. (Criminal Code, section 218.) Counterfeiting money orders.**

Whoever, with intent to defraud, shall falsely make, forge, counterfeit, engrave, or print, or cause or procure to be falsely made, forged, counterfeited, engraved, or printed, or shall willingly aid or assist in falsely making, forging, counterfeiting, engraving, or printing, any order in imitation of or purporting to be a money order issued by the Post Office Department, or by any postmaster or agent thereof; or whoever shall forge or counterfeit the signature of any postmaster, assistant postmaster, chief clerk or clerk, upon or to any money order, or postal note, or blank therefor provided or issued by or under the direction of the Post Office Department of the United States, or of any foreign country, and payable in the United States, or any material signature or indorsement thereon, or any material signature to any receipt or certificate of identification thereon; or shall falsely alter, or cause or procure to be falsely altered in any material respect, or knowingly aid or assist in falsely so altering any such money order or postal note; or shall, with intent to defraud, pass, utter, or publish any such forged or altered money order or postal note, knowing any material signature or indorsement thereon to be false, forged, or counterfeited, or any material alteration therein to have been falsely made; or shall issue any money order or postal note without having previously received or paid the full amount of money payable therefor, with the purpose of fraudulently obtaining or receiving, or fraudulently enabling any other person, either directly or indirectly, to obtain or receive from the United States, or any officer, employee, or agent thereof, any sum of money whatever; or shall, with intent to defraud the United States, or any person, transmit or present to, or cause or procure to be transmitted or presented to, any officer or employee, or at any office of the Government of the United States, any money order or postal note, knowing the same to contain any forged or counterfeited signature to the same, or to any material indorsement, receipt, or certificate thereon, or material alteration therein unlawfully made, or to have been unlawfully issued without previous payment of the amount required to be paid upon such issue, shall be fined not more than \$5,000 or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, § 218, 35 Stat. 1131.)

## DERIVATION

R. S. § 5463, as amended by act Jan. 3, 1887, ch. 13, § 2, 24 Stat. 355, which was revised from acts June 8, 1872, ch. 335, 17 Stat. 298; June 18, 1888, ch. 394, § 2, 25 Stat. 187, which were repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 348. (Criminal Code, section 219.) Counterfeiting postage stamps.**

Whoever shall forge or counterfeit any postage stamp, or any stamp printed upon any stamped envelope, or postal card, or any die, plate, or engraving therefor; or shall make or print, or knowingly use or sell, or have in possession with intent to use or sell, any such forged or counterfeited postage stamp, stamped envelope, postal card, die, plate, or engraving; or shall make, or knowingly use or sell, or have in possession with intent to use or sell, any paper

bearing the watermark of any stamped envelope, or postal card, or any fraudulent imitation thereof; or shall make or print, or authorize or procure to be made or printed, any postage stamp, stamped envelope, or postal card, of the kind authorized and provided by the Post Office Department, without the special authority and direction of said department; or shall, after such postage stamp, stamped envelope, or postal card has been printed, with intent to defraud, deliver the same to any person not authorized by an instrument in writing, duly executed under the hand of the Postmaster General and the seal of the Post Office Department, to receive it, shall be fined not more than \$500 or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, § 219, 35 Stat. 1132.)

DERIVATION

R. S. § 5464, which was revised from act June 8, 1872, ch. 335, 17 Stat. 305, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 349. (Criminal Code, section 220.) Counterfeiting foreign stamps.

Whoever shall forge, or counterfeit, or knowingly utter or use any forged or counterfeit postage stamp or revenue stamp of any foreign government shall be fined not more than \$500 or imprisoned not more than five years, or both: *Provided, however,* That nothing in this section shall be held to repeal or modify section 350 of this title.

The words "foreign government," as used in this section, shall be deemed to include any government, faction, or body of insurgents within a country with which the United States is at peace, which government, faction, or body of insurgents may or may not have been recognized by the United States as a government. (Mar. 4, 1909, ch. 321, § 220, 35 Stat. 1132; June 15, 1917, ch. 30, title VIII, § 4, 40 Stat. 226; May 26, 1926, ch. 396, 44 Stat. 653.)

CODIFICATION

First sentence is from act March 4, 1909, cited to text, as amended by act May 26, 1926, cited to text; second sentence from act June 15, 1917, cited to text.

DERIVATION

R. S. § 5465, which was revised from act June 8, 1872, ch. 335, 17 Stat. 306 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

CROSS REFERENCE

The provisions of section 4 of title VIII of the act of June 15, 1917, cited to text, so far as they define the words "foreign government" as used in various other sections, are set forth in sections 98 and 288 of this title, section 235 of Title 22, Foreign Relations and Intercourse, and section 41 of Title 50, War.

§ 349a. Forging or counterfeiting postmarking stamp.

Whoever shall forge or counterfeit any postmarking stamp, or impression thereof with intent to make it appear that such impression is a genuine postmark, or shall make or knowingly use or sell, or have in possession with intent to use or sell, any forged or counterfeited postmarking stamp, die, plate, or engraving, or such impression thereof, shall be fined not more than \$1,000 or imprisoned not more than five years, or both. (Aug. 26, 1935, ch. 692, 49 Stat. 866.)

CODIFICATION

Section is not part of chapter 8 of the Criminal Code.

§ 350. Printing, publishing or importation of black-and-white illustrations of foreign stamps and portions of United States postage stamps.

(a) Nothing in sections 275, 286, and 349 of this title, as amended, or in any other provision of law, shall be construed to forbid or prevent the printing, publishing, or importation, or the making or importation of the necessary plates for such printing or publishing, for philatelic purposes in articles, books, journals, newspapers, or albums (including the circulars or advertising literature of legitimate dealers in stamps or publishers of or dealers in philatelic or historical articles, books, journals, or albums), of black and white illustrations of—

(1) foreign revenue stamps if from plates so defaced as to indicate that the illustrations are not adapted or intended for use as stamps;

(2) foreign postage stamps; or

(3) such portion of the border of a stamp of the United States as may be necessary to show minor distinctive features of the stamp so illustrated, but all such illustrations shall be at least four times as large as the portion of the original United States stamp so illustrated.

(b) Notwithstanding any other provision of law, the Secretary of the Treasury, subject to the approval of the President, may, upon finding that no hindrance to the suppression of counterfeiting and no tendency to bring into disrepute any obligation or other security of the United States will result, by regulations, permit, to the extent and under such conditions as he may deem appropriate, the printing, publishing or importation or the making or importation of the necessary plates for such printing or publishing, for philatelic purposes in articles, books, journals, newspapers, or albums (including the circulars or advertising literature of legitimate dealers in stamps or publishers of or dealers in philatelic or historical articles, books, journals, or albums), of black and white illustrations of canceled or uncanceled United States postage stamps. The Secretary, subject to the approval of the President, may amend or repeal such regulations at any time. Such regulations, and any amendment or repeal thereof, shall become effective upon publication thereof in the Federal Register or upon such date as may be specified therein if later than the date of publication. All findings of fact made hereunder shall be final and conclusive and shall not be subject to review. (Mar. 3, 1923, ch. 218, 42 Stat. 1437; Jan. 27, 1938, ch. 10, § 2, 52 Stat. 6.)

CODIFICATION

Section is not part of chapter 8 of the Criminal Code.

§ 351. (Criminal Code, section 221.) Inclosing higher in lower class matter.

Matter of the second, third, or fourth class containing any writing or printing in addition to the original matter, other than as authorized by law, shall not be admitted to the mails, nor delivered, except upon payment of postage for matter of the first class, deducting therefrom any amount which may have been prepaid by stamps affixed, unless by direction of the Postmaster General such postage shall be remitted. Whoever shall knowingly conceal or inclose any matter of a higher class in that

of a lower class, and deposit or cause the same to be deposited for conveyance by mail, at a less rate than would be charged for such higher class matter, shall be fined not more than \$100. (Mar. 4, 1909, ch. 321, § 221, 35 Stat. 1132.)

#### DERIVATION

R. S. § 3887, which was revised from acts June 8, 1872, ch. 335, 17 Stat. 301; Jan. 20, 1888, ch. 2, § 2, 25 Stat. 2, which were repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 352. (Criminal Code, section 222.) Illegally approving bond.

Whoever, being a postmaster, shall affix his signature to the approval of any bond of a bidder, or to the certificate of sufficiency of sureties in any contract, before the said bond or contract is signed by the bidder or contractor and his sureties, or shall knowingly, or without the exercise of due diligence, approve any bond of a bidder with insufficient sureties, or shall knowingly make any false or fraudulent certificate, shall be forthwith dismissed from office and be thereafter disqualified from holding the office of postmaster; and shall also be fined not more than \$5,000, or imprisoned not more than one year, or both. (Mar. 4, 1909, ch. 321, § 222, 35 Stat. 1133.)

#### DERIVATION

R. S. § 3947, which was revised from acts June 8, 1872, ch. 335, 17 Stat. 313; June 23, 1874, ch. 456, § 12, 18 Stat. 235, which were repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 353. (Criminal Code, section 223.) Submitting false evidence as to second-class matter.

Whoever shall knowingly submit or cause to be submitted to any postmaster or to the Post Office Department or any officer of the Postal Service, any false evidence relative to any publication for the purpose of securing the admission thereof at the second-class rate, for transportation in the mails, shall be fined not more than \$500. (Mar. 4, 1909, ch. 321, § 223, 35 Stat. 1133.)

#### DERIVATION

Act Mar. 3, 1879, ch. 180, § 13, 20 Stat. 359, as amended by acts June 18, 1888, ch. 394, § 1, 25 Stat. 187; Mar. 2, 1905, ch. 1304, 33 Stat. 823, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 354. (Criminal Code, section 224.) Inducing or prosecuting false claims for losses.

Whoever shall make, allege, or present, or cause to be made, alleged, or presented, or assist, aid, or abet in making, alleging, or presenting, any claim or application for indemnity for the loss of any registered or insured letter, parcel, package, or other article or matter, or the contents thereof, knowing such claim or application to be false, fictitious, or fraudulent; or whoever for the purpose of obtaining or aiding to obtain the payment or approval of any such claim or application, shall make or use, or cause to be made or used, any false statement, certificate, affidavit, or deposition; or whoever shall knowingly and willfully misrepresent, or misstate, or, for the purpose aforesaid, shall knowingly and willfully conceal any material fact or circumstance in respect of any such claim or application for indemnity, shall be fined not more than \$500 or imprisoned not more

than one year, or both, except in cases where the amount of such claim or application for indemnity is less than \$100 there may be imposed a fine only. (Mar. 4, 1909, ch. 321, § 224, 35 Stat. 1133; Aug. 5, 1939, ch. 429, 53 Stat. 1203.)

#### § 355. (Criminal Code, section 225.) Misappropriating postal funds; prima facie evidence; deposits permitted.

Whoever, being a postmaster or other person employed in or connected with any branch of the Postal Service, shall loan, use, pledge, hypothecate, or convert to his own use, or shall deposit in any bank, or exchange for other funds or property, except as authorized by law, any money or property coming into his hands or under his control in any manner whatever, in the execution or under color of his office, employment, or service, whether the same shall be the money or property of the United States or not; or shall fail or refuse to remit to or deposit in the Treasury of the United States or in a designated depository, or to account for or turn over to the proper officer or agent, any such money or property, when required so to do by law or the regulations of the Post Office Department, or upon demand or order of the Postmaster General, either directly or through a duly authorized officer or agent, shall be deemed guilty of embezzlement; and every such person, as well as every other person advising or knowingly participating therein, shall be fined in a sum equal to the amount or value of the money or property embezzled, or imprisoned not more than ten years, or both. Any failure to produce or to pay over any such money or property, when required so to do as above provided, shall be taken to be prima facie evidence of such embezzlement; and upon the trial of any indictment against any person for such embezzlement, it shall be prima facie evidence of a balance against him to produce a transcript from the account books of the General Accounting Office. But nothing herein shall be construed to prohibit any postmaster depositing, under the direction of the Postmaster General, in a national bank designated by the Secretary of the Treasury for that purpose, to his own credit as postmaster, any funds in his charge, nor prevent his negotiating drafts or other evidences of debt through such bank, or through United States disbursing officers, or otherwise, when instructed or required so to do by the Postmaster General, for the purpose of remitting surplus funds from one post office to another. (Mar. 4, 1909, ch. 321, § 225, 35 Stat. 1133; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

#### DERIVATION

R. S. § 4046, which was revised from acts June 8, 1872, ch. 335, 17 Stat. 299; Mar. 3, 1873, ch. 272, 17 Stat. 607, and repealed in part by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153. Unrepealed part of R. S. § 4046 is set out as section 737 of Title 39, The Postal Service.

R. S. § 4053, which was revised from act June 8, 1872, ch. 335, 17 Stat. 291, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 356. (Criminal Code, section 226.) Employees interested in mail contracts.

Whoever, being a person employed in the Postal Service, shall become interested in any contract for

carrying the mail, or act as agent, with or without compensation, for any contractor or person offering to become a contractor in any business before the department, shall be immediately dismissed from office, and shall be fined not more than \$5,000, or imprisoned not more than one year, or both. (Mar. 4, 1909, ch. 321, § 226, 35 Stat. 1134.)

## DERIVATION

R. S. § 412, which was revised from act June 8, 1872, ch. 335, 17 Stat. 286, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

## CROSS REFERENCE

Employment of mail messengers and other postal employees in dual capacity, see section 136 of Title 39, The Postal Service.

§ 357. (Criminal Code, section 227.) Fraudulent use of official envelopes.

Whoever shall make use of any official envelope, label, or indorsement authorized by law, to avoid the payment of postage or registry fee on his private letter, packet, package, or other matter in the mail, shall be fined not more than \$300. (Mar. 4, 1909, ch. 321, § 227, 35 Stat. 1134.)

## DERIVATION

Acts Mar. 3, 1877, ch. 103, § 5, 19 Stat. 335; Mar. 3, 1879, ch. 180, § 29, 20 Stat. 362, as amended by acts July 5, 1884, ch. 234, § 3, 23 Stat. 158; July 2, 1886, ch. 611, 24 Stat. 122

§ 358. (Criminal Code, section 228.) Fraudulently increasing weight of mail.

Whoever shall place or cause to be placed any matter in the mails during the regular weighing period, for the purpose of increasing the weight of the mail, with intent to cause an increase in the compensation of the railroad mail carrier over whose route such mail may pass, shall be fined not more than \$20,000, or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, § 228, 35 Stat. 1134.)

## DERIVATION

June 13, 1898, ch. 446, § 1, 30 Stat. 442, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 359. (Criminal Code, section 229.) Offenses against foreign mail in transit; indictments.

Every foreign mail, shall, while being transported across the territory of the United States under authority of law, be taken and deemed to be a mail of the United States so far as to make any violation thereof, or depredation thereon, or offense in respect thereto, or any part thereof, an offense of the same grade, and punishable in the same manner and to the same extent as though the mail was a mail of the United States; and in any indictment or information for any such offense, the mail, or any part thereof, may be alleged to be, and on the trial of any such indictment or information it shall be deemed and held to be, a mail or part of a mail of the United States. (Mar. 4, 1909, ch. 321, § 229, 35 Stat. 1134.)

## DERIVATION

R. S. § 4013, which was revised from act June 8, 1872, ch. 335, 17 Stat. 317 and repealed by act Mar. 4 1909, ch. 321, § 341, 35 Stat. 1153.

§ 360. (Criminal Code, section 230.) Omission to take oath.

Every person employed in the Postal Service shall be subject to all penalties and forfeitures for the

violation of the laws relating to such service, whether he has taken the oath of office or not. (Mar. 4, 1909, ch. 321, § 230, 35 Stat. 1134.)

## DERIVATION

R. S. § 3832, which was revised from act June 8, 1872, ch. 335, 17 Stat. 287 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 361. Mailing pistols, revolvers, and other firearms capable of being concealed on person.

Pistols, revolvers, and other firearms capable of being concealed on the person are hereby declared to be nonmailable and shall not be deposited in or carried by the mails or delivered by any postmaster, letter carrier, or other person in the Postal Service: *Provided*, That such articles may be conveyed in the mails, under such regulations as the Postmaster General shall prescribe, for use in connection with their official duty, to officers of the Army, Navy, Coast Guard, Marine Corps, or Officers' Reserve Corps; to officers of the National Guard or Militia of the several States, Territories, and Districts; to officers of the United States or of the several States, Territories, and Districts whose official duty is to serve process of warrants of arrest or mittimus of commitment; to employees of the Postal Service; and to watchmen engaged in guarding the property of the United States, the several States, Territories, and Districts: *And provided further*, That such articles may be conveyed in the mails to manufacturers of firearms or bona fide dealers therein in customary trade shipments, including such articles for repairs or replacement of parts, from one to the other, under such regulations as the Postmaster General shall prescribe. Whoever shall knowingly deposit or cause to be deposited for mailing or delivery, or shall knowingly cause to be delivered by mail according to the direction thereon, or at any place to which it is directed to be delivered by the person to whom it is addressed, any pistol, revolver, or firearm, declared by this section to be nonmailable, shall be fined not exceeding \$1,000 or imprisoned not more than two years, or both. (Feb. 8, 1927, ch. 75, § 1, 44 Stat. 1059; May 15, 1939, ch. 134, 53 Stat. 744.)

## CODIFICATION

This section is not part of chapter 8 of the Criminal Code.

## Chapter 9.—OFFENSES AGAINST FOREIGN AND INTERSTATE COMMERCE

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|------|---|
| Sec. |   |
| 381. | Violent interference with foreign commerce.   |
| 382. | Carrying explosives; on vehicles with passengers for hire; explosives permitted; restrictions; military transportation. |
| 383. | Same; regulations for transporting made by Interstate Commerce Commission; effect.                                      |
| 384. | Same; high explosives excluded.   |
| 385. | Same; marking packages.   |
| 386. | Same; causing death or injury by illegal transportation.  |
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- Sec.  
392. Transportation of illegally killed game; shipments in game season; feathers of barnyard fowls.  
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394. Same; penalty.  
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396. Importing and transporting obscene books.  
396a. Transportation or importation of convict-made goods; prohibition; penalty; exceptions.  
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396e. Same; jurisdiction of violations.  
397. White-slave traffic; terms defined.  
398. Same; transportation of woman or girl for immoral purposes, or procuring ticket.  
399. Same; inducing transportation for immoral purposes.  
400. Same; inducing interstate transportation of woman or girl under eighteen for immoral purposes.  
401. Same; jurisdiction of prosecutions.  
402. Same; (1) Prevention of transportation in foreign commerce of alien women and girls under international agreement; Commissioner of Immigration and Naturalization designated as authority to receive information; duty to receive and keep statements of and pertaining to them.  
(2) Statement by person keeping woman or girl for immoral purposes; failure to file, making false statement, or failure to disclose facts.  
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404. Same; citation.  
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408. Motor vehicles; transportation, etc., of stolen vehicles.  
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408c. Same; conspiracy.  
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408d. Threatening communications in interstate commerce.  
408e. Moving in interstate or foreign commerce to avoid prosecution for felony or giving testimony.  
409. Larceny, etc., of goods in interstate or foreign commerce; penalty.  
410. Same; jurisdiction of State courts unimpaired; double jeopardy.  
411. Same; proof of character of shipments.  
412. Embezzlement, etc., by officers of carrier; jurisdiction; double jeopardy.  
412a. Wrecking trains; attempt; penalty.  
413. National Stolen Property Act; citation.  
414. Same; definitions.  
415. Same; transportation of stolen or feloniously taken goods, securities, or monies; transportation of articles used in counterfeiting.  
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417. Same; indictment for more offenses.  
418. Same; jurisdiction.  
418a. Same; conspiracy.  
419. Same; section 408 of this title unaffected.

- Sec.  
420. Compacts between States for cooperation in prevention of crime; consent of Congress.  
420a. Interference with trade and commerce by violence, threats, etc.; penalties.  
420b. Same; definitions.  
420c. Same; prosecutions.  
420d. Same; jurisdiction of offenses.  
420e. Same; separability clause.

### § 381. Violent interference with foreign commerce.

Whoever, with intent to prevent, interfere with, or obstruct or attempt to prevent, interfere with, or obstruct the exportation to foreign countries of articles from the United States, shall injure or destroy, by fire or explosives, such articles or the places where they may be while in such foreign commerce, shall be punished by imprisonment for not more than twenty years and may, in the discretion of the court, be fined not more than \$10,000. The term "United States", as used in this section, includes the Canal Zone, and all territory and waters, continental or insular, subject to the jurisdiction of the United States. (June 15, 1917, ch. 30, title IV, § 1, 40 Stat. 221; June 15, 1917, ch. 30, title XIII, § 1, 40 Stat. 231; Mar. 28, 1940, ch. 72, § 4, 54 Stat. 79.)

#### AMENDMENT

Term of imprisonment was increased by act March 28, 1940, cited to text.

### § 382. (Criminal Code, section 232.) Carrying explosives; on vehicles with passengers for hire; explosives permitted; restrictions; military transportation.

It shall be unlawful to transport, carry, or convey, within the limits of the jurisdiction of the United States, any high explosive, such as, and including, dynamite, blasting caps, detonating fuzes, black powder, gunpowder, or other like explosive, on any car or vehicle of any description operated in the transportation of passengers by a common carrier engaged in interstate or foreign commerce, which car or vehicle is carrying passengers for hire. It shall be lawful to transport on any such car or vehicle, smokeless powder, primers, fuses, not including detonating fuzes, fireworks, or other similar explosives, and properly packed and marked samples of explosives for laboratory examination, not exceeding a net weight of one-half pound each, and not exceeding twenty samples at one time in a single car or vehicle; but such explosives shall not be carried in that part of a car or vehicle which is being used for the transportation of passengers for hire. It shall be lawful to transport on any such car or vehicle small-arms ammunition in any quantity, and such fuses, torpedoes, rockets, or other signal devices as may be essential to promote safety in operation. Nothing in this section shall be construed to prevent the transportation of military or naval forces with their accompanying munitions of war on passenger-equipment cars or vehicles.

The words "detonating fuzes", as used in this section, shall be interpreted to mean fuzes used in naval or military service to detonate the high-explosive bursting charges of projectiles, mines, bombs, or torpedoes. The word "fuzes" as used herein shall be interpreted to mean devices used in igniting the bursting charges of projectiles. The word "primers"



as used herein shall be interpreted to mean devices used in igniting the propelling powder charges of ammunition. The word "fuses" as used herein shall be interpreted to mean the slow-burning fuses used commercially and intended to convey fire to an explosive combustible mass slowly or without danger to the person lighting. The word "fusees" as used herein shall be interpreted to mean the fusees ordinarily used on steamboats and railroads as night signals. (Mar. 4, 1909, ch. 321, § 232, 35 Stat. 1134; Mar. 4, 1921, ch. 172, 41 Stat. 1444; Oct. 9, 1940, ch. 777, § 6 (a), 54 Stat. 1028.)

**DERIVATION**

Act May 30, 1908, ch. 284, § 1, 35 Stat. 554, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**AMENDMENT**

Act October 9, 1940, cited to text, struck out "vessel" and "vessels" wherever appearing.

**EFFECTIVE DATE**

Effective date of act October 9, 1940, cited to text, see note under section 170 of Title 46, Shipping.

**SIMILAR PROVISIONS**

R. S. § 5353, which was revised from act July 3, 1886, ch. 162, 14 Stat. 81, repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**CROSS REFERENCE**

Carrying explosives on passenger vessels, see section 170 of Title 46, Shipping.

§ 383. (Criminal Code, section 233.) Same; regulations for transporting made by Interstate Commerce Commission; effect.

The Interstate Commerce Commission shall formulate regulations for the safe transportation within the limits of the jurisdiction of the United States of explosives and other dangerous articles, including inflammable liquids, inflammable solids, oxidizing materials, corrosive liquids, compressed gases, and poisonous substances, which shall be binding upon all common carriers engaged in interstate or foreign commerce which transport explosives or other dangerous articles by land, and upon all shippers making shipments of explosives or other dangerous articles via any common carrier engaged in interstate or foreign commerce by land or water. Said commission, of its own motion, or upon application made by any interested party, may make changes or modifications in such regulations, made desirable by new information or altered conditions. Such regulations shall be in accord with the best-known practicable means for securing safety in transit, covering the packing, marking, loading, handling while in transit, and the precautions necessary to determine whether the material when offered is in proper condition to transport. Such regulations, as well as all changes or modifications thereof, shall, unless a shorter time is authorized by the commission, take effect ninety days after their formulation and publication by said commission and shall be in effect until reversed, set aside, or modified. In the execution of the provisions of sections 382-386 of this title the Interstate Commerce Commission may utilize the services of the bureau for the safe transportation of explosives and other dangerous articles, and may avail itself of the advice and assistance of any department, commission, or board of the Government, but no official or employee of the United States shall

receive any additional compensation for such service except as now permitted by law. (Mar. 4, 1909, ch. 321, § 233, 35 Stat. 1135; Mar. 4, 1921, ch. 172, 41 Stat. 1445; Oct. 9, 1940, ch. 777, § 6 (b), 54 Stat. 1028.)

**DERIVATION**

Act May 30, 1908, ch. 284, § 2, 35 Stat. 555, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**AMENDMENT**

Act October 9, 1940, cited to text, struck out "or water" before last comma in first sentence.

**EFFECTIVE DATE**

Effective date of act October 9, 1940, cited to text, see note under section 170 of Title 46, Shipping.

§ 384. (Criminal Code, section 234.) Same; high explosives excluded.

It shall be unlawful to transport, carry, or convey within the limits of the jurisdiction of the United States, liquid nitroglycerin, fulminate in bulk in dry condition, or other like explosive, on any car or vehicle of any description operated in the transportation of passengers or property by land or water by a common carrier engaged in interstate or foreign commerce. (Mar. 4, 1909, ch. 321, § 234, 35 Stat. 1135; Mar. 4, 1921, ch. 172, 41 Stat. 1445; Oct. 9, 1940, ch. 777, § 6 (a), 54 Stat. 1028.)

**DERIVATION**

Act May 30, 1908, ch. 234, § 3, 35 Stat. 555, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**AMENDMENT**

Act October 9, 1940, cited to text, struck out "vessel" wherever appearing.

**EFFECTIVE DATE**

Effective date of act October 9, 1940, cited to text, see note under section 170 of Title 46, Shipping.

§ 385. (Criminal Code, section 235.) Same; marking packages.

Every package containing explosives or other dangerous articles when presented to a common carrier for shipment shall have plainly marked on the outside thereof the contents thereof; and it shall be unlawful for any person to deliver, or cause to be delivered, to any common carrier engaged in interstate or foreign commerce by land or water, or to carry upon any car or vehicle operated by any common carrier engaged in interstate or foreign commerce by land any explosive, or other dangerous article, as specified in section 383 of this title, under any false or deceptive marking, description, invoice, shipping order, or other declaration, or without informing the agent of such carrier in writing of the true character thereof, at or before the time such delivery or carriage is made. Whoever shall knowingly violate, or cause to be violated, any provision of this section, or of sections 382-384 of this title, or any regulation made by the Interstate Commerce Commission in pursuance thereof, shall be fined not more than \$2,000 or imprisoned not more than eighteen months, or both. (Mar. 4, 1909, ch. 321, § 235, 35 Stat. 1135; Mar. 4, 1921, ch. 172, 41 Stat. 1445; Oct. 9, 1940, ch. 777, § 6 (a), (c), 54 Stat. 1028.)

**DERIVATION**

Act May 30, 1908, ch. 234, §§ 4, 5, 35 Stat. 555, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.



## AMENDMENT

Act October 9, 1940, cited to text, struck out "vessel" wherever appearing, and "or water" before "any explosive" in first sentence.

## EFFECTIVE DATE

Effective date of act October 9, 1940, cited to text, see note under section 170 of Title 46, Shipping.

## SIMILAR PROVISIONS

R. S. § 5355.

§ 386. (Criminal Code, section 236.) Same; causing death or injury by illegal transportation.

When the death or bodily injury of any person results from the violation of sections 382-385 of this title, or any regulation made by the Interstate Commerce Commission in pursuance thereof, the person or persons who shall have so knowingly violated, or cause to be violated, such provision or regulation, shall be fined not more than \$10,000, or imprisoned not more than ten years, or both. (Mar. 4, 1909, ch. 321, § 236, 35 Stat. 1136; Mar. 4, 1921, ch. 172, 41 Stat. 1445.)

## DERIVATION

R. S. § 5354, which was revised from act July 3, 1866, ch. 162, 14 Stat. 81, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 387. (Criminal Code, section 237.) Importing lottery tickets; interstate carriage.

Whoever shall bring or cause to be brought into the United States or any place subject to the jurisdiction thereof, from any foreign country, for the purpose of disposing of the same, any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift enterprise, or similar scheme; or shall therein knowingly deposit or cause to be deposited with any express company or other common carrier for carriage, or shall carry, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, to any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any place in or subject to the jurisdiction of the United States through a foreign country to any place in or subject to the jurisdiction thereof, or from any place in or subject to the jurisdiction of the United States to a foreign country, any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon, the event of any such lottery, gift enterprise, or similar scheme, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift enterprise, or similar scheme, or shall knowingly take or receive, or cause to be taken or received, any such paper, certificate, instrument, advertisement, or list so brought, deposited, or transported, shall, for the first offense, be fined not more than \$1,000 or imprisoned not more than two years, or both; and for any subsequent offense shall be imprisoned not more than two years. (Mar. 4, 1909, ch. 321, § 237, 35 Stat. 1136.)

## DERIVATION

Act Mar. 2, 1895, ch. 191, 28 Stat. 963, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 388. (Criminal Code, section 238.) Intoxicating liquors; by interstate shipment; delivery to other than bona fide consignee.

Any officer, agent, or employee of any railroad company, express company, or other common carrier, who shall knowingly deliver or cause to be delivered to any person other than the person to whom it has been consigned, unless upon the written order in each instance of the bona fide consignee, or to any fictitious person, or to any person under a fictitious name, any spirituous, vinous, malted, or other fermented liquor or any compound containing any spirituous, vinous, malted, or other fermented liquor fit for use for beverage purposes, which has been shipped from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. (Mar. 4, 1909, ch. 321, § 238, 35 Stat. 1136; June 25, 1936, ch. 815, § 6, 49 Stat. 1929.)

## CROSS REFERENCE

Effective date, separability, effect on other laws, etc., see sections 226-228 of Title 27, Intoxicating Liquors.

9. (Criminal Code, section 239.) Same; carrier collecting purchase price of interstate shipment.

Any railroad company, express company, or other common carrier, or any other person who, in connection with the transportation of any spirituous, vinous, malted, or other fermented liquor, or any compound containing any spirituous, vinous, malted, or other fermented liquor fit for use for beverage purposes, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which prohibits the delivery or sale therein of such liquor, or from any foreign country into any such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, shall collect the purchase price or any part thereof, before, on, or after delivery, from the consignee, or from any other person, or shall in any manner act as the agent of the buyer or seller of any such liquor, for the purpose of buying or selling or completing the sale thereof, saving only in the actual transportation and delivery of the same, shall be fined not more than \$5,000 or imprisoned not more than one year, or both. (Mar. 4, 1909, ch. 321, § 239, 35 Stat. 1136; June 25, 1936, ch. 815, § 7, 49 Stat. 1929.)

## CROSS REFERENCE

Effective date, separability, effect on other laws, etc., see section 226-228 of Title 27, Intoxicating Liquors.

§ 390. (Criminal Code, section 240.) Same; shipping packages in interstate commerce not plainly marked.

Whoever shall knowingly ship or cause to be shipped from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, any package of or package containing any spirituous, vinous, malted, or other fermented liquor, or any compound containing any spirituous, vinous, malted, or other fermented liquor fit for use for beverage purposes, unless such package be so labeled on the outside cover as to plainly show the name of the consignee, the nature of its contents, and the quantity contained therein, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and such liquor shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law. (Mar. 4, 1909, ch. 321, § 240, 35 Stat. 1137; June 25, 1936, ch. 815, § 8, 49 Stat. 1930.)

CROSS REFERENCE

Effective date, separability, effect on other laws, etc., see sections 226-228 of Title 27, Intoxicating Liquors.

§ 391. (Criminal Code, section 241.) Importing injurious birds and animals; permits for foreign wild animals; specimens for museums.

The importation into the United States, or any Territory or District thereof, of the mongoose, the so-called "flying foxes" or fruit bats, the English sparrow, the starling, and such other birds and animals as the Secretary of the Interior may from time to time declare to be injurious to the interests of agriculture or horticulture, is hereby prohibited; and all such birds and animals shall, upon arrival at any port of the United States, be destroyed or returned at the expense of the owner. No person shall import into the United States, or into any Territory or District thereof, any foreign wild animal or bird, except under special permit from the Secretary of the Interior. Nothing in this section shall restrict the importation of natural-history specimens for museums or scientific collections, or of certain cage birds, such as domesticated canaries, parrots, or such other birds as the Secretary of the Interior may designate. The Secretary of the Treasury is hereby authorized to make regulations for carrying into effect the provisions of this section. (Mar. 4, 1909, ch. 321, § 241, 35 Stat. 1137; Reorg. Plan No. II, § 4 (f), 4 Fed. Reg. 2731, 53 Stat. 1433.)

DERIVATION

Act May 25, 1900, ch. 553, § 2, 31 Stat. 188, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

TRANSFER OF FUNCTIONS

Functions of Secretary of Agriculture relating to conservation of wildlife, game, and migratory birds were transferred to Secretary of the Interior by Reorg. Plan No. II, § 4 (f), cited to text, set out in note under section 1931 of Title 5, Executive Departments and Government Officers

and Employees. See also sections 401-404 of said plan for provisions relating to transfer of functions, records, property, personnel, and funds.

CROSS REFERENCE

Unlawful transportation or importation of migratory birds, see section 705 of Title 16, Conservation.

§ 392. (Criminal Code, section 242.) Transportation of illegally killed game; shipments in game season; feathers of barnyard fowls.

It shall be unlawful for any person, firm, corporation, or association to deliver or knowingly receive for shipment, transportation, or carriage, or to ship, transport, or carry, by any means whatever, from any State, Territory, or the District of Columbia to, into, or through any other State, Territory, or the District of Columbia, or to a foreign country any wild animal or bird, or the dead body or part thereof, or the egg of any such bird imported from any foreign country contrary to any law of the United States, or captured, killed, taken, purchased, sold, or possessed contrary to any such law, or captured, killed, taken, shipped, transported, carried, purchased, sold, or possessed contrary to the law of any State, Territory, or the District of Columbia, or foreign country or State, Province, or other subdivision thereof in which it was captured, killed, taken, purchased, sold, or possessed or in which it was delivered or knowingly received for shipment, transportation, or carriage, or from which it was shipped, transported, or carried; and it shall be unlawful for any person, firm, corporation, or association to transport, bring, or convey, by any means whatever, from any foreign country into the United States any wild animal or bird, or the dead body or part thereof, or the egg of any such bird captured, killed, taken, shipped, transported, or carried contrary to the law of the foreign country or State, Province, or other subdivision thereof in which it was captured, killed, taken, delivered, or knowingly received for shipment, transportation, or carriage, or from which it was shipped, transported, or carried; and no person, firm, corporation, or association shall knowingly purchase or receive any wild animal or bird, or the dead body or part thereof, or the egg of any such bird imported from any foreign country or shipped, transported, carried, brought, or conveyed, in violation of this section; nor shall any person, firm, corporation, or association purchasing or receiving any wild animal or bird; or the dead body or part thereof, or the egg of any such bird, imported from any foreign country, or shipped, transported, or carried in interstate commerce make any false record or render any account that is false in any respect in reference thereto. (Mar. 4, 1909, ch. 321, § 242, 35 Stat. 1137; June 15, 1935, ch. 261, title II, § 201, 49 Stat. 380.)

DERIVATION

Act May 25, 1900, ch. 553, § 2, 31 Stat. 188, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

CROSS REFERENCE

Unlawful transportation or importation of migratory birds, see section 705 of Title 16, Conservation.

§ 393. (Criminal Code, section 243.) Marking of packages.

All packages or containers in which wild animals or birds, or the dead bodies or parts thereof (except

furs, hides, or skins of such animals, for which provision is hereinafter made), or the eggs of such birds are shipped, transported, carried, brought, or conveyed, by any means whatever from one State, Territory, or the District of Columbia to, into, or through another State, Territory, or the District of Columbia, or to a foreign country, shall be plainly and clearly marked, labeled, or tagged on the outside thereof with the names and addresses of the shipper and consignee and with an accurate statement showing by number and kind the contents thereof: *Provided*, That packages or containers in which migratory birds included in any convention to which the United States is a party, or the dead bodies or parts thereof or eggs of such birds, are shipped, transported, carried, brought, or conveyed, as aforesaid, shall be marked, labeled, or tagged as prescribed in any such convention or law or regulation thereunder.

All packages or containers in which the furs, hides, or skins of wild animals are shipped, transported, carried, brought, or conveyed, by any means whatever, from one State, Territory, or the District of Columbia to, into, or through another State, Territory, or the District of Columbia, or to a foreign country shall be plainly and clearly marked, labeled, or tagged on the outside thereof with the names and addresses of the shipper and consignee. (Mar. 4, 1909, ch. 321, § 243, 35 Stat. 1137; June 15, 1935, ch. 261, title II, § 201, 49 Stat. 381; June 19, 1939, ch. 209, 53 Stat. 840.)

#### DERIVATION

Act May 25, 1900, ch. 553, § 4, 31 Stat. 188, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 393a. Arrests and execution of search warrants; forfeiture of animals or birds unlawfully possessed.

Any employee of the Department of the Interior authorized by the Secretary of the Interior to enforce the provisions of sections 392 and 393 of this title, and any officer of the customs, shall have power to arrest any person committing a violation of any provision of said sections in his presence or view and to take such person immediately for examination or trial before an officer or court of competent jurisdiction; shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of said sections; and shall have authority to execute any warrant to search for and seize wild animals or birds, or the dead bodies or parts thereof, or the eggs of such birds, delivered or received for shipment, transportation, or carriage, or shipped, transported, carried, brought, conveyed, purchased, or received in violation of said sections 392 and 393. Any judge of a court established under the laws of the United States or any United States commissioner may, within his jurisdiction, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. Wild animals or birds, or the dead bodies or parts thereof, or the eggs of such birds, delivered or received for shipment, transportation, or carriage, or shipped, transported, carried, brought, conveyed, purchased, or received contrary to the provisions of said sections 392 and 393 shall, when found, be taken into possession and custody by any such employee

or by the United States marshal or his deputy, or by any officer of the customs, and held pending disposition thereof by the court; and when so taken into possession or custody, upon conviction of the offender or upon judgment of a court of the United States that the same were delivered or received for shipment, transportation, or carriage, or were shipped, transported, carried, brought, conveyed, purchased, or received contrary to any provision of said sections 392 and 393, or were imported in violation of any law of the United States, as a part of the penalty and in addition to any fine or imprisonment imposed under aforesaid section 394, or otherwise, shall be forfeited and disposed of as directed by the court. (June 15, 1935, ch. 261, title II, § 202, 49 Stat. 381; Reorg. Plan No. II, § 4 (f), 4 Fed. Reg. 2731, 53 Stat. 1433.)

#### TRANSFER OF FUNCTIONS

Functions of Secretary of Agriculture relating to conservation of wildlife, game, and migratory birds were transferred to Secretary of the Interior by Reorg. Plan No. II, § 4 (f), cited to text, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See also sections 401-404 of said plan for provisions relating to transfer of functions, records, property, personnel, and funds.

§ 394. (Criminal Code, section 244.) Same; penalty.

For each evasion or violation of, or failure to comply with, any provision of sections 391-393 of this title, any person, firm, corporation, or association, upon conviction thereof, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months, or both. (Mar. 4, 1909, ch. 321, § 244, 35 Stat. 1138; June 15, 1935, ch. 261, title II, § 201, 49 Stat. 381.)

#### DERIVATION

Act May 25, 1900, ch. 553, § 4, 31 Stat. 188, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 395. Dead bodies of game animals or game or song birds, subject to laws of State.

All dead bodies, or parts thereof, of any foreign game animals, or game or song birds the importation of which is prohibited, or the dead bodies, or parts thereof, of any wild game animals or game or song birds transported into any State or Territory, or remaining therein for use, consumption, sale, or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such animals or birds had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise. (May 25, 1900, ch. 553, § 5, 31 Stat. 188.)

§ 396. (Criminal Code, section 245.) Importing and transporting obscene books.

Whoever shall bring or cause to be brought into the United States, or any place subject to the jurisdiction thereof, from any foreign country, or shall therein knowingly deposit or cause to be deposited with any express company or other common carrier, for carriage from one State, Territory, or District of the United States or place noncontig-

uous to but subject to the jurisdiction thereof, to any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any place in or subject to the jurisdiction of the United States, through a foreign country, to any place in or subject to the jurisdiction thereof, or from any place in or subject to the jurisdiction of the United States to a foreign country, any obscene, lewd, or lascivious, or any filthy book, pamphlet, picture, motion-picture film, paper, letter, writing, print, or other matter of indecent character, or any drug, medicine, article, or thing designed, adapted, or intended for preventing conception, or producing abortion, or for any indecent or immoral use; or any written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, how, or of whom, or by what means any of the hereinbefore mentioned articles, matters, or things may be obtained or made; or whoever shall knowingly take or cause to be taken from such express company or other common carrier any matter or thing the depositing of which for carriage is herein made unlawful, shall be fined not more than \$5,000 or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, § 245, 35 Stat. 1138; June 5, 1920, ch. 268, 41 Stat. 1060.)

DERIVATION

Act Feb. 8, 1897, ch. 172, 29 Stat. 512, as amended by act Feb. 8, 1905, ch. 550, 33 Stat. 705, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 396a. Transportation or importation of convict-made goods; prohibition; penalty; exceptions.**

Whoever shall knowingly transport or knowingly cause to be transported in interstate commerce, in any manner or by any means whatsoever, or aid or assist, knowingly, in obtaining transportation for or in transporting any goods, wares, and merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners (except convicts or prisoners on parole or probation) or in any penal or reformatory institution, from one State, Territory, Puerto Rico, Virgin Islands, or District of the United States, or place noncontiguous but subject to the jurisdiction thereof, or from any foreign country, into any State, Territory, Puerto Rico, Virgin Islands, or District of the United States, or place noncontiguous but subject to the jurisdiction thereof, shall be punished by a fine of not more than \$1,000 or by imprisonment of not more than one year, or both: *Provided*, That nothing herein shall apply to commodities manufactured in Federal or District of Columbia penal and correctional institutions for use by the Federal Government or to commodities manufactured in any State penal or correctional institution for use by any other State, or States, or political subdivisions thereof; to parts for the repair of farm machinery; or to agricultural commodities: *Provided further*, That this section shall go into effect one year after its approval by the President. (Oct. 14, 1940, ch. 872, 54 Stat. 1134.)

CROSS REFERENCE

Divesting prison-made goods of interstate character, see section 60 of Title 49, Transportation.

**§ 396b. Transportation or importation of convict-made goods with intent to use in violation of local law; prohibition; exceptions.**

It shall be unlawful for any person knowingly to transport or cause to be transported, in any manner or by any means whatsoever, or aid or assist in obtaining transportation for or in transporting any goods, wares, and merchandise manufactured, produced, or mined wholly or in part by convicts or prisoners (except convicts or prisoners on parole or probation), or in any penal or reformatory institution, from one State, Territory, Puerto Rico, Virgin Islands, or District of the United States, or place noncontiguous but subject to the jurisdiction thereof, or from any foreign country, into any State, Territory, Puerto Rico, Virgin Islands, or District of the United States, or place noncontiguous but subject to the jurisdiction thereof, where said goods, wares, and merchandise are intended by any person interested therein to be received, possessed, sold, or in any manner used, either in the original package or otherwise in violation of any law of such State, Territory, Puerto Rico, Virgin Islands, or District of the United States, or place noncontiguous but subject to the jurisdiction thereof. Nothing herein shall apply to commodities manufactured in Federal penal and correctional institutions for use by the Federal Government. (July 24, 1935, ch. 412, § 1, 49 Stat. 494.)

**§ 396c. Same; marking packages.**

All packages containing any goods, wares, and merchandise manufactured, produced, or mined wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, when shipped or transported in interstate or foreign commerce shall be plainly and clearly marked, so that the name and address of the shipper, the name and address of the consignee, the nature of the contents, and the name and location of the penal or reformatory institution where produced wholly or in part may be readily ascertained on an inspection of the outside of such package. (July 24, 1935, ch. 412, § 2, 49 Stat. 494.)

**§ 396d. Same; penalties for violation.**

Any person violating any provision of sections 61 and 62 of this title shall for each offense, upon conviction thereof, be punished by a fine of not more than \$1,000, and such goods, wares, and merchandise shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law. (July 24, 1935, ch. 412, § 3, 49 Stat. 495.)

**§ 396e. Same; jurisdiction of violations.**

Any violation of sections 61 and 62 of this title shall be prosecuted in any court having jurisdiction of crime within the district in which said violation was committed, or from, or into which any such goods, wares, or merchandise may have been carried or transported, or in any Territory, Puerto Rico, Virgin Islands, or the District of Columbia, contrary to the provisions of said sections. (July 24, 1935, ch. 412, § 4, 49 Stat. 495.)

**§ 397. White-slave traffic; terms defined.**

The term "interstate commerce", as used in this section and sections 398-404 of this title, shall include transportation from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, and the term "foreign commerce" shall include transportation from any State or Territory or the District of Columbia to any foreign country and from any foreign country to any State or Territory or the District of Columbia. (June 25, 1910, ch. 395, § 1, 36 Stat. 825.)

**§ 398. Same; transportation of woman or girl for immoral purposes, or procuring ticket.**

Any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding \$5,000, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court. (June 25, 1910, ch. 395, § 2, 36 Stat. 825.)

**§ 399. Same; inducing transportation for immoral purposes.**

Any person who shall knowingly persuade, induce, entice, or coerce, or cause to be persuaded, induced, enticed, or coerced, or aid or assist in persuading, inducing, enticing, or coercing any woman or girl to go from one place to another in interstate or foreign commerce, or in any Territory or the District of Columbia, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and who shall thereby knowingly cause or aid or assist in causing such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or any Territory or the District of Columbia, shall be deemed guilty of a felony and on

conviction thereof shall be punished by a fine of not more than \$5,000, or by imprisonment for a term not exceeding five years, or by both such fine and imprisonment, in the discretion of the court. (June 25, 1910, ch. 395, § 3, 36 Stat. 825.)

**§ 400. Same; inducing interstate transportation of woman or girl under 18 for immoral purposes.**

Any person who shall knowingly persuade, induce, entice, or coerce any woman or girl under the age of eighteen years from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, with the purpose and intent to induce or coerce her, or that she shall be induced or coerced to engage in prostitution or debauchery, or any other immoral practice, and shall in furtherance of such purpose knowingly induce or cause her to go and to be carried or transported as a passenger in interstate commerce upon the line or route of any common carrier or carriers, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine of not more than \$10,000, or by imprisonment for a term not exceeding ten years, or by both such fine and imprisonment, in the discretion of the court. (June 25, 1910, ch. 395, § 4, 36 Stat. 826.)

**§ 401. Same; jurisdiction of prosecutions.**

Any violation of any of sections 398-400 of this title shall be prosecuted in any court having jurisdiction of crimes within the district in which said violation was committed, or from, through, or into which any such woman or girl may have been carried or transported as a passenger in interstate or foreign commerce, or in any Territory or the District of Columbia, contrary to the provisions of any of said sections. (June 25, 1910, ch. 395, § 5, 36 Stat. 826.)

**§ 402. Same; (1) Prevention of transportation in foreign commerce of alien women and girls under international agreement; Commissioner of Immigration and Naturalization designated as authority to receive information; duty to receive and keep statements of and pertaining to them.**

For the purpose of regulating and preventing the transportation in foreign commerce of alien women and girls for purposes of prostitution and debauchery, and in pursuance of and for the purpose of carrying out the terms of the agreement or project of arrangement for the suppression of the white-slave traffic, adopted July 25, 1902, for submission to their respective governments by the delegates of various powers represented at the Paris Conference and confirmed by a formal agreement signed at Paris on May 18, 1904, and adhered to by the United States on June 6, 1908, as shown by the proclamation of the President of the United States dated June 15, 1908, the Commissioner of Immigration and Naturalization is hereby designated as the authority of the United States to receive and centralize information concerning the procurement of alien women and girls with a view to their debauchery, and to exercise supervision over such alien women and girls, receive their declarations, establish their identity, and ascertain from them who induced them to leave their

native countries, respectively; and it shall be the duty of said Commissioner of Immigration and Naturalization to receive and keep on file in his office the statements and declarations which may be made by such alien women and girls, and those which are hereinafter required pertaining to such alien women and girls engaged in prostitution or debauchery in this country, and to furnish receipts for such statements and declarations provided for in sections 397-404 of this title to the persons, respectively, making and filing them.

(2) Statement by person keeping woman or girl for immoral purposes; failure to file, making false statement, or failure to disclose facts.

Every person who shall keep, maintain, control, support, or harbor in any house or place for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl within three years after she shall have entered the United States from any country, party to the said arrangement for the suppression of the white-slave traffic, shall file with the Commissioner of Immigration and Naturalization a statement in writing setting forth the name of such alien woman or girl, the place at which she is kept, and all facts as to the date of her entry into the United States, the port through which she entered, her age, nationality, and parentage, and concerning her procuration to come to this country within the knowledge of such person, and any person who shall fail within thirty days after such person shall commence to keep, maintain, control, support, or harbor in any house or place for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl within three years after she shall have entered the United States from any of the countries, party to the said arrangement for the suppression of the white-slave traffic, to file such statement concerning such alien woman or girl with the Commissioner of Immigration and Naturalization, or who shall knowingly and willfully state falsely or fail to disclose in such statement any fact within his knowledge or belief with reference to the age, nationality, or parentage of any such alien woman or girl, or concerning her procuration to come to this country, shall be deemed guilty of a misdemeanor and, on conviction, shall be punished by a fine of not more than \$2,000 or by imprisonment for a term not exceeding two years, or by both such fine and imprisonment, in the discretion of the court.

(3) Presumption of failure to file statement not on file; failure to furnish not excused by self-criminating tendency; immunity from prosecution.

In any prosecution brought under sections 397-404 of this title, if it appear that any such statement required is not on file in the office of the Commissioner of Immigration and Naturalization, the person whose duty it shall be to file such statement shall be presumed to have failed to file said statement, unless such person or persons shall prove otherwise. No person shall be excused from furnishing the statement, as required by this section, on the ground or for the reason that the statement so required by him, or the information therein contained, might tend to criminate him or subject him to a penalty or forfeiture, but no person shall be prosecuted or sub-

jected to any penalty or forfeiture under any law of the United States for or on account of any transaction, matter, or thing, concerning which he may truthfully report in such statement. (June 25, 1910, ch. 395, § 6, 36 Stat. 826; Ex. Ord. No. 6166, § 14, June 10, 1933.)

CROSS REFERENCE

Offense punishable by imprisonment for term in excess of one year declared a felony, see section 541 of this title.

§ 403. Same; "Territory", "person" construed; liability of persons or corporations for acts and omissions of officers, agents, or employees.

The term "Territory", as used in sections 397-404 of this title, shall include the Territory of Alaska, the insular possessions of the United States, and the Canal Zone. The word "person" shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies, and associations. When construing and enforcing the provisions of sections 397-404, the act, omission, or failure of any officer, agent, or other person, acting for or employed by any other person or by any corporation, company, society, or association within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such other person, or of such company, corporation, society, or association, as well as that of the person himself. (June 25, 1910, ch. 395, § 7, 36 Stat. 827; Aug. 24, 1912, ch. 387, § 1, 37 Stat. 512.)

CROSS REFERENCE

Territory of Alaska organized, see section 21 of Title 48, Territories and Insular Possessions.

§ 404. Same; citation.

Sections 397-404 of this title shall be known and referred to as the "White Slave Traffic Act." (June 25, 1910, ch. 395, § 8, 36 Stat. 827.)

§§ 405-407. Repealed. June 29, 1940, ch. 443, § 2, 54 Stat. 686.

Sections, act July 31, 1912, ch. 263, §§ 1-3, 37 Stat. 240, related to the transportation of prize-fight films. Present provisions relating to that subject are now contained in section 1001 of Title 15, Commerce and Trade.

§ 407a. Transporting strikebreakers; penalty; application to common carriers.

(a) It shall be unlawful to transport or cause to be transported in interstate or foreign commerce any person who is employed or is to be employed for the purpose of obstructing or interfering by force or threats with (1) peaceful picketing by employees during any labor controversy affecting wages, hours, or conditions of labor; or (2) the exercise by employees of any of the rights of self organization, collective bargaining.

(b) Any person who willfully violates or aids or abets any person in violating any provision of this section, and any person who is knowingly transported in or travels in interstate or foreign commerce for any of the purposes enumerated in this section, shall be deemed guilty of a felony, and shall, upon conviction thereof, be fined not more than \$5,000 or imprisoned not more than two years, or both.

(c) The provisions of this section shall not apply to common carriers. (June 24, 1936, ch. 746, 49 Stat. 1899; June 29, 1938, ch. 813, 52 Stat. 1242.)

**§ 408. Motor vehicles; transportation, etc., of stolen vehicles.**

This section may be cited as the National Motor Vehicle Theft Act. The term "motor vehicle" when used in this section shall include an automobile, automobile truck, automobile wagon, motorcycle, or any other self-propelled vehicle not designed for running on rails; the term "interstate or foreign commerce" shall include transportation from one State, Territory, or the District of Columbia, to another State, Territory, or the District of Columbia, or to a foreign country, or from a foreign country to any State, Territory, or the District of Columbia. Whoever shall transport or cause to be transported in interstate or foreign commerce a motor vehicle, knowing the same to have been stolen, shall be punished by a fine of not more than \$5,000, or by imprisonment of not more than five years, or both. Whoever shall receive, conceal, store, barter, sell, or dispose of any motor vehicle, moving as, or which is a part of, or which constitutes interstate or foreign commerce, knowing the same to have been stolen, shall be punished by a fine of not more than \$5,000, or by imprisonment of not more than five years, or both. Any person violating this section may be punished in any district in or through which such motor vehicle has been transported or removed by such offender. (Oct. 29, 1919, ch. 89, §§ 1-5, 41 Stat. 324.)

**§ 408a. Kidnaped persons; transportation, etc., of persons unlawfully detained.**

Whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall, upon conviction, be punished (1) by death if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed, or (2) if the death penalty shall not apply nor be imposed the convicted person shall be punished by imprisonment in the penitentiary for such term of years as the court in its discretion shall determine: *Provided*, That the failure to release such person within seven days after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away shall create a presumption that such person has been transported in interstate or foreign commerce, but such presumption shall not be conclusive. (June 22, 1932, ch. 271, § 1, 47 Stat. 326; May 18, 1934, ch. 301, 48 Stat. 781.)

**§ 408b. Same; interstate or foreign commerce defined.**

The term "interstate or foreign commerce", as used in section 408a of this title, shall include transportation from one State, Territory, or the District of Columbia to another State, Territory, or the Dis-

trict of Columbia, or to a foreign country, or from a foreign country to any State, Territory, or the District of Columbia. (June 22, 1932, ch. 271, § 2, 47 Stat. 326; May 18, 1934, ch. 301, 48 Stat. 782.)

**§ 408c. Same; conspiracy.**

If two or more persons enter into an agreement, confederation, or conspiracy to violate the provisions of sections 408a and 408b of this title, and do any overt act toward carrying out such unlawful agreement, confederation, or conspiracy, such person or persons shall be punished in like manner as provided for by said sections. (June 22, 1932, ch. 271, § 3, 47 Stat. 326; May 18, 1934, ch. 301, 48 Stat. 782.)

**§ 408c-1. Same; receiving or possessing ransom money.**

Whoever receives, possesses, or disposes of any money or other property, or any portion thereof, which has at any time been delivered as ransom or reward in connection with a violation of section 408a of this title, knowing the same to be money or property which has been at any time delivered as such ransom or reward, shall be punished by a fine of not more than \$10,000 or imprisonment in the penitentiary for not more than ten years, or both. (June 22, 1932, ch. 271, § 4, as added Jan. 24, 1936, ch. 29, 49 Stat. 1099.)

**§ 408d. Threatening communications in interstate commerce.**

(a) Whoever shall transmit in interstate commerce, by any means whatsoever, any communication containing any demand or request for a ransom or reward for the release of any kidnaped person; or whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, shall transmit, as aforesaid, any communication containing any threat to kidnap any person or any threat to injure the person of another shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both.

(b) Whoever shall transmit in interstate commerce by any means whatsoever any communication containing any threat to kidnap any person or any threat to injure the person of another shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

(c) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, shall transmit in interstate commerce by any means whatsoever any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime shall be fined not more than \$500 or imprisoned not more than two years, or both.

(d) Any person violating the provisions of this section may be prosecuted in the judicial district from or into which such threat is transmitted, as aforesaid: *Provided*, That any defendant in an indictment hereunder, relating to communications originating in the United States, shall, upon motion duly made, be entitled as a matter of right to be tried in the district court of the United States in



which the matter mailed or otherwise transmitted was set first in motion; that is, in the mails or in commerce between the States. The term "interstate commerce," as used in this section, shall include communication from one State, Territory, or the District of Columbia, to another State, Territory, or the District of Columbia. (May 18, 1934, ch. 300, 48 Stat. 781; May 15, 1939, ch. 133, § 2, 53 Stat. 743.)

**§ 408e. Moving in interstate or foreign commerce to avoid prosecution for felony or giving testimony.**

It shall be unlawful for any person to move or travel in interstate or foreign commerce from any State, Territory, or possession of the United States, or the District of Columbia, with intent either (1) to avoid prosecution for murder, kidnaping, burglary, robbery, mayhem, rape, assault with a dangerous weapon, or extortion accompanied by threats of violence, or attempt to commit any of the foregoing, under the laws of the place from which he flees, or (2) to avoid giving testimony in any criminal proceedings in such place in which the commission of a felony is charged. Any person who violates the provision of this section shall, upon conviction thereof, be punished by a fine of not more than \$5,000 or by imprisonment for not longer than five years, or by both such fine and imprisonment. Violations of this section may be prosecuted only in the Federal judicial district in which the original crime was alleged to have been committed. (May 18, 1934, ch. 302, 48 Stat. 782.)

**§ 409. Larceny, etc., of goods in interstate or foreign commerce; penalty.**

Whoever shall unlawfully break the seal of any railroad car containing interstate or foreign shipments of freight or express, or shall enter any such car with intent in either case to commit larceny therein; or whoever shall steal or unlawfully take, carry away, or conceal, or by fraud or deception obtain from any railroad car, station house, platform, depot, wagon, automobile, truck, or other vehicles, or from any steamboat, vessel, or wharf, with intent to convert to his own use any goods or chattels moving as or which are a part of or which constitute an interstate or foreign shipment of freight or express, or shall buy or receive or have in his possession any such goods or chattels, knowing the same to have been stolen; or whoever shall steal or shall unlawfully take, carry away, or by fraud or deception obtain with intent to convert to his own use any baggage which shall have come into the possession of any common carrier for transportation from one State or Territory or the District of Columbia to another State or Territory or the District of Columbia or to a foreign country, or from a foreign country to any State or Territory or the District of Columbia, or shall break into, steal, take, carry away, or conceal any of the contents of such baggage, or shall buy, receive, or have in his possession any such baggage or any article therefrom of whatever nature, knowing the same to have been stolen, or whoever shall steal or shall unlawfully take by any fraudulent device, scheme, or game, from any passenger car, sleeping car, or dining car, or from any passenger or from the possession of any passenger while on or in such

passenger car, sleeping car, or dining car, when such car is a part of a train moving from one State or Territory or the District of Columbia to another State or Territory or the District of Columbia or to a foreign country, or from a foreign country to any State or Territory or the District of Columbia, any money, baggage, goods, or chattels, or who shall buy, receive, or have in his possession any such money, baggage, goods, or chattels, knowing the same to have been stolen, shall in each case be fined not more than \$5,000 or imprisoned not more than ten years, or both, and prosecutions therefor may be instituted in any district wherein the crime shall have been committed or in which the defendant may have taken or been in possession of the said money, baggage, goods, or chattels. The carrying or transporting of any such money, freight, express, baggage, goods, or chattels from one State or Territory or the District of Columbia into another State or Territory or the District of Columbia, knowing the same to have been stolen, shall constitute a separate offense and subject the offender to the penalties above described for unlawful taking, and prosecutions therefor may be instituted in any district into which such money, freight, express, baggage, goods, or chattels shall have been removed or into which they shall have been brought by such offender. The words "station house," "platform," "depot," "wagon," "automobile," "truck," or "other vehicle," as used in this section, shall include any station house, platform, depot, wagon, automobile, truck, or other vehicle of any person, firm, association, or corporation having in his or its custody therein or thereon any freight, express, goods, chattels, shipments, or baggage moving as or which are a part of or which constitute an interstate or foreign shipment. (Feb. 13, 1913, ch. 50, § 1, 37 Stat. 670; Jan. 28, 1925, ch. 102, 43 Stat. 793; Jan. 21, 1933, ch. 16, 47 Stat. 773.)

**§ 410. Same; jurisdiction of State courts unimpaired; double jeopardy.**

Nothing in section 409 of this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts. (Feb. 13, 1913, ch. 50, § 2, 37 Stat. 670; Jan. 28, 1925, ch. 102, 43 Stat. 794; Jan. 21, 1933, ch. 16, 47 Stat. 774.)

**§ 411. Same; proof of character of shipments.**

To establish the interstate or foreign commerce character of any shipment in any prosecution under section 409 of this title the waybill of such shipment shall be prima facie evidence of the place from which and to which such shipment was made. (Feb. 13, 1913, ch. 50, § 3; Jan. 28, 1925, ch. 102, 43 Stat. 794; Jan. 21, 1933, ch. 16, 47 Stat. 774.)

**§ 412. Embezzlement, etc., by officers of carrier; jurisdiction; double jeopardy.**

Every president, director, officer, or manager of any firm, association, or corporation engaged in commerce as a common carrier, who embezzles, steals, abstracts, or willfully misapplies, or willfully permits



to be misapplied, any of the moneys, funds, credits, securities, property, or assets of such firm, association, or corporation arising or accruing from, or used in, such commerce, in whole or in part, or willfully or knowingly converts the same to his own use or to the use of another, shall be deemed guilty of a felony and upon conviction shall be fined not less than \$500, or confined in the penitentiary not less than one year nor more than ten years, or both, in the discretion of the court.

Prosecutions hereunder may be in the district court of the United States for the district wherein the offense may have been committed.

Nothing in this section shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts. (Oct. 15, 1914, ch. 323, § 9, 38 Stat. 733.)

#### § 412a. Wrecking trains; attempt; penalty.

Whoever shall willfully derail, disable, or wreck any train, engine, motor unit, or car used, operated, or employed in interstate or foreign commerce by any railroad, or whoever shall willfully set fire to, or place any explosive substance on or near, or undermine any tunnel, bridge, viaduct, trestle, track, signal, station, depot, warehouse, terminal, or any other way, structure, property, or appurtenance used in the operation of any such railroad in interstate or foreign commerce, or otherwise make any such tunnel, bridge, viaduct, trestle, track, signal, station, depot, warehouse, terminal, or any other way, structure, property, or appurtenance unworkable or unusable or hazardous to work or use, with the intent to derail, disable, or wreck a train, engine, motor unit, or car used, operated, or employed in interstate or foreign commerce or whoever shall willfully attempt to do any of the aforesaid acts or things, shall be deemed guilty of a crime, and on conviction thereof shall be subject to a fine of not more than \$10,000 or imprisonment for not more than twenty years, or both fine and imprisonment in the discretion of the court: *Provided*, That whoever shall be convicted of any such crime, which has resulted in the death of any person, shall be subject also to the death penalty or to imprisonment for life, if the jury shall in its discretion so direct, or, in the case of a plea of guilty, if the court in its discretion shall so order.

Nothing in this section shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts. (June 8, 1940, ch. 286, 54 Stat. 255.)

#### § 413. National Stolen Property Act; citation.

Sections 413–419 of this title may be cited as the “National Stolen Property Act.” (May 22, 1934, ch. 333, § 1, 48 Stat. 794.)

#### § 414. Same; definitions.

When used in sections 413–419 of this title—

(a) The term “interstate or foreign commerce” shall mean transportation from one State, Territory, or the District of Columbia to another State, Territory, or the District of Columbia, or to a foreign country, or from a foreign country to any State, Territory, or the District of Columbia.

(b) The term “securities” shall include any note, stock certificate, bond, debenture, check, draft, warrant, traveler’s check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate; certificate of interest in property, tangible or intangible; instrument or document or writing evidencing ownership of goods, wares, and merchandise; or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise, or, in general, any instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing, or any forged, counterfeited, or spurious representation of any of the foregoing.

(c) The term “money” shall mean the legal tender of the United States or of any foreign country, or any counterfeited thereof. (May 22, 1934, ch. 333, § 2, 48 Stat. 794.)

#### § 415. Same; transportation of stolen or feloniously taken goods, securities, or monies; transportation of articles used in counterfeiting.

Whoever shall transport or cause to be transported in interstate or foreign commerce any goods, wares, or merchandise, securities, or money, of the value of \$5,000 or more theretofore stolen, feloniously converted, or taken feloniously by fraud or with intent to steal or purloin, knowing the same to have been so stolen, feloniously converted, or taken, or whoever with unlawful or fraudulent intent shall transport or cause to be transported in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities, knowing the same to have been falsely made, forged, altered, or counterfeited, or whoever with unlawful or fraudulent intent shall transport, or cause to be transported in interstate or foreign commerce, any bed piece, bed plate, roll, plate, die, seal, stone, type, or other tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security, or any part thereof, shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than ten years, or both: *Provided*, That the provisions of this section shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of (1) an “obligation or other security of the United States” as defined in section 261 of this title or (2) an obligation, bond, certificate, security, treasury note, bill, promise to pay, or bank note, issued by any “foreign government” as defined in section 288 of this title, or by a bank or corporation of any foreign country. (May 22, 1934, ch. 333,

§ 3, 48 Stat. 794; Aug. 3, 1939, ch. 413, § 1, 53 Stat. 1178.)

§ 416. Same; receipt or disposal of goods, securities or monies feloniously taken; receipt of articles used in counterfeiting.

Whoever shall receive, conceal, store, barter, sell, or dispose of any goods, wares, or merchandise, securities, or money of the value of \$5,000 or more, or whoever shall pledge or accept as security for a loan any goods, wares, or merchandise, or securities, of the value of \$500 or more, moving as, or which are a part of, or which constitute interstate or foreign commerce, knowing the same to have been stolen, unlawfully converted, or taken, or whoever shall receive, conceal, store, barter, sell, or dispose of any falsely made, forged, altered, or counterfeited securities, or whoever shall pledge or accept as security for a loan any falsely made, forged, altered, or counterfeited securities, moving as, or which are a part of, or which constitute interstate or foreign commerce, knowing the same to have been so falsely made, forged, altered, or counterfeited, or whoever shall receive in interstate or foreign commerce, or conceal, store, barter, sell, or dispose of, any such bed piece, bed plate, roll, plate, die, seal, stone, type, or other tool, implement, or thing used or intended to be used in falsely making, forging, altering, or counterfeiting any security, or any part thereof, moving as, or which is a part of, or which constitutes interstate or foreign commerce, knowing that the same is fitted to be used, or has been used, in falsely making, forging, altering, or counterfeiting any security, or any part thereof, shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than ten years, or both: *Provided*, That the provisions of this section shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of (1) an "obligation or other security of the United States" as defined in section 261 of this title or (2) an obligation, bond, certificate, security, Treasury note, bill, promise to pay, or bank note issued by any "foreign government" as defined in section 288 of this title, or by a bank or corporation of any foreign country. (May 22, 1934, ch. 333, § 4, 48 Stat. 795; Aug. 3, 1939, ch. 413, § 2, 53 Stat. 1178.)

§ 417. Same; indictment for more offenses.

In the event that a defendant is charged in the same indictment with two or more violations of sections 413–419 of this title, then the aggregate value of all goods, wares, and merchandise, securities, and money referred to in such indictment shall constitute the value thereof for the purposes of sections 415 and 416 of this title, and the value of any securities referred to shall be considered to be the face, par, or market value, whichever is the greatest. (May 22, 1934, ch. 333, § 5, 48 Stat. 795; Aug. 3, 1939, ch. 413, § 3, 53 Stat. 1178.)

§ 418. Same; jurisdiction.

Any person violating sections 413–419 of this title may be tried in any district from, into, or through which such goods, wares, or merchandise, or such securities, or money or such falsely made, forged,

altered, or counterfeited securities have been transported or removed. (May 22, 1934, ch. 333, § 6, 48 Stat. 795; Aug. 3, 1939, ch. 413, § 4, 53 Stat. 1178.)

§ 418a. Same; conspiracy.

If two or more persons enter into an agreement, confederation, or conspiracy to violate any provision of sections 413–419 of this title, and do any overt act toward carrying out such unlawful agreement, confederation, or conspiracy, such person or persons shall be punished in like manner as hereinbefore provided by sections 413–419 of this title. (May 22, 1934, ch. 333, § 7, as added Aug. 3, 1939, ch. 413, § 5, 53 Stat. 1179.)

§ 419. Same; section 408 of this title unaffected.

Nothing in sections 413–418 of this title shall be construed to repeal, modify, or amend any part of section 408 of this title, cited as the "National Motor Vehicle Theft Act." (May 22, 1934, ch. 333, § 7, 48 Stat. 795, renumbered § 8 by Aug. 3, 1939, ch. 413, § 6, 53 Stat. 1179.)

§ 420. Compacts between States for cooperation in prevention of crime; consent of Congress.

The consent of Congress is hereby given to any two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts. (June 6, 1934, ch. 406, § 1, 48 Stat. 909.)

§ 420a. Interference with trade and commerce by violence, threats, etc.; penalties.

Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—

(a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, not including, however, the payment of wages by a bona fide employer to a bona fide employee; or

(b) Obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right; or

(c) Commits or threatens to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate subsections (a) or (b); or

(d) Conspires or acts concertedly with any other person or persons to commit any of the foregoing acts, shall, upon conviction thereof, be guilty of a felony and shall be punished by imprisonment from one to ten years or by a fine of \$10,000, or both. (June 18, 1934, ch. 569, § 2, 48 Stat. 979.)

§ 420b. Same; definitions.

(a) As used in section 420a of this title the term "wrongful" means in violation of the criminal laws of the United States or of any State or Territory.

(b) The terms "property", "money", or "valuable considerations" used in section 420a of this title shall not be deemed to include wages paid by a bona fide employer to a bona fide employee.

(c) The term "trade or commerce", as used in section 420a of this title, is defined to mean trade or commerce between any States, with foreign nations, in the District of Columbia, in any Territory of the United States, between any such Territory or the District of Columbia and any State or other Territory, and all other trade or commerce over which the United States has constitutional jurisdiction. (June 18, 1934, ch. 569, §§ 1, 3, 48 Stat. 979, 980.)

**§ 420c. Same; prosecutions.**

Prosecutions under sections 420a–420e of this title shall be commenced only upon the express direction of the Attorney General of the United States. (June 18, 1934, ch. 569, § 4, 48 Stat. 980.)

**§ 420d. Same; jurisdiction of offenses.**

Any person charged with violating section 420a of this title may be prosecuted in any district in which any part of the offense has been committed by him or by his actual associates participating with him in the offense or by his fellow conspirators: *Provided*, That no court of the United States shall construe or apply any of the provisions of sections 420a–420e of this title in such manner as to impair, diminish, or in any manner affect the rights of bona fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States. (June 18, 1934, ch. 569, § 6, 48 Stat. 980.)

**§ 420e. Same; separability clause.**

If any provisions of sections 420a–420d of this title or the application thereof to any person or circumstance is held invalid, the remainder of said sections and the application of such provision to other persons or circumstances shall not be affected thereby. (June 18, 1934, ch. 569, § 5, 48 Stat. 980.)

**Chapter 10.—SLAVE TRADE AND PEONAGE**

Sec.

- 421. Confining, detaining, or selling slaves on vessel.
- 422. Seizing slaves on foreign shores.
- 423. Bringing slaves into United States.
- 424. Equipping vessels for slave trade.
- 425. Transporting persons to be held as slaves.
- 426. Hovering on coast with slaves on board.
- 427. Serving on vessels in slave trade.
- 428. Receiving or carrying away person to be sold or held as slave.
- 429. Equipping vessel for slave trade; forfeiture; moiety to informer.
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Sec.

- 441. When owners of foreign vessels shall give bond.
- 442. Instructions to masters of armed vessels.
- 443. Kidnaping.
- 444. Holding or returning persons to peonage.
- 445. Same; obstructing enforcement of law.
- 446. Bringing kidnaped person into United States.

**§ 421. (Criminal Code, section 246.) Confining, detaining, or selling slaves on vessel.**

Whoever, being of the crew or ship's company of any foreign vessel engaged in the slave trade, or being of the crew or ship's company of any vessel owned wholly or in part, or navigated for or in behalf of any citizen of the United States, forcibly confines or detains on board such vessel any person as a slave, or, on board such vessel, offers or attempts to sell as a slave any such person, or on the high seas or anywhere on tide water, transfers or delivers to any other vessel any such person with intent to make such person a slave, or lands or delivers on shore from on board such vessel any person with intent to make sale of, or having previously sold such person as a slave, is a pirate, and shall be imprisoned for life. (Mar. 4, 1909, ch. 321, § 246, 35 Stat. 1138.)

**DERIVATION**

R. S. § 5375, which was revised from acts May 15, 1820, ch. 113, 3 Stat. 601; Jan. 15, 1897, ch. 29, § 2, 29 Stat. 487, which were repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 422. (Criminal Code, section 247.) Seizing slaves on foreign shores.**

Whoever, being of the crew or ship's company of any foreign vessel engaged in the slave trade, or being of the crew or ship's company of any vessel owned in whole or in part, or navigated for, or in behalf of, any citizen of the United States, lands from such vessel, and, on any foreign shore, seizes any person with intent to make such person a slave, or decoys, or forcibly brings, or carries or receives such person on board such vessel, with like intent, is a pirate, and shall be imprisoned for life. (Mar. 4, 1909, ch. 321, § 247, 35 Stat. 1139.)

**DERIVATION**

R. S. § 5376, which was revised from acts May 15, 1820, ch. 113, 3 Stat. 600; Jan. 15, 1897, ch. 29, § 2, 29 Stat. 487, which were repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 423. (Criminal Code, section 248.) Bringing slaves into United States.**

Whoever brings within the jurisdiction of the United States, in any manner whatsoever, any person from any foreign kingdom or country, or from sea, or holds, sells, or otherwise disposes of, any person so brought in, as a slave, or to be held to service or labor, shall be fined not more than \$10,000, one-half to the use of the United States and the other half to the use of the party who prosecutes the indictment to effect; and, moreover, shall be imprisoned not more than seven years. (Mar. 4, 1909, ch. 321, § 248, 35 Stat. 1139.)

**DERIVATION**

R. S. § 5377, which was revised from act Apr. 20, 1818, ch. 91, 3 Stat. 452 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 424. (Criminal Code, section 249.) Equipping vessels for slave trade.**

Whoever builds, fits out, equips, loads, or otherwise prepares or sends away, either as master, factor, or owner, any vessel, in any port or place within the jurisdiction of the United States, or causes such vessel to sail from any port or place whatsoever within such jurisdiction, for the purpose of procuring any person from any foreign kingdom or country to be transported to any port or place whatsoever, to be held, sold, or otherwise disposed of as a slave, or held to service or labor, shall be fined not more than \$5,000, one-half to the use of the United States and the other half to the use of the person prosecuting the indictment to effect; and shall, moreover, be imprisoned not more than seven years. (Mar. 4, 1909, ch. 321, § 249, 35 Stat. 1139.)

DERIVATION

R. S. § 5378, which was revised from act Apr. 20, 1818, ch. 91, 3 Stat. 451 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 425. (Criminal Code, section 250.) Transporting persons to be held as slaves.**

Whoever, within the jurisdiction of the United States, takes on board, receives, or transports from any foreign kingdom or country, or from sea, any person in any vessel for the purpose of holding, selling, or otherwise disposing of such person as a slave, or to be held to service or labor, shall be punished as prescribed in section 424 of this title. (Mar. 4, 1909, ch. 321, § 250, 35 Stat. 1139.)

DERIVATION

R. S. § 5379, which was revised from act Apr. 20, 1818, ch. 91, 3 Stat. 451 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 426. (Criminal Code, section 251.) Hovering on coast with slaves on board.**

Whoever, being the captain, master, or commander of any vessel found in any river, port, bay, harbor, or on the high seas within the jurisdiction of the United States, or hovering on the coast thereof, having on board any person for the purpose of selling such person as a slave, or with intent to land such person for any such purpose, shall be fined not more than \$10,000 and imprisoned not more than four years. (Mar. 4, 1909, ch. 321, § 251, 35 Stat. 1139.)

DERIVATION

R. S. § 5380, which was revised from act Mar. 2, 1807, ch. 22, 2 Stat. 428 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 427. (Criminal Code, section 252.) Serving on vessels in slave trade.**

Whoever, being a citizen of the United States, or other person residing therein, voluntarily serves on board of any vessel employed or made use of in the transportation of slaves from any foreign country or place to another shall be fined not more than \$2,000 and imprisoned not more than two years. (Mar. 4, 1909, ch. 321, § 252, 35 Stat. 1139.)

DERIVATION

R. S. §§ 5381, 5382, which were revised from act May 10, 1800, ch. 51, §§ 2, 3, 2 Stat. 70, 71 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 428. (Criminal Code, section 253.) Receiving or carrying away person to be sold or held as slave.**

Whoever, being the master or owner or person having charge of any vessel, receives on board any other person with the knowledge or intent that such person is to be carried from any place subject to the jurisdiction of the United States to any other place to be held or sold as a slave, or carries away from any place subject to the jurisdiction of the United States any such person with the intent that he may be so held or sold as a slave, shall be fined not more than \$5,000 or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, § 253, 35 Stat. 1139.)

DERIVATION

R. S. § 5524, which was revised from act May 21, 1866, ch. 86, 14 Stat. 50 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 429. (Criminal Code, section 254.) Equipping vessel for slave trade; forfeiture; moiety to informer.**

No person shall, for himself or for another, as master, factor, or owner, build, fit, equip, load, or otherwise prepare any vessel in any port or place within the jurisdiction of the United States, or cause any vessel to sail from any port or place within the jurisdiction of the United States, for the purpose of procuring any person from any foreign kingdom, place, or country to be transported to any port or place whatsoever to be held, sold, or otherwise disposed of as a slave, or to be held to service or labor; and every vessel so built, fitted out, equipped, laden, or otherwise prepared, with her tackle, apparel, furniture, and lading, shall be forfeited, one moiety to the use of the United States and the other to the use of the person who sues for the forfeiture and prosecutes the same to effect. (Mar. 4, 1909, ch. 321, § 254, 35 Stat. 1140.)

DERIVATION

R. S. § 5551, which was revised from acts Apr. 20, 1818, ch. 91, 3 Stat. 451; Mar. 22, 1794, ch. 11, 1 Stat. 347 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 430. (Criminal Code, section 255.) Same; penalty; moiety to informer.**

Whoever so builds, fits out, equips, loads, or otherwise prepares or sends away any vessel, knowing or intending that the same shall be employed in such trade or business, contrary to the provisions of section 429 of this title, or in any way aids or abets therein, shall, besides the forfeiture of the vessel, pay the sum of \$2,000; one moiety thereof to the use of the United States and the other moiety thereof to the use of the person who sues for and prosecutes the same to effect. (Mar. 4, 1909, ch. 321, § 255, 35 Stat. 1140.)

DERIVATION

R. S. § 5552, which was revised from act Mar. 22, 1794, ch. 11, 1 Stat. 349 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 431. (Criminal Code, section 256.) Forfeiture of vessels transporting slaves; moiety to informer.**

Every vessel employed in carrying on the slave trade or on which is received or transported any person from any foreign kingdom or country, or from sea, for the purpose of holding, selling, or otherwise disposing of such person as a slave, or of holding such person to service or labor, shall, together with

her tackle, apparel, furniture, and the goods and effects which may be found on board, or which may have been imported thereon in the same voyage, be forfeited; one moiety to the use of the United States and the other to the use of the person who sues for and prosecutes the forfeiture to effect. (Mar. 4, 1909, ch. 321, § 256, 35 Stat. 1140.)

## DERIVATION

R. S. § 5553, which was revised from acts Apr. 20, 1818, ch. 91, 3 Stat. 451; May 10, 1800, ch. 51, 2 Stat. 71, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 432. (Criminal Code, section 257.) Receiving persons on board to be sold as slaves; penalty; moiety to informer.

Whoever, being a citizen of the United States, takes on board, receives, or transports any person for the purpose of selling such person as a slave shall, in addition to the forfeiture of the vessel, pay for each person so received on board or transported the sum of \$200, to be recovered in any court of the United States; the one moiety thereof to the use of the United States and the other moiety to the use of the person who sues for and prosecutes the same to effect. (Mar. 4, 1909, ch. 321, § 257, 35 Stat. 1140.)

## DERIVATION

R. S. § 5554, which was revised from act Mar. 22, 1794, ch. 11, 1 Stat. 349, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 433. (Criminal Code, section 258.) Vessels found hovering on coasts forfeited.

Every vessel which is found in any river, port, bay, or harbor, or on the high seas, within the jurisdiction of the United States, or hovering on the coasts thereof, and having on board any person, with intent to sell such person as a slave, or with intent to land the same for that purpose, either in the United States or elsewhere, shall, together with her tackle, apparel, furniture, and the goods or effects on board of her, be forfeited to the United States. (Mar. 4, 1909, ch. 321, § 258, 35 Stat. 1140.)

## DERIVATION

R. S. § 5555, which was revised from act Mar. 2, 1807, ch. 22, 2 Stat. 428, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 434. (Criminal Code, section 259.) Forfeiture of interest in slave vessels; additional penalty.

It shall be unlawful for any citizen of the United States, or other person residing therein, or under the jurisdiction thereof, directly or indirectly to hold or have any right or property in any vessel employed or made use of in the transportation or carrying of slaves from one foreign country or place to another, and any such right or property shall be forfeited and may be libeled and condemned for the use of the person suing for the same. Whoever shall violate the prohibition of this section shall also forfeit and pay a sum of money equal to double the value of his right or property in such vessel; and shall also forfeit a sum of money equal to double the value of the interest he had in the slaves which at any time may be transported or carried in such vessels. (Mar. 4, 1909, ch. 321, § 259, 35 Stat. 1140.)

## DERIVATION

R. S. § 5556, which was revised from act May 10, 1800, ch. 51, 2 Stat. 70, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 435. (Criminal Code, section 260.) Seizure of vessels in slave trade.

The President is authorized, when he deems it expedient, to man and employ any of the armed vessels of the United States to cruise wherever he may judge attempts are 'making' to carry on the slave trade, by citizens or residents of the United States, in contravention of laws prohibitory of the same; and, in such case, he shall instruct the commanders of such armed vessels to seize, take, and bring into any port of the United States, to be proceeded against according to law, all American vessels, wheresoever found, which may have on board, or which may be intended for the purpose of taking on board, or of transporting, or may have transported any person, in violation of the provisions of any Act of Congress prohibiting the traffic in slaves. (Mar. 4, 1909, ch. 321, § 260, 35 Stat. 1140.)

<sup>1</sup> So in original.

## DERIVATION

R. S. § 5557, which was revised from acts May 10, 1800, ch. 51, 2 Stat. 71; Mar. 2, 1807, ch. 22, 2 Stat. 428; Mar. 3, 1819, ch. 101, 3 Stat. 532 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 436. (Criminal Code, section 261.) Proceeds of condemned vessels paid into Treasury.

The proceeds of all vessels, their tackle, apparel, and furniture, and the goods and effects on board of them, which are so seized, prosecuted, and condemned, shall be paid into the Treasury of the United States. (Mar. 4, 1909, ch. 321, § 261, 35 Stat. 1141.)

## DERIVATION

R. S. § 5558, which was revised from acts May 10, 1800, ch. 51, 2 Stat. 71; Mar. 2, 1807, ch. 22, 2 Stat. 428; Mar. 3, 1819, ch. 101, 3 Stat. 532 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

Prize money having been abolished by act of Mar. 3, 1899, ch. 413, § 13, 30 Stat. 1007, the section was changed to provide that the proceeds of captured vessels shall be paid into the Treasury of the United States.

R. S. § 5562, act of Mar. 3, 1819, ch. 101, 3 Stat. 583, was repealed by section 341 of act Mar. 4, 1909, but its provisions were not incorporated in the Code, possibly because of the abolition of prize money as heretofore noted. It read as follows:

"Sec. 5562. A bounty of twenty-five dollars shall be paid to the officers and crews of the commissioned vessels of the United States, or revenue-cutters for each negro, mulatto, or person of color, who may be, as hereinbefore provided, delivered to the marshal or agent duly appointed to receive such person; and the Secretary of the Treasury is required to pay or cause to be paid, to such officers and crews, or their agent, such bounty for each person so delivered."

§ 437. (Criminal Code, section 262.) Disposal of persons found on seized vessel.

The officers of the vessel making such seizure shall safely keep every person found on board of any vessel so seized, taken, or brought into port for condemnation, and shall deliver every such person to the marshal of the district into which he may be brought, if into a port of the United States, or if elsewhere, to such person as may be lawfully appointed by the President, in the manner directed by

law, transmitting to the President, as soon as may be after such delivery, a descriptive list of such persons, in order that he may give directions for the disposal of them. (Mar. 4, 1909, ch. 321, § 262, 35 Stat. 1141.)

DERIVATION

R. S. § 5559, which was revised from act Mar. 3, 1819, ch. 101, § 3 Stat. 532 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 438. (Criminal Code, section 263.) Apprehension of officers and crew.

The commanders of such commissioned vessels shall cause to be apprehended and taken into custody every person found on board of such offending vessel so seized and taken, being of the officers or crew thereof, and him convey, as soon as conveniently may be, to the civil authority of the United States, to be proceeded against in due course of law. (Mar. 4, 1909, ch. 321, § 263, 35 Stat. 1141.)

DERIVATION

R. S. § 5560, which was revised from acts Mar. 3, 1819, ch. 101, § 3 Stat. 532; May 10, 1800, ch. 51, 2 Stat. 71 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 439. (Criminal Code, section 264.) Removal of persons delivered from seized vessel.

The President is authorized to make such regulations and arrangements as he may deem expedient for the safe-keeping, support, and removal beyond the limits of the United States of all such persons as may be so delivered and brought within its jurisdiction. (Mar. 4, 1909, ch. 321, § 264, 35 Stat. 1141.)

DERIVATION

R. S. § 5561, which was revised from act Mar. 3, 1819, ch. 101, § 2, 3 Stat. 533, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 440. (Criminal Code, section 265.) To what port captured vessel sent.

It shall be the duty of the commander of any armed vessel of the United States, whenever he makes any capture under the preceding provisions, to bring the vessel and her cargo, for adjudication, into some port of the State, Territory, or District to which such vessel so captured may belong, if he can ascertain the same; if not, then into any convenient port of the United States. (Mar. 4, 1909, ch. 321, § 265, 35 Stat. 1141.)

DERIVATION

R. S. § 5563, which was revised from act Mar. 3, 1819, ch. 101, § 3 Stat. 534 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 441. (Criminal Code, section 266.) When owners of foreign vessels shall give bond.

Every owner, master, or factor of any foreign vessel clearing from any port within the jurisdiction of the United States, and suspected to be intended for the slave trade, and the suspicion being declared to the officer of the customs by any citizen, on oath, and such information being to the satisfaction of the officer, shall first give bond, with sufficient sureties, to the Treasurer of the United States that none of the natives of any foreign country or place shall be taken on board such vessel to be transported or sold as slaves in any other foreign port or place whatever,

within nine months thereafter. (Mar. 4, 1909, ch. 321, § 266, 35 Stat. 1141.)

DERIVATION

R. S. § 5564, which was revised from act Mar. 22, 1794, ch. 11, 1 Stat. 349 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 442. (Criminal Code, section 267.) Instructions to masters of armed vessels.

The President is authorized to issue instructions to the commanders of the armed vessels of the United States, directing them, whenever it is practicable, and under such rules and regulations as he may prescribe, to proceed directly to the country from which they were taken, and there hand over to the agent of the United States all such persons, delivered from on board vessels seized in the prosecution of the slave trade; and they shall afterwards bring the captured vessels and persons engaged in prosecuting such trade to the United States for trial and adjudication. (Mar. 4, 1909, ch. 321, § 267, 35 Stat. 1141.)

DERIVATION

R. S. § 5567, which was revised from act June 16, 1860, ch. 136, 12 Stat. 41 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 443. (Criminal Code, section 268.) Kidnaping.

Whoever kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave; or who entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he may be made or held as a slave, or sent out of the country to be so made or held; or who in any way knowingly aids in causing any other person to be held, sold, or carried away to be held or sold as a slave, shall be fined not more than \$5,000, or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, § 268, 35 Stat. 1141.)

DERIVATION

R. S. § 5525, which was revised from act May 21, 1866, ch. 86, 14 Stat. 50, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 444. (Criminal Code, section 269.) Holding or returning persons to peonage.

Whoever holds, arrests, returns, or causes to be held, arrested, or returned, or in any manner aids in the arrest or return of any person to a condition of peonage, shall be fined not more than \$5,000, or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, § 269, 35 Stat. 1142.)

DERIVATION

R. S. § 5526, which was revised from act Mar. 2, 1867, ch. 187, 14 Stat. 546, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 445. (Criminal Code, section 270.) Same; obstructing enforcement of law.

Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of section 444 of this title, shall be liable to the penalties therein prescribed. (Mar. 4, 1909, ch. 321, § 270, 35 Stat. 1142.)

## DERIVATION

R. S. § 5527, which was revised from act Mar. 2, 1867, ch. 187, 14 Stat. 546, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 446. (Criminal Code, section 271.) Bringing kidnaped person into United States.**

Whoever shall knowingly and willfully bring into the United States or any place subject to the jurisdiction thereof, any person inveigled or forcibly kidnaped in any other country, with intent to hold such person so inveigled or kidnaped in confinement or to any involuntary servitude; or whoever shall knowingly and willfully sell or cause to be sold, into any condition of involuntary servitude, any other person for any term whatever; or whoever shall knowingly and willfully hold to involuntary servitude any person so brought or sold, shall be fined not more than \$5,000 and imprisoned not more than five years. (Mar. 4, 1909, ch. 321, § 271, 35 Stat. 1142.)

## DERIVATION

Act June 23, 1874, ch. 464, § 1, 18 Stat. 251, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**Chapter 11.—OFFENSES WITHIN ADMIRALTY, MARITIME, AND TERRITORIAL JURISDICTION OF UNITED STATES**

## Sec.

- 451. Places and waters applicable; on board American vessel on high seas or Great Lakes; on land under exclusive control of United States; guano islands.
- 452. Murder; first degree; second degree.
- 453. Manslaughter; voluntary; involuntary.
- 454. Punishment; murder; manslaughter.
- 455. Felonious assaults; to murder or rape; other felony; with weapons; beating; simple assault.
- 456. Other attempts at murder.
- 457. Rape.
- 458. Carnal knowledge of female under sixteen.
- 459. Seduction of female passenger on vessel.
- 460. Disposal of fine; evidence required.
- 461. Loss of life by misconduct of officers of vessels; liability of corporation officer.
- 462. Maiming.
- 463. Robbery.
- 464. Arson of dwelling house.
- 465. Arson of other buildings.
- 466. Larceny; determining value of written instrument.
- 467. Receiving stolen goods; trials.
- 467a. Obtaining or selling evidences of indebtedness on the high seas fraudulently or by false pretenses.
- 468. Laws of States adopted for punishing wrongful acts; effect of repeal.
- 469. Stowing away on vessels; penalty.
- 470. Same; aiding and abetting stowaways; penalty.
- 471. Same; effect on immigration laws.

**§ 451. (Criminal Code, section 272.) Places and waters applicable; on board American vessel on high seas or Great Lakes; on land under exclusive control of United States; guano islands.**

The crimes and offenses defined in sections 451-468 of this title shall be punished as herein prescribed:

**First.** When committed upon the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, or when committed within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State on board any vessel belong-

ing in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, or District thereof.

**Second.** When committed upon any vessel registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, namely: Lake Superior, Lake Michigan, Lake Huron, Lake Saint Clair, Lake Erie, Lake Ontario, or any of the waters connecting any of said lakes, or upon the River Saint Lawrence where the same constitutes the international boundary line.

**Third.** When committed within or on any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

**Fourth.** On any island, rock, or key, containing deposits of guano, which may, at the discretion of the President, be considered as appertaining to the United States. (Mar. 4, 1909, ch. 321, § 272, 35 Stat. 1142; June 11, 1940, ch. 323, 54 Stat. 304.)

## AMENDMENT

Paragraph Third was amended by act June 11, 1940, cited to text, which inserted "or concurrent" after "exclusive" and before "jurisdiction" and omitted "exclusive" before "use of the United States."

## SIMILAR PROVISIONS

R. S. §§ 5339, 5372, which were repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

Act Sept. 4, 1890, ch. 874, 26 Stat. 424.

**§ 452. (Criminal Code, section 273.) Murder; first degree; second degree.**

Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, rape, burglary, or robbery; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree. Any other murder is murder in the second degree. (Mar. 4, 1909, ch. 321, § 273, 35 Stat. 1143.)

## DERIVATION

R. S. § 5339, which was revised from acts Apr. 30, 1790, ch. 9, 1 Stat. 113; Mar. 3, 1825, ch. 65, 4 Stat. 115 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 453. (Criminal Code, section 274.) Manslaughter; voluntary; involuntary.**

Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

**Voluntary**—Upon a sudden quarrel or heat of passion.

**Involuntary**—In the commission of an unlawful act not amounting to a felony, or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection. (Mar. 4, 1909, ch. 321, § 274, 35 Stat. 1143.)



DERIVATION

R. S. § 5341, which was revised from acts Apr. 30, 1790, ch. 9, 1 Stat. 113; Mar. 3, 1857, ch. 116, 11 Stat. 250 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 454. (Criminal Code, section 275.) Punishment; murder; manslaughter.

Every person guilty of murder in the first degree shall suffer death. Every person guilty of murder in the second degree shall be imprisoned not less than ten years and may be imprisoned for life. Every person guilty of voluntary manslaughter shall be imprisoned not more than ten years. Every person guilty of involuntary manslaughter shall be imprisoned not more than three years, or fined not exceeding \$1,000, or both. (Mar. 4, 1909, ch. 321, § 275, 35 Stat. 1143.)

DERIVATION

R. S. § 5339, historically treated under section 452, and § 5343, which was revised from acts Apr. 30, 1790, ch. 9, 1 Stat. 113; Mar. 3, 1857, ch. 116, 11 Stat. 250 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 455. (Criminal Code, section 276.) Felonious assaults; to murder or rape; other felony; with weapons; beating; simple assault.

Whoever shall assault another with intent to commit murder, or rape, shall be imprisoned not more than twenty years. Whoever shall assault another with intent to commit any felony, except murder or rape, shall be fined not more than \$3,000 or imprisoned not more than ten years, or both. Whoever, with intent to do bodily harm, and without just cause or excuse, shall assault another with a dangerous weapon, instrument, or other thing, shall be fined not more than \$1,000 or imprisoned not more than five years, or both. Whoever shall unlawfully strike, beat, or wound another shall be fined not more than \$500 or imprisoned not more than six months, or both. Whoever shall unlawfully assault another shall be fined not more than \$300 or imprisoned not more than three months, or both. (Mar. 4, 1909, ch. 321, § 276, 35 Stat. 1143.)

DERIVATION

R. S. § 5346, which was revised from act Mar. 3, 1825, ch. 65, 4 Stat. 121, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 456. (Criminal Code, section 277.) Other attempts at murder.

Whoever shall attempt to commit murder or manslaughter, except as provided in section 455 of this title, shall be fined not more than \$1,000 and imprisoned not more than three years. (Mar. 4, 1909, ch. 321, § 277, 35 Stat. 1143.)

DERIVATION

R. S. § 5342, which was revised from act Mar. 3, 1857, ch. 116, 11 Stat. 250, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 457. (Criminal Code, section 278.) Rape.

Whoever shall commit the crime of rape shall suffer death. (Mar. 4, 1909, ch. 321, § 278, 35 Stat. 1143.)

DERIVATION

R. S. § 5345, which was revised from act Mar. 3, 1825, ch. 65, 4 Stat. 115, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 458. (Criminal Code, section 279.) Carnal knowledge of female under 16.

Whoever shall carnally and unlawfully know any female under the age of sixteen years, or shall be accessory to such carnal and unlawful knowledge before the fact, shall, for a first offense, be imprisoned not more than fifteen years, and for a subsequent offense be imprisoned not more than thirty years. (Mar. 4, 1909, ch. 321, § 279, 35 Stat. 1143.)

DERIVATION

Act Feb. 9, 1889, ch. 120, 25 Stat. 658, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 459. (Criminal Code, section 280.) Seduction of female passenger on vessel.

Every master, officer, seaman, or other person employed on board of any American vessel, who, during the voyage, under promise of marriage, or by threats, or the exercise of authority, or solicitation, or the making of gifts or presents, seduces and has illicit connection with any female passenger, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; but subsequent intermarriage of the parties may be pleaded in bar of conviction. (Mar. 4, 1909, ch. 321, § 280, 35 Stat. 1143.)

DERIVATION

R. S. § 5349, which was revised from act Mar. 24, 1860, ch. 8, 12 Stat. 3 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 460. (Criminal Code, section 281.) Disposal of fine; evidence required.

When a person is convicted of a violation of section 459 of this title, the court may, in its discretion, direct that the amount of the fine, when paid, be paid for the use of the female seduced, or her child, if she have any; but no conviction shall be had on the testimony of the female seduced without other evidence, nor unless the indictment is found within one year after the arrival of the vessel on which the offense was committed at the port of its destination. (Mar. 4, 1909, ch. 321, § 281, 35 Stat. 1144.)

DERIVATION

R. S. §§ 5350, 5351, which were revised from act Mar. 24, 1860, ch. 8, 12 Stat. 3 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 461. (Criminal Code, section 282.) Loss of life by misconduct of officers of vessels; liability of corporation officer.

Every captain, engineer, pilot, or other person employed on any steamboat or vessel, by whose misconduct, negligence, or inattention to his duties on such vessel the life of any person is destroyed, and every owner, charterer, inspector, or other public officer, through whose fraud, neglect, connivance, misconduct, or violation of law the life of any person is destroyed, shall be fined not more than \$10,000, or imprisoned not more than ten years, or both. When the owner or charterer of any steamboat or vessel shall be a corporation, any executive officer of such corporation, for the time being actually charged with the control and management of the operation, equipment, or navigation of such steamboat or vessel, who has knowingly and willfully caused or allowed such fraud, neglect, connivance, misconduct,



or violation of law, by which the life of any person is destroyed, shall be fined not more than \$10,000, or imprisoned not more than ten years, or both. (Mar. 4, 1909, ch. 321, § 282, 35 Stat. 1144.)

#### DERIVATION

R. S. § 5344 as amended by act Mar. 3, 1905, ch. 1454, § 5, 33 Stat. 1025, which was revised from act Feb. 28, 1871, ch. 100, 16 Stat. 456 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 462. (Criminal Code, section 283.) Maiming.

Whoever, with intent to maim or disfigure, shall cut, bite, or slit, the nose, ear, or lip, or cut out or disable the tongue, or put out or destroy an eye, or cut off or disable a limb or any member of another person; or whoever, with like intent, shall throw or pour upon another person, any scalding hot water, vitriol, or other corrosive acid, or caustic substance whatever, shall be fined not more than \$1,000, or imprisoned not more than seven years, or both. (Mar. 4, 1909, ch. 321, § 283, 35 Stat. 1144.)

#### DERIVATION

R. S. § 5348, which was revised from act Apr. 30, 1790, ch. 9, 1 Stat. 115 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 463. (Criminal Code, section 284.) Robbery.

Whoever, by force and violence, or by putting in fear, shall feloniously take from the person or presence of another anything of value, shall be imprisoned not more than fifteen years. (Mar. 4, 1909, ch. 321, § 284, 35 Stat. 1144.)

#### DERIVATION

R. S. § 5370, which was revised from act May 15, 1820, ch. 113, 3 Stat. 600 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 464. (Criminal Code, section 285.) Arson of dwelling house.

Whoever shall willfully and maliciously set fire to, burn, or attempt to burn, or by means of a dangerous explosive destroy or attempt to destroy, any dwelling house, or any store, barn, stable, or other building, parcel of a dwelling house, shall be imprisoned not more than twenty years. (Mar. 4, 1909, ch. 321, § 285, 35 Stat. 1144.)

#### DERIVATION

R. S. § 5385, which was revised from act Mar. 3, 1825, ch. 65, 4 Stat. 115 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 465. (Criminal Code, section 286.) Arson of other buildings.

Whoever shall maliciously set fire to, burn, or attempt to burn, or by any means destroy or injure, or attempt to destroy or injure, any arsenal, armory, magazine, ropewalk, ship house, warehouse, block-house, or barrack, or any storehouse, barn, or stable, not parcel of a dwelling house, or any other building not mentioned in the section last preceding, or any vessel built, building, or undergoing repair, or any lighthouse, or beacon, or any machinery, timber, cables, rigging, or other materials or appliances for building, repairing, or fitting out vessels, or any pile of wood, boards, or other lumber, or any military, naval, or victualing stores, arms, or other munitions of war, shall be fined not more than \$5,000

and imprisoned not more than twenty years. (Mar. 4, 1909, ch. 321, § 286, 35 Stat. 1144.)

#### DERIVATION

R. S. § 5386, which was revised from act Mar. 3, 1825, ch. 65, 4 Stat. 115 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

Act of Jan. 15, 1897, ch. 29, § 2, 29 Stat. 487, also repealed by section 341 of act March 4, 1909, cited to text, substituted imprisonment at hard labor for life for the death penalty imposed by R. S. § 5386.

The section was changed upon its incorporation into the Criminal Code so as to punish the destruction or attempted destruction of the buildings enumerated therein, and also by reducing the maximum penalty from life imprisonment to fine and imprisonment for twenty years.

R. S. § 5387 (act Mar. 3, 1825, ch. 65, 4 Stat. 117), likewise repealed by section 341 of act March 4, 1909, cited to text, was as follows: "Every person who maliciously sets on fire, or burns, or otherwise destroys, any vessel of war of the United States, afloat on the high seas, or in any arm of the sea, or in any river, haven, creek, basin, or bay within the admiralty jurisdiction of the United States, and out of the jurisdiction of any particular State, shall suffer death."

#### CROSS REFERENCE

Setting fire to vessel of foreign or United States registry entitled to engage in commerce punishable by \$10,000 fine or twenty years imprisonment or both, see section 502 of this title.

#### § 466. (Criminal Code, section 287.) Larceny; determining value of written instrument.

Whoever shall take and carry away, with intent to steal or purloin, any personal property of another, shall be punished as follows: If the property taken is of a value exceeding \$50, or is taken from the person of another, by a fine of not more than \$10,000, or imprisonment for not more than ten years, or both; in all other cases, by a fine of not more than \$1,000, or by imprisonment not more than one year, or both. If the property stolen consists of any evidence of debt, or other written instrument, the amount of money due thereon, or secured to be paid thereby and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, shall be deemed to be the value of the property stolen. (Mar. 4, 1909, ch. 321, § 287, 35 Stat. 1144.)

#### DERIVATION

R. S. § 5356, which was revised from acts Apr. 30, 1790, ch. 9, 1 Stat. 116; Aug. 23, 1842, ch. 188, 5 Stat. 517 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 467. (Criminal Code, section 288.) Receiving stolen goods; trials.

Whoever shall buy, receive, or conceal any money, goods, bank notes, or other thing which may be the subject of larceny, which has been feloniously taken, stolen, or embezzled, from any other person, knowing the same to have been so taken, stolen, or embezzled, shall be fined not more than \$1,000 and imprisoned not more than three years; and such person may be tried either before or after the conviction of the principal offender. (Mar. 4, 1909, ch. 321, § 288, 35 Stat. 1145.)

#### DERIVATION

R. S. § 5357, which was revised from acts Mar. 3, 1825, ch. 65, 4 Stat. 116; Apr. 30, 1790, ch. 9, 1 Stat. 116, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 467a. (Criminal Code, section 288A.) Obtaining or selling evidences of indebtedness on the high seas fraudulently or by false pretenses.

Whoever, upon the high seas or on any waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, or within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State on board any vessel belonging in whole or in part to the United States or any citizen thereof or to any corporation created by or under the laws of the United States, or of any State, Territory, or District thereof, by any fraud, or false pretense whatsoever with intent to defraud, obtains from any person anything of value, or procures the execution and delivery of any instrument of writing or conveyance of real or personal property, or the signature of any person, as maker, endorser, or guarantor, to or upon any bond, bill, receipt, promissory note, draft, or check, or any other evidence of indebtedness or fraudulently sells, barter, or disposes of any bond, bill, receipt, promissory note, draft, or check, or other evidence of indebtedness, for value, knowing the same to be worthless, or knowing the signature of the maker, endorser, or guarantor thereof to have been obtained by any false pretenses, shall be fined not more than \$5,000 or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, § 288A, as added Aug. 5, 1939, ch. 434, 53 Stat. 1205.)

§ 468. (Criminal Code, section 289.) Laws of States adopted for punishing wrongful acts; effect of repeal.

Whoever, within the territorial limits of any State, organized Territory, or district, but within or upon any of the places now existing or hereafter reserved or acquired, described in section 451 of this title, shall do or omit the doing of any act or thing which is not made penal by any laws of Congress, but which if committed or omitted within the jurisdiction of the State, Territory, or district in which such place is situated, by the laws thereof in force on February 1, 1940, and remaining in force at the time of the doing or omitting the doing of such act or thing, would be penal, shall be deemed guilty of a like offense and be subject to a like punishment. (Mar. 4, 1909, ch. 321, § 289, 35 Stat. 1145; June 15, 1933, ch. 85, 48 Stat. 152; June 20, 1935, ch. 284, 49 Stat. 394; June 6, 1940, ch. 241, 54 Stat. 234.)

#### DERIVATION

R. S. § 5391, which was revised from acts Apr. 5, 1866, ch. 24, 14 Stat. 13; Mar. 3, 1825, ch. 65, 4 Stat. 115; and act July 7, 1898, ch. 576, § 2, 30 Stat. 717, which were repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### AMENDMENT

Date in text changed from "April 1, 1935" to "February 1, 1940," by act June 6, 1940, cited to text.

§ 469. Stowing away on vessels; penalty.

Any person, without the consent of the owner, charterer, or master of any vessel and with intent to obtain, without paying therefor, transportation on such vessel to any place, within or without the United States, who shall board, enter, or secrete himself aboard such vessel, and shall be thereon

at the time of departure of said vessel from a port, harbor, wharf, or other place within the jurisdiction of the United States, including the Canal Zone, or who, having boarded, entered, or secreted himself aboard such vessel in any place within or without the jurisdiction of the United States, shall remain aboard any such vessel after such vessel has left such place and who shall be found thereon at or before the time of arrival of such vessel at any place within the jurisdiction of the United States, including the Canal Zone, shall be guilty of a misdemeanor and shall be liable to a fine not exceeding \$500 or imprisonment for a period not exceeding one year, or both, in the discretion of the court. (June 11, 1940, ch. 326, § 1, 54 Stat. 306.)

#### CROSS REFERENCE

Exclusion of stowaways under immigration laws, see section 136 (1) of Title 8, Aliens and Nationality.

§ 470. Same; aiding and abetting stowaways; penalty.

Whoever shall knowingly aid, abet, or assist any person to violate sections 469–471 of this title shall be guilty of a misdemeanor and shall be liable to a fine not exceeding \$1,000 or imprisonment for a period not exceeding one year, or both, in the discretion of the court. (June 11, 1940, ch. 326, § 2, 54 Stat. 306.)

#### CROSS REFERENCE

Exclusion of stowaways under immigration laws, see section 136 (1) of Title 8, Aliens and Nationality.

§ 471. Same; effect on immigration laws.

Nothing contained in sections 469–471 of this title shall modify, restrict, alter, or change in any particular any laws of the United States in existence June 11, 1940, or which shall be thereafter enacted either for the purpose of preventing any person from entering the United States in violation of the laws of the United States or for the purpose of securing the deportation from the United States of any person who, under the laws of the United States, shall be subject to deportation. (June 11, 1940, ch. 326, § 3, 54 Stat. 306.)

#### CROSS REFERENCE

Exclusion of stowaways under immigration laws, see section 136 (1) of Title 8, Aliens and Nationality.

## Chapter 12.—PIRACY AND OTHER OFFENSES UPON SEAS

### Sec.

- 481. Piracy; punishment.
- 482. Maltreatment of crew by officers of vessel; flogging.
- 483. Inciting revolt or mutiny on shipboard.
- 484. Revolt or mutiny on shipboard.
- 485. Seaman laying violent hands on commander.
- 486. Abandonment of mariner in foreign port.
- 487. Conspiracy to cast away vessel.
- 488. Plundering vessel in distress; obstructing escape of wrecked person; holding false light.
- 489. Attacking vessel with intent to plunder.
- 490. Breaking and entering vessel.
- 491. Destroying vessel at sea; owner.
- 492. Same; other person.
- 493. Robbery on shore by piratical crew.
- 494. Arming vessel to cruise against citizens; trials.
- 495. Piracy under color of foreign commission.
- 496. Piracy by aliens.
- 497. Running away with or yielding up vessel or cargo.
- 498. Confederating with pirates; confining master.
- 499. Selling arms or intoxicants in Pacific islands; medicinal use of spirits.

## Sec.

500. Offenses deemed on high seas.  
 501. "Vessel of the United States" defined.  
 502. Injuring vessels engaged in foreign commerce.

**§ 481. (Criminal Code, section 290.) Piracy; punishment.**

Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life. (Mar. 4, 1909, ch. 321, § 290, 35 Stat. 1145.)

## DERIVATION

R. S. § 5368, which was revised from acts Mar. 3, 1819, ch. 77, § 5, 3 Stat. 513; May 15, 1820, ch. 113, 3 Stat. 600; Jan. 30, 1823, ch. 7, 3 Stat. 721; and act Jan. 15, 1897, ch. 29, § 2, 29 Stat. 487, which were repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 482. (Criminal Code, section 291.) Maltreatment of crew by officers of vessel; flogging.**

Whoever, being the master or officer of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, beats, wounds, or without justifiable cause, imprisons any of the crew of such vessel, or withholds from them suitable food and nourishment, or inflicts upon them any cruel and unusual punishment, shall be fined not more than \$1,000, or imprisoned not more than five years, or both. This section shall not be construed to repeal or modify section 712 of Title 46. (Mar. 4, 1909, ch. 321, § 291, 35 Stat. 1145.)

## DERIVATION

R. S. § 5347, as amended by act Mar. 3, 1897, ch. 389, § 18, 29 Stat. 691, which was revised from act Mar. 3, 1835, ch. 40, 4 Stat. 776, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 483. (Criminal Code, section 292.) Inciting revolt or mutiny on shipboard.**

Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, endeavors to make a revolt or mutiny on board such vessel, or combines, conspires, or confederates with any other person on board to make such revolt or mutiny, or solicits, incites, or stirs up any other of the crew to disobey or resist the lawful orders of the master or other officer of such vessel, or to refuse or neglect their proper duty on board thereof, or to betray their proper trust, or assemblies with others in a tumultuous and mutinous manner, or makes a riot on board thereof, or unlawfully confines the master or other commanding officer thereof, shall be fined not more than \$1,000, or imprisoned not more than five years or both. (Mar. 4, 1909, ch. 321, § 292, 35 Stat. 1146.)

## DERIVATION

R. S. § 5359, which was revised from acts Mar. 3, 1835, ch. 40, 4 Stat. 776; Apr. 30, 1790, ch. 9, 1 Stat. 115 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 484. (Criminal Code, section 293.) Revolt or mutiny on shipboard.**

Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of

the United States, unlawfully and with force, or by fraud, or intimidation, usurps the command of such vessel from the master or other lawful officer in command thereof, or deprives him of authority and command on board, or resists or prevents him in the free and lawful exercise thereof, or transfers such authority and command to another not lawfully entitled thereto, is guilty of a revolt and mutiny, and shall be fined not more than \$2,000 and imprisoned not more than ten years. (Mar. 4, 1909, ch. 321, § 293, 35 Stat. 1146.)

## DERIVATION

R. S. § 5360, which was revised from acts Mar. 3, 1835, ch. 40, 4 Stat. 775; Apr. 30, 1790, ch. 9, 1 Stat. 113 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 485. (Criminal Code, section 294.) Seaman laying violent hands on commander.**

Whoever, being a seaman, lays violent hands upon his commander, thereby to hinder and prevent his fighting in defense of his vessel or the goods intrusted to him, is a pirate, and shall be imprisoned for life. (Mar. 4, 1909, ch. 321, § 294, 35 Stat. 1146.)

## DERIVATION

R. S. § 5369, which was revised from acts Apr. 30, 1790, ch. 9, 1 Stat. 113; Jan. 15, 1897, ch. 29, § 2, 29 Stat. 487, which were repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 486. (Criminal Code, section 295.) Abandonment of mariner in foreign port.**

Whoever, being master or commander of a vessel of the United States, while abroad, maliciously and without justifiable cause forces any officer or mariner of such vessel on shore, in order to leave him behind in any foreign port or place, or refuses to bring home again all such officers and mariners of such vessel whom he carried out with him, as are in a condition to return and willing to return, when he is ready to proceed on his homeward voyage, shall be fined not more than \$500, or imprisoned not more than six months, or both. (Mar. 4, 1909, ch. 321, § 295, 35 Stat. 1146.)

## DERIVATION

R. S. § 5363, which was revised from act Mar. 3, 1825, ch. 65, 4 Stat. 117, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 487. (Criminal Code, section 296.) Conspiracy to cast away vessel.**

Whoever, on the high seas, or within the United States, willfully and corruptly conspires, combines, and confederates with any other person, such other person being either within or without the United States, to cast away or otherwise destroy any vessel, with intent to injure any person that may have underwritten or may thereafter underwrite any policy of insurance thereon or on goods on board thereof, or with intent to injure any person that has lent or advanced, or may lend or advance, any money on such vessel on bottomry or respondentia; or whoever, within the United States, builds, or fits out, or aids in building or fitting out, any vessel with intent that the same be cast away or destroyed, with the intent hereinbefore mentioned, shall be fined not more than \$10,000 and imprisoned not more than

ten years. (Mar. 4, 1909, ch. 321, § 296, 35 Stat. 1146.)

DERIVATION

R. S. § 5364, which was revised from act Mar. 3, 1825, ch. 65, 4 Stat. 122, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 488. (Criminal Code, section 297.) Plundering vessel in distress; obstructing escape of wrecked person; holding false light.

Whoever plunders, steals, or destroys any money, goods, merchandise, or other effects from or belonging to any vessel in distress, or wrecked, lost, stranded, or cast away, upon the sea, or upon any reef, shoal, bank, or rocks of the sea, or in any other place within the admiralty and maritime jurisdiction of the United States, shall be fined not more than \$5,000 and imprisoned not more than ten years; and whoever willfully obstructs the escape of any person endeavoring to save his life from such vessel, or the wreck thereof; or whoever holds out or shows any false light, or extinguishes any true light, with intent to bring any vessel sailing upon the sea into danger or distress or shipwreck, shall be imprisoned not less than ten years and may be imprisoned for life. (Mar. 4, 1909, ch. 321, § 297, 35 Stat. 1146.)

DERIVATION

R. S. § 5358, which was revised from act Mar. 3, 1825, ch. 65, 4 Stat. 116, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 489. (Criminal Code, section 298.) Attacking vessel with intent to plunder.

Whoever, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, by surprise or by open force, maliciously attacks or sets upon any vessel belonging to another, with an intent unlawfully to plunder the same, or to despoil any owner thereof of any moneys, goods, or merchandise laden on board thereof, shall be fined not more than \$5,000 and imprisoned not more than ten years. (Mar. 4, 1909, ch. 321, § 298, 35 Stat. 1147.)

DERIVATION

R. S. § 5361, which was revised from act Mar. 3, 1825, ch. 65, 4 Stat. 116, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

0. (Criminal Code, section 299.) Breaking and entering vessel.

Whoever, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State, breaks or enters any vessel with intent to commit any felony, or maliciously cuts, spoils, or destroys any cordage, cable, buoys, buoy rope, head fast, or other fast, fixed to the anchor or moorings belonging to any vessel, shall be fined not more than \$1,000 and imprisoned not more than five years. (Mar. 4, 1909, ch. 321, § 299, 35 Stat. 1147.)

DERIVATION

R. S. § 5362, which was revised from act Mar. 3, 1825, ch. 65, 4 Stat. 116 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 491. (Criminal Code, section 300.) Destroying vessel at sea; owner.

Whoever, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, willfully and corruptly casts away or otherwise destroys any vessel of which he is owner, in whole or in part, with intent to prejudice any person that may underwrite any policy of insurance thereon, or any merchant that may have goods thereon, or any other owner of such vessel, shall be imprisoned for life or for any term of years. (Mar. 4, 1909, ch. 321, § 300, 35 Stat. 1147.)

DERIVATION

R. S. § 5365, as amended by act Aug. 6, 1894, ch. 227, § 1, 28 Stat. 233, which was revised from act Mar. 26, 1804, ch. 40, 2 Stat. 290 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 492. (Criminal Code, section 301.) Same; other person.

Whoever, not being an owner, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, willfully and corruptly casts away or otherwise destroys any vessel of the United States to which he belongs, or willfully, with intent to destroy the same, sets fire to any such vessel, or otherwise attempts the destruction thereof, shall be imprisoned not more than ten years. (Mar. 4, 1909, ch. 321, § 301, 35 Stat. 1147.)

DERIVATION

R. S. § 5366, as amended by act Aug. 6, 1894, ch. 227, § 2, 28 Stat. 233, which was revised from act Mar. 26, 1804, ch. 40, 2 Stat. 290 and R. S. § 5367, which was revised from act July 29, 1850, ch. 27, 9 Stat. 441 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 493. (Criminal Code, section 302.) Robbery on shore by piratical crew.

Whoever, being engaged in any piratical cruise or enterprise, or being of the crew of any piratical vessel, lands from such vessel and on shore commits robbery, is a pirate and shall be imprisoned for life. (Mar. 4, 1909, ch. 321, § 302, 35 Stat. 1147.)

DERIVATION

R. S. § 5371, which was revised from act May 15, 1820, ch. 113, 3 Stat. 600 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

SIMILAR PROVISIONS

Act Jan. 15, 1897, ch. 29, § 2, 29 Stat. 487, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 494. (Criminal Code, section 303.) Arming vessel to cruise against citizens; trials.

Whoever, being a citizen of the United States, without the limits thereof, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly aids or is concerned in furnishing, fitting out, or arming any private vessel of war or privateer, with intent that such vessel shall be employed to cruise or commit hostilities upon the citizens of the United States or their property, or whoever takes the command of or enters on board of any such vessel for such intent, or who purchases any interest in any such vessel with a view to share in the profits thereof, shall be fined not more than \$10,000 and imprisoned not more than ten years. The trial for such offense, if com-

mitted without the limits of the United States, shall be in the district in which the offender shall be apprehended or first brought. (Mar. 4, 1909, ch. 321, § 303, 35 Stat. 1147.)

#### DERIVATION

R. S. § 5284, which was revised from act Apr. 20, 1218, ch. 88, 3 Stat. 448, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 495. (Criminal Code, section 304.) Piracy under color of foreign commission.

Whoever, being a citizen of the United States, commits any murder or robbery, or any act of hostility against the United States, or against any citizen thereof, on the high seas, under color of any commission from any foreign prince, or State, or on pretense of authority from any person, is, notwithstanding the pretense of such authority, a pirate, and shall be imprisoned for life. (Mar. 4, 1909, ch. 321, § 304, 35 Stat. 1147.)

#### DERIVATION

R. S. § 5373, which was revised from act Apr. 30, 1790, ch. 9, 1 Stat. 114, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### SIMILAR PROVISIONS

Act Jan. 15, 1897, ch. 29, § 2, 29 Stat. 487, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153

#### § 496. (Criminal Code, section 305.) Piracy by aliens.

Whoever, being a citizen or subject of any foreign State, is found and taken on the sea making war upon the United States, or cruising against the vessels and property thereof, or of the citizens of the same, contrary to the provisions of any treaty existing between the United States and the State of which the offender is a citizen or subject, when by such treaty such acts are declared to be piracy, is guilty of piracy, and shall be imprisoned for life. (Mar. 4, 1909, ch. 321, § 305, 35 Stat. 1147.)

#### DERIVATION

R. S. § 5374, which was revised from act Mar. 3, 1847, ch. 51, 9 Stat. 175, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### SIMILAR PROVISIONS

Act Jan. 15, 1897, ch. 29, § 2, 29 Stat. 487, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153

#### § 497. (Criminal Code, section 306.) Running away with or yielding up vessel or cargo.

Whoever, being a captain or other officer or mariner of a vessel upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, piratically or feloniously runs away with such vessel, or with any goods or merchandise thereof, to the value of \$50, or who yields up such vessel voluntarily to any pirate, shall be fined not more than \$10,000, or imprisoned not more than ten years, or both. (Mar. 4, 1909, ch. 321, § 306, 35 Stat. 1148.)

#### DERIVATION

R. S. § 5383, which was revised from acts Aug. 8, 1846, ch. 98, 9 Stat. 73; Apr. 30, 1790, ch. 9, 1 Stat. 113, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153

#### § 498. (Criminal Code, section 307.) Confederating with pirates; confining master.

Whoever attempts or endeavors to corrupt any commander, master, officer, or mariner to yield up or to run away with any vessel, or with any goods, wares, or merchandise, or to turn pirate or to go over to or confederate with pirates, or in any wise to trade with any pirate, knowing him to be such, or furnishes such pirate with any ammunition, stores, or provisions of any kind, or fits out any vessel knowingly and, with a design to trade with, supply, or correspond with any pirate or robber upon the seas; or whoever consults, combines, confederates, or corresponds with any pirate or robber upon the seas, knowing him to be guilty of any piracy or robbery; or whoever, being a seaman, confines the master of any vessel, shall be fined not more than \$1,000 and imprisoned not more than three years. (Mar. 4, 1909, ch. 321, § 307, 35 Stat. 1148.)

#### DERIVATION

R. S. § 5384, which was revised from act Apr. 30, 1790, ch. 9, 1 Stat. 115 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 499. (Criminal Code, section 308.) Selling arms or intoxicants in Pacific islands; medicinal use of spirits.

Whoever, being subject to the authority of the United States, shall give, sell, or otherwise supply any arms, ammunition, explosive substance, intoxicating liquor, or opium to any aboriginal native of any of the Pacific Islands lying within the twentieth parallel of north latitude and the fortieth parallel of south latitude, and the one hundred and twentieth meridian of longitude west and one hundred and twentieth meridian of longitude east of Greenwich, not being in the possession or under the protection of any civilized power, shall be fined not more than \$50, or imprisoned not more than three months, or both. In addition to such punishment, all articles of a similar nature to those in respect to which an offense has been committed, found in the possession of the offender, may be declared forfeited. If it shall appear to the court that such opium, wine, or spirits have been given bona fide for medical purposes, it shall be lawful for the court to dismiss the charge. (Mar. 4, 1909, ch. 321, § 308, 35 Stat. 1148.)

#### DERIVATION

Act Feb. 14, 1902, ch. 18, §§ 1, 2, 32 Stat. 33, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 500. (Criminal Code, section 309.) Offenses deemed on high seas.

All offenses against the provisions of the section last preceding, committed on any of said islands or on the waters, rocks, or keys adjacent thereto, shall be deemed committed on the high seas on board a merchant ship or vessel belonging to the United States, and the courts of the United States shall have jurisdiction accordingly. (Mar. 4, 1909, ch. 321, § 309, 35 Stat. 1148.)

#### DERIVATION

Act Feb. 14, 1902, ch. 18, § 3, 32 Stat. 33, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 501. (Criminal Code, section 310.) "Vessel of the United States" defined.**

The words "vessel of the United States", wherever they occur in sections 481-501 of this title, shall be construed to mean a vessel belonging in whole or in part to the United States, or any citizen thereof, or any corporation created by or under the laws of the United States, or of any State, Territory, or District thereof. (Mar. 4, 1909, ch. 321, § 310, 35 Stat. 1148.)

**§ 502. Injuring vessels engaged in foreign commerce.**

Whoever shall set fire to any vessel of foreign registry, or any vessel of American registry entitled to engage in commerce with foreign nations, or to any vessel of the United States as defined in section 501 of this title, or to the cargo of the same, or shall tamper with the motive power or instrumentalities of navigation of such vessel, or shall place bombs or explosives in or upon such vessel, or shall do any other act to or upon such vessel while within the jurisdiction of the United States, or, if such vessel is of American registry, while she is on the high sea, with intent to injure or endanger the safety of the vessel or of her cargo, or of persons on board, whether the injury or danger is so intended to take place within the jurisdiction of the United States, or after the vessel shall have departed therefrom; or whoever shall attempt or conspire to do any such acts with such intent, shall be fined not more than \$10,000, or imprisoned not more than twenty years, or both. The term "United States", as used in this section, includes the Canal Zone and all territory and waters, continental or insular, subject to the jurisdiction of the United States. (June 15, 1917, ch. 30, title III, § 1, 40 Stat. 221; June 15, 1917, ch. 30, title XIII, § 1, 40 Stat. 231.)

**Chapter 13.—CERTAIN OFFENSES IN TERRITORIES, DISTRICT, OR INSULAR POSSESSION**

**Sec.**

- 511. Places applicable.
- 512. Circulating obscene literature.
- 513. Polygamy.
- 514. Unlawful cohabitation.
- 515. Joinder of counts.
- 516. Adultery.
- 517. Incest.
- 518. Fornication.
- 519. Recording certificates of marriage; evidence of marriage; punishment for violations.
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- 522. Train robberies.
- 523. Discrimination by proprietors of theaters against persons wearing uniform of Army, Navy, etc.

**§ 511. (Criminal Code, section 311.) Places applicable.**

Except as otherwise expressly provided, the offenses defined in sections 511-522 of this title shall be punished as hereinafter provided, when committed within any Territory or District, or within or upon any place within the exclusive jurisdiction of the United States. (Mar. 4, 1909, ch. 321, § 311, 35 Stat. 1148.)

**§ 512. (Criminal Code, section 312.) Circulating obscene literature.**

Whoever shall sell, lend, give away, or in any manner exhibit, or offer to sell, lend, give away, or in any manner exhibit, or shall otherwise publish or offer to publish in any manner, or shall have in his possession for any such purpose, any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article of an immoral nature, or any drug or medicine, or any article whatever, for the prevention of conception, or for causing unlawful abortion, or shall advertise the same for sale, or shall write or print, or cause to be written or printed, any card, circular, book, pamphlet, advertisement, or notice of any kind, stating when, where, how, or of whom, or by what means, any of the articles above mentioned can be purchased or obtained, or shall manufacture, draw, or print, or in anywise make any of such articles, shall be fined not more than \$2,000, or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, § 312, 35 Stat. 1149.)

**DERIVATION**

R. S. § 5389, which was revised from act Mar. 3, 1873, ch. 258, 17 Stat. 598, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1163.

**§ 513. (Criminal Code, section 313.) Polygamy.**

Every person who has a husband or wife living, who marries another, whether married or single, and any man who simultaneously, or on the same day, marries more than one woman, is guilty of polygamy, and shall be fined not more than \$500 and imprisoned not more than five years. This section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage shall have been absent for five successive years, and is not known to such person to be living, and is believed by such person to be dead, nor to any person by reason of any former marriage which shall have been dissolved by a valid decree of a competent court, nor to any person by reason of any former marriage which shall have been pronounced void by a valid decree of a competent court, on the ground of nullity of the marriage contract. (Mar. 4, 1909, ch. 321, § 313, 35 Stat. 1149.)

**DERIVATION**

R. S. § 5352, as amended by act Mar. 22, 1882, ch. 47, § 1, 22 Stat. 30, which was revised from act July 1, 1862, ch. 126, 12 Stat. 501, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1163.

**§ 514. (Criminal Code, section 314.) Unlawful cohabitation.**

If any male person cohabits with more than one woman, he shall be fined not more than \$300, or imprisoned not more than six months, or both. (Mar. 4, 1909, ch. 321, § 314, 35 Stat. 1149.)

**DERIVATION**

Act Mar. 22, 1882, ch. 47, § 3, 22 Stat. 31, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1163.

**§ 515. (Criminal Code, section 315.) Joinder of counts.**

Counts for any or all of the offenses named in sections 513 and 514 of this title may be joined in

the same information or indictment. (Mar. 4, 1909, ch. 321, § 315, 35 Stat. 1149.)

#### DERIVATION

Act Mar. 22, 1882, ch. 47, § 4, 22 Stat. 31, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 516. (Criminal Code, section 316.) Adultery.

Whoever shall commit adultery shall be imprisoned not more than three years; and when the act is committed between a married woman and a man who is unmarried, both parties to such act shall be deemed guilty of adultery; and when such act is committed between a married man and a woman who is unmarried, the man shall be deemed guilty of adultery. (Mar. 4, 1909, ch. 321, § 316, 35 Stat. 1149.)

#### DERIVATION

Act Mar. 3, 1887, ch. 397, § 3, 24 Stat. 635, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 517. (Criminal Code, section 317.) Incest.

Whoever, being related to another person within and not including the fourth degree of consanguinity computed according to the rules of the civil law, shall marry or cohabit with, or have sexual intercourse with such other so related person, knowing her or him to be within said degree of relationship, shall be deemed guilty of incest, and shall be imprisoned not more than fifteen years. (Mar. 4, 1909, ch. 321, § 317, 35 Stat. 1149.)

#### DERIVATION

Act Mar. 3, 1887, ch. 397, § 4, 24 Stat. 635, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 518. (Criminal Code, section 318.) Fornication.

If any unmarried man or woman commits fornication, each shall be fined not more than \$100, or imprisoned not more than six months. (Mar. 4, 1909, ch. 321, § 318, 35 Stat. 1149.)

#### DERIVATION

Act Mar. 3, 1887, ch. 397, § 5, 24 Stat. 636, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 519. (Criminal Code, section 319.) Recording certificates of marriage; evidence of marriage; punishment for violations.

Every ceremony of marriage, or in the nature of a marriage ceremony of any kind, whether either or both or more of the parties to such ceremony be lawfully competent to be the subjects of such marriage or ceremony or not, shall be certified by a certificate stating the fact and nature of such ceremony, the full name of each of the parties concerned, and the full name of every officer, priest, and person, by whatever style or designation called or known, in any way taking part in the performance of such ceremony, which certificate shall be drawn up and signed by the parties to such ceremony and by every officer, priest, and person taking part in the performance of such ceremony, and shall be by the officer, priest, or other person solemnizing such marriage or ceremony filed in the office of the probate court, or, if there be none, in the office of the court having probate powers in the county or district in which such ceremony shall take place, for record, and shall be immediately recorded, and be at all times subject to inspection as other public records. Such certifi-

cate, or the record thereof, or a duly certified copy of such record, shall be prima facie evidence of the facts required by this section to be stated therein in any proceeding, civil or criminal, in which the matter shall be drawn in question. Nothing in this section shall be held to prevent the proof of marriages, whether lawful or unlawful, by any evidence otherwise legally admissible for that purpose. Whoever shall willfully violate any provision of this section shall be fined not more than \$1,000, or imprisoned not more than two years, or both. The provisions of this section shall apply only within the Territories of the United States. (Mar. 4, 1909, ch. 321, § 319, 35 Stat. 1149.)

#### DERIVATION

Act Mar. 8, 1887, ch. 397, §§ 9, 10, 24 Stat. 636, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### § 520. (Criminal Code, section 320.) Prize fights and bull fights.

Whoever shall voluntarily engage in a pugilistic encounter between man and man or a fight between a man and a bull or any other animal, for money or for other thing of value, or for any championship, or upon the result of which any money or anything of value is bet or wagered, or to see which any admission fee is directly or indirectly charged, shall be imprisoned not more than five years. The provisions of this section shall apply only within the Territories of the United States and the District of Columbia. (Mar. 4, 1909, ch. 321, § 320, 35 Stat. 1150.)

#### DERIVATION

Act Feb. 7, 1896, ch. 12, § 1, 29 Stat. 5, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### BOXING IN DISTRICT OF COLUMBIA

Boxing was permitted in District of Columbia and Boxing Commission was created by act Apr. 24, 1934, ch. 161, 48 Stat. 608, 609

#### § 521. (Criminal Code, section 321.) Same; "pugilistic encounter" defined; applicable to Alaska and Hawaii.

By the terms "pugilistic encounter", as used in section 520 of this title, is meant any voluntary fight by blows by means of fists or otherwise, whether with or without gloves, between two or more men, for money or for a prize of any character, or for any other thing of value, or for any championship, or upon the result of which any money or anything of value is bet or wagered, or to see which any admission fee is directly or indirectly charged. Nothing in this section or in section 520 of this title shall be held to prohibit any pugilistic encounter in the Territory of Hawaii or the Territory of Alaska, in conformity with the laws of the respective Territories, if (1) the contestants use gloves not less than five ounces each in weight, (2) such encounter is not held on Sunday and does not consist of more than ten rounds of a duration of more than three minutes each with an interval of one minute between each round and the succeeding round, and (3) each contestant is over eighteen years of age and, one hour prior to such encounter, has been examined by a licensed physician, who shall certify in writing to the referee of such encounter that such contestant



is physically fit to engage therein. (Mar. 4, 1909, ch. 321, § 321, 35 Stat. 1150; Feb. 8, 1929, ch. 163, 45 Stat. 1156.)

#### DERIVATION

Act Feb. 7, 1896, ch. 12, § 2, 29 Stat. 5, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

#### BOXING IN DISTRICT OF COLUMBIA

Boxing was permitted in District of Columbia and Boxing Commission was created by act Apr. 24, 1934, ch. 161, 48 Stat. 608, 609.

### § 522. (Criminal Code, section 322.) Train robberies.

Whoever shall willfully and maliciously trespass upon or enter upon any railroad train, railroad car, or railroad locomotive, with the intent to commit murder, or robbery, shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both. Whoever shall willfully and maliciously trespass upon or enter upon any railroad train, railroad car, or railroad locomotive, with intent to commit any unlawful violence upon or against any passenger on said train, or car, or upon or against any engineer, conductor, fireman, brakeman, or any officer or employee connected with said locomotive, train, or car, or upon or against any express messenger or mail agent on said train or in any car thereof, or to commit any crime or offense against any person or property thereon, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. Whoever shall counsel, aid, abet, or assist in the perpetration of any of the offenses set forth in this section shall be deemed to be a principal therein. Upon the trial of any person charged with any offense set forth in this section, it shall not be necessary to set forth or prove the particular person against whom it was intended to commit the offense, or that it was intended to commit such offense against any particular person. (Mar. 4, 1909, ch. 321, § 322, 35 Stat. 1150.)

#### DERIVATION

Act July 1, 1902, ch. 1376, 32 Stat. 727, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

### § 523. Discrimination by proprietors of theaters against persons wearing uniform of Army, Navy, etc.

No proprietor, manager, or employee of a theater or other public place of entertainment or amusement in the District of Columbia, or in any Territory, the Territory of Alaska or insular possession of the United States, shall make, or cause to be made, any discrimination against any person lawfully wearing the uniform of the Army, Navy, Coast Guard, or Marine Corps of the United States because of that uniform, and any person making, or causing to be made, such discrimination shall be guilty of a misdemeanor, punishable by a fine not exceeding \$500. (Mar. 1, 1911, ch. 187, 36 Stat. 963; Aug. 24, 1912, ch. 387, § 1, 37 Stat. 512; Jan. 28, 1915, ch. 20, § 1, 38 Stat. 800.)

## Chapter 14.—SAVING PROVISIONS

#### Sec.

- 532. Pending actions not affected.
- 533. Offenses prior to effective date of Criminal Code.
- 534. Limitations.
- 535. Offenses prior to June 15, 1917.
- 536. Partial invalidity of certain sections.

### § 532. (Criminal Code, section 342.) Pending actions not affected.

Section, act Mar. 4, 1909, ch. 321, § 342, 35 Stat. 1159, provided that the repeal of existing laws or modifications thereof embraced in said act March 4, 1909 (the Criminal Code), should not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause prior to said repeal or modifications, but all liabilities laws should continue and might be enforced in the same manner as if said repeal or modifications had not been made.

### § 533. (Criminal Code, section 343.) Offenses prior to effective date of Criminal Code.

Section, act Mar. 4, 1909, ch. 321, § 343, 35 Stat. 1159, provided for the prosecution of offenses committed prior to the effective date of the Criminal Code (said act Mar. 4, 1909.)

### § 534. (Criminal Code, section 344.) Limitations.

Section, act Mar. 4, 1909, ch. 321, § 344, 35 Stat. 1159, provided for the continued application of former statutes of limitations to offenses committed under laws effective prior to January 1, 1910.

### § 535. Offenses prior to June 15, 1917.

Section, act June 15, 1917, ch. 30, title XIII, § 3, 40 Stat. 231, provided that offenses and penalties, forfeitures, or liabilities incurred prior to the taking effect of said act under any law embraced in or changed, modified, or repealed by said act might be prosecuted and punished, and suits and proceedings for causes arising or acts done or committed prior to the taking effect of said act might be commenced and prosecuted, in the same manner and with the same effect as if said act had not been passed.

### § 536. Partial invalidity of certain sections.

Section, act June 15, 1917, ch. 30, title XIII, § 4, 40 Stat. 231, provided a saving clause for said act in the event of partial invalidity.

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## Chapter 15.—GENERAL PROVISIONS

#### Sec.

- 541. Felonies and misdemeanors; petty offenses; prosecution of petty offense upon information or complaint.
- 542. Manner of inflicting death penalty.
- 543. Body of executed offender for dissection.
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§ 541. (Criminal Code, section 335.) Felonies and misdemeanors; petty offenses; prosecution of petty offense upon information or complaint.

All offenses which may be punished by death or imprisonment for a term exceeding one year shall be deemed felonies. All other offenses shall be deemed misdemeanors: *Provided*, That all offenses the penalty for which does not exceed confinement in a common jail, without hard labor for a period of six months, or a fine of not more than \$500, or both, shall be deemed to be petty offenses; and all such petty offenses may be prosecuted upon information or complaint. (Mar. 4, 1909, ch. 321, § 335, 35 Stat. 1152; Dec. 16, 1930, ch. 15, 46 Stat. 1029.)

#### CROSS REFERENCES

Embezzlement, etc., from Federal Reserve and member banks as exception to definitions of this section, see section 592 of Title 12, Banks and Banking.

Punishment for acts declared in Merchant Marine Act, 1936, to be a misdemeanor to be by fine of not more than \$10,000 or imprisonment for not less than one or more than five years, or both, see section 1228 of Title 46, Shipping.

Punishment for violations of regulations, limitations, and restrictions prescribed by Secretary of Treasury for member banks of Federal Reserve System, see section 95 of Title 12, Banks and Banking.

Solicitation of, or contract for, fees for obtaining benefits for veterans declared a misdemeanor punishable by fine of \$500 or imprisonment for not exceeding two years, see section 103 of Title 38, Pensions, Bonuses, and Veterans' Relief.

§ 542. (Criminal Code, section 323.) Manner of inflicting death penalty.

The manner of inflicting the punishment of death shall be the manner prescribed by the laws of the State within which the sentence is imposed. The

United States marshal charged with the execution of the sentence may use available State or local facilities and the services of an appropriate State or local official or employ some other person for such purpose, and pay the cost thereof in an amount approved by the Attorney General. If the laws of the State within which sentence is imposed make no provision for the infliction of the penalty of death, then the court shall designate some other State in which such sentence shall be executed in the manner prescribed by the laws thereof. (Mar. 4, 1909, ch. 321, § 323, 35 Stat. 1151; June 19, 1937, ch. 367, 50 Stat. 304.)

#### DERIVATION

R. S. § 5325, which was revised from act Apr. 30, 1790, ch. 9, 1 Stat. 119, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 543. (Criminal Code, section 331.) Body of executed offender for dissection.

The court before which any person is convicted of murder in the first degree, or rape, may, in its discretion, add to the judgment of death, that the body of the offender be delivered to a surgeon for dissection; and the marshal who executes such judgment shall deliver the body, after execution, to such surgeon as the court may direct; and such surgeon, or some person appointed by him, shall receive and take away the body at the time of execution. (Mar. 4, 1909, ch. 321, § 331, 35 Stat. 1152.)

#### DERIVATION

R. S. § 5340, which was revised from act Apr. 30, 1790, ch. 9, 1 Stat. 113, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 544. (Criminal Code, section 324.) Corruption of blood and forfeiture of estate excluded.

No conviction or judgment shall work corruption of blood or any forfeiture of estate. (Mar. 4, 1909, ch. 321, § 324, 35 Stat. 1151.)

#### DERIVATION

R. S. § 5326, which was revised from act Apr. 30, 1790, ch. 9, 1 Stat. 117 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 545. (Criminal Code, section 325.) Whipping and pillory abolished.

The punishment of whipping and of standing in the pillory shall not be inflicted. (Mar. 4, 1909, ch. 321, § 325, 35 Stat. 1151.)

#### DERIVATION

R. S. § 5327, which was revised from act Feb. 28, 1839, ch. 36, 5 Stat. 322 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 546. (Criminal Code, section 340.) Jurisdiction of district courts.

The crimes and offenses defined in this title shall be cognizable in the district courts of the United States, as prescribed in section 41 of Title 28. (Mar. 4, 1909, ch. 321, § 340, 35 Stat. 1153; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

#### REFERENCE IN TEXT

The words, "this title," as used in this section refer to the Criminal Code, act Mar. 4, 1909, ch. 321, 35 Stat. 1083. The sections of said act embodied in this code are indicated by parenthetical references in the section catchlines. For full distribution of said act, see tables.

## CROSS REFERENCE

United States commissioners, jurisdiction to try petty offenses, see section 576 of this title.

**§ 547. (Criminal Code, section 326.) Jurisdiction of State courts.**

Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof. (Mar. 4, 1909, ch. 321, § 326, 35 Stat. 1151.)

## DERIVATION

R. S. § 5328, which was revised from act Mar. 3, 1825, ch. 65, 4 Stat. 122, and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

## REFERENCE IN TEXT

The words, "this title," as used in this section refer to the Criminal Code, act Mar. 4, 1909, ch. 321, 35 Stat. 1088. The sections of said act embodied in this code are indicated by parenthetical references in the section catchlines. For full distribution of said act, see tables.

**§ 548. (Criminal Code, section 328.) Indians committing certain crime; acts on reservations; rape of Indian.**

All Indians committing against the person or property of another Indian or other person any of the following crimes, namely, murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, arson, burglary, robbery, and larceny on and within any Indian reservation under the jurisdiction of the United States Government, including rights-of-way running through the reservation, shall be subject to the same laws, tried in the same courts, and in the same manner, and be subject to the same penalties as are all other persons committing any of the above crimes within the exclusive jurisdiction of the United States: *Provided*, That any Indian who commits the crime of rape upon any female Indian within the limits of any Indian reservation shall be imprisoned at the discretion of the court: *Provided further*, That as herein used the offense rape shall be defined in accordance with the laws of the State in which the offense was committed.

The foregoing shall extend to prosecutions of Indians in South Dakota under section 549 of this title. (Mar. 4, 1909, ch. 321, § 328, 35 Stat. 1151; June 28, 1932, ch. 284, 47 Stat. 337.)

## DERIVATION

Acts Mar. 3, 1885, ch. 341, § 9, 23 Stat. 385; Jan. 15, 1897, ch. 29, § 5, 29 Stat. 487, which were repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 549. (Criminal Code, section 329.) Crimes committed on Indian reservations in South Dakota; rape of Indian.**

The district court of the United States for the district of South Dakota shall have jurisdiction to hear, try, and determine all actions and proceedings in which any person shall be charged with the crime of murder, manslaughter, rape, assault with intent to kill, assault with a dangerous weapon, arson, burglary, or larceny, committed within the limits of any Indian reservation in the State of South Dakota. Any person convicted of murder, manslaughter, rape, arson, or burglary, committed within the limits of any such reservation, shall be subject to the same punishment as is imposed upon persons committing

said crimes within the exclusive jurisdiction of the United States. Any Indian who shall commit the crime of rape upon any female Indian within any such reservation shall be imprisoned at the discretion of the court. Any person convicted of the crime of assault with intent to kill, assault with a dangerous weapon, or larceny, committed within the limits of any such reservation, shall be subject to the same punishment as is provided in cases of other persons convicted of any of said crimes under the laws of the State of South Dakota. (Mar. 4, 1909, ch. 321, § 329, 35 Stat. 1151; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

## DERIVATION

Act Feb. 2, 1903, ch. 351, 32 Stat. 793, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

## JURISDICTION

Jurisdiction to try actions arising out of crimes committed within the limits of any Indian reservation in South Dakota was conferred originally upon the circuit and district courts of the United States for the District of South Dakota by act February 2, 1903, ch. 351, 32 Stat. 793. Said act February 2, 1903, was repealed by section 341 of act March 4, 1909, cited to text. Section 329 of said act March 4, 1909, substantially reenacted the provisions of former act February 2, 1903, supra, as part of the Criminal Code. Section 289 of the Judicial Code, act March 3, 1911, cited to text, abolished the circuit courts; and section 291 thereof transferred the former jurisdiction of circuit courts to the district courts. Section 27 of said act March 3, 1911, substantially reenacted the first sentence of this section but omitted therefrom any reference to circuit courts. See section 51 of Title 28, Judicial Code and Judiciary.

## CROSS REFERENCES

Jurisdiction of offenses committed by or against Indians on Indian reservations within State of Kansas conferred on State of Kansas as affecting jurisdiction of courts of the United States, see section 217a of Title 25, Indians.

Punishment for certain crimes to be applicable to prosecution of Indians in South Dakota, see section 548 of this title.

**§ 550. (Criminal Code, section 332.) "Principals" defined.**

Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal. (Mar. 4, 1909, ch. 321, § 332, 35 Stat. 1152.)

## DERIVATION

R. S. § 5323, which was revised from act Apr. 30, 1790, ch. 9, 1 Stat. 114; R. S. § 5427, which was revised from act July 14, 1870, ch. 254, 16 Stat. 254, which were repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 551. (Criminal Code, section 333.) Punishment of accessories.**

Whoever, except as otherwise expressly provided by law, being an accessory after the fact to the commission of any offense defined in any law of the United States, shall be imprisoned not exceeding one-half the longest term of imprisonment, or fined not exceeding one-half the largest fine prescribed for the punishment of the principal, or both, if the principal is punishable by both fine and imprisonment; or if the principal is punishable by death, then an accessory shall be imprisoned not more than ten years. (Mar. 4, 1909, ch. 321, § 333, 35 Stat. 1152.)

## DERIVATION

R. S. § 5533, which was revised from act Apr. 30, 1790, ch. 9, 1 Stat. 114; R. S. § 5534, which was revised from act June 8, 1872, ch. 335, 17 Stat. 320; and R. S. § 5535, which was revised from act July 2, 1836, ch. 270, 5 Stat. 88, all of which were repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 552. (Criminal Code, section 334.) Same; robbery or piracy.

Whoever, without lawful authority, receives or takes into custody any vessel, goods, or other property, feloniously taken by any robber or pirate against the laws of the United States, knowing the same to have been feloniously taken, and whoever, knowing that such pirate or robber has done or committed any such piracy or robbery, on the land or at sea, receives, entertains, or conceals any such pirate or robber, is an accessory after the fact to such robbery or piracy, and shall be imprisoned not more than ten years. (Mar. 4, 1909, ch. 321, § 334, 35 Stat. 1152.)

## DERIVATION

R. S. §§ 5324, 5533, which were revised from act Apr. 30, 1790, ch. 9, 1 Stat. 114 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

§ 553. (Criminal Code, section 336.) Place of commitment of murder or manslaughter determined.

In all cases of murder or manslaughter, the crime shall be deemed to have been committed at the place where the injury was inflicted, or the poison administered or other means employed which caused the death, without regard to the place where the death occurs. (Mar. 4, 1909, ch. 321, § 336, 35 Stat. 1152.)

§ 554. Indictments and presentments; by twelve grand jurors.

No indictment shall be found, nor shall any presentment be made, without the concurrence of at least twelve grand jurors. (R. S. § 1021.)

## DERIVATION

Act Mar. 3, 1865, ch. 86, § 1, 13 Stat. 500.

§ 554a. Same; objection on ground of unqualified juror barred where twelve qualified jurors concurred; record of number concurring.

No plea to abate nor motion to quash any indictment, upon the ground that one or more unqualified persons served upon the grand jury finding such indictment, shall be sustained if it appears that twelve or more jurors, after deducting the number so disqualified, concurred in the finding of said indictment: *Provided, however*, That no juror shall be permitted to testify, in this connection, as to whether he or any other individual juror voted for or against the finding of such indictment, but it shall be the duty of the foreman of each grand jury to keep a record of the number of grand jurors concurring in the finding of any indictment and to file such record with the clerk of the court at the time the indictment is returned. Such record shall not be made public except on order of the court. (Apr. 30, 1934, ch. 170, § 2, 48 Stat. 649.)

§ 555. Same; offenses against elective franchise.

All crimes and offenses committed against the provisions of sections 51, 52, 54 to 59, 246, 428, and

443-445 of this title, and section 51 of Title 8, which are not infamous, may be prosecuted either by indictment or by information filed by a district attorney. (R. S. § 1022.)

## DERIVATION

Act May 31, 1870, ch. 114, § 8, 16 Stat. 142.

§ 556. Same; defects of form.

No indictment found and presented by a grand jury in any district or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant, or by reason of the attendance before the grand jury during the taking of testimony of one or more clerks or stenographers employed in a clerical capacity to assist the district attorney or other counsel for the Government who shall, in that connection, be deemed to be persons acting for and on behalf of the United States in an official capacity and function. (R. S. § 1025; May 18, 1933, ch. 31, 48 Stat. 58.)

## DERIVATION

R. S. § 1025 was from act June 1, 1872, ch. 255, § 8, 17 Stat. 198.

§ 556a. Same; objections to drawing or qualification of grand jury; time for filing; suspension of statute of limitations.

No plea to abate nor motion to quash any indictment upon the ground of irregularity in the drawing or impaneling of the grand jury or upon the ground of disqualification of a grand juror shall be sustained or granted unless such plea or motion shall have been filed before, or within ten days after, the defendant filing such plea or motion is presented for arraignment; and from the time such plea or motion is filed and until the termination of the first term of said court beginning subsequent to the final judgment on such plea or motion and during which a grand jury thereof shall be in session, no statute of limitations shall operate to bar another indictment of any defendant filing such plea or motion, or of any other defendant or defendants included in the indictment to which such plea or motion is directed, for the offense or offenses therein charged. (Apr. 30, 1934, ch. 170, § 1, 48 Stat. 648.)

§ 556b. Application of sections 554a and 556a.

Sections 554a and 556a of this title shall be applicable to the district courts of the United States, including the district courts of Alaska, Hawaii, Puerto Rico, the Virgin Islands, and the District of Columbia. (Apr. 30, 1934, ch. 170, § 3, 48 Stat. 649; June 25, 1936, ch. 804, 49 Stat. 1921.)

§ 557. Same; joinder of charges.

When there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined, instead of having several indictments the whole may be joined in one indictment in separate counts; and if two or more indictments are found in such cases.

the court may order them to be consolidated. (R. S. § 1024.)

## DERIVATION

Act Feb. 26, 1853, ch. 80, § 1, 10 Stat. 182.

§ 558. Same; perjury.

In every presentment or indictment prosecuted against any person for perjury, it shall be sufficient to set forth the substance of the offense charged upon the defendant, and by what court, and before whom the oath was taken, averring such court or person to have competent authority to administer the same, together with the proper averment to falsify the matter wherein the perjury is assigned, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding, either in law or equity, or any affidavit, deposition, or certificate, other than as hereinbefore stated, and without setting forth the commission or authority of the court or person before whom the perjury was committed. (R. S. § 5396.)

## DERIVATION

Act Apr. 30, 1790, ch. 9, § 19, 1 Stat. 118.

§ 559. Same; subornation of perjury.

In every presentment or indictment for subornation of perjury, it shall be sufficient to set forth the substance of the offense charged upon the defendant, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding either in law or equity, or any affidavit, deposition, or certificate, and without setting forth the commission or authority of the court or person before whom the perjury was committed, or was agreed or promised to be committed. (R. S. § 5397.)

## DERIVATION

Act Apr. 30, 1790, ch. 9, § 20, 1 Stat. 118.

§ 560. Same; perjury before naval court-martial.

In prosecutions for perjury committed on examination before a naval general court-martial, or for the subornation thereof, it shall be sufficient to set forth the offense charged on the defendant, without setting forth the authority by which the court was held, or the particular matters brought before, or intended to be brought before, said court. (R. S. § 1023.)

## DERIVATION

Act July 17, 1862, ch. 204, § 1, art. 13, 12 Stat. 604.

§ 561. Same; judgment on demurrer.

In every case in any court of the United States, where a demurrer is interposed to an indictment, or to any count or counts thereof, or to any information, and the demurrer is overruled, the judgment shall be respondent ouster; and thereupon a trial may be ordered at the same term, or a continuance may be ordered, as justice may require. (R. S. § 1026.)

## DERIVATION

Act May 23, 1872, ch. 202, 17 Stat. 158.

§ 562. Copy of indictment and list of jurors and witnesses for prisoner.

When any person is indicted of treason, a copy of the indictment and a list of the jury, and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each juror and witness, shall be delivered to him at least three entire days before he is tried for the same. When any person is indicted of any other capital offense, such copy of the indictment and list of the jurors and witnesses shall be delivered to him at least two entire days before the trial. (R. S. § 1033.)

## DERIVATION

Act Apr. 30, 1790, ch. 9, § 29, 1 Stat. 118.

§ 562a. Copy of information or indictment in other cases.

In each criminal case not provided for in section 562 of this title the clerk shall furnish each defendant, upon his request, a copy of any information filed or indictment returned against him, the fees for said copy and the certificate thereto, at the rates provided for by law, to be taxed as costs; but such fees shall not be demanded of any such defendant unless and until by order, judgment, or decree of the court the costs in the case are assessed against him. (Feb. 11, 1925, ch. 204, § 8, 43 Stat. 858; Jan. 22, 1927, ch. 50, § 2, 44 Stat. 1023.)

## CROSS REFERENCE

Costs, see sections 548-555 of Title 28, Judicial Code and Judiciary.

§ 563. Counsel and witnesses for persons indicted for capital crimes.

Every person who is indicted of treason or other capital crime shall be allowed to make his full defense by counsel learned in the law; and the court before which he is tried, or some judge thereof, shall immediately, upon his request, assign to him such counsel, not exceeding two, as he may desire, and they shall have free access to him at all reasonable hours. He shall be allowed, in his defense, to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial, as is usually granted to compel witnesses to appear on behalf of the prosecution. (R. S. § 1034.)

## DERIVATION

Act Apr. 30, 1790, ch. 9, § 29, 1 Stat. 118.

§ 564. Standing mute.

When any person indicted for any offense against the United States, whether capital or otherwise, upon his arraignment stands mute, or refuses to plead or answer thereto, it shall be the duty of the court to enter the plea of not guilty on his behalf, in the same manner as if he had pleaded not guilty thereto. And when the party pleads not guilty, or such plea is entered as aforesaid, the cause shall be deemed at issue, and shall, without further form or ceremony, be tried by a jury. (R. S. § 1032.)

## DERIVATION

Acts Apr. 30, 1790, ch. 9, § 30, 1 Stat. 119; Mar. 3, 1825, ch. 65, § 14, 4 Stat. 118; Mar. 3, 1835, ch. 40, § 4, 4 Stat. 777.

**§ 565. Verdicts; less offense than charged.**

In all criminal causes the defendant may be found guilty of any offense the commission of which is necessarily included in that with which he is charged in the indictment, or may be found guilty of an attempt to commit the offense so charged, if such attempt be itself a separate offense. (R. S. § 1035.)

**DERIVATION**

Act June 1, 1872, ch. 255, § 9, 17 Stat. 198.

**§ 566. Same; several joint defendants.**

On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly; and the cause as to the other defendants may be tried by another jury. (R. S. § 1036.)

**DERIVATION**

Act June 1, 1872, ch. 255, § 10, 17 Stat. 198.

**§ 567. (Criminal Code, section 330.) Same; qualified verdicts.**

In all cases where the accused is found guilty of the crime of murder in the first degree, or rape, the jury may qualify their verdict by adding thereto "without capital punishment"; and whenever the jury shall return a verdict qualified as aforesaid, the person convicted shall be sentenced to imprisonment for life. (Mar. 4, 1909, ch. 321, § 330, 35 Stat. 1152.)

**DERIVATION**

Act Jan. 15, 1897, ch. 29, § 1, 29 Stat. 487, which was repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 568. (Criminal Code, section 327.) Pardoning power.**

Whenever, by the judgment of any court or judicial officer of the United States, in any criminal proceeding, any person is sentenced to two kinds of punishment, the one pecuniary and the other corporal, the President shall have full discretionary power to pardon or remit, in whole or in part, either one of the two kinds, without in any manner impairing the legal validity of the other kind, or of any portion of either kind, not pardoned or remitted. (Mar. 4, 1909, ch. 321, § 327, 35 Stat. 1151.)

**DERIVATION**

R. S. § 5330, which was revised from act Feb. 20, 1863, ch. 46, 12 Stat. 656 and repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153.

**§ 569. Judgments for fines; collection.**

In all criminal or penal causes in which judgment or sentence has been or shall be rendered, imposing the payment of a fine or penalty, whether alone or with any other kind of punishment, the said judgment, so far as the fine or penalty is concerned, may be enforced by execution against the property of the defendant in like manner as judgments in civil cases are enforced. Where the judgment directs that the defendant shall be imprisoned until the fine or penalty imposed is paid, the issue of execution on the judgment shall not operate to discharge the defendant from imprisonment until the amount of the judgment is collected or otherwise paid. (R. S. § 1041.)

**DERIVATION**

Act June 1, 1872, ch. 255, § 12, 17 Stat. 198.

**§ 570. Disposition of bribe moneys.**

All moneys received or tendered in evidence in any case, proceeding, or investigation in any United States court, or before any officer thereof, which have been paid to or received by any official as a bribe, shall after the conclusion and final disposition of the particular case, proceeding, or investigation in which it was received as evidence, be deposited in the registry of the court to be disposed of under and in accordance with the order, judgment, or decree of the said court, to be subject, however, to the provisions of section 852 of Title 28. (Jan. 7, 1925, ch. 33, 43 Stat. 726.)

**CROSS REFERENCE**

Appropriation account for return of unclaimed money deposited by clerks of courts to be covered into trust fund receipt account of Treasury, see section 725p (b) (14) of Title 31, Money and Finance.

**§ 571. (Criminal Code, section 337.) Construction of words.**

Words used in this title in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word "person" and the word "whoever" include a corporation as well as a natural person; writing includes printing and typewriting, and signature or subscription includes a mark when the person making the same intended it as such. (Mar. 4, 1909, ch. 321, § 337, 35 Stat. 1152.)

**REFERENCE IN TEXT**

The words, "this title," as used in this section refer to the Criminal Code, act Mar. 4, 1909, ch. 321, 35 Stat. 1088. The sections of said act embodied in this code are indicated by parenthetical references in the section catchlines. For full distribution of said act, see tables.

**§ 572. (Criminal Code, section 338.) Effect of omitting "hard labor."**

The omission of the words "hard labor" from the provisions prescribing the punishment in the various sections of this Act, shall not be construed as depriving the court of the power to impose hard labor as a part of the punishment, in any case where such power now exists. (Mar. 4, 1909, ch. 321, § 338, 35 Stat. 1153.)

**REFERENCE IN TEXT**

The words, "this act," as used in this section refer to the Criminal Code, act Mar. 4, 1909, ch. 321, 35 Stat. 1088. The sections of said act embodied in this code are indicated by parenthetical references in the section catchlines. For full distribution of said act, see tables.

**§ 573. (Criminal Code, section 339.) Arrangement and classification of sections.**

No inference or presumption of a legislative construction is to be drawn by reason of the chapters under which any particular section of the Criminal Code is placed. (Mar. 4, 1909, ch. 321, § 339, 35 Stat. 1153.)

**REFERENCE IN TEXT**

The sections of the Criminal Code, act Mar. 4, 1909, ch. 321, 35 Stat. 1088, embodied in this title are indicated by parenthetical references in the section catchlines. For full distribution of said act, see tables.

### § 574. Jurisdiction of offenses under certain sections.

The several courts of first instance in the Philippine Islands and the district court of the Canal Zone shall have jurisdiction of offenses under sections 25, 27, 31-38, 98, 130-132, 343-345, 349, 381, 502, and 611-633 of this title, sections 213, 220-222, 231-234, and 238-245 of Title 22, and sections 191-194 of Title 50, committed within their respective districts, and concurrent jurisdiction with the district courts of the United States of offenses under said sections committed upon the high seas, and of conspiracies to commit such offenses, as defined by section 88 of this title, and the provisions of section 88 of this title, for the purpose of the sections hereinbefore enumerated, are hereby extended to the Philippine Islands and to the Canal Zone. In such cases, the district attorneys of the Philippine Islands and of the Canal Zone shall have the powers and perform the duties provided in the sections hereinbefore enumerated for United States attorneys. (June 15, 1917, ch. 30, title XIII, § 2, 40 Stat. 231.)

### § 575. Rewards for apprehension of criminals; appropriations authorized.

There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, as a reward or rewards for the capture of anyone who is charged with violation of criminal laws of the United States or any State or of the District of Columbia the sum of \$25,000 to be apportioned and expended in the discretion of, and upon such conditions as may be imposed by, the Attorney General of the United States. There is also hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, as a reward or rewards for information leading to the arrest of any such person the sum of \$25,000 to be apportioned and expended in the discretion of, and upon such conditions as may be imposed by, the Attorney General of the United States: *Provided*, That not more than \$25,000 shall be expended for information or capture of any one person.

If the said persons or any of them shall be killed in resisting lawful arrest, the Attorney General may pay any part of the reward or rewards in his discretion to the person or persons whom he shall adjudge to be entitled thereto: *Provided*, That no part of the money authorized to be appropriated by this section shall be paid to any official or employee of the Department of Justice of the United States. (June 6, 1934, ch. 408, 48 Stat. 910.)

### § 576. Trial of petty offenses by United States commissioners; jurisdiction; probation; definition of petty offense; election by defendant.

Any United States commissioner specially designated for that purpose by the court by which he was appointed shall have jurisdiction to try and, if found guilty, to sentence persons charged with petty offenses against the law, or rules and regulations made in pursuance of law, committed in any place over which the Congress has exclusive power to legislate or over which the United States has concurrent jurisdiction, and within the judicial district for which such commissioner was appointed. The probation laws shall be applicable to persons so tried before

United States commissioners. For the purposes of sections 576-576d of this title the term "petty offense" shall be defined as in section 541 of this title. If any person charged with such petty offense shall so elect, however, he shall be tried in the district court of the United States which has jurisdiction over the offense. The commissioner before whom the defendant is arraigned shall apprise the defendant of his right to make such election and shall not proceed to try the case unless the defendant after being so apprised, signs a written consent to be tried before the commissioner. (Oct. 9, 1940, ch. 785, § 1, 54 Stat. 1058.)

### § 576a. Same; appeals; rules of procedure and practice.

In all cases of conviction by United States commissioners an appeal shall lie from the judgment of the commissioner to the district court of the United States for the district in which the offense was committed. The Supreme Court shall prescribe rules of procedure and practice for the trial of cases before commissioners and for taking and hearing of appeals to the said district courts of the United States. (Oct. 9, 1940, ch. 785, § 2, 54 Stat. 1059.)

### RULES OF PROCEDURE FOR TRIALS BEFORE COMMISSIONERS

An order of the Supreme Court of the United States, promulgated January 6, 1941, after citing the authority of section 576a of this title, provided as follows: "It is ordered on this sixth day of January, 1941, that the following rules be adopted as the Rules of Procedure and Practice for the Trial of Cases Before Commissioners and for Taking and Hearing of Appeals to the District Courts of the United States.

"It is further ordered that these rules shall be applicable to proceedings instituted on or after February 1, 1941, and to pending proceedings except to the extent that in the opinion of the Commissioner or the Court their application would not be feasible or would work injustice."

#### RULE 1.—INFORMATION AND WARRANT

A warrant of arrest shall be issued only on an information, under oath, which shall set forth the day and place it was taken, the name of the informer, the name and title of the Commissioner, the name of the offender, the time the alleged offense was committed and the place where it was committed and a description of the alleged offense.

If arrest is made on view, an information setting forth the same matters shall be made and filed before trial.

#### RULE 2.—TRIAL

The date of trial shall be fixed at such a time as will afford the defendant a reasonable opportunity for preparation and for representation by counsel if desired.

The trial shall be conducted as are trials of criminal cases in the District Court by a District judge in a criminal case where a jury is waived.

#### RULE 3.—DOCKET

The Commissioner's proceedings shall be entered in his docket, which shall show: (1) The defendant's written consent to be tried before the Commissioner; (2) the date of the information and upon whose oath it was made; (3) the date of the issue

and service of the warrant; (4) the defendant's plea or pleas; (5) the names of the witnesses for the United States and for the defendant and a condensed summary of the testimony of each, and of any documentary evidence received; (6) the judgment and sentence of the Commissioner.

#### RULE 4.—APPEAL

1. Motions subsequent to judgment of conviction shall not be entertained by the Commissioner.

2. An appeal shall be taken within five days after entry of judgment of conviction. An appeal shall be taken by filing with the Commissioner a notice in duplicate stating that the defendant appeals from the judgment, and by serving a copy of the notice upon the United States Attorney. The notice of appeal shall set forth the title of the case, the names and addresses of the appellant and the appellant's attorney, if any; a general statement of the nature of the offense; the date of the judgment; the sentence imposed and, if the appellant is in custody, the prison where he is confined. The notice shall also contain a succinct statement of the grounds of appeal which shall serve as the appellant's assignments of error and shall follow substantially the form hereto annexed.

3. The Commissioner shall immediately forward to the Clerk of the District Court the duplicate notice of appeal together with a transcript of his docket entries and copies of the information, the warrant, the defendant's written consent to be tried before the Commissioner, and any order concerning bail, pending appeal, certified under his hand and seal. From the time of the filing of the Commissioner's certificate the District Court shall have supervision and control of the proceedings on appeal and may at any time, upon five days' notice, entertain a motion to dismiss it or for directions to the Commissioner or to vacate or modify any order of the Commissioner in relation to the appeal, including any order for the granting of bail.

4. An appeal from a judgment of conviction stays the execution of the judgment unless the defendant, pending his appeal, shall elect to enter upon the service of the sentence.

5. The defendant shall not be admitted to bail pending appeal from a judgment of conviction save as follows: Bail may be granted by the Commissioner or by the District Court or any judge thereof; but bail shall not be allowed pending appeal unless it appears that the appeal involves a substantial question which should be determined by the District Court.

6. The record on appeal shall consist of the matters certified by the Commissioner pursuant to paragraph 3. No bill of exceptions and no assignments of error other than those set forth as ground for appeal shall be required. The defendant shall not be entitled to a trial *de novo* in the District Court and the decision of the Commissioner upon questions of fact shall not be reexamined by the District Court. Only errors of law apparent from the record as certified by the Commissioner shall be considered by the court.

#### RULE 5.—NEW TRIAL FOR AFTER-DISCOVERED EVIDENCE

Within sixty days after conviction a defendant may move for a new trial on the ground of after-discovered evidence. The motion shall be in writing, addressed to the Commissioner and shall set forth under oath the nature of the evidence and the reason it was unavailable at the trial. A copy of the motion shall forthwith be served upon the United States Attorney. The Commissioner shall transmit the motion together with a transcript of his docket entries to the District Court. That court shall hear the motion, and, if it deems a sufficient showing has been made, may vacate the judgment of conviction and direct the Commissioner to re-try the case.

#### RULE 6.—DISTRICT COURT RULES

The District Courts may, by order or standing rule, not inconsistent with these rules, regulate the practice and procedure on appeals from convictions before a Commissioner.

#### FORM OF NOTICE OF APPEAL UNDER RULE 4

In the District Court of the United States

For the ----- District of -----

UNITED STATES OF AMERICA  
vs.

{ Appeal from the Judgment and Sentence  
of -----  
United States Commissioner.

-----  
Name and address of appellant-----

-----  
Name and address of appellant's attorney-----

-----  
Offense -----

-----  
Date of judgment-----

-----  
Brief description of judgment or sentence-----

-----  
Name of prison where now confined, if not on bail...

-----  
I, the above named Appellant, hereby appeal to the United States District Court for the ----- District of ----- from the judgment above-mentioned on the grounds set forth below.

(Signed) -----

Appellant.

Dated-----

-----  
Grounds of appeal:

#### § 576b. Same; fees of commissioners.

United States commissioners specially designated under authority of section 576 of this title shall receive for services rendered under sections 576-576d of this title the same fees, and none other, as provided for like or similar services in other cases under sec-



tion 597 of Title 28. (Oct. 9, 1940, ch. 785, § 3, 54 Stat. 1059.)

§ 576c. Same; existing powers of commissioners unaffected.

Sections 576–576d of this title shall not be construed as in any way repealing or limiting the existing jurisdiction, power, or authority of United States commissioners, including United States commissioners appointed for the several national parks and the United States commissioners in Alaska. (Oct. 9, 1940, ch. 785, § 4, 54 Stat. 1059.)

§ 576d. Same; inapplicability of sections 576–576c to District of Columbia.

The provisions of sections 576–576d of this title shall not apply to the District of Columbia. (Oct. 9, 1940, ch. 785, § 5, 54 Stat. 1059.)

### Chapter 16.—LIMITATIONS

Sec.

581. Capital offenses.

581a. Capital offenses; time for finding indictment.

581b. Same; offenses previously barred.

582. Offenses not capital.

583. Fleeing from justice.

584. Crimes under slave trade laws.

585, 586. Crimes under internal revenue laws.

587. Defective indictment; defect found after period of limitations; reindictment.

588. Same; defect found before period of limitations; reindictment.

589. Same; defense of limitations to new indictment.

590. Same; indictments bound by limitations on May 10, 1934.

§ 581. Capital offenses.

Subject matter of this section, R. S. § 1043, is now covered by section 582 of this title.

§ 581a. Capital offenses; time for finding indictment.

An indictment for any offense punishable by death may be found at any time without regard to any statute of limitations. (Aug. 4, 1939, ch. 419, § 1, 53 Stat. 1198.)

§ 581b. Same; offenses previously barred.

Section 581a of this title shall not authorize prosecution, trial, or punishment for any offense barred by the provisions of law existing on Aug. 4, 1939. (Aug. 4, 1939, ch. 419, § 2, 53 Stat. 1198.)

§ 582. Offenses not capital.

No person shall be prosecuted, tried, or punished for any offense, not capital, except as provided in section 584 of this title, unless the indictment is found, or the information is instituted, within three years next after such offense shall have been committed. (R. S. § 1044; Apr. 13, 1876, ch. 56, 19 Stat. 32; Nov. 17, 1921, ch. 124, § 1, 42 Stat. 220; Dec. 27, 1927, ch. 6, 45 Stat. 51.)

#### CODIFICATION

This section constitutes the first clause of R. S. § 1044 as amended by act December 27, 1927, cited to text. The remainder of R. S. § 1044, as amended, constituted a proviso that nothing therein contained "shall apply to any offense for which an indictment has been heretofore found or an information instituted, or to any proceedings under any such indictment or information."

#### DERIVATION

Act Apr. 30, 1790, ch. 9, § 32, 1 Stat. 119.

#### CROSS REFERENCE

Offenses under the Nationality Act of 1940, see section 746 (g) of Title 8, Aliens and Nationality.

§ 583. Fleeing from justice.

Nothing in sections 581 and 582 of this title shall extend to any person fleeing from justice. (R. S. § 1045.)

#### DERIVATION

Act Apr. 30, 1790, ch. 9, § 32, 1 Stat. 119.

§ 584. Crimes under slave trade laws.

No person shall be prosecuted, tried, or punished for any crime arising under the slave trade laws of the United States, unless the indictment is found or the information is instituted within five years next after the committing of such crime. (R. S. § 1046; July 5, 1884, ch. 225, § 2, 23 Stat. 122.)

#### DERIVATION

Acts Mar. 26, 1804, ch. 40, § 3, 2 Stat. 290; Apr. 20, 1818, ch. 91, § 9, 3 Stat. 452.

#### REPEAL

This section originally applied to crimes arising under the revenue laws as well as under the slave trade laws. Section 1 of act July 5, 1884, cited to text, established new limitations with respect to the revenue laws and section 2 thereof repealed all laws or parts of laws inconsistent therewith.

§§ 585, 586. Crimes under internal revenue laws.

These sections related to limitations upon the prosecution of crimes under the internal revenue laws. The subject matter of these sections is now contained in subdivisions (a) and (b), respectively, of section 3748 of Title 26, Internal Revenue Code. For repeal of acts upon which these sections were based, see section 4 (a) of enacting provisions preceding section 1 of said Title 26.

Section 585 was based upon act July 5, 1884, ch. 225, § 1, 23 Stat. 122 as amended by acts Nov. 23, 1921, ch. 136, § 1321 (a), 42 Stat. 315; June 2, 1924, 4:01 p. m., ch. 234, § 1010 (a), 43 Stat. 341; Feb. 26, 1926, ch. 27, § 1110 (a), 1200, 44 Stat. 114, 125, and act June 6, 1932, ch. 209, § 1108, 47 Stat. 288.

Section 586 was based upon the acts Nov. 23, 1921, ch. 136, § 1321 (b), 42 Stat. 315; June 2, 1924, 4:01 p. m., ch. 234, § 1010 (b), 43 Stat. 342; Feb. 26, 1926, ch. 27, § 1110 (b), 44 Stat. 115; June 6, 1932, ch. 209, § 1108, 47 Stat. 288.

§ 587. Defective indictment; defect found after period of limitations; reindictment.

Whenever an indictment is found defective or insufficient for any cause, after the period prescribed by the applicable statute of limitations has expired, a new indictment may be returned not later than the end of the next succeeding regular term of such court, following the term at which such indictment was found defective or insufficient, during which a grand jury thereof shall be in session. (May 10, 1934, ch. 278, § 1, 48 Stat. 772, July 10, 1940, ch. 567, 54 Stat. 747.)

#### CODIFICATION

Act July 10, 1940, cited to text, substituted words "not later than the end of the succeeding regular term of such court, following the term at which such indictment was found defective or insufficient" for the words "at any time during the next succeeding term of court following such finding."

§ 588. Same; defect found before period of limitations; reindictment.

Whenever an indictment is found defective or insufficient for any cause, before the period prescribed



by the applicable statute of limitations has expired, and such period will expire before the end of the next regular term of the court to which such indictment was returned, a new indictment may be returned not later than the end of the next succeeding term of such court, regular or special, following the term at which such indictment was found defective or insufficient, during which a grand jury thereof shall be in session. (May 10, 1934, ch. 278, § 2, 48 Stat. 772.)

**§ 589. Same; defense of limitations to new indictment.**

In the event of reindictment under the provisions of sections 587 or 588 of this title the defense of the statute of limitations shall not prevail against the new indictment, any provision of law to the contrary notwithstanding. (May 10, 1934, ch. 278, § 3, 48 Stat. 772.)

**§ 590. Same; indictments bound by limitations on May 10, 1934.**

The provisions of sections 587, 588, and 589 of this title shall not apply to any indictment against which the statute of limitations has run on May 10, 1934. (May 10, 1934, ch. 278, § 4, 48 Stat. 772.)

**Chapter 17.—ARREST, BAIL, AND COMMITMENT**  
Sec.

- 591. Arrest and removal for trial
- 592. Arrest and removal to or from the Philippine Islands.
- 593. Operating illicit distillery; arrest; bail.
- 594. Violations of internal revenue laws; warrant for arrest.
- 595. Persons arrested taken before nearest officer for hearing.
- 596. Bail; cases not capital.
- 597. Same; capital cases.
- 598. Same; cases removed from State courts.
- 599. Surrender by bail.
- 600. New bail.
- 601. Remission of penalty of recognizance.
- 602. Writs; several indictments against same person.
- 603. Same; copy as jailer's authority.
- 604. Same; for removal of prisoner.
- 605. Same; to bring prisoner into court.

**§ 591. Arrest and removal for trial.**

For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any United States commissioner, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State; and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case. Where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had. (R. S.

§ 1014; May 28, 1896, ch. 252, § 19, 29 Stat. 184; Mar. 2, 1901, ch. 814, 31 Stat. 956.)

**DERIVATION**

Acts Sept. 24, 1789, ch. 20, § 88, 1 Stat. 91; Mar. 2, 1793, ch. 22, § 4, 1 Stat. 334; Aug. 22, 1842, ch. 188, § 1, 5 Stat. 516.

**§ 592. Arrest and removal to or from the Philippine Islands.**

The provisions of section 591 of this title, so far as applicable, shall apply throughout the United States for the arrest and removal therefrom to the Philippine Islands of any fugitive from justice charged with the commission of any crime or offense against the United States within the Philippine Islands, and shall apply within the Philippine Islands for the arrest and removal therefrom to the United States of any fugitive from justice charged with the commission of any crime or offense against the United States. Such fugitive may, by any judge or magistrate of the Philippine Islands, and agreeably to the usual mode of process against offenders therein, be arrested and imprisoned, or bailed, as the case may be, pending the issuance of a warrant for his removal to the United States, which warrant it shall be the duty of a judge of the court of first instance seasonably to issue, and of the officer or agent of the United States designated for the purpose to execute. Such officer or agent, when engaged in executing such warrant without the Philippine Islands, shall have all the powers of a marshal of the United States so far as such powers are requisite for the prisoner's safekeeping and the execution of the warrant. (Feb. 9, 1903, ch. 529, § 1, 32 Stat. 806.)

**§ 593. Operating illicit distillery; arrest; bail.**

Where any marshal or deputy marshal of the United States within the district for which he shall be appointed shall find any person or persons in the act of operating an illicit distillery, it shall be lawful for such marshal or deputy marshal to arrest such person or persons, and take him or them forthwith before some judicial officer named in section 591 of this title, who may reside in the county of arrest or if none, in that nearest to the place of arrest, to be dealt with according to the provisions of sections 591, 596, and 597 of this title. (Mar. 1, 1879, ch. 125, § 9, 20 Stat. 341.)

**§ 594. Violations of internal revenue laws; warrant for arrest.**

Warrants of arrest for violations of internal revenue laws may be issued by United States commissioners upon the sworn complaint of a United States district attorney, assistant United States district attorney, collector, or deputy collector of internal revenue or revenue agent or private citizen; but no such warrant of arrest shall be issued upon the sworn complaint of a private citizen unless first approved in writing by a United States district attorney. (May 28, 1896, ch. 252, § 19, 29 Stat. 184; Mar. 2, 1901, ch. 814, 31 Stat. 956.)

**CROSS REFERENCE**

Application to Alaska, see section 861 of Title 28. Judicial Code and Judiciary.

**§ 595. Persons arrested taken before nearest officer for hearing.**

It shall be the duty of the marshal, his deputy, or other officer, who may arrest a person charged with any crime or offense, to take the defendant before the nearest United States commissioner or the nearest judicial officer having jurisdiction under existing laws for a hearing, commitment, or taking bail for trial, and the officer or magistrate issuing the warrant shall attach thereto a certified copy of the complaint, and upon the arrest of the accused, the return of the warrant, with a copy of the complaint attached, shall confer jurisdiction upon such officer as fully as if the complaint had originally been made before him, and no mileage shall be allowed any officer violating the provisions hereof. (Aug. 18, 1894, ch. 301, § 1, 28 Stat. 416; May 28, 1896, ch. 252, § 19, 29 Stat. 184; Mar. 2, 1901, ch. 814, 31 Stat. 956.)

**§ 596. Bail; cases not capital.**

Bail shall be admitted upon all arrests in criminal cases where the offense is not punishable by death; and in such cases it may be taken by any of the persons authorized by section 591 of this title to arrest and imprison offenders. (R. S. § 1015.)

**DERIVATION**

Acts Sept. 24, 1789, ch. 20, § 33, 1 Stat. 91; Mar. 2, 1793, ch. 22, § 4, 1 Stat. 334; Apr. 10, 1869, ch. 22, § 2, 16 Stat. 44

**§ 597. Same; capital cases.**

Bail may be admitted upon all arrests in criminal cases where the punishment may be death; but in such cases it shall be taken only by the Supreme Court or a district court, or by a justice of the Supreme Court, a circuit judge, or a judge of a district court, who shall exercise their discretion therein, having regard to the nature and circumstance of the offense, and of the evidence, and to the usages of law. (R. S. § 1016; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

**DERIVATION**

Acts Sept. 24, 1789, ch. 20, § 33, 1 Stat. 91; Mar. 2, 1793, ch. 22, § 4, 1 Stat. 334; Apr. 10, 1869, ch. 22, § 2, 16 Stat. 44.

**§ 598. Same; cases removed from State courts.**

When an appeal is taken for the revision of the judgment of a State court, in any criminal proceeding where is drawn in question the validity of a statute of, or an authority exercised under, the United States, or where any title, right, privilege, or immunity is claimed under the Constitution, or any statute of, or commission held or authority exercised under, the United States, the defendant, if charged with an offense that is bailable by the laws of such State, shall not be released from custody until a final judgment upon such appeal, or until a bond, with sufficient sureties, in a reasonable sum, as ordered and approved by the State court, is given; and if the offense is not so bailable, until a final judgment upon the appeal. (R. S. § 1017; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

**DERIVATION**

Acts Sept. 24, 1789, ch. 20, § 25, 1 Stat. 85; July 13, 1866, ch. 184, § 69, 14 Stat. 172; Feb. 5, 1867, ch. 28, § 2, 14 Stat. 386.

**§ 599. Surrender by bail.**

Any party charged with a criminal offense and admitted to bail, may, in vacation, be arrested by his bail, and delivered to the marshal or his deputy, before any judge or other officer having power to commit for such offense; and at the request of such bail, the judge or other officer shall recommit the party so arrested to the custody of the marshal, and indorse on the recognizance, or certified copy thereof, the discharge and exoneratur of such bail; and the party so committed shall therefrom be held in custody until discharged by due course of law. (R. S. § 1018.)

**DERIVATION**

Act Aug. 8, 1846, ch. 98, § 4, 9 Stat. 73.

**§ 600. New bail.**

When proof is made to any judge of the United States, or other magistrate having authority to commit on criminal charges as aforesaid, that a person previously admitted to bail on any such charge is about to abscond, and that his bail is insufficient, the judge or magistrate shall require such person to give better security, or, for default thereof, cause him to be committed to prison; and an order for his arrest may be indorsed on the former commitment, or a new warrant therefor may be issued, by such judge or magistrate, setting forth the cause thereof. (R. S. § 1019.)

**DERIVATION**

Act Aug. 8, 1846, ch. 98, § 6, 9 Stat. 73.

**§ 601. Remission of penalty of recognizance.**

When any recognizance in a criminal cause, taken for, or in, or returnable to, any court of the United States, is forfeited by a breach of the condition thereof, such court may, in its discretion, remit the whole or a part of the penalty, whenever it appears to the court that there has been no willful default of the party, and that a trial can, notwithstanding, be had in the cause, and that public justice does not otherwise require the same penalty to be enforced. (R. S. § 1020.)

**DERIVATION**

Act Feb. 28, 1839, ch. 36, § 6, 5 Stat. 322.

**§ 602. Writs; several indictments against same person.**

When two or more charges are made, or two or more indictments are found against any person, only one writ or warrant shall be necessary to commit him for trial; and it shall be sufficient to state in the writ the name or general character of the offenses, or to refer to them only in very general terms. (R. S. § 1027.)

**DERIVATION**

Act Feb. 26, 1853, ch. 80, § 1, 10 Stat. 162.

**§ 603. Same; copy as jailer's authority.**

Whenever a prisoner is committed to a sheriff or jailer by virtue of a writ, warrant, or mittimus, a copy thereof shall be delivered to such sheriff or jailer, as his authority to hold the prisoner, and the original writ, warrant, or mittimus shall be returned to the proper court or officer, with the officer's return thereon. (R. S. § 1028.)

## DERIVATION

Act Feb. 26, 1853, ch. 80, § 1, 10 Stat. 163.

## § 604. Same; for removal of prisoner.

Only one writ or warrant is necessary to remove a prisoner from one district to another. One copy thereof may be delivered to the sheriff or jailer from whose custody the prisoner is taken, and another to the sheriff or jailer to whose custody he is committed, and the original writ, with the marshal's return thereon, shall be returned to the clerk of the district to which he is removed. (R. S. § 1029.)

## DERIVATION

Act Feb. 26, 1853, ch. 80, § 1, 10 Stat. 162, 163.

## § 605. Same; to bring prisoner into court.

No writ is necessary to bring into court any prisoner or person in custody, or for remanding him from the court into custody; but the same shall be done on the order of the court or district attorney, for which no fees shall be charged by the clerk or marshal. (R. S. § 1030.)

## DERIVATION

Act Feb. 26, 1853, ch. 80, § 3, 10 Stat. 169.

## Chapter 18.—SEARCH WARRANT

## Sec.

- 611. Authority to issue.
- 612. Grounds for issue.
- 613. Probable cause and affidavit.
- 614. Examination of applicant and witnesses.
- 615. Affidavits and depositions.
- 616. Issue and contents of warrant.
- 617. Service.
- 618. Same; breaking and entering.
- 619. Same; breaking and entering to liberate detained person aiding in execution of warrant.
- 620. Same; daytime.
- 621. Time for execution and return of warrant.
- 622. Copy of warrant and receipt for property taken to person from whom taken.
- 623. Return; contents.
- 624. Copy of inventory for person from whom property taken.
- 625. Taking testimony.
- 626. Restoration of property taken; retention of custody of property by officer or other disposition.
- 627. Filing papers with clerk of court having jurisdiction.
- 628. Obstructing service or execution.
- 629. Perjury and subornation of perjury.
- 630. Maliciously procuring issue.
- 631. Officer exceeding authority.
- 632. "United States" defined.
- 633. Existing laws not repealed.

## CROSS REFERENCE

Searches and seizures of intoxicating liquors, see sections 3116 and 3117 of Title 26, Internal Revenue Code.

## § 611. Authority to issue.

A search warrant authorized by this chapter may be issued by a judge of a United States district court, or by a judge of a State or Territorial court of record, or by a United States commissioner for the district wherein the property sought is located. (June 15, 1917, ch. 30, title XI, § 1, 40 Stat. 228.)

## § 612. Grounds for issue.

A search warrant may be issued under this chapter upon either of the following grounds:

1. When the property was stolen or embezzled in violation of a law of the United States; in which case it may be taken on the warrant from any house or

other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or from any person in whose possession it may be.

2. When the property was used as the means of committing a felony; in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offense, or from any person in whose possession it may be.

3. When the property, or any paper, is possessed, controlled, or used in violation of section 98 of this title; in which case it may be taken on the warrant from the person violating said section, or from any person in whose possession it may be, or from any house or other place in which it is concealed. (June 15, 1917, ch. 30, title XI, § 2, 40 Stat. 228.)

## § 613. Probable cause and affidavit.

A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person and particularly describing the property and the place to be searched. (June 15, 1917, ch. 30, title XI, § 3, 40 Stat. 228.)

## § 614. Examination of applicant and witnesses.

The judge or commissioner must, before issuing the warrant, examine on oath the complainant and any witness he may produce, and require their affidavits or take their depositions in writing and cause them to be subscribed by the parties making them. (June 15, 1917, ch. 30, title XI, § 4, 40 Stat. 228.)

## § 615. Affidavits and depositions.

The affidavits or depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist. (June 15, 1917, ch. 30, title XI, § 5, 40 Stat. 228.)

## § 616. Issue and contents of warrant.

If the judge or commissioner is thereupon satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence, he must issue a search warrant, signed by him with his name of office, to a civil officer of the United States duly authorized to enforce or assist in enforcing any law thereof, or to a person so duly authorized by the President of the United States, stating the particular grounds or probable cause for its issue and the names of the persons whose affidavits have been taken in support thereof, and commanding him forthwith to search the person or place named, for the property specified, and to bring it before the judge or commissioner. (June 15, 1917, ch. 30, title XI, § 6, 40 Stat. 229.)

## § 617. Service.

A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution. (June 15, 1917, ch. 30, title XI, § 7 40 Stat. 229.)

**§ 618. Same; breaking and entering.**

The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance. (June 15, 1917, ch. 30, title XI, § 8, 40 Stat. 229.)

**§ 619. Same; breaking and entering to liberate detained person aiding in execution of warrant.**

He may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation. (June 15, 1917, ch. 30, title XI, § 9, 40 Stat. 229.)

**§ 620. Same; daytime.**

The judge or commissioner must insert a direction in the warrant that it be served in the daytime, unless the affidavits are positive that the property is on the person or in the place to be searched, in which case he may insert a direction that it be served at any time of the day or night. (June 15, 1917, ch. 30, title XI, § 10, 40 Stat. 229.)

**§ 621. Time for execution and return of warrant.**

A search warrant must be executed and returned to the judge or commissioner who issued it within ten days after its date; after the expiration of this time the warrant, unless executed, is void. (June 15, 1917, ch. 30, title XI, § 11, 40 Stat. 229.)

**§ 622. Copy of warrant and receipt for property taken to person from whom taken.**

When the officer takes property under the warrant, he must give a copy of the warrant, together with a receipt for the property taken (specifying it in detail), to the person from whom it was taken by him or in whose possession it was found; or, in the absence of any person, he must leave it in the place where he found the property. (June 15, 1917, ch. 30, title XI, § 12, 40 Stat. 229.)

**§ 623. Return; contents.**

The officer must forthwith return the warrant to the judge or commissioner and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory and taken before the judge or commissioner at the time, to the following effect: "I, R. S., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant." (June 15, 1917, ch. 30, title XI, § 13, 40 Stat. 229.)

**§ 624. Copy of inventory for person from whom property taken.**

The judge or commissioner must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant. (June 15, 1917, ch. 30, title XI, § 14, 40 Stat. 229.)

**§ 625. Taking testimony.**

If the grounds on which the warrant was issued be controverted, the judge or commissioner must proceed to take testimony in relation thereto, and the testimony of each witness must be reduced to writing and subscribed by each witness. (June 15, 1917, ch. 30, title XI, § 15, 40 Stat. 229.)

**§ 626. Restoration of property taken; retention of custody of property by officer or other disposition.**

If it appears that the property or paper taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the judge or commissioner must cause it to be restored to the person from whom it was taken; but if it appears that the property or paper taken is the same as that described in the warrant, and that there is probable cause for believing the existence of the grounds on which the warrant was issued, then the judge or commissioner shall order the same retained in the custody of the person seizing it or to be otherwise disposed of according to law. (June 15, 1917, ch. 30, title XI, § 16, 40 Stat. 229.)

**§ 627. Filing papers with clerk of court having jurisdiction.**

The judge or commissioner must annex the affidavits, search warrant, return, inventory, and evidence; and if he has not power to inquire into the offense in respect to which the warrant was issued, he must at once file the same, together with a copy of the record of his proceedings, with the clerk of the court having power to so inquire. (June 15, 1917, ch. 30, title XI, § 17, 40 Stat. 230.)

**§ 628. Obstructing service or execution.**

Whoever shall knowingly and willfully obstruct, resist, or oppose any such officer or person in serving or attempting to serve or execute any such search warrant, or shall assault, beat, or wound any such officer or person, knowing him to be an officer or person so authorized, shall be fined not more than \$1,000 or imprisoned not more than two years. (June 15, 1917, ch. 30, title XI, § 18, 40 Stat. 230.)

**§ 629. Perjury and subornation of perjury.**

Sections 231 and 232 of this title shall apply to and embrace all persons making oath or affirmation or procuring the same under the provisions of this chapter, and such persons shall be subject to all the pains and penalties of said sections. (June 15, 1917, ch. 30, title XI, § 19, 40 Stat. 230.)

**§ 630. Maliciously procuring issue.**

A person who maliciously and without probable cause procures a search warrant to be issued and executed shall be fined not more than \$1,000 or imprisoned not more than one year. (June 15, 1917, ch. 30, title XI, § 20, 40 Stat. 230.)

**§ 631. Officer exceeding authority.**

An officer who in executing a search warrant willfully exceeds his authority, or exercises it with unnecessary severity, shall be fined not more than

\$1,000 or imprisoned not more than one year. (June 15, 1917, ch. 30, title XI, § 21, 40 Stat. 230.)

§ 632. "United States" defined.

The term "United States", as used in sections 611-631 of this title, includes the Canal Zone and all territory and waters, continental or insular, subject to the jurisdiction of the United States. (June 15, 1917, ch. 30, title XIII, § 1, 40 Stat. 231.)

§ 633. Existing laws not repealed.

Nothing contained in sections 98 and 611-633 of this title shall be held to repeal or impair any existing provisions of law regulating search and the issue of search warrants. (June 15, 1917, ch. 30, title XI, § 23, 40 Stat. 230.)

Chapter 19.—FINES, PENALTIES, AND  
FORFEITURES

Sec.

- 641. Discharge of indigent convicts.
- 642. Penalties under laws relating to vessels; informers' rights; manner of ascertaining facts.
- 643. Refunding of penalties under laws relating to vessels or seamen.
- 644. Officers and informers as witnesses.
- 645. Confiscation of firearms possessed by convicted felons.
- 646. Remission or mitigation of forfeitures under liquor laws; possession pending trial.
  - (a) Jurisdiction of court.
  - (b) Conditions precedent to remission or mitigation.
  - (c) Claimants first entitled to delivery.
  - (d) Delivery on bond pending trial.
- 647. Use of confiscated motor vehicles.

§ 641. Discharge of indigent convicts.

When a poor convict, sentenced by any court of the United States to be imprisoned and pay a fine, or fine and costs, or to pay a fine, or fine and costs, has been confined in prison thirty days, solely for the nonpayment of such fine, or fine and costs, such convict may make application in writing to any commissioner of the United States court in the district where he is imprisoned setting forth his inability to pay such fine, or fine and costs, and after notice to the district attorney of the United States, who may appear, offer evidence, and be heard, the commissioner shall proceed to hear and determine the matter. If on examination it shall appear to him that such convict is unable to pay such fine, or fine and costs, and that he has not any property exceeding \$20 in value, except such as is by law exempt from being taken on execution for debt, the commissioner shall administer to him the following oath: "I do solemnly swear that I have not any property, real or personal, to the amount of \$20, except such as is by law exempt from being taken on civil process for debt by the laws of (naming the State where oath is administered); and that I have no property in any way conveyed or concealed, or in any way disposed of, for my future use or benefit. So help me God." Upon taking such oath such convict shall be discharged; and the commissioner shall give to the keeper of the jail a certificate setting forth the facts. In case the convict is found by the commissioner to possess property valued at an amount in excess of said exemption,

nevertheless, if the Attorney General finds that the retention by such convict of all of such property is reasonably necessary for his support or that of his family, such convict shall be released without further imprisonment solely for the nonpayment of such fine, or fine and costs; or if he finds that the retention by such convict of any part of such property is reasonably necessary for his support or that of his family, such convict shall be released without further imprisonment solely for nonpayment of such fine or fine and costs upon payment on account of his fine and costs, of that portion of his property in excess of the amount found to be reasonably necessary for his support or that of his family. (R. S. §§ 1042, 5296; May 28, 1896, ch. 252, § 19, 29 Stat. 184; Mar. 2, 1901, ch. 814, 31 Stat. 956; June 29, 1940, ch. 449, § 4, 54 Stat. 692.)

DERIVATION

Act June 1, 1872, ch. 255, § 14, 17 Stat. 198.

CROSS REFERENCE

District Court of Alaska as court of United States, see section 101a of Title 48, Territories and Insular Possessions

§ 642. Penalties under laws relating to vessels; informers' rights; manner of ascertaining facts.

The Secretary of Commerce may, upon application therefor, remit or mitigate any fine, penalty, or forfeiture provided for in laws relating to vessels or discontinue any prosecution to recover penalties or relating to forfeitures denounced in such laws, excepting the penalty of imprisonment or of removal from office, upon such terms as he, in his discretion, shall think proper; and all rights granted to informers by such laws shall be held subject to the Secretary's powers of remission, except in cases where the claims of any informer to the share of any penalty shall have been determined by a court of competent jurisdiction prior to the application for the remission of the penalty or forfeiture; and the Secretary shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as he may deem proper. (R. S. § 5294; Dec. 15, 1894, ch. 7, 28 Stat. 595; Mar. 2, 1896, ch. 37, 29 Stat. 39; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829.)

DERIVATION

Act Feb 28, 1871, ch. 100, § 64, 16 Stat. 458.

§ 643. Refunding of penalties under laws relating to vessels or seamen.

Whenever any fine, penalty, forfeiture, exaction, or charge arising under the laws relating to vessels or seamen has been paid to any collector of customs or consular officer, and application has been made within one year from such payment for the refunding or remission of the same, the Secretary of Commerce, if on investigation he finds that such fine, penalty, forfeiture, exaction, or charge was illegally, improperly, or excessively imposed, shall have the power, either before or after the same has been covered into the Treasury, to refund so much of such fine, penalty, forfeiture, exaction, or charge as he may think proper, from any moneys in the Treasury not otherwise appropriated. (June 26, 1884, ch. 121, § 26, 23 Stat. 59; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829.)

## AMENDMENT

Effective July 1, 1935, this section was affected by act June 26, 1934, ch. 756, § 18, 48 Stat. 1231, see section 725q (b) of Title 31, Money and Finance.

## § 644. Officers and informers as witnesses.

Any officer or other person entitled to or interested in a part or share of any fine, penalty, or forfeiture incurred under any law of the United States, may be examined as a witness in any of the proceedings for the recovery of such fine, penalty, or forfeiture by either of the parties thereto, and such examination shall not deprive such witness of his share or interest in such fine, penalty, or forfeiture. (R. S. § 5295.)

## DERIVATION

Act Feb. 28, 1865, ch. 67, § 2, 13 Stat. 442.

## § 645. Confiscation of firearms possessed by convicted felons.

When any person is convicted in any court of the United States of any of the crimes of murder, manslaughter, felonious assault, rape, killing or assaulting a Federal officer, robbery, burglary, bank robbery, killing or kidnaping in committing bank robbery or in avoiding or attempting to avoid apprehension for the commission of bank robbery or in freeing one's self or attempting to free one's self from arrest or confinement for bank robbery, transporting or causing to be transported a kidnaped person in interstate or foreign commerce, transporting or causing to be transported a stolen motor vehicle in interstate or foreign commerce, or any felony perpetrated in whole or in part by the use of firearms, or an attempt to commit any of the foregoing crimes, the court in its judgment of conviction may, in addition to the penalty or penalties prescribed by law for the punishment of such crime or crimes, order the confiscation and disposal of firearms and ammunition found in the possession or under the immediate control of such person at the time of his arrest. The court may direct the delivery of such firearms or ammunition to the law-enforcement agency which apprehended such person, for its use or for any other disposition in its discretion. (June 13, 1939, ch. 197, 53 Stat. 814.)

## § 646. Remission or mitigation of forfeitures under liquor laws; possession pending trial—(a) Jurisdiction of court.

Whenever, in any proceeding in court for the forfeiture, under the internal-revenue laws, of any vehicle or aircraft seized for a violation of the internal-revenue laws relating to liquors, such forfeiture is decreed, the court shall have exclusive jurisdiction to remit or mitigate the forfeiture.

## (b) Conditions precedent to remission or mitigation.

In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until he proves (1) that he has an interest in such vehicle or aircraft, as owner or otherwise, which he acquired in good faith, (2) that he had at no time any knowledge or reason to believe that it was being or would be used in the violation of laws of the United States or of any State relating to liquor, and (3) if it appears that the in-

terest asserted by the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, that, before such claimant acquired his interest, or such other person acquired his right under such contract or agreement, whichever occurred later, the claimant, his officer or agent, was informed in answer to his inquiry, at the headquarters of the sheriff, chief of police, principal Federal internal-revenue officer engaged in the enforcement of the liquor laws, or other principal local or Federal law-enforcement officer of the locality in which such other person acquired his right under such contract or agreement, of the locality in which such other person then resided, and of each locality in which the claimant has made any other inquiry as to the character or financial standing of such other person, that such other person had no such record or reputation.

## (c) Claimants first entitled to delivery.

Upon the request of any claimant whose claim for remission or mitigation is allowed and whose interest is first in the order of priority among such claims allowed in such proceeding and is of an amount in excess of, or equal to, the appraised value of such vehicle or aircraft, the court shall order its return to him; and, upon the joint request of any two or more claimants whose claims are allowed and whose interests are not subject to any prior or intervening interests claimed and allowed in such proceedings, and are of a total amount in excess of, or equal to, the appraised value of such vehicle or aircraft, the court shall order its return to such of the joint requesting claimants as is designated in such request. Such return shall be made only upon payment of all expenses incident to the seizure and forfeiture incurred by the United States. In all other cases the court shall order disposition of such vehicle or aircraft as provided in sections 304f to 304m of Title 40, and if such disposition be by public sale, payment from the proceeds thereof, after satisfaction of all such expenses, of any such claim in its order of priority among the claims allowed in such proceedings.

## (d) Delivery on bond pending trial.

In any proceeding in court for the forfeiture under the internal-revenue laws of any vehicle or aircraft seized for a violation of the internal-revenue laws relating to liquor, the court shall order delivery thereof to any claimant who shall establish his right to the immediate possession thereof, and shall execute, with one or more sureties approved by the court, and deliver to the court, a bond to the United States for the payment of a sum equal to the appraised value of such vehicle or aircraft. Such bond shall be conditioned to return such vehicle or aircraft at the time of the trial and to pay the difference between the appraised value of such vehicle or aircraft as of the time it shall have been so released on bond and the appraised value thereof as of the time of trial; and conditioned further that, if the vehicle or aircraft be not returned at the time of

trial, the bond shall stand in lieu of, and be forfeited in the same manner as, such vehicle or aircraft. Notwithstanding the provisions of this subsection or any other provisions of law relating to the delivery of possession on bond of vehicles or aircraft sought to be forfeited under the internal-revenue laws, the court may, in its discretion and upon good cause shown by the United States, refuse to order such delivery of possession. (Aug. 27, 1935, ch. 740, § 204, 49 Stat. 878.)

#### CROSS REFERENCES

Remission or mitigation of forfeiture of distilled spirits, wines, or malt beverages, see section 2805 of Title 26, Internal Revenue Code.

Remission or mitigation of forfeitures under internal revenue laws generally, see section 3726 of Title 26, Internal Revenue Code.

#### § 647. Use of confiscated motor vehicles.

The Secretary of the Treasury may authorize the use by narcotic agents of motor vehicles confiscated under the provisions of section 157 of Title 27 and to pay the cost of acquisition, maintenance, repair, and operation thereof. (May 6, 1939, ch. 115, § 1, title I, 53 Stat. 663; Mar. 25, 1940, ch. 71, title I, 54 Stat. 63.)

<sup>1</sup> So in original. The word, "to," probably should be omitted.

#### REFERENCES IN TEXT

Section 157 of Title 27, to which reference is made in this section, now appears as section 3116 of Title 26, Internal Revenue Code.

### Chapter 20.—EXTRADITION

- Sec.
- 651. Fugitives from foreign country.
- 652. Fugitives from country under control of United States.
- 653. Surrender of fugitive.
- 654. Time allowed for extradition.
- 655. Evidence on hearing.
- 656. Witnesses for indigent defendants.
- 657. Place and character of hearing.
- 658. Continuance of provisions limited.
- 659. Protection of accused.
- 660. Agent receiving offenders; powers.
- 661. Same; penalty for opposing.
- 662. Fugitives from State or Territory.
- 662a. Same; juvenile offenders.
- 662b. Fugitives to country in which United States exercises extraterritorial jurisdiction; application of section 591.
- 662c. Same; arrest and removal.
- 662d. Same; provisional arrest and detention.
- 662e. Same; allowing escape.
- 663. Penalty for resisting agent.
- 664. Delivery of fugitives as between foreign country and Philippines.
- 665. Allowing escape.
- 666. Fugitives from Philippines.
- 667. Fees of commissioners.
- 668. Payment of fees and costs.
- 669-676. Fugitives within District of Columbia.

#### § 651. Fugitives from foreign country.

Whenever there is a treaty or convention for extradition between the Government of the United States and any foreign government, any justice of the Supreme Court, circuit judge, district judge, or commissioner, authorized so to do by any of the courts of the United States, or judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any per-

son found within the limits of any State, District, or Territory, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or commissioner, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made. (R. S. § 5270; June 6, 1900, ch. 793, 31 Stat. 656.)

#### DERIVATION

Act Aug. 12, 1848, ch. 167, § 1, 9 Stat. 302.

#### § 652. Fugitives from country under control of United States.

Whenever any foreign country or territory, or any part thereof, is occupied by or under the control of the United States, any person who shall violate, or who has violated, the criminal laws in force therein, by the commission of any of the following offenses: Murder and assault with intent to commit murder; counterfeiting or altering money, or uttering or bringing into circulation counterfeit or altered money; counterfeiting certificates or coupons of public indebtedness, bank notes, or other instruments of public credit, and the utterance or circulation of the same; forgery or altering and uttering what is forged or altered; embezzlement or criminal malversation of the public funds, committed by public officers, employees, or depositaries; larceny or embezzlement of an amount not less than \$100 in value; robbery; burglary, defined to be the breaking and entering by nighttime into the house of another person with intent to commit a felony therein; and the act of breaking and entering the house or building of another, whether in the day or nighttime, with the intent to commit a felony therein; the act of entering, or of breaking and entering the offices of the Government and public authorities, or the offices of banks, banking houses, savings banks, trust companies, insurance or other companies, with the intent to commit a felony therein; perjury or the subornation of perjury; rape; arson; piracy by the law of nations; murder, assault with intent to kill, and manslaughter, committed on the high seas, on board a ship owned by or in control of citizens or residents of such foreign country or territory and not under the flag of the United States, or of some other government; malicious destruction of or attempt to destroy railways, trams, vessels, bridges, dwellings, public edifices, or other buildings, when the act endangers human life, and who shall depart or flee, or who has departed or fled, from justice therein to the United States, any Territory thereof, or to the



District of Columbia, shall, when found therein, be liable to arrest and detention by the authorities of the United States, and on the written request or requisition of the military governor or other chief executive officer in control of such foreign country or territory shall be returned and surrendered as hereinafter provided to such authorities for trial under the laws in force in the place where such offense was committed. All the provisions of sections 651, 653, 654, 655, and 658-661 of this title, so far as applicable, shall govern proceedings authorized by this section. Such proceedings shall be had before a judge of the courts of the United States only, who shall hold such person on evidence establishing probable cause that he is guilty of the offense charged. No return or surrender shall be made of any person charged with the commission of any offense of a political nature. If so held, such person shall be returned and surrendered to the authorities in control of such foreign country or territory on the order of the Secretary of State of the United States, and such authorities shall secure to such a person a fair and impartial trial. (R. S. § 5270; June 6, 1900, ch. 793, 31 Stat. 656.)

## DERIVATION

Act Aug. 12, 1848, ch. 167, § 1, 9 Stat. 302.

## CROSS REFERENCE

Extradition of fugitives from justice, see sections 662b to 662e of this title.

## § 653. Surrender of fugitive.

It shall be lawful for the Secretary of State, under his hand and seal of office, to order the person so committed to be delivered to such person as shall be authorized, in the name and on behalf of such foreign government, to be tried for the crime of which such person shall be so accused, and such person shall be delivered up accordingly; and it shall be lawful for the person so authorized to hold such person in custody, and to take him to the territory of such foreign government, pursuant to such treaty. If the person so accused shall escape out of any custody to which he shall be committed, or to which he shall be delivered, it shall be lawful to retake such person in the same manner as any person accused of any crime against the laws in force in that part of the United States to which he shall so escape, may be retaken on an escape. (R. S. § 5272.)

## DERIVATION

Act Aug. 12, 1848, ch. 167, § 3, 9 Stat. 302.

## § 654. Time allowed for extradition.

Whenever any person who is committed under sections 651, 652-655, 658-663 of this title or any treaty, to remain until delivered up in pursuance of a requisition, is not so delivered up and conveyed out of the United States within two calendar months after such commitment, over and above the time actually required to convey the prisoner from the jail to which he was committed, by the readiest way, out of the United States, it shall be lawful for any judge of the United States, or of any State, upon application made to him by or on behalf of the person so committed, and upon proof made to him that reasonable notice of the intention to make such appli-

cation has been given to the Secretary of State, to order the person so committed to be discharged out of custody, unless sufficient cause is shown to such judge why such discharge ought not to be ordered. (R. S. § 5273.)

## DERIVATION

Act Aug. 12, 1848, ch. 167, § 4, 9 Stat. 303.

## § 655. Evidence on hearing.

In all cases where any depositions, warrants, or other papers or copies thereof shall be offered in evidence upon the hearing of any extradition case under sections 651, 652, 655, 658-663 of this title, such depositions, warrants, and other papers, or the copies thereof, shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any deposition, warrant, or other paper or copies thereof, so offered, are authenticated in the manner required. (R. S. § 5271; Aug. 3, 1882, ch. 378, § 5, 22 Stat. 216.)

## DERIVATION

Acts Aug. 12, 1848, ch. 167, § 2, 9 Stat. 302; act June 22, 1860, ch. 184, 12 Stat. 84.

## § 656. Witnesses for indigent defendants.

On the hearing of any case under a claim of extradition by any foreign government, upon affidavit being filed by the person charged setting forth that there are witnesses whose evidence is material to his defense, that he cannot safely go to trial without them, what he expects to prove by each of them, and that he is not possessed of sufficient means, and is actually unable to pay the fees of such witnesses, the judge or commissioner before whom such claim for extradition is heard may order that such witnesses be subpoenaed; and in such cases the costs incurred by the process, and the fees of witnesses, shall be paid in the same manner that similar fees are paid in the case of witnesses subpoenaed in behalf of the United States. (Aug. 3, 1882, ch. 378, § 3, 22 Stat. 215.)

## § 657. Place and character of hearing.

All hearings in cases of extradition under treaty stipulation or convention shall be held on land, publicly, and in a room or office easily accessible to the public. (Aug. 3, 1882, ch. 378, § 1, 22 Stat. 215.)

## § 658. Continuance of provisions limited.

The provisions of sections 651, 652-655, 658-663 of this title relating to the surrender of persons who have committed crimes in foreign countries shall continue in force during the existence of any treaty of extradition with any foreign government, and no longer. (R. S. § 5274.)

## DERIVATION

Act Aug. 12, 1848, ch. 167, § 5, 9 Stat. 303.



**§ 659. Protection of accused.**

Whenever any person is delivered by any foreign government to an agent of the United States, for the purpose of being brought within the United States and tried for any crime of which he is duly accused, the President shall have power to take all necessary measures for the transportation and safe-keeping of such accused person, and for his security against lawless violence, until the final conclusion of his trial for the crimes or offenses specified in the warrant of extradition, and until his final discharge from custody or imprisonment for or on account of such crimes or offenses, and for a reasonable time thereafter, and may employ such portion of the land or naval forces of the United States, or of the militia thereof, as may be necessary for the safe-keeping and protection of the accused. (R. S. § 5275.)

**DERIVATION**

Act Mar. 3, 1869, ch. 141, § 1, 15 Stat. 337.

**§ 660. Agent receiving offenders; powers.**

Any person duly appointed as agent to receive, in behalf of the United States, the delivery, by a foreign government, of any person accused of crime committed within the jurisdiction of the United States, and to convey him to the place of his trial, shall have all the powers of a marshal of the United States, in the several districts through which it may be necessary for him to pass with such prisoner, so far as such power is requisite for the prisoner's safe-keeping. (R. S. § 5276.)

**DERIVATION**

Act Mar. 3, 1869, ch. 141, § 2, 15 Stat. 338.

**§ 661. Same; penalty for opposing.**

Every person who knowingly and willfully obstructs, resists, or opposes such agent in the execution of his duties, or who rescues or attempts to rescue such prisoner, whether in the custody of the agent or of any officer or person to whom his custody has lawfully been committed, shall be punishable by a fine of not more than \$1,000, and by imprisonment for not more than one year. (R. S. § 5277.)

**DERIVATION**

Act Mar. 3, 1869, ch. 141, § 3, 15 Stat. 338.

**§ 662. Fugitives from State or Territory.**

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent

appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory. (R. S. § 5278.)

**DERIVATION**

Act Feb. 12, 1793, ch. 7, § 1, 1 Stat. 302.

**§ 662a. Same; juvenile offenders.**

For the purpose of cooperating with States (and for the purposes of this section the words "State" and "States" shall include the District of Columbia) in the care and treatment of juvenile offenders, whenever any person under twenty-one years of age shall have been arrested, charged with the commission of any crime punishable in any court of the United States or of the District of Columbia, and, after investigation by the Department of Justice, it shall appear that such person has committed a criminal offense or is a delinquent under the laws of any State that can and will assume jurisdiction over such juvenile and will take him into custody and deal with him according to the laws of such State, and that it will be to the best interest of the United States and of the juvenile offender to surrender the offender to the authorities of such State, the United States attorney of the district in which such person has been arrested is authorized to forego the prosecution of such person and surrender him as herein provided.

It shall be the duty of the United States marshal of such district upon written order of the United States attorney to convey such person to such State or, if already therein, to any other part thereof and deliver him into the custody of the proper authority or authorities thereof: *Provided*, That before any person is conveyed from one State to another under the authority herein given, such person shall signify his willingness to be so returned, or there shall be presented to the United States attorney a demand from the executive authority of the State to which the prisoner is to be returned, supported by indictment or affidavit as prescribed by section 662 of this title, in cases of demand on State authorities. The expense incident to the transportation, as herein authorized, of any such person shall be paid from the appropriation "Salaries, Fees, and Expenses, United States Marshals." (June 11, 1932, ch. 243, 47 Stat. 301.)

**§ 662b. Fugitives to country in which United States exercises extraterritorial jurisdiction; application of section 591.**

The provisions of section 591 of this title, so far as applicable, shall apply within the jurisdiction of the United States in any country where the United States exercises extraterritorial jurisdiction for the arrest and removal therefrom to the United States, its Territories, Districts, or possessions, including the Panama Canal Zone and the Philippine Islands, or any other territory governed, occupied, or controlled by it, of any citizen or national of the United States who is a fugitive from justice charged with or convicted of the commission of any crime or offense

against the United States, and shall also apply throughout the United States, its Territories, Districts, and possessions, including the Panama Canal Zone and the Philippine Islands, as well as to any other territory governed, occupied, or controlled by the United States, for the arrest and removal therefrom to the jurisdiction of any officer or representative of the United States vested with judicial authority in any country in which the United States exercises extraterritorial jurisdiction, of any citizen or national of the United States who is a fugitive from justice charged with or convicted of the commission of any crime or offense against the United States in any country where it exercises extraterritorial jurisdiction. Such fugitive first mentioned may, by any officer or representative of the United States vested with judicial authority in any country in which the United States exercises extraterritorial jurisdiction and agreeably to the usual mode of process against offenders subject to such jurisdiction, be arrested and imprisoned or admitted to bail, as the case may be, pending the issuance of a warrant for his removal to the United States, its Territories, Districts, or possessions, including the Panama Canal Zone and the Philippine Islands, or any other territory governed, occupied, or controlled by it, which warrant it shall be the duty of the principal officer or representative of the United States vested with judicial authority in the country where the fugitive shall be found seasonably to issue, and of the United States marshal or corresponding officer to execute. Such marshal or other officer, or the deputies of such marshal or officer, when engaged in executing such warrant without the jurisdiction of the court to which they are attached, shall have all the powers of a marshal of the United States so far as such powers are requisite for the prisoner's safekeeping and the execution of the warrant. (Mar. 22, 1934, ch. 73, § 1, 48 Stat. 454.)

**§ 662c. Same; arrest and removal.**

Whenever the executive authority of any State, Territory, District, or possession of the United States, including the Panama Canal Zone and the Philippine Islands, demands any American citizen or national as a fugitive from justice who has fled to the jurisdiction of any officer or representative of the United States vested with judicial authority in any country in which the United States exercises extraterritorial jurisdiction, and produces a copy of an indictment found or an affidavit made before a magistrate of any State, Territory, District, or possession of the United States, charging the fugitive so demanded with having committed treason, felony, or other crime, certified as authentic by the Governor, chief magistrate, or other person authorized to act as such from whence the fugitive so charged has fled, it shall be the duty of the officer or representative of the United States vested with judicial authority to whom the demand has been made to cause such fugitive to be arrested and secured, and to cause notice of the arrest to be given to the executive authorities making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall

appear. If no such agent shall appear within three months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State, Territory, District, or possession of the United States, including the Panama Canal Zone and the Philippine Islands, shall be paid by the executive authority making such demand. The agent who receives the fugitive into his custody shall be empowered to transport him to the jurisdiction from which he has fled, and every person who, by force, sets at liberty or rescues the fugitive from such agent while so transporting him shall be fined not more than \$500 or imprisoned not more than one year. (Mar. 22, 1934, ch. 73, § 2, 48 Stat. 455.)

**§ 662d. Same; provisional arrest and detention.**

Whenever, under sections 662b–662e of this title, it is desired to obtain the provisional arrest and detention of a fugitive in advance of the presentation of the formal proofs, such detention may be obtained by telegraph upon the request of the authority competent to request the surrender of such fugitive addressed to the authority competent to grant such surrender: *Provided*, That such request for provisional arrest and detention be accompanied by an express statement that a warrant for the fugitive's arrest has been issued within the jurisdiction of the authority making such request charging the fugitive with the commission of the crime for which his extradition is sought to be obtained: *Provided further*, That in the case of a request so made by a State, Territory, District or possession, the expenses of obtaining a fugitive upon telegraphic request shall be borne by such State, Territory, District, or possession: *And provided further*, That no person shall be held in custody under telegraphic request by virtue of the provisions of this section for more than ninety days. (Mar. 22, 1934, ch. 73, § 3, 48 Stat. 455.)

**§ 662e. Same; allowing escape.**

The provisions of section 244 of this title are hereby made applicable to proceedings in extradition instituted in accordance with the provisions of sections 662b–662d of this title. (Mar. 22, 1934, ch. 73, § 4, 48 Stat. 456.)

**§ 663. Penalty for resisting agent.**

Any agent so appointed as provided in section 662 of this title who receives the fugitive into his custody shall be empowered to transport him to the State or Territory from which he has fled. And every person who, by force, sets at liberty or rescues the fugitive from such agent while so transporting him, shall be fined not more than \$500 or imprisoned not more than one year. (R. S. § 5279.)

**DERIVATION**

Act Feb. 12, 1793, ch. 7, § 2, 1 Stat. 302.

**§ 664. Delivery of fugitives as between foreign country and Philippines.**

The provisions of sections 651, 653–655, and 658–661 of this title, so far as applicable, shall apply to the Philippine Islands for the arrest and removal therefrom of any fugitives from justice charged with

the commission within the jurisdiction of any foreign government of any of the crimes provided for by treaty between the United States and such foreign nation, and for the delivery by a foreign government of any person accused of crime committed within the jurisdiction of the Philippine Islands. Such fugitive from justice of a foreign country may, upon warrant duly issued by any judge or magistrate of the Philippine Islands, and agreeably to the usual mode of process against offenders therein, be arrested and brought before such judge or magistrate, who shall proceed in the matter in accordance with the provisions hereby made applicable to the Philippine Islands. For the purposes of this section the order or warrant for delivery of a person committed for extradition prescribed by section 653 of this title shall be issued by the Governor of the Philippine Islands under his hand and seal of office, and not by the Secretary of State. (Feb. 6, 1905, ch. 454, § 1, 33 Stat. 698.)

#### CROSS REFERENCE

Extradition of fugitives from Territories and Possessions, see sections 662b-662e of this title.

#### § 665. Allowing escape.

The provisions of section 244 of this title are hereby made applicable to proceedings in extradition from the Philippine Islands, either to the United States under sections 592 and 666 of this title, or to foreign countries under the provisions of section 664 of this title. (Feb. 6, 1905, ch. 454, § 2, 33 Stat. 698.)

#### CROSS REFERENCE

Extradition of fugitives from Territories and Possessions, see sections 662b-662e of this title.

#### § 666. Fugitives from Philippines.

The provisions of sections 662 and 663 of this title, so far as applicable, shall apply to the Philippine Islands, which, for the purposes of said sections, shall be deemed a Territory within the meaning thereof. (Feb. 9, 1903, ch. 529, § 2, 32 Stat. 807.)

#### CROSS REFERENCE

Extradition of fugitives from Territories and Possessions, see sections 662b-662e of this title.

#### § 667. Fees of commissioners.

Subject matter of this section, act Aug. 3, 1882, ch. 378, § 2, 22 Stat. 215, is now covered by section 597 of Title 28, Judicial Code and Judiciary.

#### § 668. Payment of fees and costs.

All witness fees and costs of every nature in cases of extradition, including the fees of the commissioner, shall be certified by the judge or commissioner before whom the hearing shall take place to the Secretary of State of the United States, and the same shall be paid out of the appropriations to defray the expenses of the judiciary. The Attorney General shall certify to the Secretary of State the amounts to be paid to the United States on account of said fees and costs in extradition cases by the foreign government requesting the extradition, and the Secretary of State shall cause said amounts to be collected and transmitted to the Attorney General for deposit in the Treasury of the United States. (Aug. 3, 1882, ch. 378, § 4, 22 Stat. 216; June 28, 1902, ch. 1301, § 1, 32 Stat. 475.)

#### §§ 669-676. Fugitives within District of Columbia.

Sections, act Apr. 21, 1928, ch. 398, §§ 1-8, 45 Stat. 440-442, applied only to District of Columbia. Subject matter is now covered by District of Columbia Code, sections 23-403 to 23-409.

### Chapter 21.—APPEALS

#### Sec.

681. Appeals; conviction of crime punishable by death.

682. Same; on behalf of the United States.

683. United States Court of Appeals for the District of Columbia; appeal from interlocutory order.

#### CROSS REFERENCE

Appeal of convictions by United States Commissioners, see section 576a of this title.

#### § 681. Appeals; conviction of crime punishable by death.

In all cases of conviction of crime the punishment of which provided by law is death, tried before any court of the United States, the final judgment of such court against the respondent shall, upon the application of the respondent, be reexamined, reversed, or affirmed by the Supreme Court of the United States upon appeal, under such rules and regulations as said court may prescribe. Every such appeal shall be allowed as of right and without the requirement of any security for the prosecution of the same or for costs. Upon the allowance of every such appeal, it shall be the duty of the clerk of the court from which the appeal is taken to forthwith transmit to the clerk of the Supreme Court of the United States a certified transcript of the record in such case, and it shall be the duty of the clerk of the Supreme Court of the United States to receive, file, and docket the same. Every such appeal shall during its pendency operate as a stay of proceedings upon the judgment in respect of which it is taken. Any such appeal may be filed and docketed in said Supreme Court at any time in a term held prior to the term named in the citation as well as at the term so named; and all such appeals shall be advanced to a speedy hearing on motion of either party. When any such judgment shall be either reversed or affirmed the cause shall be remanded to the court from whence it came for further proceedings in accordance with the decision of the Supreme Court, and the court to which such cause is so remanded shall have power to cause such judgment of the Supreme Court to be carried into execution. No appeal shall be taken or allowed unless a petition therefor shall be filed with the clerk of the court in which the trial shall have been had during the same term or within such time, not exceeding sixty days next after the expiration of the term of the court at which the trial shall have been had, as the court may for cause allow by order entered of record. (Feb. 6, 1889, ch. 113, § 6, 25 Stat. 656; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54; Apr. 26, 1928, ch. 440, 45 Stat. 466.)

#### CROSS REFERENCE

Appeal to Circuit Court of Appeals and Supreme Court, see sections 225 and 345 of Title 28, Judicial Code and Judiciary.

#### § 682. Same; on behalf of the United States.

An appeal may be taken by and on behalf of the United States from the district courts direct to the

Supreme Court of the United States in all criminal cases, in the following instances, to wit:

From a decision or judgment quashing, setting aside, or sustaining a demurrer to, any indictment, or any count thereof, where such decision or judgment is based upon the invalidity, or construction of the statute upon which the indictment is founded.

From a decision arresting a judgment of conviction for insufficiency of the indictment, where such decision is based upon the invalidity or construction of the statute upon which the indictment is founded.

From the decision or judgment sustaining a special plea in bar, when the defendant has not been put in jeopardy.

The appeal in all such cases shall be taken within thirty days after the decision or judgment has been rendered and shall be diligently prosecuted and shall have precedence over all other cases.

Pending the prosecution and determination of the appeal in the foregoing instances, the defendant shall be admitted to bail on his own recognizance: *Provided*, That no appeal shall be taken by or allowed the United States in any case where there has been a verdict in favor of the defendant. (Mar. 2, 1907, ch. 2564, 34 Stat. 1246; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

**§ 683. United States Court of Appeals for the District of Columbia; appeal from interlocutory order.**

Nothing contained in any Act of Congress shall be construed to empower the United States Court of Appeals for the District of Columbia to allow an appeal from any interlocutory order entered in any criminal action or proceeding or to entertain any such appeal heretofore or hereafter allowed or taken. (July 3, 1926, ch. 755, 44 Stat. 831; June 7, 1934, ch. 426, 48 Stat. 926.)

**Chapter 21A.—RULES OF CRIMINAL PROCEDURE**

**Sec.**

687. Proceedings in criminal cases prior to and including verdict; power of Supreme Court to prescribe rules.

688. Proceedings in criminal cases after verdict, after finding of guilty by court or after plea of guilty; power of Supreme Court to prescribe by rule.

**§ 687. Proceedings in criminal cases prior to and including verdict; power of Supreme Court to prescribe rules.**

The Supreme Court of the United States shall have the power to prescribe, from time to time, rules of pleading, practice, and procedure with respect to any or all proceedings prior to and including verdict, or finding of guilty or not guilty by the court if a jury has been waived, or plea of guilty, in criminal cases in district courts of the United States, including the district courts of Alaska, Hawaii, Puerto Rico, Canal Zone, and the Virgin Islands, in the Supreme Courts of Hawaii and Puerto Rico, in the United States Court for China, and in proceedings before United States commissioners. Such rules shall not take effect until they shall have been reported to Congress by the Attorney General at the beginning of a regular session thereof and until after the close of such session, and thereafter all laws in conflict therewith

shall be of no further force and effect. (June 29, 1940, ch. 445, 54 Stat. 688.)

**§ 688. Proceedings in criminal cases after verdict, after finding of guilty by court or after plea of guilty; power of Supreme Court to prescribe by rule.**

The Supreme Court of the United States shall have the power to prescribe, from time to time, rules of practice and procedure with respect to any or all proceedings after verdict, or finding of guilty by the court if a jury has been waived, or plea of guilty, in criminal cases in district courts of the United States, including the District Courts of Alaska, Hawaii, Puerto Rico, Canal Zone, District of Columbia, and Virgin Islands, in the Supreme Courts of Hawaii, and Puerto Rico, in the United States Court for China, in the United States Circuit Courts of Appeals, in the United States Court of Appeals for the District of Columbia, and in the Supreme Court of the United States: *Provided*, That nothing herein contained shall be construed to give the Supreme Court the power to abridge the right of the accused to apply for withdrawal of a plea of guilty, if such application be made within ten days after entry of such plea, and before sentence is imposed.

The right of appeal shall continue in those cases in which appeals are now authorized by law, but the rules made as herein authorized may prescribe the times for and manner of taking appeals and applying for writs of certiorari and preparing records and bills of exceptions and the conditions on which supersedeas or bail may be allowed.

The Supreme Court may fix the dates when such rules shall take effect and the extent to which they shall apply to proceedings then pending, and after they become effective all laws in conflict therewith shall be of no further force. (Feb. 24, 1933, ch. 119, §§ 1-3, 47 Stat. 904; Mar. 8, 1934, ch. 49, 48 Stat. 399; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1936, ch. 804, 49 Stat. 1921.)

**RULES OF CRIMINAL PROCEDURE AFTER PLEA OF GUILTY, VERDICT OR FINDING OF GUILT**

**ANALYSIS OF RULES**

- Rule 1. Sentence.
- Rule 2. Motions.
- Rule 3. Appeals.
- Rule 4. Control by Appellate Court.
- Rule 5. Supersedeas.
- Rule 6. Bail.
- Rule 7. Directions for preparation of record on appeal.
- Rule 8. Record on appeal without bill of exceptions.
- Rule 9. Bill of exceptions.
- Rule 10. Setting the appeal for argument.
- Rule 11. Writs of certiorari.
- Rule 12. Local rules.
- Rule 13. (Definitions; computation of time.)

**EFFECTIVE DATE**

An order of the Supreme Court of the United States promulgated May 7, 1934, after citing the authority of section 688 of this title, provided as follows: "It is ordered on this seventh day of May, 1934, that the following rules be adopted as the Rules of Practice and Procedure in all proceedings after plea of guilty, verdict of guilty by a jury or finding of guilty by the trial court where a jury is waived, in criminal cases in District Courts of the United States and in the district court of the United States for the District of Columbia, and in all subsequent proceedings in such cases in the United States Circuit Courts of Appeals, in the Court of Appeals of the District of Columbia, and in the Supreme Court of the United States.

"It is further ordered that these rules shall be applicable to proceedings in all cases in which a plea of guilty shall be entered or a verdict or finding of guilt shall be rendered, on or after the first day of September, 1934."

#### APPLICATION TO TERRITORIES AND POSSESSIONS

On March 17, 1941 the Supreme Court of the United States issued the following order, effective July 1, 1941:

"It is ordered, That the Rules of Practice and Procedure, after plea of guilty, verdict or finding of guilt, in criminal cases brought in the District Courts of the United States and in the Supreme Court of the District of Columbia, promulgated by order of May 7, 1934 (292 U. S. 661), and amended by orders of May 24, 1937 (301 U. S. 717), and May 31, 1938 (304 U. S. 592), 18 U. S. C. A. following section 688, be and they hereby are made applicable to all proceedings after plea of guilty, verdict or finding of guilt by the trial court where a jury is waived, in criminal cases in the District Courts of Alaska, Hawaii, Puerto Rico, Canal Zone and Virgin Islands, and in all subsequent proceedings in such cases in the United States Circuit Courts of Appeals and in the Supreme Court of the United States

"It is further ordered, That these Rules shall be applicable to proceedings in all cases in such courts in which a plea of guilty shall be entered or a verdict or finding of guilt shall be rendered on or after the first day of July, 1941."

#### RULE 1.—SENTENCE

After a plea of guilty, or a verdict of guilt by a jury or finding of guilt by the trial court where a jury is waived, and except as provided in sections 724, 725, 726, and 727 of this title sentence shall be imposed without delay unless (1) a motion for the withdrawal of a plea of guilty, or in arrest of judgment or for a new trial, is pending, or the trial court is of opinion that there is reasonable ground for such a motion; or (2) the condition or character of the defendant, or other pertinent matters, should be investigated in the interest of justice before sentence is imposed. The judgment setting forth the sentence shall be signed by the judge who imposes the sentence and shall be entered by the clerk.

Pending sentence, the court may commit the defendant or continue or increase the amount of bail. (Amended May 24, 1937.)

#### RULE 2.—MOTIONS

(1) Motions after verdict or finding of guilt, or to withdraw a plea of guilty, shall be determined promptly.

(2) Save as provided in subdivision (3) of this Rule, motions in arrest of judgment, or for a new trial, shall be made within three (3) days after verdict or finding of guilt.

(3) Except in capital cases a motion for a new trial solely upon the ground of newly-discovered evidence may be made within sixty (60) days after final judgment, without regard to the expiration of the term at which judgment was rendered, unless an appeal has been taken and in that event the trial court may entertain the motion only on remand of the case by the appellate court for that purpose, and such remand may be made at any time before final judgment. In capital cases the motion may be made at any time before execution of the judgment.

(4) A motion to withdraw a plea of guilty shall be made within ten (10) days after entry of such plea

and before sentence is imposed. (Amended May 31, 1938.)

#### RULE 3.—APPEALS

An appeal shall be taken within five (5) days after entry of judgment of conviction, except that where a motion for a new trial has been made within the time specified in subdivision (2) of Rule 2, the appeal may be taken within five (5) days after entry of the order denying the motion.

Petitions for allowance of appeal, and citations, in cases governed by these rules are abolished.

Appeals shall be taken by filing with the clerk of the trial court a notice, in duplicate, stating that the defendant appeals from the judgment, and by serving a copy of the notice upon the United States Attorney. The notice of appeal shall set forth the title of the case, the names and addresses of the appellant and appellant's attorney, a general statement of the nature of the offense, the date of the judgment, the sentence imposed, and, if the appellant is in custody, the prison where appellant is confined. The notice shall also contain a succinct statement of the grounds of appeal and shall follow substantially the form hereto annexed.

#### RULE 4.—CONTROL BY APPELLATE COURT

The clerk of the trial court shall immediately forward the duplicate notice of appeal to the clerk of the appellate court, together with a statement from the docket entries in the case substantially as provided in the form hereto annexed.

From the time of the filing with its clerk of the duplicate notice of appeal, the appellate court shall, subject to these rules, have supervision and control of the proceedings on the appeal, including the proceedings relating to the preparation of the record on appeal.

The appellate court may at any time, upon five (5) days' notice, entertain a motion to dismiss the appeal, or for directions to the trial court, or to vacate or modify any order made by the trial court or by any judge in relation to the prosecution of the appeal including any order for the granting of bail.

#### RULE 5.—SUPERSEDEAS

An appeal from a judgment of conviction stays the execution of the judgment, unless the defendant pending his appeal shall elect to enter upon the service of his sentence.

#### RULE 6.—BAIL

The defendant shall not be admitted to bail pending an appeal from a judgment of conviction save as follows: Bail may be granted by the trial judge or by the appellate court, or, where the appellate court is not in session, by any judge thereof or by the circuit justice.

Bail shall not be allowed pending appeal unless it appears that the appeal involves a substantial question which should be determined by the appellate court.

#### RULE 7.—DIRECTIONS FOR PREPARATION OF RECORD ON APPEAL

The clerk of the trial court shall immediately notify the trial judge of the filing of the notice of

appeal, and thereupon the trial judge shall at once direct the appellant or his attorney, and the United States Attorney, to appear before him and shall give such directions as may be appropriate with respect to the preparation of the record on appeal, including directions for the purpose of making promptly available all necessary transcripts of testimony and proceedings. The action and directions contemplated by this Rule may be had and given by the trial judge at any place he may designate within the judicial district where the conviction was had.

**RULE 8.—RECORD ON APPEAL WITHOUT BILL OF EXCEPTIONS**

When it appears that the appeal is to be prosecuted upon the clerk's record of proceedings, that is, upon the indictment and other pleadings and the orders, opinions, and judgment of the trial court, without a bill of exceptions, the trial judge shall direct the appellant to file with the clerk of the trial court, within a time stated, an assignment of the errors of which he complains (which may amplify or add to the grounds stated in the notice of appeal), and shall direct the clerk to forward promptly, with his certificate, to the appellate court the above-mentioned record and assignment of errors, and upon receipt thereof the appellate court shall at once set the appeal for argument as provided in these rules.

**RULE 9.—BILL OF EXCEPTIONS**

In cases other than those described in Rule 8, the appellant, within thirty (30) days after the taking of the appeal, or within such further time as within said period of thirty days may be fixed by the trial judge, shall procure to be settled, and shall file with the clerk of the court in which the case was tried, a bill of exceptions setting forth the proceedings upon which the appellant wishes to rely in addition to those shown by the clerk's record as described in Rule 8. Within the same time, the appellant shall file with the clerk of the trial court an assignment of the errors of which appellant complains. The bill of exceptions shall be settled by the trial judge as promptly as possible, and he shall give no extension of time that is not required in the interest of justice.

Bills of exceptions shall conform to the provisions of Rule 8 of the Rules of the Supreme Court of the United States.

Upon the filing of the bill of exceptions and assignment of errors, the clerk of the trial court shall forthwith transmit them, together with such matters of record as are pertinent to the appeal, with his certificate, to the clerk of the appellate court, and the papers so forwarded shall constitute the record on appeal.

The appellate court may at any time, on five (5) days' notice, entertain a motion by either party for the correction, amplification, or reduction of the record filed with the appellate court and may issue such directions to the trial court, or trial judge, in relation thereto, as may be appropriate.

**RULE 10.—SETTING THE APPEAL FOR ARGUMENT**

Save where good cause is shown for an earlier hearing, the appellate court shall set the appeal for argument on a date not less than thirty (30) days

after the filing in that court of the record on appeal and as soon after the expiration of that period as the state of the calendar of the appellate court will permit. Preference shall be given to criminal appeals over appeals in civil cases.

**RULE 11.—WRITS OF CERTIORARI**

Petition to the Supreme Court of the United States for writ of certiorari to review a judgment of the appellate court shall be made within thirty (30) days after the entry of the judgment of that court. Such petition shall be made as prescribed in Rules 38 and 39 of the Rules of the Supreme Court of the United States.

**RULE 12.—LOCAL RULES**

Each appellate court may prescribe rules, not inconsistent with the foregoing rules, with respect to cost bonds, the procedure on the hearing of appeals, the issue of mandates, and the time and manner in which petitions for rehearing may be presented.

**RULE 13.—(DEFINITIONS; COMPUTATION OF TIME)**

In the foregoing rules, the phrase "trial court" shall be deemed to refer to the District Courts of the United States and the district court of the United States for the District of Columbia; the phrase "trial judge" includes the judge before whom the case was tried or brought to judgment and, in case of his absence from the district, or disability, or death, any other judge assigned to hold, or holding, the court in which the case was tried or brought to judgment; the phrase "appellate court" shall be deemed to refer to the United States Circuit Court of Appeals and the Court of Appeals of the District of Columbia.

For the purpose of computing time as specified in the foregoing rules, Sundays and legal holidays (whether under Federal law or under the law of the State where the case was brought) shall be excluded.

**CHANGE OF NAME**

Act June 25, 1936, ch. 804, 49 Stat. 1921, changed the name of the "Supreme Court of the District of Columbia" to "district court of the United States for the District of Columbia."

**FORM OF NOTICE OF APPEAL UNDER RULE 3.**

**FORM No. 1.**

(To be used on appeals to the United States Circuit Court of Appeals.)

**DISTRICT COURT OF THE UNITED STATES**

**FOR THE.....**

**UNITED STATES OF AMERICA**

**vs.**

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Name and address of appellant.....

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Name and address of appellant's attorney.....

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Offense .....

-----

Date of judgment.....

Brief description of judgment or sentence.....

-----

Name of prison where now confined, if not on bail..

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I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals for the \_\_\_\_\_ Circuit from the judgment above-mentioned on the grounds set forth below.

(Signed) \_\_\_\_\_

*Appellant.*

Dated \_\_\_\_\_

Grounds of appeal:

#### FORM OF NOTICE OF APPEAL UNDER RULE 3.

##### FORM No. 2.

(To be used on appeals to the Court of Appeals of the District of Columbia.)

SUPREME COURT OF THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA  
vs.

Name and address of appellant \_\_\_\_\_

Name and address of appellant's attorney \_\_\_\_\_

Offense \_\_\_\_\_

Date of judgment \_\_\_\_\_

Brief description of judgment or sentence \_\_\_\_\_

Name of prison where now confined, if not on bail \_\_\_\_\_

I, the above-named Appellant, hereby appeal to the Court of Appeals of the District of Columbia from the judgment above-mentioned on the grounds set forth below.

(Signed) \_\_\_\_\_

*Appellant.*

Dated \_\_\_\_\_

Grounds of appeal:

#### FORM OF CLERK'S STATEMENT OF DOCKET ENTRIES TO BE FORWARDED UNDER RULE 4.

##### FORM No. 3.

(To accompany duplicate notice of appeal to the United States Circuit Court of Appeals.)

DISTRICT COURT OF THE UNITED STATES

FOR THE \_\_\_\_\_  
UNITED STATES OF AMERICA  
vs.

1. Indictment or Information for \_\_\_\_\_

\_\_\_\_\_ filed \_\_\_\_\_ 193\_\_

2. Arraignment \_\_\_\_\_ 193\_\_

3. Plea to Indictment or Information \_\_\_\_\_ 193\_\_

4. Motion to withdraw plea of guilty denied \_\_\_\_\_ 193\_\_

5. Trial by jury, or by court if jury waived \_\_\_\_\_ 193\_\_

6. Verdict or finding of guilt \_\_\_\_\_ 193\_\_

7. Judgment—(with terms of sentence) \_\_\_\_\_

\_\_\_\_\_ entered \_\_\_\_\_ 193\_\_

8. Notice of Appeal filed \_\_\_\_\_ 193\_\_

Date \_\_\_\_\_ 193\_\_

Attest \_\_\_\_\_ Clerk.

*N. B.*—This statement from the docket entries is intended suitably to identify the case and not as a substitute for the record on appeal, which is to be prepared and certified as provided in rules 7, 8, and 9.

#### FORM OF CLERK'S STATEMENT OF DOCKET ENTRIES TO BE FORWARDED UNDER RULE 4.

##### FORM No. 4.

(To accompany duplicate notice of appeal to the Court of Appeals of the District of Columbia.)

SUPREME COURT OF THE DISTRICT OF COLUMBIA  
UNITED STATES OF AMERICA

vs.

1. Indictment or Information for \_\_\_\_\_

\_\_\_\_\_ filed \_\_\_\_\_ 193\_\_

2. Arraignment \_\_\_\_\_ 193\_\_

3. Plea to Indictment or Information \_\_\_\_\_ 193\_\_

4. Motion to withdraw plea of guilty denied \_\_\_\_\_ 193\_\_

5. Trial by jury, or by court if jury waived \_\_\_\_\_ 193\_\_

6. Verdict or finding of guilt \_\_\_\_\_ 193\_\_

7. Judgment—(with terms of sentence) \_\_\_\_\_

\_\_\_\_\_ entered \_\_\_\_\_ 193\_\_

8. Notice of Appeal filed \_\_\_\_\_ 193\_\_

Date \_\_\_\_\_ 193\_\_

Attest \_\_\_\_\_ Clerk.

*N. B.*—This statement from the docket entries is intended suitably to identify the case and not as a substitute for the record on appeal, which is to be prepared and certified as provided in rules 7, 8, and 9.

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### § 691. Temporary jails for confinement of United States prisoners.

In a State where the use of jails, penitentiaries, or other houses is not allowed for the imprisonment of persons arrested or committed under the authority of the United States, any marshal in such State, under the direction of the judge of the district, may hire, or otherwise procure, within the limits of such State, a convenient place to serve as a temporary jail. (R. S. § 5537.)

#### DERIVATION

Res. Mar. 3, 1821, No. 2, 3 Stat. 646; act Mar. 2, 1833, ch. 57, § 6, 4 Stat. 634.

#### CROSS REFERENCES

Confinement of Federal prisoners in State institutions, see section 753b of this title.

Construction of Federal prisons in states without facilities for federal prisoners, see sections 753c-753e of this title.

Designation by Attorney General of place of confinement and transfer of place of confinement, see section 753f of this title.

### § 692. Safe-keeping of United States prisoners; marshals to make provisions for.

The marshal shall make such other provision as he may deem expedient and necessary for the safe-keeping of the prisoners arrested or committed under the authority of the United States, until permanent provision for that purpose is made by law. (R. S. § 5538.)

#### DERIVATION

Res. Mar. 3, 1821, No. 2, 3 Stat. 646; act Mar. 2, 1833, ch. 57, § 6, 4 Stat. 634.

#### CROSS REFERENCE

Bureau of Prisons responsible for safekeeping of United States prisoners, see section 753a of this title.

### § 693. Control, discipline, and treatment of United States convicts in State or Territorial jails or prisons.

Whenever any criminal, convicted of any offense against the United States, is imprisoned in the jail or penitentiary of any State or Territory, such criminal shall in all respects be subject to the same discipline and treatment as convicts sentenced by the courts of the State or Territory in which such jail or penitentiary is situated; and while so confined therein shall be exclusively under the control of the officers having charge of the same, under the laws of such State or Territory. (R. S. § 5539.)

#### DERIVATION

Act June 30, 1834, ch. 163, 4 Stat. 739.

### §§ 694-698. Place of confinement of United States prisoners; transportation; transfer.

These sections related to the place of confinement of United States prisoners and to transfers of such prisoners from one place of confinement to another. This subject matter is now covered by section 753f of this title.

These sections were based on the following statutes:

Sec. 694.—R. S. § 5540.

Sec. 695.—R. S. §§ 5541, 5542.



SECS. 696-698.—R. S. § 5546; acts July 12, 1876, ch. 183, 19 Stat. 88; Mar. 3, 1901, ch. 873, 31 Stat. 1450.

**§ 699. Notice to court of place of confinement of convicts.**

The Attorney General, when prisoners are confined in State or Territorial jails or penitentiaries, shall give the court having jurisdiction of the offenses notice of the jail or penitentiary where such prisoners will be confined. (R. S. § 5547; May 14, 1930, ch. 274, §§ 2, 3, 46 Stat. 325.)

DERIVATION

Act May 12, 1864, ch. 85, § 2, 13 Stat. 75; act Mar. 5, 1872, ch. 30, § 1, 17 Stat. 35.

**§ 699a. Contracts for subsistence and care of Federal prisoners; duration.**

Subject matter of this section, act Feb. 15, 1928, ch. 57, title II, 45 Stat. 83, is now covered by section 753b of this title.

**§ 700. Same; clothing and money on discharge.**

Subject matter of this section, act Mar. 3, 1875, ch. 145, § 2, 18 Stat. 480, is now covered by section 746 of this title.

**§ 701. Expenses for transportation and confinement of prisoners paid by United States.**

All the expenses attendant upon the transportation from place to place, and upon the temporary or permanent confinement of persons arrested or committed under the laws of the United States, as well as upon the execution of any sentence of a court thereof respecting them, shall be paid out of the Treasury of the United States in the manner provided by law. (R. S. § 5536.)

DERIVATION

Res. Mar. 3, 1821, No. 2, 3 Stat. 646; act Mar. 3, 1835, ch. 40, § 5, 4 Stat. 777; act Mar. 3, 1865, ch. 86, § 3, 13 Stat. 500

**§ 702. Report of Superintendent of Washington Asylum and Jail.**

The Superintendent of the Washington Asylum and Jail for the District of Columbia shall annually, in the month of November, make a detailed report to the Attorney General. (R. S. § 1828; Mar. 3, 1901, ch. 854, § 1197, 31 Stat. 1379; Mar. 2, 1911, ch. 192, § 1, 36 Stat. 1003.)

DERIVATION

Act Aug. 4, 1854, ch. 242, § 15, 10 Stat. 573.

CROSS REFERENCE

Board of Public Welfare of District of Columbia was given complete and exclusive control and management of the Washington Asylum and Jail by act Mar. 16, 1926, ch. 58, § 6, 44 Stat. 209.

**§ 703. Actual reasonable cost of subsistence paid.**

There shall be allowed and paid by the Attorney General, for the subsistence of prisoners in the custody of any marshal of the United States and the superintendent of the Washington Asylum and Jail, such sum only as it reasonably and actually cost to subsist them. And it shall be the duty of the Attorney General to prescribe such regulations for the government of the marshals and the superintendent of the Washington Asylum and Jail, in relation to their duties, as will enable him to determine the

actual and reasonable expenses incurred. (R. S. § 5545; Mar. 2, 1911, ch. 192, § 1, 36 Stat. 1003.)

DERIVATION

Act May 12, 1864, ch. 85, § 3, 13 Stat. 75; act Mar. 5, 1872, ch. 30, § 1, 17 Stat. 35.

**§ 704. Cost of care of District of Columbia convicts charged against District; accounts.**

The cost of the care and custody of District of Columbia convicts in any Federal penitentiary shall be charged against the District of Columbia in quarterly accounts to be rendered by the disbursing officer of said penitentiary; and the amount to be charged against the District of Columbia shall be ascertained by multiplying the average daily number of District of Columbia convicts confined in the penitentiary during the quarter by the per capita cost for all prisoners in such penitentiary for the same quarter but excluding expenses of construction or extraordinary repair of buildings. (Mar. 3, 1915, ch. 75, § 1, 38 Stat. 869.)

**§ 704a. Same; United States reimbursed; miscellaneous receipts.**

The United States shall be reimbursed, as heretofore, for the maintenance of District of Columbia inmates, and all sums paid by such District for such maintenance for the service of the fiscal year 1927 and subsequent fiscal years shall be covered into the Treasury as "Miscellaneous receipts." (Apr. 29, 1926, ch. 195, title II, 44 Stat. 347.)

**§ 705. Ordering sentences executed in house of correction.**

Whenever any person is convicted of any offense against the United States which is punishable by fine and imprisonment, or by either, the court by which the sentence is passed may order the sentence to be executed in any house of correction or house of reformation for juvenile delinquents within the State or district where such court is held, the use of which is authorized by the legislature of the State for such purpose. (R. S. § 5548.)

DERIVATION

Act Mar. 3, 1835, ch. 40, § 5, 4 Stat. 777.

**§ 706. Juvenile offenders; confinement.**

Juvenile offenders against the laws of the United States, being under the age of sixteen years, and who may hereafter be convicted of crime, the punishment whereof is imprisonment, shall be confined during the term of sentence in some house of refuge to be designated by the Attorney General, and shall be transported and delivered to the warden or keeper of such house of refuge by the marshal of the district where such conviction has occurred; or if such conviction be had in the District of Columbia, then the transportation and delivery shall be by the superintendent of the Washington Asylum and Jail, and the reasonable actual expense of the transportation, necessary subsistence, and hire, and transportation of assistants and the marshal or superintendent, only, shall be paid by the Attorney General, out of the judiciary fund. (R. S. § 5549; Mar. 2, 1911, ch. 192, § 1, 36 Stat. 1003.)

## DERIVATION

Act Mar. 3, 1865, ch. 121, § 1, 13 Stat. 538; act Mar. 5, 1872, ch. 30, § 1, 17 Stat. 35

## CROSS REFERENCE

Transportation of prisoners, see section 753g of this title.

## § 707. Same; contracts for subsistence.

The Attorney General shall contract with the managers or persons having control of such houses of refuge for the imprisonment, subsistence, and proper employment of all such juvenile offenders, and shall give the several courts of the United States and of the District of Columbia notice of the places so provided for the confinement of such offenders; and they shall be sentenced to confinement in the house of refuge nearest the place of conviction so designated by the Attorney General. (R. S. § 5550.)

## DERIVATION

Act Mar. 3, 1865, ch. 121, § 2, 13 Stat. 538; act Mar. 5, 1872, ch. 30, § 1, 17 Stat. 35.

## CROSS REFERENCE

Subsistence of persons convicted of offenses against United States, see section 753b of this title.

## § 708. Hiring out United States convicts.

It shall not be lawful for any officer, agent, or servant of the Government of the United States to contract with any person or corporation, or permit any warden, agent, or official of any State prison, penitentiary, jail, or house of correction where criminals of the United States may be incarcerated to hire or contract out the labor of said criminals, or any part of them, who may be confined in any prison, jail, or other place of incarceration for violation of any laws of the Government of the United States of America. (Feb. 23, 1887, ch. 213, § 1, 24 Stat. 411.)

## § 709. Same; penalty.

Any person who shall offend against the provisions of section 708 of this title shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be imprisoned for a term not less than one year nor more than three years, at the discretion of the court, or shall be fined not less than \$500 nor more than \$1,000 for each offense. (Feb. 23, 1887, ch. 213, § 2, 24 Stat. 411.)

## CROSS REFERENCE

Offense punishable by imprisonment for term in excess of one year declared a felony, see section 541 of this title.

## § 709a. Time when sentence begins to run.

The sentence of imprisonment of any person convicted of a crime in a court of the United States shall commence to run from the date on which such person is received at the penitentiary, reformatory, or jail for service of said sentence: *Provided*, That if any such person shall be committed to a jail or other place of detention to await transportation to the place at which his sentence is to be served, the sentence of such person shall commence to run from the date on which he is received at such jail or other place of detention. No sentence shall prescribe any other method of computing the term. (June 29, 1932, ch. 310, § 1, 47 Stat. 381.)

## § 710. Deductions from sentences for good conduct; computation.

Each prisoner who has been or shall hereafter be convicted of any offense against the laws of the United States, and is confined, in execution of the judgment or sentence upon any such conviction, in any United States penitentiary or jail, or in any penitentiary, prison, or jail of any State or Territory, for a definite term, other than for life, whose record of conduct shows that he has faithfully observed all the rules and has not been subjected to punishment, shall be entitled to a deduction from the term of his sentence to be estimated as follows, commencing on the first day of his arrival at the penitentiary, prison, or jail: Upon a sentence of not less than six months nor more than one year, five days for each month; upon a sentence of more than one year and less than three years, six days for each month; upon a sentence of not less than three years and less than five years, seven days for each month; upon a sentence of not less than five years and less than ten years, eight days for each month; upon a sentence of ten years or more, ten days for each month. When a prisoner has two or more sentences, the aggregate of his several sentences shall be the basis upon which his deduction shall be estimated. (June 21, 1902, ch. 1140, § 1, 32 Stat. 397.)

## CROSS REFERENCE

Inmates of narcotic farms or any narcotic addict confined in any Federal institution not eligible for parole or commutation allowance for good conduct unless Surgeon General of Bureau of Public Health certifies that inmate is no longer a narcotic addict, see section 230 of Title 21, Food and Drugs.

## § 710a. Same; prisoners sentenced on or after July 29, 1932.

With respect to Federal prisoners sentenced on and after July 29, 1932, deductions from the term of sentence for good conduct, as provided for by section 710 of this title, shall be computed beginning with the day on which the sentence commences to run. (June 29, 1932, ch. 310, § 2, 47 Stat. 381.)

## CROSS REFERENCE

Inmates of narcotic farms or any narcotic addict confined in any Federal institution not eligible for parole or commutation allowance for good conduct unless Surgeon General of Bureau of Public Health certifies that inmate is no longer a narcotic addict, see section 230 of Title 21, Food and Drugs.

## § 711. Same; restoration of forfeited commutation.

In the case of convicts in any United States penitentiary, the Attorney General shall have the power to restore to any such convict who has heretofore or may hereafter forfeit any good time by violating any existing law or prison regulation such portion of lost good time as may be proper, in his judgment, upon recommendations and evidence submitted to him by the warden in charge. Restoration, in the case of United States convicts confined in State and Territorial institutions, shall be regulated in accordance with the rules governing such institutions, respectively. (June 21, 1902, ch. 1140, § 2, 32 Stat. 397.)

## CROSS REFERENCE

Inmates of narcotic farms or any narcotic addict confined in any Federal institution not eligible for parole or commutation allowance for good conduct unless Surgeon General of Bureau of Public Health certifies that inmate is no longer a narcotic addict, see section 230 of Title 21, Food and Drugs.

## § 712. Same; sentences affected.

Sections 710 and 711 of this title shall apply to all sentences imposed subsequent to July 21, 1902, and to the sentences imposed prior thereto, the commutation upon which is less than that provided in said sections 710 and 711. (R. S. § 5544; June 21, 1902, ch. 1140, § 3, 32 Stat. 398; Apr. 27, 1906, ch. 1997, 34 Stat. 149.)

## CROSS REFERENCE

Inmates of narcotic farms or any narcotic addict confined in any Federal institution not eligible for parole or commutation allowance for good conduct unless Surgeon General of Bureau of Public Health certifies that inmate is no longer a narcotic addict, see section 230 of Title 21, Food and Drugs.

## § 712a. Same; prisoners convicted prior to June 21, 1902.

Section was based upon R. S. § 5544; act June 21, 1902, ch. 1140, § 3, 32 Stat. 398; act Apr. 27, 1906, ch. 1997, 34 Stat. 149.

## § 713. Same; entry on commitment warrant; forfeiture.

Each prisoner entitled to the deduction provided for in section 710 of this title shall be discharged at the expiration of his term of sentence less the time so deducted, and a certificate of the warden or keeper of the prison or penitentiary of such deduction shall be entered on the warrant of commitment. If during the term of imprisonment the prisoner shall commit any offense for which he shall be convicted by a jury, all remissions theretofore made shall be thereby annulled. (R. S. §§ 5543, 5544; Mar. 3, 1875, ch. 145, § 1, 18 Stat. 479; Mar. 3, 1891, ch. 529, § 8, 26 Stat. 840.)

## § 714. Parole of prisoners; conditions.

Every prisoner who has been or may hereafter be convicted of any offense against the United States and is confined in execution of the judgment of such conviction in any United States penitentiary or prison, for a definite term or terms of over one year, or for the term of his natural life, whose record of conduct shows that he has observed the rules of such institution, and who, if sentenced for a definite term, has served one-third of the total of such term or terms for which he was sentenced, or, if sentenced for the term of his natural life, has served not less than fifteen years, may be released on parole as hereinafter provided. (June 25, 1910, ch. 387, § 1, 36 Stat. 819; Jan. 23, 1913, ch. 9, 37 Stat. 650.)

## CROSS REFERENCE

Inmates of narcotic farms or any narcotic addict confined in any Federal institution not eligible for parole or commutation allowance for good conduct unless Surgeon General of Bureau of Public Health certifies that inmate is no longer a narcotic addict, see section 230 of Title 21, Food and Drugs.

## § 715. Same; boards of parole; meetings.

Subject matter of this section, act June 25, 1910, ch. 387, § 2, 36 Stat. 819, is now covered by sections 723a and 723b of this title.

## § 716. Same; granting of parole; application; findings; terms and conditions; approval of Attorney General; parole of alien prisoners.

If it shall appear to the Board of Parole from a report by the proper officers of such prison or upon application by a prisoner for release on parole, that there is a reasonable probability that such applicant will live and remain at liberty without violating the laws, and if in the opinion of the board such release is not incompatible with the welfare of society, then the Board of Parole may in its discretion authorize the release of such applicant on parole, and he shall be allowed to go on parole outside of said prison, and, in the discretion of the board, to return to his home, upon such terms and conditions, including personal reports from such paroled person, as said Board of Parole shall prescribe, and to remain, while on parole, in the legal custody and under the control of the warden of such prison from which paroled, and until the expiration of the term or terms specified in his sentence, less such good time allowance as is or may hereafter be provided for by law; and the said board shall, in every parole, fix the limits of the residence of the person paroled, which limits may thereafter be changed in the discretion of the board. No release on parole shall become operative until the findings of the Board of Parole under the terms hereof shall have been approved by the Attorney General of the United States: *Provided*, That where a Federal prisoner is an alien and subject to deportation the Board of Parole may authorize the release of such prisoner after he shall have become eligible for parole on condition that he be deported and remain outside of the United States and all places subject to its jurisdiction, and upon such parole becoming effective said prisoner shall be delivered to the duly authorized immigration official for deportation. (June 25, 1910, ch. 387, § 3, 36 Stat. 819; May 13, 1930, ch. 255, § 1, 46 Stat. 272; Mar. 2, 1931, ch. 371, 46 Stat. 1469.)

## CROSS REFERENCES

Inmates of narcotic farms or any narcotic addict confined in any Federal institution not eligible for parole or commutation allowance for good conduct unless Surgeon General of Bureau of Public Health certifies that inmate is no longer a narcotic addict, see section 230 of Title 21, Food and Drugs.

Power of Board of Parole over prisoners confined in District of Columbia was transferred to and vested in Board of Indeterminate Sentence and Parole of District by act July 15, 1932, ch. 492, § 9, 47 Stat. 698.

Single Parole Board created in lieu of all boards of parole at Federal penal and correctional institutions, see section 723a of this title.

## § 716a. Same; continuance of parole until expiration of maximum sentence without deductions.

Any prisoner sentenced after June 29, 1932, who may be paroled under authority of the parole laws, shall continue on parole until the expiration of the maximum term or terms specified in his sentence without deduction of such allowance for good conduct as is or may hereafter be provided for by law. (June 29, 1932, ch. 310, § 3, 47 Stat. 381.)

§ 716b. Same; prisoners released with credit for good conduct treated as on parole until expiration of maximum term.

Any prisoner who shall have served the term or terms for which he shall after June 29, 1932, be sentenced, less deductions allowed therefrom for good conduct, shall upon release be treated as if released on parole, and shall be subject to all provisions of law relating to the parole of United States prisoners until the expiration of the maximum term or terms specified in his sentence: *Provided*, That this section shall not operate to prevent delivery of a prisoner to the authorities of any State otherwise entitled to his custody. (June 29, 1932, ch. 310, § 4, 47 Stat. 381.)

§ 717. Same; violation of parole; warrant for retaking prisoner.

If the warden of the prison or penitentiary from which said prisoner was paroled or the Board of Parole or any member thereof shall have reliable information that the prisoner has violated his parole, then said warden, at any time within the term or terms of the prisoner's sentence, may issue his warrant to any officer hereinafter authorized to execute the same for the retaking of such prisoner. (June 25, 1910, ch. 387, § 4, 36 Stat. 820; May 13, 1930, ch. 255, § 1, 46 Stat. 272.)

#### CROSS REFERENCES

Inmates of narcotic farms or any narcotic addict confined in any Federal institution not eligible for parole or commutation allowance for good conduct unless Surgeon General of Bureau of Public Health certifies that inmate is no longer a narcotic addict, see section 230 of Title 21, Food and Drugs.

Power of Board of Parole over prisoners confined in District of Columbia was transferred to and vested in Board of Indeterminate Sentence and Parole of District by act July 15, 1932, ch. 492, § 9, 47 Stat. 698.

Retaking prisoner upon violation of parole, see section 723c of this title.

§ 718. Same; officers authorized to execute warrant; expenses.

Any officer of any Federal, penal, or correctional institution or any Federal officer authorized to serve criminal process within the United States, to whom such warrant shall be delivered, is authorized and required to execute such warrant by taking such prisoner and returning him to the custody of the Attorney General. All necessary expenses incurred in the administration of sections 714-716, 717-723 of this title shall be paid out of the appropriation for the institution in connection with which such expense was incurred, and such appropriation is hereby made available therefor. (June 25, 1910, ch. 387, § 5, 36 Stat. 820; June 29, 1940, ch. 449, § 2, 54 Stat. 692.)

#### CROSS REFERENCE

Retaking of prisoner upon violation of parole, see section 723c of this title.

§ 719. Same; action by board on issue of warrant; revocation of parole.

When a prisoner has been retaken upon a warrant issued by the Board of Parole, he shall be given an opportunity to appear before said Board of Parole, a member thereof, or an examiner designated by the Board. The said Board may then, or at any time in its discretion, revoke the order and terminate

such parole or modify the terms and conditions thereof. If such order of parole shall be revoked and the parole so terminated, the said prisoner shall serve the remainder of the sentence originally imposed; and the time the prisoner was out on parole shall not be taken into account to diminish the time for which he was sentenced. (June 25, 1910, ch. 387, § 6, 36 Stat. 820; May 13, 1930, ch. 255, § 1, 46 Stat. 272; June 29, 1940, ch. 449, § 3, 54 Stat. 692.)

#### CROSS REFERENCES

Creation, power, authority, and duties of Board of Parole, see sections 723a and 723b of this title.

Inmates of narcotic farms or any narcotic addict confined in any Federal institution not eligible for parole or commutation allowance for good conduct unless Surgeon General of Bureau of Public Health certifies that inmate is no longer a narcotic addict, see section 230 of Title 21, Food and Drugs.

Power of Board of Parole over prisoners confined in District of Columbia was transferred to and vested in Board of Indeterminate Sentence and Parole of District by act July 15, 1932, ch. 492, § 9, 47 Stat. 698.

§ 720. Same; parole officer for each penitentiary; supervision of paroled prisoners by marshals.

The Board of Parole shall appoint a parole officer for the penitentiary over which it has jurisdiction. Subject to the direction and control of such board, it shall be the duty of such officer to aid paroled prisoners in securing employment and to visit and exercise supervision over them while on parole, and such officer shall have such authority and perform such other duties as the Board of Parole may direct. The salary of each parole officer shall be fixed by the Board of Parole, but shall not exceed \$1,500 per annum, which, together with his actual and necessary traveling expenses, when approved by such board, shall be paid out of the appropriation for the maintenance of the penitentiary to which he is assigned, which appropriation is hereby made available for the purpose. In addition to such parole officers, the supervision of paroled prisoners may also be devolved upon the United States marshals when the Board of Parole may deem it necessary. (June 25, 1910, ch. 387, § 7, 36 Stat. 820; May 13, 1930, ch. 255, § 1, 46 Stat. 272.)

#### CROSS REFERENCES

Compensation of certain civilian positions in the field service to be adjusted by the heads of the several executive departments and establishments, see sections 678, 678a of Title 5, Executive Departments and Government Officers and Employees.

Control and management of institutions and appointment of personnel necessary for operation thereof to be vested in Attorney General, see section 905 of this title.

Inmates of narcotic farms or any narcotic addict confined in any Federal institution not eligible for parole or commutation allowance for good conduct unless Surgeon General of Bureau of Public Health certifies that inmate is no longer a narcotic addict, see section 230 of Title 21, Food and Drugs.

Power of Board of Parole over prisoners confined in District of Columbia was transferred to and vested in Board of Indeterminate Sentence and Parole of District by act July 15, 1932, ch. 492, § 9, 47 Stat. 698.

§ 721. Same; gratuities or transportation to paroled prisoners.

It shall be the duty of the warden of the prison to furnish to any and all paroled prisoners the usual gratuities, consisting of clothing, transportation, and

\$5 in money; the transportation furnished shall be to the place to which the paroled prisoner has elected to go, with the approval of the Board of Parole. The warden of the prison who furnishes these gratuities is hereby authorized to charge the actual cost of the same in his accounts against the United States. When any such paroled prisoner shall have received his final discharge while he is away from such prison, he shall be entitled to no further gratuities provided for discharged prisoners under existing law. (June 25, 1910, ch. 387, § 8, 36 Stat. 820.)

## CROSS REFERENCES

Inmates of narcotic farms or any narcotic addict confined in any Federal institution not eligible for parole or commutation allowance for good conduct unless Surgeon General of Bureau of Public Health certifies that inmate is no longer a narcotic addict, see section 230 of Title 21, Food and Drugs.

Transportation, money, and clothing furnished prisoners upon discharge, see section 746 of this title.

§ 722. Same; United States prisoners in State reformatories; parole under State laws.

Whenever any person has been convicted of any offense against the United States which is punishable by imprisonment, and has been sentenced to imprisonment and is confined therefor, in any reformatory institution of any State in accordance with section 705 of this title, or other laws of the United States, then if such State has laws for the parole of prisoners committed to such institutions by the courts of that State, such person convicted of any offense against the United States shall be eligible to parole on the same terms and conditions and by the same authority and subject to recommittal for violation of such parole in the same manner, as persons committed to such institutions by the courts of said State, and the laws of said State relating to the parole of prisoners and the supervision thereof in such institutions are hereby adopted and made to apply to persons committed to such institutions for offenses against the United States. The necessary cost of parole and supervision of such prisoners to the State where such institution is located shall be paid by the United States out of the appropriation for the support of prisoners confined in State institutions, which appropriation is hereby made available for the purpose. No such prisoner shall be entitled to go on parole until the Attorney General shall have approved the order therefor. When a prisoner is committed to such institution outside of the State where he lives he may be permitted by his parole to return to his home, and in such case the supervision of such prisoner on parole shall devolve upon the marshal of the district where said prisoner lives, and in case such prisoner should violate his parole a warrant for his recommitment shall be delivered to and executed by said marshal. (June 25, 1910, ch. 387, § 9, 36 Stat. 821.)

## CROSS REFERENCE

Parole of prisoners in State reformatories, see section 723b of this title.

§ 723. Same; power of President to grant pardon or commutation, or good time allowance not impaired.

Nothing in sections 714–716, 717–722 of this title shall be construed to impair the power of the Presi-

dent of the United States to grant a pardon or commutation in any case, or in any way impair or revoke such good time allowance as is or may hereafter be provided by law. (June 25, 1910, ch. 387, § 10, 36 Stat. 821.)

§ 723a. Same; creation of single Board of Parole; membership; appointment; salary.

In lieu of all boards of parole at Federal penal and correctional institutions existing on June 12, 1930, there is created as of that date a single Board of Parole to consist of three members to be appointed by the Attorney General, at a salary of \$7,500 each per annum. (May 13, 1930, ch. 255, § 1, 46 Stat. 272.)

§ 723b. Same; power, authority, and duties of Board of Parole; prisoners in State reformatories.

All power and authority on June 12, 1930, vested in, and all duties on that date imposed upon, the Attorney General and the several boards of parole existing on that date with respect to the parole of United States prisoners are as of that date transferred to the Board of Parole created by section 723a of this title: *Provided, however,* That this section and sections 723a and 723c of this title shall not affect the method, terms, or conditions under which United States prisoners confined in any State reformatory are paroled, except that the power to approve the release on parole of such prisoners is conferred upon the Board of Parole created by section 723a of this title. (May 13, 1930, ch. 255, § 2, 46 Stat. 272.)

§ 723c. Same; violation of parole; warrant for retaking prisoner; effect of violation on unexpired term of imprisonment.

The Board of Parole created by section 723a of this title, or any member thereof, shall hereafter have the exclusive authority to issue warrants for the retaking of any United States prisoner who has violated his parole. The unexpired term of imprisonment of any such prisoner shall begin to run from the date he is returned to the custody of the Attorney General under said warrant, and the time the prisoner was on parole shall not diminish the time he was originally sentenced to serve. (May 13, 1930, ch. 255, § 3, 46 Stat. 272; June 29, 1940, ch. 449, § 1, 54 Stat. 692.)

## AMENDMENT

Act June 29, 1940, cited to text, substituted "returned to the custody of the Attorney General under said warrant" for "returned to the institution."

§ 724. Suspension of imposition or execution of sentences and placing of defendant upon probation; power of courts; revocation or modification of probation; duties of probationer.

The courts of the United States having original jurisdiction of criminal actions, except in the District of Columbia, when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public, as well as the defendant, will be subserved thereby, shall have power, after conviction or after a plea of guilty or nolo contendere for any crime or offense not punishable by death or life imprisonment, to suspend the imposition or execution of sentence and to place the defendant upon probation for such period and upon such terms and conditions as they may deem best; or

the court may impose a fine and may also place the defendant upon probation in the manner aforesaid. The court may revoke or modify any condition of probation, or may change the period of probation. The period of probation, together with any extension thereof, shall not exceed five years.

While on probation, the defendant may be required to pay in one or several sums a fine imposed at the time of being placed on probation and may also be required to make restitution or reparation to the aggrieved party or parties for actual damages or loss caused by the offense for which conviction was had, and may also be required to provide for the support of any person or persons for whose support he is legally responsible. (Mar. 4, 1925, ch. 521, § 1, 43 Stat. 1259.)

#### CROSS REFERENCE

Juvenile delinquents, see section 924 of this title.

#### § 725. Same; powers of probation officers, arrest of probationer.

When directed by the court, the probation officer shall report to the court, with a statement of the conduct of the probationer while on probation. The court may thereupon discharge the probationer from further supervision and may terminate the proceedings against him, or may extend the probation, as shall seem advisable.

At any time within the probation period the probation officer may arrest the probationer wherever found, without a warrant, or the court which has granted the probation may issue a warrant for his arrest, which warrant may be executed by either the probation officer or the United States marshal of either the district in which the probationer was put upon probation or of any district in which the probationer shall be found and, if the probationer shall be so arrested in a district other than that in which he has been put upon probation, any of said officers may return probationer to the district out of which such warrant shall have been issued. Thereupon such probationer shall forthwith be taken before the court. At any time after the probation period, but within the maximum period for which the defendant might originally have been sentenced, the court may issue a warrant and cause the defendant to be arrested and brought before the court. Thereupon the court may revoke the probation or the suspension of sentence, and may impose any sentence which might originally have been imposed. (Mar. 4, 1925, ch. 521, § 2, 43 Stat. 1260; June 16, 1933, ch. 97, 48 Stat. 256.)

#### CROSS REFERENCE

Juvenile delinquents, see section 924 of this title.

#### § 726. Same; probation officers; appointment; compensation; removal; designation and duties of chief probation officer.

The judge or judges of any United States court or courts having original jurisdiction of criminal actions, except in the District of Columbia, may appoint one or more suitable persons to serve as probation officers within the jurisdiction and under the direction of the judge or judges making such appointments or of their successors. All such probation officers shall serve without compensation except that in case it shall appear to any such judge

or judges that the needs of the service require that there should be salaried probation officers, such judge or judges may appoint such officers. The Attorney General shall fix the salaries to be paid probation officers and shall provide for the necessary expenses of probation officers, including clerical service, and expenses for traveling when approved by the court. Such judge or judges may in their discretion remove any probation officer serving in their respective courts. The appointment of a probation officer shall be in writing and shall be entered on the records of the court or courts of the judge or judges making such appointment, and a copy of the order of appointment shall be delivered to the officer so appointed and a copy sent to the Attorney General. Whenever such judge or judges shall have appointed more than one probation officer he or they may designate one of such officers chief probation officer. Such chief probation officer shall direct the work of all probation officers serving in the court or courts of such judge or judges. (Mar. 4, 1925, ch. 521, § 3, 43 Stat. 1260; June 6, 1930, ch. 406, § 1, 46 Stat. 503.)

#### COMPENSATION

Provision in this section relating to compensation of probation officers is modified by section 726-1 of this title.

#### CROSS REFERENCE

Juvenile delinquents, see section 924 of this title.

#### § 726-1. Same; compensation of probation officers.

The salary of no probation officer shall be less than \$1,800 per annum nor more than \$3,200 per annum. (May 14, 1940, ch. 189, title IV, 54 Stat. 210.)

#### CROSS REFERENCE

Probation officers to serve without compensation, see section 726 of this title.

#### § 726a. Same; transportation expenses of probation officers.

United States probation officers may be allowed, in lieu of actual expenses of transportation, not to exceed 3 cents per mile for the use of their own automobiles for transportation when traveling on official business within the city limits of their official station. (Apr. 27, 1938, ch. 180, title II, § 1, 52 Stat. 264; June 29, 1939, ch. 248, title II, 53 Stat. 902; May 14, 1940, ch. 189, title IV, 54 Stat. 210.)

#### § 727. Same; duties of probation officers.

It shall be the duty of a probation officer to investigate any case referred to him for investigation by the court in which he is serving and to report thereon to the court. The probation officer shall furnish to each person released on probation under his supervision a written statement of the conditions of probation and shall instruct him regarding the same. Such officer shall keep informed concerning the conduct and condition of each person on probation under his supervision and shall report thereon to the court placing such person on probation. Such officer shall use all suitable methods, not inconsistent with the conditions imposed by the court, to aid persons on probation and to bring about improvements in their conduct and condition. Each officer shall keep records of his work; shall keep accurate and complete accounts of all moneys collected from persons under his supervision; shall give receipts therefor, and shall

make at least monthly returns thereof; shall make such reports to the Attorney General as he may at any time require; and shall perform such other duties as the court may direct. Such officer shall perform such duties with respect to persons on parole as the Attorney General shall request. A probation officer shall have the power of arrest that is now exercised by a deputy marshal. (Mar. 4, 1925, ch. 521, § 4, 43 Stat. 1260; June 6, 1930, ch. 406, § 1, 46 Stat. 503.)

**CROSS REFERENCE**

Juvenile delinquents, see section 924 of this title.

**§ 728. Same; duties of Attorney General affecting probation officers; investigations; collection of information; record forms and statutes; rules; enforcement of laws; annual report.**

The Attorney General, or his authorized agent, shall investigate the work of the probation officers and make recommendations concerning the same to the respective judges and shall have access to the records of all probation officers. He shall collect for publication statistical and other information concerning the work of the probation officers. He shall prescribe record forms and statistics to be kept by the probation officers and shall formulate general rules for the proper conduct of the probation work. He shall endeavor by all suitable means to promote the efficient administration of the probation system and the enforcement of the probation laws in all United States courts. He shall incorporate in his annual report a statement concerning the operation of the probation system in such courts. (Mar. 4, 1925, ch. 521, § 4 (a), as added June 6, 1930, ch. 406, § 2, 46 Stat. 503.)

**CROSS REFERENCE**

Juvenile delinquents, see section 924 of this title.

**§ 729. Erroneous conviction; authorization of suit against United States.**

Any person who, having been convicted of any crime or offense against the United States and having been sentenced to imprisonment and having served all or any part of his sentence, shall hereafter, on appeal or on a new trial or rehearing, be found not guilty of the crime of which he was convicted or shall hereafter receive a pardon on the ground of innocence, if it shall appear that such person did not commit any of the acts with which he was charged or that his conduct in connection with such charge did not constitute a crime or offense against the United States or any State, Territory, or possession of the United States or the District of Columbia, in which the offense or acts are alleged to have been committed, and that he has not, either intentionally, or by willful misconduct, or negligence, contributed to bring about his arrest or conviction, may, subject to the limitations and conditions hereinafter stated, and in accordance with the provisions of the Judicial Code, maintain suit against the United States in the Court of Claims for damages sustained by him as a result of such conviction and imprisonment. (May 24, 1938, ch. 266, § 1, 52 Stat. 438.)

**CROSS REFERENCE**

Jurisdiction of court of claims of actions for damages against the United States, see section 250 of Title 28, Judicial Code and Judiciary.

**§ 730. Same; certificate of innocence; admissibility; contents.**

The only evidence admissible on the issue of innocence of the plaintiff shall be a certificate of the court in which such person was adjudged not guilty or a pardon or certified copy of a pardon, and such certificate of the court, pardon, or certified copy of a pardon shall contain recitals or findings that—

(a) Claimant did not commit any of the acts with which he was charged; or

(b) that his conduct in connection with such charge did not constitute a crime or offense against the United States or any State, Territory, or possession of the United States or the District of Columbia, in which the offense or acts are alleged to have been committed; and

(c) that he has not either intentionally, or by willful misconduct, or negligence, contributed to bring about his arrest or conviction. (May 24, 1938, ch. 266, § 2, 52 Stat. 438.)

**§ 731. Same; prerequisites to filing pardon.**

No pardon or certified copy of a pardon shall be filed with the Court of Claims unless it contains recitals that the pardon was granted after applicant had exhausted all recourse to the courts and further that the time for any court to exercise its jurisdiction had expired. (May 24, 1938, ch. 266, § 3, 52 Stat. 438.)

**§ 732. Same; prosecution of suit in forma pauperis.**

Upon a showing satisfactory to it, the Court may permit the plaintiff to prosecute such action in forma pauperis. In the event that the court shall render judgment for the plaintiff, the amount of damages awarded shall not exceed the sum of \$5,000. (May 24, 1938, ch. 266, § 4, 52 Stat. 438.)

**§ 733. Transfer of Federal prisoners indicted or convicted of a felony in State courts to State prisons authorized to receive them; multiple requests; expenses.**

Whenever any person confined in any penal or correctional institution pursuant to a judgment of conviction of an offense against the United States has been indicted or convicted of a felony in a court of record of any State, other than the State in which such person is confined, the Attorney General shall, if he finds it in the public interest to do so, upon the request of the Governor or the executive authority of such State, and upon the presentation of a certified copy of such indictment or judgment of conviction, cause such person to be transferred prior to his release to a penal or correctional institution situated within such State that is authorized to receive United States prisoners. In the event more than one such request is presented in respect to any prisoner, the Attorney General shall determine in his discretion which request should receive preference. The expense of personnel and transportation incurred in carrying out the provisions of this section shall be chargeable to the appropriation for the "support of United States prisoners." (Apr. 30, 1940, ch. 176, § 1, 54 Stat. 175.)



**§ 733a. Same; definitions.**

The term "indictment" as used in sections 733-733b of this title shall include "information" and the term "indicted" shall include "informed against." The term "State" shall include the District of Columbia, but not Territories. (Apr. 30, 1940, ch. 176, § 2, 54 Stat. 176.)

**§ 733b. Same; transfer of prisoners under other laws.**

Nothing in sections 733-733b of this title shall be deemed to limit the authority of the Attorney General to transfer any prisoners pursuant to any other provision of law. (Apr. 30, 1940, ch. 176, § 3, 54 Stat. 176.)

### Chapter 23.—UNITED STATES PRISONS IN GENERAL

- Sec.**
- 741. Control and management of prisons by Attorney General; officers; rules for government.
  - 742. Designation of penitentiary in which prisoners shall be confined.
  - 743. Transportation of prisoners; expenses.
  - 744. Employment of convicts.
  - 744a. Employment of convicts; forms of employment; competition with private industry or free labor.
  - 744b. Same; employment on public works; camps for confinement of convicts; expenses, how met.
  - 744c. Same; establishment of industries; disposition of articles produced; forms of employment; locality of industries.
  - 744d. Same; prison industries working-capital fund; use.
  - 744e. Same; prison industries working-capital fund; moneys credited to fund.
  - 744f. Same; prison industries working-capital fund; administration and disbursement; use of fund.
  - 744g. Same; purchase of prison-made products by Federal departments; terms of purchase.
  - 744h. Same; commutation of sentence for good conduct.
  - 744i. Federal Prison Industries; creation.
  - 744j. Same; board of directors; appointment; term; compensation.
  - 744k. Same; duties transferred; diversification of prison industries.
  - 744l. Same; Prison Industries Fund; transfer of balances to; payment of claims; employment of fund; settlement of accounts.
  - 744m. Same; annual report of directors.
  - 744n. Sections supplementary to sections 744a to 744h.
  - 745. Separation of youthful prisoners.
  - 746. Transportation home of discharged prisoners; clothing and money.
  - 747. Inapplicable to juvenile offenders.
  - 748. Confinement of prisoners in the United States Disciplinary Barracks.
  - 749. Federal jail at Fort Smith, Arkansas, made national prison; prisoners admitted.
  - 750. Salaries of captains of the watch and guards.
  - 751. Medical service in Federal penal and correctional institutions; use of personnel of Public Health Service.
  - 752. Same; funds available for compensation, allowances, and expenses.
  - 753. Bureau of Prisons; establishment; director; officers and employees.
  - 753a. Same; duties; military prisons.
  - 753b. Same; additional duties; confinement of Federal prisoners in State institutions; employment.
  - 753c. Federal prisons in States without facilities for handling Federal prisoners; authorization.
  - 753d. Same; expenses; how met; limit; estimate of costs; report to Congress.
  - 753e. Same; control and management; officers and employees; industries, farms, and other activities; classification and care of inmates.
  - 753f. Persons convicted of Federal offenses; place of confinement; transfers.

**Sec.**

- 753g. Transportation of prisoners; by whom made; expense how met; transportation of prisoners convicted by consular courts or courts martial.
- 753h. Prisoners escaping or attempting to escape; punishment.
- 753i. Persons procuring escape of prisoners or concealing escaped prisoners; punishment.
- 753j. Persons introducing into Federal prisons narcotic drugs, weapons, or other contraband articles; punishment.
- 753k. Violation of preceding sections; arrests without warrant.
- 754. Administration of oaths by warden and associate; compensation.

**§ 741. Control and management of prisons by Attorney General; officers; rules for government.**

Subject matter of this section, act Mar. 3, 1891, ch. 529, §§ 1, 4, 26 Stat. 839, is now covered by sections 753 and 753a of this title.

**§ 742. Designation of penitentiary in which prisoners shall be confined.**

Subject matter of this section, act Mar. 3, 1891, ch. 529, § 9, 26 Stat. 840, is now covered by section 753f of this title.

**§ 743. Transportation of prisoners; expenses.**

Subject matter of this section, act Mar. 3, 1891, ch. 529, § 5, 26 Stat. 839, is now covered by section 753g of this title.

**§ 744. Employment of convicts.**

Subject matter of this section, act Mar. 3, 1891, ch. 529, § 2, 26 Stat. 839, is now covered by sections 744a and 744c of this title.

**§ 744a. Employment of convicts; forms of employment; competition with private industry or free labor.**

It shall be the duty of the Attorney General to provide employment for all physically fit inmates in the United States penal and correctional institutions in such diversified forms as will reduce to a minimum competition with private industry or free labor. (May 27, 1930, ch. 340, § 1, 46 Stat. 391.)

**CROSS REFERENCE**

Federal Prison Industries created and given duty of determining manner and extent of industrial operations in Federal prisons, see sections 744i-744n of this title.

**§ 744b. Same; employment on public works; camps for confinement of convicts; expenses, how met.**

The Attorney General may make available the services of United States prisoners to the heads of the several departments under such terms, conditions, and at such rates as may be mutually agreed upon, for the purpose of constructing or repairing roads the cost of which is borne exclusively by the United States; clearing, maintaining, and reforesting public lands; building levees; and for construction or repairing any other public ways or works which are or may be financed wholly or in major part by funds appropriated from the Treasury of the United States. To carry out the purpose of this section the Attorney General may establish, equip, and maintain camps upon sites selected by him and designate such camps as a place for confinement of persons convicted of an offense against the laws of the United States, or transfer thereto any person convicted of any offense against the laws of the United States. The



expenses of transferring and maintaining prisoners at such camps shall be paid from the appropriation "Support of United States prisoners", and said appropriation may, in the discretion of the Attorney General, be reimbursed for such expenses. (May 27, 1930, ch. 340, § 2, 46 Stat. 391.)

**§ 744c. Same; establishment of industries; disposition of articles produced; forms of employment; locality of industries.**

The Attorney General shall establish such industries as will produce articles and commodities for consumption in United States penal and correctional institutions or for sale to the departments and independent establishments of the Federal Government and not for sale to the public in competition with private enterprise; *Provided*, That any industry established under authority of this section be so operated as not to curtail the production within its present limits, of any existing arsenal, navy yard, or other Government workshop. In establishing said industries the Attorney General shall provide such forms of employment in the Federal penal and correctional institutions as will give the inmates a maximum opportunity to acquire a knowledge and skill in trades and occupations which will provide them with a means of earning a livelihood upon release. The industries to be established by the Attorney General under authority of this section may be either within the precincts of any penal or correctional institution or in any convenient locality where an existing property may be obtained by lease, purchase, or otherwise. (May 27, 1930, ch. 340, § 3, 46 Stat. 391.)

#### CROSS REFERENCE

Diversification of prison industrial operations so that no single private industry shall be forced to bear an undue burden of resulting competition, see section 744k of this title.

**§ 744d. Same; prison industries working-capital fund; use.**

In lieu of the working-capital funds authorized for the textile mill at the Atlanta Penitentiary by sections 798 and 799 of this title, and for the shoe factory at the Leavenworth Penitentiary by sections 772 and 773 of this title, there is hereby created a consolidated prison industries working-capital fund which shall be available for carrying on industrial enterprises at any of the several Federal penal and correctional institutions heretofore or hereafter established. (May 27, 1930, ch. 340, § 4, 46 Stat. 391.)

#### CROSS REFERENCE

Prison Industries Fund created to receive all balances standing to credit of prison industries working-capital fund, use and expenditure of fund, see section 744i of this title.

**§ 744e. Same; prison industries working-capital fund; moneys credited to fund.**

All money appropriated for, or on May 27, 1930, on deposit with the Treasurer of the United States to the credit of the said working-capital funds at Atlanta Penitentiary and Leavenworth Penitentiary, shall be credited to the consolidated prison industries working-capital fund herein authorized. All money

received from the sale of the products or byproducts of such industries as are now or hereafter established, or for the services of said United States prisoners, shall be placed to the credit of said prison industries working-capital fund, which may be used as a revolving fund. There are authorized to be appropriated such additional sums as may from time to time be necessary to carry out the provisions of sections 744a-744h of this title. (May 27, 1930, ch. 340, § 5, 46 Stat. 391.)

#### CROSS REFERENCE

Prison Industries Fund created to receive all balances standing to credit of prison industries working-capital fund, use and expenditure of fund, see section 744i of this title.

**§ 744f. Same; prison industries working-capital fund; administration and disbursement; use of fund.**

The prison industries working-capital fund shall be administered and disbursed by or under the direction of the Attorney General, and shall be available for the purchase, repair, or replacement of industrial machinery or equipment; for the purchase of raw materials; for compensation to inmates employed in any industry under rules and regulations promulgated from time to time by the Attorney General; for the employment of necessary civilian officers and employees engaged in any industrial enterprise at any of the Federal penal and correctional institutions and in the District of Columbia; for the repair, alteration, erection, and maintenance of industrial buildings and equipment; and for travel and any other expenses incident to or connected with the establishment, operation, or maintenance of such prison industries as are now established or may hereafter be established by the Attorney General at the several penal and correctional institutions. (May 27, 1930, ch. 340, § 6, 46 Stat. 392.)

#### CROSS REFERENCE

Prison Industries Fund created to receive all balances standing to credit of prison industries working-capital fund, use and expenditure of fund, see section 744i of this title.

**§ 744g. Same; purchase of prison-made products by Federal departments; terms of purchase.**

The several Federal departments and independent establishments and all other Government institutions of the United States shall purchase at not to exceed current market prices, such products of the industries herein authorized to be carried on as meet their requirements and as may be available and are authorized by the appropriations from which such purchases are made. Any disputes as to the price, quality, suitability or character of the products manufactured in any prison industry and offered to any Government department shall be arbitrated by a board consisting of the Comptroller General of the United States, the Superintendent of Supplies of the General Supply Committee, and the Chief of the United States Bureau of Efficiency, or their representatives. The decision of said board shall be final and binding upon all parties. (May 27, 1930, ch. 340, § 7, 46 Stat. 392.)

#### BUREAU AND COMMITTEE ABOLISHED

Bureau of Efficiency was abolished by act Mar. 3, 1933, ch. 212, § 17, 47 Stat. 1519.

General Supply Committee was abolished by Ex. Ord. No. 6166, § 1, June 10, 1933.

#### BOARD OF ARBITRATION

In a letter dated January 27, 1941, the Federal Prison Industries stated that no board of arbitration had been appointed since the dissolution of the General Supply Committee and the Bureau of Efficiency, but that if one were it would probably be composed of "a representative of the Comptroller General, a representative of the Procurement Division, Treasury Department, and a representative of the Bureau of the Budget."

#### § 744h. Same; commutation of sentence for good conduct.

Sections 710-712 of this title, providing for commutation of sentences of United States prisoners for good conduct, shall be applicable to prisoners engaged in any industry, or transferred to any camp established under authority of sections 744b and 744c of this title; and in addition thereto each prisoner, without regard to length of sentence, may, in the discretion of the Attorney General, be allowed, under the same terms and conditions as provided in sections 710-712 a deduction from his sentence of not to exceed three days for each month of actual employment in said industry or said camp for the first year or any part thereof, and for any succeeding year or any part thereof not to exceed five days for each month of actual employment in said industry or said camp. (May 27, 1930, ch. 340, § 8, 46 Stat. 392.)

#### § 744i. Federal Prison Industries; creation.

In order more effectively to carry out the policy and purposes of sections 744a-744h of this title, the President is hereby authorized and empowered, in his discretion, to create a body corporate of the District of Columbia to be known as "Federal Prison Industries", which shall be a governmental body. (June 23, 1934, ch. 736, § 1, 48 Stat. 1211.)

#### TRANSFER OF FUNCTIONS

Federal Prison Industries, Inc. (together with its Board of Directors), and its functions were transferred to Department of Justice to be administered under general direction and supervision of Attorney General by Reorg. Plan No. II, § 3 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1433, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See also sections 401-404 of said plan for provisions relating to transfer of functions, records, property, personnel, and funds.

EX. ORD. NO. 6917, DEC. 11, 1934—CREATING A BODY CORPORATE TO BE KNOWN AS FEDERAL PRISON INDUSTRIES, INC.

By virtue of the authority vested in me by the Act of June 23, 1934 (Public No. 461, 73rd Congress), it is hereby ordered that a corporation of the District of Columbia be and is hereby created, said corporation to be named as

#### FEDERAL PRISON INDUSTRIES, INC.

1. The governing body of said corporation shall consist of a board of five directors to hold office at the pleasure of the President. The following persons shall constitute the first Board of Directors:

Mr. Sanford Bates  
Mr. Thomas A. Rickert  
Hon. John B. Miller  
Dr. M. L. Brittain  
Mr. Sam A. Lewisohn

2. The principal office of said corporation shall be in the City of Washington, District of Columbia, but the corporation shall have power and authority to establish

such other offices or agencies as it may deem necessary or appropriate.

3. The said corporation shall have power to determine in what manner and to what extent industrial operations shall be carried on in the several penal and correctional institutions of the United States and shall, so far as practicable, so diversify prison industrial operations that no single private industry shall be forced to bear an undue burden of competition with the products of the prison workshops. It shall also have power to do all things it is authorized to do by the said Act of June 23, 1934, and all things incident to or necessary or proper in the exercise of its functions.

4. Pursuant to the provisions of Section 4 of the said Act, the Secretary of the Treasury is directed to transfer to a fund to be known as "the Prison Industries Fund" all balances standing to the credit of the Prison Industries Working Capital Fund on the books of the Treasury and the corporation is authorized to employ the aforesaid fund, and any earnings that may hereafter accrue to the corporation, as operating capital.

5. The Attorney General is directed to transfer to the corporation hereby created all personal property, assets, accounts receivable, and equipment of any and every kind now under the jurisdiction of the Industrial Division of the Bureau of Prisons of the Department of Justice.

6. The corporation shall assume all valid claims and obligations now payable out of the Prison Industries Working Capital Fund.

7. Said corporation shall have power to sue and be sued.

8. Any vacancies occurring in the membership of the Board of Directors shall be filled by the President of the United States.

9. The heads of the several executive departments, independent establishments and Government owned and Government controlled corporations shall cooperate with the corporation in carrying out its duties and shall purchase, at not to exceed current market prices, the products or services of said industries, to the extent required or permitted by law.

10. All powers and duties vested in the Attorney General and not specifically transferred to the corporation by said Act of June 23, 1934, or by this Executive Order and assumed by said corporation, shall remain vested in the Attorney General or his duly qualified representatives as heretofore.

#### § 744j. Same; board of directors; appointment; term; compensation.

The President shall appoint a board of directors of said corporation which shall consist of five persons, one of whom shall be a representative of industry, one a representative of labor, one a representative of agriculture, one a representative of retailers and consumers, and one a representative of the Attorney General. The board of directors shall serve at the will of the President and without compensation. (June 23, 1934, ch. 736, § 2, 48 Stat. 1211.)

#### § 744k. Same; duties transferred; diversification of prison industries.

The President shall transfer to said corporation the duty of determining in what manner and to what extent industrial operations shall be carried on in Federal penal and correctional institutions and may transfer to said corporation any part or all of the other powers and duties now vested in the Attorney General or any other officer or employee of the United States by sections 744a-744h of this title. It shall be the duty of the board of directors to diversify so far as practicable prison industrial operations and so operate the prison shops that no single private industry shall be forced to bear an undue burden of

competition from the products of the prison workshops. (June 23, 1934, ch. 736, § 3, 48 Stat. 1211.)

§ 744l. Same; Prison Industries Fund; transfer of balances to; payment of claims; employment of fund; settlement of accounts.

The Secretary of the Treasury is hereby authorized and directed, upon the formation of the corporation, to transfer to a fund to be known as the "Prison Industries Fund" all balances then standing to the credit of the prison industries working-capital fund. All moneys under the control of the corporation shall be deposited or covered into the Treasury of the United States to the credit of said fund and withdrawn therefrom only pursuant to accountable warrants or certificates of settlement issued by the General Accounting Office. All valid claims and obligations payable out of said fund shall be assumed by the corporation. The corporation is hereby authorized to employ the aforesaid fund, and any earnings that may hereafter accrue to the corporation, as operating capital for the purposes enumerated in sections 744a-744h of this title, and in accordance with the laws generally applicable to the expenditures of the several departments and establishments of the Government, and also for the payment of compensation in such amounts as the Attorney General may authorize to inmates of penal institutions or their dependents for injuries suffered in any industry: *Provided*, That in no event shall compensation be paid in a greater amount than that provided in sections 751-791, 793, 799 of Title 5. Accounts of all receipts and disbursements of the corporation shall be rendered to the General Accounting Office in such manner, to such extent, and at such times as the Comptroller General of the United States may direct for settlement and adjustment pursuant to sections 41-47, 49, 53, 54, and 71 of Title 31, and such accounting shall include all fiscal transactions of the corporation, whether involving appropriated moneys, capital, or receipts from other sources. (June 23, 1934, ch. 736, § 4, 48 Stat. 1211.)

§ 744m. Same; annual report of directors.

The board of directors shall make an annual report to Congress on the conduct of the business of the corporation and on the condition of its funds. (June 23, 1934, ch. 736, § 5, 48 Stat. 1212.)

§ 744n. Sections supplementary to sections 744a to 744h.

Sections 744i-744n of this title are supplemental to sections 744a-744h of this title, and in the event of the failure of the corporation to act as herein authorized the Attorney General shall not be limited in carrying out the duties conferred upon him by sections 744a-744h of this title. (June 23, 1934, ch. 736, § 6, 48 Stat. 1212.)

§ 745. Separation of youthful prisoners.

In the prison buildings provided for in Act Mar. 3, 1891, ch. 529, §§ 1, 3, 26 Stat. 839, there shall be such arrangement of cells and yard space as that prisoners under twenty years of age shall not be in any way associated with prisoners above that age, and the management of the class under twenty

years of age shall be as far as possible reformatory. (Mar. 3, 1891, ch. 529, § 9, 26 Stat. 840.)

§ 746. Transportation home of discharged prisoners; clothing and money.

On the discharge from any prison of any person convicted under the laws of the United States on indictment he shall be furnished with transportation to the place of conviction or place of bona fide residence within the United States at the time of his commitment under sentence of the court, or to such place within the United States as may be authorized by the Attorney General; and if the term of his imprisonment shall have been six months or more he shall also be furnished with such suitable clothing as may be authorized by the Attorney General, and, in the discretion of the Attorney General, an amount of money not to exceed \$20. For the furnishing of such clothing and money charge shall be made and allowed in the accounts of the said prison with the United States. (Mar. 3, 1891, ch. 529, § 7, 26 Stat. 840; July 3, 1926, ch. 795, 44 Stat. 901.)

§ 747. Inapplicable to juvenile offenders.

Sections 741-744, 745, and 746 of this title shall not apply to minors, who, in the judgment of the judges presiding over United States courts, should be committed to reformatory institutions. (Mar. 3, 1891, ch. 529, § 7, 26 Stat. 840.)

#### CROSS REFERENCE

Confinement of juvenile offenders, see sections 705 and 706 of this title.

§ 748. Confinement of prisoners in the United States Disciplinary Barracks.

Nothing in sections 741-744, 745, and 746 of this title shall be construed as prohibiting the courts of the United States from sentencing to or confining prisoners, either civil or military, in the United States Disciplinary Barracks at Fort Leavenworth, Kansas. (Mar. 3, 1891, ch. 529, § 7, 26 Stat. 840; Mar. 4, 1915, ch. 143, § 2, 38 Stat. 1084.)

§ 749. Federal jail at Fort Smith, Arkansas, made national prison; prisoners admitted.

Subject matter of this section, act May 17, 1898, ch. 340, 30 Stat. 417, related to the Federal jail at Fort Smith, Arkansas, which was granted to city of Fort Smith for use as a community building by act Jan. 23, 1920, ch. 51, 41 Stat. 396.

§ 750. Salaries of captains of the watch and guards.

The salaries of the captains of the watch and the guards in the United States penitentiaries shall be as provided in section 677 of Title 5. (Nov. 4, 1919, ch. 93, § 1, 41 Stat. 338.)

#### CROSS REFERENCE

Compensation schedules for Government employees enumerated, see section 673 of Title 5, Executive Departments and Government Officers and Employees.

§ 751. Medical service in Federal penal and correctional institutions; use of personnel of Public Health Service.

Authorized medical relief under the Department of Justice in Federal penal and correctional institutions shall be supervised and furnished by personnel of the Public Health Service, and upon request of

the Attorney General, the Federal Security Agency shall detail regular and reserve commissioned officers of the Public Health Service, pharmacists, acting assistant surgeons, and other employees of the Public Health Service to the Department of Justice for the purpose of supervising and furnishing medical, psychiatric, and other technical and scientific services to the Federal penal and correctional institutions. (May 13, 1930, ch. 256, § 1, 46 Stat. 273; Reorg. Plan No. I, §§ 201, 205, 4 Fed. Reg. 2728, 2729, 53 Stat. 1424, 1425.)

#### TRANSFER OF FUNCTIONS

Public Health Service and its functions and personnel were transferred to Federal Security Agency, and functions of Secretary of Treasury, other than those relating to acceptance and investment of gifts, were transferred to administrator of said agency by Reorg. Plan No. I, §§ 201 and 205, cited to text, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See sections 208-211 of said plan for provisions relating to transfer of records, property, funds, and personnel.

§ 752. Same; funds available for compensation, allowances, and expenses.

The compensation, allowances, and expenses of the personnel detailed under section 751 of this title may be paid from applicable appropriations of the Public Health Service in accordance with the law and regulations governing the personnel of the Public Health Service, such appropriations to be reimbursed from applicable appropriations of the Department of Justice; or the Attorney General is hereby authorized to make allotments of funds and transfer of credit to the Public Health Service in such amounts as are available and necessary, which funds shall be available for payment of compensation, allowances, and expenses of personnel so detailed, in accordance with the law and regulations governing the personnel of the Public Health Service. (May 13, 1930, ch. 256, § 2, 46 Stat. 273.)

§ 753. Bureau of Prisons; establishment; director; officers and employees.

There is established in the Department of Justice a Bureau of Prisons, to be in charge of a director, who shall be paid a salary at the rate of \$10,000 a year, and shall be appointed by and serve directly under the Attorney General. The officers and employees of the existing office of the Superintendent of Prisons; all official records, furniture, and supplies; and all of the authority, powers, and duties conferred by law or regulation upon the Superintendent of Prisons or any of his subordinates are hereby transferred to the Bureau of Prisons. The Attorney General shall have the power to appoint such additional officers and employees as may be necessary. (May 14, 1930, ch. 274, § 1, 46 Stat. 325.)

§ 753a. Same; duties; military prisons.

The Bureau of Prisons shall have charge of the management and regulation of all Federal penal and correctional institutions and be responsible for the safekeeping, care, protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States: *Provided*, That the provisions of sections 753 and 753a-753j of this title shall not apply to military penal or military reform-

atory institutions or persons confined therein. (May 14, 1930, ch. 274, § 2, 46 Stat. 325.)

§ 753b. Same; additional duties; confinement of Federal prisoners in State institutions; employment.

It shall be the duty of the Bureau of Prisons to provide suitable quarters for the safe-keeping, care, and subsistence of all persons convicted of offenses against the United States, charged with offenses against the United States, or held as witnesses or otherwise. For this purpose the Director of the Bureau of Prisons may contract, for a period not exceeding three years with the proper authorities of any State or Territory or political subdivision thereof, for the imprisonment, subsistence, care, and proper employment of any person held under authority of any United States statute: *Provided*, That such Federal prisoners shall be employed only in the manufacture of articles for, the production of supplies for, the construction of public works for, and the maintenance and care of the institutions of, the State or political subdivision of the State in which they are imprisoned. The rates to be paid for the care and custody of said persons shall take into consideration the character of the quarters furnished, sanitary conditions, and quality of subsistence. The rates to be paid may be such as will permit and encourage the proper authorities to provide reasonably decent, sanitary, and healthful quarters and subsistence for persons held as United States prisoners. (May 14, 1930, ch. 274, § 3, 46 Stat. 325.)

§ 753c. Federal prisons in States without facilities for handling Federal prisoners; authorization.

If by reason of the refusal or inability of the authorities having control of any jail, workhouse, penal, correctional, or other suitable institution of any State or Territory, or political subdivision thereof, to enter into a contract for the imprisonment, subsistence, care, or proper employment of United States prisoners, or if there are no suitable or sufficient facilities available at reasonable cost, the Attorney General is authorized to select a site either within or convenient to the State, Territory, or judicial district concerned and cause to be erected thereon a house of detention, workhouse, jail, prison-industries project, or camp or other place of confinement, which shall be used for the detention of persons held as material witnesses, persons awaiting trial, persons sentenced to imprisonment and awaiting transfer to other institutions, and for the confinement of persons convicted of offenses against the United States and sentenced to imprisonment, with or without hard labor; for the detention of persons held for violation of the immigration laws or awaiting deportation, and of such other persons as in the opinion of the Attorney General are proper subjects for confinement in the institutions herein authorized. (May 14, 1930, ch. 274, § 4, 46 Stat. 326.)

§ 753d. Same; expenses; how met; limit; estimate of costs; report to Congress.

To carry out the purposes of section 753c of this title the Attorney General may authorize the use of a sum not to exceed \$100,000 in each instance, payable from any unexpended balance of the appropri-

ation "Support of United States prisoners" for the purpose of leasing or acquiring a site, preparation of plans, and erection of necessary buildings. If in any instance it shall be impossible or impracticable to secure a proper site and erect the necessary buildings within the above limitation of \$100,000, the Attorney General may authorize the use of a sum not to exceed \$10,000 in each instance, payable from any unexpended balance of the appropriation "Support of United States prisoners" for the purpose of securing options and making preliminary surveys or sketches. Upon selection of an appropriate site the Attorney General shall submit to Congress an estimate of the cost of purchasing same and of remodeling, constructing, and equipping the necessary buildings thereon. (May 14, 1930, ch. 274, § 5, 46 Stat. 326.)

**§ 753e. Same; control and management; officers and employees; industries, farms, and other activities; classification and care of inmates.**

The control and management of any institutions established under sections 753c and 753d of this title, and the house of detention for Federal prisoners in New York City on the property 427-431 West Street, corner of Eleventh Street, New York City, shall be vested in the Attorney General, who shall have power to promulgate rules for the government thereof, and to appoint in accordance with the civil-service laws and regulations all necessary officers and employees. In connection with such maintenance and operation the Attorney General is authorized to establish and conduct industries, farms, and other activities; to classify the inmates; and to provide for their proper treatment, care, rehabilitation, and reformation. (May 14, 1930, ch. 274, § 6, 46 Stat. 326.)

**§ 753f. Persons convicted of Federal offenses; place of confinement; transfers.**

All persons convicted of an offense against the United States shall be committed, for such terms of imprisonment and to such types of institutions as the court may direct, to the custody of the Attorney General of the United States or his authorized representative, who shall designate the places of confinement where the sentences of all such persons shall be served. The Attorney General may designate any available, suitable, and appropriate institutions, whether maintained by the Federal Government or otherwise or whether within or without the judicial district in which convicted. The Attorney General is also authorized to order the transfer of any person held under authority of any United States statute from one institution to another if in his judgment it shall be for the well-being of the prisoner or relieve overcrowded or unhealthful conditions in the institution where such prisoner is confined or for other reasons. (May 14, 1930, ch. 274, § 7, 46 Stat. 326.)

**§ 753g. Transportation of prisoners; by whom made; expense how met; transportation of prisoners convicted by consular courts or courts martial.**

All transportation of prisoners shall be by such agent or agents of the Department of Justice as the Attorney General or his authorized representative

shall from time to time nominate, the reasonable expense of transportation, necessary subsistence, and hire and transportation of guards and agent or agents to be paid by the Attorney General from any appropriation to the Department of Justice as he may direct: *Provided*, That when the conviction is by a consular court or court martial the transportation from the court to the place of confinement shall be by an agent or agents of the Department of State or the Department of War, as the case may be, the expenses of such transportation to be paid out of the Treasury of the United States in the manner provided by law. (May 14, 1930, ch. 274, § 8, 46 Stat. 327.)

**§ 753h. Prisoners escaping or attempting to escape; punishment.**

Any person committed to the custody of the Attorney General or his authorized representative, or who is confined in any penal or correctional institution pursuant to the direction of the Attorney General, or who is in custody by virtue of any process issued under the laws of the United States by any court, judge, or commissioner, or who is in custody of an officer of the United States pursuant to lawful arrest, who escapes or attempts to escape from such custody or institution, shall be guilty of an offense. If the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense whatsoever, the offense of escaping or attempting to escape therefrom shall constitute a felony and any person convicted thereof shall be punished by imprisonment for not more than five years or by a fine of not more than \$5,000, or both; and if the custody or confinement is by virtue of an arrest or charge of or for a misdemeanor, and prior to conviction, the offense of escaping or attempting to escape therefrom shall constitute a misdemeanor and any person convicted thereof shall be punished by imprisonment for not more than one year or by a fine of not more than \$1,000, or both. The sentence imposed hereunder shall be in addition to and independent of any sentence imposed in the case in connection with which such person is held in custody at the time of such escape or attempt to escape. If such person be under sentence at the time of such offense, the sentence imposed hereunder shall begin upon the expiration of, or upon legal release from, any sentence under which such person is held at the time of such escape or attempt to escape. (May 14, 1930, ch. 274, § 9, 46 Stat. 327; Aug. 3, 1935, ch. 432, 49 Stat. 513.)

**§ 753i. Persons procuring escape of prisoners or concealing escaped prisoners; punishment.**

It shall be unlawful for any person to procure the escape of any prisoner properly committed to the custody of the Attorney General or to any penal or correctional institution pursuant to the direction of the Attorney General, or to advise, connive at, aid, or assist in such escape, or to conceal any such prisoner after such escape, and upon conviction in a United States court such person shall be punished by imprisonment for not more than three years. (May 14, 1930, ch. 274, § 10, 46 Stat. 327.)

## CROSS REFERENCE

Persons aiding escape from or introducing dangerous instrumentalities into prisons to be punished by imprisonment for period of not more than ten years, see section 252 of this title.

§ 753j. Persons introducing into Federal prisons narcotic drugs, weapons, or other contraband articles; punishment.

Any person not authorized by law or by the Attorney General who introduces or attempts to introduce into or upon the grounds of any Federal penal or correctional institution any narcotic drug, weapon, or any other contraband article or thing, or any contraband letter or message intended to be received by an inmate thereof, shall be guilty of a felony and shall be punished by imprisonment for a period of not more than ten years. (May 14, 1930, ch. 274, § 11, 46 Stat. 327.)

§ 753k. Violation of preceding sections; arrests without warrant.

Officers and employees of the Bureau of Prisons of the Department of Justice are empowered to make arrests without warrant for violations of any of the provisions of sections 753h, 753i, and 753j of this title, if the person making the arrest has reasonable grounds to believe that the person so arrested is guilty of such offense, and if there is likelihood of the person escaping before a warrant can be obtained for his arrest. If the person so arrested is a fugitive from custody, he shall be returned to custody, and all other persons so arrested shall immediately be taken before a committing officer. Officers and employees of the said Bureau of Prisons are authorized and empowered to carry firearms under such rules and regulations as the Attorney General may prescribe. (June 29, 1940, ch. 449, § 5, 54 Stat. 693.)

§ 754. Administration of oaths by warden and associate; compensation.

The warden and associate warden of each Federal penal or correctional institution are hereby authorized and empowered to administer oaths to and take acknowledgments of officers and employees, as well as inmates of such institutions.

None of said officers or employees shall demand or accept any fee or compensation whatsoever for administering or taking any oath, affirmation, acknowledgment, or affidavit under the authority conferred by this section. (Feb. 11, 1938, ch. 24, §§ 1, 2, 52 Stat. 28.)

## Chapter 24.—LEAVENWORTH, KANSAS, PENITENTIARY

## Sec.

761. Care and control of penitentiary.

762. Persons confined in penitentiary.

763. Laws governing penitentiary.

764. Labor of convicts.

765. Annual estimates by Attorney General.

766. Use of penitentiary reservation for military purposes.

767. Transfer of portion of Fort Leavenworth Military Reservation to Department of Justice for farm purposes.

768. Exchange of livestock.

769. Factories at penitentiary; establishment and operation; employment of inmates.

770-776. Industries at United States penitentiary, Leavenworth, Kansas.

§ 761. Care and control of penitentiary.

The United States penitentiary on the military reservation at Leavenworth, Kansas, shall be under the care and control of the Attorney General. (June 10, 1896, ch. 400, § 1, 29 Stat. 380.)

## CROSS REFERENCE

Military prisons and prisoners as not within the jurisdiction of Bureau of Prisons, see section 753a of this title.

§ 762. Persons confined in penitentiary.

The United States Penitentiary, Leavenworth, Kansas, shall be used for the confinement of persons convicted in the United States courts of crimes against the United States and sentenced to imprisonment in a penitentiary, or convicted by courts martial of offenses now punishable by confinement in a penitentiary and sentenced to terms of imprisonment of more than one year. (Mar. 2, 1895, ch. 189, § 1, 28 Stat. 957; June 10, 1896, ch. 400, § 1, 29 Stat. 380.)

§ 763. Laws governing penitentiary.

The Leavenworth Penitentiary shall be carried on in accordance with sections 710, 741-743 and 745-748 of this title. (Mar. 2, 1895, ch. 189, § 1, 28 Stat. 957.)

## CROSS REFERENCE

Bureau of Prisons to have charge of management and regulation of all Federal correctional and penal institutions and responsibility therefor, see section 753a of this title.

§ 764. Labor of convicts.

Subject matter of this section, act Mar. 2, 1895, ch. 189, § 1, 28 Stat. 957, is now covered by section 744a-744n of this title.

§ 765. Annual estimates by Attorney General.

The Attorney General shall annually submit estimates for all expenses of maintaining the penitentiary, including salaries of necessary officers and employees. (Mar. 2, 1895, ch. 189, § 1, 28 Stat. 957; June 10, 1921, ch. 18, § 216, 42 Stat. 23.)

## CROSS REFERENCE

Control and management of prisons by Attorney General, see section 741 et seq. of this title.

§ 766. Use of penitentiary reservation for military purposes.

The penitentiary reservation shall be open for military tactical purposes, when such purposes do not interfere with the discipline of the penitentiary. (June 10, 1896, ch. 400, § 1, 29 Stat. 380.)

§ 767. Transfer of portion of Fort Leavenworth Military Reservation to Department of Justice for farm purposes.

The Secretary of War shall transfer to the jurisdiction of the Department of Justice for use as a farm in connection with the United States penitentiary, Leavenworth, Kansas, all of that portion of the Fort Leavenworth Military Reservation which lies in the State of Missouri, and including the bridge across the Missouri River, which bridge shall be open to use by the public under such rules and regulations as prescribed by the Attorney General. (May 31, 1924, ch. 221, 43 Stat. 248; Dec. 5, 1924, ch. 4, § 1, 43 Stat. 687.)

**§ 768. Exchange of livestock.**

Livestock belonging to or used in the penitentiary may be exchanged or traded when authorized by the Attorney General. (Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1414; Jan. 3, 1923, ch. 21, title II, 42 Stat. 1085; May 28, 1924, ch. 204, title II, 43 Stat. 222; Feb. 27, 1925, ch. 364, title II, 43 Stat. 1031.)

**§ 769. Factories at penitentiary; establishment and operation; employment of inmates.**

The Attorney General of the United States is authorized and directed to establish, equip, maintain, and operate at the United States penitentiary, Leavenworth, Kansas, a factory or factories for the manufacture of shoes, brooms, and brushes to supply the requirements of the various departments of the United States Government. The factory or factories shall not be so operated as to abolish any existing Government workshop, and the articles so manufactured shall be sold only to the Government of the United States.

The Attorney General is authorized to employ the inmates of the penitentiary under such regulations as he may prescribe, in the work or business of manufacturing shoes, brooms, and brushes, and in erecting all buildings necessary to conduct said businesses, and the products of such businesses shall be utilized in said penitentiary or sold to the Government of the United States for the use of the military and naval forces and other Government departments. (Feb. 11, 1924, ch. 17, § 1, 43 Stat. 6.)

**CROSS REFERENCES**

Employment of convicts in Federal prisons generally, see section 744a-744h of this title.

Establishment of prison industries, see section 744c of this title.

**§§ 770-776. Industries at United States penitentiary, Leavenworth, Kansas.**

The subject matter of these sections, which were based upon sections 2, 3, 5, 7, 8, 9, and 6, respectively, of act Feb. 11, 1924, ch. 17, 43 Stat. 6, is now covered by sections 744a-744n of this title.

**Chapter 25.—ATLANTA, GA., PENITENTIARY****Sec.**

791. Management of penitentiary.

792. Transfer of prisoners.

793. Employment of convicts.

794. Cotton factories; establishment.

795. Same; purchase or condemnation of sites; employment of inmates.

796-801. Industries at United States penitentiary, Atlanta, Ga.

**§ 791. Management of penitentiary.**

The United States penitentiary at Atlanta, Ga., shall be carried on in accordance with sections 710, 741-743 and 745 of this title. (Mar. 3, 1901, ch. 853, § 1, 31 Stat. 1185.)

**CROSS REFERENCE**

Bureau of Prisons to have charge of management and regulation of all Federal correctional and penal institutions and responsibility therefor, see section 753a of this title.

**§ 792. Transfer of prisoners.**

Subject matter of this section, act Mar. 3, 1901, ch. 853, § 1, 31 Stat. 1185, is now covered by section 753f of this title.

**§ 793. Employment of convicts.**

Subject matter of this section, act Mar. 3, 1901, ch. 853, § 1, 31 Stat. 1185, is now covered by sections 744a-744n of this title.

**§ 794. Cotton factories; establishment.**

The Attorney General of the United States is authorized and directed to establish, equip, maintain, and operate at the United States penitentiary, Atlanta, Ga., a factory or factories for the manufacture of cotton fabrics to supply the requirements of the War and Navy Departments, the Shipping Corporation, cotton duck suitable for tents and other Army purposes and canvas for mail sacks and for the manufacture of mail sacks and other similar mail-carrying equipment for the use of the United States Government. The factory or factories shall not be so operated as to abolish any existing Government workshop or curtail the production within its present limits of any such Government workshop, and the articles so manufactured shall be sold only to the Government of the United States. (July 10, 1918, ch. 144, § 1, 40 Stat. 896.)

**CROSS REFERENCE**

Employment of physically fit inmates in diversified forms as will reduce competition with private industry to a minimum, see section 744a of this title.

**§ 795. Same; purchase or condemnation of sites; employment of inmates.**

The Attorney General is authorized and directed to acquire, by purchase or condemnation proceedings, such tracts of land, at such points as he may determine, at a total cost of not to exceed \$200,000, which may be cleared, graded, and cultivated. The Attorney General is authorized to employ the inmates of the penitentiary, under such regulations as he may prescribe, in the work of clearing, grading, and cultivation of tracts of land authorized to be acquired. The products of any such agricultural development, including livestock, shall be utilized in said penitentiary or be sold to the Government of the United States for the use of the military and naval forces of the United States. (July 10, 1918, ch. 144, § 1, 40 Stat. 896.)

**CROSS REFERENCES**

Employment of physically fit inmates in diversified forms as will reduce competition with private industry to a minimum, see section 744a of this title.

Prison industries working-capital fund to be available for compensation of inmates employed in industry under rules and regulations promulgated by Attorney General, see section 744f of this title.

**§§ 796-801. Industries at United States Penitentiary, Atlanta, Ga.**

The subject-matter of these sections, which were based upon sections 2, 3, 5, 7, 8, and 6, respectively, of act July 10, 1918, ch. 144, § 2, 40 Stat. 896, is now covered by sections 744a-744n of this title.

**Chapter 26.—FEDERAL INDUSTRIAL INSTITUTION FOR WOMEN****Sec.**

811. Selection of site; women to be confined in.

812. Estimate of cost; annual estimates of expense of maintenance

813. Plans, specifications, etc., for buildings.

814. Control, management, officers, and employees of institution.



## Sec.

- 815. Transfer of women to institution
- 816. Board of Advisers; how constituted; duties.
- 817. Instruction and training of inmates.
- 818. Parole of inmates.
- 819. Transportation, etc., for inmates upon discharge.

## § 811. Selection of site; women to be confined in.

The Attorney General, the Secretary of the Interior, and the Secretary of Labor, are authorized and directed to select a site either in connection with some existing institution or elsewhere, for an industrial institution for the confinement of female persons above the age of eighteen years, convicted of an offense against the United States, including women convicted by consular courts, sentenced to imprisonment for more than one year. (June 7, 1924, ch. 287, § 1, 43 Stat. 473.)

## § 812. Estimate of cost; annual estimates of expense of maintenance.

Upon the selection of an appropriate site the Attorney General shall submit to Congress an estimate of the cost of purchasing same, together with estimates of the expense necessary to construct the proper buildings thereon. The Attorney General at the same time, and annually thereafter, shall submit estimates in detail for all expenses of maintaining the industrial institution for women, including salaries of all officers and employees. (June 7, 1924, ch. 287, § 2, 43 Stat. 473.)

## § 813. Plans, specifications, etc., for buildings.

The Secretary of the Treasury is hereby authorized, on request of the Attorney General, to cause plans, drawings, designs, specifications, and estimates for the remodeling of the buildings existing on June 7, 1924, and the construction of additional buildings, and such appurtenances as may be necessary on said reservation, to be prepared in the Office of the Supervising Architect of the Treasury Department, and the work of remodeling and construction of such buildings and appurtenances to be supervised by the field force of that office. The proper appropriations for the support and maintenance of the Office of the Supervising Architect shall be reimbursed for the cost of preparing such plans, drawings, designs, specifications, and estimates for the aforesaid work, and the supervision of the remodeling and construction of said buildings and appurtenances. (June 7, 1924, ch. 287, § 3, 43 Stat. 474.)

## § 814. Control, management, officers, and employees of institution.

The control and management of such industrial institution shall be vested in the Attorney General of the United States, who also shall have power to appoint a superintendent, assistant superintendent, and all other officers and employees necessary for the safe-keeping, care, protection, instruction, and discipline of said inmates. (June 7, 1924, ch. 287, § 4, 43 Stat. 474.)

## CROSS REFERENCE

Bureau of Prisons to have charge of management and regulation of all Federal correctional and penal institutions and responsibility therefor, see section 753a of this title.

## § 815. Transfer of women to institution.

The Attorney General is authorized, in his discretion, to transfer to such institution, as accommodations thereat become available, all persons eligible under the terms of sections 811–819 of this title for incarceration in said industrial institution, who are now, or shall hereafter be, incarcerated in other prisons, penitentiaries, reformatories, or houses of correction, and who are proper subjects for incarceration in said institution, and to transfer from such industrial institution to a suitable State or Territorial prison, penitentiary, or reformatory, any inmate who is found by him to be incorrigible, or whose presence in said industrial institution is found detrimental to its well-being. Such transfer shall be made by the United States marshal of the judicial district in which the institution from which the transfer is to be made is located. The actual and necessary expense incurred in such transfer shall be paid from the judicial funds. (June 7, 1924, ch. 287, § 6, 43 Stat. 474.)

## CROSS REFERENCE

Expenses of transportation of prisoners, see section 753g of this title.

## § 816. Board of Advisers; how constituted; duties.

Four citizens of the United States of prominence and distinction, who shall be appointed by the President for terms of three, four, five, and six years, respectively, from June 7, 1924, the term of each to be designated by the President, but their successors shall be appointed for terms of four years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the citizen whom he shall succeed, and who shall serve without compensation, shall constitute, together with the Attorney General of the United States, the Director of the Bureau of Prisons in the Department of Justice, and the Superintendent of the United States Industrial Institution for Women, a Board of Advisers of said industrial institution. It shall be the duty of said board to recommend ways and means for the discipline and training of such inmates, that on their discharge from such institution they may secure suitable employment. (June 7, 1924, ch. 287, § 7, 43 Stat. 474; May 14, 1930, ch. 274, § 1, 46 Stat. 325.)

## § 817. Instruction and training of inmates.

It shall be the duty of the Attorney General to provide for the instruction of the inmates in such institution in the common branches of an English education, and for their training in such trade, industry, or occupational pursuit as will best enable said inmates on release to obtain self-supporting employment. (June 7, 1924, ch. 287, § 5, 43 Stat. 474.)

## CROSS REFERENCE

Employment of convicts, see section 744a of this title.

## § 818. Parole of inmates.

The inmates of such industrial institution shall be eligible to parole under sections 714–716, 717–721 of this title. Such inmates shall be entitled to commutation allowance for good conduct in accordance



with sections 710-712 of this title. (June 7, 1924, ch. 287, § 8, 43 Stat. 475.)

**§ 819. Transportation, etc., for inmates upon discharge.**

Every inmate, when discharged from such industrial institution, shall be furnished with transportation to the place of conviction or place of bona fide residence, or to such other place in the United States as may be authorized by the Attorney General, and shall be furnished with suitable clothing and \$20 in money. (June 7, 1924, ch. 287, § 9, 43 Stat. 475.)

**CROSS REFERENCE**

Transportation home, clothing and money to be given prisoners on discharge from Federal prisons, see section 746 of this title.

**Chapter 27.—UNITED STATES INDUSTRIAL REFORMATORY**

**Sec.**

- 831. Selection of site; persons to be confined in; sentence need not specify place of confinement.
- 832. Estimate of cost; prison labor employed in construction; annual estimates of expense of maintenance.
- 833. Plans, specifications, etc., for buildings.
- 834. Control, management, officers, and employees of institution.
- 835. Transfer of persons to or from institution.
- 836. Board of Advisers.
- 837. Discipline; instruction and training of inmates.
- 838. Employment of inmates.
- 839. Parole of inmates; commutation allowances.
- 840. Transportation, etc., for discharged inmates.

**§ 831. Selection of site; persons to be confined in; sentence need not specify place of confinement.**

The Attorney General, the Secretary of War, and the Secretary of the Interior are authorized and directed to select a site for an industrial reformatory which shall be used for the confinement of male persons who have been or shall be convicted of offenses against the United States, including persons convicted by general courts martial and consular courts, and sentenced for terms of imprisonment for more than one year, with or without hard labor, except those who have been convicted previously of an offense punishable by imprisonment for more than one year, and except also those convicted of treason, murder in the first or second degree, rape, or arson, and those sentenced to life imprisonment. It shall be sufficient for the courts to sentence said class of offenders to imprisonment in the penitentiary without specifying the particular penitentiary or the United States industrial reformatory, and the imprisonment shall be in such penitentiary or the United States industrial reformatory as the Attorney General shall from time to time designate. (Jan. 7, 1925, ch. 32, § 1, 43 Stat. 724; May 12, 1930, ch. 237, 46 Stat. 265.)

**§ 832. Estimate of cost; prison labor employed in construction; annual estimates of expense of maintenance.**

Upon the selection of an appropriate site the Attorney General shall submit to Congress estimate of the cost of purchasing the same, together with estimates of the expense necessary to construct the proper buildings thereon. For the purpose of construction of such buildings the Attorney General shall employ the labor of such United States prison-

ers confined in the United States penitentiary, Atlanta, Georgia; the United States penitentiary, Leavenworth, Kansas; the United States penitentiary, McNeil Island, Washington; and State or Territorial prisons, penitentiaries, or reformatories, who are eligible for confinement in said United States Industrial Reformatory under the provisions of sections 831-840 of this title, and who can be used, under proper guard, in the work necessary to construct the buildings. The Attorney General at the same time, and annually thereafter, shall submit estimates in detail for all expenses of maintaining the said industrial reformatory, including salaries of all necessary officers and employees. (Jan. 7, 1925, ch. 32, § 2, 43 Stat. 724.)

**§ 833. Plans, specifications, etc., for buildings.**

The Secretary of the Treasury is authorized, upon the request of the Attorney General, to cause the plans, drawings, designs, specifications, and estimates for the remodeling and construction of the necessary buildings to be prepared in the Office of the Supervising Architect of the Treasury Department, and the work of remodeling and constructing the said buildings to be supervised by the field force of said office. The proper appropriations for the support and maintenance of the Office of the Supervising Architect shall be reimbursed for the cost of preparing such plans, drawings, designs, specifications, and estimates for the aforesaid work, and the supervision of the remodeling and construction of said buildings. (Jan. 7, 1925, ch. 32, § 3, 43 Stat. 724.)

**TRANSFER OF FUNCTIONS**

Office of Supervising Architect to be transferred to Procurement Division, see Ex. Ord. No. 6166, § 1, set out as note following section 132 of Title 5, Executive Departments and Government Officers and Employees.

**§ 834. Control, management, officers, and employees of institution.**

The control and management of the United States Industrial Reformatory shall be vested in the Attorney General, who shall have power to appoint a superintendent, assistant superintendent, and all other officers necessary for the safe-keeping, care, protection, instruction, and discipline of the inmates. (Jan. 7, 1925, ch. 32, § 4, 43 Stat. 724.)

**CROSS REFERENCE**

Bureau of Prisons to have charge of management and regulation of all Federal correctional and penal institutions and responsibility therefor, see section 753a of this title.

**§ 835. Transfer of persons to or from institution.**

The Attorney General is authorized, in his discretion, to transfer to the United States Industrial Reformatory, as accommodations become available, all persons eligible under the terms of this section and sections 831-834, 836-840 of this title for confinement in said industrial reformatory who were on January 7, 1925, or shall thereafter be, confined in the United States penitentiary, Atlanta, Georgia; the United States Penitentiary, Leavenworth, Kansas; the United States penitentiary, McNeil Island, Washington; and State and Territorial prisons, penitentiaries, or reformatories, and who are proper subjects

for confinement in said United States Industrial Reformatory. The Attorney General shall not transfer any prisoner who has less than nine months to serve of the term for which he was sentenced. The Attorney General is hereby authorized, in his discretion, at any time to transfer from the United States Industrial Reformatory to any of the aforesaid United States penitentiaries, or a suitable State or Territorial penitentiary or reformatory, any person who is ineligible for confinement therein under the terms of this section and sections 831-834, 836-840 of this title, or any person who is apparently incorrigible, and whose presence in the said United States Industrial Reformatory is detrimental to the well-being of the institution. Such transfer shall, in the case of the United States penitentiaries and industrial reformatory, be made by the warden or superintendent of the institution from which the transfer is to be made, and in the case of State and Territorial penitentiaries, or reformatories, such transfer shall be made by the United States marshal of the judicial district in which the institution from which the transfer is to be made is located. The actual and necessary expenses of such warden, superintendent, or marshal in making such transfer shall be paid, in the case of transfer from the United States penitentiaries and industrial reformatory, from the appropriation for the maintenance of the particular institution, and, in the case of transfer from State and Territorial penitentiaries, or reformatories, out of the judicial funds. (Jan. 7, 1925, ch. 32, § 7, 43 Stat. 725.)

#### CROSS REFERENCE

Expenses of transportation of prisoners, see section 753g of this title.

#### § 836. Board of Advisers.

Two citizens of the United States of prominence and distinction, who shall be appointed by the President for terms of two and four years, respectively, from January 7, 1925, the term of each to be designated by the President, but their successors shall be appointed for terms of four years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the citizen whom he shall succeed, and who shall serve without compensation, shall constitute, together with the Attorney General of the United States, the Director of the Bureau of Prisons in the Department of Justice, and the Superintendent of the United States Industrial Reformatory, who shall serve without additional compensation, a Board of Advisers of said reformatory. It shall be the duty of said board to devise ways and means looking to the reestablishment in society of the inmates discharged therefrom, whether by pardon, commutation, parole, or expiration of sentence, particularly with a view of securing suitable and remunerative employment for said discharged inmates. The expenses of said board shall be paid out of the appropriation for the maintenance of the reformatory. (Jan. 7, 1925, ch. 32, § 8, 43 Stat. 725; May 14, 1930, ch. 274, § 1, 46 Stat. 325.)

#### § 837. Discipline; instruction and training of inmates.

The discipline to be observed in said United States Industrial Reformatory shall be correctional and

designed to prevent young offenders from becoming habitual criminals. It shall be the duty of the Attorney General to provide for the instruction of the inmates in the common branches of an English education, and for their training in such trade, industry, or skilled vocation as will enable said inmates, upon release, to obtain self-supporting employment and to become self-reliant members of society. For this purpose the Attorney General shall establish and maintain a common school and trade schools in said industrial reformatory, and shall have authority to promulgate all such rules and regulations for the government of the officers of said industrial reformatory and the inmates thereof as he may deem proper and necessary. (Jan. 7, 1925, ch. 32, § 5, 43 Stat. 724.)

#### § 838. Employment of inmates.

The inmates of the United States Industrial Reformatory shall be employed only in the production and manufacture of supplies for the United States Government, for consumption in United States institutions, and in duties necessary for the construction and maintenance of the institution. (Jan. 7, 1925, ch. 32, § 6, 43 Stat. 725; Dec. 22, 1927, ch. 5 § 1, 45 Stat. 22.)

#### CROSS REFERENCE

Employment of convicts in such diversified forms of employment as will reduce competition with private industry to a minimum, see sections 744a, 744k of this title.

#### § 839. Parole of inmates; commutation allowances.

The inmates of the United States Industrial Reformatory shall be eligible for parole under sections 714-716, 717-721 of this title, which sections are hereby made to apply to all inmates of said reformatory. Such inmates shall be entitled to commutation allowance for good conduct in accordance with sections 710-712 of this title. (Jan. 7, 1925, ch. 32, § 9, 43 Stat. 726.)

#### § 840. Transportation, etc., for discharged inmates.

Every prisoner, when discharged from the United States Industrial Reformatory, shall be furnished with transportation to place of conviction, or place of bona fide residence, or to such other place within the United States as may be authorized by the Attorney General, and he shall also be furnished with suitable clothing and \$10 in money. (Jan. 7, 1925, ch. 32, § 10, 43 Stat. 726.)

#### CROSS REFERENCE

Discharged prisoners to be given transportation to place of conviction or place of residence and furnished suitable clothes and not to exceed \$20 in money, see section 746 of this title.

### Chapter 28.—PRISON CAMPS

#### Sec.

- 851. Establishment of camps; transfer of prisoners.
- 852. Commutation of sentences of prisoners confined in camps.
- 853. Laws applicable to prisoners transferred to camps.
- 854. Expense of operating camps; payment.
- 855. Same; appropriation for payment.

**§ 851. Establishment of camps; transfer of prisoners.**

The Attorney General is hereby authorized to establish, equip, maintain, and operate prison camps upon sites selected by the Attorney General, the Secretary of Agriculture, and the Secretary of the Interior. Upon written order of the Attorney General persons convicted under the laws of the United States may be transferred to such prison camps for employment upon road or trail building, the cost of which is borne exclusively by the United States: *Provided*, That sections 851–855 of this title shall not authorize any such camp for employment upon any Indian reservation. (Feb. 26, 1929, ch. 336, § 1, 45 Stat. 1318.)

**§ 852. Commutation of sentences of prisoners confined in camps.**

Sections 710, 711, and 712 of this title, providing for commutation for good conduct for United States prisoners, shall be applicable to prisoners transferred to the camps herein authorized; and in addition thereto each prisoner, without regard to length of sentence, shall be allowed, under the same terms and conditions as provided in sections 710, 711, 712, a deduction from his sentence of five days for each month of actual employment in said camp. (Feb. 26, 1929, ch. 336, § 2, 45 Stat. 1318.)

**§ 853. Laws applicable to prisoners transferred to camps.**

All laws of the United States relating to the imprisonment, transfer, control, discipline, escape, release of, or in any way affecting prisoners, except as modified by sections 851–855 of this title, shall be applicable to prisoners transferred to the camps herein authorized. (Feb. 26, 1929, ch. 336, § 3, 45 Stat. 1318.)

**§ 854. Expense of operating camps; payment.**

As part of the expense of operating such prison camps the Attorney General is hereby authorized and empowered to provide for the payment to the inmates or dependents upon inmates of prison camps herein authorized such pecuniary earnings as he may deem proper, under such rules and regulations as he may prescribe. (Feb. 26, 1929, ch. 336, § 4, 45 Stat. 1318.)

**§ 855. Same; appropriation for payment.**

The expense incident to the establishment, equipment, maintenance, and operation of prison camps shall be payable from the appropriation for support of United States prisoners, and such appropriation shall be reimbursed to the extent agreed upon by the Attorney General and the head of the department to which the appropriation for road building or such other public improvement incident to which the prison camp was established was made. (Feb. 26, 1929, ch. 336, § 5, 45 Stat. 1318.)

**Chapter 29.—HOSPITAL FOR DEFECTIVE DELINQUENTS**

Sec.

**871. Selection of site for hospital for defective delinquents.****872. Estimates of operating costs of hospital; submission to Congress.**

Sec.

**873. Plans, specifications, and estimates for hospital buildings.****874. Control and management of hospital; officers and employees; maintenance of industries, farms, and other activities; classification of inmates; care and reformation of inmates.****875. Employment of inmates; establishment of industries; manufacture and sale of commodities; working-capital fund.****876. Boards of examiners for penal and correctional institutions; personnel; examination of mentally defective inmates; transfer to hospital; term of confinement.****877. Retransfer from hospital to penal institution of inmates recovering sanity or health; deduction of time spent in hospital from sentence.****878. Disposition of defective delinquents in hospital on expiration of sentence.****879. Transfers and retransfers of defective delinquents; manner; appropriation available.****880. Appropriation for carrying out purposes of chapter.****§ 871. Selection of site for hospital for defective delinquents.**

The Attorney General is authorized and directed to select a site, either in connection with some existing institution or elsewhere, for a hospital for the care and treatment of all persons charged with or convicted of offenses against the United States, and who are in the actual custody of its officers or agents, and who at the time of their conviction or during the time of their detention and/or confinement are or shall become insane, afflicted with an incurable or chronic degenerative disease, or so defective mentally or physically so to require special medical care and treatment not available in an existing Federal institution. (May 13, 1930, ch. 254, § 1, 46 Stat. 270.)

**§ 872. Estimates of operating costs of hospital; submission to Congress.**

The Attorney General, annually, shall submit estimates covering the expense of maintaining and operating such institution, including salaries of all necessary officers and employees. (May 13, 1930, ch. 254, § 2, 46 Stat. 270.)

## CODIFICATION

Section 2 of act May 13, 1930, cited to text, also provided for the submission to Congress of an estimate of the original cost of the hospital.

**§ 873. Plans, specifications, and estimates for hospital buildings.**

This section, act May 13, 1930, ch. 254, § 3, 46 Stat. 270, provided for the preparation of plans, specifications, and estimates and for the supervision of construction of the hospital.

**§ 874. Control and management of hospital; officers and employees; maintenance of industries, farms, and other activities; classification of inmates; care and reformation of inmates.**

The control and management of the institution established hereunder shall be vested in the Attorney General, who shall have power to promulgate rules for the government thereof, and to appoint, subject to the civil service laws and regulations of the United States, all necessary officers and employees. In connection with such maintenance and operation the Attorney General is authorized to establish and conduct industries, farms, and other activities; to classify the inmates; and to provide for their proper

treatment, care, rehabilitation, and reformation. (May 13, 1930, ch. 254, § 4, 46 Stat. 271.)

#### CROSS REFERENCES

Management and regulation of all Federal penal and correctional institutions, see section 753a of this title.  
Prison industries, see sections 744a-744n of this title.

§ 875. Employment of inmates; establishment of industries; manufacture and sale of commodities; working-capital fund.

The inmates of said institution shall be employed in such manner and under such condition as the Attorney General may direct. The Attorney General may, in his discretion, establish industries, plants, factories, or shops for the manufacture of articles, commodities, and supplies for the United States Government; require any department or establishment of the United States to purchase at current market prices, as determined by the Attorney General or his authorized representatives, such articles, commodities, or supplies as meet their specifications. There may be established a working-capital fund for said industries out of any funds appropriated for said institution; and said working-capital fund shall be available for the purchase, repair, or replacement of machinery or equipment, for the purchase of raw materials and supplies, for personal services of civilian employees, and for the payment to the inmates or their dependents of such pecuniary earnings as the Attorney General shall deem proper. (May 13, 1930, ch. 254, § 5, 46 Stat. 271.)

#### CROSS REFERENCES

Diversification of prison industries to be accomplished by board of directors of Federal Prison Industries, see section 744k of this title.

Prison Industries Fund and employment thereof, see section 744l of this title.

§ 876. Boards of examiners for penal and correctional institutions; personnel; examination of mentally defective inmates; transfer to hospital; term of confinement.

There is hereby authorized to be created a board of examiners for each Federal penal and correctional institution where persons convicted of offenses against the United States are incarcerated, to consist of (1) a medical officer appointed by the warden or superintendent of the institution; (2) a medical officer to be appointed by the Attorney General; and (3) a competent expert in mental diseases to be nominated by the Surgeon General of the United States Public Health Service. The said board shall examine any inmate of the institution alleged to be insane or of unsound mind or otherwise defective and report their findings and the facts on which they are based to the Attorney General. The Attorney General, upon receiving such report, may direct the warden or superintendent or other official having custody of the prisoner to cause such prisoner to be removed to the United States hospital for defective delinquents or to any other such institution as is now authorized by law to receive insane persons charged with or convicted of offenses against the United States, there to be kept until, in the judgment of the superintendent of said hospital, the prisoner shall be restored to sanity or health or until the maximum sentence, without deduction for good time or

commutation of sentence, shall have been served. (May 13, 1930, ch. 254, § 6, 46 Stat. 271.)

§ 877. Retransfer from hospital to penal institution of inmates recovering sanity or health; deduction of time spent in hospital from sentence.

Any inmate of said United States hospital for defective delinquents whose sanity or health is restored prior to the expiration of his sentence may be retransferred to any penal or correctional institution designated by the Attorney General, there to remain pursuant to the original sentence, computing the time of his detention or confinement in said hospital as part of the term of his imprisonment. (May 13, 1930, ch. 254, § 7, 46 Stat. 272.)

§ 878. Disposition of defective delinquents in hospital on expiration of sentence.

It shall be the duty of the superintendent of said hospital to notify the proper authorities of the State, District, or Territory where any insane convict shall have his legal residence, or, if this cannot be ascertained, the proper authorities of the State, District, or Territory from which he was committed, of the date of the expiration of the sentence of any convict who, in the judgment of the superintendent of said hospital, is still insane or a menace to the public. The superintendent of said hospital shall cause to be delivered into the custody of the proper authorities of the State, District, or Territory the body of said insane convict. (May 13, 1930, ch. 254, § 8, 46 Stat. 272.)

§ 879. Transfers and retransfers of defective delinquents; manner; appropriation available.

All transfers from penal and correctional institutions to or from the hospital for defective delinquents shall be made in such manner as the Attorney General may direct, and the expense thereof shall be paid from such appropriation as may be authorized. (May 13, 1930, ch. 254, § 9, 46 Stat. 272.)

#### CROSS REFERENCE

Expenses of transportation of prisoners, see section 753g of this title.

§ 880. Appropriation for carrying out purposes of chapter.

There are hereby authorized to be appropriated such funds as are necessary to carry out the purpose of sections 871-880 of this title. (May 13, 1930, ch. 254, § 11, 46 Stat. 272.)

### Chapter 30.—ADDITIONAL INSTITUTIONS FOR CONFINEMENT OF MALE PERSONS

#### Sec.

901. Authorization; location.
902. Type of institutions.
903. Estimates; submission to Congress.
904. Plans, specifications, and estimates.
905. Control and management of institutions; industries, farms, and other activities; classification and care of inmates.
906. Employment of inmates; establishment of industries; disposition of manufactured products; working-capital fund.
907. Policy of Congress in establishing institutions.
908. Introduction of narcotic drugs, weapons, or other contraband articles on grounds of institutions; penalty.
909. Escapes and attempts to escape; penalty.

## Sec.

910. Aiding and abetting inmates to escape or to conceal themselves; penalty.  
 911. Appropriation available for certain expenses.  
 912. General appropriation.

## § 901. Authorization; location.

The Attorney General is authorized and directed to select forthwith and procure two sites, of not less than one thousand acres each, and cause to be erected thereon suitable buildings for two institutions for the confinement of male persons who have been, or shall be, convicted of offenses against the United States. One of such sites to be selected shall be situated north of thirty-eight degrees north latitude and east of eighty degrees longitude to serve the northeastern section of the United States, and one of such sites shall be situated west of the Mississippi River. Both sites shall be selected with due regard to the source of commitments, climatic conditions, and transportation facilities. (May 27, 1930, ch. 339, § 1, 46 Stat. 388.)

United States Southwestern Reformatory, at El Reno, Oklahoma, was erected pursuant to this section.

## § 902. Type of institutions.

The institution authorized under section 901 of this title, to be located west of the Mississippi River, shall be of the reformatory type and shall be for the confinement of young offenders and others who, in the opinion of the Attorney General, are proper persons for detention in a reformatory.

The institution authorized under section 901 of this title, located in the northeastern section of the United States, shall be of the penitentiary type and shall be for the incarceration of adult male persons sentenced to terms of imprisonment for more than one year with or without hard labor. (May 27, 1930, ch. 339, § 2, 46 Stat. 389.)

## § 903. Estimates; submission to Congress.

The Attorney General annually shall submit estimates covering the expense of maintaining and operating such institutions, including salaries of all necessary officers and employees. (May 27, 1930, ch. 339, § 3, 46 Stat. 389.)

## CODIFICATION

Section 3 of act May 27, 1930, cited to text, also provided for the submission to Congress of an estimate of the original cost of the institutions erected pursuant to section 901 of this title.

## § 904. Plans, specifications, and estimates.

This section, act May 27, 1930, ch. 339, § 4, 46 Stat. 389, provided for the preparation of plans, specifications, and estimates and for the supervision of construction of the institutions for which provision was made by section 901 of this title.

## § 905. Control and management of institutions; industries, farms, and other activities; classification and care of inmates.

The control and management of the institutions established under section 901 of this title shall be vested in the Attorney General, who shall have power to appoint, subject to the civil service laws and regulations of the United States, superintendents, assistant superintendents, wardens, keepers, and all

other officers and employees necessary for the safe-keeping, care, and discipline of the inmates of said institutions; and the Attorney General shall have power to prescribe all necessary rules and regulations for the governance of the officers, employees, and inmates of said institutions. In connection with the maintenance and operation of said institutions the Attorney General is authorized to establish and conduct industries, farms, and other activities, to classify the inmates, and to provide for their proper treatment, care, rehabilitation, and reformation: *Provided*, That such industries of farming and other activities shall be devoted to the production and manufacture of articles, commodities, and supplies for the use of the United States Government: *Provided further*, That any industry established under authority of sections 901-912 of this title be so operated as not to curtail the production, within its present limits, of any existing arsenal, navy yard, or other Government workshop. (May 27, 1930, ch. 339, § 5, 46 Stat. 389.)

## CROSS REFERENCES

Bureau of Prisons established to take over authority, powers, and duties of Superintendent of prisons, see section 753 of this title.

Federal Prison Industries created to control and manage Federal correctional institutions and determine manner and extent of industrial operations in the prisons, see sections 7441-7441 of this title.

## § 906. Employment of inmates; establishment of industries; disposition of manufactured products; working-capital fund.

The inmates of institutions established under section 901 of this title shall be employed in such manner and under such conditions as the Attorney General may direct. The Attorney General may, in his discretion, establish industries, plants, factories, or shops for the manufacture of articles, commodities, and supplies for the United States Government; and the several Federal departments and all other Government institutions of the United States shall purchase at not to exceed current market prices such products of the industries herein authorized to be carried on as meet their requirements and as may be available and are authorized by the appropriations from which such purchases are made. Any disputes as to the price, quality, suitability, or character of the products manufactured in any prison industry and offered to any Government department shall be arbitrated by a board consisting of the Comptroller General of the United States, the Superintendent of Supplies of the General Supply Committee, and the Chief of the United States Bureau of Efficiency, or their representatives. The decision of said board shall be final and binding upon all parties. There may be established a working-capital fund for said industries out of any funds appropriated for said institutions; and said working-capital fund shall be available for the purchase, repair, or replacement of industrial machinery or equipment, for the purchase of raw materials and supplies, for personal services of civilian employees engaged in any industrial enterprise, and for the payment to the inmates or their dependents of such pecuniary earnings as the Attorney General shall deem proper. (May 27, 1930, ch. 339, § 6, 46 Stat. 389.)

TRANSFER OF FUNCTIONS

The General Supply Committee was abolished by Ex. Ord. No. 6166, § 1, June 10, 1933, set out in note under section 132 of Title 5, Executive Departments and Government Officers and Employees.

The Bureau of Efficiency was abolished by act Mar. 3, 1938, ch. 212, § 17, 47 Stat. 1519.

CROSS REFERENCES

Employment of convicts in Federal prisons generally, see section 744a et seq. of this title.

Purchase of prison-made products by Federal departments, see section 744g of this title.

§ 907. Policy of Congress in establishing institutions.

It is hereby declared to be the policy of the Congress that the institutions established under section 901 of this title be so planned and limited in size as to facilitate the development of an integrated Federal penal and correctional system which will assure the proper classification and segregation of Federal prisoners according to their character, the nature of the crime they have committed, their mental condition, and such other factors as should be taken into consideration in providing an individualized system of discipline, care, and treatment of the persons committed to such institutions. (May 27, 1930, ch. 339, § 7, 46 Stat. 390.)

§ 908. Introduction of narcotic drugs, weapons, or other contraband articles on grounds of institutions; penalty.

Any person not authorized by law or by the Attorney General or his representative who introduces or attempts to introduce into or upon the grounds of the institutions authorized by section 901 of this title any narcotic drug, weapon, or any other contraband article or thing, or any letter or message intended to be received by an inmate thereof, shall be guilty of a felony and punishable by imprisonment for a period of not more than ten years. (May 27, 1930, ch. 339, § 8, 46 Stat. 390.)

CROSS REFERENCE

Punishment for introducing into Federal prisons narcotic drugs, weapons, or other contraband articles, see section 753j of this title.

§ 909. Escapes and attempts to escape; penalty.

It shall be unlawful for any person properly committed to the institutions described herein to escape or attempt to escape therefrom; and any such person upon apprehension and conviction in a United States court shall be punished by imprisonment for not more than five years, such sentence to begin upon the expiration of or upon legal release from the sentence for which said person was originally confined. (May 27, 1930, ch. 339, § 9, 46 Stat. 390.)

CROSS REFERENCE

Prisoners escaping or attempting to escape from Federal prisons generally, see section 753h of this title.

§ 910. Aiding and abetting inmates to escape or to conceal themselves; penalty.

It shall be unlawful for any person to procure the escape of any inmate properly committed to the institutions referred to above, or to advise, connive at, aid, or assist in such escape, or conceal any such inmate after such escape, and any person convicted in a United States court of any such offense or of-

fenses shall be punished by imprisonment for not more than three years. (May 27, 1930, ch. 339, § 10, 46 Stat. 390.)

CROSS REFERENCE

Procuring escape of or concealing escaped prisoners, see section 753i of this title.

§ 911. Appropriation available for certain expenses.

The expense, not to exceed the sum of \$35,000, incurred in the travel necessary in the selection of sites, the making of surveys, the making of preliminary sketches, and the securing of options shall be payable out of the appropriation for the "Support of United States prisoners" for the fiscal year in which such expense is incurred. (May 27, 1930, ch. 339, § 11, 46 Stat. 390.)

§ 912. General appropriation.

There is authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 901-912 of this title. (May 27, 1930, ch. 339, § 12, 46 Stat. 390.)

Chapter 31.—JUVENILE DELINQUENTS

- Sec.
- 921. Juvenile delinquents; definitions.
- 922. Prosecution as juvenile delinquent; consent of accused.
- 923. Jurisdiction; waiver of jury trial.
- 924. Probation; commitment to custody of Attorney General; support.
- 925. Notice of arrest; detention; bail.
- 926. Contract by Director of Bureau of Prisons for support.
- 927. Parole.
- 928. Construction with laws applicable to District of Columbia.
- 929. Short title.

§ 921. Juvenile delinquents; definitions.

For the purposes of sections 921-929 of this title a "juvenile" is a person seventeen years of age or under, "juvenile delinquency" is an offense against the laws of the United States committed by a juvenile and not punishable by death or life imprisonment. (June 16, 1938, ch. 486, § 1, 52 Stat. 764.)

§ 922. Prosecution as juvenile delinquent; consent of accused.

Whenever any juvenile is charged with the commission of any offense against the laws of the United States, other than an offense punishable by death or life imprisonment, and such juvenile is not surrendered to the authorities of any State, pursuant to the provisions of section 662a of this title, he shall be prosecuted as a juvenile delinquent if the Attorney General in his discretion so directs and the accused consents to such procedure. In such event such person shall be prosecuted by information on the charge of juvenile delinquency, and no prosecution shall be instituted for the specific offense alleged to have been committed by him. The said consent required to be given by such juvenile shall be given by him in writing before a judge of the district court of the United States having cognizance of the offense, who shall fully apprise the juvenile of his rights and of the consequences of such consent. (June 16, 1938, ch. 486, § 2, 52 Stat. 765.)

**§ 923. Jurisdiction; waiver of jury trial.**

The district court of the United States having jurisdiction of the offense shall have jurisdiction to try persons prosecuted as juvenile delinquents. For such purposes the court may be convened at any time and place within the district, in chambers or otherwise. The trial shall be without a jury. The consent on the part of the juvenile to be prosecuted on a charge of juvenile delinquency shall be deemed a waiver of a trial by jury. (June 16, 1938, ch. 486, § 3, 52 Stat. 765.)

**§ 924. Probation; commitment to custody of Attorney General; support.**

In the event that the court finds such juvenile guilty of juvenile delinquency, it may place him on probation under the provisions of sections 724-726, 727 of this title, except that the period of probation may include but may not exceed the minority of the delinquent; or it may commit the delinquent to the custody of the Attorney General for a period not exceeding his minority, but in no event exceeding the term for which the juvenile could have been sentenced if he had been tried and convicted of the offense which he had committed. The Attorney General may designate any public or private agency for the custody, care, subsistence, education, and training of the juvenile during the period for which he was committed. The cost of such custody and care may be paid from the appropriation for "Support of United States prisoners" or such other appropriation as the Attorney General may designate. (June 16, 1938, ch. 486, § 4, 52 Stat. 765.)

**§ 925. Notice of arrest; detention; bail.**

Whenever a juvenile is arrested on a charge of having committed an offense against the laws of the United States, the arresting officer shall immediately notify the Attorney General of such fact. If such juvenile is not forthwith taken before a committing magistrate, he may be detained in such juvenile home or other suitable place of detention as the Attorney General may designate for such purposes, but shall not be detained in a jail or similar place of detention, unless, in the opinion of the arresting officer, such detention is necessary to secure the custody of such juvenile, or to insure his safety or that of others. In no case shall such detention be for a longer period than is necessary to produce such juvenile before a committing magistrate. The committing magistrate may release such juvenile on bail, upon his own recognizance or that of some responsible person, or in default of bail may commit him to

the custody of the United States marshal, who shall lodge him in such juvenile home or other suitable place of detention as the Attorney General may designate for that purpose. Such juvenile shall not be committed to a jail or other similar institution, unless in the opinion of the marshal it appears that such commitment is necessary to secure the custody of the juvenile or to insure his safety or that of others. A juvenile detained in a jail or similar institution shall be held in custody in a room or other place apart from adults if facilities for such segregation are available. (June 16, 1938, ch. 486, § 5, 52 Stat. 765.)

**§ 926. Contract by Director of Bureau of Prisons for support.**

The Director of the Bureau of Prisons may contract with public or private agencies for the custody, care, subsistence, education, and training of juvenile delinquents and may defray the cost of such custody, care, subsistence, education, and training from the appropriation for "Support of United States prisoners" or such other appropriation as the Attorney General may designate. (June 16, 1938, ch. 486, § 6, 52 Stat. 766.)

**§ 927. Parole.**

A juvenile delinquent committed under sections 921-929 of this title who has, by his conduct, given sufficient evidence that he has reformed, may be released on parole at any time by the Board of Parole established by section 723a of this title. If it shall appear to the satisfaction of such Board that there is reasonable probability that such juvenile will, if conditionally released, remain at liberty without violating the law, then the Board may, in its discretion, parole such juvenile under conditions and regulations as the Board may deem proper. (June 16, 1938, ch. 486, § 7, 52 Stat. 766.)

**§ 928. Construction with laws applicable to District of Columbia.**

Nothing in sections 921-929 of this title shall be construed to supersede or repeal any provisions of law relative to the custody, care, subsistence, education, or training of juveniles, which are now or may hereafter be made particularly applicable to the District of Columbia. (June 16, 1938, ch. 486, § 8, 52 Stat. 766.)

**§ 929. Short title.**

Sections 921-929 may be cited as "The Federal Juvenile Delinquency Act". (June 16, 1938, ch. 486, § 9, 52 Stat. 766.)





## TITLE 19.—CUSTOMS DUTIES

Chap.	Sec.	Sec.
1. Collection districts, ports, and officers.....	1	36. Deputy collectors; duties.
1A. Foreign trade zones.....	81a	37. Same; additional powers.
2. The Tariff Commission.....	91	38. Repealed.
3. The tariff and related provisions.....	121	39. Comptrollers of Customs; where collector and surveyor appointed.
4. Tariff Act of 1930.....	1001	40. Duties of surveyors; collectors and comptrollers appointed.
5. Anti-Smuggling Act.....	1701	41. Repealed.
<b>Chapter 1.—COLLECTION DISTRICTS, PORTS, AND OFFICERS</b>		42. Keeping and rendering accounts by collector, comptroller, and surveyor.
Sec.		43. Same; duty in respect to accounts, and the penalty for omission.
1. Organization of customs service.		44. Same; accounts to include all expenses.
2. Rearrangement and limitation of districts; changing locations.		45. Same; list of clerks and account of expenditures.
3. Superintendence of collection of import duties.		46, 47. Repealed.
4. Director of customs, assistant directors, director and assistant director, special agency service; appointment, compensation, and qualifications		48. Expenses; expenses in foreign countries.
5. Collectors, etc.; term of office.		49. Repealed.
5a. Surveyors of customs and appraisers of merchandise; offices abolished.		50. Oath to expense accounts.
6. Deputies and other customs officers, laborers, and employees; appointment, compensation, and duties.		51. Limitation on compensation.
6a. Compensation of employees in customs service; annual rates established.		52. Payment of compensation and expenses.
6b. Same; new appointments of employees; minimum rate; transfers.		53. Apportionment of compensation.
6c. Same; promotions; compensation on promotion; reduction of rate of compensation.		54. Books to be furnished.
6d. Same; appropriation.		55. Quarterly account of money received or collected.
7. Assistants, solicitor to collector of port of New York; appointment and compensation.		56. Labor beyond usual hours at port of New York.
8. Vacancies; how filled.		57. Blanks.
9. Performance of duties in case of disability.		58. Fees of collectors.
10. Sickness or occasional or necessary absence of collector.		59. Posting table of fees
11. Sickness or occasional or necessary absence of comptroller or surveyor.		60. Penalty for extortion.
12. Special agents.		61. Inspectors on routes by which goods withdrawn from bonded warehouse may be exported to Mexico; reports
13. Same; number.		62. Suspension for neglect or delinquency of officers or employees.
14. Same; regulations for and limitations on number and compensation.		63. Leave of absence; regulations.
15. Special agents in foreign territory.		64. Laws imposing fines applicable to persons acting under customs laws.
16. Examiners at New York.		66. Rules and forms prescribed by Secretary.
17. Employees in departments of appraisal at New York; not to engage in business		67. Annual report to Congress affecting customhouses.
18. Same; duties.		68. Enforcement of customs and immigration laws along Canadian and Mexican borders; cooperation by Secretary of Treasury and Attorney General; erection of buildings.
19. Appraiser of merchandise at port of Baltimore.		69. Same; erection of protective gates and fences across and around roads crossing borders
20. Appraiser of merchandise at Portland, Oregon.		
21. Additional oath of office of customs officers and employees.		
22. Same; appraiser.		
23. Same; assistant appraisers.		
24. Same; who may administer.		
26. Same; special examiners of drugs.		
27. Same; subordinate customs officers; certification; default.		
28. District of Florida; headquarters.		
29. Repealed.		
30. Administration of oaths by clerks and inspectors of customs.		
30a. Repealed.		
31. Bonds of collectors, comptrollers, and surveyors.		
32. Same; how approved and filed.		
33. Duties of collector where comptrollers and surveyors are appointed.		
34. Duties of collector; no comptroller appointed.		
35. Same; collector only appointed.		

### § 1. Organization of customs service.

Except as hereinafter provided the reorganization of the customs service made by the President and communicated to Congress under date of March 3, 1913, shall, until otherwise provided by Congress, constitute the permanent organization of the customs service. (Aug. 24, 1912, ch. 355, § 1, 37 Stat. 434.)

### § 2. Rearrangement and limitation of districts; changing locations.

The President is authorized from time to time, as the exigencies of the service may require, to rearrange, by consolidation or otherwise, the several customs-collection districts and to discontinue ports of entry by abolishing the same or establishing others in their stead: *Provided*, That the whole number of customs-collection districts, ports of entry, or either of them, shall at no time be made to exceed those established and authorized as on August 1,

1914, except as the same may thereafter be provided by law. The collector of customs of each customs-collection district shall be officially designated by the number of the district for which he is appointed and not by the name of the port where the headquarters are situated and the President is authorized from time to time to change the location of the headquarters in any customs-collection district as the needs of the service may require. (Aug. 1, 1914, ch. 223, § 1, 38 Stat. 623; May 29, 1928, ch. 901, § 1 (19), 45 Stat. 987.)

#### CUSTOMS—COLLECTION DISTRICTS AND PORTS OF ENTRY

##### LIST OF CUSTOMS DISTRICTS, HEADQUARTERS, AND PORTS OF ENTRY

The following is the amended list of customs districts with their respective numbers which appeared in the Federal Register of May 10, 1940, 5 Fed. Reg. 1668. The port first named, and appearing in capital letters, is the headquarters port for the district.

*District No. 1—Maine and New Hampshire.* Boundary: The State of Maine and the State of New Hampshire except the County of Coos. Ports of entry: PORTLAND, MAINE, Bangor, Bar Harbor (including Mt. Desert Island, the city of Ellsworth, and the townships of Hancock, Sullivan, Sorrento, Gouldsboro, and Winter Harbor), Bath (including Boothbay and Wiscasset), Belfast (including Searsport), Bridgewater, Calais (including townships of Calais, Robinson and Barring), Eastport (including Lubec and Cutler), Fort Fairfield, Fort Kent, Holey-Jackman, Houlton, Jonesport, Limestone, Madawaska, Portsmouth, N. H. (including Kittery, Maine), Rockland, Van Buren, Vanceboro.

*District No. 2—Vermont.* Boundary: The State of Vermont and the county of Coos in the State of New Hampshire. Ports of entry: ST. ALBANS (including townships of St. Albans and Swanton), Alburg, Beecher Falls, Burlington, Derby Line, Highgate Springs (including township of Highgate), Island Pond, Newport, North Troy, Richford.

*District No. 4—Massachusetts.* Boundary: The State of Massachusetts. Ports of entry: BOSTON (including Cambridge, Chelsea, Medford, Everett, Quincy, Somerville, Braintree, Weymouth, and Hingham, and waters adjacent thereto), Fall River, Gloucester, Lawrence, New Bedford, Plymouth, Provincetown, Salem (including Beverly, Marblehead, and Lynn), Springfield, Worcester.

*District No. 5—Rhode Island.* Boundary: The State of Rhode Island. Ports of entry: PROVIDENCE, Newport.

*District No. 6—Connecticut.* Boundary: The State of Connecticut. Ports of entry: BRIDGEPORT, Hartford, New Haven, New London.

*District No. 7—St. Lawrence.* Boundary: The counties of Clinton, Essex, Franklin, St. Lawrence, Jefferson, and Lewis in the State of New York. Ports of entry: OGDENSBURG, N. Y., Alexandria Bay, Cape Vincent, Champlain, Chateaugay, Clayton, Fort Covington, Malone, Mooers, Morristown, Rooseveltown, Rouses Point, Waddington.

*District No. 8—Rochester.* Boundary: The counties of Oswego, Oneida, Onondaga, Cayuga, Seneca, Wayne, Broome, Tompkins, Chenango, Madison, Cortland, Hamilton, Schuyler, Chemung, Herkimer, Monroe, Ontario, Livingston, Yates, Steuben, Orleans, Genesee, Wyoming, Allegany, and Tioga in the State of New York. Ports of entry: ROCHESTER, Oswego, Sodus Point, Syracuse, Utica.

*District No. 9—Buffalo.* Boundary: The counties of Niagara, Erie, Cattaraugus, and Chautauqua in the State of New York. Ports of entry: BUFFALO (including Lackawana, Tonawanda, North Tonawanda, and east bank of Niagara River between Buffalo and Tonawanda), Dunkirk, Niagara Falls (including Lewiston).

*District No. 10—New York.* Boundary: That part of the State of New York not expressly included in the districts of Buffalo, Rochester, and St. Lawrence, and also the counties of Sussex, Passaic, Hudson, Bergen, Essex, Union, Middlesex, and Monmouth, in the State of New Jersey. Ports of entry: NEW YORK, N. Y. (including territory

described in Exec. order of April 15, 1925; T. D. 40809), Albany, N. Y., Newark, N. J., Perth Amboy, N. J.

*District No. 11—Philadelphia.* Boundary: That part of the State of Pennsylvania lying east of 79° west longitude, the State of Delaware, and that part of the State of New Jersey not included in district 10 (New York). Ports of entry: PHILADELPHIA, PA. (including Camden and Gloucester City, N. J., and territory described in Exec. order of March 15, 1938; T. D. 49472), Chester, Pa., Lewes, Del., Wilmington, Del.

*District No. 12—Pittsburgh.* Boundary: The State of West Virginia and that part of the State of Pennsylvania lying west of 79° west longitude, except the county of Erie. Port of entry: PITTSBURGH, PA.

*District No. 13—Maryland.* Boundary: The State of Maryland and the District of Columbia. Ports of entry: BALTIMORE, MD. (including Sparrows Point), Annapolis, Cambridge, Crisfield, Washington, D. C.

*District No. 14—Virginia.* Boundary: The State of Virginia. Ports of entry: NORFOLK and Newport News (including the waters and shores of Hampton Roads), Alexandria, Cape Charles City, Petersburg, Reedville, Richmond.

*District No. 15—North Carolina.* Boundary: The State of North Carolina. Ports of entry: WILMINGTON (including Townships of Northwest, Wilmington, and Cape Fear), Beaufort, Durham, Elizabeth City, Gastonia, Morehead City, Reidsville, Winston-Salem.

*District No. 16—South Carolina.* Boundary: The State of South Carolina. Ports of entry: CHARLESTON (including territory described in Exec. order of January 31, 1940; T. D. 50085), Georgetown.

*District No. 17—Georgia.* Boundary: The State of Georgia except the north shore of the St. Marys River and the city of St. Marys, Ga. Ports of entry: SAVANNAH (including territory described in Exec. order of March 5, 1940; T. D. 50111), Atlanta, Brunswick.

*District No. 18—Florida.* Boundary: The State of Florida and the north bank of the St. Marys River and the city of St. Marys, Ga. Ports of entry: TAMPA (including Port Tampa), Apalachicola, Bogalgrande, Carrabelle, Fernandina (including St. Marys, Ga.), Jacksonville, Key West, Miami, Panama City, Pensacola, Port Everglades, Port St. Joe, St. Augustine, St. Petersburg, West Palm Beach.

*District No. 19—Mobile.* Boundary: The State of Alabama and that part of the State of Mississippi lying south of 31° north latitude. Ports of entry: MOBILE, ALA., Birmingham, Ala., Gulfport, Miss., Pascagoula, Miss.

*District No. 20—New Orleans.* Boundary: The State of Louisiana except the counties of Cameron and Calcasieu, and that part of the State of Mississippi lying north of 31° north latitude. Ports of entry: NEW ORLEANS, LA. (including territory described in Exec. order of May 29, 1929; T. D. 43443), Baton Rouge, La.

*District No. 21—Sabine.* Boundary: That part of the State of Texas from Sabine Pass north along State line to north boundary line of Shelby County; west to Neches River; down western shore of said river to north boundary of Jefferson County; westerly along said boundary to east boundary of Liberty County; south to Gulf. Also, the counties of Cameron and Calcasieu in the State of Louisiana. Ports of entry: PORT ARTHUR, TEX., Beaumont, Tex., Lake Charles, La., Orange, Tex., Sabine, Tex.

*District No. 22—Galveston.* Boundary: That part of the State of Texas lying east of 97° west longitude, except the territory embraced in district 21 (Sabine). Also, those portions of the counties of Dallas, Aransas, and Refugio, lying west of 97° west longitude, and the counties of Tarrant, San Patricio, and Nueces, State of Texas. Ports of entry: GALVESTON (including Port Bolivar and Texas City), Corpus Christi, Dallas, Freeport, Houston.

*District No. 23—Laredo.* Boundary: That part of the State of Texas lying west of 97° west longitude and east of the Pecos River except the territory included in district 22 (Galveston). Ports of entry: LAREDO, Brownsville, Del Rio, Eagle Pass, Hidalgo, Rio Grande City, Roma, San Antonio.

*District No. 24—El Paso.* Boundary: The State of New Mexico and that part of the State of Texas lying west of the Pecos River. Ports of entry: EL PASO, TEX., Columbus, N. Mex., Fabens, Tex., Presidio, Tex., Ysleta, Tex.

**District No. 25—San Diego.** Boundary: The counties of San Diego and Imperial in the State of California. Ports of entry: SAN DIEGO, Andrade, Calexico, San Ysidro, Tecate.

**District No. 26—Arizona.** Boundary: The State of Arizona. Ports of entry: NOGALES, Ajo, Douglas, Naco, San Luis, Sasabe.

**District No. 27—Los Angeles.** Boundary: That part of the State of California lying south of the northern boundaries of the counties of San Luis Obispo, Kern, and San Bernardino, except the counties of San Diego and Imperial. Ports of entry: LOS ANGELES (including San Pedro, Wilmington, and Long Beach), Port San Luis.

**District No. 28—San Francisco.** Boundary: That part of the State of California lying north of the northern boundaries of the counties of San Luis Obispo, Kern, and San Bernardino, and the States of Utah and Nevada. Ports of entry: San Francisco-Oakland (including all points on San Francisco Bay), Eureka. **NOTE:** Collector of customs located at San Francisco.

**District No. 29—Oregon.** Boundary: The State of Oregon and that part of the State of Washington which embraces the waters of the Columbia River and the north bank of the said river west of 119° west longitude. Ports of entry: PORTLAND, OREG. (including territory described in Exec. order of Jan. 24, 1921; T. D. 38604), Astoria, Oreg., Longview, Wash., Marshfield, Oreg., Newport, Oreg.

**District No. 30—Washington.** Boundary: The State of Washington except that part which embraces the waters of the Columbia River and the north bank of the said river west of 119° west longitude. Ports of entry: SEATTLE, Aberdeen, Anacortes, Bellingham, Blaine, Danville, Everett, Ferry, Friday Harbor, Laurier, Lynden, Metaline Falls, Molson, Nighthawk, Northport, Olympia, Oroville, Port Angeles, Port Townsend, South Bend, Spokane, Sumas, Tacoma.

**District No. 31—Alaska.** Boundary: The Territory of Alaska. Ports of entry: JUNEAU, Cordova, Craig Eagle, Fairbanks, Hyder, Ketchikan, Petersburg, Sitka, Skagway, Unalaska, Wrangell.

**District No. 32—Hawaii.** Boundary: The Territory of Hawaii. Ports of entry: HONOLULU, Hilo, Kahului, Mahukone, Port Allen.

**District No. 33—Montana and Idaho.** Boundary: The States of Montana and Idaho. Ports of entry: GREAT FALLS, MONT., Del Bonita, Mont., Eastport, Idaho, Morgan, Mont., Ophelm, Mont., Peskan, Mont., Plegan, Mont., Porthill, Idaho, Raymond, Mont., Roosville, Mont., Scobey, Mont., Sweetgrass, Mont., Turner, Mont., Westby, Mont., Whitetail, Mont., Whitlash, Mont.

**District No. 34—Dakota.** Boundary: The States of North and South Dakota and the county of Kittson in the State of Minnesota. Ports of entry: PEMBINA, N. DAK., Ambrose, N. Dak., Antler, N. Dak., Carbury, N. Dak., Crosby, N. Dak., Dunseith, N. Dak., Fortuna, N. Dak., Hannah, N. Dak., Hansboro, N. Dak., Lancaster, Minn., Malda, N. Dak., Neche, N. Dak., Noonan, N. Dak., Northgate, N. Dak., Noyes, Minn., Portal, N. Dak., Sarles, N. Dak., Sherwood, N. Dak., St. John, N. Dak., Walhalla, N. Dak., Westhope, N. Dak.

**District No. 35—Minnesota.** Boundary: The State of Minnesota lying south of 46° north latitude. Ports of entry: MINNEAPOLIS, St. Paul.

**District No. 36—Duluth and Superior.** Boundary: The State of Minnesota, except the county of Kittson, lying north of 46° north latitude, and the State of Wisconsin lying north of said latitude, and the island of Isle Royale in the State of Michigan. Ports of entry: DULUTH, MINN., and Superior, Wis. (including West Superior), Ashland, Wis., Beaudette, Minn., International Falls, Minn., Pigeon River Bridge, Minn., Pine Creek, Minn., Ranier, Minn., Roseau, Minn., Warroad, Minn.

**District No. 37—Wisconsin.** Boundary: The State of Wisconsin lying south of 46° north latitude, and the city of Menominee, Michigan. Ports of entry: MILWAUKEE, WIS., Green Bay, Wis., Manitowoc, Wis., Marinette, Wis. (including Menominee, Mich.), Racine, Wis., Sheboygan, Wis.

**District No. 38—Michigan.** Boundary: The State of Michigan except the island of Isle Royale and the city of

Menominee, Mich. Ports of entry: DETROIT, Bay City, Cheboygan, Grand Rapids, Muskegon, Port Huron, Saginaw, Sault Ste. Marie, South Haven.

**District No. 39—Chicago.** Boundary: The State of Illinois lying north of 39° north latitude; that part of the State of Indiana north of 41° north latitude and the State of Iowa. Ports of entry: CHICAGO, ILL., Peoria, Ill.

**District No. 40—Indiana.** Boundary: The State of Indiana lying south of 41° north latitude. Ports of entry: INDIANAPOLIS, Evansville, Lawrenceburg (including Greendale).

**District No. 41—Ohio.** Boundary: The State of Ohio and the county of Erie in the State of Pennsylvania. Ports of entry: CLEVELAND, OHIO, Akron, Ohio, Ashtabula, Ohio, Cincinnati, Ohio, Columbus, Ohio, Conneaut, Ohio, Dayton, Ohio, Erie, Pa., Sandusky, Ohio, Toledo, Ohio.

**District No. 42—Kentucky.** Boundary: The State of Kentucky. Port of entry: LOUISVILLE.

**District No. 43—Tennessee.** Boundary: The States of Tennessee and Arkansas. Ports of entry: MEMPHIS, TENN., Chattanooga, Tenn., Nashville, Tenn.

**District No. 45—St. Louis.** Boundary: The States of Missouri, Kansas, and Oklahoma, and that part of the State of Illinois lying south of 39° north latitude. Ports of entry: ST. LOUIS, MO. (including East St. Louis, Ill.), Kansas City, Mo. (including municipalities of Kansas City, Kans., and North Kansas City, Mo.), St. Joseph, Mo. As amended Ex. Ord. No. 8528, Aug. 27, 1940, 5 Fed. Reg. 3403, eff. thirty days from Aug. 27, 1940.

**District No. 46—Omaha.** Boundary: The States of Nebraska and Wyoming. Port of entry: OMAHA, NEBR.

**District No. 47—Colorado.** Boundary: The State of Colorado. Port of entry: DENVER.

**District No. 49—Puerto Rico.** Boundary: The Territory of Puerto Rico. Ports of entry: SAN JUAN, Aguadilla, Arecibo, Arroyo, Fajardo, Guanica, Humacao, Mayaguez, Ponce.

(Sec. 1, 37 Stat. 434, sec. 1, 38 Stat. 623, sec. 1 (19), 45 Stat. 987; 19 U.S.C. 1, 2; President's Message March 3, 1913.)

#### AIRPORTS OF ENTRY

The location and names of the permanent airports of entry designated by the Secretary of the Treasury pursuant to section 177 (b) of Title 49, Transportation, are as follows:

Ajo, Arizona (Municipal Airport).  
Albany, New York (Municipal Field).  
Brownsville, Texas (Municipal Airport).  
Buffalo, New York (Municipal Airport).  
Caribou, Maine (Caribou Municipal Airport).  
Cleveland, Ohio (Cleveland Municipal Airport).  
Detroit, Michigan (Ford Airport or Wayne County Airport).  
Douglas, Arizona (Douglas Airport).  
Duluth, Minnesota (Duluth Municipal Airport or Duluth Boat Club Seaplane Base).  
Eagle Pass, Texas (Eagle Pass Airport).  
El Paso, Texas (Municipal Airport).  
Fairbanks, Alaska (Weeks Municipal Airport).  
Juneau, Alaska (Juneau Airport).  
Ketchikan, Alaska (Ketchikan Airport).  
Key West, Florida (Meacham Field).  
Laredo, Texas (Laredo Airdrome).  
Miami, Florida (Dinner Key Seaplane Base, Pan-American Field or 36th Street).  
Nogales, Arizona (Nogales Municipal Airport).  
Ogdensburg, New York (Ogdensburg Harbor).  
Pembina, North Dakota (Fort Pembina Airport).  
Port Angeles, Washington (Port Angeles Airport).  
Port Townsend, Washington (Port Townsend Airport).  
Portal, North Dakota (Portal Airport).  
Put-in-Bay, Ohio (Put-in-Bay Airport).  
Rochester, New York (Municipal Airport).  
Rouses Point, New York (Rouses Point Seaplane Base).  
San Diego, California (San Diego Municipal Airport or Lindbergh Field).  
San Juan, Puerto Rico (Isla Grande Airport).  
Seattle, Washington (Boeing Municipal Air Field).  
Seattle, Washington (Lake Union).  
Skagway, Alaska (Skagway Municipal Airport).

Swanton, Vermont (Missisquoi Airport).  
 West Palm Beach, Florida (Roosevelt Flying Service  
 Base or Currie Common Park).  
 Wrangell, Alaska (Wrangell Seaplane Base).

### § 3. Superintendence of collection of import duties.

The Secretary of the Treasury shall direct the superintendence of the collection of the duties on imports as he shall judge best. (R. S. § 249.)

#### DERIVATION

Act May 8, 1792, ch. 37, § 6, 1 Stat. 280.

### § 4. Director of customs, assistant directors, director and assistant director, special agency service; appointment, compensation, and qualifications.

Subject matter of this section, act Mar. 4, 1923, ch. 251, § 1, 42 Stat. 1453, is now covered by sections 281, 281a, and 281b of Title 5, Executive Departments and Government Officers and Employees.

### § 5. Collectors, etc.; term of office.

Collectors of the customs, comptrollers of customs, and surveyors of the customs shall be appointed for the term of four years. (R. S. § 2613; Sept. 21, 1922, ch. 356, title IV, § 523, 42 Stat. 974.)

#### DERIVATION

Act May 19, 1820, ch. 102, § 1, 3 Stat. 582.

#### CROSS REFERENCE

Surveyor of customs' office abolished except in port of New York, see section 5a of this title.

### § 5a. Surveyors of customs and appraisers of merchandise; offices abolished.

The offices of surveyors of customs (except the surveyor of customs at the Port of New York) and appraisers of merchandise (except the appraiser of merchandise at the Port of New York), twenty-one in all, with annual salaries aggregating \$102,000, are hereby abolished. The duties imposed by law and regulations upon surveyors and appraisers of customs, their assistants and deputies (except the surveyor and the appraiser, their assistants and deputies at the Port of New York) are hereby transferred to, imposed upon, and continued in positions on July 5, 1932, established in the Customs Service by or pursuant to law, as the Secretary of the Treasury by appropriate regulation shall specify; and he is further authorized to designate the titles by which such positions shall be officially known hereafter. The Secretary of the Treasury, in performing the duties imposed upon him by this section, shall administer the same in such a manner that the transfer of duties provided hereby will not result in the establishment of any new positions in the Customs Service. (July 5, 1932, ch. 430, title I, § 1, 47 Stat. 584.)

### § 6. Deputies and other customs officers, laborers, and employees; appointment, compensation, and duties.

The Secretary of the Treasury is authorized and directed to appoint deputy collectors, deputy comptrollers, deputy surveyors, deputy and assistant appraisers, examiners of merchandise, inspectors and such other customs officers, laborers, and other employees as he shall deem necessary, prescribe their designations and duties when not otherwise defined by law, and fix their compensation. He is authorized

to appoint special agents of the customs service in number, as otherwise provided by law, and fix their compensation, and to appoint and fix the compensation of such number of Treasury attachés for duty in foreign countries and of customs agents as he may deem necessary, all of whom shall perform their duties as defined by existing law or prescribed by the Secretary of the Treasury, under the immediate supervision of the director, special agency service of the customs: *Provided*, That any officer of the customs service designated by the Secretary of the Treasury for foreign service, shall, through the Department of State, be regularly and officially attached to the diplomatic missions of the United States in the countries in which they are to be stationed, and when such officers are assigned to countries in which there is no diplomatic missions of the United States appropriate recognition and standing with full facilities for discharging their official duties shall be arranged by the Department of State. The Secretary of State may reject the name of any such officer whose assignment to the foreign post for which he has been designated would, in his judgment, be prejudicial to the public policy of the United States. The Attorney General shall likewise appoint and fix the compensation of the clerks and other employees of the United States Customs Court. The appointment of such customs officers and employees shall be made pursuant to the civil service laws and regulations upon the nomination of the principal officer in charge of the office to which such appointments are to be made. (Mar. 4, 1923, ch. 251, § 2, 42 Stat. 1453; Jan. 13, 1925, ch. 76, 43 Stat. 748; May 28, 1926, ch. 411, § 1, 44 Stat. 669; June 17, 1930, ch. 497, title IV, §§ 518, 649, 46 Stat. 737, 762.)

#### TRANSFER OF FUNCTIONS

Transfer of administrative powers and duties of Department of Justice or Attorney General to Administrative Office of the United States Courts respecting various employees of the courts, see note under section 446 of Title 28, Judicial Code and Judiciary.

#### CROSS REFERENCES

Extra pay for overtime services in connection with vessels, see section 382b of Title 46, Shipping.

Offices of surveyors of customs and appraisers of merchandise abolished except in port of New York, see section 5a of this title.

Special Agency Service of the Customs abolished, see section 281b (c) of Title 5, Executive Departments and Government Officers and Employees.

### § 6a. Compensation of employees in customs service; annual rates established.

The following annual rates of compensation are established for the employees in the Customs Service hereinafter specified:

(a) Laborers, \$1,500.

(b) Verifiers-openers-packers, \$1,680, \$1,740, \$1,800, \$1,860, \$1,920, \$1,980, and \$2,040.

(c) Clerks, entrance salary, \$1,700; clerks having one year's satisfactory service, \$1,800; clerks having two years' satisfactory service, \$1,900; clerks having three years' satisfactory service, \$2,000; clerks having four years' satisfactory service, \$2,100; thereafter promotion of clerks to higher rates of compensation shall be in accordance with existing law.

(d) Customs guards, \$1,860, \$1,920, \$1,980, \$2,040, \$2,100, \$2,200, \$2,300, and \$2,400.

(e) Inspectors, \$2,100, \$2,200, \$2,300, \$2,400, \$2,500, \$2,600, \$2,700, \$2,800, \$2,900, \$3,000, \$3,100, \$3,200, and \$3,300.

(f) Station inspectors, \$3,000, \$3,100, \$3,200, \$3,300, \$3,400, \$3,500, and \$3,600. (May 29, 1928, ch. 865, § 1, 45 Stat. 955; Dec. 12, 1930, ch. 10, 46 Stat. 1026.)

#### CROSS REFERENCE

Extra pay for overtime services in connection with vessels, see section 882b of Title 46, Shipping.

#### § 6b. Same; new appointments of employees; minimum rate; transfers.

All new appointments of employees specified in section 6a of this title shall be made at the minimum rate of the appropriate salary range: *Provided, however*, That the Secretary of the Treasury is authorized to waive the foregoing provision of this section in the case of employees who are transferred from a position in any class specified in section 6a of this title or from any position in the Customs Service to a position in any of the classes specified in section 6a of this title, including that of clerk, when such transfer is made in the interest of good administration: *Provided further*, That in fixing the entrance salary of clerks, transferred from any position in the Customs Service or the Bureau of Customs, and in giving them increases in pay at any time thereafter, as provided in section 6a (c) of this title, credit may be given for all previous continuous service in the Customs Field Service or in the Bureau of Customs, whether clerical or otherwise, in positions requiring a first-grade clerical, or higher grade, civil-service examination. (May 29, 1928, ch. 865, § 2, 45 Stat. 955; Dec. 12, 1930, ch. 10, 46 Stat. 1027.)

#### § 6c. Same; promotions; compensation on promotion; reduction of rate of compensation.

Nothing in sections 6a and 6b of this title shall be construed to prevent the promotion at any time of any employee from a position in any of the grades or classes specified in section 6a of this title to a vacancy in a position administratively allocated to any grade under authority of section 678 of Title 5, or to a vacant position legally allocated to any grade created by or under authority of Congress after December 12, 1930, regardless of the period of time the employee has served and regardless of the designation of the vacant position, and when so promoted such employee shall receive the compensation authorized by law for such positions and thereafter shall cease to be affected by the provisions of section 6a of this title; and nothing contained in this section or sections 6a and 6b of this title shall be construed to reduce the rate of compensation of any employee in the Customs Service. (May 29, 1928, ch. 865, § 3, 45 Stat. 955; Dec. 12, 1930, ch. 10, 46 Stat. 1027.)

#### § 6d. Same; appropriation.

There are hereby authorized to be appropriated such sums as may be necessary to pay the rates of compensation established by sections 6a and 6b of this title. (May 29, 1928, ch. 865, § 4, 45 Stat. 955; Dec. 12, 1930, ch. 10, 46 Stat. 1027.)

#### § 7. Assistants; solicitor to collector of port of New York; appointment and compensation.

The collectors of customs, comptrollers of customs, surveyors of customs, and appraisers of merchandise shall each, with the approval of the Secretary of the Treasury, appoint a customs officer familiar with the customs laws and procedure, to act and be known as the assistant collector, the assistant comptroller, the assistant surveyor, and the chief assistant appraiser (in lieu of the special deputies), and the Secretary of the Treasury shall fix their compensation. The collector of customs at the port of New York, shall also, with the approval of the Secretary of the Treasury, appoint a customs officer qualified in the law and familiar with customs procedure, to act and be known as solicitor to the collector, whose compensation shall likewise be fixed by the Secretary of the Treasury. (Mar. 4, 1923, ch. 251, § 3, 42 Stat. 1453.)

#### CROSS REFERENCE

Offices of surveyors of customs and appraisers of merchandise, except at the port of New York, abolished and their duties transferred to existing positions in Customs Service, see section 5a of this title.

#### § 8. Vacancies; how filled.

In case of a vacancy in the office of a collector of customs, comptroller of customs, surveyor of customs, or appraiser of merchandise, such assistant collector, assistant comptroller, assistant surveyor, or chief assistant appraiser shall give bond when required, act as such officer, and receive the compensation of such office until an appointment thereto has been made and the person so appointed has duly qualified. Whenever a vacancy occurs in the position of such assistants, chief assistant, and solicitor to the collector, herein provided for, it shall be filled, with the approval of the Secretary of the Treasury, by the promotion or transfer of a trained and qualified customs officer, and the assistant, chief assistant, and solicitor to the collector so appointed shall continue in office and shall not be reduced or removed except for cause and in accordance with the civil service laws and regulations. (R. S. § 2629; Mar. 3, 1905, ch. 1413, § 1, 33 Stat. 983; Mar. 4, 1923, ch. 251, § 4, 42 Stat. 1453.)

#### DERIVATION

Act Mar. 2, 1799, ch. 22, § 22, 1 Stat. 644.

#### CROSS REFERENCE

Offices of surveyors of customs and appraisers of merchandise abolished, except in port of New York, and their duties transferred to existing positions in Customs Service, see section 5a of this title.

#### § 9. Performance of duties in case of disability.

In case of the disability of a collector, the duties and authorities vested in him shall devolve on his assistant, if any there be at the time of such disability, for whose conduct the estate of such disabled collector shall be liable; and, if there be no assistant, they shall devolve upon the comptroller of the same district, if any there be; and if there be no comptroller, they shall devolve upon the surveyor at the port designated as the district headquarters, if any there be. (R. S. § 2625; Mar. 4, 1923, ch. 251, § 3, 42 Stat. 1453.)

## DERIVATION

Act Mar. 2, 1799, ch. 22, § 22, 1 Stat. 644.

## CROSS REFERENCE

Office of surveyor of customs abolished except in port of New York, see section 5a of this title.

### § 10. Sickness or occasional or necessary absence of collector.

In cases of occasional and necessary absence or of sickness any collector may exercise his powers and perform his duties by deputy, and he shall be answerable for the acts of such deputy in the execution of such trust. (R. S. § 2630; Mar. 4, 1923, ch. 251, §§ 2, 3, 42 Stat. 1453; Jan. 13, 1925, ch. 76, 43 Stat. 748.)

## DERIVATION

Act Mar. 2, 1799, ch. 22, § 22, 1 Stat. 644; act Mar. 3, 1817, ch. 109, § 7, 3 Stat. 397.

### § 11. Sickness or occasional or necessary absence of comptroller or surveyor.

Every comptroller and surveyor, in cases of occasional and necessary absence, or of sickness, and not otherwise, may respectively exercise and perform his functions, powers, and duties by deputy, duly constituted under their hands and seals respectively, for whom, in the execution of their trust, they shall respectively be answerable. (R. S. § 2632; June 17, 1930, ch. 497, title IV, § 523, 46 Stat. 740.)

## DERIVATION

Act Mar. 2, 1799, ch. 22, § 22, 1 Stat. 644.

## CROSS REFERENCES

Deputy collectors to be appointed and their designations and duties prescribed by Secretary of Treasury, see section 6 of this title.

Office of surveyor of customs abolished except in port of New York, see section 5a of this title.

### § 12. Special agents.

The Secretary of the Treasury may appoint special agents, for the purpose of making the examinations of the books, papers, and accounts of collectors and other officers of the customs, and to be employed generally, under the direction of the Secretary, in the prevention and detection of frauds on the customs revenue; and the expense thereof shall be charged to the "appropriation to defray the expense of collecting the revenue from customs." (R. S. § 2649.)

## DERIVATION

Act May 12, 1870, ch. 102, § 1, 16 Stat. 122.

### § 13. Same; number.

The number of special agents referred to in section 12 of this title shall be thirty. (Mar. 4, 1911, ch. 285, § 1, 36 Stat. 1393; Mar. 4, 1923, ch. 251, §§ 1, 2, 5, 7, 42 Stat. 1453, 1454; Mar. 3, 1927, ch. 348, § 3, 44 Stat. 1382.)

## SIMILAR PROVISIONS

R. S. § 2650.

1891—Mar. 3, 1891, ch. 542, § 1, 26 Stat. 968.

1876—Aug. 15, 1876, ch. 287, § 1, 19 Stat. 152.

## CROSS REFERENCE

Special Agency Service of Customs abolished, see section 261b (c), of Title 5, Executive Departments and Government Officers and Employees.

### § 14. Same; regulations for and limitations on number and compensation.

The Secretary of the Treasury may, from time to time, make such regulations not inconsistent with law, for the government of the special agents, as he deems expedient, and may rescind or alter regulations so made. But no special agent, in addition to those authorized by sections 12, 13 of this title, shall be appointed or employed upon any business relating to the customs revenue; nor shall any sum be paid to any agent authorized to be employed for mileage or any other expenses except such as are actually incurred in the discharge of his official duty. (R. S. § 2651.)

## DERIVATION

Act May 12, 1870, ch. 102, §§ 2, 3, 16 Stat. 123.

### § 15. Special agents in foreign territory.

For the purpose of better guarding against frauds upon the revenue on foreign merchandise transported between the ports of the Atlantic and those of the Pacific overland through any foreign territory, the Secretary of the Treasury may appoint special sworn agents as inspectors of the customs, to reside in such foreign territory where such merchandise may be landed or embarked, with power to superintend the landing or shipping of all merchandise, passing coastwise between the ports of the United States on the Pacific and the Atlantic. It shall be their duty, under such regulations and instructions as the Secretary of the Treasury may prescribe, to guard against the perpetration of frauds upon the revenue. (R. S. § 2999.)

## DERIVATION

Act Mar. 28, 1854, ch. 30, § 5, 10 Stat. 272.

### § 16. Examiners at New York.

No person shall be appointed examiner of merchandise at the port of New York who is not, at the time of his appointment, practically and thoroughly acquainted with the character, quality, and value of the article in the examination and appraisal of which he is to be employed; nor shall any such examiner enter upon the discharge of his duties, as such, until he shall have taken and subscribed an oath faithfully and diligently to discharge such duties. (R. S. § 2940; Mar. 4, 1923, ch. 251, § 2, 42 Stat. 1453; Jan. 13, 1925, ch. 76, 43 Stat. 748.)

## DERIVATION

Act July 27, 1866, ch. 284, § 4, 14 Stat. 303.

### § 17. Employees in departments of appraisal at New York; not to engage in business.

No appraiser, assistant appraiser, examiner, clerk, verifier, sampler, messenger, or other person employed in the departments of appraisal at the port of New York, or any of them, shall engage or be employed in any commercial or mercantile business, or act as agent for any person engaged in such business, during the term of his appointment. (R. S. § 2941.)

## DERIVATION

Act July 27, 1866, ch. 284, § 5, 14 Stat. 303.

### § 18. Same; duties.

All provisions relating to the duties of appraisers, or to any proceedings consequent or dependent upon the action of such appraisers and not inconsistent with the provisions relating to the appraiser and assistant appraisers at the port of New York, shall be construed to apply to them. (R. S. § 2942.)

#### DERIVATION

Act July 27, 1866, ch. 284, § 8, 14 Stat. 303.

#### CROSS REFERENCE

Offices of appraisers of merchandise abolished except at port of New York, see section 5a of this title.

### § 19. Appraiser of merchandise at port of Baltimore.

This section, act February 9, 1925, ch. 167, 43 Stat. 819, related to appraiser of merchandise at Baltimore. Said office of appraiser was abolished by section 5a of this title.

### § 20. Appraiser of merchandise at Portland, Oregon.

This section, act February 21, 1925, ch. 278, § 1, 43 Stat. 957, related to appraiser of merchandise at Portland, Oregon. Said office of appraiser was abolished by section 5a of this title.

### § 21. Additional oath of office of customs officers and employees.

Every officer, clerk, or employee appointed under this chapter shall, before entering upon his duties, take and subscribe an oath, in addition to the oath of office prescribed by section 16 of Title 5, that he will use his best endeavors to prevent and detect frauds against the laws of the United States imposing duties upon imports. (R. S. § 2616.)

#### DERIVATION

Acts Mar. 2, 1799, ch. 22, § 20, 1 Stat. 641; Mar. 3, 1817, ch. 109, § 7, 3 Stat. 397; July 30, 1846, ch. 74, § 9, 9 Stat. 44; May 9, 1848, ch. 40, 9 Stat. 220; June 26, 1848, ch. 70, § 6, 9 Stat. 239.

### § 22. Same; appraiser.

The appraiser at New York, before he enters upon the duties of his office, shall take and subscribe an oath faithfully to direct and supervise the examination, inspection, and appraisement according to law, of such merchandise as the collector may direct pursuant to law, and to cause to be duly reported to the collector the true value thereof, as required by law. (R. S. § 2614; July 5, 1932, ch. 430, title I, § 1, 47 Stat. 584.)

#### DERIVATION

Acts Mar. 1, 1823, ch. 21, § 16, 3 Stat. 735; July 27, 1866, ch. 284, § 1, 14 Stat. 302; July 14, 1870, ch. 255, §§ 34-36, 16 Stat. 271.

### § 23. Same; assistant appraisers.

Each of the assistant appraisers at the port of New York, before entering upon the duties of his office, shall take and subscribe an oath diligently and faithfully to examine and inspect such goods, wares, and merchandise as the appraiser may direct, and truly to report to him the true value thereof, according to law. (R. S. § 2615; July 5, 1932, ch. 430, title I, § 1, 47 Stat. 584.)

#### DERIVATION

Acts May 28, 1830, ch. 147, § 2, 4 Stat. 409; July 27, 1866, ch. 284, § 2, 14 Stat. 302; July 14, 1870, ch. 255, §§ 34-36, 16 Stat. 271.

### § 24. Same; who may administer.

The oath of office required by law to be taken by a collector may be taken before any magistrate authorized to administer oaths within the district to which such collector belongs. The oath required to be taken by subordinate officers of the customs may be taken before the collector of the customs in the district in which they are appointed, or before any officer authorized to administer oaths generally. (R. S. § 2617; Feb. 8, 1875, ch. 36, § 11, 18 Stat. 309.)

#### DERIVATION

Acts Mar. 2, 1799, ch. 22, § 20, 1 Stat. 641; July 30, 1846, ch. 74, § 9, 9 Stat. 44; June 26, 1848, ch. 71, § 6, 9 Stat. 239.

### § 26. Same; special examiners of drugs.

Special examiners of drugs, medicines, chemicals, and so forth, shall, before entering upon their duties, take and subscribe an oath faithfully and diligently to perform such duties, and to use their best endeavors to prevent and detect frauds upon the revenue of the United States. (R. S. § 2611; Feb. 8, 1875, ch. 36, § 11, 18 Stat. 309.)

#### DERIVATION

Act June 26, 1848, ch. 70, § 6, 9 Stat. 239.

### § 27. Same; subordinate customs officers; certification; default.

The oaths required to be taken by subordinate officers of the customs shall be taken in duplicate, one copy to be transmitted to the Secretary of the Treasury, and the other to be filed with the collector of customs for the district in which the officer appointed acts. And in default of taking such oath, or transmitting a certificate thereof, or filing the same with the collector, the party failing shall forfeit and pay the sum of \$200, to be recovered, with cost of suit, in any court of competent jurisdiction, to the use of the United States. (Feb. 8, 1875, ch. 36, § 11, 18 Stat. 309; Mar. 2, 1895, ch. 177, § 5, 28 Stat. 807.)

### § 28. District of Florida; headquarters.

The headquarters of the customs district of Florida shall be at Tampa, in said State. (Sept. 24, 1914, ch. 309, 38 Stat. 716.)

### § 29. Repealed. Aug. 26, 1935, ch. 689, § 2, 49 Stat. 864.

Section was based upon act Mar. 15, 1898, ch. 68, § 1, 30 Stat. 286, as supplemented by acts Jan. 28, 1915, ch. 20, § 1, 38 Stat. 800; Mar. 4, 1923, ch. 251, § 3, 42 Stat. 1453.

### § 30. Administration of oaths by clerks and inspectors of customs.

Subject matter of this section, act Sept. 30, 1890, ch. 1126, § 1, 26 Stat. 511, is now covered by section 1486 of this title.

### § 30a. Repealed. June 17, 1930, ch. 497, § 651 (a) (3), 46 Stat. 762, eff. June 18, 1930.

Section was based upon Res. Apr. 2, 1928, ch. 309, 45 Stat. 401.

### § 31. Bonds of collectors, comptrollers, and surveyors.

Every collector, comptroller of customs, and surveyor, shall, before entering on the duties of his office, give a bond to the United States, for the true and faithful discharge of the duties thereof according to law, in such amounts as the Secretary of the



Treasury may direct, and with sureties approved by the Secretary of the Treasury. (R. S. §§ 2619, 2620; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 245; July 31, 1894, ch. 174, § 4, 28 Stat. 205; Mar. 2, 1895, ch. 177, § 5, 28 Stat. 807; Aug. 24, 1912, ch. 355, § 1, 37 Stat. 434; June 17, 1930, ch. 497, title IV, § 523, 46 Stat. 740.)

#### DERIVATION

R. S. § 2619 was from acts Mar. 2, 1799, ch. 23, § 1, 1 Stat. 705; June 4, 1844, ch. 39, § 5 Stat. 661.

R. S. § 2620 was from act June 17, 1864, ch. 130, § 5, 13 Stat. 134.

#### CROSS REFERENCES

Approval and filing of bonds, see section 32 of this title.  
Office of surveyor of customs abolished except in port of New York, see section 5a of this title.

### § 32. Same; how approved and filed.

All bonds required by law to be given by collectors, comptrollers, surveyors, or other officers of the customs shall be approved by the Secretary of the Treasury and shall be filed as he may direct. (R. S. § 2620; July 31, 1894, ch. 174, § 4, 28 Stat. 205; Mar. 2, 1895, ch. 177, § 5, 28 Stat. 807; June 17, 1930, ch. 497, title IV, § 523, 46 Stat. 740.)

#### DERIVATION

Act June 17, 1864, ch. 130, § 5, 13 Stat. 134

#### CROSS REFERENCES

Bonds of collectors, comptrollers, and surveyors to have sureties approved by Secretary of Treasury, see section 31 of this title.

Office of surveyor of customs abolished except in port of New York, see section 5a of this title.

### § 33. Duties of collector where comptrollers and surveyors are appointed.

At each of the ports for which there are a collector, comptroller, and surveyor, it shall be the duty of the collector:

First. To receive all reports, manifests, and documents to be made or exhibited on the entry of any ship or vessel, according to the regulations of this title.<sup>1</sup>

Second. To record, in books to be kept for that purpose, all manifests.

Third. To receive the entries of all ships or vessels, and of the goods, wares, and merchandise imported in them.

Fourth. To estimate, together with the comptroller where there is one, or alone where there is none, the amount of the dues payable thereupon, indorsing such amount upon the respective entries.

Fifth. To receive all moneys paid for duties, and take all bonds for securing the payment thereof.

Sixth. To grant all permits for the unlading and delivery of goods.

Seventh. To provide, with the approval of the Secretary of the Treasury, at the public expense, storehouses for the safekeeping of goods, and such scales, weights, and measures as may be necessary. (R. S. § 2621; Mar. 4, 1923, ch. 251, § 2, 42 Stat. 1453; Jan. 13, 1925, ch. 76, 43 Stat. 748; June 17, 1930, ch. 497, title IV, § 523, 46 Stat. 740.)

<sup>1</sup> Sections 5, 6, 8, 9-12, 14-18, 21-24, 26, 27, 31-35, 37, 39-47, 53-61, 129, 134, 152, 192, 197, 199, 232, 233, 240, 257, 258, 273-275, 282-294, 338-341, 376, 378, 379, 390, 391, 420, 482, 483, 506-508, 526, 528, 574 of this title; section 57 of Title 5, Executive Departments and Government Officers

and Employees; sections 6, 33, 51, 52, 58, 60, 64, 66, 67, 68-70 of Title 14, Coast Guard, section 122 of Title 18, Criminal Code and Criminal Procedure; section 711 of Title 31, Money and Finance; and sections 110-112, 123, 124 of Title 46, Shipping.

#### DERIVATION

Act Mar. 2, 1799, ch. 22, § 21, 1 Stat. 642.

#### CROSS REFERENCE

Office of surveyor of customs abolished except in port of New York, see section 5a of this title.

### § 34. Duties of collector; no comptroller appointed.

At ports at which there are a collector and surveyor only, the collector shall solely execute all the duties in which the cooperation of the comptroller is requisite at the ports where there is a comptroller. And he shall act in like manner in case of the disability or death of the comptroller, until a successor is appointed, unless there is a deputy duly authorized, who in that case shall continue to act until an appointment is made. (R. S. § 2622; June 17, 1930, ch. 497, title IV, § 523, 46 Stat. 740.)

#### DERIVATION

Act Mar. 2, 1799, ch. 22, § 21, 1 Stat. 643.

#### CROSS REFERENCE

Office of surveyor of customs abolished except in port of New York, see section 5a of this title.

### § 35. Same; collector only appointed.

At ports at which there is a collector only, the collector shall solely execute all the duties in which the cooperation of the comptroller is requisite, at ports where a comptroller is appointed, and he shall also, as far as may be, perform all the duties prescribed for surveyors at ports where surveyors are authorized. (R. S. § 2623; June 17, 1930, ch. 497, title IV, § 523, 46 Stat. 740.)

#### DERIVATION

Act Mar. 2, 1799, ch. 22, § 21, 1 Stat. 643.

#### CROSS REFERENCE

Office of surveyor of customs abolished except in port of New York, see section 5a of this title.

### § 36. Deputy collectors; duties.

Deputy collectors appointed by the Secretary of the Treasury shall have authority to receive entries, collect duties, and to perform any and all functions prescribed by law for collectors of customs, subject to such regulations and restrictions as the Secretary of the Treasury shall prescribe. (Feb. 6, 1907, ch. 471, 34 Stat. 880; Mar. 4, 1923, ch. 251, § 2, 42 Stat. 1453; Jan. 13, 1925, ch. 76, 43 Stat. 748.)

### § 37. Same; additional powers.

The Secretary of the Treasury is authorized, whenever in his opinion the public interest demands it, to clothe any deputy collector at a port other than the district headquarters with all the powers of his principal appertaining to official acts; and he may require such deputy to give bond to the United States, in such amount as the Secretary may prescribe, for the faithful discharge of his official duties. (R. S. § 2633.)

#### DERIVATION

Acts July 18, 1866, ch. 201, § 29, 14 Stat. 186; July 27, 1868, ch. 273, § 3, 15 Stat. 240.



§ 38. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Section was based upon act Sept. 21, 1922, ch. 356, title IV, § 523, 42 Stat. 974.

§ 39. Comptrollers of customs; where collector and surveyor appointed.

At ports at which there are a collector, comptroller, and surveyor, it shall be the duty of the comptroller—

First. To receive copies of all manifests and entries.

Second. To estimate, together with the collector, the duties on all merchandise subject to duty, and no duties shall be received without such estimates.

Third. To keep a separate record of such estimates.

Fifth. To examine the collector's abstracts of duties and other accounts of receipts, bonds, and expenditures, and certify the same if found right. (R. S. § 2626; June 17, 1930, ch. 497, title IV, § 523, 46 Stat. 740.)

#### DERIVATION

Act Mar. 2, 1799, ch. 22, § 21, 1 Stat. 642.

#### CROSS REFERENCES

Office of surveyor of customs abolished except in port of New York, see section 5a of this title.

Powers and duties of Comptrollers of Customs, see section 1523 of this title

§ 40. Duties of surveyors; collectors and comptrollers appointed.

At ports at which there are a collector, comptroller, and surveyor, it shall be the duty of the surveyor, who shall be in all cases subject to the direction of the collector—

First. To superintend and direct all inspectors, weighers, measurers, and gaugers within his port.

Second. To report once in every week to the collector the name or names of all inspectors, weighers, gaugers, or measurers who are absent from or neglect to do their duty.

Third. To visit or inspect the vessels which arrive in his port, and make a return in writing every morning to the collector of all vessels which have arrived from foreign ports during the preceding day; specifying the names and denominations of the vessels, the masters' names, from whence arrived, whether laden or in ballast, to what nation belonging, and, if American vessels, whether the masters thereof have or have not complied with the law, in having the required number of manifests of the cargo on board, agreeing in substance with the provisions of law.

Fourth. To put on board each of such vessels one or more inspectors immediately after their arrival in his port.

Fifth. To ascertain the proof, quantities, and kinds of distilled spirits imported, rating such spirits according to their respective degrees of proof, as defined by the laws imposing duties on spirits.

Sixth. To examine whether the goods imported in any vessel, and the deliveries thereof, agreeably to the inspector's returns, correspond with the permits for landing the same; and if any error or disagreement appears, to report the same to the collector, and to the comptroller, if any.

Seventh. To superintend the lading for exportation of all goods entered for the benefit of any drawback, bounty, or allowance, and examine and report whether the kind, quantity, and quality of the goods, so laden on board any vessel for exportation, correspond with the entries and permits granted therefor.

Eighth. To examine, and, from time to time, and particularly on the first Mondays of January and July in each year, try the weights, measures, and other instruments used in ascertaining the duties on imports, with standards to be provided by each collector at the public expense for that purpose; and where disagreements or errors are discovered, to report the same to the collector; and to obey and execute such directions as he may receive for correcting the same, agreeably to the standards. (R. S. § 2627; June 17, 1930, ch. 497, title IV, § 523, 46 Stat. 740.)

#### DERIVATION

Act Mar. 2, 1799, ch. 22, § 21, 1 Stat. 642.

#### CROSS REFERENCE

Office of surveyor of customs abolished except in port of New York, see section 5a of this title.

§ 41. Repealed. Feb. 28, 1933, ch. 131, § 1, 47 Stat. 1349.

Section was based upon R. S. § 2628.

§ 42. Keeping and rendering accounts by collector, comptroller, and surveyor.

Every collector, comptroller, and surveyor shall keep accurate accounts of all moneys received by him, and of all expenditures, specifying expenditures for rent, fuel, stationery, and clerk hire, and shall annually, within ten days after the 30th day of June, transmit the same, verified by oath, to the General Accounting Office. Every collector, comptroller, or surveyor who omits or neglects to keep such account, or to transmit the same so verified, shall be liable to a penalty of not more than \$500. The Secretary of the Treasury shall make appropriate rules and regulations for carrying out the provisions of this section. (R. S. § 2639; July 31, 1894, ch. 174, §§ 19, 22, 28 Stat. 210; June 10, 1921, ch. 18, § 304, 42 Stat. 24; May 29, 1928, ch. 901, § 1 (115), 45 Stat. 994; June 17, 1930, ch. 497, title IV, § 523, 46 Stat. 740.)

#### DERIVATION

Acts Mar. 2, 1799, ch. 23, § 2, 1 Stat. 708; Mar. 3, 1849, ch. 108, § 12, 9 Stat. 396.

#### CROSS REFERENCE

Office of surveyor of customs abolished except at port of New York, see section 5a of this title.

§ 43. Same; duty in respect to accounts, and the penalty for omission.

Collectors, comptrollers, and surveyors shall attend in person at the ports at which their duties are to be performed; and shall keep fair and true accounts and records of all their transactions, as officers of the customs, in such manner and form as may from time to time be directed by the Secretary of the Treasury; and shall at all times submit their books, papers, and accounts to the inspection of such persons as may be appointed for that purpose; and shall once in every month, or oftener if they shall be

required, transmit their accounts for settlement to the officer or officers whose duty it shall be to make such settlement. And if any collector, comptroller, or surveyor shall omit to keep fair and true accounts, or shall refuse to submit forthwith his books, papers and accounts to inspection as required by law, or if any collector shall omit or refuse to render his accounts for settlement, for a term exceeding three months after the same shall have been required by the proper officer, the delinquent officer shall be liable to a penalty of \$1,000 to be recovered with costs of suit. (R. S. § 2640; June 17, 1930, ch. 497, title IV, § 523, 46 Stat. 740.)

## DERIVATION

Act Mar. 2, 1799, ch. 22, § 21, 1 Stat. 643.

## CROSS REFERENCE

Office of surveyor of customs abolished except in port of New York, see section 5a of this title.

## § 44. Same; accounts to include all expenses.

Every collector, comptroller, and surveyor shall account to the Treasury for all the expenses incident to his office. Such accounts shall be rendered on oath, at such times and in such forms, and shall be supported by such proofs, as shall be prescribed by the Secretary of the Treasury. (R. S. § 2641; Aug. 24, 1912, ch. 355, § 1, 37 Stat. 434; June 17, 1930, ch. 497, title IV, § 523, 46 Stat. 740.)

## DERIVATION

Act May 7, 1822, ch. 107, § 12, 3 Stat. 695.

## CROSS REFERENCE

Office of surveyor of customs abolished except in port of New York, see section 5a of this title.

## § 45. Same; list of clerks and account of expenditures.

Every collector, comptroller, and surveyor shall, together with his accounts of the expenses incident to his office, render a list of the clerks employed by him, stating the rate of compensation allowed to each, and the duties which they severally perform; and also an account of the sums paid for stationery, official or contingent expenses, fuel, and office rent, stating the purposes for which the premises rented are applied. (R. S. § 2643; June 17, 1930, ch. 497, title IV, § 523, 46 Stat. 740.)

## DERIVATION

Act May 7, 1822, ch. 107, § 13, 3 Stat. 695.

## CROSS REFERENCE

Office of surveyor of customs abolished except in port of New York, see section 5a of this title.

## §§ 46, 47. Repealed. Feb. 28, 1933, ch. 131, § 1, 47 Stat. 1349.

These sections were based upon R. S. §§ 2644 and 2645, respectively.

## § 48. Expenses; expenses in foreign countries

All customs officers and employees, including customs officers and employees in foreign countries, in addition to their compensation shall receive their necessary traveling expenses and actual expenses incurred for subsistence while traveling on duty and away from their designated station, and when transferred from one official station to another for duty may be allowed, within the discretion and under

written orders of the Secretary of the Treasury, the expenses incurred for packing, crating, freight, and drayage in the transfer of their household effects and other personal property. (Mar. 4, 1923, ch. 251, § 5, 42 Stat. 1454; June 17, 1930, ch. 497, title IV, § 645 (b), 46 Stat. 761.)

§ 49. Repealed. Aug. 26, 1935, ch. 689, § 1, 49 Stat. 864.  
Section was based upon R. S. § 1790.

## § 50. Oath to expense accounts.

Collectors of customs are required, empowered, and authorized, when requested, to administer oaths, required by law or otherwise, to accounts for travel or other expenses against the United States, with like force and effect as officers having a seal; for such services when so rendered, or when rendered on demand by notaries public, who at the time are also salaried officers or employees of the United States, no charge shall be made; and no fee or money paid for the services herein described shall be paid or reimbursed by the United States. (Aug. 24, 1912, ch. 355, § 8, 37 Stat. 487; June 6, 1939, ch. 185, 53 Stat. 810.)

## AMENDMENT

Reenacted without change by act June 6, 1939, ch. 185, 53 Stat. 810.

## § 51. Limitation on compensation.

Except in the case of laborers, no compensation fixed under sections 6 and 7 of this title shall be greater than 30 per centum in excess of the limitations of existing law. (Mar. 4, 1923, ch. 251, § 7, 42 Stat. 1454.)

## CROSS REFERENCE

Appropriation for compensation of employees, see section 6d of this title.

## § 52. Payment of compensation and expenses.

The compensation of all customs officers and employees provided for by sections 6, 7, 8, 13, 51 of this title, and the expenses authorized by section 48 of this title, shall be paid from the appropriation for the collection of the revenue from customs. (Mar. 4, 1923, ch. 251, § 6, 42 Stat. 1454; Mar. 3, 1927, ch. 348, § 3, 44 Stat. 1382.)

## § 53. Apportionment of compensation.

Collectors and all other officers of the customs, serving for a less period than a year, shall not be paid for the entire year, but shall be allowed in no case a greater than a pro rata of the maximum compensation of such officers respectively for the time only which they actually serve as such collectors or officers, whether the same be under one or more appointments, or before or after confirmation. And no collector or other officer shall, in any case, receive for his services, either as fees, salary, fines, penalties, forfeitures, or otherwise, for the time he may be in service, beyond the maximum pro rata rate provided by law. And this section shall be applied and enforced in regard to all officers, agents, and employees of the United States whomsoever, as well those whose compensation is determined by a commission on disbursements, not to exceed an annual maximum, as those paid by salary or otherwise. (R. S. § 2687.)

## DERIVATION

Acts Feb. 11, 1846, ch. 7, § 1, 9 Stat. 3; July 18, 1866, ch. 201, § 34, 14 Stat. 186.

## § 54. Books to be furnished.

All blank books, blanks, and stationery of every kind required by collectors and other officers of the customs shall, so soon as they can be prepared for delivery, by or under the direction of the Secretary of the Treasury, be furnished to them for the use of their respective offices, upon requisition made by them. (R. S. § 2646.)

## DERIVATION

Act July 28, 1866, ch. 293, § 5, 14 Stat. 309

## § 55. Quarterly account of money received or collected.

Every collector of customs, every comptroller, and every surveyor performing or having performed the duties of a collector, shall render a quarter-yearly account, under oath, to the Secretary of the Treasury, in such form as the Secretary shall prescribe, of all sums of money by each of them respectively received or collected for fines, penalties, or forfeitures, or for seizure of merchandise, or upon compromises made upon any seizure; or on account of suits instituted for frauds against the revenue laws; or for rent and storage of merchandise, which may be stored in the public storehouses, and for which a rent is paid beyond the rents paid by the collector or other such officer; or for custody of goods in bonded warehouses; and all such moneys received shall be covered into the Treasury as public money. (R. S. § 2647; Aug. 24, 1912, ch. 355, § 1, 37 Stat. 434; June 17, 1930, ch. 497, title IV, § 523, 46 Stat. 740.)

## DERIVATION

Acts Mar. 3, 1841, ch. 35, § 5, 5 Stat. 432; Mar. 3, 1857, ch. 108, § 8, 11 Stat. 229; July 18, 1866, ch. 201, § 40, 14 Stat. 187

## CROSS REFERENCE

Office of surveyor of customs abolished except in port of New York, see section 5a of this title.

## § 56. Labor beyond usual hours at port of New York.

If at any time, from an increase of importation, or from any other cause, there shall be found upon the floors of the public stores in the city of New York an accumulation of merchandise awaiting appraisalment, the appraiser shall, under regulations established by the Secretary of the Treasury, direct the assistant appraisers, and others associated with them in this branch of the public business, to devote time beyond the usual business hours, in each day, during daylight, to their respective duties, so that the business of appraisalment may be faithfully and more promptly dispatched. (R. S. § 2944.)

## DERIVATION

Act July 27, 1866, ch. 284, § 9, 14 Stat. 303.

## § 57. Blanks.

Collectors and surveyors of the collection districts on the northern, northeastern, and northwestern frontiers are authorized to keep on sale, at their several offices, blank manifests and clearances required for the business of their districts, and to charge the sum of 10 cents, and no more, for each

blank which shall be prepared and executed by them. The net proceeds of such sales shall be covered into the Treasury. (R. S. § 2648; Aug. 24, 1912, ch. 355, § 1, 37 Stat. 434.)

## DERIVATION

Act July 14, 1862, ch. 169, § 2, 12 Stat. 572.

## CROSS REFERENCE

Office of surveyor of customs abolished except in port of New York, see section 5a of this title.

## § 58. Fees of collectors.

Collectors shall charge and collect the following fees:

First. For every entrance of any vessel of one hundred tons burden and upward, \$2.50

Second. For every clearance of any vessel of one hundred tons burden and upward, \$2.50.

Third. For every entrance of any vessel under the burden of one hundred tons, \$1.50.

Fourth. For every clearance of any vessel under one hundred tons burden, \$1.50.

Fifth. For every post entry, \$2.

Sixth. For every permit to land goods, 20 cents.

Seventh. For every bond taken officially, 40 cents.

Eighth. For every permit to load goods for exportation, which are entitled to drawback, 30 cents.

Ninth. For every debenture or other official certificate, 20 cents.

Tenth. For every bill of health other than a bill of health furnished a vessel of the United States, 20 cents.

Eleventh. For every official document, registers excepted, required by any merchant, owner, or master of any vessel not elsewhere enumerated, and for which fees are not prohibited by section 331 of Title 46, Shipping, 20 cents. (R. S. § 2654; Aug. 24, 1912, ch. 355, § 1, 37 Stat. 434.)

## DERIVATION

Acts Mar. 2, 1799, ch. 23, § 2, 1 Stat. 706; June 17, 1864, ch. 130, § 3, 13 Stat. 134.

## § 59. Posting table of fees.

Every collector, comptroller, and surveyor shall cause to be affixed, and constantly kept in some public and conspicuous place of his office, a fair table of the rates of fees and duties demandable by law, and shall give a receipt for the fees received by him, specifying the particulars whenever required so to do; and for every failure so to do, he shall be liable to a penalty of \$100, recoverable to the use of the informer. (R. S. § 2635; June 17, 1930, ch. 497, title IV, § 523, 46 Stat. 740.)

## DERIVATION

Act Mar. 2, 1799, ch. 22, § 73, 1 Stat. 680.

## CROSS REFERENCE

Office of surveyor of customs abolished except in port of New York, see section 5a of this title.

## § 60. Penalty for extortion.

Every officer of the customs who demands or receives any other or greater fee, compensation, or reward than is allowed by law, for performing any duty or service required from him by law, shall be liable to a penalty of \$200 for each offense, recoverable to the use of the party aggrieved. (R. S. § 2636.)

DERIVATION

Act Mar. 2, 1799, ch. 22, § 73, 1 Stat. 680.

§ 61. Inspectors on routes by which goods withdrawn from bonded warehouse may be exported to Mexico; reports.

Inspectors of the customs residing at San Antonio, Eagle Pass, the Presidio del Norte, and San Elizario, or at such other points as the Secretary of the Treasury may designate, upon the routes by which goods entered and bonded and withdrawn from warehouse may, in pursuance of law, be exported to Mexico, shall make a report semiannually to the Secretary of the Treasury of all the trade that passes under inspection, stating the number of packages, description of goods, their value, and the names of the exporters. (R. S. § 2580.)

DERIVATION

Act Aug. 30, 1852, ch. 96, § 3, 10 Stat. 38.

CROSS REFERENCE

Customs employees in foreign countries to perform duties defined by existing law or prescribed by Secretary of Treasury, see section 6 of this title.

§ 62. Suspension for neglect or delinquency of officers or employees.

The several collectors, comptrollers, surveyors, and appraisers shall have power, with the approval of the Secretary of the Treasury, as punishment for any neglect or minor delinquency the punishment whereof is not prescribed by law, to suspend from duty with loss of pay for a period not to exceed thirty days for any one cause, any customs officer or employee nominated or appointed and subordinate to such collector, comptroller, surveyor, or appraiser: *Provided, however,* That the Secretary of the Treasury may, on application by the suspended person within one year from the expiration of the suspension, in his discretion pay the whole or any part of the pay forfeited by reason of said suspension. (Dec. 18, 1890, ch. 22, 26 Stat. 690; June 17, 1930, ch. 497, title IV, § 523, 46 Stat. 740.)

CROSS REFERENCE

Offices of surveyors of customs and appraisers of merchandise abolished except in port of New York, see section 5a of this title.

§ 63. Leave of absence; regulations.

All officers and employees of the customs service of the Government who receive a per diem compensation shall be entitled to receive the same leave of absence as is provided for clerks and employees in the several executive departments at Washington, District of Columbia, by section 30 of Title 5. The Secretary of the Treasury shall make all rules and regulations necessary to carry the provisions of this section into effect. (Aug. 28, 1890, ch. 812, §§ 1, 2, 26 Stat. 362.)

§ 64. Laws imposing fines applicable to persons acting under customs laws.

Provisions of this section, act Feb. 8, 1875, ch. 36, § 23, 18 Stat. 312, were incorporated as section 4048 of Title 26, Internal Revenue Code.

§ 66. Rules and forms prescribed by Secretary.

Provisions of this section, R. S. § 251, were incorporated as section 4041 (a) of Title 26, Internal Revenue Code.

§ 67. Annual report to Congress affecting custom-houses.

The Secretary of the Treasury shall lay before Congress at the commencement of each regular session a statement of the amount of money expended at each customhouse during the preceding fiscal year, and of the number of persons employed, and the occupation and salary of each person at each customhouse during the same period. (R. S. § 258.)

DERIVATION

Act Mar. 3, 1849, ch. 110, § 6, 9 Stat. 399.

§ 68. Enforcement of customs and immigration laws along Canadian and Mexican borders; cooperation by Secretary of Treasury and Attorney General; erection of buildings.

To aid in the enforcement of the customs and immigration laws along the Canadian and Mexican borders and to provide better facilities for such enforcement at points along such borders at which no Federal or other buildings adapted or suitably located for the purpose are available, the Secretary of the Treasury and the Attorney General are hereby authorized to expend, from the funds appropriated for the general maintenance and operation of the Customs and the Immigration and Naturalization Services, respectively, the necessary amounts for the acquisition of land and the erection of buildings, sheds, and office quarters, including living quarters for officers where none are otherwise available: *Provided,* That the total amount which may be so expended for any one project, for the use of one department, including the cost of the site, shall not exceed \$5,000, and that where quarters are so erected or facilities so provided for the joint use of the Customs and the Immigration and Naturalization Services the combined cost charged to the two appropriations concerned shall not exceed \$10,000 for any one project, including the site. (June 26, 1930, ch. 617, § 1, 46 Stat. 817; Oct. 10, 1940 ch. 837, 54 Stat. 1091.)

§ 69. Same; erection of protective gates and fences across and around roads crossing borders.

The Secretary of the Treasury is authorized to expend, from the funds appropriated for the general maintenance and operation of the Customs Service, such amounts as may be necessary for the erection of protective gates across international highways and roads crossing the Canadian and Mexican borders and for the erection of such fences in the immediate vicinity of such highways and roads as may be necessary to prevent unlawful entry or smuggling. (June 26, 1930, ch. 617, § 2, as added Oct. 10, 1940, ch. 837, 54 Stat. 1092.)

Chapter 1A.—FOREIGN TRADE ZONES

Sec.

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### § 81a. Definitions.

When used in sections 81a–81u of this title—

(a) The term "Secretary" means the Secretary of Commerce;

(b) The term "Board" means the Board which is hereby established to carry out the provisions of sections 81a–81u of this title. The Board shall consist of the Secretary of Commerce, who shall be chairman and executive officer of the Board, the Secretary of the Treasury, and the Secretary of War;

(c) The term "State" includes any State, the District of Columbia, Alaska, Hawaii, and Puerto Rico;

(d) The term "corporation" means a public corporation and a private corporation, as defined in sections 81a–81u of this title;

(e) The term "public corporation" means a State, political subdivision thereof, a municipality, a public agency of a State, political subdivision thereof, or municipality, or a corporate municipal instrumentality of one or more States;

(f) The term "private corporation" means any corporation (other than a public corporation) which is organized for the purpose of establishing, operating, and maintaining a foreign-trade zone and which is chartered under special Act enacted after June 18, 1934, of the State or States within which it is to operate such zone;

(g) The term "applicant" means a corporation applying for the right to establish, operate, and maintain a foreign-trade zone;

(h) The term "grantee" means a corporation to which the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted;

(i) The term "zone" means a "foreign-trade zone" as provided in sections 81a–81u of this title. (June 18, 1934, ch. 590, § 1, 48 Stat. 998.)

### § 81b. Authorization of the establishment of zones; number; preference as between corporations.

(a) The Board is hereby authorized, subject to the conditions and restrictions of sections 81a–81u of this title and of the rules and regulations made thereunder, upon application as hereinafter provided, to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States.

(b) Each port of entry shall be entitled to at least one zone, but when a port of entry is located within the confines of more than one State such port of entry shall be entitled to a zone in each of such States, and when two cities separated by water are embraced in one port of entry, a zone may be authorized in each of said cities or in territory adjacent thereto. Zones in addition to those to which a port of entry is entitled shall be authorized only if the Board finds that existing or authorized zones will not adequately serve the convenience of commerce.

(c) In granting applications preference shall be given to public corporations.

(d) In case of any State in which harbor facilities of any port of entry are owned and controlled by the State and in which State harbor facilities of any other port of entry are owned and controlled by a municipality, the Board shall not grant an application by any public corporation for the establishment of any zone in such State, unless such application has been authorized by an Act of the legislature of such State (enacted after June 18, 1934). (June 18, 1934, ch. 590, § 2, 48 Stat. 999.)

### § 81c. Admission of foreign merchandise; treatment; shipment to customs territory; appraisal; reshipment to zone.

Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs laws of the United States, except as otherwise provided in sections 81a–81u of this title, be brought into a zone and may not be manufactured or exhibited in such zone but may be stored, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, and be exported, and foreign merchandise may be sent into customs territory of the United States therefrom, in the original package or otherwise; but when foreign merchandise is so sent from a zone into customs territory of the United States it shall be subject to the laws and regulations of the United States affecting imported merchandise: *Provided*, That when the privilege shall be requested the collector of customs shall supervise the unloading of foreign merchandise in the zone, cause such merchandise or any portion thereof to be appraised and the duties liquidated thereon. Thereafter it may be stored or manipulated under the supervision and regulations prescribed by the Secretary of the Treasury, and within two years after such unloading such merchandise, whether mixed with domestic merchandise or not, may be sent into customs territory upon the payment of such liquidated duties thereon; and if not so sent into customs territory within such period of two years such merchandise shall be disposed of under rules and regulations prescribed by the Secretary of the Treasury and out of the proceeds the duties shall be paid and the remainder, if any, shall be delivered to the owners of the property: *Provided further*, That subject to such regulations respecting identity and the safeguarding of the revenue as the Secretary of the Treasury may deem necessary, articles the growth, product, or manufacture of the United States, and articles previously imported on which duty has been paid, or which

have been admitted free of duty, may be taken into a zone from the customs territory of the United States, and may be brought back thereto free of duty, whether or not they have been combined with or made part, while in such zone, of other articles: *Provided*, That if in the opinion of the Secretary of the Treasury their identity has not been lost such articles not entitled to free entry by reason of non-compliance with the requirements made hereunder by the Secretary of the Treasury shall be treated when they reenter the customs territory of the United States as foreign merchandise under the provisions of the tariff laws in force at that time. (June 18, 1934, ch. 590, § 3, 48 Stat. 999.)

**§ 81d. Customs officers and guards.**

The Secretary of the Treasury shall assign to the zone the necessary customs officers and guards to protect the revenue and to provide for the admission of foreign merchandise into customs territory. (June 18, 1934, ch. 590, § 4, 48 Stat. 1000.)

**§ 81e. Vessels entering or leaving zone; coastwise trade.**

Vessels entering or leaving a zone shall be subject to the operation of all the laws of the United States, except as otherwise provided in sections 81a–81u of this title, and vessels leaving a zone and arriving in customs territory of the United States shall be subject to such regulations to protect the revenue as may be prescribed by the Secretary of the Treasury. Nothing in sections 81a–81u of this title shall be construed in any manner so as to permit vessels under foreign flags to carry goods or merchandise shipped from one foreign trade zone to another zone or port in the protected coastwise trade of the United States. (June 18, 1934, ch. 590, § 5, 48 Stat. 1000.)

**§ 81f. Application for establishment of zone; expansion of zone.**

(a) Each application shall state in detail—

(1) The location and qualifications of the area in which it is proposed to establish a zone, showing (A) the land and water or land or water area or land area alone if the application is for its establishment in or adjacent to an interior port; (B) the means of segregation from customs territory; (C) the fitness of the area for a zone; and (D) the possibilities of expansion of the zone area;

(2) The facilities and appurtenances which it is proposed to provide and the preliminary plans and estimate of the cost thereof, and the existing facilities and appurtenances which it is proposed to utilize;

(3) The time within which the applicant proposes to commence and complete the construction of the zone and facilities and appurtenances;

(4) The methods proposed to finance the undertaking;

(5) Such other information as the Board may require.

(b) The Board may upon its own initiative or upon request permit the amendment of the application. Any expansion of the area of an established

zone shall be made and approved in the same manner as an original application. (June 18, 1934, ch. 590, § 6, 48 Stat. 1000.)

**§ 81g. Granting of application.**

If the Board finds that the proposed plans and location are suitable for the accomplishment of the purpose of a foreign trade zone under sections 81a–81u of this title, and that the facilities and appurtenances which it is proposed to provide are sufficient it shall make the grant. (June 18, 1934, ch. 590, § 7, 48 Stat. 1000.)

**§ 81h. Rules and regulations.**

The Board shall prescribe such rules and regulations not inconsistent with the provisions of sections 81a–81u of this title or the rules and regulations of the Secretary of the Treasury made hereunder and as may be necessary to carry out sections 81a–81u of this title. (June 18, 1934, ch. 590, § 8, 48 Stat. 1000.)

**§ 81i. Cooperation of Board with other agencies.**

The Board shall cooperate with the State, subdivision, and municipality in which the zone is located in the exercise of their police, sanitary, and other powers in and in connection with the free zone. It shall also cooperate with the United States Customs Service, the Post Office Department, the Public Health Service, the Immigration and Naturalization Service, and such other Federal agencies as have jurisdiction in ports of entry described in section 81b of this title. (June 10, 1933, Ex. Ord. No. 6166, § 14; June 18, 1934, ch. 590, § 9, 48 Stat. 1000.)

**TRANSFER OF FUNCTIONS**

The Bureaus of Immigration and Naturalization were consolidated as an Immigration and Naturalization Service by Ex. Ord. No. 6166, § 14, cited to text, set out in the note to section 132 of Title 5, Executive Departments and Government Officers and Employees.

**§ 81j. Cooperation of other agencies with Board.**

For the purpose of facilitating the investigations of the Board and its work in the granting of the privilege, in the establishment, operation, and maintenance of a zone, the President may direct the executive departments and other establishments of the Government to cooperate with the Board, and for such purpose each of the several departments and establishments is authorized, upon direction of the President, to furnish to the Board such records, papers, and information in their possession as may be required by him, and temporarily to detail to the service of the Board such officers, experts, or engineers as may be necessary. (June 18, 1934, ch. 590, § 10, 48 Stat. 1001.)

**§ 81k. Agreements as to use of property.**

If the title to or right of user of any of the property to be included in a zone is in the United States, an agreement to use such property for zone purposes may be entered into between the grantee and the department or officer of the United States having control of the same, under such conditions, approved by the Board and such department or officer, as may

be agreed upon. (June 18, 1934, ch. 590, § 11, 48 Stat. 1001.)

**§ 81l. Facilities to be provided and maintained.**

Each grantee shall provide and maintain in connection with the zone—

(a) Adequate slips, docks, wharves, warehouses, loading and unloading and mooring facilities where the zone is adjacent to water; or, in the case of an inland zone, adequate loading, unloading, and warehouse facilities;

(b) Adequate transportation connections with the surrounding territory and with all parts of the United States, so arranged as to permit of proper guarding and inspection for the protection of the revenue;

(c) Adequate facilities for coal or other fuel and for light and power;

(d) Adequate water and sewer mains;

(e) Adequate quarters and facilities for the officers and employees of the United States, State, and municipality whose duties may require their presence within the zone;

(f) Adequate enclosures to segregate the zone from customs territory for protection of the revenue, together with suitable provisions for ingress and egress of persons, conveyances, vessels, and merchandise;

(g) Such other facilities as may be required by the Board. (June 18, 1934, ch. 590, § 12, 48 Stat. 1001.)

**§ 81m. Permission to others to use zone.**

The grantee may, with the approval of the Board, and under reasonable and uniform regulations for like conditions and circumstances to be prescribed by it, permit other persons, firms, corporations, or associations to erect such buildings and other structures within the zone as will meet their particular requirements: *Provided*, That such permission shall not constitute a vested right as against the United States, nor interfere with the regulation of the grantee or the permittee by the United States, nor interfere with or complicate the revocation of the grant by the United States: *And provided further*, That in the event of the United States or the grantee desiring to acquire the property of the permittee no good will shall be considered as accruing from the privilege granted to the zone: *And provided further*, That such permits shall not be granted on terms that conflict with the public use of the zone as set forth in sections 81a–81u of this title. (June 18, 1934, ch. 590, § 13, 48 Stat. 1001.)

**§ 81n. Operation of zone as public utility; cost of customs service.**

Each zone shall be operated as a public utility, and all rates and charges for all services or privileges within the zone shall be fair and reasonable, and the grantee shall afford to all who may apply for the use of the zone and its facilities and appurtenances uniform treatment under like conditions, subject to such treaties or commercial conventions as are now in force or may hereafter be made from time to time by the United States with foreign governments and the cost of maintaining the addi-

tional customs service required under sections 81a–81u of this title shall be paid by the operator of the zone. (June 18, 1934, ch. 590, § 14, 48 Stat. 1001.)

**§ 81o. Residents; rules as to entering and leaving; exclusion of goods; retail trade.**

(a) No person shall be allowed to reside within the zone except Federal, State, or municipal officers or agents whose resident presence is deemed necessary by the Board.

(b) The Board shall prescribe rules and regulations regarding employees and other persons entering and leaving the zone. All rules and regulations concerning the protection of the revenue shall be approved by the Secretary of the Treasury.

(c) The Board may at any time order the exclusion from the zone of any goods or process of treatment that in its judgment is detrimental to the public interest, health, or safety.

(d) No retail trade shall be conducted within the zone except under permits issued by the grantee and approved by the Board. Such permittees shall sell no goods except such domestic or duty-paid or duty-free goods as are brought into the zone from customs territory. (June 18, 1934, ch. 590, § 15, 48 Stat. 1002.)

**§ 81p. Accounts; reports of grantee; reports of Board.**

(a) The form and manner of keeping the accounts of each zone shall be prescribed by the Board.

(b) Each grantee shall make to the Board annually, and at such other times as it may prescribe, reports containing a full statement of all the operations, receipts, and expenditures, and such other information as the Board may require.

(c) The Board shall make a report to Congress on the first day of each regular session containing a summary of the operation and fiscal condition of each zone and transmit therewith copies of the annual report of each grantee. (June 18, 1934, ch. 590, § 16, 48 Stat. 1002.)

**§ 81q. Transfer of grant.**

The grant shall not be sold, conveyed, transferred, set over, or assigned. (June 18, 1934, ch. 590, § 17, 48 Stat. 1002.)

**§ 81r. Revocation of grant; grounds; proceedings; appeal to circuit court of appeals.**

(a) In the event of repeated willful violations of any of the provisions of sections 81a–81u of this title by the grantee, the Board may revoke the grant after four months' notice to the grantee and affording it an opportunity to be heard. The testimony taken before the Board shall be reduced to writing and filed in the records of the Board together with the decision reached thereon.

(b) In the conduct of any proceeding under this section for the revocation of a grant the Board may compel the attendance of witnesses and the giving of testimony and the production of documentary evidence, and for such purpose may invoke the aid of the district courts of the United States.

(c) An order under the provisions of this section revoking the grant issued by the Board shall be final and conclusive, unless within ninety days after its service the grantee appeals to the circuit court of



appeals for the circuit in which the zone is located by filing with the clerk of said court a written petition praying that the order of the Board be set aside. Such order shall be stayed pending the disposition of appellate proceedings by the court. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Board and it shall forthwith prepare, certify, and file in the court a full and accurate transcript of the record in the proceedings held before it under this section, the charges, the evidence, and the order revoking the grant. The testimony and evidence taken or submitted before the Board, duly certified and filed as a part of the record, shall be considered by the court as the evidence in the case. (June 18, 1934, ch. 590, § 18, 48 Stat. 1002.)

### § 81s. Offenses.

In case of a violation of sections 81a–81u of this title, or any regulation under sections 81a–81u of this title, by the grantee, any officer, agent, or employee thereof responsible for or permitting any such violation shall be subject to a fine of not more than \$1,000. Each day during which a violation continues shall constitute a separate offense. (June 18, 1934, ch. 590, § 19, 48 Stat. 1003.)

### § 81t. Separability of provisions.

If any provision of sections 81a–81u of this title or the application of such provision to certain circumstances be held invalid, the remainder of sections 81a–81u of this title and the application of such provisions to circumstances other than those as to which it is held invalid shall not be affected thereby (June 18, 1934, ch. 590, § 20, 48 Stat. 1003.)

### § 81u. Right to alter, amend, or repeal chapter.

The right to alter, amend, or repeal sections 81a–81u of this title is hereby reserved. (June 18, 1934, ch. 590, § 21, 48 Stat. 1003.)

## Chapter 2.—THE TARIFF COMMISSION

### §§ 91–107. United States Tariff Commission.

These sections related to the United States Tariff Commission as it existed prior to the act June 17, 1930, ch. 497, 46 Stat. 696.

Subject matter of section 91, act Sept. 8, 1916, ch. 463, § 700, 39 Stat. 795, is now covered by section 1330 of this title.

Subject matter of section 92, act Sept. 8, 1916, § 701, 39 Stat. 795, is now covered by section 1331 (a)–(e) of this title.

Subject matter of section 93, act Sept. 21, 1922, ch. 356, title III, § 318d, 42 Stat. 947, is now covered by section 1331 (f) of this title. Said section 93 was repealed by act June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762.

Section 94, act July 19, 1919, ch. 24, § 1, 41 Stat. 182, providing that the disbursing clerk of the Treasury Department should act in a similar capacity for the commission, was a proviso repeated in successive appropriation acts but which has not been repeated in recent years.

Subject matter of section 95, act Sept. 21, 1922, ch. 356, title III, § 318 (e), 42 Stat. 947, is now covered by section 1331 (g) of this title. Said section 95 was repealed by act June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762.

Subject matter of section 96, act Sept. 8, 1916, ch. 463, § 702, 39 Stat. 796, is now covered by section 1332 (a) of this title.

Subject matter of section 97, act Sept. 8, 1916, ch. 463, § 703, 39 Stat. 796, is now covered by section 1332 (g) of this title.

Subject matter of section 98, act Sept. 8, 1916, ch. 463, § 704, 39 Stat. 796, is now covered by section 1332 (b) of this title.

Section 99, act Sept. 8, 1916, ch. 463, § 705, 39 Stat. 796, related to the transfer of certain employees to the commission.

Subject matter of section 100, act Sept. 8, 1916, ch. 463, § 706, 39 Stat. 797, as amended by act Sept. 21, 1922, ch. 356, title III, § 318 (f), 42 Stat. 947, is now covered by section 1333 (a)–(e) of this title.

Subject matter of section 101, act Sept. 8, 1916, ch. 463, § 707, 39 Stat. 797, is now covered by section 1334 of this title.

Subject matter of section 102, act Sept. 21, 1922, ch. 356, title III, § 318 (a), 42 Stat. 946, is now covered by section 1332 (d) of this title. Said section 102 was repealed by act June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762.

Section 103, act Sept. 21, 1922, ch. 356, title III, § 318 (c), 42 Stat. 947, was repealed by act June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762.

Subject matter of section 104, act Sept. 21, 1922, ch. 356, title III, § 318 (b), 42 Stat. 947, is now covered by section 1332 (e) of this title. Said section 104 was repealed by act June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762.

Subject matter of section 105, act Sept. 8, 1916, ch. 463, § 708, 39 Stat. 798, is now covered by section 105 of this section.

Section 106, act Sept. 8, 1916, ch. 463, § 709, 39 Stat. 798, authorized an annual appropriation to defray the expenses of the commission. Since the passage of the Tariff Act of June 17, 1930, ch. 497, 46 Stat. 590, appropriations for the commission have been made in annual Executive Office appropriation bills.

Subject matter of section 107, act Feb. 20, 1929, ch. 270, § 1, 45 Stat. 1243 (repeated as a proviso in subsequent appropriations for the commission), is now covered by section 6 of Title 41, Public Contracts. Said act February 20, 1929, and the similar provisos in subsequent appropriation acts, were repealed by act Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111. A similar provision was enacted by said act October 10, 1940, as part of the consolidated exceptions to section 5 of said Title 41.

## Chapter 3.—THE TARIFF AND RELATED PROVISIONS

### SUBTITLE I.—DUTIABLE LIST

Sec.

121. Repealed.

### SUBTITLE II.—FREE LIST

122. Repealed.

### SUBTITLE III.—SPECIAL PROVISIONS

#### THE PHILIPPINE ISLANDS, CUBA, AND CANAL ZONE

123. Repealed.

123a. Duties and taxes on foreign vessels coming from Philippines; payment into treasury of Islands.

124. Products of Cuba; reduction of duties on.

125. Same; no additional charges on; equal treatment of imports.

126. Imports from Canal Zone.

#### COUNTERVAILING AND DISCRIMINATING DUTY

127. Repealed.

128. Discriminating duty on goods imported in foreign vessels; exception.

129. Discriminating duties.

#### COUNTRY OF ORIGIN

130. Importation only in vessels of United States or of country of origin.

131. Same; vessels, goods, etc., of nations not maintaining similar regulations; vessels of citizens of the United States.

132, 133. Repealed.



**MEDICINAL PREPARATIONS**

- Sec.  
134. Name of proprietor affixed to medicines.

**IMPORTATIONS PROHIBITED**

- 135-143. Repealed.

**SPECIAL PROVISIONS FOR ADMISSION OR WITHDRAWAL FROM BONDED WAREHOUSE WITHOUT PAYMENT OF DUTY**

144. Repealed.  
144a. Entry under bond of exhibits of arts, sciences, and industries, and products of soil, mine, and sea.  
145-147. Repealed.

**BONDED WAREHOUSES**

- 148-150. Repealed.  
151. Bonded warehouses for storage and cleansing of imported garbanzo; withdrawals.

**DRAWBACKS**

152. Repealed.  
152a. Drawbacks; articles shipped to Philippines.  
152b. Same; articles reexported to Philippines.

**REIMPORTING EXPORTED ARTICLES**

153. Repealed.

**EQUALIZING PRODUCTION COSTS**

- 154-159. Repealed.

**DUMPING INVESTIGATION**

160. Investigations by Secretary of Treasury; notice to Secretary by appraisers as to sales price of imported articles; withholding appraisement.

**SPECIAL DUMPING DUTY**

161. Amount of duty to be collected; determination of foreign market value of goods.

**PURCHASE PRICE**

162. Purchase price.

**EXPORTER'S SALES PRICE**

163. Determination of exporter's sales price.

**FOREIGN MARKET VALUE**

164. Determination of foreign market value.

**COST OF PRODUCTION**

165. Cost of production.

**EXPORTER**

166. Who are exporters.

**OATHS AND BONDS ON ENTRY**

167. Oath and bond of person for whose account merchandise is imported before delivery thereof.

**DUTIES OF APPRAISERS**

168. Appraisal and report to collector.

**APPEALS AND PROTESTS**

169. Appeals, etc., from determinations of appraisers.

**DRAWBACKS**

170. Special duties treated as regular duties.

**SHORT TITLE**

171. Citation.

**DEFINITIONS**

172. Definitions.

**RULES AND REGULATIONS**

173. Rules and regulations.

**UNFAIR METHODS OF COMPETITION AND IMPORTATION UNLAWFUL**

- 174-180. Repealed.

**IMPORTS FROM COUNTRIES MAKING DISCRIMINATIONS**

181. Exclusion of imports from countries making discriminations.  
182-190. Repealed.

**SPECIAL PROVISIONS**

- 191, 192. Repealed.  
193. Grain brought from Canada for grinding.

**Sec.**

194. Return free of articles and livestock exported for exhibition.

195. Same; animals taken abroad with circus or menagerie.

196. Repealed.

**PAYMENT OF DUTY**

197. Duties, how payable.

198. Certified checks; receivable for all public dues; lien for payment of.

199. Judgments, how payable.

**SUBTITLE IV.—CUSTOMS ADMINISTRATION****ADMINISTRATIVE PROVISIONS****PART 1.—DEFINITIONS**

231. Repealed.  
232. Same; "port."  
233. Departure from prescribed forms.  
234-239. Repealed.  
240. Value at date of shipment.

**PART 2.—REPORT, ENTRY, AND UNLADING OF VESSELS AND VEHICLES**

- 241-256. Repealed.  
257. Duty on equipments or repair parts for vessels.  
258. Remission for necessary repairs.  
259, 260. Repealed.  
261. Boarding officers' compensation.  
262-266. Repealed.  
267. Compensation for overtime services; fixing working hours.  
268-272. Repealed.  
273. Landing spirits and wines; marking casks and cases.  
274. Same; obliteration of marks.  
275-281. Repealed.  
282. Oath of master.  
283. Duty on saloon stores.  
284, 285. Repealed.  
286. Departure for place where no customhouse.  
287. Report and unloading of cargoes.  
288. Enrolled or licensed vessels.  
289. Entry of ferryboats; vessels exempt from fees.  
290. Departure from place where there is no customhouse.  
291. Forms.  
292. Penalty for neglect.  
293. Registered vessels touching at foreign ports.  
294. Same; no duty by reason thereof.

**PART 3.—ASCERTAINMENT, COLLECTION, AND RECOVERY OF DUTIES**

- 331-337. Repealed.  
338. Indorsement upon invoice; port of entry.  
339. Restriction on consular certificates.  
340. Consuls to exact proof of invoice.  
341. Fraudulent practices; consul's report.  
342-375. Repealed.  
376. Duties of assistant appraisers; port of New York; report deemed appraisement.  
377, 378. Repealed.  
379. Instructions to prevent importation.  
380-389. Repealed.  
390. Hydrometers.  
391. Ascertainment of duties on grain.  
392-405. Repealed.  
405a. Board of General Appraisers.  
406-409. Repealed.  
413-419. Repealed.  
420. Definition of "ton".

**PART 4.—TRANSPORTATION IN BOND AND WAREHOUSING OF MERCHANDISE**

- 451-459. Repealed.  
460. Retention of distilled spirits, wines, etc., in warehouse during prohibitory period.  
461-466. Repealed.  
467. Deposit of imported liquors in bonded warehouse.  
468. Stamps and brands effaced on emptying packages of imported liquors.

## Sec.

469. Dealing in or using empty stamped imported liquor containers.  
 471. Repealed.  
 472. Special delivery and appraisement of imported articles of limited value and weight.  
 473. Carriers responsible under bond; return of unclaimed packages.  
 474. Merchandise corded and sealed; record.  
 475. Consignment to carrier; invoice; delivery.

## PART 5.—ENFORCEMENT PROVISIONS

481. Repealed.  
 482. Search of vehicles and persons.  
 483. Forfeitures; penalty for aiding unlawful importation.  
 484-493. Repealed.  
 494. Seizure of merchandise as security for fines; release on bond.  
 495-506. Repealed.  
 507. Officers to make character known.  
 508. Persons making seizures pleading general issue and proving special matter.  
 509-525. Repealed.  
 526. Costs of prosecution.  
 527. Sums received from fines and other receipts covered into Treasury.  
 528. Collector to receive amount recovered.  
 529. Repealed.  
 530. Dismissal of proceedings.  
 531-534. Repealed.  
 535. Compulsory production of books, invoices, or papers.  
 536. Repealed.  
 537. Officers, informers, and defendants as witnesses  
 538, 539. Repealed.  
 540. President may use suitable vessels for enforcing customs laws.  
 541. Small boats for use of customs officials.  
 542. Motor boats for Corpus Christi; use elsewhere.

## PART 6.—GENERAL PROVISIONS

- 571-573. Repealed.  
 574. Exemption from taking other oaths.  
 575, 576. Repealed.  
 577. Laws applicable to Philippines.  
 578. Repealed.

## SUBTITLE I.—DUTIABLE LIST

- § 121. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Section was based upon act Sept. 21, 1922, ch. 356, title I, § 1, 42 Stat. 858-922. Corresponding provisions of Tariff Act of 1930, see section 1001 of this title.

## SUBTITLE II.—FREE LIST

- § 122. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Section was based upon act Sept. 21, 1922, ch. 356, title II, § 201, 42 Stat. 922-934. Corresponding provisions of Tariff Act of 1930, see section 1201 of this title.

## SUBTITLE III.—SPECIAL PROVISIONS

## THE PHILIPPINE ISLANDS, CUBA, AND CANAL ZONE

- § 123. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Section was based upon act Sept. 21, 1922, ch. 356, title III, § 301, 42 Stat. 934. Corresponding provisions of Tariff Act of 1930, see section 1301 of this title.

- § 123a. Duties and taxes on foreign vessels coming from Philippines; payment into treasury of Islands.

Provisions of this section, act Mar. 8, 1902, ch. 140, § 4, 32 Stat. 54, were incorporated as section 3343 (a) of Title 26, Internal Revenue Code.

- § 124. Products of Cuba; reduction of duties on.

So long as the convention between the United States and the Republic of Cuba, signed on the 11th day of December, in the year 1902, shall remain in force, all articles of merchandise being the product of the soil or industry of the Republic of Cuba, which on December 17, 1903, were imported into the United States free of duty, shall continue to be so admitted free of duty, and all other articles of merchandise being the product of the soil or industry of the Republic of Cuba imported into the United States shall be admitted at a reduction of 20 per centum of the rates of duty thereon, as provided by Act July 24, 1897, ch. 11, 30 Stat. 151, or as may be provided by any tariff law of the United States subsequently enacted. The rates of duty herein granted by the United States to the Republic of Cuba are and shall continue during the term of said convention preferential in respect to all like imports from other countries. Nothing contained in this section shall be held or construed as an admission on the part of the House of Representatives that customs duties can be changed otherwise than by an Act of Congress, originating in said House. (Dec. 17, 1903, ch. 1, § 1, 33 Stat. 3; Oct. 3, 1913, ch. 16, § IV, B, 38 Stat. 192.)

## CODIFICATION

Act July 24, 1897, ch. 11, 30 Stat. 151, cited in body of text, was the Tariff Act of 1897 and has been largely omitted from the code because superseded by later tariff acts. Present tariff act is Tariff Act of 1930 embraced in sections 1001 et seq. of this title.

## CROSS REFERENCE

Cuba reciprocity treaty not affected by Tariff Act of 1930, see section 1316 of this title.

- § 125. Same; no additional charges on; equal treatment of imports.

So long as the convention mentioned in section 124 of this title shall remain in force, the laws and regulations adopted, or that may be adopted by the United States to protect the revenues and prevent fraud in the declarations and proofs, that the articles of merchandise to which said convention may apply are the product or manufacture of the Republic of Cuba, shall not impose any additional charge or fees therefor on the articles imported, excepting the consular fees established, or which may be established, by the United States for issuing shipping documents, which fees shall not be higher than those charged on the shipments of similar merchandise from any other nation whatsoever. Articles of the Republic of Cuba shall receive, on their importation into the ports of the United States, treatment equal to that which similar articles of the United States shall receive on their importation into the ports of the Republic of Cuba. Any tax or charge that may be imposed by the national or local authorities of the United States upon the articles of merchandise of the Republic of Cuba, embraced in the provisions of said convention, subsequent to importation and prior to their entering into consumption into the United States, shall be imposed and collected without discrimination upon like articles whencesoever imported. (Dec. 17, 1903, ch. 1, § 2, 33 Stat. 4.)

**§ 126. Imports from Canal Zone.**

All laws affecting imports of articles, goods, wares, and merchandise and entry of persons into the United States from foreign countries shall apply to articles, goods, wares, and merchandise and persons coming from the Canal Zone, Isthmus of Panama, and seeking entry into any State or Territory of the United States or the District of Columbia. (Mar. 2, 1905, ch. 1311, 33 Stat. 843.)

**CROSS REFERENCE**

United States, alien, person, seaman defined, see section 173 of Title 8, Aliens and Nationality.

**COUNTERVAILING AND DISCRIMINATING DUTY****§ 127. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.**

Section was based upon act Sept. 21, 1922, ch. 356, title III, § 303, 42 Stat. 935. Corresponding provisions of Tariff Act of 1930, see section 1303 of this title.

**§ 128. Discriminating duty on goods imported in foreign vessels; exception.**

A discriminating duty of 10 per centum ad valorem, in addition to the duties imposed by law, shall be levied, collected, and paid on all goods, wares, or merchandise which shall be imported in vessels not of the United States, or which being the production or manufacture of any foreign country not contiguous to the United States, shall come into the United States from such contiguous country; but this discriminating duty shall not apply to goods, wares, or merchandise which shall be imported in vessels not of the United States entitled at the time of such importation by treaty or convention or Act of Congress to be entered in the ports of the United States on payment of the same duties as shall then be payable on goods, wares, and merchandise imported in vessels of the United States, nor to goods, wares, and merchandise imported in a vessel owned by citizens of the United States, but not a vessel of the United States, if such vessel, after entering an American port, shall before leaving the same be registered as a vessel of the United States, nor to such foreign products or manufactures as shall be imported from such contiguous countries in the usual course of strictly retail trade. (Oct. 3, 1913, ch. 16, § IV, J, subsec. 1, 38 Stat. 195; Mar. 4, 1915, ch. 171, § 1, 38 Stat. 1193; June 17, 1930, ch. 497, title IV, § 651 (d), 46 Stat. 763.)

**§ 129. Discriminating duties.**

No part of the additional or discriminating duty imposed by law on merchandise on account of its importation in foreign vessels shall be allowed to be drawback, but the whole shall be retained. (R. S. § 3027.)

**DERIVATION**

Acts May 13, 1800, ch. 64, § 2, 2 Stat. 83; Aug. 30, 1842, ch. 270, § 15, 5 Stat. 563.

**COUNTRY OF ORIGIN****§ 130. Importation only in vessels of United States or of country of origin.**

No goods, wares, or merchandise, unless in cases provided for by treaty, shall be imported into the

United States from any foreign port or place, except in vessels of the United States, or in such foreign vessels as truly and wholly belong to the citizens or subjects of that country of which the goods are the growth, production, or manufacture, or from which such goods, wares, or merchandise can only be, or most usually are, first shipped for transportation. All goods, wares, or merchandise imported contrary to this section or section 128, and the vessel wherein the same shall be imported, together with her cargo, tackle, apparel, and furniture, shall be forfeited to the United States; and such goods, wares, or merchandise, ship, or vessel, and cargo shall be liable to be seized, prosecuted, and condemned in like manner, and under the same regulations, restrictions, and provisions as have been heretofore established for the recovery, collection, distribution, and remission of forfeitures to the United States by the several revenue laws. (Oct. 3, 1913, ch. 16, § IV, J, subsec. 2, 38 Stat. 196; June 17, 1930, ch. 497, title IV, § 651 (d), 46 Stat. 763.)

**§ 131. Same; vessels, goods, etc., of nations not maintaining similar regulations; vessels of citizens of the United States.**

Section 130 of this title shall not apply to vessels or goods, wares, or merchandise imported in vessels of a foreign nation which does not maintain a similar regulation against vessels of the United States nor to any vessel owned by citizens of the United States but not a vessel of the United States if such vessel after entering an American port shall, before leaving the same, be registered as a vessel of the United States. (Oct. 3, 1913, ch. 16, § IV, J, subsec. 3, 38 Stat. 196; Mar. 4, 1915, ch. 171, § 1, 38 Stat. 1193; June 17, 1930, ch. 497, title IV, § 651 (d), 46 Stat. 763.)

**§§ 132, 133. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762.**

These sections were based upon act Sept. 21, 1922, ch. 356, title III, § 304 (a), (b), 42 Stat. 936.

Corresponding provisions of Tariff Act of 1930, see section 1304 of this title.

Sections 132, 133 were repealed effective sixty days after enactment of repealing act.

**MEDICINAL PREPARATIONS****§ 134. Name of proprietor affixed to medicines.**

All medicinal preparations, whether chemical or otherwise, usually imported with the name of the manufacturer, shall have the true name of the manufacturer and the place where they are prepared permanently and legibly affixed to each parcel by stamp, label, or otherwise; and all medicinal preparations imported without such names so affixed shall be adjudged to be forfeited. (R. S. § 2934.)

**DERIVATION**

Act June 26, 1848, ch. 70, § 1, 9 Stat. 237.

**IMPORTATIONS PROHIBITED****§§ 135-143. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.**

Sections were based upon act Sept. 21, 1922, ch. 356, title III, §§ 305 (a), (c), 306 (a), (b), (c), 307, title IV, § 526 (a), (b), (c), 42 Stat. 936, 937, 975.

Provisions of Tariff Act of 1930 corresponding to section 135, see section 1305 of this title; section 136, see section 1305; section 137, see section 1306; section 138, none; section 139, none; section 140, see section 1307; section 141, see section 1526 (a); section 142, see section 1526 (b); section 143, see section 1526 (c).

**SPECIAL PROVISIONS FOR ADMISSION OR WITHDRAWAL FROM BONDED WAREHOUSE WITHOUT PAYMENT OF DUTY**

§ 144. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Section was based upon act Sept. 21, 1922, ch. 356, title III, § 308, 42 Stat. 938. Corresponding provisions of Tariff Act of 1930, see section 1308 of this title.

§ 144a. Entry under bond of exhibits of arts, sciences, and industries, and products of soil, mine, and sea.

All articles which shall be imported from foreign countries for the sole purpose of exhibition or display at a permanent exhibition or exhibitions and/or at a temporary exhibition or exhibitions of the arts, sciences, and industries, and products of the soil, mine, and sea, to be held at any time and from time to time by Rockefeller Center (Incorporated), a corporation organized under the laws of the State of New York, and/or by its tenants or licensees in a building or buildings to be owned by Rockefeller Center (Incorporated), and to be a part of and to be known as Rockefeller Center and to be located between Fifth and Sixth Avenues and Forty-eighth and Fifty-first Streets, in the Borough of Manhattan, city and State of New York, upon which articles there shall be a tariff or customs duty, shall be admitted free of such tariff, customs duty, fees, or charges under such regulations as the Secretary of the Treasury shall prescribe; but it shall be lawful, at any time during or at the close of any exhibition held pursuant to this section, to sell for delivery at the close thereof any goods or property imported for and actually displayed at such exhibition, subject to such regulations for the security of the revenue and for the collection of import duties as the Secretary of the Treasury shall prescribe: *Provided*, That all such articles, when sold or withdrawn for consumption or use in the United States, shall be subject to the duty, if any, imposed upon such articles by the revenue laws in force at the date of their withdrawal and to the requirements of the tariff laws in effect at such date: *And provided further*, That Rockefeller Center (Incorporated) shall be deemed, for customs purposes only, to be the sole consignee of all merchandise imported under the provisions of this section, and that all necessary governmental expenses incurred as a result of exhibitions authorized under this section, including salaries of customs officials in charge of imported articles, shall be paid to the Treasury of the United States by Rockefeller Center (Incorporated) under regulations to be prescribed by the Secretary of the Treasury: *And provided further*, That all such articles shall, at the expiration of two years, be subject to the impost duty then in force, unless the same shall have been sold or exported from this country prior to that period of time: *And provided further*, That nothing in this section contained shall be construed as an

invitation, express or implied, from the Government of the United States to any foreign government, state, municipality, corporation, partnership, or individual to import any articles for the purpose of exhibition at the said exhibitions. (July 19, 1932, ch. 511, 47 Stat. 705.)

§§ 145–147. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Section 145 was based upon acts June 26, 1884, ch. 121, § 16, 23 Stat. 57; June 19, 1886, ch. 421, § 15, 24 Stat. 82; July 24, 1897, ch. 11, § 14, 30 Stat. 207. Corresponding provisions of Tariff Act of 1930, see paragraph (c) of section 1651 of this title.

Section 146 was based upon act Sept. 21, 1922, ch. 356, title III, § 309, 42 Stat. 938. Corresponding provisions of Tariff Act of 1930, see section 1309 of this title.

Section 147 was based upon act Sept. 21, 1922, ch. 356, title III, § 310, 42 Stat. 938. Corresponding provisions of Tariff Act of 1930, see section 1310 of this title.

**BONDED WAREHOUSES**

§§ 148–150. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Sections were based upon act Sept. 21, 1922, ch. 356, title III, §§ 311, 312, 42 Stat. 938–940. Provisions of Tariff Act of 1930 corresponding to section 148, see section 1311 of this title; section 149, see section 1312; section 150, see section 1312.

§ 151. Bonded warehouses for storage and cleansing of imported garbanzo; withdrawals.

Under such regulations and conditions as may be prescribed by the Secretary of the Treasury, bonded warehouses may be established in which imported Mexican peas, commonly called garbanzo may be stored, cleaned, repacked or otherwise changed in condition, but not manufactured, and withdrawn for exportation without the payment of duty thereon. The whole or any part of such imported garbanzo, and the waste material and by-products incident to cleaning or otherwise treating said imported garbanzo, may be withdrawn for domestic consumption upon the payment on the quantity so withdrawn of the duty imposed by law on such garbanzo in their condition as imported. The compensation of customs officers and storekeepers for all services in the supervision of such warehouses shall be paid from moneys advanced by the warehouse proprietor to the collector of customs and be carried in a special account and disbursed for such purposes, and all expenses incurred shall be paid by the warehouse proprietor. (June 28, 1916, ch. 180, 39 Stat. 239.)

**CROSS REFERENCE**

Withdrawal of imported merchandise from bonded warehouses, see section 1562 of this title.

**DRAWBACKS**

§ 152. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Section was based upon act Sept. 21, 1922, ch. 356, title III, § 313, 42 Stat. 940. Corresponding provisions of Tariff Act of 1930, see section 1313 of this title.

§ 152a. Drawbacks; articles shipped to Philippines.

All articles manufactured in bonded manufacturing warehouses in whole or in part of imported materials, or of materials subject to internal-revenue tax and intended for shipment from the United

States to the Philippine Islands, shall, when so shipped, under such regulations as the Secretary of the Treasury may prescribe, be exempt from internal-revenue tax, and shall not be charged with duty except the duty levied upon imports into the Philippine Islands.

Where materials on which duties have been paid are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the shipment of said articles to the Philippine Archipelago a drawback equal in amount to the duties paid on the materials used, less 1 per centum of such duties, under such rules and regulations as the Secretary of the Treasury may prescribe. (Mar. 8, 1902, ch. 140, § 6, 32 Stat. 55.)

#### CROSS REFERENCES

Drawback, upon exportation, on articles made from materials imported into United States, of all duties paid on such imported articles, less 1 per centum, see section 1313 of this title.

Internal revenue tax on goods going into Philippine Islands from United States, see section 1301 of this title

§ 152b. Same; articles reexported to Philippines.

Merchandise in bonded warehouse or otherwise in the custody and control of the officers of the customs upon which duties have been paid, shall be entitled, on shipment to the Philippine Islands within three years from the date of the original arrival, to a return of the duties paid less 1 per centum, and merchandise upon which duties have not been paid may be shipped without the payment of duties to the Philippine Islands within said period, under such rules and regulations as may be prescribed by the Secretary of the Treasury. (Mar. 8, 1902, ch. 140, § 7, 32 Stat. 55.)

#### CROSS REFERENCE

Internal revenue tax on goods going into Philippine Islands from United States, see section 1301 of this title

#### REIMPORTING EXPORTED ARTICLES

§ 153. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Section was based upon act Sept. 21, 1922, ch. 356, title III, § 314, 42 Stat. 941. Corresponding provisions of Tariff Act of 1930, see section 1314 of this title.

#### EQUALIZING PRODUCTION COSTS

§§ 154–159. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Sections were based upon act Sept. 21, 1922, ch. 356, title III, § 315 (a), (b), (c), (d), (e), and (f), 42 Stat. 941–943.

Provisions of Tariff Act of 1930 corresponding to section 154, see section 1336 (a) of this title; section 155, see section 1336 b); section 156, see section 1336 (e); section 157, none; section 158, see section 1336 (i); section 159, see section 1336 (j).

#### DUMPING INVESTIGATION

§ 160. Investigations by Secretary of Treasury; notice to Secretary by appraisers as to sales price of imported articles; withholding appraisement.

(a) Whenever the Secretary of the Treasury (hereinafter called the "Secretary"), after such investigation as he deems necessary, finds that an industry in the United States is being or is likely to be injured, or is prevented from being established, by

reason of the importation into the United States of a class or kind of foreign merchandise, and that merchandise of such class or kind is being sold or is likely to be sold in the United States or elsewhere at less than its fair value, then he shall make such finding public to the extent he deems necessary, together with a description of the class or kind of merchandise to which it applies in such detail as may be necessary for the guidance of the appraising officers.

(b) Whenever, in the case of any imported merchandise of a class or kind as to which the Secretary has not so made public a finding, the appraiser or person acting as appraiser has reason to believe or suspect, from the invoice or other papers or from information presented to him, that the purchase price is less, or that the exporter's sales price is less or likely to be less, than the foreign market value (or, in the absence of such value, than the cost of production) he shall forthwith, under regulations prescribed by the Secretary, notify the Secretary of such fact and withhold his appraisement report to the collector as to such merchandise until the further order of the Secretary, or until the Secretary has made public a finding as provided in subdivision (a) in regard to such merchandise. (May 27, 1921, ch. 14, § 201, 42 Stat. 110; June 17, 1930, ch. 497, title IV, § 651 (d), 46 Stat. 762.)

#### CROSS REFERENCE

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

#### SPECIAL DUMPING DUTY

§ 161. Amount of duty to be collected; determination of foreign market value of goods.

(a) In the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary of the Treasury has made public a finding as provided in section 160 of this title, and as to which the appraiser or person acting as appraiser has made no appraisement report to the collector before such finding has been so made public, if the purchase price or the exporter's sales price is less than the foreign market value (or, in the absence of such value, than the cost of production) there shall be levied, collected, and paid, in addition to the duties imposed thereon by law, a special dumping duty in an amount equal to such difference.

(b) If it is established to the satisfaction of the appraising officers that the amount of such difference between the purchase price and the foreign market value is wholly or partly due to the fact that the wholesale quantities, in which such a similar merchandise is sold or freely offered for sale to all purchasers for exportation to the United States in the ordinary course of trade, are greater than the wholesale quantities in which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States), then due allowance

shall be made therefor in determining the foreign market value for the purposes of this section.

(c) If it is established to the satisfaction of the appraising officers that the amount of such difference between the exporter's sales price and the foreign market value is wholly or partly due to the fact that the wholesale quantities, in which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the United States in the ordinary course of trade, are greater than the wholesale quantities in which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States), then due allowance shall be made therefor in determining the foreign market value for the purposes of this section. (May 27, 1921, ch. 14, § 202, 42 Stat. 11; June 17, 1930, ch. 497, title IV, § 651 (d), 46 Stat. 762.)

#### CROSS REFERENCE

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

#### PURCHASE PRICE

##### § 162. Purchase price.

For the purposes of this section and sections 160–171 of this title, the purchase price of imported merchandise shall be the price at which such merchandise has been purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account the merchandise is imported, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States; and plus the amount, if not included in such price, of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States; and plus the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation upon the manufacturer, producer, or seller, in respect to the manufacture, production, or sale of the merchandise, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States. (May 27, 1921, ch. 14, § 203, 42 Stat. 12; June 17, 1930, ch. 497, title IV, § 651 (d), 46 Stat. 762.)

#### EXPORTER'S SALES PRICE

##### § 163. Determination of exporter's sales price.

For the purpose of sections 160–171 of this title, the exporter's sales price of imported merchandise

shall be the price at which such merchandise is sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of the exporter, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less (1) the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States, (2) the amount of the commissions, if any, for selling in the United States the particular merchandise under consideration, (3) an amount equal to the expenses, if any, generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise, and (4) the amount of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States; and plus the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation upon the manufacturer, producer, or seller in respect to the manufacture, production, or sale of the merchandise, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States. (May 27, 1921, ch. 14, § 204, 42 Stat. 13; June 17, 1930, ch. 497, title IV, § 651 (d), 46 Stat. 762.)

#### FOREIGN MARKET VALUE

##### § 164. Determination of foreign market value.

For the purposes of sections 160–171 of this title, the foreign-market value of imported merchandise shall be the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States), plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of exportation, the foreign-market value shall be ascertained as of the date of such purchase or agreement to purchase. In the ascertainment of foreign-market value for the purposes of said sections no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account. (May 27, 1921, ch. 14, § 205,

42 Stat. 13; June 17, 1930, ch. 497, title IV, § 651 (d), 46 Stat. 762.)

#### COST OF PRODUCTION

##### § 165. Cost of production.

For the purposes of sections 160–171 of this title, the cost of production of imported merchandise shall be the sum of—

(1) The cost of materials of, and of fabrication, manipulation, or other process employed in manufacturing or producing, identical or substantially identical merchandise, at a time preceding the date of shipment of the particular merchandise under consideration which would ordinarily permit the manufacture or production of the particular merchandise under consideration in the usual course of business;

(2) The usual general expenses (not less than 10 per centum of such cost) in the case of identical or substantially identical merchandise;

(3) The cost of all containers and coverings, and all other costs, charges, and expenses incident to placing the particular merchandise under consideration in condition, packed ready for shipment to the United States; and

(4) An addition for profit (not less than 8 per centum of the sum of the amounts found under paragraphs (1) and (2)) equal to the profit which is ordinarily added, in the case of merchandise of the same general character as the particular merchandise under consideration, by manufacturers or producers in the country of manufacture or production who are engaged in the same general trade as the manufacturer or producer of the particular merchandise under consideration. (May 27, 1921, ch. 14, § 206, 42 Stat. 13; June 17, 1930, ch. 497, title IV, § 651 (d), 46 Stat. 762.)

#### EXPORTER

##### § 166. Who are exporters.

For the purposes of sections 160–171 of this title, the exporter of imported merchandise shall be the person by whom or for whose account the merchandise is imported into the United States:

(1) If such person is the agent or principal of the exporter, manufacturer, or producer; or

(2) If such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer, or producer; or

(3) If the exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in any business conducted by such person; or

(4) If any person or persons, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, own or control in the aggregate 20 per centum or more of the voting power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 per centum or more of such power or control in the business of the exporter, manufacturer, or producer. (May 27, 1921, ch. 14, § 207, 42 Stat. 14; June 17, 1930, ch. 497, title IV, § 651 (d), 46 Stat. 762.)

#### OATHS AND BONDS ON ENTRY

##### § 167. Oath and bond of person for whose account merchandise is imported before delivery thereof.

In the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary of the Treasury has made public a finding as provided in section 160 of this title, and delivery of which has not been made by the collector before such finding has been so made public, unless the person by whom or for whose account such merchandise is imported makes oath before the collector, under regulations prescribed by the Secretary, that he is not an exporter, or unless such person declares under oath at the time of entry, under regulations prescribed by the Secretary, the exporter's sales price of such merchandise, it shall be unlawful for the collector to deliver the merchandise until such person has made oath before the collector, under regulations prescribed by the said Secretary, that the merchandise has not been sold or agreed to be sold by such person, and has given bond to the collector, under regulations prescribed by the Secretary, with sureties approved by the collector, in an amount equal to the estimated value of the merchandise, conditioned: (1) That he will report to the collector the exporter's sales price of the merchandise within thirty days after such merchandise has been sold or agreed to be sold in the United States; (2) that he will pay on demand from the collector the amount of special dumping duty, if any, imposed by sections 160–171 of this title, upon such merchandise; and (3) that he will furnish to the collector such information as may be in his possession and as may be necessary for the ascertainment of such duty, and will keep such records as to the sale of such merchandise as the Secretary may by regulation prescribe. (May 27, 1921, ch. 14, § 208, 42 Stat. 14; June 17, 1930, ch. 497, title IV, § 651 (d), 46 Stat. 762.)

#### DUTIES OF APPRAISERS

##### § 168. Appraisal and report to collector.

In the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary of the Treasury has made public a finding as provided in section 160 of this title, and as to which the appraiser or person acting as appraiser has made no appraisement report to the collector before such finding has been so made public, it shall be the duty of each appraiser or person acting as appraiser, by all reasonable ways and means to ascertain, estimate, and appraise (any invoice or affidavit thereto or statement of cost of production to the contrary notwithstanding) and report to the collector the foreign market value or the cost of production, as the case may be, the purchase price, and the exporter's sales price, and any other facts which the Secretary may deem necessary for the purposes of sections 160–171 of this title. (May 27, 1921, ch. 14, § 209, 42 Stat. 15; June 17, 1930, ch. 497, title IV, § 651 (d), 46 Stat. 762.)

#### CROSS REFERENCE

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.



## APPEALS AND PROTESTS

## § 169. Appeals, etc., from determinations of appraisers.

For the purposes of sections 160–171 of this title, the determination of the appraiser or person acting as appraiser as to the foreign market value or the cost of production, as the case may be, the purchase price, and the exporter's sales price, and the action of the collector in assessing special dumping duty, shall have the same force and effect and be subject to the same right of appeal and protest, under the same conditions and subject to the same limitations; and the general appraisers, the United States Customs Court, and the Court of Customs and Patent Appeals shall have the same jurisdiction, powers, and duties in connection with such appeals and protests as in the case of appeals and protests relating to customs duties under existing law. (May 27, 1921, ch. 14, § 210, 42 Stat. 15; May 28, 1926, ch. 411, § 1, 44 Stat. 669; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475; June 17, 1930, ch. 497, title IV, § 651 (d), 46 Stat. 762.)

## CROSS REFERENCE

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

## DRAWBACKS

## § 170. Special duties treated as regular duties.

The special dumping duty imposed by sections 160–171 of this title shall be treated in all respects as regular customs duties within the meaning of all laws relating to the drawback of customs duties. (May 27, 1921, ch. 14, § 211, 42 Stat. 15; June 17, 1930, ch. 497, title IV, § 651 (d), 46 Stat. 762.)

## SHORT TITLE

## § 171. Citation.

Sections 160–171 of this title may be cited as the "Antidumping Act, 1921." (May 27, 1921, ch. 14, § 212, 42 Stat. 15; June 17, 1930, ch. 497, title IV, § 651 (d), 46 Stat. 762.)

## DEFINITIONS

## § 172. Definitions.

When used in sections 160–171 of this title—

The term "person" includes individuals, partnerships, corporations, and associations; and

The term "United States" includes all Territories and possessions subject to the jurisdiction of the United States, except the Philippine Islands, the Virgin Islands, the islands of Guam and Tutuila, and the Canal Zone. (May 27, 1921, ch. 14, § 406, 42 Stat. 18.)

## RULES AND REGULATIONS

## § 173. Rules and regulations.

The Secretary shall make rules and regulations necessary for the enforcement of sections 160–172 of this title. (May 27, 1921, ch. 14, § 407, 42 Stat. 18.)

## UNFAIR METHODS OF COMPETITION AND IMPORTATION UNLAWFUL

## §§ 174–180. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Sections were based upon act Sept. 21 1922, ch. 356, title III, § 316 (a)–(g), 42 Stat. 943, 944.

Provisions of Tariff Act of 1930 corresponding to section 174, see section 1337 (a) of this title; section 175, see section 1337 (b); section 176, see section 1337 (c); section 177, see section 1337 (d); section 178, see section 1337 (e); section 179, see section 1337 (f); section 180, see section 1337 (g).

## IMPORTS FROM COUNTRIES MAKING DISCRIMINATIONS

## § 181. Exclusion of imports from countries making discriminations.

Whenever the President shall be satisfied that unjust discriminations are made by or under the authority of any foreign state against the importation to or sale in such foreign state of any product of the United States, he may direct that such products of such foreign state so discriminating against any product of the United States as he may deem proper shall be excluded from importation to the United States; and in such case he shall make proclamation of his direction in the premises, and therein name the time when such direction against importation shall take effect, and after such date the importation of the articles named in such proclamation shall be unlawful. The President may at any time revoke, modify, terminate, or renew any such direction as, in his opinion, the public interest may require. (Aug. 30, 1890, ch. 839, § 5, 26 Stat. 415.)

## CROSS REFERENCE

Additional duties on or exclusion of products of countries discriminating against United States, see section 1338 of this title.

## §§ 182–190. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Sections were based upon act Sept. 21, 1922, ch. 356, title III, § 317 (a)–(1), 42 Stat. 944–946. Provisions of Tariff Act of 1930 corresponding to section 182, see section 1338 (a) of this title; section 183, see section 1338 (b); section 184, see section 1338 (c); section 185, see section 1338 (d); section 186, see section 1338 (e); section 187, see section 1338 (f); section 188, see section 1338 (g); section 189, see section 1338 (h); section 190, see section 1338 (i).

## SPECIAL PROVISIONS

## §§ 191, 192. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a), 46 Stat. 762, eff. June 18, 1930.

Section 191 was based upon act Sept. 21, 1922, ch. 356, title III, § 322, 42 Stat. 948.

Section 192 was based upon R. S. § 2804; act Aug. 27, 1894, ch. 349, § 26, 28 Stat. 552

## § 193. Grain brought from Canada for grinding.

Grain brought into the United States in wagons or other ordinary road vehicles, by farmers residing in the Dominion of Canada, to be ground by mills owned by citizens of the United States, shall not be deemed to be imported or liable to import duties. Such grain shall be brought into the United States under such regulations as the Treasury Department may prescribe to prevent fraud and evasion, and shall be returned as in like manner provided by such regulations. Entry shall be made of and duties paid upon all such grain as shall be taken or received by mill owners as tolls for such grinding, under like regulations provided by the Treasury Department. (Jan. 9, 1883, ch. 17, 22 Stat. 402.)



### § 194. Return free of articles and livestock exported for exhibition.

Whenever any article or articles or livestock shall be sent out of the United States for temporary use or exhibition at any public exposition, fair, or conference, held in a foreign country, such articles shall be entitled to be returned to the United States, under such regulations as may be prescribed by the Secretary of the Treasury, without the payment of customs duty, whether they shall be of domestic or of foreign production: *Provided*, That the articles of foreign production have once paid duty in the United States and no drawback has been allowed thereon, and if any domestic articles are subject to internal-revenue tax, such tax shall be proved to have been paid before exportation and not refunded. (May 18, 1896, ch. 195, 29 Stat. 122.)

#### CROSS REFERENCE

Articles of American growth or manufacture exported from United States may re-enter duty-free where they have not been advanced in value or improved in condition, see section 1201, paragraph 1615, of this title.

### § 195. Same; animals taken abroad with circus or menagerie.

The privilege of free entry conferred by section 194 of this title shall apply to wild and other animals of foreign origin taken abroad temporarily for exhibition in connection with any circus or menagerie, subject, however, to the conditions and limitations prescribed in said section. The provision of this section shall apply only in such cases as those of foreign-born animals taken abroad, and inventories of which are filed prior to their leaving the country with the collector of customs at the port of their departure. (Mar. 3, 1899, ch. 454, 30 Stat. 1372.)

#### CROSS REFERENCE

All coins and currencies of United States including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations to be legal tender for payment of duties, see section 462 of Title 31, Money and Finance.

### § 196. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Section was based upon act Sept. 21, 1922, ch. 356, title III, § 319, 42 Stat. 947.

#### PAYMENT OF DUTY

### § 197. Duties, how payable.

Except as provided in section 198 of this title all duties upon imports shall be collected in ready money, and shall be paid in gold and silver coin, coin certificates, and such other certificates or Treasury notes as may by law be declared receivable in payment thereof. (R. S. §§ 3009, 3473; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 247, 249.)

#### DERIVATION

R. S. § 3009 was from acts Mar. 2, 1833, ch. 55, § 3, 4 Stat. 630; Aug. 6, 1846, ch. 84, § 1, 9 Stat. 53; Feb. 25, 1862, ch. 33, § 5, 12 Stat. 346.

R. S. § 3473 was from act Aug. 6, 1846, ch. 90, § 18, 9 Stat. 64.

#### NATIONAL BANK ACT

Act June 3, 1864, ch. 106, 13 Stat. 99, is part of the National Bank Act. See section 38 of Title 12, Banks and Banking.

#### CROSS REFERENCE

Coins and currencies of United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations, to be legal tender for all public debts, charges, taxes, duties, and dues, see section 462 of Title 31, Money and Finance.

### § 198. Certified checks; receivable for all public dues; lien for payment of.

Provisions of this section, acts Mar. 2, 1911, ch. 191, § 1, 36 Stat. 965; Mar. 3, 1913, ch. 119, 37 Stat. 733, were incorporated as section 3656 (a) of Title 26, Internal Revenue Code.

### § 199. Judgments, how payable.

In all proceedings brought by the United States in any court for due recovery as well of duties upon imports alone as of penalties for the nonpayment thereof, the judgment shall recite that the same is rendered for duties, and such judgment, interest, and costs shall be payable in the coin by law receivable for duties, and the execution issued on such judgment shall set forth that the recovery is for duties, and shall require the marshal to satisfy the same in the coin by law receivable for duties; and in case of levy upon and sale of the property of the judgment debtor, the marshal shall refuse payment from any purchaser at such sale in any other money than that specified in the execution. (R. S. § 3014.)

#### DERIVATION

Act Mar. 3, 1865, ch. 80, § 12, 13 Stat. 944.

#### FEDERAL RULES OF CIVIL PROCEDURE

Execution, see Rule 69, following section 723c of Title 28, Judicial Code and Judiciary.

Effect of Rule 69 on this section, see note by Advisory Committee under said Rule 69.

## SUBTITLE IV.—CUSTOMS ADMINISTRATION

### ADMINISTRATIVE PROVISIONS

#### PART 1.—DEFINITIONS

### § 231. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762.

Section was based upon act Sept. 21, 1922, ch. 356, title IV, § 401, 42 Stat. 948.

Corresponding provisions of Tariff Act of 1930, see section 1401 of this title.

### § 232. Same; "port."

The word "port", as used in this title,<sup>1</sup> may include any place from which merchandise can be shipped for importation, or at which merchandise can be imported. (R. S. § 2767.)

<sup>1</sup> Sections 5, 6, 8, 9-12, 14-18, 21-24, 26, 27, 31-35, 37, 39-47, 53-61, 129, 134, 152, 192, 197, 199, 232, 233, 240, 257, 258, 273-275, 282-294, 338-341, 376, 378, 379, 390, 391, 420, 482, 483, 506-508, 526, 528, 574 of this title; section 57 of Title 5, Executive Departments and Government Officers and Employees; sections 6, 33, 51, 52, 58, 60, 64, 66, 67, 68-70 of Title 14, Coast Guard; section 122 of Title 18, Criminal Code and Criminal Procedure; section 711 of Title 31, Money and Finance; and sections 110-112, 123, 124 of Title 46, Shipping.

### § 233. Departure from prescribed forms.

In cases where the forms of official documents, as prescribed by this title,<sup>1</sup> shall be substantially complied with and observed, according to the true intent

thereof, no penalty or forfeiture shall be incurred by a deviation therefrom. (R. S. § 2769.)

<sup>1</sup>Sections 5, 6, 8, 9-12, 14-18, 21-24, 26, 27, 31-35, 37, 39-47, 53-61, 129, 134, 152, 192, 197, 199, 232, 233, 240, 257, 258, 273-275, 282-284, 338-341, 376, 378, 379, 390, 391, 420, 482, 483, 506-508, 526, 528, 574 of this title; section 57 of Title 5, Executive Departments and Government Officers and Employees; sections 6, 33, 51, 52, 58, 60, 64, 66, 67, 68-70 of Title 14, Coast Guard; section 122 of Title 18, Criminal Code and Criminal Procedure; section 711 of Title 31, Money and Finance; and sections 110-112, 123, 124 of Title 46, Shipping.

## DERIVATION

Act Mar. 2, 1799, ch. 22, § 111, 1 Stat. 704.

§§ 234-239. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Sections were based upon act Sept. 21, 1922, ch. 356, title IV, § 402 (a)-(f), 42 Stat. 949, 950.

Provisions of Tariff Act of 1930 corresponding to section 234, see section 1402 (a) of this title; section 235, see section 1402 (c); section 236, see section 1402 (d); section 237, see section 1402 (e); section 238, see section 1402 (f); section 239, see section 1402 (g).

§ 240. Value at date of shipment.

When the duty upon any imports shall be subject to be levied upon the true market value of such imports in the principal markets of the country from whence the importation has been made, or at the port of exportation, the duty shall be estimated and collected upon the value on the day of actual shipment, whenever a bill of lading shall be presented showing the date of shipment, and which shall be certified by a certificate of the United States consul or legally authorized authority. (R. S. § 2904.)

## DERIVATION

Act Mar. 2, 1861, ch. 68, § 28, 12 Stat. 197.

## PART 2.—REPORT, ENTRY, AND UNLADING OF VESSELS AND VEHICLES

§§ 241-256. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Sections were based upon act Sept. 21, 1922, ch. 356, title IV, §§ 431-446, 42 Stat. 950-953.

Provisions of Tariff Act of 1930 corresponding to section 241, see section 1431 of this title; section 242, see section 1432; section 243, see section 1433; section 244, see section 1434; section 245, see section 1435; section 246, see section 1436; section 247, see section 1437; section 248, see section 1438; section 249, see section 1439; section 250, see section 1440; section 251, see section 1441; section 252, see section 1442; section 253, see section 1443; section 254, see section 1444; section 255, see section 1445; section 256, see section 1446.

§ 257. Duty on equipments or repair parts for vessels.

The equipments, or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the expenses of repairs made in a foreign country upon a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or a vessel intended to be employed in such trade, shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad valorem duty of 50 per centum on the cost thereof in such foreign country; and if the owner or master of such vessel shall willfully and knowingly neglect or fail to report, make entry, and pay duties as herein required, such vessel,

with her tackle, apparel, and furniture, shall be seized and forfeited. For the purposes of this section, compensation paid to members of the regular crew of such vessel in connection with the installation of any such equipments or any part thereof, or the making of repairs, in a foreign country, shall not be included in the cost of such equipment or part thereof, or of such repairs. (R. S. § 3114; Sept. 21, 1922, ch. 356, title IV, § 466, 42 Stat. 957; June 17, 1930, ch. 497, title IV, § 466, 46 Stat. 719.)

## DERIVATION

Act July 18, 1866, ch. 201, § 23, 14 Stat. 183.

§ 258. Remission for necessary repairs.

If the owner or master of such vessel furnishes good and sufficient evidence—

(1) That such vessel, while in the regular course of her voyage, was compelled, by stress of weather or other casualty, to put into such foreign port and purchase such equipments, or make such repairs, to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination; or

(2) That such equipments or parts thereof or repair parts or materials, were manufactured or produced in the United States, and the labor necessary to install such equipments or to make such repairs was performed by residents of the United States, or by members of the regular crew of such vessel,

then the Secretary of the Treasury is authorized to remit or refund such duties, and such vessel shall not be liable to forfeiture, and no license or enrollment and license, or renewal of either, shall hereafter be issued to any such vessel until the collector to whom application is made for the same shall be satisfied, from the oath of the owner or master, that all such equipments and repairs made within the year immediately preceding such application have been duly accounted for under the provisions of this section and section 257 of this title, and the duties accruing thereon duly paid; and if such owner or master shall refuse to take such oath, or take it falsely, the vessel shall be seized and forfeited. (R. S. § 3115; Sept. 21, 1922, ch. 356, title IV, § 466, 42 Stat. 957; June 17, 1930, ch. 497, title IV, § 466, 46 Stat. 719.)

## DERIVATION

Act July 18, 1866, ch. 201, § 23, 14 Stat. 184.

§§ 259, 260. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762.

These sections were based upon act Sept. 21, 1922, ch. 356, title IV, §§ 447, 448, 42 Stat. 953.

Provisions of Tariff Act of 1930 corresponding to section 259, see section 1447 of this title; section 260, see section 1448.

§ 261. Boarding officers' compensation.

Customs officers acting as boarding officers, and any customs officer who may be designated for that purpose by the collector of customs, shall be allowed extra compensation for services in boarding vessels at night or on Sundays or holidays—at the rate prescribed by the Secretary of the Treasury as provided in section 267 of this title, the said extra compensation to be paid by the master, owner, agent, or consignee of such vessels. (Feb. 13, 1911, ch. 46,

§ 5, 36 Stat. 901; Feb. 7, 1920, ch. 61, 41 Stat. 402; Sept. 21, 1922, ch. 356, § 643, 42 Stat. 990.)

#### CODIFICATION

This section originally contained a provision authorizing the officers to whom reference is made in text to administer the oath or affirmation provided for in the act February 13, 1911, cited to text. The sections of said act providing for an oath or affirmation were repealed by act Sept. 21, 1922, ch. 356, § 643, 42 Stat. 990. Present provisions relating to the administration of oaths by customs officers are contained in section 1486 of this title.

§§ 262-266. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Sections were based upon act Sept. 21, 1922, ch. 356, title IV, §§ 449-453, 42 Stat. 954, 955.

Provisions of Tariff Act of 1930 corresponding to section 262, see section 1449 of this title; section 263, see section 1450; section 264, see section 1451; section 265, see section 1452; section 266, see section 1453.

§ 267. Compensation for overtime services; fixing working hours.

The Secretary of the Treasury shall fix a reasonable rate of extra compensation for overtime services of inspectors, storekeepers, weighers, and other customs officers and employees who may be required to remain on duty between the hours of five o'clock postmeridian and eight o'clock antemeridian, or on Sundays or holidays, to perform services in connection with the lading or unlading of cargo, or the lading of cargo or merchandise for transportation in bond or for exportation in bond or for exportation with benefit of drawback, or in connection with the receiving or delivery of cargo on or from the wharf, or in connection with the unlading, receiving, or examination of passengers' baggage, such rates to be fixed on the basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond five o'clock postmeridian (but not to exceed two and one-half days' pay for the full period from five o'clock postmeridian to eight o'clock antemeridian), and two additional days' pay for Sunday or holiday duty. The said extra compensation shall be paid by the master, owner, agent, or consignee of such vessel or other conveyance whenever such special license or permit for immediate lading or unlading or for lading or unlading at night or on Sundays or holidays shall be granted to the collector of customs, who shall pay the same to the several customs officers and employees entitled thereto according to the rates fixed therefor by the Secretary of the Treasury. Such extra compensation shall be paid if such officers or employees have been ordered to report for duty and have so reported, whether the actual lading, unlading, receiving, delivery, or examination takes place or not. In those ports where customary working hours are other than those hereinabove mentioned, the collector of customs is vested with authority to regulate the hours of customs employees so as to agree with prevailing working hours in said ports, but nothing contained in this section shall be construed in any manner to affect or alter the length of a working day for customs employees or the overtime pay herein fixed. (Feb. 13, 1911, ch. 46, § 5, 36 Stat. 901; Feb. 7, 1920, ch. 61, 41 Stat. 402.)

#### SIMILAR PROVISIONS

R. S. § 2872, as amended by act June 26, 1884, ch. 121, § 25, 23 Stat. 59.

§§ 268-272. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Sections were based upon act Sept. 21, 1922, ch. 356, title IV, §§ 454-458, 42 Stat. 955, 956.

Provisions of Tariff Act of 1930 corresponding to section 268, see section 1455 of this title; section 269, see section 1456; section 270, see section 1457; section 271, none; section 272, see section 1458.

§ 273. Landing spirits and wines; marking casks and cases.

The officers of inspection of any port where distilled spirits or wines shall be landed, shall, upon the landing thereof, and as soon as the casks, vessels, and cases containing the same shall be inspected, gauged, or measured, brand or otherwise mark in durable characters, the several casks, vessels, and cases containing the same, and the marks shall express the number of casks, vessels, or cases, whether of spirits or wines, marked by each officer respectively, in each year, in progressive numbers for each of the articles; also the port of importation, the name of the vessel, and the surname of the master; also each kind of spirits or wines, for which different rates of duty are or shall be imposed, the number of gallons in each cask or case, and the rate of proof if spirits; also the name of the surveyor or chief officer of inspection for the port, and the date of importation; of all which particulars the chief officers of inspections shall keep fair and correct accounts, in books to be provided for that purpose. (R. S. § 2885.)

#### DERIVATION

Acts Mar. 2, 1799, ch. 22, § 39, 1 Stat. 659; July 14, 1832, ch. 227, § 5, 4 Stat. 591.

#### CROSS REFERENCE

Office of surveyor of customs abolished except in port of New York, see section 5a of this title.

§ 274. Same; obliteration of marks.

On the sale of any cask, vessel, or case, which has been or shall be marked as containing distilled spirits or wines, and which has been emptied of its contents, and prior to the delivery thereof to the purchaser, or any removal thereof, the marks and numbers, which shall have been set thereon by or under the direction of any officer of inspection, shall be defaced and obliterated in the presence of some officer of inspection or of the customs, who shall, on due notice being given, attend for that purpose, at which time the certificate which ought to accompany such chest, vessel, or case, shall also be returned and canceled. Every person who shall obliterate, counterfeit, alter, or deface any mark or number placed by an officer of inspection upon any cask, vessel, or case, containing distilled spirits or wines, or any certificate thereof; or who shall sell or in any way alienate or remove any cask, vessel, or case, which has been emptied of its contents, before the marks and numbers, set thereon pursuant to the provisions of section 273 of this title, shall have been defaced or obliterated, in presence of an officer of inspection; or who shall neglect or refuse to deliver the certificate issued to accompany the cask, chest,

vessel, or case, of which the marks and numbers shall have been defaced or obliterated in manner aforesaid, on being thereto required by an officer of inspection or of the customs, shall for every such offense be liable to a penalty of \$100, with costs of suit. (R. S. § 2886.)

DERIVATION

Act Mar. 2, 1799, ch. 22, § 44, 1 Stat. 660.

FEDERAL RULES OF CIVIL PROCEDURE

Costs, see Rule 54, following section 723c of Title 28, Judicial Code and Judiciary.

Effect of Rule 54 on this section, see note by Advisory Committee under said Rule 54.

CROSS REFERENCE

Stamps and brands to be effaced on emptying packages of imported liquors and use of empty stamped containers prohibited, see sections 468, 469 of this title.

§§ 275-281. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Sections were based upon act Sept. 21, 1922, ch. 356, title IV, §§ 459-465, 42 Stat. 956, 957.

Provisions of Tariff Act of 1930 corresponding to section 275, see section 1459 of this title; section 276, see section 1460; section 277, see section 1461; section 278, see section 1462; section 279, see section 1463; section 280, see section 1464; section 281, see section 1465.

§ 282. Oath of master.

In the oath to be taken by the master of any vessel enrolled or licensed to engage in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States on making a report of merchandise purchased in a foreign country for the use of the vessel, he shall declare that such articles purchased for use of the vessel, designated "sea stores", are truly intended for the use exclusively of the vessel, and are not intended for sale, transfer, or private use. If any other or greater quantity of dutiable articles shall be found on board such vessel than are specified in such report or entry of such articles, or any part thereof shall be landed without a permit from a collector or other officer of the customs, such articles, together with the vessel, her apparel, tackle, and furniture, shall be forfeited. (R. S. § 3111.)

DERIVATION

Acts July 18, 1866, ch. 201, § 22, 14 Stat. 183; Feb. 10, 1871, ch. 45, § 1, 16 Stat. 408.

CROSS REFERENCES

Libel of vessels or vehicles where owner or master has violated customs-revenue laws, see section 1594 of this title.

List of supplies of vessel arriving from a contiguous country to be filed by the master with the manifest, see section 1465 of this title.

§ 283. Duty on saloon stores.

Articles purchased for the use of or for sale on board any such vessel, as saloon stores or supplies, shall be deemed merchandise, and shall be liable, when purchased at a foreign port, to entry and the payment of the duties found to be due thereon, at the first port of arrival of such vessel in the United States; and for a failure on the part of the saloon keeper or person purchasing or owning such articles to report, make entries, and pay duties, as hereinbefore required, such articles, together with the fix-

tures and other merchandise, found in such saloon or on or about such vessel, belonging to and owned by such saloon keeper or other person interested in such saloon, shall be seized and forfeited, and such saloon keeper or other person so purchasing and owning shall be liable to a penalty of not less than \$100 and not more than \$500, and shall be punishable by imprisonment for not less than three months and not more than two years. (R. S. § 3113.)

DERIVATION

Acts July 18, 1866, ch. 201, § 22, 14 Stat. 183; Feb. 10, 1871, ch. 45, § 1, 16 Stat. 409.

§§ 284, 285. Repealed. July 3, 1926, ch. 757, § 3, 44 Stat. 832.

Sections were based upon R. S. §§ 3116, 3117.

§ 286. Departure for place where no customhouse.

The master of any vessel so enrolled or licensed shall, before departing from a port in one collection district to a place in another collection district, where there is no customhouse, file his manifest, and obtain a clearance in the same manner, and make oath to the manifest, which manifest and clearance shall be delivered to the proper officer of customs at the port at which the vessel next arrives after leaving the place of destination specified in the clearance. (R. S. § 3118.)

DERIVATION

Act July 1, 1870, ch. 185, § 1, 16 Stat. 176.

§ 287. Report and unloading of cargoes.

Nothing contained in section 286 of this title shall exempt masters of vessels from reporting, as required by law, any merchandise destined for any foreign port. No permit shall be required for the unloading of cargo brought from an American port. (R. S. § 3119.)

DERIVATION

Act July 1, 1870, ch. 185, § 1, 16 Stat. 177.

§ 288. Enrolled or licensed vessels.

Enrolled or licensed vessels engaged in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, departing from or arriving at a port in one district to or from a port in another district, and also touching at intermediate foreign ports, shall not thereby become liable to the payment of entry and clearance fees, as if from or to foreign ports; but such vessels shall, notwithstanding, be required to enter and clear. (R. S. § 2793.)

DERIVATION

Res. Feb. 10, 1871, No. 27, § 2, 16 Stat. 595.

ABOLITION OF FEES

Act Mar. 3, 1897, ch. 389, § 9, 29 Stat. 689 provided in part as follows: "Fees for the entry direct from a foreign port and for the clearance direct to a foreign port of a vessel navigating the waters of the northern, northeastern, and northwestern frontiers of the United States otherwise than by sea, prescribed by section forty-three hundred and eighty-two of the Revised Statutes, are abolished."

§ 289. Entry of ferryboats; vessels exempt from fees.

The masters of vessels used exclusively as ferryboats carrying passengers, baggage, and merchandise shall not be required to pay clearance fees.

Any passenger vessel engaged triweekly or oftener in trade between ports of the United States and foreign ports shall be exempt from clearance fees while such service triweekly or oftener is maintained. (R. S. § 2792; May 28, 1908, ch. 212, § 1, 35 Stat. 424.)

## DERIVATION

Act June 4, 1872, ch. 280, 17 Stat. 214.

**§ 290. Departure from place where there is no customhouse.**

The master of any vessel so enrolled or licensed, destined with a cargo from a place in the United States, at which there may be no customhouse, to a port where there may be a customhouse, shall, within twenty-four hours after arrival at the port of destination, deliver to the proper officer of the customs a manifest, subscribed by him, setting forth the cargo laden at the place of departure, or laden or unladen at any intermediate port, or place, to the truth of which manifest he shall make oath before such officer. If the vessel, however, have no cargo, the master shall not be required to deliver such manifest. (R. S. § 3122.)

## DERIVATION

Act July 1, 1870, ch. 185, § 2, 16 Stat. 177.

**§ 291. Forms.**

The manifests, certificates of clearance, and oaths, provided for by sections 286, 287, and 290 of this title, shall be in such form, and prepared, filled up, and executed in such manner as the Secretary of the Treasury and the Secretary of Commerce may from time to time prescribe. (R. S. § 3124; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829.)

## DERIVATION

Act July 1, 1870, ch. 185, § 4, 16 Stat. 177.

**§ 292. Penalty for neglect.**

If the master of any enrolled or licensed vessel shall neglect or fail to comply with any of the provisions or requirements of sections 286, 287, 290, and 291 of this title, such master shall forfeit and pay to the United States the sum of \$20 for each and every failure or neglect, and for which sum the vessel shall be liable, and may be summarily proceeded against, by way of libel, in any district court of the United States. (R. S. § 3125.)

## DERIVATION

Act July 1, 1870, ch. 185, § 5, 16 Stat. 177.

## CROSS REFERENCE

Vessels or vehicles made subject to seizure for payment of penalty where the vessel or vehicle, owner or master, conductor, driver, or other person in charge, has become subject to penalty for violation of the customs laws, see section 1594 of this title.

**§ 293. Registered vessels touching at foreign ports.**

Any vessel, on being duly registered in pursuance of the laws of the United States, may engage in trade between one port in the United States and one or more ports within the same, with the privilege of touching at one or more foreign ports during the voyage, and land and take in thereat merchandise, passengers and their baggage, and letters, and mails. All such vessels shall be furnished by the collectors

of the ports at which they shall take in their cargoes in the United States, with certified manifests, setting forth the particulars of the cargoes, the marks, number of packages, by whom shipped, to whom consigned, at what port to be delivered; designating such merchandise as is entitled to drawback, or to the privilege of being placed in warehouse; and the masters of all such vessels shall, on their arrival at any port of the United States from any foreign port at which such vessel may have touched, as herein provided, conform to the laws providing for the delivery of manifests of cargo and passengers taken on board at such foreign port, and all other laws regulating the report and entry of vessels from foreign ports, and be subject to all the penalties therein prescribed. (R. S. § 3126.)

## DERIVATION

Act May 27, 1848, ch. 48, § 1, 9 Stat. 232.

**§ 294. Same; no duty by reason thereof.**

Any foreign merchandise taken in at one port of the United States to be conveyed in registered vessels to any other port within the same, either under the provisions relating to warehouses, or under the laws regulating the transportation coastwise of merchandise entitled to drawback, as well as any merchandise not entitled to drawback, but on which the import duties chargeable by law shall have been duly paid, shall not become subject to any import duty by reason of the vessel in which they may arrive having touched at a foreign port during the voyage. (R. S. § 3127.)

## DERIVATION

Act May 27, 1848, ch. 48, § 2, 9 Stat. 232.

**PART 3.—ASCERTAINMENT, COLLECTION, AND RECOVERY OF DUTIES**

**§§ 331–337. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762.**

Sections were derived from act Sept. 21, 1922, ch. 356, title IV, §§ 481 (a)–(c), 482 (a)–(d), 42 Stat. 958.

Provisions of Tariff Act of 1930 corresponding to section 331, see section 1481 (a) of this title; section 332, see section 1481 (b); section 333, see section 1481 (c); section 334, see section 1482 (a); section 335, see section 1482 (b); section 336, see section 1482 (c); section 337, see section 1482 (d).

Sections 331–333 were repealed effective on day after enactment of repealing act.

Sections 334–337 were repealed effective sixty days after enactment of repealing act.

**§ 338. Indorsement upon invoice; port of entry.**

The person producing an invoice for certification shall at the same time declare to the consul or vice consul the port in the United States at which it is intended to make entry of merchandise; whereupon the consul, or vice consul, shall indorse upon each of the triplicates a certificate, under his hand and official seal, stating that the invoice has been produced to him, with the date of such production, and the name of the person by whom the same was produced, and the port in the United States at which it shall be the declared intention to make entry of the merchandise therein mentioned. (R. S. § 2855; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

## DERIVATION

Act Mar. 3, 1863, ch. 76, § 1, 12 Stat. 738.

## § 339. Restriction on consular certificates.

No consular officer of the United States shall grant a certificate for merchandise shipped from countries adjacent to the United States, which have passed a consulate after purchase for shipment. (R. S. § 2861.)

## DERIVATION

Act Feb. 22, 1873, ch. 184, § 3, 17 Stat. 474.

## § 340. Consuls to exact proof of invoice.

All consular officers are authorized to require, before certifying any invoice, satisfactory evidence, either by the oath of the person presenting such invoices or otherwise, that such invoices are correct and true. In the exercise of the discretion hereby given, the consular officers shall be governed by such general or special regulations or instructions as may from time to time be established or given by the Secretary of State. (R. S. § 2862.)

## DERIVATION

Act Mar. 3, 1865, ch. 111, 13 Stat. 532.

## CROSS REFERENCE

Invoices covering merchandise of \$100 in value to be certified, see section 1482 of this title.

## § 341. Fraudulent practices; consul's report.

All consuls of the United States having any knowledge or belief of any case or practice of any person who obtains verification of any invoice whereby the revenue of the United States is or may be defrauded, shall report the facts to the collector of the port where the revenue is or may be defrauded, or to the Secretary of the Treasury. (R. S. § 2863; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

## DERIVATION

Act July 14, 1862, ch. 163, § 18, 12 Stat. 559.

## §§ 342–375. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762.

Sections were based upon act Sept. 21, 1922, ch. 356, title IV, §§ 482 (e), (f), 483, 484 (a)–(g), 485, (a)–(f), 486–497, 498 (a), (b), 499, and 500 (a), (b), (c), 42 Stat. 959–965.

Provisions of Tariff Act of 1930 corresponding to section 342, see section 1482 (e) of this title; section 343, see section 1482 (f); section 344, see section 1483; section 345, see section 1484 (a); section 346, see section 1484 (b); section 347, see section 1484 (c); section 348, see section 1484 (d); section 349, see section 1484 (e); section 350, see section 1484 (f); section 351, see section 1484 (g); section 352, see section 1485 (a); section 353, see section 1485 (b); section 354, see section 1485 (c); section 355, see section 1485 (d); section 356, see section 1485 (e); section 357, see section 1485 (f); section 358, none, but see section 1623; section 359, see section 1487; section 360, see section 1488; section 361, see sections 1489 and 1503 (b); section 362, see section 1490; section 363, see section 1491; section 364, see section 1492; section 365, see section 1493; section 366, see section 1494; section 367, see section 1495; section 368, see section 1496; section 369, see section 1497; section 370, see section 1498 (a); section 371, see section 1498 (b); section 372, see section 1499; section 373, see section 1500 (a); section 374, see section 1500 (b); section 375, see section 1500 (d).

Sections 342, 343 were repealed effective sixty days after enactment of repealing act.

Sections 344–375 were repealed effective on day following date of enactment of repealing act.

## § 376. Duties of assistant appraisers; port of New York; report deemed appraisement.

The report referred to in section 23 of this title by an assistant appraiser at the port of New York, when approved by him shall be transmitted to the collector, and shall be deemed an appraisement by the United States local appraiser of the district of such merchandise required by law. (R. S. § 2615.)

## DERIVATION

Acts May 28, 1830, ch. 147, § 2, 4 Stat. 409; July 27, 1866, ch. 284, § 2, 14 Stat. 302; July 14, 1870, ch. 255, §§ 34–36, 16 Stat. 271.

## CROSS REFERENCE

Abolition of assistant appraisers except at port of New York, see section 5a of this title.

## § 377. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Section was based upon act Sept. 21, 1922, ch. 356, title IV, § 500 (d), 42 Stat. 966. Corresponding provisions of Tariff Act of 1930, see section 1500 (e) of this title.

## § 378. Repealed. Feb. 28, 1933, ch. 131, § 1, 47 Stat. 1349.

Section was based upon R. S. § 2938.

Section 2 of the repealing act provided that rights or liabilities existing under this section on February 28, 1933, should not be affected thereby.

## § 379. Instructions to prevent importation.

The Secretary of the Treasury shall give to the collectors of districts for which an examiner of drugs, medicines, and chemicals is not provided by law, such instructions as he may deem necessary to prevent the importation of adulterated and spurious drugs and medicines. (R. S. § 2612.)

## DERIVATION

Act June 26, 1848, ch. 70, § 5, 9 Stat. 238.

## §§ 380–389. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Sections were based upon act Sept. 21, 1922, ch. 356, title IV, §§ 500 (e), 501, 502 (a), (b), (c), 503, 504, 505, 506, 507, 42 Stat. 966–968.

Provisions of Tariff Act of 1930 corresponding to section 380, see section 1500 (f) of this title; section 381, see section 1501; section 382, see section 1502 (a); section 383, see section 1502 (b); section 384, see section 1502 (c); section 385, see sections 1503 and 1504; section 386, see section 1505; section 387, see section 1506; section 388, see section 1507; section 389, see section 1508.

## § 390. Hydrometers.

The Secretary of the Treasury may, under the direction of the President, adopt such hydrometer as he may deem best calculated to promote the public interest for the purpose of ascertaining the proof of liquors; and, after such adoption, the duties imposed by law upon distilled spirits shall be collected according to proof ascertained by any hydrometer so adopted. (R. S. § 2918.)

## DERIVATION

Act Jan. 12, 1825, ch. 4, 4 Stat. 79.

## CROSS REFERENCES

Determination of proof by distillation or otherwise where it is impracticable to ascertain it by means prescribed by existing law or regulations, see section 1001, paragraph 811, of this title.

Standard for determining proof of brandy or other spirits of liquor to be same as that provided in internal revenue laws, see section 1001, paragraph 811, of this title.

### 1. Ascertainment of duties on grain.

For the purpose of estimating the duties on importations of grain, the number of bushels shall be ascertained by weight, instead of by measuring; and sixty pounds of wheat, fifty-six pounds of corn, fifty-six pounds of rye, forty-eight pounds of barley, thirty-two pounds of oats, sixty pounds of peas, and forty-two pounds of buckwheat, avoirdupois weight, shall respectively be estimated as a bushel. (R. S. § 2919.)

#### DERIVATION

Act July 18, 1866, ch. 201, § 38, 14 Stat. 187.

§§ 392–405. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762.

These sections were based upon sections 508–518 of act Sept. 21, 1922, ch. 356, title IV, 42 Stat. 968–972.

The following table shows the distribution of former sections to the present similar provisions in the Tariff Act of 1930, as incorporated in this title.

Former section:	Present provision
392.....	sec. 1509
393.....	sec. 1510
394.....	
395.....	sec. 1511
396.....	sec. 1512
397.....	sec. 1513
398.....	sec. 1514
399.....	sec. 1515
400.....	sec. 1516 (a)
401.....	sec. 1516 (b)
402.....	sec. 1516 (c)
403.....	sec. 1516 (d)
404.....	sec. 1517
405.....	sec. 1518

### § 405a. Board of General Appraisers.

This section, act May 28, 1926, ch. 411, § 1, 44 Stat. 669, changed the name of the former Board of General Appraisers to United States Customs Court. See section 1518 of this title.

§§ 406–409. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Sections were based upon act Sept. 21, 1922, ch. 356, title IV, §§ 519, 520 (a), (b), 521, 42 Stat. 973.

Provisions of Tariff Act of 1930 corresponding to section 406, see section 1519 of this title; section 407, see section 1520 (a); section 408, see section 1520 (b) [repealed]; section 409, see section 1521.

§§ 413, 414. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Sections were based upon act Sept. 21, 1922, ch. 356, title IV, §§ 524, 525, 42 Stat. 975.

Provisions of Tariff Act of 1930 corresponding to section 413, see section 1524 of this title; section 414, see section 1525.

§§ 415–419. Repealed. June 17, 1930, ch. 497, title IV, § 641 (e), 46 Stat. 760, eff. June 18, 1930.

Sections were based upon act June 10, 1910, ch. 283, §§ 1–5, 36 Stat. 464, 465. Repeal was subject to an exception as follows: "Except that any license issued \* \* \* shall continue in force and effect, subject to suspension and revocation in the same manner and upon the same conditions as licenses issued pursuant to subdivision (a) of this section." Subdivision (a) is set forth in section 1641 of this title, and such section now regulates the licensing of customhouse brokers. Subsection (e) of section 641, act of 1930, the repealing act, was repealed by act August 26, 1935, ch. 689, § 5, 49 Stat. 865, but sections 415–419 of this title were not thereby revived.

Provisions of Tariff Act of 1930 corresponding to sections 415–419, see section 1641 of this title.

### § 420. Definition of "ton."

Section, R. S. § 2951, defined the word "ton" as used in chapter 6 of title XXXIV of the Revised Statutes. The word "ton" is not used in the provisions of said chapter now carried in this code.

### PART 4.—TRANSPORTATION IN BOND AND WAREHOUSING OF MERCHANDISE

§§ 451–459. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 42 Stat. 762, eff. June 18, 1930.

Sections were based upon act Sept. 21, 1922, ch. 356, title IV, §§ 551–559, 42 Stat. 975–977.

The following table shows the distribution of former sections to the present similar provisions in the Tariff Act of 1930, as incorporated in this title.

Former section:	Present provision
451.....	sec. 1551
452.....	sec. 1552
453.....	sec. 1553
454.....	sec. 1554
455.....	sec. 1555
456.....	sec. 1556
457.....	sec. 1557
458.....	sec. 1558
459.....	sec. 1559

### § 460. Retention of distilled spirits, wines, etc., in warehouse during prohibitory period.

Under regulations prescribed by the Secretary of the Treasury, any imported distilled spirits, wines, or other liquors which may be in any customs bonded warehouse under the customs laws on the date any prohibition of their sale or removal, by any Act of Congress, or proclamation of the President of the United States takes effect shall be permitted to remain therein without payment of any taxes or duties thereon, beyond the three-year period provided by law, during such period of prohibition; and may be exported at any time during such extended period. Any imported spirits, wines, or other liquors as to which the three-year bonded period may have expired after February 24, 1919, and prior to the date such prohibition takes effect may at the option of the owner remain in bond during such period of prohibition. (Feb. 24, 1919, ch. 18, § 600 (b), 40 Stat. 1106.)

§§ 461–466. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Sections were based upon act Sept. 21, 1922, ch. 356, title IV, §§ 560–565, 42 Stat. 977–979.

The following table shows the distribution of former sections to the present similar provisions in the Tariff Act of 1930, as incorporated in this title.

Former section:	Present provision
461.....	sec. 1560
462.....	sec. 1561
463.....	sec. 1562
464.....	sec. 1563
465.....	sec. 1564
466.....	sec. 1565

### § 467. Deposit of imported liquors in bonded warehouse.

All distilled spirits, wines, and malt liquors, imported in pipes, hogsheads, tierces, barrels, casks, or other similar packages, shall be first placed in public store or bonded warehouse, and shall not be removed therefrom until the same shall have been inspected, marked, and branded by a United States customs-gauger, and a stamp affixed to each package,



indicating the date and particulars of such inspection; and the Secretary of the Treasury is authorized to prescribe the form of, and provide, the requisite stamps, and to make all regulations which he may deem necessary and proper for carrying the foregoing requirements into effect. Any pipe, hogshead, tierce, barrel, cask, or other package withdrawn from public store or bonded warehouse purporting to contain imported liquor, found without having thereon the stamp hereby required, shall be, with its contents, forfeited to the United States; and whenever any cask or package of imported distilled spirits of not less than five wine-gallons is filled for shipment, sale, or delivery on the premises of any wholesale liquor dealer, the same shall be stamped with a special stamp for imported spirits, under such rules and regulations as the Commissioner of Internal Revenue has prescribed, or may hereafter prescribe, in the case of domestic distilled spirits. (Mar. 1, 1879, ch. 125, § 11, 20 Stat. 342.)

**§ 468. Stamps and brands effaced on emptying packages of imported liquors.**

Every person who empties or draws off, or causes to be emptied or drawn off, the contents of any package of imported liquors stamped as above required, shall, at the time of such emptying, efface, obliterate, and destroy the stamp thereon, and also all other marks or brands which shall have been placed thereon in accordance with the law or regulations concerning imported liquors; every cask or other package from which the stamp for imported liquors required by section 467 of this title to be placed thereon shall not be effaced, obliterated, or destroyed, on emptying such package, shall be forfeited, and the same may be seized by any officer of internal revenue wherever found; and all the provisions and penalties of R. S. § 3324, relating to empty casks or packages from which the marks, brands, or stamps have not been effaced or obliterated, and relating to the removal of stamps from packages, and to having in possession any stamps so removed, shall apply to the stamps for imported spirits herein provided for, and to the casks or other packages on which such stamps shall have been used. (Mar. 1, 1879, ch. 125, § 12, 20 Stat. 342; May 28, 1880, ch. 108, § 12, 21 Stat. 148.)

**REFERENCE IN TEXT**

R. S. § 3324, cited in body of text, is substantially incorporated in section 2866 of Title 26, Internal Revenue Code.

**§ 469. Dealing in or using empty stamped imported liquor containers.**

If any person shall purchase or sell, with the imported-liquor stamp herein required remaining thereon, or any of the marks or brands which shall have been placed thereon in accordance with the laws or regulations concerning imported liquors remaining thereon, any cask or other package, after the same has been once used to contain imported liquors and has been emptied; or if any person shall use or have in possession such cask or package, with any imitation of such marks or brands, for the purpose of placing domestic distilled spirits therein for sale; every such cask or package, with its contents,

if any, shall be forfeited to the United States. And every such person who shall violate any of the provisions of this section shall be liable to a penalty of \$200 for every such cask or package so purchased, sold, used, or had in possession. (Mar. 1, 1879, ch. 125, § 13, 20 Stat. 343; May 28, 1880, ch. 108, § 13, 21 Stat. 148.)

§ 471. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Section was based upon act Sept. 21, 1922, ch. 356, title IV, § 560, 42 Stat. 977.

Corresponding provisions of Tariff Act of 1930, see section 1560 of this title.

**§ 472. Special delivery and appraisement of imported articles of limited value and weight.**

Articles, not merchandise intended for sale, not exceeding \$500 in value, imported in packages not exceeding one hundred pounds in weight, in vessels of the United States, may be specially delivered to and appraised at the public stores, and the entry thereof liquidated by the collector under such regulations as the Secretary of the Treasury may prescribe, and after such appraisement and liquidation may be delivered, upon payment of the liquidated duties under the bond provided for in section 473 of this title, to express companies or other duly incorporated inland carriers bonded for the transportation of appraised or unappraised merchandise between the several ports in the United States. Not more than one such consignment to one ultimate consignee from the same consignor shall be imported in any one vessel. The original appraisement of and liquidation of duties on such importations shall be final against the owner, importer, agent, or consignee, except in the case of manifest clerical errors, as provided for in section 24 of Act June 10, 1890, ch. 407, 26 Stat. 140. Nothing contained in this section and sections 473–475 shall apply to explosives, or any article the importation of which is prohibited by law. (June 8, 1896, ch. 371, § 1, 29 Stat. 263.)

**REFERENCE IN TEXT**

Section 24 of act June 10, 1890, to which reference is made in text, was repealed by act Sept. 21, 1922, ch. 356, § 643, 42 Stat. 989. Subject matter of said section 24 is now contained in section 1520 (a) of this title.

**CROSS REFERENCES**

Declaration and entry of certain merchandise under regulations, see section 1498 of this title.

Errors in liquidation of entries to be corrected where there has been a clerical error, see section 1520 of this title.

**§ 473. Carriers responsible under bond; return of unclaimed packages.**

Such express companies or other inland carriers shall be responsible to the United States under bond for the safe delivery of such articles to the ultimate consignee. If any package shall not be delivered to the ultimate consignee by the express company or other inland carrier, and shall be returned to the collector of the port where such articles are entered within ninety days from the date of importation intact, the collector shall take charge of such package and dispose of it as unclaimed merchandise, and the duties paid shall be refunded by the Secretary of the Treasury out of any moneys in the Treasury not



otherwise appropriated; and the express company or other inland carriers shall be relieved of any liability therefor under its bond; and before any express company or other inland carrier shall be permitted to receive and transport any such articles they shall become bound to the United States in such bonds, in such form and amount, and with such conditions not inconsistent with law as the Secretary of the Treasury may require. (June 8, 1896, ch. 371, § 2, 29 Stat. 263.)

#### CROSS REFERENCE

Merchandise under terms of this section to be admitted to entry under regulations prescribed by the Secretary of the Treasury, see section 1498 (a) (11) of this title.

#### § 474. Merchandise corded and sealed; record.

Articles transported under the provisions of sections 472–475 of this title shall be corded and sealed in such manner as shall from time to time be prescribed by the Secretary of the Treasury; and the collector of the port of first arrival shall retain in his office a permanent record of such merchandise so forwarded. (June 8, 1896, ch. 371, § 3, 29 Stat. 263.)

#### CROSS REFERENCE

Merchandise under terms of this section to be admitted to entry under regulations prescribed by the Secretary of the Treasury, see section 1498 (a) (11) of this title.

#### § 475. Consignment to carrier; invoice; delivery.

Such packages may be consigned to and entered by the agents of the express company or other inland carrier or steamship company, who shall at the time of entry state the ultimate consignee, and in all cases where a certified or other invoice is required by law such invoice may be attached to or inclosed in the package, under such regulations as the Secretary of the Treasury may prescribe; and the delivery of such articles to the express company or other inland carrier shall not be delayed because of the nonarrival of the triplicate invoice, but the ultimate consignee shall be liable for any increased duty found due on reliquidation, if any, after receipt of said merchandise from the express company or other inland carrier or steamship company making entry under this section and sections 472–474 of this title. (June 8, 1896, ch. 371, § 4, 29 Stat. 263.)

#### CROSS REFERENCES

Merchandise not to be admitted to entry without production of certified invoice, see section 1484 (b) of this title.

Merchandise under terms of this section to be admitted to entry under regulations prescribed by the Secretary of the Treasury, see section 1498 (a) (11) of this title.

### PART 5.—ENFORCEMENT PROVISIONS

#### § 481. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Section was based upon act Sept. 21, 1922, ch. 356, title IV, § 581, 42 Stat. 979. Corresponding provisions of Tariff Act of 1930, see section 1581 of this title.

#### § 482. Search of vehicles and persons.

Any of the officers or persons authorized to board or search vessels may stop, search, and examine, as well without as within their respective districts, any vehicle, beast, or person, on which or whom he or they shall suspect there is merchandise which is sub-

ject to duty, or shall have been introduced into the United States in any manner contrary to law, whether by the person in possession or charge, or by, in, or upon such vehicle or beast, or otherwise, and to search any trunk or envelope, wherever found, in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law; and if any such officer or other person so authorized shall find any merchandise on or about any such vehicle, beast, or person, or in any such trunk or envelope, which he shall have reasonable cause to believe is subject to duty, or to have been unlawfully introduced into the United States, whether by the person in possession or charge, or by, in, or upon such vehicle, beast, or otherwise, he shall seize and secure the same for trial. (R. S. § 3061.)

#### DERIVATION

Act July 18, 1866, ch. 201, § 3, 14 Stat. 178.

#### § 483. Forfeitures; penalty for aiding unlawful importation.

(a) All vessels, with the tackle, apparel, and furniture thereof, and all vehicles, animals, aircraft, and things with the tackle, harness, and equipment thereof, used in, or employed to aid in, or to facilitate by obtaining information or otherwise, the unlading, bringing in, importation, landing, removal, concealment, harboring, or subsequent transportation of any merchandise upon the same or otherwise unlawfully introduced, or attempted to be introduced into the United States, shall be seized and forfeited.

(b) Any member of the crew of any such vessel and any person who assists, finances, directs, or is otherwise concerned in the unlading, bringing in, importation, landing, removal, concealment, harboring, or subsequent transportation of any such merchandise exceeding \$100 in value, or into whose control or possession the same shall come without lawful excuse, shall, in addition to any other penalty, be liable to a penalty equal to the value of such goods, to be recovered in any court of competent jurisdiction, or to imprisonment for not more than five years, or both. (R. S. § 3062; Aug. 5, 1935, ch. 438, title II, § 208, 49 Stat. 526.)

#### DERIVATION

Act July 18, 1866, ch. 201, § 3, 14 Stat. 178.

#### §§ 484–493. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Sections were based upon act Sept. 21, 1922, ch. 356, title IV, §§ 582–591, 42 Stat. 979–981.

Provisions of Tariff Act of 1930 corresponding to section 484, see section 1582 of this title; section 485, see section 1583; section 486, see section 1584; section 487, see section 1585; section 488, see section 1586; section 489, see section 1586 (d); section 490, see section 1588; section 491, see section 1589; section 492, see section 1590; section 493, see section 1591.

#### § 494. Seizure of merchandise as security for fines; release on bond.

Any merchandise entered by any person or persons violating any of the provisions of section 12 of Act June 22, 1874, ch. 391, 18 Stat. 188, but not subject to forfeiture under the same section, may, while owned by him or them, or while in his or their possession, to double the amount claimed, be taken by

the collector and held as security for the payment of any fine or fines incurred as aforesaid, or may be levied upon and sold on execution to satisfy any judgment recovered for such fine or fines. But nothing herein contained shall prevent any owner or claimant from obtaining a release of such merchandise on giving a bond, with sureties satisfactory to the collector, or, in case of judicial proceedings, satisfactory to the court, or the judge thereof, for the payment of any fine or fines so incurred. Such merchandise shall in no case be released until all accrued duties thereon shall have been paid or secured. (June 22, 1874, ch. 391, § 13, 18 Stat. 188.)

#### REFERENCE IN TEXT

Section 12 of the act of June 22, 1874, to which reference is made in the text, was repealed by act June 10, 1890, ch. 407, § 29, 26 Stat. 141. For corresponding provisions in the Tariff Act of 1930, see section 1591 of this title.

§§ 495-505. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Sections were based upon act Sept. 21, 1922, ch. 356, title IV, §§ 592, 593 (a), 593 (b), 594-601, 42 Stat. 982-984.

Provisions of Tariff Act of 1930 corresponding to section 495, see section 1592 of this title; section 496, see section 1593 (a); section 497, see section 1593 (b) (c); section 498, see section 1594; section 499, see section 1595; section 500, see section 1596; section 501, see section 1597; section 502, see section 1598; section 503, see section 1599; section 504, see section 1600; section 505, see section 1601.

§ 506. Repealed. Aug. 5, 1935, ch. 438, § 203 (b), 49 Stat. 523.

Section was based upon R. S. § 3072.

§ 507. Officers to make character known.

Every officer or other person authorized to make searches and seizures by this title,<sup>1</sup> shall, at the time of executing any of the powers conferred upon him, make known, upon being questioned, his character as an officer or agent of the customs or Government, and shall have authority to demand of any person within the distance of three miles to assist him in making any arrests, search, or seizure authorized by this title, where such assistance may be necessary; and if such person shall, without reasonable excuse, neglect or refuse so to assist, upon proper demand, he shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$200, nor less than \$5. (R. S. § 3071.)

<sup>1</sup> Sections 5, 6, 8, 9-12, 14-18, 21-24, 26, 27, 31-35, 37, 39-47, 53-61, 129, 134, 152, 192, 197, 199, 232, 233, 240, 257, 258, 273-275, 282-294, 338-341, 378, 379, 390, 391, 420, 432, 433, 506-508, 526, 528, 574 of this title; section 57 of Title 5, Executive Departments and Government Officers and Employees; sections 6, 33, 51, 52, 58, 60, 64, 66, 67, 68-70 of Title 14, Coast Guard; section 122 of Title 18, Criminal Code and Criminal Procedure; section 711 of Title 31, Money and Finance; and sections 110-112, 123, 124 of Title 46, Shipping.

#### DERIVATION

Act July 18, 1866, ch. 201, § 10, 14 Stat. 180.

§ 508. Persons making seizures pleading general issue and proving special matter.

If any officer, or other person, executing or aiding or assisting in the seizure of goods, under any Act providing for or regulating the collection of duties on imports or tonnage, is sued for anything done

in virtue of the powers given thereby, or by virtue of a warrant granted by any judge, or justice, pursuant to law, he may plead the general issue and give such Act and the special matter in evidence. (R. S. § 3073.)

#### DERIVATION

Act Mar. 2, 1799, ch. 22, § 71, 1 Stat. 678.

#### FEDERAL RULES OF CIVIL PROCEDURE

General rules of pleading, see Rule 8, following section 723c of Title 28, Judicial Code and Judiciary.

Superseding method of procedure prescribed in this section, see note by advisory committee under Rule 8.

§§ 509-521. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Sections were based upon act Sept. 21, 1922, ch. 356, title IV, §§ 602-614, 42 Stat. 984-987.

Provisions of Tariff Act of 1930 corresponding to section 509, see section 1602 of this title; section 510, see section 1603; section 511, see section 1604; section 512, see section 1605; section 513, see section 1606; section 514, see section 1607; section 515, see section 1608; section 516, see section 1609; section 517, see section 1610; section 518, see section 1611; section 519, see section 1612; section 520, see section 1613; section 521, see section 1614.

§§ 522-524. Repealed. Aug. 27, 1935, ch. 740, § 308, 49 Stat. 880.

These sections were based upon sections 1-3, respectively, of act Mar. 3, 1925, ch. 438, 43 Stat. 1116, as amended by act May 27, 1930, ch. 342, § 9, 46 Stat. 430.

§ 525. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Section was based upon act Sept. 21, 1922, ch. 356, title IV, § 615, 42 Stat. 987. Corresponding provisions of Tariff Act of 1930, see section 1615 of this title.

§ 526. Costs of prosecution.

Whenever a seizure, condemnation, and sale of merchandise takes place within the United States, and the value thereof is less than \$250, that part of the forfeiture which accrues to the United States, or so much thereof as may be necessary, shall be applied to the payment of the cost of prosecution. (R. S. § 3089.)

#### DERIVATION

Act Mar. 2, 1799, ch. 22, § 91, 1 Stat. 697.

§ 527. Sums received from fines and other receipts covered into Treasury.

Except as otherwise provided by law, all sums received from fines, penalties, and forfeitures, connected with the customs, and from fees paid into the Treasury by customs officers, and from storage, cartage, drayage, labor, and services, shall be covered into the Treasury as are other miscellaneous receipts. (Mar. 4, 1907, ch. 2918, § 1, 34 Stat. 1315.)

#### CROSS REFERENCES

Proceeds from sale of forfeited articles to be deposited, after deduction of actual expenses of seizure, publication, and sale in Treasury of United States, see section 1609 of this title.

Reimbursable charges to be deposited as a refund to appropriation from which paid instead of being covered into Treasury, see section 1524 of this title.

§ 528. Collector to receive amount recovered.

The collector within whose district any seizure shall be made or forfeiture incurred for any violation of the duty laws is authorized to receive from the

court within which trial is had, or from the proper officer thereof, the sum recovered, after deducting all proper charges to be allowed by the court; and on receipt thereof he shall pay and distribute the same without delay, according to law. (R. S. § 3087; June 17, 1930, ch. 497, title IV, § 604, 46 Stat. 754.)

§ 529. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Section was based upon act Sept. 21, 1922, ch. 356, title IV, § 616, 42 Stat. 987. Corresponding provisions of Tariff Act of 1930, see section 1616 of this title.

§ 530. Dismissal of proceedings.

Section, act Jan. 22, 1875, ch. 22, 18 Stat. 303, related to act June 22, 1874, ch. 391, § 19, 18 Stat. 190, which was repealed by act Sept. 21, 1922, ch. 356, § 643, 42 Stat. 989.

§§ 531–534. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Sections were based upon act Sept. 21, 1922, ch. 356, title IV, §§ 617–620, 42 Stat. 987, 988.

Provisions of Tariff Act of 1930 corresponding to section 531, see section 1617 of this title; section 532, see section 1618; section 533, see section 1619; section 534, see section 1620.

§ 535. Compulsory production of books, invoices, or papers.

In all suits and proceedings other than criminal arising under any of the revenue laws of the United States, the attorney representing the Government, whenever, in his belief, any business book, invoice, or paper, belonging to or under the control of the defendant or claimant, will tend to prove any allegation made by the United States, may make a written motion, particularly describing such book, invoice, or paper, and setting forth the allegation which he expects to prove; and thereupon the court in which suit or proceeding is pending may, at its discretion, issue a notice to the defendant or claimant to produce such book, invoice, or paper in court, at a day and hour to be specified in said notice, which, together with a copy of said motion, shall be served formally on the defendant or claimant by the United States marshal by delivering to him a certified copy thereof, or otherwise serving the same as original notices of suit in the same court are served; and if the defendant or claimant shall fail or refuse to produce such book, invoice, or paper in obedience to such notice, the allegations stated in the said motion shall be taken as confessed unless his failure or refusal to produce the same shall be explained to the satisfaction of the court. And if produced, the said attorney shall be permitted, under the direction of the court, to make examination (at which examination the defendant or claimant, or his agent, may be present) of such entries in said book, invoice, or paper as relate to or tend to prove the allegation aforesaid, and may offer the same in evidence on behalf of the United States. But the owner of said books and papers, his agent or attorney, shall have, subject to the order of the court, the custody of them, except pending their examination in court as aforesaid. (June 22, 1874, ch. 391, § 5, 18 Stat. 187.)

#### CONSTITUTIONALITY

This section held unconstitutional as applied to a suit to enforce a forfeiture decided to be criminal in its nature

in *Boyd v. U. S.* ((1886), 116 U. S. 616, 6 S. Ct. 524, 29 U. S. (L. Ed.) 746.)

§ 536. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Section was based upon act Sept. 21, 1922, ch. 356, title IV, § 621, 42 Stat. 988. Corresponding provisions of Tariff Act of 1930, see section 1621 of this title.

§ 537. Officers, informers, and defendants as witnesses.

No officer, or other person entitled to or claiming compensation under any provision of Act June 22, 1874 (chapter 391, 18 Statutes 188) shall be thereby disqualified from becoming a witness in any action, suit, or proceeding for the recovery, mitigation, or remission thereof, but shall be subject to examination and cross-examination in like manner with other witnesses, without being thereby deprived of any right, title, share, or interest in any fine, penalty, or forfeiture to which such examination may relate; and in every such case the defendant or defendants may appear and testify and be examined and cross-examined in like manner. (June 22, 1874, ch. 391, § 8, 18 Stat. 188.)

#### REFERENCE IN TEXT

Section 4 of act June 22, 1874, referred to in the text, providing for compensation to officers of the customs or other persons detecting goods being smuggled, was repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989. For corresponding provisions in the Tariff Act of 1930, see section 1619 of this title.

§§ 538, 539. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Sections were based upon act Sept. 21, 1922, ch. 356, title IV, §§ 622, 623, 42 Stat. 988.

Provisions of Tariff Act of 1930 corresponding to section 538, see section 1318 of this title; section 539, see section 1624.

§ 540. President may use suitable vessels for enforcing customs laws.

In the execution of laws providing for the collection of duties on imports and tonnage, the President, in addition to the Coast Guard cutters in service, may employ in aid thereof such other suitable vessels as may, in his judgment, be required. (R. S. § 5318; Jan. 28, 1915, ch. 20, § 1, 38 Stat. 800.)

#### DERIVATION

Act July 13, 1861, ch. 3, § 7, 12 Stat. 257.

§ 541. Small boats for use of customs officials.

The collector of each district may, with the approval of the Secretary of the Treasury, provide and employ such small open row and sail boats, and persons to serve in them, as shall be necessary for the use of the surveyors and inspectors in going on board of vessels and otherwise, for the better detection of frauds. (R. S. § 2763.)

#### DERIVATION

Act Mar. 2, 1799, ch. 22, § 101, 1 Stat. 700.

§ 542. Motor boat for Corpus Christi; use elsewhere.

The Secretary of the Treasury may use the gasoline motor boat provided for service in the customs collection at Corpus Christi, Texas, elsewhere than at Corpus Christi as the exigencies of the service may require. (Feb. 10, 1913, ch. 35, 37 Stat. 665.)

## PART 6.—GENERAL PROVISIONS

§§ 571-573. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Sections were based upon act Sept. 21, 1922, ch. 356, title IV, § 641, title III, §§ 320, 321, 42 Stat. 989, 947.

Provisions of Tariff Act of 1930 corresponding to section 571, see section 1651 (c) of this title; section 572, see section 1316; section 573, none.

§ 574. Exemption from taking other oaths.

Nothing contained in this title<sup>1</sup> shall be construed to exempt the masters or owners of vessels from making and subscribing any oaths required by any laws of the United States not immediately relating to the collection of the duties on the importation of merchandise into the United States. (R. S. § 3094.)

<sup>1</sup> Sections 5, 6, 8, 9-12, 14-18, 21-24, 26, 27, 31-35, 37, 39-47, 53-61, 129, 134, 152, 192, 197, 199, 232, 233, 240, 257, 258, 273-275, 282-294, 338-341, 376, 378, 379, 390, 391, 420, 482, 483, 506-508, 526, 528, 574 of this title; section 57 of Title 5, Executive Departments and Government Officers and Employees; sections 6, 33, 51, 52, 58, 60, 64, 66, 67, 68-70 of Title 14, Coast Guard; section 122 of Title 18, Criminal Code and Criminal Procedure; section 711 of Title 31, Money and Finance; and sections 110-112, 123, 124 of Title 46, Shipping.

## DERIVATION

Act Mar. 2, 1799, ch. 22, § 110, 1 Stat. 703.

§§ 575, 576. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762.

Sections were based upon act Sept. 21, 1922, ch. 356, title IV, §§ 645, 647, 42 Stat. 990.

Provisions of Tariff Act of 1930 corresponding to section 575, see section 1652 of this title.

§ 577. Laws applicable to Philippines.

Except as otherwise provided by law, the provisions of Act June 10, 1890, ch. 407, 26 Stat. 131, as amended by Act July 24, 1897, ch. 11, 30 Stat. 151, shall apply to all articles coming into the United States from the Philippine Archipelago. (Mar. 8, 1902, ch. 140, § 8, 32 Stat. 55.)

## REFERENCE IN TEXT

Act of June 10, 1890, ch. 407, cited in body of text, as amended, except section 12 (relative to the Board of General Appraisers) and section 22 (abolishing certain fees and oaths) was repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989, and provisions on the subject matter of the act of 1890, were contained in title IV of the act of 1922. Title IV of the act of 1922 was superseded by subtitle IV of the Tariff Act of 1930, act June 17, 1930, ch. 497, 46 Stat. 708. Section 30 of the act of 1890 as amended was saved from repeal by section 321 of the act of 1922 and by section 651 (d) (3) of the act of 1930 (section 1651 (d) (3) of this title).

§ 578. Repealed. June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762, eff. June 18, 1930.

Section was based upon act May 29, 1928, ch. 852, § 708, 45 Stat. 881. Corresponding provisions of Tariff Act of 1930, see section 1001, par. 370.

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## SUBTITLE I.—DUTIABLE LIST

## § 1001. Articles dutiable, and rates; schedules.

Except as otherwise specially provided for in this chapter, there shall be levied, collected, and paid upon all articles when imported from any foreign country into the United States or into any of its possessions (except the Philippine Islands, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, and the island of Guam) the rates of duty which are prescribed by the schedules and paragraphs of the dutiable list of this subtitle, namely:

## SCHEDULE 1.—CHEMICALS, OILS, AND PAINTS

PARAGRAPH 1. Acids and acid anhydrides: Acetic acid containing by weight not more than 65 per centum of acetic acid, 1½ cents per pound; containing by weight more than 65 per centum, 2 cents per pound; acetic anhydride, 3½ cents per pound; boric acid, 1 cent per pound; chloroacetic acid, 5 cents per pound; citric acid, 17 cents per pound; formic acid, 3 cents per pound; lactic acid, containing by weight of lactic acid less than 30 per centum, 2 cents per pound; 30 per centum or more and less than 55 per centum, 4 cents per pound; and 55 per centum or more, 9 cents per pound: *Provided*, That any lactic acid anhydride present shall be determined as lactic acid and included as such: *And provided further*, That the duty on lactic acid shall not be less than 25 per centum ad valorem; tannic acid, tannin, and extracts of nutgalls, containing by weight of tannic acid less than 50 per centum, 5 cents per pound; 50 per centum or more and not medicinal, 11 cents per pound; 50 per centum or more and medicinal, 18 cents per pound; tartaric acid, 8 cents per pound; arsenic acid, 3 cents per pound; gallic acid, 6 cents per pound; oleic acid or red oil, 20 per centum ad valorem; oxalic acid, 6 cents per pound; phosphoric acid, 2 cents per pound; pyrogalllic acid, 12 cents per pound; carbon dioxide, weighing with immediate containers and carton, one pound or less per carton, 1 cent per pound on contents, immediate containers, and carton; and all other acids and acid anhydrides not specially provided for, 25 per centum ad valorem.

PAR. 2. Acetaldehyde, aldol or acetaldol, aldehyde ammonia, butyraldehyde, crotonaldehyde, paracetaldehyde; ethylene chlorohydrin, propylene chlorohydrin, butylene chlorohydrin; ethylene dichloride, propylene dichloride, butylene dichloride; ethylene oxide, propylene oxide, butylene oxide; ethylene glycol, propylene glycol, butylene glycol, and all other glycols or dihydric alcohols; monoethanolamine, diethanolamine, triethanolamine, ethylene diamine, and all other hydroxy alkyl amines and alkylene

diamines; allyl alcohol, crotonyl alcohol, vinyl alcohol, and all other olefin or unsaturated alcohols; homologues and polymers of all the foregoing; ethers, esters, salts, and nitrogenous compounds of any of the foregoing, whether polymerized or unpolymerized; and mixtures in chief value of any one or more of the foregoing; all the foregoing not specially provided for, 6 cents per pound and 30 per centum ad valorem.

PAR. 3. Acetone and ethyl methyl ketone, and their homologues, and acetone oil, 20 per centum ad valorem.

PAR. 4. Alcohol: Amyl, butyl, hexyl, and propyl, all the foregoing whether primary, secondary, or tertiary; fusel oil; and mixtures in chief value of any one or more of the foregoing, 6 cents per pound; methyl or wood (or methanol), 18 cents per gallon; and ethyl for nonbeverage purposes only, 15 cents per gallon.

PAR. 5. All chemical elements, all chemical salts, and compounds, all medicinal preparations, and all combinations and mixtures of any of the foregoing, all the foregoing obtained naturally or artificially and not specially provided for, 25 per centum ad valorem.

PAR. 6. Aluminum hydroxide or refined bauxite, one-half of 1 cent per pound; potassium aluminum sulphate or potash alum and ammonium aluminum sulphate or ammonia alum, three-fourths of 1 cent per pound; aluminum sulphate, alum cake or aluminous cake, containing not more than 15 per centum of alumina and more iron than the equivalent of one-tenth of 1 per centum of ferric oxide, one-fifth of 1 cent per pound; containing more than 15 per centum of alumina or not more iron than the equivalent of one-tenth of 1 per centum of ferric oxide, three-eighths of 1 cent per pound; all other aluminum salts and compounds not specially provided for 25 per centum ad valorem.

PAR. 7. Ammonium carbonate and bicarbonate, 2 cents per pound; ammonium chloride,  $1\frac{1}{4}$  cents per pound; ammonium nitrate, 1 cent per pound; ammonium perchlorate and ammonium phosphate,  $1\frac{1}{2}$  cents per pound; liquid anhydrous ammonia,  $2\frac{1}{2}$  cents per pound.

PAR. 8. Antimony: Oxide, 2 cents per pound; tartar emetic or potassium-antimony tartrate, 6 cents per pound; sulphides and other antimony salts and compounds, not specially provided for, 1 cent per pound and 25 per centum ad valorem.

PAR. 9. Argols, tartar, and wine lees, containing 90 per centum or more of potassium bitartrate, 5 cents per pound; cream of tartar, 5 cents per pound; Rochelle salts or potassium-sodium tartrate, 5 cents per pound.

PAR. 10. Balsams: Copaiba, fir or Canada, Peru, tolu, styrax, and all other balsams, all the foregoing which are natural and uncompounded, 10 per centum ad valorem: *Provided*, That no article containing alcohol shall be classified for duty under this paragraph.

PAR. 11. Amber and amberoid unmanufactured, not specially provided for, 50 cents per pound; synthetic gums and resins not specially provided for, 4 cents

per pound and 30 per centum ad valorem; arabic or senegal, one-half of 1 cent per pound.

PAR. 12. Barium carbonate, precipitated,  $1\frac{1}{2}$  cents per pound; barium chloride, 2 cents per pound; barium dioxide, 6 cents per pound; barium hydroxide,  $1\frac{1}{4}$  cents per pound; barium nitrate, 2 cents per pound; and barium oxide,  $2\frac{1}{2}$  cents per pound.

PAR. 13. Blackings, powders, liquids, and creams for cleaning or polishing, not specially provided for, 25 per centum ad valorem: *Provided*, That no preparations containing alcohol shall be classified for duty under this paragraph.

PAR. 14. Bleaching powder or chlorinated lime, three-tenths of 1 cent per pound.

PAR. 15. Caffeine, \$1.25 per pound; caffeine citrate, 75 cents per pound; compounds of caffeine, 25 per centum ad valorem; theobromine, 75 cents per pound.

PAR. 16. Calcium carbide, 1 cent per pound; calcium acetate, crude, 1 cent per pound; calcium oxalate, 4 cents per pound.

PAR. 17. Calomel, corrosive sublimate, and other mercurial preparations, 22 cents per pound and 25 per centum ad valorem.

PAR. 18. Carbon tetrachloride, 1 cent per pound; chloroform, 4 cents per pound; tetrachloroethane and trichloroethylene, 30 per centum ad valorem.

PAR. 19. Casein or lactarene and mixtures of which casein or lactarene is the component material of chief value, not specially provided for,  $5\frac{1}{2}$  cents per pound.

PAR. 20. Chalk or whiting or Paris white: Dry, ground, or bolted, four-tenths of 1 cent per pound; precipitated, 25 per centum ad valorem; ground in oil (putty), three-fourths of 1 cent per pound; put up in the form of cubes, blocks, sticks, or disks, or otherwise, including tailors', billiard, red, and manufactures of chalk not specially provided for, 25 per centum ad valorem.

PAR. 21. Chemical compounds, mixtures, and salts, of which gold, platinum, rhodium, or silver constitutes the element of chief value, 25 per centum ad valorem.

PAR. 22. Chemical compounds, salts, and mixtures of bismuth, 35 per centum ad valorem.

PAR. 23. Chemicals, drugs, medicinal and similar substances, whether dutiable or free, when imported in capsules, pills, tablets, lozenges, troches, ampoules, jubes, or similar forms, including powders put up in medicinal doses, shall be dutiable at not less than 25 per centum ad valorem.

PAR. 24. Chemical elements, and chemical and medicinal compounds, preparations, mixtures, and salts, distilled or essential oils, expressed or extracted oils, animal oils and greases, ethers and esters, flavoring and other extracts, and natural or synthetic fruit flavors, fruit esters, oils and essences, all the foregoing and their combinations when containing alcohol, and all articles consisting of vegetable or mineral objects immersed or placed in, or saturated with, alcohol, except perfumery and spirit varnishes, and all alcoholic compounds not specially provided for, if containing 20 per centum of alcohol or less, 20 cents per pound and 25 per centum ad valorem; containing more than 20 per centum and not more



than 50 per centum of alcohol, 40 cents per pound and 25 per centum ad valorem; containing more than 50 per centum of alcohol, 80 cents per pound and 25 per centum ad valorem.

PAR. 25. Chicle, refined or advanced in value by drying, straining, or any other process or treatment whatever beyond that essential to the proper packing, 5 cents per pound.

PAR. 26. Chloral hydrate, terpin hydrate, thymol, and glycerophosphoric acid, and salts and compounds of glycerophosphoric acid, 35 per centum ad valorem; diethylbarbituric acid and salts and compounds thereof, \$2.50 per pound; ethyl-hydrocupreine and salts and compounds thereof, 20 cents per ounce.

PAR. 27. Coal-tar products:

(a) (1) Acetanilide not suitable for medicinal use, alphanaphthol, aminobenzoic acid, aminonaphthol, aminophenetole, aminophenol, aminosalicylic acid, aminoanthraquinone, aniline oil, aniline salt, anthraquinone, arsanilic acid, benzaldehyde not suitable for medical use, benzal chloride, benzanthrone, benzidine, benzidine sulfate, benzoic acid not suitable for medicinal use, benzoquinone, benzoyl chloride, benzyl chloride, benzylethylaniline, beta-naphthol not suitable for medicinal use, bromobenzene, chlorobenzene, chlorophthalic acid, cinnamic acid, cumidine, dehydrothiotoluidine, diaminostilbene, dianisidine, dichlorophthalic acid, dimethyl aniline, dimethylaminophenol, dimethylphenylbenzylammonium hydroxide, dimethylphenylenediamine, dinitrobenzene, dinitrochlorobenzene, dinitronaphthalene, dinitrophenol, dinitrotoluene, dihydroxynaphthalene, diphenylamine, hydroxyphenylarsinic acid, metanilic acid, methylanthraquinone, naphthylamine, naphthylenediamine, nitroaniline, nitroanthraquinone, nitrobenzaldehyde, nitrobenzene, nitronaphthalene, nitrophenol, nitrophenylenediamine, nitrosodimethylaniline, nitrotoluene, nitrotoluylenediamine, phenylenediamine, phenylhydrazine, phenylnaphthylamine, phenylglycine, phenylglycine-orthocarboxylic acid, phthalic acid, phthalic anhydride, phthalimide, quinaldine, quinoline, resorcinol not suitable for medicinal use, salicylic acid and its salts not suitable for medicinal use, sulfanilic acid, thiocarbanilide, thiosalicylic acid, tetrachlorophthalic acid, tetramethyldiaminobenzophenone, tetramethyldiaminodiphenylmethane, toluene sulfochloride, toluene sulfonamide, tribromophenol, toluidine, tolidine, tolylenediamine, xyldine, anthracene having a purity of 30 per centum or more, carbazole having a purity of 65 per centum or more, naphthalene which after the removal of all water present has a solidifying point of seventy-nine degrees centigrade or above; all the foregoing products in this paragraph whether obtained, derived, or manufactured from coal tar or other source;

(2) all distillates (except those provided for in subparagraph (b)) of coal tar, blast-furnace tar, oil-gas tar, and water-gas tar, which on being subjected to distillation yield in the portion distilling below one hundred and ninety degrees centigrade a quantity of tar acids equal to or more than 5 per centum of the original distillate or which on being subjected to distillation yield in the portion distilling below two hundred and fifteen degrees centigrade a quan-

tity of tar acids equal to or more than 75 per centum of the original distillate;

(3) all products, by whatever name known, which are similar to any of the products provided for in this paragraph or in paragraph 1651, and which are obtained, derived, or manufactured in whole or in part from any of the products provided for in this paragraph or in paragraph 1651;

(4) all mixtures, including solutions, consisting in whole or in part of any of the foregoing products provided for in this paragraph, except sheep dip and medicinal soaps;

(5) all the foregoing products provided for in this paragraph, not colors, dyes, or stains, color acids, color bases, color lakes, leuco-compounds, indoxyl, indoxyl compounds, ink powders, photographic chemicals, medicinals, synthetic aromatic or odoriferous chemicals, synthetic resinlike products, synthetic tanning materials, or explosives, and not specially provided for in paragraph 28 or 1651, 40 per centum ad valorem and 7 cents per pound.

(b) Metacresol having a purity of 90 per centum or more, orthocresol having a purity of 90 per centum or more, paracresol having a purity of 90 per centum or more, phenol, carboic acid which on being subjected to distillation yields in the portion distilling below one hundred and ninety degrees centigrade a quantity of tar acids equal to or more than 5 per centum of the original distillate, cresylic acid which on being subjected to distillation yields in the portion distilling below two hundred and fifteen degrees centigrade a quantity of tar acids equal to or more than 75 per centum of the original distillate, and any mixture of any of the foregoing products with any of the products provided for in paragraph 1651, 20 per centum ad valorem and 3½ cents per pound.

(c) The ad valorem rates provided in this paragraph shall be based upon the American selling price (as defined in subdivision (g) of section 1402, Subtitle IV), of any similar competitive article manufactured or produced in the United States. If there is no similar competitive article manufactured or produced in the United States then the ad valorem rate shall be based upon the United States value, as defined in subdivision (e) of section 1402, Subtitle IV.

(d) For the purposes of this paragraph any coal-tar product provided for in this chapter shall be considered similar to or competitive with any imported coal-tar product which accomplishes results substantially equal to those accomplished by the domestic product when used in substantially the same manner.

PAR. 28. Coal-tar products:

(a) All colors, dyes, or stains, whether soluble or not in water, except those provided for in subparagraph (b), color acids, color bases, color lakes, leuco-compounds, whether colorless or not, indoxyl, and indoxyl compounds; ink powders; photographic chemicals; acetanilide suitable for medicinal use, acetphenetidine, acetylsalicylic acid, antipyrine, benzaldehyde suitable for medicinal use, benzoic acid suitable for medicinal use, beta-naphthol suitable for medicinal use, guaiacol and its derivatives, phenolphthalein, resorcinol suitable for medicinal use, salicylic acid and its salts suitable for medicinal use,

salol, and other medicinals; sodium benzoate; saccharin; artificial musk, benzyl acetate, benzy benzoate, coumarin, diphenyloxide, methyl anthranilate, methyl salicylate, phenylacetaldehyde, phenylethyl alcohol, and other synthetic odoriferous or aromatic chemicals, including flavors, all these products not marketable as perfumery, cosmetics, or toilet preparations, and not mixed and not compounded, and not containing alcohol; synthetic phenolic resin and all resinlike products prepared from phenol, cresol, phthalic anhydride, coumarone, indene, or from any other article or material provided for in paragraph 27 or 1651, all these products whether in a solid, semisolid, or liquid condition; synthetic tanning materials; picric acid, trinitrotoluene, and other explosives except smokeless powders; all the foregoing products provided for in this paragraph, when obtained, derived, or manufactured in whole or in part from any of the products provided for in paragraph 27 or 1651; natural alizarin and natural indigo, and colors, dyes, stains, color acids, color bases, color lakes, leuco-compounds, indoxyl, and indoxyl compounds, obtained, derived, or manufactured in whole or in part from natural alizarin or natural indigo; natural methyl salicylate or oil of wintergreen or oil of sweet birch; natural coumarin; natural gualacol and its derivatives; vanillin, from whatever source obtained, derived, or manufactured; and all mixtures, including solutions, consisting in whole or in part of any of the articles or materials provided for in this paragraph, excepting mixtures of synthetic odoriferous or aromatic chemicals, 45 per centum ad valorem and 7 cents per pound.

(b) Synthetic indigo, "Colour Index No. 1177," and sulphur black, "Colour Index No. 978," 3 cents per pound and 20 per centum ad valorem.

(c) The ad valorem rates provided in this paragraph shall be based upon the American selling price (as defined in subdivision (g) of section 1402, Subtitle IV) of any similar competitive article manufactured or produced in the United States. If there is no similar competitive article manufactured or produced in the United States then the ad valorem rate shall be based upon the United States value, as defined in subdivision (e) of section 1402, Subtitle IV.

(d) For the purposes of this paragraph any coal-tar product provided for in this chapter shall be considered similar to or competitive with any imported coal-tar product which accomplishes results substantially equal to those accomplished by the domestic product when used in substantially the same manner.

(e) The specific duties provided for in this paragraph on colors, dyes, or stains, whether soluble or not in water, color acids, color bases, color lakes, leuco-compounds, indoxyl, and indoxyl compounds, shall be based on standards of strength which shall be established by the Secretary of the Treasury, and upon all importations of such articles which exceed such standards of strength the specific duty shall be computed on the weight which the article would have if it were diluted to the standard strength, but in no case shall any such articles of whatever strength be subject to a less specific duty than that provided in subparagraph (a) or (b), as the case may be.

(f) It shall be unlawful to import or bring into the United States any such color, dye, stain, color acid, color base, color lake, leuco-compound, indoxyl, or indoxyl compound unless the immediate container and the invoice shall bear a plain, conspicuous, and truly descriptive statement of the identity and percentage, exclusive of diluents, of such color, dye, stain, color acid, color base, color lake, leuco-compound, indoxyl, or indoxyl compound contained therein.

(g) On and after June 17, 1930, it shall be unlawful to import or bring into the United States any such color, dye, stain, color acid, color base, color lake, leuco-compound, indoxyl, or indoxyl compound, if the immediate container or the invoice bears any statement, design, or device regarding the article or the ingredients or substances contained therein which is false, fraudulent, or misleading in any particular.

(h) In the enforcement of the foregoing provisions of this paragraph the Secretary of the Treasury shall adopt a standard of strength for each dye or other article which shall conform as nearly as practicable to the commercial strength in ordinary use in the United States prior to July 1, 1914. If a dye or other article has been introduced into commercial use since said date then the standard of strength for such dye or other article shall conform as nearly as practicable to the commercial strength in ordinary use. If a dye or other article was or is ordinarily used in more than one commercial strength, then the lowest commercial strength shall be adopted as the standard of strength for such dye or other article.

(i) Any article or product which is within the terms of paragraph 1, 5, 37, 39, 60, 66, 82, or 1687, as well as within the terms of paragraph 27, 28, or 1651, shall be assessed for duty or exempted from duty as the case may be under paragraph 27, 28, or 1651.

PAR. 29. Cobalt: Oxide, 20 cents per pound; sulphate and linoleate, 10 cents per pound; and all other cobalt salts and compounds, 30 per centum ad valorem.

PAR. 30. Collodion and other liquid solutions of pyroxylin, of other cellulose esters or ethers, or of cellulose, 30 cents per pound.

PAR. 31. (a) Cellulose acetate, and compounds, combinations, or mixtures containing cellulose acetate:

(1) In blocks, sheets, rods, tubes, powder, flakes, briquets, or other forms, whether or not colloidized, and waste wholly or in chief value of cellulose acetate, all the foregoing not made into finished or partly finished articles, 50 cents per pound;

(2) made into finished or partly finished articles of which any of the foregoing is the component material of chief value, and not specially provided for, 80 per centum ad valorem.

(b) All compounds of cellulose (except cellulose acetate, but including pyroxylin and other cellulose esters and ethers), and all compounds, combinations, or mixtures of which any such compound is the component material of chief value:

(1) In blocks, sheets, rods, tubes, powder, flakes, briquets, or other forms, whether or not colloidized,

not made into finished or partly finished articles, 40 cents per pound, except that transparent sheets more than three one-thousandths of one inch and not more than thirty-two one-thousandths of one inch in thickness shall be subject to duty at the rate of 45 cents per pound;

(2) made into finished or partly finished articles of which any of the foregoing is the component material of chief value, not specially provided for, 60 per centum ad valorem.

(c) Sheets, bands, and strips (whether known as cellophane or by any other name whatsoever), exceeding one inch in width but not exceeding three one-thousandths of one inch in thickness, made by any artificial process from cellulose, a cellulose hydrate, a compound of cellulose (other than cellulose acetate), or a mixture containing any of the foregoing, by solidification into sheets, bands, or strips, 45 per centum ad valorem.

PAR. 32. Compounds of cellulose, known as vulcanized or hard fiber, made wholly or in chief value of cellulose, 30 per centum ad valorem.

PAR. 33. Compounds of casein, known as galalith, or by any other name, in blocks, sheets, rods, tubes, or other forms, not made into finished or partly finished articles, 25 cents per pound; made into finished or partly finished articles of which any of the foregoing is the component material of chief value not specially provided for, 40 cents per pound and 50 per centum ad valorem.

PAR. 34. Drugs, such as barks, beans, berries, buds, bulbs, bulbous roots, excrescences, fruits, flowers, dried fibers, dried insects, grains, herbs, leaves, lichens, mosses, roots, stems, vegetables, seeds (aromatic, not garden seeds), seeds of morbid growth, weeds, and all other drugs of vegetable or animal origin; any of the foregoing which are natural and uncompounded drugs and not edible, and not specially provided for, but which are advanced in value or condition by shredding, grinding, chipping, crushing, or any other process or treatment whatever beyond that essential to the proper packing of the drugs and the prevention of decay or deterioration pending manufacture, 10 per centum ad valorem: *Provided*, That the term "drug" wherever used in this chapter shall include only those substances having therapeutic or medicinal properties and chiefly used for medicinal purposes: *And provided further*, That no article containing alcohol shall be classified for duty under this paragraph.

PAR. 35. Aconite, aloes, asafetida, cocculus indicus, ipecac, jalap, manna; marshmallow, or althea root, leaves and flowers; maté, and pyrethrum or insect flowers; all the foregoing which are natural and uncompounded, but which are advanced in value or condition by shredding, grinding, chipping, crushing, or any other process or treatment whatever beyond that essential to proper packing and the prevention of decay or deterioration pending manufacture, 10 per centum ad valorem: *Provided*, That no article containing alcohol shall be classified for duty under this paragraph.

PAR. 36. Coca leaves, 10 cents per pound; digitalis, 20 per centum ad valorem.

PAR. 37. Ethers and esters: Diethyl sulphate and dimethyl sulphate, 25 per centum ad valorem; ethyl acetate, 3 cents per pound; butyl acetate and amyl acetate, 7 cents per pound; ethyl chloride, 15 cents per pound; ethyl ether, 4 cents per pound; and ethers and esters of all kinds not specially provided for, 25 per centum ad valorem: *Provided*, That no article containing more than 10 per centum of alcohol shall be classified for duty under this paragraph.

PAR. 38. Extracts, dyeing and tanning: Chestnut, cutch, chlorophyll, divi-divi, fustic, hemlock, logwood, mangrove, myrobalan, oak, Persian berry, quebracho, sumac, saffron, safflower, saffron cake, valonia, wattle, and other extracts, decoctions, and preparations of vegetable origin used for dyeing, coloring, staining, or tanning, not specially provided for, and combinations and mixtures of the foregoing articles in this paragraph, 15 per centum ad valorem: *Provided*, That no article containing alcohol shall be classified for duty under this paragraph.

PAR. 39. Flavoring extracts and natural or synthetic fruit flavors, fruit esters, oils, and essences, all the foregoing not containing alcohol, and not specially provided for, 25 per centum ad valorem.

PAR. 40. Formaldehyde solution or formalin, 1½ cents per pound; solid formaldehyde or paraformaldehyde, 8 cents per pound; and hexamethylenetetramine, 11 cents per pound.

PAR. 41. Edible gelatin, valued at less than 40 cents per pound, 20 per centum ad valorem and 5 cents per pound; valued at 40 cents or more per pound, 20 per centum ad valorem and 7 cents per pound; gelatin, glue, glue size, and fish glue, not specially provided for, valued at less than 40 cents per pound, 25 per centum ad valorem and 2 cents per pound; valued at 40 cents or more per pound, 25 per centum ad valorem and 8 cents per pound; agar agar, pectin, isinglass, and manufactures, wholly or in chief value of gelatin, glue, or glue size, 25 per centum ad valorem; casein glue, 30 per centum ad valorem.

PAR. 42. Glycerin, crude, 1 cent per pound; refined, 2 cents per pound.

PAR. 43. Ink, and ink powders not specially provided for, 10 per centum ad valorem; drawing ink, 15 per centum ad valorem.

PAR. 44. Iodine, resublimed, 10 cents per pound.

PAR. 45. Bromine and all bromine compounds not specially provided for, 10 cents per pound.

PAR. 46. Lead: Acetate, white, 2½ cents per pound; acetate, brown, gray, or yellow, 2 cents per pound; nitrate, arsenate, and resinate, 3 cents per pound; and all other lead compounds not specially provided for, 30 per centum ad valorem.

PAR. 47. Licorice, extracts of, in pastes, rolls, or other forms, 20 per centum ad valorem.

PAR. 48. Lime, citrate of, 7 cents per pound; juice of lemons, limes, oranges, or other citrous fruits, unfit for beverage purposes, 5 cents per pound.

PAR. 49. Magnesium: Carbonate, precipitated, 1½ cents per pound; manufactures of carbonate of magnesia, 2 cents per pound; chloride, anhydrous, 1 cent per pound; chloride, not specially provided for, five-eighths of 1 cent per pound; sulphate or Epsom salts, three-fourths of 1 cent per pound; oxide or calcined magnesia, 7 cents per pound.

PAR. 50. Manganese: Borate, resinate, sulphate, and other manganese compounds and salts, not specially provided for, 25 per centum ad valorem.

PAR. 51. Menthol, 50 cents per pound; natural crude camphor, 1 cent per pound; natural refined camphor, 5 cents per pound; synthetic camphor, 5 cents per pound.

Two sentences of this paragraph following text as set out have been executed. See Tariff Commission Report No. 104, Second Series.

PAR. 52. Oils, animal and fish: Sod, herring, and menhaden, 5 cents per gallon; whale and seal, 6 cents per gallon; sperm, crude, 10 cents per gallon; sperm, refined or otherwise processed, 14 cents per gallon; spermaceti wax, 6 cents per pound; wool grease containing more than 2 per centum of free fatty acids, 1 cent per pound; containing 2 per centum or less of free fatty acids and not suitable for medicinal use, 2 cents per pound; suitable for medicinal use, including adeps lanæ, hydrous or anhydrous, 3 cents per pound; all other animal and fish oils, fats, and greases, not specially provided for, 20 per centum ad valorem.

PAR. 53. Oils, vegetable: Castor, 3 cents per pound; hempseed, 1½ cents per pound; linseed or flaxseed, and combinations and mixtures in chief value of such oil, 4½ cents per pound; olive, weighing with the immediate container less than forty pounds, 9½ cents per pound on contents and container; olive, not specially provided for, 6½ cents per pound; poppy seed, 2 cents per pound; rapeseed, 6 cents per gallon; all other expressed or extracted oils, not specially provided for, 20 per centum ad valorem.

PAR. 54. Coconut oil, 2 cents per pound; cottonseed oil, 3 cents per pound; peanut oil, 4 cents per pound; palm-kernel oil, 1 cent per pound; sesame oil, 3 cents per pound; and soy-bean oil, 3½ cents per pound, but not less than 45 per centum ad valorem.

PAR. 55. Alizarin assistant, Turkey red oil, sulphonated castor or other sulphonated animal or vegetable oils, soaps made in whole or in part from castor oil, and all soluble greases; all the foregoing in whatever form, and suitable for use in the processes of softening, dyeing, tanning, or finishing, not specially provided for, 35 per centum ad valorem.

PAR. 56. Hydrogenated or hardened oils and fats, 4 cents per pound; other oils and fats, the composition and properties of which have been changed by vulcanizing, oxidizing, chlorinating, nitrating, or any other chemical process, and not specially provided for, 20 per centum ad valorem.

PAR. 57. Combinations and mixtures of animal, vegetable, or mineral oils or any of them (except combinations or mixtures containing essential or distilled oils), with or without other substances, and not specially provided for, 25 per centum ad valorem, but not less than the rate applicable to the component material subject to the highest rate of duty: *Provided*, That no article containing alcohol shall be classified for duty under this paragraph.

PAR. 58. Oils, distilled or essential: Lemon, grapefruit, and orange, 25 per centum ad valorem; eucalyptus, 15 per centum ad valorem; clove, peppermint, patchouli, sandalwood, and all other essential and

distilled oils not specially provided for, 25 per centum ad valorem: *Provided*, That no article mixed or compounded with or containing alcohol shall be classified for duty under this paragraph.

PAR. 59. Opium containing not less than 8.5 per centum of anhydrous morphine, \$3 per pound; morphine, morphine sulphate, and all opium alkaloids and salts, esters, and other derivatives thereof, \$3 per ounce; cocaine, ecgonine, and salts, esters, and other derivatives thereof, \$2.60 per ounce; tincture of opium, such as laudanum, and other liquid preparations of opium, not specially provided for, 60 per centum ad valorem; opium containing less than 8.5 per centum of anhydrous morphine, \$6 per pound: *Provided*, That nothing herein contained shall be so construed as to repeal or in any manner impair or affect the provisions of sections 171-173, 174-185 of Title 21.

PAR. 60. Perfume materials: Ambergris, castoreum, civet, and musk grained or in pods, 20 per centum ad valorem; anethol, citral, geraniol, heliotropin, ionone, rhodinol, safrol, terpineol, and all natural or synthetic odoriferous or aromatic chemicals, all the foregoing not mixed and not compounded, and not specially provided for, 45 per centum ad valorem; all mixtures or combinations containing essential or distilled oils, or natural or synthetic odoriferous or aromatic substances, 40 cents per pound and 50 per centum ad valorem: *Provided*, That only materials not marketable as perfumery, cosmetics, or toilet preparations, and not containing more than 10 per centum of alcohol, shall be classified for duty under this paragraph: *Provided further*, That all of the foregoing materials containing more than 10 per centum of alcohol shall be classified for duty under paragraph 61 as toilet preparations.

PAR. 61. Perfumery, including cologne and other toilet waters, articles of perfumery, whether in sachets or otherwise, and all preparations used as applications to the hair, mouth, teeth, or skin, such as cosmetics, dentifrices, tooth soaps, pastes, theatrical grease paints, pomades, powders, and other toilet preparations, all the foregoing, if containing alcohol, 40 cents per pound and 75 per centum ad valorem; if not containing alcohol, 75 per centum ad valorem; bath salts, if not perfumed, 25 per centum ad valorem; if perfumed (whether or not having medicinal properties), 75 per centum ad valorem.

PAR. 62. Floral or flower waters containing no alcohol, not specially provided for, 20 per centum ad valorem; bay rum or bay water, whether distilled or compounded, 40 cents per pound and 60 per centum ad valorem.

PAR. 63. Phosphorus, 8 cents per pound; phosphorus oxychloride and phosphorus trichloride, 6 cents per pound.

PAR. 64. Plasters, healing or curative, of all kinds, and court-plaster, 20 per centum ad valorem.

PAR. 65. (a) Paints, colors, and pigments, commonly known as artists', school, students', or children's paints or colors:

(1) In tubes, jars, cakes, pans, or other forms, not exceeding one and one-half pounds net weight each, and valued at less than 20 cents per dozen pieces,

and not assembled in paint sets, kits, or color outfits, three-fourths of 1 cent per tube, jar, cake, pan, or other form;

(2) in tubes, jars, cakes, pans, or other forms, not exceeding one and one-half pounds net weight each, and valued at 20 cents or more per dozen pieces, and not assembled in paint sets, kits, or color outfits: In tubes or jars, 2 cents per tube or jar and 40 per centum ad valorem; in cakes, pans, or other forms, 1¼ cents per cake, pan, or other form and 40 per centum ad valorem;

(3) in tubes, jars, cakes, pans, or other forms, not exceeding one and one-half pounds net weight each, when assembled in paint sets, kits, or color outfits, with or without brushes, water pans, outline drawings, stencils, or other articles, 70 per centum ad valorem on the value as assembled;

(4) in bulk, or in any form exceeding one and one-half pounds net weight each, 8¼ cents per ounce.

(b) For the purposes of this paragraph, tubes, jars, cakes, pans, or other forms, shall not be considered as assembled in a paint set, kit, or color outfit, unless assembled in such form and container, and with such assortment of merchandise, as to be suitable for sale at retail to artists, students, or children, as a paint set, kit, or color outfit.

PAR. 66. Pigments, colors, stains, and paints, including enamel paints, whether dry, mixed, or ground in or mixed with water, oil, or solutions other than oil, not specially provided for, 25 per centum ad valorem.

PAR. 67. Barytes ore, crude or unmanufactured, \$4 per ton; ground or otherwise manufactured, \$7.50 per ton; precipitated barium sulphate or blanc fixe, 1¼ cents per pound.

PAR. 68. Blue pigments and all blues containing iron ferrocyanide or iron ferricyanide, in pulp, dry, or ground in or mixed with oil or water, 8 cents per pound; ultramarine blue, dry, in pulp, or ground in or mixed with oil or water, wash and all other blues containing ultramarine, if valued at more than 10 cents per pound, 4 cents per pound; if valued at 10 cents per pound or less, 3 cents per pound.

PAR. 69. Bone black or bone char, and blood char, 20 per centum ad valorem; decolorizing, deodorizing, or gas-absorbing chars and carbons, whether or not activated, and all activated chars and carbons, 45 per centum ad valorem.

PAR. 70. Chrome yellow, chrome green, and other colors containing chromium, in pulp, dry, or ground in or mixed with oil or water, 25 per centum ad valorem.

PAR. 71. Gas black, lampblack, and all other black pigments, by whatever name known, dry or ground in or mixed with oil or water, and not specially provided for, 20 per centum ad valorem.

PAR. 72. Lead pigments: Litharge, 2½ cents per pound; orange mineral, 3 cents per pound; red lead, 2¾ cents per pound; white lead, 2½ cents per pound; all pigments containing lead, dry or in pulp, or ground in or mixed with oil or water, not specially provided for, 30 per centum ad valorem.

PAR. 73. Ochres, siennas, and umbers, crude or not ground, one-eighth of 1 cent per pound; washed or ground, three-eighths of 1 cent per pound; iron-

oxide and iron-hydroxide pigments not specially provided for, 20 per centum ad valorem.

PAR. 74. Satin white and precipitated calcium sulphate, one-half of 1 cent per pound.

PAR. 75. Spirit varnishes containing less than 5 per centum of methyl alcohol, \$2.20 per gallon and 25 per centum ad valorem; spirit varnishes containing 5 per centum or more of methyl alcohol, and all other varnishes, including so-called gold size or japan, not specially provided for, 25 per centum ad valorem.

PAR. 76. Vermilion reds containing quicksilver, dry or ground in or mixed with oil or water, 35 cents per pound; cuprous oxide, 35 per centum ad valorem.

PAR. 77. Zinc oxide and leaded zinc oxides containing not more than 25 per centum of lead, in any form of dry powder, 1¾ cents per pound; ground in or mixed with oil or water, 2¼ cents per pound; lithopone, and other combinations or mixtures of zinc sulphide and barium sulphate containing by weight less than 30 per centum of zinc sulphide, 1¾ cents per pound; containing by weight 30 per centum or more of zinc sulphide, 1¾ cents per pound and 15 per centum ad valorem.

PAR. 78. Potassium: Chromate and dichromate, 2¼ cents per pound; citrate, 14 cents per pound; chlorate and perchlorate, 1½ cents per pound; ferricyanide or red prussiate of potash, 7 cents per pound; ferrocyanide or yellow prussiate of potash, 4 cents per pound; iodide, 25 cents per pound; bromide, 10 cents per pound; bicarbonate, 1½ cents per pound; carbonate, three-fourths of 1 cent per pound; hydroxide or caustic potash, 1 cent per pound; nitrate or saltpeter, refined, 1 cent per pound; and permanganate, 6 cents per pound.

PAR. 79. Sodium, potassium, lithium, beryllium, and caesium, 25 per centum ad valorem.

PAR. 80. Soap: Castile, 15 per centum ad valorem; toilet, 30 per centum ad valorem; all other soap and soap powder, not specially provided for, 15 per centum ad valorem.

PAR. 81. Sodium: Arsenate, 1 cent per pound; borate or borax, refined, one-eighth of 1 cent per pound; bromide, 10 cents per pound; carbonate, calcined, or soda ash, hydrated or sal soda, and monohydrated, one-fourth of 1 cent per pound; chlorate, 1½ cents per pound; chloride or salt, in bags, sacks, barrels, or other packages, 11 cents per one hundred pounds; in bulk, 7 cents per one hundred pounds; citrate, 12 cents per pound; chromate and dichromate, 1¾ cents per pound; formate, 2 cents per pound; ferrocyanide or yellow prussiate of soda, 2 cents per pound; hydroxide or caustic soda, one-half of 1 cent per pound; nitrite, 4½ cents per pound; oxalate, 2½ cents per pound; phosphate (except pyro phosphate) containing by weight less than 45 per centum of water, 1½ cents per pound; phosphate (except pyro phosphate), not specially provided for, three-fourths of 1 cent per pound; sesquicarbonate, one-fourth of 1 cent per pound; silicofluoride, 1½ cents per pound; sulphate, crystallized, or Glauber salt, \$1 per ton; sulphate, anhydrous, \$3 per ton; sulphide, containing not more than 35 per centum of sodium sulphide, three-eighths of 1 cent per pound; containing more than 35 per centum, three-fourths of 1 cent per pound; silicate,

sulphite, bisulphite, metabisulphite, and thiosulphate, three-eighths of 1 cent per pound.

PAR. 82. Sodium hydrosulphite, hydrosulphite compounds, sulphonylate compounds, and all combinations and mixtures of the foregoing, 35 per centum ad valorem.

PAR. 83. Starch: Potato,  $2\frac{1}{2}$  cents per pound; and all other starches not specially provided for,  $1\frac{1}{2}$  cents per pound.

PAR. 84. Dextrine, made from potato starch or potato flour, 3 cents per pound; dextrine, not otherwise provided for, burnt starch or British gum, dextrine substitutes, and soluble or chemically treated starch, 2 cents per pound.

PAR. 85. Strontium: Carbonate, precipitated, nitrate, and oxide, 25 per centum ad valorem.

PAR. 86. Strychnine, and salts of, 20 cents per ounce.

PAR. 87. Thorium nitrate, thorium oxide, and other salts of thorium not specially provided for, cerium nitrate, cerium fluoride, and other salts of cerium not specially provided for, and gas-mantle scrap consisting in chief value of metallic oxides, 35 per centum ad valorem.

PAR. 88. Tin bichloride, tin tetrachloride, and all other chemical compounds, mixtures, and salts, of which tin constitutes the element of chief value, 25 per centum ad valorem.

PAR. 89. Titanium potassium oxalate, and all compounds and mixtures containing titanium, 30 per centum ad valorem.

PAR. 90. Turpentine, gum and spirits of, and rosin, 5 per centum ad valorem.

PAR. 91. Vanadic acid, vanadic anhydride, and salts of the foregoing, 40 per centum ad valorem; chemical compounds, mixtures, and salts, wholly or in chief value of vanadium, not specially provided for, 40 per centum ad valorem.

PAR. 92. Vanilla beans, 30 cents per pound; tonka beans, 25 cents per pound.

PAR. 93. Zinc chloride,  $1\frac{1}{2}$  cents per pound; zinc sulphate, three-fourths of 1 cent per pound; and zinc sulphide, 3 cents per pound.

PAR. 94. Collodion emulsion, 25 per centum ad valorem.

PAR. 95. Azides, fulminates, fulminating powder, and other like articles not specially provided for,  $12\frac{1}{2}$  cents per pound.

PAR. 96. Dynamite and other high explosives, put up in sticks, cartridges, or other forms, suitable for blasting,  $1\frac{1}{4}$  cents per pound.

PAR. 97. Wood tar and pitch of wood, and tar oil from wood, 1 cent per pound.

#### SCHEDULE 2.—EARTHS, EARTHENWARE, AND GLASSWARE

PAR. 201. (a) Bath brick, chrome brick, and fire brick, not specially provided for, 25 per centum ad valorem; magnesite brick, three-fourths of 1 cent per pound and 10 per centum ad valorem.

(b) All other brick, not specially provided for: Not glazed, enameled, painted, vitrified, ornamented, or decorated in any manner, \$1.25 per thousand; if glazed, enameled, painted, vitrified, ornamented, or decorated in any manner, 5 per centum ad valorem, but not less than \$1.50 per thousand.

PAR. 202. (a) Tiles, unglazed, glazed, ornamented, hand painted, enameled, vitrified, semivitrified, decorated, encaustic, ceramic mosaic, flint, spar, embossed, gold decorated, grooved or corrugated, and all other earthen tiles and tiling by whatever name known (except pill tiles, but including tiles wholly or in part of cement), all the foregoing valued at not more than 40 cents per square foot, 10 cents per square foot, but not less than 50 nor more than 70 per centum ad valorem; valued at more than 40 cents per square foot, 60 per centum ad valorem.

(b) Mantels, friezes, and articles of every description or parts thereof, composed wholly or in chief value of earthen tiles or tiling, except pill tiles, 50 per centum ad valorem.

PAR. 203. Limestone (not suitable for use as monumental or building stone), crude, or crushed but not pulverized, 5 cents per one hundred pounds; lime, not specially provided for, 10 cents per one hundred pounds, including the weight of the container; hydrated lime, 12 cents per one hundred pounds, including the weight of the container.

PAR. 204. Crude magnesite, fifteen thirty-seconds of 1 cent per pound; caustic calcined magnesite, fifteen-sixteenths of 1 cent per pound; dead burned and grain magnesite, and periclase, not suitable for manufacture into oxychloride cements, twenty-three fortieths of 1 cent per pound.

PAR. 205. (a) Plaster rock or gypsum, ground or calcined, \$1.40 per ton.

(b) Roman, Portland, and other hydraulic cement or cement clinker, 6 cents per one hundred pounds, including the weight of the container; white non-staining Portland cement, 8 cents per one hundred pounds, including the weight of the container.

(c) Keene's cement, and other cement of which gypsum is the component material of chief value: Valued at \$14 per ton or less, \$3.50 per ton; valued above \$14 and not above \$20 per ton, \$5 per ton; valued above \$20 and not above \$40 per ton, \$10 per ton; valued above \$40 per ton, \$14 per ton.

(d) Other cement, not specially provided for, 20 per centum ad valorem.

(e) Statues, statuettes, and bas-reliefs, wholly or in chief value of plaster of Paris, not specially provided for, 60 per centum ad valorem; manufactures of which plaster of Paris is the component material of chief value, not specially provided for, 35 per centum ad valorem.

PAR. 206. Pumice stone, unmanufactured, valued at \$15 or less per ton, one-tenth of 1 cent per pound; valued at more than \$15 per ton, one-fourth of 1 cent per pound; wholly or partly manufactured, three-fourths of 1 cent per pound; manufactures of pumice stone, or of which pumice stone is the component material of chief value, not specially provided for, 35 per centum ad valorem.

PAR. 207. Clays or earths, unwrought and unmanufactured, including common blue clay and Gross-Almerode glass pot clay, not specially provided for, \$1 per ton; wrought or manufactured not specially provided for, \$2 per ton; bentonite, unwrought and unmanufactured, \$1.50 per ton; wrought or manufactured, \$3.25 per ton; china clay or kaolin, \$2.50 per ton; crude feldspar, \$1 per ton; bauxite, crude,



not refined or otherwise advanced in condition in any manner, \$1 per ton; fuller's earth, unwrought and unmanufactured, \$1.50 per ton; wrought or manufactured \$3.25 per ton; clays or earths artificially activated with acid or other material, one-fourth of 1 cent per pound and 30 per centum ad valorem; silica, crude, not specially provided for, \$3.50 per ton; fluorspar, containing more than 97 per centum of calcined fluoride, \$5.60 per ton; containing not more than 97 per centum of calcium fluoride, \$8.40 per ton; sand containing 95 per centum or more of silica and not more than six-tenths of 1 per centum of oxide of iron and suitable for use in the manufacture of glass, \$2 per ton.

PAR. 208. (a) Mica, unmanufactured: Valued at not above 15 cents per pound, 4 cents per pound; valued at above 15 cents per pound, 4 cents per pound and 25 per centum ad valorem.

(b) Mica, cut or stamped to dimensions, shape, or form, 40 per centum ad valorem.

(c) Mica films and splittings, not cut or stamped to dimensions: Not above twelve ten-thousandths of one inch in thickness, 25 per centum ad valorem; over twelve ten-thousandths of one inch in thickness, 40 per centum ad valorem.

(d) Mica films and splittings cut or stamped to dimensions, 45 per centum ad valorem.

(e) Mica plates and built-up mica, and all manufactures of mica, or of which mica is the component material of chief value, by whatever name known, and to whatever use applied, and whether or not named, described, or provided for in any other paragraph of this chapter, 40 per centum ad valorem.

(f) Untrimmed phlogopite mica from which no rectangular piece exceeding two inches in length or one inch in width may be cut, 15 per centum ad valorem.

(g) Mica waste and scrap valued at not more than 5 cents per pound, 25 per centum ad valorem; mica waste and scrap valued at more than 5 cents per pound shall be classified as mica, unmanufactured.

(h) Mica, ground or pulverized, 20 per centum ad valorem.

PAR. 209. Talc, steatite or soapstone, and French chalk, crude and underground, one-fourth of 1 cent per pound; ground, washed, powdered, or pulverized (except toilet preparations), 35 per centum ad valorem; cut or sawed, or in blanks, crayons, cubes, disks, or other forms, 1 cent per pound; manufactures (except toilet preparations), of which talc, steatite or soapstone, or French chalk is the component material of chief value, wholly or partly finished, and not specially provided for, if not decorated, 35 per centum ad valorem; if decorated, 45 per centum ad valorem.

PAR. 210. Common yellow, brown, red, or gray earthenware, plain or embossed, composed of a body wholly of clay which is unwashed, unmixed, and not artificially colored; common salt, glazed stoneware; stoneware and earthenware crucibles; all the foregoing not ornamented, incised, or decorated in any manner, and manufactures wholly or in chief value of such ware, not specially provided for, 15 per centum ad valorem; ornamented, incised, or decorated in any manner, and manufactures wholly or in chief value of such ware, not specially provided for,

20 per centum ad valorem; and Rockingham earthenware, 25 per centum ad valorem.

PAR. 211. Earthenware and crockery ware composed of a nonvitrified absorbent body, including white granite and semiporcelain earthenware, and cream-colored ware, terra cotta, and stoneware, including clock cases with or without movements, pill tiles, plaques, ornaments, charms, vases, statues, statuettes, mugs, cups, steins, lamps, and all other articles composed wholly or in chief value of such ware; plain white, plain yellow, plain brown, plain red, or plain black, not painted, colored, tinted, stained, enameled, gilded, printed, ornamented, or decorated in any manner, and manufactures in chief value of such ware, not specially provided for, 10 cents per dozen pieces and 45 per centum ad valorem; painted, colored, tinted, stained, enameled, gilded, printed, ornamented, or decorated in any manner, and manufactures in chief value of such ware, not specially provided for, 10 cents per dozen pieces and 50 per centum ad valorem.

PAR. 212. China, porcelain, and other vitrified wares, including chemical porcelain ware and chemical stoneware, composed of a vitrified nonabsorbent body which when broken shows a vitrified or vitreous, or semivitrified or semivitreous fracture, and all bisque and parian wares, including clock cases with or without movements, plaques, pill tiles, ornaments, charms, vases, statues, statuettes, mugs, cups, steins, lamps, and all other articles composed wholly or in chief value of such ware, plain white, not painted, colored, tinted, stained, enameled, gilded, printed, or ornamented or decorated in any manner, and manufactures in chief value of such ware, not specially provided for, 60 per centum ad valorem; painted, colored, tinted, stained, enameled, gilded, printed, or ornamented or decorated in any manner, and manufactures in chief value of such ware, not specially provided for, 70 per centum ad valorem. In addition to the foregoing there shall be paid a duty of 10 cents per dozen separate pieces on all tableware, kitchenware, and table and kitchen utensils.

PAR. 213. Graphite or plumbago, crude or refined: Amorphous, 10 per centum ad valorem; crystalline lump, chip or dust, 30 per centum ad valorem; crystalline flake, 1 $\frac{1}{4}$ % cents per pound. As used in this paragraph, the term "crystalline flake" means graphite or plumbago which occurs disseminated as a relatively thin flake throughout its containing rock, decomposed or not, and which may be or has been separated therefrom by ordinary crushing, pulverizing, screening, or mechanical concentration process, such flake being made up of a number of parallel laminae, which may be separated by mechanical means.

PAR. 214. Earthy or mineral substances wholly or partly manufactured and articles, wares, and materials (crude or advanced in condition), composed wholly or in chief value of earthy or mineral substances, not specially provided for, whether susceptible of decoration or not, if not decorated in any manner, 30 per centum ad valorem; if decorated, 40 per centum ad valorem.

PAR. 215. Gas retorts, 20 per centum ad valorem; lava tips for burners, 10 cents per gross and 15 per

centum ad valorem; and magnesia clay supporters, consisting of rings, rods, and other forms for gas mantles, 35 per centum ad valorem.

PAR. 216. Carbons and electrodes, of whatever material composed, and wholly or partly manufactured for producing electric arc light, if less than one-half inch in diameter or of equivalent cross-sectional area, 60 per centum ad valorem; if one-half inch or more in diameter or of equivalent cross-sectional area, 45 per centum ad valorem; electrodes, composed wholly or in part of carbon or graphite, and wholly or partly manufactured, for electric furnace or electrolytic purposes; brushes, of whatever material composed, and wholly or partly manufactured, for electric motors, generators, or other electrical machines or appliances; plates, rods, and other forms of whatever material composed, and wholly or partly manufactured, for manufacturing into the aforesaid brushes; and articles or wares composed wholly or in part of carbon or graphite, wholly or partly manufactured, not specially provided for, 45 per centum ad valorem.

PAR. 217. Bottles, vials, jars, ampoules, and covered or uncovered demijohns, and carboys, any of the foregoing, wholly or in chief value of glass, filled or unfilled, not specially provided for, and whether their contents be dutiable or free (except such as contain merchandise subject to an ad valorem rate of duty, or to a rate of duty based in whole or in part upon the value thereof, which shall be dutiable at the rate applicable to their contents), shall be subject to duty as follows: If holding more than one pint, 1 cent per pound; if holding not more than one pint and not less than one-fourth of one pint, 1½ cents per pound; if holding less than one-fourth of one pint, 50 cents per gross: *Provided*, That the terms "bottles", "vials", "jars", "ampoules", "demijohns", and "carboys", as used herein, shall be restricted to such articles when suitable for use and of the character ordinarily employed for the holding or transportation of merchandise, and not as appliances or implements in chemical or other operations, and shall not include bottles for table service and thermostatic bottles.

PAR. 218. (a) Biological, chemical, metallurgical, pharmaceutical, and surgical articles and utensils of all kinds, including all scientific articles, and utensils, whether used for experimental purposes in hospitals, laboratories, schools or universities, colleges, or otherwise, all the foregoing (except articles provided for in paragraph 217 or in subparagraph (e)), finished or unfinished, wholly or in chief value of glass, 85 per centum ad valorem; wholly or in chief value of fused quartz or fused silica, 50 per centum ad valorem.

(b) Tubes (except gauge glass tubes), rods, canes, and tubing, with ends finished or unfinished, for whatever purpose used, wholly or in chief value of glass, 65 per centum ad valorem; wholly or in chief value of fused quartz or fused silica, 40 per centum ad valorem; gauge glass tubes, wholly or in chief value of glass, 60 per centum ad valorem.

(c) Illuminating articles of every description, finished or unfinished, wholly or in chief value of glass, for use in connection with artificial illumination:

Prisms, glass chandeliers, and articles in chief value of prisms, 60 per centum ad valorem; chimneys, 55 per centum ad valorem; globes and shades, 70 per centum ad valorem; all others, 60 per centum ad valorem: *Provided*, That parts not specially provided for, wholly or in chief value of glass, of any of the foregoing shall be subject to the same rate of duty as the articles of which they are parts.

(d) All glassware commercially known as plated or cased glass, composed of two or more layers of clear, opaque, colored, or semitranslucent glass, or combinations of the same, 60 per centum ad valorem.

(e) Bottles and jars, wholly or in chief value of glass, of the character used or designed to be used as containers of perfume, talcum powder, toilet water, or other toilet preparations; bottles, vials, and jars, wholly or in chief value of glass, fitted with or designed for use with ground-glass stoppers, when suitable for use and of the character ordinarily employed for the holding or transportation of merchandise; all the foregoing produced by automatic machine, 25 per centum ad valorem; otherwise produced, 75 per centum ad valorem. For the purposes of this subparagraph no regard shall be had to the method of manufacture of the stoppers or covers.

(f) Table and kitchen articles and utensils, and all articles of every description not specially provided for, composed wholly or in chief value of glass, blown or partly blown in the mold or otherwise, or colored, cut, engraved, etched, frosted, gilded, ground (except such grinding as is necessary for fitting stoppers or for purposes other than ornamentation), painted, printed in any manner, sand-blasted, silvered, stained, or decorated or ornamented in any manner, whether filled or unfilled, or whether their contents be dutiable or free, 60 per centum ad valorem.

(g) Table and kitchen articles and utensils, composed wholly or in chief value of glass, when pressed and unpolished, whether or not decorated or ornamented in any manner or ground (except such grinding as is necessary for fitting stoppers or for purposes other than ornamentation), whether filled or unfilled, or whether their contents be dutiable or free, 50 per centum ad valorem.

(h) Any of the articles specified in this paragraph, if containers of merchandise subject to an ad valorem rate of duty or to a rate of duty based in whole or in part upon the value thereof, shall be dutiable at the rate applicable to their contents, but not less than the rate provided for in this paragraph.

(i) For the purposes of this chapter, bottles, vials, and jars with glass stoppers or covers shall with their stoppers or covers be deemed entireties.

(j) For the purposes of this schedule an article shall be considered to be composed wholly or in chief value of glass if such article is wholly or in chief value of glass, or of paste, or of a combination of glass and paste.

PAR. 219. Cylinder, crown, and sheet glass, by whatever process made, and for whatever purpose used, not exceeding one hundred and fifty square inches, 1½ cents per pound; above that, and not exceeding three hundred and eighty-four square inches, 2½ cents per pound; above that, and not exceeding seven hundred and twenty square inches,



2½ cents per pound; above that and not exceeding eight hundred and sixty-four square inches, 2½ cents per pound; above that, and not exceeding one thousand two hundred square inches, 3 cents per pound; above that, and not exceeding two thousand four hundred square inches, 3½ cents per pound; above that, 3¾ cents per pound: *Provided*, That none of the foregoing weighing less than sixteen ounces but not less than twelve ounces per square foot shall be subject to a less rate of duty than 50 per centum ad valorem: *Provided further*, That cylinder, crown, and sheet glass, imported in boxes, shall be denied entry unless packed in units containing fifty square feet or multiples thereof, as nearly as sizes will permit, and the duty shall be computed thereon according to actual weight of glass.

PAR. 220. Laminated glass composed of layers of glass and other material or materials, and manufactures wholly or in chief value of such glass, 60 per centum ad valorem.

PAR. 221. Rolled glass (not sheet glass) fluted, figured, ribbed, or rough, or the same containing a wire netting within itself, 1½ cents per pound.

PAR. 222. (a) Plate glass, by whatever process made, not exceeding three hundred and eighty-four square inches, 12½ cents per square foot; above that, and not exceeding seven hundred and twenty square inches, 17 cents per square foot; above that, and not exceeding one thousand and eight square inches, 17½ cents per square foot; all above that, 19¾ cents per square foot: *Provided*, That none of the foregoing measuring one-half inch or over in thickness shall be subject to a less rate of duty than 50 per centum ad valorem.

(b) Plate glass containing a wire netting within itself, not exceeding three hundred and eight-four square inches, 15 cents per square foot; above that, and not exceeding seven hundred and twenty square inches, 20 cents per square foot; all above that, 23 cents per square foot.

(c) The term "plate glass", when used in this chapter, means glass wholly ground and polished on both surfaces.

(d) Rolled, cylinder, crown, and sheet glass, not plate glass, if ground wholly or in part (whether or not polished) otherwise than for the purpose of ornamentation, or if one-fourth of one inch or more in thickness and obscured by coloring prior to solidification, shall be subject to the duties provided in subparagraph (a) or (b) of this paragraph; if any of the foregoing is subjected to any of the processes specified in paragraph 224, the additional duty provided therein shall apply.

PAR. 223. Plate, cylinder, crown, and sheet glass, by whatever process made, when made into mirrors, finished or partly finished, exceeding in size one hundred and forty-four square inches and not exceeding three hundred and eighty-four square inches, 15 cents per square foot; above that, and not exceeding seven hundred and twenty square inches, 20 cents per square foot; all above that, 23 cents per square foot: *Provided*, That none of the foregoing shall be subject to a less rate of duty than 45 per centum ad valorem: *Provided further*, That none of the foregoing mirrors when framed shall be subject to a less

rate of duty than that imposed upon similar mirrors of like description not framed, but shall pay in addition thereto upon such frames the rate of duty applicable thereto when imported separately.

PAR. 224. Plate, rolled, cylinder, crown, and sheet glass, and glass mirrors exceeding in size one hundred and forty-four square inches, by whatever process made, when bent, frosted, sanded, enameled, beveled, etched, embossed, engraved, flashed, stained, colored (except glass not plate glass and not less than one-fourth of one inch in thickness, when obscured by coloring prior to solidification), painted, ornamented, or decorated, shall be subject to a duty of 5 per centum ad valorem in addition to the rates otherwise chargeable thereon.

PAR. 225. Spectacles, eyeglasses, and goggles, and frames for the same, or parts thereof, finished or unfinished, valued at not over 65 cents per dozen, 20 cents per dozen and 15 per centum ad valorem; valued at over 65 cents per dozen and not over \$2.50 per dozen, 60 cents per dozen and 20 per centum ad valorem; valued at over \$2.50 per dozen, 40 per centum ad valorem.

PAR. 226. Lenses of glass or pebble, molded or pressed, or ground and polished to a spherical, cylindrical, or prismatic form, and ground and polished plano or coquille glasses, wholly or partly manufactured, with the edges unground, 40 per centum ad valorem; with the edges ground or beveled, 10 cents per dozen pairs and 35 per centum ad valorem; strips of glass not more than three inches wide, ground or polished on one or both sides to a cylindrical or prismatic form, including those used in the construction of gauges, and glass slides for magic lanterns, 35 per centum ad valorem.

PAR. 227. Optical glass or glass used in the manufacture of lenses or prisms for spectacles, or for optical instruments or equipment, or for optical parts, scientific or commercial, in any and all forms, 50 per centum ad valorem.

PAR. 228. (a) Spectographs, spectrometers, spectroscopes, refractometers, saccharimeters, colorimeters, prism-binoculars, cathetometers, interferometers, haemacytometers, polarimeters, polariscopes, photometers, ophthalmoscopes, slit lamps, corneal microscopes, optical measuring or optical testing instruments, testing or recording instruments for ophthalmological purposes, frames and mountings therefor, and parts of any of the foregoing; all the foregoing, finished or unfinished, 60 per centum ad valorem.

(b) Azimuth mirrors, parabolic or mangin mirrors for searchlight reflectors, mirrors for optical, dental, or surgical purposes, photographic or projection lenses, sextants, octants, opera or field glasses (not prism binoculars), telescopes, microscopes, all optical instruments, frames, and mountings therefor, and parts of any of the foregoing; all the foregoing, finished or unfinished, not specially provided for, 45 per centum ad valorem.

PAR. 229. Incandescent electric-light bulbs and lamps, without filaments, 20 per centum ad valorem; with metal filaments, 20 per centum ad valorem; with filaments of carbon or other nonmetallic material, 30 per centum ad valorem.

PAR. 230. (a) Stained or painted glass windows, and parts thereof, not specially provided for, 60 per centum ad valorem.

(b) Glass mirrors (except framed or cased mirrors in chief value of platinum, gold, or silver), not specially provided for, not exceeding in size one hundred and forty-four square inches, with or without frames or cases, 50 per centum ad valorem.

(c) Glass ruled or etched in any manner, and manufactures of such glass, for photographic reproductions or engraving processes, or for measuring or recording purposes, 55 per centum ad valorem.

(d) All glass, and manufactures of glass, or of which glass is the component of chief value, except broken glass or glass waste fit only for remanufacture, not specially provided for, 50 per centum ad valorem.

PAR. 231. Smalts, frostings, and all ceramic and glass colors, fluxes, glazes, and enamels, all the foregoing, ground or pulverized, 30 per centum ad valorem; in any other form, 40 per centum ad valorem; opal, enamel or cylinder glass tiles and tiling, 40 per centum ad valorem.

PAR. 232. (a) Marble, breccia, and onyx, in block, rough or squared only, 65 cents per cubic foot; marble, breccia, and onyx, sawed or dressed, over two inches in thickness, \$1 per cubic foot.

(b) Slabs and paving tiles of marble, breccia, or onyx: Containing not less than four superficial inches, if not more than one inch in thickness, 8 cents per superficial foot; if more than one inch and not more than one and one-half inches in thickness, 10 cents per superficial foot; if more than one and one-half inches and not more than two inches in thickness, 13 cents per superficial foot; in addition thereto on all the foregoing, if rubbed in whole or in part, 3 cents per superficial foot, or if polished in whole or in part (whether or not rubbed), 6 cents per superficial foot.

(c) Mosaic cubes of marble, breccia, or onyx, not exceeding two cubic inches in size, if loose, one-fourth of 1 cent per pound and 20 per centum ad valorem; if attached to paper or other material, 5 cents per superficial foot and 35 per centum ad valorem.

(d) Marble, breccia, and onyx, wholly or partly manufactured into monuments, benches, vases, and other articles, and articles of which these substances or any of them is the component material of chief value, not specially provided for, 50 per centum ad valorem.

PAR. 233. Alabaster and jet, wholly or partly manufactured into monuments, benches, vases, and other articles, and articles of which these substances or either of them is the component material of chief value, and all articles composed wholly or in chief value of agate, rock crystal, or other semiprecious stone, except such as are cut into shapes and forms fitting them expressly for use in the construction of jewelry, not specially provided for, 50 per centum ad valorem.

PAR. 234. (a) Granite suitable for use as monumental, paving, or building stone, not specially provided for, hewn, dressed, pointed, pitched, lined, or polished, or otherwise manufactured, 60 per centum

ad valorem; unmanufactured, or not dressed, pointed, pitched, lined, hewn, or polished, 25 cents per cubic foot.

(b) Travertine stone, unmanufactured, or not dressed, hewn, or polished, 25 cents per cubic foot.

(c) Freestone, sandstone, limestone, lava, and all other stone suitable for use as monumental or building stone, except marble, breccia, and onyx, not specially provided for, hewn, dressed, or polished, or otherwise manufactured, 50 per centum ad valorem; unmanufactured, or not dressed, hewn, or polished, 15 cents per cubic foot.

PAR. 235. Slate, slates, slate chimney pieces, mantels, slabs for tables, roofing slates, and all other manufactures of slate, not specially provided for, 25 per centum ad valorem.

PAR. 236. Watch crystals or watch glasses, finished or unfinished, 60 per centum ad valorem.

#### SCHEDULE 3.—METALS AND MANUFACTURES OF

PAR. 301. Iron in pigs and iron kentledge, \$1.12½ per ton; spiegeleisen containing more than 1 per centum of carbon, 75 cents per ton; granular or sponge iron, \$2.25 per ton; wrought and cast scrap iron, scrap steel, hammer scale, roll scale, and mill scale, 75 cents per ton: *Provided*, That spiegeleisen for the purposes of this chapter shall be an iron manganese alloy containing less than 30 per centum of manganese: *Provided further*, That nothing shall be deemed scrap iron or scrap steel except second-hand or waste or refuse iron or steel fit only to be remanufactured: *Provided further*, That an additional duty of \$1 per pound on the vanadium content in excess of one-tenth of 1 per centum, 72 cents per pound on the tungsten content in excess of two-tenths of 1 per centum, 65 cents per pound on the molybdenum content in excess of two-tenths of 1 per centum, and 3 cents per pound on the chromium content in excess of two-tenths of 1 per centum, shall be levied, collected, and paid on all the foregoing.

PAR. 302. (a) Manganese ore (including ferruginous manganese ore) or concentrates, and manganiferous iron ore, all the foregoing containing in excess of 10 per centum of metallic manganese, 1 cent per pound on the metallic manganese contained therein.

(b) Molybdenum ore or concentrates, 35 cents per pound on the metallic molybdenum contained therein.

(c) Tungsten ore or concentrates, 50 cents per pound on the metallic tungsten contained therein.

(d) Ferromanganese containing more than 1 per centum of carbon, 1½ cents per pound on the metallic manganese contained therein: *Provided*, That ferromanganese for the purposes of this chapter shall be such iron-manganese alloys as contain 30 per centum or more of manganese.

(e) Manganese metal, manganese silicon, manganese boron, and ferromanganese and spiegeleisen containing not more than 1 per centum of carbon, 1½ cents per pound on the manganese contained therein and 15 per centum ad valorem.

(f) Ferromolybdenum, metallic molybdenum, molybdenum powder, calcium molybdate, and all other

compounds and alloys of molybdenum, 50 cents per pound on the molybdenum contained therein and 15 per centum ad valorem.

(g) Tungsten metal, tungsten carbide, and mixtures or combinations containing tungsten metal or tungsten carbide, all the foregoing, in lumps, grains, or powder, 60 cents per pound on the tungsten contained therein and 50 per centum ad valorem; tungstic acid, and all other compounds of tungsten, not specially provided for, 60 cents per pound on the tungsten contained therein and 40 per centum ad valorem.

(h) Ferrotungsten, ferrochromium tungsten, chromium tungsten, chromium cobalt tungsten, tungsten nickel, and all other alloys of tungsten not specially provided for, 60 cents per pound on the tungsten contained therein and 25 per centum ad valorem.

(i) Ferrosilicon, containing 8 per centum or more of silicon and less than 60 per centum, 2 cents per pound on the silicon contained therein; containing 60 per centum or more of silicon and less than 80 per centum, 3 cents per pound on the silicon contained therein; containing 80 per centum or more of silicon and less than 90 per centum, 4 cents per pound on the silicon contained therein; containing 90 per centum or more of silicon, and silicon metal, 8 cents per pound on the silicon contained therein.

(j) Silicon aluminum, aluminum silicon, alumin, ferrosilicon aluminum, and ferroaluminum silicon, 5 cents per pound.

(k) Ferrochrome or ferrochromium containing 3 per centum or more of carbon, 2½ cents per pound on the chromium contained therein; ferrochrome or ferrochromium containing less than 3 per centum of carbon, and chrome metal or chromium metal, 30 per centum ad valorem.

(l) Boron carbide, chromium carbide, vanadium carbide, chromium nickel, chromium silicon, chromium vanadium, and manganese copper, 25 per centum ad valorem.

(m) Ferrophosphorus, ferrotitanium, ferrovandium, ferrouanium, ferrozirconium, zirconium, ferrosilicon, ferroboration, ferroaluminum vanadium, ferromanganese vanadium, ferrosilicon vanadium, and ferrosilicon aluminum vanadium, 25 per centum ad valorem.

(n) Barium, boron, calcium, columbium or niobium, strontium, tantalum, thorium, titanium, uranium, vanadium, zirconium, alloys of two or more of these metals, or alloys not specially provided for of one or more of these metals with one or more of the metals aluminum, chromium, cobalt, copper, manganese, nickel, or silicon, 25 per centum ad valorem.

(o) All alloys used in the manufacture of steel or iron, not specially provided for, 25 per centum ad valorem.

(p) Cerium metal, \$2 per pound.

(q) Ferrocium and all other cerium alloys, \$2 per pound and 25 per centum ad valorem.

(r) Ductile tantalum metal, ductile columbium or niobium metal, and ductile nonferrous alloys of tantalum metal, or of columbium or niobium metal, 40 per centum ad valorem.

PAR. 303. Muck bars, pieces thereof except crop ends, bar iron, and round iron in coils or rods, iron in slabs, blooms, loops, or other forms less finished than iron in bars and more advanced than pig iron, except castings; all the foregoing, valued at not above 1½ cents per pound, three-tenths of 1 cent per pound; valued above 1½ and not above 2½ cents per pound, five-tenths of 1 cent per pound; valued above 2½ and not above 3½ cents per pound, eight-tenths of 1 cent per pound; valued above 3½ and not above 5 cents per pound, 1 cent per pound; valued above 5 cents per pound, 1½ cents per pound.

PAR. 304. Steel ingots, cogged ingots, blooms and slabs, by whatever process made; die blocks or blanks; billets and bars, whether solid or hollow; shafting; pressed, sheared, or stamped shapes not advanced in value or condition by any process or operation subsequent to the process of stamping; hammer molds or swaged steel; gun-barrel molds not in bars; concrete reinforcement bars; all descriptions and shapes of dry sand, loam, or iron molded steel castings; sheets and plates and steel not specially provided for; all the foregoing valued at not above 1½ cents per pound, three-tenths of 1 cent per pound; valued above 1½ and not above 2½ cents per pound, five-tenths of 1 cent per pound; valued above 2½ and not above 3½ cents per pound, eight-tenths of 1 cent per pound; valued above 3½ and not above 5 cents per pound, 1 cent per pound; valued above 5 and not above 8 cents per pound, 1¼ cents per pound; valued above 8 and not above 12 cents per pound, 2½ cents per pound; valued above 12 and not above 16 cents per pound, 3½ cents per pound; valued above 16 cents per pound, 20 per centum ad valorem: *Provided*, That on steel circular saw plates there shall be levied, collected, and paid an additional duty of one-fourth of 1 cent per pound: *Provided further*, That on hollow bars and hollow drill steel valued at more than 4 cents per pound there shall be levied, collected, and paid an additional duty of three-fourths of 1 cent per pound.

PAR. 305. In addition to the rates of duty provided for in paragraphs 303, 304, 307, 308, 312, 313, 315, 316, 317, 318, 319, 322, 323, 324, 327, and 328 of this schedule, there shall be levied, collected, and paid on all steel or iron in the materials and articles enumerated or described in such paragraphs:

(1) A duty of 8 per centum ad valorem if such steel or iron contains more than one-tenth of 1 per centum of vanadium, or more than two-tenths of 1 per centum of tungsten, molybdenum, or chromium, or more than six-tenths of 1 per centum of nickel, cobalt, or any other metallic element used in alloying steel or iron: *Provided*, That phosphorus shall not be considered as alloying material unless present in the steel or iron in excess of 5 per centum, nor shall manganese or silicon be so considered unless either is present in the steel in excess of 1 per centum, or unless either is present in the iron in excess of 3 per centum; and

(2) an additional cumulative duty of \$1 per pound on the vanadium content in excess of one-tenth of 1 per centum, 72 cents per pound on the tungsten content in excess of two-tenths of 1 per centum, 65 cents per pound on the molybdenum content in ex-

cess of two-tenths of 1 per centum, and 3 cents per pound on the chromium content in excess of two-tenths of 1 per centum.

PAR. 306. All metal produced from iron or its ores, which is cast and malleable, of whatever description or form, without regard to the percentage of carbon contained therein, whether produced by cementation, or converted, cast, or made from iron or its ores, by the crucible, electric, Bessemer, Clapp-Griffith, pneumatic, Thomas-Gilchrist, basic, Siemens-Martin, or open-hearth process, or by the equivalent of either, or by a combination of two or more of the processes, or their equivalents, or by any fusion or other process which produces from iron or its ores a metal either granular or fibrous in structure, which is cast and malleable, excepting what is known as malleable-iron castings, shall be classed and denominated as steel.

PAR. 307. Boiler or other plate iron or steel, except crucible plate steel and saw plate steel, not thinner than one hundred and nine one-thousandths of one inch, cut or sheared to shape or otherwise, or un-sheared, and skelp iron or steel sheared or rolled in grooves, valued at not above 3 cents per pound, five-tenths of 1 cent per pound; valued at over 3 cents per pound, 20 per centum ad valorem: *Provided*, That all sheets or plates of iron or steel thinner than one hundred and nine one-thousandths of one inch shall be subject to duty as iron or steel sheets.

PAR. 308. Sheets of iron or steel, common or black, of whatever dimensions, and skelp iron or steel, valued at 3 cents per pound or less, thinner than one hundred and nine one-thousandths and not thinner than thirty-eight one-thousandths of one inch, forty-five one-hundredths of 1 cent per pound; thinner than thirty-eight one-thousandths and not thinner than twenty-two one-thousandths of one inch, fifty-five one-hundredths of 1 cent per pound; thinner than twenty-two one-thousandths and not thinner than ten one-thousandths of one inch, seventy-five one-hundredths of 1 cent per pound; thinner than ten one-thousandths of one inch, eighty-five one-hundredths of 1 cent per pound; corrugated or crimped, seventy-five one-hundredths of 1 cent per pound; all the foregoing when valued at more than 3 cents per pound, 20 per centum ad valorem: *Provided*, That all sheets or plates of common or black iron or steel not thinner than one hundred and nine one-thousandths of one inch shall be subject to duty as plate iron or plate steel.

PAR. 309. All iron or steel sheets, plates, bars, and rods, and all hoop, band, or scroll iron or steel, excepting what are known commercially as tin plates, terneplates, and taggers tin, when galvanized or coated with zinc, spelter, or other metals, or any alloy of those metals, shall be subject to two-tenths of 1 cent per pound more duty than if the same was not so galvanized or coated; sheets or plates composed of iron, steel, copper, nickel, or other metal with layers of other metal or metals imposed thereon by forging, hammering, rolling, or welding, 30 per centum ad valorem; thermostatic metal in sheets, plates, or other forms, 50 per centum ad valorem; sheets and plates of iron or steel, polished, planished, or glanced, by whatever name designated, 1¼ cents

per pound: *Provided*, That plates or sheets of iron or steel, by whatever name designated, other than polished, planished, or glanced, herein provided for, which have been pickled or cleaned by acid, or by any other material or process, or which are cold-rolled, smoothed only, not polished, shall be subject to two-tenths of 1 cent per pound more duty than the rates provided on corresponding thicknesses of common or black sheet iron or steel.

PAR. 310. Sheets or plates of iron or steel, or taggers iron or steel, coated with tin or lead, or with a mixture of which these metals, or either of them, is a component part, by the dipping or any other process, and commercially known as tin plates, terneplates, and taggers tin, 1 cent per pound.

PAR. 311. No article not specially provided for which is wholly or partly manufactured from tin plate, terneplate, or sheet, plate, hoop, band, or scroll iron or steel, or of which such tin plate, terneplate, sheet, plate, hoop, band, or scroll iron or steel shall be the material of chief value, shall be subject to a lower rate of duty than that imposed on the tin plate, terneplate, or sheet, plate, hoop, band, or scroll iron or steel from which it is made, or of which it shall be the component thereof of chief value.

PAR. 312. Beams, girders, joists, angles, channels, car-truck channels, tees, columns and posts, or parts or sections of columns and posts, and deck and bulb beams, together with all other structural shapes of iron or steel, not assembled, manufactured, or advanced beyond hammering, rolling, or casting, one-fifth of 1 cent per pound; any of the foregoing machined, drilled, punched, assembled, fitted, fabricated for use, or otherwise advanced beyond hammering, rolling, or casting, 20 per centum ad valorem; sashes and frames of iron or steel, 25 per centum ad valorem; sheet piling, one-fifth of 1 cent per pound.

PAR. 313. Hoop, band, and scroll iron or steel, not specially provided for, valued at 3 cents per pound or less, eight inches or less in width, and thinner than three-eighths and not thinner than one hundred and nine one-thousandths of one inch, twenty-five one-hundredths of 1 cent per pound; thinner than one hundred and nine one-thousandths and not thinner than thirty-eight one-thousandths of one inch, thirty-five one-hundredths of 1 cent per pound; thinner than thirty-eight one-thousandths of one inch, fifty-five one-hundredths of 1 cent per pound: *Provided*, That barrel hoops of iron or steel, and hoop or band iron, or hoop or band steel, flared, splayed, or punched, with or without buckles or fastenings, shall pay no more duty than that imposed on the hoop or band iron or steel from which they are made; bands and strips of iron or steel, whether in long or short lengths, not specially provided for, 25 per centum ad valorem.

PAR. 314. Hoop or band iron, and hoop or band steel, cut to lengths, or wholly or partly manufactured into hoops or ties, coated or not coated with paint or any other preparation, with or without buckles or fastenings, for baling cotton or any other commodity, one-fourth of 1 cent per pound.

PAR. 315. Wire rods: Rivet, screw, fence, and other iron or steel wire rods, whether round, oval, or square, or in any other shape, nail rods and flat rods up to

six inches in width ready to be drawn or rolled into wire or strips, all the foregoing in coils or otherwise, valued at not over 4 cents per pound, three-tenths of 1 cent per pound; valued at over 4 cents per pound, six-tenths of 1 cent per pound: *Provided*, That all round iron or steel rods smaller than twenty one-hundredths of one inch in diameter shall be classified and dutiable as wire: *Provided further*, That all iron or steel wire rods which have been tempered or treated in any manner or partly manufactured shall be subject to an additional duty of one-fourth of 1 cent per pound: *Provided further*, That on all iron or steel bars and rods of whatever shape or section which are cold rolled, cold drawn, cold hammered, or polished in any way in addition to the ordinary process of hot rolling or hammering, there shall be paid one-eighth of 1 cent per pound in addition to the rates provided on bars or rods of whatever section or shape which are hot rolled; and on all strips, plates, or sheets of iron or steel of whatever shape, other than polished, planished, or glanced sheet iron or sheet steel, which are cold hammered, blued, brightened, tempered, or polished by any process to such perfected surface finish or polish better than the grade of cold rolled, smoothed only, there shall be paid two-tenths of 1 cent per pound in addition to the rates provided on plates, strips, or sheets of iron or steel of common or black finish of corresponding thickness or value.

PAR. 316. (a) Round iron or steel wire, not smaller than ninety-five one-thousandths of one inch in diameter, three-fourths of 1 cent per pound; smaller than ninety-five one-thousandths and not smaller than sixty-five one-thousandths of one inch in diameter, 1¼ cents per pound; smaller than sixty-five one-thousandths of one inch in diameter, 1½ cents per pound: *Provided*, That all the foregoing valued above 6 cents per pound shall be subject to a duty of 25 per centum ad valorem; all wire composed of iron, steel, or other metal, not specially provided for (except gold, silver, platinum, tungsten, or molybdenum); all flat wires and all steel in strips not thicker than one-quarter of one inch and not exceeding sixteen inches in width, whether in long or short lengths, in coils or otherwise, and whether rolled or drawn through dies or rolls, or otherwise produced, 25 per centum ad valorem: *Provided*, That all wire of iron, steel, or other metal coated by dipping, galvanizing, sherardizing, electrolytic, or any other process with zinc, tin, or other metal, shall be subject to a duty of two-tenths of 1 cent per pound in addition to the rate imposed on the wire of which it is made; telegraph, telephone, and other wires and cables composed of iron, steel, or other metal (except gold, silver, platinum, tungsten, or molybdenum), covered with or composed in part of cotton, jute, silk, enamel, lacquer, rubber, paper, compound, or other material, with or without metal covering, 35 per centum ad valorem; wire rope, 35 per centum ad valorem; wire strand, 35 per centum ad valorem; spinning and twisting ring travelers, 35 per centum ad valorem; wire heddles and healds, 25 cents per thousand and 30 per centum ad valorem.

(b) Ingots, shot, bars, sheets, wire, or other forms, not specially provided for, or scrap, containing more

than 50 per centum of tungsten, tungsten carbide, molybdenum or molybdenum carbide, or combinations thereof: Ingots, shot, bars, or scrap, 50 per centum ad valorem; sheets, wire, or other forms, 60 per centum ad valorem.

PAR. 317. All galvanized wire not specially provided for, not larger than twenty one-hundredths and not smaller than eight one-hundredths of an inch in diameter, of the kind commonly used for fencing purposes, galvanized wire fencing composed of wires not larger than twenty one-hundredths and not smaller than eight one-hundredths of one inch in diameter; and all wire commonly used for baling hay or other commodities, one-half of 1 cent per pound.

PAR. 318. Woven-wire cloth: Gauze, fabric, or screen, made of wire composed of steel, brass, copper, bronze, or any other metal or alloy, not specially provided for, with meshes not finer than thirty wires to the lineal inch in warp or filling, 25 per centum ad valorem; with meshes finer than thirty and not finer than ninety wires to the lineal inch in warp or filling, 40 per centum ad valorem; with meshes finer than ninety wires to the lineal inch in warp or filling, 50 per centum ad valorem. Fourdrinier wires and cylinder wires, suitable for use in paper-making machines (whether or not parts of or fitted or attached to such machines), and woven-wire cloth suitable for use in the manufacture of Fourdrinier wires or cylinder wires, 50 per centum ad valorem.

PAR. 319. (a) Iron or steel anchors and parts thereof; forgings of iron or steel, or of combined iron and steel, not machined, tooled, or otherwise advanced in condition by any process or operation subsequent to the forging process, not specially provided for, 25 per centum ad valorem.

(b) Autoclaves, catalyst chambers or tubes, converters, reaction chambers, scrubbers, separators, shells, stills, ovens, soakers, penstock pipes, cylinders, containers, drums, and vessels, any of the foregoing composed wholly or in chief value of iron or steel, by whatever process made (except by casting), wholly or partly manufactured, if over 20 inches at the largest inside diameter (exclusive of nonmetallic lining), and having metal walls one and one-fourth inches or more in thickness, and parts for any of the foregoing, 35 per centum ad valorem.

PAR. 320. Electric storage batteries and parts thereof, storage battery plates, and storage battery plate material, wholly or partly manufactured, all the foregoing not specially provided for, 40 per centum ad valorem.

PAR. 321. Antifriction balls and rollers, metal balls and rollers commonly used in ball or roller bearings, metal ball or roller bearings, and parts thereof, whether finished or unfinished, for whatever use intended, 10 cents per pound and 45 per centum ad valorem.

PAR. 322. Railway fishplates or splice bars, and tie plates, made of iron or steel, one-fourth of 1 cent per pound; rail braces, and all other railway bars made of iron or steel, and railway bars made in part of steel, T rails, and punched iron or steel flat rails, one-tenth of 1 cent per pound.

PAR. 323. Axles and parts thereof, axle bars, axle blanks, and forgings for axles, of iron or steel, without reference to the stage or state of manufacture, not specially provided for, valued at not more than 6 cents per pound, six-tenths of 1 cent per pound: *Provided*, That when iron or steel axles are imported fitted in wheels, or parts of wheels, of iron or steel, they shall be dutiable at the same rate as the wheels in which they are fitted.

PAR. 324. Wheels for railway purposes, and parts thereof, of iron or steel, and steel-tired wheels for railway purposes, wholly or partly finished, and iron or steel locomotive, car, or other railway tires and parts thereof, wholly or partly manufactured, 1 cent per pound: *Provided*, That when wheels for railway purposes, or parts thereof, of iron or steel, are imported with iron or steel axles fitted in them, the wheels and axles together shall be dutiable at the same rate as is provided for the wheels when imported separately.

PAR. 325. Jewelers' and other anvils weighing less than five pounds each, 45 per centum ad valorem; all other anvils of iron or steel, or of iron and steel combined, by whatever process made, or in whatever stage of manufacture, 3 cents per pound.

PAR. 326. Blacksmiths' hammers, tongs, and sledges, track tools, wedges, and crowbars, of iron or steel,  $1\frac{1}{2}$  cents per pound.

PAR. 327. Cast-iron pipe of every description, and cast-iron fittings for cast-iron pipe, 25 per centum ad valorem; cast-iron andirons, plates, stove plates, sadirons, tailors' irons, hatters' irons, but not including electric irons, and castings and vessels wholly of cast iron, including all castings of iron or cast-iron plates which have been chiseled, drilled, machined, or otherwise advanced in condition by processes or operations subsequent to the casting process but not made up into articles, or parts thereof, or finished machine parts; castings of malleable iron not specially provided for; cast hollow ware, coated, glazed, or tinned, but not including enameled ware and hollow ware containing electrical elements, 20 per centum ad valorem; molders' patterns, of whatever material composed, for the manufacture of castings, 50 per centum ad valorem.

PAR. 328. Lap-welded, butt-welded, seamed, or jointed iron or steel tubes, pipes, flues, and stays, not thinner than sixty-five one-thousandths of one inch, if not less than three-eighths of one inch in diameter, three-fourths of 1 cent per pound; if less than three-eighths and not less than one-fourth of one inch in diameter,  $1\frac{1}{4}$  cents per pound; if less than one-fourth of one inch in diameter,  $1\frac{3}{4}$  cents per pound: *Provided*, That no tubes, pipes, flues, or stays made of charcoal iron shall be subject to a less rate of duty than  $1\frac{1}{4}$  cents per pound; cylindrical and tubular tanks or vessels, for holding gas, liquids, or other material, whether full or empty; welded cylindrical furnaces, tubes and flues made from plate metal, whether corrugated, ribbed, or otherwise reinforced against collapsing pressure, and all other finished or unfinished iron or steel tubes not specially provided for, 25 per centum ad valorem; flexible metal tubing or hose, whether covered with wire or other material, including any appliances or attachments affixed

thereto, not specially provided for, and rigid iron or steel tubes or pipes prepared and lined or coated in any manner suitable for use as conduits for electrical conductors, 30 per centum ad valorem.

PAR. 329. Chain and chains of all kinds, made of iron or steel, not less than three-fourths of one inch in diameter, seven-eighths of 1 cent per pound; less than three-fourths and not less than three-eighths of one inch in diameter,  $1\frac{1}{2}$  cents per pound; less than three-eighths and not less than five-sixteenths of one inch in diameter,  $2\frac{1}{2}$  cents per pound; less than five-sixteenths of one inch in diameter, 4 cents per pound; chains of iron or steel, used for the transmission of power, of not more than two-inch pitch and containing more than three parts per pitch, and parts thereof, finished or unfinished, 40 per centum ad valorem; all other chains used for the transmission of power, and parts thereof, 35 per centum ad valorem; anchor or stud link chain, two inches or more in diameter  $1\frac{1}{2}$  cents per pound; less than two inches in diameter, 2 cents per pound: *Provided*, That all articles manufactured wholly or in chief value of chain shall not be subject to a lower rate of duty than that imposed upon the chain of which it is made, or of which chain is the component material of chief value.

PAR. 330. Nuts, nut blanks, and washers, of wrought iron or steel, six-tenths of 1 cent per pound; bolts, with or without threads or nuts, and bolt blanks, of iron or steel, 1 cent per pound; spiral nut locks, and lock washers, of iron or steel, 35 per centum ad valorem.

PAR. 331. Cut nails and cut spikes, of iron or steel, exceeding two inches in length, four-tenths of 1 cent per pound; cut tacks and brads, hobnails and cut nails, of iron or steel, not exceeding two inches in length, 15 per centum ad valorem; horseshoe nails, and other iron or steel nails, not specially provided for,  $1\frac{1}{2}$  cents per pound; upholsterers' nails, chair glides, and thumb tacks, of two or more pieces of iron or steel, finished or unfinished, 3 cents per pound; nails, spikes, tacks, brads, and staples, made of iron or steel wire, not less than one inch in length nor smaller than sixty-five one-thousandths of one inch in diameter, four-tenths of 1 cent per pound; less than one inch in length and smaller than sixty-five one-thousandths of one inch in diameter, three-fourths of 1 cent per pound; staples, in strip form, for use in paper fasteners or stapling machines, 2 cents per pound; spikes, tacks, brads, and staples, not specially provided for, six-tenths of 1 cent per pound.

PAR. 332. Rivets, studs, and steel points, lathed, machined, or brightened, and rivets or studs for non-skidding automobile tires, 30 per centum ad valorem; rivets of iron or steel, not specially provided for, 1 cent per pound.

PAR. 333. Common horse, mule, or ox shoes, of wrought iron or steel, one-fifth of 1 cent per pound; horse, mule, or ox shoes, punched, drilled or tapped, of wrought iron or steel, for use with adjustable wrought-iron or steel skid calks, and solid drop-forged calked shoes of wrought iron or steel, 1 cent per pound.



PAR. 334. Steel wool, 10 cents per pound; steel shavings, 5 cents per pound; and in addition thereto, on all the foregoing, 30 per centum ad valorem.

PAR. 335. Grit, shot, and sand of iron or steel, in any form, three-fourths of 1 cent per pound.

PAR. 336. Corset clasps, corset steels, and dress steels, whether plain or covered with cotton, silk, or other material, 35 per centum ad valorem.

PAR. 337. Card clothing not actually and permanently fitted to and attached to carding machines or to parts thereof at the time of importation, when manufactured with round iron or untempered round steel wire, 20 per centum ad valorem; when manufactured with tempered round steel wire, or with plated wire, or other than round iron or steel wire, or with felt face, wool face, or rubber-face cloth containing wool, 45 per centum ad valorem.

PAR. 338. Screws, commonly called wood screws, of iron or steel, 25 per centum ad valorem.

PAR. 339. Table, household, kitchen, and hospital utensils, and hollow or flat ware, not specially provided for: Plated with platinum or gold, 65 per centum ad valorem; plated with silver, 50 per centum ad valorem; composed of iron or steel and enameled or glazed with vitreous glasses, 5 cents per pound and 30 per centum ad valorem; composed wholly or in chief value of aluminum,  $8\frac{1}{2}$  cents per pound and 40 per centum ad valorem; composed wholly or in chief value of copper, brass, steel, or other base metal, not plated with platinum, gold, or silver, and not specially provided for, 40 per centum ad valorem; the foregoing rates shall apply to the foregoing articles whether or not containing electrical heating elements as constituent parts thereof.

PAR. 340. Crosscut saws, mill saws, pit and drag saws, circular saws, steel band saws, finished or further advanced than tempered and polished, hand, back, and all other saws, not specially provided for, 20 per centum ad valorem; jewelers' or piercing saws, 40 cents per gross.

PAR. 341. Steel plates, stereotype plates, electrotype plates, half-tone plates, photogravure plates, photo-engraved plates, and plates of other materials, engraved or otherwise prepared for printing, and plates of iron or steel engraved or fashioned for use in the production of designs, patterns, or impressions on glass in the process of manufacturing plate or other glass, 25 per centum ad valorem; lithographic plates of stone or other material engraved, drawn, or prepared, 25 per centum ad valorem.

PAR. 342. Umbrella and parasol ribs and stretchers composed wholly or in chief value of iron, steel, or other metal, in frames or otherwise, and tubes for umbrellas, wholly or partly finished, 60 per centum ad valorem.

PAR. 343. Needles for knitting, sewing, shoe, or embroidery machines of every description, not specially provided for, and crochet needles or hooks, \$1.15 per thousand and 40 per centum ad valorem; spring-beard needles, \$1.50 per thousand and 50 per centum ad valorem; latch needles, \$2 per thousand and 60 per centum ad valorem; tape, knitting, and all other needles, not specially provided for, bodkins of metal, and needle cases or needle books furnished with as-

sortments of needles or combinations of needles and other articles, 45 per centum ad valorem.

PAR. 344. Cylindrical steel rolls ground and polished, valued at 25 cents per pound or over, 25 per centum ad valorem; any of the foregoing containing more than one-tenth of 1 per centum of vanadium, or more than two-tenths of 1 per centum of tungsten, molybdenum, or chromium, 40 per centum ad valorem.

PAR. 345. Saddlery and harness hardware: Buckles, rings, snaps, bits, swivels, and all other articles of iron, steel, brass, composition, or other metal, not plated with gold or silver, commonly or commercially known as harness hardware, 35 per centum ad valorem; all articles of iron, steel, brass, composition, or other metal, not plated with gold or silver, commonly or commercially known as saddlery or riding bridle hardware, 50 per centum ad valorem; all the foregoing, if plated with gold or silver, 60 per centum ad valorem.

PAR. 346. Belt buckles, trouser buckles, and waistcoat buckles, shoe or slipper buckles, and parts thereof, made wholly or partly of iron, steel, or other base metal, valued at not more than 20 cents per hundred, 5 cents per hundred; valued at more than 20 and not more than 50 cents per hundred, 10 cents per hundred; valued at more than 50 cents and not more than \$1.66 $\frac{2}{3}$  per hundred, 15 cents per hundred; and in addition thereto, on all the foregoing, 20 per centum ad valorem.

PAR. 347. Hooks and eyes, wholly or in chief value of metal, whether loose, carded, or otherwise, including weight of cards, cartons, and immediate wrappings and labels,  $4\frac{1}{2}$  cents per pound and 25 per centum ad valorem.

PAR. 348. Snap fasteners and clasps, and parts thereof, by whatever name known, or of whatever material composed, not plated with gold, silver, or platinum; all the foregoing, valued at not more than \$1.66 $\frac{2}{3}$  per hundred: If not mounted on tape, 55 per centum ad valorem; mounted on tape, including sew-on fasteners, 60 per centum ad valorem.

PAR. 349. Metal trouser buttons (except steel) and nickel bar buttons, one-twelfth of 1 cent per line per gross; steel trouser buttons, one-fourth of 1 cent per line per gross; buttons of metal, not specially provided for, three-fourths of 1 cent per line per gross; and in addition thereto, on all the foregoing, 15 per centum ad valorem; metal buttons embossed with a design, device, pattern, or lettering, 45 per centum ad valorem: *Provided*, That the term "line" as used in this paragraph shall mean the line button measure of one-fortieth of one inch.

PAR. 350. Pins with solid heads, without ornamentation, including hair, safety, hat, bonnet, and shawl pins; and brass, copper, iron, steel, or other base metal pins, with heads of glass, paste, or fusible enamel; all the foregoing not plated with gold or silver, and not commonly known as jewelry, 35 per centum ad valorem.

PAR. 351. Pens, not specially provided for, of plain or carbon steel, 15 cents per gross; wholly or in part of other metal, 18 cents per gross; any of the foregoing with nib and barrel in one piece, 20 cents per gross.

PAR. 352. Twist and other drills, reamers, milling cutters, taps, dies, die heads, and metal-cutting tools of all descriptions, and cutting edges or parts for use in such tools, composed of steel or substitutes for steel, all the foregoing, if suitable for use in cutting metal, not specially provided for, 50 per centum ad valorem; cutting tools of any kind containing more than one-tenth of 1 per centum of vanadium, or more than two-tenths of 1 per centum of tungsten, molybdenum, or chromium, 60 per centum ad valorem. The foregoing rates shall apply whether or not the articles are imported separately or as parts of or attached to machines, but shall not apply to holding or operating devices.

PAR. 353. All articles suitable for producing, rectifying, modifying, controlling, or distributing electrical energy;

electrical telegraph (including printing and type-writing), telephone, signaling, radio, welding, ignition, wiring, therapeutic, and X-ray apparatus, instruments (other than laboratory), and devices; and

articles having as an essential feature an electrical element or device, such as electric motors, fans, locomotives, portable tools, furnaces, heaters, ovens, ranges, washing machines, refrigerators, and signs;

all the foregoing, and parts thereof, finished or unfinished, wholly or in chief value of metal, and not specially provided for, 35 per centum ad valorem.

PAR. 354. Penknives, pocketknives, clasp knives, pruning knives, budding knives, erasers, manicure knives, and all knives by whatever name known, including such as are denominatively mentioned in this chapter, which have folding or other than fixed blades or attachments, valued at not more than 40 cents per dozen,  $1\frac{1}{4}$  cents each and 50 per centum ad valorem; valued at more than 40 and not more than 50 cents per dozen, 5 cents each and 50 per centum ad valorem; valued at more than 50 cents and not more than \$1.25 per dozen, 11 cents each and 55 per centum ad valorem; valued at more than \$1.25 and not more than \$3 per dozen, 18 cents each and 55 per centum ad valorem; valued at more than \$3 and not more than \$6 per dozen, 25 cents each and 50 per centum ad valorem; valued at more than \$6 per dozen, 35 cents each and 55 per centum ad valorem; blades, handles, or other parts of any of the foregoing knives or erasers shall be dutiable at not less than the rate herein imposed upon knives and erasers valued at more than 50 cents and not exceeding \$1.25 per dozen; cuticle knives, corn knives, nail files, tweezers, manicure or pedicure nippers, and parts thereof, finished or unfinished, by whatever name known, 60 per centum ad valorem: *Provided*, That any of the foregoing, if imported in the condition of assembled, but not fully finished, shall be dutiable at not less than the rate of duty herein imposed upon fully finished articles of the same material and quality, but not less in any case than 15 cents each and 55 per centum ad valorem: *Provided further*, That all the articles specified in this paragraph, when imported, shall have the name of the maker or purchaser and beneath the same the name of the country of origin die sunk conspicuously and indelibly on the shank or tang of at least one or, if practicable, each and every blade thereof.

PAR. 355. Table, butchers', carving, cooks', hunting, kitchen, bread, cake, pie, slicing, cigar, butter, vegetable, fruit, cheese, canning, fish, carpenters' bench, curriers', drawing, farriers', fleshing, hay, sugar-beet, beet-topping, tanners', plumbers', painters', palette, artists', shoe, and similar knives, forks, and steels, and cleavers, all the foregoing, finished or unfinished, not specially provided for, with handles of mother-of-pearl, shell, ivory, deer, or other animal horn, silver, or other metal than aluminum, nickel silver, iron or steel, 16 cents each; with handles of hard rubber, solid bone, celluloid, or any pyroxylin, casein, or similar material, 8 cents each; with handles of any other material, if less than four inches in length, exclusive of handle, 2 cents each; if four inches in length or over, exclusive of handle, 8 cents each; any of the foregoing without handles, with blades less than six inches in length, 2 cents each; with blades six inches or more in length, 8 cents each; and in addition thereto, on all the foregoing, 45 per centum ad valorem: *Provided*, That all articles specified in this paragraph when imported, shall have the name of the maker or purchaser and beneath the same the name of the country of origin die sunk legibly and indelibly upon the blade in a place that shall not be covered.

PAR. 356. Planing-machine knives, tannery and leather knives, tobacco knives, paper and pulp mill knives, roll bars, bed plates, and all other stock-treating parts for pulp and paper machinery, shear blades, circular cloth cutters, circular cork cutters, circular cigarette cutters, meat-slicing cutters, and all other cutting knives and blades used in power or hand machines, 20 per centum ad valorem.

PAR. 357. Nail, barbers', and animal clippers, pruning and sheep shears, and all scissors and other shears, and blades for the same, finished or unfinished, valued at not more than 50 cents per dozen,  $3\frac{1}{2}$  cents each and 45 per centum ad valorem; valued at more than 50 cents and not more than \$1.75 per dozen, 15 cents each and 45 per centum ad valorem; valued at more than \$1.75 per dozen, 20 cents each and 45 per centum ad valorem: *Provided*, That all articles specified in this paragraph, when imported, shall have die sunk conspicuously and indelibly, the name of the maker or purchaser and beneath the same the name of the country of origin, to be placed on the outside of the blade, between the screw or rivet and the handle of scissors and shears (except pruning and sheep shears), and on the blade or handle of pruning and sheep shears and clippers.

PAR. 358. Safety razors and safety-razor handles and frames, 10 cents each and 30 per centum ad valorem; razors and parts thereof, finished or unfinished, valued at less than 75 cents per dozen, 18 cents each; valued at 75 cents and less than \$1.50 per dozen, 25 cents each; valued at \$1.50 and less than \$3 per dozen, 30 cents each; valued at \$3 and less than \$4 per dozen, 35 cents each; valued at \$4 or more per dozen, 45 cents each; and in addition thereto, on all the foregoing, 30 per centum ad valorem; blades for safety razors, in strips, one-half of 1 cent each and 30 per centum ad valorem; all other, finished or unfinished, 1 cent each and 30



per centum ad valorem: *Provided*, That all articles specified in this paragraph, when imported, shall have the name of the maker or purchaser and beneath the same the name of the country of origin die sunk conspicuously and indelibly on the blade or shank or tang of each and every blade and on safety razors and parts thereof.

PAR. 359. Surgical instruments, and parts thereof, including hypodermic needles, hypodermic syringes, and forceps, composed wholly or in part of iron, steel, copper, brass, nickel, aluminum, or other metal, finished or unfinished, 55 per centum ad valorem, unless in chief value of glass, in which case the rate shall be 70 per centum ad valorem; dental instruments, and parts thereof, including hypodermic needles, hypodermic syringes, and forceps, wholly or in part of iron, steel, copper, brass, nickel, aluminum, or other metal, finished or unfinished, 35 per centum ad valorem, unless in chief value of glass, in which case the rate shall be 60 per centum ad valorem: *Provided*, That all articles specified in this paragraph, when imported, shall have the name of the maker or purchaser and beneath the same the name of the country of origin die sunk conspicuously and indelibly on the outside, or if a jointed instrument on the outside when closed.

PAR. 360. Scientific and laboratory instruments, apparatus, utensils, appliances (including surveying and mathematical instruments), and parts thereof, wholly or in chief value of metal, and not plated with gold, silver, or platinum, finished or unfinished, not specially provided for, 40 per centum ad valorem; drawing instruments, and parts thereof, wholly or in chief value of metal, 45 per centum ad valorem: *Provided*, That all articles specified in this paragraph, when imported, shall have the name of the maker or purchaser and beneath the same the name of the country of origin die sunk conspicuously and indelibly on the outside, or if a jointed instrument on the outside when closed.

PAR. 361. Slip-joint pliers, 60 per centum ad valorem; other pliers, pincers, and nippers, and hinged hand tools for holding and splicing wire, finished or unfinished, valued at not more than \$2 per dozen, 5 cents each and 60 per centum ad valorem; valued at more than \$2 per dozen, 10 cents each and 60 per centum ad valorem: *Provided*, That all articles specified in this paragraph, when imported, shall have the name of the maker or purchaser and beneath the same the name of the country of origin die sunk conspicuously and indelibly on the outside of the joint.

PAR. 362. Files, file blanks, rasps, and floats, of whatever cut or kind, two and one-half inches in length and under, 25 cents per dozen; over two and one-half and not over four and one-half inches in length, 47½ cents per dozen; over four and one-half and under seven inches in length, 62½ cents per dozen; seven inches in length and over, 77½ cents per dozen.

PAR. 363. Sword blades, and swords and side arms, irrespective of quality or use, wholly or in part of metal, 50 per centum ad valorem.

PAR. 364. Bells (except church and similar bells and carillons), finished or unfinished, and parts thereof, 50 per centum ad valorem.

PAR. 365. Shotguns, rifles, and combination shotguns and rifles, valued at not more than \$5 each, \$1.50 each; valued at more than \$5 and not more than \$10 each, \$4 each; valued at more than \$10 and not more than \$25 each, \$6 each; valued at more than \$25 and not more than \$50 each, \$10 each; valued at more than \$50 each, 20 per centum ad valorem; and in addition thereto, on all the foregoing, 45 per centum ad valorem; barrels for shotguns and rifles, further advanced in manufacture than rough bored only, \$4 each; stocks for shotguns and rifles, wholly or partly manufactured, \$5 each; and in addition thereto, on all the foregoing, 50 per centum ad valorem; on all parts of such guns or rifles, and fittings for such stocks or barrels, finished or unfinished, 55 per centum ad valorem: *Provided*, That all shotguns and rifles imported without a lock or locks or other fittings shall be subject to a duty of \$10 each and 55 per centum ad valorem. Shotgun barrels, in single tubes, forged, rough bored, 10 per centum ad valorem.

PAR. 366. Pistols and revolvers: Automatic, single-shot, magazine, or revolving, valued at not more than \$4 each, \$2 each; valued at more than \$4 and not more than \$8 each, \$2.50 each; valued at more than \$8 each, \$3.50 each; parts thereof and fittings therefor, 50 per centum ad valorem; and in addition thereto, on all the foregoing, 55 per centum ad valorem.

PAR. 367. (a) Watch movements, and time-keeping, time-measuring, or time-indicating mechanisms, devices, and instruments, whether or not designed to be worn or carried on or about the person, all the foregoing, if less than one and seventy-seven one-hundredths inches wide, whether or not in cases, containers, or housings:

(1) If more than one and one-half inches wide, \$1.25 each; if more than one and two-tenths inches but not more than one and one-half inches wide, \$1.40 each; if more than one inch but not more than one and two-tenths inches wide, \$1.55 each; if more than nine-tenths of one inch but not more than one inch wide, \$1.75 each; if more than eight-tenths of one inch but not more than nine-tenths of one inch wide, \$2 each; if more than six-tenths of one inch but not more than eight-tenths of one inch wide, \$2.25 each; if six-tenths of one inch or less wide, \$2.50 each;

(2) in the case of any of the foregoing having no jewels or only one jewel, the above rates shall be reduced by 40 per centum;

(3) any of the foregoing having more than seven jewels shall be subject to an additional duty of 15 cents for each jewel in excess of seven;

(4) any of the foregoing shall be subject to an additional duty of \$1 for each adjustment of whatever kind (treating adjustment to temperature as two adjustments) in accordance with the marking as hereinafter provided;

(5) any of the foregoing shall be subject to an additional duty of \$1 each, if constructed or designed to operate for a period in excess of forty-seven hours

without rewinding, or if self-winding, or if a self-winding device may be incorporated therein;

(6) any of the foregoing having more than seventeen jewels, whether adjusted or unadjusted, and whether with or without dials, shall, in lieu of the duties provided in clauses (1), (2), (3), (4), and (5), be subject to a duty of \$10.75 each.

(b) All the foregoing shall have cut, engraved, or die sunk, conspicuously and indelibly on one or more of the top plates or bridges: The name of the country of manufacture; the name of the manufacturer or purchaser; in words and in Arabic numerals the number of jewels, if any, serving a mechanical purpose as frictional bearings; and, in words and in Arabic numerals, the number and classes of adjustments, or, if unadjusted, the word "unadjusted."

(c) Parts for any of the foregoing shall be dutiable as follows:

(1) Parts (except pillar or bottom plates, or their equivalent, bridges or their equivalent, and jewels) imported in the same shipment with complete movements, mechanisms, devices, or instruments, provided for in subparagraph (a) of this paragraph (whether or not suitable for use in such movements, mechanisms, devices, or instruments), 45 per centum ad valorem; but this clause of this subparagraph shall not be applicable to that portion of all the parts in the shipment which exceeds in value 4 per centum of the value of such complete movements, mechanisms, devices, or instruments;

(2) pillar or bottom plates, or their equivalent, shall be subject to one-half the amount of duty which would be borne by the complete movement, mechanism, device, or instrument for which suitable;

(3) each assembly or subassembly (unless dutiable under clause (1) of this subparagraph) consisting of two or more parts or pieces of metal or other material joined or fastened together shall be subject to a duty of 3 cents for each such part or piece of material, except that in the case of jewels the duty shall be 15 cents instead of 3 cents, and except that in the case of pillar or bottom plates or their equivalent the duty shall be the rate provided in clause (2) of this subparagraph instead of 3 cents, and except that in the case of a balance assembly the duty shall be 50 cents for the assembly instead of 3 cents for each part or piece thereof. No assembly or subassembly shall be subject to a greater amount of duty than would be borne by the complete movement, mechanism, device, or instrument for which suitable, nor to a less rate of duty than 45 per centum ad valorem. For the purpose of this clause a balance assembly shall be an assembly consisting of a balance wheel, balance staff, and hairspring, with or without the other parts commercially known as parts of a balance assembly. For the purpose of this clause bimetallic balance wheels (not part of a balance assembly), and mainsprings with riveted ends, shall each be considered as one part or piece;

(4) all other parts (except jewels), 65 per centum ad valorem.

(d) Jewels, suitable for use in any movement, mechanism, device, or instrument, dutiable under

this paragraph or paragraph 368, or in any meter or compass, 10 per centum ad valorem.

(e) Dials for any of the foregoing movements, mechanisms, devices, or instruments, if such dials are less than one and seventy-seven one-hundredths inches wide and are imported separately, 5 cents each and 45 per centum ad valorem. Dials for any of the movements, mechanisms, devices, or instruments provided for in this paragraph, whether or not attached thereto, shall have stamped, cut, engraved, or die sunk, conspicuously and indelibly thereon the name of the country of manufacture; which marking, if the dial is imported attached to any of the foregoing movements, mechanisms, devices, or instruments, shall be placed on the face of the dial in such manner as not to be obscured by any part of the case, container, or housing.

(f) All cases, containers, or housings, designed or suitable for the enclosure of any of the foregoing movements, mechanisms, devices, or instruments, whether or not containing such movements, mechanisms, devices, or instruments, and whether finished or unfinished, complete or incomplete, except such containers as are used for shipping purposes only:

(1) If made of gold or platinum, 75 cents each and 45 per centum ad valorem;

(2) if in part of gold, silver, or platinum, or wholly of silver, 40 cents each and 45 per centum ad valorem;

(3) if set with precious, semiprecious, or imitation precious, or imitation semiprecious stones, or if prepared for the setting of such stones, 40 cents each and 45 per centum ad valorem;

(4) if of base metal (and not containing gold, silver, or platinum), 20 cents each and 45 per centum ad valorem;

(5) any of the foregoing cases, containers, or housings, if enameled, shall be subject to an additional duty of 15 per centum ad valorem.

(g) Any of the foregoing cases, containers, or housings, shall have cut, engraved, or die sunk, conspicuously and indelibly on the inside of the back cover, the name in full of the manufacturer or purchaser and the name of the country of manufacture.

(h) For the purposes of this paragraph the width of any movement, mechanism, device, or instrument, shall be the shortest surface dimension through the center of the pillar or bottom plate, or its equivalent, not including in the measurement any portion not essential to the functioning of the movement, mechanism, device, or instrument.

(i) For the purposes of this paragraph and paragraph 368 the term "jewel" includes substitutes for jewels.

(j) An article required by this paragraph to be marked shall be denied entry unless marked in exact conformity with the requirements of this paragraph.

PAR. 368. (a) Clocks, clock movements, including lever movements, clockwork mechanisms, time-keeping, time-measuring, or time-indicating mechanisms, devices, and instruments, synchronous and subsynchronous motors of less than one-fortieth of one horsepower valued at not more than \$3 each, not including the value of gears or other attachments, and any mechanism, device, or instrument intended

or suitable for measuring time, distance, speed, or fares, or the flowage of water, gas, or electricity, or similar uses, or for regulating, indicating, or controlling the speed of arbors, drums, disks, or similar uses, or for recording or indicating time, or for recording, indicating, or performing any operation or function at a predetermined time or times, all the above (except the articles enumerated or described in paragraph 367), whether or not in cases, containers, or housings:

(1) If valued at not more than \$1.10 each, 55 cents each; valued at more than \$1.10 but not more than \$2.25 each, \$1 each; valued at more than \$2.25 but not more than \$5 each, \$1.50 each; valued at more than \$5 but not more than \$10 each, \$3 each; valued at more than \$10 each, \$4.50 each;

(2) any of the foregoing shall be subject to an additional duty of 65 per centum ad valorem;

(3) any of the foregoing containing jewels shall be subject to an additional cumulative duty of 25 cents for each such jewel.

(b) All the foregoing shall have cut, engraved, or die sunk, conspicuously and indelibly on the most visible part of the front or back plate: The name of the country of manufacture; the name of the manufacturer or purchaser; and the number of jewels, if any. If such markings are in whole or in part sufficiently similar to the trade name or trade mark of an established American manufacturer as to be liable to deceive the user in the United States, entry thereof shall be denied, if such trade name or trade mark has been placed on file with the collector of customs.

(c) Parts for any of the foregoing shall be dutiable as follows:

(1) Parts (except plates provided for in clause (2) of this subparagraph, and jewels) imported in the same shipment with complete movements, mechanisms, devices, or instruments, provided for in subparagraph (a) of this paragraph (whether or not suitable for use in such movements, mechanisms, devices, or instruments), 45 per centum ad valorem; but this clause of this subparagraph shall not be applicable to that portion of all the parts in the shipment which exceeds in value  $1\frac{1}{2}$  per centum of the value of such complete movements, mechanisms, devices, or instruments;

(2) a plate suitable for assembling thereon the clockwork mechanism constituting or contained in any of the foregoing movements, mechanisms, devices, or instruments, shall be subject to one-half the amount of duty which would be borne by the complete movement, mechanism, device, or instrument for which suitable. If two or more such plates are imported together they shall be dutiable as one plate if they are necessary, as a set, for such assembling;

(3) each assembly or subassembly (unless dutiable under clause (1) or (4) of this subparagraph) consisting of two or more parts or pieces of metal or other material joined or fastened together shall be subject to a duty of 65 per centum ad valorem and, in addition, to a duty of 3 cents for each such part or piece of material, except that in the case of jewels the specific duty shall be 25 cents instead of 3 cents. For the purpose of this clause and clause (4), bi-

metallic balance wheels, and main springs with riveted ends, shall each be considered as one part or piece;

(4) each assembly or subassembly consisting in part of a plate or plates provided for in clause (2) of this subparagraph shall be subject to the rate of duty provided for such plate or plates, and, in addition, to a duty of 5 cents for each part or piece of material (except such plate or plates) in such assembly or subassembly, except that in the case of jewels the specific duty shall be 25 cents instead of 5 cents;

(5) no assembly or subassembly shall be subject to a greater amount of duty than would be borne by the complete movement, mechanism, device, or instrument for which suitable;

(6) all other parts (except jewels), 65 per centum ad valorem.

(d) Dials for any movements, mechanisms, devices, or instruments enumerated or described in this paragraph or in paragraph 367 (except dials specifically provided for in paragraph 367), when imported separately, 50 per centum ad valorem. All such dials (whether imported separately or attached to any of the foregoing) shall have stamped, cut, engraved, or die sunk, conspicuously and indelibly thereon the name of the country of manufacture; which marking, if the dial is imported attached to any of the foregoing movements, mechanisms, devices, or instruments, shall be placed on the face of the dial in such manner as not to be obscured by any part of the case, container, or housing.

(e) Cases, containers, or housings suitable for any of the movements, mechanisms, devices, or instruments enumerated or described in this paragraph, not specially provided for, when imported separately, 45 per centum ad valorem. Any such case, container, or housing, whether imported separately or attached to any of the foregoing movements, mechanisms, devices, or instruments, shall have stamped, cut, engraved, or die sunk, conspicuously and indelibly on the back thereof, the name of the country of manufacture.

(f) An article required by this paragraph to be marked shall be denied entry unless marked in exact conformity with the requirements of this paragraph.

(g) Taximeters and parts thereof, finished or unfinished, 85 per centum ad valorem.

PAR. 369. (a) Automobile trucks valued at \$1,000 or more each, automobile-truck and motor-bus chassis valued at \$750 or more each, automobile-truck bodies valued at \$250 or more each, motor busses designed for the carriage of more than ten persons, and bodies for such busses, all the foregoing, whether finished or unfinished, 25 per centum ad valorem.

(b) All other automobiles, automobile chassis, and automobile bodies, and motorcycles, all the foregoing, whether finished or unfinished, 10 per centum ad valorem.

(c) Parts (except tires and except parts wholly or in chief value of glass) for any of the articles enumerated in subparagraph (a) or (b), finished or unfinished, not specially provided for, 25 per centum ad valorem.

PAR. 370. Airplanes, hydroplanes, motorboats, and parts of the foregoing, 30 per centum ad valorem.

The term "motorboat", when used in this chapter, includes a yacht or pleasure boat, regardless of length or tonnage, whether sail, steam, or motor propelled, owned by a resident of the United States or brought into the United States for sale or charter to a resident thereof, whether or not such yacht or boat is brought into the United States under its own power, but does not include a yacht or boat used or intended to be used in trade or commerce, nor a yacht or boat built, or for the building of which a contract was entered into, prior to December 1, 1927.

PAR. 371. Bicycles, and parts thereof, not including tires, 30 per centum ad valorem.

PAR. 372. Reciprocating steam engines and steam locomotives, 15 per centum ad valorem; sewing machines, not specially provided for, valued at not more than \$75 each, 15 per centum ad valorem; valued at more than \$75 each, 30 per centum ad valorem; steam turbines, 20 per centum ad valorem; cash registers, 25 per centum ad valorem; printing machinery (except for textiles), bookbinding machinery, and paper-box machinery, 25 per centum ad valorem; lawn mowers and machine tools, 30 per centum ad valorem; embroidery machines, including shuttles for sewing and embroidery machines, lace-making machines, machines for making lace curtains, nets and nettings, 30 per centum ad valorem; knitting, braiding, lace braiding, and insulating machines, and all other similar textile machinery, finished or unfinished, not specially provided for, 40 per centum ad valorem; all other textile machinery, finished or unfinished, not specially provided for, 40 per centum ad valorem; cream separators valued at more than \$50 each, and other centrifugal machines for the separation of liquids or liquids and solids, not specially provided for, 25 per centum ad valorem; combined adding and typewriting machines, 30 per centum ad valorem; apparatus for the generation of acetylene gas from calcium carbide, 20 per centum ad valorem; machines for cutting or hobbing gears, 40 per centum ad valorem; punches, shears, and bar cutters, intended for use in fabricating structural or other rolled iron or steel shapes, 40 per centum ad valorem; all other machines, finished or unfinished, not specially provided for, 27½ per centum ad valorem: *Provided*, That parts, not specially provided for, wholly or in chief value of metal or porcelain, of any of the foregoing, shall be dutiable at the same rate of duty as the articles of which they are parts: *Provided further*, That machine tools as used in this paragraph shall be held to mean any machine operating other than by hand power which employs a tool for work on metal.

PAR. 373. Shovels, spades, scoops, forks, hoes, rakes, scythes, sickles, grass hooks, corn knives, and drainage tools, and parts thereof, composed wholly or in chief value of metal, whether partly or wholly manufactured, 30 per centum ad valorem.

PAR. 374. Aluminum, aluminum scrap, and alloys (except those provided for in paragraph 302) in which aluminum is the component material of chief value, in crude form, 4 cents per pound; in coils, plates, sheets, bars, rods, circles, disks, blanks, strips, rectangles, and squares, 7 cents per pound.

PAR. 375. Metallic magnesium and metallic magnesium scrap, 40 cents per pound; magnesium alloys, powder, sheets, ribbons, tubing, wire, and all other articles, wares, or manufactures of magnesium, not specially provided for, 40 cents per pound on the metallic magnesium content and 20 per centum ad valorem.

PAR. 376. Antimony, as regulus or metal, 2 cents per pound; needle or liquated antimony, one-fourth of 1 cent per pound.

PAR. 377. Bismuth, 7½ per centum ad valorem.

PAR. 378. Cadmium, 15 cents per pound.

PAR. 379. Metallic arsenic, 6 cents per pound.

PAR. 380. German silver, or nickel silver, unmanufactured, 29 per centum ad valorem; nickel silver sheets, strips, rods, and wire, 30 per centum ad valorem.

PAR. 381. Copper in rolls, rods, or sheets, 2½ cents per pound; copper engravers' plates, not ground, and seamless copper tubes and tubing, 7 cents per pound; copper engravers' plates, ground, and brazed copper tubes, 11 cents per pound; brass rods, sheet brass, brass plates, bars, and strips, Muntz or yellow metal sheets, sheathing, bolts, piston rods, and shafting, 4 cents per pound; seamless brass tubes and tubing, 8 cents per pound; brazed brass tubes, brass angles and channels, 12 cents per pound; bronze rods and sheets, 4 cents per pound; bronze tubes, 8 cents per pound.

PAR. 382. (a) Tin foil less than six one-thousandths of one inch in thickness, 35 per centum ad valorem; aluminum foil less than six one-thousandths of one inch in thickness, 40 per centum ad valorem; bronze powder not of aluminum, 14 cents per pound; aluminum bronze powder, powdered foil, powdered tin, flitters, and metallics, manufactured in whole or in part, 12 cents per pound; bronze, or Dutch metal, or aluminum, in leaf, 6 cents per one hundred leaves; bronze powder, or Dutch metal powder, or aluminum powder, in leaf, 6 cents per one hundred leaves and 10 per centum ad valorem. The foregoing rates on leaf apply to leaf not exceeding in size the equivalent of five and one-half by five and one-half inches; additional duties in the same proportion shall be assessed on leaf exceeding in size said equivalent.

(b) Stamping and embossing materials of bronze powder, or Dutch metal powder, or aluminum powder, mounted on paper or equivalent backing, and releasable from the backing by means of heat and pressure, three-eighths of 1 cent per one hundred square inches.

PAR. 383. (a) Gold leaf, unmounted, 82½ cents per one hundred leaves. The foregoing rate applies to leaf not exceeding in size the equivalent of three and three-eighths by three and three-eighths inches; additional duties in the same proportion shall be assessed on leaf exceeding in size said equivalent. Gold leaf, mounted on paper or equivalent backing, 6¾ cents per one hundred square inches and 25 per centum ad valorem.

(b) Silver leaf, 5 cents per one hundred leaves.

PAR. 384. Cabinet locks, not of pin tumbler or cylinder construction, not over one and one-half inches in width, 70 cents per dozen; over one and one-half and not over two and one-half inches in width, \$1

per dozen; over two and one-half inches in width, \$1.50 per dozen; padlocks, not of pin tumbler or cylinder construction, not over one and one-half inches in width, 35 cents per dozen; over one and one-half and not over two and one-half inches in width, 50 cents per dozen; over two and one-half inches in width, 75 cents per dozen; padlocks of pin tumbler or cylinder construction, not over one and one-half inches in width, \$1 per dozen; over one and one-half and not over two and one-half inches in width, \$1.50 per dozen; over two and one-half inches in width, \$2 per dozen; all other locks or latches of pin tumbler or cylinder construction, \$2 per dozen; and in addition thereto, on all the foregoing, 20 per centum ad valorem.

PAR. 385. Tinsel wire, made wholly or in chief value of gold, silver, or other metal, 6 cents per pound and 10 per centum ad valorem; lame or lahn, made wholly or chief value of gold, silver, or other metal, 6 cents per pound and 20 per centum ad valorem; bullions and metal threads made wholly or in chief value of tinsel wire, lame or lahn, 6 cents per pound and 35 per centum ad valorem; beltings and other articles made wholly or in chief value of tinsel wire, metal thread, lame or lahn, or of tinsel wire, lame or lahn and india rubber, bullions, or metal threads, not specially provided for, 45 per centum ad valorem; woven fabrics, ribbons, fringes, and tassels, made wholly or in chief value of any of the foregoing, 55 per centum ad valorem.

PAR. 386. Quicksilver, 25 cents per pound: *Provided*, That the flasks, bottles, or other vessels in which quicksilver is imported shall be subject to the same rate of duty as they would be subjected to if imported empty.

PAR. 387. Phosphor-copper or phosphorus-copper, 3 cents per pound.

PAR. 388. New types, 30 per centum ad valorem.

PAR. 389. Nickel, and alloys (except those provided for in paragraph 302 or 380) in which nickel is the component material of chief value, in pigs or ingots, shot, cubes, grains, cathodes, or similar forms, 3 cents per pound; in bars, rods, plates, sheets, strips, strands, castings, wire, tubes, tubing, anodes, or electrodes, 25 per centum ad valorem; and in addition thereto, on all the foregoing, if cold rolled, cold drawn, or cold worked, 10 per centum ad valorem.

PAR. 390. Bottle caps of metal, collapsible tubes, and sprinkler tops, if not decorated, colored, waxed, lacquered, enameled, lithographed, electroplated, or embossed in color, 30 per centum ad valorem; if decorated, colored, waxed, lacquered, enameled, lithographed, electroplated, or embossed in color, 45 per centum ad valorem.

PAR. 391. Lead-bearing ores, flue dust, and mattes of all kinds,  $1\frac{1}{2}$  cents per pound on the lead contained therein: *Provided*, That such duty shall not be applied to the lead contained in copper, gold, or silver ores, or copper mattes, unless actually recovered: *Provided further*, That on all importations of lead-bearing ores, flue dust, and mattes, of all kinds the duties shall be estimated at the port of entry and a bond given in double the amount of such estimated duties for the transportation of the ores, flue dust, or mattes by common carriers bonded for the trans-

portation of appraised or unappraised merchandise to properly equipped sampling or smelting establishments, whether designated as bonded warehouses or otherwise. On the arrival of the ores, flue dust, or mattes at such establishments they shall be sampled according to commercial methods under the supervision of Government officers who shall be stationed at such establishments, and who shall submit the samples thus obtained to a Government assayer, designated by the Secretary of the Treasury, who shall make a proper assay of the sample and report the result to the proper customs officers, and the import entries shall be liquidated thereon. And the Secretary of the Treasury is authorized to make all necessary regulations to enforce the provisions of this paragraph.

PAR. 392. Lead bullion or base bullion, lead in pigs and bars, lead dross, reclaimed lead, scrap lead, antimonial lead, antimonial scrap lead, type metal, Babbitt metal, solder, all alloys or combinations of lead not specially provided for,  $2\frac{1}{2}$  cents per pound on the lead contained therein; lead in sheets, pipe, shot, glazier's lead, and lead wire,  $2\frac{3}{4}$  cents per pound.

PAR. 393. Zinc-bearing ores of all kinds, except pyrites containing not more than 3 per centum zinc,  $1\frac{1}{2}$  cents per pound on the zinc contained therein: *Provided*, That such duties shall not be applied to the zinc contained in lead or copper ores unless actually recovered: *Provided further*, That on all importations of zinc-bearing ores the duties shall be estimated at the port of entry, and a bond given in double the amount of such estimated duties for the transportation of the ores by common carriers bonded for the transportation of appraised or unappraised merchandise to properly equipped sampling or smelting establishments, whether designated as bonded warehouses or otherwise. On the arrival of the ores at such establishments they shall be sampled according to commercial methods under the supervision of Government officers, who shall be stationed at such establishments, and who shall submit the samples thus obtained to a Government assayer, designated by the Secretary of the Treasury, who shall make a proper assay of the sample and report the result to the proper customs officers, and the import entries shall be liquidated thereon. And the Secretary of the Treasury is authorized to make all necessary regulations to enforce the provisions of this paragraph.

PAR. 394. Zinc in blocks, pigs, or slabs, and zinc dust,  $1\frac{3}{4}$  cents per pound; in sheets, 2 cents per pound; in sheets coated or plated with nickel or other metal (except gold, silver, or platinum), or solutions,  $2\frac{1}{4}$  cents per pound; old and worn-out zinc, fit only to be remanufactured, zinc dross, and zinc skimmings,  $1\frac{1}{2}$  cents per pound.

PAR. 395. Print rollers, of whatever material composed, with raised patterns of brass or brass and felt, finished or unfinished, used for printing, stamping, or cutting designs, \$5 each and 72 per centum ad valorem; embossing rollers of steel or other metal, 30 per centum ad valorem; print blocks, and print rollers not specially provided for, of whatever material composed, used for printing, stamping, or cutting

designs, 60 per centum ad valorem: *Provided*, That the foregoing rates shall apply whether or not the articles are imported separately, or as parts of machines.

PAR. 396. Drills (including breast drills), bits, gimlets, gimlet-bits, countersinks, planes, chisels, gouges, and other cutting tools; pipe tools, wrenches, spanners, screwdrivers, bit braces, vises, and hammers; calipers, rules, and micrometers; all the foregoing, if hand tools not provided for in paragraph 352, and parts thereof, wholly or in chief value of metal, not specially provided for, 45 per centum ad valorem.

PAR. 397. Articles or wares not specially provided for, if composed wholly or in chief value of platinum, gold, or silver, and articles or wares plated with platinum, gold, or silver, or colored with gold lacquers, whether partly or wholly manufactured, 65 per centum ad valorem; if composed wholly or in chief value of iron, steel, lead, copper, brass, nickel, pewter, zinc, aluminum, or other metal, but not plated with platinum, gold, or silver, or colored with gold lacquer, whether partly or wholly manufactured, 45 per centum ad valorem.

PAR. 398. No allowance or reduction of duties for partial loss or damage in consequence of rust or of discoloration shall be made upon any description of iron or steel, or upon any article wholly or partly manufactured of iron or steel, or upon any manufacture of iron or steel.

#### SCHEDULE 4.—WOOD AND MANUFACTURES OF

PAR. 401. Timber hewn, sided, or squared, otherwise than by sawing, and round timber used for spars or in building wharves; sawed lumber and timber not specially provided for; all the foregoing, if of fir, spruce, pine, hemlock, or larch, \$1 per thousand feet, board measure, and in estimating board measure for the purposes of this paragraph no deduction shall be made on account of planing, tonguing, and grooving.

PAR. 402. Maple (except Japanese maple), birch, and beech: Flooring, 8 per centum ad valorem.

PAR. 403. Brier root or brier wood, ivy or laurel root, and similar wood, unmanufactured, or not further advanced than cut into blocks suitable for the articles into which they are intended to be converted, 10 per centum ad valorem.

PAR. 404. Cedar commercially known as "Spanish cedar", *lignumvitae*, lancewood, ebony, box, grana-dilla, mahogany, rosewood, satinwood, Japanese white oak, and Japanese maple: In the form of sawed boards, planks, deals, and all other forms not further manufactured than sawed, and flooring, 15 per centum ad valorem.

PAR. 405. Veneers of wood, 20 per centum ad valorem; plywood, 40 per centum ad valorem, and in addition thereto on birch and alder plywood, 10 per centum ad valorem; wood unmanufactured, not specially provided for, 20 per centum ad valorem.

PAR. 406. Hubs for wheels, heading bolts, stave bolts, last blocks, wagon blocks, oar blocks, heading blocks, and all like blocks or sticks, roughhewn, or rough shaped, sawed or bored, 10 per centum ad valorem.

PAR. 407. Casks, barrels, and hogsheads (empty), sugar-box shoocks, and packing boxes (empty), and

packing-box shoocks, of wood, not specially provided for, 15 per centum ad valorem.

PAR. 408. Boxes, barrels, and other articles containing oranges, lemons, limes, grapefruit, shaddocks or pomelos, 25 per centum ad valorem: *Provided*, That the thin wood, so called, comprising the sides, tops, and bottoms of fruit boxes of the growth or manufacture of the United States, exported as fruit-box shoocks, may be reimported in completed form, filled with fruit, by the payment of duty at one-half the rate imposed on similar boxes of entirely foreign growth and manufacture; but proof of the identity of such shoocks shall be made under regulations to be prescribed by the Secretary of the Treasury.

PAR. 409. Reeds wrought or manufactured from rattan or reeds, whether round, flat, split, oval, or in whatever form, cane wrought or manufactured from rattan, cane webbing, and split or partially manufactured rattan, not specially provided for, 20 per centum ad valorem. Furniture wholly or in chief value of rattan, reed, bamboo, osier or willow, malacca, grass, seagrass, or fiber of any kind, 60 per centum ad valorem; split bamboo, 1¼ cents per pound; osier or willow, including chip of and split willow, prepared for basket makers' use, 35 per centum ad valorem; all articles not specially provided for, wholly or partly manufactured of rattan, bamboo, osier or willow, 45 per centum ad valorem.

PAR. 410. Toothpicks of wood or other vegetable substance, 25 per centum ad valorem; butchers' and packers' skewers of wood, 25 cents per thousand.

PAR. 411. Porch and window blinds, baskets, bags, chair seats, curtains, shades, or screens, any of the foregoing wholly or in chief value of bamboo, wood, straw, papier-mâché, palm leaf, or compositions of wood, not specially provided for, 50 per centum ad valorem.

PAR. 412. Spring clothespins, 20 cents per gross; furniture, wholly or partly finished, and parts thereof, and folding rules, all the foregoing, wholly or in chief value of wood, and not specially provided for, 40 per centum ad valorem; wood moldings and carvings to be used in architectural and furniture decoration, 40 per centum ad valorem; bent-wood furniture, wholly or partly finished, and parts thereof, 47½ per centum ad valorem; paintbrush handles, wholly or in chief value of wood, 33⅓ per centum ad valorem; wood flour, and manufactures of wood or bark, or of which wood or bark is the component material of chief value, not specially provided for, 33⅓ per centum ad valorem.

#### SCHEDULE 5.—SUGAR, MOLASSES, AND MANUFACTURES OF

PAR. 501. Sugars, tank bottoms, sirups of cane juice, melada, concentrated melada, concrete and concentrated molasses, testing by the polariscope not above seventy-five sugar degrees, and all mixtures containing sugar and water, testing by the polariscope above fifty sugar degrees and not above seventy-five sugar degrees, 1.7125 cents per pound, and for each additional sugar degree shown by the polariscopic test, three hundred and seventy-five ten-thousandths of 1 cent per pound additional, and fractions of a degree in proportion.



PAR. 502. Molasses and sugar sirups, not specially provided for, testing not above 48 per centum total sugars, one-fourth of 1 cent per gallon; testing above 48 per centum total sugars, two hundred and seventy-five one-thousandths of 1 cent additional for each per centum of total sugars and fractions of a per centum in proportion. Molasses not imported to be commercially used for the extraction of sugar or for human consumption, three one-hundredths of 1 cent per pound of total sugars.

PAR. 503. Maple sugar, 8 cents per pound; maple sirup,  $5\frac{1}{2}$  cents per pound; dextrose testing not above 99.7 per centum and dextrose sirup, 2 cents per pound.

PAR. 504. Sugar cane in its natural state, \$2.50 per ton of two thousand pounds; sugar contained in dried sugar cane, or in sugar cane in any other than its natural state, 75 per centum of the rate of duty applicable to manufactured sugar of like polariscopic test.

PAR. 505. Adonite, arabinose, dulcitol, galactose, inositol, inulin, levulose, mannitol, d-talose, d-tagatose, ribose, melibiose, dextrose testing above 99.7 per centum, mannose, melezitose, raffinose, rhamnose, salicin, sorbitol, xylose, lactose, and other saccharides, 50 per centum ad valorem.

PAR. 506. Sugar candy and all confectionery not specially provided for, 40 per centum ad valorem; sugar after being refined, when tintured, colored, or in any way adulterated, 40 per centum ad valorem, but not less than the rate of duty provided in paragraph 501 for sugar of the same polariscopic test.

#### SCHEDULE 6.—TOBACCO AND MANUFACTURES OF

PAR. 601. Wrapper tobacco, and filler tobacco when mixed or packed with more than 35 per centum of wrapper tobacco, and all leaf tobacco the product of two or more countries or dependencies when mixed or packed together, if unstemmed, \$2.27½ per pound; if stemmed, \$2.92½ per pound; filler tobacco not specially provided for, if unstemmed, 35 cents per pound; if stemmed, 50 cents per pound.

PAR. 602. The term "wrapper tobacco" as used in this subtitle means that quality of leaf tobacco which has the requisite color, texture, and burn, and is of sufficient size for cigar wrappers, and the term "filler tobacco" means all other leaf tobacco. Collectors of customs shall permit entry to be made, under rules and regulations to be prescribed by the Secretary of the Treasury, of any leaf tobacco when the invoices of the same shall specify in detail the character of such tobacco, whether wrapper or filler, its origin and quality. In the examination for classification of any imported leaf tobacco, at least one bale, box, or package in every ten, and at least one in every invoice, shall be examined by the appraiser or person authorized by law to make such examination, and at least ten hands shall be examined in each examined bale, box or package.

PAR. 603. All other tobacco, manufactured or unmanufactured, not specially provided for, 55 cents per pound; scrap tobacco, 35 cents per pound.

PAR. 604. Snuff and snuff flour, manufactured of tobacco, ground, dry or damp, and pickled, scented, or otherwise, of all descriptions, and tobacco stems, cut, ground, or pulverized, 55 cents per pound.

PAR. 605. Cigars, cigarettes, cheroots of all kinds, \$4.50 per pound and 25 per centum ad valorem, and paper cigars and cigarettes, including wrappers, shall be subject to the same duties as are herein imposed upon cigars.

#### SCHEDULE 7.—AGRICULTURAL PRODUCTS AND PROVISIONS

PAR. 701. Cattle, weighing less than seven hundred pounds each,  $2\frac{1}{2}$  cents per pound; weighing seven hundred pounds or more each, 3 cents per pound; beef and veal, fresh, chilled, or frozen, 6 cents per pound; tallow, one-half of 1 cent per pound; oleo oil and oleo stearin, 1 cent per pound; dried blood albumen, light, 12 cents per pound; dark, 6 cents per pound.

PAR. 702. Sheep, lambs, and goats, \$3 per head; mutton, and goat meat, fresh, chilled, or frozen, 5 cents per pound; lamb, fresh, chilled, or frozen, 7 cents per pound.

PAR. 703. Swine, 2 cents per pound; pork, fresh, chilled, or frozen,  $2\frac{1}{2}$  cents per pound; bacon, hams, and shoulders, and other pork, prepared or preserved,  $3\frac{1}{4}$  cents per pound; lard, 3 cents per pound; lard compounds and lard substitutes, 5 cents per pound.

PAR. 704. Reindeer meat, venison and other game (except birds), fresh, chilled, or frozen, not specially provided for, 6 cents per pound.

PAR. 705. Extract of meat, including fluid, 15 cents per pound.

PAR. 706. Meats, fresh, chilled, frozen, prepared, or preserved, not specially provided for, 6 cents per pound, but not less than 20 per centum ad valorem.

PAR. 707. Whole milk, fresh or sour,  $6\frac{1}{2}$  cents per gallon; cream, fresh or sour,  $56\frac{1}{10}$  cents per gallon; skimmed milk, fresh or sour, and buttermilk, 2 1-20 cents per gallon: *Provided*, That fresh or sour milk containing more than  $5\frac{1}{2}$  per centum of butterfat shall be dutiable as cream, and fresh or sour cream containing more than 45 per centum of butterfat shall be dutiable as butter, and skimmed milk containing more than 1 per centum of butterfat shall be dutiable as whole milk.

PAR. 708. (a) Milk, condensed or evaporated: In air-tight containers, unsweetened,  $1\frac{1}{10}$  cents per pound; in air-tight containers, sweetened,  $2\frac{3}{4}$  cents per pound; all other,  $25\frac{1}{100}$  cents per pound.

(b) Dried whole milk,  $6\frac{1}{2}$  cents per pound; dried cream,  $12\frac{1}{2}$  cents per pound; dried skimmed milk and dried buttermilk, 3 cents per pound: *Provided*, That dried skimmed milk containing more than 3 per centum of butterfat, and dried buttermilk containing more than 6 per centum of butterfat, shall be dutiable as dried whole milk; and dried whole milk containing more than 35 per centum of butterfat shall be dutiable as dried cream.

(c) Malted milk, and compounds or mixtures of or substitutes for milk or cream, 35 per centum ad valorem.

PAR. 709. Butter, 14 cents per pound; oleomargarine and other butter substitutes, 14 cents per pound.

PAR. 710. Cheese and substitutes therefor, 7 cents per pound, but not less than 35 per centum ad valorem.

PAR. 711. Birds, live: Chickens, ducks, geese, turkeys, and guineas, 8 cents per pound; baby chicks

of poultry, 4 cents each; all other live birds not specially provided for, valued at \$5 or less each, 50 cents each; valued at more than \$5 each, 20 per centum ad valorem.

PAR. 712. Birds, dead, dressed or undressed, fresh, chilled, or frozen: Chickens, ducks, geese, and guineas, 10 cents per pound; turkeys, 10 cents per pound; all other, 10 cents per pound; all the foregoing, prepared or preserved in any manner and not specially provided for, 10 cents per pound.

PAR. 713. Eggs of poultry, in the shell, 10 cents per dozen; whole eggs, egg yolk, and egg albumen, frozen or otherwise prepared or preserved, and not specially provided for, whether or not sugar or other material is added, 11 cents per pound; dried whole eggs, dried egg yolk, and dried egg albumen, whether or not sugar or other material is added, 18 cents per pound.

PAR. 714. Horses and mules unless imported for immediate slaughter, valued at not more than \$150 per head, \$30 per head; valued at more than \$150 per head, 20 per centum ad valorem.

PAR. 715. Live animals, vertebrate and invertebrate, not specially provided for, 15 per centum ad valorem.

PAR. 716. Honey, 3 cents per pound.

PAR. 717. (a) Fish, fresh or frozen (whether or not packed in ice), whole, or beheaded or eviscerated or both, but not further advanced (except that the fins may be removed): Halibut, salmon, mackerel, and swordfish, 2 cents per pound; other fish, not specially provided for, 1 cent per pound.

(b) Fish, fresh or frozen (whether or not packed in ice), filleted, skinned, boned, sliced, or divided into portions, not specially provided for, 2½ cents per pound.

(c) Fish, dried and unsalted: Cod, haddock, hake, pollock, and cusk, 2½ cents per pound; other fish, 1¼ cents per pound.

PAR. 718. (a) Fish, prepared or preserved in any manner, when packed in oil or in oil and other substances, 30 per centum ad valorem.

(b) Fish, prepared or preserved in any manner, when packed in air-tight containers weighing with their contents not more than fifteen pounds each (except fish packed in oil or in oil and other substances): Salmon, 25 per centum ad valorem; other fish, 25 per centum ad valorem.

PAR. 719. Fish, pickled or salted (except fish packed in oil or in oil and other substances and except fish packed in air-tight containers weighing with their contents not more than fifteen pounds each):

(1) Salmon, 25 per centum ad valorem;

(2) cod, haddock, hake, pollock, and cusk, neither skinned nor boned (except that the vertebral column may be removed), 1¼ cents per pound when containing not more than 43 per centum of moisture by weight, and three-fourths of 1 cent per pound when containing more than 43 per centum of moisture by weight;

(3) cod, haddock, hake, pollock, and cusk, skinned or boned, whether or not dried, 2 cents per pound;

(4) herring and mackerel, whether or not boned, in bulk or in immediate containers weighing with their contents more than fifteen pounds each, 1 cent per pound net weight; in immediate containers (not air-tight) weighing with their contents not more

than fifteen pounds each, 25 per centum ad valorem;

(5) other fish, in bulk or in immediate containers weighing with their contents more than fifteen pounds each, 1¼ cents per pound net weight; in immediate containers (not air-tight) weighing with their contents not more than fifteen pounds each, 25 per centum ad valorem.

PAR. 720. (a) Fish, smoked or kippered (except packed in oil or in oil and other substances and except fish packed in air-tight containers weighing with their contents not more than fifteen pounds each):

(1) Salmon, 25 per centum ad valorem;

(2) herring, whole or beheaded, but not further advanced, 1¼ cents per pound;

(3) herring, eviscerated, split, skinned, boned, or divided into portions, 3 cents per pound;

(4) cod, haddock, hake, pollock, and cusk, whole, or beheaded or eviscerated or both, but not further advanced (except that the vertebral column may be removed), 2½ cents per pound;

(5) cod, haddock, hake, pollock, and cusk, filleted, skinned, boned, sliced, or divided into portions, 3 cents per pound;

(6) other fish, 25 per centum ad valorem.

(b) Fish, prepared or preserved, not specially provided for, in immediate containers weighing with their contents not more than fifteen pounds each, 25 per centum ad valorem; in bulk or in immediate containers, weighing with their contents more than fifteen pounds each, 1¼ cents per pound net weight.

(c) The term "fish", as used in this chapter, does not include shellfish.

PAR. 721. (a) Crab meat, fresh or frozen (whether or not packed in ice), or prepared or preserved in any manner, including crab paste and crab sauce, 15 per centum ad valorem.

(b) Clams, clam juice, or either in combination with other substances, packed in air-tight containers, 35 per centum ad valorem.

(c) Fish paste and fish sauce, 30 per centum ad valorem.

(d) Caviar and other fish roe for food purposes: Sturgeon, 30 per centum ad valorem; other, 20 cents per pound. Any of the foregoing roe, if boiled and packed in air-tight containers, whether or not in bouillon or sauce, shall be subject to a duty of 30 per centum ad valorem.

(e) Oysters, oyster juice, or either in combination with other substances, packed in air-tight containers, 8 cents per pound, including weight of immediate container.

PAR. 722. Barley, hulled or unhulled, 20 cents per bushel of forty-eight pounds; barley malt, 40 cents per one hundred pounds; pearl barley, patent barley and barley flour, 2 cents per pound.

PAR. 723. Buckwheat, hulled or unhulled, 25 cents per one hundred pounds; buckwheat flour and grits or groats, one-half of 1 cent per pound.

PAR. 724. Corn or maize, including cracked corn, 25 cents per bushel of fifty-six pounds; corn grits, meal, and flour, and similar products, 50 cents per one hundred pounds.

PAR. 725. Macaroni, vermicelli, noodles, and similar alimentary pastes, containing no eggs or egg prod-



ucts, 2 cents per pound; containing eggs or egg products, 3 cents per pound.

PAR. 726. Oats, hulled or unhulled, 16 cents per bushel of thirty-two pounds; unhulled ground oats, 45 cents per one hundred pounds; oatmeal, rolled oats, oat grits, and similar oat products, 80 cents per one hundred pounds.

PAR. 727. Paddy or rough rice,  $1\frac{1}{4}$  cents per pound; brown rice (hulls removed, all or in part),  $1\frac{1}{2}$  cents per pound; milled rice (bran removed, all or in part),  $2\frac{1}{2}$  cents per pound; broken rice, which will pass readily through a metal sieve perforated with round holes five and one-half sixty-fourths of one inch in diameter, and rice meal, flour, polish, and bran, five-eighths of 1 cent per pound.

PAR. 728. Rye, 15 cents per bushel of fifty-six pounds; rye malt, 40 cents per one hundred pounds; rye flour and meal, 45 cents per one hundred pounds.

PAR. 729. Wheat, 42 cents per bushel of sixty pounds; wheat, unfit for human consumption, 10 per centum ad valorem; wheat flour, semolina, crushed or cracked wheat, and similar wheat products not specially provided for, \$1.04 per one hundred pounds.

PAR. 730. Bran, shorts, byproduct feeds obtained in milling wheat or other cereals, 10 per centum ad valorem; hulls of oats, barley, buckwheat, or other grains, ground or unground, 10 cents per one hundred pounds; dried beet pulp, malt sprouts, and brewers' grains, \$5 per ton; soy bean oil cake and soy bean oil-cake meal, three-tenths of 1 cent per pound; all other vegetable oil cake and oil-cake meal, not specially provided for, three-tenths of 1 cent per pound; mixed feeds, consisting of an admixture of grains or grain products with oil cake, oil-cake meal, molasses, or other feedstuffs, 10 per centum ad valorem.

PAR. 731. Screenings, scalpings, chaff, or scourings of wheat, flaxseed, or other grains or seeds: Un-ground, or ground, 10 per centum ad valorem: *Provided*, That when grains or seeds contain more than 5 per centum of any one foreign matter dutiable at a rate higher than that applicable to the grain or seed the entire lot shall be dutiable at such higher rate.

PAR. 732. Cereal breakfast foods, and similar cereal preparations, by whatever name known, processed further than milling, and not specially provided for, 20 per centum ad valorem.

PAR. 733. Biscuits, wafers, cake, cakes, and similar baked articles, and puddings, all the foregoing by whatever name known, whether or not containing chocolate, nuts, fruits, or confectionery of any kind, 30 per centum ad valorem.

PAR. 734. Apples, green or ripe, 25 cents per bushel of fifty pounds; dried, desiccated, or evaporated, 2 cents per pound; otherwise prepared or preserved, and not specially provided for,  $2\frac{1}{2}$  cents per pound.

PAR. 735. Apricots, green, ripe, or in brine, one-half of 1 cent per pound; dried, desiccated, or evaporated, 2 cents per pound; otherwise prepared or preserved, and not specially provided for, 35 per centum ad valorem.

PAR. 736. Berries, edible, in their natural condition or in brine,  $1\frac{1}{4}$  cents per pound; dried, desiccated, or evaporated,  $2\frac{1}{2}$  cents per pound; otherwise

prepared or preserved, or frozen, and not specially provided for, 35 per centum ad valorem.

PAR. 737. Cherries:

(1) In their natural state, 2 cents per pound;

(2) dried, desiccated, or evaporated, 6 cents per pound;

(3) sulphured, or in brine, with pits,  $5\frac{1}{2}$  cents per pound; with pits removed,  $9\frac{1}{2}$  cents per pound;

(4) maraschino, candied, crystallized, or glacé, or prepared or preserved in any manner,  $9\frac{1}{2}$  cents per pound and 40 per centum ad valorem.

PAR. 738. Cider, 5 cents per gallon; vinegar, 8 cents per proof gallon: *Provided*, That the standard proof for vinegar shall be 4 per centum by weight of acetic acid.

PAR. 739. Orange, grapefruit, lemon, and other fruit peel, crude, dried, or in brine, 2 cents per pound; candied, crystallized, or glacé, or otherwise prepared or preserved, 8 cents per pound; citrons or citron peel, candied, crystallized, or glacé, or otherwise prepared or preserved, 6 cents per pound.

PAR. 740. Figs, fresh, dried, or in brine, and fig paste, 5 cents per pound; prepared or preserved, not specially provided for, 40 per centum ad valorem.

PAR. 741. Dates, fresh or dried, with pits, 1 cent per pound; with pits removed, 2 cents per pound; any of the foregoing packed in units of any description weighing (with the immediate container, if any) not more than ten pounds each,  $7\frac{1}{2}$  cents per pound; prepared or preserved, not specially provided for, 35 per centum ad valorem. (As amended June 25, 1938, 5 p. m. E. S. T., ch. 679, § 31, 52 Stat. 1090.)

#### EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on June 25, 1938.

PAR. 742. Grapes in bulk, crates, barrels, or other packages, 25 cents per cubic foot of such bulk or the capacity of the packages, according as imported; raisins, 2 cents per pound; other dried grapes,  $2\frac{1}{2}$  cents per pound; currants, Zante or other, 2 cents per pound.

PAR. 743. Lemons,  $2\frac{1}{2}$  cents per pound; limes, in their natural state, or in brine, 2 cents per pound; oranges, 1 cent per pound; grapefruit,  $1\frac{1}{2}$  cents per pound.

PAR. 744. Olives: In brine, green, 20 cents per gallon; in brine, ripe, 30 cents per gallon; in brine, pitted or stuffed, 30 cents per gallon; dried ripe, 5 cents per pound; not specially provided for, 5 cents per pound.

PAR. 745. Peaches: Green, ripe, or in brine, one-half of 1 cent per pound; dried, desiccated, or evaporated, 2 cents per pound; otherwise prepared or preserved, and not specially provided for, 35 per centum ad valorem.

PAR. 746. Mangoes, 15 cents per pound.

PAR. 747. Pineapples, 50 cents per crate of two and forty-five one-hundredths cubic feet; in bulk,  $1\frac{1}{2}$  cents each; candied, crystallized, or glacé, 35 per centum ad valorem; otherwise prepared or preserved, and not specially provided for, 2 cents per pound.

PAR. 748. Plums, prunes, and prunelles, green, ripe, or in brine, one-half of 1 cent per pound; dried, desiccated, or evaporated, 2 cents per pound; otherwise

prepared or preserved, and not specially provided for, 35 per centum ad valorem.

PAR. 749. Pears: Green, ripe, or in brine, one-half of 1 cent per pound; dried, desiccated, or evaporated, 2 cents per pound; otherwise prepared or preserved, and not specially provided for, 35 per centum ad valorem.

PAR. 750. Avocados or avocado pears, also known as alligator pears, 15 cents per pound.

PAR. 751. All jellies, jams, marmalades, and fruit butters, 35 per centum ad valorem.

PAR. 752. Fruits in their natural state, or in brine, pickled, dried, desiccated, evaporated, or otherwise prepared or preserved, and not specially provided for, and mixtures of two or more fruits, prepared or preserved, 35 per centum ad valorem; fruit pastes and fruit pulps, 35 per centum ad valorem; candied, crystallized, or glacé apricots, figs, dates, peaches, pears, plums, prunes, prunelles, berries, and other fruits, not specially provided for, 40 per centum ad valorem: *Provided*, That a mixture of two or more kinds of candied, crystallized, or glacé fruit shall bear the highest rate of duty applicable to any of the components.

PAR. 753. Tulip bulbs, \$6 per thousand; hyacinth bulbs, \$4 per thousand; lily bulbs, \$6 per thousand; narcissus bulbs, \$6 per thousand; crocus corms, \$2 per thousand; lily of the valley pips, \$6 per thousand; all other bulbs, roots, rootstocks, clumps, corms, tubers, and herbaceous perennials, imported for horticultural purposes, 30 per centum ad valorem; cut flowers, fresh, dried, prepared, or preserved, 40 per centum ad valorem.

PAR. 754. Seedlings and cuttings of Manetti, multiflora, brier, rugosa, and other rose stock, all the foregoing not more than three years old, \$2 per thousand; rose plants, budded, grafted, or grown on their own roots, 4 cents each; cuttings, seedlings, and grafted or budded plants of other deciduous or evergreen ornamental trees, shrubs, or vines, and all nursery or greenhouse stock, not specially provided for, 25 per centum ad valorem.

PAR. 755. Seedlings, layers, and cuttings of apple, cherry, pear, plum, quince, and other fruit stocks, \$2 per thousand; grafted or budded fruit trees, cuttings and seedlings of grapes, currants, gooseberries, or other fruit vines, plants, or bushes, 25 per centum ad valorem.

PAR. 756. Almonds, not shelled, 5½ cents per pound; shelled, 16½ cents per pound; blanched, roasted, or otherwise prepared or preserved, 18½ cents per pound; mandalonas or almond substitute, 18½ cents per pound; almond paste, 18½ cents per pound; chestnuts (including marrons), candied, crystallized, or glacé, or prepared or preserved in any manner, 25 cents per pound.

PAR. 757. Cream or Brazil nuts, not shelled, 1½ cents per pound; shelled, 4½ cents per pound; filberts, not shelled, 5 cents per pound; shelled, 10 cents per pound; any of the foregoing, if blanched, shall be subject to the same rate of duty as if not blanched.

PAR. 758. Coconuts, one-half of 1 cent each; coconut meat, shredded and desiccated, or similarly prepared, 3½ cents per pound.

PAR. 759. Peanuts, not shelled, 4¼ cents per pound; shelled, 7 cents per pound; blanched, salted, prepared, or preserved, not specially provided for, and peanut butter, 7 cents per pound.

PAR. 760. Walnuts of all kinds, not shelled, 5 cents per pound; shelled, 15 cents per pound; blanched, roasted, prepared, or preserved, including walnut paste, 15 cents per pound; pecans, unshelled, 5 cents per pound; shelled, 10 cents per pound.

PAR. 761. Edible nuts, not specially provided for, not shelled, 2½ cents per pound; shelled, 5 cents per pound; cashew nuts, shelled or unshelled, 2 cents per pound; any of the foregoing, if blanched, shall be subject to the same rate of duty as if not blanched; pickled, or otherwise prepared or preserved, and not specially provided for, 35 per centum ad valorem; nut and kernel paste not specially provided for, 25 per centum ad valorem: *Provided*, That no allowance shall be made for dirt or other impurities in nuts of any kind, shelled or unshelled, and that a mixture of two or more kinds of nuts shall bear the highest rate of duty applicable to any of the components.

PAR. 762. Oil-bearing seeds and materials: Castor beans, one-half of 1 cent per pound; flaxseed, 65 cents per bushel of fifty-six pounds; poppy seed, 32 cents per one hundred pounds; sunflower seed, 2 cents per pound; apricot and peach kernels, 3 cents per pound; soybeans, 2 cents per pound; cottonseed, one-third of 1 cent per pound.

PAR. 763. Grass seeds and other forage crop seeds: Alfalfa, 8 cents per pound; alsike clover, 8 cents per pound; crimson clover, 2 cents per pound; red clover, 8 cents per pound; white and ladino clover, 6 cents per pound; sweet clover, 4 cents per pound; clover, not specially provided for, 3 cents per pound; millet, 1 cent per pound; orchard grass, 5 cents per pound; rye grass, 3 cents per pound; timothy, 2 cents per pound; hairy vetch, 3 cents per pound; other vetch, 1½ cents per pound; bent-grass (genus agrostis), 40 cents per pound; bluegrass, 5 cents per pound; tall oat, 5 cents per pound; all other grass and forage crop seeds not specially provided for, 2 cents per pound: *Provided*, That no allowance shall be made for dirt or other impurities in seed of any kind.

PAR. 764. Other garden and field seeds: Beet (except sugar beet), 4 cents per pound; cabbage, 12 cents per pound; canary, 1 cent per pound; carrot, 4 cents per pound; cauliflower, 25 cents per pound; celery, 2 cents per pound; kale, 6 cents per pound; kohlrabi, 8 cents per pound; mangelwurzel, 4 cents per pound; mushroom spawn, 1 cent per pound; onion, 15 cents per pound; parsley, 2 cents per pound; parsnip, 4 cents per pound; pepper, 15 cents per pound; radish, 6 cents per pound; spinach, 1 cent per pound; tree and shrub, 8 cents per pound; turnip, 5 cents per pound; rutabaga, 5 cents per pound; flower, 6 cents per pound; all other garden and field seeds not specially provided for, 6 cents per pound: *Provided*, That the provisions for seeds in this schedule shall include such seeds whether used for planting or for other purposes.

PAR. 765. Beans, not specially provided for, and black-eye cowpeas: Green or unripe, 3½ cents per pound; dried, 3 cents per pound; in brine, 3 cents

per pound; prepared or preserved in any manner, 3 cents per pound on the entire contents of the container.

PAR. 766. Sugar beets, 80 cents per ton of two thousand pounds; other beets, 17 per centum ad valorem.

PAR. 767. Lentils, one-half of 1 cent per pound; lupines, one-half of 1 cent per pound.

PAR. 768. Mushrooms, fresh or dried, 10 cents per pound and 45 per centum ad valorem; otherwise prepared or preserved, 10 cents per pound on drained weight and 45 per centum ad valorem.

PAR. 769. Peas and chickpeas or garbanzos: Green or unripe, 3 cents per pound in the case of peas, and, in the case of chickpeas or garbanzos, 2 cents per pound; dried,  $1\frac{3}{4}$  cents per pound; split,  $2\frac{1}{2}$  cents per pound; prepared or preserved in any manner, 2 cents per pound on the entire contents of the container.

PAR. 770. Onions,  $2\frac{1}{2}$  cents per pound; garlic,  $1\frac{1}{2}$  cents per pound.

PAR. 771. White or Irish potatoes, 75 cents per one hundred pounds; dried, dehydrated, or desiccated potatoes,  $2\frac{3}{4}$  cents per pound; potato flour,  $2\frac{1}{2}$  cents per pound.

PAR. 772. Tomatoes in their natural state, 3 cents per pound; prepared or preserved in any manner, 50 per centum ad valorem.

PAR. 773. Turnips and rutabagas, 25 cents per one hundred pounds.

PAR. 774. Vegetables in their natural state: Peppers, 3 cents per pound; eggplant, 3 cents per pound; cucumbers, 3 cents per pound; squash, celery, lettuce, and cabbage, 2 cents per pound; crude horseradish, 3 cents per pound; all other, not specially provided for, 50 per centum ad valorem: *Provided*, That in the assessment of duties on vegetables of any kind no segregation or allowance of any kind shall be made for foreign matter or impurities mixed therewith.

PAR. 775. Vegetables (including horseradish), if cut, sliced, or otherwise reduced in size, or if reduced to flour, or if parched or roasted, or if pickled, or packed in salt, brine, oil, or prepared or preserved in any other way and not specially provided for; sauces of all kinds, not specially provided for; soybeans, prepared or preserved in any manner; bean stick, miso, bean cake, and similar products, not specially provided for; soups, soup rolls, soup tablets or cubes, and other soup preparations, pastes, balls, puddings, hash, and all similar forms, composed of vegetables, or of vegetables and meat or fish, or both, not specially provided for, 35 per centum ad valorem; sauerkraut, 50 per centum ad valorem; pimientos, packed in brine or in oil, or prepared or preserved in any manner, 6 cents per pound.

PAR. 776. Acorns and dandelion roots, crude,  $1\frac{1}{2}$  cents per pound; chicory, crude, 2 cents per pound; any of the foregoing, ground, or otherwise prepared, 4 cents per pound; all coffee substitutes and adulterants, and coffee essences, 3 cents per pound.

PAR. 777. (a) Cocoa and chocolate, unsweetened, 3 cents per pound, on net weight.

(b) Cocoa and chocolate, sweetened, in bars or blocks weighing ten pounds or more each, 4 cents per pound; in any other form, whether or not prepared, 40 per centum ad valorem.

(c) Cacao butter, 25 per centum ad valorem.

PAR. 778. Ginger root, candied, or otherwise prepared or preserved, 20 per centum ad valorem.

PAR. 779. Hay, \$5 per ton of two thousand pounds; straw, \$1.50 per ton of two thousand pounds; broom corn, \$20 per ton of two thousand pounds; rice straw, and rice fiber, \$10 per ton of two thousand pounds.

PAR. 780. Hops, 24 cents per pound; hop extract, \$2.40 per pound; lupulin, \$1.50 per pound.

PAR. 781. Spices and spice seeds: Cassia, cassia buds, and cassia vera, ground, 5 cents per pound; cloves, ground, 6 cents per pound; clove stems, ground, 5 cents per pound; cinnamon and cinnamon chips, ground, 5 cents per pound; ginger root, not preserved or candied, ground, 5 cents per pound; mace, ground, 8 cents per pound; Bombay, or wild mace, unground, 18 cents per pound; ground, 22 cents per pound; mustard seeds (whole), 2 cents per pound; mustard, ground, or prepared in bottles or otherwise, 10 cents per pound; nutmegs, ground, 5 cents per pound; pepper, capsicum or red pepper or cayenne pepper, unground, 5 cents per pound; ground, 8 cents per pound; paprika, ground or unground, 5 cents per pound; black or white pepper, ground, 5 cents per pound; pimento (allspice), ground, 3 cents per pound; sage, unground, 1 cent per pound; ground, 3 cents per pound; curry and curry powder, 5 cents per pound; mixed spices, and spices and spice seeds not specially provided for, including all herbs or herb leaves in glass or other small packages, for culinary use, 25 per centum ad valorem: *Provided*, That in all the foregoing no allowance shall be made for dirt or other foreign matter: *Provided further*, That the importation of pepper shells, ground or unground, is hereby prohibited.

PAR. 782. Teasels, not bleached, colored, dyed, painted, or chemically treated, 25 per centum ad valorem.

PAR. 783. Cotton having a staple of one and one-eighth inches or more in length, 7 cents per pound.

#### SCHEDULE 8.—SPIRITS, WINES, AND OTHER BEVERAGES

PAR. 801. The duties prescribed in Schedule 8 and imposed by Subtitle I shall be in addition to the internal-revenue taxes imposed under existing law, or any subsequent Act.

Text of this paragraph as now set out was originally designated (b). Subparagraph (a) related to Titles II and III of the National Prohibition Act, as amended, which was repealed by act Aug. 27, 1935, ch. 740, § 1, 49 Stat. 872.

PAR. 802. Brandy and other spirits manufactured or distilled from grain or other materials, cordials, liqueurs, arrack, absinthe, kirschwasser, ratafia, and bitters of all kinds, containing spirits, and compounds and preparations of which distilled spirits are the component material of chief value and not specially provided for, \$5 per proof gallon.

PAR. 803. Champagne and all other sparkling wines, \$6 per gallon.

PAR. 804. Still wines, including ginger wine or ginger cordial, vermouth, and rice wine or sake, and similar beverages not specially provided for, \$1.25 per gallon: *Provided*, That any of the foregoing articles specified in this paragraph when imported

containing more than 24 per centum of alcohol shall be classed as spirits and pay duty accordingly.

PAR. 805. Ale, porter, stout, beer, and fluid malt extract, \$1 per gallon; malt extract, solid or condensed, 60 per centum ad valorem.

PAR. 806. (a) Cherry juice, prune juice, or prune wine, and all other fruit juices and fruit sirups, not specially provided for, containing less than one-half of 1 per centum of alcohol, 70 cents per gallon; containing one-half of 1 per centum or more of alcohol, 70 cents per gallon, and in addition thereto \$5 per proof gallon on the alcohol contained therein; grape juice, grape sirup, and other similar products of the grape, by whatever name known, containing or capable of producing less than 1 per centum of alcohol, 70 cents per gallon; containing or capable of producing more than 1 per centum of alcohol, 70 cents per gallon, and in addition thereto \$5 per proof gallon on the alcohol contained therein or that can be produced therefrom.

(b) Concentrated juice of lemons, oranges, or other citrus fruits, fit for beverage purposes, and sirups containing any of the foregoing, all the foregoing, whether in liquid, powdered, or solid form, 70 cents per gallon on the quantity of unconcentrated natural fruit juice contained in such concentrated juice or sirup as shown by chemical analysis.

PAR. 807. Berries and fruits of all kinds, prepared or preserved in any manner, containing one-half of 1 per centum or more of alcohol shall pay in addition to the rates provided in this subtitle \$5 per proof gallon on the alcohol contained therein.

PAR. 808. Ginger ale, ginger beer, lemonade, soda water, and similar beverages containing no alcohol, and beverages containing less than one-half of 1 per centum of alcohol, not specially provided for, 15 cents per gallon.

PAR. 809. All mineral waters and all imitations of natural mineral waters, and all artificial mineral waters not specially provided for, 10 cents per gallon.

PAR. 810. When any article provided for in this schedule is imported in bottles or jugs, duty shall be collected upon the bottles or jugs at one-third the rate provided on the bottles or jugs if imported empty or separately.

PAR. 811. Each and every gauge or wine gallon of measurement shall be counted as at least one proof gallon; and the standard for determining the proof of brandy and other spirits or liquors of any kind when imported shall be the same as that which is defined in the laws relating to internal revenue. The Secretary of the Treasury, in his discretion, may authorize the ascertainment of the proof of wines, cordials, or other liquors and fruit juices by distillation or otherwise, in cases where it is impracticable to ascertain such proof by the means prescribed by existing law or regulations.

PAR. 812. No lower rate or amount of duty shall be levied, collected, and paid on the articles enumerated in paragraph 802 of this schedule than that fixed by law for the description of first proof; but it shall be increased in proportion for any greater strength than the strength of first proof, and all imitations of brandy, spirits, or wines imported by any names whatever shall be subject to the highest rate of duty

provided for the genuine articles respectively intended to be represented, and in no case less than \$5 per proof gallon: *Provided*, That any brandy or other spirituous or distilled liquors imported in any sized cask, bottle, jug, or other package, of or from any country, dependency, or province under whose laws similar sized casks, bottles, jugs, or other packages of distilled spirits, wine, or other beverage put up or filled in the United States are denied entrance into such country, dependency, or province, shall be forfeited to the United States.

PAR. 813. There shall be no constructive or other allowance for breakage, leakage, or damage on wines, liquors, cordials, or distilled spirits, except that when it shall appear to the collector of customs from the gauger's return, verified by an affidavit by the importer to be filed within fifteen days after the delivery of the merchandise, that a cask or package has been broken or otherwise injured in transit from a foreign port and as a result thereof a part of its contents, amounting to 10 per centum or more of the total value of the contents of the said cask or package in its condition as exported, has been lost, allowance therefor may be made in the liquidation of the duties. (As amended June 25, 1938, 5 p. m. E. S. T., ch. 679, § 32, 52 Stat. 1090.)

#### EFFECTIVE DATE

Effective date of act June 25, 1938, cited to text, see section 1653a of this title.

PAR. 814. No wines, spirits, or other liquors or articles provided for in this schedule containing one-half of 1 per centum or more of alcohol shall be imported or permitted entry except on a permit issued therefor by the Secretary of the Treasury, and any such wines, spirits, or other liquors or articles imported or brought into the United States without a permit shall be seized and forfeited in the same manner as for other violations of the customs laws: *Provided*, That high-proof fruit spirits made in distilleries connected with wineries for use in the fortification of wines, may also be withdrawn and used, under the same laws and regulations applicable to the withdrawal and use of alcohol for all non-beverage purposes.

PAR. 815. The Secretary of the Treasury is hereby authorized and directed to make all rules and regulations necessary for the enforcement of the provisions of this schedule.

#### SCHEDULE 9.—COTTON MANUFACTURES

PAR. 901. (a) Cotton yarn, including warps, in any form, not bleached, dyed, colored, combed, or plied, of numbers not exceeding number 90, 5 per centum ad valorem and, in addition thereto, for each number, three-tenths of 1 per centum ad valorem; exceeding number 90, 32 per centum ad valorem.

(b) Cotton yarn, including warps, in any form, bleached, dyed, colored, combed, or plied, of numbers not exceeding number 90, 10 per centum ad valorem and, in addition thereto, for each number, three-tenths of 1 per centum ad valorem; exceeding number 90, 37 per centum ad valorem.

(c) Cotton waste, manufactured or otherwise advanced in value, cotton card laps, sliver, and roving, 5 per centum ad valorem.

PAR. 902. Cotton sewing thread, one-half of 1 cent per hundred yards; crochet, darning, embroidery, and knitting cottons, put up for handwork, in lengths not exceeding eight hundred and forty yards, one-half of 1 cent per hundred yards: *Provided*, That none of the foregoing shall pay a less rate of duty than 20 nor more than 35 per centum ad valorem. In no case shall the duty be assessed on a less number of yards than is marked on the goods as imported.

PAR. 903. (a) The term cotton cloth, or cloth, wherever used in this schedule, unless otherwise specially provided for, shall be held to include all woven fabrics of cotton, in the piece, whether figured, fancy, or plain, and shall not include any article, finished or unfinished, made from cotton cloth.

(b) In the ascertainment of the condition of the cloth or yarn upon which the duties imposed upon cotton cloth are made to depend, the entire fabric and all parts thereof shall be included.

(c) The average number of the yarn in cotton cloth herein provided for shall be obtained by taking the length of the thread or yarn to be equal to the distance covered by it in the cloth in the condition as imported, except that all clipped threads shall be measured as if continuous; in counting the threads all ply yarns shall be separated into singles and the count taken of the total singles; the weight shall be taken after any excessive sizing is removed by boiling or other suitable process.

(d) Plain gauze or leno woven cotton nets or nettings shall be classified for duty as cotton cloth.

PAR. 904. (a) Cotton cloth, not bleached, printed, dyed, or colored, containing yarns the average number of which does not exceed number 90, 10 per centum ad valorem and, in addition thereto, for each number, thirty-five one-hundredths of 1 per centum ad valorem; exceeding number 90, 41½ per centum ad valorem: *Provided*, That none of the foregoing shall be subject to a less duty than fifty-five one-hundredths of 1 cent per average number per pound.

(b) Cotton cloth, bleached, containing yarns the average number of which does not exceed number 90, 13 per centum ad valorem and, in addition thereto, for each number, thirty-five one-hundredths of 1 per centum ad valorem; exceeding number 90, 44½ per centum ad valorem.

(c) Cotton cloth, printed, dyed, or colored, containing yarns the average number of which does not exceed number 90, 16 per centum ad valorem and, in addition thereto, for each number, thirty-five one-hundredths of 1 per centum ad valorem; exceeding number 90, 47½ per centum ad valorem.

(d) In addition to the duties hereinbefore provided in this paragraph, cotton cloth woven with eight or more harnesses, or with Jacquard, lappet, or swivel attachments, shall be subject to a duty of 10 per centum ad valorem, and cotton cloth, other than the foregoing, woven with two or more colors or kinds of filling, shall be subject to a duty of 5 per centum ad valorem.

(e) Tire fabric or fabric for use in pneumatic tires, including cord fabric, 25 per centum ad valorem.

PAR. 905. Cloth, in chief value of cotton, containing silk, or rayon or other synthetic textile, shall be classified for duty as cotton cloth under paragraphs 903

and 904 and shall be subject to an additional duty of 5 per centum ad valorem.

PAR. 906. Cloth, in chief value of cotton, containing wool, 60 per centum ad valorem.

PAR. 907. Tracing cloth, cotton window hollands, and all oilcloths (except silk oilcloths and oilcloths for floors), 30 per centum ad valorem; filled or coated cotton cloths not specially provided for, 35 per centum ad valorem; waterproof cloth, wholly or in chief value of cotton or other vegetable fiber, whether or not in part of India rubber, 40 per centum ad valorem.

PAR. 908. Tapestries and other Jacquard-figured upholstery cloths (not including pile fabrics or bed-ticking) in the piece or otherwise, wholly or in chief value of cotton or other vegetable fiber, 55 per centum ad valorem.

PAR. 909. Pile fabrics (including pile ribbons), cut or uncut, whether or not the pile covers the entire surface, wholly or in chief value of cotton, and all articles, finished or unfinished, made or cut from such pile fabrics, all the foregoing, if velveteens or velvets, 62½ per centum ad valorem; if corduroys, plushes, or chenilles, 50 per centum ad valorem; if terry-woven, 40 per centum ad valorem.

PAR. 910. Table damask, wholly or in chief value of cotton, and all articles, finished or unfinished, made or cut from such table damask, 30 per centum ad valorem.

PAR. 911. (a) Quilts or bedspreads, 25 per centum ad valorem; if Jacquard-figured, 40 per centum ad valorem; blankets or blanket cloth, napped or unnapped, 30 per centum ad valorem but not less than 14¼ cents per pound; if Jacquard-figured, 45 per centum ad valorem; Jacquard-figured napped cloth, 45 per centum ad valorem; towels, other than pile fabrics, 25 per centum ad valorem; if Jacquard-figured, 40 per centum ad valorem. The foregoing rates shall apply to any of the foregoing wholly or in chief value of cotton, whether in the piece or otherwise.

(b) Sheets and pillowcases, wholly or in chief value of cotton, 25 per centum ad valorem; polishing cloths, dust cloths, and mop cloths, wholly or in chief value of cotton, not made of pile fabrics, 25 per centum ad valorem; table and bureau covers, center-pieces, runners, scarfs, napkins, and doilies, made of plain-woven cotton cloth, and not specially provided for, 30 per centum ad valorem.

PAR. 912. Fabrics, with fast edges, not exceeding twelve inches in width, and articles made therefrom; tubings, garters, suspenders, braces, cords, tassels, and cords and tassels; all the foregoing, wholly or in chief value of cotton or of cotton and India rubber, and not specially provided for, 35 per centum ad valorem; spindle banding, and lamp and stove wicking, wholly or in chief value of cotton or other vegetable fiber, 30 per centum ad valorem; candle wicking, wholly or in chief value of cotton or other vegetable fiber, 10 cents per pound and 12½ per centum ad valorem; boot, shoe, or corset lacings, wholly or in chief value of cotton or other vegetable fiber, 30 per centum ad valorem; loom harness, healds, and collets, wholly or in chief value of cotton or other vegetable

fiber, 35 per centum ad valorem; labels, for garments or other articles, wholly or in chief value of cotton or other vegetable fiber, 50 per centum ad valorem.

PAR. 913. (a) Belts and belting, for machinery, wholly or in chief value of cotton or other vegetable fiber, or of cotton or other vegetable fiber and india rubber, 30 per centum ad valorem.

(b) Rope used as belting for textile machinery, wholly or in chief value of cotton, 40 per centum ad valorem.

PAR. 914. Knit fabric, in the piece, wholly or in chief value of cotton or other vegetable fiber, made on a warp-knitting machine, 45 per centum ad valorem; made on other than a warp-knitting machine, 35 per centum ad valorem.

PAR. 915. Gloves and mittens, finished or unfinished, wholly or in chief value of cotton or other vegetable fiber: Made of fabric knit on a warp-knitting machine, 60 per centum ad valorem; made of fabric knit on other than a warp-knitting machine, 50 per centum ad valorem; made of woven fabric, 25 per centum ad valorem.

PAR. 916. (a) Hose and half-hose, selvaged, fashioned, seamless, or mock-seamed, finished or unfinished, wholly or in chief value of cotton or other vegetable fiber, made wholly or in part on knitting machines, or knit by hand, 50 per centum ad valorem.

(b) Hose and half-hose, finished or unfinished, made or cut from knitted fabric wholly or in chief value of cotton or other vegetable fiber, and not specially provided for, 30 per centum ad valorem.

PAR. 917. Underwear, outerwear, and articles of all kinds, knit or crocheted, finished or unfinished, wholly or in chief value of cotton or other vegetable fiber, and not specially provided for, 45 per centum ad valorem.

PAR. 918. Handkerchiefs and woven mufflers, wholly or in chief value of cotton, finished or unfinished, not hemmed, shall be subject to duty as cloth; hemmed or hemstitched, 10 per centum ad valorem, in addition.

PAR. 919. Clothing and articles of wearing apparel of every description, manufactured wholly or in part, wholly or in chief value of cotton, and not specially provided for, 37½ per centum ad valorem. Shirt collars and cuffs, of cotton, not specially provided for, 30 cents per dozen pieces and 10 per centum ad valorem. Shirts of cotton, not knit or crocheted, 45 per centum ad valorem.

PAR. 920. Lace window curtains, nets, nettings, pillow shams, and bed sets, and all other fabrics and articles, by whatever name known, plain or Jacquard-figured, finished or unfinished, wholly or partly manufactured, for any use whatsoever, made on the Nottingham lace-curtain machine, wholly or in chief value of cotton or other vegetable fiber, 60 per centum ad valorem.

PAR. 921. Rag rugs, wholly or in chief value of cotton, of the type commonly known as "hit-and-miss", 75 per centum ad valorem; chenille rugs, wholly or in chief value of cotton, 40 per centum ad valorem; all other floor coverings, including carpets, carpeting, mats, and rugs, wholly or in chief value of cotton, 35 per centum ad valorem.

PAR. 922. Rags, including wiping rags, wholly or in chief value of cotton, except rags chiefly used in paper-making, 3 cents per pound.

PAR. 923. All manufactures, wholly or in chief value of cotton, not specially provided for, 40 per centum ad valorem.

PAR. 924. All the articles enumerated or described in this schedule (except in paragraph 922) shall be subject to an additional duty of 10 cents per pound on the cotton contained therein having a staple of one and one-eighth inches or more in length.

#### SCHEDULE 10.—FLAX, HEMP, JUTE, AND MANUFACTURES OF

PAR. 1001. Flax straw, \$3 per ton; flax, not hackled, 1½ cents per pound; flax, hackled, including "dressed line", 3 cents per pound; flax tow, flax noils, and crin vegetal, twisted or not twisted, 1 cent per pound; hemp and hemp tow, 2 cents per pound; hackled hemp, 3½ cents per pound.

PAR. 1002. Sliver and roving, of flax, hemp, ramie, or other vegetable fiber, not specially provided for, 20 per centum ad valorem.

PAR. 1003. Jute yarns or roving, single, coarser in size than twenty-pound, 2½ cents per pound; twenty-pound up to but not including ten-pound, 4 cents per pound; ten-pound up to but not including five-pound, 5½ cents per pound; five-pound and finer, 7 cents per pound, but not more than 40 per centum ad valorem; jute sliver, 1½ cents per pound; twist, twine, and cordage, composed of two or more jute yarns or rovings twisted together, the size of the single yarn or roving of which is coarser than twenty-pound, 3½ cents per pound; twenty-pound up to but not including ten-pound, 5 cents per pound; ten-pound up to but not including five-pound, 6½ cents per pound; five-pound and finer, 9 cents per pound; and in addition thereto, on any of the foregoing twist, twine, and cordage, when bleached, dyed, or otherwise treated, 2 cents per pound.

PAR. 1004. (a) Single yarns, of flax, hemp, or ramie, or a mixture of any of them, not finer than sixty lea, 35 per centum ad valorem; finer than sixty lea, 25 per centum ad valorem.

(b) Threads, twines, and cords, composed of two or more yarns of flax, hemp, or ramie, or a mixture of any of them, twisted together, 40 per centum ad valorem.

(c) There shall not be classified under this paragraph any twines or cords composed of three or more strands, each strand composed of two or more yarns, if such twines or cords are wholly or in chief value of flax or ramie and three-sixteenths of one inch or more in diameter, or wholly or in chief value of hemp and one-eighth of one inch or more in diameter.

PAR. 1005. (a) Cordage, including cables, tarred or untarred, composed of three or more strands, each strand composed of two or more yarns:

(1) Wholly or in chief value of manilla (abaca), sisal, henequen, or other hard fiber, 2 cents per pound; and in addition thereto, on any of the foregoing smaller than three-fourths of one inch in diameter, 15 per centum ad valorem;

(2) wholly or in chief value of sunn, or other bast fiber, but not including cordage made of jute, 2 cents per pound;

(3) wholly or in chief value of hemp,  $3\frac{1}{4}$  cents per pound.

(b) Cords and twines (whether or not composed of three or more strands, each strand composed of two or more yarns), tarred or untarred, single or plied, wholly or in chief value of manila (abaca), sisal, henequen, or other hard fiber, 40 per centum ad valorem.

PAR. 1006. Gill nettings, nets, webs, and seines, and other nets for fishing, wholly or in chief value of flax, hemp, or ramie, and not specially provided for, 45 per centum ad valorem.

PAR. 1007. Hose, suitable for conducting liquids or gases, wholly or in chief value of vegetable fiber,  $19\frac{1}{2}$  cents per pound and 15 per centum ad valorem.

PAR. 1008. Woven fabrics, wholly of jute, not specially provided for, not bleached, printed, stenciled, painted, dyed, colored, or rendered noninflammable, 1 cent per pound; bleached, printed, stenciled, painted, dyed, colored, or rendered noninflammable, 1 cent per pound and 10 per centum ad valorem.

PAR. 1009. (a) Woven fabrics, not including articles finished or unfinished, of flax, hemp, or ramie, or of which these substances or any of them is the component material of chief value (except such as are commonly used as paddings or interlinings in clothing), exceeding thirty and not exceeding one hundred threads to the square inch, counting the warp and filling, weighing not less than four and not more than twelve ounces per square yard, and exceeding twelve inches but not exceeding thirty-six inches in width, 55 per centum ad valorem.

(b) Woven fabrics, such as are commonly used for paddings or interlinings in clothing, wholly or in chief value of flax or hemp, or of which these substances or either of them is the component material of chief value, exceeding thirty and not exceeding one hundred and twenty threads to the square inch, counting the warp and filling, and weighing not less than four and one-half and not more than twelve ounces per square yard, 55 per centum ad valorem; wholly or in chief value of jute, exceeding thirty threads to the square inch, counting the warp and filling, and weighing not less than four and one-half ounces and not more than twelve ounces per square yard, 50 per centum ad valorem.

(c) Woven fabrics, in the piece or otherwise, wholly or in chief value of vegetable fiber, except cotton, filled, coated, or otherwise prepared for use as artists' canvas, 45 per centum ad valorem.

PAR. 1010. Woven fabrics, not including articles finished or unfinished, of flax, hemp, ramie, or other vegetable fiber, except cotton, or of which these substances or any of them is the component material of chief value, not specially provided for, 40 per centum ad valorem.

PAR. 1011. Plain-woven fabrics, not including articles finished or unfinished, wholly or in chief value of flax, hemp, ramie, or other vegetable fiber, except cotton, weighing less than four ounces per square yard, 35 per centum ad valorem.

PAR. 1012. Pile fabrics, whether or not the pile covers the entire surface, wholly or in chief value of vegetable fiber, except cotton, and all articles, finished or unfinished, made or cut from such pile fabrics: If the pile is wholly cut or wholly uncut, 45 per centum ad valorem; if the pile is partly cut, 50 per centum ad valorem.

PAR. 1013. Table damask, wholly or in chief value of vegetable fiber, except cotton, and all articles, finished or unfinished, made or cut from such damask, 45 per centum ad valorem.

PAR. 1014. Towels and napkins, finished or unfinished, wholly or in chief value of flax, hemp, or ramie, or of which these substances or any of them is the component material of chief value, not exceeding one hundred and twenty threads to the square inch, counting the warp and filling, 55 per centum ad valorem; exceeding one hundred and twenty threads to the square inch, counting the warp and filling, 40 per centum ad valorem; sheets and pillowcases, wholly or in chief value of flax, hemp, or ramie, or of which these substances or any of them is the component material of chief value, 40 per centum ad valorem.

PAR. 1015. Fabrics, with fast edges, not exceeding twelve inches in width, and articles made therefrom; tubings, garters, suspenders, braces, cords, tassels, and cords and tassels; all the foregoing, wholly or in chief value of vegetable fiber, except cotton, or of vegetable fiber, except cotton, and india rubber, 35 per centum ad valorem; tapes, wholly or in part of flax, woven with or without metal threads, on reels, spools, or otherwise and designed expressly for use in the manufacture of measuring tapes, 30 per centum ad valorem.

PAR. 1016. Handkerchiefs, wholly or in chief value of vegetable fiber, except cotton, finished or unfinished, not hemmed, 35 per centum ad valorem; hemmed or hemstitched, or unfinished having drawn threads, 50 per centum ad valorem: *Provided*, That any of the foregoing made with hand-rolled or hand-made hems shall be subject to an additional duty of 1 cent each.

PAR. 1017. Clothing, and articles of wearing apparel of every description, wholly or in chief value of vegetable fiber, except cotton, and whether manufactured wholly or in part, not specially provided for, 35 per centum ad valorem; shirt collars and cuffs, wholly or in part of flax, 40 cents per dozen and 10 per centum ad valorem.

PAR. 1018. Bags or sacks made from plain-woven fabrics of single jute yarns or from twilled or other fabrics wholly of jute, not bleached, printed, stenciled, painted, dyed, colored, or rendered noninflammable, 1 cent per pound and 10 per centum ad valorem; bleached, printed, stenciled, painted, dyed, colored, or rendered noninflammable, 1 cent per pound and 15 per centum ad valorem.

PAR. 1019. Bagging for cotton, gunny cloth, and similar fabrics, suitable for covering cotton, composed of single yarns made of jute, jute butts, or other vegetable fiber, not bleached, dyed, colored, stained, painted, or printed, not exceeding sixteen threads to the square inch, counting the warp and filling, and weighing not less than fifteen ounces nor



more than thirty-two ounces per square yard, six-tenths of 1 cent per square yard; weighing more than thirty-two ounces per square yard, three-tenths of 1 cent per pound.

PAR. 1020. Inlaid linoleum, 42 per centum ad valorem; all other linoleum, including corticine and cork carpet, 35 per centum ad valorem; floor oilcloth, 20 per centum ad valorem; mats or rugs made of linoleum or floor oilcloth shall be subject to the same rates of duty as herein provided for linoleum and floor oilcloth.

PAR. 1021. Common China, Japan, and India straw matting, and floor coverings made therefrom, 3 cents per square yard; carpets, carpeting, mats, matting, and rugs, wholly or in chief value of flax, hemp, or jute, or a mixture thereof, 35 per centum ad valorem; all other floor coverings not specially provided for, 40 per centum ad valorem.

PAR. 1022. Matting and articles made therefrom, wholly or in chief value of cocoa fiber or rattan, 10 cents per square yard; pile mats and floor coverings, wholly or in chief value of cocoa fiber or rattan, 8 cents per square foot.

PAR. 1023. All manufactures, wholly or in chief value of vegetable fiber, except cotton, not specially provided for, 40 per centum ad valorem.

#### SCHEDULE 11.—WOOL AND MANUFACTURES OF

PAR. 1101. (a) Wools: Donskol, Smyrna, Cordova, Valparaiso, Ecuadorean, Syrian, Aleppo, Georgian, Turkestan, Arabian, Bagdad, Persian, Sistan, East Indian, Thibetan, Chinese, Manchurian, Mongolian, Egyptian, Sudan, Cyprus, Sardinian, Pyrenean, Oporto, Iceland, Scotch Blackface, Black Spanish, Kerry, Haslock, and Welsh Mountain; similar wools without merino or English blood; all other wools of whatever blood or origin not finer than 40s; and hair of the camel; all the foregoing, in the grease or washed, 24 cents per pound of clean content; scoured, 27 cents per pound of clean content; on the skin, 22 cents per pound of clean content; sorted, or matchings, if not scoured, 25 cents per pound of clean content: *Provided*, That a tolerance of not more than 10 per centum of wools not finer than 44s may be allowed in each bale or package of wools imported as not finer than 40s.

(b) Any of the foregoing may be entered or withdrawn from warehouse without the payment of duty by a manufacturer, processor, or dealer upon the filing of a bond to insure that any wool or hair entered or withdrawn thereunder shall be used only in the manufacture of press cloth, camel's hair belting, knit or felt boots, heavy fulled lumbermen's socks, rugs, carpets, or any other floor coverings. A manufacturer, processor, or dealer may be relieved of liability under his bond with respect to any wool or hair so entered or withdrawn which is transferred in its imported or any other form to another manufacturer, processor, or dealer who has filed a bond to insure that the merchandise so transferred shall be used only in the manufacture of the above-enumerated articles. If any wool or hair so entered, withdrawn, or transferred under bond is used or transferred for use in its imported or any other form in any manner otherwise than in the manufacture of

the articles enumerated above, there shall be levied, collected, and paid on the merchandise so used or transferred in violation of the bond the regular duties which would apply to such merchandise if imported in its condition at the time of such use or transfer. Such duties shall be paid by the manufacturer, processor, or dealer whose bond is charged with the wool or hair at the time of such use or transfer; but such duties shall not be levied or collected on any merchandise (except white soft wastes, white threads and noils, which shall be dutiable at seven-eighths of such regular duties when used or transferred for use otherwise than in the manufacture of the enumerated articles) resulting in the usual course of manufacture of such enumerated manufactured articles which cannot be used (with or without further preparation) in the usual course of the manufacture of such enumerated articles, or which is exported or destroyed. When any wool or hair which has been entered or withdrawn under bond as provided for in this subparagraph is used or transferred for use, in its imported or any other form, otherwise than in the manufacture of the above-enumerated articles and prior to such use or transfer there shall have been combined or mixed with such wool or hair any other merchandise, the whole or the combination or mixture shall be presumed to be composed of wool or hair entered or withdrawn under bond, as provided for in this subparagraph, unless the manufacturer, processor, or dealer liable for the payment of the duties shall establish the quantity of bonded wool or hair in such combination or mixture. Every manufacturer, processor, or dealer who has given a bond pursuant to the provisions of this subparagraph shall report any use or transfer of merchandise in violation of the terms of his bond, within thirty days after such use or transfer, to the collector of customs in whose district the bond is filed; and for failure to so report, such manufacturer, processor, or dealer shall be liable to a penalty equal to the value of the merchandise so used or transferred at the time and place of such use or transfer. Such penalty shall be in addition to the duties above provided for. The Secretary of the Treasury is authorized to prescribe such regulations and the form, conditions, and amounts of such bonds as may be necessary to carry into effect the provisions of this subparagraph.

(c) For the purposes of this schedule:

(1) Wools and hair in the grease shall be considered such as are in their natural condition as shorn from the animal, and not cleansed otherwise than by shaking, willowing, or burr picking.

(2) washed wools and hair shall be considered such as have been washed, with water only, on the animal's back or on the skin, and all wool and hair, not scoured, with a higher clean yield than 77 per centum shall be considered as washed;

(3) scoured wools and hair shall be considered such as have been otherwise cleansed (not including shaking, willowing, burr picking, or carbonizing);

(4) sorted wools or hair, or matchings, shall be wools and hair (other than skirtings) wherein the identity of individual fleeces has been destroyed, except that skirted fleeces shall not be considered



sorted wools or hair, or matchings, unless the backs have been removed; and

(5) the Official Standards of the United States for grades of wool as established by the Secretary of Agriculture on June 18, 1926, pursuant to law, shall be the standards for determining the grade of wools. (As amended June 25, 1938, 5 p. m. E. S. T., ch. 679, § 33 (a), 52 Stat. 1090.)

#### EFFECTIVE DATE

Effective date of act June 25, 1938, cited to text, see section 1653a of this title.

Subsection (b) of section 33 of act June 25, 1938, cited to text, provided as follows:

"(b) The provisions of paragraph 1101 of the Tariff Act of 1930, as amended by this act, with respect to wool or hair entered under bond for use in the manufacture of articles enumerated in such paragraph, shall apply with respect to wool or hair under bond on the effective date of this act (see section 1653a, post), as well as with respect to wool or hair thereafter imported."

The President by Proclamation December 30, 1936, under section 1318 of this title extended the period for furnishing proof of use in manufacture of bonded wool and camel hair.

PAR. 1102. (a) Wools, not specially provided for, not finer than 44s, in the grease or washed, 29 cents per pound of clean content; scoured, 32 cents per pound of clean content; on the skin, 27 cents per pound of clean content; sorted, or matchings, if not scoured, 30 cents per pound of clean content: *Provided*, That a tolerance of not more than 10 per centum of wools not finer than 46s may be allowed in each bale or package of wools imported as not finer than 44s.

(b) Wools, not specially provided for, and hair of the Angora goat, Cashmere goat, alpaca, and other like animals, in the grease or washed, 34 cents per pound of clean content; scoured, 37 cents per pound of clean content; on the skin, 32 cents per pound of clean content; sorted, or matchings, if not scoured, 35 cents per pound of clean content.

PAR. 1103. If any bale or package contains wools, hairs, wool wastes, or wool waste material, subject to different rates of duty, the highest rate applicable to any part shall apply to the entire contents of such bale or package, except as provided in paragraphs 1101 and 1102.

PAR. 1104. The Secretary of the Treasury is hereby authorized and directed to prescribe methods and regulations for carrying out the provisions of this schedule relating to the duties on wool and hair. The Secretary of the Treasury is further authorized and directed to procure from the Secretary of Agriculture, and deposit in such customhouses and other places in the United States or elsewhere as he may designate, sets of the Official Standards of the United States for grades of wool. He is further authorized to display, in the customhouses of the United States, or elsewhere, numbered, but not otherwise identifiable, samples of imported wool and hair, to which are attached data as to clean content and other pertinent facts, for the information of the trade and of customs officers.

PAR. 1105. (a) Top waste, slubbing waste, roving waste, and ring waste, 37 cents per pound; garnetted waste, 26 cents per pound; nolls, carbonized, 30 cents per pound; nolls, not carbonized, 23 cents per pound; thread or yarn waste, 25 cents per pound; card or burr

waste, carbonized, 23 cents per pound; not carbonized, 16 cents per pound; all other wool wastes not specially provided for, 24 cents per pound; shoddy, and wool extract, 24 cents per pound; mungo, 10 cents per pound; wool rags, 18 cents per pound; flocks, 8 cents per pound.

(b) Wastes of the hair of the Angora goat, Cashmere goat, alpaca, and other like animals, shall be dutiable at the rates provided for similar types of wool wastes.

PAR. 1106. Wool, and hair of the kinds provided for in this schedule, if carbonized, or advanced in any manner or by any process of manufacture beyond the washed or scoured condition, including tops, but not further advanced than roving, 37 cents per pound and 20 per centum ad valorem.

PAR. 1107. Yarn, wholly or in chief value of wool, valued at not more than \$1 per pound, 40 cents per pound and 35 per centum ad valorem; valued at more than \$1 but not more than \$1.50 per pound, 40 cents per pound and 45 per centum ad valorem; valued at more than \$1.50 per pound, 40 cents per pound and 50 per centum ad valorem.

PAR. 1108. Woven fabrics, weighing not more than four ounces per square yard, wholly or in chief value of wool, valued at not more than \$1.25 per pound, 50 cents per pound and 50 per centum ad valorem; valued at more than \$1.25 but not more than \$2 per pound, 50 cents per pound and 55 per centum ad valorem; valued at more than \$2 per pound, 50 cents per pound and 60 per centum ad valorem: *Provided*, That if the warp of any of the foregoing is wholly of cotton, or other vegetable fiber, the duty on the fabric, valued at not more than \$1 per pound, shall be 40 cents per pound and 50 per centum ad valorem; valued at more than \$1 but not more than \$1.50 per pound, 40 cents per pound and 55 per centum ad valorem; valued at more than \$1.50 per pound, 40 cents per pound and 60 per centum ad valorem.

PAR. 1109. (a) Woven fabrics, weighing more than four ounces per square yard, wholly or in chief value of wool, valued at not more than \$1.25 per pound, 50 cents per pound and 50 per centum ad valorem; valued at more than \$1.25 but not more than \$2 per pound, 50 cents per pound and 55 per centum ad valorem; valued at more than \$2 per pound, 50 cents per pound and 60 per centum ad valorem.

(b) Felts, belts, blankets, jackets, or other articles of machine clothing, for paper-making, printing, or other machines, when woven, wholly or in chief value of wool, as units or in the piece, finished or unfinished, shall be dutiable at the rates provided in subparagraph (a).

PAR. 1110. Pile fabrics, whether or not the pile covers the entire surface, wholly or in chief value of wool, and all articles, finished or unfinished, made or cut from such pile fabrics: If the pile is wholly cut or wholly uncut, 44 cents per pound and 50 per centum ad valorem; if the pile is partly cut, 44 cents per pound and 55 per centum ad valorem.

PAR. 1111. Blankets, and similar articles (including carriage and automobile robes and steamer rugs), made as units or in the piece, finished or unfinished, wholly or in chief value of wool, not exceeding three yards in length, valued at not more than \$1 per

pound, 30 cents per pound and 36 per centum ad valorem; valued at more than \$1 but not more than \$1.50 per pound, 33 cents per pound and 37½ per centum ad valorem; valued at more than \$1.50 per pound, 40 cents per pound and 40 per centum ad valorem: *Provided*, That on all the foregoing, exceeding three yards in length, the same duty shall be paid as on woven fabrics of wool weighing more than four ounces per square yard. (As amended June 25, 1938, 5 p. m., E. S. T., ch. 679, § 34 (a), 52 Stat. 1091.)

#### EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on June 25, 1938.

PAR. 1112. Felts, not woven, wholly or in chief value of wool, valued at not more than \$1.50 per pound, 30 cents per pound and 35 per centum ad valorem; valued at more than \$1.50 per pound, 40 cents per pound and 40 per centum ad valorem.

PAR. 1113. Fabrics, with fast edges, not exceeding twelve inches in width, and articles made therefrom; tubings, garters, suspenders, braces, cords, and cords and tassels; all the foregoing, wholly or in chief value of wool, 50 cents per pound and 50 per centum ad valorem.

PAR. 1114. (a) Knit fabric, in the piece, wholly or in chief value of wool, valued at not more than \$1 per pound, 33 cents per pound and 40 per centum ad valorem; valued at more than \$1 per pound, 50 cents per pound and 50 per centum ad valorem.

(b) Hose, half-hose, gloves, and mittens, finished or unfinished, wholly or in chief value of wool, valued at not more than \$1.75 per dozen pairs, 40 cents per pound and 35 per centum ad valorem; valued at more than \$1.75 per dozen pairs, 50 cents per pound and 50 per centum ad valorem.

(c) Knit underwear, finished or unfinished, wholly or in chief value of wool, valued at not more than \$1.75 per pound, 40 cents per pound and 30 per centum ad valorem; valued at more than \$1.75 per pound, 50 cents per pound and 50 per centum ad valorem.

(d) Outerwear and articles of all kinds, knit or crocheted, finished or unfinished, wholly or in chief value of wool, and not specially provided for, valued at not more than \$2 per pound, 44 cents per pound and 45 per centum ad valorem; valued at more than \$2 per pound, 50 cents per pound and 50 per centum ad valorem.

PAR. 1115. (a) Clothing and articles of wearing apparel of every description, not knit or crocheted, manufactured wholly or in part, wholly or in chief value of wool, valued at not more than \$4 per pound, 33 cents per pound and 45 per centum ad valorem; valued at more than \$4 per pound, 50 cents per pound and 50 per centum ad valorem.

(b) Bodies, hoods, forms, and shapes, for hats, bonnets, caps, berets, and similar articles, wholly or in chief value of wool but not knit or crocheted nor made in chief value of knit, crocheted, or woven material, 40 cents per pound and 75 per centum ad valorem; and, in addition thereto, on all the foregoing, if pulled, stamped, blocked, or trimmed (including finished hats, bonnets, caps, berets, and similar ar-

ticles), 25 cents per article. (As amended June 25, 1938, 5 p. m., E. S. T., ch. 679, § 34 (b), 52 Stat. 1092.)

#### EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on June 25, 1938.

PAR. 1116. (a) Oriental, Axminster, Savonnerie, Aubusson, and other carpets, rugs, and mats, not made on a power-driven loom, plain or figured, whether woven as separate carpets, rugs, or mats, or in rolls of any width, 50 cents per square foot, but not less than 45 per centum ad valorem.

(b) Carpets, rugs, and mats, of oriental weave or weaves, made on a power-driven loom; chenille Axminster carpets, rugs, and mats; all the foregoing, plain or figured, whether woven as separate carpets, rugs, or mats, or in rolls of any width, 60 per centum ad valorem.

PAR. 1117. (a) Axminster carpets, rugs and mats, not specially provided for; Wilton carpets, rugs, and mats; Brussels carpets, rugs, and mats; velvet or tapestry carpets, rugs, and mats; and carpets, rugs, and mats, of like character or description; all the foregoing, valued at not more than 40 cents per square foot, 40 per centum ad valorem; valued at more than 40 cents per square foot, 60 per centum ad valorem.

(b) Ingrain carpets, mats, and rugs or art squares, of whatever material composed, and carpets, rugs, and mats, of like character or description, not specially provided for, 25 per centum ad valorem.

(c) All other floor coverings, including mats and druggets, wholly or in chief value of wool, not specially provided for, valued at not more than 40 cents per square foot, 30 per centum ad valorem; valued at more than 40 cents per square foot, 60 per centum ad valorem.

(d) Parts of any of the foregoing shall be dutiable at the rate provided for the completed article.

PAR. 1118. Screens, hassocks, and all other articles, composed wholly or in part of carpets, rugs, or mats, and not specially provided for, 30 per centum ad valorem.

PAR. 1119. Tapestries and upholstery goods (not including pile fabrics), in the piece or otherwise, wholly or in chief value of wool, shall be subject to the applicable rates of duty imposed upon woven fabrics of wool in paragraph 1108 or 1109.

PAR. 1120. All manufactures, wholly or in chief value of wool, not specially provided for, 50 per centum ad valorem.

PAR. 1121. Whenever in this subtitle the word "wool" is used in connection with a manufactured article of which it is a component material, it shall be held to include wool or hair of the sheep, camel, Angora goat, Cashmere goat, alpaca, or other like animals, whether manufactured by the woolen, worsted, felt, or any other process.

PAR. 1122. Fabrics (except printing-machine cylinder lapping in chief value of flax), in the piece or otherwise, containing 17 per centum or more in weight of wool, but not in chief value thereof, and whether or not more specifically provided for, shall be dutiable as follows:

That proportion of the amount of the duty on the fabric, computed under this schedule, which the amount of wool bears to the entire weight, plus that proportion of the amount of the duty on the fabric, computed as if this paragraph had not been enacted, which the weight of the component materials other than wool bears to the entire weight.

#### SCHEDULE 12.—SILK MANUFACTURES

PAR. 1201. Silk partially manufactured, including total or partial degumming other than in the reeling process, from raw silk, waste silk, or cocoons, and silk noils exceeding two inches in length; all the foregoing, if not twisted or spun, 35 per centum ad valorem.

PAR. 1202. Spun silk or schappe silk yarn, or yarn of silk and rayon or other synthetic textile, and roving, not bleached, dyed, colored, or plied, 40 per centum ad valorem; bleached, dyed, colored, or plied, 50 per centum ad valorem.

PAR. 1203. Thrown silk not more advanced than singles, tram, or organzine, 20 per centum ad valorem.

PAR. 1204. Sewing silk, twist, floss, and silk threads or yarns of any description, made from raw silk, not specially provided for, 40 per centum ad valorem.

PAR. 1205. Woven fabrics in the piece, wholly or in chief value of silk, not specially provided for, 55 per centum ad valorem; woven fabrics in the piece, not exceeding thirty inches in width, whether woven with fast or split edges, wholly or in chief value of silk, including umbrella silk or Gloria cloth, 60 per centum ad valorem; any of the foregoing, if Jacquard-figured, 65 per centum ad valorem.

PAR. 1206. Pile fabrics (including pile ribbons), whether or not the pile covers the entire surface, wholly or in chief value of silk, and all articles, finished or unfinished, made or cut from such pile fabrics:

(1) If the pile is wholly cut or wholly uncut, if velvets (other than ribbons), 65 per centum ad valorem; if other than velvets, 60 per centum ad valorem;

(2) if the pile is partly cut, if velvets (other than ribbons), 70 per centum ad valorem; if other than velvets, 65 per centum ad valorem;

(3) Velvet ribbons, 60 per centum ad valorem.

PAR. 1207. Fabrics, with fast edges, not exceeding twelve inches in width, and articles made therefrom; tubings, garters, suspenders, braces, cords, tassels, and cords and tassels; all the foregoing wholly or in chief value of silk or of silk and india rubber, and not specially provided for, 55 per centum ad valorem; if Jacquard-figured, 65 per centum ad valorem.

PAR. 1208. Knit fabric, in the piece, wholly or in chief value of silk, 55 per centum ad valorem; gloves, mittens, hose, half-hose, underwear, outerwear, and articles of all kinds, knit or crocheted, finished or unfinished, wholly or in chief value of silk, 60 per centum ad valorem.

PAR. 1209. Handkerchiefs and woven mufflers, wholly or in chief value of silk, finished or unfinished, not hemmed, 55 per centum ad valorem; hemmed or hemstitched, 60 per centum ad valorem.

PAR. 1210. Clothing and articles of wearing apparel of every description, manufactured wholly or in

part, wholly or in chief value of silk, and not specially provided for, 65 per centum ad valorem.

PAR. 1211. All manufactures, wholly or in chief value of silk, not specially provided for, 65 per centum ad valorem.

#### SCHEDULE 13.—MANUFACTURES OF RAYON OR OTHER SYNTHETIC TEXTILE

PAR. 1301. Filaments of rayon or other synthetic textile, single or grouped, and yarns of rayon or other synthetic textile, singles, all the foregoing not specially provided for, weighing one hundred and fifty deniers or more per length of four hundred and fifty meters, 45 per centum ad valorem; weighing less than one hundred and fifty deniers per length of four hundred and fifty meters, 50 per centum ad valorem; and, in addition, yarns of rayon or other synthetic textile, plied, shall be subject to an additional duty of 5 per centum ad valorem: *Provided*, That none of the foregoing filaments shall be subject to a less duty than 40 cents per pound, and none of the foregoing yarns shall be subject to a less duty than 45 cents per pound. Any of the foregoing yarns if having more than twenty turns twist per inch shall be subject to an additional cumulative duty of 45 cents per pound.

PAR. 1302. Waste of rayon or other synthetic textile, except waste wholly or in chief value of cellulose acetate, 10 per centum ad valorem; filaments of rayon or other synthetic textile, not exceeding thirty inches in length, other than waste, whether known as cut fiber, staple fiber, or by any other name, 25 per centum ad valorem; noils of rayon or other synthetic textile, 25 per centum ad valorem; garnetted or carded rayon or other synthetic textile, 10 cents per pound and 25 per centum ad valorem; sliver, tops, and roving, of rayon or other synthetic textile, 10 cents per pound and 30 per centum ad valorem.

PAR. 1303. Spun yarn of rayon or other synthetic textile, 12½ cents per pound, and, in addition, if singles, 45 per centum ad valorem, if plied, 50 per centum ad valorem.

PAR. 1304. Yarn of rayon or other synthetic textile put up for handwork, and sewing thread of rayon or other synthetic textile, 55 per centum ad valorem, but not less than 45 cents per pound.

PAR. 1305. Rayon or other synthetic textile in bands or strips not exceeding one inch in width, suitable for the manufacture of textiles, 45 per centum ad valorem, but not less than 45 cents per pound.

PAR. 1306. Woven fabrics in the piece, wholly or in chief value of rayon or other synthetic textile, not specially provided for, 45 cents per pound and 60 per centum ad valorem, and, in addition, if Jacquard-figured, 10 per centum ad valorem.

PAR. 1307. Pile fabrics (including pile ribbons), whether or not the pile covers the entire surface, wholly or in chief value of rayon or other synthetic textile, and all articles, finished or unfinished, made or cut from such pile fabrics, 45 cents per pound, and, in addition, if the pile is wholly cut or wholly uncut, 60 per centum ad valorem, if the pile is partly cut, 65 per centum ad valorem.

PAR. 1308. Fabrics, with fast edges, not exceeding twelve inches in width, and articles made therefrom;

tubings, garters, suspenders, braces, cords, tassels, and cords and tassels; all the foregoing wholly or in chief value of rayon or other synthetic textile, or of rayon or other synthetic textile and india rubber, and not specially provided for, 45 cents per pound and 60 per centum ad valorem, and, in addition, if Jacquard-figured, 10 per centum ad valorem.

PAR. 1309. Knit fabric, in the piece, wholly or in chief value of rayon or other synthetic textile, 45 cents per pound and 60 per centum ad valorem; gloves, mittens, hose, half-hose, underwear, outerwear, and articles of all kinds, knit or crocheted, finished or unfinished, wholly or in chief value of rayon or other synthetic textile, 45 cents per pound and 65 per centum ad valorem.

PAR. 1310. Handkerchiefs and woven mufflers, wholly or in chief value of rayon or other synthetic textile, finished or unfinished, not hemmed, 45 cents per pound and 60 per centum ad valorem; if hemmed or hemstitched, 45 cents per pound and 65 per centum ad valorem.

PAR. 1311. Clothing and articles of wearing apparel of every description, manufactured wholly or in part, wholly or in chief value of rayon or other synthetic textile, and not specially provided for, 45 cents per pound and 65 per centum ad valorem.

PAR. 1312. Manufactures of filaments, fibers, yarns, or threads, of rayon or other synthetic textile, and textile products made of bands or strips (not exceeding one inch in width) of rayon or other synthetic textile, all the foregoing, wholly or in chief value of rayon or other synthetic textile, not specially provided for, 45 cents per pound and 65 per centum ad valorem.

PAR. 1313. Whenever used in this chapter the terms "rayon" and "other synthetic textile" mean the product made by any artificial process from cellulose, a cellulose hydrate, a compound of cellulose, or a mixture containing any of the foregoing, which product is solidified into filaments, fibers, bands, strips, or sheets, whether such products are known as rayon, staple fiber, visca, or cellophane, or as artificial, imitation, or synthetic silk, wool, horsehair, or straw, or by any other name whatsoever.

#### SCHEDULE 14.—PAPERS AND BOOKS

PAR. 1401. Uncoated papers commonly or commercially known as book paper, and all uncoated printing paper, not specially provided for, not including cover paper, one-fourth of 1 cent per pound and 10 per centum ad valorem: *Provided*, That if any country, dependency, province, or other subdivision of government shall forbid or restrict in any way the exportation of (whether by law, order, regulation, contractual relation, or otherwise, directly or indirectly), or impose any export duty, export license fee, or other export charge of any kind whatsoever (whether in the form of additional charge or license fee or otherwise) upon printing paper, or wood pulp, or wood for use in the manufacture of wood pulp, the President may enter into negotiations with such country, dependency, province, or other subdivision of government to secure the removal of such prohibition, restriction, export duty, or other export charge, and if it is not removed he may, by proclamation, declare such failure of negotiations, setting forth

the facts. Thereupon, and until such prohibition, restriction, export duty, or other export charge is removed, there shall be imposed upon printing paper provided for in this paragraph, when imported either directly or indirectly from such country, dependency, province, or other subdivision of government, an additional duty of 10 per centum ad valorem and in addition thereto an amount equal to the highest export duty or other export charge imposed by such country, dependency, province, or other subdivision of government, upon either an equal amount of printing paper or an amount of wood pulp or wood for use in the manufacture of wood pulp necessary to manufacture such printing paper.

PAR. 1402. Paper board, wallboard, and pulpboard, including cardboard, and leather board or compress leather, not plate finished, supercalendered or friction calendered, laminated by means of an adhesive substance, coated, surface stained or dyed, lined or vat-lined, embossed, printed, decorated or ornamented in any manner, nor cut into shapes for boxes or other articles and not specially provided for, 10 per centum ad valorem: *Provided*, That for the purposes of this chapter any of the foregoing less than twelve one-thousandths of one inch in thickness shall be deemed to be paper; sheathing paper, roofing paper, deadening felt, sheathing felt, roofing felt or felt roofing, whether or not saturated or coated, 10 per centum ad valorem.

PAR. 1403. Filter masse or filter stock, composed wholly or in part of wood pulp, wood flour, cotton or other vegetable fiber, 20 per centum ad valorem; indurated fiber ware, masks composed of paper, pulp or papier-mâché, and manufactures of papier-mâché not specially provided for, 25 per centum ad valorem; manufactures of pulp, not specially provided for, 30 per centum ad valorem.

PAR. 1404. Papers commonly or commercially known as tissue paper, stereotype paper, and copying paper, india and bible paper, condenser paper, carbon paper, coated or uncoated, bibulous paper, pottery paper, tissue paper for waxing, and all paper similar to any of the foregoing, not specially provided for, colored or uncolored, white or printed, weighing not over six pounds to the ream, and whether in sheets or any other form, 6 cents per pound and 20 per centum ad valorem; weighing over six pounds and less than ten pounds to the ream, 5 cents per pound and 15 per centum ad valorem; india and bible paper weighing ten pounds or more and less than twenty and one-half pounds to the ream, 4 cents per pound and 15 per centum ad valorem; crêpe paper, commonly or commercially so known, including paper crêped or partly crêped in any manner, and paper wadding, and pulp wadding, and manufactures of such wadding, 6 cents per pound and 15 per centum ad valorem: *Provided*, That no article composed wholly or in chief value of one or more of the papers specified in this paragraph shall be subject to a less rate of duty than that imposed upon the component paper of chief value of which such article is made: *Provided further*, That the term "ream" as used in this paragraph means two hundred and eighty-eight thousand square inches.

PAR. 1405. Papers with coated surface or surfaces, not specially provided for, 5 cents per pound and 15 per centum ad valorem; papers with coated surface or surfaces, embossed or printed otherwise than lithographically, and papers wholly or partly covered with metal or its solutions (except as herein provided), or with gelatin, linseed oil cement, or flock, 5 cents per pound and 15 per centum ad valorem; uncoated papers, including wrapping paper, with the surface or surfaces wholly or partly decorated or covered with a design, fancy effect, pattern, or character, except designs, fancy effects, patterns, or characters produced on a paper machine without attachments, or produced by lithographic process,  $4\frac{1}{2}$  cents per pound and 10 per centum ad valorem, and in addition thereto, if embossed, or printed otherwise than lithographically, or wholly or partly covered with metal or its solutions, or with gelatin or flock, 10 per centum ad valorem: *Provided*, That paper wholly or partly covered with metal or its solutions, and weighing less than fifteen pounds per ream of four hundred and eighty sheets, on the basis of twenty by twenty-five inches, shall be subject to a duty of 5 cents per pound and 18 per centum ad valorem; gummed papers, not specially provided for, 5 cents per pound; simplex decalcomania paper not printed, 5 cents per pound and 10 per centum ad valorem; cloth-lined or reinforced paper, 5 cents per pound and 17 per centum ad valorem; papers with paraffin or wax-coated surface or surfaces, vegetable parchment paper, grease-proof and imitation parchment papers which have been supercalendered and rendered transparent or partially so, by whatever name known, all other grease-proof and imitation parchment paper, not specially provided for, by whatever name known, 3 cents per pound and 15 per centum ad valorem; bags, printed matter other than lithographic, and all other articles, composed wholly or in chief value of any of the foregoing papers, not specially provided for, and all boxes of paper or papier-mâché or wood covered or lined with any of the foregoing papers or lithographed paper, or covered or lined with cotton or other vegetable fiber, 5 cents per pound and 20 per centum ad valorem; plain basic paper ordinarily used in the manufacture of paper commonly or commercially known either as blue print or brown print, and plain basic paper ordinarily used for similar purposes, 20 per centum ad valorem; sensitized paper commonly or commercially known either as blue print or brown print, and similar sensitized paper, 25 per centum ad valorem; unsensitized basic paper, and baryta coated paper, to be sensitized for use in photography, 5 per centum ad valorem; sensitized paper, to be used in photography, 30 per centum ad valorem; wet transfer paper or paper prepared wholly with glycerin or glycerin combined with other materials, containing the imprints taken from lithographic plates or stones, 65 per centum ad valorem.

PAR. 1406. Pictures, calendars, cards, labels, flaps, cigar bands, placards, and other articles, composed wholly or in chief value of paper lithographically printed in whole or in part from stone, gelatin, metal, or other material (except boxes, views of American scenery or objects, and music, and illustrations when

forming part of a periodical or newspaper, or of bound or unbound books, accompanying the same), not specially provided for, shall be subject to duty at the following rates: Labels and flaps, printed in less than eight colors (bronze printing to be counted as two colors), but not printed in whole or in part in metal leaf, 30 cents per pound; cigar bands of the same number of colors and printings, 35 cents per pound; labels and flaps printed in eight or more colors (bronze printing to be counted as two colors), but not printed in whole or in part in metal leaf, 40 cents per pound; cigar bands of the same number of colors and printings, 50 cents per pound; labels and flaps, printed in whole or in part in metal leaf, 60 cents per pound; cigar bands, printed in whole or in part in metal leaf, 65 cents per pound; all labels, flaps, and bands, not exceeding ten square inches cutting size in dimensions, if embossed or die-cut, shall be subject to the same rate of duty as hereinbefore provided for cigar bands of the same number of colors and printings (but no extra duty shall be assessed on labels, flaps, and bands for embossing or die-cutting); transparencies, printed lithographically or otherwise, in not more than five printings (bronze printing to be counted as two printings), 40 per centum ad valorem; in more than five printings (bronze printing to be counted as two printings), 50 per centum ad valorem: *Provided*, That all invoices shall state the number of separate printings actually employed in the production of the transparency; fashion magazines or periodicals, printed in whole or in part by lithographic process, or decorated by hand, 8 cents per pound; decalcomanias in ceramic colors, weighing not over one hundred pounds per one thousand sheets on the basis of twenty by thirty inches in dimensions, \$1.25 per pound and 15 per centum ad valorem; weighing over one hundred pounds per one thousand sheets on the basis of twenty by thirty inches in dimensions, 30 cents per pound and 15 per centum ad valorem; all other decalcomanias, except toy decalcomanias, if not backed with metal leaf, 40 cents per pound; if backed with metal leaf, 65 cents per pound; all articles other than those hereinbefore specifically provided for in this paragraph, not exceeding twelve one-thousandths of one inch in thickness, 30 cents per pound; exceeding twelve and not exceeding twenty one-thousandths of one inch in thickness, and less than thirty-five square inches cutting size in dimensions, 15 cents per pound; exceeding thirty-five square inches cutting size in dimensions, 12 cents per pound, and in addition thereto on all said articles exceeding twelve and not exceeding twenty one-thousandths of one inch in thickness, if either die-cut or embossed, three-fourths of 1 cent per pound; if both die-cut and embossed,  $1\frac{1}{2}$  cents per pound; exceeding twenty one-thousandths of one inch in thickness,  $8\frac{3}{4}$  cents per pound: *Provided*, That in the case of articles hereinbefore specified the thickness which shall determine the rate of duty to be imposed shall be that of the thinnest material found in the article, but for the purposes of this paragraph the thickness of lithographs mounted or pasted upon paper, cardboard, or other material shall be the combined thickness of the lithograph

and the foundation on which it is mounted or pasted, and the cutting size shall be the area which is the product of the greatest dimensions of length and breadth of the article, and if the article is made up of more than one piece, the cutting size shall be the combined cutting sizes of all of the lithographically printed parts in the article.

PAR. 1407. (a) Correspondence cards, writing, letter, note, drawing, and handmade paper, paper commonly or commercially known as handmade or machine handmade paper, japan paper and imitation japan paper by whatever name known, Bristol board of the kinds made on a Fourdrinier or a multicylinder machine, ledger, bond, record, tablet, typewriter, manifold, onionskin, and imitation onionskin paper, and paper similar to any of the foregoing, all the above weighing eight pounds or over per ream, 3 cents per pound and 15 per centum ad valorem; if ruled, bordered, embossed, printed, lined, or decorated in any manner, whether in the pulp or otherwise, other than by lithographic process, 10 per centum ad valorem in addition; correspondence cards, and writing, letter, and note paper, in sheets less than one hundred and ten square inches in area, shall be subject to an additional cumulative duty of 5 per centum ad valorem.

(b) Sheets of writing, letter, and note paper, with border gummed or perforated, with or without inserts, prepared for use as combination sheet and envelope, and papeteries, 40 per centum ad valorem. The term "papeteries" as used in this paragraph means writing, letter, or note paper, or correspondence cards, together with the envelopes, packed or assembled into boxes, portfolios, folders, or other containers, in which such articles are sold as a unit to the ultimate consumer, including such containers.

(c) The term "ream" as used in this paragraph means one hundred and eighty-seven thousand square inches.

PAR. 1408. Paper envelopes, filled or unfilled, whether the contents are dutiable or free, not specially provided for shall be subject to the same rate of duty as the paper from which made and in addition thereto, if plain, 5 per centum ad valorem; if bordered, embossed, printed, tinted, decorated, or lined, 10 per centum ad valorem; if lithographed, 30 per centum ad valorem: *Provided*, That paper envelopes which contain merchandise subject to an ad valorem rate of duty or a duty based in whole or in part upon the value thereof shall be dutiable at the rate applicable to their contents but not less than the rates provided for herein.

PAR. 1409. Jacquard designs on ruled paper, or cut on Jacquard cards, and parts of such designs, 35 per centum ad valorem; hanging paper, not printed, lithographed, dyed, or colored, 10 per centum ad valorem; printed, lithographed, dyed, or colored, 1½ cents per pound and 20 per centum ad valorem; wrapping paper not specially provided for, 30 per centum ad valorem; blotting paper, 30 per centum ad valorem; filtering paper, 5 cents per pound and 15 per centum ad valorem; paper commonly or commercially known as cover paper, plain, uncoated, and undecorated, 30 per centum ad valorem; paper not specially provided for, 30 per centum ad valorem.

PAR. 1410. Unbound books of all kinds, bound books of all kinds except those bound wholly or in part in leather, sheets or printed pages of books bound wholly or in part in leather, pamphlets, music in books or sheets, and printed matter, all the foregoing not specially provided for, if of bona fide foreign authorship, 15 per centum ad valorem; all other, not specially provided for, 25 per centum ad valorem: *Provided*, That exported books of domestic manufacture, when returned to the United States after having been advanced in value or improved in condition by any process of manufacture or other means, shall, under rules and regulations prescribed by the Secretary of the Treasury, be dutiable only on the cost of materials added and labor performed in a foreign country; blank books, slate books, drawings, engravings, photographs, etchings, maps, and charts, 25 per centum ad valorem; book bindings or covers wholly or in part of leather, not specially provided for, 30 per centum ad valorem; books of paper or other material for children's use, printed lithographically or otherwise, not exceeding in weight twenty-four ounces each, with reading matter other than letters, numerals, or descriptive words, 15 per centum ad valorem; booklets printed lithographically or otherwise, not specially provided for, 7 cents per pound; booklets, wholly or in chief value of paper, decorated in whole or in part by hand or by spraying, whether or not printed, not specially provided for, 15 cents per pound; all post cards (not including American views), plain, decorated, embossed, or printed except by lithographic process, 30 per centum ad valorem; views of any landscape, scene, building, place or locality in the United States, on cardboard or paper, not thinner than eight one-thousandths of one inch, by whatever process printed or produced, including those wholly or in part produced by either lithographic or photogelatin process (except show cards), occupying thirty-five square inches or less of surface per view, bound or unbound, or in any other form, 15 cents per pound and 25 per centum ad valorem; thinner than eight one-thousandths of one inch, \$2 per thousand; greeting cards, valentines, tally cards, place cards, and all other social and gift cards, including folders, booklets and cutouts, or in any other form, wholly or partly manufactured, with greeting, title or other wording, 45 per centum ad valorem; without greeting, title or other wording, 30 per centum ad valorem.

PAR. 1411. Photograph, autograph, scrap, postcard and postage-stamp albums, and albums for phonograph records, wholly or partly manufactured, 30 per centum ad valorem.

PAR. 1412. Playing cards, 10 cents per pack and 20 per centum ad valorem.

PAR. 1413. Papers and paper board and pulpboard, including cardboard and leatherboard or compress leather, embossed, cut, die-cut, or stamped into designs or shapes, such as initials, monograms, lace, borders, bands, strips, or other forms, or cut or shaped for boxes or other articles, plain or printed, but not lithographed, and not specially provided for; paper board and pulpboard, including cardboard and leatherboard or compress leather, plate finished, supercalendered or friction calendered, laminated by



means of an adhesive substance, coated, surface stained or dyed, lined or vat-lined, embossed, printed, or decorated or ornamented in any manner; press boards and press paper, all the foregoing, 30 per centum ad valorem; test or container boards of a bursting strength above sixty pounds per square inch by the Mullen or the Webb test, 20 per centum ad valorem; stereotype-matrix mat or board, 35 per centum ad valorem; wall pockets, composed wholly or in chief value of paper, papier-mâché or paper board, whether or not die-cut, embossed, or printed lithographically or otherwise; boxes, composed wholly or in chief value of paper, papier-mâché or paper board, and not specially provided for; manufactures of paper, or of which paper is the component material of chief value, not specially provided for, all the foregoing, 35 per centum ad valorem; tubes wholly or in chief value of paper, commonly used for holding yarn or thread, if parallel, 1 cent per pound and 25 per centum ad valorem; if tapered, 3 cents per pound and 35 per centum ad valorem.

#### SCHEDULE 15.—SUNDRIES

PAR. 1501. (a) Yarn, slivers, rovings, wick, rope, cord, cloth, tape, and tubing, of asbestos, or of asbestos and any other spinnable fiber, with or without wire, and all manufactures of any of the foregoing, 40 per centum ad valorem.

(b) Molded, pressed, or formed articles, in part of asbestos, containing any binding agent, coating, or filler, other than hydraulic cement or synthetic resin, 25 per centum ad valorem.

(c) Asbestos shingles and articles in part of asbestos, if containing hydraulic cement or hydraulic cement and other material, not coated, impregnated, decorated, or colored, in any manner, three-fourths of 1 cent per pound; if coated, impregnated, decorated, or colored, in any manner, 1 cent per pound.

(d) All other manufactures of which asbestos is the component material of chief value, 25 per centum ad valorem.

PAR. 1502. Boxing gloves, baseballs, footballs, tennis balls, golf balls, and all other balls, of whatever material composed, finished or unfinished, primarily designed for use in physical exercise (whether or not such exercise involves the element of sport), and all clubs, rackets, bats, golf tees, and other equipment, such as is ordinarily used in conjunction therewith, all the foregoing, not specially provided for, 30 per centum ad valorem; ice and roller skates, and parts thereof, 20 per centum ad valorem.

PAR. 1503. Spangles and beads, including bugles, not specially provided for, 35 per centum ad valorem; beads of ivory, 45 per centum ad valorem; fabrics and articles not ornamented with beads, spangles, or bugles, nor embroidered, tamboured, appliqué, or scalloped, composed wholly or in chief value of beads or spangles (other than imitation pearl beads, beads in imitation of precious or semiprecious stones, and beads in chief value of synthetic resin), 60 per centum ad valorem; hollow or filled imitation pearl beads of all kinds and shapes, of whatever material composed, 60 per centum ad valorem; imitation solid pearl beads, valued at not more than one-fourth of 1 cent per inch, 60 per centum ad valorem; valued at

more than one-fourth of 1 cent and not more than 1 cent per inch, one-half of one cent per inch and 60 per centum ad valorem; valued at more than 1 cent and not more than 5 cents per inch, 1 cent per inch and 40 per centum ad valorem; valued at more than 5 cents per inch, 60 per centum ad valorem; iridescent imitation solid pearl beads, valued at not more than 10 cents per inch, 90 per centum ad valorem; valued at more than 10 cents per inch, 60 per centum ad valorem; beads composed in chief value of synthetic resin, 75 per centum ad valorem; all other beads in imitation of precious or semiprecious stones, of all kinds and shapes, of whatever material composed, 45 per centum ad valorem: *Provided*, That the rates on spangles and beads provided in this paragraph shall be applicable whether such spangles and beads are strung or loose, mounted or unmounted: *Provided further*, That no article composed wholly or in chief value of any of the foregoing beads or spangles shall be subject to duty at a less rate than is imposed in any paragraph of this chapter upon such articles without such beads or spangles.

PAR. 1504. (a) Braids, plaits, laces, and willow sheets or squares, composed wholly or in chief value of straw, chip, paper, grass, palm leaf, willow, osier, rattan, real horsehair, cuba bark, or manila hemp, and braids and plaits, wholly or in chief value of ramie, all the foregoing suitable for making or ornamenting hats, bonnets, or hoods: Not bleached, dyed, colored, or stained, 15 per centum ad valorem; bleached, dyed, colored, or stained, 25 per centum ad valorem; any of the foregoing containing a substantial part of rayon or other synthetic textile (but not wholly or in chief value thereof), 45 per centum ad valorem.

(b) Hats, bonnets, and hoods, composed wholly or in chief value of straw, chip, paper, grass, palm leaf, willow, osier, rattan, real horsehair, cuba bark, ramie, or manila hemp, whether wholly or partly manufactured:

(1) Not blocked or trimmed, and not bleached, dyed, colored, or stained, 25 per centum ad valorem;

(2) not blocked or trimmed, if bleached, dyed, colored, or stained, 25 cents per dozen and 25 per centum ad valorem;

(3) blocked or trimmed (whether or not bleached, dyed, colored, or stained), \$3.50 per dozen and 50 per centum ad valorem;

(4) if sewed (whether or not blocked, trimmed, bleached, dyed, colored, or stained), \$4 per dozen and 60 per centum ad valorem;

(5) any of the foregoing known as harvest hats, valued at less than \$3 per dozen, 25 per centum ad valorem.

(c) As used in this paragraph the terms "grass" and "straw" mean these substances in their natural form and structure, and not the separated fiber thereof.

PAR. 1505. Hats, bonnets, and hoods, wholly or in chief value of any braid not provided for in paragraph 1504, if such braid is composed of a substantial part of rayon or other synthetic textile, but not wholly or in chief value thereof:

(1) Blocked or trimmed (whether or not bleached, dyed, colored, or stained), 90 per centum ad valorem;

(2) if sewed (whether or not blocked, trimmed, bleached, dyed, colored, or stained), 90 per centum ad valorem.

PAR. 1506. Brooms, made of broom corn, straw, wooden fiber, or twigs, 25 per centum ad valorem; tooth brushes and other toilet brushes, the handles or backs of which are composed wholly or in chief value of any product provided for in paragraph 31, 2 cents each and 50 per centum ad valorem; handles and backs for tooth brushes and other toilet brushes, composed wholly or in chief value of any product provided for in paragraph 31, 1 cent each and 50 per centum ad valorem; toilet brushes, ornamented, mounted, or fitted with gold, silver, or platinum, or wholly or partly plated with gold, silver, or platinum, whether or not enameled, 60 per centum ad valorem; other tooth brushes and other toilet brushes, 1 cent each and 50 per centum ad valorem; all other brushes, not specially provided for, 50 per centum ad valorem; hair pencils in quills or otherwise, 40 per centum ad valorem.

PAR. 1507. Bristles, sorted, bunched, or prepared, 3 cents per pound.

PAR. 1508. Button forms of lastings, mohair or silk cloth, and manufactures of other material, in patterns of such size, shape, or form as to be fit for buttons exclusively, and not exceeding three inches in any one dimension, 10 per centum ad valorem.

PAR. 1509. Buttons of vegetable ivory, finished or partly finished,  $1\frac{1}{4}$  cents per line per gross; vegetable ivory button blanks, not drilled, dyed, or finished, three-fourths of 1 cent per line per gross; buttons of pearl or shell, finished or partly finished,  $1\frac{1}{4}$  cents per line per gross; pearl or shell button blanks, not turned, faced, or drilled,  $1\frac{1}{4}$  cents per line per gross; and, in addition thereto, on all the foregoing, 25 per centum ad valorem: *Provided*, That the term "line" as used in this paragraph and paragraph 1510 shall mean the line button measure of one-fortieth of one inch.

PAR. 1510. Buttons commonly known as agate buttons, and buttons made in imitation of or similar to pearl, shell, or agate buttons (except buttons commonly known as Roman pearl and fancy buttons with a fish-scale or similar to fish-scale finish),  $1\frac{1}{2}$  cents per line per gross and 25 per centum ad valorem; parts of buttons and button molds or blanks, finished or unfinished, not specially provided for, and all collar and cuff buttons and studs composed wholly of bone, mother-of-pearl, ivory, vegetable ivory, or agate, and buttons not specially provided for, 45 per centum ad valorem.

PAR. 1511. Cork bark, cut into squares, cubes, or quarters, 8 cents per pound; stoppers, over three-fourths of one inch in diameter, measured at the larger end, wholly or in chief value of natural cork bark, 25 cents per pound; wholly or in chief value of artificial, composition, or compressed cork, 10 cents per pound; stoppers, three-fourths of one inch or less in diameter, measured at the larger end, wholly or in chief value of natural cork bark, 31 cents per pound; wholly or in chief value of artificial, composition, or compressed cork,  $12\frac{1}{2}$  cents per pound; perforated or hollow corks, commonly or commercially known as shell corks, 75 cents per pound;

perforated cork penholder grips, \$2 per pound; disks, wafers, and washers, three-sixteenths of one inch or less in thickness, made from natural cork bark, 25 cents per pound; if made from artificial, composition, or compressed cork,  $12\frac{1}{2}$  cents per pound; cork, commonly or commercially known as artificial, composition, or compressed cork, in the rough and not further advanced than slabs, blocks, planks, rods, sticks, or similar forms, 10 cents per pound; manufactured wholly or in chief value of artificial, composition, or compressed cork, finished or unfinished, not specially provided for, 16 cents per pound; clean, refined, or purified, granulated or ground cork, weighing not over six pounds per cubic foot uncompressed, 3 cents per pound; all other ground, granulated, or regranulated cork, 1 cent per pound; cork insulation, wholly or in chief value of cork, cork waste, or granulated or ground cork, in blocks, slabs, boards, or planks,  $2\frac{1}{2}$  cents per board foot; cork pipe coverings, cork fitting covers, and cork lags, wholly or partly manufactured, coated or uncoated, 5 cents per pound; cork tile in the rough or wholly or partly finished, over three-eighths of one inch in thickness, 6 cents per pound; three-eighths of one inch or less in thickness, 10 cents per pound; cork paper, 30 per centum ad valorem; and manufactures wholly or in chief value of cork bark or cork, not specially provided for, 45 per centum ad valorem.

PAR. 1512. Dice, dominoes, draughts, chessmen, and billiard, pool, and bagatelle balls, and poker chips, of ivory, bone, or other material, 50 per centum ad valorem.

PAR. 1513. Dolls and doll clothing, composed in any part, however small, of any of the laces, fabrics, embroideries, or other materials or articles provided for in paragraph 1529 (a), 90 per centum ad valorem; dolls and toys, composed wholly or in chief value of any product provided for in paragraph 31, having any movable member or part, 1 cent each and 60 per centum ad valorem; not having any movable member or part, 1 cent each and 50 per centum ad valorem; parts of dolls or toys, composed wholly or in chief value of any product provided for in paragraph 31, 1 cent each and 50 per centum ad valorem; all other dolls, parts of dolls (including clothing), doll heads, toy marbles, toy games, toy containers, toy favors, toy souvenirs, of whatever materials composed, air rifles, toy balloons, toy books without reading matter (not counting as reading matter any printing on removable pages), other than letters, numerals, or descriptive words, bound or unbound, and parts thereof, garlands, festooning and Christmas tree decorations made wholly or in chief value of tinsel wire, lame or lahn, bullions or metal threads, and all other toys, and parts of toys, not specially provided for, 70 per centum ad valorem. As used in this paragraph, the term "toy" means an article chiefly used for the amusement of children, whether or not also suitable for physical exercise or for mental development. The rates provided for in this paragraph shall apply to articles enumerated or described herein, whether or not more specifically provided for elsewhere in this chapter.

PAR. 1514. Emery, corundum, garnet, and artificial abrasives, in grains, or ground, pulverized, refined, or



manufactured, 1 cent per pound; emery wheels, emery files, and manufactures of which emery, corundum, garnet, or artificial abrasive is the component material of chief value, not specially provided for; and all papers, cloths, and combinations of paper and cloth, wholly or partly coated with artificial or natural abrasives, or with a combination of natural and artificial abrasives; all the foregoing, 20 per centum ad valorem. Any of the foregoing, if containing more than one-tenth of 1 per centum of vanadium, or more than two-tenths of 1 per centum of tungsten, molybdenum, boron, tantalum, columbium or niobium, or uranium, or more than three-tenths of 1 per centum of chromium, 60 per centum ad valorem.

PAR. 1515. Firecrackers more than five-sixteenths of one inch outside diameter, or more than one and three-quarters inches in length, 25 cents per pound; all other firecrackers, 8 cents per pound; bombs, rockets, Roman candles, and fireworks of all descriptions, not specially provided for, 12 cents per pound; the weight on all the foregoing to include all coverings, wrappings, and packing material.

PAR. 1516. Matches, friction or lucifer, of all descriptions, per gross of one hundred and forty-four boxes, containing not more than one hundred matches per box, 20 cents per gross when imported otherwise than in boxes containing not more than one hundred matches each,  $2\frac{3}{4}$  cents per one thousand matches; match splints, 1 cent per thousand; skillets, in any form, for match boxes, 12 cents per thousand; wax matches, wind matches, and all matches in books or folders or having a stained, dyed, or colored stick or stem, tapers consisting of a wick coated with an inflammable substance, night lights, fusees and time-burning chemical signals, by whatever name known, 40 per centum ad valorem: *Provided*, That in accordance with section 2654 of Title 26, white phosphorus matches manufactured wholly or in part in any foreign country shall not be entitled to enter at any of the ports of the United States, and the importation thereof is hereby prohibited: *Provided further*, That nothing in this chapter contained shall be held to repeal or modify chapter 24 of Title 26.

PAR. 1517. Percussion caps, cartridges, and cartridge shells empty, 30 per centum ad valorem; blasting caps, containing not more than one gram charge of explosive, \$2.25 per thousand; containing more than one gram charge of explosive, 75 cents per thousand additional for each additional one-half gram charge of explosive; mining, blasting, or safety fuses of all kinds, \$1 per thousand feet.

PAR. 1518. Feathers and downs, on the skin or otherwise, crude or not dressed, colored, or otherwise advanced or manufactured in any manner, not specially provided for, 20 per centum ad valorem; dressed, colored, or otherwise advanced or manufactured in any manner, including quilts of down and other manufactures of down, 60 per centum ad valorem; feather dusters, 45 per centum ad valorem; artificial or ornamental feathers suitable for use as millinery ornaments, 60 per centum ad valorem; artificial or ornamental fruits, vegetables, grasses, grains, leaves, flowers, stems, or parts thereof, when com-

posed wholly or in chief value of yarns, threads, filaments, tinsel wire, lame, bullions, metal threads, beads, bugles, spangles, or rayon or other synthetic textile, 90 per centum ad valorem; when composed wholly or in chief value of other materials and not specially provided for, 60 per centum ad valorem; natural grasses, grains, leaves, plants, shrubs, herbs, trees, and parts thereof, not specially provided for, when bleached, 50 per centum ad valorem; when colored, dyed, painted, or chemically treated, 75 per centum ad valorem; boas, boutonnieres, wreaths, and all articles not specially provided for, composed wholly or in chief value of any of the feathers, flowers, leaves, or other material above mentioned, shall be subject to the rate of duty provided in this paragraph for such materials, but not less than 60 per centum ad valorem: *Provided*, That the importation of birds of paradise, aigrettes, egret plumes or so-called "osprey plumes", and the feathers, quills, heads, wings, tails, skins, or parts of skins, of wild birds, either raw or manufactured, and not for scientific or educational purposes, is hereby prohibited; but this provision shall not apply to the feathers or plumes of ostriches or to the feathers or plumes of domestic fowls of any kind: *Provided further*, That birds of paradise, and the feathers, quills, heads, wings, tails, skins, or parts thereof, and all aigrettes, egret plumes, or so-called "osprey plumes", and the feathers, quills, heads, wings, tails, skins, or parts of skins, of wild birds, either raw or manufactured, of like kind to those the importation of which is prohibited by the foregoing provisions of this paragraph, which may be found in the United States, on and after June 17, 1930, except as to such plumage or parts of birds in actual use for personal adornment, and except such plumage, birds, or parts thereof imported therein for scientific or educational purposes, shall be presumed for the purpose of seizure to have been imported unlawfully after October 3, 1913, and the collector of customs shall seize the same unless the possessor thereof shall establish, to the satisfaction of the collector that the same were imported into the United States prior to October 3, 1913, or as to such plumage or parts of birds that they were plucked or derived in the United States from birds lawfully therein; and in case of seizure by the collector, he shall proceed as in case of forfeiture for violation of the customs laws, and the same shall be forfeited, unless the claimant shall, in any legal proceeding to enforce such forfeiture, other than a criminal prosecution, overcome the presumption of illegal importation and establish that the birds or articles seized, of like kind to those mentioned the importation of which is prohibited as above, were imported into the United States prior to October 3, 1913, or were plucked in the United States from birds lawfully therein.

Whenever birds or plumage, the importation of which is prohibited by the foregoing provisions of this paragraph, are forfeited to the Government, the Secretary of the Treasury is hereby authorized to place the same with the departments or bureaus of the Federal or State Governments or societies or museums for exhibition or scientific or educational purposes, but not for sale or personal use; and in the event of such birds or plumage not being re-

quired or desired by either Federal or State Government or for educational purposes, they shall be destroyed.

Nothing in this chapter shall be construed to repeal the provisions of act Mar. 4, 1913, ch. 145, 37 Stat. 847 or sections 703-711 of Title 16, or any other law of the United States, now of force, intended for the protection or preservation of birds within the United States. That if on investigation by the collection before seizure, or before trial for forfeiture, or if at such trial if such seizure has been made, it shall be made to appear to the collector, or the prosecuting officer of the Government, as the case may be, that no illegal importation of such feathers has been made, but that the possession, acquisition or purchase of such feathers is or has been made in violation of the provisions of act Mar. 4, 1913, ch. 145, 37 Stat. 847 or sections 703-711 of Title 16, or any other law of the United States, now of force, intended for the protection or preservation of birds within the United States, it shall be the duty of the collector, or such prosecuting officer, as the case may be, to report the facts to the proper officials of the United States, or State or Territory charged with the duty of enforcing such laws.

PAR. 1519. (a) Dressed furs and dressed fur skins (except silver or black fox), and plates, mats, linings, strips, and crosses of dressed dog, goat, or kid skins, 25 per centum ad valorem; all the foregoing, if dyed, 30 per centum ad valorem.

(b) Manufactures of fur (except silver or black fox), further advanced than dressing, prepared for use as material (whether or not joined or sewed together) including plates, mats, linings, strips, and crosses (except plates, mats, linings, strips, and crosses of dog, goat, and kid skins), if not dyed, 35 per centum ad valorem; if dyed, 40 per centum ad valorem.

(c) Silver or black fox furs or skins, dressed or undressed, not specially provided for, 50 per centum ad valorem.

(d) Articles of wearing apparel of every description, wholly or partly manufactured, composed wholly or in chief value of hides or skins of cattle of the bovine species, and not specially provided for, 15 per centum ad valorem; composed wholly or in chief value of dog, goat, or kid skins, and not specially provided for, 35 per centum ad valorem.

(e) Articles, wholly or partly manufactured (including fur collars, fur cuffs, and fur trimmings), wholly or in chief value of fur, not specially provided for, 50 per centum ad valorem.

PAR. 1520. Hatters' furs, or furs not on the skin, prepared for hatters' use, including fur skins carotated, 35 per centum ad valorem.

PAR. 1521. Fans of all kinds, except common palm-leaf fans, 50 per centum ad valorem.

PAR. 1522. Gun wads wholly or in chief value of hair felt, 35 per centum ad valorem; all others, 20 per centum ad valorem.

PAR. 1523. Human hair, raw, 10 per centum ad valorem; cleaned or commercially known as drawn, but not manufactured, 20 per centum ad valorem; human hair tops, roving, and yarns, of which human hair is the component material of chief value, 6 cents

per pound and 25 per centum ad valorem; press cloth, of which human hair is the component material of chief value, 8 cents per pound and 40 per centum ad valorem; press cloth, of which camel's hair is the component material of chief value, 40 per centum ad valorem but not less than 25 cents per pound; hair press cloth, not specially provided for, 40 per centum ad valorem; manufactures of human hair, including nets and nettings, or of which human hair is the component material of chief value, not specially provided for, 35 per centum ad valorem.

PAR. 1524. Hair, curled, suitable for beds or mattresses, 10 per centum ad valorem.

PAR. 1525. Haircloth (including haircloth known as "hair seating"), wholly or in chief value of horsehair, not specially provided for, 35 per centum ad valorem; hair felt, made wholly or in chief value of animal hair, not specially provided for, 25 per centum ad valorem; manufactures of hair felt, not specially provided for, 35 per centum ad valorem; cloths and all other manufactures of every description, wholly or in chief value of cattle hair, goat hair, or horsehair, not specially provided for, 40 per centum ad valorem.

PAR. 1526. (a) Hats, caps, bonnets, and hoods, for men's, women's, boys', or children's wear, trimmed or untrimmed, including bodies, hoods, plateaux, forms, or shapes, for hats or bonnets, composed wholly or in chief value of fur of the rabbit, beaver, or other animals, valued at not more than \$6 per dozen, \$1.25 per dozen; valued at more than \$6 and not more than \$9 per dozen, \$2.50 per dozen; valued at more than \$9 and not more than \$12 per dozen, \$5 per dozen; valued at more than \$12 and not more than \$15 per dozen, \$6 per dozen; valued at more than \$15 and not more than \$18 per dozen, \$7 per dozen; valued at more than \$18 and not more than \$24 per dozen, \$9 per dozen; valued at more than \$24 and not more than \$30 per dozen, \$12 per dozen; valued at more than \$30 and not more than \$48 per dozen, \$13 per dozen; valued at more than \$48 per dozen, \$16 per dozen; and in addition thereto, on all the foregoing, 25 per centum ad valorem.

(b) Men's silk or opera hats, in chief value of silk, \$2 each and 75 per centum ad valorem.

PAR. 1527. (a) Jewelry, commonly or commercially so known, finished or unfinished (including parts thereof):

(1) Composed wholly or in chief value of gold or platinum, or of which the metal part is wholly or in chief value of gold or platinum, 80 per centum ad valorem;

(2) all other, of whatever material composed, valued above 20 cents per dozen pieces, 1 cent each, and in addition thereto three-fifths of 1 cent per dozen for each 1 cent the value exceeds 20 cents per dozen, and 50 per centum ad valorem: *Provided*, That none of the foregoing shall be subject to a less amount of duty than would be payable if the article were not dutiable under this paragraph.

(b) Rope, curb, cable, and fancy patterns of chain not exceeding one-half inch in diameter, width, or thickness, valued above 30 cents per yard, of gold or platinum, 80 per centum ad valorem; of any other metal, whether or not plated with gold or platinum,

6 cents per foot, and in addition thereto three-fifths of 1 cent per yard for each 1 cent the value exceeds 30 cents per yard, and 50 per centum ad valorem.

(c) Articles valued above 20 cents per dozen pieces, designed to be worn on apparel or carried on or about or attached to the person, such as and including buckles; card cases; chains; cigar cases; cigar cutters; cigar holders; cigar lighters; cigarette cases; cigarette holders; coin holders; collar, cuff, and dress buttons; combs; match boxes; mesh bags and purses; millinery; military and hair ornaments; pins; powder cases; stamp cases; vanity cases; watch bracelets; and like articles; all the foregoing and parts thereof, finished or unfinished:

(1) Composed wholly or in chief value of gold or platinum, or of which the metal part is wholly or in chief value of gold or platinum, 80 per centum ad valorem;

(2) composed wholly or in chief value of metal other than gold or platinum (whether or not enameled, washed, covered, or plated, including rolled gold plate), or (if not composed in chief value of metal and if not dutiable under clause (1) of this subparagraph) set with and in chief value of precious or semiprecious stones, pearls, cameos, coral, amber, imitation precious or semiprecious stones, or imitation pearls, 1 cent each and in addition thereto three-fifths of 1 cent per dozen for each 1 cent the value exceeds 20 cents per dozen, and 50 per centum ad valorem.

(d) Stampings, galleries, mesh, and other materials of metal, whether or not set with glass or paste, finished or partly finished, separate or in strips or sheets, suitable for use in the manufacture of any of the foregoing articles in this paragraph, if of gold or platinum, 75 per centum ad valorem; if of other metal or metals, plated or unplated, 80 per centum ad valorem.

PAR. 1528. Pearls and parts thereof, drilled or un-drilled, but not set or strung (except temporarily), 10 per centum ad valorem; diamonds, coral, rubies, cameos, and other precious stones and semiprecious stones, cut but not set, and suitable for use in the manufacture of jewelry, 10 per centum ad valorem; imitation precious stones, cut or faceted; imitation semiprecious stones, faceted; marcasites and imitation marcasites; imitation half pearls, and hollow or filled imitation pearls of all shapes, without hole or with hole partly through only, 20 per centum ad valorem; imitation precious stones, not cut or faceted; imitation semiprecious stones, not faceted; imitation jet buttons, cut, polished, or faceted; imitations of opaque precious or semiprecious stones, with flat backs and tops, cut and polished, but not faceted, 60 per centum ad valorem; imitation solid pearls and iridescent imitation solid pearls, unpierced, pierced, or partially pierced, loose, or mounted, of whatever shape, color, or design, shall bear the same rate of duty as is applicable under paragraph 1503 to beads of the same character.

PAR. 1529. (a) Laces, lace fabrics, and lace articles, made by hand or on a lace, net, knitting, or braiding machine, and all fabrics and articles made on a lace or net machine, all the foregoing, plain or figured; lace window curtains, veils, veillings, flouncings, all-

overs, neck ruffings, flutings, quillings, ruchings, tuckings, insertings, galloons, edging, trimmings, fringes, gimps and ornaments; braids, loom woven and ornamented in the process of weaving, or made by hand, or on a lace knitting, or braiding machine; and fabrics and articles embroidered (whether or not the embroidery is on a scalloped edge), tam-boured, appliqué, ornamented with beads, bugles, or spangles, or from which threads have been omitted, drawn, punched, or cut, and with threads introduced after weaving to finish or ornament the openwork, not including one row of straight hemstitching adjoining the hem; all the foregoing, and fabrics and articles wholly or in part thereof, finished or unfinished (except materials and articles provided for in paragraph 915, 920, 1006, 1111, 1116 (a), 1504, 1505, 1513, 1518, 1523, or 1530 (e), or in Subtitle II (free list), or in subparagraph (b) of this paragraph), by whatever name known, and to whatever use applied, and whether or not named, described, or provided for elsewhere in this chapter, when composed wholly or in chief value of filaments, yarns, threads, tinsel wire, lame, bullions, metal threads, beads, bugles, spangles, or rayon or other synthetic textile, 90 per centum ad valorem. Hose and half-hose wholly or in chief value of cotton or of wool shall not be dutiable at the above rate by reason of being embroidered, if the embroidery is such as is commonly known as clocking and does not exceed one inch in width or six inches in length, exclusive of the fork, but shall be subject to a duty of 75 per centum ad valorem.

(b) Handkerchiefs, wholly or in part of lace, and handkerchiefs embroidered (whether with a plain or fancy initial, monogram, or otherwise, and whether or not the embroidery is on a scalloped edge), tam-boured, appliqué, or from which threads have been omitted, drawn, punched, or cut, and with threads introduced after weaving to finish or ornament the openwork, not including one row of straight hemstitching adjoining the hem; all the foregoing, finished or unfinished, of whatever material composed, valued at not more than 70 cents per dozen, 3 cents each and 40 per centum ad valorem; valued at more than 70 cents per dozen, 4 cents each and 40 per centum ad valorem: *Provided*, That any of the foregoing valued at not more than 70 cents per dozen, if made with hand rolled or hand made hems, shall be subject to an additional duty of 1 cent each.

(c) Corsets, girdle corsets, step-in corsets, brassieres, bandeaux brassieres; corsets, girdle corsets, or step-in corsets, attached to brassieres or bandeaux brassieres; all similar body-supporting garments; all the foregoing, of whatever material composed, finished or unfinished, and all wearing apparel or articles to which any of the foregoing is attached, 60 per centum ad valorem; all the foregoing composed in whole or in part of elastic fabric, 75 per centum ad valorem. No wearing apparel or article so attached to such body-supporting garment shall be subject to a less rate of duty than if imported separately. Elastic fabrics of whatever material composed, knit, woven, or braided, in part of india rubber, 60 per centum ad valorem. (As amended June 25, 1938, 5 p. m. E. S. T., ch. 679, § 34 (c), 52 Stat. 1092.)

## EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on June 25, 1938.

PAR. 1530. (a) Hides and skins of cattle of the bovine species (except hides and skins of the India water buffalo imported to be used in the manufacture of rawhide articles), raw or uncured, or dried, salted, or pickled, 10 per centum ad valorem.

(b) Leather (except leather provided for in subparagraph (d) of this paragraph), made from hides or skins of cattle of the bovine species:

(1) Sole or belting leather (including offal), rough, partly finished, finished, curried, or cut or wholly or partly manufactured into outer or inner soles, blocks, strips, counters, taps, box toes, or any forms or shapes suitable for conversion into boots, shoes, footwear, or belting, 12½ per centum ad valorem;

(2) leather welting, 12½ per centum ad valorem;

(3) leather to be used in the manufacture of harness or saddlery, 12½ per centum ad valorem;

(4) side upper leather (including grains and splits), patent leather, and leather made from calf or kip skins, rough, partly finished, or finished, or cut or wholly or partly manufactured into uppers, vamps, or any forms or shapes suitable for conversion into boots, shoes, or footwear, 15 per centum ad valorem;

(5) upholstery, collar, bag, case, glove, garment, or strap leather, in the rough, in the white, crust, or russet, partly finished, or finished, 20 per centum ad valorem;

(6) leather to be used in the manufacture of footballs, basket balls, soccer balls, or medicine balls, 20 per centum ad valorem;

(7) all other, rough, partly finished, finished, or curried, not specially provided for, 15 per centum ad valorem.

(c) Leather (except leather provided for in subparagraph (d) of this paragraph), made from hides or skins of animals (including fish, reptiles, and birds, but not including cattle of the bovine species), in the rough, in the white, crust, or russet, partly finished, or finished, 25 per centum ad valorem; vegetable-tanned rough leather made from goat or sheep skins (including those commercially known as Indian-tanned goat or sheep skins), 10 per centum ad valorem; any of the foregoing if imported to be used in the manufacture of boots, shoes, or footwear, or cut or wholly or partly manufactured into uppers, vamps, or any forms or shapes suitable for conversion into boots, shoes, or footwear, 10 per centum ad valorem.

(d) Leather of all kinds, grained, printed, embossed, ornamented, or decorated, in any manner or to any extent (including leather finished in gold, silver, aluminum, or like effects), or by any other process (in addition to tanning) made into fancy leather, and any of the foregoing cut or wholly or partly manufactured into uppers, vamps, or any forms or shapes suitable for conversion into boots, shoes, or footwear, all the foregoing by whatever name known, and to whatever use applied, 30 per centum ad valorem.

(e) Boots, shoes, or other footwear (including athletic or sporting boots and shoes), made wholly or in chief value of leather, not specifically provided for,

20 per centum ad valorem; boots, shoes, or other footwear (including athletic or sporting boots and shoes), the uppers of which are composed wholly or in chief value of wool, cotton, ramie, animal hair, fiber, rayon, or other synthetic textile, silk, or substitutes for any of the foregoing, whether or not the soles are composed of leather, wood, or other materials, 35 per centum ad valorem.

(f) Harness valued at more than \$70 per set, single harness valued at more than \$40, saddles valued at more than \$40 each, saddlery, and parts (except metal parts) for any of the foregoing, 35 per centum ad valorem; saddles made wholly or in part of pigskin or imitation pigskin, 35 per centum ad valorem; saddles and harness, not specially provided for, parts thereof, except metal parts, and leather shoe laces, finished or unfinished, 15 per centum ad valorem.

(g) The Secretary of the Treasury shall prescribe methods and regulations for carrying out the provisions of this paragraph.

PAR. 1531. Bags, baskets, belts, satchels, cardcases, pocketbooks, jewel boxes, portfolios, and other boxes and cases, not jewelry, wholly or in chief value of leather or parchment, and manufactures of leather, rawhide, or parchment, or of which leather, rawhide, or parchment is the component material of chief value, not specially provided for, 35 per centum ad valorem; any of the foregoing permanently fitted and furnished with traveling, bottle, drinking, dining or luncheon, sewing, manicure, or similar sets, 50 per centum ad valorem.

PAR. 1532. (a) Gloves made wholly or in chief value of leather, whether wholly or partly manufactured, shall be dutiable at the following rates, the lengths stated in each case being the extreme length (including the unfolded length of cuffs or other appendages) when stretched to their fullest extent namely: Men's gloves not over twelve inches in length, \$6 per dozen pairs; women's and children's gloves not over twelve inches in length, \$5.50 per dozen pairs; for each inch or fraction thereof in excess of twelve inches, 50 cents per dozen pairs: *Provided*, That, in addition thereto, on all the foregoing there shall be paid each of the following cumulative duties: When machine seamed, otherwise than overseamed, \$1 per dozen pairs; when seamed by hand, \$5 per dozen pairs; when lined with cotton, wool, silk, or other fabrics, \$3.50 per dozen pairs; when trimmed with fur, \$4 per dozen pairs; when lined with leather or fur, \$5 per dozen pairs: *Provided further*, That all the foregoing shall be dutiable at not less than 50 per centum ad valorem: *Provided further*, That glove trunks, with or without the usual accompanying pieces, shall be subject to 75 per centum of the duty provided for the gloves in the fabrication of which they are suitable.

(b) Gloves wholly or in chief value of leather made from horsehides or cowhides (except calfskins), whether wholly or partly manufactured, 25 per centum ad valorem.

PAR. 1533. Catgut, whip gut, oriental gut, and manufactures thereof, and manufactures of worm gut, not specially provided for, 40 per centum ad valorem.

PAR. 1534. Gas, kerosene, or alcohol mantles, and mantles not specially provided for, treated with chemicals or metallic oxides, wholly or partly manufactured, 40 per centum ad valorem.

PAR. 1535. Artificial flies, snelled hooks, leaders, or casts, finished or unfinished, 55 per centum ad valorem; fishing rods and reels, and parts thereof, finished or unfinished, not specially provided for, 55 per centum ad valorem; fish hooks, artificial baits, and all other fishing tackle and parts thereof, fly books, fly boxes, fishing baskets or creels, finished or unfinished, not specially provided for, except fishing lines, fishing nets, and seines, 45 per centum ad valorem: *Provided*, That any prohibition of the importation of feathers in this chapter shall not be construed as applying to artificial flies used for fishing, or to feathers used for the manufacture of such flies.

PAR. 1536. Candles,  $27\frac{1}{2}$  per centum ad valorem; manufactures of amber, bladders, or wax, or of which these substances or any of them is the component material of chief value, not specially provided for, 20 per centum ad valorem.

PAR. 1537. (a) Manufactures of bone, chip, grass, sea grass, horn, quills, palm leaf, straw, weeds, or whalebone, or of which these substances or any of them is the component material of chief value, not specially provided for, 25 per centum ad valorem; manufactures of chip roping, 25 per centum ad valorem. The terms "grass" and "straw" mean these substances in their natural state and not the separated fibers thereof.

(b) Manufactures of india rubber or gutta-percha, or of which these substances or either of them is the component material of chief value, not specially provided for, 25 per centum ad valorem; automobile, motorcycle, and bicycle tires composed wholly or in chief value of rubber, 10 per centum ad valorem; molded insulators and insulating materials, wholly or partly manufactured, composed wholly or in chief value of rubber or gutta-percha, 30 per centum ad valorem; manufactures composed wholly or in chief value of india rubber known as "hard rubber", not specially provided for, finished or unfinished, 35 per centum ad valorem.

(c) Combs of whatever material composed, except combs wholly of metal, not specially provided for; if valued at \$4.50 or less per gross, 1 cent each and 25 per centum ad valorem; if valued at more than \$4.50 per gross, 2 cents each and 35 per centum ad valorem.

PAR. 1538. Manufactures of ivory or vegetable ivory, or of which either of these substances is the component material of chief value, not specially provided for; manufactures of mother-of-pearl or shell, or of which these substances or either of them is the component material of chief value, not specially provided for; and shells and pieces of shells engraved, cut, ornamented, or otherwise manufactured, 35 per centum ad valorem.

PAR. 1539. (a) Electrical insulators and other articles, wholly or partly manufactured, composed wholly or in chief value of shellac or copal, not specially provided for, 30 per centum ad valorem.

(b) Laminated products (whether or not provided for elsewhere in this chapter) of which any synthetic resin or resin-like substance is the chief binding agent, in sheets or plates, 25 cents per pound and 30 per centum ad valorem; in rods, tubes, blocks, strips, blanks, or other forms, 50 cents per pound and 40 per centum ad valorem; manufactures wholly or in chief value of any of the foregoing, or of any other product of which any synthetic resin or resin-like substance is the chief binding agent, 50 cents per pound and 40 per centum ad valorem.

PAR. 1540. Moss and sea grass, eelgrass, and seaweeds, if manufactured or dyed, 10 per centum ad valorem.

PAR. 1541. (a) Musical instruments and parts thereof, not specially provided for, pianoforte or player-piano actions and parts thereof, violin bow hair, pitch pipes, tuning forks, tuning hammers, and metronomes, all the foregoing, 40 per centum ad valorem; pipe organs or pipe-organ player actions and parts thereof, 60 per centum ad valorem: *Provided*, That for pipe organs or pipe-organ player actions and parts thereof especially designed and constructed for installation and use in a particular church, or in a particular public auditorium at which it is not customary to charge an admission fee, which are imported for that specific use, and which are so installed and used within one year from the date of importation, the rate of duty shall be 40 per centum ad valorem; and the Secretary of the Treasury is authorized to make all needful rules and regulations for carrying out the provisions of this clause; cases for musical instruments, 50 per centum ad valorem; chin rests for violins, 40 per centum ad valorem; bridges for fretted stringed instruments, not specially provided for, 50 per centum ad valorem; strings for musical instruments, composed wholly or in part of catgut, other gut, oriental gut, or metal, 40 per centum ad valorem; tuning pins, \$1 per thousand and 35 per centum ad valorem.

(b) Violins, violas, violoncellos, and double basses, of all sizes, wholly or partly manufactured or assembled, made after the year 1800, \$1.25 each and 35 per centum ad valorem; unassembled parts, 40 per centum ad valorem.

(c) Carillons, and parts thereof, 20 per centum ad valorem.

PAR. 1542. Phonographs, gramophones, graphophones, dictophones, and similar articles, and parts thereof, not specially provided for, 30 per centum ad valorem; needles for phonographs, gramophones, graphophones, dictophones, and similar articles, 8 cents per thousand and 45 per centum ad valorem.

PAR. 1543. Rolls: Calender rolls or bowls made wholly or in chief value of cotton, paper, husk, wool, or mixtures thereof, or stone of any nature, compressed between and held together by iron or steel heads or washers fastened to iron or steel mandrels or cores, suitable for use in calendering, embossing, mangling, or pressing operations, 35 per centum ad valorem.

PAR. 1544. Rosaries, chaplets, and similar articles of religious devotion, of whatever material composed (except if made in whole or in part of gold, silver, platinum, gold plate, silver plate, or precious or imita-

tion precious stones), valued at not more than \$1.25 per dozen, 15 per centum ad valorem; valued at more than \$1.25 per dozen, 30 per centum ad valorem; any of the foregoing if made in whole or in part of gold, silver, platinum, gold plate, silver plate, or precious or imitation precious stones, 50 per centum ad valorem.

PAR. 1545. Sponges, commercially known as sheeps-wool, 30 per centum ad valorem; sponges, commercially known as yellow, grass, or velvet, 25 per centum ad valorem; all other sponges, not specially provided for, 15 per centum ad valorem; manufactures of sponges, or of which sponge is the component material of chief value, not specially provided for, 25 per centum ad valorem.

PAR. 1546. Violin rosin, 15 per centum ad valorem.

PAR. 1547. (a) Works of art, including (1) paintings in oil or water colors, pastels, pen-and-ink drawings, and copies, replicas, or reproductions of any of the same, (2) statuary, sculptures, or copies, replicas, or reproductions thereof, valued at not less than \$2.50, and (3) etchings and engravings, all the foregoing, not specially provided for, 20 per centum ad valorem.

(b) Paintings in oil, mineral, water, or other colors, pastels, and drawings and sketches in pen and ink, pencil, or water color, any of the foregoing (whether or not works of art) suitable as designs for use in the manufacture of textiles, floor coverings, wall paper, or wall coverings, 20 per centum ad valorem.

PAR. 1548. Peat moss, 50 cents per ton.

PAR. 1549. (a) Pencils of paper, wood, or other material not metal, filled with lead or other material, pencils of lead, crayons (including chalk crayons and charcoal crayons or fusains), not specially provided for, 50 cents per gross and 30 per centum ad valorem; pencil point protectors, and clips, whether separate or attached to pencils, 25 cents per gross; pencils stamped with names other than the manufacturers' or the manufacturers' trade name or trade-mark, 50 cents per gross and 25 per centum ad valorem; slate pencils, not in wood, 25 per centum ad valorem.

(b) Black leads for pencils, not in wood or other material, and black leads exceeding six one-hundredths of one inch in diameter, 6 cents per gross; leads, commonly known as refills, black, colored, or indelible, not exceeding six one-hundredths of one inch in diameter and not exceeding two inches in length, 10 cents per gross, and longer leads shall pay in proportion in addition thereto; colored or crayon leads, copy or indelible leads, not specially provided for, 40 per centum ad valorem.

PAR. 1550. (a) Penholder tips, penholders and parts thereof, gold pens, combination penholders comprising penholders, pencil, rubber eraser, automatic stamp, or other attachments, 25 cents per gross and 20 per centum ad valorem: *Provided*, That pens and penholders shall be assessed for duty separately.

(b) Fountain pens, fountain-pen holders, stylographic pens, and parts thereof, 72 cents per dozen and 40 per centum ad valorem: *Provided*, That the value of cartons and fillers shall be included in the dutiable value.

(c) Mechanical pencils, 45 cents per gross and 40 per centum ad valorem.

PAR. 1551. Photographic cameras and parts thereof, not specially provided for, 20 per centum ad valorem: *Provided*, That if the photographic lens is the component of chief value of the camera or of the part in which it is imported, such camera or part, including the photographic lens, shall be dutiable at the rate applicable to such photographic lens when imported separately; photographic dry plates, not specially provided for, 20 per centum ad valorem; photographic films, sensitized but not exposed or developed, of every kind except motion-picture films having a width of one inch or more, 25 per centum ad valorem; motion-picture films, sensitized but not exposed or developed, four-tenths of 1 cent per linear foot of the standard width of one and three-eighths inches, and all other widths of one inch or more shall be subject to duty in equal proportion thereto; photographic-film negatives, imported in any form, for use in any way in connection with moving-picture exhibits, or for making or reproducing pictures for such exhibits, exposed but not developed, except undeveloped negative moving-picture film of American manufacture exposed abroad for silent or sound news reel, 2 cents per linear foot; exposed and developed, 3 cents per linear foot; photographic-film positives, imported in any form, for use in any way in connection with moving-picture exhibits, including herein all moving, motion, motophotography, or cinematography film pictures, prints, positives, or duplicates of every kind and nature, and of whatever substance made, 1 cent per linear foot: *Provided*, That upon the importation of photographic and motion-picture films or film negatives taken from the United States and exposed in a foreign country by an American producer of motion pictures operating temporarily in said foreign country in the course of production of a picture 60 per centum or more of which is made in the United States the duty shall be 1 cent per linear foot, and the Secretary of the Treasury shall prescribe such rules and regulations as may be necessary for the entry of such films or film negatives under this proviso.

PAR. 1552. Pipes and smokers' articles: Common tobacco pipes and pipe bowls made wholly of clay, valued at not more than 40 cents per gross, 15 cents per gross; valued at more than 40 cents per gross, 45 per centum ad valorem; tobacco pipe bowls, wholly or in chief value of brier or other wood or root, in whatever condition of manufacture, whether bored or unbored, and tobacco pipes having such bowls, 5 cents each and 60 per centum ad valorem; pipes, pipe bowls, cigar and cigarette holders, not specially provided for, and mouthpieces for pipes, or for cigar and cigarette holders, all the foregoing of whatever material composed, and in whatever condition of manufacture, whether wholly or partly finished, or whether bored or unbored, 5 cents each and 60 per centum ad valorem; pouches for chewing or smoking tobacco, cases suitable for pipes, cigar and cigarette holders, finished or partly finished; cigarette books, cigarette-book covers, cigarette paper in all forms, except cork paper; and all smokers' articles whatsoever, and parts thereof, finished or unfinished, not specially provided for, of whatever material composed, except china, porcelain, parian, bisque, earthenware, or stoneware,



60 per centum ad valorem; meerschaum, crude or unmanufactured, 20 per centum ad valorem.

PAR. 1553. All thermostatic bottles, carafes, jars, jugs, and other thermostatic containers, or blanks and pistons of such articles, of whatever material composed, constructed with a vacuous or partially vacuous insulation space to maintain the temperature of the contents, whether imported, finished, or unfinished, with or without a jacket or casing of metal or other material, shall be subject to the following rates of duty, namely: Having a capacity of one pint or less, 15 cents each; having a capacity of more than one pint and not more than two pints, 30 cents each; having a capacity of more than two pints, 30 cents each and in addition thereto 5 cents for each pint or fraction thereof by which the capacity exceeds two pints; and in addition thereto, on all the foregoing, 45 per centum ad valorem; parts of any of the foregoing not including those above mentioned, 55 per centum ad valorem: *Provided*, That all articles specified in this paragraph when imported shall have the name of the maker or purchaser and beneath the same the name of the country of origin legibly, indelibly, and conspicuously etched with acid on the glass part, and dies stamped on the jacket or casing of metal or other material, in a place that shall not be covered thereafter: *Provided further*, That each label, wrapper, box, or carton in which any of the foregoing are wrapped or packed, when imported, shall have the name of the maker or purchaser and beneath the same the name of the country of origin legibly, indelibly, and conspicuously stamped or printed thereon.

PAR. 1554. Umbrellas, parasols, and sunshades, covered with material other than paper or lace, not embroidered or appliquéd, 40 per centum ad valorem; walking canes, finished or unfinished, 40 per centum ad valorem; handles and sticks for umbrellas, parasols, sunshades, and walking canes, 40 per centum ad valorem, except that if wholly or in chief value of synthetic resin, the rate shall be 75 per centum ad valorem.

PAR. 1555. Waste, not specially provided for, 10 per centum ad valorem.

PAR. 1556. Bleached beeswax, 30 per centum ad valorem.

PAR. 1557. Stamping and embossing materials of pigments, mounted on paper or equivalent backing and releasable from the backing by means of heat and pressure, three-eighths of 1 cent per hundred square inches.

PAR. 1558. That there shall be levied, collected, and paid on the importation of all raw or unmanufactured articles not enumerated or provided for, a duty of 10 per centum ad valorem, and on all articles manufactured, in whole or in part, not specially provided for, a duty of 20 per centum ad valorem.

PAR. 1559. That each and every imported article, not enumerated in this chapter, which is similar, either in material, quality, texture, or the use to which it may be applied to any article enumerated in this chapter as chargeable with duty, shall be subject to the same rate of duty which is levied on the enumerated article which it most resembles in any

of the particulars before mentioned; and if any non-enumerated article equally resembles two or more enumerated articles on which different rates of duty are chargeable, there shall be levied on such non-enumerated article the same rate of duty as is chargeable on the article which it resembles paying the highest rate of duty; and on articles not enumerated, manufactured of two or more materials, the duty shall be assessed at the highest rate at which the same would be chargeable if composed wholly of the component material thereof of chief value; and the words "component material of chief value", wherever used in this chapter shall be held to mean that component material which shall exceed in value any other single component material of the article; and the value of each component material shall be determined by the ascertained value of such material in its condition as found in the article. If two or more rates of duty shall be applicable to any imported article, it shall be subject to duty at the highest of such rates. (May 27, 1930, ch. 342, § 8, 46 Stat. 430; June 17, 1930, ch. 497, title I, § 1, 46 Stat. 590; Mar. 10, 1934, Ex. Or. 6639, § 1; June 12, 1934, ch. 474, § 2 (a), 48 Stat. 944; June 25, 1938, 5 p. m. E. S. T., ch. 679, §§ 2, 31, 32, 33 (a), 34, 52 Stat. 1077, 1090, 1091.)

#### AMENDMENT

Act June 25, 1938, cited to text, amended this section by inserting "Wake Island, Midway Islands, Kingman Reef," before the words "and the island of Guam" and before the words "or the island of Guam" wherever such words appear.

#### EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

#### CHANGE IN TARIFF RATES

The rates authorized by the several paragraphs of this section are subject to change by the President under the provisions of section 1351 of this title. Information on changes in rates effected through Presidential action may be obtained from the United States Tariff Commission.

### SUBTITLE II.—FREE LIST

#### § 1201. Free list.

Except as otherwise specially provided for in this chapter, the articles mentioned in the following paragraphs, when imported into the United States or into any of its possessions (except the Philippine Islands, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, and the island of Guam), shall be exempt from duty:

#### SCHEDULE 16

PAR. 1601. Acids and acid anhydrides: Hydrofluoric acid, hydrochloric or muriatic acid, nitric acid, sulphuric acid or oil of vitriol, and mixtures of nitric and sulphuric acids, valeric acid, and all anhydrides of the foregoing not specially provided for.

PAR. 1602. Aconite, aloes, asafetida, buchu leaves, cocculus indicus, ipecac, jalap, licorice root, manna; marshmallow or althea root, leaves and flowers; maté, and pyrethrum or insect flowers, all the foregoing which are natural and uncompounded and are in a crude state, not advanced in value or condition by shredding, grinding, shipping, crushing, or any



other process or treatment whatever beyond that essential to proper packing and the prevention of decay or deterioration pending manufacture: *Provided*, That no article containing alcohol shall be admitted free of duty under this paragraph.

PAR. 1603. Agates, unmanufactured.

PAR. 1604. Agricultural implements: Plows, tooth or disk harrows, headers, harvesters, reapers, agricultural drills and planters, mowers, hoes, rakes, cultivators, thrashing machines, cotton gins, machinery for used in the manufacture of sugar, wagons and carts, cream separators valued at not more than \$50 each, and all other agricultural implements of any kind or description, not specially provided for, whether in whole or in parts, including repair parts: *Provided*, That no article specified by name in Subtitle I shall be free of duty under this paragraph.

PAR. 1605. Albumen, not specially provided for.

PAR. 1606. (a) Any animal imported by a citizen of the United States specially for breeding purposes, shall be admitted free, whether intended to be used by the importer himself or for sale for such purposes, except black or silver foxes: *Provided*, That no such animal shall be admitted free unless pure bred of a recognized breed and duly registered in a book of record recognized by the Secretary of Agriculture for that breed: *Provided further*, That the certificate of such record and pedigree of such animal shall be produced and submitted to the Department of Agriculture, duly authenticated by the proper custodian of such book of record, together with an affidavit of the owner, agent, or importer that the animal imported is the identical animal described in said certificate of record and pedigree. The Secretary of Agriculture may prescribe such regulations as may be required for determining the purity of breeding and the identity of such animal: *And provided further*, That the collectors of customs shall require a certificate from the Department of Agriculture stating that such animal is pure bred of a recognized breed and duly registered in a book of record recognized by the Secretary of Agriculture for that breed.

(b) The Secretary of the Treasury may prescribe such additional regulations as may be required for the strict enforcement of this provision.

(c) Horses, mules, asses, cattle, sheep, and other domestic animals straying across the boundary line into any foreign country, or driven across such boundary line by the owner for temporary pasturage purposes only, together with their offspring, shall be dutiable unless brought back to the United States within eight months, in which case they shall be free of duty, under regulations to be prescribed by the Secretary of the Treasury.

PAR. 1607. Animals and poultry brought into the United States temporarily for a period not exceeding six months, for the purpose of breeding, exhibition, or competition for prizes offered by any agricultural, polo, or racing association; but a bond shall be given in accordance with regulations prescribed by the Secretary of the Treasury; also teams of animals, including their harness and tackle, and the wagons or other vehicles actually owned by persons emigrating from foreign countries to the United States with their families, and in actual use for the purpose of such emigration, under such regulations as the Sec-

retary of the Treasury may prescribe; and wild animals and birds intended for exhibition in zoological collections for scientific or educational purposes, and not for sale or profit.

PAR. 1608. Antimony ore.

PAR. 1609. Annatto, archil, cochineal, cudbear, gambier, litmus prepared or unprepared; all the foregoing, and extracts thereof, not containing alcohol.

PAR. 1610. Antitoxins, vaccines, viruses, serums, and bacterins, used for therapeutic purposes.

PAR. 1611. Argols, tartar, and wine lees, crude or partly refined, containing less than 90 per centum of potassium bitartrate, and calcium tartrate, crude.

PAR. 1612. Arrowroot, crude or manufactured, and arrowroot starch and flour.

PAR. 1613. Sulphide of arsenic.

PAR. 1614. Arsenious acid or white arsenic.

PAR. 1615. (a) Articles, the growth, produce, or manufacture of the United States, when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means.

(b) Steel boxes, casks, barrels, carboys, bags, quicksilver flasks or bottles, metal drums, and other substantial outer containers of domestic or foreign manufacture, exported empty and returned as usual containers or coverings of merchandise, or exported filled with products of the United States and returned empty or as the usual containers or coverings of merchandise, including shooks and staves produced in the United States when returned as boxes or barrels in use as the usual containers of merchandise.

(c) Photographic dry plates and films of the manufacture of the United States (except moving-picture films to be used for commercial purposes), exposed abroad, whether developed or not.

(d) Photographic films light struck or otherwise damaged, or worn out, so as to be unsuitable for any other purposes than the recovery of the constituent materials, provided the basic films are of the manufacture of the United States.

(e) The foregoing provisions of this paragraph shall not apply to—

(1) Any article upon which an allowance of drawback has been made under section 1313 of this title or a corresponding provision of a prior tariff act, unless such article is in use at the time of importation as the usual container or covering of merchandise not subject to an ad-valorem rate of duty;

(2) Any article of a kind with respect to the importation of which an internal-revenue tax is imposed at the time such article is entered for consumption or withdrawn from warehouse for consumption, unless such article was subject to an internal-revenue tax imposed upon production or importation at the time of its exportation from the United States and it shall be proved that such tax was paid before exportation and not refunded;

(3) Any article manufactured or produced in a customs bonded warehouse in the United States and exported under any provision of law; or

(4) Any article made dutiable under the provisions of paragraph 1606 (c).

(f) Upon the entry for consumption or withdrawal from warehouse for consumption of any article previously exported, which is excepted from free entry under this paragraph by the foregoing subparagraph (e) and is not otherwise exempted from the payment of duty, there shall be levied, collected, and paid thereon, in lieu of any other duty or tax, a duty equal to the total duty and internal-revenue tax, if any, then imposed with respect to the importation of like articles not previously exported from the United States, but in no case in excess of the sum of customs draw-back, if any, proved to have been allowed upon the exportation of such article from the United States plus the amount of the internal-revenue tax, if any, imposed at the time such article is entered for consumption or withdrawn from warehouse for consumption upon the importation of like articles not previously exported from the United States. Manufactured tobacco subject to duty hereunder shall be retained in customs custody until internal-revenue stamps in payment of any part of the legal duties measured by a rate or amount of internal-revenue tax shall have been placed thereon.

(g) Any article exported from the United States for repairs or alterations may be returned upon the payment of a duty upon the value of the repairs or alterations at the rate or rates which would apply to the article itself in its repaired or altered condition if not within the purview of this subparagraph.

(h) The allowance of total or partial exemption from duty under any provision of this paragraph shall be subject to such regulations as to proof of identity and compliance with the conditions of this paragraph as the Secretary of the Treasury may prescribe. (As amended June 25, 1938, 5 p. m. E. S. T., ch. 679, § 35, 52 Stat. 1092.)

#### EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

PAR. 1616. Asbestos, unmanufactured, a s b e s t o s crudes, fibers, stucco, and sand and refuse containing not more than 15 per centum of foreign matter.

PAR. 1617. Waste bagging, and waste sugar sack cloth.

PAR. 1618. Bananas and plantains, green or ripe.

PAR. 1619. Barks, cinchona or other, from which quinine may be extracted.

PAR. 1620. Bells, broken, and bell metal, broken and fit only to be remanufactured.

PAR. 1621. Bibles, comprising the books of the Old or New Testament, or both, bound or unbound.

PAR. 1622. All binding twine manufactured from New Zealand hemp, henequen, manila, istle or Tampico fiber, sisal grass, or sunn, or a mixture of any two or more of them, of single ply and measuring not exceeding seven hundred and fifty feet to the pound.

PAR. 1623. Bread: *Provided*, That no article shall be exempted from duty as bread unless yeast was the leavening substance used in its preparation.

PAR. 1624. Fish sounds.

PAR. 1625. Blood, dried, not specially provided for.

PAR. 1626. Bolting cloths composed of silk, imported expressly for milling purposes, and so perma-

nently marked as not to be available for any other use.

PAR. 1627. Bones: Crude, steamed, or ground; bone dust, bone meal, and bone ash; and animal carbon suitable only for fertilizing purposes.

PAR. 1628. Books, engravings, photographs, etchings, bound or unbound, maps and charts imported by authority or for the use of the United States or for the use of the Library of Congress.

PAR. 1629. Hydrographic charts and publications issued for their subscribers or exchanges by scientific or literary associations or academies, and publications of individuals for gratuitous private circulation, not advertising matter, and public documents issued by foreign Governments; books, maps, music, engravings, photographs, etchings, lithographic prints, bound or unbound, and charts, which have been printed more than twenty years at the time of importation: *Provided*, That where any such books have been rebound wholly or in part in leather within such period, the binding so placed upon such books shall be dutiable as provided in paragraph 1410 of section 1001 of this title.

PAR. 1630. Books and pamphlets printed wholly or chiefly in languages other than English; books, pamphlets, and music, in raised print, used exclusively by or for the blind; Braille tablets, cubarithms, special apparatus and objects serving to teach the blind, including printing apparatus, machines, presses, and types for the use and benefit of the blind exclusively.

PAR. 1631. Any society or institution incorporated or established solely for religious, philosophical, educational, scientific, or literary purposes, or for the encouragement of the fine arts, or any college, academy, school, or seminary of learning in the United States, or any State or public library, may import free of duty any book, map, music, engraving, photograph, etching, lithographic print, or chart, for its own use or for the encouragement of the fine arts, and not for sale, under such rules and regulations as the Secretary of the Treasury may prescribe.

PAR. 1632. Books, libraries, usual and reasonable furniture, and similar household effects of persons or families from foreign countries if actually used abroad by them not less than one year, and not intended for any other person or persons, nor for sale.

PAR. 1633. Borax, crude or unmanufactured, and borate of lime, borate of soda, and other borate material, crude and unmanufactured, not specially provided for.

PAR. 1634. Brass, old brass, clippings from brass or Dutch metal, all the foregoing, fit only for remanufacture.

PAR. 1635. Brazilian or pichurim beans.

PAR. 1636. Brazilian pebble, unwrought or unmanufactured.

PAR. 1637. Bristles, crude, not sorted, bunched, or prepared.

PAR. 1638. Bullion, gold or silver.

PAR. 1639. Burgundy pitch.

PAR. 1640. Burrstones, manufactured or bound up into millstones.

PAR. 1641. Calcium: Chloride, crude; nitrate, and cyanamid or lime nitrogen.

PAR. 1642. Calcium arsenate.

PAR. 1643. Linotype and all typesetting machines, shoe machinery, sand-blast machines, sludge machines, and tar and oil spreading machines used in the construction and maintenance of roads and in improving them by the use of road preservatives; all the foregoing whether in whole or in part, including repair parts.

PAR. 1644. Cerite or cerium ore.

PAR. 1645. Chalk, crude, not ground, bolted, precipitated, or otherwise manufactured.

PAR. 1646. Chestnuts (including marrons), not further advanced than crude, dried, or baked.

PAR. 1647. Chromite or chrome ore.

PAR. 1648. Chip and chip roping, not specially provided for.

PAR. 1649. Citrons and citron peel, crude, dried, or in brine.

PAR. 1650. Coal, anthracite, semianthracite, bituminous, semibituminous, culm, slack, and shale; coke; compositions used for fuel in which coal or coal dust is the component material of chief value, whether in briquets or other form.

PAR. 1651. Coal-tar products: Acenaphthene, anthracene having a purity of less than 30 per centum, benzene, carbazole having a purity of less than 65 per centum, cumene, cymene, fluorene, methylantracene, methylnaphthalene, naphthalene which after the removal of all the water present has a solidifying point less than seventy-nine degrees centigrade, pyridine, toluene, xylene, dead or creosote oil, anthracene oil, pitch of coal tar, pitch of blast-furnace tar, pitch of oil-gas tar, pitch of water-gas tar, crude coal tar, crude blast-furnace tar, crude oil-gas tar, crude water-gas tar, all other distillates of any of these tars which on being subjected to distillation yield in the portion distilling below one hundred and ninety degrees centigrade a quantity of tar acids less than 5 per centum of the original distillate, all mixtures of any of these distillates and any of the foregoing pitches, and all other materials or products that are found naturally in coal tar, whether produced or obtained from coal tar or other source, and not specially provided for in paragraph 27 or 28 of Subtitle I of this chapter.

PAR. 1652. Cobalt and cobalt ore.

PAR. 1653. Cocoa or cacao beans, and shells thereof.

PAR. 1654. Coffee, except coffee imported into Puerto Rico and upon which a duty is imposed under the authority of section 1319 of this title.

PAR. 1655. Coins of gold, silver, copper, or other metal.

PAR. 1656. Coir and coir yarn.

PAR. 1657. Composition metal of which copper is the component material of chief value, not specially provided for.

PAR. 1658. Copper ore; regulus of, and black or coarse copper, and cement copper; old copper, fit only for remanufacture, copper scale, clippings from new copper, and copper in plates, bars, ingots, or pigs, not manufactured or specially provided for.

PAR. 1659. Copper sulphate or blue vitriol; copper acetate and subacetate or verdigris.

PAR. 1660. Coral, marine, uncut, and unmanufactured.

PAR. 1661. Cork wood, or cork bark, unmanufactured, and cork waste, shavings, and cork refuse of all kinds.

PAR. 1662. Cotton, not specially provided for, and cotton waste.

PAR. 1663. Cryolite, or kryolith.

PAR. 1664. Metallic mineral substances in a crude state, such as drosses, skimmings, residues, brass foundry ash, and flue dust, not specially provided for.

PAR. 1665. Curling stones.

PAR. 1666. Cuttlefish bone.

PAR. 1667. Cyanide: Potassium cyanide, sodium cyanide, all cyanide salts and cyanide mixtures (not including sulpho-cyanides, orthiocyanides, thiocyanates, nitroprussides, ferrocyanides, ferricyanides, and cyanates).

PAR. 1668. Diamonds and other precious stones, rough or uncut, and not advanced in condition or value from their natural state by cleaving, splitting, cutting, or other process, whether in their natural form or broken, glaziers' and engravers' diamonds, any of the foregoing not set, miners' diamonds, and diamond dust.

PAR. 1669. Drugs such as barks, beans, berries, buds, bulbs, bulbous roots, excrescences, fruits, flowers, dried fibers, dried insects, grains, herbs, leaves, lichens, mosses, logs, roots, stems, vegetables, seeds (aromatic, not garden seeds), seeds of morbid growth, weeds, and all other drugs of vegetable or animal origin; all the foregoing which are natural and uncompounded drugs and not edible, and not specially provided for, and are in a crude state, not advanced in value or condition by shredding, grinding, chipping, crushing, or any other process or treatment whatever beyond that essential to the proper packing of the drugs and the prevention of decay or deterioration pending manufacture: *Provided*, That no article containing alcohol shall be admitted free of duty under this paragraph.

PAR. 1670. Dyeing or tanning materials: Fustic wood, hemlock bark, logwood, mangrove bark, oak bark, quebracho wood, wattle bark, divi-divi, myrobalans fruit, sumac, valonia, nutgalls or gallnuts, and all articles of vegetable origin used for dyeing, coloring, staining, or tanning, all the foregoing, whether crude or advanced in value or condition by shredding, grinding, chipping, crushing, or any similar process; all the foregoing not containing alcohol and not specially provided for.

PAR. 1671. Eggs of birds, fish, and insects (except fish roe for food purposes): *Provided*, That the importation of eggs of wild birds is prohibited, except eggs of game birds imported for propagating purposes under regulations prescribed by the Secretary of Agriculture, and specimens imported for scientific collections.

PAR. 1672. Emery ore and corundum ore, and crude artificial abrasives, not specially provided for.

PAR. 1673. Enflourage greases, floral essences and floral concretes: *Provided*, That no article mixed or compounded with or containing alcohol shall be exempted from duty under this paragraph.

PAR. 1674. Fans, common palm-leaf, plain and not ornamented or decorated in any manner, and palm

leaf in its natural state not colored, dyed, or otherwise advanced or manufactured.

PAR. 1675. Ferrous sulphate or copperas.

PAR. 1676. Fibrin, in all forms.

PAR. 1677. Fish imported to be used for purposes other than human consumption.

PAR. 1678. Fishskins, raw or salted.

PAR. 1679. Natural flint, natural flints, and natural flint stones, unground.

PAR. 1680. Fossils.

PAR. 1681. Furs and fur skins, not specially provided for, undressed.

PAR. 1682. Live game animals and birds, imported for stocking purposes, and game animals and birds killed in foreign countries by residents of the United States and imported by them for noncommercial purposes; under such regulations as the Secretary of Agriculture and the Secretary of the Treasury shall prescribe.

PAR. 1683. Goldbeaters' molds and goldbeaters' skins.

PAR. 1684. Grasses and fibers: Henequen, sisal, manila, jute, jute butts, kapok, istle or Tampico fiber, New Zealand fiber, sunn, maguey, ramie or China grass, raffa, pulu, and all other textile grasses or fibrous vegetable substances, not dressed or manufactured in any manner, and not specially provided for.

PAR. 1685. Guano, basic slag (ground or unground), manures, and (notwithstanding any other provision of this chapter) those grades of all other substances used chiefly for fertilizers, or chiefly as an ingredient in the manufacture of fertilizers.

PAR. 1686. Gums and resins: Damar, kauri, copal, chicle, dragon's blood, kadaya, sandarac, tragacanth, tragasol, and other natural gums, natural gum resins, and natural resins, not specially provided for.

PAR. 1687. Gunpowder, sporting powder, and all other explosive substances, not specially provided for, and not wholly or in chief value of cellulose esters.

PAR. 1688. Hair of horse, cattle, and other animals, cleaned or uncleaned, drawn or undrawn, but unmanufactured, not specially provided for.

PAR. 1689. Hide cuttings, raw, with or without hair, ossein, and all other glue stock.

PAR. 1690. Rope made of rawhide.

PAR. 1691. Hides and skins of the India water buffalo imported to be used in the manufacture of rawhide articles.

PAR. 1692. Bones, whetstones, and grindstones.

PAR. 1693. Hoofs, unmanufactured.

PAR. 1694. Horns and parts of, including horn strips and tips, unmanufactured.

PAR. 1695. Horses or mules imported for immediate slaughter.

PAR. 1696. Ice.

PAR. 1697. India rubber and guttapercha, crude, including jelutong or pontianak, guayule, gutta balata, and gutta siak, and scrap or refuse india rubber and guttapercha fit only for remanufacture.

PAR. 1698. Iodine, crude, and copper iodide, crude.

PAR. 1699. Iridium, osmium, palladium, rhodium, and ruthenium, and native combinations thereof with one another or with platinum.

PAR. 1700. Iron ore, including manganiferous iron ore, and the dross or residuum from burnt pyrites.

PAR. 1701. Ivory tusks in their natural state or cut vertically across the grain only, with the bark left intact.

PAR. 1702. Jet, unmanufactured.

PAR. 1703. Joss stick or joss light.

PAR. 1704. Waste rope.

PAR. 1705. Kelp.

PAR. 1706. Kieserite.

PAR. 1707. Lac: Crude, seed, button, stick, or shell.

PAR. 1708. Lava, unmanufactured.

PAR. 1709. Leeches.

PAR. 1710. Limestone-rock asphalt; asphaltum and bitumen.

PAR. 1711. Lifeboats and life-saving apparatus specially imported by societies and institutions incorporated or established to encourage the saving of human life.

PAR. 1712. Lithographic stones, not engraved.

PAR. 1713. Loadstones.

PAR. 1714. Manuscripts, not specially provided for.

PAR. 1715. Marrow, crude.

PAR. 1716. Mechanically ground wood pulp, chemical wood pulp, unbleached or bleached.

PAR. 1717. Medals of gold, silver, or copper, and other metallic articles actually bestowed by foreign countries or citizens of foreign countries as trophies or prizes, and received and accepted as honorary distinctions.

PAR. 1718. Mineral salts obtained by evaporation from mineral waters, when accompanied by a duly authenticated certificate and satisfactory proof showing that they are in no way artificially prepared and are only the product of a designated mineral spring.

PAR. 1719. Minerals, crude, or not advanced in value or condition by refining or grinding, or by other process of manufacture, not specially provided for.

PAR. 1720. Models of inventions and of other improvements in the arts, to be used exclusively as models and incapable of any other use.

PAR. 1721. Monazite sand and other thorium ores.

PAR. 1722. Moss, seaweeds, and vegetable substances, crude or unmanufactured, not specially provided for.

PAR. 1723. Muzzle-loading muskets, shotguns, rifles, and parts thereof.

PAR. 1724. Needles, hand sewing or darning.

PAR. 1725. Nets or finished sections of nets for use in otter trawl fishing, if composed wholly or in chief value of manila.

PAR. 1726. Newspapers, undeveloped negative moving-picture film of American manufacture exposed abroad for silent or sound news reel, and periodicals; but the term "periodicals" as herein used shall be understood to embrace only unbound or paper-covered publications issued within six months of the time of entry, devoted to current literature of the day, or containing current literature as a predominant feature, and issued regularly at stated periods, as weekly, monthly, or quarterly, and bearing the date of issue.

PAR. 1727. Oil-bearing seeds and nuts: Copra, hempseed, kapok seed, palm nuts, palm-nut kernels, tung nuts, rapeseed, rubber seed, perilla and sesame

seed; seeds and nuts, not specially provided for, when the oils derived therefrom are free of duty.

PAR. 1728. Nux vomica, gentian, sarsaparilla root, belladonna, henbane, stramonium, and ergot.

PAR. 1729. Oakum.

PAR. 1730. (a) All products of American fisheries (including fish, shellfish, and other marine animals, and spermaceti, whale, fish, and other marine animal oils), which have not been landed in a foreign country or which, if so landed, have been landed solely for transshipment without change in condition: *Provided*, That fish, the product of American fisheries (except cod, haddock, hake, pollock, cusk, mackerel, and swordfish), landed in a foreign country and there not further advanced than beheaded, eviscerated, packed in ice, frozen, and with fins removed, shall be exempt from duty: *Provided further*, That products of American fisheries, prepared or preserved by an American fishery, on the treaty coasts of Newfoundland, Magdalen Islands, and Labrador, as such coasts are defined in the Convention of 1818 between the United States and Great Britain, shall be exempt from duty.

(b) Eulachon oil, cod oil, and cod-liver oil.

"Products of American fisheries" defined, see section 6 of Title 1, General Provisions.

PAR. 1731. Oils, distilled or essential: Anise, bergamot, bitter almond, camphor, caraway, cassia, cinnamon, citronella, geranium, lavender, lemon-grass, lime, lignaloe or bois de rose, neroli or orange flower, origanum, palmarosa, pettigrain, rose or otto of roses, rosemary, spike lavender, thyme, and ylang ylang or cananga: *Provided*, That no article mixed or compounded with or containing alcohol shall be exempted from duty under this paragraph.

PAR. 1732. Oils, expressed or extracted: Croton, palm, perilla, and sweet almond; olive, palm-kernel, rapeseed, sunflower, and sesame oil, rendered unfit for use as food or for any but mechanical or manufacturing purposes, by such means as shall be satisfactory to the Secretary of the Treasury and under regulations to be prescribed by him; tung oil; and nut oils not specially provided for.

Additional tax imposed on oils imported into United States, including sesame, sunflower, and rapeseed oil at rate of  $4\frac{1}{2}$  cents per pound, see section 2491 (b) of Title 26, Internal Revenue Code.

PAR. 1733. Oils, mineral: Petroleum, crude, fuel, or refined, and all distillates obtained from petroleum, including kerosene, benzine, naphtha, gasoline, paraffin, and paraffin oil, not specially provided for.

PAR. 1734. Ores of gold, silver, or nickel; nickel matte; nickel oxide; ores of the platinum metals; sweepings of gold and silver.

PAR. 1735. Duplex decalomania paper not printed.

PAR. 1736. Parchment and vellum.

PAR. 1737. Paris green and London purple.

PAR. 1738. Pearl, mother-of-, and shells, not sawed, cut, flaked, polished, or otherwise manufactured, or advanced in value from the natural state.

PAR. 1739. Personal effects, not merchandise, of citizens of the United States dying in foreign countries.

PAR. 1740. Phosphates, crude, and apatite.

PAR. 1741. Pigeons, fancy or racing.

PAR. 1742. Plants, trees, shrubs, roots, seed cane, seeds, and other material for planting, imported by the Department of Agriculture or the United States Botanic Garden.

PAR. 1743. Plaster rock or gypsum, crude.

PAR. 1744. Platinum, unmanufactured or in ingots, bars, sheets, or plates not less than one-eighth of one inch in thickness, sponge, or scrap.

PAR. 1745. Potassium chloride or muriate of potash, potassium sulphate, kainite, wood ashes and beet-root ashes, and all crude potash salts not specially provided for.

PAR. 1746. Potassium nitrate or saltpeter, crude.

PAR. 1747. Professional books, implements, instruments, and tools of trade, occupation, or employment in the actual possession of persons emigrating to the United States owned and used by them abroad; but this exemption shall not be construed to include machinery or other articles imported for use in any manufacturing establishment, or for any other person or persons, or for sale, nor shall it be construed to include theatrical scenery, properties, and apparel; but such articles brought by proprietors or managers of theatrical exhibitions arriving from abroad, for temporary use by them in such exhibitions, and not for any other person, and not for sale, and which have been used by them abroad, shall be admitted free of duty under such regulations as the Secretary of the Treasury may prescribe; but bonds shall be given for the payment to the United States of such duties as may be imposed by law upon any and all such articles as shall not be exported within six months after such importation: *Provided*, That the Secretary of the Treasury may, in his discretion, extend such period for a further term of six months in case application shall be made therefor.

PAR. 1748. Quinine sulphate and all alkaloids and salts of alkaloids derived from cinchona bark.

PAR. 1749. Radium, salts of, and radioactive substitutes.

PAR. 1750. Rag pulp; paper stock, crude, of every description, including all grasses, fibers, rags, waste (including jute, hemp, and flax waste), shavings, clippings, old paper, rope ends, waste rope, and waste bagging, and all other waste not specially provided for, including old gunny cloth, and old gunny bags, used chiefly for paper making, and no longer suitable for bags.

PAR. 1751. Rennet, raw or prepared.

PAR. 1752. Patna rice, cleaned, for use in the manufacture of canned soups.

PAR. 1753. Sago, crude, and sago flour.

PAR. 1754. Santonin, and salts of.

PAR. 1755. Sausage casings, weasands, intestines, bladders, tendons, and integuments, not specially provided for.

PAR. 1756. Sea herring, smelts, and tuna fish, fresh or frozen, whether or not packed in ice, and whether or not whole.

PAR. 1757. Cowpeas not specially provided for, and sugar-beet seed.

PAR. 1758. Selenium, and salts of.

PAR. 1759. Sheep dip.

PAR. 1760. Shingles of wood.

PAR. 1761. Shrimps, lobsters, and other shellfish, fresh or frozen (whether or not packed in ice), or prepared or preserved in any manner (including pastes and sauces), and not specially provided for.

PAR. 1762. Silk cocoons and silk waste.

PAR. 1763. Silk, raw, in skeins reeled from the cocoon, or reeled, but not wound, doubled, twisted, or advanced in manufacture in any way.

PAR. 1764. Skeletons and other preparations of anatomy.

PAR. 1765. Skins of all kinds, raw, and hides not specially provided for.

PAR. 1766. Sodium: Nitrate, crude or refined; sulphate, crude, or crude salt cake, and niter cake; bicarbonate or baking soda.

PAR. 1767. Specimens of natural history, botany, and mineralogy, when imported for scientific public collections, and not for sale.

PAR. 1768. Spices and spice seeds:

(1) Cassia, cassia buds, and cassia vera; cloves; clove stems; cinnamon and cinnamon chips; ginger root, not preserved or candied; mace; nutmegs; black or white pepper; and pimento (allspice); all the foregoing, if unground;

(2) anise; caraway; cardamom; coriander; cummin; and fennel.

PAR. 1769. Spunk.

PAR. 1770. Spurs and stilts used in the manufacture of earthenware, stoneware, or porcelain.

PAR. 1771. Stamps: Postage or revenue stamps, canceled or uncanceled, and government stamped envelopes or post cards bearing no other printing than the official imprint thereon.

PAR. 1772. Standard newsprint paper.

PAR. 1773. Statuary and casts of sculpture for use as models or for art educational purposes only; regalia and gems, where specially imported in good faith for the use and by order of any society incorporated or established solely for religious, philosophical, educational, scientific, or literary purposes, or for the encouragement of the fine arts, or for the use and by order of any college, academy, school, seminary of learning, orphan asylum, or public hospital in the United States, or any State or public library, and not for sale, subject to such regulations as the Secretary of the Treasury shall prescribe; but the term "regalia" as herein used shall be held to embrace only such insignia of rank or office or emblems as may be worn upon the person or borne in the hand during public exercises of the society or institution, and shall not include articles of furniture or fixtures, or of regular wearing apparel nor personal property of individuals.

PAR. 1774. Altars, pulpits, communion tables, baptismal fonts, shrines, or parts of any of the foregoing, and statuary (except casts of plaster of Paris, or of compositions of paper or papier-mâché), imported in good faith for presentation (without charge) to, and for the use of, any corporation or association organized and operated exclusively for religious purposes.

PAR. 1775. Stone and sand: Burrstone in blocks, rough or unmanufactured; quartzite; traprock; rottenstone, tripoli, and sand, crude or manufactured;

silica; cliff stone, freestone, granite, and sandstone, unmanufactured, and not suitable for use as monumental, paving, or building stone; all the foregoing not specially provided for.

PAR. 1776. Strontianite or mineral strontium carbonate and celestite or mineral strontium sulphate.

PAR. 1777. Sulphur in any form, and sulphur ore, such as pyrites or sulphide of iron in its natural state, and spent oxide of iron, containing more than 25 per centum of sulphur.

PAR. 1778. Tagua nuts.

PAR. 1779. Tamarinds.

PAR. 1780. Tankage, fish scrap, fish meal, cod-liver oil cake, and cod-liver oil cake meal, all the foregoing unfit for human consumption.

PAR. 1781. Tapioca, tapioca flour, and cassava.

PAR. 1782. Locust or carob beans, and pods and seeds thereof.

PAR. 1783. (a) Impure tea, tea waste, and tea siftings and sweepings, for manufacturing purposes in bond, pursuant to the provisions of chapter 2 of Title 21.

(b) Tea not specially provided for, and tea plants: *Provided*, That all cans, boxes, and other immediate containers, including paper, and other wrappings of tea in packages of less than five pounds each, and all intermediate containers of such tea, shall be dutiable at the rate chargeable thereon if imported empty: *Provided further*, That nothing herein contained shall be construed to repeal or impair the provisions of sections 41-50 of Title 21.

PAR. 1784. Teeth, natural or unmanufactured.

PAR. 1785. Tin ore or cassiterite, and black oxide of tin: *Provided*, That there shall be imposed and paid upon cassiterite, or black oxide of tin, a duty of 4 cents per pound, and upon bar, block, pig tin, and grain or granulated, a duty of 6 cents per pound when it is made to appear to the satisfaction of the President of the United States that the mines of the United States are producing one thousand five hundred tons of cassiterite and bar, block, and pig tin per year. The President shall make known this fact by proclamation, and thereafter said duties shall go into effect.

PAR. 1786. Tin in bars, blocks or pigs, alloys in chief value of tin not specially provided for, and grain or granulated and scrap tin, including scrap tin plate.

PAR. 1787. Tobacco stems not cut, ground, or pulverized.

PAR. 1788. Truffles, fresh, or dried or otherwise prepared or preserved.

PAR. 1789. Turmeric.

PAR. 1790. Turtles.

PAR. 1791. Typewriters.

PAR. 1792. Uranium, oxide and salts of.

PAR. 1793. Urea.

PAR. 1794. Vegetable tallow.

PAR. 1795. Wafers, not edible.

PAR. 1796. Wax: Animal, vegetable, or mineral, not specially provided for.

PAR. 1797. Disks of soft wax, commonly known as master records, or metal matrices obtained therefrom, for use in the manufacture of sound records for export purposes.

PAR. 1798. Wearing apparel, articles of personal adornment, toilet articles, and similar personal effects of persons arriving in the United States; but this exemption shall include only such articles as were actually owned by them and in their possession abroad at the time of or prior to their departure from a foreign country, and as are necessary and appropriate for the wear and use of such persons and are intended for such wear and use, and shall not be held to apply to merchandise or articles intended for other persons or for sale: *Provided*, That all jewelry and similar articles of personal adornment having a value of \$300 or more, brought in by a nonresident of the United States, shall, if sold within three years after the date of the arrival of such person in the United States, be liable to duty at the rate or rates in force at the time of such sale, to be paid by such person: *Provided further*, That in case of residents of the United States returning from abroad all wearing apparel, personal and household effects, and in the case of individuals returning from abroad, all professional books, implements, instruments, and tools of trade, occupation, or employment, taken by them out of the United States to foreign countries shall be admitted free of duty, without regard to their value, upon their identity being established under appropriate rules and regulations to be prescribed by the Secretary of the Treasury: *Provided further*, That up to but not exceeding \$100 in value of articles (including distilled spirits, wines, and malt liquors aggregating not more than one wine gallon and including not more than one hundred cigars) acquired abroad by such residents of the United States as an incident of the foreign journey for personal or household use or as souvenirs or curios, but not bought on commission or intended for sale, shall be free of duty: *Provided further*, That (a) in the case of articles acquired in any country other than a contiguous country which maintains a free zone or free port, the exemption authorized by the preceding proviso shall apply only to articles so acquired by a returning resident who has remained beyond the territorial limits of the United States for a period of not less than forty-eight hours and (b) in the case of articles acquired in a contiguous country which maintains a free zone or free port, the Secretary of the Treasury shall by special regulation or instruction, the application of which may be restricted to one or more individual ports of entry, provide that the exemption authorized by the preceding proviso shall be applied only to articles acquired abroad by a returning resident who has remained beyond the territorial limits of the United States for not less than such period (which period shall not exceed twenty-four hours) as the Secretary may deem necessary in the public interest or to facilitate enforcement at the specified port or ports of the requirement that the exemption shall apply only to articles acquired as an incident of the foreign journey: *Provided further*, That the exemption authorized by the second preceding proviso shall apply only to articles declared in accordance with regulations to be prescribed by the Secretary of the Treasury by a returning resident who has not taken advantage of the said exemption

within the thirty-day period immediately preceding his return to the United States: *Provided further*, That no such special regulation or instruction shall take effect until the lapse of ninety days after the date of such special regulation or instruction: *And provided further*, That all articles exempted by this paragraph from the payment of duty shall also be exempt from the payment of any internal-revenue taxes. (As amended June 26, 1936, ch. 830, title III, § 337, 49 Stat. 1959; June 25, 1938, 5 p. m. E. S. T. ch. 679, § 36, 52 Stat. 1093.)

#### EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

PAR. 1799. Whalebone, unmanufactured.

PAR. 1800. All barbed wire, whether plain or galvanized.

PAR. 1801. Witherite, crude, unground.

PAR. 1802. Wood charcoal.

PAR. 1803. Wood:

(1) Timber hewn, sided, or squared, otherwise than by sawing, and round timber used for spars or in building wharves; sawed lumber and timber, not further manufactured than planed, and tongued and grooved; all the foregoing not specially provided for.

(2) Logs; timber, round, unmanufactured; pulpwoods; firewood, handle bolts, shingle bolts; gun blocks for gunstocks, rough hewn or sawed or planed on one side; and laths; all the foregoing not specially provided for.

PAR. 1804. Posts, railroad ties, and telephone, trolley, electric-light, and telegraph poles of cedar or other woods.

PAR. 1805. Pickets, palings, hoops, and staves of wood of all kinds.

PAR. 1806. Woods: Sticks of partridge, hair wood, pimento, orange, myrtle, bamboo, rattan, india malacca joints, and other woods not specially provided for, in the rough, or not further advanced than cut into lengths suitable for sticks for umbrellas, parasols, sunshades, whips, fishing rods, or walking canes.

PAR. 1807. Original paintings in oil, mineral, water, or other colors, pastels, original drawings and sketches in pen, ink, pencil, or water colors, artists' proof etchings unbound, and engravings and woodcuts unbound, original sculptures or statuary, including not more than two replicas or reproductions of the same; but the terms "sculpture" and "statuary" as used in this paragraph shall be understood to include professional productions of sculptors only, whether in round or in relief, in bronze, marble, stone, terra cotta, ivory, wood, or metal, or whether cut, carved, or otherwise wrought by hand from the solid block or mass of marble, stone, or alabaster, or from metal, or cast in bronze or other metal or substance, or from wax or plaster, made as the professional productions of sculptors only; and the words "paintings", "drawing", "sketch", "sculpture", and "statuary" as used in this paragraph shall not be understood to include any articles of utility or for industrial use, nor such as are made wholly or in part by stenciling or any other mechanical process; and the words "etchings", "engravings", and "woodcuts"



as used in this paragraph shall be understood to include only such as are printed by hand from plates or blocks etched or engraved with hand tools and not such as are printed from plates or blocks etched or engraved by photo-chemical or other mechanical processes.

PAR. 1808. Works of art, drawings, engravings, photographic pictures, and philosophical and scientific apparatus brought by professional artists, lecturers, or scientists arriving from abroad for use by them temporarily for exhibition and in illustration, promotion, and encouragement of art, science, or industry in the United States, and not for sale, shall be admitted free of duty, under such regulations as the Secretary of the Treasury shall prescribe; but bonds shall be given for the payment to the United States of such duties as may be imposed by law upon any and all such articles as shall not be exported within six months after such importation: *Provided*, That the Secretary of the Treasury may, in his discretion, extend such period for a further term of six months in cases where application therefor shall be made.

PAR. 1809. Works of art, collections in illustration of the progress of the arts, sciences, agriculture, or manufactures, photographs, works in terra cotta, parian, pottery, or porcelain, antiquities and artistic copies thereof in metal or other material, imported in good faith for exhibition at a fixed place by any State or by any society or institution established for the encouragement of the arts, science, agriculture, or education, or for a municipal corporation, and all like articles imported in good faith by any society or association, or for a municipal corporation, for the purpose of erecting a public monument, and not intended for sale nor for any other purpose than herein expressed; but bond shall be given, under such rules and regulations as the Secretary of the Treasury may prescribe, for the payment of lawful duties which may accrue should any of the articles aforesaid be sold, transferred, or used contrary to this provision, and such articles shall be subject at any time to examination and inspection by the proper officers of the customs: *Provided*, That the privileges of this and the preceding paragraph shall not be allowed to associations or corporations engaged in or connected with business of a private or commercial character.

PAR. 1810. Works of art, productions of American artists residing temporarily abroad, or other works of art, including pictorial paintings on glass, imported expressly for presentation to a national institution or to any State or municipal corporation or incorporated religious society, college, or other public institution, including stained or painted window glass or stained or painted glass windows which are works of art when imported to be used in houses of worship, valued at \$15 or more per square foot, and excluding any article, in whole or in part, molded, cast, or mechanically wrought from metal within twenty years prior to importation; but such exemption shall be subject to such regulations as the Secretary of the Treasury may prescribe.

PAR. 1811. Works of art (except rugs and carpets made after the year 1700), collections in illustration

of the progress of the arts, works in bronze, marble, terra cotta, parian, pottery, or porcelain, artistic antiquities, and objects of art of ornamental character or educational value which shall have been produced prior to the year 1830, but the free importation of such objects shall be subject to such regulations as to proof of antiquity as the Secretary of the Treasury may prescribe. Violins, violas, violoncellos, and double basses, of all sizes, made in the year 1800 or prior year.

PAR. 1812. Gobelin tapestries used as wall hangings.

PAR. 1813. Worm gut, unmanufactured.

PAR. 1814. Zaffer.

PAR. 1815. Articles, when returned after having been loaned and exported for use temporarily abroad solely for exhibition, examination, or experimentation, for scientific or educational purposes, if imported by or for the account of the person who exported them from the United States, and not for sale, subject to such regulations as the Secretary of the Treasury shall prescribe. (June 17, 1930, ch. 497, title II, § 201, 46 Stat. 672-685; Mar. 4, 1933, ch. 280, 47 Stat. 1570; June 12, 1934, ch. 474, § 2 (a), 48 Stat. 944; June 25, 1938, 5 p. m. E. S. T., ch. 679, §§ 2, 35, 36, 52 Stat. 1077, 1092, 1093.)

#### AMENDMENT

Act June 25, 1938, cited to text, amended this section by inserting "Wake Island, Midway Islands, Kingman Reef," before the words "and the island of Guam" and before the words "or the island of Guam" wherever such words appear. For effective date of said act, see section 1653a of this title.

#### EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

### SUBTITLE III.—SPECIAL PROVISIONS

#### PART I.—MISCELLANEOUS

##### § 1301. Philippine Islands.

There shall be levied, collected, and paid upon all articles coming into the United States from the Philippine Islands the rates of duty which are required to be levied, collected, and paid upon like articles imported from foreign countries: *Provided*, That all articles, the growth or product of or manufactured in the Philippine Islands from materials the growth or product of the Philippine Islands or of the United States, or of both, or which do not contain foreign materials to the value of more than 20 per centum of their total value, upon which no drawback of customs duties has been allowed therein, coming into the United States from the Philippine Islands shall hereafter be admitted free of duty: *Provided, however*, That in consideration of the exemptions aforesaid, all articles, the growth, product, or manufacture of the United States, upon which no drawback of customs duties has been allowed therein, shall be admitted to the Philippine Islands from the United States free of duty: *And provided further*, That the free admission, herein provided, of such articles, the growth, product, or manufacture of the United States, into the Philippine Islands, or of the growth, product, or manufacture, as hereinbefore defined, of the Philippine Islands into the United States,

shall be conditioned upon the direct shipment thereof, under a through bill of lading, from the country of origin to the country of destination: *Provided*, That direct shipments shall include shipments in bond through foreign territory contiguous to the United States: *Provided, however*, That if such articles become unpacked while en route by accident, wreck, or other casualty, or so damaged as to necessitate their repacking, the same shall be admitted free of duty upon satisfactory proof that the unpacking occurred through accident or necessity and that the merchandise involved is the identical merchandise originally shipped from the United States or the Philippine Islands, as the case may be, and that its condition has not been changed except for such damage as may have been sustained: *And provided*, That there shall be levied, collected, and paid, in the United States, upon articles, goods, wares, or merchandise coming into the United States from the Philippine Islands a tax equal to the internal-revenue tax imposed in the United States upon the like articles, goods, wares, or merchandise of domestic manufacture; such tax to be paid by internal-revenue stamp or stamps, to be provided by the Commissioner of Internal Revenue, and to be affixed in such manner and under such regulations as he, with the approval of the Secretary of the Treasury, shall prescribe; and such articles, goods, wares, or merchandise shipped from said islands to the United States shall be exempt from the payment of any tax imposed by the internal-revenue laws of the Philippine Islands: *And provided further*, That there shall be levied, collected, and paid in the Philippine Islands, upon articles, goods, wares, or merchandise going into the Philippine Islands from the United States, a tax equal to the internal-revenue tax imposed in the Philippine Islands upon the like articles, goods, wares, or merchandise of Philippine Islands manufacture; such tax to be paid by internal-revenue stamps or otherwise, as provided by the laws of the Philippine Islands; and such articles, goods, wares, or merchandise going into the Philippine Islands from the United States shall be exempt from the payment of any tax imposed by the internal-revenue laws of the United States: *And provided further*, That in addition to the customs taxes imposed in the Philippine Islands, there shall be levied, collected, and paid therein upon articles, goods, wares, or merchandise imported into the Philippine Islands from countries other than the United States the internal-revenue tax imposed by the Philippine Government on like articles manufactured and consumed in the Philippine Islands or shipped thereto for consumption therein from the United States: *And provided further*, That from and after June 17, 1930, all internal revenues collected in or for account of the Philippine Islands shall accrue intact to the general government thereof and be paid into the insular treasury. (June 17, 1930, ch. 497, title III, § 301, 46 Stat. 685.)

#### CROSS REFERENCE

Duties and taxes on foreign vessels coming from Philippines, see section 123a of this title.

#### § 1302. Puerto Rico—Exemption from internal-revenue taxes.

Provisions of this section, acts June 17, 1930, ch. 497, title III, § 302, 46 Stat. 686; May 17, 1932, ch. 190, 47 Stat. 158, were incorporated as section 3361 (b) of Title 26, Internal Revenue Code.

#### § 1303. Countervailing duties.

Whenever any country, dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or corporation shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government, and such article or merchandise is dutiable under the provisions of this chapter, then upon the importation of any such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to the duties otherwise imposed by this chapter, an additional duty equal to the net amount of such bounty or grant, however the same be paid or bestowed. The Secretary of the Treasury shall from time to time ascertain and determine, or estimate, the net amount of each such bounty or grant, and shall declare the net amount so determined or estimated. The Secretary of the Treasury shall make all regulations he may deem necessary for the identification of such articles and merchandise and for the assessment and collection of such additional duties. (June 17, 1930, ch. 497, title III, § 303, 46 Stat. 687.)

#### § 1304. Marking of imported articles and containers— (a) Marking of articles.

Except as hereinafter provided, every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. The Secretary of the Treasury may by regulations—

(1) Determine the character of words and phrases or abbreviations thereof which shall be acceptable as indicating the country of origin and prescribe any reasonable method of marking, whether by printing, stenciling, stamping, branding, labeling, or by any other reasonable method, and a conspicuous place on the article (or container) where the marking shall appear;

(2) Require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of the article or as to the origin of any other article with which such imported article is usually combined subsequent to importation but before delivery to an ultimate purchaser; and

(3) Authorize the exception of any article from the requirements of marking if—

- (A) Such article is incapable of being marked;
- (B) Such article cannot be marked prior to shipment to the United States without injury;
- (C) Such article cannot be marked prior to shipment to the United States, except at an expense economically prohibitive of its importation;
- (D) The marking of a container of such article will reasonably indicate the origin of such article;
- (E) Such article is a crude substance;
- (F) Such article is imported for use by the importer and not intended for sale in its imported or any other form;
- (G) Such article is to be processed in the United States by the importer or for his account otherwise than for the purpose of concealing the origin of such article and in such manner that any mark contemplated by this section would necessarily be obliterated, destroyed, or permanently concealed;
- (H) An ultimate purchaser, by reason of the character of such article or by reason of the circumstances of its importation, must necessarily know the country of origin of such article even though it is not marked to indicate its origin;
- (I) Such article was produced more than twenty years prior to its importation into the United States; or
- (J) Such article is of a class or kind with respect to which the Secretary of the Treasury has given notice by publication in the weekly Treasury Decisions within two years after July 1, 1937, that articles of such class or kind were imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin: *Provided*, That this subdivision (J) shall not apply after September 1, 1938, to sawed lumber and timbers, telephone, trolley, electric-light, and telegraph poles of wood, and bundles of shingles; but the President is authorized to suspend the effectiveness of this proviso if he finds such action required to carry out any trade agreement entered into under the authority of sections 1351-1354 of this title, as extended.

**(b) Marking of containers.**

Whenever an article is excepted under subdivision (3) of subsection (a) of this section from the requirements of marking, the immediate container, if any, of such article, or such other container or containers of such article as may be prescribed by the Secretary of the Treasury, shall be marked in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of such article, subject to all provisions of this section, including the same exceptions as are applicable to articles under subdivision (3) of subsection (a). If articles are excepted from marking requirements under clause (F), (G), or (H) of subdivision (3) of subsection (a) of this section, their usual containers shall not be subject to the marking requirements of this section. Usual containers in use as such at the time of importation shall in no case be required to be marked to show the country of their own origin.

**(c) Additional duties for failure to mark.**

If at the time of importation any article (or its container, as provided in subsection (b) hereof) is not marked in accordance with the requirements of this section, and if such article is not exported or destroyed or the article (or its container, as provided in subsection (b) hereof) marked after importation in accordance with the requirements of this section (such exportation, destruction, or marking to be accomplished under customs supervision prior to the liquidation of the entry covering the article, and to be allowed whether or not the article has remained in continuous customs custody), there shall be levied, collected, and paid upon such article a duty of 10 per centum ad valorem, which shall be deemed to have accrued at the time of importation, shall not be construed to be penal, and shall not be remitted wholly or in part nor shall payment thereof be avoidable for any cause. Such duty shall be levied, collected, and paid in addition to any other duty imposed by law and whether or not the article is exempt from the payment of ordinary customs duties. The compensation and expenses of customs officers and employees assigned to supervise the exportation, destruction, or marking to exempt articles from the application of the duty provided for in this subsection shall be reimbursed to the Government by the importer.

**(d) Delivery withheld until marked.**

No imported article held in customs custody for inspection, examination, or appraisal shall be delivered until such article and every other article of the importation (or their containers), whether or not released from customs custody, shall have been marked in accordance with the requirements of this section or until the amount of duty estimated to be payable under subsection (c) of this section has been deposited. Nothing in this section shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law.

**(e) Penalties.**

If any person shall, with intent to conceal the information given thereby or contained therein, deface, destroy, remove, alter, cover, obscure, or obliterate any mark required under the provisions of this chapter, he shall, upon conviction, be fined not more than \$5,000 or imprisoned not more than one year, or both. (June 17, 1930, ch. 497, title III, § 304, 46 Stat. 687; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 3, 52 Stat. 1077.)

**EFFECTIVE DATE**

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

**§ 1305. Immoral articles—Importation prohibited—**  
**(a) Prohibition of importation.**

All persons are prohibited from importing into the United States from any foreign country any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the United States, or forcible resistance to any law of the United States, or containing any threat to take the

life of or inflict bodily harm upon any person in the United States, or any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article which is obscene or immoral, or any drug or medicine or any article whatever for the prevention of conception or for causing unlawful abortion, or any lottery ticket, or any printed paper that may be used as a lottery ticket, or any advertisement of any lottery. No such articles whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles and, unless it appears to the satisfaction of the collector that the obscene or other prohibited articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee, the entire contents of the package in which such articles are contained, shall be subject to seizure and forfeiture as hereinafter provided: *Provided*, That the drugs hereinbefore mentioned, when imported in bulk and not put up for any of the purposes hereinbefore specified, are excepted from the operation of this subdivision: *Provided further*, That the Secretary of the Treasury may, in his discretion, admit the so-called classics or books of recognized and established literary or scientific merit, but may, in his discretion, admit such classics or books only when imported for noncommercial purposes.

Upon the appearance of any such book or matter at any customs office, the same shall be seized and held by the collector to await the judgment of the district court as hereinafter provided; and no protest shall be taken to the United States Customs Court from the decision of the collector. Upon the seizure of such book or matter the collector shall transmit information thereof to the district attorney of the district in which is situated the office at which such seizure has taken place, who shall institute proceedings in the district court for the forfeiture, confiscation, and destruction of the book or matter seized. Upon the adjudication that such book or matter thus seized is of the character the entry of which is by this section prohibited, it shall be ordered destroyed and shall be destroyed. Upon adjudication that such book or matter thus seized is not of the character the entry of which is by this section prohibited, it shall not be excluded from entry under the provisions of this section.

In any such proceeding any party in interest may upon demand have the facts at issue determined by a jury and any party may have an appeal or the right of review as in the case of ordinary actions or suits.

**(b) Penalty on Government officers.**

Any officer, agent, or employee of the Government of the United States who shall knowingly aid or abet any person engaged in any violation of any of the provisions of law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail obscene or indecent publications or representations, or books, pamphlets, papers, writings, advertisements, circulars, prints, pictures, or drawings containing any matter advocating or urging treason or

insurrection against the United States, or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or means for preventing conception or procuring abortion, or other articles of indecent or immoral use or tendency, shall be deemed guilty of a misdemeanor, and shall for every offense be punishable by a fine of not more than \$5,000, or by imprisonment at hard labor for not more than ten years, or both. (June 17, 1930, ch. 497, title III, § 305, 46 Stat. 688.)

**CROSS REFERENCE**

Offense punishable by imprisonment for term in excess of one year deemed a felony, see section 541 of Title 18, Criminal Code and Criminal Procedure.

**§ 1306. Cattle, sheep, swine, and meats—Importation prohibited in certain cases—(a) Rinderpest and foot-and-mouth disease.**

If the Secretary of Agriculture determines that rinderpest or foot-and-mouth disease exists in any foreign country, he shall officially notify the Secretary of the Treasury and give public notice thereof, and thereafter, and until the Secretary of Agriculture gives notice in a similar manner that such disease no longer exists in such foreign country, the importation into the United States of cattle, sheep, or other domestic ruminants, or swine, or of fresh, chilled, or frozen beef, veal, mutton, lamb, or pork, from such foreign country, is prohibited.

**(b) Meats unfit for human food.**

No meat of any kind shall be imported into the United States unless such meat is healthful, wholesome, and fit for human food and contains no dye, chemical, preservative, or ingredient which renders such meat unhealthful, unwholesome, or unfit for human food, and unless such meat also complies with the rules and regulations made by the Secretary of Agriculture. All imported meats shall, after entry into the United States in compliance with such rules and regulations, be deemed and treated as domestic meats within the meaning of and subject to the provisions of sections 1-15, 95 of Title 21.

**(c) Regulations.**

The Secretary of Agriculture is authorized to make rules and regulations to carry out the purposes of this section, and in such rules and regulations the Secretary of Agriculture may prescribe the terms and conditions for the destruction of all cattle, sheep, and other domestic ruminants, and swine, and of all meats, offered for entry and refused admission into the United States, unless such cattle, sheep, domestic ruminants, swine, or meats be exported by the consignee within the time fixed therefor in such rules and regulations. (June 17, 1930, ch. 497, title III, § 306, 46 Stat. 689.)

**§ 1307. Convict-made goods—Importation prohibited.**

All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is

authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision. The provisions of this section relating to goods, wares, articles, and merchandise mined, produced, or manufactured by forced labor or/and indentured labor, shall take effect on January 1, 1932; but in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States.

"Forced labor", as herein used, shall mean all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily. (June 17, 1930, ch. 497, title III, § 307, 46 Stat. 689.)

**§ 1308. Temporary free importation under bond for exportation.**

The following articles, when not imported for sale or for sale on approval, may be admitted into the United States under such rules and regulations as the Secretary of the Treasury may prescribe, without the payment of duty, under bond for their exportation within six months from the date of importation, which period may, in the discretion of the Secretary of the Treasury (whether such articles are imported before or after this section becomes effective), be extended, upon application, for a further period not to exceed six months:

(1) Articles to be repaired, altered, or otherwise changed in condition by processes which do not result in articles manufactured or produced in the United States;

(2) Models of women's wearing apparel imported by manufacturers for use solely as models in their own establishment, and not for sale;

(3) Samples solely for use in taking orders for merchandise, or for examination with a view to reproduction;

(4) Articles intended solely for experimental purposes, and upon satisfactory proof to the Secretary that any such article has been destroyed because of its use for experimental purposes such bond may be canceled without the payment of duty;

(5) Automobiles, motorcycles, bicycles, airplanes, airships, balloons, boats, racing shells, and similar vehicles and craft, and horses, and the usual equipment of the foregoing; all the foregoing which are brought temporarily into the United States by non-residents (A) for the purpose of taking part in races or other specific contests, or (B) for the transportation of such nonresidents, their families and guests, and such incidental carriage of articles as may be necessary and appropriate to the purposes of the journey, but not to be used for the transportation of persons or articles for hire nor in any case primarily for the carriage of articles (but nothing in this chapter shall be construed as altering the customary exceptions of vehicles and other instruments of international traffic from the application of the customs laws); and in the case of horses, vehicles, and craft entered under this subdivision collectors of customs may, under such regulations as the Secretary of the

Treasury may prescribe, defer the exaction of a bond for not to exceed ninety days (or six months in the case of such horses, vehicles, and craft from a country which accords a similar privilege to horses, vehicles, and craft from the United States) after the date of importation, but unless such horse, vehicle, or craft is exported or the bond is given within the period of such deferment, such horse, vehicle, or craft shall be subject to forfeiture;

(6) Locomotives and other railroad equipment brought temporarily into the United States for use in clearing obstructions, fighting fires, or making emergency repairs on railroads within the United States, or for use in transportation otherwise than in international traffic when the Secretary of the Treasury finds that the temporary use of foreign railroad equipment is necessary to meet an emergency;

(7) Containers for compressed gases which comply with the laws and regulations for the transportation of such containers in the United States;

(8) Articles imported by illustrators and photographers for use solely as models in their own establishments, in the illustrating of catalogues, pamphlets, or advertising matter;

(9) Professional equipment, tools of trade, and camping equipment imported for their own use by nonresidents sojourning temporarily in the United States, and articles of special design for temporary use exclusively in connection with the manufacture or production of articles for export. (June 17, 1930, ch. 497, title III, § 308, 46 Stat. 690; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 4, 52 Stat. 1079.)

**EFFECTIVE DATE**

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

**§ 1309. Supplies for certain vessels and aircraft—(a) Exemption from customs duties and internal-revenue tax.**

Articles of foreign or domestic manufacture or production may, under such regulations as the Secretary of the Treasury may prescribe, be withdrawn from bonded warehouses, bonded manufacturing warehouses, or continuous customs custody elsewhere than in a bonded warehouse free of duty or internal-revenue tax for supplies (not including equipment) of vessels of war, in ports of the United States, of any nation which may reciprocate such privilege toward the vessels of war of the United States in its ports, or for supplies (not including equipment) of vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions, or for supplies (not including equipment) of aircraft registered in the United States and actually engaged in foreign trade or trade between the United States and any of its possessions, or for supplies (including equipment), maintenance, or repair of aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, where such trade by foreign aircraft is permitted.

**(b) Drawback.**

Articles withdrawn from bonded warehouses, bonded manufacturing warehouses, or continuous customs custody elsewhere than in a bonded warehouse and articles of domestic manufacture or production, laden as supplies upon any such foreign vessel or any such vessel or aircraft of the United States or laden as supplies (including equipment) upon, or used in the maintenance or repair of, any such foreign aircraft, shall be considered to be exported within the meaning of the drawback provisions of this chapter.

**(c) Articles removed in, or returned to, the United States.**

Any article exempted from duty or tax, or in respect of which drawback has been allowed, under this section or section 1317 of this title and thereafter removed in the United States from any vessel or aircraft, or otherwise returned to the United States, shall be treated as an importation from a foreign country.

**(d) Reciprocal privileges.**

The privileges granted by this section and section 1317 of this title in respect of aircraft registered in a foreign country shall be allowed only if the Secretary of the Treasury shall have been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of Commerce shall advise the Secretary of the Treasury that he has found that a foreign country has discontinued, or will discontinue, the allowance of such privileges, the privileges granted by this section and such section 1317 shall not apply thereafter in respect of aircraft registered in that foreign country. (June 17, 1930, ch. 497, title III, § 309, 46 Stat. 690; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 5 (a), 52 Stat. 1080.)

**EFFECTIVE DATE**

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

**§ 1310. Free importation of merchandise recovered from sunken and abandoned vessels.**

Whenever any vessel laden with merchandise, in whole or in part subject to duty, has been sunk in any river, harbor, bay, or waters subject to the jurisdiction of the United States, and within its limits, for the period of two years and is abandoned by the owner thereof, any person who may raise such vessel shall be permitted to bring any merchandise recovered therefrom into the port nearest to the place where such vessel was so raised free from the payment of any duty thereupon, but under such regulations as the Secretary of the Treasury may prescribe. (June 17, 1930, ch. 497, title III, § 310, 46 Stat. 690.)

**§ 1311. Bonded manufacturing warehouses.**

All articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty, and without having an internal-revenue stamp affixed thereto, shall,

under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six: *Provided*, That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury: *Provided further*, That the manufacture of distilled spirits from grain, starch, molasses, or sugar, including all dilutions or mixtures of them or either of them, shall not be permitted in such manufacturing warehouses.

Whenever goods manufactured in any bonded warehouse established under the provisions of the preceding paragraph shall be exported directly therefrom or shall be duly laden for transportation and immediate exportation under the supervision of the proper officer who shall be duly designated for that purpose, such goods shall be exempt from duty and from the requirements relating to revenue stamps.

No flour, manufactured in a bonded manufacturing warehouse from wheat imported after ninety days after June 17, 1930, shall be withdrawn from such warehouse for exportation without payment of a duty on such imported wheat equal to any reduction in duty which by treaty will apply in respect of such flour in the country to which it is to be exported.

Any materials used in the manufacture of such goods, and any packages, coverings, vessels, brands, and labels used in putting up the same may, under the regulations of the Secretary of the Treasury, be conveyed without the payment of revenue tax or duty into any bonded manufacturing warehouse, and imported goods may, under the aforesaid regulations, be transferred without the exaction of duty from any bonded warehouse into any bonded manufacturing warehouse; but this privilege shall not be held to apply to implements, machinery, or apparatus to be used in the construction or repair of any bonded manufacturing warehouse or for the prosecution of the business carried on therein.

Articles or materials received into such bonded manufacturing warehouse or articles manufactured therefrom may be withdrawn or removed therefrom for direct shipment and exportation or for transportation and immediate exportation in bond to foreign countries or to the Philippine Islands under the supervision of the officer duly designated therefor by the collector of the port, who shall certify to such shipment and exportation, or lading for transportation, as the case may be, describing the articles by their mark or otherwise, the quantity, the date of exportation, and the name of the vessel: *Provided*, That the by-products incident to the processes of manufacture, including waste derived from cleaning rice in bonded warehouses under the Act of March 24, 1874, ch. 65, 18 Stat. 24, in said bonded warehouses may be withdrawn for domestic consumption on the payment of duty equal to the duty which would be assessed and collected by law if such waste or by-products were imported from a foreign



country: *Provided*, That all waste material may be destroyed under Government supervision. All labor performed and services rendered under these provisions shall be under the supervision of a duly designated officer of the customs and at the expense of the manufacturer.

A careful account shall be kept by the collector of all merchandise delivered by him to any bonded manufacturing warehouse, and a sworn monthly return, verified by the customs officers in charge, shall be made by the manufacturer containing a detailed statement of all imported merchandise used by him in the manufacture of exported articles.

Before commencing business the proprietor of any manufacturing warehouse shall file with the Secretary of the Treasury a list of all the articles intended to be manufactured in such warehouse, and state the formula of manufacture and the names and quantities of the ingredients to be used therein.

Articles manufactured under these provisions may be withdrawn under such regulations as the Secretary of the Treasury may prescribe for transportation and delivery into any bonded warehouse at an exterior port for the sole purpose of immediate export therefrom: *Provided*, That cigars manufactured in whole of tobacco imported from any one country, made and manufactured in such bonded manufacturing warehouses, may be withdrawn for home consumption upon the payment of the duties on such tobacco in its condition as imported under such regulations as the Secretary of the Treasury may prescribe, and the payment of the internal-revenue tax accruing on such cigars in their condition as withdrawn, and the boxes or packages containing such cigars shall be stamped to indicate their character, origin of tobacco from which made, and place of manufacture.

The provisions of section R. S. § 3433 shall, so far as may be practicable, apply to any bonded manufacturing warehouse established under this chapter and to the merchandise conveyed therein.

Distilled spirits and wines which are rectified in bonded manufacturing warehouses, class six, and distilled spirits which are reduced in proof and bottled in such warehouses, shall be deemed to have been manufactured within the meaning of this section, and may be withdrawn as hereinbefore provided, and likewise for shipment in bond to Puerto Rico, subject to the provisions of this section, and under such regulations as the Secretary of the Treasury may prescribe, there to be withdrawn for consumption or be rewarehoused and subsequently withdrawn for consumption: *Provided*, That upon withdrawal in Puerto Rico for consumption, the duties imposed by the customs laws of the United States shall be collected on all imported merchandise (in its condition as imported) and imported containers used in the manufacture and putting up of such spirits and wines in such warehouses: *Provided further*, That no internal-revenue tax shall be imposed on distilled spirits and wines rectified in class six warehouses if such distilled spirits and wines are exported or shipped in accordance with the provisions of this section, and that no person rectifying distilled spirits or wines in such warehouses

shall be subject by reason of such rectification to the payment of special tax as a rectifier. (June 17, 1930, ch. 497, title III, § 311, 46 Stat. 691; June 26, 1936, ch. 830, title IV, § 404, 49 Stat. 1960.)

#### REFERENCES IN TEXT

Act March 24, 1874, to which reference is made in text, which provided that "Importers" bonded warehouses, to be used for the storage and cleansing of imported rice intended for exportation to foreign countries, may be established at any port of entry in the United States, under such rules and regulations as the Secretary of the Treasury may prescribe", was repealed by act September 21, 1922, ch. 356, § 643, 42 Stat. 989.

R. S. § 3433, to which reference is made in text, was amended by act February 27, 1877, ch. 69, 19 Stat. 248. The provisions of R. S. § 3433 as they existed prior to the amendment of February 27, 1877, supra, were reenacted as section 10 of act October 1, 1890, ch. 1244, 26 Stat. 614. Section 55 of said act October 1, 1890, repealed all laws and parts of laws inconsistent therewith. The provisions of said section 10 of act October 1, 1890, were incorporated into Title 26, Internal Revenue Code, as subsections (a), (b), (c), and (d) (1) of section 3177.

#### CROSS REFERENCE

Section to apply to any foreign trade agreement to extent only that such agreement assures to United States a preferential rate of duty on wheat flour, see section 1352 of this title.

#### § 1312. Bonded smelting warehouses.

The works of manufacturers engaged in smelting or refining, or both, of ores and crude metals, may, upon the giving of satisfactory bonds, be designated as bonded smelting warehouses. Ores or crude metals may be removed from the vessel or other vehicle in which imported, or from a bonded warehouse, into a bonded smelting warehouse without the payment of duties thereon, and there smelted or refined, or both, together with ores or crude metals of home or foreign production: *Provided*, That the bonds shall be charged with a sum equal in amount to the regular duties which would have been payable on such ores and crude metals if entered for consumption at the time of their importation, and the several charges against such bonds shall be canceled upon the exportation or delivery to a bonded manufacturing warehouse established under section 1311 of this title of a quantity of the same kind of metal equal to the quantity of metal producible from the smelting or refining, or both, of the dutiable metal contained in such ores or crude metals, due allowance being made of the smelter wastage as ascertained from time to time by the Secretary of the Treasury: *Provided further*, That the said metals so producible, or any portion thereof, may be withdrawn for domestic consumption or transferred to a bonded customs warehouse and withdrawn therefrom and the several charges against the bonds canceled upon the payment of the duties chargeable against an equivalent amount of ores or crude metals from which said metal would be producible in their condition as imported: *Provided further*, That on the arrival of the ores and crude metals at such establishments they shall be sampled and assayed according to commercial methods under the supervision of Government officers: *Provided further*, That all labor performed and services rendered pursuant to this section shall be under the supervision of an officer of the customs, to be appointed by the Secretary of the Treasury and at the expense of the



manufacturer: *Provided further*, That all regulations for the carrying out of this section shall be prescribed by the Secretary of the Treasury: *And provided further*, That the several charges against the bonds of any smelting warehouse established under the provisions of this section may be canceled upon the exportation or transfer to a bonded manufacturing warehouse from any other bonded smelting warehouse established under this section of a quantity of the same kind of metal, in excess of that covered by open bonds, equal to the amount of metal producible from the smelting or refining, or both, of the dutiable metal contained in the imported ores and crude metals, due allowance being made of the smelter wastage as ascertained from time to time by the Secretary of the Treasury. (June 17, 1930, ch. 497, title III, § 312, 46 Stat. 692.)

**§ 1313. Drawback and refunds—(a) Articles made from imported merchandise.**

Upon the exportation of articles manufactured or produced in the United States with the use of imported merchandise, the full amount of the duties paid upon the merchandise so used shall be refunded as drawback, less 1 per centum of such duties, except that such duties shall not be so refunded upon the exportation of flour or by-products produced from wheat imported after ninety days after June 17, 1930. Where two or more products result from the manipulation of imported merchandise, the drawback shall be distributed to the several products in accordance with their relative values at the time of separation.

**(b) Substitution for drawback purposes.**

If imported duty-paid sugar or non-ferrous metal, or ore containing non-ferrous metal, and duty free or domestic merchandise of the same kind and quality are used in the manufacture or production of articles within a period not to exceed one year from the receipt of such imported merchandise by the manufacturer or producer of such articles, there shall be allowed upon the exportation (or shipment to the Philippine Islands) of any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported articles, an amount of drawback equal to that which would have been allowable had the sugar or non-ferrous metal, or ore containing non-ferrous metal, used therein been imported; but the total amount of drawback allowed upon the exportation of such articles, together with the total amount of drawback allowed in respect of such imported merchandise under any other provision of law, shall not exceed 99 per centum of the duty paid on such imported merchandise.

**(c) Merchandise not conforming to sample or specifications.**

Upon the exportation of merchandise not conforming to sample or specifications upon which the duties have been paid and which have been entered or withdrawn for consumption and, within thirty days after release from customs custody, returned to customs custody for exportation, the full amount of the duties paid upon such merchandise shall be

refunded as drawback, less 1 per centum of such duties.

**(d) Flavoring extracts and medicinal or toilet preparations.**

Upon the exportation of flavoring extracts, medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from domestic alcohol on which an internal-revenue tax has been paid, there shall be allowed a drawback equal in amount to the tax found to have been paid on the alcohol so used.

Upon the exportation of bottled distilled spirits and wines manufactured or produced in the United States on which an internal-revenue tax has been paid, there shall be allowed, under regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, a drawback equal in amount to the tax found to have been paid on such bottled distilled spirits and wines: *Provided*, That such distilled spirits and wines have been bottled especially for export, under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

**(e) Imported salt for curing fish.**

Imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries, and in curing fish on the shores of the navigable waters of the United States, whether such fish are taken by licensed or unlicensed vessels, and upon proof that the salt has been used for either of such purposes, the duties on the same shall be remitted.

**(f) Exportation of meats cured with imported salt.**

Upon the exportation of meats, whether packed or smoked, which have been cured in the United States with imported salt, there shall be refunded, upon satisfactory proof that such meats have been cured with imported salt, the duties paid on the salt so used in curing such exported meats, in amounts not less than \$100.

**(g) Materials for construction and equipment of vessels built for foreigners.**

The provisions of this section shall apply to materials imported and used in the construction and equipment of vessels built for foreign account and ownership, or for the government of any foreign country, notwithstanding that such vessels may not within the strict meaning of the term be articles exported.

**(h) Time limitation on exportation.**

No drawback shall be allowed under the provisions of this section or of section 152a of this title (relating to drawback on shipments to the Philippine Islands), unless the completed article is exported, or shipped to the Philippine Islands, within three years after importation of the imported merchandise.

**(i) Regulations.**

The Secretary of the Treasury is authorized to prescribe regulations governing (1) the identification of imported merchandise used in the manufacture or production of articles entitled to drawback of customs duties, the ascertainment of the quantity of such merchandise used, of the time when such merchandise was received by the manufacturer or

producer of the exported articles, and of the amount of duties paid thereon, the determination of the facts of the manufacture or production of such articles in the United States and their exportation therefrom, the time within which drawback entries on such articles shall be filed and completed, to entitle such articles to drawback, and the payment of drawback due thereon; (2) the identification of merchandise withdrawn for consumption and returned to customs custody for exportation, the determination of the facts of nonconformity thereof to sample or specifications and of exportation thereof from the United States, and the payment of the drawback due thereon; (3) the determination and payment of drawback of internal-revenue tax on domestic distilled spirits and wines, including the requirement of such notices, bonds, bills of lading, and other evidence of payment of tax and exportation as the Secretary of the Treasury deems necessary; (4) the remission of duties on imported salt used in curing fish, including the production of proof that the salt has been so used; and (5) the refunding of duties paid upon imported salt used in curing exported meats, including the production of proof that the salt has been so used; and designating the person to whom refund or payment of drawback shall be made.

(j) Source of payment.

Any drawback of duties that may be authorized under the provisions of this chapter shall be paid from the customs receipts of Puerto Rico, if the duties were originally paid into the Treasury of Puerto Rico. (June 17, 1930, ch. 497, title III, § 313, 46 Stat. 693; May 17, 1932, ch. 190, 47 Stat. 158; June 26, 1936, ch. 830, title IV, §§ 402, 403, 49 Stat. 1960.)

§ 1314. Repealed. June 25, 1938, ch. 679, § 35, 52 Stat. 1092, eff. July 25, 1938.

Section was based upon act June 17, 1930, ch. 497, title III, § 314, 46 Stat. 695

EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

§ 1315. Effective date of rates of duty.

On and after June 18, 1930, all goods, wares, and merchandise previously imported, for which no entry has been made, and all goods, wares, and merchandise previously entered without payment of duty and under bond for warehousing, transportation, or any other purpose, for which no permit of delivery to the importer or his agent has been issued, shall be subjected to the duties imposed by this chapter and to no other duty upon the entry or the withdrawal thereof. Insofar as duties are based upon the quantity of any merchandise, such duties shall, except as provided in paragraph 813 and section 1562 of this chapter (relating respectively to certain beverages and to manipulating warehouses), be levied and collected upon the quantity of such merchandise at the time of its importation. No administrative ruling resulting in the imposition of a higher rate of duty or charge than the Secretary of the Treasury shall find to have been applicable to imported merchandise

under an established and uniform practice shall be effective with respect to articles entered for consumption or withdrawn from warehouse for consumption prior to the expiration of thirty days after the date of publication in the weekly Treasury Decisions of notice of such ruling; but this provision shall not apply with respect to the imposition of antidumping duties. (June 17, 1930, ch. 497, title III, § 315, 46 Stat. 695; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 6, 52 Stat. 1081.)

EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

§ 1316. Cuban reciprocity treaty not affected.

Nothing in this chapter shall be construed to abrogate or in any manner impair or affect the provisions of the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on December 11, 1902, or the provisions of sections 124 and 125 of this title. (June 17, 1930, ch. 497, title III, § 316, 46 Stat. 695.)

§ 1317. Tobacco products; supplies for aircraft.

(a) The shipment or delivery of manufactured tobacco, snuff, cigars, or cigarettes, for consumption beyond the jurisdiction of the internal-revenue laws of the United States, as defined by section 2197 (a) of Title 26, shall be deemed exportation within the meaning of the customs and internal-revenue laws applicable to the exportation of such articles without payment of duty or internal-revenue tax.

(b) The shipment or delivery of any merchandise for use as supplies (including equipment) upon, or in the maintenance or repair of, aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, where such trade by foreign aircraft is permitted, shall be deemed an exportation within the meaning of the customs and internal-revenue laws applicable to the exportation of such merchandise without the payment of duty or internal revenue tax. (June 17, 1930, ch. 497, title III, § 317, 46 Stat. 696; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 5 (b), 52 Stat. 1081.)

REPEALED

Insofar as this section related exclusively to Internal Revenue it was repealed and incorporated as section 2197 (b) of Title 26, Internal Revenue. See section 4 (a) of enacting sections of Internal Revenue Code preceding subtitle A of title 26.

EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

§ 1318. Emergencies.

Whenever the President shall by proclamation declare an emergency to exist by reason of a state of war, or otherwise, he may authorize the Secretary of the Treasury to extend during the continuance of such emergency the time herein prescribed for the performance of any act, and may authorize the Secretary of the Treasury to permit, under such regulations as the Secretary of the Treasury may

prescribe, the importation free of duty of food, clothing, and medical, surgical, and other supplies for use in emergency relief work. The Secretary of the Treasury shall report to the Congress any action taken under the provisions of this section. (June 17, 1930, ch. 497, title III, § 318, 46 Stat. 696.)

#### § 1319. Duty on coffee imported into Puerto Rico.

The Legislature of Puerto Rico is hereby empowered to impose tariff duties upon coffee imported into Puerto Rico, including coffee grown in a foreign country coming into Puerto Rico from the United States. Such duties shall be collected and accounted for as now provided by law in the case of duties collected in Puerto Rico. (June 17, 1930, ch. 497, title III, § 319, 46 Stat. 696; May 17, 1932, ch. 190, 47 Stat. 158.)

#### § 1319a. Duty on coffee; ratification of duties imposed by Legislature of Puerto Rico.

The taxes and duties imposed by the Legislature of Puerto Rico by Joint Resolution Numbered 59 approved by the Governor of Puerto Rico May 5, 1930, and by Act Numbered 77 approved by the Governor of Puerto Rico May 5, 1931, as amended by Act Numbered 7 approved by the Governor April 9, 1934, including therein such taxes and duties on coffee heretofore or hereafter brought into Puerto Rico from any State or Territory or district or possession of the United States, or other place subject to the jurisdiction of the United States, are legalized and ratified, and the collection of all such taxes and duties made under or by authority of either of said acts of the Puerto Rican Legislature, including such taxes and duties on coffee heretofore or hereafter brought into Puerto Rico from any State, Territory, district, or possession of the United States, or other place subject to the jurisdiction of the United States, is legalized, ratified, and confirmed as fully to all intents and purposes as if the same had, by prior Act of Congress, been specifically authorized and directed. (June 18, 1934, ch. 604, 48 Stat. 1017; Aug. 20, 1935, ch. 578, 49 Stat. 665.)

#### CODIFICATION

Section was not part of Tariff Act of 1930 which constitutes this chapter.

#### § 1320. Reciprocal agreements relating to advertising matter.

With the advice and consent of the President, the Secretary of the Treasury and the Postmaster General, jointly, may, on behalf of the United States, enter into a reciprocal agreement with any foreign country to provide for the entry free of duty in the respective countries of dispatches or shipments through the mails of circulars, folders, pamphlets, books, and cards, in the nature of advertising matter (except such matter as may be printed, manufactured, or produced in a foreign country, advertising the sale of articles by persons carrying on business in the United States or containing announcements relating to the merchandise or business of such persons) to individual addresses, and may, in the event any such agreement is entered into, prescribe such rules and regulations as they may deem necessary relating to the customs and postal treatment of such

matter in the United States. (June 17, 1930, ch. 497, title III, § 320, 46 Stat. 696.)

#### § 1321. Administrative exemptions.

Collectors of customs are hereby authorized, under such regulations as the Secretary of the Treasury may prescribe, to disregard a difference of less than \$1 between the total estimated duties or taxes deposited, or the total duties or taxes tentatively assessed, with respect to any entry of merchandise and the total amount of duties or taxes actually accruing thereon, and to admit articles free of duty when the expense and inconvenience of collecting the duty accruing thereon would be disproportionate to the amount of such duty, but the aggregate value of articles imported by one person on one day and exempted from the payment of duty under the authority of this section shall not exceed \$5 in the case of articles accompanying, and for the personal or household use of, persons arriving in the United States, or \$1 in any other case. (June 17, 1930, ch. 497, title III, § 321, as added June 25, 1938, 5 p. m. E. S. T., ch. 679, § 7, 52 Stat. 1081.)

#### EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

#### PART II.—UNITED STATES TARIFF COMMISSION

#### § 1330. Organization of the Commission—(a) Membership.

The United States Tariff Commission (referred to in this subtitle as the "commission") shall be composed of six commissioners to be hereafter appointed by the President by and with the advice and consent of the Senate, but each member now in office shall continue to serve until his successor (as designated by the President at the time of nomination) takes office, but in no event for longer than September 16, 1930. No person shall be eligible for appointment as a commissioner unless he is a citizen of the United States, and, in the judgment of the President, is possessed of qualifications requisite for developing expert knowledge of tariff problems and efficiency in administering the provisions of Part II of this subtitle. Not more than three of the commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable.

#### (b) Terms of office.

Terms of office of the commissioners first taking office after June 17, 1930, shall expire, as designated by the President at the time of nomination, one at the end of each of the first six years after June 17, 1930. The term of office of a successor to any such commissioner shall expire six years from the date of the expiration of the term for which his predecessor was appointed, except that any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term.

**(c) Chairman, vice chairman; salaries.**

The President shall annually designate one of the commissioners as chairman and one as vice chairman of the commission. The vice chairman shall act as chairman in case of the absence or disability of the chairman. A majority of the commissioners in office shall constitute a quorum, but the commission may function notwithstanding vacancies. Each commissioner (including members in office on June 17, 1930) shall receive a salary of \$11,000 a year. No commissioner shall actively engage in any other business, vocation, or employment than that of serving as a commissioner. (June 17, 1930, ch. 497, title III, § 330, 46 Stat. 696.)

**SALARIES OF COMMISSIONERS**

For the fiscal year ending June 30, 1937, the salaries of the commissioners were reduced to \$10,000 each per annum by act Mar. 19, 1936, ch. 156, § 4, 49 Stat. 1183.

For the fiscal year ending June 30, 1938, the salaries of the Commissioners of the Interstate Commerce Commission and the Commissioners of the United States Tariff Commission were reduced to \$10,000 each per annum by act June 28, 1937, ch. 396, § 3, 50 Stat. 352

**§ 1331. General powers—(a) Personnel.**

The commission shall appoint a secretary, who shall receive a salary of \$7,500 per year, and the commission shall have authority to employ and fix the compensations of such special experts, examiners, clerks, and other employees as the commission may from time to time find necessary for the proper performance of its duties.

**(b) Application of civil service law.**

With the exception of the secretary, a clerk to each commissioner, and such special experts as the commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil service law.

**(c) Expenses.**

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders in making any investigation or upon official business in any other places than at their respective headquarters, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

**(d) Offices and supplies.**

Unless otherwise provided by law, the commission may rent suitable offices for its use, and purchase such furniture, equipment, and supplies as may be necessary.

**(e) Principal office at Washington.**

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such agents as it may designate, prosecute any inquiry necessary to its duties in any part of the United States or in any foreign country.

**(f) Office at New York.**

The commission is authorized to establish and maintain an office at the port of New York for the

purpose of directing or carrying on any investigation, receiving and compiling statistics, selecting, describing, and filing samples of articles, and performing any of the duties or exercising any of the powers imposed upon it by law.

**(g) Official seal.**

The commission is authorized to adopt an official seal, which shall be judicially noticed. (June 17, 1930, ch. 497, title III, § 331, 46 Stat. 697.)

**§ 1332. Investigations—(a) Investigations and reports.**

It shall be the duty of the commission to investigate the administration and fiscal and industrial effects of the customs laws of this country now in force or which may be hereafter enacted, the relations between the rates of duty on raw materials and finished or partly finished products, the effects of ad valorem and specific duties and of compound specific and ad valorem duties, all questions relative to the arrangement of schedules and classification of articles in the several schedules of the customs law, and, in general, to investigate the operation of customs laws, including their relation to the Federal revenues, their effect upon the industries and labor of the country, and to submit reports of its investigations as hereafter provided.

**(b) Investigations of tariff relations.**

The commission shall have power to investigate the tariff relations between the United States and foreign countries, commercial treaties, preferential provisions, economic alliances, the effect of export bounties and preferential transportation rates, the volume of importations compared with domestic production and consumption, and conditions, causes, and effects relating to competition of foreign industries with those of the United States, including dumping and cost of production.

**(c) Investigation of Paris Economy Pact.**

The commission shall have power to investigate the Paris Economy Pact and similar organizations and arrangements in Europe.

**(d) Information for President and Congress.**

In order that the President and the Congress may secure information and assistance, it shall be the duty of the commission to—

(1) Ascertain conversion costs and costs of production in the principal growing, producing, or manufacturing centers of the United States of articles of the United States, whenever in the opinion of the commission it is practicable;

(2) Ascertain conversion costs and costs of production in the principal growing, producing, or manufacturing centers of foreign countries of articles imported into the United States, whenever in the opinion of the commission such conversion costs or costs of production are necessary for comparison with conversion costs or costs of production in the United States and can be reasonably ascertained;

(3) Select and describe articles which are representative of the classes or kinds of articles imported into the United States and which are similar to or comparable with articles of the United States; select and describe articles of the United States similar to or comparable with such imported articles; and ob-

tain and file samples of articles so selected, whenever the commission deems it advisable;

(4) Ascertain import costs of such representative articles so selected;

(5) Ascertain the grower's, producer's, or manufacturer's selling prices in the principal growing, producing, or manufacturing centers of the United States of the articles of the United States so selected; and

(6) Ascertain all other facts which will show the differences in or which affect competition between articles of the United States and imported articles in the principal markets of the United States.

**(e) Definitions.**

When used in this subdivision and in subdivision (d)—

(1) The term "article" includes any commodity, whether grown, produced, fabricated, manipulated, or manufactured;

(2) The term "import cost" means the price at which an article is freely offered for sale in the ordinary course of trade in the usual wholesale quantities for exportation to the United States plus, when not included in such price, all necessary expenses, exclusive of customs duties, of bringing such imported article to the United States.

**(f) Cost of crude petroleum; ascertainment by Tariff Commission.**

Subsection (f) directed the Tariff Commission to ascertain the cost of crude petroleum during three years preceding 1930.

**(g) Reports to President and Congress.**

The commission shall put at the disposal of the President of the United States, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, whenever requested, all information at its command, and shall make such investigations and reports as may be requested by the President or by either of said committees or by either branch of the Congress, and shall report to Congress on the first Monday of December of each year after June 17, 1930, a statement of the methods adopted and all expenses incurred, and a summary of all reports made during the year. (June 17, 1930, ch. 497, title III, § 332, 46 Stat. 698.)

**CROSS REFERENCE**

Importation of intoxicating liquors into any State, Territory, or possession in violation of its laws prohibited, see section 2 of the 20th Amendment to the Constitution.

**§ 1332a. Importation of red cedar shingles; investigation by Commission; duty.**

(a) The United States Tariff Commission is hereby directed to conduct an investigation as soon as practicable after the close of the calendar year 1939 and each calendar year thereafter, for the purpose of ascertaining the quantities of red cedar shingles shipped by producers in the United States and the quantities of imported red cedar shingles entered for consumption, or withdrawn from warehouse for consumption, during each of the three calendar years immediately preceding any such investigation.

(b) If the Commission finds, on the basis of an investigation under subdivision (a) of this section,

that in any calendar year after 1938 the quantity of imported red cedar shingles entered for consumption, or withdrawn from warehouse for consumption, was in excess of 30 per centum of the combined total for such year of the respective quantities ascertained in such investigation, it shall so report to the President. If the President approves the report of the Commission, he shall so proclaim, and on and after the day following the filing of such proclamation with the Division of the Federal Register and so long as any trade agreement entered into under the authority of section 1351 of this title, shall be in effect with respect to the importation into the United States of red cedar shingles, there shall be a duty upon imported red cedar shingles entered for consumption, or withdrawn from warehouse for consumption, in any calendar year in excess of 30 per centum of the annual average for the preceding three calendar years of the combined total of the quantity of such shingles shipped by producers in the United States and of the quantity of such imported shingles entered for consumption, or withdrawn from warehouse for consumption. The rate of such duty shall be 25 cents per square. Any duty imposed under this section shall be treated for the purposes of all provisions of law relating to customs revenue as a duty imposed by section 1001 of this title, and shall not apply to shingles entered for consumption before the duty becomes applicable.

(c) The quantity of red cedar shingles entitled to exemption from any duty imposed pursuant to this section shall be ascertained for each quota period by the Commission and reported to the Secretary of the Treasury. (July 1, 1940, ch. 499, 54 Stat. 708.)

**CODIFICATION**

This section is not a part of the Tariff Act of 1930.

**CROSS REFERENCE**

Collection and publication of statistics regarding production and importation of red cedar shingles, see sections 94-98 of Title 13, Census.

**§ 1333. Testimony and production of papers—(a) Authority to obtain information.**

For the purposes of carrying Part II of this subtitle into effect the commission or its duly authorized agent or agents shall have access to and the right to copy any document, paper, or record, pertinent to the subject matter under investigation, in the possession of any person, firm, copartnership, corporation, or association engaged in the production, importation, or distribution of any article under investigation, and shall have power to summon witnesses, take testimony, administer oaths, and to require any person, firm, copartnership, corporation, or association to produce books or papers relating to any matter pertaining to such investigation. Any member of the commission may sign subpoenas, and members and agents of the commission, when authorized by the commission, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

**(b) Witnesses and evidence.**

Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States at any designated

place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any district or territorial court of the United States or the district court of the United States for the District of Columbia in requiring the attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) **Mandamus.**

Upon the application of the Attorney General of the United States, at the request of the commission, any such court shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of Part II of this subtitle or any order of the commission made in pursuance thereof.

(d) **Depositions.**

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under Part II of this subtitle at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person, firm, copartnership, corporation, or association, may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission, as hereinbefore provided.

(e) **Fees and mileage of witnesses.**

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same, except employees of the commission, shall severally be entitled to the same fees and mileage as are paid for like services in the courts of the United States: *Provided*, That no person shall be excused, on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents, and other evidence, in obedience to the subpoena of the commission; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, he may so testify or produce evidence, except that no person shall be exempt from prosecution and punishment for perjury committed in so testifying.

(f) **Statements under oath.**

The commission is authorized, in order to ascertain any facts required by subdivision (d) of section 1332, to require any importer and any American

grower, producer, manufacturer, or seller to file with the commission a statement, under oath, giving his selling prices in the United States of any article imported, grown, produced, fabricated, manipulated, or manufactured by him. (June 17, 1930, ch. 497, title III, § 333, 46 Stat. 699; June 25, 1936, ch. 804, 49 Stat. 1921.)

**SIMILAR PROVISIONS**

1916—Sept. 8, 1916, ch. 463, § 706, 39 Stat. 797, as amended by act Sept. 21, 1922, ch. 356, title III, § 318 (f), 42 Stat. 947.

**FEDERAL RULES OF CIVIL PROCEDURE**

Application of, see Rules 45, 81, following section 723c of Title 28, Judicial Code and Judiciary.

§ 1334. **Cooperation with other agencies.**

The commission shall in appropriate matters act in conjunction and cooperation with the Treasury Department, the Department of Commerce, the Federal Trade Commission, or any other departments, or independent establishments of the Government, and such departments and independent establishments of the Government shall cooperate fully with the commission for the purposes of aiding and assisting in its work, and, when directed by the President, shall furnish to the commission, on its request, all records, papers, and information in their possession relating to any of the subjects of investigation by the commission and shall detail, from time to time, such officials and employees to said commission as he may direct. (June 17, 1930, ch. 497, title III, § 334, 46 Stat. 700.)

§ 1335. **Penalty for disclosure of trade secrets.**

It shall be unlawful for any member of the commission, or for any employee, agent, or clerk of the commission, or any other officer or employee of the United States, to divulge, or to make known in any manner whatever not provided for by law, to any person, the trade secrets or processes of any person, firm, copartnership, corporation, or association embraced in any examination or investigation conducted by the commission, or by order of the commission, or by order of any member thereof. Any offense against the provisions of this section shall be a misdemeanor and be punished by a fine not exceeding \$1,000, or by imprisonment not exceeding one year, or both, in the discretion of the court, and such offender shall also be dismissed from office or discharged from employment. (June 17, 1930, ch. 497, title III, § 335, 46 Stat. 701.)

§ 1336. **Equalization of costs of production—(a) Change of classification or duties.**

In order to put into force and effect the policy of Congress by this chapter intended, the commission (1) upon request of the President, or (2) upon resolution of either or both Houses of Congress, or (3) upon its own motion, or (4) when in the judgment of the commission there is good and sufficient reason therefor, upon application of any interested party, shall investigate the differences in the costs of production of any domestic article and of any like or similar foreign article. In the course of the investigation the commission shall hold hearings and give reasonable public notice thereof, and shall afford reasonable opportunity for parties interested to be

present, to produce evidence, and to be heard at such hearings. The commission is authorized to adopt such reasonable procedure and rules and regulations as it deems necessary to execute its functions under this section. The commission shall report to the President the results of the investigation and its findings with respect to such differences in costs of production. If the commission finds it shown by the investigation that the duties expressly fixed by statute do not equalize the differences in the costs of production of the domestic article and the like or similar foreign article when produced in the principal competing country, the commission shall specify in its report such increases or decreases in rates of duty expressly fixed by statute (including any necessary change in classification) as it finds shown by the investigation to be necessary to equalize such differences. In no case shall the total increase or decrease of such rates of duty exceed 50 per centum of the rates expressly fixed by statute.

**(b) Change to American selling price.**

If the commission finds upon any such investigation that such differences cannot be equalized by proceeding as hereinbefore provided, it shall so state in its report to the President and shall specify therein such ad valorem rates of duty based upon the American selling price (as defined in section 1402 (g)) of the domestic article, as it finds shown by the investigation to be necessary to equalize such differences. In no case shall the total decrease of such rates of duty exceed 50 per centum of the rates expressly fixed by statute, and no such rate shall be increased.

**(c) Proclamation by the President.**

The President shall by proclamation approve the rates of duty and changes in classification and in basis of value specified in any report of the commission under this section, if in his judgment such rates of duty and changes are shown by such investigation of the commission to be necessary to equalize such differences in costs of production.

**(d) Effective date of rates and changes.**

Commencing thirty days after the date of any presidential proclamation of approval the increased or decreased rates of duty and changes in classification or in basis of value specified in the report of the commission shall take effect.

**(e) Ascertainment of differences in costs of production.**

In ascertaining under this section the differences in costs of production, the commission shall take into consideration, in so far as it finds it practicable:

**(1) In the case of a domestic article.**

(A) The cost of production as hereinafter in this section defined; (B) transportation costs and other costs incident to delivery to the principal market or markets of the United States for the article; and (C) other relevant factors that constitute an advantage or disadvantage in competition.

**(2) In the case of a foreign article.**

(A) The cost of production as hereinafter in this section defined, or, if the commission finds that such cost is not readily ascertainable, the commission may accept as evidence thereof, or as supplemental thereto, the weighted average of the invoice prices or

values for a representative period and/or the average wholesale selling price for a representative period (which price shall be that at which the article is freely offered for sale to all purchasers in the principal market or markets of the principal competing country or countries in the ordinary course of trade and in the usual wholesale quantities in such market or markets); (B) transportation costs and other costs incident to delivery to the principal market or markets of the United States for the article; (C) other relevant factors that constitute an advantage or disadvantage in competition, including advantages granted to the foreign producers by a government, person, partnership, corporation, or association in a foreign country.

**(f) Modification of changes in duty.**

Any increased or decreased rate of duty or change in classification or in basis of value which has taken effect as above provided may be modified or terminated in the same manner and subject to the same conditions and limitations (including time of taking effect) as is provided in this section in the case of original increases, decreases, or changes.

**(g) Prohibition against transfers from the free list to the dutiable list or from the dutiable list to the free list.**

Nothing in this section shall be construed to authorize a transfer of an article from the dutiable list to the free list or from the free list to the dutiable list, nor a change in form of duty. Whenever it is provided in any paragraph of Subtitle I of this chapter, or in any amendatory act that the duty or duties shall not exceed a specified ad valorem rate upon the articles provided for in such paragraph, no rate determined under the provisions of this section upon such articles shall exceed the maximum ad valorem rate so specified.

**(h) Definitions.**

For the purpose of this section—

(1) The term "domestic article" means an article wholly or in part the growth or product of the United States; and the term "foreign article" means an article wholly or in part the growth or product of a foreign country.

(2) The term "United States" includes the several States and Territories and the District of Columbia.

(3) The term "foreign country" means any empire, country, dominion, colony, or protectorate, or any subdivision or subdivisions thereof (other than the United States and its possessions).

(4) The term "cost of production", when applied with respect to either a domestic article or a foreign article, includes, for a period which is representative of conditions in production of the article: (A) The price or cost of materials, labor costs, and other direct charges incurred in the production of the article and in the processes or methods employed in its production; (B) the usual general expenses, including charges for depreciation or depletion which are representative of the equipment and property employed in the production of the article and charges for rent or interest which are representative of the cost of obtaining capital or instruments of production; and (C) the cost of containers and coverings of whatever nature, and other costs, charges, and



expenses incident to placing the article in condition packed ready for delivery.

**(i) Rules and regulations of President.**

The President is authorized to make all needful rules and regulations for carrying out his functions under the provisions of this section.

**(j) Rules and regulations of Secretary of Treasury.**

The Secretary of the Treasury is authorized to make such rules and regulations as he may deem necessary for the entry and declaration of foreign articles of the class or kind of articles with respect to which a change in basis of value has been made under the provisions of subdivision (b) of this section, and for the form of invoice required at time of entry.

**(k) Investigations prior to June 17, 1930.**

All uncompleted investigations instituted prior to June 17, 1930, under the provisions of sections 154-159 of this title, including investigations in which the President has not proclaimed changes in classification or in basis of value or increases or decreases in rates of duty, shall be dismissed without prejudice; but the information and evidence secured by the commission in any such investigation may be given due consideration in any investigation instituted under the provisions of this section. (June 17, 1930, ch. 497, title III, § 336, 46 Stat. 701.)

**REFERENCE IN TEXT**

Sections 154-159, to which reference is made in text, were repealed by section 651 (a) (1) of act June 17, 1930, cited to text.

**CROSS REFERENCE**

Section not to apply to any article with respect to which a foreign trade agreement has been concluded pursuant to section 1351 et seq. of this title, see section 1352 of this title.

**§ 1337. Unfair practices in import trade—(a) Unfair methods of competition declared unlawful.**

Unfair methods of competition and unfair acts in the importation of articles into the United States, or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States, are hereby declared unlawful, and when found by the President to exist shall be dealt with, in addition to any other provisions of law, as hereinafter provided.

**(b) Investigations of violations by Commission.**

To assist the President in making any decisions under this section the commission is hereby authorized to investigate any alleged violation hereof on complaint under oath or upon its initiative.

**(c) Hearings and review.**

The commission shall make such investigation under and in accordance with such rules as it may promulgate and give such notice and afford such hearing, and when deemed proper by the commission such rehearing, with opportunity to offer evidence, oral or written, as it may deem sufficient for a full presentation of the facts involved in such investiga-

tion. The testimony in every such investigation shall be reduced to writing, and a transcript thereof with the findings and recommendation of the commission shall be the official record of the proceedings and findings in the case, and in any case where the findings in such investigation show a violation of this section, a copy of the findings shall be promptly mailed or delivered to the importer or consignee of such articles. Such findings, if supported by evidence, shall be conclusive, except that a rehearing may be granted by the commission and except that, within such time after said findings are made and in such manner as appeals may be taken from decisions of the United States Customs Court, an appeal may be taken from said findings upon a question or questions of law only to the United States Court of Customs and Patent Appeals by the importer or consignee of such articles. If it shall be shown to the satisfaction of said court that further evidence should be taken, and that there were reasonable grounds for the failure to adduce such evidence in the proceedings before the commission, said court may order such additional evidence to be taken before the commission in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts or make new findings by reason of additional evidence, which, if supported by evidence, shall be conclusive as to the facts except that within such time and in such manner an appeal may be taken as aforesaid upon a question or questions of law only. The judgment of said court shall be final.

**(d) Transmission of findings to President.**

The final findings of the commission shall be transmitted with the record to the President.

**(e) Exclusion of articles from entry.**

Whenever the existence of any such unfair method or act shall be established to the satisfaction of the President he shall direct that the articles concerned in such unfair methods or acts, imported by any person violating the provisions of this chapter, shall be excluded from entry into the United States, and upon information of such action by the President, the Secretary of the Treasury shall, through the proper officers, refuse such entry. The decision of the President shall be conclusive.

**(f) Entry under bond.**

Whenever the President has reason to believe that any article is offered or sought to be offered for entry into the United States in violation of this section but has not information sufficient to satisfy him thereof, the Secretary of the Treasury shall, upon his request in writing, forbid entry thereof until such investigation as the President may deem necessary shall be completed; except that such articles shall be entitled to entry under bond prescribed by the Secretary of the Treasury.

**(g) Continuance of exclusion.**

Any refusal of entry under this section shall continue in effect until the President shall find and instruct the Secretary of the Treasury that the conditions which led to such refusal of entry no longer exist.

**(h) Definition.**

When used in this section and in sections 1338 and 1340, the term "United States" includes the several States and Territories, the District of Columbia, and all possessions of the United States except the Philippine Islands, the Virgin Islands, American Samoa, and the island of Guam. (June 17, 1930, ch. 497, title III, § 337, 46 Stat. 703.)

**§ 1337a. Same; importation of products produced under process covered by claims of unexpired patent.**

The importation for use, sale, or exchange of a product made, produced, processed, or mined under or by means of a process covered by the claims of any unexpired valid United States letters patent, shall have the same status for the purposes of section 1337 of this title as the importation of any product or article covered by the claims of any unexpired valid United States letters patent. (July 2, 1940, ch. 515, 54 Stat. 724.)

**§ 1338. Discrimination by foreign countries—(a) Additional duties.**

The President when he finds that the public interest will be served thereby shall by proclamation specify and declare new or additional duties as hereinafter provided upon articles wholly or in part the growth or product of, or imported in a vessel of, any foreign country whenever he shall find as a fact that such country—

(1) Imposes, directly or indirectly, upon the disposition in or transportation in transit through or reexportation from such country of any article wholly or in part the growth or product of the United States any unreasonable charge, exaction, regulation, or limitation which is not equally enforced upon the like articles of every foreign country; or

(2) Discriminates in fact against the commerce of the United States, directly or indirectly, by law or administrative regulation or practice, by or in respect to any customs, tonnage, or port duty, fee, charge, exaction, classification, regulation, condition, restriction, or prohibition, in such manner as to place the commerce of the United States at a disadvantage compared with the commerce of any foreign country.

**(b) Exclusion from importation.**

If at any time the President shall find it to be a fact that any foreign country has not only discriminated against the commerce of the United States, as aforesaid, but has, after the issuance of a proclamation as authorized in subdivision (a) of this section, maintained or increased its said discriminations against the commerce of the United States, the President is hereby authorized, if he deems it consistent with the interests of the United States, to issue a further proclamation directing that such products of said country or such articles imported in its vessels as he shall deem consistent with the public interests shall be excluded from importation into the United States.

**(c) Application of proclamation.**

Any proclamation issued by the President under the authority of this section shall, if he deems it con-

sistent with the interests of the United States, extend to the whole of any foreign country or may be confined to any subdivision or subdivisions thereof; and the President shall, whenever he deems the public interests require, suspend, revoke, supplement, or amend any such proclamation.

**(d) Duties to offset commercial disadvantages.**

Whenever the President shall find as a fact that any foreign country places any burden or disadvantage upon the commerce of the United States by any of the unequal impositions or discriminations aforesaid, he shall, when he finds that the public interest will be served thereby, by proclamation specify and declare such new or additional rate or rates of duty as he shall determine will offset such burden or disadvantage, not to exceed 50 per centum ad valorem or its equivalent, on any products of, or on articles imported in a vessel of, such foreign country; and thirty days after the date of such proclamation there shall be levied, collected, and paid upon the articles enumerated in such proclamation when imported into the United States from such foreign country such new or additional rate or rates of duty; or, in case of articles declared subject to exclusion from importation into the United States under the provisions of subdivision (b) of this section, such articles shall be excluded from importation.

**(e) Duties to offset benefits to third country.**

Whenever the President shall find as a fact that any foreign country imposes any unequal imposition or discrimination as aforesaid upon the commerce of the United States, or that any benefits accrue or are likely to accrue to any industry in any foreign country by reason of any such imposition or discrimination imposed by any foreign country other than the foreign country in which such industry is located, and whenever the President shall determine that any new or additional rate or rates of duty or any prohibition hereinbefore provided for do not effectively remove such imposition or discrimination and that any benefits from any such imposition or discrimination accrue or are likely to accrue to any industry in any foreign country, he shall, when he finds that the public interest will be served thereby, by proclamation specify and declare such new or additional rate or rates of duty upon the articles wholly or in part the growth or product of any such industry as he shall determine will offset such benefits, not to exceed 50 per centum ad valorem or its equivalent, upon importation from any foreign country into the United States of such articles; and on and after thirty days after the date of any such proclamation such new or additional rate or rates of duty so specified and declared in such proclamation shall be levied, collected, and paid upon such articles.

**(f) Forfeiture of articles.**

All articles imported contrary to the provisions of this section shall be forfeited to the United States and shall be liable to be seized, prosecuted, and condemned in like manner and under the same regulations, restrictions, and provisions as may from time to time be established for the recovery, collection, distribution, and remission of forfeitures to the United States by the several revenue laws. When-

ever the provisions of this chapter shall be applicable to importations into the United States of articles wholly or in part the growth or product of any foreign country, they shall be applicable thereto whether such articles are imported directly or indirectly.

**(g) Ascertainment by Commission of discriminations.**

It shall be the duty of the commission to ascertain and at all times to be informed whether any of the discriminations against the commerce of the United States enumerated in subdivisions (a), (b), and (e) of this section are practiced by any country; and if and when such discriminatory acts are disclosed, it shall be the duty of the commission to bring the matter to the attention of the President, together with recommendations.

**(h) Rules and regulations of Secretary of Treasury.**

The Secretary of the Treasury with the approval of the President shall make such rules and regulations as are necessary for the execution of such proclamations as the President may issue in accordance with the provisions of this section.

**(i) Definition.**

When used in this section the term "foreign country" means any empire, country, dominion, colony or protectorate, or any subdivision or subdivisions thereof (other than the United States and its possessions), within which separate tariff rates or separate regulations of commerce are enforced. (June 17, 1930, ch. 497, title III, § 338, 46 Stat. 704.)

**§ 1339. Effect of reenactment of existing law.**

Notwithstanding the repeal by section 1651 of the laws relating to the United States Tariff Commission and their reenactment in sections 1330–1338, inclusive, with modifications, the unexpended balances of appropriations available for the commission at the time this section takes effect shall remain available for the commission in the administration of its functions under this chapter; and such repeal and reenactment shall not operate to change the status of the officers and employees under the jurisdiction of the commission at the time this section takes effect. No investigation or other proceeding pending before the commission at such time (other than proceedings under sections 154–159 of this title) shall abate by reason of such repeal and reenactment, but shall continue under the provisions of this chapter. (June 17, 1930, ch. 497, title III, § 339, 46 Stat. 706.)

**REFERENCES IN TEXT**

Sections 154–159, to which reference is made in text, were repealed by section 651 (a) (1) of act June 17, 1930, cited to text.

**§ 1340. Domestic value—Conversion of rates.**

This section, act June 17, 1930, ch. 497, title III, § 340, 46 Stat. 706, related to the preparation of a certain report by the commission to Congress. See Tariff Commission Reports, No. 46, Parts 1 to 8.

**§ 1341. Interference with functions of Commission—**

**(a) Interfering with or influencing the Commission or its employees.**

It shall be unlawful for any person (1) to prevent or attempt to prevent, by force, intimidation, threat,

or in any other manner, any member or employee of the commission from exercising the functions imposed upon the commission by this subtitle, or (2) to induce, or attempt to induce, by like means any such member or employee to make any decision or order, or to take any action, with respect to any matter within the authority of the commission.

**(b) Penalty.**

Any person who violates any of the provisions of this section shall, upon conviction thereof, be fined not more than \$1,000 or imprisonment for not more than one year, or both.

**(c) Definition.**

As used in this section the term "person" includes an individual, corporation, association, partnership, or any other organization or group of individuals. (June 17, 1930, ch. 497, title III, § 341, 46 Stat. 707.)

**PART III.—PROMOTION OF FOREIGN TRADE**

**§ 1351. Foreign-trade agreements—(a) Authority of President; modification of duties; altering import restrictions.**

(a) For the purpose of expanding foreign markets for the products of the United States (as a means of assisting in the present emergency in restoring the American standard of living, in overcoming domestic unemployment and the present economic depression, in increasing the purchasing power of the American public, and in establishing and maintaining a better relationship among various branches of American agriculture, industry, mining, and commerce) by regulating the admission of foreign goods into the United States in accordance with the characteristics and needs of various branches of American production so that foreign markets will be made available to those branches of American production which require and are capable of developing such outlets by affording corresponding market opportunities for foreign products in the United States, the President, whenever he finds as a fact that any existing duties or other import restrictions of the United States or any foreign country are unduly burdening and restricting the foreign trade of the United States and that the purpose above declared will be promoted by the means hereinafter specified, is authorized from time to time—

(1) To enter into foreign-trade agreements with foreign governments or instrumentalities thereof; and

(2) To proclaim such modifications of existing duties and other import restrictions, or such additional import restrictions, or such continuance, and for such minimum periods, of existing customs or excise treatment of any article covered by foreign-trade agreements, as are required or appropriate to carry out any foreign-trade agreement that the President has entered into hereunder. No proclamation shall be made increasing or decreasing by more than 50 per centum any existing rate of duty or transferring any article between the dutiable and free lists. The proclaimed duties and other import restrictions shall apply to articles the growth, produce, or manufacture of all foreign countries, whether imported di-

rectly, or indirectly: *Provided*, That the President may suspend the application to articles the growth, produce, or manufacture of any country because of its discriminatory treatment of American commerce or because of other acts or policies which in his opinion tend to defeat the purposes set forth in this section; and the proclaimed duties and other import restrictions shall be in effect from and after such time as is specified in the proclamation. The President may at any time terminate any such proclamation in whole or in part.

(b) *Cuba; preferential customs treatment.*

Nothing in this section shall be construed to prevent the application, with respect to rates of duty established under this section pursuant to agreements with countries other than Cuba, of the provisions of the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on December 11, 1902, or to preclude giving effect to an exclusive agreement with Cuba concluded under this section, modifying the existing preferential customs treatment of any article the growth, produce, or manufacture of Cuba: *Provided*, That the duties payable on such an article shall in no case be increased or decreased by more than 50 per centum of the duties now payable thereon.

(c) *Duties and other import restrictions defined.*

As used in this section, the term "duties and other import restrictions" includes (1) rate and form of import duties and classification of articles, and (2) limitations, prohibitions, charges, and exactions other than duties, imposed on importation or imposed for the regulation of imports. (June 17, 1930, ch. 497, title III, § 350; June 12, 1934, ch. 474, § 1, 48 Stat. 943.)

*Trade Agreements*

[Supplemented to December 13, 1940]

Country	Date signed	Effective date
Belgium (Belgo-Luxemburg Economic Union).....	Feb. 27, 1935	May 1, 1935
Brazil.....	Feb. 2, 1935	Jan. 1, 1936
Canada.....	Dec. 13, 1940	Dec. 20, 1940
Colombia.....	Sept. 13, 1935	May 20, 1936
Costa Rica.....	Nov. 28, 1936	Aug. 2, 1937
Cuba.....	Dec. 18, 1939	Dec. 22, 1939
Ecuador.....	Aug. 6, 1938	Oct. 23, 1938
El Salvador.....	Feb. 19, 1937	May 31, 1937
Finland.....	May 18, 1936	Nov. 2, 1936
France.....	May 6, 1936	June 15, 1936
Guatemala.....	Apr. 24, 1936	June 15, 1936
Haiti.....	Mar. 28, 1935	June 3, 1935
Honduras.....	Dec. 18, 1935	Mar. 2, 1936
Netherlands.....	Dec. 20, 1935	Feb. 1, 1936 May 8, 1937
Nicaragua.....	Mar. 11, 1936	Oct. 1, 1936
Sweden.....	May 25, 1935	Aug. 5, 1935
Switzerland.....	Jan. 9, 1936	Feb. 15, 1936 June 6, 1936
Turkey.....	Apr. 1, 1939	May 5, 1939
United Kingdom, Newfoundland, the British nonselfgoverning colonies and certain protectorates and protected states and mandated territories.....	Nov. 17, 1938	Jan. 1, 1939
Venezuela.....	Nov. 6, 1939	Dec. 16, 1939

Australia—The President suspended, under subsection (a) (2), the application of trade agreement rates to the products of Australia, effective August 1, 1936 (T. D. 48405).

Canada—Agreement cited above supersedes agreements of November 15, 1935, November 17, 1938, and December 30, 1939.

Cuba—Agreement cited above supersedes agreement of August 24, 1934.

Czechoslovakia—The Trade Agreement with Czechoslovakia dated March 7, 1938, and amended by Protocol signed April 15, 1939, were made public by the President in his proclamations signed March 15 and April 15, 1939. These proclamations were terminated by Proclamation No. 2326, effective March 30, 1939. 4 Fed. Reg. 1367, 53 Stat. 2530. Products from Czechoslovak areas under Polish or Hungarian occupation were regarded as products from Poland and Hungary after December 30, 1938. T. D. 49770, 4 F. R. 104, DI. Sudeten areas in Czechoslovakia under German occupation November 9, 1938, were regarded as part of Germany after November 10, 1938, and were no longer covered by the Czechoslovak Trade Agreement.

Ecuador—Agreement cited above was modified temporarily according to announcement by Department of State on June 15, 1940.

Germany—The President suspended, under subsection (a) (2), the application of trade agreement rates to the products of Germany, effective October 15, 1935, (T. D. 47865).

§ 1352. Equalization of costs of production; classification; flour in bonded warehouses; termination of agreements; termination of authority of President.

(a) The provisions of sections 1336 and 1516 (b) of this title shall not apply to any article with respect to the importation of which into the United States a foreign-trade agreement has been concluded pursuant to Part III of this subtitle, or to any provision of any such agreement. The third paragraph of section 1311 of this title shall apply to any agreement concluded pursuant to Part III to the extent only that such agreement assures to the United States a rate of duty on wheat flour produced in the United States which is preferential in respect to the lowest rate of duty imposed by the country with which such agreement has been concluded on like flour produced in any other country; and upon the withdrawal of wheat flour from bonded manufacturing warehouses for exportation to the country with which such agreement has been concluded, there shall be levied, collected, and paid on the imported wheat used, a duty equal to the amount of such assured preference.

(b) Every foreign trade agreement concluded pursuant to Part III shall be subject to termination, upon due notice to the foreign government concerned, at the end of not more than three years from the date on which the agreement comes into force, and, if not then terminated, shall be subject to termination thereafter upon not more than six months' notice.

(c) The authority of the President to enter into foreign trade agreements under section 1351 of Part III shall terminate on the expiration of three years from June 12, 1940. (June 12, 1934, ch. 474, § 2, 48 Stat. 944; Mar. 1, 1937, ch. 22, 50 Stat. 24; Apr. 12, 1940, ch. 96, 54 Stat. 107.)

§ 1353. Indebtedness of foreign countries, effect on.

Nothing in Part III of this title shall be construed to give any authority to cancel or reduce, in any manner, any of the indebtedness of any foreign

country to the United States. (June 12, 1934, ch. 474, § 3, 48 Stat. 944.)

§ 1354. Notice of intention to negotiate agreement; opportunity to be heard; President to seek information and advice.

Before any foreign trade agreement is concluded with any foreign government or instrumentality thereof under the provisions of Part III of this title, reasonable public notice of the intention to negotiate an agreement with such government or instrumentality shall be given in order that any interested person may have an opportunity to present his views to the President, or to such agency as the President may designate, under such rules and regulations as the President may prescribe; and before concluding such agreement the President shall seek information and advice with respect thereto from the United States Tariff Commission, the Departments of State, Agriculture, and Commerce and from such other sources as he may deem appropriate. (June 12, 1934, ch. 474, § 4, 48 Stat. 945.)

#### SUBTITLE IV.—ADMINISTRATIVE PROVISIONS

##### PART I.—DEFINITIONS

#### § 1401. Miscellaneous.

When used in this subtitle or in Part I of Subtitle III—

##### (a) Vessel.

The word "vessel" includes every description of water craft or other contrivance used, or capable of being used, as a means of transportation in water, but does not include aircraft.

##### (b) Vehicle.

The word "vehicle" includes every description of carriage or other contrivance used, or capable of being used, as a means of transportation on land, but does not include aircraft.

##### (c) Merchandise.

The word "merchandise" means goods, wares, and chattels of every description, and includes merchandise the importation of which is prohibited.

##### (d) Person.

The word "person" includes partnerships, associations, and corporations.

##### (e) Master.

The word "master" means the person having the command of the vessel.

##### (f) Day.

The word "day" means the time from eight o'clock antemeridian to five o'clock postmeridian.

##### (g) Night.

The word "night" means the time from five o'clock postmeridian to eight o'clock antemeridian.

##### (h) Collector.

The word "collector" means collector of customs and includes assistant collector of customs, deputy collector of customs, and any person authorized by law or by regulations of the Secretary of the Treasury to perform the duties of a collector of customs.

##### (i) Comptroller of customs.

The term "comptroller of customs" includes assistant comptroller of customs and any person authorized by law or by regulations of the Secretary of the Treasury to perform the duties of a comptroller of customs.

##### (j) Appraiser.

The word "appraiser" means appraiser of merchandise and includes chief assistant appraiser and any person authorized by law or by regulations of the Secretary of the Treasury to perform the duties of an appraiser, but does not include the United States Customs Court or any division or judge thereof.

##### (k) United States.

The term "United States" includes all Territories and possessions of the United States except the Philippine Islands, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, and the island of Guam.

##### (l) Officer of the customs.

The term "officer of the customs" means any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or agent or other person authorized by law or by the Secretary of the Treasury, or appointed in writing by a collector, to perform the duties of an officer of the Customs Service.

##### (m) Customs waters.

The term "customs waters" means, in the case of a foreign vessel subject to a treaty or other arrangement between a foreign government and the United States enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon such vessel upon the high seas the laws of the United States, the waters within such distance of the coast of the United States as the said authorities are or may be so enabled or permitted by such treaty or arrangement and, in the case of every other vessel, the waters within four leagues of the coast of the United States.

##### (n) Hovering vessel.

The term "hovering vessel" means any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws respecting the revenue. (June 17, 1930, ch. 497, title IV, § 401, 46 Stat. 708; Aug. 5, 1935, ch. 438, title II, § 201, 49 Stat. 521; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 2, 52 Stat. 1077.)

##### EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

##### CROSS REFERENCE

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

**§ 1402. Value—(a) Basis.**

For the purposes of this chapter, the value of imported merchandise shall be—

(1) The foreign value or the export value, whichever is higher;

(2) If the appraiser determines that neither the foreign value nor the export value can be satisfactorily ascertained, then the United States value;

(3) If the appraiser determines that neither the foreign value, the export value, nor the United States value can be satisfactorily ascertained, then the cost of production;

(4) In the case of an article with respect to which there is in effect under section 1336 a rate of duty based upon the American selling price of a domestic article, then the American selling price of such article.

**(b) Review of appraiser's decision.**

A decision of the appraiser that foreign value, export value, or United States value cannot be satisfactorily ascertained shall be subject to review in reappraisal proceedings under section 1501; but in any such proceeding an affidavit executed outside of the United States shall not be admitted in evidence if executed by any person who fails to permit a Treasury attaché to inspect his books, papers, records, accounts, documents, or correspondence, pertaining to the value or classification of such merchandise.

**(c) Foreign value.**

The foreign value of imported merchandise shall be the market value or the price at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale for home consumption to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, including the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

**(d) Export value.**

The export value of imported merchandise shall be the market value or the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

**(e) United States value.**

The United States value of imported merchandise shall be the price at which such or similar imported merchandise is freely offered for sale for domestic consumption, packed ready for delivery, in the principal market of the United States to all purchasers, at

the time of exportation of the imported merchandise, in the usual wholesale quantities and in the ordinary course of trade, with allowance made for duty, cost of transportation and insurance, and other necessary expenses from the place of shipment to the place of delivery, a commission not exceeding 6 per centum, if any has been paid or contracted to be paid on goods secured otherwise than by purchase, or profits not to exceed 8 per centum and a reasonable allowance for general expenses, not to exceed 8 per centum on purchased goods.

**(f) Cost of production.**

For the purpose of this subtitle the cost of production of imported merchandise shall be the sum of—

(1) The cost of materials of, and of fabrication, manipulation, or other process employed in manufacturing or producing such or similar merchandise, at a time preceding the date of exportation of the particular merchandise under consideration which would ordinarily permit the manufacture or production of the particular merchandise under consideration in the usual course of business;

(2) The usual general expenses (not less than 10 per centum of such cost) in the case of such or similar merchandise;

(3) The cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the particular merchandise under consideration in condition, packed ready for shipment to the United States; and

(4) An addition for profit (not less than 8 per centum of the sum of the amounts found under paragraphs (1) and (2) of this subdivision) equal to the profit which ordinarily is added, in the case of merchandise of the same general character as the particular merchandise under consideration, by manufacturers or producers in the country of manufacture or production who are engaged in the production or manufacture of merchandise of the same class or kind.

**(g) American selling price.**

The American selling price of any article manufactured or produced in the United States shall be the price, including the cost of all containers and coverings of whatever nature and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for delivery, at which such article is freely offered for sale for domestic consumption to all purchasers in the principal market of the United States, in the ordinary course of trade and in the usual wholesale quantities in such market, or the price that the manufacturer, producer, or owner would have received or was willing to receive for such merchandise when sold for domestic consumption in the ordinary course of trade and in the usual wholesale quantities, at the time of exportation of the imported article. (June 17, 1930, ch. 497, title IV, § 402, 46 Stat. 708; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 8, 52 Stat. 1081.)

**EFFECTIVE DATE**

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

## CROSS REFERENCE

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

## PART II.—REPORT, ENTRY, AND UNLADING OF VESSELS AND VEHICLES

## § 1431. Manifest—Requirement, form, and contents.

The master of every vessel arriving in the United States and required to make entry shall have on board his vessel a manifest in a form to be prescribed by the Secretary of the Treasury and signed by such master under oath as to the truth of the statements therein contained. Such manifest shall contain:

First. The names of the ports or places at which the merchandise was taken on board and the ports of entry of the United States for which the same is destined, particularly describing the merchandise destined to each such port: *Provided*, That the master of any vessel laden exclusively with coal, sugar, salt, nitrates, hides, dyewoods, wool, or other merchandise in bulk consigned to one owner and arriving at a port for orders, may destine such cargo "for orders", and within fifteen days thereafter, but before the unloading of any part of the cargo such manifest may be amended by the master by designating the port or ports of discharge of such cargo, and in the event of failure to amend the manifest within the time permitted such cargo must be discharged at the port at which the vessel arrived and entered.

Second. The name, description, and build of the vessel, the true measure or tonnage thereof, the port to which such vessel belongs, and the name of the master of such vessel.

Third. A detailed account of all merchandise on board such vessel, with the marks and numbers of each package, and the number and description of the packages according to their usual name or denomination, such as barrel, keg, hogshead, case, or bag.

Fourth. The names of the persons to whom such packages are respectively consigned in accordance with the bills of lading issued therefor, except that when such merchandise is consigned to order the manifest shall so state.

Fifth. The names of the several passengers aboard the vessel, stating whether cabin or steerage passengers, with their baggage, specifying the number and description of the pieces of baggage belonging to each, and a list of all baggage not accompanied by passengers.

Sixth. An account of the sea stores and ship's stores on board of the vessel. (June 17, 1930, ch. 497, title IV, § 431, 46 Stat. 710.)

## § 1432. Manifest to specify sea and ship's stores.

The manifest of any vessel arriving from a foreign port or place shall separately specify the articles to be retained on board of such vessel as sea stores, ship's stores, or bunker coal, or bunker oil, and if any other or greater quantity of sea stores, ship's stores, bunker coal, or bunker oil is found on board of any such vessel than is specified in the manifest, or if any such articles, whether shown on the manifest or not, are landed without a permit therefor issued by the collector, all such articles omitted from the manifest

or landed without a permit shall be subject to forfeiture, and the master shall be liable to a penalty equal to the value of the articles. (June 17, 1930, ch. 497, title IV, § 432, 46 Stat. 710.)

## § 1432a. Entry after visiting hovering vessel as arrival.

For the purposes of sections 1432, 1433, 1434, 1448, 1585, and 1586 of this title, any vessel which has visited any hovering vessel shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place. (Aug. 5, 1935, ch. 438, title II, § 201, 49 Stat. 521.)

## § 1433. Report of arrival.

Within twenty-four hours after the arrival of any vessel from a foreign port or place, or of a foreign vessel from a domestic port, or of a vessel of the United States carrying bonded merchandise or foreign merchandise for which entry has not been made, at any port or place within the United States at which such vessel shall come to, the master shall, unless otherwise provided by law, report the arrival of the vessel at the nearest customhouse, under such regulations as the Secretary of Commerce may prescribe. (June 17, 1930, ch. 497, title IV, § 433, 46 Stat. 711.)

## CROSS REFERENCES

Entry after visiting hovering vessel as arrival, see section 1432a of this title.

Vessels arriving on Sundays, holidays, or at night, see section 1435b of this title.

## § 1434. Entry of American vessels.

Except as otherwise provided by law, and under such regulations as the Secretary of Commerce may prescribe, the master of a vessel of the United States arriving in the United States from a foreign port or place shall, within forty-eight hours after its arrival within the limits of any customs collection district, make formal entry of the vessel at the customhouse by producing and depositing with the collector the vessel's crew list, its register, or document in lieu thereof, the clearance and bills of health issued to the vessel at the foreign port or ports from which it arrived, together with the original and one copy of the manifest, and shall make oath that the ownership of the vessel is as indicated in the register, or document in lieu thereof, and that the manifest was made out in accordance with section 1431 of this title. (June 17, 1930, ch. 497, title IV, § 434, 46 Stat. 711; Aug. 5, 1935, ch. 438, title III, § 301, 49 Stat. 527.)

## CROSS REFERENCES

Entry after visiting hovering vessel as arrival, see section 1432a of this title.

Vessels arriving on Sundays, holidays, or at night, see section 1435b of this title.

## § 1435. Entry of foreign vessels.

The master of any foreign vessel arriving within the limits of any customs collection district shall, within forty-eight hours thereafter, make entry at the customhouse in the same manner as is required for the entry of a vessel of the United States, except that a list of the crew need not be delivered, and that instead of depositing the register or document in lieu thereof such master may produce a certificate by the



consul of the nation to which such vessel belongs that said documents have been deposited with him: *Provided*, That such exception shall not apply to the vessels of foreign nations in whose ports American consular officers are not permitted to have the custody and possession of the register and other papers of vessels entering the ports of such nations. (June 17, 1930, ch. 497, title IV, § 435, 46 Stat. 711.)

#### CROSS REFERENCE

Vessels arriving on Sundays, holidays, or at night, see section 1435b of this title.

§ 1435a. Entry; duties of master; performance by licensed deck officer or purser.

Subject matter of this section, act May 4, 1934, ch. 212, 48 Stat. 663, is now covered by section 91a of Title 46, Shipping.

§ 1435b. Clearance of vessels arriving on Sundays, holidays, or at night.

In order to expedite the dispatch of vessels carrying passengers operating on regular schedules and arriving at night or on a Sunday or a holiday at a port in the United States at which such vessel is required by law to report arrival and make entry and from which it is required to obtain a clearance, the collector of customs, or any deputy collector of customs designated by him, if the vessel departs during the same night, Sunday, or holiday on which it arrives may, under such regulations as may be prescribed jointly by the Secretary of Commerce and the Secretary of the Treasury, receive the report of arrival and entry of such vessel from and give clearance for such vessel to the master or other proper officer thereof on board such vessel: *Provided*, That bond, as prescribed in section 1451 of this title, is given to secure reimbursement to the Government for the compensation of, and expenses incurred by, such customs officers in performing such services, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the same terms and conditions as in the case of customs officers and employees assigned to lading or unlading at night or on Sunday or a holiday. (June 16, 1937, ch. 362, 50 Stat. 303.)

#### CODIFICATION

Section was not part of Tariff Act of 1930.

§ 1436. Failure to report or enter vessel; additional penalty where vessel carrying nonimportable goods or liquor.

Every master who fails to make the report or entry provided for in sections 1433, 1434, or 1435 of this title shall, for each offense, be liable to a fine of not more than \$1,000 and, if the vessel have, or be discovered to have had, on board any merchandise (sea stores excepted), the importation of which into the United States is prohibited, or any spirits, wines, or other alcoholic liquors, such master shall be subject to an additional fine of not more than \$2,000 or to imprisonment for not more than one year, or to both such fine and imprisonment.

Every master who presents a forged, altered, or false document or paper on making entry of a vessel as required by section 1434 or 1435 of this title, knowing the same to be forged, altered, or false and

without revealing the fact, shall, in addition to any forfeiture to which in consequence the vessel may be subject, be liable to a fine of not more than \$5,000 nor less than \$50 or to imprisonment for not more than two years, or to both such fine and imprisonment. (June 17, 1930, ch. 497, title IV, § 436, 46 Stat. 711; Aug. 5, 1935, ch. 438, title II, § 202, 49 Stat. 521.)

§ 1437. Documents returned at clearance.

The register, or document in lieu thereof, deposited in accordance with section 1434 or 1435 of this title shall be returned to the master or owner of the vessel upon its clearance. (June 17, 1930, ch. 497, title IV, § 437, 46 Stat. 711.)

§ 1438. Unlawful return of foreign vessel's papers.

It shall not be lawful for any foreign consul to deliver to the master of any foreign vessel the register, or document in lieu thereof, deposited with him in accordance with the provisions of section 1435 of this title until such master shall produce to him a clearance in due form from the collector of the port where such vessel has been entered. Any consul offending against the provisions of this section shall be liable to a fine of not more than \$5,000. (June 17, 1930, ch. 497, title IV, § 438, 46 Stat. 712.)

§ 1439. Delivery of manifest.

Immediately upon arrival and before entering his vessel, the master of a vessel from a foreign port or place required to make entry shall mail or deliver to the comptroller of customs for the district in which the port of entry is located, a copy of the manifest, and shall on entering his vessel make affidavit that a true and correct copy was so mailed or delivered, and he shall also mail or deliver to said comptroller of customs a true and correct copy of any correction of such manifest filed on entry of his vessel. Any master who fails so to mail or deliver such copy of the manifest or correction thereof shall be liable to a penalty of not more than \$500. (June 17, 1930, ch. 497, title IV, § 439, 46 Stat. 712.)

§ 1440. Correction of manifest.

If there is any merchandise or baggage on board such vessel which is not included in or which does not agree with the manifest, the master of the vessel shall make a post entry thereof, and mail or deliver a copy to the comptroller of customs for the district in which the port of entry is located and for failure so to do shall be liable to a penalty of \$500. (June 17, 1930, ch. 497, title IV, § 440, 46 Stat. 712.)

§ 1441. Vessels not required to enter.

The following vessels shall not be required to make entry at the customhouse:

(1) Vessels of war and public vessels employed for the conveyance of letters and dispatches and not permitted by the laws of the nations to which they belong to be employed in the transportation of passengers or merchandise in trade;

(2) Passenger vessels making three trips or oftener a week between a port of the United States and a foreign port, or vessels used exclusively as ferry-

boats, carrying passengers, baggage, or merchandise: *Provided*, That the master of any such vessel shall be required to report such baggage and merchandise to the collector within twenty-four hours after arrival;

(3) Yachts of fifteen gross tons or under not permitted by law to carry merchandise or passengers for hire and not visiting any hovering vessel, nor having at any time or, if forfeited to the United States or to a foreign government, at any time after forfeiture, become liable to seizure and forfeiture for any violation of the laws of the United States;

(4) Vessels arriving in distress or for the purpose of taking on bunker coal, bunker oil, sea stores, or ship's stores and which shall depart within twenty-four hours after arrival without having landed or taken on board any passengers, or any merchandise other than bunker coal, bunker oil, sea stores, or ship's stores: *Provided*, That the master, owner, or agent of such vessel shall report under oath to the collector the hour and date of arrival and departure and the quantity of bunker coal, bunker oil, sea stores, or ship's stores taken on board; and

(5) Tugs enrolled and licensed to engage in the foreign and coasting trade in the northern, northeastern, and northwestern frontiers when towing vessels which are required by law to enter and clear. (June 17, 1930, ch. 497, title IV, § 441, 46 Stat. 712; Aug. 5, 1935, ch. 438, title III, § 302, 49 Stat. 527; Aug. 14, 1937, ch. 620, § 1, 50 Stat. 638.)

#### EFFECTIVE DATE

Section 2 of act August 14, 1937, cited to text, provided as follows: "The amendment made by this act shall take effect on the day following the date of its enactment."

#### § 1442. Residue cargo.

Any vessel having on board merchandise shown by the manifest to be destined to a foreign port or place may, after the report and entry of such vessel under the provisions of this chapter, proceed to such foreign port of destination with the cargo so destined therefor, without unloading the same and without the payment of duty thereon. Any vessel arriving from a foreign port or place having on board merchandise shown by the manifest to be destined to a port or ports in the United States other than the port of entry at which such vessel first arrived and made entry may proceed with such merchandise from port to port or from district to district for the unloading thereof. (June 17, 1930, ch. 497, title IV, § 442, 46 Stat. 713.)

#### § 1443. Cargo for different ports—manifest and permit.

Merchandise arriving in any vessel for delivery in different districts or ports of entry shall be described in the manifest in the order of the districts or ports at or in which the same is to be unladen. Before any vessel arriving in the United States with any such merchandise shall depart from the port of first arrival, the master shall obtain from the collector a permit therefor with a certified copy of the vessel's manifest showing the quantities and particulars of the merchandise entered at such port of entry and of that remaining on board. (June 17, 1930, ch. 497, title IV, § 443, 46 Stat. 713.)

#### § 1444. Arrival at another port.

Within twenty-four hours after the arrival of such vessel at another port of entry the master shall report the arrival of his vessel to the collector at such port and shall produce the permit issued by the collector at the port of first arrival, together with the certified copy of his manifest. (June 17, 1930, ch. 497, title IV, § 444, 46 Stat. 713.)

#### § 1445. Penalties for failure to have permit and certified manifest.

If the master of any such vessel shall proceed to another port or district without having obtained a permit therefor and a certified copy of his manifest, or if he shall fail to produce such permit and certified copy of his manifest to the collector at the port of destination, or if he shall proceed to any port not specified in the permit, he shall be liable to a penalty, for each offense, of not more than \$500. (June 17, 1930, ch. 497, title IV, § 445, 46 Stat. 713.)

#### § 1446. Supplies and stores retained on board.

Vessels arriving in the United States from foreign ports may retain on board, without the payment of duty, all coal and other fuel supplies, ships' stores, sea stores, and the legitimate equipment of such vessels. Any such supplies, ships' stores, sea stores, or equipment landed and delivered from such vessel shall be considered and treated as imported merchandise: *Provided*, That bunker coal, bunker oil, ships' stores, sea stores, or the legitimate equipment of vessels belonging to regular lines plying between foreign ports and the United States, which are delayed in port for any cause, may be transferred under a permit by the collector and under customs supervision from the vessel so delayed to another vessel of the same line and owner, and engaged in the foreign trade, without the payment of duty thereon. (June 17, 1930, ch. 497, title IV, § 446, 46 Stat. 713.)

#### § 1447. Place of entry and unloading.

It shall be unlawful to make entry of any vessel or to unlade the cargo or any part thereof of any vessel elsewhere than at a port of entry: *Provided*, That upon good cause therefor being shown, the Secretary of Commerce may permit entry of any vessel to be made at a place other than a port of entry designated by him, under such conditions as he shall prescribe: *And provided further*, That any vessel laden with merchandise in bulk may proceed after entry of such vessel to any place designated by the Secretary of the Treasury for the purpose of unloading such cargo, under the supervision of customs officers if the collector shall consider the same necessary, and in such case the compensation and expenses of such officers shall be reimbursed to the Government by the party in interest. (June 17, 1930, ch. 497, title IV, § 447, 46 Stat. 714.)

#### § 1448. Unloading—(a) Permits and preliminary entries.

Except as provided in section 1441 of this title (relating to vessels not required to enter), no merchandise, passengers, or baggage shall be unladen from any vessel or vehicle arriving from a foreign port or place until entry of such vessel or report of the

arrival of such vehicle has been made and a permit for the unloading of the same issued by the collector. *Provided*, That the master may make a preliminary entry of a vessel by making oath or affirmation to the truth of the statements contained in the vessel's manifest and delivering the manifest to the customs officer who boards such vessel, but the making of such preliminary entry shall not excuse the master from making formal entry of his vessel at the customhouse, as provided by this chapter. After the entry, preliminary or otherwise, of any vessel or report of the arrival of any vehicle, the collector may issue a permit to the master of the vessel, or to the person in charge of the vehicle, to unload merchandise or baggage, but except as provided in subdivision (b) of this section merchandise or baggage so unladen shall be retained at the place of unloading until entry therefor is made and a permit for its delivery granted, and the owners of the vessel or vehicle from which any imported merchandise is unladen prior to entry of such merchandise shall be liable for the payment of the duties accruing on any part thereof that may be removed from the place of unloading without a permit therefor having been issued. Any merchandise or baggage so unladen from any vessel or vehicle for which entry is not made within forty-eight hours exclusive of Sunday and holidays from the time of entry of the vessel or report of the vehicle, unless a longer time is granted by the collector, as provided in section 1484 of this title, shall be sent to a bonded warehouse or the public stores and held as unclaimed at the risk and expense of the consignee in the case of merchandise and of the owner in the case of baggage until entry thereof is made.

**(b) Special delivery permit.**

The Secretary of the Treasury is authorized to provide by regulations for the issuing of special permits for delivery, prior to formal entry therefor, of perishable articles and other articles, the immediate delivery of which is necessary. (June 17, 1930, ch. 497, title IV, § 448, 46 Stat. 714.)

**CROSS REFERENCE**

Entry after visiting hovering vessel as arrival, see section 1432a of this title.

**§ 1449. Unloading at port of entry.**

Except as provided in sections 1442 and 1447 of this title (relating to residue cargo and to bulk cargo, respectively), merchandise and baggage imported in any vessel by sea shall be unladen at the port of entry to which such vessel is destined, unless (1) such vessel is compelled by any cause to put into another port of entry, and the collector of such port issues a permit for the unloading of such merchandise or baggage, or (2) the Secretary of the Treasury, because of an emergency existing at the port of destination, authorizes such vessel to proceed to another port of entry. Merchandise and baggage so unladen may be entered in the same manner as other imported merchandise or baggage and may be treated as unclaimed merchandise or baggage and stored at the expense and risk of the owner thereof, or may be reloaded without entry upon the vessel from which it was unladen for transportation to its destination. (June 17, 1930, ch. 497, title IV, § 449, 46 Stat. 714.)

**§ 1450. Unloading on Sundays, holidays, or at night.**

No merchandise, baggage, or passengers arriving in the United States from any foreign port or place, and no bonded merchandise or baggage being transported from one port to another, shall be unladen from the carrying vessel or vehicle on Sunday, a holiday, or at night, except under special license granted by the collector under such regulations as the Secretary of the Treasury may prescribe. (June 17, 1930, ch. 497, title IV, § 450, 46 Stat. 715.)

**§ 1451. Same; extra compensation.**

Before any such special license to unload shall be granted, the master, owner, or agent, of such vessel or vehicle shall be required to give a bond in the penal sum to be fixed by the collector conditioned to indemnify the United States for any loss or liability which might occur or be occasioned by reason of the granting of such special license and to pay the compensation and expenses of the customs officers and employees assigned to duty in connection with such unloading at night or on Sunday or a holiday, in accordance with the provisions of sections 261 and 267 of this title. In lieu of such bond the owner, or agent, of any vessel or vehicle or line of vessels or vehicles may execute a bond in a penal sum to be fixed by the Secretary of the Treasury to cover and include the issuance of special licenses for the unloading of vessels or vehicles belonging to such line for a period of one year from the date thereof. Upon a request made by the owner, master, or person in charge of a vessel or vehicle, or by or on behalf of a common carrier or by or on behalf of the owner or consignee of any merchandise or baggage, for overtime services of customs officers or employees at night or on a Sunday or holiday, the collector shall assign sufficient customs officers or employees if available to perform any such services which may lawfully be performed by them during regular hours of business, but only if the person requesting such services gives a bond in a penal sum to be fixed by the collector, conditioned to pay the compensation and expenses of such customs officers and employees, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the same terms and conditions as in the case of customs officers and employees assigned to duty in connection with lading or unloading at night or on Sunday or a holiday. Nothing in this section shall be construed to impair the existing authority of the Treasury Department to assign customs officers or employees to regular tours of duty at nights or on Sundays or holidays when such assignments are in the public interest. (June 17, 1930, ch. 497, title IV, § 451, 46 Stat. 715; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 9, 52 Stat. 1082.)

**EFFECTIVE DATE**

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

**§ 1452. Lading on Sundays, holidays, or at night.**

No merchandise or baggage entered for transportation under bond or for exportation with the benefit of drawback, or other merchandise or baggage re-

quired to be laden under customs supervision, shall be laden on any vessel or vehicle at night or on Sunday or a holiday, except under special license therefor to be issued by the collector under the same conditions and limitations as pertain to the unloading of imported merchandise or merchandise being transported in bond. (June 17, 1930, ch. 497, title IV, § 452, 46 Stat. 715.)

**§ 1453. Lading and unloading of merchandise or baggage—Penalties.**

If any merchandise or baggage is laden on, or unladen from, any vessel or vehicle without a special license or permit therefor issued by the collector, the master of such vessel or the person in charge of such vehicle and every other person who knowingly is concerned, or who aids therein, or in removing or otherwise securing such merchandise or baggage, shall each be liable to a penalty equal to the value of the merchandise or baggage so laden or unladen, and such merchandise or baggage shall be subject to forfeiture, and if the value thereof is \$500 or more, the vessel or vehicle on or from which the same shall be laden or unladen shall be subject to forfeiture. (June 17, 1930, ch. 497, title IV, § 453, 46 Stat. 716.)

**§ 1454. Unloading of passengers—Penalty.**

If any passenger is unladen from any vessel or vehicle without a special license or permit therefor issued by the collector, the master of such vessel or the person in charge of such vehicle and every other person who knowingly is concerned, or who aids therein, shall each be liable to a penalty of \$500 for each such passenger so unladen. (June 17, 1930, ch. 497, title IV, § 454, 46 Stat. 716.)

**§ 1455. Boarding and discharging inspectors.**

The collector for the district in which any vessel or vehicle arrives from a foreign port or place may put on board of such vessel or vehicle while within such district, and if necessary while going from one district to another, one or more inspectors or other customs officers to examine the cargo and contents of such vessel or vehicle and superintend the unloading thereof, and to perform such other duties as may be required by law or the customs regulations for the protection of the revenue. Such inspector or other customs officer may, if he shall deem the same necessary for the protection of the revenue, secure the hatches or other communications or outlets of such vessel or vehicle with customs seals or other proper fastenings while such vessel is not in the act of unloading, and such fastenings shall not be removed without permission of the inspector or other customs officer. Such inspector or other customs officer may require any vessel or vehicle to discontinue or suspend unloading during the continuance of unfavorable weather or any conditions rendering the discharge of cargo dangerous or detrimental to the revenue. Any officer, owner, agent of the owner, or member of the crew of any such vessel who obstructs or hinders any such inspector or other customs officer in the performance of his duties, shall be liable to a penalty of not more than \$500. (June 17, 1930, ch. 497, title IV, § 455, 46 Stat. 716.)

**§ 1456. Compensation and expenses of inspectors between ports.**

The compensation of any inspector or other customs officer, stationed on any vessel or vehicle while proceeding from one port to another and returning therefrom, shall be reimbursed to the Government by the master or owner of such vessel, together with the actual expense of such inspector or customs officer for subsistence, or in lieu of such expenses such vessel or vehicle may furnish such inspector or customs officer the accommodations usually supplied to passengers. (June 17, 1930, ch. 497, title IV, § 456, 46 Stat. 716.)

**§ 1457. Time for unloading.**

Whenever any merchandise remains on board any vessel or vehicle from a foreign port more than twenty-five days after the date on which report of said vessel or vehicle was made, the collector may take possession of such merchandise and cause the same to be unladen at the expense and risk of the owners thereof, or may place one or more inspectors or other customs officers on board of said vessel or vehicle to protect the revenue. The compensation and expenses of any such inspector or customs officer for subsistence while on board of such vessel or vehicle shall be reimbursed to the Government by the owner or master of such vessel or vehicle. (June 17, 1930, ch. 497, title IV, § 457, 46 Stat. 716.)

**§ 1458. Bulk cargo, time for unloading.**

The limitation of time for unloading shall not extend to vessels laden exclusively with merchandise in bulk consigned to one consignee and arriving at a port for orders, but if the master of such vessel requests a longer time to discharge its cargo, the compensation of the inspectors or other customs officers whose services are required in connection with the unloading shall, for every day consumed in unloading in excess of twenty-five days from the date of the vessel's entry, be reimbursed by the master or owner of such vessel. (June 17, 1930, ch. 497, title IV, § 458, 46 Stat. 717.)

**§ 1459. Contiguous countries; report and manifest.**

The master of any vessel of less than five net tons carrying merchandise and the person in charge of any vehicle arriving in the United States from contiguous country, shall immediately report his arrival to the customs officer at the port of entry or customhouse which shall be nearest to the place at which such vessel or vehicle shall cross the boundary line or shall enter the territorial waters of the United States, and if such vessel or vehicle have on board any merchandise, shall produce to such customs officer a manifest as required by law, and no such vessel or vehicle shall proceed farther inland nor shall discharge or land any merchandise, passengers, or baggage without receiving a permit therefor from such customs officer. Any person importing or bringing merchandise into the United States from a contiguous country otherwise than in a vessel or vehicle shall immediately report his arrival to the customs officer at the port of entry or customhouse which shall be nearest to the place at which he shall cross the boundary line and shall present such merchandise to such customs

officer for inspection. (June 17, 1930, ch. 497, title IV, § 459, 46 Stat. 717; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 10 (a), 52 Stat. 1082.)

#### EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

#### § 1460. Same; penalties for failure to report or file manifest.

The master of any vessel or the person in charge of any vehicle who fails to report arrival in the United States as required by section 1459 of this title, or if so reporting proceeds further inland without a permit from the proper customs officer, shall be subject to a penalty of \$100 for each offense. If any merchandise is imported or brought into the United States in any vessel or vehicle, or by any person otherwise than in a vessel or vehicle, from a contiguous country, which vessel, vehicle, or merchandise is not so reported to the proper customs officers; or if the master of such vessel or the person in charge of such vehicle fails to file a manifest for the merchandise carried therein, or discharges or lands such merchandise without a permit; such merchandise and the vessel or vehicle, if any, in which it was imported or brought into the United States shall be subject to forfeiture; and the master of such vessel or the person in charge of such vehicle, or the person importing or bringing in merchandise otherwise than in a vessel or vehicle, shall, in addition to any other penalty, be liable to a penalty equal to the value of the merchandise which was not reported, or not included in the manifest, or which was discharged or landed without a permit. If any vessel or vehicle not so reported carries any passenger; or if any passenger is discharged or landed from any such vessel or vehicle before it is so reported, or after such report but without a permit; the master of the vessel or the person in charge of the vehicle shall, in addition to any other penalty, be liable to a penalty of \$500 for each passenger so carried, discharged, or landed. (June 17, 1930, ch. 497, title IV, § 460, 46 Stat. 717; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 10 (b), 52 Stat. 1082.)

#### EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

#### § 1461. Same—Inspection.

All merchandise and baggage imported or brought in from any contiguous country, except as otherwise provided by law or by regulations of the Secretary of the Treasury, shall be unladen in the presence of and be inspected by a customs officer at the first port of entry at which the same shall arrive; and such officer may require the owner, or his agent, or other person having charge or possession of any trunk, traveling bag, sack, valise, or other container, or of any closed vehicle, to open the same for inspection, or to furnish a key or other means for opening the same. (June 17, 1930, ch. 497, title IV, § 461, 46 Stat. 717.)

#### § 1462. Same—Forfeiture.

If such owner, agent, or other person shall fail to comply with his demand, the officer shall retain such trunk, traveling bag, sack, valise, or other container or closed vehicle, and open the same, and, as soon thereafter as may be practicable, examine the contents, and if any article subject to duty or any article the importation of which is prohibited is found therein, the whole contents and the container or vehicle shall be subject to forfeiture. (June 17, 1930, ch. 497, title IV, § 462, 46 Stat. 718.)

#### § 1463. Same—Sealed vessels and vehicles.

To avoid unnecessary inspection of merchandise imported from a contiguous country at the first port of arrival, the master of the vessel or the person in charge of the vehicle in which such merchandise is imported may apply to the customs officer of the United States stationed in the place from which such merchandise is shipped, and such officer may seal such vessel or vehicle. Any vessel or vehicle so sealed may proceed with such merchandise to the port of destination under such regulations as the Secretary of the Treasury may prescribe. (June 17, 1930, ch. 497, title IV, § 463, 46 Stat. 718.)

#### § 1464. Same—Penalties in connection with sealed vessels and vehicles.

If the master of such vessel or the person in charge of any such vehicle fails to proceed with reasonable promptness to the port of destination and to deliver such vessel or vehicle to the proper officers of the customs, or fails to proceed in accordance with such regulations of the Secretary of the Treasury, or unloads such merchandise or any part thereof at other than such port of destination, or disposes of any such merchandise by sale or otherwise, he shall be guilty of a felony and upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than five years, or both; and any such vessel or vehicle, with its contents, shall be subject to forfeiture. (June 17, 1930, ch. 497, title IV, § 464, 46 Stat. 718.)

#### § 1465. Same—Supplies.

The master of any vessel of the United States documented to engage in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers shall, upon arrival from a foreign contiguous territory, file with the manifest of such vessel a detailed list of all supplies or other merchandise purchased in such foreign country for use or sale on such vessel, and also a statement of the cost of all repairs to and all equipment taken on board such vessel. The conductor or person in charge of any railway car arriving from a contiguous country shall file with the manifest of such car a detailed list of all supplies or other merchandise purchased in such foreign country for use in the United States. If any such supplies, merchandise, repairs, or equipment shall not be reported, the master, conductor, or other person having charge of such vessel or vehicle shall be liable to a fine of not less than \$100 and not more than \$500, or to imprisonment for not more than two

years, or both. (June 17, 1930, ch. 497, title IV, § 465, 46 Stat. 718.)

**§ 1466. Equipment and repairs of vessels.**

See sections 257 and 258 of this title.

**§ 1467. Special inspection, examination, and search.**

Whenever a vessel from a foreign port or place or from a port or place in any Territory or possession of the United States arrives at a port or place in the United States or the Virgin Islands, whether directly or via another port or place in the United States or the Virgin Islands, the collector of customs for such port or place of arrival may, under such regulations as the Secretary of the Treasury may prescribe and for the purpose of assuring compliance with any law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce, cause inspection, examination, and search to be made of the persons, baggage, and merchandise discharged or unladen from such vessel, whether or not any or all such persons, baggage, or merchandise has previously been inspected, examined, or searched by officers of the customs. (June 17, 1930, ch. 497, title IV, § 467, as added June 25, 1938, 5 p. m. E. S. T., ch. 679, § 11, 52 Stat. 1083.)

**EFFECTIVE DATE**

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided

**PART III.—ASCERTAINMENT, COLLECTION, AND RECOVERY OF DUTIES**

**§ 1481. Invoice—Contents—(a) In general.**

All invoices of merchandise to be imported into the United States shall set forth—

(1) The port of entry to which the merchandise is destined;

(2) The time when, the place where, and the person by whom and the person to whom the merchandise is sold or agreed to be sold, or if to be imported otherwise than in pursuance of a purchase, the place from which shipped, the time when and the person to whom and the person by whom it is shipped;

(3) A detailed description of the merchandise, including the name by which each item is known, the grade or quality, and the marks, numbers, or symbols under which sold by the seller or manufacturer to the trade in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;

(4) The quantities in the weights and measures of the country or place from which the merchandise is shipped, or in the weights and measures of the United States;

(5) The purchase price of each item in the currency of the purchase, if the merchandise is shipped in pursuance of a purchase or an agreement to purchase;

(6) If the merchandise is shipped otherwise than in pursuance of a purchase or an agreement to purchase, the value for each item, in the currency in which the transactions are usually made, or, in the absence of such value, the price in such currency that

the manufacturer, seller, shipper, or owner would have received, or was willing to receive, for such merchandise if sold in the ordinary course of trade and in the usual wholesale quantities in the country of exportation;

(7) The kind of currency, whether gold, silver, or paper;

(8) All charges upon the merchandise, itemized by name and amount when known to the seller or shipper; or all charges by name (including commissions, insurance, freight, cases, containers, coverings, and cost of packing) included in the invoice prices when the amounts for such charges are unknown to the seller or shipper;

(9) All rebates, drawbacks, and bounties, separately itemized, allowed upon the exportation of the merchandise; and

(10) Any other facts deemed necessary to a proper appraisalment, examination, and classification of the merchandise that the Secretary of the Treasury may require.

(b) Shipments not purchased and not shipped by manufacturer.

If the merchandise is shipped to a person in the United States by a person other than the manufacturer, otherwise than by purchase, such person shall state on the invoice the time when, the place where, the person from whom such merchandise was purchased, and the price paid therefor in the currency of the purchase, stating whether gold, silver, or paper.

(c) Purchases in different consular districts.

When the merchandise has been purchased in different consular districts for shipment to the United States and is assembled for shipment and embraced in a single invoice which is produced for certification under the provisions of paragraph (2) of subdivision (a) of section 1482 of this title, the invoice shall have attached thereto the original bills or invoices received by the shipper, or extracts therefrom, showing the actual prices paid or to be paid for such merchandise. The consular officer to whom the invoice is so produced for certification may require that any such original bill or invoice be certified by the consular officer for the district in which the merchandise was purchased.

(d) Exceptions by regulations.

The Secretary of the Treasury may by regulations provide for such exceptions from the requirements of this section as he deems advisable. (June 17, 1930, ch. 497, title IV, § 481, 46 Stat. 719.)

**CROSS REFERENCE**

Wool products, additional information required in invoices, see section 68f of Title 15, Commerce and Trade.

**§ 1482. Certified invoice—(a) Certification in general.**

Every invoice covering merchandise exceeding \$100 in value shall, at or before the time of the shipment of the merchandise, or as soon thereafter as the conditions will permit, be produced for certification to the consular officer of the United States—

(1) For the consular district in which the merchandise was manufactured, or purchased, or from which it was to be delivered pursuant to contract;

(2) For the consular district in which the merchandise is assembled and repacked for shipment to the United States, if it has been purchased in different consular districts.

**(b) Declaration.**

Such invoices shall have indorsed thereon, when so produced, a verified declaration, in a form prescribed by the Secretary of the Treasury, stating whether the merchandise is sold or agreed to be sold, or whether it is shipped otherwise than in pursuance of a purchase or an agreement to purchase, that there is no other invoice differing from the invoice so produced, and that all the statements contained in such invoice and in such declaration are true and correct.

**(c) Making and signing.**

Every certified invoice shall be made out in triplicate, or, for merchandise intended for immediate transportation under the provisions of section 1552 of this title, in quadruplicate, if desired by the shipper, and shall be signed by the seller or shipper, or the agent of either; but a person who has no interest in the merchandise except as broker or forwarder shall not be competent to sign any such invoice. Where any such invoice is signed by an agent, he shall state thereon the name of his principal.

**(d) Certified under existing law.**

Such invoices shall be certified in accordance with the provisions of existing law.

**(e) Disposition.**

The original of the invoice and, if made, the quadruplicate shall be delivered to the exporter to be forwarded to the consignee for use in making entry of the merchandise, and the triplicate shall be promptly transmitted by the consular officer to the collector of customs at the port of entry named in the invoice. The duplicate shall be filed in the office of the consular officer by whom the invoice was certified, to be there kept until the Secretary of State authorizes its destruction.

**(f) Certification by others than American consul.**

When merchandise is to be shipped from a place so remote from an American consulate as to render impracticable certification of the invoice by an American consular officer, such invoice may be certified by a consular officer of a nation at the time in amity with the United States, or, if there be no such consular officer available, such invoice shall be executed before a notary public or other officer having authority to administer oaths and having an official seal: *Provided*, That invoices for merchandise shipped to the United States from the Philippine Islands, the Virgin Islands, American Samoa, the island of Guam, or the Canal Zone may be certified by the collector of customs or the person acting as such, or by his deputy.

**(g) Effective date.**

This section shall take effect August 16, 1930. (June 17, 1930, ch. 497, title IV, § 482, 46 Stat. 720.)

**§ 1483. Consignee as owner of merchandise.**

For the purposes of this subtitle—

(1) All merchandise imported into the United States shall be held to be the property of the person to whom the same is consigned; and the holder of a bill of lading duly indorsed by the consignee therein named, or, if consigned to order, by the consignor, shall be deemed the consignee thereof. The underwriters of abandoned merchandise and the salvors of merchandise saved from a wreck at sea or on or along a coast of the United States may be regarded as the consignees.

(2) A person making entry of merchandise under the provisions of subdivision (h) or (i) of section 1484 (relating to entry on carrier's certificate and on duplicate bill of lading, respectively) shall be deemed the sole consignee thereof. (June 17, 1930, ch. 497, title IV, § 483, 46 Stat. 721.)

**§ 1484. Entry of merchandise—(a) Requirement and time.**

Except as provided in sections 1490, 1498, 1552, and 1553 and in subdivision (j) of section 1336 of this chapter, and in subdivisions (h) and (i) of this section, the consignee of imported merchandise shall make entry therefor either in person or by an agent authorized by him in writing under such regulations as the Secretary of the Treasury may prescribe. Such entry shall be made at the customhouse within forty-eight hours, exclusive of Sundays and holidays, after the entry of the importing vessel or report of the vehicle, or after the arrival at the port of destination in the case of merchandise transported in bond, unless the collector authorizes in writing a longer time.

**(b) Production of certified invoice.**

No merchandise shall be admitted to entry under the provisions of this section without the production of a certified invoice therefor, except that entry may be permitted if—

(1) The collector is satisfied that the failure to produce such invoice is due to causes beyond the control of the person making entry;

(2) Such person makes a verified declaration in writing that he is unable to produce such invoice and (A) files therewith a seller's or shipper's invoice, or (B) if he is not in possession of a seller's or shipper's invoice files therewith a statement of the value, or the price paid, in the form of an invoice; and

(3) Such person gives a bond for the production of such certified invoice within six months.

The Secretary of the Treasury may by regulations provide for such exceptions from the requirements of this subdivision as he deems advisable.

**(c) Production of bill of lading.**

The consignee shall produce the bill of lading at the time of making entry, except that—

(1) If the collector is satisfied that no bill of lading has been issued, the shipping receipt or other evidence satisfactory to the collector may be accepted in lieu thereof;

(2) The collector is authorized to permit entry and to release merchandise from customs custody without the production of the bill of lading if the person making such entry gives a bond satisfactory to the



collector, in a sum equal to not less than one and one-half times the invoice value of the merchandise, to produce such bill of lading, to relieve the collector of all liability, to indemnify the collector against loss, to defend every action brought upon a claim for loss or damage, by reason of such release from customs custody or a failure to produce such bill of lading, and to entitle any person injured by reason of such release from customs custody to sue on such bond in his own name, without making the collector a party thereto. Any person so injured by such release may sue on such bond to recover any damages so sustained by him; and

(3) The provisions of this subdivision shall not apply in the case of an entry under subdivision (h) or (i) of this section (relating to entry on carrier's certificate and on duplicate bill of lading, respectively).

**(d) Signing and contents.**

Such entry shall be signed by the consignee, or his agent, and shall set forth such facts in regard to the importation as the Secretary of the Treasury may require for the purpose of assessing duties and to secure a proper examination, inspection, appraisal, and liquidation, and shall be accompanied by such invoices, bills of lading, certificates, and documents as are required by law and regulations promulgated thereunder.

**(e) Statistical enumeration.**

The Secretary of the Treasury, the Secretary of Commerce, and the Chairman of the United States Tariff Commission are authorized and directed to establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States, and as a part of the entry there shall be attached thereto or included therein an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and the value of the total quantity of each kind of article.

**(f) Packages included.**

If any of the certificates or documents necessary to make entry of any part of merchandise arriving on one vessel or vehicle and consigned to one consignee have not arrived, such part may be entered subsequently, and notation of the packages or cases to be omitted from the original entry shall be made thereon. One or more packages arriving on one vessel or vehicle addressed for delivery to one person and imported in another package containing packages addressed for delivery to other persons may be separately entered, under such rules and regulations as the Secretary of the Treasury may prescribe. All other merchandise arriving on one vessel or vehicle and consigned to one consignee shall be included in one entry, unless the Secretary of the Treasury shall authorize the inclusion of portions of such merchandise in separate entries under such rules and regulations as he may prescribe.

**(g) Statement of cost of production.**

Under such regulations as the Secretary of the Treasury may prescribe, the collector or the ap-

praiser may require a verified statement from the manufacturer or producer showing the cost of production of the imported merchandise, when necessary to the appraisal of such merchandise.

**(h) Entry on carrier's certificate.**

Any person certified by the carrier bringing the merchandise to the port at which entry is to be made to be the owner or consignee of the merchandise, or an agent of such owner or consignee, may make entry thereof, either in person or by an authorized agent, in the manner and subject to the requirements prescribed in this section (or in regulations promulgated hereunder) in the case of a consignee within the meaning of paragraph (1) of section 1483.

**(i) Entry on duplicate bill of lading.**

Any person may, upon the production of a duplicate bill of lading signed or certified to be genuine by the carrier bringing the merchandise to the port at which entry is to be made, make entry for the merchandise in respect of which such bill of lading is issued, in the manner and subject to the requirements prescribed in this section (or in regulations promulgated hereunder) in the case of a consignee within the meaning of paragraph (1) of section 1483, except that such person shall make such entry in his own name.

**(j) Release of merchandise.**

Merchandise shall be released from customs custody only to or upon the order of the carrier by whom the merchandise is brought to the port at which entry is made, except that merchandise in a bonded warehouse shall be released from customs custody only to or upon the order of the proprietor of the warehouse. The collector shall return to the person making entry the bill of lading (if any is produced) with a notation thereon to the effect that entry for such merchandise has been made. The collector shall not be liable to any person in respect of the delivery of merchandise released from customs custody in accordance with the provisions of this section. Where a recovery is had in any suit or proceeding against a collector on account of the release of merchandise from customs custody, in the performance of his official duty, and the court certifies that there was probable cause for such release by the collector, or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the Government, no execution shall issue against such collector, but the amount so recovered shall, upon final judgment, be paid out of moneys appropriated from the Treasury for that purpose. (June 17, 1930, ch. 497, title IV, § 484, 46 Stat. 722; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 12, 52 Stat. 1083.)

**EFFECTIVE DATE**

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

**CROSS REFERENCE**

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

**§ 1485. Declaration—(a) Requirement—Form and contents.**

Every consignee making an entry under the provisions of section 1484 of this title shall make and file therewith, in a form to be prescribed by the Secretary of the Treasury, a declaration under oath, stating—

(1) Whether the merchandise is imported in pursuance of a purchase or an agreement to purchase, or whether it is imported otherwise than in pursuance of a purchase or agreement to purchase;

(2) That the prices set forth in the invoice are true, in the case of merchandise purchased or agreed to be purchased; or in the case of merchandise secured otherwise than by purchase or agreement to purchase, that the statements in such invoice as to value or price are true to the best of his knowledge and belief;

(3) That all other statements in the invoice or other documents filed with the entry, or in the entry itself, are true and correct; and

(4) That he will produce at once to the collector any invoice, paper, letter, document, or information received showing that any such prices or statements are not true or correct.

**(b) Books and periodicals.**

The Secretary of the Treasury is authorized to prescribe regulations for one declaration in the case of books, magazines, newspapers, and periodicals published and imported in successive parts, numbers, or volumes, and entitled to free entry.

**(c) Agents.**

In the event that an entry is made by an agent under the provisions of section 1484 of this title and such agent is not in possession of such declaration of the consignee, such agent shall give a bond to produce such declaration.

**(d) Liability of consignee for increased duties.**

A consignee shall not be liable for any additional or increased duties if (1) he declares at the time of entry that he is not the actual owner of the merchandise, (2) he furnishes the name and address of such owner, and (3) within ninety days from the date of entry he produces a declaration of such owner conditioned that he will pay all additional and increased duties, under such regulations as the Secretary of the Treasury may prescribe. Such owner shall possess all the rights of a consignee.

**(e) Separate forms for purchase and nonpurchase importations.**

The Secretary of the Treasury shall prescribe separate forms for the declaration in the case of merchandise which is imported in pursuance of a purchase or agreement to purchase and merchandise which is imported otherwise than in pursuance of a purchase or agreement to purchase.

**(f) Deceased or insolvent persons; partnerships and corporations.**

Whenever such merchandise is consigned to a deceased person, or to an insolvent person who has assigned the same for the benefit of his creditors, the executor or administrator, or the assignee of such person or receiver or trustee in bankruptcy,

shall be considered as the consignee; when consigned to a partnership the declaration of one of the partners only shall be required, and when consigned to a corporation such declaration may be made by any officer of such corporation. Whether the consignee is an individual, a partnership, or a corporation, the declaration may be made by any person who has knowledge of the facts and who is specifically authorized by such individual, a member of such partnership, or an officer of such corporation to make such declaration. (June 17, 1930, ch. 497, Title IV, § 485, 46 Stat. 724; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 13, 52 Stat. 1083.)

**EFFECTIVE DATE**

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

**§ 1486. Administration of oaths—(a) Customs officers.**

The following officers and employees may administer any oaths required or authorized by law or regulations promulgated thereunder in respect of any matter coming before such officers or employees in the performance of their official duties: (1) Any customs officer appointed by the President; (2) the chief assistant of any such officer, or any officer or employee of the customs field service designated for the purpose by such officer or by the Secretary of the Treasury; and (3) any officer or employee of the Bureau of Customs designated for the purpose by the Secretary of the Treasury.

**(b) Postmasters.**

The postmaster or assistant postmaster of the United States at any post office where customs officers are not stationed is hereby authorized to administer any oaths required to be made to statements in customs documents by importers of merchandise, not exceeding \$100 in value, through the mails.

**(c) No compensation.**

No compensation or fee shall be demanded or accepted for administering any oath under the provisions of this section. (June 17, 1930, ch. 497, title IV, § 486, 46 Stat. 725.)

**§ 1487. Value in entry—Amendment.**

The consignee or his agent may, under such regulations as the Secretary of the Treasury may prescribe, at the time entry is made, or at any time before the invoice or the merchandise has come under the observation of the appraiser for the purpose of appraisal, make in the entry such additions to or deductions from the cost or value given in the invoice as, in his opinion, may raise or lower the same to the value of such merchandise. (June 17, 1930, ch. 497, title IV, § 487, 46 Stat. 725.)

**CROSS REFERENCE**

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

**§ 1488. Appraisal of merchandise.**

The collector within whose district any merchandise is entered shall cause such merchandise to be appraised. (June 17, 1930, ch. 497, title IV, § 488, 46 Stat. 725.)

**§ 1489. Additional duties.**

If the final appraised value of any article of imported merchandise which is subject to an ad valorem rate of duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the entered value, there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of 1 per centum of the total final appraised value thereof for each 1 per centum that such final appraised value exceeds the value declared in the entry. Such additional duty shall apply only to the particular article or articles in each invoice that are so advanced in value upon final appraisement and shall not be imposed upon any article upon which the amount of duty imposed by law on account of the final appraised value does not exceed the amount of duty that would be imposed if the final appraised value did not exceed the entered value, and shall be limited to 75 per centum of the final appraised value of such article or articles. Such additional duties shall not be construed to be penal and shall not be remitted nor payment thereof in any way avoided, except in the case of a clerical error, upon the order of the Secretary of the Treasury, or in any case upon the finding of the United States Customs Court, upon a petition filed at any time after final appraisement and before the expiration of sixty days after liquidation and supported by satisfactory evidence under such rules as the court may prescribe, that the entry of the merchandise at a less value than that returned upon final appraisement was without any intention to defraud the revenue of the United States or to conceal or misrepresent the facts of the case or to deceive the appraiser as to the value of the merchandise. If the appraised value of any merchandise exceeds the value declared in the entry by more than 100 per centum, such entry shall be presumptively fraudulent, and the collector shall seize the whole case or package containing such merchandise and proceed as in case of forfeiture for violation of the customs laws; and in any legal proceeding other than a criminal prosecution that may result from such seizure, the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same, and forfeiture shall be adjudged unless he rebuts such presumption of fraud by sufficient evidence.

Upon the making of such order or finding, the additional duties shall be remitted or refunded, wholly or in part, and the entry shall be liquidated or reliquidated accordingly. Such additional duties shall not be refunded in case of exportation of the merchandise, nor shall they be subject to the benefit of drawback. All additional duties, penalties, or forfeitures applicable to merchandise entered in connection with a certified invoice shall be alike applicable to merchandise entered in connection with a seller's or shipper's invoice or statement in the form of an invoice.

Furniture described in paragraph 1811 of section 1201 of this title shall enter the United States at ports which shall be designated by the Secretary of the Treasury for this purpose. If any article described in said paragraph 1811 and imported for

sale is rejected as unauthentic in respect to the antiquity claimed as a basis for free entry, there shall be imposed, collected, and paid on such article, unless exported under customs supervision, a duty of 25 per centum of the value of such article in addition to any other duty imposed by law upon such article. (June 17, 1930, ch. 497, title IV, § 489, 46 Stat. 725.)

**§ 1490. General orders—(a) Incomplete entry.**

Whenever entry of any imported merchandise is not made within the time provided by law or the regulations prescribed by the Secretary of the Treasury, or whenever entry of such merchandise is incomplete because of failure to pay the estimated duties, or whenever, in the opinion of the collector, entry of such merchandise can not be made for want of proper documents or other cause, or whenever the collector believes that any merchandise is not correctly and legally invoiced, he shall take the merchandise into his custody and send it to a bonded warehouse or public store, to be held at the risk and expense of the consignee until entry is made or completed and the proper documents are produced, or a bond given for their production.

**(b) At request of consignee.**

At the request of the consignee of any merchandise, or of the owner or master of the vessel or the person in charge of the vehicle in which the same is imported, any merchandise may be taken possession of by the collector after the expiration of one day after the entry of the vessel or report of the vehicle and may be unladen and held at the risk and expense of the consignee until entry thereof is made. (June 17, 1930, ch. 497, title IV, § 490, 46 Stat. 726.)

**§ 1491. Unclaimed merchandise.**

Any entered or unentered merchandise (except merchandise entered under section 1557 of this title, but including merchandise entered for transportation in bond or for exportation) which shall remain in customs custody for one year from the date of importation thereof, without all estimated duties and storage or other charges thereon having been paid, shall be considered unclaimed and abandoned to the Government and shall be appraised by the appraiser of merchandise and sold by the collector at public auction under such regulations as the Secretary of the Treasury shall prescribe. All gunpowder and other explosive substances and merchandise liable to depreciation in value by damage, leakage, or other cause to such extent that the proceeds of sale thereof may be insufficient to pay the duties, storage, and other charges, if permitted to remain in public store or bonded warehouse for a period of one year, may be sold forthwith, under such regulations as the Secretary of the Treasury may prescribe. Merchandise subject to sale hereunder or under section 1559 of this chapter may be entered or withdrawn for consumption at any time prior to such sale upon payment of all duties, storage, and other charges, and expenses that may have accrued thereon, but such merchandise after becoming subject to sale may not be exported prior to sale without the payment of such duties, charges, and expenses nor may it be entered for warehouse. The

computation of duties for the purposes of this section and sections 1493 and 1559 of this title shall be at the rate or rates applicable at the time the merchandise becomes subject to sale. (June 17, 1930, ch. 497, title IV, § 491, 46 Stat. 726; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 14, 52 Stat. 1083.)

#### EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

#### CROSS REFERENCE

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

### § 1492. Destruction of abandoned or forfeited merchandise.

Except as provided in R. S. § 3369 (relating to tobacco and snuff), and in section 901 of the Revenue Act of 1926 (relating to distilled spirits), any merchandise abandoned or forfeited to the Government under the preceding or any other provision of the customs laws, which is subject to internal revenue tax and which the collector shall be satisfied will not sell for a sufficient amount to pay such taxes, shall be forthwith destroyed under regulations to be prescribed by the Secretary of the Treasury, instead of being sold at auction. (June 17, 1930, ch. 497, title IV, § 492, 46 Stat. 727.)

#### REFERENCES IN TEXT

R. S. § 3369, cited in body of text, is now covered by sections 2002 (a) (1); 2103 (a) (1), (c) (d); 2112 (d) (2); 2190 of Title 26, Internal Revenue Code.

Section 901 of Revenue Act of 1926, cited in body of text, is now covered by section 3074 (a) of Title 26, Internal Revenue Code.

### § 1493. Proceeds of sale.

The surplus of the proceeds of sales under section 1491 of this title after the payment of storage charges, expenses, duties, and the satisfaction of any lien for freight, charges, or contribution in general average, shall be deposited by the collector in the Treasury of the United States, if claim therefor shall not be filed with the collector within ten days from the date of sale, and the sale of such merchandise shall exonerate the master of any vessel in which the merchandise was imported from all claims of the owner thereof, who shall, nevertheless, on due proof of his interest, be entitled to receive from the Treasury the amount of any surplus of the proceeds of sale. (June 17, 1930, ch. 497, title IV, § 493, 46 Stat. 727.)

#### CROSS REFERENCE

Repeal of permanent appropriation in this section, see section 725a (b) of Title 31, Money and Finance.

### § 1494. Expense of weighing and measuring.

In all cases in which the invoice or entry does not state the weight, quantity, or measure of the merchandise, the expense of ascertaining the same shall be collected from the consignee before its release from customs custody. (June 17, 1930, ch. 497, title IV, § 494, 46 Stat. 727.)

### § 1495. Partnership bond.

When any bond is required by law or regulations to be executed by any partnership for any purpose

connected with the transaction of business at any customhouse, the execution of such bond by any member of such partnership shall bind the other partners in like manner and to the same extent as if such other partners had personally joined in the execution, and an action or suit may be instituted on such bond against all partners as if all had executed the same. (June 17, 1930, ch. 497, title IV, § 495, 46 Stat. 727.)

### § 1496. Examination of baggage.

The collector may cause an examination to be made of the baggage of any person arriving in the United States in order to ascertain what articles are contained therein and whether subject to duty, free of duty, or prohibited notwithstanding a declaration and entry therefor has been made. (June 17, 1930, ch. 497, title IV, § 496, 46 Stat. 727.)

### § 1497. Same—Penalties.

Any article not included in the declaration and entry as made, and, before examination of the baggage was begun, not mentioned in writing by such person, if written declaration and entry was required, or orally if written declaration and entry was not required, shall be subject to forfeiture and such person shall be liable to a penalty equal to the value of such article. (June 17, 1930, ch. 497, title IV, § 497, 46 Stat. 728.)

### § 1498. Entry under regulations—(a) Authorized for certain merchandise.

The Secretary of the Treasury is authorized to prescribe rules and regulations for the declaration and entry of—

- (1) Merchandise not exceeding \$100 in value, including such merchandise imported through the mails;
- (2) Merchandise damaged on the voyage of importation, by fire or through marine casualty or any other cause, without fault on the part of the shipper;
- (3) Merchandise recovered from a wrecked or stranded vessel;
- (4) Household effects used abroad and personal effects, not imported in pursuance of a purchase or agreement for purchase and not intended for sale;
- (5) Articles sent by persons in foreign countries as gifts to persons in the United States;
- (6) Articles carried on the person or contained in the baggage of a person arriving in the United States;
- (7) Tools of trade of a person arriving in the United States;
- (8) Personal effects of citizens of the United States who have died in a foreign country;
- (9) Merchandise within the provisions of sections 1465 and 1466 of this title (relating to supplies, repairs, and equipment on vessels and railway cars) at the first port of arrival;
- (10) Merchandise when in the opinion of the Secretary of the Treasury the value thereof cannot be declared; and
- (11) Merchandise within the provisions of sections 472–475 of this title.

**(b) Application of general provisions.**

The Secretary of the Treasury is authorized to include in such rules and regulations any of the provisions of section 1484 or 1485 of this title (relating, respectively, to entry and to declaration of merchandise generally). (June 17, 1930, ch. 497, title IV, § 498, 46 Stat. 728.)

**§ 1499. Examination of merchandise.**

Imported merchandise, required by law or regulations made in pursuance thereof to be inspected, examined, or appraised, shall not be delivered from customs custody, except under such bond or other security as may be prescribed by the Secretary of the Treasury to assure compliance with all applicable laws, regulations, and instructions which the Secretary of the Treasury or the Customs Service is authorized to enforce until it has been inspected, examined, or appraised and is reported by the appraiser to have been truly and correctly invoiced and found to comply with the requirements of the laws of the United States. The collector shall designate the packages or quantities covered by any invoice or entry which are to be opened and examined for the purpose of appraisement or otherwise and shall order such packages or quantities to be sent to the public stores or other places for such purpose. Not less than one package of every invoice and not less than one package of every ten packages of merchandise, shall be so designated unless the Secretary of the Treasury, from the character and description of the merchandise, is of the opinion that the examination of a less proportion of packages will amply protect the revenue and by special regulation or instruction, the application of which may be restricted to one or more individual ports or to one or more importations or one or more classes of merchandise, permit a less number of packages to be examined. All such special regulations or instructions shall be published in the weekly Treasury Decisions within fifteen days after issuance and before the liquidation of any entries affected thereby. The collector or the appraiser may require such additional packages or quantities as either of them may deem necessary. If any package is found by the appraiser to contain any article not specified in the invoice and he reports to the collector that in his opinion such article was omitted from the invoice with fraudulent intent on the part of the seller, shipper, owner, or agent, the contents of the entire package in which such article is found shall be liable to seizure, but if the appraiser reports that no such fraudulent intent is apparent, then the value of said article shall be added to the entry and the duties thereon paid accordingly. If a deficiency is found in quantity, weight, or measure in the examination of any package, report thereof shall be made to the collector, who shall make allowance therefor in the liquidation of duties.

No appraisement made after the effective date of the Customs Administrative Act of 1938<sup>1</sup> shall be held invalid on the ground that the required number of packages or the required quantity of the merchandise was not designated for examination or, if designated, was not actually examined, unless the party claiming such invalidity shall establish that merchandise in the packages or quantities not designated

for examination, or not actually examined, was different from that actually examined and that the difference was such as to establish the incorrectness of the appraiser's return of value; and then only as to the merchandise for which the value returned by the appraiser is shown to be incorrect. (June 17, 1930, ch. 497, title IV, § 499, 46 Stat. 728; June 25, 1938, 5 p. m. E. S. T., ch. 679, §§ 15, 16 (a), 52 Stat. 1084.)

<sup>1</sup>Effective on thirtieth day after date of enactment except sections 31 and 34 which were effective on date of enactment. See section 1653a of this title.

**EFFECTIVE DATE**

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

**CROSS REFERENCE**

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

**§ 1500. Duties of appraising officers—(a) Appraiser.**

It shall be the duty of the appraiser under such rules and regulations as the Secretary of the Treasury may prescribe—

(1) To appraise the merchandise in the unit of quantity in which the merchandise is usually bought and sold by ascertaining or estimating the value thereof by all reasonable ways and means in his power, any statement of cost or cost of production in any invoice, affidavit, declaration, or other document to the contrary notwithstanding;

(2) To ascertain the number of yards, parcels, or quantities of the merchandise ordered or designated for examination;

(3) To ascertain whether the merchandise has been truly and correctly invoiced;

(4) To describe the merchandise in order that the collector may determine the dutiable classification thereof; and

(5) To report his decisions to the collector.

**(b) Reports of appraiser's subordinates.**

The appraiser shall have power to review, revise, and correct the reports of his subordinate officers.

**(c) Chief assistant and deputy appraisers.**

The duties of the chief assistant appraiser and deputy appraisers shall be prescribed by the Secretary of the Treasury. During the absence or disability of the appraiser, or in the event that there is no appraiser, the chief assistant appraiser shall exercise the powers and perform the duties of the appraiser.

**(d) Assistant appraisers.**

It shall be the duty of an assistant appraiser—

(1) To examine and inspect such merchandise as the appraiser may direct, and to report to him the value thereof;

(2) To revise and correct the reports and to supervise and direct the work of such examiners and other employees as the appraiser may designate; and

(3) To assist the appraiser, under such regulations as the Secretary of the Treasury or the appraiser may prescribe.

**(e) Examiners.**

It shall be the duty of an examiner to examine and inspect the merchandise and report the value and such other facts as the appraiser may require in his appraisal or report and to perform such other duties as may be prescribed by rules and regulations of the Secretary of the Treasury or the appraiser.

**(f) Acting appraiser.**

The Secretary of the Treasury is authorized to designate an officer of the customs as acting appraiser at a port where there is no appraiser. Such acting appraiser shall take the oath, perform all the duties, and possess all the powers of an appraiser. The Secretary of the Treasury may appoint an officer of the customs who shall perform the functions of acting appraiser during the absence or disability of such acting appraiser. (June 17, 1930, ch. 497, title IV, § 500, 46 Stat. 729.)

**CROSS REFERENCE**

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

**§ 1501. Notice of appraisal; reappraisal.**

(a) The collector shall give written notice of appraisal to the consignee, his agent, or his attorney, if (1) the appraised value is higher than the entered value, or (2) a change in the classification of the merchandise results from the appraiser's determination of value. The decision of the appraiser shall be final and conclusive upon all parties unless a written appeal for a reappraisal is filed with or mailed to the United States Customs Court by the collector within sixty days after the date of the appraiser's report, or filed by the consignee or his agent with the collector within thirty days after the date of personal delivery, or if mailed the date of mailing of written notice of appraisal to the consignee, his agent, or his attorney. No such appeal filed by the consignee or his agent shall be deemed valid, unless he has complied with all the provisions of this chapter relating to the entry and appraisal of such merchandise. Every such appeal shall be transmitted with the entry and the accompanying papers by the collector to the United States Customs Court and shall be assigned to one of the judges, who shall in every case, notwithstanding that the original appraisal may for any reason be held invalid or void and that the merchandise or samples thereof be not available for examination, after affording the parties an opportunity to be heard on the merits, determine the value of the merchandise from the evidence in the entry record and that adduced at the hearing. Reasonable notice shall be given to the importer and to the person designated to represent the Government in such proceedings of the time and place of the hearing, at which the parties and their attorneys shall have an opportunity to introduce evidence and to hear and cross-examine the witnesses of the other party and to inspect all samples and all papers admitted or offered as evidence. In finding such value affidavits and depositions of persons whose attendance cannot reasonably be had, price lists and catalogues, reports or depositions of consuls, customs agents, collectors, appraisers, assistant appraisers,

examiners, and other officers of the Government may be admitted in evidence. Copies of official documents, when certified by an official duly authorized by the Secretary of the Treasury, may be admitted in evidence with the same force and effect as original documents. The value found by the appraiser shall be presumed to be the value of the merchandise and the burden shall rest upon the party who challenges its correctness to prove otherwise.

(b) The judge shall, after argument on the part of any of the interested parties requesting to be heard, render his decision in writing, together with a statement of the reasons therefor and of the facts on which the decision is based. Such decision shall be final and conclusive upon all parties unless within thirty days from the date of the filing of the decision with the collector an application for its review shall be filed with or mailed to the United States Customs Court by the collector or other person authorized by the Secretary of the Treasury, and a copy of such application mailed to the consignee, or his agent or attorney, or filed by the consignee, or his agent or attorney, with the collector, by whom the same shall be forthwith forwarded to the United States Customs Court. Every such application shall be assigned by the court to a division of three judges, who shall consider the case upon the samples of the merchandise, if there be any, and the record made before the single judge, and, after hearing argument on the part of any of the interested parties requesting to be heard, shall affirm, reverse, or modify the decision of the single judge or remand the case to the single judge for further proceedings, and shall state its action in a written decision, to be forwarded to the collector, setting forth the facts upon which the finding is based and the reasons therefor. The decision of the United States Customs Court shall be final and conclusive upon all parties unless an appeal shall be taken by either party to the Court of Customs and Patent Appeals upon a question or questions of law only within the time and in the manner provided by section 310 of Title 28.

(c) If upon the hearing of a protest, the United States Customs Court shall declare an appraisal of merchandise made after the effective date of the Customs Administrative Act of 1938<sup>1</sup> to have been invalid or void, it shall remand the matter to a single judge, who shall proceed to determine the proper dutiable value of such merchandise in the manner provided for by this section. In such proceeding no presumption of correctness shall attach to the invoice or entered values. (June 17, 1930, ch. 497, title IV, § 501, 46 Stat. 730; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 16 (b), 52 Stat. 1084.)

<sup>1</sup> Effective on thirtieth day after date of enactment except sections 31 and 34 thereof which were effective on date of enactment. See section 1653a of this title.

**EFFECTIVE DATE**

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

**CROSS REFERENCE**

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

**§ 1502. Regulations for appraisement and classification—(a) Powers of Secretary of the Treasury.**

The Secretary of the Treasury shall establish and promulgate such rules and regulations not inconsistent with the law, and may disseminate such information as may be necessary to secure a just, impartial, and uniform appraisement of imported merchandise and the classification and assessment of duties thereon at the various ports of entry, and may direct any appraiser, deputy appraiser, assistant appraiser, or examiner of merchandise to go from one port of entry to another for the purpose of appraising or assisting in appraising merchandise imported at such port.

**(b) Reversal of Secretary's rulings.**

No ruling or decision once made by the Secretary of the Treasury, giving construction to any law imposing customs duties, shall be reversed or modified adversely to the United States, by the same or a succeeding Secretary, except in concurrence with an opinion of the Attorney General recommending the same, or a final decision of the United States Customs Court.

**(c) Duties of customs officers.**

It shall be the duty of all officers of the customs to execute and carry into effect all instructions of the Secretary of the Treasury relative to the execution of the revenue laws; and in case any difficulty arises as to the true construction or meaning of any part of the revenue laws, the decision of the Secretary shall be binding upon all officers of the customs. (June 17, 1930, ch. 497, title IV, § 502, 46 Stat. 731.)

**CROSS REFERENCE**

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

**§ 1503. Dutiable value—(a) General rule.**

Except as provided in section 1562 of this title (relating to withdrawal from manipulating warehouses) and in subdivision (b) of this section, the basis for the assessment of duties on imported merchandise subject to ad valorem rates of duty shall be the entered value of the final appraised value, whichever is higher.

**(b) Entries pending reappraisalment.**

If the importer certifies at the time of entry that he has entered the merchandise at a value higher than the value as defined in this chapter because of advances by the appraiser in similar cases then pending on appeal for reappraisalment or re-appraisalment, and if the importer's contention in such pending cases shall subsequently be sustained, wholly or in part, by a final decision on reappraisalment or re-appraisalment, and if it shall appear that such action of the importer on entry was taken in good faith, the collector shall liquidate the entry in accordance with the final appraisalment.

**(c) Basis of rate.**

For the purpose of determining the rate of duty to be assessed upon any merchandise when the rate is based upon or regulated in any manner by the value of the merchandise, the final appraised value shall (except as provided in section 1562 of this title) be

taken to be the value of the merchandise. (June 17, 1930, ch. 497, title IV, § 503, 46 Stat. 731.)

**CROSS REFERENCE**

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

**§ 1503a. Construction of section 1503 (b).**

It was and is the true intent and meaning of subsection (b) of section 1503 of this title, that imported merchandise entered in accordance with the provisions of said subsection (b) shall be appraised and reappraised in the same manner as though the merchandise was not so entered; that the appraisalment and reappraisalment of such merchandise shall have the same force and effect as in the case of merchandise not so entered; and that entries covered by certification of the importer as provided in said subsection (b) shall be liquidated in accordance with the final appraised value of the merchandise covered by such certificates. (July 12, 1932, ch. 473, 47 Stat. 657.)

**§ 1504. Coverings and containers.**

If there shall be used for covering or holding imported merchandise, whether dutiable or free of duty, any unusual material, article, or form designed for use otherwise than in the bona fide transportation of such merchandise to the United States, additional duties shall be levied upon such material, article, or form at the rate or rates to which the same would be subjected if separately imported. (June 17, 1930, ch. 497, title IV, § 504, 46 Stat. 732.)

**§ 1505. Payment of duties.**

The consignee shall deposit with the collector, at the time of making entry, unless the merchandise is entered for warehouse or transportation or under bond, the amount of duty estimated to be payable thereon. Upon receipt of the appraiser's report and of the various reports of landing, weight, gauge, or measurement, the collector shall ascertain, fix, and liquidate the rate and amount of duties to be paid on such merchandise as provided by law, and shall give notice of such liquidation in the form and manner prescribed by the Secretary of the Treasury, and collect any increased or additional duties due or refund any excess of duties deposited as determined on such liquidation. (June 17, 1930, ch. 497, title IV, § 505, 46 Stat. 732.)

**CROSS REFERENCE**

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

**§ 1506. Allowance for abandonment and damage.**

Allowance shall be made in the estimation and liquidation of duties under regulations prescribed by the Secretary of the Treasury in the following cases:

**(1) Abandonment within 30 days.**

Where the importer abandons to the United States, within thirty days after entry in the case of merchandise not sent to the appraiser's stores for examination, or within thirty days after the release of the examination packages or quantities of merchandise in the case of merchandise sent to the appraiser's stores for examination, any imported merchandise representing 5



per centum or more of the total value of all the merchandise of the same class or kind entered in the invoice in which the item appears, and delivers, within the applicable thirty-day period, the portion so abandoned to such place as the collector directs unless the collector is satisfied that the merchandise is so far destroyed as to be nondeliverable;

**(2) Perishable merchandise, condemned.**

Where fruit or other perishable merchandise has been condemned at the port of entry, within ten days after landing, by the health officers or other legally constituted authorities, and the consignee, within five days after such condemnation, files with the collector written notice thereof, an invoiced description and the location thereof, and the name of the vessel or vehicle in which imported. (June 17, 1930, ch. 497, title IV, § 506, 46 Stat. 732.)

**CROSS REFERENCE**

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

**§ 1507. Tare and draft.**

The Secretary of the Treasury is hereby authorized to prescribe and issue regulations for the ascertainment of tare upon imported merchandise, including the establishment of reasonable and just schedule tares therefor, but in no case shall there be any allowance for draft or for impurities, other than excessive moisture and impurities not usually found in or upon such or similar merchandise. (June 17, 1930, ch. 497, title IV, § 507, 46 Stat. 732.)

**§ 1508. Commingling of goods.**

Whenever dutiable merchandise and merchandise which is free of duty or merchandise subject to different rates of duty are so packed together or mingled that the quantity or value of each class of such merchandise cannot be readily ascertained by the customs officers, the whole of such merchandise shall be subject to the highest rate of duty applicable to any part thereof, unless the importer or consignee shall segregate such merchandise at his own risk and expense under customs supervision within ten days after entry thereof, in order that the quantity and value of each part or class thereof may be ascertained. (June 17, 1930, ch. 497, title IV, § 508, 46 Stat. 732.)

**§ 1509. Examination of importer and others.**

Collectors, appraisers, and judges and divisions of the United States Customs Court may cite to appear before them or any of them and to examine upon oath, which said officers or any of them are hereby authorized to administer, any owner, importer, consignee, agent, or other person upon any matter or thing which they, or any of them, may deem material respecting any imported merchandise then under consideration or previously imported within one year, in ascertaining the classification or the value thereof or the rate or amount of duty; and they, or any of them, may require the production of any letters, accounts, contracts, invoices, or other documents relating to said merchandise, and may require such testimony to be reduced to writing, and when so taken it shall be filed and preserved, under

such rules as the United States Customs Court may prescribe, and such evidence may be given consideration in subsequent proceedings relating to such merchandise. (June 17, 1930, ch. 497, Title IV, § 509, 46 Stat. 733.)

**CROSS REFERENCE**

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

**§ 1510. Penalties for refusal to give testimony.**

If any person so cited to appear shall neglect or refuse to attend, or shall decline to answer, or shall refuse to answer in writing any interrogatories, and subscribe his name to his deposition, or to produce such papers when so required by a judge of the United States Customs Court, or a division of such court, or an appraiser, or a collector, he shall be liable to a penalty of not less than \$20 nor more than \$500; and if such person be the owner, importer, or consignee, the appraisement last made of such merchandise, whether made by an appraiser, a judge of the United States Customs Court, or a division of such court, shall be final and conclusive against such person; and any person who shall willfully and corruptly swear falsely on an examination before any judge of the United States Customs Court, or division of such court, or appraiser or collector, shall be deemed guilty of perjury; and if he is the owner, importer, or consignee, the merchandise shall be forfeited or the value thereof may be recovered from him. (June 17, 1930, ch. 497, title IV, § 510, 46 Stat. 733.)

**CROSS REFERENCE**

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

**§ 1511. Inspection of importer's books.**

If any person importing merchandise into the United States or dealing in imported merchandise fails, at the request of the Secretary of the Treasury, or an appraiser, or person acting as appraiser, or a collector, or the United States Customs Court, or a judge of such court, as the case may be, to permit a duly accredited officer of the United States to inspect his books, papers, records, accounts, documents, or correspondence, pertaining to the value or classification of such merchandise, then while such failure continues the Secretary of the Treasury, under regulations prescribed by him, (1) shall prohibit the importation of merchandise into the United States by or for the account of such person, and (2) shall instruct the collectors to withhold delivery of merchandise imported by or for the account of such person. If such failure continues for a period of one year from the date of such instructions, the collector shall cause the merchandise, unless previously exported, to be sold at public auction as in the case of forfeited merchandise. (June 17, 1930, ch. 497, title IV, § 511, 46 Stat. 733.)

**CROSS REFERENCE**

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

**§ 1512. Deposit of duty receipts.**

All moneys paid to any collector for unascertained duties or for duties paid under protest against the

rate or amount of duties charged shall be deposited to the credit of the Treasurer of the United States and shall not be held by the collectors to await any ascertainment of duties or the result of any litigation in relation to the rate or amount of duties legally chargeable and collectible in any case where money is so paid. (June 17, 1930, ch. 497, title IV, § 512, 46 Stat. 734.)

#### § 1513. Collector's immunity.

No collector or other customs officer shall be in any way liable to any owner, importer, consignee, or agent or any other person for or on account of any rulings or decisions as to the appraisement or the classification of any imported merchandise or the duties charged thereon, or the collection of any dues, charges, or duties on or on account of said merchandise, or any other matter or thing as to which said owner, importer, consignee, or agent might under this chapter be entitled to protest or appeal from the decision of such collector or other officer. (June 17, 1930, ch. 497, title IV, § 513, 46 Stat. 734.)

#### § 1514. Protest against collector's decisions.

Except as provided in subdivision (b) of section 1561 of this title (relating to protests by American manufacturers, producers, and wholesalers), all decisions of the collector, including the legality of all orders and findings entering into the same, as to the rate and amount of duties chargeable, and as to all exactions of whatever character (within the jurisdiction of the Secretary of the Treasury), and his decisions excluding any merchandise from entry or delivery, under any provision of the customs laws, and his liquidation or reliquidation of any entry, or refusal to pay any claim for drawback, or his refusal to reliquidate any entry for a clerical error discovered within one year after the date of entry, or within sixty days after liquidation or reliquidation when such liquidation or reliquidation is made more than ten months after the date of entry, shall, upon the expiration of sixty days after the date of such liquidation, reliquidation, decision, or refusal, be final and conclusive upon all persons (including the United States and any officer thereof), unless the importer, consignee, or agent of the person paying such charge or exaction, or filing such claim for drawback, or seeking such entry or delivery, shall, within sixty days after, but not before such liquidation, reliquidation, decision, or refusal, as the case may be, as well in cases of merchandise entered in bond as for consumption, file a protest in writing with the collector setting forth distinctly and specifically, and in respect to each entry, payment, claim, decision, or refusal, the reasons for the objection thereto. The reliquidation of an entry shall not open such entry so that a protest may be filed against the decision of the collector upon any question not involved in such reliquidation. (June 17, 1930, ch. 497, title IV, § 514, 46 Stat. 734.)

#### § 1515. Same; review of decisions.

Upon the filing of such protest the collector shall within ninety days thereafter review his decision, and may modify the same in whole or in part and

thereafter remit or refund any duties, charge, or exaction found to have been assessed or collected in excess, or pay any drawback found due, of which notice shall be given as in the case of the original liquidation, and against which protest may be filed within the same time and in the same manner and under the same conditions as against the original liquidation or decision. If the collector shall, upon such review, affirm his original decision, or if a protest shall be filed against his modification of any decision, and, in the case of merchandise entered for consumption, if all duties and charges shall be paid, then the collector shall forthwith transmit the entry and the accompanying papers, and all the exhibits connected therewith, to the United States Customs Court for due assignment and determination, as provided by law. Such determination shall be final and conclusive upon all persons, and the papers transmitted shall be returned, with the decision and judgment order thereon, to the collector, who shall take action accordingly, except in cases in which an appeal shall be filed in the United States Court of Customs and Patent Appeals within the time and in the manner provided by law. (June 17, 1930, ch. 497, title IV, § 515, 46 Stat. 734.)

#### § 1516. Appeal or protest by American producers—(a) Value.

Whenever an American manufacturer, producer, or wholesaler believes that the appraised value of any imported merchandise of a class or kind manufactured, produced, or sold at wholesale by him is too low, he may file with the Secretary of the Treasury a complaint setting forth the value at which he believes the merchandise should be appraised and the facts upon which he bases his belief. The Secretary shall thereupon transmit a copy of such complaint to the appraiser at each port of entry where the merchandise is usually imported. Until otherwise directed by the Secretary, the appraiser shall report each subsequent importation of the merchandise giving the entry number, the name of the importer, the appraised value, and his reasons for the appraisement. If the Secretary does not agree with the action of the appraiser, he shall instruct the collector to file an appeal for a reappraisement as provided in section 1501 of this title, and such manufacturer, producer, or wholesaler shall have the right to appear and to be heard as a party in interest under such rules as the United States Customs Court may prescribe. The Secretary shall notify such manufacturer, producer, or wholesaler of the action taken by such appraiser, giving the port of entry, the entry number, and the appraised value of such merchandise and the action he has taken thereon. If the appraiser advances the entered value of merchandise upon the information furnished by the American manufacturer, producer, or wholesaler, and an appeal is taken by the consignee, such manufacturer, producer, or wholesaler shall have the right to appear and to be heard as a party in interest, under such rules as the United States Customs Court may prescribe. If the American manufacturer, producer, or wholesaler is not satisfied with the action of the Secretary, or the action of the appraiser

thereon, he may file, within thirty days after the date of the mailing of the Secretary's notice, an appeal for a reappraisal in the same manner and with the same effect as an appeal by a consignee under the provisions of section 1501 of this title.

(b) Classification.

The Secretary of the Treasury shall, upon written request by an American manufacturer, producer, or wholesaler, furnish the classification of, and the rate of duty, if any, imposed upon, designated imported merchandise of a class or kind manufactured, produced, or sold at wholesale by him. If such manufacturer, producer, or wholesaler believes that the proper rate of duty is not being assessed, he may file a complaint with the Secretary, setting forth a description of the merchandise, the classification, and the rate or rates of duty he believes proper, and the reasons for his belief. If the Secretary decides that the classification of, or rate of duty assessed upon, the merchandise is not correct, he shall notify the collectors as to the proper classification and rate of duty and shall so inform the complainant, and such rate of duty shall be assessed upon all such merchandise entered for consumption or withdrawn from warehouse for consumption after thirty days after the date such notice to the collectors is published in the weekly Treasury Decisions. If the Secretary decides that the classification and rate of duty are correct, he shall so inform the complainant. If dissatisfied with the decision of the Secretary, the complainant may file with the Secretary, not later than thirty days after the date of such decision, notice that he desires to protest the classification of, or rate of duty assessed upon, the merchandise. Upon receipt of such notice from the complainant, the Secretary shall cause publication to be made of his decision as to the proper classification and rate of duty and of the complainant's desire to protest, and shall thereafter furnish the complainant with such information as to the entries and consignees of such merchandise, entered after the publication of the decision of the Secretary at the port of entry designated by the complainant in his notice of desire to protest, as will enable the complainant to protest the classification of, or rate of duty imposed upon, such merchandise in the liquidation of such an entry at such port. The Secretary shall direct the collector at such port to notify such complainant immediately when the first of such entries is liquidated. Within thirty days after the date of mailing to the complainant of notice of such liquidation, the complainant may file with the collector at such port a protest in writing setting forth a description of the merchandise and the classification and rate of duty he believes proper. Notwithstanding such protest is filed, merchandise of the character covered by the published decision of the Secretary, when entered for consumption or withdrawn from warehouse for consumption on or before the date of publication of a decision of the United States Customs Court or of the United States Court of Customs and Patent Appeals, rendered under the provisions of subsection (c) of this section, not in harmony with the published decision of the Secretary, shall be classified and the entries liquidated in accordance with such decision of

the Secretary, and, except as otherwise provided in this chapter, the liquidations of such entries shall be final and conclusive upon all parties. If the protest of the complainant is sustained in whole or in part by a decision of the United States Customs Court or of the United States Court of Customs and Patent Appeals, merchandise of the character covered by the published decision of the Secretary, which is entered for consumption or withdrawn from warehouse for consumption after the date of publication of such court decision, shall be subject to classification and assessment of duty in accordance with the final judicial decision on the complainant's protest, and the liquidation of entries covering such merchandise so entered or withdrawn shall be suspended until final disposition is made of such protest, whereupon such entries shall be liquidated, or if necessary, reliquidated in accordance with such final decision. Every proceeding arising under this subsection shall be given precedence over other cases on the dockets of the United States Customs Court and the United States Court of Customs and Patent Appeals, and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(c) Hearing and determination.

A copy of every appeal and every protest filed by an American manufacturer, producer, or wholesaler under the provisions of this section shall be mailed by the collector to the consignee or his agent within five days after the filing thereof, and such consignee or his agent shall have the right to appear and to be heard as a party in interest before the United States Customs Court. The collector shall transmit the entry and all papers and exhibits accompanying or connected therewith to the United States Customs Court for due assignment and determination of the proper value or of the proper classification and rate of duty. The decision of the United States Customs Court upon any such appeal or protest shall be final and conclusive upon all parties unless an appeal is taken by either party to the Court of Customs and Patent Appeals, as provided in sections 1501 and 1515 of this title.

(d) Inspection of documents.

In proceedings instituted under the provisions of this section an American manufacturer, producer, or wholesaler shall not have the right to inspect any documents or papers of the consignee or importer disclosing any information which the United States Customs Court or any judge or division thereof shall deem unnecessary or improper to be disclosed to him. (June 17, 1930, ch. 497, title IV, § 516, 46 Stat. 735; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 17 (a), 52 Stat. 1084.)

EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

Subsections (b), and (c) of section 17 of act June 25, 1938, cited to text, provided as follows: "(b) The provisions of subsection (b) of section 516 of the Tariff Act of 1930 (this section), as amended by this act, shall apply only in the case of complaints filed after the effective date of this act (see section 1653a post). The provisions of subsection (b) of section 516 of the Tariff Act of 1930, as in force prior to the effective date of this act, shall continue in force

with respect to any proceedings commenced by the filing of a complaint thereunder, except that upon the expiration of thirty days after the effective date of this act, or upon the expiration of thirty days after the date of a decision of the Secretary adverse to the complainant, whichever is the later, any such proceedings in which a protest has not been duly filed shall be deemed to have been terminated unless the complainant shall have filed with the Secretary after the effective date of this act a notice that he desires to protest the classification of, or rate of duty assessed upon, the merchandise.

"(c) The provisions of subsection (b) of section 516 of the Tariff Act of 1930, as amended by this act, shall not apply with respect to any article of a class or kind which is named or described in any obligation undertaken by the United States in a foreign trade agreement entered into under section 350 of the Tariff Act of 1930 (U. S. C., 1934 edition, title 19, sec. 1351)."

#### CROSS REFERENCES

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

Section not to apply to any article with respect to which a foreign trade agreement has been concluded pursuant to section 1351 et seq of this title, see section 1352 of this title

#### § 1517. Frivolous protest or appeal.

The United States Customs Court shall, upon motion of counsel for the Government and may, upon its own motion, decide whether any appeal for reappraisal or protest filed under the provisions of sections 1501, 1514, 1515, or 1516 of this title is frivolous, and, if said court shall decide that such appeal or protest is frivolous, a penalty of not less than \$5 nor more than \$250 shall be assessed against the person filing such appeal or protest: *Provided*, That all appeals for reappraisal or protests filed by the same person and raising the same issue shall, if held frivolous by said court, be consolidated and deemed one proceeding for the purpose of imposing the penalty provided in this section: *Provided further*, That the person against whom such penalty is assessed may have a review by the Court of Customs and Patent Appeals of the decision of the United States Customs Court by filing an appeal within the time and in the manner provided by section 310 of Title 28. (June 17, 1930, ch. 497, title IV, § 517, 46 Stat. 737.)

#### § 1518. United States Customs Court.

Subject matter of section June 10, 1890, ch. 407, § 12, 26 Stat. 136; May 27, 1908, ch. 205, § 3, 35 Stat. 406; Aug. 5, 1909, ch. 6, § 28, 36 Stat. 98; May 28, 1926, ch. 411, § 1, 44 Stat. 669, act June 17, 1930, ch. 497, title 4, § 518, 46 Stat. 737, is now covered by sections 296 and 297 of Title 28. Judicial Code and Judiciary.

#### § 1519. Publication of decisions of customs court.

All decisions of the United States Customs Court shall be preserved and filed and shall be open to inspection, and it shall be the duty of the court to forward a copy of each decision to the collector of customs for the district in which the merchandise affected thereby was imported and to forward an additional copy to the Secretary of the Treasury, who shall cause such decisions as he or the court shall deem sufficiently important to be published in full, or, if neither the Secretary of the Treasury nor the court deems a full publication thereof necessary, then the court shall cause abstracts of such decisions to be made for publication, and such decisions and

abstracts thereof shall be published from time to time and at least once each week for the information of customs officers and the public. (June 17, 1930, ch. 497, title IV, § 519, 46 Stat. 739.)

#### § 1520. Refunds and errors.

(a) The Secretary of the Treasury is hereby authorized to refund duties or other receipts in the following cases:

(1) *Excess deposits*.—Whenever it is ascertained on liquidation or reliquidation of an entry that more money has been deposited or paid as duties than was required by law to be so deposited or paid;

(2) *Fees, charges, and exactions*.—Whenever it is determined in the manner required by law that any fees, charges, or exactions, other than duties and taxes, have been erroneously or excessively collected; and

(3) *Fines, penalties, and forfeitures*.—Whenever money has been deposited in the Treasury on account of a fine, penalty, or forfeiture which did not accrue, or which is finally determined to have accrued in an amount less than that so deposited, or which is mitigated to an amount less than that so deposited or is remitted.

(b) Repealed.

(c) Notwithstanding a valid protest was not filed, the Secretary of the Treasury may authorize a collector to reliquidate an entry to correct—

(1) A clerical error in any entry or liquidation discovered within one year after the date of entry, or within sixty days after liquidation when liquidation is made more than ten months after the date of entry; or

(2) Any assessment of duty on household or personal effects which by law were not subject to duty and in respect of which an application for refund has been filed with the collector within one year after the date of entry. (June 17, 1930, ch. 497, title IV, § 520, 46 Stat. 739; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 18, 52 Stat. 1086.)

#### REPEAL

Paragraph (b) of this section, making permanent appropriation, was repealed by act June 26, 1934, ch. 756, § 2, 48 Stat. 1225, eff. July 1, 1935, such act authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury. See section 725a (b) of Title 31, Money and Finance.

#### EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

#### CROSS REFERENCE

Appropriation account covering "Refunding moneys erroneously received and covered (Customs)" abolished and unobligated balances transferred to surplus fund of Treasury, see section 725q of Title 31, Money and Finance.

#### § 1521. Reliquidation on account of fraud.

If the collector finds probable cause to believe there is fraud in the case, he may reliquidate an entry within two years (exclusive of the time during which a protest is pending) after the date of liquidation or last reliquidation. (June 17, 1930, ch. 497, title IV, § 521, 46 Stat. 739.)

**§ 1522. Conversion of currency.**

Section, act June 17, 1930, ch. 497, title IV, § 522, 46 Stat. 739, amended section 372 of Title 31, Money and Finance.

**§ 1523. Comptrollers of Customs.**

Naval officers of customs in office on September 22, 1922, and their successors shall continue to be known as Comptrollers of Customs.

Comptrollers of Customs shall examine the collector's accounts of receipts and disbursements of money and receipts and disposition of merchandise and certify the same to the Secretary of the Treasury for transmission to the General Accounting Office. They shall perform such other duties as the Secretary of the Treasury may from time to time prescribe, and their administrative examination shall extend to all customs districts assigned to them by the Secretary of the Treasury.

Comptrollers of customs shall verify all assessments of duties and allowances of drawbacks made by collectors in connection with the liquidation thereof. In cases of disagreement between a collector and a Comptroller of Customs, the latter shall report the facts to the Secretary of the Treasury for instructions.

This section shall not be construed to affect the manner of appointment, the terms of office, or the compensation of any such officer as now provided by law, nor to affect the provisions of sections 1, 2, 11, 13-24, 41-56 of Title 31 (June 17, 1930, ch. 497, title IV, § 523, 46 Stat. 740.)

**§ 1524. Deposit of reimbursable charges.**

Receipts for any reimbursable charges or expenses which have been paid for out of any appropriation for collecting the revenue from customs shall be deposited as a refund to such appropriation instead of being covered into the Treasury as miscellaneous receipts, as provided by section 527 of this title. (June 17, 1930, ch. 497, title IV, § 524, 46 Stat. 741; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 19 (b), 52 Stat. 1087.)

**EFFECTIVE DATE**

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

**§ 1525. Details to District of Columbia from field service.**

In connection with the enforcement of this chapter, the Secretary of the Treasury is authorized to use in the District of Columbia not to exceed ten persons detailed from the field force of the Customs Service and paid from the appropriation for the expense of collecting the revenue from customs. (June 17, 1930, ch. 497, title IV, § 525, 46 Stat. 741.)

**§ 1526. Merchandise bearing American trade-mark—(a) Importation prohibited.**

It shall be unlawful to import into the United States any merchandise of foreign manufacture if such merchandise, or the label, sign, print, package, wrapper, or receptacle, bears a trade mark owned by a citizen of, or by a corporation or association

created or organized within, the United States, and registered in the Patent Office by a person domiciled in the United States, under the provisions of sections 81-109 of Title 15, and if a copy of the certificate of registration of such trade mark is filed with the Secretary of the Treasury, in the manner provided in section 106 of said Title 15, unless written consent of the owner of such trade mark is produced at the time of making entry.

**(b) Seizure and forfeiture.**

Any such merchandise imported into the United States in violation of the provisions of this section shall be subject to seizure and forfeiture for violation of the customs laws.

**(c) Injunction and damages.**

Any person dealing in any such merchandise may be enjoined from dealing therein within the United States or may be required to export or destroy such merchandise or to remove or obliterate such trade mark and shall be liable for the same damages and profits provided for wrongful use of a trade mark, under the provisions of such sections 81-109 of Title 15. (June 17, 1930, ch. 497, title IV, § 526, 46 Stat. 741.)

**§ 1527. Importation of wild mammals and birds in violation of foreign law—(a) Importation prohibited.**

If the laws or regulations of any country, dependency, province, or other subdivision of government restrict the taking, killing, possession, or exportation to the United States, of any wild mammal or bird alive or dead, or restrict the exportation to the United States of any part or product of any wild mammal or bird, whether raw or manufactured, no such mammal or bird, or part or product thereof, shall, after the expiration of ninety days after June 17, 1930, be imported into the United States from such country, dependency, province, or other subdivision of government, directly or indirectly, unless accompanied by a certification of the United States consul, for the consular district in which is located the port or place from which such mammal or bird, or part or product thereof, was exported from such country, dependency, province, or other subdivision of government, that such mammal or bird, or part or product thereof, has not been acquired or exported in violation of the laws or regulations of such country, dependency, province, or other subdivision of government.

**(b) Forfeiture.**

Any mammal or bird, alive or dead, or any part or product thereof, whether raw or manufactured, imported into the United States in violation of the provisions of the preceding subdivision shall be subject to seizure and forfeiture under the customs laws. Any such article so forfeited may, in the discretion of the Secretary of the Treasury and under such regulations as he may prescribe, be placed with the departments or bureaus of the Federal or State Governments, or with societies or museums, for exhibition or scientific or educational purposes, or destroyed, or (except in the case of heads or horns of wild mammals) sold in the manner provided by law.

**(c) Section not to apply in certain cases.**

The provisions of this section shall not apply in the case of—

**(1) Prohibited importations.**

Articles, the importation of which is prohibited under the provisions of this chapter, or of section 391 of Title 18, or of any other law;

**(2) Scientific or educational purposes.**

Wild mammals or birds, alive or dead, or parts or products thereof, whether raw or manufactured, imported for scientific or educational purposes;

**(3) Certain migratory game birds.**

Migratory game birds (for which an open season is provided by the laws of the United States and any foreign country which is a party to a treaty with the United States, in effect on the date of importation, relating to the protection of such migratory game birds) brought into the United States by bona fide sportsmen returning from hunting trips in such country, if at the time of importation the possession of such birds is not prohibited by the laws of such country or of the United States. (June 17, 1930, ch. 497, title IV, § 527, 46 Stat. 741.)

**§ 1528. Taxes not to be construed as duties.**

No tax or other charge imposed by or pursuant to any law of the United States shall be construed to be a customs duty for the purpose of any statute relating to the customs revenue, unless the law imposing such tax or charge designates it as a customs duty or contains a provision to the effect that it shall be treated as a duty imposed under the customs laws. Nothing in this section shall be construed to limit or restrict the jurisdiction of the United States Customs Court or the United States Court of Customs and Patent Appeals. (June 17, 1930, ch. 497, title IV, § 528; as added June 25, 1938, 5 p. m. E. S. T., ch. 679, § 20, 52 Stat. 1087.)

**EFFECTIVE DATE**

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided

**PART IV.—TRANSPORTATION IN BOND AND WAREHOUSING OF MERCHANDISE****§ 1551. Bonding of carriers.**

Any common carrier of merchandise owning or operating railroad, steamship, or other transportation lines or routes for the transportation of merchandise in the United States, upon application and the filing of a bond in a form and penalty and with such sureties as may be approved by the Secretary of the Treasury, may be designated as a carrier of bonded merchandise for the final release of which from customs custody a permit has not been issued. (June 17, 1930, ch. 497, title IV, § 551, 46 Stat. 742.)

**§ 1551a. Bonded cartmen or lightermen.**

The Secretary of the Treasury be, and he is hereby, authorized, when it appears to him to be in the interest of commerce, and notwithstanding any provision of law or regulation requiring that the transportation of imported merchandise be by a bonded common

carrier, to permit such merchandise which has been entered and examined for customs purposes to be transported by bonded cartmen or bonded lightermen between the ports of New York, Newark, and Perth Amboy, which are all included in Customs Collection District Numbered 10 (New York): *Provided*, That this resolution shall not be construed to deprive any of the ports affected of its rights and privileges as a port of entry. (June 19, 1936, ch. 611, 49 Stat. 1538.)

**CODIFICATION**

Section is not part of Tariff Act of 1930 constituting this chapter.

**§ 1552. Entry for immediate transportation.**

Any merchandise, other than explosives and merchandise the importation of which is prohibited, arriving at a port of entry in the United States, may be entered, under such rules and regulations as the Secretary of the Treasury may prescribe, for transportation in bond without appraisement to any other port of entry designated by the consignee, or his agent, and by such bonded carrier as he designates, there to be entered in accordance with the provisions of this chapter. (June 17, 1930, ch. 497, title IV, § 552, 46 Stat. 742.)

**§ 1553. Entry for transportation and exportation.**

Any merchandise, other than explosives and merchandise the importation of which is prohibited, shown by the manifest, bill of lading, shipping receipt, or other document to be destined to a foreign country, may be entered for transportation in bond through the United States by a bonded carrier without appraisement or the payment of duties and exported under such regulations as the Secretary of the Treasury shall prescribe; and any baggage or personal effects not containing merchandise the importation of which is prohibited arriving in the United States destined to a foreign country may, upon the request of the owner or carrier having the same in possession for transportation, be entered for transportation in bond through the United States by a bonded carrier without appraisement or the payment of duty, under such regulations as the Secretary of the Treasury may prescribe. In places where no bonded common-carrier facilities are reasonably available, such merchandise may be so transported otherwise than by a bonded common carrier under such regulations as the Secretary of the Treasury shall prescribe. (June 17, 1930, ch. 497, title IV, § 553, 46 Stat. 742; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 21, 52 Stat. 1087.)

**EFFECTIVE DATE**

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

**§ 1554. Transportation through contiguous countries.**

With the consent of the proper authorities, imported merchandise, in bond or duty-paid, and products and manufactures of the United States, may be transported from one port to another in the United States through contiguous countries, under such regulations as the Secretary of the Treasury shall

prescribe, unless such transportation is in violation of R. S. § 4347, section 883 of Title 46 or section 1588 of this title. (June 17, 1930, ch. 497, title IV, § 554, 46 Stat. 743.)

REFERENCES IN TEXT

R. S. § 4347, cited in body of text, was superseded by section 290 of Title 46, Shipping, covering same subject-matter.

§ 1555. Bonded warehouses.

Buildings or parts of buildings and other enclosures may be designated by the Secretary of the Treasury as bonded warehouses for the storage of imported merchandise entered for warehousing, or taken possession of by the collector, or under seizure, or for the manufacture of merchandise in bond, or for the repacking, sorting, or cleaning of imported merchandise. Such warehouses may be bonded for the storing of such merchandise only as shall belong or be consigned to the owners or proprietors thereof and be known as private bonded warehouses, or for the storage of imported merchandise generally and be known as public bonded warehouses. Before any imported merchandise not finally released from customs custody shall be stored in any such premises, the owner or lessee thereof shall give a bond in such sum and with such sureties as may be approved by the Secretary of the Treasury to secure the Government against any loss or expense connected with or arising from the deposit, storage, or manipulation of merchandise in such warehouse. Except as otherwise provided in this chapter, bonded warehouses shall be used solely for the storage of imported merchandise and shall be placed in charge of a proper officer of the customs, who, together with the proprietor thereof, shall have joint custody of all merchandise stored in the warehouse; and all labor on the merchandise so stored shall be performed by the owner or proprietor of the warehouse, under supervision of the officer of the customs in charge of the same, at the expense of the owner or proprietor. The compensation of such officer of the customs and other customs employees appointed to supervise the receipt of merchandise into any such warehouse and deliveries therefrom shall be reimbursed to the Government by the proprietor of such warehouse. (June 17, 1930, ch. 497, title IV, § 555, 46 Stat. 743.)

§ 1556. Same—Regulations for establishing.

The Secretary of the Treasury shall from time to time establish such rules and regulations as may be necessary for the establishment of bonded warehouses and to protect the interests of the Government in the conduct, management, and operation of such warehouses and in the withdrawal of and accounting for merchandise deposited therein. (June 17, 1930, ch. 497, title IV, § 556, 46 Stat. 743.)

§ 1557. Entry for warehouse; warehouse period; drawback.

(a) Any merchandise subject to duty, with the exception of perishable articles and explosive substances other than firecrackers, may be entered for warehousing and be deposited in a bonded warehouse at the expense and risk of the owner, importer, or consignee. Such merchandise may be withdrawn, at

any time within three years from the date of importation, for consumption upon payment of the duties and charges accruing thereon at the rate of duty imposed by law upon such merchandise at the date of withdrawal; or may be withdrawn for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or the island of Guam, without the payment of duties thereon, or for transportation and rewarehousing at another port or elsewhere, or for transfer to another bonded warehouse at the same port: *Provided*, That the total period of time for which such merchandise may remain in bonded warehouse shall not exceed three years from the date of importation. Merchandise upon which the duties have been paid and which shall have remained continuously in bonded warehouse or otherwise in the custody and under the control of customs officers, may be entered or withdrawn at any time within three years after the date of importation for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or the island of Guam, under such regulations as the Secretary of the Treasury shall prescribe, and upon such entry or withdrawal, and exportation or shipment, the duties thereon shall be refunded.

(b) The right to withdraw any merchandise entered in accordance with subsection (a) of this section for the purposes specified in such subsection may be transferred upon compliance with regulations prescribed by the Secretary of the Treasury. So long as any such transfer remains unrevoked the transferee shall have, with respect to the merchandise the subject of the transfer, all rights to file protests, and to the privileges provided for in this section and in sections 1562 and 1563 of this title which would otherwise be possessed by the transferor. The transferee shall also have the right to receive all lawful refunds of moneys paid by him to the United States with respect to the merchandise and no revocation of any transfer shall deprive him of this right. Any such transfer may be made irrevocable by the filing of a bond of the transferee in such amount and with such conditions as the Secretary of the Treasury shall prescribe, including an obligation to pay all unpaid regular, increased, and additional duties, charges, and exactions on the merchandise the subject of the transfer. Upon the filing of such bond the transferor shall be relieved from liability for the payment of duties, charges, and exactions on the merchandise the subject of the transfer, but shall remain bound by all other unsatisfied conditions of his bond.

(c) Merchandise entered under bond, under any provision of law, may, upon payment of all charges other than duty on the merchandise, be destroyed, at the request and at the expense of the consignee, within the bonded period under customs supervision, in lieu of exportation, and upon such destruction the entry of such merchandise shall be liquidated without payment of duty and any duties collected shall be refunded. (June 17, 1930, ch. 497, title IV, § 557,



46 Stat. 744; June 25, 1938, 5 p. m. E. S. T., ch. 679, §§ 2, 22 (a), 23 (a), 52 Stat. 1077, 1087, 1088.)

#### EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

§ 1558. No remission or refund after release of merchandise.

(a) No remission, abatement, refund, or drawback of estimated or liquidated duty shall be allowed because of the exportation or destruction of any merchandise after its release from the custody of the Government, except in the following cases:

(1) When articles are exported with respect to which a drawback of duties is expressly provided for by law;

(2) When prohibited articles have been regularly entered in good faith and are subsequently exported or destroyed pursuant to a law of the United States and under such regulations as the Secretary of the Treasury may prescribe; and

(3) When articles entered under bond, under any provision of law, are destroyed within the bonded period as provided for in section 1557 of this title, or are destroyed within the bonded period by death, accidental fire, or other casualty, and proof of such destruction is furnished which shall be satisfactory to the Secretary of the Treasury, in which case any accrued duties shall be remitted or refunded and any condition in the bond that the articles shall be exported shall be deemed to have been satisfied.

(b) When articles are exported or destroyed under customs supervision after once having been released from customs custody, as provided for in subsection (c) of section 1304 of this title, such exportation or destruction shall not exempt such articles from the payment of duties other than the marking duty provided for in such subsection (c). (June 17, 1930, ch. 497, title IV, § 558, 46 Stat. 744; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 24, 52 Stat. 1088.)

#### EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

§ 1559. Warehouse goods deemed abandoned after 3 years.

Merchandise upon which any duties or charges are unpaid, remaining in bonded warehouse beyond three years from the date of importation, shall be regarded as abandoned to the Government and shall be sold under such regulations as the Secretary of the Treasury shall prescribe, and the proceeds of sale paid into the Treasury, as in the case of unclaimed merchandise covered by section 1493 of this title, subject to the payment to the owner or consignee of such amount, if any, as shall remain after deduction of duties, charges, and expenses. Merchandise upon which all duties and charges have been paid, remaining in bonded warehouse beyond three years from the date of importation, shall be held to be no longer in the custody or control of the officers of the customs. (June 17, 1930, ch. 497,

title IV, § 559, 46 Stat. 744; June 22, 1938, ch. 679, § 23 (a) 52 Stat. 1088.)

#### AMENDMENT

Subsection (b) of act June 22, 1938, cited to text, provided as follows: "(b) The amendments made by subsection (a) of this section shall apply in the case of grain imported prior to the effective date of this act (see section 1653a, post) which, on such date, has not become abandoned to the Government under section 491 or 559 of the Tariff Act of 1930 (U. S. C., 1934 edition, title 19, sec. 1491 or 1559), and which has remained in the custody of customs officers."

#### EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

#### CROSS REFERENCE

Repeal of permanent appropriation in this section, see section 725a (b) of Title 31, Money and Finance.

§ 1560. Leasing of warehouses.

The Secretary of the Treasury may cause to be set aside any available space in a building used as a customhouse for the storage of bonded merchandise or may lease premises for the storage of unclaimed merchandise or other imported merchandise required to be stored by the Government, and set aside a portion of such leased premises for the storage of bonded merchandise: *Provided*, That no part of any premises owned or leased by the Government may be used for the storage of bonded merchandise at any port at which a public bonded warehouse has been established and is in operation. All the premises so leased shall be leased on public account and the storage and other charges shall be deposited and accounted for as customs receipts, and the rates therefor shall not be less than the charges for storage and similar services made at such port of entry by commercial concerns for the storage and handling of merchandise. No collector or other officer of the customs shall own, in whole or in part, any bonded warehouse or enter into any contract or agreement for the lease or use of any building to be thereafter erected as a public store or warehouse. No lease of any building to be so used shall be taken for a longer period than three years, nor shall rent for any such premises be paid, in whole or in part, in advance. (June 17, 1930, ch. 497, title IV, § 560, 46 Stat. 745.)

§ 1561. Public stores.

Any premises owned or leased by the Government and used for the storage of merchandise for the final release of which from customs custody a permit has not been issued shall be known as a "public store." (June 17, 1930, ch. 497, title IV, § 561, 46 Stat. 745.)

§ 1562. Manipulation in warehouse.

Unless by special authority of the Secretary of the Treasury, no merchandise shall be withdrawn from bonded warehouse in less quantity than an entire bale, cask, box, or other package; or, if in bulk, in the entire quantity imported or in a quantity not less than one ton weight. All merchandise so withdrawn shall be withdrawn in the original packages in which imported unless, upon the application of the im-

porter, it appears to the collector that it is necessary to the safety or preservation of the merchandise to repack or transfer the same: *Provided*, That upon permission therefor being granted by the Secretary of the Treasury, and under customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose and be withdrawn therefrom for exportation to a foreign country or for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or the island of Guam, without payment of the duties, or for consumption, upon payment of the duties accruing thereon, in its condition and quantity, and at its weight, at the time of withdrawal from warehouse, with such additions to or reductions from the final appraised value as may be necessary by reason of change in condition. The basis for the assessment of duties on such merchandise so withdrawn for consumption shall be the entered value or the adjusted final appraised value, whichever is higher, and if the rate of duty is based upon or regulated in any manner by the value of the merchandise such rate shall be based upon or regulated by such adjusted final appraised value; but for the purpose of the ascertainment and assessment of additional duties under section 1489 of this title adjustments of the final appraised value shall be disregarded. The scouring or carbonizing of wool shall not be considered a process of manufacture within the provisions of this section. Under such regulations as the Secretary of the Treasury shall prescribe, imported merchandise which has been entered and which has remained in continuous customs custody may be manipulated in accordance with the provisions of this section under customs supervision and at the risk and expense of the consignee, but elsewhere than in a bonded warehouse, in cases where neither the protection of the revenue nor the proper conduct of customs business requires that such manipulation be done in a bonded warehouse. (June 17, 1930, ch. 497, title IV, § 562, 46 Stat. 745; June 25, 1938, 5 p. m. E. S. T., ch. 679, §§ 2, 25, 52 Stat. 1077, 1088.)

#### EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

#### § 1563. Allowance for loss—Abandonment of warehouse goods—(a) Allowance.

In no case shall there be any abatement or allowance made in the duties for any injury, deterioration, loss, or damage sustained by any merchandise while remaining in customs custody, except that the Secretary of the Treasury is authorized, upon production of proof satisfactory to him of the loss or theft of any merchandise while in the appraiser's stores, or of the actual injury or destruction, in whole or in part, of any merchandise by accidental fire or other casualty, while in bonded warehouse, or in the appraiser's stores, or while in transportation under bond, or while in the custody of the officers of the customs, although not in bond, or while within the limits of any port of entry and

before having been landed under the supervision of the officers of the customs, to abate or refund, as the case may be, the duties upon such merchandise, in whole or in part, and to pay any such refund out of any moneys in the Treasury not otherwise appropriated, and to cancel any warehouse bond or bonds, or enter satisfaction thereon in whole or in part, as the case may be, but no abatement or refund shall be made in respect of injury or destruction of any merchandise in bonded warehouse occurring after the expiration of three years from the date of importation. The decision of the Secretary of the Treasury as to the abatement or refund of the duties on any such merchandise shall be final and conclusive upon all persons.

The Secretary of the Treasury is authorized to prescribe such regulations as he may deem necessary to carry out the provisions of this subdivision, and he may by such regulations limit the time within which proof of loss, theft, injury, or destruction shall be submitted, and may provide for the abatement or refund of duties, as authorized herein, by collectors of customs in cases in which the amount of the abatement or refund claimed is less than \$25 and in which the importer has agreed to abide by the decision of the collector. The decision of the collector in any such case shall be final and conclusive upon all persons.

Any case pending before the United States Customs Court on June 18, 1930, under the provisions of section 464 of this title, may, with the consent of the parties and the permission of the court, be transferred to the Secretary of the Treasury, or to the collector, for consideration and final determination in accordance with the provisions of this subdivision.

#### (b) Abandonment.

Under such regulations as the Secretary of the Treasury may prescribe and subject to any conditions imposed thereby, the consignee may at any time within three years from the date of original importation, abandon to the Government any merchandise in bonded warehouse, whereupon any duties on such merchandise may be remitted or refunded as the case may be, but any merchandise so abandoned shall not be less than an entire package and shall be abandoned in the original package without having been repacked while in a bonded warehouse (other than a bonded manipulating warehouse). (June 17, 1930, ch. 497, title IV, § 563, 46 Stat. 746; June 22, 1938, ch. 679, § 23 (a), 52 Stat. 1088.)

#### AMENDMENT

Subsection (b) of act June 22, 1938, cited to text, provided as follows: "(b) The amendments made by subsection (a) of this section shall apply in the case of grain imported prior to the effective date of this act (see section 1653a, post) which, on such date, has not become abandoned to the Government under section 491 or 559 of the Tariff Act of 1930 (U. S. C., 1934 edition, title 19, sec. 1491 or 1559), and which has remained in the custody of customs officers."

#### EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

## CROSS REFERENCES

Effective July 1, 1935, the permanent appropriation provided for in the first paragraph of this section was repealed by act June 26, 1934, ch. 756, § 2, 48 Stat. 1226, such act authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury. See section 725a (b) of Title 31, Money and Finance.

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

## § 1564. Liens.

Whenever a collector of customs shall be notified in writing of the existence of a lien for freight, charges, or contribution in general average upon any imported merchandise sent to the appraiser's store for examination, entered for warehousing or taken possession of by him, he shall refuse to permit delivery thereof from public store or bonded warehouse until proof shall be produced that the said lien has been satisfied or discharged. The rights of the United States shall not be prejudiced or affected by the filing of such lien, nor shall the United States or its officers be liable for losses or damages consequent upon such refusal to permit delivery. If merchandise, regarding which such notice of lien has been filed, shall be forfeited or abandoned and sold, the freight, charges, or contribution in general average due thereon shall be paid from the proceeds of such sale in the same manner as other lawful charges and expenses are paid therefrom. (June 17, 1930, ch. 497, title IV, § 564, 46 Stat. 747.)

## CROSS REFERENCE

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

## § 1565. Cartage.

The cartage of merchandise entered for warehouse shall be done by cartmen to be appointed and licensed by the collector of customs and who shall give a bond, in a penal sum to be fixed by such collector, for the protection of the Government against any loss of, or damage to, such merchandise while being so carted. The cartage of merchandise designated for examination at the appraiser's stores, and of merchandise taken into custody by the collector as unclaimed shall be performed by such persons as may be designated, under contract or otherwise, by the Secretary of the Treasury, and under such regulations for the protection of the owners thereof and of the revenue as the Secretary of the Treasury shall prescribe. (June 17, 1930, ch. 497, title IV, § 565, 46 Stat. 747.)

## CROSS REFERENCE

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

## PART V.—ENFORCEMENT PROVISIONS

## § 1581. Boarding vessels.

(a) Any officer of the customs may at any time go on board of any vessel or vehicle at any place in the United States or within the customs waters or, as he may be authorized, within a customs-enforcement area established under sections 1701-1711 of this title, or at any other authorized place, without as well as within his district, and examine the manifest and other documents and papers and examine, inspect, and search the vessel or vehicle and every

part thereof and any person, trunk, package, or cargo on board, and to this end may hail and stop such vessel or vehicle, and use all necessary force to compel compliance.

(b) Officers of the Department of Commerce and other persons authorized by such department may go on board of any vessel at any place in the United States or within the customs waters and hail, stop, and board such vessel in the enforcement of the navigation laws and arrest or, in case of escape or attempted escape, pursue and arrest any person engaged in the breach or violation of the navigation laws.

(c) Any master of a vessel being examined as herein provided, who presents any forged, altered, or false document or paper to the examining officer, knowing the same to be forged, altered, or false and without revealing the fact shall, in addition to any forfeiture to which in consequence the vessel may be subject, be liable to a fine of not more than \$5,000 nor less than \$500.

(d) Any vessel or vehicle which, at any authorized place, is required to come to a stop by any officer of the customs, or is required to come to a stop by signal made by any vessel employed in the service of the customs displaying the ensign and pennant prescribed for such vessel by the President, shall come to a stop, and upon failure to comply, a vessel so required to come to a stop shall become subject to pursuit and the master thereof shall be liable to a fine of not more than \$5,000 nor less than \$1,000. It shall be the duty of the several officers of the customs to pursue any vessel which may become subject to pursuit, and to board and examine the same, and to examine any person or merchandise on board, without as well as within their respective districts and at any place upon the high seas or, if permitted by the appropriate foreign authority, elsewhere where the vessel may be pursued as well as at any other authorized place.

(e) If upon the examination of any vessel or vehicle it shall appear that a breach of the laws of the United States is being or has been committed so as to render such vessel or vehicle, or the merchandise, or any part thereof, on board of, or brought into the United States by, such vessel or vehicle, liable to forfeiture or to secure any fine or penalty, the same shall be seized and any person who has engaged in such breach shall be arrested.

(f) It shall be the duty of the several officers of the customs to seize and secure any vessel, vehicle, or merchandise which shall become liable to seizure, and to arrest any person who shall become liable to arrest, by virtue of any law respecting the revenue, as well without as within their respective districts, and to use all necessary force to seize or arrest the same.

(g) Any vessel, within or without the customs waters, from which any merchandise is being, or has been, unlawfully introduced into the United States by means of any boat belonging to, or owned, controlled, or managed in common with, said vessel, shall be deemed to be employed within the United States and, as such, subject to the provisions of this section.

(h) The provisions of this section shall not be construed to authorize or require any officer of the United States to enforce any law of the United States upon the high seas upon a foreign vessel in contravention of any treaty with a foreign government enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon said vessel upon the high seas the laws of the United States except as such authorities are or may otherwise be enabled or permitted under special arrangement with such foreign government. (June 17, 1930, ch. 497, title IV, § 581, 46 Stat. 747; Aug. 5, 1935, ch. 438, title II, § 203, 49 Stat. 521.)

**§ 1582. Search of persons and baggage; regulations.**

The Secretary of the Treasury may prescribe regulations for the search of persons and baggage and he is authorized to employ female inspectors for the examination and search of persons of their own sex; and all persons coming into the United States from foreign countries shall be liable to detention and search by authorized officers or agents of the Government under such regulations. (June 17, 1930, ch. 497, title IV, § 582, 46 Stat. 748.)

**§ 1583. Certification of manifest.**

The master of every vessel and the person in charge of every vehicle bound to a port or place in the United States shall deliver to the officer of the customs or Coast Guard who shall first demand it of him, the original and one copy of the manifest of such vessel or vehicle, and such officer shall certify on the back of the original manifest to the inspection thereof and return the same to the master or other person in charge. (June 17, 1930, ch. 497, title IV, § 583, 46 Stat. 748.)

**§ 1584. Falsity or lack of manifest; penalties.**

Any master of any vessel and any person in charge of any vehicle bound to the United States who does not produce the manifest to the officer demanding the same shall be liable to a penalty of \$500, and if any merchandise, including sea stores, is found on board of or after having been unladen from such vessel or vehicle which is not included or described in said manifest or does not agree therewith, the master of such vessel or the person in charge of such vehicle or the owner of such vessel or vehicle shall be liable to a penalty equal to the value of the merchandise so found or unladen, and any such merchandise belonging or consigned to the master or other officer or to any of the crew of such vessel, or to the owner or person in charge of such vehicle, shall be subject to forfeiture, and if any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge or the owner of such vessel or vehicle shall be subject to a penalty of \$500: *Provided*, That if the collector shall be satisfied that the manifest was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master, said penalties shall not be incurred.

If any of such merchandise so found consists of heroin, morphine, or cocaine, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle shall be liable to a penalty of \$50 for each ounce thereof so found. If any of such merchandise so found consists of smoking opium or opium prepared for smoking, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle shall be liable to a penalty of \$25 for each ounce thereof so found. If any of such merchandise so found consists of crude opium, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle shall be liable to a penalty of \$10 for each ounce thereof so found. Such penalties shall, notwithstanding the proviso in section 1594 of this title (relating to the immunity of vessels or vehicles used as common carriers), constitute a lien upon such vessel which may be enforced by a libel in rem; except that the master or owner of a vessel used by any person as a common carrier in the transaction of business as such common carrier shall not be liable to such penalties and the vessel shall not be held subject to the lien, if it appears to the satisfaction of the court that neither the master nor any of the officers (including licensed and unlicensed officers and petty officers) nor the owner of the vessel knew, and could not, by the exercise of the highest degree of care and diligence, have known, that such narcotic drugs were on board. Clearance of any such vessel may be withheld until such penalties are paid or until a bond, satisfactory to the collector, is given for the payment thereof. The provisions of this paragraph shall not prevent the forfeiture of any such vessel or vehicle under any other provision of law.

If any of such merchandise (sea stores excepted), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors for the importation of which into the United States a certificate is required under section 1707 of this title and the required certificate be not shown, be so found upon any vessel not exceeding five hundred net tons, the vessel shall, in addition to any other penalties herein or by law provided, be seized and forfeited, and, if any manifested merchandise (sea stores excepted) consisting of any such spirits, wines, or other alcoholic liquors be found upon any such vessel and the required certificate be not shown, the master of the vessel shall be liable to the penalty herein provided in the case of merchandise not duly manifested: *Provided*, That if the collector shall be satisfied that the certificate required for the importation of any spirits, wines, or other alcoholic liquors was issued and was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake, said penalties shall not be incurred. (June 17, 1930, ch. 497, title IV, § 584, 46 Stat. 748; Aug. 5, 1935, ch. 438, title II, § 204, 49 Stat. 523.)

**§ 1585. Departure before report or entry.**

If any vessel or vehicle from a foreign port or place arrives within the limits of any collection district and departs or attempts to depart, except from stress of weather or other necessity, without making a

report or entry under the provisions of this chapter, or if any merchandise is unladen therefrom before such report or entry, the master of such vessel shall be liable to a penalty of \$5,000, and the person in charge of such vehicle shall be liable to a penalty of \$500, and any such vessel or vehicle shall be forfeited, and any officer of the customs may cause such vessel or vehicle to be arrested and brought back to the most convenient port of the United States. (June 17, 1930, ch. 497, title IV, § 585, 46 Stat. 749; Aug. 5, 1935, ch. 438, title III, § 303, 49 Stat. 527.)

**CROSS REFERENCE**

Entry after visiting hovering vessel at arrival, see section 1432a of this title.

**§ 1586. Unlawful unloading or transshipment.**

(a) The master of any vessel from a foreign port or place who allows any merchandise (including sea stores) to be unladen from such vessel at any time after its arrival within the customs waters and before such vessel has come to the proper place for the discharge of such merchandise, and before he has received a permit to unlade, shall be liable to a penalty equal to twice the value of the merchandise but not less than \$1,000, and such vessel and its cargo and the merchandise so unladen shall be seized and forfeited.

(b) The master of any vessel from a foreign port or place who allows any merchandise (including sea stores), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors, to be unladen from his vessel at any place upon the high seas adjacent to the customs waters of the United States to be transshipped to or placed in or received on any vessel of any description, with knowledge, or under circumstances indicating the purpose to render it possible, that such merchandise, or any part thereof, may be introduced, or attempted to be introduced, into the United States in violation of law, shall be liable to a penalty equal to twice the value of the merchandise but not less than \$1,000, and the vessel from which the merchandise is so unladen, and its cargo and such merchandise, shall be seized and forfeited.

(c) The master of any vessel from a foreign port or place who allows any merchandise (including sea stores) destined to the United States, the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors, to be unladen, without permit to unlade, at any place upon the high seas adjacent to the customs waters of the United States, to be transshipped to or placed in or received on any vessel of the United States or any other vessel which is owned by any person a citizen of, or domiciled in, the United States, or any corporation incorporated in the United States, shall be liable to a penalty equal to twice the value of the merchandise but not less than \$1,000, and the vessel from which the merchandise is so unladen, and its cargo and such merchandise, shall be seized and forfeited.

(d) If any merchandise (including sea stores) unladen in violation of the provisions of this section is transshipped to or placed in or received on any

other vessel, the master of the vessel on which such merchandise is placed, and any person aiding or assisting therein, shall be liable to a penalty equal to twice the value of the merchandise, but not less than \$1,000, and such vessel, and its cargo and such merchandise, shall be seized and forfeited.

(e) Whoever, at any place, if a citizen of the United States, or at any place in the United States or within one league of the coast of the United States, if a foreign national, shall engage or aid or assist in any unloading or transshipment of any merchandise in consequence of which any vessel becomes subject to forfeiture under the provisions of this section shall, in addition to any other penalties provided by law, be liable to imprisonment for not more than two years.

(f) Whenever any part of the cargo or stores of a vessel has been unladen or transshipped because of accident, stress of weather, or other necessity, the master of such vessel and the master of any vessel to which such cargo or stores has been transshipped shall, as soon as possible thereafter, notify the collector of the district within which such unloading or transshipment has occurred, or the collector within the district at which such vessel shall first arrive thereafter, and shall furnish proof that such unloading or transshipment was made necessary by accident, stress of weather, or other unavoidable cause, and if the collector is satisfied that the unloading or transshipment was in fact due to accident, stress of weather, or other necessity, the penalties described in this section shall not be incurred. (June 17, 1930, ch. 497, title IV, § 586, 46 Stat. 749; Aug. 5, 1935, ch. 438, title II, § 205, 49 Stat. 524.)

**CROSS REFERENCE**

Entry after visiting hovering vessel at arrival, see section 1432a of this title.

**§ 1587. Examination of hovering vessels.**

(a) Any hovering vessel, or any vessel which fails (except for unavoidable cause), at any place within the customs waters or within a customs-enforcement area established under sections 1701-1711 of this title, to display lights as required by law, or which has become subject to pursuit as provided in section 1581 of this title, or which, being a foreign vessel to which subsection (h) of said section 1581 applies, is permitted by special arrangement with a foreign government to be so examined without the customs waters of the United States, may at any time be boarded and examined by any officer of the customs, and the provisions of said section 1581 shall apply thereto, as well without as within his district, and in examining the same, any such officer may also examine the master upon oath respecting the cargo and voyage of the vessel, and may also bring the vessel into the most convenient port of the United States to examine the cargo, and if the master of said vessel refuses to comply with the lawful directions of such officer or does not truly answer such questions as are put to him respecting the vessel, its cargo, or voyage, he shall be liable to a penalty of not more than \$5,000 nor less than \$500. If, upon the examination of any such vessel or its cargo by any officer of the customs, any dutiable merchandise destined to the

United States is found, or discovered to have been, on board thereof, the vessel and its cargo shall be seized and forfeited. It shall be presumed that any merchandise (sea stores excepted), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors, so found, or discovered to have been, on board thereof, is destined to the United States.

(b) If any vessel laden with cargo be found at any place in the United States or within the customs waters or within a customs-enforcement area established under sections 1701-1711 of this title and such vessel afterwards is found light or in ballast or having discharged its cargo or any part thereof, and the master is unable to give a due account of the port or place at which the cargo, or any part thereof, consisting of any merchandise the importation of which into the United States is prohibited or any spirits, wines, or other alcoholic liquors, was lawfully discharged, the vessel shall be seized and forfeited.

(c) Nothing contained in this section shall be construed to render any vessel liable to forfeiture which is bona fide bound from one foreign port to another foreign port, and which is pursuing her course, wind and weather permitting. (June 17, 1930, ch. 497, title IV, § 587, 46 Stat. 749; Aug. 5, 1935, ch. 438, title II, § 206, 49 Stat. 525.)

#### § 1588. Transportation between American ports via foreign ports.

If any merchandise is laden at any port or place in the United States upon any vessel belonging wholly or in part to a subject of a foreign country, and is taken thence to a foreign port or place to be reladen and reshipped to any other port in the United States, either by the same or by another vessel, foreign or American, with intent to evade the provisions relating to the transportation of merchandise from one port or place of the United States to another port or place of the United States in a vessel belonging wholly or in part to a subject of any foreign power, the merchandise shall, on its arrival at such last-named port or place, be seized and forfeited to the United States, and the vessel shall pay a tonnage duty of 50 cents per net ton. (June 17, 1930, ch. 497, title IV, § 588, 46 Stat. 749.)

#### § 1589. Unlawful relanding.

If any merchandise entered or withdrawn for exportation without payment of the duties thereon, or with intent to obtain a drawback of the duties paid, or of any other allowances given by law on the exportation thereof, is relanded at any place in the United States without entry therefor having been made, the same shall be considered and treated as having been imported into the United States contrary to law, and all persons concerned therein and such merchandise shall be liable to the same penalties as are prescribed by section 1593 of this title. (June 17, 1930, ch. 497, title IV, § 589, 46 Stat. 750.)

#### § 1590. False drawback claim.

If any person shall knowingly and willfully file any false or fraudulent entry or claim for the payment of drawback, allowance, or refund of duties upon the exportation of merchandise, or shall knowingly or

willfully make or file any false affidavit, abstract, record, certificate, or other document, with a view to securing the payment to himself or others of any drawback, allowance, or refund of duties, on the exportation of merchandise, greater than that legally due thereon, such person shall be guilty of a felony, and upon conviction thereof shall be punished by a fine of not more than \$5,000, or by imprisonment for not more than two years, or both, and the merchandise or the value thereof to which such false entry or claim, affidavit, abstract, record, certificate, or other document relates shall be subject to forfeiture. (June 17, 1930, ch. 497, title IV, § 590, 46 Stat. 750.)

#### § 1591. Fraud; personal penalties.

If any consignor, seller, owner, importer, consignee, agent, or other person or persons enters or introduces, or attempts to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or makes any false statement in any declaration under the provisions of section 1485 of this title (relating to declaration on entry) without reasonable cause to believe the truth of such statement, or aids or procures the making of any such false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, whether or not the United States shall or may be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement; or is guilty of any willful act or omission by means whereof the United States shall or may be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement, or affected by such act or omission, such person or persons shall upon conviction be fined for each offense a sum not exceeding \$5,000, or be imprisoned for a time not exceeding two years, or both, in the discretion of the court: *Provided*, That nothing in this section shall be construed to relieve imported merchandise from forfeiture by reason of such false statement or for any cause elsewhere provided by law. (June 17, 1930, ch. 497, title IV, § 591, 46 Stat. 750; Aug. 5, 1935, ch. 438, title III, § 304 (a), 49 Stat. 527.)

#### § 1592. Same; penalty against goods.

If any consignor, seller, owner, importer, consignee, agent, or other person or persons enters or introduces, or attempts to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or makes any false statement in any declaration under the provisions of section 1485 of this title (relating to declaration on entry)

without reasonable cause to believe the truth of such statement, or aids or procures the making of any such false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, whether or not the United States shall or may be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement; or is guilty of any willful act or omission by means whereof the United States is or may be deprived of the lawful duties or any portion thereof accruing upon the merchandise or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement, or affected by such act or omission, such merchandise, or the value thereof, to be recovered from such person or persons, shall be subject to forfeiture, which forfeiture shall only apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles of merchandise to which such fraud or false paper or statement relates. The arrival within the territorial limits of the United States of any merchandise consigned for sale and remaining the property of the shipper or consignor, and the acceptance of a false or fraudulent invoice thereof by the consignee or the agent of the consignor, or the existence of any other facts constituting an attempted fraud, shall be deemed, for the purposes of this section, to be an attempt to enter such merchandise notwithstanding no actual entry has been made or offered. (June 17, 1930, ch. 497, title IV, § 592, 46 Stat. 750; Aug. 5, 1935, ch. 438, title III, § 304 (b), 49 Stat. 527.)

**§ 1593. Smuggling and clandestine importations—(a) Fraud on revenue.**

If any person knowingly and willfully, with intent to defraud the revenue of the United States, smuggles, or clandestinely introduces into the United States any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice, or other document or paper, every such person, his, her, or their aids and abettors, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding \$5,000, or imprisoned for any term of time not exceeding two years, or both, at the discretion of the court.

**(b) Importation contrary to law.**

If any person fraudulently or knowingly imports or brings into the United States, or assists in so doing, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law, such merchandise shall be forfeited and the offender shall be fined in any sum not exceeding \$5,000 nor less than \$50, or be imprisoned for any time not exceeding two years, or both.

**(c) Presumptions.**

Whenever, on trial for a violation of this section, the defendant is shown to have or to have had possession of such goods, such possession shall be deemed

evidence sufficient to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the jury. (June 17, 1930, ch. 497, title IV, § 593, 46 Stat. 751.)

**CROSS REFERENCE**

Offense punishable by imprisonment for term in excess of one year deemed a felony, see section 541 of Title 18, Criminal Code and Criminal Procedure.

**§ 1594. Libel of vessels and vehicles.**

Whenever a vessel or vehicle, or the owner or master, conductor, driver, or other person in charge thereof, has become subject to a penalty for violation of the customs-revenue laws of the United States, such vessel or vehicle shall be held for the payment of such penalty and may be seized and proceeded against summarily by libel to recover the same: *Provided*, That no vessel or vehicle used by any person as a common carrier in the transaction of business as such common carrier shall be so held or subject to seizure or forfeiture under the customs laws, unless it shall appear that the owner or master of such vessel or the conductor, driver, or other person in charge of such vehicle was at the time of the alleged illegal act a consenting party or privy thereto. (June 17, 1930, ch. 497, title IV, § 594, 46 Stat. 751.)

**§ 1595. Searches and seizures—(a) Warrant.**

If any collector of customs or other officer or person authorized to make searches and seizures shall have cause to suspect the presence in any dwelling house, store, or other building or place of any merchandise upon which the duties have not been paid, or which has been otherwise brought into the United States contrary to law, he may make application, under oath, to any justice of the peace, to any municipal, county, State, or Federal judge, or to any United States commissioner, and shall thereupon be entitled to a warrant to enter such dwelling house in the daytime only, or such store or other place at night or by day, and to search for and seize such merchandise: *Provided*, That if any such house, store, or other building, or place in which such merchandise shall be found, is upon or within ten feet of the boundary line between the United States and a foreign country, such portion thereof as is within the United States may forthwith be taken down or removed.

**(b) Entry upon property of others.**

Any person authorized by this chapter to make searches and seizures, or any person assisting him or acting under his directions, may, if deemed necessary by him or them, enter into or upon or pass through the lands, inclosures, and buildings, other than the dwelling house, of any person whomsoever, in the discharge of his official duties. (June 17, 1930, ch. 497, title IV, § 595, 46 Stat. 752.)

**§ 1596. Buildings on boundary.**

Any person who receives or deposits any merchandise in any building upon the boundary line between the United States and any foreign country, or carries any merchandise through the same, or aids therein, in violation of law, shall be punishable by a fine of not more than \$5,000 or by imprisonment for not



more than two years, or both. (June 17, 1930, ch. 497, title IV, § 596, 46 Stat. 752.)

**§ 1597. Fraudulent treatment of goods in warehouse.**

If any merchandise is fraudulently concealed in, removed from, or repacked in any bonded warehouse, or if any marks or numbers placed upon packages deposited in such a warehouse be fraudulently altered, defaced, or obliterated, such merchandise and packages shall be subject to forfeiture, and all persons convicted of the fraudulent concealment, repacking, or removal of such merchandise, or of altering, defacing, or obliterating such marks and numbers thereon, and all persons aiding and abetting therein shall be liable to the same penalties as are imposed by section 1593 of this title. (June 17, 1930, ch. 497, title IV, § 597, 46 Stat. 752.)

**§ 1598. Offenses relating to seals; unlawful removal of goods from customs custody.**

If any unauthorized person affixes, attaches, or in any way willfully assists or encourages the affixing or attaching of a customs seal, fastening, or mark, or any seal, fastening, or mark purporting to be a customs seal, fastening, or mark to any vessel, vehicle, warehouse, or package; or if any unauthorized person willfully or maliciously removes, breaks, injures, or defaces any customs seal or other fastening placed upon any vessel, vehicle, warehouse, or package containing merchandise or baggage in bond or in customs custody, or willfully aids, abets, or encourages any other person to remove, break, injure, or deface such seal, fastening, or mark; or if any person maliciously enters any bonded warehouse or any vessel or vehicle laden with or containing bonded merchandise with intent unlawfully to remove or cause to be removed therefrom any merchandise or baggage therein, or unlawfully removes or causes to be removed any merchandise or baggage in such vessel, vehicle, or bonded warehouse or otherwise in customs custody or control, or aids or assists therein; or if any person receives or transports any merchandise or baggage unlawfully removed from any such vessel, vehicle, or warehouse, knowing the same to have been unlawfully removed, he shall be guilty of a felony and liable to the same penalties as are imposed by section 1593 of this title. (June 17, 1930, ch. 497, title IV, § 598, 46 Stat. 752; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 26, 52 Stat. 1089.)

**EFFECTIVE DATE**

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

**§ 1599. Officers not to be interested in vessels or cargo.**

No person employed under the authority of the United States, in the collection of duties on imports or tonnage, shall own, either in whole or in part, any vessel, or act as agent, attorney, or consignee for the owner or owners of any vessel, or of any cargo or lading on board the same; nor shall any such person import, or be concerned directly or indirectly in the importation of, any merchandise for sale into the

United States. Every person who violates this section shall be liable to a penalty of \$500. (June 17, 1930, ch. 497, title IV, § 599, 46 Stat. 753.)

**§ 1600. Gratuities.**

Any officer or employee of the United States who, except in payment of the duties or exactions fixed by law, solicits, demands, exacts, or receives from any person, directly or indirectly, any gratuity, money, or thing of value, for any service performed under the customs laws, or in consideration of any official act to be performed by him, or of the omission of performance of any such act, in connection with or pertaining to the importation, entry, inspection or examination, or appraisement of merchandise or baggage, shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding \$5,000, or by imprisonment for not more than two years, or both, and evidence, satisfactory to the court in which the trial is had, of such soliciting, demanding, exacting, or receiving shall be prima facie evidence that the same was contrary to law. (June 17, 1930, ch. 497, title IV, § 600, 46 Stat. 753.)

**CROSS REFERENCE**

Offense punishable by death or imprisonment for more than one year made a felony, see section 541 of Title 18, Criminal Code and Criminal Procedure.

**§ 1601. Bribery.**

Any person who gives, or offers to give, or promises to give, any money or thing of value, directly or indirectly, to any officer or employee of the United States in consideration of or for any act or omission contrary to law in connection with or pertaining to the importation, appraisement, entry, examination, or inspection of merchandise or baggage, or of the liquidation of the entry thereof, or by threats or demands or promises of any character attempts to improperly influence or control any such officer or employee of the United States as to the performance of his official duties, shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding \$5,000 or by imprisonment for a term not exceeding two years, or both, and evidence of such giving, offering, or promising to give, or attempting to influence or control, satisfactory to the court in which such trial is had, shall be prima facie evidence that the same was contrary to law. (June 17, 1930, ch. 497, title IV, § 601, 46 Stat. 753.)

**CROSS REFERENCE**

Offense punishable by death or imprisonment for more than one year made a felony, see section 541 of Title 18, Criminal Code and Criminal Procedure.

**§ 1601a. Wearing uniform or badge of Coast Guard or Customs Service while violating revenue laws.**

Whosoever without authority shall use the uniform or badge of the Coast Guard, or the Customs Service, or of any foreign revenue service, or any uniform, clothing, or badge resembling the same, while engaged, or assisting, in any violation of any revenue law of the United States, shall be fined not more than \$500 and imprisoned not more than two years. (Aug. 5, 1935, ch. 438, title III, § 309, 49 Stat. 528.)

**§ 1602. Seizure; report to collector.**

It shall be the duty of any officer, agent, or other person authorized by law to make seizures of merchandise or baggage subject to seizure for violation of the customs laws, to report every such seizure immediately to the collector for the district in which such violation occurred, and to turn over and deliver to such collector any vessel, vehicle, merchandise, or baggage seized by him, and to report immediately to such collector every violation of the customs laws. (June 17, 1930, ch. 497, title IV, § 602, 46 Stat. 754.)

**§ 1603. Same; collector's reports.**

Whenever a seizure of merchandise for violation of the customs laws is made, or a violation of the customs laws is discovered, and legal proceedings by the United States attorney in connection with such seizure or discovery are required, it shall be the duty of the collector or the principal local officer of the Customs Agency Service to report such seizure or violation to the United States attorney for the district in which such violation has occurred, or in which such seizure was made, and to include in such report a statement of all the facts and circumstances of the case within his knowledge, with the names of the witnesses and a citation to the statute or statutes believed to have been violated, and on which reliance may be had for forfeiture or conviction. (June 17, 1930, ch. 497, title IV, § 603, 46 Stat. 754; June 10, 1933, Ex. Or. 6166, § 5; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 27, 52 Stat. 1089.)

**EFFECTIVE DATE**

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

**§ 1604. Same; prosecution.**

It shall be the duty of every United States district attorney immediately to inquire into the facts of cases reported to him by collectors and the laws applicable thereto, and if it appears probable that any fine, penalty, or forfeiture has been incurred by reason of such violation, for the recovery of which the institution of proceedings in the United States district court is necessary, forthwith to cause the proper proceedings to be commenced and prosecuted, without delay, for the recovery of such fine, penalty, or forfeiture in such case provided, unless, upon inquiry and examination, such district attorney decides that such proceedings can not probably be sustained or that the ends of public justice do not require that they should be instituted or prosecuted, in which case he shall report the facts to the Secretary of the Treasury for his direction in the premises. (June 17, 1930, ch. 497, title IV, § 604, 46 Stat. 754.)

**§ 1605. Same; custody.**

All vessels, vehicles, merchandise, and baggage seized under the provisions of the customs laws, or laws relating to the navigation, registering, enrolling or licensing, or entry or clearance, of vessels, unless otherwise provided by law, shall be placed and remain in the custody of the collector for the district in which the seizure was made to await disposition

according to law. (June 17, 1930, ch. 497, title IV, § 605, 46 Stat. 754.)

**§ 1606. Same; appraisement.**

The collector shall require the appraiser to determine the domestic value, at the time and place of appraisement, of any vessel, vehicle, merchandise, or baggage seized under the customs laws. (June 17, 1930, ch. 497, title IV, § 606, 46 Stat. 754.)

**CROSS REFERENCE**

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

**§ 1607. Same; value \$1,000 or less.**

If such value of such vessel, vehicle, merchandise, or baggage returned by the appraiser does not exceed \$1,000, the collector shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. For the purposes of this section and sections 1610 and 1612 of this title merchandise the importation of which is prohibited shall be held not to exceed \$1,000 in value. (June 17, 1930, ch. 497, title IV, § 607, 46 Stat. 754; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 28 (a), 52 Stat. 1089.)

**EFFECTIVE DATE**

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

**CROSS REFERENCE**

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

**§ 1608. Same; claims; judicial condemnation.**

Any person claiming such vessel, vehicle, merchandise, or baggage may at any time within twenty days from the date of the first publication of the notice of seizure file with the collector a claim stating his interest therein. Upon the filing of such claim and the giving of a bond to the United States in the penal sum of \$250, with sureties to be approved by the collector, conditioned that in case of condemnation of the articles so claimed the obligor shall pay all the costs and expenses of the proceedings to obtain such condemnation, the collector shall transmit such claim and bond, with a duplicate list and description of the articles seized, to the United States attorney for the district in which seizure was made, who shall proceed to a condemnation of the merchandise or other property in the manner prescribed by law. (June 17, 1930, ch. 497, title IV, § 608, 46 Stat. 755.)

**§ 1609. Same; summary of forfeiture and sale.**

If no such claim is filed or bond given within the twenty days hereinbefore specified, the collector shall declare the vessel, vehicle, merchandise, or baggage forfeited, and shall sell the same at public auction in the same manner as merchandise abandoned to the United States is sold, or otherwise dispose of the same according to law and shall deposit the proceeds of sale, after deducting the actual ex-

penses of seizure, publication, and sale in the Treasury of the United States. (June 17, 1930, ch. 497, title IV, § 609, 46 Stat. 755; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 28 (b), 52 Stat. 1089.)

#### EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

#### CROSS REFERENCE

Destruction of forfeited vessels, see section 1705 of this title.

§ 1610. Same; value more than \$1,000.

If the value returned by the appraiser of any vessel, vehicle, merchandise, or baggage so seized is greater than \$1,000, the collector shall transmit a report of the case, with the names of available witnesses, to the United States attorney for the district in which the seizure was made for the institution of the proper proceedings for the condemnation of such property. (June 17, 1930, ch. 497, title IV, § 610, 46 Stat. 755.)

#### CROSS REFERENCE

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

§ 1611. Same; sale unlawful.

If the sale of any vessel, vehicle, merchandise or baggage forfeited under the customs laws in the district in which seizure thereof was made be prohibited by the laws of the State in which such district is located, or if a sale may be made more advantageously in any other district, the Secretary of the Treasury may order such vessel, vehicle, merchandise, or baggage to be transferred for sale in any customs district in which the sale thereof may be permitted. Upon the request of the Secretary of the Treasury, any court may, in proceedings for the forfeiture of any vessel, vehicle, merchandise, or baggage under the customs laws, provide in its decree of forfeiture that the vessel, vehicle, merchandise, or baggage, so forfeited, shall be delivered to the Secretary of the Treasury for disposition in accordance with the provisions of this section. If the Secretary of the Treasury is satisfied that the proceeds of any sale will not be sufficient to pay the costs thereof, he may order a destruction by the customs officers: *Provided*, That any merchandise forfeited under the customs laws, the sale or use of which is prohibited under any law of the United States or of any State, may, in the discretion of the Secretary of the Treasury, be destroyed, or remanufactured into an article that is not prohibited, the resulting article to be disposed of to the profit of the United States only. (June 17, 1930, ch. 497, title IV, § 611, 46 Stat. 755.)

§ 1612. Same; summary sale.

Whenever it appears to the collector that any vessel, vehicle, merchandise, or baggage seized under the customs laws is liable to perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof, and the value of such vessel, vehicle, merchandise, or baggage as determined by

the appraiser under section 1606 of this title does not exceed \$1,000, and such vessel, vehicle, merchandise, or baggage has not been delivered under bond, the collector shall, within twenty-four hours after the receipt by him of the appraiser's return proceed forthwith to advertise and sell the same at auction under regulations to be prescribed by the Secretary of the Treasury. If such value of such vessel, vehicle, merchandise, or baggage exceeds \$1,000 the collector shall forthwith transmit the appraiser's return and his report of the seizure to the United States district attorney, who shall petition the court to order an immediate sale of such vessel, vehicle, merchandise, or baggage, and if the ends of justice require it the court shall order such immediate sale, the proceeds thereof to be deposited with the court to await the final determination of the condemnation proceedings. Whether such sale be made by the collector or by order of the court, the proceeds thereof shall be held subject to claims of parties in interest to the same extent as the vessel, vehicle, merchandise, or baggage so sold would have been subject to such claim. (June 17, 1930, ch. 497, title IV, § 612, 46 Stat. 756.)

#### CROSS REFERENCES

Destruction of forfeited vessels, see section 1705 of this title.

Office of appraiser of merchandise abolished except at port of New York, see section 5a of this title.

§ 1613. Disposition of proceeds of forfeited property.

Any person claiming any vessel, vehicle, merchandise, or baggage, or any interest therein, which has been forfeited and sold under the provisions of this chapter, may at any time within three months after the date of sale apply to the Secretary of the Treasury if the forfeiture and sale was under the customs laws, or to the Secretary of Commerce if the forfeiture and sale was under the navigation laws, for a remission of the forfeiture and restoration of the proceeds of such sale, or such part thereof as may be claimed by him. Upon the production of satisfactory proof that the applicant did not know of the seizure prior to the declaration or condemnation of forfeiture, and was in such circumstances as prevented him from knowing of the same, and that such forfeiture was incurred without any willful negligence or intention to defraud on the part of the applicant, the Secretary of the Treasury or the Secretary of Commerce may order the proceeds of the sale, or any part thereof, restored to the applicant, after deducting the cost of seizure and of sale, the duties, if any, accruing on the merchandise or baggage, and any sum due on a lien for freight, charges, or contribution in general average that may have been filed. If no application for such remission or restoration is made within three months after such sale, or if the application be denied by the Secretary of the Treasury or the Secretary of Commerce, the proceeds of sale shall be disposed of as follows:

(1) For the payment of all proper expenses of the proceedings of forfeiture and sale, including expenses of seizure, maintaining the custody of the property, advertising and sale, and if condemned by a decree of a district court and a bond for such costs was not given, the costs as taxed by the court;

(2) For the satisfaction of liens for freight charges, and contributions in general average, notice of which has been filed with the collector according to law; and

(3) The residue shall be deposited with the Treasurer of the United States as a customs or navigation fine.

(4) The residue shall be deposited with the Treasurer of the United States as a customs or navigation fine. (June 17, 1930, ch. 497, title IV, § 613, 46 Stat. 756; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 29, 52 Stat. 1089.)

#### EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided.

#### CROSS REFERENCE

Effective July 1, 1935, the permanent appropriation provided for in this section was repealed by act June 26, 1934, ch. 756, § 2, 48 Stat. 1226, such act authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury. See section 725a (b) of Title 31, Money and Finance.

#### § 1614. Release of seized property.

If any person claiming an interest in any vessel, vehicle, merchandise, or baggage seized under the provisions of this chapter offers to pay the value of such vessel, vehicle, merchandise, or baggage, as determined under section 1606 of this title and it appears that such person has in fact a substantial interest therein, the collector may, subject to the approval of the Secretary of the Treasury if under the customs laws, or the Secretary of Commerce if under the navigation laws, accept such offer and release the vessel, vehicle, merchandise, or baggage seized upon the payment of such value thereof, which shall be distributed in the order provided in section 1613 of this title. (June 17, 1930, ch. 497, title IV, § 614, 46 Stat. 757.)

#### § 1615. Burden of proof in forfeiture proceedings.

In all suits or actions brought for the forfeiture of any vessel, vehicle, merchandise, or baggage seized under the provisions of any law relating to the collection of duties on imports or tonnage, where the property is claimed by any person, the burden of proof shall lie upon such claimant; and in all suits or actions brought for the recovery of the value of any vessel, vehicle, merchandise, or baggage, because of violation of any such law, the burden of proof shall be upon the defendant: *Provided*, That probable cause shall be first shown for the institution of such suit or action, to be judged of by the court, subject to the following rules of proof:

(1) The testimony or deposition of the officer of the customs who has boarded or required to come to a stop or seized a vessel or vehicle, or has arrested a person, shall be prima facie evidence of the place where the act in question occurred.

(2) Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise<sup>1</sup> or containers of merchandise, shall be prima facie evidence of the foreign origin of such merchandise.

(3) The fact that a vessel of any description is found, or discovered to have been, in the vicinity of any hovering vessel and under any circumstances indicating contact or communication therewith, whether by proceeding to or from such vessel, or by coming to in the vicinity of such vessel, or by delivering to or receiving from such vessel any merchandise, person, or communication, or by any other means effecting contact or communication therewith, shall be prima facie evidence that the vessel in question has visited such hovering vessel. (June 17, 1930, ch. 497, title IV, § 615, 46 Stat. 757; Aug. 5, 1935, ch. 438, title II, § 207, 49 Stat. 525.)

<sup>1</sup> So in original.

#### § 1616. Compromise of Government claims prohibited; exception.

It shall not be lawful for any officer of the United States to compromise or abate any claim of the United States arising under the customs laws for any fine, penalty, or forfeiture, and any such officer who compromises or abates any such claim or attempts to make such compromise or abatement, or in any manner relieves or attempts to relieve any person, vessel, vehicle, merchandise, or baggage from any such fine, penalty, or forfeiture shall be guilty of a felony and upon conviction thereof shall be punished by a fine of not more than \$5,000 or by imprisonment for a term of not exceeding two years: *Provided*, That the Secretary of the Treasury shall have power to remit or mitigate any such fine, penalty, or forfeiture, or to compromise the same in the manner provided by law. (June 17, 1930, ch. 497, title IV, § 616, 46 Stat. 757.)

#### § 1617. Compromise of Government claims by Secretary of Treasury.

Upon a report by a collector, district attorney, or any special attorney or customs agent, having charge of any claim arising under the customs laws, showing the facts upon which such claim is based, the probabilities of a recovery and the terms upon which the same may be compromised, the Secretary of the Treasury is hereby authorized to compromise such claim, if such action shall be recommended by the General Counsel for the Department of the Treasury. (June 17, 1930, ch. 497, title IV, § 617, 46 Stat. 757; May 10, 1934, ch. 277, § 512 (b), 48 Stat. 759.)

#### § 1618. Remission or mitigation of penalties.

Whenever any person interested in any vessel, vehicle, merchandise, or baggage seized under the provisions of this chapter, or who has incurred, or is alleged to have incurred, any fine or penalty thereunder, files with the Secretary of the Treasury if under the customs laws, and with the Secretary of Commerce if under the navigation laws, before the sale of such vessel, vehicle, merchandise, or baggage a petition for the remission or mitigation of such fine, penalty, or forfeiture, the Secretary of the Treasury, or the Secretary of Commerce, if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation

of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto. In order to enable him to ascertain the facts, the Secretary of the Treasury may issue a commission to any customs agent, collector, judge of the United States Customs Court, or United States commissioner, to take testimony upon such petition: *Provided*, That nothing in this section shall be construed to deprive any person of an award of compensation made before the filing of such petition. (June 17, 1930, ch. 497, title IV, § 618, 46 Stat. 757.)

§ 1619. Award of compensation to informers.

Any person not an officer of the United States who detects and seizes any vessel, vehicle, merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws, and who reports the same to an officer of the customs, or who furnishes to a district attorney, to the Secretary of the Treasury, or to any customs officer original information concerning any fraud upon the customs revenue, or a violation of the customs laws or the navigation laws, perpetrated or contemplated, which detection and seizure or information leads to a recovery of any duties withheld, or of any fine, penalty, or forfeiture incurred, may be awarded and paid by the Secretary of the Treasury a compensation of 25 per centum of the net amount recovered, but not to exceed \$50,000 in any case, which shall be paid out of any appropriations available for the collection of the revenue from customs. For the purposes of this section an amount recovered under a bail bond shall be deemed a recovery of a fine incurred. If any vessel, vehicle, merchandise, or baggage is forfeited to the United States, and is thereafter, in lieu of sale, destroyed under the customs or navigation laws or delivered to any governmental agency for official use, compensation of 25 per centum of the appraised value thereof may be awarded and paid by the Secretary of the Treasury under the provisions of this section, but not to exceed \$50,000 in any case. (June 17, 1930, ch. 497, title IV, § 619, 46 Stat. 758; Aug. 5, 1935, ch. 438, title III, § 305, 49 Stat. 527.)

§ 1620. Same; United States officers.

Any officer of the United States who directly or indirectly receives, accepts, or contracts for any portion of the money which may accrue to any person making such detection and seizure, or furnishing such information, shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or both, and shall be thereafter ineligible to any office of honor, trust, or emolument. Any such person who pays to any such officer, or to any person for the use of such officer, any portion of such money, or anything of value for or because of such money, shall have a right of action against such officer, or his legal representatives, or against such person, or his legal representatives, and shall be entitled to recover the money so paid or the thing of value so given. (June 17, 1930, ch. 497, title IV, § 620, 46 Stat. 758.)

§ 1621. Limitation of actions.

No suit or action to recover any pecuniary penalty or forfeiture of property accruing under the customs laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was discovered: *Provided*, That the time of the absence from the United States of the person subject to such penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within this period of limitation. (June 17, 1930, ch. 497, title IV, § 621, 46 Stat. 758; Aug. 5, 1935, ch. 438, title III, § 306, 49 Stat. 527.)

§ 1622. Foreign landing certificates.

The Secretary of the Treasury may by regulations require the production of landing certificates in respect of merchandise exported from the United States, or in respect of residue cargo, in cases in which he deems it necessary for the protection of the revenue. (June 17, 1930, ch. 497, title IV, § 622, 46 Stat. 758.)

§ 1623. Bonds and other security.

(a) In any case in which bond or other security is not specifically required by law, the Secretary of the Treasury may by regulation or specific instruction require, or authorize collectors of customs to require, such bonds or other security as he, or they, may deem necessary for the protection of the revenue or to assure compliance with any provision of law, regulation, or instruction which the Secretary of the Treasury or the Customs Service may be authorized to enforce.

(b) Whenever a bond is required or authorized by a law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce, the Secretary of the Treasury may—

(1) Except as otherwise specifically provided by law, prescribe the conditions and form of such bond, and fix the amount of penalty thereof, whether for the payment of liquidated damages or of a penal sum: *Provided*, That when a consolidated bond authorized by paragraph 4 of this subsection is taken, the Secretary of the Treasury may fix the penalty of such bond without regard to any other provision of law, regulation, or instruction.

(2) Provide for the approval of the sureties on such bond, without regard to any general provision of law.

(3) Authorize the execution of a term bond the conditions of which shall extend to and cover similar cases of importations over such period of time, not to exceed one year, or such longer period as he may fix when in his opinion special circumstances existing in a particular instance require such longer period.

(4) Authorize, to the extent that he may deem necessary, the taking of a consolidated bond (single entry or term), in lieu of separate bonds to assure compliance with two or more provisions of law, regulations, or instructions which the Secretary of the Treasury or the Customs Service is authorized to enforce. A consolidated bond taken pursuant to the authority contained in this subsection shall have the same force and effect in respect of every provision of law, regulation, or instruction for the

purposes for which it is required as though separate bonds had been taken to assure compliance with each such provision.

(c) The Secretary of the Treasury may authorize the cancellation of any bond provided for in this section, or of any charge that may have been made against such bond, in the event of a breach of any condition of the bond, upon the payment of such lesser amount or penalty or upon such other terms and conditions as he may deem sufficient.

(d) No condition in any bond taken to assure compliance with any law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce shall be held invalid on the ground that such condition is not specified in the law, regulation, or instruction authorizing or requiring the taking of such bond.

(e) The Secretary of the Treasury is authorized to permit the deposit of money or obligations of the United States, in such amount and upon such conditions as he may by regulation prescribe, in lieu of sureties on any bond required or authorized by a law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce. (June 17, 1930, ch. 497, title IV, § 623, 46 Stat. 759; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 30, 52 Stat. 1089.)

#### EFFECTIVE DATE

Section 37 of act June 25, 1938, cited to text, provided that the amendment to this section by said act should take effect on the thirtieth day following June 25, 1938, except as otherwise specifically provided

#### § 1624. General regulations.

In addition to the specific powers conferred by this title the Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this chapter. (June 17, 1930, ch. 497, title IV, § 624, 46 Stat. 759.)

#### PART VI.—MISCELLANEOUS PROVISIONS

#### § 1641. Customhouse brokers—(a) Regulations for licensing.

The Secretary of the Treasury may prescribe rules and regulations governing the licensing as customhouse brokers of citizens of the United States of good moral character, and of corporations, associations, and partnerships, and may require as a condition to the granting of any license, the showing of such facts as he may deem advisable as to the qualifications of the applicant to render valuable service to importers and exporters. No such license shall be granted to any corporation, association, or partnership unless licenses as customhouse brokers have been issued to at least two of the officers of such corporation or association, or two of the members of such partnership, and such licenses are in force. Any license granted to any such corporation, association, or partnership shall be deemed revoked if for any continuous period of more than sixty days after the issuance of such license there are not at least two officers of such corporation or association or two members of such partnership who are qualified to transact business as customhouse brokers. Except as provided in subdivision (c) of this section, no person shall transact business as a customhouse broker

without a license granted in accordance with the provisions of this subdivision, but nothing in this section shall be construed to authorize the requiring of a license in the case of any person transacting at a customhouse business pertaining to his own importations.

#### (b) Revocation or suspension; appeal.

The collector or chief officer of the customs may at any time, for good and sufficient reasons, serve notice in writing upon any customhouse broker so licensed to show cause why said license shall not be revoked or suspended, which notice shall be in the form of a statement specifically setting forth the ground of complaint. The collector or chief officer of customs shall within ten days thereafter notify the customhouse broker in writing of a hearing to be held before him within five days upon said charges. At such hearing the customhouse broker may be represented by counsel, and all proceedings including the proof of the charges and the answer thereto, shall be presented, with the right of cross-examination to both parties, and a stenographic record of the same shall be made and a copy thereof shall be delivered to the customhouse broker. At the conclusion of such hearing the collector or chief officer of customs shall forthwith transmit all papers and the stenographic report of the hearing, which shall constitute the record of the case, to the Secretary of the Treasury for his action. Thereupon the said Secretary of the Treasury shall have the right to revoke or suspend the license of any customhouse broker shown to be incompetent, disreputable, or who has refused to comply with the rules and regulations issued under this section, or who has, with intent to defraud, in any manner willfully and knowingly deceived, misled, or threatened any importer, exporter, claimant, or client, or prospective importer, exporter, claimant, or client, by word, circular, letter or by advertisement.

An appeal may be taken by any licensed customhouse broker from any order of the Secretary of the Treasury suspending or revoking a license. Such appeal shall be taken by filing, in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, within sixty days after the entry of such order, a written petition praying that the order of the Secretary of the Treasury be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon the Secretary of the Treasury, or upon any officer designated by him for that purpose, and thereupon the Secretary of the Treasury shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Secretary of the Treasury shall be considered by the court unless such objection shall have been urged before the collector or chief officer of customs or unless there were reasonable grounds for failure so to do. The finding of the Secretary of the Treasury as to the facts, if supported by substantial evidence, shall be conclusive.

If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the collector or chief officer of customs, the court may order such additional evidence to be taken before the collector or chief officer of customs and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Secretary of the Treasury may modify his findings as to the facts by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Secretary of the Treasury shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 346 and 347 of Title 28. The commencement of proceedings under this subsection shall, unless specifically ordered by the court, operate as a stay of the Secretary of the Treasury's order.

(c) Prior licenses.

Licenses issued under section 415 of Title 19 (Repealed) or under the provisions of subdivision (a) of this section prior to August 26, 1935, shall continue in force and effect, subject to suspension and revocation as provided in subdivision (b) of this section.

(d) Regulations by Secretary.

The Secretary of the Treasury shall prescribe such rules and regulations as he may deem necessary to protect importers and the revenue of the United States, and to carry out the provisions of this section, including rules and regulations requiring the keeping of books, accounts, and records by custom-house brokers, and the inspection thereof, and of their papers, documents, and correspondence by, and the furnishing by them of information relating to their business to, any duly accredited agent of the United States. (June 17, 1930, ch. 497, title IV, § 641, 46 Stat. 759; Aug. 26, 1935, ch. 689, §§ 3-5, 49 Stat. 864, 865.)

REPEAL

Subsection (e) of this section was repealed by act August 26, 1935, § 5, cited to text, but sections 415 to 419 of this title, which were repealed by said paragraph, were not thereby revived.

§ 1642. Investigation of methods of valuation.

In compliance with a request from the President on July 2, 1932, the survey authorized by this section, Act June 17, 1930, ch. 497, title IV, § 642, 46 Stat. 761, was made and submitted to the President on February 28, 1933. See Tariff Commission Reports, No. 70, Second Series.

§ 1643. Application of customs reorganization act.

The rights, privileges, powers, and duties vested in or imposed upon the Secretary of the Treasury by this chapter shall be subject to the provisions

of subdivision (a) of section 281b of Title 5. (June 17, 1930, ch. 497, title IV, § 643, 46 Stat. 761.)

§ 1644. Application of section 177 of Title 49.

The authority vested by section 177 of Title 49 in the Secretary of the Treasury, and in the Secretary of Commerce, by regulation to provide for the application to civil air navigation of the laws and regulations relating to the administration of customs, and of the laws and regulations relating to the entry and clearance of vessels, respectively, shall extend to the application in like manner of any of the provisions of this chapter or of any regulations promulgated hereunder. (June 17, 1930, ch. 497, title IV, § 644, 46 Stat. 761.)

§ 1645. Travel and subsistence—(a) Transfers in foreign countries.

In the case of a transfer to or from an official station in a foreign country, or from one official station to another in a foreign country, customs officers and employees may be allowed, within the discretion and under written orders of the Secretary of the Treasury, the actual and necessary traveling and subsistence expenses of their families in respect of such transfer. The expense of transporting the remains of customs officers and employees who die while in or in transit to foreign countries in the discharge of their official duties, to their former homes in this country for interment, and the ordinary and necessary expenses for such interment, at their posts of duty or at home, are hereby authorized to be paid upon the written order of the Secretary of the Treasury. The expenses authorized by this subdivision shall be paid from the appropriation for the collection of the revenue from customs.

(b) Transfer of household and personal effects

Subsection (b) repealed in part act Mar 4, 1923, ch 251, § 5, 42 Stat. 1454. See section 48 of this title.

(c) Transportation on foreign ships.

Notwithstanding the provisions of section 891r of Title 46, or of any other law, any allowance, within the limitations prescribed by law, for travel or shipping expenses incurred on a foreign ship by any officer or employee of the Bureau of Customs or the Customs Service, shall be credited if the Secretary of the Treasury certifies to the Comptroller General that transportation on such foreign ship was necessary to protect the revenue. (June 17, 1930, ch. 497, title IV, § 645, 46 Stat. 761.)

REFERENCES IN TEXT

Section 891r of Title 46, cited in body of text, was repealed by act June 29, 1936, ch. 858, § 903 (c), 49 Stat. 2016, but was substantially reenacted by section 901 of that act. See section 1241 of this title.

§ 1646. Tenure and retirement of judges of the United States Court of Customs and Patent Appeals.

Subject matter of this section, act June 17, 1930, ch. 497, § 646, 46 Stat. 762, now appears as section 801b of Title 28, Judicial Code and Judiciary.

§ 1647. Review of decisions of Court of Customs and Patent Appeals.

Subject matter of section, act June 17, 1930, ch. 497, § 647, 46 Stat. 762, now appears as section 308 of Title 28, Judicial Code and Judiciary.



**§ 1648. Uncertified checks, United States notes, and national bank notes receivable for customs duties.**

Collectors of customs may receive uncertified checks, United States notes, and circulating notes of national banking associations in payment of duties on imports, during such time and under such rules and regulations as the Secretary of the Treasury shall prescribe; but if a check so received is not paid the person by whom such check has been tendered shall remain liable for the payment of the duties and for all legal penalties and additions to the same extent as if such check had not been tendered. (June 17, 1930, ch. 497, title IV, § 648, 46 Stat. 762.)

**§ 1649. Change in designation of customs attachés.**

Customs attachés shall be known as "Treasury attachés." (June 17, 1930, ch. 497, title IV, § 649, 46 Stat. 762.)

**§ 1650. Appointment of deputy commissioner of customs.**

Subject matter of section, act June 17, 1930, ch. 497, § 650, 46 Stat. 762, is set out as section 281f of Title 5, Executive Departments and Government Officers and Employees.

**§ 1651. Repeals—(a) Specific repeals.**

The following acts and parts of acts are repealed, subject to the limitations provided in subdivision (c):

(1) The Tariff Act of 1922, except that the repeal of sections 304 and 482 (relating to marking of imported articles and to certified invoices, respectively) shall take effect sixty days after the enactment of this chapter;

(2) Section 16 of the Act entitled "An Act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes", approved June 26, 1884, as amended (relating to supplies for certain vessels);

(3) The Joint Resolution entitled "Joint Resolution Authorizing certain customs officials to administer oaths", approved April 2, 1928; and

(4) Section 2804 of the Revised Statutes, as amended (relating to limitations on importation packages of cigars).

**(b) General repeal.**

All acts and parts of acts inconsistent with the provisions of this chapter are hereby repealed.

**(c) Rights and liabilities under acts repealed or modified.**

The repeal of existing laws or modifications or reenactments thereof embraced in this chapter shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil or criminal case prior to such repeal, modifications, or reenactments, but all liabilities under such laws shall continue and may be enforced in the same manner as if such repeal, modifications, or reenactments had not been made. All offenses committed and all penalties, under any statute embraced in or changed, modified, or repealed by this chapter, may be prosecuted and punished in the same manner and with the same effect as if this chapter had not been passed. No

acts of limitation now in force, whether applicable to civil causes and proceedings or to the prosecution of offenses or for the recovery of penalties or forfeitures embraced in, modified, changed, or repealed by this chapter, shall be affected thereby so far as they affect any suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to June 18, 1930, which may be commenced and prosecuted within the same time and with the same effect as if this chapter had not been passed.

**(d) Certain acts not affected.**

Nothing in this chapter shall be construed to amend or repeal any of the following provisions of law:

(1) Subsections 1, 2, and 3 of paragraph J of Section IV of the act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes", approved October 3, 1913 (relating to restrictions on importations in foreign vessels or through contiguous countries), as modified by the act of March 4, 1915, chapter 171; (Sections 128, 130, 131 of this title and section 146 of Title 46.)

(2) Subsection 2 of paragraph N of Section IV of such act of October 3, 1913, ch. 16 (relating to the manufacture of alcohol for denaturation only);

(3) Section 30 of the act entitled "An Act to simplify the laws in relation to the collection of the revenues", approved June 10, 1890, as amended (providing for an Assistant Attorney General in charge of customs matters) (section 296 of Title 5);

(4) The act entitled "An Act relating to the use or disposal of vessels or vehicles forfeited to the United States for violation of the customs laws or the National Prohibition Act, and for other purposes", approved March 3, 1925 (sections 522, 523, 524 of this title and sections 41, 42, 43 of Title 27); nor

(5) The Antidumping Act, 1921 (160–171 of this title). (June 17, 1930, ch. 497, title IV, § 651, 46 Stat. 762.)

**§ 1652. Separability of provisions.**

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances shall not be affected thereby. (June 17, 1930, ch. 497, title IV, § 652, 46 Stat. 763.)

**§ 1653. Effective date of chapter.**

Except as otherwise provided, this chapter shall take effect on June 18, 1930. (June 17, 1930, ch. 497, title IV, § 653, 46 Stat. 763.)

**§ 1653a. Effective date of Customs Administrative Act of 1938.**

This section, act June 25, 1938, ch. 679, § 37, 52 Stat. 1094, provided the date of enactment of the Customs Administrative Act of 1938.

Section was not part of Tariff Act of 1930 which constitutes this chapter.

**§ 1654. Short title.**

This chapter may be cited as the "Tariff Act of 1930." (June 17, 1930, ch. 497, title IV, § 654, 46 Stat. 763.)

## Chapter 5.—ANTI-SMUGGLING ACT

Sec.

1701. Customs-enforcement area.
- (a) Establishment; extent and duration; enforcement of laws applicable to waters adjacent to customs waters.
  - (b) Boarding vessels; arrest and seizure; compliance with treaty provisions; authority of Secretary of Commerce unaffected.
1702. Smuggling into territory of foreign government.
- (a) Allowing vessel owned or controlled to engage in smuggling; persons aiding or assisting vessel; penalty.
  - (b) Lessor or charterer of vessel with knowledge of purpose to smuggle as within section.
1703. Seizure and forfeiture of vessels.
- (a) Vessels subject to seizure and forfeiture.
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1704. Refusal or revocation of registry, enrollment, license or number on evidence that vessel engaging in smuggling; appeal to Secretary of Commerce; immunity of collectors from liability.
1705. Destruction of forfeited vessel.
1706. Importation in vessels under thirty tons and aircraft; licenses; labels as prima facie evidence of foreign origin of merchandise.
1707. Certificate for importation of alcoholic liquors in small vessels; bond where liquor destined to foreign port; penalty for failure to carry; lost, defaced, or incorrect certificate as relieving from penalty.
1708. Lading vessel in foreign port with liquor for importation.
- (a) Allowing lading without certificate for importation; liability of master.
  - (b) Procuring lading with intent to defraud revenue laws; liability of citizen, master, and members of crew of United States vessel.
1709. Definitions.
1710. Separability clause.
1711. Citation of chapter.

§ 1701. Customs-enforcement area—(a) Establishment; extent and duration; enforcement of laws applicable to waters adjacent to customs waters.

Whenever the President finds and declares that at any place or within any area on the high seas adjacent to but outside customs waters any vessel or vessels hover or are being kept off the coast of the United States and that, by virtue of the presence of any such vessel or vessels at such place or within such area, the unlawful introduction or removal into or from the United States of any merchandise or person is being or may be occasioned, promoted, or threatened, the place or area so found and declared shall constitute a customs-enforcement area for the purposes of this chapter. Only such waters on the high seas shall be within a customs-enforcement area as the President finds and declares are in such proximity to such vessel or vessels that such unlawful introduction or removal of merchandise or persons may be carried on by or to or from such vessel or vessels. No customs-enforcement area shall include any waters more than one hundred nautical miles from the place or immediate area where the President declares such vessel or vessels are hovering or are being kept and, notwithstanding the foregoing provision, shall not include any waters more than fifty nautical miles outwards from the outer limit of customs waters. Whenever the President finds

that, within any customs-enforcement area, the circumstances no longer exist which gave rise to the declaration of such area as a customs-enforcement area, he shall so declare, and thereafter, and until a further finding and declaration is made under this subsection with respect to waters within such area, no waters within such area shall constitute a part of such customs-enforcement area. The provisions of law applying to the high seas adjacent to customs waters of the United States shall be enforced in a customs-enforcement area upon any vessel, merchandise, or person found therein.

(b) Boarding vessels; arrest and seizure; compliance with treaty provisions; authority of Secretary of Commerce unaffected.

At any place within a customs-enforcement area the several officers of the customs may go on board of any vessel and examine the vessel and any merchandise or person on board, and bring the same into port, and, subject to regulations of the Secretary of the Treasury, it shall be their duty to pursue and seize or arrest and otherwise enforce upon such vessel, merchandise, or person, the provisions of law which are made effective thereto in pursuance of subsection (a) in the same manner as such officers are or may be authorized or required to do in like case at any place in the United States by virtue of any law respecting the revenue: *Provided*, That nothing contained in this section or in any other provision of law respecting the revenue shall be construed to authorize or to require any officer of the United States to enforce any law thereof upon the high seas upon a foreign vessel in contravention of any treaty with a foreign government enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon such vessel upon the high seas the laws of the United States except as such authorities are or may otherwise be enabled or permitted under special arrangement with such foreign government: *Provided further*, That none of the provisions of this chapter shall be construed to relieve the Secretary of Commerce of any authority, responsibility, or jurisdiction now vested in or imposed on that officer. (Aug. 5, 1935, ch. 438, title I, § 1, 49 Stat. 517.)

§ 1702. Smuggling into territory of foreign government—(a) Allowing vessel owned or controlled to engage in smuggling; persons aiding or assisting vessel; penalty.

Any person owning in whole or in part any vessel of the United States who employs, or participates in, or allows the employment of, such vessel for the purpose of smuggling, or attempting to smuggle, or assisting in smuggling, any merchandise into the territory of any foreign government in violation of the laws there in force, if under the laws of such foreign government any penalty or forfeiture is provided for violation of the laws of the United States respecting the customs revenue, and any citizen of, or person domiciled in, or any corporation incorporated in, the United States, controlling or substantially participating in the control of any such vessel, directly or indirectly, whether through ownership of corporate shares or otherwise, and allowing the employment of said vessel for any such purpose, and

any person found, or discovered to have been, on board of any such vessel so employed and participating or assisting in any such purpose, shall be liable to a fine of not more than \$5,000 or to imprisonment for not more than two years, or to both such fine and imprisonment.

(b) Lessor or charterer of vessel with knowledge of purpose to smuggle as within section.

It shall constitute an offense under this section to hire out or charter a vessel if the lessor or charterer has knowledge that, or if such vessel is leased or chartered under circumstances which would give rise to a reasonable belief that, the lessee or person chartering the vessel intends to employ such vessel for any of the purposes described in subsection (a) and if such vessel is, during the time such lease or charter is in effect, employed for any such purpose. (Aug. 5, 1935, ch. 438, title I, § 2, 49 Stat. 518.)

§ 1703. Seizure and forfeiture of vessels—(a) Vessels subject to seizure and forfeiture.

Whenever any vessel which shall have been built, purchased, fitted out in whole or in part, or held, in the United States or elsewhere, for the purpose of being employed to defraud the revenue or to smuggle any merchandise into the United States, or to smuggle any merchandise into the territory of any foreign government in violation of the laws there in force, if under the laws of such foreign government any penalty or forfeiture is provided for violation of the laws of the United States respecting the customs revenue, or whenever any vessel which shall be found, or discovered to have been, employed, or attempted to be employed, within the United States for any such purpose, or in anywise in assistance thereof, or whenever any vessel of the United States which shall be found, or discovered to have been, employed, or attempted to be employed at any place, for any such purpose, or in anywise in assistance thereof, if not subsequently forfeited to the United States or to a foreign government, is found at any place at which any such vessel may be examined by an officer of the customs in the enforcement of any law respecting the revenue, the said vessel and its cargo shall be seized and forfeited.

(b) "Vessels of the United States."

Every vessel which is documented, owned, or controlled in the United States, and every vessel of foreign registry which is, directly or indirectly, substantially owned or controlled by any citizen of, or corporation incorporated, owned, or controlled in, the United States, shall, for the purposes of this section, be deemed a vessel of the United States.

(c) Acts constituting prima facie evidence vessel engaged in smuggling.

For the purposes of this section, the fact that a vessel has become subject to pursuit as provided in section 1581 of this title, or is a hovering vessel, or that a vessel fails, at any place within the customs waters of the United States or within a customs-enforcement area, to display lights as required by law, shall be prima facie evidence that such vessel is being, or has been, or is attempted to be employed to defraud the revenue of the United States. (Aug. 5, 1935, ch. 438, title I, § 3, 49 Stat. 518.)

§ 1704. Refusal or revocation of registry, enrollment, license or number on evidence that vessel engaging in smuggling; appeal to Secretary of Commerce; immunity of collectors from liability.

Subject to appeal to the Secretary of Commerce and under such regulations as he may prescribe, whenever the collector of customs of the district in which any vessel is, or is sought to be, registered, enrolled, licensed, or numbered, is shown upon evidence which he deems sufficient that such vessel is being, or is intended to be, employed to smuggle, transport, or otherwise assist in the unlawful introduction or importation into the United States of any merchandise or person, or to smuggle any merchandise into the territory of any foreign government in violation of the laws there in force, if under the laws of such foreign government any penalty or forfeiture is provided for violation of the laws of the United States respecting the customs revenue, or whenever, from the design or fittings of any vessel or the nature of any repairs made thereon, it is apparent to such collector that such vessel has been built or adapted for the purpose of smuggling merchandise, the said collector shall revoke the registry, enrollment, license, or number of said vessel or refuse the same if application be made therefor, as the case may be. Such collector and all persons acting by or under his direction shall be indemnified from any penalties or actions for damages for carrying out the provisions of this section. (Aug. 5, 1935, ch. 438, title I, § 4, 49 Stat. 519.)

§ 1705. Destruction of forfeited vessel.

Any vessel or vehicle forfeited to the United States, whether summarily or by a decree of any court, for violation of any law respecting the revenue, may, in the discretion of the Secretary of the Treasury, if he deems it necessary to protect the revenue of the United States, be destroyed in lieu of the sale thereof under existing law. (Aug. 5, 1935, ch. 438, title I, § 5, 49 Stat. 519.)

§ 1706. Importation in vessels under 30 tons and aircraft; licenses; labels as prima facie evidence of foreign origin of merchandise.

Except into the districts adjoining to the Dominion of Canada, or into the districts adjacent to Mexico, no merchandise of foreign growth or manufacture subject to the payment of duties shall be brought into the United States from any foreign port or place, or from any hovering vessel, in any vessel of less than thirty net tons burden without special license granted by the Secretary of the Treasury under such conditions as he may prescribe, nor in any other manner than by sea, except by aircraft duly licensed in accordance with law, or landed or unladen at any other port than is directed by law, under the penalty of seizure and forfeiture of all such unlicensed vessels or aircraft and of the merchandise imported therein, landed or unladen in any manner. Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise or containers of merchandise found upon any such vessel or aircraft, shall be prima facie evidence of the foreign origin of such merchandise. (Aug. 5, 1935, ch. 438, title I, § 6, 49 Stat. 519.)

**§ 1707. Certificate for importation of alcoholic liquors in small vessels; bond where liquor destined to foreign port; penalty for failure to carry; lost, defaced, or incorrect certificate as relieving from penalty.**

In addition to any other requirement of law, every vessel, not exceeding five hundred net tons, from a foreign port or place, or which has visited a hovering vessel, shall carry a certificate for the importation into the United States of any spirits, wines, or other alcoholic liquors on board thereof (sea stores excepted), destined to the United States, said certificate to be issued by a consular officer of the United States or other authorized person pursuant to such regulations as the Secretary of State and the Secretary of the Treasury may jointly prescribe. Any spirits, wines, or other alcoholic liquors (sea stores excepted) found, or discovered to have been, upon any such vessel at any place in the United States, or within the customs waters, without said certificate on board, which are not shown to have a bona fide destination without the United States, shall be seized and forfeited and, in the case of any such merchandise so destined to a foreign port or place, a bond shall be required in double the amount of the duties to which such merchandise would be subject if imported into the United States, conditioned upon the delivery of said merchandise at such foreign port or place as may be certified by a consular officer of the United States or otherwise as provided in said regulations: *Provided*, That if the collector shall be satisfied that the certificate required for the importation of any spirits, wines, or other alcoholic liquors was issued and was lost or mislaid without fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake, said penalties shall not be incurred nor shall such bond be required. This section shall take effect on the sixtieth day following Aug. 5, 1935. (Aug. 5, 1935, ch. 438, title I, § 7, 49 Stat. 520.)

**§ 1708. Lading vessel in foreign port with liquor for importation—(a) Allowing lading without certificate for importation; liability of master.**

If the master of any vessel of the United States, not exceeding five hundred net tons, allows such vessel to be laden at any foreign port or other place without the United States with any merchandise destined to the United States and consisting of any spirits, wines, or other alcoholic liquors (sea stores excepted), which facts may be evidenced by the testimony or depositions of foreign administrative officials or certified copies of their records or by other sufficient evidence, without certificate issued for the importation of such merchandise into the United States as required by section 1707 of this title, the master of such vessel shall, in addition to any other penalties provided by law, be liable to a penalty equal to the value of the said merchandise but not less than \$1,000 and such vessel and such merchandise shall be seized and forfeited.

**(b) Procuring lading with intent to defraud revenue laws; liability of citizen, master, and members of crew of United States vessel.**

Whoever, being a citizen of the United States or a master or a member of the crew of a vessel of the

United States, if such vessel does not exceed five hundred net tons, shall, with intent to defraud the revenue of the United States, procure, or aid or assist in procuring, any merchandise destined to the United States and consisting of any spirits, wines, or other alcoholic liquors, without certificate issued for the importation thereof into the United States as required by section 1707 of this title, to be laden upon such vessel at any foreign port or other place without the United States, which facts may be evidenced by the testimony or depositions of foreign administrative officials or certified copies of their records or by other sufficient evidence, shall, in addition to any other penalties provided by law, be liable to a fine of not more than \$1,000 or to imprisonment for not more than two years, or to both such fine and imprisonment. (Aug. 5, 1935, ch. 438, title I, § 8, 49 Stat. 520.)

**§ 1709. Definitions.**

When used in this act:

(a) The term "United States", when used in a geographical sense, includes all Territories and possessions of the United States, except the Philippine Islands, the Virgin Islands, the Canal Zone, American Samoa, Wake Island, Midway Islands, Kingman Reef, and the island of Guam.

(b) The term "officer of the customs" means any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or agent or other person authorized by law or by the Secretary of the Treasury, or appointed in writing by a collector, to perform the duties of an officer of the Customs Service.

(c) The term "customs waters" means, in the case of a foreign vessel subject to a treaty or other arrangement between a foreign government and the United States enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon such vessel upon the high seas the laws of the United States, the waters within such distance of the coast of the United States as the said authorities are or may be so enabled or permitted by such treaty or arrangement and, in the case of every other vessel, the waters within four leagues of the coast of the United States.

(d) The term "hovering vessel" means any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws respecting the revenue. (Aug. 5, 1935, ch. 438, title IV, § 401, 49 Stat. 529; June 25, 1938, 5 p. m. E. S. T., ch. 679, § 2, 52 Stat. 1077.)

<sup>1</sup> "Act Aug. 5, 1935, ch. 438, 49 Stat. 529, which affected sections 483, 1401, 1432a, 1434, 1436, 1441, 1581, 1584-1587, 1591, 1592, 1601a, 1615, 1619, 1621, 1701-1711 of this title, section 64 of Title 14, Coast Guard, section 122 of Title 18, Criminal Code and Criminal Procedure, and sections 60, 91, 106, 277, 288, 319, 325 of Title 46, Shipping."

**EFFECTIVE DATE**

Effective date of act June 25, 1938, cited to text, see section 1653a of this title.

**§ 1710. Separability clause.**

If any clause, sentence, paragraph, or part of this act,<sup>1</sup> or the application thereof to any person, or circumstances, is held invalid, the application thereof to other persons, or circumstances, and the remainder of the act,<sup>1</sup> shall not be affected thereby. (Aug. 5, 1935, ch. 438, title IV, § 402, 49 Stat. 529.)

<sup>1</sup>"Act Aug. 5, 1935, ch. 438, 49 Stat. 529, which affected sections 483, 1401, 1432a, 1434, 1436, 1441, 1581, 1584-1587, 1591, 1592, 1601a, 1615, 1619, 1621, 1701-1711 of this title, section 64 of Title 14, Coast Guard, section 122 of Title

18, Criminal Code and Criminal Procedure, and sections 60, 91, 106, 277, 288, 319, 325 of Title 46, Shipping."

**§ 1711. Citation of chapter.**

This act<sup>1</sup> may be cited as the "Anti-Smuggling Act". (Act Aug. 5, 1935, ch. 438, title IV, § 403, 49 Stat. 529.)

<sup>1</sup>"Act Aug. 5, 1935, ch. 438, 49 Stat. 529, which affected sections 483, 1401, 1432a, 1434, 1436, 1441, 1581, 1584-1587, 1591, 1592, 1601a, 1615, 1619, 1621, 1701-1711 of this title, section 64 of Title 14, section 122 of Title 18, and sections 60, 91, 106, 277, 288, 319, 325 of Title 46."



## TITLE 20.—EDUCATION

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### CROSS REFERENCES

Agricultural and mechanical colleges, see Title 7, Agriculture.  
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 Military instruction in schools and colleges, see Title 10, Army.  
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### Chapter 1.—THE OFFICE OF EDUCATION

Sec.	
1.	Establishment.
2.	Commissioner of Education.
2a.	Assistant Commissioner of Education; appointment; duties.
3.	Bulletin of Office of Education.
4.	Report of Commissioner.
5.	Offices for use of Office of Education.

#### § 1. Establishment.

There shall be under the Federal Security Agency a bureau called the Office of Education, the purpose and duties of which shall be to collect statistics and facts showing the condition and progress of education in the several States and Territories, and to diffuse such information respecting the organization and management of schools and school systems, and methods of teaching, as shall aid the people of the United States in the establishment and maintenance of efficient school systems, and otherwise promote the cause of education throughout the country. (R. S. § 516; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### DERIVATION

Act March 2, 1867, ch. 158, § 1, 14 Stat. 434; act July 20, 1868, ch. 176, § 1, 15 Stat. 92, 106.

#### TRANSFER OF FUNCTIONS

The Office of Education was originally established in the Department of the Interior from which it was transferred to the Federal Security Agency by Reorganization

Plan No. I, cited to text, which is set out in note to section 133t of Title 5, Executive Departments and Government Officers and Employees.

#### § 2. Commissioner of Education.

The management of the Office of Education shall, subject to the direction and supervision of the Federal Security Administrator, be intrusted to a Commissioner of Education, who shall be appointed by the President, by and with the advice and consent of the Senate. (R. S. § 517; Mar. 3, 1917, ch. 163, § 1, 39 Stat. 1105; Mar. 3, 1925, ch. 462, 43 Stat. 1179; Reorg. Plan No. I, § 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### DERIVATION

Act March 2, 1867, ch. 158, § 2, 14 Stat. 434; act July 20, 1868, ch. 176, § 1, 15 Stat. 92, 106.

#### TRANSFER OF FUNCTIONS

Administration of the Office of Education was transferred to Federal Security Administrator in Federal Security Agency by Reorganization Plan No. I, § 204, cited to text, which is set out as note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

#### § 2a. Assistant Commissioner of Education; appointment; duties.

There shall be in the Office of Education under the Federal Security Agency one Assistant Commissioner of Education, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be authorized to sign such letters, papers, and documents, and to perform such other duties as may be directed by the Commissioner of Education, and to act as commissioner in the absence of that officer, or in the case of a vacancy in the office of commissioner: *Provided*, That the assistant commissioner shall not aid, directly or indirectly, in promoting correspondence instruction by the bureau or its employees. (May 26, 1930, ch. 330, 46 Stat. 384; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

The Office of Education was originally established in the Department of the Interior from which it was transferred to the Federal Security Agency by Reorganization Plan No. I, cited to text, which is set out in note to section 133t of Title 5, Executive Departments and Government Officers and Employees.

#### § 3. Bulletin of Office of Education.

The Commissioner of Education is authorized to prepare and publish a bulletin of the Office of Education as to the condition of higher education, technical and industrial education, facts as to compulsory attendance in the schools, and such other educational topics in the several States of the Union and in foreign countries as may be deemed of value to the educational interests of the States, and there



shall be printed one edition of not exceeding twelve thousand five hundred copies of each issue of said bulletin for distribution by the Office of Education, the expense of printing and binding such bulletin to be charged to the allotment for printing and binding for the Federal Security Agency. (May 28, 1896, ch. 252, § 1, 29 Stat. 171; Reorg. Plan No. I, § 201, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

The Office of Education was originally established in the Department of the Interior from which it was transferred to the Federal Security Agency by Reorganization Plan No. I, cited to text, which is set out in note to section 133t of Title 5, Executive Departments and Government Officers and Employees.

In the appropriation act of July 12, 1870, ch. 251, 16 Stat. 242, the Office was designated the Bureau of Education. This designation was retained until the act of May 14, 1930, ch. 273, 46 Stat. 281, 319, which made appropriations for the Office of Education. Since that time, all appropriations have been made to the Office of Education.

#### § 4. Report of Commissioner.

The Commissioner of Education shall present annually to Congress a report embodying the results of his investigations and labors, together with a statement of such facts and recommendations as will, in his judgment, subserve the purpose for which the office is established. (R. S. § 518.)

#### DERIVATION

Act March 2, 1867, ch. 158, § 3, 14 Stat. 434.

#### § 5. Offices for use of Office of Education.

The Federal Works Administrator shall furnish proper offices for the use of the Office of Education. (R. S. § 519; Feb. 26, 1925, ch. 339, § 3, 43 Stat. 983; June 10, 1933, Ex. Or. 6166, § 2; Mar. 2, 1934, ch. 38, § 1, 48 Stat. 389; Reorg. Plan No. I, §§ 301, 303, eff. July 1, 1939, 4 Fed. Reg. 2729, 53 Stat. 1426, 1427.)

#### DERIVATION

Act March 2, 1867, ch. 158, § 4, 14 Stat. 434; act March 2, 1867, ch. 167, § 2, 14 Stat. 466.

#### TRANSFER OF FUNCTIONS

All functions of the Director of the National Park Service relating to the administration of the functions of the Branch of Buildings Management and the functions of the National Park Service in the District of Columbia in connection with the general assignment of space were vested in the Federal Works Administrator by Reorganization Plan No. I, cited to text, which is set out in note to section 133t of Title 5, Executive Departments and Government Officers and Employees.

#### CROSS REFERENCE

Public Buildings Administration, control of and allotment of space in the several public buildings, see section 1 of Title 40, Public Buildings, Property, and Works.

### Chapter 2.—VOCATIONAL EDUCATION

#### Sec.

11. Annual appropriations.
12. Same; paying salaries of teachers of agricultural subjects; amounts; allotment of funds to States.
13. Same; paying salaries of teachers of trade, home economics, and industrial subjects; amounts; allotment of funds to States.
14. Same; preparing teachers of agricultural subjects; amounts; allotment of funds to States.
15. Same; studies, investigations, and reports; salaries and expenses.
- 15a–15g. Appropriation for further development of vocational education in states and territories.

#### Sec.

- 15h. Further development of vocational education in States and Territories; appropriation; matching by States and Territories; allotment.
- 15i. Same; additional appropriation for salaries and expenses of teachers, supervisors, and directors; matching by States and Territories.
- 15j. Same; additional appropriation for training teachers, supervisors, or directors.
- 15k. Same; appropriation for Office of Education.
- 15l. Same; payments to State custodians.
- 15m. Conditions and limitations on appropriations.
- 15n. Industrial-plant programs; limitations on expenditures.
- 15o. Appropriations in lieu of those authorized by Act of 1934.
- 15p. "States and Territories" defined.
16. Same; acceptance of benefits of appropriations by States; creation of State boards.
17. Federal board; members; chairman; terms of office; cooperation with State boards; investigations; assistants.
18. Plans and reports by State boards to be submitted to Federal Security Agency.
19. Expenditure of appropriations; expenses to be borne by States.
20. Plans by State boards for use of appropriations; for agricultural purposes.
21. Same; for salaries of teachers of trade, home economics, and industrial subjects.
22. Same; for training teachers, supervisors, or directors
23. State custodians of funds appropriated.
24. Supervision of expenditures by States; quarterly payments to States
25. Deductions from allotments when preceding allotments have not been expended
26. Withholding allotments.
27. Loss of funds; replacing; limitation on use.
28. Reports to Congress by Federal Security Agency.
29. Benefits extended to Hawaii.
30. Benefits extended to Puerto Rico; appropriation; apportionment.

#### § 11. Annual appropriations.

There is annually appropriated, out of any money in the Treasury not otherwise appropriated, the amounts hereinafter provided for, to be paid to the respective States for the purpose of cooperating with the States in paying the salaries of teachers, supervisors, and directors of agricultural subjects, and teachers of trade, home economics, and industrial subjects, and in the preparation of teachers of agricultural, trade, industrial, and home economics subjects, and for the use of the Federal Security Agency for the administration of sections 11–15, 16–28, of this title and for the purpose of making studies, investigations, and reports to aid in the organization and conduct of vocational education, which sums shall be expended as hereinafter provided. (Feb. 23, 1917, ch. 114, § 1, 39 Stat. 929; Ex. Ord. No. 6166, § 15, June 10, 1933; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

The functions of the Federal Board for Vocational Education were transferred to the Department of the Interior and the Board required to act in an advisory capacity without compensation, by section 15 of Executive order, June 10, 1933, No. 6166, set out in note to section 132 of Title 5, Executive Departments and Government Officers and Employees.

The Office of Education, including the Federal Board for Vocational Education, was transferred to the Federal Security Agency by Reorganization Plan No. I, cited to text, which is set out in note to section 133t of Title 5, Executive Department, and Government Officers and Employees.

**§ 12. Same; paying salaries of teachers of agricultural subjects; amounts; allotment of funds to States.**

For the purpose of cooperating with the States in paying the salaries of teachers, supervisors, or directors of agricultural subjects there is annually appropriated for the use of the States, subject to the provisions of sections 11–15, 16–28, of this title, the sum of \$3,000,000. Said appropriation shall be allotted to the States in the proportion which their rural population bears to the total rural population in the United States, not including outlying possessions, according to the last preceding United States census. The allotment of funds to any State shall be not less than a minimum of \$10,000 for any fiscal year. There is appropriated for each fiscal year the sum of \$27,000, or so much thereof as may be necessary, which shall be used for the purpose of providing the minimum allotment to the States provided for in this section. (Feb. 23, 1917, ch. 114, § 2, 39 Stat. 930.)

**§ 13. Same; paying salaries of teachers of trade, home economics, and industrial subjects; amounts; allotment of funds to States.**

For the purpose of cooperating with the States in paying the salaries of teachers of trade, home economics, and industrial subjects there is annually appropriated for the use of the States the sum of \$3,000,000. Said appropriation shall be allotted to the States in the proportion which their urban population bears to the total urban population in the United States, not including outlying possessions, according to the last preceding United States census. The allotment of funds to any State shall be not less than a minimum of \$10,000 for any fiscal year. There is appropriated the sum of \$50,000 annually, or so much thereof as may be needed, which shall be used for the purpose of providing the minimum allotment to the States provided for in this section.

Not more than 20 per centum of the money appropriated under sections 11–15, 16–28, of this title for the payment of salaries of teachers of trade, home economics, and industrial subjects, for any year, shall be expended for the salaries of teachers of home economics subjects. (Feb. 23, 1917, ch. 114, § 3, 39 Stat. 930.)

**§ 14. Same; preparing teachers of agricultural subjects; amounts; allotment of funds to States.**

For the purpose of cooperating with the States in preparing teachers, supervisors, and directors of agricultural subjects and teachers of trade and industrial and home economics subjects, there is annually appropriated for the use of the States the sum of \$1,000,000. Said sum shall be allotted to the States in the proportion which their population bears to the total population of the United States, not including outlying possessions, according to the last preceding United States census. The allotment of funds to any State shall be not less than a minimum of \$10,000 for any fiscal year. And there is appropriated the sum of \$90,000 annually, or so much thereof as may be needed, which shall be used for the purpose of providing the minimum allotment provided for in this section. (Feb. 23, 1917, ch. 114, § 4, 39 Stat. 931.)

**§ 15. Same; studies, investigations, and reports; salaries and expenses.**

There is appropriated to the Federal Security Agency the sum of \$200,000 annually, for the purpose of making or cooperating in making the studies, investigations, and reports provided for in section 17 of this title, and for the purpose of paying the salaries of the officers, the assistants, and such office and other expenses as the Agency may deem necessary to the execution and administration of sections 11–15, 16–28, of this title; this appropriation is also made available for printing and binding, law books, books of reference and periodicals, and postage on foreign mail. (Feb. 23, 1917, ch. 114, § 7, 39 Stat. 933; Oct. 6, 1917, ch. 79, § 1, 40 Stat. 345; Ex. Ord. No. 6166, § 15, June 10, 1933, Reorg. Plan. No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 1728, 53 Stat. 1424.)

**SALARIES AND EXPENSES**

Effective July 1, 1935, the permanent appropriation for salaries and expenses provided for in this section was repealed by act June 26, 1934, ch. 756, § 2, 48 Stat. 1226, such act authorizing, in lieu thereof, annual appropriations from the general fund of the Treasury in identical terms and in such amounts as provided by the laws making such permanent appropriations. See section 725a (b) of title 31.

**TRANSFER OF FUNCTIONS**

Functions of Federal Board for Vocational Education transferred to Interior Department and from there to the Federal Security Agency. See note to section 11 of this title.

**§§ 15a–15g. Appropriation for further development of vocational education in States and Territories.**

Sections 15a–15c, act February 5, 1929, ch. 153, §§ 1–3, 45 Stat. 1151, appropriated money to be used for further development of vocational education in the States and Territories but appropriations were authorized for only four years after the fiscal year ending June 30, 1930.

Sections 15d–15g, act of May 21, 1934, ch. 324, §§ 1–4, 48 Stat. 792, provided for the further development of vocational education in the several States and Territories by authorizing additional appropriations for the fiscal years 1935–37.

Section 7 of act of June 8, 1936, ch. 541, 49 Stat. 1490, incorporated in section 15o of this title, provided that the appropriations authorized by the act of June 8, 1936, incorporated in sections 15h–15p of this title, "shall be in lieu thereof and not in addition to the appropriations authorized in" sections 1 and 2 of the act of May 21, 1934.

**§ 15h. Further development of vocational education in States and Territories; appropriation; matching by States and Territories; allotment.**

For the purpose of providing for the further development of vocational education in the several States and Territories there is hereby authorized to be appropriated for the fiscal year beginning July 1, 1937, and annually thereafter, the sum of \$12,000,000: *Provided*, That the several States and Territories shall be required to match by State or local funds or both 50 per centum of the appropriations authorized under the provisions of this section until June 30, 1942, 60 per centum for the year ending June 30, 1943, 70 per centum for the year ending June 30, 1944, 80 per centum for the year ending June 30, 1945, 90 per centum for the year ending June 30, 1946, and annually thereafter 100 per centum of the appropriations authorized under the provisions of this section. One-third of this sum each year shall

be allotted to the States and Territories in the proportion that their farm population bears to the total farm population of the United States and Territories, according to the United States census last preceding the end of the fiscal year in which any such allotment is made, and shall be used for the salaries and necessary travel expenses of teachers, supervisors, and directors of agricultural subjects in such States and Territories. One-third of the sum appropriated for each fiscal year shall be allotted to the States and Territories in the proportion that their rural population bears to the total rural population of the United States and Territories, according to the United States census last preceding the end of the fiscal year in which any such allotment is to be made, and shall be used for the salaries and travel expenses of teachers, supervisors, and directors of home-economics subjects in such States and Territories. One-third of the sum appropriated for each fiscal year shall be allotted to the States and Territories in the proportion that their nonfarm population bears to the total nonfarm population of the United States and Territories, according to the United States census last preceding the end of the fiscal year in which any such allotment is to be made, and shall be used for the salaries and necessary travel expenses of teachers, supervisors, and directors of trade and industrial subjects, in such States and Territories: *Provided further*, That the allotment of funds to any State or Territory for each of the three purposes enumerated in this section shall be not less than a minimum of \$20,000 for any fiscal year, 50 per centum of which shall be matched by State or local funds or both, and there is hereby authorized to be appropriated for the fiscal year beginning July 1, 1937, and annually thereafter the sum of \$175,000, or so much thereof as may be needed, which shall be used for the purpose of providing the minimum allotments to the States and Territories provided for in this section. (June 8, 1936, ch. 541, § 1, 49 Stat. 1488.)

§ 15i. Same; additional appropriation for salaries and expenses of teachers, supervisors, and directors; matching by States and Territories.

In addition to the sum authorized to be appropriated by section 15h of this title, there is hereby authorized to be appropriated, and required to be matched in the same proportions as such sum, the sum of \$1,200,000, to be allotted to the States and Territories in the proportion that their total population bears to the total population of the United States and Territories, according to the United States census last preceding the end of the fiscal year in which any such allotment is made, and shall be used for the salaries and necessary travel expenses of teachers, supervisors, and directors of, and maintenance of teacher training in, distributive occupational subjects in such States and Territories: *Provided, however*, That the allotment of funds to any State or Territory for the purpose of this section shall be not less than a minimum of \$10,000 for any fiscal year after July 1, 1937, and there is hereby authorized to be appropriated for the fiscal year beginning July 1, 1937, and annually thereafter the sum of \$54,000, or so much thereof as may be needed, which shall be used for the purpose of providing the

minimum allotments to the States and Territories provided for in this section. (June 8, 1936, ch. 541, § 2, 49 Stat. 1488.)

§ 15j. Same; additional appropriation for training teachers, supervisors, or directors.

For the purpose of cooperating with the States and Territories in preparing teachers, supervisors, and directors of agricultural, trade and industrial, and home-economics subjects there is hereby authorized to be appropriated for the use of the several States and Territories for the fiscal year beginning July 1, 1937, and annually thereafter the sum of \$1,000,000. Said sum shall be allotted to the several States and Territories in the proportion which their population bears to the total population of the United States and Territories, according to the last preceding United States census: *Provided*, That the allotment of funds to any State or Territory shall be not less than a minimum of \$10,000 for any fiscal year. And there is hereby authorized to be appropriated for the fiscal year beginning after June 8, 1936 and annually thereafter the sum of \$54,000, or so much thereof as may be needed, which shall be used for the purpose of providing the minimum allotments to the States and Territories provided for in this section. (June 8, 1936, ch. 541, § 3, 49 Stat. 1489.)

§ 15k. Same; appropriation for Office of Education.

For the purpose of carrying out the provisions of sections 15h, 15i and 15j of this title there is hereby authorized to be appropriated to the Office of Education, Federal Security Agency, for vocational education, for the fiscal year beginning July 1, 1937, and annually thereafter the sum of \$350,000, to be expended for the same purposes and in the same manner as provided in section 15 of this title. (June 8, 1936, ch. 541, § 4, 49 Stat. 1489; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

The Office of Education was originally established in the Department of the Interior from which it was transferred to the Federal Security Agency by Reorganization Plan No. I, cited to text, which is set out in note to section 133t of Title 5, Executive Department, and Government Officers and Employees.

§ 15l. Same; payments to State custodians.

The Secretary of the Treasury, through the Fiscal Service of the Treasury Department, shall, upon the certification of the United States Commissioner of Education, pay, in equal semiannual payments, on the 1st day of July and January of each year, to the custodian for vocational education of each State and Territory designated in section 23 of this title, the moneys to which the State or Territory is entitled under the provisions of sections 15h, 15i and 15j of this title. (June 8, 1936, ch. 541, § 5, 49 Stat. 1489; Reorg. Plan No. III, § 1 (a) (1), 5 Fed. Reg. 2107, 54 Stat. 1231.)

#### TRANSFER OF FUNCTIONS

The Division of Disbursements in the Treasury Department was consolidated in the Fiscal Service of that Department by Reorganization Plan No. III, cited to text.

**§ 15m. Conditions and limitations on appropriations.**

The appropriations made by sections 15h, 15i, 15j and 15k of this title shall be in addition to, and shall be subject to the same conditions and limitations as, the appropriations made by sections 12, 13 and 14 of this title except that the appropriations made by sections 15h and 15j of this title for home economics shall be subject to the conditions and limitations applicable to the appropriation for agricultural purposes under section 12 of this title, with the exception of that part of section 20 of this title which requires directed or supervised practice for at least six months per year; that such moneys as are provided by sections 15h, 15i, 15j and 15k of this title for trade and industrial subjects, including public and other service occupations, may be expended for part-time classes operated for less than one hundred and forty-four hours per year; that the provisions of section 21 of this title, requiring at least one-third of the sum appropriated to any State to be expended for part-time schools or classes shall be held to include any part-time day-school classes for workers fourteen years of age and over, and evening-school classes for workers sixteen years of age and over; except that the appropriations made by section 15i of this title for distributive occupational subjects shall be limited to part-time and evening schools as provided in sections 11-15, 16-28 of this title, for trade, home economics, and industrial subjects and as qualified by the provisions of this section; and that the appropriations available under section 15k of this title shall be available for expenses of attendance at meeting of educational associations and other organizations and for expenses of conferees called to meet in the District of Columbia or elsewhere, which, in the opinion of the Commissioner, are necessary for the efficient discharge of the provisions of sections 15h, 15i, 15j, 15k, 15l and 15m of this title. (June 8, 1936, ch. 541, § 6, 49 Stat. 1489.)

**§ 15n. Industrial-plant programs; limitations on expenditures.**

No part of the appropriations authorized in sections 15h-15p of this title shall be expended in industrial-plant training programs, except such industrial-plant training be bona-fide vocational training, and not a device to utilize the services of vocational trainees for private profit. (June 8, 1936, ch. 541, § 6a, 49 Stat. 1490.)

**§ 15o. Appropriations in lieu of those authorized by Act of 1934.**

The appropriations authorized by sections 15h-15p of this title shall be in lieu thereof and not in addition to the appropriations authorized in sections 15d and 15e of this title. (June 8, 1936, ch. 541, § 7, 49 Stat. 1490.)

**§ 15p. "States and Territories" defined.**

As used in sections 15h-15p of this title the term "States and Territories" means the several States, the Territories of Alaska and Hawaii, the Island of Puerto Rico, and the District of Columbia. (June 8, 1936, ch. 541, § 8, 49 Stat. 1490.)

**§ 16. Same; acceptance of benefits of appropriations by States; creation of State boards.**

In order to secure the benefits of the appropriations provided for in sections 12, 13, and 14 of this title, any State shall, through the legislative authority thereof, accept the provisions of sections 11-15, 16-28, of this title and designate or create a State board, consisting of not less than three members, and having all necessary power to cooperate, as herein provided, with the Federal Security Agency in the administration of the provisions of sections 11-15, 16-28, of this title. The State board of education, or other board having charge of the administration of public education in the State, or any State board having charge of the administration of any kind of vocational education in the State may, if the State so elect, be designated as the State board, for the purposes of sections 11-15, 16-28, of this title.

Any State may accept the benefits of any one or more of the respective funds herein appropriated, and it may defer the acceptance of the benefits of any one or more of such funds, and shall be required to meet only the conditions relative to the fund or funds the benefits of which it has accepted, except that no State shall receive any appropriation for salaries of teachers, supervisors, or directors of agricultural subjects, until it shall have taken advantage of at least the minimum amount appropriated for the training of teachers, supervisors, or directors of agricultural subjects, as provided for in sections 11-15, 16-28, of this title, and no State shall receive any appropriation for the salaries of teachers of trade, home economics, and industrial subjects until it shall have taken advantage of at least the minimum amount appropriated for the training of teachers of trade, home economics, and industrial subjects, as provided for in sections 11-15, 16-28, of this title. (Feb. 23, 1917, ch. 114, § 5, 39 Stat. 931; Ex. Ord. No. 6166, § 15, June 10, 1933; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

**TRANSFER OF FUNCTIONS**

Functions of Federal Board for Vocational Education transferred to Interior Department and from there to the Federal Security Agency. See note to section 11 of this title.

**§ 17. Federal board; members; chairman; terms of office; cooperation with State boards; investigations; assistants.**

A Federal Board for Vocational Education is created, to consist of the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the United States Commissioner of Education, and three citizens of the United States to be appointed by the President, by and with the advice and consent of the Senate. One of said three citizens shall be a representative of the manufacturing and commercial interests, one a representative of the agricultural interests, and one a representative of labor. The board shall elect annually one of its members as chairman. In the first instance, one of the citizen members shall be appointed for one year, one for two years, and one for three years, and thereafter for three years each.

The Federal Security Agency shall have power to cooperate with State boards in carrying out the provisions of sections 11–15, 16–28, of this title. It shall be the duty of the Federal Security Agency to make or cause to have made studies, investigations, and reports, with particular reference to their use in aiding the States in the establishment of vocational schools and classes and in giving instruction in agriculture, trades and industries, commerce and commercial pursuits, and home economics. Such studies, investigations, and reports shall include agriculture and agricultural processes and requirements upon agricultural workers; trades, industries, and apprenticeships, trade and industrial requirements upon industrial workers, and classification of industrial processes and pursuits; commerce and commercial pursuits and requirements upon commercial workers; home management, domestic science, and the study of related facts and principles; and problems of administration of vocational schools and of courses of study and instruction in vocational subjects.

When the Federal Security Agency deems it advisable such studies, investigations, and reports concerning agriculture, for the purposes of agricultural education, may be made in cooperation with or through the Department of Agriculture; such studies, investigations, and reports concerning trades and industries, for the purposes of trade and industrial education, may be made in cooperation with or through the Department of Labor; such studies, investigations, and reports concerning commerce and commercial pursuits, for the purposes of commercial education, may be made in cooperation with or through the Department of Commerce; such studies, investigations, and reports concerning the administration of vocational schools, courses of study and instruction in vocational subjects, may be made in cooperation with or through the Office of Education.

The Commissioner of Education may make such recommendations to the Federal Security Agency relative to the administration of sections 11–15, 16–28, of this title as he may from time to time deem advisable. It shall be the duty of the Federal Security Agency to carry out the rules, regulations, and decisions which it may adopt. The Federal Security Agency shall have power to employ such assistants as may be necessary to carry out the provisions of sections 11–15, 16–28, of this title. (Feb. 23, 1917, ch. 114, § 6, 39 Stat. 932; Ex. Ord. No. 6166, § 15, June 10, 1933; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

The Office of Education was originally established in the Department of the Interior from which it was transferred to the Federal Security Agency by Reorganization Plan No. I, cited to text, which is set out in note to section 133t of Title 5, Executive Department, and Government Officers and Employees.

In the appropriation act of July 12, 1870, ch. 251, 16 Stat. 242, the Office was designated the Bureau of Education. This designation was retained until the act of May 14, 1930, ch. 273, 46 Stat. 281, 319, which made appropriations for the "Office of Education." Since that time, all appropriations have been made to the "Office of Education."

Functions of Federal Board for Vocational Education were transferred to Interior Department and from there

to the Federal Security Agency. See note to section 11. of this title.

#### § 18. Plans and reports by State boards to be submitted to Federal Security Agency.

In order to secure the benefits of the appropriation for any purpose specified in sections 11–15, 16–28, of this title, the State board shall prepare plans, showing the kinds of vocational education for which it is proposed that the appropriation shall be used; the kinds of schools and equipment; courses of study; methods of instruction; qualifications of teachers; and, in the case of agricultural subjects, the qualifications of supervisors or directors; plans for the training of teachers; and, in the case of agricultural subjects, plans for the supervision of agricultural education, as provided for in section 20 of this title. Such plans shall be submitted by the State board to the Federal Security Agency, and if such Agency finds the same to be in conformity with the provisions and purposes of sections 11–15, 16–28, of this title, the same shall be approved. The State board shall make an annual report to the Federal Security Agency, on or before September 1st of each year, on the work done in the State and the receipts and expenditures of money under the provisions of sections 11–15, 16–28, of this title. (Feb. 23, 1917, ch. 114, § 8, 39 Stat. 933; Ex. Ord. No. 6166, § 15, June 10, 1933; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

Functions of Federal Board for Vocational Education were transferred to Interior Department and from there to the Federal Security Agency. See note to section 11 of this title.

#### § 19. Expenditure of appropriations; expenses to be borne by States.

The appropriation for the salaries of teachers, supervisors, or directors of agricultural subjects and of teachers of trade, home economics, and industrial subjects shall be devoted exclusively to the payment of salaries of such teachers, supervisors, or directors having the minimum qualifications set up for the State by the State board, with the approval of the Federal Security Agency. The cost of instruction supplementary to the instruction in agricultural and in trade, home economics, and industrial subjects provided for in sections 11–15, 16–28, of this title, necessary to build a well-rounded course of training, shall be borne by the State and local communities, and no part of the cost thereof shall be borne out of the appropriations made in sections 11–15, 16–28, of this title. The moneys expended under the provisions of sections 11–15, 16–28, of this title, in cooperation with the States, for the salaries of teachers, supervisors, or directors of agricultural subjects, or for the salaries of teachers of trade, home economics, and industrial subjects, shall be conditioned that for each dollar of Federal money expended for such salaries the State or local community, or both, shall expend an equal amount for such salaries; and that appropriations for the training of teachers of vocational subjects, as provided in sections 11–15, 16–28, of this title, shall be conditioned that such money be expended for mainte-

nance of such training and that for each dollar of Federal money so expended for maintenance, the State or local community, or both, shall expend an equal amount for the maintenance of such training. (Feb. 23, 1917, ch. 114, § 9, 39 Stat. 933; Ex. Ord. No. 6166, § 15, June 10, 1933; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

Functions of Federal Board for Vocational Education were transferred to Interior Department and from there to the Federal Security Agency. See note to section 11 of this title.

#### § 20. Plans by State boards for use of appropriations; for agricultural purposes.

Any State may use the appropriation for agricultural purposes, or any part thereof allotted to it, under the provisions of sections 11-15, 16-28, of this title, for the salaries of teachers, supervisors, or directors of agricultural subjects, either for the salaries of teachers of such subjects in schools or classes or for the salaries of supervisors or directors of such subjects under a plan of supervision for the State to be set up by the State board, with the approval of the Federal Security Agency. In order to receive the benefits of such appropriation for the salaries of teachers, supervisors, or directors of agricultural subjects the State board of any State shall provide in its plan for agricultural education that such education shall be that which is under public supervision or control; that the controlling purpose of such education shall be to fit for useful employment; that such education shall be of less than college grade and be designed to meet the needs of persons over fourteen years of age who have entered upon or who are preparing to enter upon the work of the farm or of the farm home; that the State or local community, or both, shall provide the necessary plant and equipment determined upon by the State board, with the approval of the Federal Security Agency, as the minimum requirement for such education in schools and classes in the State; that the amount expended for the maintenance of such education in any school or class receiving the benefit of such appropriation shall be not less annually than the amount fixed by the State board, with the approval of the Federal Security Agency, as the minimum for such schools or classes in the State; that such schools shall provide for directed or supervised practice in agriculture, either on a farm provided for by the school or other farm, for at least six months per year; that the teachers, supervisors, or directors of agricultural subjects shall have at least the minimum qualifications determined for the State by the State board, with the approval of the Federal Security Agency. (Feb. 23, 1917, ch. 114, § 10, 39 Stat. 934; Ex. Ord. No. 6166, § 15, June 10, 1933; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

Functions of Federal Board for Vocational Education were transferred to Interior Department and from there to the Federal Security Agency. See note to section 11 of this title.

#### § 21. Same; for salaries of teachers of trade, home economics, and industrial subjects.

In order to receive the benefits of the appropriation for the salaries of teachers of trade, home economics, and industrial subjects the State board of any State shall provide in its plan for trade, home economics, and industrial education that such education shall be given in schools or classes under public supervision or control; that the controlling purpose of such education shall be to fit for useful employment; that such education shall be of less than college grade and shall be designed to meet the needs of persons over fourteen years of age who are preparing for a trade or industrial pursuit or who have entered upon the work of a trade or industrial pursuit; that the State or local community, or both, shall provide the necessary plant and equipment determined upon by the State board, with the approval of the Federal Security Agency, as the minimum requirement in such State for education for any given trade or industrial pursuit; that the total amount expended for the maintenance of such education in any school or class receiving the benefit of such appropriation shall be not less annually than the amount fixed by the State board, with the approval of the Federal Security Agency, as the minimum for such schools or classes in the State; that such schools or classes giving instruction to persons who have not entered upon employment shall require that at least half of the time of such instruction be given to practical work on a useful or productive basis, such instruction to extend over not less than nine months per year and not less than thirty hours per week; that at least one-third of the sum appropriated to any State for the salaries of teachers of trade, home economics, and industrial subjects shall, if expended, be applied to part-time schools or classes for workers over fourteen years of age who have entered upon employment, and such subjects in a part-time school or class may mean any subject given to enlarge the civic or vocational intelligence of such workers over fourteen and less than eighteen years of age; that such part-time schools or classes shall provide for not less than one hundred and forty-four hours of class-room instruction per year; that evening industrial schools shall fix the age of sixteen years as a minimum entrance requirement and shall confine instruction to that which is supplemental to the daily employment; that the teachers of any trade or industrial subject in any State shall have at least the minimum qualifications for teachers of such subject determined upon for such State by the State board, with the approval of the Federal Security Agency. For cities and towns of less than twenty-five thousand population, according to the last preceding United States census, the State board, with the approval of the Federal Security Agency, may modify the conditions as to the length of course and hours of instruction per week for schools and classes giving instruction to those who have not entered upon employment, in order to meet the particular needs of such cities and towns. (Feb. 23, 1917, ch. 114, § 11, 39 Stat. 934; Ex. Ord. No. 6166, § 15, June 10, 1933; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

TRANSFER OF FUNCTIONS

Functions of Federal Board for Vocational Education were transferred to Interior Department and from there to the Federal Security Agency. See note to section 11 of this title.

§ 22. Same; for training teachers, supervisors, or directors.

In order for any State to receive the benefits of the appropriation in sections 11-15, 16-28, of this title for the training of teachers, supervisors, or directors of agricultural subjects, or of teachers of trade, industrial or home economics subjects, the State board of such State shall provide in its plan for such training that the same shall be carried out under the supervision of the State board; that such training shall be given in schools or classes under public supervision or control; that such training shall be given only to persons who have had adequate vocational experience or contact in the line of work for which they are preparing themselves as teachers, supervisors, or directors, or who are acquiring such experience or contact as a part of their training; and that the State board, with the approval of the Federal Security Agency, shall establish minimum requirements for such experience or contact for teachers, supervisors, or directors of agricultural subjects and for teachers of trade, industrial, and home economics subjects; that not more than 60 per centum nor less than 20 per centum of the money appropriated under sections 11-15, 16-28, of this title for the training of teachers of vocational subjects to any State for any year shall be expended for any one of the following purposes: For the preparation of teachers, supervisors, or directors of agricultural subjects, or the preparation of teachers of trade and industrial subjects, or the preparation of teachers of home economics subjects. (Feb. 23, 1917, ch. 114, § 12, 39 Stat. 935; Ex. Ord. No. 6166, § 15, June 10, 1933; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

TRANSFER OF FUNCTIONS

Functions of Federal Board for Vocational Education were transferred to Interior Department and from there to the Federal Security Agency. See note to section 11 of this title.

§ 23. State custodians of funds appropriated.

In order to secure the benefits of the appropriations for the salaries of teachers, supervisors, or directors of agricultural subjects, or for the salaries of teachers of trade, home economics, and industrial subjects, or for the training of teachers as provided in sections 11-15, 16-28, of this title, any State shall, through the legislative authority thereof, appoint as custodian for said appropriations its State treasurer, who shall receive and provide for the proper custody and disbursements of all money paid to the State from said appropriations. (Feb. 23, 1917, ch. 114, § 13, 39 Stat. 935.)

§ 24. Supervision of expenditures by States; quarterly payments to States.

The Federal Security Agency shall annually ascertain whether the several States are using, or are prepared to use, the money received by them in accordance with the provisions of sections 11-15,

16-28, of this title. On or before the first day of January of each year the Federal Security Agency shall certify to the Secretary of the Treasury each State which has accepted the provisions of sections 11-15, 16-28, of this title and complied therewith, certifying the amounts which each State is entitled to receive under the provisions of sections 11-15, 16-28, of this title. Upon such certification the Secretary of the Treasury shall pay quarterly to the custodian for vocational education of each State the moneys to which it is entitled under the provisions of sections 11-15, 16-28, of this title. The moneys so received by the custodian for vocational education for any State shall be paid out on the requisition of the State board as reimbursement for expenditures already incurred to such schools as are approved by said State board and are entitled to receive such moneys under the provisions of sections 11-15, 16-28, of this title. (Feb. 23, 1917, ch. 114, § 14, 39 Stat. 935; Ex. Ord. No. 6166, § 15, June 10, 1933; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

TRANSFER OF FUNCTIONS

Functions of Federal Board for Vocational Education were transferred to Interior Department and from there to the Federal Security Agency. See note to section 11 of this title.

§ 25. Deductions from allotments when preceding allotments have not been expended.

Whenever any portion of the fund annually allotted to any State has not been expended for the purpose provided for in sections 11-15, 16-28, of this title, a sum equal to such portion shall be deducted by the Federal Security Agency from the next succeeding annual allotment from such fund to such State. (Feb. 23, 1917, ch. 114, § 15, 39 Stat. 936; Ex. Ord. No. 6166, § 15, June 10, 1933; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

TRANSFER OF FUNCTIONS

Functions of Federal Board for Vocational Education were transferred to Interior Department and from there to the Federal Security Agency. See note to section 11 of this title.

§ 26. Withholding allotments.

The Federal Security Agency may withhold the allotment of moneys to any State whenever it shall be determined that such moneys are not being expended for the purposes and under the conditions of sections 11-15, 16-28, of this title.

If any allotment is withheld from any State, the State board of such State may appeal to the Congress of the United States; and if the Congress shall not direct such sum to be paid it shall be covered into the Treasury. (Feb. 23, 1917, ch. 114, § 16, 39 Stat. 936; Ex. Ord. No. 6166, § 15, June 10, 1933; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

TRANSFER OF FUNCTIONS

Functions of Federal Board for Vocational Education were transferred to Interior Department and from there to the Federal Security Agency. See note to section 11 of this title.



### § 27. Loss of funds; replacing; limitation on use.

If any portion of the moneys received by the custodian for vocational education of any State under sections 11-15, 16-28, of this title, for any given purpose named in sections 11-15, 16-28, of this title, shall, by any action or contingency, be diminished or lost, it shall be replaced by such State, and until so replaced no subsequent appropriation for such education shall be paid to such State. No portion of any moneys appropriated under sections 11-15, 16-28, of this title for the benefit of the States shall be applied, directly or indirectly, to the purchase, erection, preservation, or repair of any building or buildings or equipment, or for the purchase or rental of lands, or for the support of any religious or privately owned or conducted school or college. (Feb. 23, 1917, ch. 114, § 17, 39 Stat. 936.)

### § 28. Reports to Congress by Federal Security Agency.

The Federal Security Agency shall make an annual report to Congress, on or before December 1, on the administration of sections 11-15, 16-28, of this title, and shall include in such report the reports made by the State boards on the administration of sections 11-15, 16-28, of this title by each State and the expenditure of the money allotted to each State. (Feb. 23, 1917, ch. 114, § 18, 39 Stat. 936; Ex. Ord. No. 6166, § 15, June 10, 1933; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

Functions of Federal Board for Vocational Education were transferred to Interior Department and from there to the Federal Security Agency. See note to section 11 of this title.

### § 29. Benefits extended to Hawaii.

The Territory of Hawaii shall be entitled to share in the benefits of sections 11-15, 16-28, of this title and any statute supplementary thereto, upon the same terms and conditions as any of the several States. There is authorized to be appropriated annually out of any money in the Treasury not otherwise appropriated, the sum of \$30,000, to be available for allotment under sections 11-15, 16-28, of this title to the Territory. (Mar. 10, 1924, ch. 46, § 4, 43 Stat. 18.)

### § 30. Benefits extended to Puerto Rico; appropriation; apportionment.

Puerto Rico shall be entitled to share in the benefits of sections 11-15, 16-28, of this title upon the same terms and conditions as any of the several States. There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending June 30, 1932, and annually thereafter, the sum of \$105,000, to be available for allotment under sections 11-15, 16-28, of this title to the island of Puerto Rico: *Provided*, That of the sum authorized to be appropriated for the purposes of this section, the sum of \$30,000, if expended, shall be expended for the salaries of teachers of agricultural subjects; the sum of \$30,000, if expended, shall be expended for the salaries of teachers of home-economics subjects; the sum of \$30,000, if expended, shall be expended for the sal-

aries of teachers of trade and industrial subjects; and the sum of \$15,000, if expended, shall be expended for the maintenance of teacher training, including supervision. (Mar. 3, 1931, ch. 404, § 1, 46 Stat. 1489; May 17, 1932, ch. 190, 47 Stat. 158.)

## Chapter 3.—SMITHSONIAN INSTITUTION (AND NATIONAL MUSEUM)

### GENERAL PROVISIONS

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### NATIONAL GALLERY OF ART

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### SMITHSONIAN GALLERY OF ART

76. Designation of site.
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## GENERAL PROVISIONS

## § 41. Incorporation of institution.

The President, the Vice President, the Chief Justice, and the heads of executive departments are hereby constituted an establishment by the name of the Smithsonian Institution for the increase and diffusion of knowledge among men, and by that name shall be known and have perpetual succession, with the powers, limitations, and restrictions hereinafter contained, and no other. (R. S. § 5579; Feb. 27, 1877, ch. 69, 19 Stat. 253; Mar. 12, 1894, ch. 36, 28 Stat. 41.)

## DERIVATION

Act August 10, 1846, ch. 178, § 1, 9 Stat. 102; act March 20, 1871, ch. 1, 17 Stat. 1.

## § 42. Regents.

The business of the institution shall be conducted at the city of Washington by a Board of Regents, named the "Regents of the Smithsonian Institution", to be composed of the Vice President, the Chief Justice of the United States, and three members of the Senate and three members of the House of Representatives; together with six other persons, other than members of Congress, two of whom shall be resident in the city of Washington; and the other four shall be inhabitants of some State, but no two of them of the same State. (R. S. § 5580, Mar. 12, 1894, ch. 36, 28 Stat. 41.)

## DERIVATION

Act August 10, 1846, ch. 178, § 3, 9 Stat. 103; act January 10, 1865, ch. 11, 13 Stat. 420; act March 20, 1871, ch. 1, 17 Stat. 1.

## § 43. Same; appointment; terms of office; vacancies.

The Board of Regents shall be appointed as follows: The Members of the Senate by the President thereof; the Members of the House by the Speaker thereof; and the six other persons by joint resolution of the Senate and House of Representatives. The Members of the House so appointed shall serve for the term of two years; and on every alternate fourth Wednesday of December a like number shall be appointed in the same manner to serve until the fourth Wednesday in December in the second year succeeding their appointment. The Senators so appointed shall serve during the term for which they shall hold, without reelection, their office as Senators. Vacancies, occasioned by death, resignation, or otherwise, shall be filled as vacancies in committees are filled. The regular term of service for the other six members shall be six years; and new elections thereof shall be made by joint resolutions of Congress. Vacancies occasioned by death, resignation, or otherwise may be filled in like manner by joint resolution of Congress. (R. S. § 5581.)

## DERIVATION

Act August 10, 1846, ch. 178, § 3, 9 Stat. 103.

## § 44. Same; organization.

The Board of Regents shall meet in the city of Washington and elect one of their number as chancellor, who shall be the presiding officer of the Board of Regents, and called the "chancellor of the Smithsonian Institution", and a suitable person as secre-

tary of the institution, who shall also be the secretary of the Board of Regents. The board shall also elect three of their own body as an executive committee, and shall fix the time for the regular meetings of the board; and, on application of any three of the Regents to the secretary of the institution, it shall be his duty to appoint a special meeting of the Board of Regents, of which he shall give notice, by letter, to each of the members; and, at any meeting of the board, five shall constitute a quorum to do business. Each member of the board shall be paid his necessary traveling and other actual expenses in attending meetings of the board, which shall be audited by the executive committee and recorded by the secretary of the board; but his service as Regent shall be gratuitous. (R. S. § 5582.)

## DERIVATION

Act August 10, 1846, ch. 178, § 3, 9 Stat. 103.

## § 45. Special meetings of members.

The members of the institution may hold stated and special meetings, for the supervision of the affairs of the institution and the advice and instruction of the Board of Regents, to be called in the manner provided for in the by-laws of the institution, at which the President, and in his absence the Vice President, shall preside. (R. S. § 5585.)

## DERIVATION

Act August 10, 1846, ch. 178, § 8, 9 Stat. 103.

## § 46. Duties of secretary.

The secretary of the Board of Regents shall take charge of the building and property of the institution, and shall, under their direction, make a fair and accurate record of all their proceedings, to be preserved in the institution; and shall also discharge the duties of librarian and of keeper of the museum, and may, with the consent of the Board of Regents, employ assistants. (R. S. § 5583.)

## DERIVATION

Act August 10, 1846, ch. 178, § 7, 9 Stat. 105.

## § 47. Acting secretary.

The chancellor of the Smithsonian Institution may, by an instrument in writing filed in the office of the secretary thereof, designate and appoint a suitable person to act as secretary of the institution when there shall be a vacancy in said office, and whenever the secretary shall be unable from illness, absence, or other cause to perform the duties of his office; and in such case the person so appointed may perform all the duties imposed on the secretary by law until the vacancy shall be filled or such inability shall cease. The said chancellor may change such designation and appointment from time to time as the interests of the institution may in his judgment require. (May 13, 1884, ch. 44, 23 Stat. 21.)

## § 48. Salary and removal of secretary and assistants.

The secretary and his assistants shall, respectively, receive for their services such sum as may be allowed by the Board of Regents, to be paid semiannually on the first day of January and July; and shall be removable by the Board of Regents whenever, in

their judgment, the interests of the institution require such removal. (R. S. § 5584.)

## DERIVATION

Act August 10, 1846, ch. 178, § 7, 9 Stat. 105.

## § 49. Statement of expenditures.

The secretary shall submit to Congress annually at the beginning of each regular session thereof a detailed statement of the expenditures of the preceding fiscal year, under appropriations for "International Exchanges", "North American Ethnology", and the "National Museum." (Oct. 2, 1888, ch. 1069, 25 Stat. 529.)

## § 50. Reception and arrangement of specimens and objects of art.

Whenever suitable arrangements can be made from time to time for their reception, all objects of art and of foreign and curious research, and all objects of natural history, plants, and geological and mineralogical specimens belonging to the United States, which may be in the city of Washington, in whose-soever custody they may be, shall be delivered to such persons as may be authorized by the Board of Regents to receive them, and shall be so arranged and classified in the building erected for the institution as best to facilitate the examination and study of them; and whenever new specimens in natural history, geology, or mineralogy are obtained for the museum of the institution, by exchanges of duplicate specimens, which the Regents may in their discretion make, or by donation, which they may receive, or otherwise, the Regents shall cause such new specimens to be appropriately classed and arranged. The minerals, books, manuscripts, and other property of James Smithson, which have been received by the Government of the United States, shall be preserved separate and apart from other property of the institution. (R. S. § 5586.)

## DERIVATION

Act August 10, 1846, ch. 178, § 6, 9 Stat. 105.

## § 50a. Gellatly art collection; estimates of sums needed for preservation and maintenance.

The Smithsonian Institution is authorized to include in its estimates of appropriations such sums as may be needful for the preservation and maintenance of the John Gellatly art collection. (June 5, 1929, ch. 9, 46 Stat. 5.)

## § 51. Library.

The Regents shall make, from the interest of the fund, an appropriation, not exceeding an average of \$25,000 annually, for the gradual formation of a library composed of valuable works pertaining to all departments of human knowledge. (R. S. § 5587.)

## DERIVATION

Act August 10, 1846, ch. 178, § 8, 9 Stat. 105.

## CROSS REFERENCE

Appropriation of interest moneys, see section 54 of this title.

## § 52. Evidence of title to site and buildings.

The site and lands selected for buildings for the Smithsonian Institution shall be deemed appropri-

ated to the institution, and the record of the description of such site and lands, or a copy thereof, certified by the chancellor and secretary of the Board of Regents, shall be received as evidence in all courts of the extent and boundaries of the lands appropriated to the institution. (R. S. § 5588.)

## DERIVATION

Act August 10, 1846, ch. 178, § 4, 9 Stat. 104.

## FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official record, see Rule 44, following § 723c of Title 28, Judicial Code and Judiciary.

## § 53. Protection of property.

All laws for the protection of public property in the city of Washington shall apply to, and be in force for, the protection of the lands, buildings, and other property of the Smithsonian Institution. All moneys recovered by or accruing to, the institution shall be paid into the Treasury of the United States, to the credit of the Smithsonian bequest, and separately accounted for. (R. S. § 5589.)

## DERIVATION

Act August 10, 1846, ch. 178, § 5, 9 Stat. 104.

## § 54. Appropriation of interest.

So much of the property of James Smithson as has been received in money, and paid into the Treasury of the United States, being the sum of \$541,379.63, shall be lent to the United States Treasury, at 6 per centum per annum interest; and 6 per centum interest on the trust-fund and residuary legacy received into the United States Treasury, payable in half-yearly payments, on the first of January and July in each year, is appropriated for the perpetual maintenance and support of the Smithsonian Institution; and all expenditures and appropriations to be made, from time to time, to the purposes of the institution shall be exclusively from the accruing interest, and not from the principal of the fund. All the moneys and stocks which have been, or may hereafter be, received into the Treasury of the United States, on account of the fund bequeathed by James Smithson, are pledged to refund to the Treasury of the United States the sums hereby appropriated. (R. S. § 5590.)

## DERIVATION

Acts August 10, 1846, ch. 178, § 2, 9 Stat. 102; February 5, 1867, ch. 34, § 2, 14 Stat. 391.

## § 55. Acceptance of other sums.

The Secretary of the Treasury is authorized and directed to receive into the Treasury, on the same terms as the original bequest of James Smithson, such sums as the Regents may, from time to time, see fit to deposit, not exceeding, with the original bequest, the sum of \$1,000,000. This shall not operate as a limitation on the power of the Smithsonian Institution to receive money or other property by gift, bequest, or devise, and to hold and dispose of the same in promotion of the purposes thereof. (R. S. § 5591; Mar. 12, 1894, ch. 36, 28 Stat. 41.)

## DERIVATION

Act February 5, 1867, ch. 34, § 1, 14 Stat. 391.

# § 56. Disposal of unappropriated money.

The Regents are authorized to make such disposal of any other moneys which have accrued, or shall hereafter accrue, as interest upon the Smithsonian fund, not herein appropriated, or not required for the purposes herein provided, as they shall deem best suited for the promotion of the purpose of the testator. (R. S. § 5592.)

## DERIVATION

Act August 10, 1846, ch. 178, § 9, 9 Stat. 105.

# § 57. Disbursements.

Whenever money is required for the payment of the debts or performance of the contracts of the institution, incurred or entered into in conformity with the provisions of sections 41-46, 48, 50, 51-57, and 67 of this title, or for making the purchases and executing the objects authorized by said sections, the Board of Regents, or the executive committee thereof, may certify to the chancellor and secretary of the board that such sum of money is required, whereupon they shall examine the same, and, if they shall approve thereof, shall certify the same to the proper officer of the Treasury for payment. The board shall submit to Congress, at each session thereof, a report of the operations, expenditures, and condition of the institution. (R. S. § 5593.)

## DERIVATION

Act August 10, 1846, ch. 178, § 8, 9 Stat. 103.

# § 58. Annual report of salaries.

A report in detail, for the preceding fiscal year, shall be made to Congress annually of the salaries of all officers and employees paid from appropriations under the Smithsonian Institution. (Mar. 3, 1899, ch. 424, § 1, 30 Stat. 1085.)

# § 59. National Museum; collections of Coast and Geodetic Survey, and Geological Survey.

All collections of rocks, minerals, soils, fossils, and objects of natural history, archæology, and ethnology, made by the Coast and Geodetic Survey, the Geological Survey, or by any other parties for the Government of the United States, when no longer needed for investigations in progress shall be deposited in the National Museum. (Mar. 3, 1879, ch. 182, § 1, 20 Stat. 394.)

## REFERENCES IN TEXT

Words "Coast and Interior Survey" appearing in act Mar. 3, 1879, cited to text, have been changed to "Coast and Geodetic Survey." Congress never created a Coast and Interior Survey. In a communication dated November 6, 1940, the Director of the Geological Survey explained that the words "Coast and Interior Survey" were inadvertently incorporated upon authority of report contained in Senate Misc. Doc. No. 9, 45th Congress, 3d Session, which recommended the "Coast and Geodetic Survey" be changed to "United States Coast and Interior Survey" and an organization be created in the Interior Department to be known as the "United States Geological Survey." Congress adopted only the latter suggestion.

# § 60. Same; arms, matériel, equipment, etc., for.

The Secretary of War is authorized to furnish to the National Museum, for exhibition, upon request therefor by the administrative head thereof, such articles of arms, matériel, equipment, or clothing as have been issued from time to time to the United

States Army, or which have been or may hereafter be produced for the United States Army, and which are objects of general interest or of foreign or curious research, provided that such articles are surplus or can be spared. (Mar. 4, 1921, ch. 166, § 1, 41 Stat. 1438.)

# § 61. Archives relating to Indians, collected by Geographical and Geological Survey.

All the archives, records, and materials relating to the Indians of North America, collected by the Geographical and Geological Survey of the Rocky Mountain region, shall be turned over to the Smithsonian Institution, that the work may be completed and prepared for publication under its direction: *Provided*, That it shall meet the approval of the Secretary of the Interior and of the Secretary of the Smithsonian Institution. (Mar. 3, 1879, ch. 182, § 1, 20 Stat. 397.)

# § 62. Instruments of Coast and Geodetic Survey; transfer authorized.

The Secretary of Commerce may transfer to the Smithsonian Institution such instruments of the Coast and Geodetic Survey as in his judgment are of historic value but of no further use in the survey's work. (Aug. 1, 1914, ch. 223, § 1, 38 Stat. 661.)

# § 63. Transfer of instruments to educational institutions and museums.

The Secretary of Commerce is authorized to transfer, under such rules and regulations as he may deem advisable, to educational institutions and to museums, such instruments of the United States Coast and Geodetic Survey as, in his judgment, are of historical value but of no further use in the work of that survey, except such historical instruments as may be needed by the Smithsonian Institution for exhibit at the National Museum. (June 5, 1920, ch. 235, § 1, 41 Stat. 930.)

# § 64. Distribution of specimens to schools and colleges.

Duplicate specimens of the National Museum and of the Fish and Wildlife Service may be distributed to colleges, academies, and other institutions of learning upon the payment by the recipients of the cost of preparation for transportation and the transportation thereof. (Mar. 3, 1883, ch. 143, 22 Stat. 629; Reorg. Plan No. II, § 4 (e), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1433; Reorg. Plan No. III, § 3, eff. June 30, 1940, 5 Fed. Reg. 2108, 54 Stat. 1232.)

## TRANSFER OF FUNCTIONS

Bureau of Fisheries was consolidated with Bureau of Biological Survey into Fish and Wildlife Service in Department of Interior, and offices of Commissioner and Deputy Commissioner of Fisheries were abolished by Reorganization Plan No. III, § 3, effective June 30, 1940, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

# § 65. Report of Director of National Museum.

The Director of the National Museum shall report annually to Congress the progress of the museum during the year and its present condition. (July 7, 1884, ch. 332, 23 Stat. 214.)

# § 66. Exchange of typewriters and adding machines.

The Government branches under the direction of the Smithsonian Institution may exchange type-

writers, adding machines, and other labor-saving devices in part payment for like articles. (Mar. 3, 1915, ch. 75, § 1, 38 Stat. 839.)

#### § 67. Right of repeal.

Congress may alter, amend, add to, or repeal any of the provisions of sections 41-46, 48, 50, 51-57, of this title; but no contract or individual right made or acquired under such provisions shall be thereby divested or impaired. (R. S. § 5594.)

#### DERIVATION

Act August 10, 1846, ch. 178, § 11, 9 Stat. 106.

#### § 68. Repealed. Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111.

Section was from act Feb. 11, 1927, ch. 104, § 1, 44 Stat. 1081.

Its subject matter is now covered by sections 6-6b of Title 41, Public Contracts. Construction of repeal, see note under section 6 of Title 41, Public Contracts.

#### § 69. Ethnological researches among American Indians; cooperation of Institution with States, educational institutions, and scientific organizations.

The Secretary of the Smithsonian Institution is hereby authorized to cooperate with any State, educational institution, or scientific organization in the United States for continuing ethnological researches among the American Indians and the excavation and preservation of archaeological remains. (Apr. 10, 1928, ch. 335, § 1, 45 Stat. 413.)

#### § 70. Same; appropriation for cooperative work; direction of work; when Secretary of the Interior may impose regulations.

There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$20,000, which shall be available until expended for the purposes stated in section 69 of this title: *Provided*, That at such time as the Smithsonian Institution is satisfied that any State, educational institution, or scientific organization in any of the United States is prepared to contribute to such investigation and when, in its judgment, such investigation shall appear meritorious, the Secretary of the Smithsonian Institution may direct that an amount from this sum equal to that contributed by such State, educational institution, or scientific organization, not to exceed \$2,000, to be expended from such sum in any one State during any calendar year, be made available for cooperative investigation: *Provided further*, That all such cooperative work and division of the result thereof shall be under the direction of the Secretary of the Smithsonian Institution: *Provided further*, That where lands are involved which are under the jurisdiction of the Bureau of Indian Affairs or the National Park Service, cooperative work thereon shall be under such regulations and conditions as the Secretary of the Interior may provide. (Apr. 10, 1928, ch. 335, § 2, 45 Stat. 413.)

### NATIONAL GALLERY OF ART

#### NATIONAL COLLECTION OF FINE ARTS

Act of March 24, 1937, ch. 50, 50 Stat. 51, sections 1-5 of which are incorporated as sections 71-75 of this title, provided in section 6 (c) that "The existing bureau of the Smithsonian Institution now designated as a national gallery of art shall hereafter be known as the National Collection of Fine Arts."

#### § 71. National Gallery of Art; designation of site.

The area bounded by Seventh Street, Constitution Avenue, Fourth Street, and North Mall Drive, Northwest, in the District of Columbia, is hereby appropriated to the Smithsonian Institution as a site for a National Gallery of Art. The Smithsonian Institution is authorized to permit the A. W. Mellon Educational and Charitable Trust (hereinafter referred to as the donor) to construct on said site for the Smithsonian Institution a building to be designated the National Gallery of Art, and to remove any existing structure and landscape the grounds within said area. The adjoining area bounded by Fourth Street, Pennsylvania Avenue, Third Street, and North Mall Drive, Northwest, in the District of Columbia, is hereby reserved as a site for future additions to the National Gallery of Art. The project shall be in accordance with plans and specifications approved by the Commission of Fine Arts. (Mar. 24, 1937, ch. 50, § 1, 50 Stat. 51.)

#### § 72. Same; establishment; Board of Trustees.

(a) There is hereby established in the Smithsonian Institution a bureau, which shall be directed by a board to be known as the Trustees of the National Gallery of Art, whose duty it shall be to maintain and administer the National Gallery of Art and site thereof and to execute such other functions as are vested in the board by sections 71-75 of this title. The board shall be composed as follows: The Chief Justice of the United States, the Secretary of State, the Secretary of the Treasury, and the Secretary of the Smithsonian Institution, *ex officio*; and five general trustees who shall be citizens of the United States, to be chosen as hereinafter provided. No officer or employee of the Federal Government shall be eligible to be chosen as a general trustee.

(b) The general trustees first taking office shall be chosen by the Board of Regents of the Smithsonian Institution, subject to the approval of the donor, and shall have terms expiring one each on July 1 of 1939, 1941, 1943, 1945, and 1947, as designated by the Board of Regents. A successor shall be chosen by a majority vote of the general trustees and shall have a term expiring ten years from the date of the expiration of the term for which his predecessor was chosen, except that a successor chosen to fill a vacancy occurring prior to the expiration of such term shall be chosen only for the remainder of such term. (Mar. 24, 1937, ch. 50, § 2, 50 Stat. 52.)

#### NATIONAL COLLECTION OF FINE ARTS

Act of March 24, 1937, ch. 50, 50 Stat. 51, sections 1-5 of which are incorporated as sections 71-75 of this title, provided in section 6 (c) that "The existing bureau of the Smithsonian Institution now designated as a national gallery of art shall hereafter be known as the National Collection of Fine Arts."

#### § 73. Same; acceptance of gift from A. W. Mellon.

Upon completion of the National Gallery of Art, the board shall accept for the Smithsonian Institution as a gift from the donor a collection of works of art which shall be housed and exhibited in the National Gallery of Art. (Mar. 24, 1937, ch. 50, § 3, 50 Stat. 52.)

**§ 74. Same; maintenance; acceptance of gifts; appointment and compensation of officers and employees; review of actions of board.**

(a) The faith of the United States is pledged that, on completion of the National Gallery of Art by the donor in accordance with the terms of sections 71-75 of this title and the acquisition from the donor of the collection of works of art, the United States will provide such funds as may be necessary for the upkeep of the National Gallery of Art and the administrative expenses and costs of operation thereof, including the protection and care of works of art acquired by the board, so that the National Gallery of Art shall be at all times properly maintained and the works of art contained therein shall be exhibited regularly to the general public free of charge. For these purposes, and to provide, prior to the completion of the National Gallery of Art, for the protection and care of the works of art in said Gallery and for administrative and operating expenses and equipment preparatory to the opening of the Gallery to the public, there are hereby authorized to be appropriated such sums as may be necessary.

(b) The board is authorized to accept for the Smithsonian Institution and to hold and administer gifts, bequests, or devises of money, securities, or other property of whatsoever character for the benefit of the National Gallery of Art. Unless otherwise restricted by the terms of the gift, bequest, or devise, the board is authorized to sell or exchange and to invest or reinvest in such investments as it may determine from time to time the moneys, securities, or other property composing trust funds given, bequeathed, or devised to or for the benefit of the National Gallery of Art. The income as and when collected shall be placed in such depositories as the board shall determine and shall be subject to expenditure by the board.

(c) The board shall appoint and fix the compensation and duties of a director, an assistant director, a secretary, and a chief curator of the National Gallery of Art, and of such other officers and employees of the National Gallery of Art as may be necessary for the efficient administration of the functions of the board. Such director, assistant director, secretary, and chief curator shall be compensated from trust funds available to the board for the purpose, and their appointment and salaries shall not be subject to the civil-service laws or sections 661-663, 664-673, 674, of Title 5. The director, assistant director, secretary, and chief curator shall be well qualified by experience and training to perform the duties of their office and the original appointment to each such office shall be subject to the approval of the donor.

(d) The actions of the board, including any payment made or directed to be made by it from any trust funds, shall not be subject to review by any officer or agency other than a court of law. (Mar. 24, 1937, ch. 50, § 4, 50 Stat. 52; Apr. 13, 1939, ch. 61, 53 Stat. 577.)

**§ 75. Same; seal; bylaws and regulations; quorum; standard of art works; trust funds; reports of board.**

(a) The board is authorized to adopt an official seal which shall be judicially noticed and to make

such bylaws, rules, and regulations, as it deems necessary for the administration of its functions under sections 71-75 of this title, including, among other matters, bylaws, rules, and regulations relating to the acquisition, exhibition, and loan of works of art, the administration of its trust funds, and the organization and procedure of the board. The board may function notwithstanding vacancies, and three members of the board shall constitute a quorum for the transaction of business.

(b) In order that the collection of the National Gallery of Art shall always be maintained at a high standard and in order to prevent the introduction therein of inferior works of art, no work of art shall be included in the permanent collection of the National Gallery of Art unless it be of similar high standard of quality to those in the collection acquired from the donor.

(c) The board shall have all the usual powers and obligations of a trustee in respect of all trust funds administered by it and all works of art acquired by it.

(d) The board shall submit to the Smithsonian Institution an annual report of its operations under sections 71-75 of this title, including a detailed statement of all acquisitions and loans of works of art and of all public and private moneys received and disbursed. (Mar. 24, 1937, ch. 50, § 5, 50 Stat. 53.)

**SMITHSONIAN GALLERY OF ART**

**§ 76. Designation of site.**

For the purpose of providing a site for a suitable building for properly housing and displaying the national collections of fine arts, comprising paintings, sculptures, bronzes, glass, porcelain, tapestry, furniture, jewelry, and other types of art; to display portraits of eminent American men and women; and to exhibit the works of artists deserving of recognition, the National Capital Park and Planning Commission shall designate and the President shall assign a suitable tract of public land in the District of Columbia between Fourth and Fourteenth Streets and Constitution and Independence Avenues. (May 17, 1938, ch. 238, § 1, 52 Stat. 399.)

**§ 76a. Creation of Commission; personnel; compensation; powers; termination.**

(a) A Commission, to be called the Smithsonian Gallery of Art Commission (hereinafter referred to as the "Commission"), comprising a member to be designated by the Regents of the Smithsonian Institution; the Secretary of the Smithsonian Institution; a member to be designated by the Secretary of the Treasury; the Chairman of the National Capital Park and Planning Commission; the Chairman of the Commission of Fine Arts; the Chairman of the Joint Committee on the Library; the Chairman of the Committee on the Library of the House; and the Chairman of the Art Commission of the Smithsonian Institution, is hereby created and authorized to make all preliminary investigations and to secure appropriate designs, by competition or otherwise, preferably by competition, for a building to be constructed on the site above described, said building to be so designed as to permit of future expansion,

parking arrangements, and for landscaping its surroundings. The Commission shall choose a Chairman from its own membership.

(b) The members of the Commission shall serve as such members without compensation and the Commission shall terminate upon the submission to and approval by the Regents of the Smithsonian Institution (hereinafter referred to as the "Regents") of the said design for the building and grounds.

(c) The Commission may employ such technical, clerical, and other assistants and make such expenditures (including expenditures for personal services at the seat of government and elsewhere) as may be necessary for the performance of the duties vested in the Commission: *Provided*, That architectural, engineering, and other necessary consultants may be employed without regard to the civil-service laws and sections 661-663, 664-673, 674 of Title 5. All expenditures of the Commission, including the cost of any design which may be accepted, and the compensation of a jury of award in the event a competition is held, shall be allowed and paid upon presentation of itemized vouchers therefor approved by its Chairman. To carry out the provisions of this section, there is hereby authorized to be appropriated the sum of \$40,000. (May 17, 1938, ch. 238, § 2, 52 Stat. 399.)

§ 76b. Solicitation of construction funds by Regents; construction, name, and maintenance of building.

(a) The Regents are hereby authorized to solicit and receive subscriptions of funds from private sources for the purposes specified in this subsection. Funds so received shall be placed in a special deposit account with the Treasurer of the United States, and may be expended by the Regents to meet the cost of the construction of the building, including furnishings and equipment thereof, to obtain necessary drawings and specifications, make necessary surveys and estimates of cost, defray necessary administrative expenses, and secure other needful services.

(b) The Regents may, subject to the approval of the President, authorize the preparation of the site and the construction of the building, including approaches and landscaping of the grounds: *Provided*, That the Federal Works Administrator shall supervise the preparation of the plans and specifications, make all necessary contracts, and supervise construction.

(c) The name of the building shall be the Smithsonian Gallery of Art (hereinafter referred to as the "Gallery"), and it shall be under the supervision and control of the Regents and the Secretary of the Smithsonian Institution. (May 17, 1938, ch. 238, § 3, 52 Stat. 400; Reorg. Plan No. I, §§ 301, 303, eff. July 1, 1939, 4 Fed. Reg. 2729, 53 Stat. 1426, 1427.)

#### TRANSFER OF FUNCTIONS

All the functions of the Director of Procurement relating to the selection of location and sites of public buildings were transferred to the Federal Works Administrator by Reorganization Plan No. I, cited to text and set out as note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

§ 76c. Policy to foster appreciation of past and contemporary art; solicitation of donations.

(a) It shall be the policy of the Regents to maintain a worthy standard for the acceptance of art objects for exhibition in the Gallery, and to foster by public exhibitions from time to time in Washington, and other parts of the United States a growing appreciation of art, both of past and contemporary time; and the Regents are hereby authorized to solicit and receive private donations of works of art and contributions of funds from private sources for the purchase of works of art. Funds so received shall be placed in a special deposit account with the Treasurer of the United States and may be expended by the Regents for the purchase of works of art.

(b) In order to encourage the development of contemporary art and to effect the widest distribution and cultivation in matters of such art, the Regents are hereby authorized to solicit and receive funds from private sources, to acquire (by purchase or otherwise) and sell contemporary works of art or copies thereof, to employ artists and other personnel, award scholarships, conduct exhibitions, and generally to do such things and have such other powers as will effectuate the purposes of this subsection. Funds received by the Regents under this subsection shall be placed in a special deposit account with the Treasurer of the United States and may be expended by the Regents for the purposes enumerated in this subsection and for no other purposes: *Provided*, That the Regents shall not incur any obligations under this subsection in excess of the funds available therefor. (May 17, 1938, ch. 238, § 4, 52 Stat. 400.)

§ 76d. Donations of works of art from Government agencies.

The Federal Works Administrator and other agencies of the Government are authorized to donate to the Gallery any works of art now or hereafter under their control. (May 17, 1938, ch. 238, § 5, 52 Stat. 401; Reorg. Plan No. I, §§ 301, 303, eff. July 1, 1939, 4 Fed. Reg. 2729, 53 Stat. 1426, 1427.)

#### TRANSFER OF FUNCTIONS

Public Buildings Branch of the Procurement Division in the Treasury Department and Public Works Administration and other agencies were consolidated into the Federal Works Agency, and functions transferred to the Federal Works Administrator, by Reorganization Plan No. I, §§ 301, 303, effective July 1, 1939, set out in notes to section 133t of Title 5, Executive Departments and Government Officers and Employees.

§ 76e. Housing or exhibiting objects of art possessed by Smithsonian Institute.

Such objects of art as the Government or the Smithsonian Institution now possess, or such as may hereafter be acquired, may be housed or exhibited in the Gallery, with the approval of and under such regulations as the Regents and Secretary of the Smithsonian Institution may prescribe. (May 17, 1938, ch. 238, § 6, 52 Stat. 401.)

§ 76f. Appointment of Director of Gallery, compensation and duties; personnel.

The Regents may appoint and fix the compensation and duties of a Director of the Gallery and may employ such other officers and employees as



may be necessary for the efficient operation and administration of the Gallery. (May 17, 1938, ch. 238, § 7, 52 Stat. 401.)

**§ 76g. Appropriations for administrative expenses.**

There are hereby authorized to be appropriated annually such sums as may be necessary to maintain and administer the Gallery, including the salaries of the Director and of other necessary officers and employees, and for special public exhibitions at Washington and elsewhere. (May 17, 1938, ch. 238, § 8, 52 Stat. 401.)

**Chapter 4.—NATIONAL ZOOLOGICAL PARK**

**Sec.**

81. National Zoological Park; administration by Regents of Smithsonian Institution.

82. Same; aid in acquisition of collections.

83. Same; report of expenses.

84. Same; plans for buildings and bridges.

**§ 81. National Zoological Park; administration by Regents of Smithsonian Institution.**

The National Zoological Park is placed under the direction of the Regents of the Smithsonian Institution, who are authorized to transfer to it any living specimens, whether of animals or plants, in their charge, to accept gifts for the park at their discretion, in the name of the United States, to make exchanges of specimens, and to administer the said Zoological Park for the advancement of science and the instruction and recreation of the people. (Apr. 30, 1890, ch. 173, § 2, 26 Stat. 78.)

**§ 82. Same; aid in acquisition of collections.**

The heads of executive departments of the Government are authorized and directed to cause to be rendered all necessary and practicable aid to the said Regents in the acquisition of collections for the Zoological Park. (Apr. 30, 1890, ch. 173, § 3, 26 Stat. 78.)

**§ 83. Same; report of expenses.**

A report in detail of the expenses on account of the National Zoological Park shall be made to Congress at the beginning of each regular session. (Aug. 18, 1894, ch. 301, § 1, 28 Stat. 384.)

**§ 84. Same; plans for buildings and bridges.**

All plans and specifications for the construction of buildings in the National Zoological Park shall be prepared under the supervision of the municipal architect of the District of Columbia, and all plans and specifications for bridges in said park shall be prepared under the supervision of the engineer of bridges of the District of Columbia. (Aug. 24, 1912, ch. 355, § 1, 37 Stat. 437.)

**Chapter 5.—GOVERNMENT COLLECTIONS AND INSTITUTIONS FOR RESEARCH, AND MATERIAL FOR EDUCATIONAL INSTITUTIONS**

**Sec.**

91. Literary and scientific collections accessible to investigators and students.

92. Admissions to marine biological station for pursuit of investigations.

93. Sale of machine tools to trade, technical, and public schools and universities; conditions.

**Sec.**

94. Transfer of obsolete aeronautical equipment to museums, schools, and colleges.

**§ 91. Literary and scientific collections accessible to investigators and students.**

The facilities for study research and illustration in the Government departments and in the following and any other governmental collections now existing or hereafter to be established in the city of Washington for the promotion of knowledge shall be accessible, under such rules and restrictions as the officers in charge of each department or collection may prescribe, subject to such authority as is now or may hereafter be permitted by law, to the scientific investigators and to duly qualified individuals, students and graduates of any institution of learning in the several States and Territories and the District of Columbia, to wit:

One. Of the Library of Congress.

Two. Of the National Museum.

Three. Of the Patent Office.

Four. Of the Office of Education.

Five. Of the Bureau of Ethnology.

Six. Of the Army Medical Museum.

Seven. Of the Department of Agriculture.

Eight. Of the Fish and Wildlife Service.

Nine. Of the Botanic Gardens.

Ten. Of the Coast and Geodetic Survey.

Eleven. Of the Geological Survey.

Twelve. Of the Naval Observatory.

Thirteen. Of the Zoological Park.

Fourteen. Of the Government Printing Office. (Apr. 12, 1892, No. 8, 27 Stat. 395; Mar. 3, 1901, ch. 831, § 1, 31 Stat. 1039; May 14, 1928, ch. 551, § 1, 45 Stat. 531; Reorg. Plan No. II, § 4 (e), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1433; Reorg. Plan No. III, § 3, eff. June 30, 1940, 5 Fed. Reg. 2108, 54 Stat. 1232.)

**TRANSFER OF FUNCTIONS**

Bureau of Fisheries was consolidated with Bureau of Biological Survey into Fish and Wildlife Service in Department of Interior by Reorganization Plan No. III, § 3, effective June 30, 1940, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

**CHANGE IN NAME**

The Office of Education was created and placed in the Department of the Interior by the act of July 20, 1868, ch. 176, 15 Stat. 106, which abolished the Department of Education. In the appropriation act of July 12, 1870, ch. 251, 16 Stat. 242, the Office was designated the Bureau of Education. This designation was retained until the act of May 14, 1930, ch. 273, 46 Stat. 281, 319, which made appropriations for the "Office of Education." Since that time, all appropriations have been made to the "Office of Education."

**§ 92. Admissions to marine biological station for pursuit of investigations.**

The professors, instructors, and students of the several land-grant, agricultural, and mechanical colleges of the United States shall be admitted to the marine biological station on the Gulf of Mexico on the coast of Florida, to pursue such investigation in fish culture and biology as may be practicable, without cost to the Government, under such rules and regulations as may be from time to time prescribed by the Secretary of Commerce. (Mar. 1, 1911, ch.

189, §§ 1, 2, 36 Stat. 964; Aug. 1, 1914, ch. 223, § 1, 38 Stat. 665.)

#### DISPOSAL OF STATION

Secretary of Commerce was authorized to dispose of the marine biological station at Key West, Fla., by act April 29, 1929, ch. 2, 46 Stat. 2.

Under communication of the Fish and Wildlife Service dated November 12, 1940, it was stated the land on which was situated this station was reconveyed to the Key West Realty Company by quit claim deed executed by the Secretary of Commerce.

§ 93. Sale of machine tools to trade, technical, and public schools and universities; conditions.

The Secretary of War is authorized, under such regulations as he may prescribe, to sell at 15 per centum of their cost to trade, technical, and public schools and universities, and other recognized educational institutions, upon application in writing, such machine tools as are suitable for their use owned by the United States of America and under the control of the War Department and not needed for Government purposes. The money realized from the sale may be used by the Secretary of War to defray expenses, except cost of transportation, incident to distribution of the tools, and the balance shall be turned into the Treasury of the United States as miscellaneous receipts. In the event any such material is offered for sale by said institutions without the consent in writing of the Secretary of War, title thereto shall revert to the United States. (Nov. 19, 1919, ch. 118, 41 Stat. 360.)

§ 94. Transfer of obsolete aeronautical equipment to museums, schools, and colleges.

The Secretary of War is hereby authorized in his discretion to transfer or loan to museums or properly accredited schools, colleges, and universities, for exhibition or instructional purposes, any aircraft, aircraft parts, instruments, or engines that have become obsolete or impaired to the extent that repair would not be economical: *Provided*, That such aircraft, aircraft parts, or engines will not be used in actual flight: *Provided further*, That no expense shall be caused the United States Government by the transfer or loan or return of said property. (May 26, 1928, ch. 760, 45 Stat. 753.)

#### Chapter 6.—AMERICAN PRINTING HOUSE FOR THE BLIND

Sec.

101. Permanent trust fund; annual appropriation.
102. Same; application of appropriation.
  - (1) Purposes and method of expenditure.
  - (2) Buildings.
  - (3) Sales of books and apparatus at cost.
  - (4) Income withheld when not properly used.
  - (5) Bond of treasurer.
  - (6) Ex officio trustees.
103. Publications for National Library for the Blind.
104. Annual reports by trustees.
105. Books for Library of Congress.

§ 101. Permanent trust fund; annual appropriation.

The sum of \$250,000, set apart as a perpetual trust fund for the purpose of aiding the education of the blind in the United States, through the American Printing House for the Blind, shall be credited on the books of the Treasury Department as a perpetual trust fund for that purpose, to be held by the Secretary of the Treasury; and the sum of \$10,000,

being equivalent to 4 per centum on the principal of said trust fund, is appropriated, out of any moneys in the Treasury not otherwise appropriated, and such appropriation shall be deemed a permanent annual appropriation and shall be expended in the manner and for the purposes authorized by sections 1, 2 and 4 of this title. In addition to the permanent appropriation of \$10,000, made in this section, there is authorized to be appropriated annually to the American Printing House for the Blind the sum of \$115,000, which sum shall be expended in accordance with the requirements of sections 1, 2 and 4 of this title. (Mar. 3, 1879, ch. 186, §§ 1, 2, 20 Stat. 468; June 25, 1906, ch. 3536, 34 Stat. 460; Aug. 4, 1919, ch. 31, 41 Stat. 272; Feb. 8, 1927, ch. 76, 44 Stat. 1060; Aug. 23, 1937, ch. 736, 50 Stat. 744.)

#### TRANSFER OF FUNCTIONS

Functions of Secretary of Treasury over administration of appropriations for American Printing House for Blind (except function relating to administration of perpetual trust fund) were transferred to Federal Security Agency, and annual report and vouchers of trustees were directed to be furnished to Federal Security Administrator by Reorganization Plan No. II, § 201 (b), effective July 1, 1939, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

#### CROSS REFERENCE

Classification of fund for education of the blind as a trust fund, see section 725a of Title 31, Money and Finance.

§ 102. Same; application of appropriation.

The Secretary of the Treasury of the United States is hereby authorized to pay over semiannually, to the trustees of the American Printing House for the Blind, located in Louisville, Kentucky, and chartered in 1858 by the Legislature of Kentucky, upon the requisition of their president, countersigned by their treasurer, one-half of such permanent annual appropriation upon the following conditions:

(1) *Purposes and method of expenditure.*—First. Such appropriation shall be expended by the trustees of the American Printing House for the Blind each year in manufacturing and furnishing embossed books for the blind and tangible apparatus for their instruction; and the total amount of such books and apparatus so manufactured and furnished by such appropriation shall each year be distributed among all the public institutions for the education of the blind in the States and Territories of the United States and the District of Columbia, upon the requisition of the superintendent of each, duly certified by its board of trustees. The basis of such distribution shall be the total number of pupils in all the public institutions for the education of the blind, to be authenticated in such manner and as often as the trustees of the said American Printing House for the Blind shall require; and each institution shall receive, in books and apparatus, that portion of the appropriation as is shown by the ratio between the number of pupils in that institution for the education of the blind and the total number of pupils in all the public institutions for the education of the blind, which ratio shall be computed upon the first Monday in January of each year.

(2) *Buildings.*—Second. No part of the appropriation shall be expended in the erection or leasing of buildings.

(3) *Sales of books and apparatus at cost.*—Third. No profit shall be put on any books or tangible apparatus for the instruction of the blind manufactured or furnished by the trustees of said American Printing House for the Blind, located in Louisville, Kentucky; and the price put upon each article so manufactured or furnished shall only be its actual cost.

(4) *Income withheld when not properly used.*—Fourth. The Secretary of the Treasury of the United States shall have the authority to withhold the appropriation whenever he shall receive satisfactory proof that the trustees of said American Printing House for the Blind, located in Louisville, Kentucky, are not using the appropriation for the benefit of the blind in the public institutions for the education of the blind in the United States.

(5) *Bond of treasurer.*—Fifth. Before any money be paid to the treasurer of the American Printing House for the Blind by the Secretary of the Treasury of the United States, the treasurer of the American Printing House for the Blind shall execute a bond, with two approved sureties, to the amount of \$20,000, conditioned that the money so received shall be expended according to this law and all amendments thereto, which shall be held by the Secretary of the Treasury of the United States, and shall be renewed every two years.

(6) *Ex officio trustees.*—Sixth. The superintendents of the various public institutions for the education of the blind in the United States shall each, ex officio, be a member of the board of trustees of the American Printing House for the Blind, located in the city of Louisville, Kentucky. (Mar. 3, 1879, ch. 186, § 3, 20 Stat. 468.)

#### TRANSFER OF FUNCTIONS

Transfer of functions with respect to the American Printing House for the Blind to the Federal Security Agency, see note under section 101 of this title.

#### § 103. Publications for National Library for the Blind.

Two copies of each of the publications printed by the American Printing House for the Blind shall be furnished free of charge to the National Library for the Blind located at 1729 H Street Northwest, Washington, District of Columbia. (Nov. 4, 1919, ch. 93, § 1, 41 Stat. 332.)

#### § 104. Annual reports by trustees.

The trustees of said American Printing House for the Blind shall annually make to the Federal Security Administrator a report of the items of their expenditure of the appropriation aforesaid during the year preceding their report, and shall annually furnish him with a voucher from each public institution for the education of the blind, showing that the amount of books and tangible apparatus due has been received. (Mar. 3, 1879, ch. 186, § 4, 20 Stat. 469; Reorg. Plan No. II, § 201 (b), eff. July 1, 1939, 4 Fed. Reg. 2732, 53 Stat. 1434.)

#### TRANSFER OF FUNCTIONS

Transfer of functions with respect to the American Printing House for the Blind to the Federal Security Agency, see note under section 101 of this title.

#### § 105. Books for Library of Congress.

The distribution of embossed books manufactured by the American Printing House for the Blind at Louisville, Kentucky, out of the income of the fund provided by sections 1, 2, and 4 of this title, shall include one copy of every book so manufactured to be deposited in the Library of Congress at Washington. (Mar. 4, 1913, ch. 142, § 1, 37 Stat. 748.)

#### Chapter 6A.—VENDING STANDS FOR BLIND IN FEDERAL BUILDINGS

##### Sec.

- 107. Operation of vending stand authorized.
- 107a. Surveys by Commissioner of Education; designating State licensing agencies; qualifications for license; preferences; selection of locations.
- 107b. Application for designation as state licensing agency; cooperation with Commissioner; furnishing initial stock.
- 107c. Cooperation of Commissioner with boards for rehabilitation of handicapped persons.
- 107d. Expenditures for personal services, rent, printing, etc.; preference to blind persons.
- 107e. Definitions.
- 107f. Appropriation.

#### § 107. Operation of vending stand authorized.

For the purpose of providing blind persons with remunerative employment, enlarging the economic opportunities of the blind, and stimulating the blind to greater efforts in striving to make themselves self-supporting blind persons licensed under the provisions of sections 107 to 107f of this title shall be authorized to operate vending stands in any Federal building where, in the discretion of the head of the department or agency in charge of the maintenance of the building, such vending stands may be properly and satisfactorily operated by blind persons. (June 20, 1936, ch. 638, § 1, 49 Stat. 1559.)

#### § 107a. Surveys by Commissioner of Education; designating State licensing agencies; qualifications for license; preferences; selection of locations.

(a) The Office of Education under the Federal Security Agency, subject to the direction of the Commissioner of Education and such rules and regulations as he may, with the approval of the Federal Security Administrator, prescribe, shall—

(1) Make surveys of concession-stand opportunities for blind persons in Federal and other buildings in the United States;

(2) Make surveys throughout the United States of industries with a view to obtaining information that will assist blind persons to obtain employment;

(3) Make available to the public, and especially to persons and organizations engaged in work for the blind, information obtained as a result of such surveys;

(4) Designate as provided in section 107b of this title the State commission for the blind in each State, or, in any State in which there is no such commission some other public agency to issue licenses to blind persons who are citizens of the United States and at least twenty-one years of age for the operating of vending stands in Federal and other buildings in

such State for the vending of newspapers, periodicals, confections, tobacco products, and such other articles as may be approved for each building by the custodian thereof and the State licensing agency; and

(5) Take such other steps as may be necessary and proper to carry out the provisions of sections 107-107f of this title.

(b) The State licensing agency shall, in issuing each such license for the operation of a vending stand, give preference to blind persons who are in need of employment and have resided for at least one year in the State in which such stand is to be located. Each such license shall be issued for an indefinite period but may be terminated by the State licensing agency if it is satisfied that the stand is not being operated in accordance with the rules and regulations prescribed by such licensing agency. Each such license for the operation of a vending stand in a Federal building shall be subject to the approval of the Federal agency having charge of the building in which the stand is located. Such licenses shall be issued only to applicants who are blind within the meaning of section 107e of this title but are able, in spite of such infirmity, to operate such stands.

(c) The State licensing agency designated by the Office of Education is authorized, with the approval of the custodian having charge of the building in which the vending stand is to be located, to select a location for such stand and the type of stand to be provided. (June 20, 1936, ch. 638, § 2, 49 Stat. 1560; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

The Office of Education was originally established in the Department of the Interior from which it was transferred to the Federal Security Agency by Reorganization Plan No. I, cited to text, which is set out in note to section 133t of Title 5, Executive Departments and Government Officers and Employees.

§ 107b. Application for designation as State licensing agency; cooperation with Commissioner; furnishing initial stock.

(a) A State commission for the blind or other State agency desiring to be designated as the agency for licensing blind persons for the operation of vending stands as provided in sections 107-107f of this title shall, with the approval of the governor of the State, make application to the Commissioner of Education and agree—

(1) To cooperate with the Commissioner of Education and with the division of vocational rehabilitation of such State in training, placing, and supervising blind persons;

(2) To provide through loan, gift, or otherwise, for each blind person licensed to operate a stand, an adequate initial stock of suitable articles to be vended therefrom. (June 20, 1936, ch. 638, § 3, 49 Stat. 1560.)

§ 107c. Cooperation of Commissioner with boards for rehabilitation of handicapped persons.

The Commissioner is authorized to cooperate with the State boards for rehabilitation of handicapped persons, established by the several States pursuant to sections 31-44 of Title 29, as amended and supplemented, in carrying out the provisions of sections

107-107f of this title. (June 20, 1936, ch. 638, § 4, 49 Stat. 1560.)

§ 107d. Expenditures for personal services, rent, printing, etc.; preference to blind persons.

(a) The Commissioner is authorized to make such expenditures out of any money appropriated therefor (including expenditures for personal services and rent at the seat of government and elsewhere, books of reference and periodicals, for printing and binding, and for traveling expenses) as he may deem necessary to carry out the provisions of sections 107-107f of this title. (b) The Commissioner shall, in employing such additional personnel as may be necessary, give preference to blind persons who are capable of discharging the required duties, and at least 50 per centum of such additional personnel shall be blind persons. (June 20, 1936, ch. 638, § 5, 49 Stat. 1560.)

§ 107e. Definitions.

As used in sections 107-107d of this title—

(a) The term "United States" includes the several States, Territories, and possessions of the United States, and the District of Columbia.

(b) The term "blind person" means a person having not more than 10 per centum visual acuity in the better eye with correction. Such blindness shall be certified by a duly licensed ophthalmologist.

(c) The term "State" means a State, Territory, possession, or the District of Columbia. (June 20, 1936, ch. 638, § 6, 49 Stat. 1560.)

§ 107f. Appropriation.

There is authorized to be appropriated such sums as may be necessary for carrying out the provisions of sections 107-107f of this title. (June 20, 1936, ch. 638, § 7, 49 Stat. 1560.)

#### Chapter 7.—INSTRUCTION AS TO NATURE AND EFFECT OF ALCOHOLIC DRINKS AND NARCOTICS

Sec.

111. Study in certain schools of effect of alcoholic drinks and narcotics.

112. Enforcement of section 111.

113 Teachers' certificates dependent on passing examination on effect of alcoholic drinks and narcotics.

§ 111. Study in certain schools of effect of alcoholic drinks and narcotics.

The nature of alcoholic drinks and narcotics, and special instruction as to their effects upon the human system, in connection with the several divisions of the subject of physiology and hygiene, shall be included in the branches of study taught in the common or public schools, and in the military and naval schools, and shall be studied and taught as thoroughly and in the same manner as other like required branches are in said schools, by the use of textbooks in the hands of pupils where other branches are thus studied in said schools, and by all pupils in all said schools throughout the Territories, in the Military and Naval Academies of the United States, and in the District of Columbia, and in all Indian and colored schools in the Territories of the United States. (May 20, 1886, ch. 362, § 1, 24 Stat. 69.)

**§ 112. Enforcement of section 111.**

It shall be the duty of the proper officers in control of any school described in section 111 of this title to enforce the provisions of this chapter; and any such officer, school director, committee, superintendent, or teacher who shall refuse or neglect to comply with the requirements of this chapter, or shall neglect or fail to make proper provisions for the instruction required and in the manner specified by section 111 of this title, for all pupils in each and every school under his jurisdiction, shall be removed from office, and the vacancy filled as in other cases. (May 20, 1886, ch. 362, § 2, 24 Stat. 69.)

**§ 113. Teachers' certificates dependent on passing examination on effect of alcoholic drinks and narcotics.**

No certificate shall be granted to any person to teach in the public schools of the District of Columbia or Territories who has not passed a satisfactory examination in physiology and hygiene, with special reference to the nature and the effects of alcoholic drinks and other narcotics upon the human system. (May 20, 1886, ch. 362, § 3, 24 Stat. 69.)

**Chapter 8.—HOWARD UNIVERSITY**

Sec.

- 121. Annual report of president and directors.
- 122. Limitation on use of appropriations.
- 123. Annual appropriations; inspection by Office of Education; annual report to Congress.

**§ 121. Annual report of president and directors.**

The president and directors of Howard University shall report to the Federal Security Administrator the condition of the institution on the 1st of July of each year, embracing therein the number of pupils received and discharged or leaving the same for any cause during the preceding year, and the number remaining; also, the branches of knowledge and industry taught and the progress made therein together with a statement showing the receipts of the institution and from what sources, and its disbursements, and for what objects. (Mar. 3, 1893, ch. 208, 27 Stat. 595; July 1, 1898, ch. 546, 30 Stat. 624; Reorg. Plan No. IV, § 11 (c), eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

**TRANSFER OF FUNCTIONS**

Functions of Department of Interior relating to administration of Howard University were transferred to Federal Security Agency to be administered under direction and supervision of Federal Security Administrator, and annual report required to be furnished to Secretary of Interior by President and directors of said University was directed to be furnished to Federal Security Administrator, by Reorganization Plan No. IV, § 11 (c), effective June 30, 1940, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

**§ 122. Limitation on use of appropriations.**

No part of the appropriations made by Congress for the Howard University shall be used, directly or indirectly, for the support of the theological department of said university, nor for the support of any sectarian, denominational, or religious instruction therein; and no part thereof shall be paid to said university until it shall accord to the Federal Security Administrator, or to his designated agent or

agents, authority to visit and inspect such university and to control and supervise the expenditure therein of all moneys paid under said appropriations. (Mar. 3, 1899, ch. 424, 30 Stat. 1101; Reorg. Plan No. IV, § 11 (c), eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

**TRANSFER OF FUNCTIONS**

Functions of Department of Interior relating to administration of Howard University were transferred to Federal Security Agency to be administered under direction and supervision of Federal Security Administrator by Reorganization Plan No. IV, § 11 (c), effective June 30, 1940, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

**§ 123. Annual appropriations; inspection by Office of Education; annual report to Congress.**

Annual appropriations are hereby authorized to aid in the construction, development, improvement, and maintenance of the university, no part of which shall be used for religious instruction. The university shall at all times be open to inspection by the Office of Education and shall be inspected by the said bureau at least once each year. An annual report making a full exhibit of the affairs of the university shall be presented to Congress each year in the report of the Office of Education. (Mar. 2, 1867, ch. 162, § 8, 14 Stat. 439; Dec. 13, 1928, ch. 26, 45 Stat. 1021; Reorg. Plan No. IV, § 11 (c), eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

**CHANGE IN NAME**

The Office of Education was created and placed in the Department of the Interior by the act of July 20, 1868, ch. 176, 15 Stat. 106, which abolished the Department of Education. In the appropriation act of July 12, 1870, ch. 251, 16 Stat. 242, the Office was designated the Bureau of Education. This designation was retained until the act of May 14, 1930, ch. 273, 46 Stat. 281, 319, which made appropriations for the "Office of Education." Since that time, all appropriations have been made to the "Office of Education."

**REPORTS CONTINUED**

Office of Education was directed to continue its inspections of and reports on affairs of Howard University in accordance with provisions of existing law, by Reorganization Plan No. IV, § 11 (c), effective June 30, 1940, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

**Chapter 9.—NATIONAL TRAINING SCHOOL FOR BOYS****§§ 131–152. Establishment, administration, etc.**

These sections, sections 131–152, related to the District of Columbia and are set out as sections 32–801 to 32–822 of the District of Columbia Code.

**Chapter 10.—NATIONAL TRAINING SCHOOL FOR GIRLS****§§ 161–174. Establishment, administration, etc.**

These sections, sections 161–174, related to the District of Columbia and are set out as sections 32–901 to 32–913 of the District of Columbia Code.

**Chapter 11.—NATIONAL ARBORETUM**

Sec.

- 191. Establishment; site; acquisition of land.
- 192. Appropriation for acquisition of land.
- 193. Administration of arboretum.
- 194. Advisory council.

### § 191. Establishment; site; acquisition of land.

The Secretary of Agriculture is authorized and directed to establish and maintain a national arboretum for purposes of research and education concerning tree and plant life. For the purposes of sections 191–194 of this title, (1) the President is authorized to transfer to the jurisdiction of the Secretary of Agriculture by Executive order any land which now belongs to the United States within or adjacent to the District of Columbia located along the Anacostia River north of Benning Bridge, and (2) the Secretary of Agriculture is authorized in his discretion to acquire, within the limits of the appropriation authorized by sections 191–194 of this title, by private purchase, condemnation proceedings, or gift, land so located or other land within or adjacent to the District of Columbia: *Provided*, That the purchase price of any part of said land shall not exceed the full value assessment of such property last made before purchase thereof plus 25 per centum of such assessed value. (Mar. 4, 1927, ch. 505, § 1, 44 Stat. 1422.)

### § 192. Appropriation for acquisition of land.

Section, act March 4, 1927, ch. 505, § 2, 44 Stat. 1422, authorized appropriation of \$300,000 to be expended for acquisition of land specified in section 191 of this title.

### § 193. Administration of arboretum.

In order to stimulate research and discovery the national arboretum established by the Secretary of Agriculture in accordance with the provisions of sections 191–194 of this title shall be under competent scientific direction. The arboretum shall be administered by the Secretary of Agriculture separately from the agricultural, horticultural, and forestry stations of the Department of Agriculture, but it shall be so correlated with them as to bring about the most effective utilization of its facilities and discoveries. (Mar. 4, 1927, ch. 505, § 3, 44 Stat. 1422.)

### § 194. Advisory council.

The Secretary of Agriculture is authorized to create an advisory council in relation to the plan and development of the national arboretum to be established under sections 191–194 of this title, to include representatives of national organizations interested in the work of the arboretum. (Mar. 4, 1927, ch. 505, § 4, 44 Stat. 1422.)

## Chapter 12.—FOREIGN STUDENTS

### § 221. Instruction of citizens from American republics.

The President be, and he hereby is, authorized, in his discretion and under such regulations as he may prescribe by Executive order, to permit citizens of the American republics to receive instruction, with or without charge therefor, at professional educational institutions and schools maintained and administered by the Government of the United States or by departments or agencies thereof: *Provided*, That such citizens shall agree to comply with all regulations for the government of the institutions and schools at which they may be under instruction and to exert every effort to accomplish successfully the courses of instruction prescribed: *And provided further*, That the regulations prescribed by the President under the authority of this section shall contain provisions limiting the admission of citizens of the American republics to primary schools maintained and administered by the Government of the United States so that there will under no circumstances be any curtailment of the admission of citizens of the United States eligible to receive instruction therein and not more than one citizen of any American republic shall receive instruction at the same time in the United States Military Academy and not more than one in the United States Naval Academy. (June 24, 1938, ch. 644, 52 Stat. 1034.)

#### CROSS REFERENCES

Appointments to United States Military Academy, see section 1091 et seq. of Title 10, Army.

Appointments to United States Naval Academy, see section 1031 et seq. of Title 34, Navy.





## TITLE 21.—FOOD AND DRUGS

Chap.	Sec.
1. Adulterated or misbranded foods or drugs---	1
2. Teas-----	41
3. Filled milk-----	61
4. Animals, meats, and meat and dairy products--	71
5. Viruses, serums, toxins, antitoxins, and analogous products-----	151
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### CROSS REFERENCES

#### Narcotics:

Instruction as to effect of, see section 111 et seq. of Title 20, Education.

Taxation of, see section 2550 et seq. of Title 26, Internal Revenue Code.

Packers and Stockyards Act, see Title 7, Agriculture.

### Chapter 1.—ADULTERATED OR MISBRANDED FOODS OR DRUGS

#### FEDERAL FOOD AND DRUGS ACT OF 1906

Sec.	
1-5.	Repealed.
6.	Butter defined.
7-14.	Repealed.
14a.	Sea food sold in interstate commerce; examinations; fees; offenses.
15.	Repealed.

#### MISCELLANEOUS PROVISIONS

16.	Introduction into, or sale in, State or Territory or District of Columbia of dairy or food products falsely labeled or branded.
17.	Same; penalty; jurisdiction of prosecutions.
18.	Suspension of importation of adulterated articles.
19.	Repealed.
20.	Apples in interstate commerce; standard grades.
21.	Same; branding grades on barrels.
22.	Same; barrels misbranded.
23.	Same; penalty for violations.
24.	Certificate of Inspection of American food products for export; issuance upon payment of actual cost.
25.	Oleomargarine, butterine, or imitation butter or cheese transported into a State subject to its police powers.
26.	Inspection of food and other products by Department of Agriculture for any branch of Government.

#### FEDERAL FOOD AND DRUGS ACT OF 1906

Sections 1-5 and 7-15 of this title were based upon the Federal Food and Drugs Act, act June 30, 1906, ch. 3915, § 1, 34 Stat. 768. Subject matter similar to said act is now contained in the Federal Food, Drug, and Cosmetic Act, act June 25, 1938, ch. 675, § 1, 52 Stat. 1040, which is set out in chapter 9, sections 301 et seq., of this title.

Section 902 (a) of act June 25, 1938, ch. 675, 52 Stat. 1059, which repealed sections 1-5, 7-14, and 15 of this title, provided that the repeal of said sections should take effect upon the effective date of said act June 25, 1938, which was to take effect twelve months after the date of its enactment. Act June 23, 1939, ch. 242, § 2 (b), 53 Stat. 854, provided that "The provisions of such act of June 30, 1906,

as amended, to the extent that they impose, or authorize the imposition of, any requirement imposed by section 403 (k) of the Federal Food, Drug, and Cosmetic Act (section 343 of this title), shall remain in force until January 1, 1940."

§§ 1-5. Repealed. June 25, 1938, ch. 675, § 902 (a), 52 Stat. 1059.

Sections 1 and 2 of this title were based upon sections 1 and 2, respectively, of act June 30, 1906, ch. 3915, 34 Stat. 768. Section 3 was based upon section 3 of said act June 30, 1906, as amended by act Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736. Sections 4 and 5 of this title were based upon section 12 of said act June 30, 1906.

§ 6. Butter defined.

The subject matter of section 6, act Mar. 4, 1923, ch. 268, 42 Stat. 1500, has now become section 321a of this title.

§§ 7-14. Repealed. June 25, 1938, ch. 675, § 902 (a), 52 Stat. 1059.

Sections 7, 8, and 9 of this title were based on sections 6, 7, and 8, respectively, of act June 30, 1906, ch. 3915, 34 Stat. 768. Section 10 of this title was based upon section 8 of said act June 30, 1906, as amended by acts Aug. 23, 1912, ch. 352, 37 Stat. 416; Mar. 3, 1913, ch. 117, 37 Stat. 732; July 24, 1919, ch. 26, 41 Stat. 271; July 8, 1930, ch. 874, 46 Stat. 1019. Sections 11, 12, 13, and 14 of this title were based, respectively, upon sections 4, 5, 9, and 10 of said act June 30, 1906. Section 11 was modified by act Jan. 18, 1927, ch. 39, 44 Stat. 1003.

§ 14a. Sea food sold in interstate commerce; examinations; fees; offenses.

The subject matter of section 14a, act June 30, 1906, ch. 3915, § 10A, as added by act June 22, 1934, ch. 712, 48 Stat. 1204, and amended by act Aug 27, 1935, ch. 739, 49 Stat. 871, has now become section 372a of this title.

§ 15. Repealed. June 25, 1938, ch. 675, § 902 (a), 52 Stat. 1059.

Section 15 of this title was based upon section 11 of act June 30, 1906, ch. 3915, 34 Stat. 772.

#### MISCELLANEOUS PROVISIONS

§ 16. Introduction into, or sale in, State or Territory or District of Columbia of dairy or food products falsely labeled or branded.

No person or persons, company or corporation, shall introduce into any State or Territory of the United States or the District of Columbia from any other State or Territory of the United States or the District of Columbia, or sell in the District of Columbia or in any Territory any dairy or food products which shall be falsely labeled or branded as to the State or Territory in which they are made, produced, or grown, or cause or procure the same to be done by others. (July 1, 1902, ch. 1357, § 1, 32 Stat. 632.)

§ 17. Same; penalty; jurisdiction of prosecutions.

If any person or persons violate the provisions of section 16 of this title, either in person or through

another, he shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$500 nor more than \$2,000. The jurisdiction for the prosecution of said misdemeanor shall be within the district of the United States court in which it is committed. (July 1, 1902, ch. 1357, § 2, 32 Stat. 632.)

#### § 18. Suspension of importation of adulterated articles.

Whenever the President is satisfied that there is good reason to believe that any importation is being made, or is about to be made, into the United States, from any foreign country, of any article used for human food or drink that is adulterated to an extent dangerous to the health or welfare of the people of the United States, or any of them, he may issue his proclamation suspending the importation of such articles from such country for such period of time as he may think necessary to prevent such importation; and during such period it shall be unlawful to import into the United States from the countries designated in the proclamation of the President any of the articles the importation of which is so suspended. (Aug. 30, 1890, ch. 839, § 4, 26 Stat. 415.)

#### § 19. Repealed. May 29, 1928, ch. 901, § 1 (100), 45 Stat. 993.

Section, act May 23, 1908, ch. 192, 35 Stat. 261, related to report to the Congress of expenditures in enforcing food and drug laws.

#### § 20. Apples in interstate commerce; standard grades.

The standard grades for apples when packed in barrels which shall be shipped or delivered for shipment in interstate or foreign commerce, or which shall be sold or offered for sale within the District of Columbia or the Territories of the United States shall be as follows: Apples of one variety, which are well-grown specimens, hand picked, of good color for the variety, normal shape, practically free from insect and fungous injury, bruises, and other defects, except such as are necessarily caused in the operation of packing, or apples of one variety which are not more than 10 per centum below the foregoing specifications shall be "Standard grade minimum size two and one-half inches", if the minimum size of the apples is two and one-half inches in transverse diameter; "Standard grade minimum size two and one-fourth inches", if the minimum size of the apples is two and one-fourth inches in transverse diameter; or "Standard grade minimum size two inches", if the minimum size of the apples is two inches in transverse diameter. (Aug. 3, 1912, ch. 273, § 2, 37 Stat. 250.)

#### § 21. Same; branding grades on barrels.

The barrels in which apples are packed in accordance with the provisions of sections 20–23 of this title may be branded in accordance with the provisions of section 20 of this title. (Aug. 3, 1912, ch. 273, § 3, 37 Stat. 251.)

#### § 22. Same; barrels misbranded.

Barrels packed with apples shall be deemed to be misbranded within the meaning of sections 20–23 of this title—

First. If the barrel bears any statement, design, or device indicating that the apples contained therein

are "Standard" grade and the apples when packed do not conform to the requirements prescribed by section 20 of this title.

Second. If the barrel bears any statement, design, or device indicating that the apples contained therein are "Standard" grade and the barrel fails to bear also a statement of the name of the variety, the name of the locality where grown, and the name of the packer or the person by whose authority the apples were packed and the barrel marked. (Aug. 3, 1912, ch. 273, § 5, 37 Stat. 251.)

#### § 23. Same; penalty for violations.

Any person, firm or corporation, or association who shall knowingly pack or cause to be packed apples in barrels or who shall knowingly sell or offer for sale such barrels in violation of the provisions of sections 20, 21, and 22 of this title shall be liable to a penalty of \$1 and costs for each such barrel so sold or offered for sale, to be recovered at the suit of the United States in any court of the United States having jurisdiction. (Aug. 3, 1912, ch. 273, § 6, 37 Stat. 251.)

#### CROSS REFERENCE

Section is also set out as section 233 of Title 15, Commerce and Trade.

#### § 24. Certificate of Inspection of American food products for export; issuance upon payment of actual cost.

No certificate of results of any inspection of food products before shipment to foreign countries shall issue unless the owner or his agent shall first pay to the Federal Security Administrator, at a price to be determined and established by the Administrator, the actual cost of the inspection, the money received to be deposited in the Treasury of the United States as miscellaneous receipts. (Mar. 4, 1915, ch. 144, 38 Stat. 1102; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1237.)

#### TRANSFER OF FUNCTIONS

The Food and Drug Administration in the Department of Agriculture and its functions, except those functions relating to the administration of the Insecticide Act of 1910 and the Naval Stores Act, were transferred to the Federal Security Agency, to be administered under the direction and supervision of the Federal Security Administrator, by Reorganization Plan No. IV, cited to text, set out in notes to section 133t of Title 5, Executive Departments and Government Officers and Employees.

#### § 25. Oleomargarine, butterine, or imitation butter or cheese transported into a State subject to its police powers.

All articles known as oleomargarine, butterine, imitation, process, renovated, or adulterated butter, or imitation cheese, or any substance in the semblance of butter or cheese not the usual product of the dairy and not made exclusively of pure and unadulterated milk or cream, transported into any State or Territory or the District of Columbia, and remaining therein for use, consumption, sale, or storage therein, shall, upon the arrival within the limits of such State or Territory or the District of Columbia, be subject to the operation and effect of the laws of such State or Territory or the District of Columbia, enacted in the exercise of its police powers to the same extent and in the same manner as

though such articles or substances had been produced in such State or Territory or the District of Columbia, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise. (May 9, 1902, ch. 784, § 1, 32 Stat. 193.)

**§ 26. Inspection of food and other products by Department of Agriculture for any branch of Government.**

The Federal Security Agency may upon request of any branch of the Federal Government perform inspections of food and other products and receive reimbursement of the cost of such inspections, including salaries and expenses, out of appropriations available therefor. (Jan. 18, 1927, ch. 39, 44 Stat. 984; May 16, 1928, ch. 572, 45 Stat. 548; Feb. 16, 1929, ch. 227, 45 Stat. 1198; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1237.)

**TRANSFER OF FUNCTIONS**

The Food and Drug Administration in the Department of Agriculture and its functions, except those functions relating to the administration of the Insecticide Act of 1910 and the Naval Stores Act, were transferred to the Federal Security Agency, to be administered under the direction and supervision of the Federal Security Administrator, by Reorganization Plan No. IV, cited to text, set out in notes to section 133t of Title 5, Executive Departments and Government Officers and Employees.

**Chapter 2.—TEAS**

**Sec.**

41. Importation of tea inferior to standard; bond of importers; regulation of use of inferior importation.
42. Board of experts; appointment; term; vacancies; compensation.
43. Standards of purity; duplicate samples at customhouses and for importers and dealers.
44. Bonds of importers; examination; importations at ports having no examiner.
45. Permit for delivery; retention of inferior grades; reexamination; partial delivery.
46. Examiners; examination according to usages of trade.
- 46a. Deposit of fee before examination of tea.
47. United States Board of Tea Appeals; permit for delivery; exportation or destruction of inferior grades.
48. Reexamination; findings by examiner; assistance of experts.
49. Reimporting rejected teas; forfeiture.
50. Regulations.

**§ 41. Importation of tea inferior to standard; bond of importers; regulation of use of inferior importation.**

It shall be unlawful for any person or persons or corporation to import or bring into the United States any merchandise as tea which is inferior in purity, quality, and fitness for consumption to the standards provided in section 43 of this title, and the importation of all such merchandise is prohibited. Nothing in sections 41-46, 47-50 of this title shall affect or prevent the importation into the United States, under such regulations as the Federal Security Administrator may prescribe, of any merchandise as tea which may be inferior in purity, quality, and fitness for consumption to the standards established by the Federal Security Administrator or of any tea waste, tea siftings, or tea sweepings, for the sole purpose of manufacturing theine, caffeine, or other chemical products whereby the identity and character of the original material is entirely destroyed

or changed; importers and manufacturers who import or bring into the United States such tea, tea waste, tea siftings, or tea sweepings shall give suitable bond, to be subject to the approval only of the collector of customs at the port of entry, conditioned that said imported material shall be only used for the purposes provided in sections 41-46, 47-50 of this title, under such regulations as may be prescribed by the Federal Security Administrator. (Mar. 2, 1897, ch. 358, § 1, 29 Stat. 604; May 16, 1908, ch. 170, 35 Stat. 163; May 31, 1920, ch. 217, 41 Stat. 712; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1237.)

**TRANSFER OF FUNCTIONS**

The Food and Drug Administration in the Department of Agriculture and its functions, except those functions relating to the administration of the Insecticide Act of 1910 and the Naval Stores Act, were transferred to the Federal Security Agency, to be administered under the direction and supervision of the Federal Security Administrator, by Reorganization Plan No. IV, cited to text, set out in notes to section 133t of Title 5, Executive Departments and Government Officers and Employees.

**§ 42. Board of experts; appointment; term; vacancies; compensation.**

On or before February 15 of each year, the Federal Security Administrator shall appoint a board, to consist of seven members, each of whom shall be an expert in teas, and who shall prepare and submit to him standard samples of tea. The persons so appointed shall be at all times subject to removal by the said Administrator, and shall serve for the term of one year. Vacancies in the said board occurring by removal, death, resignation, or any other cause shall be forthwith filled by the Federal Security Administrator by appointment, such appointee to hold for the unexpired term. Said board shall appoint a presiding officer, who shall be the medium of all communications to or from such board. Each member of said board shall receive as compensation the sum of \$50 per annum, which, together with all necessary expenses while engaged upon the duty herein provided, shall be paid out of the appropriation for "Expenses of collecting the revenue from customs." (Mar. 2, 1897, ch. 358, § 2, 29 Stat. 605; May 31, 1920, ch. 217, 41 Stat. 712; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1237.)

**CROSS REFERENCE**

Transfer of the Food and Drug Administration and its functions to the Federal Security Agency, see note to section 41 of this title.

**§ 43. Standards of purity; duplicate samples at customhouses and for importers and dealers.**

The Federal Security Administrator, upon the recommendation of the board of experts provided in section 42 of this title, shall fix and establish uniform standards of purity, quality, and fitness for consumption of all kinds of teas imported into the United States, and shall procure and deposit in the customhouses of the ports of New York, Chicago, San Francisco, and such other ports as he may determine, duplicate samples of such standards. Said Administrator shall procure a sufficient number of other duplicate samples of such standards to supply the importers and dealers in tea at all ports desiring

the same at cost. All teas, or merchandise described as tea, of inferior purity, quality, and fitness for consumption to such standards shall be deemed within the prohibition of section 41 of this title. (Mar. 2, 1897, ch. 358, § 3, 29 Stat. 605; May 31, 1920, ch. 217, 41 Stat. 712; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1237.)

#### CROSS REFERENCE

Transfer of the Food and Drug Administration and its functions to the Federal Security Agency, see note to section 41 of this title.

#### § 44. Bonds of importers; examination; importations at ports having no examiner.

On making entry at the customhouse of all teas, or merchandise described as tea, imported into the United States, the importer or consignee shall give a bond to the collector of the port that such merchandise shall not be removed from the warehouse until released by the collector, after it shall have been duly examined with reference to its purity, quality, and fitness for consumption. For the purpose of such examination samples of each line in every invoice of tea shall be submitted by the importer or consignee to the examiner, together with the sworn statement of such importer or consignee that such samples represent the true quality of each and every part of the invoice and accord with the specifications therein contained; or in the discretion of the Federal Security Administrator, such samples shall be obtained by the examiner and compared by him with the standards established by sections 41-46, 47-50 of this title. In cases where said tea, or merchandise described as tea, is entered at ports where there is no qualified examiner as provided in section 46 of this title, the consignee or importer shall in the manner aforesaid furnish under oath a sample of each line of tea to the collector or other revenue officer to whom is committed the collection of duties, and said officer shall also draw or cause to be drawn samples of each line in every invoice and shall forward the same to a duly qualified examiner as provided in said section. The bond required by this section shall also be conditioned for the payment of all customhouse charges which may attach to such merchandise prior to its being released or destroyed (as the case may be) under the provisions of sections 41-46, 47-50 of this title. (Mar. 2, 1897, ch. 358, § 4, 29 Stat. 605; May 31, 1920, ch. 217, 41 Stat. 712; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1237.)

#### CROSS REFERENCE

Transfer of the Food and Drug Administration and its functions to the Federal Security Agency, see note to section 41 of this title.

#### § 45. Permit for delivery; retention of inferior grades; reexamination; partial delivery.

If, after an examination as provided in section 44 of this title, the tea is found by the examiner to be equal in purity, quality, and fitness for consumption to the standards provided in sections 41-44 of this title, and no reexamination shall be demanded by the collector as provided in section 47 of this title, a permit shall at once be granted to the importer or consignee declaring the tea free from the control of

the customs authorities; but if on examination such tea, or merchandise described as tea, is found, in the opinion of the examiner, to be inferior in purity, quality, and fitness for consumption to the said standards the importer or consignee shall be immediately notified, and the tea, or merchandise described as tea, shall not be released by the customhouse, unless on a reexamination called for by the importer or consignee the finding of the examiner shall be found to be erroneous. Should a portion of the invoice be passed by the examiner, a permit shall be granted for that portion and the remainder held for further examination, as provided in said section 47. (Mar. 2, 1897, ch. 358, § 5, 29 Stat. 605.)

#### § 46. Examiners; examination according to usages of trade.

The examination provided for by sections 41-46, 47-50 of this title shall be made by a duly qualified examiner at a port where standard samples are established, and where the merchandise is entered at ports where there is no qualified examiner, the examination shall be made at that one of said ports which is nearest the port of entry, and that for this purpose samples of the merchandise, obtained in the manner prescribed by section 44 of this title, shall be forwarded to the proper port by the collector or chief officer at the port of entry. In all cases of examination or reexamination of teas, or merchandise described as tea, by examiners or the United States Board of Tea Appeals under the provisions of this chapter, the purity, quality, and fitness for consumption of the same shall be tested according to the usages and customs of the tea trade, including the testing of an infusion of the same in boiling water, and, if necessary, chemical analysis. (Mar. 2, 1897, ch. 358, § 7, 29 Stat. 606; May 31, 1920, ch. 217, 41 Stat. 712, 713.)

#### § 46a. Deposit of fee before examination of tea.

On and after July 1, 1940, no tea, or merchandise described as tea, shall be examined for importation into the United States, or released by the Collector, under sections 41-46, 47-50 of this title unless the importer or consignee of such tea or merchandise, prior to such examination, has paid for deposit into the Treasury of the United States as miscellaneous receipts, a fee of 3.5 cents for each hundred weight or fraction thereof of such tea and merchandise. (June 27, 1940, ch. 437, title I, 54 Stat. 632.)

#### § 47. United States Board of Tea Appeals; permit for delivery; exportation or destruction of inferior grades.

In case the collector, importer, or consignee shall protest against the finding of the examiner, the matter in dispute shall be referred for decision to the United States Board of Tea Appeals, to consist of three employees of the Federal Security Agency, to be designated by the Federal Security Administrator. If such board shall, after due examination, find the tea in question to be equal in purity, quality, and fitness for consumption to the proper standards, a permit shall be issued by the collector for its release and delivery to the importer; but if upon such final reexamination by such board the tea shall be found to be inferior in purity, quality, and fitness for con-

sumption to the said standards, the importer or consignee shall give a bond, with security satisfactory to the collector, to export said tea, or merchandise described as tea, out of the limits of the United States within a period of six months after such final re-examination; and if the same shall not have been exported within the time specified, the collector, at the expiration of that time, shall cause the same to be destroyed. (Mar. 2, 1897, ch. 358, § 6, 29 Stat. 606; May 31, 1920, ch. 217, 41 Stat. 712, 713; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1237.)

#### CROSS REFERENCE

Transfer of the Food and Drug Administration and its functions to the Federal Security Agency, see note to section 41 of this title.

#### § 48. Reexamination; findings by examiner; assistance of experts.

In cases of reexamination of teas, or merchandise described as teas, by the United States Board of Tea Appeals in pursuance of the provisions of sections 41-46, 47-50 of this title, samples of the tea, or merchandise described as tea, in dispute, for transmission to such board for its decision, shall be put up and sealed by the examiner in the presence of the importer or consignee if he so desires, and transmitted to such board, together with a copy of the finding of the examiner, setting forth the cause of condemnation and the claim or ground of the protest of the importer relating to the same, such samples, and the papers therewith, to be distinguished by such mark that the same may be identified. The decision of such board shall be in writing, signed by them, and transmitted, together with the record and samples, within three days after the rendition thereof, to the collector, who shall forthwith furnish the examiner and the importer or consignee with a copy of said decision or finding. The United States Board of Tea Appeals shall be authorized to obtain the advice, when necessary, of persons skilled in the examination of teas, who shall each receive for his services in any particular case a compensation not exceeding \$5. (Mar. 2, 1897, ch. 358, § 8, 29 Stat. 606; May 31, 1920, ch. 217, 41 Stat. 712.)

#### § 49. Reimporting rejected teas; forfeiture.

No imported teas which have been rejected by a customs examiner or by the United States Board of Tea Appeals, and exported under the provisions of sections 41-46, 47-50 of this title, shall be reimported into the United States under the penalty of forfeiture for a violation of this prohibition. (Mar. 2, 1897, ch. 358, § 9, 29 Stat. 606; May 31, 1920, ch. 217, 41 Stat. 712.)

#### § 50. Regulations.

The Federal Security Administrator shall have the power to enforce the provisions of sections 41-46, 47-50 of this title by appropriate regulations. (Mar. 2, 1897, ch. 358, § 10, 29 Stat. 607; May 31, 1920, ch. 217, 41 Stat. 712.)

#### CROSS REFERENCE

Transfer of the Food and Drug Administration and its functions to the Federal Security Agency, see note to section 41 of this title.

### Chapter 3.—FILLED MILK

#### Sec.

61. Filled milk; definitions.
62. Same; manufacture, shipment, or delivery for shipment in interstate or foreign commerce prohibited.
63. Same; penalty for violations of law; acts, omissions, and so forth, of agents.
64. Same; regulations for enforcement.

#### FEDERAL FOOD, DRUG, AND COSMETIC ACT

By virtue of act June 25, 1938, ch. 675, § 902 (c), 52 Stat. 1059, nothing contained in chapter 9 of this title shall be construed as in any way affecting, modifying, repealing, or superseding the provisions of sections 61-63 of this title.

#### BUREAU OF DAIRYING

See sections 401-404 of Title 7, Agriculture.

#### § 61. Filled milk; definitions.

Whenever used in sections 62 and 63 of this title—

(a) The term "person" includes an individual, partnership, corporation, or association;

(b) The term "interstate or foreign commerce" means commerce (1) between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; (2) between points within the same State, Territory, or possession, or within the District of Columbia, but through any place outside thereof; or (3) within any Territory or possession, or within the District of Columbia; and

(c) The term "filled milk" means any milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat, so that the resulting product is in imitation or semblance of milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated. This definition shall not include any distinctive proprietary food compound not readily mistaken in taste for milk or cream or for evaporated, condensed, or powdered milk, or cream where such compound (1) is prepared and designed for feeding infants and young children and customarily used on the order of a physician; (2) is packed in individual cans containing not more than sixteen and one-half ounces and bearing a label in bold type that the content is to be used only for said purpose; (3) is shipped in interstate or foreign commerce exclusively to physicians, wholesale and retail druggists, orphan asylums, child-welfare associations, hospitals, and similar institutions and generally disposed of by them. (Mar. 4, 1923, ch. 262, § 1, 42 Stat. 1486.)

#### § 62. Same; manufacture, shipment, or delivery for shipment in interstate or foreign commerce prohibited.

It is declared that filled milk, as defined in section 61 of this title is an adulterated article of food, injurious to the public health, and its sale constitutes a fraud upon the public. It shall be unlawful for any person to manufacture within any Territory or possession, or within the District of Columbia, or to ship or deliver for shipment in interstate or foreign commerce, any filled milk. (Mar. 4, 1923, ch. 262, § 2, 42 Stat. 1487.)

§ 63. Same; penalty for violations of law; acts, omissions, and so forth, of agents.

Any person violating any provision of sections 61 and 62 of this title shall upon conviction thereof be subject to a fine of not more than \$1,000 or imprisonment of not more than one year, or both. When construing and enforcing the provisions of said sections, the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association, within the scope of his employment or office, shall in every case be deemed the act, omission, or failure, of such individual, partnership, corporation, or association, as well as of such person. (Mar. 4, 1923, ch. 262, § 3, 42 Stat. 1487.)

§ 64. Same; regulations for enforcement.

The Federal Security Administrator is authorized and directed to make and enforce such regulations as may in his judgment be necessary to carry out the purposes of sections 61-64 of this title. (Mar. 4, 1923, ch. 262, § 4, as added Aug. 27, 1935, ch. 743, 49 Stat. 885; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1237.)

#### TRANSFER OF FUNCTIONS

The Food and Drug Administration in the Department of Agriculture and its functions, except those functions relating to the administration of the Insecticide Act of 1910 and the Naval Stores Act, were transferred to the Federal Security Agency, to be administered under the direction and supervision of the Federal Security Administrator, by Reorganization Plan No. IV, cited to text, set out in notes to section 133t of Title 5, Executive Departments and Government Officers and Employees.

### Chapter 4.—ANIMALS, MEATS, AND MEAT AND DAIRY PRODUCTS

#### EXAMINATION OF ANIMALS, MEAT, AND MEAT PRODUCTS USED IN INTERSTATE OR FOREIGN COMMERCE

##### Sec.

71. Inspection of meat and meat food products; examination of cattle before slaughtering; diseased animals slaughtered separately and carcasses examined.
72. Post mortem examination of carcasses and marking or labeling; destruction of carcasses condemned; reinspection.
73. Examination of carcasses brought into slaughtering or packing establishments, and of meat food products issued from and returned thereto.
74. Inspectors of meat food products; marks of inspection; destruction of condemned products; products for export.
75. Labeling receptacles or coverings of meat or meat food products inspected and passed; supervision by inspectors; sales under false names; trade names.
76. Sanitary inspection and regulation of slaughtering and packing establishments; rejection of meat or meat food products unfit for food.
77. Examination of cattle and food products thereof, slaughtered and prepared during nighttime.
78. Transportation of carcasses, meat, or meat food products not properly inspected and marked.
79. Forgery, alteration or unauthorized use of marks, labels, or other identification devices or certificates.
80. Inspection of animals for export.
81. Inspectors of animals for export; certificates of condition.
82. No clearance to vessel carrying cattle for export without inspector's certificate.
83. Inspection of carcasses, meat of which is intended for export.

##### Sec.

84. Inspectors of carcasses, and so forth, meat of which is intended for export; certificates of condition.
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87. Transportation or sale of meat or meat food products without complying with provisions of inspection law.
88. Offenses; penalty.
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91. Inspection requirements as applicable to farmers or retailers; definitions; sale of meat and meat food products unfit for food; penalty.
92. Sale of meat or meat food products unfit for food; penalty.
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#### IMPORTATION OF CATTLE AND QUARANTINE

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117. Notice of existence of contagion to railroads; transportation of diseased stock or live poultry; penalty.
118. Duty of district attorneys.
119. Agents to examine and report on methods of treatment of animals, and means for suppression of diseases.
120. Regulation of exportation and transportation of infected livestock and live poultry.
121. Shipments from areas suspected infected; control of animals and live poultry.
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124. Transportation or delivery therefor from quarantined State or Territory or portion thereof, of livestock and live poultry, forbidden.
125. Regulations for inspection, disinfection, and certification, and delivery and shipment of livestock and live poultry from quarantined State or Territory.
126. Moving livestock and live poultry from quarantined State or Territory under regulations.
127. Transportation from quarantined State, Territory, and so forth; penalty.
128. Extension of quarantine law to carriers in interstate commerce.
129. Payment for animals purchased; computation of value, and amount paid.
130. Pleuropneumonia in District of Columbia; duties of Commissioners.

## Sec.

131. Fences along international boundary lines to keep out diseased animals.  
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## IMPORTATION OF MILK AND CREAM

141. Prohibition of importation without permit.  
 142. Milk or cream when unfit for importation.  
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## EXAMINATION OF ANIMALS, MEAT, AND MEAT PRODUCTS USED IN INTERSTATE OR FOREIGN COMMERCE

Bureau of Animal Industry, see sections 391-394 of Title 7, Agriculture.

- § 71. Inspection of meat and meat food products; examination of cattle before slaughtering; diseased animals slaughtered separately and carcasses examined.

For the purpose of preventing the use in interstate or foreign commerce of meat and meat-food products which are unsound, unhealthful, unwholesome, or otherwise unfit for human food, the Secretary of Agriculture, at his discretion, may cause to be made, by inspectors appointed for that purpose, an examination and inspection of all cattle, sheep, swine, and goats before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment in which they are to be slaughtered and the meat and meat-food products thereof are to be used in interstate or foreign commerce; and all cattle, swine, sheep, and goats found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, or goats; and when so slaughtered the carcasses of said cattle, sheep, swine, or goats shall be subject to a careful examination and inspection, all as provided by the rules and regulations to be prescribed by the Secretary of Agriculture, as provided for in sections 71-93 of this title. (Mar. 4, 1907, ch. 2907, 34 Stat. 1260.)

- § 72. Post mortem examination of carcasses and marking or labeling; destruction of carcasses condemned; reinspection.

For the purposes set forth in section 71 of this title the Secretary of Agriculture shall cause to be made by inspectors appointed for that purpose a post mortem examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine, and goats to be prepared for human consumption at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in any State, Territory, or the District of Columbia for transportation or sale as articles of interstate or foreign commerce; and the carcasses and parts thereof of all such animals found to be sound, healthful, wholesome, and fit for human food shall be marked, stamped, tagged, or labeled as "Inspected and

passed"; and said inspectors shall label, mark, stamp, or tag as "Inspected and condemned" all carcasses and parts thereof of animals found to be unsound, unhealthful, unwholesome, or otherwise unfit for human food; and all carcasses and parts thereof thus inspected and condemned shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Secretary of Agriculture may remove inspectors from any such establishment which fails to so destroy any such condemned carcass or part thereof, and said inspectors, after said first inspection, shall, when they deem it necessary, reinspect said carcasses or parts thereof to determine whether since the first inspection the same have become unsound, unhealthful, unwholesome, or in any way unfit for human food, and if any carcass or any part thereof shall, upon examination and inspection subsequent to the first examination and inspection, be found to be unsound, unhealthful, unwholesome, or otherwise unfit for human food, it shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Secretary of Agriculture may remove inspectors from any establishment which fails to so destroy any such condemned carcass or part thereof. (Mar. 4, 1907, ch. 2907, 34 Stat. 1260.)

- § 73. Examination of carcasses brought into slaughtering or packing establishments, and of meat food products issued from and returned thereto.

The foregoing provisions shall apply to all carcasses or parts of carcasses of cattle, sheep, swine, and goats, or the meat or meat products thereof which may be brought into any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, and such examination and inspection shall be had before the said carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products; and the foregoing provisions shall also apply to all such products, which, after having been issued from any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained. (Mar. 4, 1907, ch. 2907, 34 Stat. 1261.)

- § 74. Inspectors of meat food products; marks of inspection; destruction of condemned products; products for export.

For the purposes hereinbefore set forth the Secretary of Agriculture shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all meat food products prepared for interstate or foreign commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, and for the purposes of any examination and inspection said inspectors shall have access at all times, by day or night, whether the establishment be operated or not, to every part of said establishment; and said inspectors shall mark, stamp, tag, or label as "Inspected and passed" all such products found to be sound, healthful, and wholesome, and which contain no dyes, chemicals, preservatives, or ingredients which render such meat, or meat food products unsound, unhealthful,



unwholesome, or unfit for human food; and said inspectors shall label, mark, stamp, or tag as "Inspected and condemned" all such products found unsound, unhealthful, and unwholesome, or which contain dyes, chemicals, preservatives, or ingredients which render such meat or meat food products unsound, unhealthful, unwholesome, or unfit for human food, and all such condemned meat food products shall be destroyed for food purposes, as hereinbefore provided, and the Secretary of Agriculture may remove inspectors from any establishment which fails to so destroy such condemned meat food products: *Provided*, That subject to the rules and regulations of the Secretary of Agriculture the provisions of this section in regard to preservatives shall not apply to meat food products for export to any foreign country and which are prepared or packed according to the specifications or directions of the foreign purchaser, when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is to be exported; but if said article shall be in fact sold or offered for sale for domestic use or consumption then this proviso shall not exempt said article from the operation of all the other provisions of sections 71-93 of this title. (Mar. 4, 1907, ch. 2907, 34 Stat. 1261.)

**§ 75. Labeling receptacles or coverings of meat or meat food products inspected and passed; supervision by inspectors; sales under false names; trade names.**

When any meat or meat food product prepared for interstate or foreign commerce which has been inspected as hereinbefore provided and marked "Inspected and passed" shall be placed or packed in any can, pot, tin, canvas, or other receptacle or covering in any establishment where inspection under the provisions of sections 71-93 of this title is maintained, the person, firm, or corporation preparing said product shall cause a label to be attached to said can, pot, tin, canvas, or other receptacle or covering, under the supervision of an inspector, which label shall state that the contents thereof have been "inspected and passed" under the provisions of such sections; and no inspection and examination of meat or meat food products deposited or inclosed in cans, tins, pots, canvas, or other receptacle or covering in any establishment where inspection under the provisions of such sections is maintained shall be deemed to be complete until such meat or meat food products have been sealed or inclosed in said can, tin, pot, canvas, or other receptacle or covering under the supervision of an inspector, and no such meat or meat food products shall be sold or offered for sale by any person, firm, or corporation in interstate or foreign commerce under any false or deceptive name; but established trade name or names which are usual to such products and which are not false and deceptive and which shall be approved by the Secretary of Agriculture are permitted. (Mar. 4, 1907, ch. 2907, 34 Stat. 1262.)

**§ 76. Sanitary inspection and regulation of slaughtering and packing establishments; rejection of meat or meat food products unfit for food.**

The Secretary of Agriculture shall cause to be made, by experts in sanitation or by other competent inspectors, such inspection of all slaughtering, meat canning, salting, packing, rendering, or similar establishments in which cattle, sheep, swine, and goats are slaughtered and the meat and meat food products thereof are prepared for interstate or foreign commerce as may be necessary to inform himself concerning the sanitary conditions of the same, and to prescribe the rules and regulations of sanitation under which such establishments shall be maintained; and where the sanitary conditions of any such establishment are such that the meat or meat food products are rendered unclean, unsound, unhealthful, unwholesome, or otherwise unfit for human food, he shall refuse to allow said meat or meat food products to be labeled, marked, stamped, or tagged as "inspected and passed." (Mar. 4, 1907, ch. 2907, 34 Stat. 1262.)

**§ 77. Examination of cattle and food products thereof, slaughtered and prepared during nighttime.**

The Secretary of Agriculture shall cause an examination and inspection of all cattle, sheep, swine, and goats, and the food products thereof, slaughtered and prepared in the establishments hereinbefore described for the purposes of interstate or foreign commerce to be made during the nighttime as well as during the daytime when the slaughtering of said cattle, sheep, swine, and goats, or the preparation of said food products is conducted during the nighttime. (Mar. 4, 1907, ch. 2907, 34 Stat. 1262.)

**§ 78. Transportation of carcasses, meat, or meat food products not properly inspected and marked.**

No person, firm, or corporation shall transport or offer for transportation, and no carrier of interstate or foreign commerce shall transport or receive for transportation from one State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, or to any place under the jurisdiction of the United States, or to any foreign country, any carcasses or parts thereof, meat, or meat food products thereof which have not been inspected, examined, and marked as "Inspected and passed", in accordance with the terms of sections 71-93 of this title, and with the rules and regulations prescribed by the Secretary of Agriculture. (Mar. 4, 1907, ch. 2907, 34 Stat. 1262.)

**§ 79. Forgery, alteration or unauthorized use of marks, labels, or other identification devices or certificates.**

No person, firm, or corporation, or officer, agent, or employee thereof, shall forge, counterfeit, simulate, or falsely represent, or shall without proper authority use, fail to use, or detach, or shall knowingly or wrongfully alter, deface, or destroy, or fail to deface or destroy, any of the marks, stamps, tags, labels, or other identification devices provided for in sections 71-93 of this title, or in and as directed by the rules and regulations prescribed hereunder by the Secretary of Agriculture, on any carcasses, parts of carcasses, or the food product, or containers

thereof, subject to the provisions of such sections or any certificate in relation thereto, authorized or required by such sections or by the said rules and regulations of the Secretary of Agriculture. (Mar. 4, 1907, ch. 2907, 34 Stat. 1263.)

**§ 80. Inspection of animals for export.**

The Secretary of Agriculture shall cause to be made a careful inspection of all cattle, sheep, swine, and goats intended and offered for export to foreign countries at such times and places, and in such manner as he may deem proper, to ascertain whether such cattle, sheep, swine, and goats are free from disease. (Mar. 4, 1907, ch. 2907, 34 Stat. 1263.)

**§ 81. Inspectors of animals for export; certificates of condition.**

For the purpose of section 80 of this title he may appoint inspectors who shall be authorized to give an official certificate clearly stating the condition in which such cattle, sheep, swine, and goats are found. (Mar. 4, 1907, ch. 2907, 34 Stat. 1263.)

**§ 82. No clearance to vessel carrying cattle for export without inspector's certificate.**

No clearance shall be given to any vessel having on board cattle, sheep, swine, or goats for export to a foreign country until the owner or shipper of such cattle, sheep, swine, or goats has a certificate from the inspector authorized to be appointed, stating that the said cattle, sheep, swine, or goats are sound and healthy, or unless the Secretary of Agriculture shall have waived the requirement of such certificate for export to the particular country to which such cattle, sheep, swine, or goats are to be exported. (Mar. 4, 1907, ch. 2907, 34 Stat. 1263.)

**§ 83. Inspection of carcasses, meat of which is intended for export.**

The Secretary of Agriculture shall also cause to be made a careful inspection of the carcasses and parts thereof of all cattle, sheep, swine, and goats, the meat of which, fresh, salted, canned, corned, packed, cured, or otherwise prepared, is intended and offered for export to any foreign country, at such times and places and in such manner as he may deem proper. (Mar. 4, 1907, ch. 2907, 34 Stat. 1263.)

**§ 84. Inspectors of carcasses, and so forth, meat of which is intended for export; certificates of condition.**

For the purpose of section 83 of this title he may appoint inspectors who shall be authorized to give an official certificate stating the condition in which said cattle, sheep, swine, or goats, and the meat thereof, are found. (Mar. 4, 1907, ch. 2907, 34 Stat. 1263.)

**§ 85. No clearance to vessel carrying meat for export without inspector's certificate.**

No clearance shall be given to any vessel having on board any fresh, salted, canned, corned, or packed beef, mutton, pork, or goat meat, being the meat of animals killed except as hereinbefore provided for export to and sale in a foreign country from any port in the United States, until the owner or shipper

thereof shall obtain from an inspector appointed under the provisions of sections 71-93 of this title a certificate that the said cattle, sheep, swine, and goats were sound and healthy at the time of inspection, and that their meat is sound and wholesome, unless the Secretary of Agriculture shall have waived the requirements of such certificate for the country to which said cattle, sheep, swine, and goats or meats are to be exported. (Mar. 4, 1907, ch. 2907, 34 Stat. 1263.)

**§ 86. Delivery of inspectors' certificates, and of copies.**

The inspectors provided for under sections 71-93 of this title shall be authorized to give official certificates of the sound and wholesome condition of the cattle, sheep, swine, and goats, their carcasses and products as described in said sections; and one copy of every certificate granted under the provisions of said sections shall be filed in the Department of Agriculture, another copy shall be delivered to the owner or shipper, and when the cattle, sheep, swine, and goats, or their carcasses and products are sent abroad, a third copy shall be delivered to the chief officer of the vessel on which the shipment shall be made. (Mar. 4, 1907, ch. 2907, 34 Stat. 1263.)

**§ 87. Transportation or sale of meat or meat food products without complying with provisions of inspection law.**

No person, firm, or corporation engaged in the interstate commerce of meat or meat food products shall transport or offer for transportation, sell or offer to sell, any such meat or meat food products in any State or Territory or in the District of Columbia or any place under the jurisdiction of the United States, other than in the State or Territory or in the District of Columbia or any place under the jurisdiction of the United States in which the slaughtering, packing, canning, rendering, or other similar establishment owned, leased, or operated by said firm, person, or corporation is located unless and until said person, firm, or corporation shall have complied with all of the provisions of sections 71-93 of this title. (Mar. 4, 1907, ch. 2907, 34 Stat. 1264.)

**§ 88. Offenses; penalty.**

Any person, firm, or corporation, or any officer or agent of any such person, firm, or corporation, who shall violate any of the provisions of sections 71-93 of this title shall be deemed guilty of a misdemeanor and shall be punished on conviction thereof by a fine of not exceeding \$10,000 or imprisonment for a period of not more than two years, or by both such fine and imprisonment, in the discretion of the court. (Mar. 4, 1907, ch. 2907, 34 Stat. 1264.)

**CROSS REFERENCE**

Offense punishable by imprisonment for term in excess of one year deemed a felony, see section 541 of Title 18, Criminal Code and Criminal Procedure.

**§ 89. Inspectors to make examinations provided for; appointment; duties; regulations.**

The Secretary of Agriculture shall appoint from time to time inspectors to make examination and inspection of all cattle, sheep, swine, and goats, the inspection of which is provided for under the provisions of sections 71-93 of this title, and of all car-

casses and parts thereof, and of all meats and meat food products thereof, and of the sanitary conditions of all establishments in which such meat and meat food products hereinbefore described are prepared; and said inspectors shall refuse to stamp, mark, tag, or label any carcass or any part thereof, or meat food product therefrom, prepared in any establishment hereinbefore mentioned, until the same shall have actually been inspected and found to be sound, healthful, wholesome, and fit for human food, and to contain no dyes, chemicals, preservatives, or ingredients which render such meat food product unsound, unhealthful, unwholesome, or unfit for human food; and to have been prepared under proper sanitary conditions, hereinbefore provided for; and shall perform such other duties as are provided by said sections and by the rules and regulations to be prescribed by said Secretary of Agriculture; and said Secretary of Agriculture shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of said sections, and all inspections and examinations made under said sections shall be such and made in such manner as described in the rules and regulations prescribed by said Secretary of Agriculture not inconsistent with provisions thereof. (Mar. 4, 1907, ch. 2907, 34 Stat. 1264.)

**§ 90. Bribery of or gifts to inspectors or other officers and acceptance of gifts.**

Any person, firm, or corporation, or any agent or employee of any person, firm, or corporation, who shall give, pay, or offer, directly or indirectly, to any inspector, deputy inspector, chief inspector, or any other officer or employee of the United States authorized to perform any of the duties prescribed by sections 71-93 of this title or by the rules and regulations of the Secretary of Agriculture any money or other thing of value, with intent to influence said inspector, deputy inspector, chief inspector, or other officer or employee of the United States in the discharge of any duty provided for in said sections, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by a fine not less than \$5,000 nor more than \$10,000 and by imprisonment not less than one year nor more than three years; and any inspector, deputy inspector, chief inspector, or other officer or employee of the United States authorized to perform any of the duties prescribed by said sections who shall accept any money, gift, or other thing of value from any person, firm, or corporation, or officers, agents, or employees thereof, given with intent to influence his official action, or who shall receive or accept from any person, firm, or corporation engaged in interstate or foreign commerce any gift, money, or other thing of value, given with any purpose or intent whatsoever, shall be deemed guilty of a felony and shall, upon conviction thereof, be summarily discharged from office and shall be punished by a fine not less than \$1,000 nor more than \$10,000 and by imprisonment not less than one year nor more than three years. (Mar. 4, 1907, ch. 2907, 34 Stat. 1264.)

**§ 91. Inspection requirements as applicable to farmers or retailers; definitions; sale of meat and meat food products unfit for food; penalty.**

Within the meaning of sections 71-96 of this title—

(a) A "farmer" means any person or partnership chiefly engaged in producing agricultural products on whose farm the number of cattle, calves, sheep, lambs, swine, or goats is in keeping with the size of the farm or with the volume or character of the agricultural products produced thereon, but does not mean any person or partnership engaged in producing agricultural products who—

(1) actively engages in buying or trading in cattle, calves, sheep, lambs, swine, or goats; or

(2) actively engages, directly or indirectly, in conducting a business which includes the slaughter of cattle, calves, sheep, lambs, swine, or goats for food purposes; or

(3) actively engages, directly or indirectly, in buying or selling meat or meat food products other than those prepared by any farmer on the farm; or

(4) actively engages, directly or indirectly, in salting, curing, or canning meat, or in preparing sausage, lard, or other meat food products; or

(5) slaughters, or permits any person to slaughter, on his or their farm cattle, calves, sheep, lambs, swine, or goats which are not actually owned by him or them.

(b) A "retail butcher" means any person, partnership, association, or corporation chiefly engaged in selling meat or meat food products to consumers only, except that the Secretary of Agriculture, at his discretion, may permit any retail butcher to transport in interstate or foreign commerce to consumers and meat retailers in any one week not more than five carcasses of cattle, twenty-five carcasses of calves, twenty carcasses of sheep, twenty-five carcasses of lambs, ten carcasses of swine, twenty carcasses of goats, or twenty-five carcasses of goat kids, or the equivalent of fresh meat therefrom, and to transport in interstate or foreign commerce to consumers only meat and meat food products which have been salted, cured, canned, or prepared as sausage, lard, or other meat food products, and which have not been inspected, examined, and marked as "Inspected and Passed" in accordance with the terms of sections 71-93 of this title, and Acts supplemental thereto, and with the rules and regulations prescribed by the Secretary of Agriculture.

(c) A "retail dealer" means any person, partnership, association, or corporation chiefly engaged in selling meat or meat food products to consumers only except that the Secretary of Agriculture, at his discretion, may permit any retail dealer to transport in interstate trade or foreign commerce to consumers and meat retailers in any one week not more than five carcasses of cattle, twenty-five carcasses of calves, twenty carcasses of sheep, twenty-five carcasses of lambs, ten carcasses of swine, twenty carcasses of goats, or twenty-five carcasses of goat kids, or the equivalent of fresh meat therefrom, and to transport in interstate or foreign commerce to consumers only meat and meat food products which have been salted, cured, canned, or prepared as sausage, lard, or other meat food products which have not

been inspected, examined, and marked as "Inspected and Passed" in accordance with the terms of sections 71-93 of this title, and Acts supplemental thereto, and with the rules and regulations prescribed by the Secretary of Agriculture.

The provisions of sections 71-93 of this title, requiring inspection to be made by the Secretary of Agriculture shall not apply to animals slaughtered by any farmer on the farm and sold and transported in interstate or foreign commerce, nor to retail butchers and retail dealers in meat and meat food products, supplying their customers: *Provided*, That all meat and meat food products derived from animals slaughtered by any farmer on the farm which are salted, cured, canned, or prepared into sausage, lard, or other meat food products at any place other than by the farmer on the farm upon which the animals were slaughtered shall not be transported in interstate or foreign commerce under the farmers' exemption herein provided, and all fresh meat and all farm-cured or prepared meat and meat food products derived from animals slaughtered by any farmer on the farm which are to be used in interstate or foreign commerce shall be clearly marked with the name and address of the farmer on whose farm the animals were slaughtered: *Provided further*, That if any person shall sell or offer for sale or transportation for interstate or foreign commerce any meat or meat food products which are diseased, unsound, unhealthful, unwholesome, or otherwise unfit for human food, knowing that such meat food products are intended for human consumption, he shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding \$1,000 or by imprisonment for a period of not exceeding one year, or by both such fine and imprisonment: *And provided further*, The Secretary of Agriculture is authorized to maintain the inspection in sections 71-93 of this title provided for at any slaughtering, meat canning, salting, packing, rendering, or similar establishment notwithstanding this exception, and that the persons operating the same may be retail butchers and retail dealers or farmers; and where the Secretary of Agriculture shall establish such inspection then the provisions of said sections shall apply notwithstanding this exception. (Mar. 4, 1907, ch. 2907, 34 Stat. 1265; June 29, 1938, ch. 810, 52 Stat. 1235.)

**§ 92. Sale of meat or meat products unfit for food; penalty.**

Section, as enacted by act Mar. 4, 1907, ch. 2907, 34 Stat. 1260, was a proviso following the first sentence of section 91 of this title, and has been restored to said section

**§ 93. Repealed.** May 29, 1928, ch. 901, § 1 (92), 45 Stat. 993.

Section, act Mar. 4, 1907, ch. 2907, 34 Stat. 1265, related to statement in annual estimates as to persons employed, their compensation and expenses.

**§ 94. Inspection extended to reindeer.**

The provisions of sections 71-93 of this title may be extended to the inspection of reindeer. (June 30, 1914, ch. 131, 38 Stat. 420.)

**§ 94a. Inspection of dairy products for export.**

Sections 71-94 of this title shall be deemed to include dairy products intended for exportation to any foreign country, and the Secretary of Agriculture may apply, under rules and regulations to be prescribed by him, the provisions of said sections for inspection and certification appropriate for ascertaining the purity and quality of such products, and may cause the same to be so marked, stamped, or labeled as to secure their identity and make known in the markets of foreign countries to which they may be sent from the United States their purity, quality, and grade; and all the provisions of said sections relating to live cattle and products thereof for export shall apply to dairy products so inspected and certified. (May 23, 1908, ch. 192, 35 Stat. 254.)

**§ 95. Appropriation for expenses of inspection.**

Annual appropriations of the sum of \$3,000,000 from the general fund of the Treasury are authorized for the expenses of the inspection of cattle, sheep, swine, and goats and the meat and meat food products thereof which enter into interstate or foreign commerce and for all expenses necessary to carry into effect the provisions of sections 71-96 of this title, including rent and the employment of labor in Washington and elsewhere, for each year, and in addition there is authorized to be appropriated such other sums as may be necessary in the enforcement of the meat inspection laws (sections 71-96 of this title). (June 30, 1906, ch. 3913, 34 Stat. 679; June 26, 1934, ch. 756, § 2, 48 Stat. 1225.)

**§ 96. Marking horse meat transported in interstate commerce.**

No person, firm, or corporation or officer, agent, or employee thereof shall transport or offer for transportation, and no carrier of interstate or foreign commerce shall transport or receive for transportation from one State or Territory or the District of Columbia to any other State or Territory or the District of Columbia or to any place under the jurisdiction of the United States or to any foreign country, any equine meat or food products thereof unless plainly and conspicuously labeled, marked, branded or tagged "Horse meat" or "Horse-meat Product", as the case may be, under such rules and regulations as may be prescribed by the Secretary of Agriculture. All the penalties, terms and provisions in sections 71-94 of this title, except the exemption therein applying to animals slaughtered by any farmer on a farm, to retail butchers and retail dealers in meat food products supplying their customers, shall be applicable to horses, their carcasses, parts of carcasses, and meat food products thereof, and the establishments and other places where such animals are slaughtered or the meat or meat food products thereof are prepared or packed for the interstate or foreign commerce, and to all persons, firms, corporations and officers, agents and employees thereof who slaughter such animals or prepare or handle such meat or meat food products for interstate or foreign commerce. (July 24, 1919, ch. 26, 41 Stat. 241.)

**IMPORTATION OF CATTLE AND QUARANTINE****§ 101. Suspension of importation of all animals.**

Whenever, in the opinion of the President, it shall be necessary for the protection of animals in the United States against infectious or contagious diseases, he may, by proclamation, suspend the importation of all or any class of animals for a limited time, and may change, modify, revoke, or renew such proclamation, as the public good may require; and during the time of such suspension the importation of any such animals shall be unlawful. (Aug. 30, 1890, ch. 839, § 9, 26 Stat. 416.)

**§ 102. Quarantine of imported animals.**

The Secretary of Agriculture is authorized, at the expense of the owner, to place and retain in quarantine all neat cattle, sheep, and other ruminants, and all swine, imported into the United States, at such ports as he may designate for such purpose, and under such conditions as he may by regulation prescribe, respectively, for the several classes of animals above described. For this purpose he may have and maintain possession of all lands, buildings, animals, tools, fixtures, and appurtenances in use on August 3, 1890, for the quarantine of neat cattle, and purchase, construct, or rent as may be necessary, and he may appoint veterinary surgeons, inspectors, officers, and employees by him deemed necessary to maintain such quarantine, and provide for the execution of the other provisions of sections 101–105 of this title. (Aug. 30, 1890, ch. 839, § 7, 26 Stat. 416.)

**§ 103. Importation, except at quarantine ports, prohibited; slaughter of infected animals; appraisal; payment.**

The importation of all animals described in sections 101–105 of this title into any port in the United States, except such as may be designated by the Secretary of Agriculture, with the approval of the Secretary of the Treasury, as quarantine stations, is prohibited. The Secretary of Agriculture may cause to be slaughtered such of the animals named in said sections as may be, under regulations prescribed by him, adjudged to be infected with any contagious disease, or to have been exposed to infection so as to be dangerous to other animals. The value of animals so slaughtered as being so exposed to infection but not infected may be ascertained by agreement of the Secretary of Agriculture and the owners thereof if practicable; otherwise, by the appraisal by two persons familiar with the character and value of such property, to be appointed by the Secretary of Agriculture, whose decision, if they agree, shall be final; otherwise, the Secretary of Agriculture shall decide between them, and his decision shall be final. The amount of the value thus ascertained shall be paid to the owner thereof out of money in the Treasury appropriated for the use of the Bureau of Animal Industry; but no payment shall be made for any animal imported in violation of the provisions of the sections hereinbefore enumerated. If any animals subject to quarantine according to the provisions of said sections are brought into any port of the United States where no quarantine station is established, the collector of such port shall require

the same to be conveyed, by the vessel on which they are imported or are found, to the nearest quarantine station at the expense of the owner. (Aug. 30, 1890, ch. 839, § 8, 26 Stat. 416.)

**§ 104. Importation of diseased animals prohibited.**

The importation of cattle, sheep, and other ruminants, and swine, which are diseased or infected with any disease, or which shall have been exposed to such infection within sixty days next before their exportation, is prohibited: *Provided*, That the Secretary of Agriculture, within his discretion and under such regulations as he may prescribe, is authorized to permit the admission from Mexico into the State of Texas of cattle which have been infested with or exposed to ticks upon being freed therefrom. Any person who shall knowingly violate the foregoing provision shall be deemed guilty of a misdemeanor and shall, on conviction, be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding three years, and any vessel or vehicle used in such unlawful importation within the knowledge of the master or owner of such vessel or vehicle that such importation is diseased or has been exposed to infection as herein described, shall be forfeited to the United States. (Aug. 30, 1890, ch. 839, § 6, 26 Stat. 416; June 28, 1926, ch. 700, § 2, 44 Stat. 775; Feb. 28, 1931, ch. 348, 46 Stat. 1460.)

**CROSS REFERENCE**

Offense punishable by imprisonment for term in excess of one year deemed a felony, see section 541 of Title 18, Criminal Code and Criminal Procedure.

**§ 105. Inspection of animals imported or intended for export.**

The Secretary of Agriculture shall cause careful inspection to be made by a suitable officer of all imported animals described in sections 101–104 of this title, to ascertain whether such animals are infected with contagious diseases or have been exposed to infection so as to be dangerous to other animals, which shall then either be placed in quarantine or dealt with according to the regulations of the Secretary of Agriculture. All food, litter, manure, clothing, utensils, and other appliances that have been so related to such animals on board ship as to be judged liable to convey infection shall be dealt with according to the regulations of the Secretary of Agriculture. The Secretary of Agriculture may cause inspection to be made of all animals described in such sections intended for exportation, and provide for the disinfection of all vessels engaged in the transportation thereof, and of all barges or other vessels used in the conveyance of such animals intended for export to the ocean steamer or other vessels, and of all attendants and their clothing, and of all headropes and other appliances used in such exportation, by such orders and regulations as he may prescribe; and if, upon such inspection, any such animals shall be adjudged, under the regulations of the Secretary of Agriculture, to be infected or to have been exposed to infection so as to be dangerous to other animals, they shall not be allowed to be placed upon any vessel for exportation; the expense of all the inspection and disinfection provided for in this section to be borne by the owners of the vessels on which such animals

are exported. (Aug. 30, 1890, ch. 839, § 10, 26 Stat. 417.)

**§§ 106, 107. Admission for immediate slaughter at ports of entry of tick-infested cattle; regulations; slaughtering.**

Sections were based upon act Aug. 10, 1917, ch. 52, § 9, 40 Stat. 275, as amended by act Nov. 21, 1918, ch. 212, § 3, 40 Stat. 1048. Section 12 of said act August 10, 1917, provided that the act should cease to be in effect when the national emergency resulting from World War I had

**PREVENTION OF INTRODUCTION AND SPREAD OF CONTAGION**

**§ 111. Regulations to prevent contagious diseases.**

The Secretary of Agriculture shall have authority to make such regulations and take such measures as he may deem proper to prevent the introduction or dissemination of the contagion of any contagious, infectious, or communicable disease of animals and/or live poultry from a foreign country into the United States or from one State or Territory of the United States or the District of Columbia to another, and to seize, quarantine, and dispose of any hay, straw, forage, or similar material, or any meats, hides, or other animal products coming from an infected foreign country to the United States, or from one State or Territory or the District of Columbia in transit to another State or Territory or the District of Columbia whenever in his judgment such action is advisable in order to guard against the introduction or spread of such contagion. (Feb. 2, 1903, ch. 349, § 2, 32 Stat. 792; Feb. 7, 1928, ch. 30, 45 Stat. 59.)

**§ 112. Investigations as to pleuropneumonia, and other diseases; regulations.**

In order to promote the exportation of livestock and/or live poultry from the United States the Secretary of Agriculture shall make special investigation as to the existence of pleuropneumonia, or any contagious, infectious, or communicable disease, along the dividing lines between the United States and foreign countries, and along the lines of transportation from all parts of the United States to ports from which livestock and/or live poultry are exported, and shall, from time to time, establish such regulations concerning the exportation and transportation of livestock and/or live poultry as the results of said investigations may require. (May 29, 1884, ch. 60, § 4, 23 Stat. 32; Feb. 2, 1903, ch. 349, § 1, 32 Stat. 791; Feb. 7, 1928, ch. 30, 45 Stat. 59.)

**§ 113. Measures to prevent exportation of diseased livestock and live poultry.**

In order to prevent the exportation from any port of the United States to any port in a foreign country of livestock and/or live poultry affected with any contagious, infectious, or communicable disease, and especially pleuropneumonia, the Secretary of Agriculture is authorized to take such steps and adopt such measures, not inconsistent with the provisions of sections 111–119 of this title, as he may deem necessary. (May 29, 1884, ch. 60, § 5, 23 Stat. 32; Feb. 2, 1903, ch. 349, § 1, 32 Stat. 791; Feb. 7, 1928, ch. 30, 45 Stat. 59.)

**§ 114. Regulations for suppression of diseases; co-operation of States and Territories.**

It shall be the duty of the Secretary of Agriculture to prepare such rules and regulations as he may deem necessary for the speedy and effectual suppression and extirpation of pleuropneumonia and other dangerous, contagious, infectious, and communicable diseases, and to certify such rules and regulations to the executive authority of each State and Territory, and invite said authorities to cooperate in the execution and enforcement of the provisions of sections 111–115, 117–119, and 130 of this title. Whenever the plans and methods of the Secretary of Agriculture shall be accepted by any State or Territory in which pleuropneumonia or other contagious, infectious, or communicable disease is declared to exist, or such State or Territory shall have adopted plans and methods for the suppression and extirpation of said diseases, and such plans and methods shall be accepted by the Secretary of Agriculture, and whenever the governor of a State or other properly constituted authorities signify their readiness to cooperate for the extinction of any contagious, infectious, or communicable disease in conformity with the provisions of the sections hereinbefore enumerated, the Secretary of Agriculture is authorized to expend so much of the money appropriated for carrying out the provisions of said sections as may be necessary in such investigations, and in such disinfection and quarantine measures as may be necessary to prevent the spread of the disease from one State or Territory into another. (May 29, 1884, ch. 60, § 3, 23 Stat. 32; Feb. 7, 1928, ch. 30, 45 Stat. 59.)

**§ 115. Transportation of diseased livestock and live poultry prohibited; splenetic fever.**

No railroad company within the United States, or the owners or masters of any steam or sailing or other vessel or boat, shall receive for transportation or transport from one State or Territory to another, or from any State into the District of Columbia, or from the District into any State, any livestock and/or live poultry affected with any contagious, infectious, or communicable disease, and especially the disease known as pleuropneumonia; nor shall any person, company, or corporation deliver for such transportation to any railroad company, or master or owner of any boat or vessel, any livestock and/or live poultry, knowing them to be affected with any contagious, infectious, or communicable disease; nor shall any person, company, or corporation drive on foot, or transport in private conveyance from one State or Territory to another, or from any State into the District of Columbia, or from the District into any State, any livestock and/or live poultry, knowing them to be affected with any contagious, infectious, or communicable disease, and especially the disease known as pleuropneumonia. (May 29, 1884, ch. 60, § 6, 23 Stat. 32; June 28, 1926, ch. 700, § 1, 44 Stat. 774; Feb. 7, 1928, ch. 30, 45 Stat. 59.)

**CODIFICATION**

Act May 29, 1884, as amended by act June 28, 1926, cited to text, also contained the following proviso: "That until May 1, 1928, cattle infested with or exposed to cattle fever ticks may be shipped in interstate commerce for immediate slaughter after one dipping in accordance

with such regulations as the Secretary of Agriculture may prescribe."

**§ 116. Same; shipment of certain cattle excepted.**

Cattle which have reacted to the tuberculin test may be shipped, transported, or moved from one State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, for immediate slaughter, in accordance with such rules and regulations as shall be prescribed by the Secretary of Agriculture. The said Secretary of Agriculture may, in his discretion, and under such rules and regulations as he may prescribe, permit cattle which have been shipped for breeding or feeding purposes from one State, Territory, or the District of Columbia to another State, Territory, or the District of Columbia, and which have reacted to the tuberculin test subsequent to such shipment, to be reshipped in interstate commerce to the original owner. (May 31, 1920, ch. 217, 41 Stat. 699.)

**§ 117. Notice of existence of contagion to railroads; transportation of diseased stock or live poultry; penalty.**

It shall be the duty of the Secretary of Agriculture to notify, in writing, the proper officials or agents of any railroad, steamboat, or other transportation company doing business in or through any infected locality, and by publication in such newspapers as he may select, of the existence of said contagion; and any person or persons operating any such railroad, or master or owner of any boat or vessel, or owner or custodian of or person having control over such cattle or other livestock and/or live poultry within such infected district, who shall knowingly violate the provisions of section 115 of this title shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than \$100 nor more than \$5,000 or by imprisonment for not more than one year, or by both such fine and imprisonment. (May 29, 1884, ch. 60, § 7, 23 Stat. 32; Feb. 7, 1928, ch. 30, 45 Stat. 59.)

**§ 118. Duty of district attorneys.**

It shall be the duty of the several United States district attorneys to prosecute all violations of sections 112-115, 117-119, and 130 of this title which shall be brought to their notice or knowledge by any person making the complaint under oath; and the same shall be heard before any district court of the United States or Territorial court holden within the district in which such violation has been committed. (May 29, 1884, ch. 60, § 9, 23 Stat. 33; Mar. 3, 1911, ch. 231, § 289, 36 Stat. 1167; Feb. 7, 1928, ch. 30, 45 Stat. 59.)

**§ 119. Agents to examine and report on methods of treatment of animals, and means for suppression of diseases.**

The Secretary of Agriculture is authorized to appoint two competent agents, who shall be practical stock raisers or experienced business men familiar with questions pertaining to commercial transactions in livestock and/or live poultry, whose duty it shall be, under the instructions of the said Secretary of Agriculture, to examine and report upon the best

methods of treating, transporting, and caring for animals, and the means to be adopted for the suppression and extirpation of contagious pleuropneumonia, and to provide against the spread of other dangerous contagious, infectious, and communicable diseases. The compensation of said agents shall be at the rate of \$10 per diem, with all necessary expenses, while engaged in the actual performance of their duties under sections 111-115, 117, and 118 of this title, when absent from their usual place of business or residence as such agent. (May 29, 1884, ch. 60, § 2, 23 Stat. 31; Feb. 9, 1889, ch. 122, § 1, 25 Stat. 659; July 14, 1890, ch. 707, 26 Stat. 288; Feb. 7, 1928, ch. 30, 45 Stat. 59.)

**§ 120. Regulation of exportation and transportation of infected livestock and live poultry.**

In order to enable the Secretary of Agriculture to effectually suppress and extirpate contagious pleuropneumonia, foot-and-mouth disease, and other dangerous contagious, infectious, and communicable diseases in cattle and other livestock and/or live poultry, and to prevent the spread of such diseases, he is authorized and directed from time to time to establish such rules and regulations concerning the exportation and transportation of livestock and/or live poultry from any place within the United States where he may have reason to believe such diseases may exist into and through any State or Territory, and into and through the District of Columbia and to foreign countries as he may deem necessary, and all such rules and regulations shall have the force of law. (May 29, 1884, ch. 60, §§ 4, 5, 23 Stat. 32; Feb. 2, 1903, ch. 349, § 1, 32 Stat. 791; Feb. 7, 1928, ch. 30, 45 Stat. 59.)

**§ 121. Shipments from areas suspected infected; control of animals and live poultry.**

Whenever any inspector or assistant inspector of the Bureau of Animal Industry shall issue a certificate showing that such officer had inspected any cattle or other livestock and/or live poultry which were about to be shipped, driven, or transported from such locality to another as stated in section 120 preceding, and had found them free from Texas or splenic fever infection, pleuropneumonia, foot-and-mouth disease, or any other infectious, contagious, or communicable disease, such animals, so inspected and certified, may be shipped, driven, or transported from such place into and through any State or Territory, and into and through the District of Columbia, or they may be exported from the United States without further inspection or the exaction of fees of any kind, except such as may at any time be ordered or exacted by the Secretary of Agriculture; and all such animals shall at all times be under the control and supervision of the Bureau of Animal Industry of the Agricultural Department for the purposes of such inspection. (Feb. 2, 1903, ch. 349, § 1, 32 Stat. 791; Feb. 7, 1928, ch. 30, 45 Stat. 59.)

**§ 122. Offenses; penalty.**

Any person, company, or corporation knowingly violating the provisions of sections 111, 120, or 121



of this title or the orders or regulations made in pursuance thereof shall be guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than \$100 nor more than \$1,000, or by imprisonment not more than one year, or by both such fine and imprisonment. (Feb. 2, 1903, ch. 349, § 3, 32 Stat. 792; Feb. 7, 1928, ch. 30, 45 Stat. 59.)

#### § 123. Quarantine.

The Secretary of Agriculture is authorized and directed to quarantine any State or Territory or the District of Columbia, or any portion of any State or Territory or the District of Columbia, when he shall determine the fact that cattle or other livestock and/or live poultry in such State or Territory or District of Columbia are affected with any contagious, infectious, or communicable disease; and the Secretary of Agriculture is directed to give written or printed notice of the establishment of quarantine to the proper officers of railroad, steamboat, or other transportation companies doing business in or through any quarantined State or Territory or the District of Columbia, and to publish in such newspapers in the quarantined State or Territory or the District of Columbia, as the Secretary of Agriculture may select, notice of the establishment of quarantine. (Mar. 3, 1905, ch. 1496, § 1, 33 Stat. 1264; Feb. 7, 1928, ch. 30, 45 Stat. 59.)

#### § 124. Transportation or delivery therefor from quarantined State or Territory or portion thereof, of livestock and live poultry, forbidden.

No railroad company or the owners or masters of any steam or sailing or other vessel or boat shall receive for transportation or transport from any quarantined State or Territory or the District of Columbia, or from the quarantined portion of any State or Territory or the District of Columbia, any cattle or other livestock, and/or live poultry, except as hereinafter provided; nor shall any person, company, or corporation deliver for such transportation to any railroad company, or to the master or owner of any boat or vessel, any cattle or other livestock and/or live poultry, except as hereinafter provided; nor shall any person, company, or corporation drive on foot, or cause to be driven on foot, or transport in private conveyance or cause to be transported in private conveyance, from a quarantined State or Territory or the District of Columbia, or from the quarantined portion of any State or Territory or the District of Columbia, into any other State or Territory or the District of Columbia, any cattle or other livestock and/or live poultry, except as hereinafter provided. (Mar. 3, 1905, ch. 1496, § 2, 33 Stat. 1264; Feb. 7, 1928, ch. 30, 45 Stat. 59.)

#### § 125. Regulations for inspection, disinfection, and certification, and delivery and shipment of livestock and live poultry from quarantined State or Territory.

It shall be the duty of the Secretary of Agriculture, and he is authorized and directed, when the public safety will permit, to make and promulgate rules and regulations which shall permit and govern the inspection, disinfection, certification, treatment, handling, and method and manner of delivery and

shipment of cattle or other livestock and/or live poultry from a quarantined State or Territory or the District of Columbia, and from the quarantined portion of any State or Territory or the District of Columbia, into any other State or Territory or the District of Columbia; and the Secretary of Agriculture shall give notice of such rules and regulations in the manner provided in section 124 of this title for notice of establishment of quarantine. (Mar. 3, 1905, ch. 1496, § 3, 33 Stat. 1265; Feb. 7, 1928, ch. 30, 45 Stat. 59.)

#### § 126. Moving livestock and live poultry from quarantined State or Territory under regulations.

Cattle or other livestock and/or live poultry may be moved from a quarantined State or Territory or the District of Columbia, or from the quarantined portion of any State or Territory or the District of Columbia, into any other State or Territory or the District of Columbia, under and in compliance with the rules and regulations of the Secretary of Agriculture, made and promulgated in pursuance of the provisions of section 125 of this title; but it shall be unlawful to move, or to allow to be moved, any cattle or other livestock and/or live poultry from any quarantined State or Territory or the District of Columbia, or from the quarantined portion of any State or Territory or the District of Columbia, into any other State or Territory or the District of Columbia, in manner or method or under conditions other than those prescribed by the Secretary of Agriculture. (Mar. 3, 1905, ch. 1496, § 4, 33 Stat. 1265; Feb. 7, 1928, ch. 30, 45 Stat. 59.)

#### § 127. Transportation from quarantined State, Territory, and so forth; penalty.

Any person, company, or corporation violating the provisions of sections 124 or 126 of this title shall be guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than \$100 nor more than \$1,000, or by imprisonment not more than one year, or by both such fine and imprisonment. (Mar. 3, 1905, ch. 1496, § 6, 33 Stat. 1265.)

#### § 128. Extension of quarantine law to carriers in interstate commerce.

The provisions of sections 123-127 of this title and of section 118 of Title 18 shall apply to any railroad company or other common carrier whose road or line forms any part of a route over which cattle or other livestock and/or live poultry are transported in the course of shipment from any quarantined State or Territory or the District of Columbia, or from the quarantined portion of any State or Territory or the District of Columbia, into any other State or Territory or the District of Columbia. (June 30, 1914, ch. 131, 38 Stat. 419; Feb. 7, 1928, ch. 30, 45 Stat. 59.)

#### § 129. Payment for animals purchased; computation of value, and amount paid.

In case of an emergency arising out of the existence of foot-and-mouth disease, rinderpest, contagious pleuropneumonia, or other contagious or infectious disease of animals, which, in the opinion of the Secretary of Agriculture, threatens the livestock industry of the country, he may ex-

pend, in the city of Washington or elsewhere any unexpended balances of appropriations heretofore made for this purpose in the arrest and eradication of any such disease, including the payment of claims growing out of past and future purchases and destruction, in cooperation with the States, of animals affected by or exposed to, or of materials contaminated by or exposed to, any such disease, wherever found and irrespective of ownership, under like or substantially similar circumstances, when such owner has complied with all lawful quarantine regulations: *Provided*, That the payment for animals hereafter purchased may be made on appraisalment based on the meat, dairy, or breeding value, but in case of appraisalment based on breeding value no appraisalment of any animal shall exceed three times its meat or dairy value, and, except in case of an extraordinary emergency, to be determined by the Secretary of Agriculture, the payment by the United States Government for any animals shall not exceed one-half of any such appraisalments. (June 25, 1940, ch. 421, § 1, 54 Stat. 542.)

#### SIMILAR PROVISIONS

Similar provisions were contained in prior appropriation acts for the Department of Agriculture, as follows:

- 1939—June 30, 1939, ch. 253, title I, 53 Stat. 951.
- 1938—June 16, 1938, ch. 464, title I, 52 Stat. 722.
- 1937—June 29, 1937, ch. 404, 50 Stat. 406.
- 1936—June 4, 1936, ch. 489, 49 Stat. 1432.
- 1935—May 17, 1935, ch. 131, title I, § 1, 49 Stat. 257.
- 1934—Mar. 26, 1934, ch. 89, 48 Stat. 477.
- 1933—Mar. 3, 1933, ch. 203, 47 Stat. 1442.
- 1932—July 7, 1932, ch. 443, 47 Stat. 620.
- 1931—Feb. 23, 1931, ch. 278, 46 Stat. 1252.
- 1930—May 27, 1930, ch. 341, 46 Stat. 403.
- 1929—Feb. 16, 1929, ch. 227, 45 Stat. 1198.
- 1928—May 16, 1928, ch. 572, 45 Stat. 548.
- 1927—Jan. 18, 1927, ch. 39, 44 Stat. 1005.
- 1926—May 11, 1926, ch. 286, 44 Stat. 529.
- 1925—Feb. 10, 1925, ch. 200, 43 Stat. 851.
- 1924—Dec. 5, 1924, ch. 4, § 1, 43 Stat. 683.
- June 5, 1924, ch. 266, 43 Stat. 458
- Apr. 2, 1924, ch. 81, § 1, 43 Stat. 40.
- 1923—Feb. 26, 1923, ch. 119, 42 Stat. 1318.
- 1922—May 11, 1922, ch. 185, 42 Stat. 536.
- 1917—Mar. 4, 1917, ch. 179, 39 Stat. 1167.

#### § 130. Pleuropneumonia in District of Columbia; duties of Commissioners.

Whenever any contagious, infectious, or communicable disease affecting domestic animals or live poultry, and especially the disease known as pleuropneumonia, shall be brought into or shall break out in the District of Columbia, it shall be the duty of the commissioners of said District to take measures to suppress the same promptly and to prevent the same from spreading; and for this purpose the said commissioners are empowered to order and require that any premises, farm, or farms where such disease exists, or has existed, be put in quarantine; to order all or any animals coming into the District to be detained at any place or places for the purpose of inspection and examination; to prescribe regulations for and to require the destruction of animals or live poultry affected with contagious, infectious, or communicable disease, and for the proper disposition of their hides and carcasses; to prescribe regulations for disinfection, and such other regulations as they may deem necessary to prevent infection or

contagion being communicated, and shall report to the Secretary of Agriculture whatever they may do in pursuance of the provisions of this section. (May 29, 1884, ch. 60, § 8, 23 Stat. 33; Feb. 7, 1928, ch. 30, 45 Stat. 59.)

#### CROSS REFERENCE

Diseases and quarantine in the District of Columbia, see sections 111 and 123-127 of this title.

#### § 131. Fences along international boundary lines to keep out diseased animals.

The Secretary of Agriculture may permit the erection of fences along international boundary lines, but entirely within the territory of the United States, for the purpose of keeping out diseased animals. (May 26, 1910, ch. 256, 36 Stat. 440.)

#### § 132. Inspection of dairy products for export.

Section, act May 23, 1908, ch. 192, 35 Stat. 254, now appears as section 94a of this title.

#### IMPORTATION OF MILK AND CREAM

##### FEDERAL FOOD, DRUG, AND COSMETIC ACT

By virtue of act June 25, 1938, ch. 675, § 902 (c), 52 Stat. 1059, nothing contained in chapter 9 of this title shall be construed as in any way affecting, modifying, repealing, or superseding the provisions of sections 141-149 of this title.

#### § 141. Prohibition of importation without permit.

On and after May 16, 1927, the importation into the United States of milk and cream is prohibited unless the person by whom such milk or cream is shipped or transported into the United States holds a valid permit from the Federal Security Administrator. (Feb. 15, 1927, ch. 155, § 1, 44 Stat. 1101; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1237.)

##### TRANSFER OF FUNCTIONS

The Food and Drug Administration in the Department of Agriculture and its functions were transferred to the Federal Security Agency, to be administered under the direction and supervision of the Federal Security Administrator, by Reorganization Plan No. IV, cited to text, set out in notes to section 133t of Title 5, Executive Departments and Government Officers and Employees.

#### § 142. Milk or cream when unfit for importation.

Milk or cream shall be considered unfit for importation (1) when all cows producing such milk or cream are not healthy and a physical examination of all such cows has not been made within one year previous to such milk being offered for importation; (2) when such milk or cream, if raw, is not produced from cows which have passed a tuberculin test applied by a duly authorized official veterinarian of the United States, or of the country in which such milk or cream is produced, within one year previous to the time of the importation, showing that such cows are free from tuberculosis; (3) when the sanitary conditions of the dairy farm or plant in which such milk or cream is produced or handled do not score at least fifty points out of one hundred points according to the methods for scoring as provided by the score cards, used by the Bureau of Dairy Industry of the United States Department of Agriculture at the time such dairy farms or plants are scored; (4) in the case of raw milk if the number of bacteria per cubic centi-

meter exceeds three hundred thousand and in the case of raw cream seven hundred and fifty thousand, in the case of pasteurized milk if the number of bacteria per cubic centimeter exceeds one hundred thousand, and in the case of pasteurized cream five hundred thousand; (5) when the temperature of milk or cream at the time of importation exceeds fifty degrees Fahrenheit. (Feb. 15, 1927, ch. 155, § 2, 44 Stat. 1101.)

**§ 143. Inspection; certified statement in lieu thereof; waiver of requirements of section 142; regulations; suspension and revocation of permits.**

The Federal Security Administrator shall cause such inspections to be made as are necessary to insure that milk and cream are so produced and handled as to comply with the provisions of section 142 of this title, and in all cases when he finds that such milk and/or cream is produced and handled so as not to be unfit for importation under clauses 1, 2, and 3 of section 142 of this title, he shall issue to persons making application therefor permits to ship milk and/or cream into the United States: *Provided*, That in lieu of the inspections to be made by or under the direction of the Federal Security Administrator he may, in his discretion, accept a duly certified statement signed by a duly accredited official of an authorized department of any foreign government and/or of any State of the United States or any municipality thereof that the provisions in clauses 1, 2, and 3 of section 142 of this title have been complied with. Such certificate of the accredited official of an authorized department of any foreign government shall be in the form prescribed by the Federal Security Administrator, who is hereby authorized and directed to prescribe such form as well as rules and regulations regulating the issuance of permits to import milk or cream into the United States.

The Federal Security Administrator is authorized, in his discretion, to waive the requirement of section 142, paragraph 4, of this title when issuing permits to operators of condenseries in which milk and/or cream is used when sterilization of the milk and/or cream is a necessary process: *Provided, however*, That no milk and/or cream shall be imported whose bacterial count per cubic centimeter in any event exceeds one million two hundred thousand: *Provided further*, That such requirements shall not be waived unless the farm producing such milk to be imported is within a radius of fifteen miles of the condensery in which it is to be processed: *Provided further*, That if milk and/or cream imported when the requirements of section 142, paragraph 4, have been so waived, is sold, used, or disposed of in its raw state or otherwise than as condensed milk by any person, the permit shall be revoked and the importer shall be subject to fine, imprisonment, or other penalty prescribed by sections 141–149 of this title.

The Federal Security Administrator is directed to waive the requirements of paragraphs 2 and 5 of section 142 of this title insofar as the same relate to milk when issuing permits to operators of, or to producers for delivery to, creameries and condensing plants in the United States within twenty miles of

the point of production of the milk, and who import no raw milk except for pasteurization or condensing: *Provided*, That if milk imported when the requirements of paragraphs 2 and 5 of section 142 have been so waived is sold, used, or disposed of in its raw state, or otherwise than as pasteurized, condensed, or evaporated milk by any person, the permit shall be revoked and the importer shall be subjected to fine, imprisonment, or other penalty prescribed by sections 141–149 of this title.

The Federal Security Administrator is authorized and directed to make and enforce such regulations as may in his judgment be necessary to carry out the purpose of sections 141–149 of this title for the handling of milk and cream, for the inspection of milk, cream, cows, barns, and other facilities used in the production and handling of milk and/or cream and the handling, keeping, transporting, and importing of milk and/or cream: *Provided, however*, That unless and until the Federal Security Administrator shall provide for inspections to ascertain that paragraphs 1, 2, and 3 of section 142 have been complied with, the Federal Security Administrator shall issue temporary permits to any applicants therefor to ship or transport milk and/or cream into the United States.

The Federal Security Administrator is authorized to suspend or revoke any permit for the shipment of milk or cream into the United States when he shall find that the holder thereof has failed to comply with the provisions of or has violated sections 141–149 of this title or any of the regulations made hereunder, or that the milk and/or cream brought or shipped by the holder of such permit into the United States is not produced and handled in conformity with, or that the quality thereof does not conform to, all of the provisions of section 142 of this title. (Feb. 15, 1927, ch. 155, § 3, 44 Stat. 1102; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1237.)

#### TRANSFER OF FUNCTIONS

See note to section 141 of this title.

**§ 144. Unlawful receiving of imported milk or cream.**

It shall be unlawful for any person in the United States to receive milk or cream imported into the United States unless the importation is in accordance with the provisions of sections 141–149 of this title. (Feb. 15, 1927, ch. 155, § 4, 44 Stat. 1103.)

**§ 145. Penalties.**

Any person who knowingly violates any provision of sections 141–149 of this title shall, in addition to all other penalties prescribed by law, be punished by a fine of not less than \$50 nor more than \$2,000, or by imprisonment for not more than one year, or by both such fine and imprisonment. (Feb. 15, 1927, ch. 155, § 5, 44 Stat. 1103.)

**§ 146. Appropriation.**

There is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of \$50,000 per annum, to enable the Federal Security Administrator to carry out the provisions of sections 141–149 of this title. (Feb. 15,

1927, ch. 155, § 6, 44 Stat. 1103; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1237.)

#### TRANSFER OF FUNCTIONS

See note to section 141 of this title.

#### § 147. Repeal of inconsistent laws.

Any laws or parts of laws inconsistent with sections 141–149 of this title are hereby repealed. (Feb. 15, 1927, ch. 155, § 7, 44 Stat. 1103.)

#### § 148. Powers of State with respect of milk or cream lawfully imported.

Nothing in sections 141–149 of this title is intended nor shall be construed to affect the powers of any State, or any political subdivision thereof, to regulate the shipment of milk or cream into, or the handling, sale, or other disposition of milk or cream in, such State or political subdivision after the milk and/or cream shall have been lawfully imported under the provisions of said sections. (Feb. 15, 1927, ch. 155, § 8, 44 Stat. 1103.)

#### § 149. Definitions; "person"; "United States."

When used in sections 141–148 of this title—

(a) The term "person" means an individual, partnership, association, or corporation.

(b) The term "United States" means continental United States. (Feb. 15, 1927, ch. 155, § 9, 44 Stat. 1103.)

### Chapter 5.—VIRUSES, SERUMS, TOXINS, ANTI-TOXINS, AND ANALOGOUS PRODUCTS

#### Sec.

151. Preparation and sale of worthless or harmful products for domestic animals prohibited; preparation to be in compliance with rules at licensed establishments.

152. Importation regulated and prohibited.

153. Inspection of imports; denial of entry and destruction.

154. Regulations for preparation and sale; licenses.

155. Permits for importation.

156. Licenses conditioned on permitting inspection; suspension of licenses.

157. Same; inspection daytime or nighttime.

158. Offenses; punishment.

§ 151. Preparation and sale of worthless or harmful products for domestic animals prohibited; preparation to be in compliance with rules at licensed establishments.

It shall be unlawful for any person, firm, or corporation to prepare, sell, barter, or exchange in the District of Columbia, or in the Territories, or in any place under the jurisdiction of the United States, or to ship or deliver for shipment from one State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, any worthless, contaminated, dangerous, or harmful virus, serum, toxin, or analogous product intended for use in the treatment of domestic animals, and no person, firm, or corporation shall prepare, sell, barter, exchange, or ship as aforesaid any virus, serum, toxin, or analogous product manufactured within the United States and intended for use in the treatment of domestic animals, unless and until the said virus, serum, toxin, or analogous product shall have been prepared, under and in compliance with regu-

lations prescribed by the Secretary of Agriculture, at an establishment holding an unsuspended and unrevoked license issued by the Secretary of Agriculture as hereinafter authorized. (Mar. 4, 1913, ch. 145, 37 Stat. 832.)

#### § 152. Importation regulated and prohibited.

The importation into the United States, without a permit from the Secretary of Agriculture, of any virus, serum, toxin, or analogous product for use in the treatment of domestic animals, and the importation of any worthless, contaminated, dangerous, or harmful virus, serum, toxin, or analogous product for use in the treatment of domestic animals, are prohibited. (Mar. 4, 1913, ch. 145, 37 Stat. 832.)

#### § 153. Inspection of imports; denial of entry and destruction.

The Secretary of Agriculture is authorized to cause the Bureau of Animal Industry to examine and inspect all viruses, serums, toxins, and analogous products, for use in the treatment of domestic animals, which are being imported or offered for importation into the United States, to determine whether such viruses, serums, toxins, and analogous products are worthless, contaminated, dangerous, or harmful, and if it shall appear that any such virus, serum, toxin, or analogous product, for use in the treatment of domestic animals, is worthless, contaminated, dangerous, or harmful, the same shall be denied entry and shall be destroyed or returned at the expense of the owner or importer. (Mar. 4, 1913, ch. 145, 37 Stat. 832.)

#### § 154. Regulations for preparation and sale; licenses.

The Secretary of Agriculture is authorized to make and promulgate from time to time such rules and regulations as may be necessary to prevent the preparation, sale, barter, exchange, or shipment as aforesaid of any worthless, contaminated, dangerous, or harmful virus, serum, toxin, or analogous product for use in the treatment of domestic animals, and to issue, suspend, and revoke licenses for the maintenance of establishments for the preparation of viruses, serums, toxins, and analogous products, for use in the treatment of domestic animals, intended for sale, barter, exchange, or shipment as aforesaid. (Mar. 4, 1913, ch. 145, 37 Stat. 832.)

#### § 155. Permits for importation.

The Secretary of Agriculture is authorized to issue permits for the importation into the United States of viruses, serums, toxins, and analogous products, for use in the treatment of domestic animals, which are not worthless, contaminated, dangerous, or harmful. (Mar. 4, 1913, ch. 145, 37 Stat. 833.)

#### § 156. Licenses conditioned on permitting inspection; suspension of licenses.

All licenses issued under authority of this chapter to establishments where such viruses, serums, toxins, or analogous products are prepared for sale, barter, exchange, or shipment as aforesaid, shall be issued on condition that the licensee shall permit the inspection of such establishments and of such

products and their preparation; and the Secretary of Agriculture may suspend or revoke any permit or license issued under authority of said chapter, after opportunity for hearing has been granted the licensee or importer, when the Secretary of Agriculture is satisfied that such license or permit is being used to facilitate or effect the preparation, sale, barter, exchange, or shipment as aforesaid, or the importation into the United States of any worthless, contaminated, dangerous, or harmful virus, serum, toxin, or analogous product for use in the treatment of domestic animals. (Mar. 4, 1913, ch. 145, 37 Stat. 833.)

§ 157. Same; inspection daytime or nighttime.

Any officer, agent, or employee of the Department of Agriculture duly authorized by the Secretary of Agriculture for the purpose may, at any hour during the daytime or nighttime, enter and inspect any establishment licensed under the provisions of this chapter where any virus, serum, toxin, or analogous product for use in the treatment of domestic animals is prepared for sale, barter, exchange, or shipment as aforesaid. (Mar. 4, 1913, ch. 145, 37 Stat. 833.)

§ 158. Offenses; punishment.

Any person, firm, or corporation who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not exceeding \$1,000 or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court. (Mar. 4, 1913, ch. 145, 37 Stat. 833.)

## Chapter 6.—NARCOTIC DRUGS

### IMPORTATION OR EXPORTATION

- Sec.
- 171. Narcotic drugs; definitions.
- 172. Federal Narcotics Control Board; composition of
- 173. Importation of narcotic drugs prohibited; exceptions; crude opium for manufacture of heroin; forfeitures.
- 173a. Same; importation of coca leaves; additional quantity authorized; destruction of cocaine and ecgonine obtained therefrom; duties on imported coca leaves.
- 174. Same; penalty; evidence.
- 175. Same; deportation of convicted aliens.
- 176. Same; masters of vessels; persons in charge of railroad cars, etc.; liability of.
- 177. Administration of law.
- 178. Smoking opium; possession in transit; evidence.
- 179. Same; masters of vessels; persons in charge of railroad cars, and so forth; liability of; forfeiture.
- 180. Smoking opium not admitted for transportation to another country nor transferred from one vessel to another; other narcotic drugs.
- 181. Presumption and burden of proof as to importation of smoking opium.
- 182. Exportation of narcotic drugs prohibited; exceptions; requests for copies of laws of foreign governments; rules and regulations by Commissioner of Narcotics.
- 183. Same; punishment; share of fine to informer.
- 184. Seizure and forfeiture of narcotic drugs found on vessel and not shown on manifest, or landed from vessel without permit; penalty against master of vessel; withholding clearance papers; mitigation and remission of forfeitures and penalties.
- 185. Citation.

### IMPORTATION BY CHINESE SUBJECTS OR TRAFFICKING IN, IN CHINA, BY UNITED STATES CITIZENS

- 191. Opium importation by Chinese prohibited; penalty.
- 192. Same; forfeiture.
- 193. Importation, transportation, and trafficking in, in China, by citizens prohibited.

### MISCELLANEOUS

- 196. Studies and investigations by Surgeon General of Public Health; annual report.
- 197. Cooperation of Departments in discharge of international obligations concerning traffic in narcotic drugs.
- 198. Cooperation of Secretary of Treasury with States in suppression of abuse of narcotic drugs.
- 199. Information concerning violations of narcotic laws; payments by Commissioner of Narcotics.
- 200. Additional punishment for second offenses.
- 200a. Same; third and subsequent offenses.
- 200b. Same; procedure.

### CROSS REFERENCE

Harrison Anti-narcotic Act, regulating domestic sale or dispensing of narcotics, see sections 2550 et seq. and 3220 et seq. of Title 26, Internal Revenue Code.

### IMPORTATION OR EXPORTATION

§ 171. Narcotic drugs; definitions.

When used in sections 173–185 of this title—

(a) The term “narcotic drug” means opium, coca leaves, cocaine, or any salt, derivative, or preparation of opium, coca leaves, or cocaine;

(b) The term “United States”, when used in a geographical sense, includes the several States and Territories, and the District of Columbia;

(c) and

(d) The term “person” means individual, partnership, corporation, or association. (Feb. 9, 1909, ch. 100, § 1, 35 Stat. 614; Jan. 17, 1914, ch. 9, 38 Stat. 275; May 26, 1922, ch. 202, § 1, 42 Stat. 596; June 14, 1930, ch. 488, § 3, 46 Stat. 586.)

### CODIFICATION

Subdivision (c) of this section provided that “The term ‘board’ means the Federal Narcotics Control Board established by section 172 of this title.” The Federal Narcotics Control Board was abolished and all authority, powers, and functions theretofore exercised by such board transferred to the Commissioner of Narcotics, by act June 14, 1930, cited to text, see section 282b of Title 5, Executive Departments and Government Officers and Employees.

§ 172. Federal Narcotics Control Board; composition of.

Section, acts Feb. 9, 1909, ch. 100, § 2, 35 Stat. 614; Jan. 17, 1914, ch. 9, 38 Stat. 275; May 26, 1922, ch. 202, § 1, 42 Stat. 596; June 7, 1924, ch. 352, 43 Stat. 657, established the Federal Narcotics Control Board which was abolished by act June 14, 1930, ch. 488, § 3, 46 Stat. 586. See section 282b of Title 5, Executive Departments and Government Officers and Employees.

§ 173. Importation of narcotic drugs prohibited; exceptions; crude opium for manufacture of heroin; forfeitures.

It is unlawful to import or bring any narcotic drug into the United States or any territory under its control or jurisdiction; except that such amounts of crude opium and coca leaves as the Commissioner of Narcotics finds to be necessary to provide for medical and legitimate uses only may be imported and brought into the United States or such territory under such regulations as the Commissioner of Nar-

cotics shall prescribe, but no crude opium may be imported or brought in for the purpose of manufacturing heroin. All narcotic drugs imported under such regulations shall be subject to the duties which are now or may hereafter be imposed upon such drugs when imported.

Any narcotic drug imported or brought into the United States or any territory under its control or jurisdiction, contrary to law, shall (1) if smoking opium or opium prepared for smoking, be seized and summarily forfeited to the United States Government without the necessity of instituting forfeiture proceedings of any character; or (2) if any other narcotic drug be seized and forfeited to the United States Government, without regard to its value, in the manner provided by sections 514 and 515 of Title 19, or the provisions of law hereafter enacted which are amendatory of, or in substitution for, such sections. Any narcotic drug which is forfeited in a proceeding for condemnation or not claimed under such sections, or which is summarily forfeited as provided in this subdivision, shall be placed in the custody of the Commissioner of Narcotics and in his discretion be destroyed or delivered to some agency of the United States Government for use for medical or scientific purposes. (Feb. 9, 1909, ch. 100, § 2, 35 Stat. 614; Jan. 17, 1914, ch. 9, 38 Stat. 275; May 26, 1922, ch. 202, § 1, 42 Stat. 596; June 7, 1924, ch. 352, 43 Stat. 657; June 14, 1930, ch. 488, § 3, 46 Stat. 586.)

#### CROSS REFERENCES

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.  
Importation of additional coca leaves authorized, see section 173a of this title.

**§ 173a. Same; importation of coca leaves; additional quantity authorized; destruction of cocaine and ecgonine obtained therefrom; duties on imported coca leaves.**

In addition to the amount of coca leaves which may be imported under the first paragraph of section 173 of this title, the Commissioner of Narcotics is authorized to permit, in accordance with regulations issued by him, the importation of additional amounts of coca leaves: *Provided*, That after the entry thereof into the United States all cocaine, ecgonine, and all salts, derivatives, and preparations from which cocaine or ecgonine may be synthesized or made, contained in such additional amounts of coca leaves, shall be destroyed under the supervision of an authorized representative of the Commissioner of Narcotics. All coca leaves imported under this section shall be subject to the duties which are now or may hereafter be imposed upon such coca leaves when imported. (June 14, 1930, ch. 488, § 6, 46 Stat. 587.)

#### CROSS REFERENCE

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 174. Same; penalty; evidence.**

If any person fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or assists in so doing or receives, conceals, buys, sells or in any manner facilitates the transportation, concealment, or sale of any such

narcotic drug after being imported or brought in, knowing the same to have been imported contrary to law, such person shall, upon conviction, be fined not more than \$5,000 and imprisoned for not more than ten years. Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury. (Feb. 9, 1909, ch. 100, § 2, 35 Stat. 614; Jan. 17, 1914, ch. 9, 38 Stat. 275; May 26, 1922, ch. 202, § 1, 42 Stat. 596; June 7, 1924, ch. 352, 43 Stat. 657.)

#### CROSS REFERENCES

Additional punishment for subsequent offenses, see sections 200-200b of this title.  
Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 175. Same; deportation of convicted aliens.**

Any alien who at any time after his entry is convicted under section 174 of this title shall upon the termination of the imprisonment imposed by the court upon such conviction and upon warrant issued by the Secretary of Labor be taken into custody and deported in accordance with the provisions of sections 155 and 156 of Title 8 or provisions of law hereafter enacted which are amendatory of or in substitution for such sections. (Feb. 9, 1909, ch. 100, § 2, 35 Stat. 614; Jan. 17, 1914, ch. 9, 38 Stat. 275; May 26, 1922, ch. 202, § 1, 42 Stat. 596; June 7, 1924, ch. 352, 43 Stat. 657.)

#### CROSS REFERENCES

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

Provisions suspending deportation of aliens where serious economic detriment would result or permitting aliens of good character to depart at own expense to country of choice not to apply to aliens deportable under this section, see section 155 (d) of Title 8, Aliens and Nationality.

**§ 176. Same; masters of vessels; persons in charge of railroad cars, etc.; liability of.**

The master of any vessel or other water craft, or a person in charge of a railroad car or other vehicle, shall not be liable under section 174 of this title, if he satisfies the jury that he had no knowledge of and used due diligence to prevent the presence of the narcotic drug in or on such vessel, water craft, railroad car, or other vehicle; but the narcotic drug shall be seized, forfeited, and disposed of as provided in the second paragraph of section 173 of this title. (Feb. 9, 1909, ch. 100, § 2, 35 Stat. 614; Jan. 17, 1914, ch. 9, 38 Stat. 275; May 26, 1922, ch. 202, § 1, 42 Stat. 596; June 7, 1924, ch. 352, 43 Stat. 657.)

#### CROSS REFERENCE

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 177. Administration of law.**

Except as otherwise provided by law, the administration of sections 171-185 of this title is vested in the Department of the Treasury. (Feb. 9, 1909, ch. 100, § 2, 35 Stat. 614; Jan. 17, 1914, ch. 9, 38 Stat. 275; May 26, 1922, ch. 202, § 1, 42 Stat. 596; June 7, 1924, ch. 352, 43 Stat. 657.)

**§ 178. Smoking opium; possession in transit; evidence.**

Any person subject to the jurisdiction of the United States who shall, either as principal or as accessory, receive or have in his possession, or conceal on board of or transport on any foreign or domestic vessel or other water craft or railroad car or other vehicle destined to or bound from the United States or any possession thereof, any smoking opium or opium prepared for smoking, or who, having knowledge of the presence in or on any such vessel, water craft, or vehicle of such article, shall not report the same to the principal officer thereof, shall be subject to the penalty provided in section 174 of this title. Whenever on trial for violation of this section the defendant is shown to have or to have had possession of such opium, such possession shall be deemed sufficient evidence to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the jury. (Feb. 9, 1909, ch. 100, § 4; Jan. 17, 1914, ch. 9, 38 Stat. 275.)

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance

**§ 179. Same; masters of vessels; persons in charge of railroad cars, and so forth; liability of; forfeiture.**

Any master of a vessel or other water craft or person in charge of a railroad car or other vehicle shall not be liable under section 178 of this title if he shall satisfy the jury that he had no knowledge and used due diligence to prevent the presence of such article in or on such vessel, water craft, car, or other vessel, and any such article shall be forfeited and shall be destroyed. (Feb. 9, 1909, ch. 100, § 4; Jan. 17, 1914, ch. 9, 38 Stat. 275.)

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 180. Smoking opium not admitted for transportation to another country nor transferred from one vessel to another; other narcotic drugs.**

No smoking opium or opium prepared for smoking shall be admitted into the United States or into any territory under its control or jurisdiction for transportation to another country, or be transferred or transshipped from one vessel to another vessel within any waters of the United States for immediate exportation or for any other purpose; and except with the approval of the Commissioner of Narcotics, no other narcotic drug may be so admitted, transferred, or transshipped. (Feb. 9, 1909, ch. 100, § 5; Jan. 17, 1914, ch. 9, 38 Stat. 275; May 26, 1922, ch. 202, § 2, 42 Stat. 597; June 14, 1930, ch. 488, § 3, 46 Stat. 586.)

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 181. Presumption and burden of proof as to importation of smoking opium.**

All smoking opium or opium prepared for smoking found within the United States shall be presumed to have been imported contrary to law, and the burden of proof shall be on the claimant or the accused

to rebut such presumption. (Feb. 9, 1909, ch. 100, § 3; Jan. 17, 1914, ch. 9, 38 Stat. 275.)

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 182. Exportation of narcotic drugs prohibited; exception; requests for copies of laws of foreign governments; rules and regulations by Commissioner of Narcotics.**

(a) It shall be unlawful for any person subject to the jurisdiction of the United States Government to export or cause to be exported from the United States, or from territory under its control or jurisdiction, or from countries in which the United States exercises extraterritorial jurisdiction, any narcotic drug to any other country. Narcotic drugs (except smoking opium and opium prepared for smoking, the exportation of which is absolutely prohibited) may be exported to a country only which has ratified and become a party to the convention and final protocol between the United States Government and other powers for the suppression of the abuses of opium and other drugs, commonly known as the International Opium Convention of 1912, and then only if (1) such country has instituted and maintains, in conformity with that convention, a system, which the Commissioner of Narcotics deems adequate, of permits or licenses for the control of imports of such narcotic drugs; (2) the narcotic drug is consigned to an authorized permittee; and (3) there is furnished to the Commissioner of Narcotics proof deemed adequate by him that the narcotic drug is to be applied exclusively to medical and legitimate uses within the country to which exported, that it will not be reexported from such country, and that there is an actual shortage of and a demand for the narcotic drug for medical and legitimate uses within such country.

(b) The Secretary of State shall request all foreign governments to communicate through the diplomatic channels copies of the laws and regulations promulgated in their respective countries which prohibit or regulate the importation and shipment in transit of any narcotic drug and, when received, advise the Commissioner of Narcotics thereof.

(c) The Commissioner of Narcotics shall make and publish all proper regulations to carry into effect the authority vested in him by this subchapter. (Feb. 9, 1909, ch. 100, § 6; Jan. 17, 1914, ch. 9, 38 Stat. 275; May 26, 1922, ch. 202, § 2, 42 Stat. 597; June 14, 1930, ch. 488, § 3, 46 Stat. 586.)

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 183. Same; punishment; share of fine to informer.**

Any person who exports or causes to be exported any narcotic drugs in violation of section 182 of this title shall be fined in any sum not exceeding \$5,000 nor less than \$50 or by imprisonment for any time not exceeding two years, or both. And one-half of any fine recovered from any person or persons convicted of an offense under any section of this subchapter may be paid to the person or persons giving information leading to such recovery, and one-half



of any bail forfeited and collected in any proceedings brought thereunder may be paid to the person or persons giving the information which led to the institution of such proceedings, if so directed by the court exercising jurisdiction in the case. No payment for giving information shall be made to any officer or employee of the United States. (Feb. 9, 1909, ch. 100, § 7; Jan. 17, 1914, ch. 9, 38 Stat. 277.)

#### CROSS REFERENCES

Additional punishment for subsequent offenses, see sections 200–200b of this title.

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 184. Seizure and forfeiture of narcotic drugs found on vessel and not shown on manifest, or landed from vessel without permit; penalty against master of vessel; withholding clearance papers; mitigation and remission of forfeitures and penalties.**

A narcotic drug that is found upon a vessel arriving at a port of the United States or territory under its control or jurisdiction and is not shown upon the vessel's manifest, or that is landed from any such vessel without a permit first obtained from the collector of customs for that purpose, shall be seized, forfeited, and disposed of in the manner provided in the second paragraph of section 173 of this title, and the master of the vessel shall be liable (1) if the narcotic drug is smoking opium, to a penalty of \$25 an ounce, and (2) if any other narcotic drug, to a penalty equal to the value of the narcotic drug.

Such penalty shall constitute a lien upon the vessel which may be enforced by proceedings by libel in rem. Clearance of the vessel from a port of the United States may be withheld until the penalty is paid, or until there is deposited with the collector of customs at the port a bond in a penal sum double the amount of the penalty, with sureties approved by the collector, and conditioned on the payment of the penalty (or so much thereof as is not remitted by the Secretary of the Treasury) and of all costs and other expenses to the Government in proceedings for the recovery of the penalty, in case the master's application for remission of the penalty is denied in whole or in part by the Secretary of the Treasury.

The provisions of law for the mitigation and remission of penalties and forfeitures incurred for violations of the customs laws, shall apply to penalties incurred for a violation of the provisions of this section. (Feb. 9, 1909, ch. 100, § 8; Jan. 17, 1914, ch. 9, 38 Stat. 277; May 26, 1922, ch. 202, § 3, 42 Stat. 598.)

#### CROSS REFERENCES

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

Penalty when smoking opium or opium prepared for smoking is not included in vessel's manifest, see section 1584 of Title 19, Customs Duties.

**§ 185. Citation.**

Sections 171–184 of this title may be cited as the "Narcotic Drugs Import and Export Act." (Feb. 9, 1909, ch. 100, § 9; May 26, 1922, ch. 202, § 4, 42 Stat. 598.)

#### CROSS REFERENCE

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

## IMPORTATION BY CHINESE SUBJECTS OR TRAFFICKING IN, IN CHINA, BY UNITED STATES CITIZENS

**§ 191. Opium importation by Chinese prohibited; penalty.**

The importation of opium into any of the ports of the United States by any subject of the Emperor of China is prohibited.

Every person guilty of a violation of the preceding provision shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not more than \$500 nor less than \$50, or by imprisonment for a period of not more than six months nor less than thirty days, or by both such fine and imprisonment, in the discretion of the court. (Feb. 23, 1887, ch. 210, § 1, 24 Stat. 409.)

#### CROSS REFERENCES

Importation of narcotic drugs prohibited except for medicinal purposes, see section 173 of this title.

Penalty for importation of narcotic drugs, see section 174 of this title.

**§ 192. Same; forfeiture.**

Every package containing opium, either in whole or in part, imported into the United States by any subject of the Emperor of China shall be deemed forfeited to the United States; and proceedings for the declaration and consequences of such forfeiture may be instituted in the courts of the United States as in other cases of the violation of the laws relating to other illegal importations. (Feb. 23, 1887, ch. 210, § 2, 24 Stat. 409.)

#### CROSS REFERENCES

Importation of narcotic drugs prohibited except for medicinal purposes, see section 173 of this title.

Penalty for importation of narcotic drugs, see section 174 of this title.

**§ 193. Importation, transportation, and trafficking in, in China, by citizens prohibited.**

No citizen of the United States shall import opium into any of the open ports of China, nor transport the same from one open port to any other open port, or buy or sell opium in any of such open ports of China, nor shall any vessel owned by citizens of the United States, or any vessel, whether foreign or otherwise, employed by any citizen of the United States, or owned by any citizen of the United States, either in whole or in part, and employed by persons not citizens of the United States, take or carry opium into any of such open ports of China, or transport the same from one open port to any other open port, or be engaged in any traffic therein between or in such open ports or any of them. Citizens of the United States offending against the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$500 nor less than \$50, or by both such punishments, in the discretion of the court. The United States Court for China, concurrently with any district court of the United States in the district in which any offender may be found, shall have jurisdiction to hear, try, and determine all cases arising under the foregoing provisions of this section, subject to the general regulations provided

by law. Every package of opium or package containing opium, either in whole or in part, brought, taken, or transported, trafficked, or dealt in contrary to the provisions of this section, shall be forfeited to the United States, for the benefit of China; and such forfeiture, and the declaration and consequences thereof, shall be made, had, determined, and executed by the proper authorities of the United States exercising judicial powers within China. (Feb. 23, 1887, ch. 210, § 3, 24 Stat. 409; June 30, 1906, ch. 3934, § 1, 34 Stat. 814.)

#### MISCELLANEOUS

##### § 196. Studies and investigations by Surgeon General of Public Health; annual report.

The Surgeon General of the Public Health Service is authorized and directed to make such studies and investigations, as may be necessary, of the abusive use of narcotic drugs; of the quantities of crude opium, coca leaves, and their salts, derivatives, and preparations, together with such reserves thereof, as are necessary to supply the normal and emergency medicinal and scientific requirements of the United States; and of the causes, prevalence, and means for the prevention and treatment of mental and nervous diseases. The Surgeon General shall report to the Federal Security Administrator not later than the 1st day of September each year the results of such studies and investigations. The results of such studies and investigations of the quantities of crude opium, coca leaves, or other narcotic drugs, together with such reserves thereof, as are necessary to supply the normal and emergency medicinal and scientific requirements of the United States, shall be made available to the Commissioner of Narcotics, to be used at his discretion in determining the amounts of crude opium and coca leaves to be imported under section 173 of this title.

The Federal Security Administrator is hereby authorized to appoint such professional, technical, and clerical assistants as may be necessary to carry out the provisions of this section. (June 14, 1930, ch. 488, § 4 (b), (c), 46 Stat. 587; Reorg. Plan No. I, §§ 201, 205, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

The Public Health Service and its functions and personnel, including the Surgeon General, were transferred to the Federal Security Agency, and the functions of the Secretary of the Treasury relating to the administration of the Public Health Service, other than those relating to acceptance and investment of gifts, were transferred to the administrator of said agency by Reorg. Plan No. I, §§ 201 and 205, cited to text.

##### § 197. Cooperation of Departments in discharge of international obligations concerning traffic in narcotic drugs.

The Secretary of the Treasury shall cooperate with the Secretary of State in the discharge of the international obligations of the United States concerning the traffic in narcotic drugs. (June 14, 1930, ch. 488, § 7, 46 Stat. 587.)

##### § 198. Cooperation of Secretary of Treasury with States in suppression of abuse of narcotic drugs.

The Secretary of the Treasury shall cooperate with the several States in the suppression of the

abuse of narcotic drugs in their respective jurisdictions, and to that end he is authorized (1) to cooperate in the drafting of such legislation as may be needed, if any, to effect the end named, and (2) to arrange for the exchange of information concerning the use and abuse of narcotic drugs in said States and for cooperation in the institution and prosecution of cases in the courts of the United States and before the licensing boards and courts of the several States. The Secretary of the Treasury is hereby authorized to make such regulations as may be necessary to carry this section into effect. (June 14, 1930, ch. 488, § 8, 46 Stat. 587.)

##### § 199. Information concerning violations of narcotic laws; payments by Commissioner of Narcotics.

The Commissioner of Narcotics is authorized and empowered to pay to any person, from funds now or hereafter appropriated for the enforcement of the narcotic laws of the United States, for information concerning a violation of any narcotic law of the United States, resulting in a seizure of contraband narcotics, such sum or sums of money as he may deem appropriate, without reference to any moiety or rewards to which such person may otherwise be entitled by law: *Provided*, That all payments under authority of this section to any informer in any foreign country shall be made only through an accredited consul or vice consul of the United States stationed in such country, and every such payment must be supported by a voucher with an accompanying certificate of said consul or vice consul that the payment of the amount stated on the voucher has been made to the informer named, and at the place and time specified on said voucher. (July 3, 1930, ch. 829, 46 Stat. 850.)

##### § 200. Additional punishment for second offenses.

A person who, after having been convicted of selling, importing, or exporting, or conspiring to sell, import, or export, opium, coca leaves, cocaine, or any salt, derivative, or preparation of opium, coca leaves, or cocaine, again sells, imports, or exports, or conspires to sell, import, or export, any of the said narcotic drugs, in violation of the laws of the United States, shall, upon conviction of such second offense, be fined not more than \$5,000 or imprisoned in a Federal penitentiary for not more than ten years, or both, in the discretion of the court, whenever the fact of such previous conviction is established in the manner prescribed in section 200b of this title. (Aug. 12, 1937, ch. 598, § 1, 50 Stat. 627.)

#### REPEAL

Insofar as this section relates exclusively to Internal Revenue, it was repealed and incorporated as section 2557 (b) (5) of Title 26, Internal Revenue Code. See section 4 (a) of enacting sections of Internal Revenue Code preceding subtitle A of Title 26.

##### § 200a. Same; third and subsequent offenses.

A person who, after having been two times convicted of selling, importing, or exporting, or conspiring to sell, import, or export, opium, coca leaves, cocaine, or any salt, derivative, or preparation of opium, coca leaves, or cocaine, again sells, imports,

or exports or conspires to sell, import, or export, any of the said narcotic drugs, in violation of the laws of the United States, shall, upon conviction of such third offense, or any offense subsequent thereto, be fined not more than \$10,000 or imprisoned in a Federal penitentiary for not more than twenty years, or both, in the discretion of the court, whenever the fact of such previous convictions is established in the manner prescribed in section 200b of this title. (Aug. 12, 1937, ch. 598, § 2, 50 Stat. 627.)

#### REPEAL

Insofar as this section relates exclusively to Internal Revenue, it was repealed and incorporated as section 2657 (b) (6) of Title 26, Internal Revenue Code. See section 4 (a) of enacting sections of Internal Revenue Code preceding subtitle A of Title 26.

#### § 200b. Same; procedure.

Whenever it shall appear, after conviction and before or after sentence, that a person convicted of unlawfully selling, importing, or exporting, or conspiring unlawfully to sell, import, or export, any of the narcotic drugs enumerated in sections 200–200b of this title has previously been convicted of unlawfully selling, importing, or exporting, or conspiring unlawfully to sell, import, or export, any of said narcotic drugs, in violation of the laws of the United States, it shall be the duty of the United States district attorney for the district in which such subsequent conviction was had to file an information alleging that the defendant has previously been so convicted, and further alleging the number of such previous convictions. The court in which the defendant was convicted shall cause the said defendant, whether confined in prison or otherwise, to appear before it and shall apprise him of the allegations of the information and of his right to a trial by jury as to the truth thereof. The court shall inquire of the defendant whether he is the person who has previously been convicted. If the defendant states he is not such person, or if he refuses to answer or remains silent, a plea of not guilty shall be entered by the court, and a jury shall be empaneled to determine whether the defendant is the person alleged in the information to have previously been convicted, and the number of such previous convictions. If after a trial on the sole issue of the truth of such allegations the jury determines that the defendant is in fact the person previously convicted as charged in the information, or if he acknowledges in open court, after being duly cautioned as to his rights, that he is such person, he shall be punished as prescribed in sections 200 or 200a of this title, as the case may be, and the previous sentence of the court, if any, shall be vacated and there shall be deducted from the new sentence the amount of time actually served under the sentence so vacated. (Aug. 12, 1937, ch. 598, § 3, 50 Stat. 627.)

#### REPEAL

Insofar as this section relates exclusively to Internal Revenue it was repealed and incorporated as section 2657 (b) (7) of Title 26, Internal Revenue Code. See section 4 (a) of enacting sections of Internal Revenue Code preceding subtitle A of Title 26.

### Chapter 7.—PRACTICE OF PHARMACY AND SALE OF POISONS IN CONSULAR DISTRICTS IN CHINA

#### Sec.

201. Doing business without a license unlawful; employment of Chinese subjects.
202. Same; certain classes of persons and corporations excepted; insecticides.
203. Same; application for license; requirements; qualification for license.
204. Same; issue of license.
205. Display of license in pharmacy.
206. Revocation of license.
207. Restrictions on sales; written orders or prescriptions.
208. Same; certain preparations and sales excepted.
209. Same; poisons; book entry of sale; labels.
210. Pharmacist; unauthorized use of title.
211. Preservation of originals of prescriptions compounded and copies thereof; inspection of prescriptions by consular officers; marking containers of drugs.
212. Offenses; punishment; duty to enforce provisions.
213. Fraudulent representations to evade or defeat restrictions.
214. Previous laws unaffected.
215. "Consul" defined.

#### § 201. Doing business without a license unlawful; employment of Chinese subjects.

It shall be unlawful in the consular districts of the United States in China for any person whose permanent allegiance is due to the United States not licensed as a pharmacist within the meaning of this chapter to conduct or manage any pharmacy, drug or chemical store, apothecary shop, or other place of business for the retailing, compounding, or dispensing of any drugs, chemicals, or poisons, or for the compounding of physicians' prescriptions, or to keep exposed for sale at retail, any drugs, chemicals, or poisons, except as hereinafter provided, or, except as hereinafter provided, for any person whose permanent allegiance is due to the United States not licensed as a pharmacist within the meaning of this chapter to compound, dispense, or sell, at retail, any drug, chemical, poison, or pharmaceutical preparation upon the prescription of a physician, or otherwise, or to compound physicians' prescriptions, except as an aid to and under the proper supervision of a pharmacist licensed under this chapter. And it shall be unlawful for any person, firm, or corporation owing permanent allegiance to the United States owning partly or wholly or managing a pharmacy, drug store, or other place of business to cause or permit any person other than a licensed pharmacist to compound, dispense, or sell at retail any drug, medicine, or poison, except as an aid to and under the proper supervision of a licensed pharmacist. Where it is necessary for a person, firm, or corporation whose permanent allegiance is due to the United States and owning partly or wholly or managing a pharmacy, drug store, or other place of business to employ Chinese subjects to compound, dispense, or sell at retail any drug, medicine, or poison, such person, firm, or corporation, owner, part owner, or manager of a pharmacy, drug store, or other place of business may employ such Chinese subjects when their character, ability, and age of twenty-one years or over have been certified to by at least two recognized and reputable practitioners of medicine, or two pharmacists licensed under this chapter whose

permanent allegiance is due to the United States. (Mar. 3, 1915, ch. 74, § 1, 38 Stat. 817.)

**§ 202. Same; certain classes of persons and corporations excepted; insecticides.**

Nothing in section 201 of this title shall be construed to interfere with any recognized and reputable practitioner of medicine, dentistry, or veterinary surgery in the compounding of his own prescriptions, or to prevent him from supplying to his patients such medicines as he may deem proper, except as hereinafter provided; nor with the exclusively wholesale business of any person, firm, or corporation whose permanent allegiance is due to the United States dealing and licensed as pharmacists, or having in their employ at least one person who is so licensed, except as hereinafter provided; nor with the sale by persons, firms, or corporations whose permanent allegiance is due to the United States other than pharmacists of poisonous substances sold exclusively for use in the arts, or as insecticides, when such substances are sold in unbroken packages bearing labels having plainly printed upon them the name of the contents, the word "Poison", when practicable the name of at least one suitable antidote, and the name and address of the vender. (Mar. 3, 1915, ch. 74, § 1, 38 Stat. 817.)

**§ 203. Same; application for license; requirements; qualifications for license.**

Every person whose permanent allegiance is due to the United States desiring to practice as a pharmacist in the consular districts in China shall file with the consul an application, duly verified under oath, setting forth the name and age of the applicant, the place or places at which he pursued and the time spent in the study of pharmacy, the experience which the applicant has had in compounding physicians' prescriptions under the direction of a licensed pharmacist, and the name and location of the school or college of pharmacy, if any, of which he is a graduate, and shall submit evidence sufficient to show to the satisfaction of said consul that he is of good moral character and not addicted to the use of alcoholic liquors or narcotic drugs so as to render him unfit to practice pharmacy. Applicants shall be not less than twenty-one years of age and shall have had at least four years' experience in the practice of pharmacy or shall have served three years under the instruction of a regularly licensed pharmacist, and any applicant who has been graduated from a school or college of pharmacy recognized by the proper board of his State, Territory, District of Columbia, or other possession of the United States as in good standing shall be entitled to practice upon presentation of his diploma. (Mar. 3, 1915, ch. 74, § 2, 38 Stat. 818.)

**§ 204. Same; issue of license.**

If the applicant for license as a pharmacist has complied with the requirements of section 203 of this title, the consul shall issue to him a license which shall entitle him to practice pharmacy in the consular districts of the United States in China, subject to the provisions of this chapter. (Mar. 3, 1915, ch. 74, § 3, 38 Stat. 819.)

**§ 205. Display of license in pharmacy.**

Every license to practice pharmacy shall be conspicuously displayed by the person to whom the same has been issued in the pharmacy, drug store, or place of business, if any, of which the said person is the owner or part owner or manager. (Mar. 3, 1915, ch. 74, § 5, 38 Stat. 819.)

**§ 206. Revocation of license.**

The license of any person whose permanent allegiance is due to the United States to practice pharmacy in the consular districts of the United States in China may be revoked by the consul if such person be found to have obtained such license by fraud, or be addicted to the use of any narcotic or stimulant, or to be suffering from physical or mental disease, in such manner and to such extent as to render it expedient that in the interests of the public his license be canceled; or to be of an immoral character; or if such person be convicted in any court of competent jurisdiction of any offense involving moral turpitude. It shall be the duty of the consul to investigate any case in which it is discovered by him or made to appear to his satisfaction that any license issued under the provisions of this chapter is revocable and shall, after full hearing, if in his judgment the facts warrant it, revoke such license. (Mar. 3, 1915, ch. 74, § 4, 38 Stat. 819.)

**§ 207. Restrictions on sales; written orders or prescriptions.**

It shall be unlawful for any person, firm, or corporation whose permanent allegiance is due to the United States, either personally or by servant or agent or as the servant or agent of any other person or of any firm or corporation, to sell, furnish, or give away any cocaine, salts of cocaine, or preparation containing cocaine or salts of cocaine, or morphine or preparation containing morphine or salts of morphine, or any opium or preparation containing opium, or any chloral hydrate or preparation containing chloral hydrate, except upon the original written order or prescription of a recognized and reputable practitioner of medicine, dentistry, or veterinary medicine, which order or prescription shall be dated and shall contain the name of the person for whom prescribed, or, if ordered by a practitioner of veterinary medicine, shall state the kind of animal for which ordered and shall be signed by the person giving the order or prescription. Such order or prescription shall be, for a period of three years, retained on file by the person, firm, or corporation who compounds or dispenses the article ordered or prescribed, and it shall not be compounded or dispensed after the first time except upon the written order of the original prescriber. (Mar. 3, 1915, ch. 74, § 6, 38 Stat. 819.)

**§ 208. Same; certain preparations and sales excepted**

The provisions of the preceding section shall not apply to preparations containing not more than two grains of opium or not more than one-quarter grain of morphine, or not more than one-quarter grain of cocaine, or not more than two grains of chloral hydrate in the fluid ounce, or, if a solid preparation,

in one avoirdupois ounce, nor shall they apply to preparations sold in good faith for diarrhea and cholera, each bottle or package of which is accompanied by specific directions for use and caution against habitual use, nor to liniments or ointments sold in good faith as such when plainly labeled "for external use only", nor to powder of ipecac and opium, commonly known as Dover's powder, when sold in quantities not exceeding twenty grains. The provisions of this section or section 207 of this title shall not be construed to permit the selling, furnishing, giving away, or prescribing for the use of any habitual users of the same any cocaine, salts of cocaine, or preparation containing cocaine or salts of cocaine, or morphine or salts of morphine, or preparations containing morphine or salts of morphine, or any opium or preparation containing opium, or any chloral hydrate or preparation containing chloral hydrate. But the preceding sentence shall not be construed to prevent any recognized or reputable practitioner of medicine whose permanent allegiance is due to the United States from furnishing in good faith for the use of any habitual user of narcotic drugs who is under his professional care such substances as he may deem necessary for their treatment, when such prescriptions are not given or substances furnished for the purpose of evading the provisions of this section. But the provisions of this section or said section 207 shall not apply to sales at wholesale between jobbers, manufacturers, and retail druggists, hospitals, and scientific or public institutions. (Mar. 3, 1915, ch. 74, § 6, 38 Stat. 819.)

**§ 209. Same; poisons; book entry of sale; labels.**

It shall be unlawful for any person, firm, or corporation whose permanent allegiance is due to the United States to sell or deliver to any other person any of the following-described substances, or any poisonous compound, combination, or preparation thereof, to wit: The compounds of and salts of antimony, arsenic, barium, chromium, copper, gold, lead, mercury, silver, and zinc, the caustic hydrates of sodium and potassium, solution or water of ammonia, methyl alcohol, paregoric, the concentrated mineral acids, oxalic and hydrochloric acids and their salts, yellow phosphorus, Paris green, carbolic acid, the essential oils of almonds, pennyroyal, tansy, rue, and savin; croton oil, creosote, chloroform, cantharides, or aconite, belladonna, bitter almonds, colchicum, cotton root, cocculus indicus, conium, cannabis indica, digitalis, ergot, hyoscyamus, ignatia, lobelia, nux vomica, physostigma, phytolacca, strophanthus, stramonium, veratrum viride, or any of the poisonous alkaloids or alkaloidal salts derived from the foregoing, or any other poisonous alkaloids or their salts, or any other virulent poison, except in the manner following, and, moreover, if the applicant be less than eighteen years of age, except upon the written order of a person known or believed to be an adult.

It shall first be learned, by due inquiry, that the person to whom delivery is about to be made is aware of the poisonous character of the substance and that it is desired for a lawful purpose, and the box, bottle, or other package shall be plainly labeled

with the name of the substance, the word "Poison", the name of at least one suitable antidote, when practicable, and the name and address of the person, firm, or corporation dispensing the substance. And before delivery be made of any of the foregoing substances, excepting solution or water of ammonia and sulphate of copper, there shall be recorded in a book kept for that purpose the name of the article, the quantity delivered, the purpose for which it is to be used, the date of delivery, the name and address of the person for whom it is procured, and the name of the individual personally dispensing the same; and said book shall be preserved by the owner thereof for at least three years after the date of the last entry therein. The foregoing provisions shall not apply to articles dispensed upon the order of persons believed by the dispenser to be recognized and reputable practitioners of medicine, dentistry, or veterinary surgery. When a physician writes upon his prescription a request that it be marked or labeled "Poison" the pharmacist shall, in the case of liquids, place the same in a colored glass, roughened bottle, of the kind commonly known in trade as a "poison bottle", and, in the case of dry substances, he shall place a poison label upon the container. The record of sale and delivery above mentioned shall not be required of manufacturers and wholesalers who shall sell any of the foregoing substances at wholesale to licensed pharmacists, but the box, bottle, or other package containing such substance, when sold at wholesale, shall be properly labeled with the name of the substance, the word "poison", and the name and address of the manufacturer or wholesaler. It shall not be necessary, in sales either at wholesale or at retail, to place a poison label upon, nor to record the delivery of, the sulphide of antimony, or the oxide or carbonate of zinc, or of colors ground in oil and intended for use as paints, or calomel; nor in the case of preparations containing any of the substances named in this section, when a single box, bottle, or other package, or when the bulk of one-half fluid ounce or the weight of one-half avoirdupois ounce does not contain more than an adult medicinal dose of such substance; nor in the case of liniments or ointments sold in good faith as such, when plainly labeled "For external use only"; nor, in the case of preparations put up and sold in the form of pills, tablets, or lozenges, containing any of the substances enumerated in this section and intended for internal use, when the dose recommended does not contain more than one-fourth of an adult medicinal dose of such substance.

For the purpose of this and of every other section of this chapter no box, bottle, or other package shall be regarded as having been labeled "Poison" unless the word "Poison" appears conspicuously thereon, printed in plain, uncondensed gothic letters in red ink. (Mar. 3, 1915, ch. 74, § 7, 38 Stat. 820.)

**§ 210. Pharmacist; unauthorized use of title.**

It shall be unlawful for any person whose permanent allegiance is due to the United States, not legally licensed as a pharmacist, to take, use, or exhibit the title of pharmacist, or licensed or registered pharmacist, or the title of druggist or apothecary, or any

other title or description of like import. (Mar. 3, 1915, ch. 74, § 10, 38 Stat. 821.)

**§ 211. Preservation of originals of prescriptions compounded and copies thereof; inspection of prescriptions by consular officers; marking containers of drugs.**

Every person, firm, or corporation whose permanent allegiance is due to the United States owning, partly owning, or managing a drug store or pharmacy shall keep in his place of business a suitable book or file, in which shall be preserved for a period of not less than three years the original of every prescription compounded or dispensed at such store or pharmacy, or a copy of such prescription, except when the preservation of the original is required by section 207 or 208 of this title. Upon request the owner, part owner, or manager of such store shall furnish to the prescribing physician, or to the person for whom such prescription was compounded or dispensed, a true and correct copy thereof. Any prescription required by said section 207 or 208 of this title, and any prescription for, or register of sales of, substances mentioned in such sections shall at all times be open to inspection by duly authorized consular officers in the consular districts of the United States in China. No person, firm, or corporation whose permanent allegiance is due to the United States shall, in a consular district, compound or dispense any drug or drugs or deliver the same to any other person without marking on the container thereof the name of the drug or drugs contained therein and directions for using the same. (Mar. 3, 1915, ch. 74, § 9, 38 Stat. 821.)

**§ 212. Offenses; punishment; duty to enforce provisions.**

Any person, firm, or corporation, whose permanent allegiance is due to the United States, violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$50 and not more than \$100 or by imprisonment for not less than one month and not more than sixty days, or by both such fine and imprisonment, in the discretion of the court, and if the offense be continuing in its character, each week or part of a week during which it continues shall constitute a separate and distinct offense. And it shall be the duty of the consular and judicial officers of the United States in China to enforce the provisions of this chapter. (Mar. 3, 1915, ch. 74, § 11, 38 Stat. 821.)

**§ 213. Fraudulent representations to evade or defeat restrictions.**

No person, firm, or corporation whose permanent allegiance is due to the United States seeking to procure in the consular districts of the United States in China any substance the sale of which is regulated by the provisions of this chapter shall make any fraudulent representations so as to evade or defeat the restrictions herein imposed. (Mar. 3, 1915, ch. 74, § 8, 38 Stat. 821.)

**§ 214. Previous laws unaffected.**

Nothing in this chapter shall be construed as modifying or revoking any of the provisions of sections 191–193 of this title. (Mar. 3, 1915, ch. 74, § 13, 38 Stat. 822.)

**§ 215. "Consul" defined.**

The word "consul" as used in this chapter shall mean the consular officer in charge of the district concerned. (Mar. 3, 1915, ch. 74, § 12, 38 Stat. 822.)

**Chapter 8.—NARCOTIC FARMS**

**Sec.**

- 221. Definitions of terms used in chapter.
- 222. Narcotic farms for narcotic addicts.
- 222a. Same; narcotic farm at Lexington, Kentucky; name.
- 222b. Same; narcotic farm at Fort Worth, Texas; name.
- 223. Same; annual estimates of expenses of maintenance.
- 224. Same; plans for remodeling or construction of buildings for farms.
- 225. Same; control and management; Division of Mental Hygiene in Bureau of Public Health Service; duties; rank, pay, and allowances of medical officer in charge of division.
- 226. Same; discipline and treatment of addicts; regulations; furnishing information to States.
- 227. Same; transfer of addicts who are prisoners to and from farms.
- 228. Same; duty of prosecuting officers to report convicted persons believed to be addicts.
- 229. Same; employment of inmates; establishment of shops; disposition of manufactured articles; report to Congress.
- 230. Same; parole of inmates; commutation allowances for good conduct.
- 231. Same; discharge of addicts; further treatment; addicts voluntarily submitting themselves to treatment.
- 232. Same; admission of addicts who are not prisoners.
- 233. Same; discharged addicts; gratuities and transportation; admission of probationers to farms.
- 234. Same; prohibiting introduction of narcotic drugs on premises.
- 235. Same; escape of inmates.
- 236. Same; procuring escape of inmates; concealment of escaped inmates.
- 237. Same; alien inmates; deportation.

**§ 221. Definitions of terms used in chapter.**

When used in this chapter—

(a) The term "habit-forming narcotic drug" or "narcotic" means opium and coca leaves and the innumerable alkaloids derived therefrom, the best known of these alkaloids being morphia, heroin, and codeine, obtained from opium, and cocaine derived from the coca plant; all compounds, salts, preparations, or other derivatives obtained either from the raw material or from the various alkaloids; Indian hemp and its various derivatives, compounds, and preparations, and peyote in its various forms.

(b) The term "addict" means any person who habitually uses any habit-forming narcotic drug as defined in this chapter so as to endanger the public morals, health, safety, or welfare, or who is or has been so far addicted to the use of such habit-forming narcotic drugs as to have lost the power of self-control with reference to his addiction. (Jan. 19, 1929, ch. 82, § 1, 45 Stat. 1085.)

**§ 222. Narcotic farms for narcotic addicts.**

There shall be two institutions for the confinement and treatment of persons who have been or shall be convicted of offenses against the United

States, including persons convicted by general courts martial and consular courts, and who are addicted to the use of habit-forming narcotic drugs, and for the confinement and treatment of addicts who voluntarily submit themselves for treatment. (Jan. 19, 1929, ch. 82, § 2, 45 Stat. 1085.)

#### CODIFICATION

Section 2 of act January 19, 1929, cited to text, originally provided for the selection of sites for the two institutions provided for in this section by the Attorney General, the Secretary of the Treasury, and the Secretary of War. The sites selected pursuant to said section were Lexington, Kentucky, and Fort Worth, Texas.

§ 222a. Same; narcotic farm at Lexington, Kentucky; name.

The Narcotic Farm at Lexington, Kentucky, shall be known as United States Public Health Service Hospital, Lexington, Kentucky. (June 23, 1936, ch. 725, § 1, 49 Stat. 1840.)

§ 222b. Same; narcotic farm at Fort Worth, Texas; name.

The United States Narcotic Farm, Fort Worth, Texas, shall be known as United States Public Health Service Hospital, of Fort Worth, Texas. (Mar. 28, 1938, ch. 55, § 1, 52 Stat. 134.)

§ 223. Same; annual estimates of expenses of maintenance.

The Federal Security Administrator annually shall submit to Congress estimates in detail for all expenses of maintaining the said United States narcotic farms, including salaries of all necessary officers and employees. (Jan. 19, 1929, ch. 82, § 3, 45 Stat. 1085; Reorg. Plan No. I, § 205 (b), eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1425.)

#### CODIFICATION

Section 3 of act January 19, 1929, cited to text, also provided for the submission to Congress of estimates of the cost of purchasing sites and constructing buildings for the farms.

#### TRANSFER OF FUNCTIONS

"Federal Security Administrator" as used in this section originally read "Secretary of the Treasury." The functions of the Secretary of the Treasury relating to the administration of the Public Health Service were transferred to the Federal Security Administrator by Reorg. Plan No. I, cited to text and set out in notes to section 133t of Title 5, Executive Departments and Government Officers and Employees.

§ 224. Same; plans for remodeling or construction of buildings for farms.

This section, act Jan. 19, 1929, ch. 82, § 4, 45 Stat. 1086, related to the construction of buildings for the two narcotic farms.

§ 225. Same; control and management; Division of Mental Hygiene in Bureau of Public Health Service; duties; rank, pay, and allowances of medical officer in charge of division.

The control and management of the United States narcotic farms shall be vested in the Federal Security Administrator, who shall have power to appoint competent superintendents, assistant superintendents, physicians, pharmacists, psychologists, nurses, and all other officers and employees necessary for the safe-keeping, care, protection, treatment, and discipline of the inmates. There shall be in the office

of the Surgeon General of the Bureau of the Public Health Service, in the Federal Security Agency, a division to be known as the Division of Mental Hygiene, which shall be in charge of a physician trained in the treatment and care of narcotic addicts, and which division shall have charge of the management, discipline, and methods of treatment of said United States narcotic farms under the rules and regulations promulgated by the Federal Security Administrator. The medical officer of the Public Health Service in charge of said division shall hold the rank and receive the pay and allowances of Assistant Surgeon General while so serving. (Jan. 19, 1929, ch. 82, § 5, 45 Stat. 1086; June 14, 1930, ch. 488, § 4 (a), 46 Stat. 586; Reorg. Plan No. I, §§ 201, 205, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

"Federal Security Administrator" and "Federal Security Agency," as used in this section originally read "Secretary of the Treasury" and "Department of the Treasury." The functions of the Secretary of the Treasury relating to the administration of the Public Health Service were transferred to the Federal Security Administrator by Reorg. Plan No. I, cited to text and set out in notes to section 133t of Title 5, Executive Departments and Government Officers and Employees.

§ 226. Same; discipline and treatment of addicts; regulations; furnishing information to States.

The care, discipline, and treatment of the persons admitted to or confined in a United States narcotic farm shall be designed to rehabilitate them, restore them to health, and where necessary train them to be self-supporting and self-reliant. For this purpose the Federal Security Administrator shall have authority to promulgate all necessary rules and regulations for the government of the officers and inmates of said United States narcotic farms. The Surgeon General of the Bureau of Public Health Service shall also give the authorized representatives of each State the benefit of his experience in the administration of said United States narcotic farms and the treatment of persons confined therein through the publication and dissemination of information on methods of treatment and research in this field, together with individual and group case histories, to the end that each State may be encouraged to provide similar facilities for the care and treatment of narcotic addicts within their own jurisdiction. (Jan. 19, 1929, ch. 82, § 6, 45 Stat. 1086; Reorg. Plan No. I, §§ 201, 205, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424, 1425.)

#### TRANSFER OF FUNCTIONS

Transfer of the Public Health Service and its functions and personnel to the Federal Security Agency, see note to section 225 of this title.

§ 227. Same; transfer of addicts who are prisoners to and from farms.

The authority vested with the power to designate the place of confinement of a prisoner is hereby authorized and directed to transfer to the United States narcotic farms, as accommodations become available, all addicts, as herein defined, who are now or shall hereafter be sentenced to confinement in or be confined in any penal, correctional, disciplinary, or reformatory institution of the United States, in-



cluding those addicts convicted of offenses against the United States who are confined in State and Territorial prisons, penitentiaries, and reformatories: *Provided*, That no addict shall be transferred to a United States narcotic farm who, in the opinion of the officer authorized to direct the transfer, is not a proper subject for confinement in such an institution either because of the nature of the crime he has committed, or his apparent incorrigibility. The authority vested with the power to designate the place of confinement of a prisoner is authorized to transfer from a United States narcotic farm to the institution from which he was received, or to such other institution as may be designated by the proper authority, any addict whose presence at a United States narcotic farm is detrimental to the well-being of the institution, or who does not continue to be a narcotic addict under the terms of this chapter. All transfers to or from a narcotic farm shall be made by the officer in charge of such farm, and the actual and necessary expenses incident to such transfers shall be paid from the appropriation for the maintenance of such farm. (Jan. 19, 1929, ch. 82, § 7, 45 Stat. 1086.)

**§ 228. Same; duty of prosecuting officers to report convicted persons believed to be addicts.**

It shall be the duty of each prosecuting officer, when sentence is pronounced, to report to the authority vested with the power to designate the place of confinement the name of each convicted person believed by him to be an addict, as herein defined, his reasons for such belief, and all pertinent facts bearing on such addiction, together with the nature of the offense. (Jan. 19, 1929, ch. 82, § 8, 45 Stat. 1087.)

**§ 229. Same; employment of inmates; establishment of shops; disposition of manufactured articles; report to Congress.**

The inmates of said narcotic farms shall be employed in such manner and under such conditions as the Federal Security Administrator may direct. The Federal Security Administrator may, in his discretion, establish industries, plants, factories, or shops for the manufacture of articles, commodities, and supplies for the United States Government; require any Government department or establishment or other institution appropriated for directly or indirectly by the Congress of the United States to purchase at current market prices as determined by the Federal Security Administrator, or his authorized representative, such articles, commodities, or supplies as meet their specifications; and the Federal Security Administrator shall provide for the payment to the inmates or their dependents such pecuniary earnings as he may deem proper, and establish a working-capital fund for said industries out of any funds appropriated for said narcotic farms; and said working-capital fund shall be available for the purchase, repair, or replacement of machinery or equipment, for the purchase of raw materials and supplies, and for the employment of necessary civilian officers and employees: *Provided*, That at the opening of each regular session of Congress the Federal Security Administrator shall make a detailed report to Congress of the receipts and ex-

penditures made from said working-capital fund. (Jan. 19, 1929, ch. 82, § 9, 45 Stat. 1087; Reorg. Plan No. I, §§ 201, 205, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424, 1425.)

**TRANSFER OF FUNCTIONS**

Transfer of functions of the Secretary of the Treasury relating to the administration of the Public Health Service, see note to section 222 of this title.

**CROSS REFERENCE**

Employment of inmates of penal or correctional institutions, see section 744a et seq. of Title 18, Criminal Code and Criminal Procedure.

**§ 230. Same; parole of inmates; commutation allowances for good conduct.**

Any inmate of said narcotic farms or any narcotic addict confined in any institution convicted of an offense against the United States shall not be eligible for parole under sections 714-721 of Title 18 or under the provisions of any Act or regulation relating to parole, or receive any commutation allowance for good conduct in accordance with the provisions of sections 710-712 of Title 18, unless and until the Surgeon General of the Bureau of the Public Health Service shall have certified that said inmate is no longer a narcotic addict as defined by this chapter. When such certificate shall have been made, the board of parole of the penal, correctional, disciplinary, or reformatory institution from which such former addict was transferred may authorize his release on parole without transfer back to such institution. (Jan. 19, 1929, ch. 82, § 10, 45 Stat. 1087.)

**§ 231. Same; discharge of addicts; further treatment; addicts voluntarily submitting themselves to treatment.**

Not later than one month prior to the expiration of the sentence of any addict confined in a United States narcotic farm, he shall be examined by the Surgeon General of the Bureau of the Public Health Service, or his authorized representative. If he believes the person to be discharged is still an addict within the meaning of this chapter and that he may by further treatment in a United States narcotic farm be cured of his addiction, the addict shall be informed, under such rules and regulations as the Federal Security Administrator may promulgate, of the advisability of his submitting himself to further treatment. The addict may then apply in writing to the Federal Security Administrator for further treatment in a United States narcotic farm for a period not exceeding the maximum length of time considered necessary by the Surgeon General of the Bureau of the Public Health Service. Upon approval of the application by the Federal Security Administrator or his authorized agent, the addict may be given such further treatment as is necessary to cure him of his addiction: *Provided*, That if any addict voluntarily submits himself to treatment he may be confined in a United States narcotic farm for a period not exceeding the maximum amount of time estimated by the Surgeon General of the Bureau of the Public Health Service as necessary to effect a cure or until he ceases to be an addict within the meaning of this chapter.

(Jan. 19, 1929, ch. 82, § 11, 45 Stat. 1087; Reorg. Plan No. I, §§ 201, 205, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424, 1425.)

#### TRANSFER OF FUNCTIONS

Transfer of the Public Health Service and its functions and personnel to the Federal Security Agency, see note to section 225 of this title.

§ 232. Same; admission of addicts who are not prisoners.

Any person, except an unconvicted alien, addicted to the use of habit-forming narcotic drugs, whether or not he shall have been convicted of an offense against the United States, may apply to the Federal Security Administrator, or his authorized representative, for admission to a United States narcotic farm.

Any such addict shall be examined by the Surgeon General of the Bureau of the Public Health Service or his authorized agent, who shall report to the Federal Security Administrator whether the applicant is an addict within the meaning of this chapter; whether he believes he may by treatment in a United States narcotic farm be cured of his addiction and the estimated length of time necessary to effect a cure, and any further pertinent information bearing on the addiction, habits, or character of the applicant. The Federal Security Administrator may, in his discretion, admit the applicant to a United States narcotic farm. No such addict shall be admitted unless he voluntarily submits to treatment for the maximum amount of time estimated by the Surgeon General of the Bureau of the Public Health Service as necessary to effect a cure, and unless suitable accommodations are available after all eligible addicts convicted of offenses against the United States have been admitted. The Federal Security Administrator may require any such addict voluntarily applying to pay the cost of his subsistence, care, and treatment. All such money shall be covered into the Treasury of the United States to the credit of the appropriation from which the expenditure was made: *Provided*, That if any addict voluntarily submits himself to treatment he may be confined in a United States narcotic farm for a period not exceeding the maximum amount of time estimated by the Surgeon General of the Bureau of the Public Health Service as necessary to effect a cure of the addiction or until he ceases to be an addict within the meaning of this chapter: *And provided further*, That any person who voluntarily submits himself for treatment at a United States narcotic farm shall not forfeit or abridge thereby any of his rights as a citizen of the United States; nor shall such submission be used against him in any proceeding in any court, and that the record of his voluntary commitment shall be confidential and not divulged. (Jan. 19, 1929, ch. 82, § 12, 45 Stat. 1088; Reorg. Plan No. I, §§ 201, 205, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424, 1425.)

#### TRANSFER OF FUNCTIONS

Transfer of the Public Health Service and its functions and personnel to the Federal Security Agency, see note to section 225 of this title.

§ 233. Same; discharged addicts; gratuities and transportation; admission of probationers to farms.

Every person convicted of an offense against the United States shall upon discharge, or upon his release on parole, from a United States narcotic farm be furnished with the gratuities and transportation authorized by law to be furnished had his discharge or release been from the penal, correctional, disciplinary, or reformatory institution to which he was sentenced or from which he was transferred.

Any court of the United States having the power to suspend the imposition or execution of sentence, and place defendants on probation under any of the existing laws, may impose as one of the conditions of such probation that the defendant, if an addict, as herein defined, shall be admitted and submit himself for treatment at a United States narcotic farm until discharged therefrom as cured. Upon the discharge of any such probationer from a United States narcotic farm, he shall be furnished with the gratuities and transportation authorized to be furnished by section 746 of Title 18. The actual and necessary expense incident to transporting such probationer to such farm and to furnishing such transportation and gratuities shall be paid from the appropriation for the maintenance of such farm: *Provided*, That where existing law vests a discretion in any officer as to the place to which transportation shall be furnished or as to the amount of clothing and gratuities to be furnished, such discretion shall be exercised by the Federal Security Administrator with respect to addicts discharged from the United States narcotic farms. (Jan. 19, 1929, ch. 82, § 13, 45 Stat. 1088; Reorg. Plan No. I, §§ 201, 205, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424, 1425.)

#### TRANSFER OF FUNCTIONS

Transfer of the Public Health Service and its functions and personnel to the Federal Security Agency, see note to section 225 of this title.

§ 234. Same; prohibiting introduction of narcotic drugs on premises.

Any person not authorized by law or by the Federal Security Administrator who introduces or attempts to introduce into a United States narcotic farm or within the grounds adjoining or adjacent thereto any habit-forming narcotic drugs as defined in this chapter is guilty of a felony, and is punishable by confinement in the penitentiary for a period of not more than ten years. (Jan. 19, 1929, ch. 82, § 14, 45 Stat. 1089; Reorg. Plan No. I, §§ 201, 205, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424, 1425.)

#### TRANSFER OF FUNCTIONS

Transfer of the Public Health Service and its functions and personnel to the Federal Security Agency, see note to section 225 of this title.

§ 235. Same; escape of inmates.

It shall be unlawful for any person properly committed thereto to escape or attempt to escape from a narcotic farm, and any such person upon apprehension and conviction in a United States court shall be punished by imprisonment for not more than five years, such sentence to begin upon the expiration of the sentence for which said person was origi-

nally confined. (Jan. 19, 1929, ch. 82, § 15, 45 Stat. 1089.)

§ 236. Same; procuring escape of inmates; concealment of escaped inmates.

It shall be unlawful for any person to procure the escape of any inmate properly committed to a narcotic farm or to advise, connive at, aid, or assist in such escape, or conceal any such inmate after such escape, and upon conviction in a United States court shall be punished by imprisonment in the penitentiary for not more than three years. (Jan. 19, 1929, ch. 82, § 16, 45 Stat. 1089.)

§ 237. Same; alien inmates; deportation.

Wherever an alien addict has been transferred to either of the United States narcotic farms provided for in this chapter who is entitled to his discharge but is subject to deportation in lieu of being returned to the penal institution from which he came, he shall be deported by the authority vested by law with power over deportation. (Jan. 19, 1929, ch. 82, § 17, 45 Stat. 1089.)

## Chapter 9.—FEDERAL FOOD, DRUG, AND COSMETIC ACT

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## SUBCHAPTER I.—SHORT TITLE

## § 301. Short title.

This chapter may be cited as the Federal Food, Drug, and Cosmetic Act. (June 25, 1938, ch. 675, § 1, 52 Stat. 1040.)

## EFFECTIVE DATE

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938.

## SUBCHAPTER II.—DEFINITIONS

## § 321. Definitions; generally.

For the purposes of this chapter—

- (a) The term "Territory" means any Territory or possession of the United States, including the District of Columbia and excluding the Canal Zone.
- (b) The term "interstate commerce" means (1) commerce between any State or Territory and any place outside thereof, and (2) commerce within the District of Columbia or within any other Territory not organized with a legislative body.
- (c) The term "Agency" means the Federal Security Agency.
- (d) The term "Administrator" means the Federal Security Administrator.
- (e) The term "person" includes individual, partnership, corporation, and association.
- (f) The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.
- (g) The term "drug" means (1) articles recognized in the official United States Pharmacopœia, official Homœopathic Pharmacopœia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention

of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories.

(h) The term "device" (except when used in paragraph (n) of this section and in sections 331 (i), 343 (f), 352 (c), and 362 (c)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals.

(i) The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such articles; except that such term shall not include soap.

(j) The term "official compendium" means the official United States Pharmacopœia, official Homœopathic Pharmacopœia of the United States, official National Formulary, or any supplement to any of them.

(k) The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(l) The term "immediate container" does not include package liners.

(m) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.

(n) If an article is alleged to be misbranded because the labeling is misleading, then in determining whether the labeling is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling relates under the conditions of use prescribed in the labeling thereof or under such conditions of use as are customary or usual.

(o) The representation of a drug, in its labeling, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

(p) The term "new drug" means—

(1) Any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof, except that such a drug not so recognized shall not be deemed to be a "new drug" if at any time prior to the enactment of this chapter it was subject to former sections 1-5 and 7-15 of this title, and if at such time its labeling contained the same representations concerning the conditions of its use; or

(2) Any drug the composition of which is such that such drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions. (June 25, 1938, ch. 675, § 201, 52 Stat. 1041; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

#### TRANSFER OF FUNCTIONS

Subdivision (c) of this section originally read, "The term 'Department' means the Department of Agriculture of the United States." Subdivision (d) originally read, "The term 'Secretary' means the Secretary of Agriculture." The Food and Drug Administration, which is charged with the administration of this chapter, was transferred to the Federal Security Agency, to be administered under the direction and supervision of the Federal Security Administrator, by Reorg. Plan No. IV, § 12, cited to text and set out in note to section 133t of Title 5, Executive Departments and Government Officers and Employees.

#### FOOD AND DRUG ACT OF 1906

Sections 1-5 and 7-15 of this title, to which reference is made in subdivision (p) (1), constituted the Food and Drug Act of 1906.

#### EFFECTIVE DATE

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938.

§ 321a. Same; butter.

For the purposes of this chapter "butter" shall be understood to mean the food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter, and containing not less than 80 per centum by weight of milk fat, all tolerances having been allowed for. (Mar. 4, 1923, ch. 268, 42 Stat. 1500; June 25, 1938, ch. 675, § 902 (a), 52 Stat. 1059.)

#### CODIFICATION

This section, which is not a provision of the Federal Food, Drug, and Cosmetic Act, was formerly section 6 of this title. Act June 25, 1938, cited to the text, provided that the section should remain in force and effect and be applicable to the provisions of this chapter. See section 392 (a) of this title.

§ 321b. Same; package.

The word "package" where it occurs in this chapter shall include and shall be construed to include wrapped meats inclosed in papers or other materials as prepared by the manufacturers thereof for sale. (July 24, 1919, ch. 26, 41 Stat. 271; June 25, 1938, ch. 675, § 902 (a), 52 Stat. 1059.)

#### CODIFICATION

This section, which is not a provision of the Federal Food, Drug, and Cosmetic Act was formerly the last sentence of paragraph third of section 10 of this title, and was made applicable to that act by act June 25, 1938, cited to the text. See section 392 (a) of this title.

### SUBCHAPTER III.—PROHIBITED ACTS AND PENALTIES

#### § 331. Prohibited acts.

The following acts and the causing thereof are hereby prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device, or cosmetic in interstate commerce.

(c) The receipt in interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(d) The introduction or delivery for introduction into interstate commerce of any article in violation of section 344 or 355.

(e) The refusal to permit access to or copying of any record as required by section 373.

(f) The refusal to permit entry or inspection as authorized by section 374.

(g) The manufacture within any Territory of any food, drug, device, or cosmetic that is adulterated or misbranded.

(h) The giving of a guaranty or undertaking referred to in section 333 (c) (2), which guaranty or undertaking is false, except by a person who relied upon a guaranty or undertaking to the same effect signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the food, drug, device, or cosmetic; or the giving of a guaranty or undertaking referred to in section 333 (c) (3), which guaranty or undertaking is false.

(i) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of section 344, 346 (b), 354, or 364.

(j) The using by any person to his own advantage, or revealing, other than to the Administrator or officers or employees of the Agency, or to the courts when relevant in any judicial proceeding under this Act, any information acquired under authority of section 344, 355, or 374 concerning any method or process which as a trade secret is entitled to protection.

(k) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device, or cosmetic, if such act is done while such article is held for sale after shipment in interstate commerce and results in such article being misbranded.

(l) The using, on the labeling of any drug or in any advertising relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under section 355, or

that such drug complies with the provisions of such section. (June 25, 1938, ch. 675, § 301, 52 Stat. 1042; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

#### TRANSFER OF FUNCTIONS

See note to section 321 of this title.

#### EFFECTIVE DATE

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938.

### § 332. Injunction proceedings—(a) Jurisdiction of courts.

The district courts of the United States and the United States courts of the Territories shall have jurisdiction, for cause shown, and subject to the provisions of section 381 (relating to notice to opposite party) of Title 28, as amended, to restrain violations of section 331, except paragraphs (e), (f), (h), (i), and (j).

#### (b) Violation of injunction.

In case of violation of an injunction or restraining order issued under this section, which also constitutes a violation of this chapter, trial shall be by the court, or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of section 387 of Title 28, as amended. (June 25, 1938, ch. 675, § 302, 52 Stat. 1043.)

#### EFFECTIVE DATE

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938.

### § 333. Penalties—(a) Violation of section 331.

Any person who violates any of the provisions of section 331 shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than one year, or a fine of not more than \$1,000, or both such imprisonment and fine; but if the violation is committed after a conviction of such person under this section has become final such person shall be subject to imprisonment for not more than three years, or a fine of not more than \$10,000, or both such imprisonment and fine.

#### (b) Same; with intent to defraud or mislead.

Notwithstanding the provisions of subsection (a) of this section, in case of a violation of any of the provisions of section 331, with intent to defraud or mislead, the penalty shall be imprisonment for not more than three years, or a fine of not more than \$10,000, or both such imprisonment and fine.

#### (c) Exceptions in certain cases of good faith, etc.

No person shall be subject to the penalties of subsection (a) of this section, (1) for having received in interstate commerce any article and delivered it or proffered delivery of it, if such delivery or proffer was made in good faith, unless he refuses to furnish on request of an officer or employee duly designated by the Administrator the name and address of the person from whom he purchased or received such article and copies of all documents, if any there be, pertaining to the delivery of the article to him;

or (2) for having violated section 331 (a) or (d), if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the article, to the effect, in case of an alleged violation of section 331 (a), that such article is not adulterated or misbranded, within the meaning of this chapter designating this chapter or to the effect, in case of an alleged violation of section 331 (d), that such article is not an article which may not, under the provisions of section 344 or 355, be introduced into interstate commerce; or (3) for having violated section 331 (a), where the violation exists because the article is adulterated by reason of containing a coal-tar color not from a batch certified in accordance with regulations promulgated by the Administrator under this chapter, if such person establishes a guaranty or undertaking signed by, and containing the name and address of, the manufacturer of the coal-tar color, to the effect that such color was from a batch certified in accordance with the applicable regulations promulgated by the Administrator under this chapter. (June 25, 1938, ch. 675, § 303, 52 Stat. 1043; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

#### TRANSFER OF FUNCTIONS

See note to section 321 of this title.

#### EFFECTIVE DATE

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938.

### § 334. Seizure—(a) Grounds and jurisdiction.

Any article of food, drug, device, or cosmetic that is adulterated or misbranded when introduced into or while in interstate commerce, or which may not, under the provisions of section 344 or 355, be introduced into interstate commerce, shall be liable to be proceeded against while in interstate commerce, or at any time thereafter, on libel of information and condemned in any district court of the United States within the jurisdiction of which the article is found: *Provided, however,* That no libel for condemnation shall be instituted under this chapter, for any alleged misbranding if there is pending in any court a libel for condemnation proceeding under this chapter based upon the same alleged misbranding, and not more than one such proceeding shall be instituted if no such proceeding is so pending, except that such limitations shall not apply (1) when such misbranding has been the basis of a prior judgment in favor of the United States, in a criminal, injunction, or libel for condemnation proceeding under this chapter, or (2) when the Administrator has probable cause to believe from facts found, without hearing, by him or any officer or employee of the Agency that the misbranded article is dangerous to health, or that the labeling of the misbranded article is fraudulent, or would be in a material respect misleading to the injury or damage of the purchaser or consumer. In any case where the number of libel for condemnation proceedings is limited as above provided the proceeding pending or instituted shall, on application of the claimant, seasonably made, be removed for trial to any district agreed

upon by stipulation between the parties, or, in case of failure to so stipulate within a reasonable time, the claimant may apply to the court of the district in which the seizure has been made, and such court (after giving the United States attorney for such district reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, to which the case shall be removed for trial.

**(b) Procedure; multiplicity of pending proceedings.**

The article shall be liable to seizure by process pursuant to the libel, and the procedure in cases under this section shall conform, as nearly as may be, to the procedure in admiralty; except that on demand of either party any issue of fact joined in any such case shall be tried by jury. When libel for condemnation proceedings under this section, involving the same claimant and the same issues of adulteration or misbranding, are pending in two or more jurisdictions, such pending proceedings, upon application of the claimant seasonably made to the court of one such jurisdiction, shall be consolidated for trial by order of such court, and tried in (1) any district selected by the claimant where one of such proceedings is pending; or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the claimant may apply to the court of one such jurisdiction, and such court (after giving the United States attorney for such district reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, in which all such pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the cases covered thereby.

**(c) Availability of samples of seized goods prior to trial.**

The court at any time after seizure up to a reasonable time before trial shall by order allow any party to a condemnation proceeding, his attorney or agent, to obtain a representative sample of the article seized, and as regards fresh fruits or fresh vegetables, a true copy of the analysis on which the proceeding is based and the identifying marks or numbers, if any, of the packages from which the samples analyzed were obtained.

**(d) Disposition of goods after decree of condemnation.**

Any food, drug, device, or cosmetic condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this section, direct and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States; but such article shall not be sold under such decree contrary to the provisions of this chapter or the laws of the jurisdiction in which sold: *Provided*, That after entry of the decree and upon

the payment of the costs of such proceedings and the execution of a good and sufficient bond conditioned that such article shall not be sold or disposed of contrary to the provisions of this chapter or the laws of any State or Territory in which sold, the court may by order direct that such article be delivered to the owner thereof to be destroyed or brought into compliance with the provisions of this chapter under the supervision of an officer or employee duly designated by the Administrator, and the expenses of such supervision shall be paid by the person obtaining release of the article under bond. Any article condemned by reason of its being an article which may not, under section 344 or 355, be introduced into interstate commerce, shall be disposed of by destruction.

**(e) Costs.**

When a decree of condemnation is entered against the article, court costs and fees, and storage and other proper expenses, shall be awarded against the person, if any, intervening as claimant of the article.

**(f) Removal of case for trial.**

In the case of removal for trial of any case as provided by subsection (a) or (b)—

(1) The clerk of the court from which removal is made shall promptly transmit to the court in which the case is to be tried all records in the case necessary in order that such court may exercise jurisdiction.

(2) The court to which such case was removed shall have the powers and be subject to the duties, for purposes of such case, which the court from which removal was made would have had, or to which such court would have been subject, if such case had not been removed. (June 25, 1938, ch. 675, § 304, 52 Stat. 1044; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

**TRANSFER OF FUNCTIONS**

See note to section 321 of this title.

**EFFECTIVE DATE**

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938.

**§ 335. Hearing before report of criminal violation.**

Before any violation of this chapter is reported by the Administrator to any United States attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding. (June 25, 1938, ch. 675, § 305, 52 Stat. 1045; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

**TRANSFER OF FUNCTIONS**

See note to section 321 of this title.

**EFFECTIVE DATE**

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938.



### § 336. Report of minor violations.

Nothing in this chapter shall be construed as requiring the Administrator to report for prosecution, or for the institution of libel or injunction proceedings, minor violations of this chapter whenever he believes that the public interest will be adequately served by a suitable written notice or warning. (June 25, 1938, ch. 675, § 306, 52 Stat. 1045; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

#### TRANSFER OF FUNCTIONS

See note to section 321 of this title.

#### EFFECTIVE DATE

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938.

### § 337. Proceedings in name of United States; provision as to subpoenas.

All such proceedings for the enforcement, or to restrain violations, of this chapter shall be by and in the name of the United States. Notwithstanding the provisions of section 654 of Title 28, subpoenas for witnesses who are required to attend a court of the United States, in any district, may run into any other district in any such proceeding. (June 25, 1938, ch. 675, § 307, 52 Stat. 1046.)

#### EFFECTIVE DATE

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938.

## SUBCHAPTER IV.—FOOD

### § 341. Definitions and standards for food.

Whenever in the judgment of the Administrator such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable definition and standard of identity, a reasonable standard of quality, and/or reasonable standards of fill of container: *Provided*, That no definition and standard of identity and no standard of quality shall be established for fresh or dried fruits, fresh or dried vegetables, or butter, except that definitions and standards of identity may be established for avocados, cantaloupes, citrus fruits, and melons. In prescribing any standard of fill of container, the Administrator shall give due consideration to the natural shrinkage in storage and in transit of fresh natural food and to need for the necessary packing and protective material. In the prescribing of any standard of quality for any canned fruit or canned vegetable, consideration shall be given and due allowance made for the differing characteristics of the several varieties of such fruit or vegetable. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the Administrator shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. Any definition and standard of identity prescribed by the Administrator for avocados, cantaloupes, citrus fruits, or melons shall

relate only to maturity and to the effects of freezing. (June 25, 1938, ch. 675, § 401, 52 Stat. 1046; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

#### TRANSFER OF FUNCTIONS

See note to section 321 of this title.

#### EFFECTIVE DATE

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938.

### § 342. Adulterated food.

A food shall be deemed to be adulterated—

#### (a) Poisonous, insanitary, etc., ingredients.

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or (2) if it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of section 346; or (3) if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or (4) if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; or (5) if it is, in whole or in part, the product of a diseased animal or of an animal which has died otherwise than by slaughter; or (6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

#### (b) Absence, substitution, or addition of constituents.

(1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

#### (c) Uncertified coal tar coloring.

If it bears or contains a coal-tar color other than one from a batch that has been certified in accordance with regulations as provided by section 346: *Provided*, That this paragraph shall not apply to citrus fruit bearing or containing a coal-tar color if application for listing of such color has been made under this chapter and such application has not been acted on by the Administrator, if such color was commonly used prior to the enactment of this chapter for the purpose of coloring citrus fruit.

#### (d) Confectionery containing alcohol or nonnutritive substance.

If it is confectionery, and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of 1 per centum, natural gum, and pectin: *Provided*, That this paragraph shall not apply to any confectionery

by reason of its containing less than one-half of 1 per centum by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances. (June 25, 1938, ch. 675, § 402, 52 Stat. 1046; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

#### TRANSFER OF FUNCTIONS

See note to section 321 of this title.

#### EFFECTIVE DATE

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938. Act June 23, 1939, ch. 242, § 1, 53 Stat. 853, provided that the effective date of subsection (c) should be postponed until January 1, 1940.

### § 343. Misbranded food.

A food shall be deemed to be misbranded—

#### (a) False or misleading label.

If its labeling is false or misleading in any particular.

#### (b) Offer for sale under another name.

If it is offered for sale under the name of another food.

#### (c) Imitation of another food.

If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated.

#### (d) Misleading container.

If its container is so made, formed, or filled as to be misleading.

#### (e) Package form.

If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Administrator.

#### (f) Prominence of information on label.

If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

#### (g) Representation as to definition and standard of identity.

If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by section 341, unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.

#### (h) Representation as to standards of quality and fill of container.

If it purports to be or is represented as—

(1) a food for which a standard of quality has been prescribed by regulations as provided by section 341, and its quality falls below such standard, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or

(2) a food for which a standard or standards of fill of container have been prescribed by regulations as provided by section 341, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

#### (i) Label where no representation as to definition and standard of identity.

If it is not subject to the provisions of paragraph (g) of this section unless its label bears (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each: *Provided*, That, to the extent that compliance with the requirements of clause (2) of this paragraph is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Administrator.

#### (j) Representation for special dietary use.

If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Administrator determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses.

#### (k) Artificial flavoring, etc.; exception of articles from (g), (i), and (k).

If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: *Provided*, That to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the Administrator. The provisions of this paragraph and paragraphs (g) and (i) with respect to artificial coloring shall not apply in the case of butter, cheese, or ice cream. (June 25, 1938, ch. 675, § 403, 52 Stat. 1047; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

#### TRANSFER OF FUNCTIONS

See note to section 321 of this title.

#### EFFECTIVE DATE

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938. Act June 23, 1939, ch. 242, § 1, 53 Stat. 853, provided that the effective date of subsections (e) (1), (g), (h), (i), (j), and (k) should be postponed until January 1, 1940.

**§ 344. Emergency permit control—(a) Conditions on manufacturing, processing, etc., as health measure.**

Whenever the Administrator finds after investigation that the distribution in interstate commerce of any class of food may, by reason of contamination with micro-organisms during the manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered interstate commerce, he then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into interstate commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the Administrator as provided by such regulations.

**(b) Violation of permit; suspension and reinstatement.**

The Administrator is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the Administrator shall, immediately after prompt hearing and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued or as amended.

**(c) Inspection of permit-holding establishments.**

Any officer or employee duly designated by the Administrator shall have access to any factory or establishment, the operator of which holds a permit from the Administrator, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator. (June 25, 1938, ch. 675, § 404, 52 Stat. 1048; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

**TRANSFER OF FUNCTIONS**

See note to section 321 of this title.

**EFFECTIVE DATE**

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938.

**§ 345. Regulations making exemptions.**

The Administrator shall promulgate regulations exempting from any labeling requirement of this chapter (1) small open containers of fresh fruits and fresh vegetables and (2) food which is, in ac-

cordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed, on condition that such food is not adulterated or misbranded under the provisions of this chapter upon removal from such processing, labeling, or repacking establishment. (June 25, 1938, ch. 675, § 405, 52 Stat. 1049; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

**TRANSFER OF FUNCTIONS**

See note to section 321 of this title.

**EFFECTIVE DATE**

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938.

**§ 346. Tolerances for poisonous ingredients in food and certification of coal-tar colors for food—(a) Regulations for tolerating unavoidable poisonous ingredients.**

Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice shall be deemed to be unsafe for purposes of the application of clause (2) of section 342 (a); but when such substance is so required or cannot be so avoided, the Administrator shall promulgate regulations limiting the quantity therein or thereon to such extent as he finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of clause (2) of section 342 (a). While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1) of section 342 (a). In determining the quantity of such added substance to be tolerated in or on different articles of food the Administrator shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

**(b) Regulations for coal-tar colors.**

The Administrator shall promulgate regulations providing for the listing of coal-tar colors which are harmless and suitable for use in food and for the certification of batches of such colors, with or without harmless diluents. (June 25, 1938, ch. 675, § 406, 52 Stat. 1049; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

**TRANSFER OF FUNCTIONS**

See note to section 321 of this title.

**EFFECTIVE DATE**

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938.

**SUBCHAPTER V.—DRUGS AND DEVICES**

**§ 351. Adulterated drugs and devices.**

A drug or device shall be deemed to be adulterated—

**(a) Poisonous, insanitary, etc., ingredients.**

(1) If it consists in whole or in part of any filthy, putrid, or decomposed substance; or (2) if it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or (3) if it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if it is a drug and it bears or contains, for purposes of coloring only, a coal-tar color other than one from a batch that has been certified in accordance with regulations as provided by section 354.

**(b) Strength, quality, or purity differing from official compendium.**

If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, except that whenever tests or methods of assay have not been prescribed in such compendium, or such tests or methods of assay as are prescribed are, in the judgment of the Administrator, insufficient for the making of such determination, the Administrator shall bring such fact to the attention of the appropriate body charged with the revision of such compendium, and if such body fails within a reasonable time to prescribe tests or methods of assay which, in the judgment of the Administrator, are sufficient for purposes of this paragraph, then the Administrator shall promulgate regulations prescribing appropriate tests or methods of assay in accordance with which such determination as to strength, quality, or purity shall be made. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopœia and the Homeopathic Pharmacopœia of the United States it shall be subject to the requirements of the United States Pharmacopœia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopœia of the United States and not to those of the United States Pharmacopœia.

**(c) Misrepresentation of strength, etc., where drug is unrecognized in compendium.**

If it is not subject to the provisions of paragraph (b) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

**(d) Mixture with or substitution of another substance.**

If it is a drug and any substance has been (1) mixed or packed therewith so as to reduce its quality or strength or (2) substituted wholly or in part therefor. (June 25, 1938, ch. 875, § 501, 52 Stat. 1049;

Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

**TRANSFER OF FUNCTIONS**

See note to section 321 of this title.

**EFFECTIVE DATE**

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938. Act June 23, 1939, ch. 242, § 1, 53 Stat. 853, provided that the effective date of subsection (a) (4) should be postponed until January 1, 1940.

**§ 352. Misbranded drugs and devices.**

A drug or device shall be deemed to be misbranded—

**(a) False or misleading label.**

If its labeling is false or misleading in any particular.

**(b) Package form; contents of label.**

If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Administrator.

**(c) Prominence of information on label.**

If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

**(d) Habit-forming substances.**

If it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha eucaine, barbituric acid, betaeucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, or sulphonmethane; or any chemical derivative of such substance, which derivative has been by the Administrator, after investigation, found to be, and by regulations designated as, habit forming; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit forming." (As amended June 23, 1939, ch. 242, § 3, 53 Stat. 854.)

**(e) Designation of drug by name not in compendium.**

If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears (1) the common or usual name of the drug, if such there be; and (2), in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the quantity, kind, and proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, stro-

phanthm, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein: *Provided*, That to the extent that compliance with the requirements of clause (2) of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the Administrator.

**(f) Directions for use and warnings on label.**

Unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: *Provided*, That where any requirement of clause (1) of this paragraph, as applied to any drug or device, is not necessary for the protection of the public health, the Administrator shall promulgate regulations exempting such drug or device from such requirement.

**(g) Representation as recognized drug; packing and labeling.**

If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: *Provided*, That the method of packing may be modified with the consent of the Administrator. Whenever a drug is recognized in both the United States Pharmacopœia and the Homeopathic Pharmacopœia of the United States, it shall be subject to the requirements of the United States Pharmacopœia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopœia of the United States, and not to those of the United States Pharmacopœia.

**(h) Deteriorative drugs; packing and labeling.**

If it has been found by the Administrator to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the Administrator shall by regulations require as necessary for the protection of the public health. No such regulation shall be established for any drug recognized in an official compendium until the Administrator shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

**(i) Drug; misleading container; imitation; offer for sale under another name.**

(1) If it is a drug and its container is so made, formed, or filled as to be misleading; or (2) if it is an imitation of another drug; or (3) if it is offered for sale under the name of another drug.

**(j) Health-endangering when used as prescribed.**

If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof. (June 25, 1938, ch. 675, § 502, 52 Stat. 1050, as amended June 23, 1939, ch. 242, § 3, 53 Stat. 854; Reorg. Plan No. IV, §§ 12, 13, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

**TRANSFER OF FUNCTIONS**

See note to section 321 of this title.

**EFFECTIVE DATE**

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938, except subsection (j), which was to take effect on June 25, 1938. Act June 23, 1939, ch. 242, 53 Stat. 853, provided that the effective date of subsections (b), (d), (e), (f), (g), and (h), should be postponed until January 1, 1940, except insofar as subsections (d) and (e) related to any substance named in former section 10 of this title under the heading "Drugs" and except insofar as subsections (b), (d), (e), (f), (g), and (h) related to drugs to which section 355 of this title applies.

**§ 353. Exemptions in case of drugs and devices—(a) Regulations for goods to be processed, labeled, or repacked elsewhere.**

The Administrator is hereby directed to promulgate regulations exempting from any labeling or packaging requirement of this chapter drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed, on condition that such drugs and devices are not adulterated or misbranded under the provisions of this chapter upon removal from such processing, labeling, or repacking establishment.

**(b) Prescription by physician, etc.**

A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail), shall if—

(1) such physician, dentist, or veterinarian is licensed by law to administer such drug, and

(2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian,

be exempt from the requirements of section 352 (b) and (e), and (in case such prescription is marked by the writer thereof as not refillable or its refilling is prohibited by law) of section 352 (d). (June 25, 1938, ch. 675, § 503, 52 Stat. 1051; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

**TRANSFER OF FUNCTIONS**

See note to section 321 of this title.

**EFFECTIVE DATE**

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938.

**§ 354. Certification of coal-tar colors for drugs.**

The Administrator shall promulgate regulations providing for the listing of coal-tar colors which are harmless and suitable for use in drugs for purposes of coloring only and for the certification of batches of such colors, with or without harmless diluents. (June 25, 1938, ch. 675, § 504, 52 Stat. 1052; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

**TRANSFER OF FUNCTIONS**

See note to section 321 of this title.

**EFFECTIVE DATE**

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938.

**§ 355. New drugs—(a) Necessity of effective application.**

No person shall introduce or deliver for introduction into interstate commerce any new drug, unless an application filed pursuant to subsection (b) is effective with respect to such drug.

**(b) Filing application; contents.**

Any person may file with the Administrator an application with respect to any drug subject to the provisions of subsection (a). Such person shall submit to the Administrator as a part of the application (1) full reports of investigations which have been made to show whether or not such drug is safe for use; (2) a full list of the articles used as components of such drug; (3) a full statement of the composition of such drug; (4) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (5) such samples of such drug and of the articles used as components thereof as the Administrator may require; and (6) specimens of the labeling proposed to be used for such drug.

**(c) Effective date of application.**

An application provided for in subsection (b) shall become effective on the sixtieth day after the filing thereof unless prior to such day the Administrator by notice to the applicant in writing postpones the effective date of the application to such time (not more than one hundred and eighty days after the filing thereof) as the Administrator deems necessary to enable him to study and investigate the application.

**(d) Grounds for refusing application to become effective.**

If the Administrator finds, after due notice to the applicant and giving him an opportunity for a hearing, that (1) the investigations, reports of which are required to be submitted to the Administrator pursuant to subsection (b), do not include adequate tests by all methods reasonably applicable to show whether or not such drug is safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof; (2) the results of such tests show that such drug is unsafe for use under such conditions or do not show that such drug is safe for use under such conditions; (3) the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug are inadequate to preserve its identity, strength, quality, and purity; or (4) upon the basis of the information submitted to him as part of the application, or upon the basis of any other information before him with respect to such drug, he has insufficient information to determine whether such drug is safe for use under such conditions, he shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

**(e) Suspension of effectiveness of application.**

The effectiveness of an application with respect to any drug shall, after due notice and opportunity for

hearing to the applicant, by order of the Administrator be suspended if the Administrator finds (1) that clinical experience, tests by new methods, or tests by methods not deemed reasonably applicable when such application became effective show that such drug is unsafe for use under the conditions of use upon the basis of which the application became effective, or (2) that the application contains any untrue statement of a material fact. The order shall state the findings upon which it is based.

**(f) Revocation of order refusing effectiveness.**

An order refusing to permit an application with respect to any drug to become effective shall be revoked whenever the Administrator finds that the facts so require.

**(g) Service of orders.**

Orders of the Administrator issued under this section shall be served (1) in person by any officer or employee of the Agency designated by the Administrator or (2) by mailing the order by registered mail addressed to the applicant or respondent at his last-known address in the records of the Administrator.

**(h) Appeal from order.**

An appeal may be taken by the applicant from an order of the Administrator refusing to permit the application to become effective, or suspending the effectiveness of the application. Such appeal shall be taken by filing in the district court of the United States within any district wherein such applicant resides or has his principal place of business, or in the District Court of the United States for the District of Columbia, within sixty days after the entry of such order, a written petition praying that the order of the Administrator be set aside. A copy of such petition shall be forthwith served upon the Administrator, or upon any officer designated by him for that purpose, and thereupon the Administrator shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm or set aside such order. No objection to the order of the Administrator shall be considered by the court unless such objection shall have been urged before the Administrator or unless there were reasonable grounds for failure so to do. The finding of the Administrator as to the facts, if supported by substantial evidence, shall be conclusive. If any person shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence to be taken before the Administrator and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Administrator may modify his findings as to the facts by reason of the additional evidence so taken, and he shall file with the court such modified findings which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the setting aside of the

original order. The judgment and decree of the court affirming or setting aside any such order of the Administrator shall be final, subject to review as provided in sections 225, 346, and 347 of Title 28, as amended, and in section 7, as amended, of the Act entitled "An Act to establish a Court of Appeals for the District of Columbia", approved February 9, 1893 [ch. 74, 27 Stat. 435] (D. C. Code, sec. 17-101). The commencement of proceedings under this subsection shall not, unless specifically ordered by the court to the contrary, operate as a stay of the Administrator's order.

(i) **Exemption of drugs for research.**

The Administrator shall promulgate regulations for exempting from the operation of this section drugs intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety of drugs. (June 25, 1938, ch. 675, § 505, 52 Stat. 1052; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

**TRANSFER OF FUNCTIONS**

See note to section 321 of this title.

**EFFECTIVE DATE**

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect June 25, 1938.

**SUBCHAPTER VI.—COSMETICS**

**§ 361. Adulterated cosmetics.**

A cosmetic shall be deemed to be adulterated—

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling thereof, or under such conditions of use as are customary or usual: *Provided*, That this provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness.", and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this paragraph and paragraph (e) the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

(b) If it consists in whole or in part of any filthy, putrid, or decomposed substance.

(c) If it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

(d) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(e) If it is not a hair dye and it bears or contains a coal-tar color other than one from a batch that has been certified in accordance with regulations as provided by section 364. (June 25, 1938, ch. 675, § 601, 52 Stat. 1054.)

**EFFECTIVE DATE**

Section 902 (a) of act June 25, 1938, cited to text, provided that subsections (b)–(e) should take effect

twelve months after June 25, 1938, and that subsection (a) should take effect June 25, 1938, except that in the case of a cosmetic to which the proviso of subsection (a) relates, such cosmetic should not, prior to the ninetieth day after June 25, 1938, be deemed adulterated by reason of the failure of its label to bear the legend prescribed in such proviso. Act June 23, 1939, ch. 242, § 1, 53 Stat. 853, provided that the effective date of subsection (e) should be postponed until January 1, 1940.

**§ 362. Misbranded cosmetics.**

A cosmetic shall be deemed to be misbranded—

(a) If its labeling is false or misleading in any particular.

(b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Administrator.

(c) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(d) If its container is so made, formed, or filled as to be misleading. (June 25, 1938, ch. 675, § 602, 52 Stat. 1054; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

**TRANSFER OF FUNCTIONS**

See note to section 321 of this title.

**EFFECTIVE DATE**

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938. Act June 23, 1939, ch. 242, 53 Stat. 853, provided that the effective date of subsection (b) should be postponed until January 1, 1940.

**§ 363. Regulations making exemptions.**

The Administrator shall promulgate regulations exempting from any labeling requirement of this chapter cosmetics which are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed, on condition that such cosmetics are not adulterated or misbranded under the provisions of this chapter upon removal from such processing, labeling, or repacking establishment. (June 25, 1938, ch. 675, § 603, 52 Stat. 1054; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

**TRANSFER OF FUNCTIONS**

See note to section 321 of this title.

**EFFECTIVE DATE**

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938.

**§ 364. Certification of coal-tar colors for cosmetics.**

The Administrator shall promulgate regulations providing for the listing of coal-tar colors which are



harmless and suitable for use in cosmetics and for the certification of batches of such colors, with or without harmless diluents. (June 25, 1938, ch. 675, § 604, 52 Stat. 1055; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

#### TRANSFER OF FUNCTIONS

See note to section 321 of this title.

#### EFFECTIVE DATE

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938.

### SUBCHAPTER VII.—GENERAL ADMINISTRATIVE PROVISIONS

#### § 371. Regulations and hearings—(a) Authority to promulgate regulations.

The authority to promulgate regulations for the efficient enforcement of this chapter, except as otherwise provided in this section, is hereby vested in the Administrator.

#### (b) Regulations for imports and exports.

The Secretary of the Treasury and the Federal Security Administrator shall jointly prescribe regulations for the efficient enforcement of the provisions of section 381, except as otherwise provided therein. Such regulations shall be promulgated in such manner and take effect at such time, after due notice, as the Federal Security Administrator shall determine.

#### (c) Conduct of hearings.

Hearings authorized or required by this chapter shall be conducted by the Administrator or such officer or employee as he may designate for the purpose.

#### (d) Effectiveness of definitions and standards of identity.

The definitions and standards of identity promulgated in accordance with the provisions of this chapter shall be effective for the purposes of the enforcement of this chapter, notwithstanding such definitions and standards as may be contained in other laws of the United States and regulations promulgated thereunder.

#### (e) Hearings of proposed changes in regulations; orders.

The Administrator, on his own initiative or upon an application of any interested industry or substantial portion thereof stating reasonable grounds therefor, shall hold a public hearing upon a proposal to issue, amend, or repeal any regulation contemplated by any of the following sections of this chapter: 341, 343 (j), 344 (a), 346 (a) and (b), 351 (b), 352 (d), 352 (h), 354, and 364. The Administrator shall give appropriate notice of the hearing, and the notice shall set forth the proposal in general terms and specify the time and place for a public hearing to be held thereon not less than thirty days after the date of the notice, except that the public hearing on regulations under section 344 (a) may be held within a reasonable time, to be fixed by the Administrator, after notice thereof. At the hearing any interested person may be heard in person or by his representative. As soon as practicable after completion of the hearing, the Administrator shall by order make public

his action in issuing, amending, or repealing the regulation or determining not to take such action. The Administrator shall base his order only on substantial evidence of record at the hearing and shall set forth as part of the order detailed findings of fact on which the order is based. No such order shall take effect prior to the ninetieth day after it is issued, except that if the Administrator finds that emergency conditions exist necessitating an earlier effective date, then the Administrator shall specify in the order his findings as to such conditions and the order shall take effect at such earlier date as the Administrator shall specify therein to meet the emergency.

#### (f) Review of order.

(1) In a case of actual controversy as to the validity of any order under subsection (e), any person who will be adversely affected by such order if placed in effect may at any time prior to the ninetieth day after such order is issued file a petition with the Circuit Court of Appeals of the United States for the circuit wherein such person resides or has his principal place of business, for a judicial review of such order. The summons and petition may be served at any place in the United States. The Administrator, promptly upon service of the summons and petition, shall certify and file in the court the transcript of the proceedings and the record on which the Administrator based his order.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may seem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(3) The court shall have jurisdiction to affirm the order, or to set it aside in whole or in part, temporarily or permanently. If the order of the Administrator refuses to issue, amend, or repeal a regulation and such order is not in accordance with law the court shall by its judgment order the Administrator to take action, with respect to such regulation, in accordance with law. The findings of the Administrator as to the facts, if supported by substantial evidence, shall be conclusive.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such order of the Administrator shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 346 and 347 of Title 28.

(5) Any action instituted under this subsection shall survive notwithstanding any change in the person occupying the office of Administrator or any vacancy in such office.

(6) The remedies provided for in this subsection shall be in addition to and not in substitution for any other remedies provided by law.

(g) Copies of records of hearings.

A certified copy of the transcript of the record and proceedings under subsection (e) shall be furnished by the Administrator to any interested party at his request, and payment of the costs thereof, and shall be admissible in any criminal, libel for condemnation, exclusion of imports, or other proceeding arising under or in respect to this chapter, irrespective of whether proceedings with respect to the order have previously been instituted or become final under subsection (f). (June 25, 1938, ch. 675, § 701, 52 Stat. 1055; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

TRANSFER OF FUNCTIONS

See note to section 321 of this title.

EFFECTIVE DATE

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect June 25, 1938.

§ 372. Examinations and investigations—(a) Authority to conduct.

The Administrator is authorized to conduct examinations and investigations for the purposes of this chapter through officers and employees of the Agency or through any health, food, or drug officer or employee of any State, Territory, or political subdivision thereof, duly commissioned by the Administrator as an officer of the Agency. In the case of food packed in a Territory the Administrator shall attempt to make inspection of such food at the first point of entry within the United States when, in his opinion and with due regard to the enforcement of all the provisions of this chapter, the facilities at his disposal will permit of such inspection. For the purposes of this subsection the term "United States" means the States and the District of Columbia.

(b) Availability to owner of part of analysis samples.

Where a sample of a food, drug, or cosmetic is collected for analysis under this chapter the Administrator shall, upon request, provide a part of such official sample for examination or analysis by any person named on the label of the article, or the owner thereof, or his attorney or agent; except that the Administrator is authorized, by regulations, to make such reasonable exceptions from, and impose such reasonable terms and conditions relating to, the operation of this subsection as he finds necessary for the proper administration of the provisions of this chapter.

(c) Records of other departments and agencies.

For purposes of enforcement of this chapter, records of any department or independent establishment in the executive branch of the Government shall be open to inspection by any official of the Federal Security Agency duly authorized by the Administrator to make such inspection. (June 25, 1938, ch. 675, § 702, 52 Stat. 1056; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

TRANSFER OF FUNCTIONS

See note to section 321 of this title.

EFFECTIVE DATE

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938.

§ 372a. Examination of sea food on request of packer; marking food with results; fees; penalties.

The Federal Security Administrator, upon application of any packer of any sea food for shipment or sale within the jurisdiction of this chapter, may, at his discretion, designate inspectors to examine and inspect such food and the production, packing, and labeling thereof. If on such examination and inspection compliance is found with the provisions of this chapter and regulations promulgated thereunder, the applicant shall be authorized or required to mark the food as provided by regulation to show such compliance. Services under this section shall be rendered only upon payment by the applicant of fees fixed by regulation in such amounts as may be necessary to provide, equip, and maintain an adequate and efficient inspection service. Receipts from such fees shall be covered into the Treasury and shall be available to the Secretary of Agriculture for expenditures incurred in carrying out the purposes of this section, including expenditures for salaries of additional inspectors when necessary to supplement the number of inspectors for whose salaries Congress has appropriated. The Secretary is hereby authorized to promulgate regulations governing the sanitary and other conditions under which the service herein provided shall be granted and maintained, and for otherwise carrying out the purposes of this section. Any person who forges, counterfeits, simulates, or falsely represents, or without proper authority uses any mark, stamp, tag, label, or other identification devices authorized or required by the provisions of this section or regulations thereunder, shall be guilty of a misdemeanor, and shall on conviction thereof be subject to imprisonment for not more than one year or a fine of not less than \$1,000 nor more than \$5,000, or both such imprisonment and fine. (June 30, 1906, ch. 3915, § 10A, as added, June 22, 1934, ch. 712, 48 Stat. 1204, and amended Aug. 27, 1935, ch. 739, 49 Stat. 871; June 25, 1938, ch. 675, § 902 (a), 52 Stat. 1059; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

CODIFICATION

This section, which is not a provision of the Federal Food, Drug, and Cosmetic Act, was formerly section 14a of this title. Act June 25, 1938, cited to the text, provided that the section should remain in force and effect and be applicable to the provisions of this chapter. See section 392 (a) of this title.

§ 373. Records of interstate shipment.

For the purpose of enforcing the provisions of this chapter, carriers engaged in interstate commerce, and persons receiving food, drugs, devices, or cosmetics in interstate commerce or holding such articles so received, shall, upon the request of an officer or employee duly designated by the Administrator, permit such officer or employee, at reasonable times, to have access to and to copy all records showing the movement in interstate commerce of any food, drug, device, or cosmetic, or the holding

thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and copying of any such record so requested when such request is accompanied by a statement in writing specifying the nature or kind of food, drug, device, or cosmetic to which such request relates: *Provided*, That evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained: *Provided further*, That carriers shall not be subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of food, drugs, devices, or cosmetics in the usual course of business as carriers. (June 25, 1938, ch. 675, § 703, 52 Stat. 1057; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

#### TRANSFER OF FUNCTIONS

See note to section 321 of this title.

#### EFFECTIVE DATE

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938.

#### § 374. Factory inspection.

For purposes of enforcement of this chapter, officers or employees duly designated by the Administrator, after first making request and obtaining permission of the owner, operator, or custodian thereof, are authorized (1) to enter, at reasonable times, any factory, warehouse, or establishment in which food, drugs, devices, or cosmetics are manufactured, processed, packed, or held, for introduction into interstate commerce or are held after such introduction, or to enter any vehicle being used to transport or hold such food, drugs, devices, or cosmetics in interstate commerce; and (2) to inspect, at reasonable times, such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein. (June 25, 1938, ch. 675, § 704, 52 Stat. 1057; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

#### TRANSFER OF FUNCTIONS

See note to section 321 of this title.

#### EFFECTIVE DATE

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938.

#### § 375. Publicity—(a) Reports.

The Administrator shall cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

#### (b) Information regarding certain goods.

The Administrator may also cause to be disseminated information regarding food, drugs, devices, or cosmetics in situations involving, in the opinion of the Administrator, imminent danger to health or gross deception of the consumer. Nothing in this section shall be construed to prohibit the Administrator from collecting, reporting, and illustrating the results of the investigations of the Agency. (June

25, 1938, ch. 675, § 705, 52 Stat. 1057; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

#### TRANSFER OF FUNCTIONS

See note to section 321 of this title.

#### EFFECTIVE DATE

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938.

#### § 376. Cost of certification of coal-tar colors.

The admitting to listing and certification of coal-tar colors, in accordance with regulations prescribed under this chapter, shall be performed only upon payment of such fees, which shall be specified in such regulations, as may be necessary to provide, maintain, and equip an adequate service for such purposes. (June 25, 1938, ch. 675, § 706, 52 Stat. 1058.)

#### EFFECTIVE DATE

Section made "immediately effective" by act May 2, 1939, ch. 107, § 1, title I, 53 Stat. 631. It was originally effective twelve months after date of enactment, by section 902 (a) of act June 25, 1938, cited to text.

### SUBCHAPTER VIII.—IMPORTS AND EXPORTS

#### § 381. Imports and exports—(a) Imports; examination and refusal of admission.

The Secretary of the Treasury shall deliver to the Federal Security Administrator, upon his request, samples of food, drugs, devices, and cosmetics which are being imported or offered for import into the United States, giving notice thereof to the owner or consignee, who may appear before the Federal Security Administrator and have the right to introduce testimony. If it appears from the examination of such samples or otherwise that (1) such article has been manufactured, processed, or packed under insanitary conditions, or (2) such article is forbidden or restricted in sale in the country in which it was produced or from which it was exported, or (3) such article is adulterated, misbranded, or in violation of section 355, then such article shall be refused admission. This paragraph shall not be construed to prohibit the admission of narcotic drugs the importation of which is permitted under section 173 of this title.

#### (b) Same; disposition of refused articles.

The Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any such article refused admission, unless such article is exported by the consignee within three months from the date of notice of such refusal, under such regulations as the Secretary of the Treasury may prescribe: *Provided*, That the Secretary of the Treasury may deliver to the consignee any such article pending examination and decision in the matter on execution of a bond as liquidated damages for the amount of the full invoice value thereof together with the duty thereon and on refusing for any cause to return such article or any part thereof to the custody of the Secretary of the Treasury when demanded for the purpose of excluding it from the country or for any other purpose, such consignee shall forfeit the full amount of the bond as liquidated damages.

**(c) Same; charges concerning refused articles.**

All charges for storage, cartage, and labor on any article which is refused admission or delivery shall be paid by the owner or consignee and in default of such payment shall constitute a lien against any future importations made by such owner or consignee.

**(d) Exports.**

A food, drug, device, or cosmetic intended for export shall not be deemed to be adulterated or misbranded under this chapter if it (1) accords to the specifications of the foreign purchaser, (2) is not in conflict with the laws of the country to which it is intended for export, and (3) is labeled on the outside of the shipping package to show that it is intended for export. But if such article is sold or offered for sale in domestic commerce, this subsection shall not exempt it from any of the provisions of this chapter. (June 25, 1938, ch. 675, § 801, 52 Stat. 1058; Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1237.)

**REFERENCE IN TEXT**

"Section 173 of this title", as used at the end of paragraph (a) of this section, originally read, "section 2 of the act of May 26, 1922, as amended (U. S. C., 1934 edition, Title 21, sec. 173)." The act of May 26, 1922, 42 Stat. 596, was an act to amend the act of February 9, 1909, as amended, 35 Stat. 614. Section 173 of this title is based upon section 2 of the act of February 9, 1909, as amended. Section 2 of the act of February 9, 1909, was amended by, and set out as amended in quotation marks in section 1

of the act of May 26, 1922. Section 2 of the act of May 26, 1922, amended sections 5 and 6 of the act of February 9, 1909, which are set out as sections 180 and 182 of this title.

**TRANSFER OF FUNCTIONS**

See note to section 321 of this title.

**EFFECTIVE DATE**

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938.

**SUBCHAPTER IX.—MISCELLANEOUS****§ 391. Separability clause.**

If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby. (June 25, 1938, ch. 675, § 901, 52 Stat. 1059.)

**EFFECTIVE DATE**

Section 902 (a) of act June 25, 1938, cited to text, provided that this section should take effect twelve months after June 25, 1938.

**§ 392. Exemption of meats and meat food products.**

Meats and meat food products shall be exempt from the provisions of this chapter to the extent of the application or the extension thereto of sections 71-91 of this title. (June 25, 1938, ch. 675, § 902 (b), 52 Stat. 1059.)

## TITLE 22.—FOREIGN RELATIONS AND INTERCOURSE

Chap.	Sec.	Chap.	Sec.
1. Diplomatic and consular service generally—	1	21. Retirement and disability system; establishment; rules and regulations—Continued.	
2. Consular courts—	141	(d) Age and period of service for retirement.	
3. United States Court for China—	191	(e) Annuities; amounts.	
4. Passports—	211	(f) Death of officer prior to establishment of claim.	
5. Preservation of friendly foreign relations generally—	231	(g) Investment of fund.	
6. Foreign diplomatic and consular officers—	251	(h) Assignability of moneys; exemption from legal process.	
7. International bureaus, congresses, etc.—	261	(i) Distribution of excess of officer's contributions over annuity payments.	
8. Foreign Service buildings—	291	(j) Retirement for total disability.	
9. Foreign wars, war materials, and neutrality—	401	(k) Unhealthful posts; computation of length of service.	
10. Hemispherical relations—	501	(l) Return of contributions on separation from service before retirement.	
11. Foreign agents and propaganda—	601	(m) Estimates of required appropriations; actuarial valuations.	
		(n) Rights upon promotion to Ambassador or Minister, or appointment to position in State Department.	
		(o) Computation of period of service.	
<b>Chapter 1.—DIPLOMATIC AND CONSULAR SERVICE GENERALLY</b>		21a. Chief of Division of Western European Affairs.	
<b>ORGANIZATION OF FOREIGN SERVICE OF UNITED STATES</b>		22. Recall of retired officer to active duty; compensation.	
Sec.		23. Other laws applicable to Foreign Service officers.	
1. Establishment of Foreign Service.		23a. Clerks in Foreign Service; grades and classification; compensation.	
2. Foreign Service officer defined; assignment to duty generally.		23b. Same; promotions; qualifications.	
3. Grading, classification, and salaries; details for purpose of inspection; transfer of ambassadors and ministers.		23c. Same; additional compensation to meet excessive costs of living at certain posts.	
3a. Same; salary increases.		23d. Same; appointment to service in diplomatic mission; citizenship.	
4. Appointment of Foreign Service officers as diplomatic secretaries or as consular officers; official acts under respective commissions.		23e. Regulations as to clerks in Foreign Service.	
5. Appointment of Foreign Service officers; examination and probation; transfers from State Department; citizenship requirement; reinstatement.		23f. Board of Foreign Service Personnel for Foreign Service; establishment; duties; recommendation of promotions; composition.	
6. Appointment to class, assignment to post; classification as diplomatic secretaries and as consular officers abolished.		23g. Division of Foreign Service Personnel; assignment of Foreign Service officers for duty in Division; effect of assignment on eligibility for promotion; nature of duty.	
7. Reports and recommendations for promotions and appointments		23h. Same; duties; custodian of information affecting Foreign Service officers; efficiency ratings; recommendations for promotion; confidential character of correspondence and records.	
8. Recommissioning diplomatic and consular officers on July 1, 1924.		23i. Separation of Foreign Service officers from Foreign Service; grounds; retirement pay; annuities and bonuses.	
9. Inspection of diplomatic and consular offices; expenses of inspector; suspension of consuls, etc.; penal liability of inspectors.		23j. Provisions as reducing salary of promoted officers.	
10. Abolition of grade of consular assistant.		23k. Fiscal districts; establishment; district accounting and disbursing offices; personnel; duties.	
11. Bonds of officers of the Foreign Service.		23l. Fees and official monies from diplomatic missions, consular offices, and district accounting and disbursing offices; disposition.	
12. Representation allowances; post allowances; approval of expenditures; report to Congress.		<b>DIPLOMATIC OFFICERS GENERALLY</b>	
13. Fees; accounting; stamps.		31. Restriction against creation of new ambassadorships.	
14. Private secretaries to ambassadors; appointment; salaries.		32. Appointment and salaries of ambassadors, ministers, etc.	
15. Assignment for duty in State Department.		33. Citizenship as requisite to compensation.	
16. Special details; salary and expenses.		34. Ambassador to Belgium.	
17. Ordering officers to United States on statutory leave of absence; traveling expenses; duties while on leave.		34a. Ambassador to Poland.	
17a. Leaves of absence; sick leaves.		34b. Minister to Union of South Africa.	
18. Counselor of embassy or legation.		34c. Minister to Egypt.	
19. Commissioner, chargé d'affaires; minister resident and diplomatic agent; appointment and salary.		35. Clerks at embassies and legations.	
20. Compensation of Foreign Service officer acting as chargé d'affaires ad interim or in charge of consulate.		36. Compensation of person filling two offices.	
21. Retirement and disability system; establishment; rules and regulations.		37. Special allowance to messenger of embassy at Paris.	
(a) Reports; appropriations.		38. Restriction against transaction of business by diplomatic officers.	
(b) Foreign Service retirement and disability fund.			
(c) Contributions from salaries; optional additional deposits.			

- Sec.  
39. Uniforms and official costumes prohibited.  
40. "Diplomatic officer" defined.

#### CONSULAR OFFICERS GENERALLY

51. Official designations in consular service.  
51a. Appointment of vice-consuls and consular agents.  
52. Abolition of certain consular offices.  
53. General application of provisions to consular officers.  
54. Commercial agents abolished.  
55. Extent of consulates.  
56. Consular clerks; appointment.  
57. Repealed.  
58. Expense allowance to vice consulate or consular agency.

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71. General construction as to powers and duties.  
72. Solemnization of marriages.  
73. Protests.  
74. Lists and returns of seamen and vessels, etc.  
75. Estates of decedents generally; General Accounting Office as conservator.  
76. Notification of death of decedent; transmission of inventory of effects  
77. Following testamentary directions; assistance to testamentary appointee.  
78. Bond as administrator or guardian; action on bond.  
79. Penalty for failure to give bond and for embezzlement  
80. Commercial and agricultural reports.  
81. Reports as to exports, imports, and wages.  
82. Reports as to current prices of merchandise, etc., and as to agricultural conditions.  
83. Certification of invoices generally.  
84. Fees for certification of invoices.  
85. Exaction of excessive fees for verification of invoices; penalty.  
86. Destruction of old invoices.  
87. Restriction as to certificate for goods from countries adjacent to United States.  
88. Retention of papers of American vessels until payment of demands and wages.  
89. Fees for services to American vessels or seamen prohibited.  
90. Profits from dealings with discharged seamen; prohibition.  
91. Valuation of foreign coins in payment of fees.  
92. Exaction of excessive fees generally; penalty of treble amount.  
93. Liability for uncollected fees.  
94. Returns as to fees by officers compensated by fees.  
95. Receipt for fees; numbering receipts.  
96. Registry of fees.  
97. Account of fees; verification; perjury.  
98. Notarial acts, oaths, affirmations, affidavits, and depositions; fees.  
99. General duty to account for fees.  
100. Stamps for fees; effect of failure to affix stamps to documents.  
101. Posting rates of fees.  
102. Embezzlement of fees or of effects of American citizens.  
103. Liability for neglect of duty or for malfeasance generally; action on bond; penalty.  
104. False certificate as to ownership of property.  
105. Performance of diplomatic functions restricted.  
106. Restriction as to transaction of private business by consular officer generally.  
107. Extension of restriction as to transaction of business.  
108. Penalty for violation of restriction as to transaction of business; action on bond.  
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121. When salary commences.  
122. Fixing time allowance for travel to and from post.

- Sec.  
123. Repealed.  
124. Absence without leave; compensation withheld; sickness.  
125. Extra compensation prohibited.  
126. Correspondence on affairs of foreign governments; recommendation for employment and acceptance of presents, etc.  
127. Regulation of fees by President.  
128. Medium for payment of fees.  
129. Office paraphernalia.  
130. Allowance to widow of deceased officer.  
130a. Expenses of bringing home remains of personnel dying abroad.  
130b. Expenses of transporting personnel, families and effects to and from posts.  
131. Depositions and notarial acts; perjury.  
132. General regulations by President for Diplomatic and Consular Service.  
133. Repealed.  
134. Gifts of buildings, etc., for Diplomatic and Consular Service.  
135. Protection of diplomatic codes.

#### PROCLAMATIONS RESPECTING WAR AND NEUTRALITY

See notes preceding section 1 of appendix of Title 50, War.

#### ORGANIZATION OF FOREIGN SERVICE OF UNITED STATES

##### § 1. Establishment of Foreign Service.

The Diplomatic and Consular Service of the United States shall be known as the Foreign Service of the United States. (May 24, 1924, ch. 182, § 1, 43 Stat. 140, renumbered § 8 and amended Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1207.)

##### EFFECTIVE DATE

Act February 23, 1931, cited to text, see note under section 2 of this title.

##### § 2. Foreign Service officer defined; assignment to duty generally.

The official designation "Foreign Service officers", as employed throughout sections 3–23, 23f–23l of this title, shall be deemed to denote permanent officers in the Foreign Service below the grade of minister, all of whom are subject to promotion on merit and who may be appointed to either diplomatic or consular positions or assigned to serve in the Department of State subject to section 15 of this title, at the discretion of the President. (May 24, 1924, ch. 182, § 2, 43 Stat. 140, renumbered § 9 and amended Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1207.)

##### EFFECTIVE DATE

Section 37 of act Feb. 23, 1931, ch. 276, provided "That this act shall take effect on July 1, 1931."

##### § 3. Grading, classification, and salaries; details for purpose of inspection; transfer of ambassadors and ministers.

(a) The officers in the Foreign Service shall hereafter be graded and classified as follows, with the salaries of each class herein affixed thereto, except as increases in salaries are authorized in section 3a of this title, but not exceeding in number for each class a proportion of the total number of officers in the service represented in the following percentage limitations:

Ambassadors and Ministers as now or hereafter provided; Foreign Service officers as follows: Class 1, 6 per centum, \$9,000 to \$10,000; class 2, 7 per centum,

\$8,000 to \$8,900; class 3, 8 per centum, \$7,000 to \$7,900; class 4, 9 per centum, \$6,000 to \$6,900; class 5, 10 per centum, \$5,000 to \$5,900; class 6, 14 per centum, \$4,500 to \$4,900; class 7, \$4,000 to \$4,400; class 8, \$3,500 to \$3,900; unclassified, \$2,500 to \$3,400: *Provided*, That as many Foreign Service officers above class 6 as may be required for the purpose of inspection may be detailed by the Secretary of State for that purpose.

(b) Any person appointed an Ambassador or a Minister by the President, by and with the advice and consent of the Senate, who has taken his oath of office and entered upon his official duties as required by law, may be thereafter transferred in accordance with a subsequent appointment as Ambassador or Minister by the President, by and with the advice and consent of the Senate; and notwithstanding the provisions of section 121 of this title, he shall be entitled to be paid salary at the rate prescribed by law for the Ambassador or Minister at the post from which he is transferred to the date he takes oath of office under his new appointment, and thereafter at the rate prescribed by law for the Ambassador or Minister at the new post, including in either case such period as he may be necessarily in transit traveling under orders, receiving instruction, or on authorized leave of absence, as provided by law for officers and employees of the Foreign Service of the United States. The taking of his oath by an Ambassador or Minister appointed to a post shall not operate to deprive the retiring Ambassador or Minister at such post of salary up to the date of his departure therefrom, while traveling under orders, during transit to his home in the United States and while on authorized leave of absence, as provided by the law for officers and employees of the Foreign Service of the United States. Appropriations are hereby authorized to pay salaries in such cases. (May 24, 1924, ch. 182, § 3, 43 Stat. 140, as renumbered § 10 and amended Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1207; Apr. 24, 1939, ch. 84, § 2, 53 Stat. 583.)

#### EFFECTIVE DATE

Section 5 of act April 24, 1939, cited to text, provided: "This act shall take effect on the first day of the calendar month following the expiration of sixty days from the date of its approval by the President."

Act February 23, 1931, cited to text, see note under section 2 of this title.

#### STATUS OF FOREIGN SERVICE OFFICERS

Reorg. Plan No. II, § 1 (c), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees, provides: "Foreign Commerce Service officers and Foreign Agricultural Service officers who by reason of transfer to the Foreign Service of the United States and by appointment according to law acquire status of Foreign Service officers therein shall not be included in the total number of officers in such Service for the purpose of determining the percentage limitation" established by this section.

#### § 3a. Same; salary increases.

Notwithstanding the provisions of section 3 of this title all Foreign Service officers having a rating of satisfactory or better who shall have been in classes 5, 6, 7, or 8 for a continuous period of nine months or more, shall, on the first day of each fiscal year receive an increase of salary of \$100, except that no

officer shall receive a salary above the maximum of his class and all such officers in classes 1, 2, 3, or 4 shall in the same circumstances receive an increase of \$200: *Provided*, That the Secretary of State is authorized to fix the salary of Foreign Service officers in the unclassified grade within the salary range specified in section 3 of this title; and, within the limits of appropriation therefor, to grant to Foreign Service officers in any class additional promotion in salary within the salary range established for the classes in which they are serving, based upon especially meritorious service. Increases in salary under the terms of this section shall be paid to Foreign Service officers only as the right to such increases accrues after the effective date of this section. (May 24, 1924, ch. 182, § 33, as added Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1215 and amended Apr. 24, 1939, ch. 84, § 4, 53 Stat. 588.)

#### EFFECTIVE DATE

Act April 24, 1939, cited to the text, see note to section 3 of this title.

Act February 23, 1931, cited to text, see note under section 2 of this title.

#### § 4. Appointment of Foreign Service officers as diplomatic secretaries or as consular officers; official acts under respective commissions.

All appointments and promotions of Foreign Service officers shall be made by the President by and with the advice and consent of the Senate and such officers may be commissioned as diplomatic or consular officers or both: *Provided*, That Foreign Service officers now or hereafter appointed or promoted during a recess of the Senate shall be paid the compensation of the position to which appointed or promoted from the date of such appointment or promotion until the end of the next session of the Senate if they have not theretofore been confirmed by the Senate, or until their rejection by the Senate before the end of its next session: *Provided further*, That if the Senate should reject or fail to confirm the promotion of a Foreign Service officer during the session following the date of such promotion, the Foreign Service officer shall automatically be reinstated in the position from which he was promoted, such reinstatement to be effective, in the event of rejection of the nomination, from the date of rejection; and in the event of failure of the Senate to act on the nomination during the session following a promotion, from the termination of that session: *And provided further*, That all official acts of such officers while serving under diplomatic or consular commissions in the Foreign Service shall be performed under their respective commissions as secretaries or as consular officers. (May 24, 1924, ch. 182, § 4, 43 Stat. 140, as renumbered § 11 and amended Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1215; June 29, 1935, ch. 337, 49 Stat. 436.)

#### EFFECTIVE DATE

Act February 23, 1931, cited to text, see note under section 2 of this title.

#### § 5. Appointment of Foreign Service officers; examination and probation; transfers from State Department; citizenship requirement; reinstatement.

Appointments to the position of Foreign Service officer shall be made after examination, and officers



so appointed shall serve a suitable period of probation in an unclassified grade or, under such rules and regulations as the President may prescribe, after five years of continuous service in an executive or quasi-executive position in the Department of State, by transfer therefrom: *Provided*, That no candidate shall be eligible for examination for Foreign Service officer who is not an American citizen and who shall not have been such at least fifteen years: *Provided further*, That reinstatement of Foreign Service officers separated from the classified service by reason of appointment to some other position in the Government service may be made by Executive order of the President under such rules and regulations as he may prescribe. Except that the number of such officers reinstated shall not affect the number of the percentage of the class provided in section 3 of this title. (May 24, 1924, ch. 182, § 5, 43 Stat. 141 as renumbered § 12 and amended Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1208.)

**EFFECTIVE DATE**

Act February 23, 1931, cited to text, see note under section 2 of this title.

**§ 6. Appointment to class, assignment to post; classification as diplomatic secretaries and as consular officers abolished.**

All appointments of Foreign Service officers shall be by commission to a class and not by a commission to a particular post, and such officers shall be assigned to posts and may be transferred from one post to another by order of the President as the interests of the service may require: *Provided*, That the classification of secretaries in the Diplomatic Service and of consular officers is abolished without, however, in any wise impairing the validity of the present commissions of secretaries and consular officers. (May 24, 1924, ch. 182, § 5, 43 Stat. 141 as renumbered § 12 and amended by Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1208.)

**EFFECTIVE DATE**

Act February 23, 1931, cited to text, see note under section 2 of this title.

**§ 7. Reports and recommendations for promotions and appointments.**

The Secretary of State is directed to report from time to time to the President, along with his recommendations, the names of those Foreign Service officers who by reason of efficient service have demonstrated special capacity for promotion to the grade of minister and the names of those Foreign Service officers and clerks and officers and employees in the Department of State who by reason of efficient service, an accurate record of which shall be kept in the Department of State, have demonstrated special efficiency, and also the names of persons found upon taking the prescribed examination to have fitness for appointment to the service, and any Foreign Service officer who may hereafter be promoted to a higher class within the classification prescribed in section 3 of this title shall have the status and receive the compensation attaching to such higher class from the date stated in his commission as the effective date of his promotion to such

higher class. (May 24, 1924, ch. 182, § 14, added by Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1208.)

**DERIVATION**

Act Feb. 5, 1915, ch. 23, § 5, 38 Stat. 806, from which this section was originally derived, was repealed by act Feb. 23, 1931, ch. 276, § 13, 46 Stat. 1208 which was an amendment of act May 24, 1924, ch. 182, 43 Stat. 140. Section 6 of act May 24, 1924, amending section 5 of act Feb. 5, 1915, was substantially reenacted by this section.

**EFFECTIVE DATE**

Act February 23, 1931, cited to text, see note under section 2 of this title.

**§ 8. Recommissioning diplomatic and consular officers on July 1, 1924.**

Section, act May 24, 1924, ch. 182, § 7, 43 Stat. 141, related to recommissioning diplomatic and consular officers on July 1, 1924.

**§ 9. Inspection of diplomatic and consular offices; expenses of inspector; suspension of consuls, etc.; penal liability of inspectors.**

Foreign Service officers detailed for the purpose of inspection shall, under the direction of the Secretary of State, inspect in a substantially uniform manner the work of diplomatic and consular offices. Each office shall be inspected at least once in every two years. Whenever the President has reason to believe that the business of a consulate or a consulate general is not being properly conducted and that it is necessary for the public interest, he may authorize any Foreign Service officer detailed for the purpose of inspection to suspend the consul or consul general, and administer the office in his stead for a period not exceeding ninety days. In such case the Foreign Service officer so authorized shall have power to suspend any vice consular officer or clerk in said office during the period aforesaid. The provisions of sections 102 and 103 of this title shall apply to Foreign Service officers detailed for the purpose of inspection. (Apr. 5, 1906, ch. 1366, § 4, 34 Stat. 100; May 24, 1924, ch. 182, § 10, 43 Stat. 142, as renumbered § 17 and amended by Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1209.)

**EFFECTIVE DATE**

Act February 23, 1931, cited to text, see note under section 2 of this title.

**§ 10. Abolition of grade of consular assistant.**

Section, acts May 24, 1924, ch. 182, § 8, 43 Stat. 142, as redesignated § 14 and amended Feb. 23, 1931, ch. 276, § 7 (14), 46 Stat. 1208, abolished the grade of consular assistant.

**§ 11. Bonds of officers of the Foreign Service.**

Every secretary, consul general, consul, vice consul of career, or Foreign Service officer, before he receives his commission or enters upon the duties of his office, shall give to the United States a bond, in such form as the President shall prescribe, with such sureties, who shall be permanent residents of the United States, as the Secretary of State shall approve, in a penal sum not less than the annual compensation allowed to such officer, conditioned for the true and faithful accounting for, paying over, and delivering up of all fees, moneys, goods, effects, books, records, papers, and other property which shall come to his hands or to the hands of any other

person to his use as such officer under any law now or hereafter enacted, and for the true and faithful performance of all other duties now or hereafter lawfully imposed upon him as such officer: *Provided*, That the operation of no existing bond shall in any wise be impaired by the provisions of sections 1-23, 23f-23l of this title: *Provided further*, That such bond shall cover by its stipulations all official acts of such officer, whether commissioned as diplomatic or consular officer or Foreign Service officer. The bonds herein mentioned shall be deposited with the Secretary of the Treasury. (May 24, 1924, ch. 182, § 16, added by Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1208.)

R. S. §§ 1697, 1698, which were amended by act May 24, 1924, ch. 182, § 9, 43 Stat. 142, and from which this section was originally derived, were repealed by act Feb. 23, 1931, ch. 276, § 15, 46 Stat. 1208. This section is a substantial reenactment of section 9 of act May 24, 1924.

#### EFFECTIVE DATE

Act February 23, 1931, cited to text, see note under section 2 of this title.

#### § 12. Representation allowances; post allowances; approval of expenditures; report to Congress.

Under such regulations as the President may prescribe, and within the limitations of such appropriations as may be made therefor, which appropriations are authorized, ambassadors, ministers, diplomatic, consular, and Foreign Service officers may be granted allowances for representation; and also post allowances wherever the cost of living may be proportionately so high that in the opinion of the Secretary of State such allowances are necessary to enable such diplomatic, consular, and Foreign Service officers to carry on their work efficiently: *Provided*, That all such allowances shall be accounted for to the Secretary of State in such manner and under such rules and regulations as the President may prescribe and the authorization and approval of such expenditures by the Secretary of State, as complying with such rules and regulations, shall be binding upon all officers of the Government: *Provided further*, That the Secretary of State shall report all such expenditures annually to the Congress with the Budget estimates of the Department of State. (May 24, 1924, ch. 182, § 12, 43 Stat. 142, as renumbered § 19 and amended Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1209.)

#### EFFECTIVE DATE

Act February 23, 1931, cited to text, see note under section 2 of this title.

#### § 13. Fees; accounting; stamps.

The provisions of sections 99 and 100 of this title, relative to official fees and the method of accounting therefor, shall apply to diplomatic officers below the grade of minister and to consular officers. (May 24, 1924, ch. 182, § 11, 43 Stat. 142, as renumbered § 18 and amended Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1209.)

#### EFFECTIVE DATE

Act February 23, 1931, cited to text, see note under section 2 of this title.

#### § 14. Private secretaries to ambassadors; appointment; salaries.

Appropriations are authorized for the salary of a private secretary to each ambassador to be appointed by the ambassador and hold office at his pleasure. (May 24, 1924, ch. 182, § 13, 43 Stat. 143, as renumbered § 20 and amended Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1209.)

#### EFFECTIVE DATE

Act February 23, 1931, cited to text, see note under section 2 of this title.

#### § 15. Assignment for duty in State Department.

Any Foreign Service officer may be assigned for duty in the Department of State without loss of class or salary, such assignment to be for a period of not more than three years, unless the public interests demand further service, when such assignment may be extended for a period not to exceed one year. (May 24, 1924, ch. 182, § 14, 43 Stat. 143, as renumbered § 21 and amended Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1209.)

#### EFFECTIVE DATE

Act February 23, 1931, cited to text, see note under section 2 of this title.

#### § 16. Special details; salary and expenses.

Any ambassador or minister or any Foreign Service officer of whatever class detailed for duty in connection with trade conferences or international gatherings, congresses, or conferences, or for other special duty not at his post or in the Department of State, except temporarily for purposes of consultation, shall be paid his salary and expenses for travel and subsistence at the rates prescribed by law. (May 24, 1924, ch. 182, § 14, 43 Stat. 143, as renumbered § 21 and amended Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1209.)

#### CODIFICATION

Provision of this section as amended by act February 23, 1931, cited to the text, "Notwithstanding the provisions of section 1742 of the Revised Statutes of the United States" is omitted, since R. S. § 1742 is repealed by act Feb. 23, 1931, ch. 276, § 22, 46 Stat. 1210.

#### EFFECTIVE DATE

Act February 23, 1931, cited to text, see note under section 2 of this title.

#### § 17. Ordering officers to United States on statutory leave of absence; traveling expenses; duties while on leave.

The Secretary of State is authorized, whenever he deems it to be in the public interest, to order to the United States on his statutory leave of absence any Foreign Service officer or vice consul of career who has performed three years or more of continuous service abroad: *Provided*, That the expenses of transportation and subsistence of such officers and their immediate families, in traveling from their posts to their homes in the United States and return, shall be paid under the same rules and regulations applicable in the case of officers going to and returning from their posts under orders of the Secretary of State when not on leave: *And provided further*, That while in the United States the services of such officers shall be available for trade conference work or for such duties in the Department of State as the

Secretary of State may prescribe, but the time of such work or duties shall not be counted as leave. (May 24, 1924, ch. 182, § 15, 43 Stat. 143, as redesignated § 22 and amended Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1210.)

#### EFFECTIVE DATE

Act February 23, 1931, cited to text see note under section 2 of this title.

#### § 17a. Leaves of absence; sick leaves.

The Secretary of State is authorized, in his discretion and subject to such regulations as may be issued by the President, to grant to any officer or employee of the Foreign Service not to exceed sixty days annual leave of absence with pay. If such officer or employee returns to the United States, the leave of absence granted under the provisions of this section and section 17 of this title shall be exclusive of the time actually and necessarily occupied in going to and from the United States, and such time as may be necessarily occupied in awaiting sailing. Any portion of sixty days annual leave not granted or availed of in any one year may be cumulative, not to exceed, exclusive of time in transit and awaiting sailing, one hundred and twenty days in three years or one hundred and eighty days in four years: *Provided further*, That employees, not American citizens, may be granted not to exceed thirty days leave of absence with pay in any one year.

The Secretary of State is also authorized to grant to any officer or employee of the Foreign Service on account of personal illness or on account of exposure to a contagious disease which would render presence at a post of duty hazardous to the health of fellow employees, sick leave of absence with pay at the rate of fifteen days a year, the unused portion of such sick leave to be cumulative not to exceed one hundred and twenty days.

No Foreign Service officer shall be absent from his post with pay for more than forty-eight hours without permission, except as provided in this section and section 17 of this title. (May 24, 1924, ch. 182, § 22, added by Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1210.)

#### CODIFICATION

Proviso in original text of second paragraph of this section provided that not more than thirty days of additional sick leave of absence with pay might be granted.

#### EFFECTIVE DATE

Act February 23, 1931, cited to text, see note under section 2 of this title.

#### § 18. Counselor of embassy or legation.

The President may, whenever he considers it advisable so to do, designate and assign any Foreign Service officer as counselor of embassy or legation. (July 1, 1916, ch. 208, 39 Stat. 252; May 24, 1924, ch. 182, § 16, 43 Stat. 143, as renumbered § 23 and amended Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1210.)

#### EFFECTIVE DATE

Act February 23, 1931, cited to text see note under section 2 of this title.

#### § 19. Commissioner, chargé d'affaires; minister resident and diplomatic agent; appointment and salary.

Within the discretion of the President, any Foreign Service officer may be assigned to act as commissioner, chargé d'affaires, minister resident, or diplomatic agent for such period as the public interests may require without loss of grade, class, or salary: *Provided, however*, That no such officer shall receive more than one salary. (May 24, 1924, ch. 182, § 17, 43 Stat. 143, as renumbered § 24 and amended Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1210.)

#### EFFECTIVE DATE

Act February 23, 1931, cited to text see note under section 2 of this title.

#### CROSS REFERENCE

Compensation for filling two offices, see section 36 of this title.

#### § 20. Compensation of Foreign Service officer acting as chargé d'affaires ad interim or in charge of consulate.

For such times as any Foreign Service officer shall be lawfully authorized to act as chargé d'affaires ad interim or to assume charge of a consulate general or consulate during the absence of the principal officer at the post to which he shall have been assigned, he shall, if his salary is less than one-half that of such principal officer, receive in addition to his salary as Foreign Service officer, compensation equal to the difference between such salary and one-half of the salary provided by law for the ambassador, minister, or principal consular officer, as the case may be. Vice consuls while in charge of a consulate general or consulate during the absence of the principal officer shall be entitled to additional compensation in the same manner and under the same conditions as Foreign Service officers as provided above in this section. (R. S. § 1685; Mar. 2, 1909, ch. 235, 35 Stat. 673; Feb. 5, 1915, ch. 23, § 3, 38 Stat. 805; May 24, 1924, ch. 182, § 17 (25), 43 Stat. 143; Feb. 27, 1925, ch. 364, title I, 43 Stat. 1016; Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1210.)

#### CODIFICATION

Second sentence was from act Feb. 27, 1925, ch. 364, title I, 43 Stat. 1016. First sentence was from other acts cited to text.

#### DERIVATION

Act Aug. 10, 1865, ch. 127, § 10, 11 Stat. 56.

#### 1931 AMENDMENT

Section 17 of act May 24, 1924, ch. 182, cited to text, was renumbered § 25 and amended by act Feb. 23, 1931, ch. 276, § 7, cited to text.

#### EFFECTIVE DATE

Act February 23, 1931, cited to text, see note under section 2 of this title.

#### CROSS REFERENCE

Extra compensation to diplomatic and consular officers prohibited, see section 125 of this title.

#### § 21. Retirement and disability system; establishment; rules and regulations.

The President is authorized to prescribe rules and regulations for the establishment of a Foreign Service retirement and disability system to be administered under the direction of the Secretary of State and in accordance with the following principles, to wit:

(a) Reports; appropriations.

The Secretary of State shall submit annually a comparative report showing all receipts and disbursements on account of refunds, allowances, and annuities, together with the total number of persons receiving annuities and the amounts paid them, and shall submit annually estimates of appropriations necessary to continue this section in full force and such appropriations are hereby authorized.

(b) Foreign Service retirement and disability fund.

There is hereby created a special fund to be known as the Foreign Service retirement and disability fund.

(c) Contributions from salaries; optional additional deposits.

Five per centum of the basic salary of all Foreign Service officers eligible to retirement shall be contributed to the Foreign Service retirement and disability fund, and the Secretary of the Treasury is directed on the date on which this section takes effect to cause such deductions to be made and the sums transferred on the books of the Treasury Department to the credit of the Foreign Service retirement and disability fund for the payment of annuities, refunds, and allowances: *Provided*, That all basic salaries in excess of \$10,000 per annum shall be treated as \$10,000 and any Ambassador, Minister, or Foreign Service officer appointed to a position in the Department of State, as provided in paragraph (n) of this section, at a lower basic salary than he was receiving on the date of such appointment shall be considered for all purposes of this section as continuing to draw the higher salary and salary deductions authorized under this paragraph shall be on that basis: *And provided further*, That any Foreign Service officer may at his option and under such regulations as may be prescribed by the President, deposit additional sums in multiples of 1 per centum of his basic salary, but not to exceed 10 per centum of such basic salary, which amounts together with interest thereon at 3 per centum per annum compounded on June 30 of each year, shall, at the date of his retirement, be returned to him in a lump sum; or the officer may elect to use the accumulated amount of his additional deposits and interest to purchase an additional annuity which shall, if he so desires, carry with it a proviso that upon his death a cash benefit shall be paid in such amount as he may elect under regulations to be prescribed by the President, to a beneficiary designated in writing and filed in accordance with instructions of the Secretary of State. The amount of such cash benefit shall not exceed the accumulated amount of the officer's additional deposits with interest to the date of retirement: *Provided, however*, That in lieu of such cash benefit, the officer may direct that beginning at the time of his death his beneficiary shall be paid a life annuity of such amount as may be purchasable with the amount of the cash benefit and such annuity shall provide for the guaranteed return of at least the amount of the cash benefit. The calculation of the amount of the additional annuity purchasable by the retired officer under the provisions of this option shall be based upon such tables of annuity values as may from time to time be prescribed for this purpose by the Secretary of the

Treasury. In case an officer shall become separated from the service for any reason except retirement on an annuity, the amount of any additional deposits with interest at 3 per centum per annum compounded annually, made by him under the provisions of this paragraph shall be refunded in the manner provided elsewhere in this section for the return of contributions and interest in the case of death or withdrawal from active service. Any benefits payable to an officer, or to his beneficiary, in respect to the additional deposits provided under this paragraph, shall be in addition to the benefits otherwise provided under this section.

(d) Age and period of service for retirement.

When any Foreign Service officer has reached the age of sixty-five years and rendered at least fifteen years of service he shall be retired on an annuity computed as prescribed in paragraph (e) of this section: *Provided*, That any Foreign Service officer who has reached the age of sixty years and rendered at least thirty years of service may be retired at his own request on the annuity computed as prescribed under paragraph (e) of this section: *Provided further*, That any officer below the age of sixty years who has rendered at least thirty years of actual service, exclusive of extra service credits as provided in paragraph (k) of this section, may be retired at his own request and elect to receive either (1) a deferred annuity beginning at age sixty computed as prescribed under paragraph (e) of this section, or (2) an immediate annuity computed as prescribed under paragraph (e) of this section, reduced by one-fourth of 1 per centum of such annuity for each month or major fraction thereof, between the date of his retirement and the sixtieth anniversary of his date of birth: *And provided further*, That the President may in his discretion retain any such officer on active duty for such period prior to his reaching seventy years of age as he may deem for the interests of the United States.

(e) Annuities; amounts.

The annuity of a retired Foreign Service officer shall be equal to 2 per centum of his average annual basic salary for the ten years next preceding the date of retirement, multiplied by the number of years of service not exceeding thirty years and in determining the aggregate period of service upon which the annuity is to be based, the fractional part of a month, if any, in the total service shall be eliminated: *Provided*, That at the time of his retirement a Foreign Service officer, if the husband of a wife to whom he has been married for at least five years, may elect to receive a reduced annuity and designate his wife as his beneficiary, to whom will be paid any portion up to two-thirds of his reduced annuity, at the option of the officer, as long as she may live after his death: *Provided, however*, That the annuity payable to the widow shall in no case exceed 25 per centum of the officer's average annual basic salary for the ten years next preceding the date of retirement. If the age of the officer is less than the age of the wife or exceeds her age by not more than eight years, the annuity of the officer will be reduced by an amount equal to one-half the annuity which

he elects to have paid to his widow. If the age of the officer exceeds the age of the wife by more than eight years, the annuity of the officer will be reduced by an amount equal to one-half the annuity which he elects to have paid to his widow plus an additional reduction equal to 2 per centum of such widow's annuity for each year, or fraction thereof, that the difference in age exceeds eight: *Provided further*, That the officer may at his option also elect to have his annuity reduced by an additional 5 per centum of the amount which he elects to have paid to his widow, with a provision that, from and after the death of his wife, if the officer shall survive her, the annuity payable to the officer shall be that amount which would have been payable if no option had been elected: *Provided further*, That a retired officer who is receiving an annuity on the effective date of this section, if the husband of a wife to whom he was married at the time of his retirement and for a total period of at least five years, shall be entitled under the same terms and conditions set forth above, to elect to receive a reduced annuity, a portion of which will be continued on his death throughout the life of his surviving widow, but all such elections by retired officers shall be made within six months following the effective date of this section, and they shall all be effective on the same date, to be prescribed by the President: *And provided further*, That no increases in annuities under sections 1-21, 22, 23f-23l of this title, sections 152a, 154, and 297 of Title 5, and section 334 of Title 28 shall operate retroactively and nothing in such sections shall be interpreted as reducing the rate of the annuity received by any retired officer on the effective date of this section, unless the officer voluntarily elects to receive a reduced annuity as provided in this subsection.

**(f) Death of officer prior to establishment of claim.**

In case a Foreign Service officer shall die without having established a valid claim for annuity, the total amount of his deductions with interest thereon at 4 per centum per annum compounded on June 30 of each year, except as provided in paragraph (c) of this section, shall be paid upon the establishment of a valid claim therefor in the order of precedence given under paragraph (i) of this section: *Provided, however*, That if the deceased officer rendered at least fifteen years of service and is survived by a widow to whom he was married for at least five years, such widow shall be paid an annuity equal to the annuity which she would have been entitled to receive if her husband had been retired on the date of his death, under the provisions of paragraph (j) of this section, and had elected to receive the reduced joint and survivorship annuity, under paragraph (e) hereof, providing the maximum annuity for his widow, unless prior to the date of his death he shall have elected, in lieu of such widow's annuity, and with the approval of the Secretary of State, the return of his deductions with interest as provided in the first part of this paragraph covering officers dying without having established a valid claim for annuity.

**(g) Investment of fund.**

The Secretary of the Treasury is directed to invest from time to time in interest-bearing securities of the United States such portions of the Foreign Service retirement and disability fund as in his judgment may not be immediately required for the payment of annuities, refunds, and allowances, and the income derived from such investments shall constitute a part of said fund.

**(h) Assignability of moneys; exemption from legal process.**

None of the moneys mentioned in this section shall be assignable either in law or equity, or be subject to execution, levy, or attachment, garnishment, or other legal process.

**(i) Distribution of excess of officer's contributions over annuity payments.**

In case the total contributions of the retired officer, exclusive of additional voluntary contributions made under paragraph (c) of this section, together with interest at 4 per centum per annum compounded annually up to the date at which annuity payments cease under the terms of the annuity, exceed the annuity payments exclusive of any additional annuity purchased with voluntary contributions made under paragraph (c) hereof, accumulated at the same rate of interest up to such date, the excess of said accumulated contributions over said accumulated annuity payments shall be paid in the following order of precedence, upon the establishment of a valid claim therefor:

First, to the beneficiary or beneficiaries designated in writing by such annuitant or Foreign Service officer and recorded in compliance with instructions of the Secretary of State, which are hereby authorized;

Second, if there be no such beneficiary, to the duly appointed executor or administrator of the estate of such annuitant or Foreign Service officer;

Third, if there be no such beneficiary, or executor or administrator, payment may be made, after the expiration of thirty days from the date of the death of the annuitant or Foreign Service officer, to such person or persons as may appear in the judgment of the Secretary of State to be legally entitled thereto, and such payment shall be a bar to recovery by any other person.

**(j) Retirement for total disability.**

Any Foreign Service officer who, after serving for a total period of not less than fifteen years, becomes totally disabled for useful and efficient service by reason of disease or injury not due to vicious habits, intemperance, or willful misconduct on his part, shall, upon his own application or upon order of the President, be retired on an annuity under paragraph (e) of this section: *Provided, however*, That in each case such disability shall be determined by the report of a duly qualified physician or surgeon designated by the Secretary of State to conduct the examination: *Provided further*, That unless the disability be permanent, a like examination shall be made annually until the annuitant has reached the retirement age as defined in paragraph (d) of this section,

and the payment of annuity shall cease from the date of the medical examination showing recovery.

Fees for examinations under this provision, together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of the Foreign Service retirement and disability fund.

When the annuity is discontinued under this provision before the annuitant has received a sum equal to the total amount of his contributions, with accrued interest, the difference shall be paid to him or to his legal representatives.

**(k) Unhealthful posts; computation of length of service.**

The President is authorized from time to time to establish, by Executive order, a list of places which by reason of climatic or other extreme conditions are to be classed as unhealthful posts, and each year of duty subsequent to January 1, 1900, at such posts inclusive of regular leaves of absence, of officers already retired or hereafter retired, shall be counted as one year and a half, and so on in like proportion in reckoning the length of service for the purpose of retirement, fractional months being considered as full months in computing such service: *Provided, however,* That the President may at any time cancel the designation of any places as unhealthful without affecting any credit which has accrued for service at such posts prior to the date of the cancelation.

**(l) Return of contributions on separation from service before retirement.**

Whenever a Foreign Service officer becomes separated from the service before becoming eligible for an annuity, except under section 231 of this title, the total amount of contributions from his salary with interest thereon at 4 per centum per annum compounded annually up to the date of such separation, except as provided in paragraph (c) of this section, shall be returned to him.

**(m) Estimates of required appropriations; actuarial valuations.**

The Treasury Department shall prepare the estimates of the annual appropriations required to be made to the Foreign Service retirement and disability fund, and shall make actuarial valuations of such fund at intervals of five years, or oftener if deemed necessary by the Secretary of the Treasury. The Secretary of State is authorized to expend from money to the credit of the Foreign Service retirement and disability fund an amount not exceeding \$5,000 per annum for the expenses necessary in carrying out the provisions of this section, including actuarial advice.

**(n) Rights upon promotion to Ambassador or Minister, or appointment to position in State Department.**

Any diplomatic secretary or consular officer who has been, or any Foreign Service officer who may hereafter be, promoted from the classified service to the grade of Ambassador or Minister, or appointed to a position in the Department of State, shall be entitled to all the benefits of this section in the same manner and under the same conditions as Foreign Service officers: *Provided,* That any officer now included under the Act of May 24, 1924, ch. 182,

43 Stat. 140, and the amendment thereto of July 3, 1926, ch. 798, § 1, 44 Stat. 902, shall be entitled to the benefits of this section: *And provided further,* That hereafter an Ambassador or Minister, or a former Ambassador or Minister, or a person appointed to a position in the Department of State after serving as Ambassador, Minister, or Foreign Service officer, who is not otherwise entitled to an annuity under this section and who shall have served as such for the period mentioned in the following paragraph (1), shall nevertheless be entitled to the benefits thereof in the same manner and under the same conditions as Foreign Service officers, but subject to the following terms and conditions:

(1) Any person who has served as Ambassador or Minister, or a person appointed to a position in the Department of State after serving as Ambassador, Minister, or Foreign Service officer, continuously or at different times for an aggregate period of twenty years or more, in which period may be included any periods of service in any of the capacities and as provided in paragraph (c) of this section, may become entitled to the benefits of this section as hereinafter provided by paying into the Foreign Service retirement and disability fund a special contribution equal to 5 per centum of his annual salary for each year of such employment subsequent to July 1, 1924, with interest thereon to date of payment compounded annually at 4 per centum.

(2) Any Ambassador or Minister, or a person appointed to a position in the Department of State after serving as Ambassador, Minister, or Foreign Service officer, who becomes entitled to the benefits of this section as provided in the preceding paragraph (1) shall receive an annuity computed in accordance with paragraph (e) of this section, including the right to voluntary retirement as provided by paragraph (d) of this section: *Provided, however,* That in case any Ambassador or Minister, or a person appointed to a position in the Department of State after serving as Ambassador, Minister, or Foreign Service officer, is retired from active service at less than sixty-five years of age and with at least twenty but less than thirty years of service, computed in accordance with this section, and assuming that he shall have complied with the requirements of the law entitling him to such annuity, he shall receive an annuity computed in accordance with paragraph (d) of this section on the basis of the total period of service thus computed, including extra service credits as provided in paragraph (k) of this section, the fractional part of a month, if any, to be eliminated from such total period of service; or if he is over sixty-five years of age (unless he is retained in active service as provided in paragraph (d) of this section), or not in active service, on the effective date of this section such annuity shall begin on the date he complies with all the requirements of law to entitle him to such annuity.

**(o) Computation of period of service.**

For the purposes of sections 1-21, 22, 23, 23a-23l of this title, sections 152a, 154, and 297 of Title 5, and section 334 of Title 28 the period of service shall be computed from the date of original oath of office as diplomatic secretary,

consul general, consul, vice consul, deputy consul, consular assistant, consular agent, commercial agent, interpreter, or student interpreter, and shall include periods of service at different times as either a diplomatic or consular officer, or while on assignment to the Department of State, or on special duty or service in another department or establishment of the Government, but all periods of separation from the service and so much of any period of leave of absence without pay as may exceed six months shall be excluded: *Provided*, That service prior to appointment as a Foreign Service officer as a classified or an unclassified employee in the civil service of the United States, or in the service of the District of Columbia, including periods of service at different times and in one or more departments, branches, or independent offices, or the legislative branch of the Government, and also periods of service performed overseas under authority of the United States, and periods of honorable service in the Army, Navy, Marine Corps, or Coast Guard of the United States may be included in the period of service, in which case the officer shall pay into the Foreign Service retirement and disability fund a special contribution equal to 5 per centum of his annual salary for each year of such employment subsequent to July 1, 1924, with interest thereon to date of payment compounded annually at 4 per centum and all such officers within the purview of this provision may elect to make such deposits in installments during the continuance of their service in such amounts and under such conditions as may be determined in each instance by the Secretary of State; but in the case of a Foreign Service officer who is eligible for and receives retired pay on account of military or naval service, the period of service upon which such retired pay is based shall not be included; in the case of an employee who is eligible for and receives a pension on account of non-service-connected disability under laws administered by the Veterans' Administration the minimum period of service necessary to entitle him to pension shall not be included; but in the case of an employee who is eligible for and receives pension or compensation under laws administered by the Veterans' Administration on account of service-connected disability, all honorable military or naval service shall be included; and nothing in sections 1-21, 22, 23, and 23a-23l of this title, sections 152a, 154, and 297 of Title 5, and section 334 of Title 28 shall be construed as to affect in any manner an employee's right to retired pay, pension, or compensation in addition to the annuity therein provided. (May 24, 1924, ch. 182, § 18 (26), 43 Stat. 144; July 3, 1926, ch. 798, § 1, 44 Stat. 902; Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1211; Apr. 24, 1939, ch. 84, § 3, 53 Stat. 584; July 19, 1939, ch. 330, 53 Stat. 1067; Aug. 5, 1939, ch. 441, 53 Stat. 1208; Apr. 20, 1940, ch. 118, § 1, 54 Stat. 143; Oct. 14, 1940, ch. 859, § 4, 54 Stat. 1118.)

#### EFFECTIVE DATE

Act May 24, 1924, cited to text, was effective July 1, 1924.  
Act February 23, 1931, cited to text, was effective July 1, 1931.

Act April 20, 1940, cited to text, provided as follows:  
"This act shall take effect on the 1st day of the calendar

month following the date of its approval by the President."

Act October 14, 1940, cited to text, provided as follows:  
"Sec. 5. This act shall take effect the 1st day of the month next succeeding the date of enactment. Any person separated from the service prior to such effective date may, upon request, have his claim for retirement adjudicated under the terms of this act; but no increase in annuity shall be allowed prior to such effective date nor shall this act be construed so as to reduce the annuity of any person separated prior to its effective date."

#### ELECTIONS UNDER PARAGRAPH (E)

Executive Order No. 8180, June 21, 1939, 4 F. R. 2475 DI., designated September 1, 1939, as the date on which all elections were to be made by retired Foreign Service officers to receive reduced annuities in accordance with the provisions of paragraph (e) of this section.

#### ANNUITIES; CHANGE OF PREVIOUS ELECTIONS UNDER SUBSECTION (E)

Section 2 of act April 20, 1940, cited to text, provided as follows:

"SEC. 2. The provisions of section 1 of this act shall be construed and interpreted in every respect as having been in effect on and after July 1, 1939 (the effective date of the act of April 24, 1939, which it amends), and, accordingly, any retired officer is hereby authorized to avail himself of the benefits of these provisions, as follows:

"(a) A retired officer who elected to receive a reduced annuity and a life annuity payable to his surviving widow as provided in section 26 (e) of the act of February 23, 1931, as amended by the act of April 24, 1939, is hereby authorized, within six months of the effective date of this act, to amend such election in accordance with the additional provisions of the aforesaid section 26 (e) as established by section 1 of this act and to change the amount thereof within the limitations established by these provisions: *Provided*, That such an amended election shall be effective on the first day of the calendar month in which the application is filed, except where the wife of such an officer has died since September 1, 1939, the date heretofore fixed in accordance with law as the effective date for such elections, such amended election shall be considered effective as of the latter date.

"(b) A retired officer who did not elect to receive a reduced annuity and a life annuity payable to his surviving widow, as provided in section 26 (e) of the act of February 23, 1931, as amended by the act of April 24, 1939, is hereby authorized, within six months of the effective date of this act to make such an election, but only in accordance with the additional provisions of the aforesaid section 26 (e) as provided in section 2 of this act: *Provided*, That such an election shall be effective on the first day of the calendar month in which the application is filed."

#### 1931 AMENDMENT

Section 18 of act May 24, 1924, cited to text, was renumbered section 26 and amended by act February 23, 1931, cited to text.

#### TRUST FUND

The Foreign Service Retirement and Disability Fund is classified on the books of the Treasury as a trust fund by section 725s of Title 31, Money and Finance.

#### FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under Rule 69, see note by Advisory Committee under said Rule 69.

Execution, see Rule 69, following section 723c of Title 28, Judicial Code and Judiciary.

#### § 21a. Chief of Division of Western European Affairs.

The Chief of the Division of Western European Affairs shall be entitled to participate in and have the benefits of the Foreign Service retirement and disability fund provided by section 21 of this title. (July 3, 1926, ch. 798, § 2, 44 Stat. 903.)



**§ 22. Recall of retired officer to active duty; compensation.**

In the event of public emergency any retired Foreign Service officer may be recalled temporarily to active service by the President, and while so serving he shall be entitled in lieu of his retirement allowance to the full pay of the class in which he is temporarily serving. (May 24, 1924, ch. 182, § 19, 43 Stat. 146, as renumbered § 27 and amended Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1213.)

**EFFECTIVE DATE**

Act February 23, 1931, cited to text, see note under section 2 of this title.

**§ 23. Other laws applicable to Foreign Service officers.**

All provisions of law enacted prior to February 23, 1931, relating to diplomatic secretaries and to consular officers, which are not inconsistent with the provisions of sections 1–21, 22, 23, 23f–23l of this title, are made applicable to Foreign Service officers when they are designated for service as diplomatic or consular officers, and all Acts or parts of Acts inconsistent with said sections are hereby repealed. (May 24, 1924, ch. 182, § 20, 43 Stat. 146, as renumbered § 28 and amended Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1213.)

**EFFECTIVE DATE**

Act February 23, 1931, cited to text, see note under section 2 of this title.

**§ 23a. Clerks in Foreign Service; grades and classification; compensation.**

The clerks in the Foreign Service of the United States of America shall be graded and classified as follows, and shall receive, within the limitation of such appropriations as the Congress may make, the basic compensations specified:

Senior clerks. Class 1, \$4,000; class 2, \$3,750; class 3, \$3,500; class 4, \$3,250; class 5, \$3,000.

Junior clerks. Class 1, \$2,750; class 2, \$2,500; class 3, all clerks whose compensation as fixed by the Secretary of State is less than \$2,500 per annum. (Feb. 23, 1931, ch. 276, § 1, 46 Stat. 1207.)

**EFFECTIVE DATE**

Act February 23, 1931, cited to text, see note under section 2 of this title.

**§ 23b. Same; promotions; qualifications.**

Appointments to the grade of senior clerks and advancement from class to class in that grade shall be by promotion for efficient service, and no one shall be promoted to the grade of senior clerk who is not an American citizen and has not served as a clerk in a diplomatic mission or a consulate, or both, or as a clerk in the Department of State for at least five years. (Feb. 23, 1931, ch. 276, § 2, 46 Stat. 1207.)

**EFFECTIVE DATE**

Act February 23, 1931, cited to text, see note under section 2 of this title.

**§ 23c. Same; additional compensation to meet excessive costs of living at certain posts.**

The Secretary of State is hereby authorized, at posts where in his judgment it is required by the public interests for the purpose of meeting the unusual or excessive costs of living ascertained by him

to exist, to grant compensation to clerks assigned there in addition to the basic rates specified in section 23a of this title, and also to other employees in the Foreign Service of the United States who are American citizens in addition to the basic rates of their salaries as fixed by the Secretary of State, within such appropriations as Congress may make for such purpose: *Provided, however,* That all such additional compensation with the reasons therefor shall be reported to Congress with the annual Budget. (Feb. 23, 1931, ch. 276, § 3, 46 Stat. 1207, Apr. 24, 1939, ch. 84, § 1, 53 Stat. 583.)

**EFFECTIVE DATE**

Section 5 of act April 24, 1939, cited to text, provided: "This act shall take effect on the first day of the calendar month following the expiration of sixty days from the date of its approval by the President."

Act February 23, 1931, cited to text, see note under section 2 of this title.

**§ 23d. Same; appointment to service in diplomatic mission; citizenship.**

No clerk who is not an American citizen shall be appointed to service in a diplomatic mission. (Feb. 23, 1931, ch. 276, § 4, 46 Stat. 1207.)

**EFFECTIVE DATE**

Act February 23, 1931, cited to text, see note under section 2 of this title.

**§ 23e. Regulations as to clerks in Foreign Service.**

The President is authorized to prescribe regulations for the administration of sections 23a–23d of this title. (Feb. 23, 1931, ch. 276, § 5, 46 Stat. 1207.)

**EFFECTIVE DATE**

Act February 23, 1931, cited to text, see note under section 2 of this title.

**§ 23f. Board of Foreign Service Personnel for Foreign Service; establishment; duties; recommendation of promotions; composition.**

There shall be in the Department of State a Board of Foreign Service Personnel for the Foreign Service, whose duty it shall be to recommend promotions in the Foreign Service and to furnish the Secretary of State with lists of Foreign Service officers who have demonstrated special capacity for promotion to the grade of minister. The board shall be composed of not more than three Assistant Secretaries of State, one of whom shall be the Assistant Secretary of State having supervision over the Division of Foreign Service Personnel, who shall be chairman. The Chief of the Division of Foreign Service Personnel and one other member of the division may attend the meetings of the board and one of them shall act as secretary, but they shall not be entitled to vote in its proceedings. (May 24, 1924, ch. 182, § 31, added by Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1214.)

**EFFECTIVE DATE**

Act February 23, 1931, cited to text, see note under section 2 of this title.

**§ 23g. Division of Foreign Service Personnel; assignment of Foreign Service officers for duty in Division; effect of assignment on eligibility for promotion; nature of duty.**

No Foreign Service officer below class I shall be assigned for duty in the Division of Foreign Service

Personnel. Foreign Service officers assigned to the division shall not be eligible for recommendation by the Board of Foreign Service Personnel for promotion to the grade of minister or ambassador during the period of such assignment or for three years thereafter, nor shall such officers be given any authority except of a purely advisory character, over promotions, demotions, transfers, or separations from the service of Foreign Service officers. (May 24, 1924, ch. 182, § 31, added by Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1214.)

**EFFECTIVE DATE**

Act February 23, 1931, cited to text, see note under section 2 of this title.

§ 23h. Same; duties; custodian of information affecting Foreign Service officers; efficiency ratings; recommendations for promotion; confidential character of correspondence and records.

The Division of Foreign Service Personnel shall assemble, record, and be the custodian of all available information in regard to the character, ability, conduct, quality of work, industry, experience, dependability, and general availability of Foreign Service officers, including reports of inspecting officers and efficiency reports of supervising officers. All such information shall be appraised at least once in two years and the result of such appraisal expressed in terms of excellent, very good, satisfactory, or unsatisfactory, accompanied by a concise statement of the considerations upon which they are based, shall be entered upon records to be known as the efficiency records of the officers, and shall constitute their efficiency ratings for the period. No charges against an officer that would adversely affect his efficiency rating or his value to the service, if true, shall be taken into consideration in determining his efficiency rating except after the officer shall have had opportunity to reply thereto. The Assistant Secretary of State supervising the Division of Foreign Service Personnel shall be responsible for the keeping of accurate and impartial efficiency records of Foreign Service officers and shall take all measures necessary to ensure their accuracy and impartiality. Not later than November 1, at least every two years, the Division of Foreign Service Personnel shall, under the supervision of the Assistant Secretary of State, prepare a list in which all Foreign Service officers shall be graded in accordance with their relative efficiency and value to the service. In this list officers shall be graded as excellent, very good, satisfactory, or unsatisfactory, with such further subclassification as may be found necessary. All officers rated satisfactory or above shall be eligible for promotion in the order of merit to the minimum salary of the next higher class. This list shall not become effective insofar as it affects promotion until it has been considered by the Board of Foreign Service Personnel hereinbefore provided for and approved by the Secretary of State: *Provided*, That this list shall not be changed before the next succeeding list of ratings is approved except in case of extraordinary or conspicuously meritorious service or serious misconduct, and any change for such reasons shall be made only after consideration by the Board of Foreign Service Personnel and approval

by the Secretary of State, and the reasons for such change when made shall be inscribed upon the efficiency records of the officers affected. From this list of all Foreign Service officers recommendations for promotion shall be made in the order of their ascertained merit within classes. Recommendations shall also be made, in order of merit, as shown by ratings in the examinations for appointment to the unclassified grade, with commissions also as diplomatic secretaries and vice consuls, of those who have successfully passed the examinations. All such recommendations shall be submitted to the Secretary of State for his consideration and, if he shall approve, for transmission to the President.

The correspondence and records of the Division of Foreign Service Personnel shall be confidential except to the President, the Secretary of State, the members of the Board of Foreign Service Personnel, the Assistant Secretary of State supervising the division, and such of its employees as may be assigned to work on such correspondence and records. (May 24, 1924, ch. 182, § 32, added by Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1214.)

**EFFECTIVE DATE**

Act February 23, 1931, cited to text, see note under section 2 of this title.

§ 23i. Separation of Foreign Service officers from Foreign Service; grounds; retirement pay; annuities and bonuses.

The President is hereby authorized to establish by Executive order, regulations providing for the separation of Foreign Service officers from the Foreign Service, in accordance with the conditions herein-after prescribed. Any Foreign Service officer so separated from the Foreign Service shall be retired from the Service, after a hearing by the Secretary of State, upon an annuity equal to 25 per centum of his salary at the time of retirement, in the case of an officer over forty-five years of age, or in the case of an officer under forty-five years of age with a bonus of one year's salary at the time of his retirement, either annuity or one year's salary to be payable out of the Foreign Service retirement and disability fund and except as herein provided, subject to the same provisions and limitations as other annuities payable out of such fund; but no return of contributions shall be made under paragraph (1)<sup>1</sup> of section 21 of this title in the case of any Foreign Service officer retired under the provisions of this section: *Provided, however*, That any officer entitled to the bonus of one year's salary will receive in lieu of such bonus the amount of his contributions and interest under paragraph (1)<sup>1</sup> of section 21 of this title if such amount exceeds one year's salary. Whenever it is determined that the efficiency rating of an officer is unsatisfactory, thereby meaning below the standard required for the service, and such determination has been confirmed by the Secretary of State, the officer shall be notified thereof, and if, after a reasonable period to be determined by the circumstances in each particular case, the rating of such officer continues to be found unsatisfactory and such finding is confirmed by the Secretary of State after a hearing accorded the officer, such officer shall be separated from the service with the annuity or

bonus provided in this section, but no officer so separated from the service shall receive the said annuity or bonus unless at the time of separation he shall have served at least fifteen years. He shall, however, if he has not served at least fifteen years, have returned to him the full sum of his contributions to the annuity fund, with interest thereon at 4 per centum compounded annually, except as provided in paragraph (c) of section 23d<sup>1</sup> of this title. The benefits of this section, except, at the option of the Secretary of State, the return of an officer's contributions to the annuity fund, shall not be given to Foreign Service officers separated from the Foreign Service on account of malfeasance in office. (May 24, 1924, ch. 182, § 33, added by Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1215; Apr. 24, 1939, ch. 84, § 4, 53 Stat. 588.)

<sup>1</sup> So in original. Probably should refer to paragraph (1).

<sup>2</sup> So in original. Probably should refer to paragraph (c) of section 21 of this title.

#### EFFECTIVE DATE

Section 5 of act April 24, 1939, cited to text, provided: "This act shall take effect on the first day of the calendar month following the expiration of sixty days from the date of its approval by the President."

Act February 23, 1931, cited to text, see note under section 2 of this title.

#### § 23j. Provisions as reducing salary of promoted officers.

Nothing in sections 1–21, 22, 23, 23f–23l of this title shall be construed to reduce the salary of any Foreign Service officer upon promotion to a higher class. (May 24, 1924, ch. 182, § 34, added by Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1216.)

#### EFFECTIVE DATE

Act February 23, 1931, cited to text, see note under section 2 of this title.

#### § 23k. Fiscal districts; establishment; district accounting and disbursing offices; personnel; duties.

The President is hereby authorized, whenever the necessity for such offices with a view to effecting economies in accounting procedure is apparent, to prescribe certain fiscal districts or areas and to establish within each such district as a part of the Department of State service, a district accounting and disbursing office to exercise control over the accounts and returns of all diplomatic missions and consular offices within the district in such manner as the President may direct. To each such office may be assigned the administrative accounting responsibility for receipts and expenditures of the diplomatic missions and consular offices within the district. Each district office shall be in charge of an accountable officer, to whom all fees, and other official monies, received by any diplomatic, consular, or Foreign Service officer may be accounted for, under such rules and regulations as may be prescribed by the Secretary of State, all such fees and monies, or the residue thereof after the payment of salaries, allowances, and current expenses of the diplomatic missions and consular offices within the district, to be paid by the district accounting and disbursing officer into the Treasury of the United States. Such district accounting and disbursing officers account-

able for public monies may entrust monies to other bonded officers for the purpose of having them make disbursements as his agent, and the officer to whom the monies are entrusted as well as the officer who entrusts the monies to him, shall be held pecuniarily responsible therefor to the United States. All diplomatic, consular, or Foreign Service officers on duty within the area covered by such district offices may be required to render accounts of their disbursements to the officer in charge of such district office to be included in his accounts. Said district accounting and disbursing officers and their agents shall be bonded respectively to the United States for the faithful performance of their duties in such penal amounts as the President may require.

*Provided further*, That the Secretary of State is authorized to appoint such district accounting and disbursing officers and their assistants in the same manner as clerks in diplomatic missions and consular offices are appointed.

And any other existing statutes, insofar as they conflict with this section are hereby amended. (May 24, 1924, ch. 182, § 35, added by Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1216.)

#### EFFECTIVE DATE

Act February 23, 1931, cited to text, see note under section 2 of this title.

#### § 23l. Fees and official monies from diplomatic missions, consular offices, and district accounting and disbursing offices; disposition.

All fees and other official monies received by diplomatic missions or consular offices or by the district accounting and disbursing offices provided in section 23k of this title, may be transmitted through the Department of State for deposit in the United States Treasury, or may be used in payment of salaries, allowances, and current expenses of said missions and offices, under such rules and regulations as the President may from time to time prescribe; the residue, if any, to be transmitted through the Department of State for deposit in the United States Treasury. (May 24, 1924, ch. 182, § 36, added by Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1216.)

#### EFFECTIVE DATE

Act February 23, 1931, cited to text, see note under section 2 of this title.

### DIPLOMATIC OFFICERS GENERALLY

#### § 31. Restriction against creation of new ambassadorships.

No new ambassadorship shall be created unless the same shall be provided for by Act of Congress. (Mar. 2, 1909, ch. 235, 35 Stat. 672.)

#### § 32. Appointment and salaries of ambassadors, ministers, etc.

Ambassadors, envoys extraordinary and ministers plenipotentiary, ministers resident, and agents shall be entitled to compensation at the rates following, per annum, namely:

Ambassadors extraordinary and plenipotentiary to Argentina, Brazil, Chile, Cuba, France, Germany, Great Britain, Italy, Japan, Mexico, Peru, Spain, and Turkey, \$17,500: *Provided*, That the salary of an envoy extraordinary and minister plenipotentiary to

Turkey, in the event that the President should appoint a diplomatic representative of that grade, shall be \$12,000;

Ambassador extraordinary and plenipotentiary to Belgium and envoy extraordinary and minister plenipotentiary to Luxembourg, \$17,500;

Envoys extraordinary and ministers plenipotentiary to China, and the Netherlands, \$12,000;

Envoys extraordinary and ministers plenipotentiary to Albania, Austria, Bolivia, Bulgaria, Czechoslovakia, Colombia, Costa Rica, Denmark, Dominican Republic, Ecuador, Egypt, Finland, Greece, Guatemala, Haiti, Honduras, Hungary, Nicaragua, Norway, Panama, Paraguay, Persia, Poland, Portugal, Rumania, Salvador, Siam, Sweden, Switzerland, Uruguay, and Venezuela, \$10,000, and to the Serbs, Croats, and Slovenes, \$10,000;

Envoy extraordinary and minister plenipotentiary to Esthonia, Latvia, and Lithuania, \$10,000;

Agent and consul general at Tangier, \$7,500.

Ambassadors, and envoys extraordinary and ministers plenipotentiary to all other countries, unless where a different compensation is prescribed by law, shall be entitled to compensation each, at the rate of \$10,000 per annum.

And, unless when otherwise provided by law, ministers resident and commissioners shall be entitled to compensation at the rate of 75 per centum, and chargés d'affaires at the rate of 50 per centum, of the amounts allowed to ambassadors, envoys extraordinary, and ministers plenipotentiary to the said countries, respectively. (R. S. § 1675; Mar. 3, 1875, ch. 153, 18 Stat. 483; Feb. 27, 1925, ch. 364, 43 Stat. 1015; Jan. 21, 1931, ch. 42, 46 Stat. 1040.)

#### CODIFICATION

Former proviso of this section provided that no salary enumerated in this section should be paid to any official receiving any other salary from the Government. Judge Advocate General's opinion declared this proviso to be temporary. See JAG 010.3, Nov. 12, 1929, p. 4.

#### DERIVATION

Act Aug. 18, 1856, ch. 127, § 1, 11 Stat. 52; act June 16, 1860, ch. 135, § 1, 12 Stat. 40; act Feb. 22, 1873, ch. 184, § 1, 17 Stat. 471, 472.

#### CROSS REFERENCES

Belgium, appointment and compensation of ambassador, see section 34 of this title.

Foreign Service officer, assignment to act as diplomatic officer, and compensation, see sections 19 and 20 of this title.

### § 33. Citizenship as requisite to compensation.

No compensation provided for any officer mentioned in section 32 of this title, or any appropriation therefor, shall be applicable to the payment of the compensation of any person appointed to or holding any such office who shall not be a citizen of the United States; nor shall any other compensation be allowed in any such case. (R. S. § 1744.)

#### DERIVATION

Act Aug. 18, 1856, ch. 127, § 21, 11 Stat. 60.

### § 34. Ambassador to Belgium.

The President is authorized to appoint, as the representative of the United States, an ambassador to the Kingdom of Belgium, who shall receive as com-

pensation the sum of \$17,500 per annum. (Sept. 29, 1919, ch. 72, 41 Stat. 291.)

#### CROSS REFERENCE

Compensation of ambassador to Belgium, see paragraph 3 of section 32 of this title.

### § 34a. Ambassador to Poland.

The President is authorized to appoint, as the representative of the United States, an ambassador to the Republic of Poland, who shall receive as compensation the sum of \$17,500 per annum. (Jan. 22, 1930, ch. 22, 46 Stat. 57.)

### § 34b. Minister to Union of South Africa.

The President is authorized to appoint, as the representative of the United States, an envoy extraordinary and minister plenipotentiary to the Union of South Africa, who shall receive as compensation the sum of \$10,000 per annum. (June 5, 1930, ch. 404, 46 Stat. 502.)

### § 34c. Minister to Egypt.

The President is hereby authorized to appoint as the representative of the United States an envoy extraordinary and minister plenipotentiary to Egypt, who shall receive as compensation the sum of \$10,000 per annum. (June 1, 1922, ch. 204, title I, 42 Stat. 600.)

### § 35. Clerks at embassies and legations.

Clerks at the embassies and legations, whenever hereafter appointed, shall be citizens of the United States, and so far as practicable shall be appointed under civil-service rules and regulations. (Feb. 27, 1925, ch. 364, title I, 43 Stat. 1016; Apr. 29, 1926, ch. 195, title I, 44 Stat. 331; Feb. 24, 1927, ch. 189, title I, 44 Stat. 1180; Feb. 15, 1928, ch. 57, title I, 45 Stat. 65; Jan. 25, 1929, ch. 102, title I, 45 Stat. 1096; Apr. 18, 1930, ch. 184, title I, 46 Stat. 175.)

### § 36. Compensation of persons filling two offices.

When to any diplomatic office held by any person there is superadded another, such person shall be allowed additional compensation for his services in such superadded office, at the rate of 50 per centum of the amount allowed by law for such superadded office, and for such time as shall be actually and necessarily occupied in making the transit between the two posts of duty, at the commencement and termination of the period of such superadded office, and no longer; and such superadded office shall be deemed to continue during the time to which it is limited by the terms thereof. (R. S. § 1686.)

#### DERIVATION

Act Aug. 18, 1856, ch. 127, § 9, 11 Stat. 56.

#### CROSS REFERENCES

Double salaries not to be paid Government employees when combined amount exceeds \$2,000.00 per annum, see section 58 of Title 5, Executive Departments and Government Officers and Employees.

Foreign Service officer to receive only one salary though assigned other duties, see section 19 of this title.

### § 37. Special allowance to messenger of embassy at Paris.

Section, act June 11, 1874, ch. 275, § 1, 18 Stat. 67, providing for special allowance to messenger of embassy at

Paris, is in the opinion of the Secretary of State, no longer operative.

**§ 38. Restriction against transaction of business by diplomatic officers.**

No ambassador, minister, minister resident, diplomatic agent, or secretary in the Diplomatic Service of any grade or class shall, while he holds his office, be interested in or transact any business as a merchant, factor, broker, or other trader, or as an agent for any such person to, from, or within the country or countries to which he or the chief of his mission, as the case may be, is accredited, either in his own name or in the name or through the agency of any other person, nor shall he, in such country or countries, practice as a lawyer for compensation or be interested in the fees or compensation of any lawyer so practicing. (Feb. 5, 1915, ch. 23, § 7, 38 Stat. 807.)

**§ 39. Uniforms and official costumes prohibited.**

No person in the Diplomatic Service of the United States shall wear any uniform or official costume not previously authorized by Congress. (R. S. § 1688.)

**DERIVATION**

Res. May 27, 1867, No. 15, 15 Stat. 23.

**§ 40. "Diplomatic officer" defined.**

"Diplomatic officer" shall be deemed to include ambassadors, envoys extraordinary, ministers plenipotentiary, and ministers resident, and none others. (R. S. § 1674; Feb. 5, 1915, ch. 23, § 6, 38 Stat. 806; July 1, 1916, ch. 208, 39 Stat. 252; May 24, 1924, ch. 182, § 2, 43 Stat. 140.)

**DERIVATION**

Act Aug. 18, 1856, ch. 127, § 31, 11 Stat. 64; act June 20, 1864, ch. 136, § 1, 13 Stat. 138; act July 25, 1866, ch. 223, 14 Stat. 225; act Jan. 8, 1874, ch. 1, 18 Stat. 285.

**CONSULAR OFFICERS GENERALLY**

**§ 51. Official designations in consular service.**

The official designations employed throughout sections 11, 20, 32, 33, 36, 39, 51, 53, 55, 58, 71, 73-77, 80, 82, 83, 85, 87, 88, 90-97, 101-109, 121, 123, 125, 127-132, and 168 of this title shall be deemed to have the following meanings, respectively:

First. "Consul general" and "consul" shall be deemed to denote full, principal, and permanent consular officers as distinguished from subordinates and substitutes.

Second. "Consular agent" shall be deemed to denote consular officers subordinate to such principals exercising the powers vested in them and performing the duties prescribed for them by regulation of the President at posts or places different from those at which such principals are located, respectively.

Third. "Vice consuls" shall be deemed to denote consular officers subordinate to such principals exercising and performing the duties within the limits of their consulates at the same or at different points and places from those at which the principals are located, except that when vice consuls take charge of consulates general or consulates when the principal officers shall be temporarily absent or relieved from duty they shall be deemed to denote consular officers who

shall be substituted, temporarily, to fill the places of said consuls general or consuls.

Fourth. "Consular officer" shall be deemed to include consuls general, consuls, vice consuls, interpreters in consular offices, student interpreters, and consular agents, and none others. (R. S. § 1674; Feb. 5, 1915, ch. 23, § 6, 38 Stat. 806.)

**DERIVATION**

Act Aug. 18, 1856, ch. 127, § 31, 11 Stat. 64; act June 20, 1864, ch. 136, § 1, 13 Stat. 138; act July 25, 1866, ch. 223, 14 Stat. 225; act Jan. 8, 1874, ch. 1, 18 Stat. 285.

**§ 51a. Appointment of vice-consuls and consular agents.**

The President is authorized to provide for the appointment of vice-consuls and consular agents in such manner and under such regulations as he shall deem proper. No vice-consul or consular agent shall be appointed otherwise than under such regulations as have been or may be prescribed by the President. (R. S. § 1695; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100; Feb. 5, 1915, ch. 23, § 6, 38 Stat. 806.)

**§ 52. Abolition of certain consular offices.**

Section, act Feb. 5, 1915, ch. 23, § 6, 38 Stat. 806, abolished offices of vice consul general, deputy consul general, and deputy consul.

**§ 53. General application of provisions to consular officers.**

The various provisions of sections 11, 20, 32, 33, 36, 39, 51, 53, 55, 58, 71, 73-77, 80, 82, 83, 85, 87, 88, 90-97, 101-109, 121, 123, 125, 127-132, and 168 of this title which are expressed in terms of general application to any particular classes of consular officers, shall be deemed to apply as well to all other classes of such officers, so far as may be consistent with the subject matter of the same and with the treaties of the United States. (R. S. § 1689.)

**DERIVATION**

Act Aug. 18, 1856, ch. 127, § 31, 11 Stat. 64.

**§ 54. Commercial agents abolished.**

Section, act Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100, abolished grade of commercial agent.

**§ 55. Extent of consulates.**

The President is authorized to define the extent of country to be embraced within any consulate. (R. S. § 1695.)

**DERIVATION**

Act Aug. 18, 1856, ch. 127, § 14, 11 Stat. 57.

**§ 56. Consular clerks; appointment.**

Consular clerks, whenever hereafter appointed, shall, so far as practicable, be appointed under civil-service rules and regulations. (Feb. 27, 1925, ch. 364, 43 Stat. 1017; Apr. 29, 1926, ch. 195, title I, 44 Stat. 333; Feb. 24, 1927, ch. 189, title I, 44 Stat. 1182.)

**§ 57. Repealed. Feb. 23, 1931, ch. 276, § 6, 46 Stat. 1207.**

Section, act Apr. 5, 1906, ch. 1366, § 5, 34 Stat. 101, required clerks paid \$1,000 a year or more to be citizens of the United States.

### § 58. Expense allowance to vice consulate or consular agency.

Section, R. S. § 1696, derived from act Mar. 3, 1869, ch. 125, § 6, 15 Stat. 322, is no longer operative in the opinion of the Secretary of State. It provided that the only allowance to any vice consulate or consular agency for expenses shall be an amount sufficient to pay for stationery and postage on official letters.

### POWERS, DUTIES, AND LIABILITIES OF CONSULAR OFFICERS GENERALLY

#### § 71. General construction as to powers and duties.

The specification in sections 11, 20, 32, 33, 36, 39, 51, 53, 55, 58, 71, 73-77, 80, 82, 83, 85, 87, 88, 90-97, 101-109, 121, 123, 125, 127-132 and 168 of this title of certain powers to be exercised and duties to be performed by consuls and vice consuls, shall not be construed as implying the exclusion of others resulting from the nature of their appointments, or prescribed by any treaty or convention under which they may act. (R. S. § 1714.)

#### DERIVATION

Act Apr. 14, 1792, ch. 24, § 9, 1 Stat. 257.

#### § 72. Solemnization of marriages.

Marriages in presence of any consular officer of the United States in a foreign country, between persons who would be authorized to marry if residing in the District of Columbia, shall be valid to all intents and purposes, and shall have the same effect as if solemnized within the United States. And such consular officer shall, in all cases, give to the parties married before them a certificate of such marriage, and shall send another certificate thereof to the Department of State, there to be kept; such certificate shall specify the names of the parties, their ages, places of birth, and residence. (R. S. § 4082.)

#### DERIVATION

Act June 22, 1860, ch. 179, § 31, 12 Stat. 79.

#### § 73. Protests.

Consuls and vice consuls shall have the right, in the ports or places to which they are severally appointed, of receiving the protests or declarations which captains, masters, crews, passengers, or merchants, who are citizens of the United States, may respectively choose to make there; and also such as any foreigner may choose to make before them relative to the personal interest of any citizen of the United States. Copies of such acts duly authenticated by consuls or vice consuls, under the seal of their consulates, respectively, shall be received in evidence equally with their originals in all courts in the United States. (R. S. § 1707.)

#### DERIVATION

Act Apr. 14, 1792, ch. 24, § 2, 1 Stat. 255.

#### § 74. Lists and returns of seamen and vessels, etc.

Every consular officer shall keep a detailed list of all seamen and mariners shipped and discharged by him, specifying their names and the names of the vessels on which they are shipped and from which they are discharged, and the payments, if any, made on account of each so discharged; also of the number of the vessels arrived and departed, the amounts of

their registered tonnage, and the number of their seamen and mariners, and of those who are protected, and whether citizens of the United States or not, and as nearly as possible the nature and value of their cargoes, and where produced, and shall make returns of the same, with their accounts and other returns, to the Secretary of Commerce. (R. S. § 1708; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829.)

#### DERIVATION

Act Aug. 18, 1856, ch. 127, § 27, 11 Stat. 62.

#### § 75. Estates of decedents generally; General Accounting Office as conservator.

It shall be the duty of a consular officer, or, if no consular officer is present, a diplomatic officer, under such procedural regulations as the Secretary of State may prescribe—

First. To take possession and to dispose of the personal estate left by any citizen of the United States, except a seaman who is a member of the crew of an American vessel, who shall die within or is domiciled at time of death within his jurisdiction: *Provided*, That such procedure is authorized by treaty provisions or permitted by the laws or authorities of the country wherein the death occurs, or the decedent is domiciled, or that such privilege is accorded by established usage: *Provided further*, That the decedent shall leave in the country where the death occurred or where he was domiciled, no legal representative, partner in trade, or trustee by him appointed to take care of his personal estate. A consular officer or, in his absence, a diplomatic officer shall act as the provisional conservator of the personal property within his jurisdiction of a deceased citizen of the United States but, unless authorized by treaty provisions, local law, or usage, he shall not act as administrator of such personal property. He shall render assistance in guarding, collecting, and transmitting the property to the United States to be disposed of according to the law of the decedent's domicile.

Second. After having taken possession of the personal property, as provisional conservator, to inventory and carefully appraise the effects, article by article, with the assistance of two competent persons who, together with such officer, shall sign the inventory and annex thereto an appropriate certificate as to the accuracy of the appraised value of each article.

Third. To collect the debts due to the decedent in his jurisdiction and pay from the estate the obligations owed there by the decedent.

Fourth. To sell at auction, after reasonable public notice, unless the amount involved does not justify such expenditure, such part of the estate as shall be of a perishable nature, and after reasonable public notice and notice to next of kin if they can be ascertained by reasonable diligence such further part, if any, as shall be necessary for the payment of the decedent's debts incurred in such country, and funeral expenses, and expenses incident to the disposition of the estate. If, at the expiration of one year from the date of death (or for such additional period as may be required for final settlement of the estate), no claimant shall appear, the residue of the estate, with

the exception of investments of bonds, shares of stocks, notes of indebtedness, jewelry or heirlooms, or other articles having a sentimental value, shall be sold.

Fifth. To transmit to the General Accounting Office the proceeds of the sale (and any unsold effects, such as investments of bonds, shares of stocks, notes of indebtedness, jewelry or heirlooms, or other articles having a sentimental value), there to be held in trust for the legal claimant. If, however, at any time prior to such transmission, the decedent's legal representative should appear and demand the proceeds and effects in the officer's hands, he shall deliver them to such representative after having collected the prescribed fee therefor.

The Comptroller General of the United States, or such member of the General Accounting Office as he may duly empower to act as his representative for the purpose, shall act as conservator of such parts of these estates as may be received by the General Accounting Office or are in its possession, and may, when deemed to be in the interest of the estate, sell such effects, including bonds, shares of stock, notes of indebtedness, jewelry, or other articles, which have heretofore or may hereafter be so received, and pay the expenses of such sale out of the proceeds: *Provided*, That application for such effects shall not have been made by the legal claimant within six years after their receipt. The Comptroller General is authorized, for and in behalf of the estate of the deceased, to receive any balances due to such estates, to draw therefor on banks, safe deposits, trust or loan companies, or other like institutions, to endorse all checks, bills of exchange, promissory notes, and other evidences of indebtedness due to such estates, and take such other action as may be deemed necessary for the conservation of such estates. The net proceeds of such sales, together with such other moneys as may be collected by him, shall be deposited into the Treasury to a fund in trust for the legal claimant and reported to the Secretary of State.

If no claim to the effects the proceeds of which have been so deposited shall have been received from a legal claimant of the deceased within six years from the date of the receipt of the effects by the General Accounting Office, the funds so deposited, with any remaining unsold effects, less transmittal charges, shall be transmitted by that office to the proper officer of the State or Territory of the last domicile in the United States of the deceased citizen, if known, or, if not, such funds shall be covered into the general fund of the Treasury as miscellaneous receipts on account of proceeds of deceased citizens, and any such remaining unsold effects shall be disposed of by the General Accounting Office in such manner as, in the judgment of the Comptroller General, is deemed appropriate, or they may be destroyed if considered no longer possessed of any value: *Provided*, That when the estate shall be valued in excess of \$500, and no claim therefor has been presented to the General Accounting Office by a legal claimant within the period specified in this paragraph or the legal claimant is unknown, before disposition of the estate as provided herein, notice shall be given by publishing once a week for four consecutive weeks in

a newspaper published in the county of the last known domicile of the deceased, in the United States, the expense thereof to be deducted from the proceeds of such estate, and any lawful claim received as the result of such advertisement shall be adjusted and settled as provided for herein. (R. S. § 1709; Mar. 3, 1911, ch. 223, 36 Stat. 1083; June 10, 1921, ch. 18, § 304, 42 Stat. 24; July 12, 1940, ch. 618, 54 Stat. 758.)

#### DERIVATION

Act Apr. 14, 1792, ch. 24, § 2, 1 Stat. 255.

#### CROSS REFERENCES

Estates of decedents in China, see section 193 of this title.

Estates of Decedents, Department of State, Trust Fund, see section 725s of Title 31, Money and Finance.

#### § 76. Notification of death of decedent; transmission of inventory of effects.

For the information of the representative of the deceased, the consular officer, or, if no consular officer is present, a diplomatic officer, in the settlement of his estate shall immediately notify his death in one of the gazettes published in the consular district, and also to the Secretary of State, that the same may be notified in the State to which the deceased belonged; and he shall, as soon as may be, transmit to the Secretary of State an inventory of the effects of the deceased taken as before directed. (R. S. § 1710; July 12, 1940, ch. 618, 54 Stat. 758.)

#### DERIVATION

Act Apr. 14, 1792, ch. 24, § 2, 1 Stat. 255.

#### § 77. Following testamentary directions; assistance to testamentary appointee.

When a citizen of the United States dies in a foreign country and leaves, by any lawful testamentary disposition, special directions for the custody and management, by the consular officer, or in his absence a diplomatic officer, within whose jurisdiction the death occurred, of the personal property in the foreign country which he possessed at the time of death, such officer shall, so far as the laws of the foreign country permit, strictly observe such directions if not contrary to the laws of the United States. If such citizen has named, by any lawful testamentary disposition, any other person than a consular officer or diplomatic officer to take charge of and manage such property, it shall be the duty of the officer, whenever required by the person so named, to give his official aid in whatever way may be practicable to facilitate the proceedings of such person in the lawful execution of his trust, and, so far as the laws of the country or treaty provisions permit, to protect the property of the deceased from any interference by the authorities of the country where such citizen died. To this end it shall be the duty of the consular officer, or if no consular officer is present a diplomatic officer, to safeguard the decedent's property by placing thereon his official seal and to break and remove such seal only upon the request of the person designated by the deceased to take charge of and manage his property. (R. S. § 1711; July 12, 1940, ch. 618, 54 Stat. 758.)

#### DERIVATION

Act Aug. 18, 1856, ch. 127, § 28, 11 Stat. 63.



**§ 78. Bond as administrator or guardian; action on bond.**

No consular officer of the United States shall accept an appointment from any foreign state as administrator, guardian, or to any other office of trust for the settlement or conservation of estates of deceased persons or of their heirs or of persons under legal disabilities, without executing a bond, with security, to be approved by the Secretary of State, and in a penal sum to be fixed by him and in such form as he may prescribe, conditioned for the true and faithful performance of all his duties according to law and for the true and faithful accounting for, delivering, and paying over to the persons thereto entitled of all moneys, goods, effects, and other property which shall come to his hands or to the hands of any other person to his use as such administrator, guardian, or in other fiduciary capacity. Said bond shall be deposited with the Secretary of the Treasury. In case of a breach of any such bond, any person injured by the failure of such officer faithfully to discharge the duties of his said trust according to law, may institute, in his own name and for his sole use, a suit upon said bond and thereupon recover such damages as shall be legally assessed, with costs of suit, for which execution may issue in due form; but if such party fails to recover in the suit, judgment shall be rendered and execution may issue against him for costs in favor of the defendant; and the United States shall in no case be liable for the same. The said bond shall remain, after any judgment rendered thereon, as a security for the benefit of any person injured by a breach of the condition of the same until the whole penalty has been recovered. (June 30, 1902, ch. 1331, § 1, 32 Stat. 546.)

**§ 79. Penalty for failure to give bond and for embezzlement.**

Every consular officer who accepts any appointment to any office of trust mentioned in section 78 of this title without first having complied with the provisions thereof by due execution of a bond as therein required, or who shall willfully fail or neglect to account for, pay over, and deliver any money, property, or effects so received to any person lawfully entitled thereto, after having been requested by the latter, his representative or agent so to do, shall be deemed guilty of embezzlement and shall be punishable by imprisonment for not more than five years and by a fine of not more than \$5,000. (June 30, 1902, ch. 1331, § 2, 32 Stat. 547.)

**§ 80. Commercial and agricultural reports.**

Consuls of the United States in foreign countries shall procure and transmit to the Department of State authentic commercial information respecting such countries of such character and in such manner and form and at such times as the department may from time to time prescribe. And they shall also procure and transmit to the Department of State, for the use of the Agricultural Department, monthly reports relative to the character, condition, and respective yields of the agricultural and horticultural industries and other fruiteries of the country in which they are respectively stationed; and the

Secretary of Agriculture is hereby required and directed to embody the information thus obtained, or so much thereof as he may deem material and important, in his monthly bulletin of crop reports. (R. S. § 1712; June 18, 1888, ch. 393, 25 Stat. 186; Feb. 9, 1889, ch. 122, §§ 1, 4, 25 Stat. 659; July 14, 1890, ch. 707, 26 Stat. 288; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

**DERIVATION**

Act Aug. 18, 1856, ch. 170, § 1, 11 Stat. 139.

**CROSS REFERENCES**

Gathering and compilation of statistics and useful and material information regarding subjects enumerated in section 596 of Title 5, Executive Departments and Government Officers and Employees, and furnishing of reports to Secretary of Commerce by consular officers, see section 175 of Title 15, Commerce and Trade.

Information pertaining to work of Department of Commerce to be obtained from consular officers, see section 162 of Title 5, Executive Departments and Government Officers and Employees.

**§ 81. Reports as to exports, imports, and wages.**

It shall be the duty of consuls to make to the Secretary of State a quarterly statement of exports from, and imports to, the different places to which they are accredited, giving, as near as may be, the market price of the various articles of exports and imports, the duty and port charges, if any, on articles imported and exported, together with such general information as they may be able to obtain as to how, where, and through what channels a market may be opened for American products and manufactures. In addition to the duties now imposed by law, it shall be the duty of consuls of the United States, annually, to procure and transmit to the Department of State, as far as practicable, information respecting the rate of wages paid for skilled and unskilled labor within their respective jurisdictions. (Jan. 27, 1879, ch. 28, 20 Stat. 273; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

**CROSS REFERENCE**

Information for Department of Commerce and reports by consular officers, see section 162 of Title 5, Executive Departments and Government Officers and Employees, and section 175 of Title 15, Commerce and Trade.

**§ 82. Reports as to current prices of merchandise, etc., and as to agricultural conditions.**

Every consular officer shall furnish to the Secretary of the Treasury, as often as shall be required, the prices current of all articles of merchandise usually exported to the United States from the port or place in which he is situated; and he shall also furnish to the Secretary of the Treasury, at least once in twelve months, the prices current of all articles of merchandise, including those of the farm, the garden, and the orchard, that are imported through the port or place in which he is stationed. And he shall also report as to the character of agricultural implements in use, and whether they are imported to or manufactured in that country; as to the character and extent of agricultural and horticultural pursuits there. That part of the information thus obtained which pertains to agriculture shall be transmitted by the Secretary of the Treasury, as soon as the same shall have been received by him, to the Secretary of Agriculture, who shall include the same, or so much

thereof as he may deem material and important, in his annual reports, stating the said prices in dollars and cents, and rendering tables of foreign weights and measures into their American equivalents. (R. S. § 1713; June 18, 1888, ch. 393, 25 Stat. 186; Feb. 9, 1889, ch. 122, §§ 1, 4, 25 Stat. 659.)

## DERIVATION

Act Aug. 18, 1856, ch. 127, § 27, 11 Stat. 62.

## CROSS REFERENCE

Information for Department of Commerce and reports by consular officers, see section 162 of Title 5, Executive Departments and Government Officers and Employees, and section 175 of Title 15, Commerce and Trade.

## § 83. Certification of invoices generally.

No consular officer shall certify any invoice unless he is satisfied that the person making oath thereto is the person he represents himself to be, that he is a credible person, and that the statements made under such oath are true; and he shall, thereupon, by his certificate, state that he was so satisfied. (R. S. § 1715.)

## DERIVATION

Act Aug. 18, 1856, ch. 127, § 27, 11 Stat. 62.

## CROSS REFERENCE

Invoices covering merchandise exceeding \$100 in value to be certified, see section 1482 of Title 19, Customs Duties.

## § 84. Fees for certification of invoices.

Fees for the consular certification of invoices shall be, and they hereby are, included with the fees for official services for which the President is authorized by section 127 of this title to prescribe rates or tariffs. (Apr. 5, 1906, ch. 1366, § 9, 34 Stat. 101.)

## § 85. Exaction of excessive fees for verification of invoices; penalty.

The fee provided by law for the verification of invoices by consular officers shall, when paid, be held to be a full payment for furnishing blank forms of declaration to be signed by the shipper, and for making, signing, and sealing the certificate of the consular officer thereto; and any consular officer who, under pretense of charging for blank forms, advice, or clerical services in the preparation of such declaration or certificate, charges or receives any fee greater in amount than that provided by law for the verification of invoices, or who demands or receives for any official services, or who allows any clerk or subordinate to receive for any such service, any fee or reward other than the fee provided by law for such service, shall be punishable by imprisonment for not more than one year, or by a fine of not more than \$2,000, and shall be removed from his office. (R. S. § 1716.)

## DERIVATION

Act Mar. 3, 1869, ch. 125, § 3, 15 Stat. 321.

## § 86. Destruction of old invoices.

The Secretary of State is authorized to cause, from time to time, the destruction of invoices that have been filed in the consular offices for a period of more than five years. (Feb. 24, 1903, ch. 753, 32 Stat. 854.)

## § 87. Restriction as to certificate for goods from countries adjacent to United States.

No consular officer of the United States shall grant a certificate for goods, wares, or merchandise shipped from countries adjacent to the United States which have passed a consulate after purchase for shipment. (R. S. § 1717.)

## DERIVATION

Act Feb. 22, 1873, ch. 184, § 3, 17 Stat. 474.

## § 88. Retention of papers of American vessels until payment of demands and wages.

All consular officers are authorized and required to retain in their possession all the papers of vessels of the United States, which shall be deposited with them as directed by law, till payment shall be made of all demands and wages on account of such vessels. (R. S. § 1718.)

## DERIVATION

Act Aug. 18, 1856, ch. 127, § 28, 11 Stat. 63.

## § 89. Fees for services to American vessels or seamen prohibited.

No fees named in the tariff of consular fees prescribed by order of the President shall be charged or collected by consular officers for the official services to American vessels and seamen. Consular officers shall furnish the master of every such vessel with an itemized statement of such services performed on account of said vessel, with the fee so prescribed for each service, and make a detailed report to the Secretary of the Treasury of such services and fees, under such regulations as the Secretary of State may prescribe; and the Secretary of the Treasury shall allow consular officers who are paid in whole or in part by fees such compensation for said services as they would have received but for the above prohibition: *Provided*, That such services, in the opinion of the Secretary of the Treasury, have been necessarily rendered. (June 26, 1884, ch. 121, § 12, 23 Stat. 56.)

## CROSS REFERENCES

Adjustments, see section 725a of Title 31, Money and Finance.

General duty to account for fees, see section 99 of this title.

## § 90. Profits from dealings with discharged seamen; prohibition.

No consular officer, nor any person under any consular officer shall make any charge or receive, directly or indirectly, any compensation, by way of commission or otherwise, for receiving or disbursing the wages or extra wages to which any seaman or mariner is entitled who is discharged in any foreign country, or for any money advanced to any such seaman or mariner who seeks relief from any consulate; nor shall any consular officer, or any person under any consular officer, be interested, directly or indirectly, in any profit derived from clothing, boarding, or otherwise supplying or sending home any such seaman or mariner. Such prohibition as to profit, however, shall not be construed to relieve or prevent any such officer who is the owner of or otherwise interested in any vessel of the United States from transporting in such vessel any such seaman or mariner, or from receiving or being inter-

ested in such reasonable allowance as may be made for such transportation by law. (R. S. § 1719.)

DERIVATION

Act Aug. 18, 1856, ch. 127, § 20, 11 Stat. 59.

§ 91. Valuation of foreign coins in payment of fees.

Consuls, vice consuls, and consular agents in the Dominion of Canada, in the collection of official fees, shall receive foreign moneys at the rate given in the Treasury schedule of the value of foreign coins. (R. S. § 1722; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

DERIVATION

Act Mar. 3, 1869, ch. 125, § 3, 15 Stat. 321.

§ 92. Exaction of excessive fees generally; penalty of treble amount.

Whenever any consular officer collects, or knowingly allows to be collected for any service, any other or greater fees than are allowed by law for such service, he shall, besides his liability to refund the same, be liable to pay to the person by whom or in whose behalf the same are paid, treble the amount of the unlawful charge so collected, as a penalty, to be recovered with costs, in any proper form of action, by such person for his own use. And in any such case the Secretary of the Treasury may retain, out of the compensation of such officer, the amount of such overcharge and of such penalty, and charge the same to such officer in account, and may thereupon refund such unlawful charge, and pay such penalty to the person entitled to the same if he shall think proper so to do. (R. S. § 1723.)

DERIVATION

Act Aug. 18, 1856, ch. 127, § 17, 11 Stat. 58.

§ 93. Liability for uncollected fees.

Every consul general, consul, or vice consul appointed to perform the duty of any such officer, who omits to collect any fees which he is entitled to charge for any official service, shall be liable to the United States therefor, as if he had collected the same; unless, upon good cause shown therefor, the Secretary of the Treasury shall think proper to remit the same. (R. S. § 1724; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

DERIVATION

Act Aug. 18, 1856, ch. 127, § 18, 11 Stat. 58.

§ 94. Returns as to fees by officers compensated by fees.

All consular agents, as are allowed for their compensation the whole or any part of the fees which they may collect, shall make returns in such manner as the Comptroller General of the United States shall prescribe, of all such fees as they or any person in their behalf so collect. (R. S. § 1725; July 31, 1894, ch. 174, § 5, 28 Stat. 206; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

DERIVATION

Act Aug. 18, 1856, ch. 127, § 18, 11 Stat. 58.

§ 95. Receipt for fees; numbering receipts.

Every consular officer shall give receipts for all fees collected for his official services, expressing the

particular services for which the same were collected. He shall number all receipts given by him for fees received for official services, in the order of their dates, beginning with number one at the commencement of the period of his service, and on the first day of January in every year thereafter. (R. S. §§ 1726, 1727.)

DERIVATION

R. S. §§ 1726, 1727 were from act Aug. 18, 1856, ch. 127, §§ 17, 18, 11 Stat. 58.

§ 96. Registry of fees.

Every consular officer shall also register in a book to be kept by him for that purpose all fees so received by him, in the order in which they are received, specifying each item of service and the amount received therefor, from whom, and the dates when received, and if for any service connected with any vessel, the name thereof, and indicating what items and amounts are embraced in each receipt given by him therefor, and numbering the same according to the number of the receipts, respectively, so that the receipts and register shall correspond with each other; and he shall, in such register, specify the name of the person for whom, and the date when he shall grant, issue, or verify any passport, certify any invoice, or perform any other official service in the entry of the receipt of the fees therefor, and also number each consular act so receipted for with the number of such receipt, and as shown by such register. (R. S. § 1727.)

DERIVATION

Act Aug. 18, 1856, ch. 127, § 18, 11 Stat. 58.

§ 97. Account of fees; verification; perjury.

Every consular officer, in rendering his account of fees received, shall furnish a full transcript of the register which he is required to keep, and make oath that, to the best of his knowledge, the same is true, and contains a full and accurate statement of all fees received by him, or for his use, for his official services as such consular officer, during the period for which it purports to be rendered. Such oath may be taken before any person having authority to administer oaths at the port or place where the consular officer is located. If any such consular officer willfully and corruptly commits perjury, in any such oath, within the intent and meaning of any Act of Congress now or hereafter made, he may be charged, proceeded against, tried, and convicted, and dealt with in the same manner, in all respects, as if such offense had been committed in the United States, before any officer duly authorized therein to administer or take such oath, and shall be subject to the same punishment and disability therefor as are or shall be prescribed for such offense. (R. S. § 1728.)

DERIVATION

Act Aug. 18, 1856, ch. 127, § 18, 11 Stat. 58.

§ 98. Notarial acts, oaths, affirmations, affidavits, and depositions; fees.

Every consular officer of the United States is hereby required, whenever application is made to him therefor, within the limits of his consulate, to administer to or take from any person any oath,

affirmation, affidavit, or deposition, and to perform any other notarial act which any notary public is required or authorized by law to do within the United States; and for every such notarial act performed he shall charge in each instance the appropriate fee prescribed by the President under section 127 of this title. (Apr. 5, 1906, ch. 1366, § 7, 34 Stat. 101.)

#### § 99. General duty to account for fees.

All fees, official or unofficial, received by any officer in the Consular Service for services rendered in connection with the duties of his office or as a consular officer, including fees for notarial services, and fees for taking depositions, executing commissions or letters rogatory, settling estates, receiving or paying out moneys, caring for or disposing of property, shall be accounted for and paid into the Treasury of the United States, and the sole and only compensation of such officers shall be by salaries fixed by law; but this shall not apply to consular agents, who shall be paid by one-half of the fees received in their offices, up to a maximum sum of \$1,000 in any one year, the other half being accounted for and paid into the Treasury of the United States. (Apr. 5, 1906, ch. 1366, § 8, 34 Stat. 101; Feb. 5, 1915, ch. 23, §§ 3, 6, 38 Stat. 805, 806; May 24, 1924, ch. 182, § 11, 43 Stat. 142.)

#### CROSS REFERENCES

Application to consular officers, see section 13 of this title.

Appropriations and adjustments, see section 725a of Title 31, Money and Finance.

#### § 100. Stamps for fees; effect of failure to affix stamps to documents.

Every consular officer shall be provided and kept supplied with adhesive official stamps, on which shall be printed the equivalent money value of denominations and to amounts to be determined by the Department of State, and shall account quarterly to the Department of State for the use of such stamps and for such of them as shall remain in his hands.

Whenever a consular officer is required or finds it necessary to perform any consular or notarial act he shall prepare and deliver to the party or parties at whose instance such act is performed a suitable and appropriate document as prescribed in the consular regulations and affix thereto and duly cancel an adhesive stamp or stamps of the denomination or denominations equivalent to the fee prescribed for such consular or notarial act, and no such act shall be legally valid within the jurisdiction of the Government of the United States unless such stamp or stamps is or are affixed and canceled. (Apr. 5, 1906, ch. 1366, § 10, 34 Stat. 102; May 24, 1924, ch. 182, § 11, 43 Stat. 142.)

#### CROSS REFERENCE

Application to consular officers, see section 13 of this title.

#### § 101. Posting rates of fees.

It shall be the duty of all consular officers at all times to keep posted up in their offices, respectively, in a conspicuous place, and subject to the examination of all persons interested therein, a copy of such rates or tariffs as shall be in force. (R. S. § 1731.)

#### DERIVATION

Act Aug. 18, 1856, ch. 127, § 16, 11 Stat. 57.

#### § 102. Embezzlement of fees or of effects of American citizens.

Every consular officer who willfully neglects to render true and just quarterly accounts and returns of the business of his office, and of moneys received by him for the use of the United States, or who neglects to pay over any balance of said moneys due to the United States at the expiration of any quarter, before the expiration of the next succeeding quarter, or who shall receive money, property, or effects belonging to a citizen of the United States and shall not within a reasonable time after demand made upon him by the Secretary of State or by such citizen, his executor, administrator, or legal representative, account for and pay over all moneys, property, and effects, less his lawful fees, due to such citizen, shall be deemed guilty of embezzlement, and shall be punishable by imprisonment for not more than five years, and by a fine of not more than \$2,000. (R. S. § 1734; Dec. 21, 1898, ch. 36, § 3, 30 Stat. 771.)

#### DERIVATION

Act Mar. 3, 1869, ch. 125, § 5, 15 Stat. 322.

#### § 103. Liability for neglect of duty or for malfeasance generally; action on bond; penalty.

Whenever any consular officer willfully neglects or omits to perform seasonably any duty imposed upon him by law, or by any order or instruction made or given in pursuance of law, or is guilty of any willful malfeasance or abuse of power, or of any corrupt conduct in his office, he shall be liable to all persons injured by any such neglect, or omission, malfeasance, abuse, or corrupt conduct, for all damages occasioned thereby; and for all such damages, he and his sureties upon his official bond shall be responsible thereon to the full amount of the penalty thereof to be sued in the name of the United States for the use of the person injured. Such suit, however, shall in no case prejudice, but shall be held in entire subordination to the interests, claims, and demands of the United States, as against any officer, under such bond, for every willful act of malfeasance or corrupt conduct in his office. If any consul neglects or omits to perform seasonably the duties imposed upon him by the laws regulating the shipment and discharge of seamen, or is guilty of any malversation or abuse of power, he shall be liable to any injured person for all damage occasioned thereby; and for all malversation and corrupt conduct in office, he shall be punishable by imprisonment for not more than five years and not less than one, and by a fine of not more than \$10,000 and not less than \$1,000. (R. S. §§ 1735, 1736; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

#### DERIVATION

R. S. § 1735 was from act Aug. 18, 1856, ch. 127, § 32, 11 Stat. 64.

R. S. § 1736 was from act July 20, 1840, ch. 48, § 18, 5 Stat. 397.

#### § 104. False certificate as to ownership of property.

If any consul or vice consul falsely and knowingly certifies that property belonging to foreigners is property belonging to citizens of the United States, he

shall be punishable by imprisonment for not more than three years, and by a fine of not more than \$10,000. (R. S. § 1737; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

## DERIVATION

Act Feb. 22, 1803, ch. 9, § 7, 2 Stat. 204.

## § 105. Performance of diplomatic functions restricted.

No consular officers shall exercise diplomatic functions, or hold any diplomatic correspondence or relation on the part of the United States, in, with, or to the government or country to which he is appointed, or any other country or government, when there is in such country any officer of the United States authorized to perform diplomatic functions therein; nor in any case, unless expressly authorized by the President so to do. (R. S. § 1738.)

## DERIVATION

Act Aug. 18, 1856, ch. 127, § 12, 11 Stat. 56.

## § 106. Restriction as to transaction of private business by consular officer generally.

No consul general, consul, or consular agent receiving a salary of more than \$1,000 a year shall, while he holds his office, be interested in or transact any business as a merchant, factor, broker, or other trader, or as a clerk or other agent for any such person to, from, or within the port, place, or limits of his jurisdiction, directly or indirectly, either in his own name or in the name or through the agency of any other person; nor shall he practice as a lawyer for compensation or be interested in the fees or compensation of any lawyer; and he shall in his official bond stipulate as a condition thereof not to violate this prohibition. (R. S. § 1699; Apr. 5, 1906, ch. 1366, § 6, 34 Stat. 101.)

## DERIVATION

Act Aug. 18, 1856, ch. 127, § 5, 11 Stat. 55.

## § 107. Extension of restriction as to transaction of business.

All consular officers whose respective salaries exceed \$1,000 a year shall be subject to the prohibition against transacting business, practicing as a lawyer, or being interested in the fees or compensation of any lawyer contained in section 106 of this title. And the President may extend the prohibition to any consular agent whose salary does not exceed \$1,000 a year or who may be compensated by fees, and may require such officer to give a bond not to violate the prohibition. (R. S. § 1700; Apr. 5, 1906, ch. 1366, § 6, 34 Stat. 101.)

## DERIVATION

Acts Aug. 18, 1856, ch. 127, § 15, 11 Stat. 57; Feb. 4, 1862, ch. 17, § 1, 12 Stat. 336.

## § 108. Penalty for violation of restriction as to transaction of business; action on bond.

Every consul general or consul who violates the prohibition against transacting business, required to be inserted in his official bond, shall be liable to a penalty therefor, for the use of the United States, equal in amount to the annual compensation specified for him, which may be recovered in an action of debt at the suit of the United States, either directly for the penalty, as such, against such consul general

or consul, or upon his official bond, as liquidated damages, for the breach of such condition against such consul general or consul, and his sureties, or any one or more of them; and in every such case all such actions shall be open to the United States for the collection of such penalty till the same shall be collected in some one of such actions; and every such penalty, when collected, shall be paid into the Treasury of the United States. (R. S. § 1701; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

## DERIVATION

Act Aug. 18, 1856, ch. 127, § 5, 11 Stat. 55.

## § 109. Allowance for office rent of consulates.

Section, R. S. § 1706; act Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100, is in the opinion of the Secretary of State no longer operative. It provided for allowance for office rent of consulates.

## GENERAL PROVISIONS COMMON TO DIPLOMATIC AND TO CONSULAR OFFICERS

## § 121. When salary commences.

No ambassador, envoy extraordinary, minister plenipotentiary, minister resident, commissioner, chargé d'affaires, secretary of legation, assistant secretary of legation, interpreter to any legation or consulate, or consul general, consul, or vice consul shall be entitled to compensation for his services, except from the time when he reaches his post and enters upon his official duties to the time when he ceases to hold such office, and for such time as is actually and necessarily occupied in receiving his instructions, not to exceed thirty days, and in making the direct transit between the place of his residence, when appointed, and his post of duty, at the commencement and termination of the period of his official service, for which he shall in all cases be allowed and paid, except as hereinafter in this section mentioned. And no person shall be deemed to hold any such office after his successor is appointed and actually enters upon the duties of his office at his post of duty, nor after his official residence at such post has terminated if not so relieved. But no such officer as is referred to in this section shall be allowed compensation for the time so occupied in such transit, at the termination of the period of his official service, if he has resigned or been recalled therefrom for any malfeasance in his office. (R. S. § 1740; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100; Feb. 5, 1915, ch. 23, § 6, 38 Stat. 806; Feb. 27, 1925, ch. 364, 43 Stat. 1017.)

## DERIVATION

Act Aug. 18, 1856, ch. 127, § 8, 11 Stat. 55.

## § 122. Fixing time allowance for travel to and from post.

The Secretary of State, in a communication of June 13, 1939, declared section, act June 11, 1874, ch. 275, § 4, 18 Stat. 70, to be no longer operative because "The practice of establishing and making public maximum transit periods under this provision was abandoned following the issuance of an Executive order of February 25, 1915. The matter of transit time is now dealt with in chapter V, section 42 (c) of the Foreign Service Regulations, which reads:

"*Excess travel time.* No Foreign Service officer or employee traveling under orders or on leave with permission to visit the United States is entitled to salary in transit

for any time in excess of that actually and necessarily occupied in proceeding by direct route and generally adopted method of transport from his post to his place of residence or destination in the United States, or *vice versa*, and such time as may be necessarily occupied in awaiting sailing, except when complying with specific orders issued by the Department of State (sec. XXIV-467, part II) (22 U. S. C. § 17a)."

**§ 123. Repealed.** Feb. 23, 1931, ch. 276, § 22, 46 Stat. 1210.

Section, R. S. § 1742, limited time of absence for which salary should be paid.

**§ 124. Absence without leave; compensation withheld; sickness.**

No ambassador, envoy extraordinary, minister plenipotentiary, minister resident, commissioner to any foreign country, chargé d'affaires, secretary, interpreter to any legation in any foreign country, consul general, consul, consular pupils, or consular agent shall be absent from his post or the performance of his duties for a longer period than ten days at any one time, without the permission previously obtained of the President. And no compensation shall be allowed for the time of any such absence in any case except in cases of sickness. (June 17, 1874, ch. 294, 18 Stat. 77; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

**§ 125. Extra compensation prohibited.**

The compensation allowed by law to the various diplomatic and consular officers shall be in full for all the services rendered and personal expenses incurred by the persons respectively for whom such compensation is provided, of whatever kind such services or personal expenses may be, or by whatever treaty, law, or instructions they are required; and no allowance, other than such as is so provided, shall be made in any case for the outfit or return home of any such officer or person. (R. S. § 1743.)

**DERIVATION**

Act Aug. 18, 1856, ch. 127, § 20, 11 Stat. 59.

**CROSS REFERENCE**

Extra compensation to Foreign Service officers while in charge of consulates, see section 20 of this title.

**§ 126. Correspondence on affairs of foreign governments; recommendation for employment and acceptance of presents, etc.**

No diplomatic or consular officer shall correspond in regard to the public affairs of any foreign government with any private person, newspaper, or other periodical, or otherwise than with the proper officers of the United States; nor without the consent of the Secretary of State previously obtained, recommend any person at home or abroad for any employment of trust or profit under the Government of the country in which he is located; nor ask or accept, for himself or any other person, any present, emolument, pecuniary favor, office, or title of any kind from any such government. (June 17, 1874, ch. 294, 18 Stat. 77.)

**§ 127. Regulation of fees by President.**

The President is authorized to prescribe, from time to time, the rates or tariffs of fees to be charged for official services, and to designate what shall be re-

garded as official services, besides such as are expressly declared by law, in the business of the several embassies, legations, and consulates, and to adapt the same, by such differences as may be necessary or proper, to each embassy, legation, or consulate; and it shall be the duty of all officers and persons connected with such embassies, legations, and consulates to collect for such official services such and only such fees as may be prescribed for their respective embassies, legations, and consulates, and such rates or tariffs shall be reported annually to Congress. (R. S. § 1745; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

**DERIVATION**

Act Aug. 18, 1856, ch. 127, § 16, 11 Stat. 57.

**§ 128. Medium for payment of fees.**

All fees collected by diplomatic and consular officers for and in behalf of the United States shall be collected in the coin of the United States, or at its representative value in exchange. (R. S. § 1746.)

**DERIVATION**

Act Aug. 18, 1856, ch. 127, § 30, 11 Stat. 63.

**CROSS REFERENCE**

All coins and currencies of United States to be legal tender for payment of public charges, see section 462 of Title 31, Money and Finance.

**§ 129. Office paraphernalia.**

The President is authorized to provide at the public expense all such stationery, blanks, record and other books, seals, presses, flags, and signs as he shall think necessary for the several embassies, legations, and consulates in the transaction of their business. (R. S. § 1748; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

**DERIVATION**

Act Aug. 18, 1856, ch. 127, § 22, 11 Stat. 60.

**§ 130. Allowance to widow of deceased officer.**

Whenever any diplomatic or consular officer of the United States dies in a foreign country in the discharge of his duty, there shall be paid to his widow, or, if no widow survive him, then to his heirs at law, a sum of money equal to the allowance made to such officer for the time necessarily occupied in making the transit from his post of duty to his residence in the United States. (R. S. § 1749.)

**DERIVATION**

Act Feb. 22, 1873, ch. 184, § 2, 17 Stat. 474.

**§ 130a. Expenses of bringing home remains of personnel dying abroad.**

Payment shall be made for the expenses of the preparation and transportation of the remains of Diplomatic, Consular, and Foreign Service officers, and other employees of the Foreign Service, including Foreign Service inspectors, who have died or may die abroad or in transit while in the discharge of their official duties, to their former homes in this country or to a place not more distant for interment, and for the ordinary expenses of such interment. (Apr. 27, 1938, ch. 180, title I, § 1, 52 Stat. 250; June 29, 1939, ch. 248, title I, 53 Stat. 887; May 14, 1940, ch. 189, title I, 54 Stat. 184.)

## CODIFICATION

Section is based upon provisions contained in all annual appropriation acts providing funds for the Foreign Service beginning with act Feb. 26, 1883, ch. 56, § 1, 22 Stat. 430. Although each of these provisions is by its terms limited to its specific appropriation, the Secretary of State, in a communication dated June 13, 1939, recommended its incorporation into the code, saying: "As provision has been made in the annual appropriation acts for the past 56 years for the payment of expenses of this character, I believe that the continued repetition of this item in appropriation acts would amply justify the inclusion of this provision as a section of Title 22 in the next revision of the code."

**§ 130b. Expenses of transporting personnel, families and effects to and from posts.**

Payment shall be made for the traveling expenses, including travel by airplane when specifically authorized by the Secretary of State, of Diplomatic, Consular, and Foreign Service officers, and other employees of the Foreign Service, including Foreign Service inspectors, and under such regulations as the Secretary of State may prescribe, of their families and expenses of transportation of effects, in going to and returning from their posts, including expenses incurred in connection with leaves of absence. (Apr. 27, 1938, ch. 180, title I, § 1, 52 Stat. 250; June 29, 1939, ch. 248, title I, 53 Stat. 887; May 14, 1940, ch. 189, title I, 54 Stat. 183.)

## CODIFICATION

Section is based upon provisions contained in appropriation acts providing funds for the Foreign Service beginning with act June 16, 1906, ch. 3337, 34 Stat. 288. Although each of these provisions is by its terms limited to its specific appropriation, the Secretary of State, in a communication dated June 13, 1939, recommended its incorporation into the code, saying: "As the original provision with respect to this matter has been in force for 32 years and the enactment in its present broader form has been repeated in acts of Congress for the past 20 years, I believe that you would be warranting in incorporating a section in the revised edition of the code which would set forth this enactment with respect to the transportation of Foreign Service personnel in going to and returning from their posts and of their families and effects."

The Secretary of State, in the aforementioned communication of June 13, 1939, further requested that the following provision, which was incorporated in a Supplement to the Standardized Travel Regulations issued by the Secretary of State on April 27, 1927, after examination thereof by the Comptroller General, be set out as a note to this section: "The cost of packing and crating for shipment, as well as unpacking and uncrating, will be allowed in the case of effects shipped by freight, but not for those transported as baggage. The use of liftvans is authorized for the shipment of household effects when they can be used as economically as having the goods packed and crated in the ordinary manner."

**§ 131. Depositions and notarial acts; perjury.**

Every secretary of embassy or legation and consular officer is hereby authorized, whenever he is required or deems it necessary or proper so to do, at the post, port, place, or within the limits of his embassy, legation, or consulate, to administer to or take from any person an oath, affirmation, affidavit, or deposition, and to perform any notarial act which any notary public is required or authorized by law to do within the United States. Every such oath, affirmation, affidavit, deposition, and notarial act administered, sworn, affirmed, taken, had, or done, by or before any such officer, when certified under his hand and seal of office, shall be as valid, and of like

force and effect within the United States, to all intents and purposes, as if administered, sworn, affirmed, taken, had, or done, by or before any other person within the United States duly authorized and competent thereto. If any person shall willfully and corruptly commit perjury, or by any means procure any person to commit perjury in any such oath, affirmation, affidavit, or deposition, within the intent and meaning of any Act of Congress now or hereafter made, such offender may be charged, proceeded against, tried, convicted, and dealt with in any district of the United States, in the same manner, in all respects, as if such offense had been committed in the United States, before any officer duly authorized therein to administer or take such oath, affirmation, affidavit, or deposition, and shall be subject to the same punishment and disability therefor as are or shall be prescribed by any such act for such offense; and any document purporting to have affixed, impressed, or subscribed thereto or thereon the seal and signature of the officer administering or taking the same in testimony thereof, shall be admitted in evidence without proof of any such seal or signature being genuine or of the official character of such person; and if any person shall forge any such seal or signature, or shall tender in evidence any such document with a false or counterfeit seal or signature thereto, knowing the same to be false or counterfeit, he shall be deemed and taken to be guilty of a misdemeanor and on conviction shall be imprisoned not exceeding three years nor less than one year, and fined in a sum not to exceed \$3,000, and may be charged, proceeded against, tried, convicted, and dealt with therefor in the district where he may be arrested or in custody. (R. S. § 1750; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

## DERIVATION

Act Aug. 18, 1856, ch. 127, § 24, 11 Stat. 61.

**§ 132. General regulations by President for Diplomatic and Consular Service.**

The President is authorized to prescribe such regulations, and make and issue such orders and instructions, not inconsistent with the Constitution or any law of the United States, in relation to the duties of all diplomatic and consular officers, the transaction of their business, the rendering of accounts and returns, the payment of compensation, the safe-keeping of the archives and public property in the hands of all such officers, the communication of information, and the procurement and transmission of the products of the arts, sciences, manufactures, agriculture, and commerce, from time to time, as he may think conducive to the public interest. It shall be the duty of all such officers to conform to such regulations, orders, and instructions. (R. S. § 1752.)

## DERIVATION

Act Aug. 18, 1856, ch. 127, § 22, 11 Stat. 60.

**§ 133. Repealed. May 7, 1926, ch. 250, § 7, 44 Stat. 405.**

Section, act Feb. 17, 1911, ch. 105, 36 Stat. 917, provided for purchase of buildings for Diplomatic and Consular Service.



### § 134. Gifts of buildings, etc., for Diplomatic and Consular Service.

The President is authorized in his discretion to accept on behalf of the United States unconditional gifts of land, buildings, furniture, and furnishings, or any of them, for the use of diplomatic and consular offices and residences. (Mar. 2, 1921, ch. 113, 41 Stat. 1215.)

#### CROSS REFERENCE

Foreign Service buildings, see sections 291–299 of this title.

### § 135. Protection of diplomatic codes.

Whoever, by virtue of his employment by the United States, shall obtain from another or shall have custody of or access to, or shall have had custody of or access to, any official diplomatic code or any matter prepared in any such code, or which purports to have been prepared in any such code, and shall willfully, without authorization or competent authority, publish or furnish to another any such code or matter, or any matter which was obtained while in the process of transmission between any foreign government and its diplomatic mission in the United States, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both. (June 10, 1933, ch. 57, 48 Stat. 122.)

## Chapter 2.—CONSULAR COURTS

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### § 141. Judicial authority generally.

To carry into full effect the provisions of the treaties of the United States with certain foreign countries, the ministers and consuls of the United States in China, Siam, Turkey, Morocco, Muscat, Abyssinia, Persia, and the territories formerly a part of the former Ottoman Empire including Egypt, duly appointed to reside therein, shall, in addition to other powers and duties imposed upon them, respectively, by the provisions of such treaties, respectively, be invested with judicial authority described in sections 72, 141–143, 145–159, 163–174, 176–181, 183, 211, 212, 218, 219, 251–258 of this title, sections 701–704 of Title 28, and sections 21–24 of Title 50, which shall appertain to the office of minister and consul, and be a part of the duties belonging thereto, wherein, and so far as, the same is allowed by treaty, and in accordance with the usages of the countries in their intercourse with the Franks or other foreign Christian nations. (R. S. §§ 4083, 4125, 4126, 4127; June 14, 1878, ch. 193, 20 Stat. 131.)

#### DERIVATION

R. S. § 4083 was from act June 22, 1860, ch. 179, § 1, 12 Stat. 72; act July 28, 1866, ch. 296, § 11, 14 Stat. 322; act July 1, 1870, ch. 194, § 1, 16 Stat. 183.

R. S. §§ 4125–4127 were from act June 22, 1860, ch. 179, §§ 21, 28, 29, 12 Stat. 76.

#### CROSS REFERENCE

United States Court for China, see section 191 et seq. of this title.

### § 142. General jurisdiction in criminal cases.

The officers mentioned in section 141 of this title are fully empowered to arraign and try, in the manner provided in sections 72, 141–143, 145–159, 163–174, 176–181, 183, 211, 212, 218, 219, 251–258 of this title, sections 701–704 of Title 28, and sections 21–24 of Title 50, all citizens of the United States charged with offenses against law, committed in such countries, respectively, and to sentence such offenders in the manner in such sections authorized; and each of them is authorized to issue all such processes as are suitable and necessary to carry this authority into execution. (R. S. § 4084.)

#### DERIVATION

Act June 22, 1860, ch. 179, § 2, 12 Stat. 72.

### § 143. General jurisdiction in civil cases; venue.

Such officers are also invested with all the judicial authority necessary to execute the provisions of such treaties, respectively, in regard to civil rights, whether of property or person; and they shall enter-

tain jurisdiction in matters of contract, at the port where, or nearest to which, the contract was made, or at the port at which, or nearest to which, it was to be executed, and in all other matters, at the port where, or nearest to which, the cause of controversy arose, or at the port where, or nearest to which, the damage complained of was sustained, provided such port be one of the ports at which the United States are represented by consuls. Such jurisdiction shall embrace all controversies between citizens of the United States, or others, provided for by such treaties, respectively. (R. S. § 4085.)

## DERIVATION

Act June 22, 1860, ch. 179, § 3, 12 Stat. 73.

#### § 144. Vice consul at Shanghai to exercise judicial functions of consul general.

Section, act Mar. 2, 1909, ch. 235, 35 Stat. 679; Mar. 4, 1915, ch. 145, 38 Stat. 1122, is now set out as section 197c of this title.

#### § 145. System of laws to be applied.

Jurisdiction in both criminal and civil matters shall, in all cases, be exercised and enforced in conformity with the laws of the United States, which are hereby, so far as is necessary to execute such treaties, respectively, and so far as they are suitable to carry the same into effect, extended over all citizens of the United States in those countries, and over all others to the extent that the terms of the treaties, respectively, justify or require. But in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies, the common law and the law of equity and admiralty shall be extended in like manner over such citizens and others in those countries; and if neither the common law, nor the law of equity or admiralty, nor the statutes of the United States, furnish appropriate and sufficient remedies, the ministers in those countries, respectively, shall, by decrees and regulations which shall have the force of law, supply such defects and deficiencies. (R. S. § 4086.)

## DERIVATION

Act June 22, 1860, ch. 179, § 4, 12 Stat. 73.

#### § 146. Rules and regulations for consular court generally.

In order to organize and carry into effect the system of jurisprudence demanded by such treaties, respectively, the ministers, with the advice of the several consuls in each of the countries, respectively, or of so many of them as can be conveniently assembled, shall prescribe the forms of all processes to be issued by any of the consuls; the mode of executing and the time of returning the same; the manner in which trials shall be conducted and how the records thereof shall be kept; the form of oaths for Christian witnesses, and the mode of examining all other witnesses; the costs to be allowed to the prevailing party, and the fees to be paid for judicial services; the manner in which all officers and agents to execute process, and to carry sections 72, 141-143, 145-159, 163-174, 176-181, 183, 211, 212, 218, 219, 251-258, of this title, sections 701-704 of Title 28, and sections 21-24 of Title 50 into effect, shall be appointed and compensated; the form of bail bonds, and the security which

shall be required of the party who appeals from the decision of a consul; and shall make all such further decrees and regulations from time to time, under the provisions of such sections, as the exigency may demand. (R. S. § 4117.)

## DERIVATION

Act June 22, 1860, ch. 179, § 5, 13 Stat. 73.

#### § 147. Dissent of consuls to and publication of rules, etc.

All such regulations, decrees, and orders shall be plainly drawn up in writing and submitted, as in section 146 of this title provided, for the advice of the consuls, or as many of them as can be consulted without prejudicial delay or inconvenience, and such consul shall signify his assent or dissent in writing, with his name subscribed thereto. After taking such advice, and considering the same, the minister in each of those countries may, nevertheless, by causing the decree, order, or regulation to be published with his signature thereto, and the opinions of his advisers inscribed thereon, make it binding and obligatory until annulled or modified by Congress; and it shall take effect from the publication or any subsequent day thereto named in the act. (R. S. § 4118.)

## DERIVATION

Act June 22, 1860, ch. 179, § 5, 13 Stat. 73.

#### § 148. Transmission of rules, etc., to Secretary of State.

All such regulations, orders, and decrees shall, as speedily as may be after publication, be transmitted by the ministers, with the opinions of their advisers, as drawn up by them severally, to the Secretary of State, to be laid before Congress for revision. (R. S. § 4119.)

## DERIVATION

Act June 22, 1860, ch. 179, § 6, 13 Stat. 73.

#### § 149. Warrant, arrest, trial, and sentence by consul generally.

Each of the consuls mentioned in section 141 of this title, at the port for which he is appointed, is authorized upon facts within his own knowledge, or which he has good reason to believe true, or upon complaint made or information filed in writing and authenticated in such way as shall be prescribed by the minister, to issue his warrant for the arrest of any citizen of the United States charged with committing in the country an offense against law; and to arraign and try any such offender; and to sentence him to punishment in the manner prescribed in sections 72, 141-143, 145-159, 163-174, 176-181, 183, 211, 212, 218, 219, 251-258 of this title, sections 701-704 of Title 28, and sections 21-24 of Title 50. (R. S. § 4087.)

## DERIVATION

Act June 22, 1860, ch. 179, § 7, 12 Stat. 74.

#### § 150. Jurisdiction of consul in criminal cases when sitting alone; when decision final.

Any consul, when sitting alone for the trial of offenses or misdemeanors, shall decide finally all cases where the fine imposed does not exceed \$100, or the term of imprisonment does not exceed sixty days. (R. S. § 4105.)

## DERIVATION

Act June 22, 1860, ch. 179, § 8, 12 Stat. 74.

**§ 151. Jurisdiction of consul in criminal cases when sitting alone; when appeal to minister lies.**

Any consul when sitting alone may also decide all cases in which the fine imposed does not exceed \$500, or the term of imprisonment does not exceed ninety days; but in all such cases, if the fine exceeds \$100, or the term of imprisonment for misdemeanor exceeds sixty days, the defendants or any of them, if there be more than one, may take the case, by appeal, before the minister, if allowed jurisdiction, either upon errors of law or matters of fact, under such rules as may be prescribed by the minister for the prosecution of appeals in such cases. (R. S. § 4089.)

## DERIVATION

Act June 22, 1860, ch. 179, § 9, 12 Stat. 74.

**§ 152. Calling in associates in criminal cases; reference to minister on disagreement.**

Whenever, in any case, the consul is of opinion that, by reason of the legal questions which may arise therein, assistance will be useful to him, or whenever he is of opinion that severer punishments than those specified in sections 150, 151 of this title will be required, he shall summon, to sit with him on the trial, one or more citizens of the United States, not exceeding four, and in capital cases not less than four, who shall be taken by lot from a list which had previously been submitted to and approved by the minister, and shall be persons of good repute and competent for the duty. Every such associate shall enter upon the record his judgment and opinion, and shall sign the same; but the consul shall give judgment in the case. If the consul and his associates concur in opinion, the decisions shall, in all cases, except of capital offenses and except as provided in section 151 of this title, be final. If any of the associates differ in opinion from the consul, the case, without further proceedings, together with the evidence and opinions, shall be referred to the minister for his adjudication, either by entering up judgment therein, or by remitting the same to the consul with instructions how to proceed therewith. (R. S. § 4106.)

## DERIVATION

Act June 22, 1860, ch. 179, § 10, 12 Stat. 74.

## CROSS REFERENCE

Provisions of this section and section 153 of this title, allowing consuls in certain cases to summon associates, to have no application to United States Court for China, see section 196 of this title.

**§ 153. Jurisdiction of consuls in civil cases; finality; associates in civil cases; reference to minister on disagreement.**

Each of the consuls mentioned in section 141 of this title shall have at the port for which he is appointed, jurisdiction as herein provided, in all civil cases arising under such treaties, respectively, wherein the damages demanded do not exceed the sum of \$500; and, if he sees fit to decide the same without aid, his decision thereon shall be final. But whenever he is of opinion that any such case involves legal perplexities, and that assistance will be useful

to him, or whenever the damages demanded exceed \$500, he shall summon, to sit with him on the hearing of the case, not less than two nor more than three citizens of the United States, if such are residing at the port, who shall be taken from a list which had previously been submitted to and approved by the minister, and shall be of good repute and competent for the duty. Every such associate shall note upon the record his opinion, and also, in case he dissents from the consul, such reasons therefor as he thinks proper to assign; but the consul shall give judgment in the case. If the consul and his associates concur in opinion, the judgment shall be final. If any of the associates differ in opinion from the consul, either party may appeal to the minister, under such regulations as may exist; but if no appeal is lawfully claimed, the decision of the consul shall be final. (R. S. § 4107.)

## DERIVATION

Act June 22, 1860, ch. 179, § 11, 12 Stat. 74.

## CROSS REFERENCE

Provisions of this section and section 152 of this title, allowing consuls in certain cases to summon associates, to have no application to United States Court for China, see section 196 of this title.

**§ 154. Evidence; how taken.**

In all cases, criminal and civil, the evidence shall be taken down in writing in open court, under such regulations as may be made for that purpose; and all objections to the competency or character of testimony shall be noted, with the ruling in all such cases, and the evidence shall be part of the case. (R. S. § 4097.)

## DERIVATION

Act July 1, 1870, ch. 194, § 12, 16 Stat. 75.

**§ 155. Punishment generally; contempt.**

In all cases, except as, in sections 72, 141-143, 145-159, 163-174, 176-181, 183, 211, 212, 218, 219, 251-258 of this title, sections 701-704 of Title 28, and sections 21-24 of Title 50, otherwise provided, the punishment of crime provided for by such sections shall be by fine or imprisonment, or both, at the discretion of the officer who decides the case, but subject to the regulations in such sections contained, and such as may hereafter be made. It shall, however, be the duty of such officer to award punishment according to the magnitude and aggravation of the offense. Every person who refuses or neglects to comply with the sentence passed upon him shall stand committed until he does comply, or is discharged by order of the consul, with the consent of the minister in the country. (R. S. § 4101.)

## DERIVATION

Act June 22, 1860, ch. 179, § 14, 12 Stat. 75.

**§ 156. Capital offenses; requisites for convictions; conviction of lesser offense.**

Insurrection or rebellion against the government of either of the countries mentioned in section 141 of this title, with intent to subvert the same, and murder, shall be capital offenses, punishable with death; but no person shall be convicted of either of those crimes, unless the consul and his associates in the trial all concur in opinion, and the minister also

approves of the conviction. But it shall be lawful to convict one put upon trial for either of these crimes, of a less offense of a similar character, if the evidence justifies it, and to punish, as for other offenses, by fine or imprisonment, or both. (R. S. § 4102.)

## DERIVATION

Act June 22, 1860, ch. 179, § 15, 12 Stat. 75.

## § 157. Punishment for contempt of court.

No fine imposed by a consul for a contempt committed in presence of the court, or for failing to obey a summons from the same, shall exceed \$50; nor shall the imprisonment exceed twenty-four hours for the same contempt. (R. S. § 4104.)

## DERIVATION

Act June 22, 1860, ch. 179, § 8, 12 Stat. 74.

## § 158. Execution of criminals; pardons.

Whenever any person is convicted of either of the crimes punishable with death, in either of the countries mentioned in section 141 of this title, it shall be the duty of the minister to issue his warrant for the execution of the convict, appointing the time, place, and manner; but if the minister is satisfied that the ends of public justice demand it, he may from time to time postpone such execution; and if he finds mitigating circumstances which authorize it, he may submit the case to the President for pardon. (R. S. § 4103.)

## DERIVATION

Act June 22, 1860, ch. 179, § 15, 12 Stat. 75.

## § 159. Fees for judicial services; application of moneys; rendition of accounts.

It shall be the duty of the minister in each of the countries mentioned in section 141 of this title to establish a tariff of fees for judicial services, which shall be paid by such parties, and to such persons, as the minister shall direct; and the proceeds shall, as far as is necessary, be applied to defray the expenses incident to the execution of sections 72, 141-143, 145-159, 163-174, 176-181, 183, 211, 212, 218, 219, 251-258 of this title, sections 701-704 of Title 28, and sections 21-24 of Title 50; and regular accounts, both of receipts and expenditures, shall be kept by the minister and consuls and transmitted annually to the Secretary of State. (R. S. § 4120.)

## DERIVATION

Act June 22, 1860, ch. 179, § 17, 12 Stat. 75.

## § 160. Settlement of criminal cases.

In all criminal cases which are not of a heinous character, it shall be lawful for the parties aggrieved or concerned therein, with the assent of the minister in the country, or consul, to adjust and settle the same among themselves, upon pecuniary or other considerations. (R. S. § 4099.)

## DERIVATION

Act June 22, 1860, ch. 179, § 18, 12 Stat. 76.

## § 161. Arbitration, reference, and compromise of civil cases.

It shall be the duty of the ministers and the consuls in the countries mentioned in section 141 of this title

to encourage the settlement of controversies of a civil character, by mutual agreement, or to submit them to the decision of referees agreed upon by the parties; and the minister in each country shall prepare a form of submission for such cases, to be signed by the parties, and acknowledged before the consul. When parties have so agreed to refer, the referees may, after suitable notice of the time and place of meeting for the trial, proceed to hear the case, and a majority of them shall have power to decide the matter. If either party refuses or neglects to appear, the referees may proceed *ex parte*. After hearing any case such referees may deliver their award, sealed, to the consul, who, in court, shall open the same; and if he accepts it, he shall indorse the fact, and judgment shall be rendered thereon, and execution issue in compliance with the terms thereof. The parties, however, may always settle the same before return thereof is made to the consul. (R. S. § 4098.)

## DERIVATION

Act June 22, 1860, ch. 179, § 19, 12 Stat. 76.

## § 162. Aid of local authorities invoked.

The ministers and consuls shall be fully authorized to call upon the local authorities to sustain and support them in the execution of the powers confided to them by treaty, and on their part to do and perform whatever is necessary to carry the provisions of the treaties into full effect, so far as they are to be executed in the countries, respectively. (R. S. § 4100.)

## DERIVATION

Act June 22, 1860, ch. 179, § 20, 12 Stat. 76.

## § 163. Where jurisdiction of minister exercised.

The jurisdiction allowed by treaty to the ministers, respectively, in the countries named in section 141 of this title shall be exercised by them in those countries, respectively, wherever they may be. (R. S. § 4108.)

## DERIVATION

Act June 22, 1860, ch. 179, § 27, 12 Stat. 78.

## § 164. Jurisdiction of minister; when appellate and when original.

The jurisdiction of such ministers in all matters of civil redress, or of crimes, except in capital cases for murder or insurrection against the governments of such countries, respectively, or for offenses against the public peace amounting to felony under the laws of the United States, shall be appellate only: *Provided*, That in cases where a consular officer is interested, either as party or witness, such minister shall have original jurisdiction. (R. S. § 4109.)

## DERIVATION

Act June 22, 1860, ch. 179, § 27, 12 Stat. 78.

## § 165. Appellate jurisdiction of minister; new trials.

Each of the ministers mentioned in section 141 of this title shall, in the country to which he is appointed, be fully authorized to hear and decide all cases, criminal and civil, which may come before him, by appeal, under the provisions of sections 72, 141-143, 145-159, 163-174, 176-181, 183, 211, 212, 218, 219,

251–258 of this title, sections 701–704 of Title 28, and sections 21–24 of Title 50, and to issue all processes necessary to execute the power conferred upon him; and he is fully empowered to decide finally any case upon the evidence which comes up with it, or to hear the parties further, if he thinks justice will be promoted thereby; and he may also prescribe the rules upon which new trials may be granted, either by the consuls or by himself, if asked for upon sufficient grounds. (R. S. § 4091.)

## DERIVATION

Act June 22, 1860, ch. 179, § 13, 12 Stat. 75.

#### § 166. Jurisdiction of minister to try capital and felony cases.

Capital cases for murder or insurrection against the government of either of the countries mentioned in section 141 of this title, by citizens of the United States, or for offenses against the public peace amounting to felony under the laws of the United States, may be tried before the minister of the United States in the country where the offense is committed if allowed jurisdiction. (R. S. § 4090.)

## DERIVATION

Act June 22, 1860, ch. 179, § 24, 12 Stat. 77.

#### § 167. Prevention of American citizens from enlisting with foreign countries.

Each such minister mentioned in section 166 of this title may issue all manner of writs, to prevent the citizens of the United States from enlisting in the military or naval service of either of the countries mentioned in section 141 of this title, to make war upon any foreign power with whom the United States are at peace, or in the service of one portion of the people against any other portion of the same people; and he may carry out this power by a resort to such force belonging to the United States as may at the time be within his reach. (R. S. § 4090.)

## DERIVATION

Act June 22, 1860, ch. 179, § 24, 12 Stat. 77.

#### § 168. Marshals of consular courts; appointment and salary.

The President is authorized to appoint marshals for such of the consular courts as he may think proper, not to exceed two in number, namely: One in Siam and one in Turkey, each of whom shall receive a salary of \$1,000 a year, in addition to the fees allowed by the regulations of the ministers, respectively, in those countries: *Provided*, That no salary shall be allowed the marshal at the consulate in Siam. (R. S. §§ 1693, 4111; June 30, 1906, ch. 3934, § 8, 34 Stat. 816.)

## DERIVATION

R. S. § 1693 was from act Mar. 3, 1869, ch. 125, § 7, 15 Stat. 322.

R. S. § 4111 was from act June 22, 1860, ch. 179, § 25, 12 Stat. 77.

#### § 169. Execution and return of process by marshal.

It shall be the duty of the marshals, respectively, to execute all process issued by the minister of the United States in those countries, respectively, or by the consul at the port at which they reside, and to

make due return thereof to the officer by whom it was issued, and to conform in all respects to the regulations prescribed by the ministers, respectively, in regard to their duties. (R. S. § 4112.)

## DERIVATION

Act June 22, 1860, ch. 179, § 25, 12 Stat. 77.

#### § 170. Bond of marshal.

Each marshal, before entering upon the duties of his office, shall give bond for the faithful performance thereof in a penal sum not to exceed \$10,000, with two sureties to be approved by the Secretary of State. Such bond shall be transmitted to the Secretary of the Treasury, and a certified copy thereof be lodged in the office of the minister. (R. S. § 4113.)

## DERIVATION

Act June 22, 1860, ch. 179, § 25, 12 Stat. 77.

#### § 171. Suit on bond of marshal.

Whenever any person desires to bring suit upon the bond of any such marshal, it shall be the duty of the Secretary of the Treasury, or of the minister having custody of a copy of the same, to give to the person so applying a certified copy thereof, upon which suit may be brought and prosecuted with the same effect as could be done upon the original: *Provided*, The Secretary of the Treasury, or the minister to whom the application is made, is satisfied that there is probable cause of action against the marshal. (R. S. § 4114.)

## DERIVATION

Act June 22, 1860, ch. 179, § 25, 12 Stat. 77.

#### § 172. Necessity for production of original bond.

Upon a plea of non est factum, verified upon oath, or any other good cause shown, the court or the consul or minister trying the cause may require the original bond of the marshal to be produced; and it shall be the duty of the Secretary of the Treasury to forward the original bond to the court, or consul, or minister requiring the same. (R. S. § 4115.)

## DERIVATION

Act June 22, 1860, ch. 179, § 25, 12 Stat. 77.

#### § 173. Service of process, etc., in suit on bond of marshal.

All rules, orders, writs, and processes of every kind which are intended to operate or be enforced against any of the marshals, in any of the countries named in section 141 of this title, shall be directed to and executed by such persons as may be appointed for that purpose by the minister or consul issuing the same. (R. S. § 4116.)

## DERIVATION

Act June 22, 1860, ch. 179, § 25, 12 Stat. 77.

#### § 174. Expenses of prisons in foreign countries.

The President, when provision is not otherwise made, is authorized to allow, in the adjustment of the accounts of each of the ministers or consuls, the actual expenses of the rent of suitable buildings or parts of buildings to be used as prisons for American convicts in the countries mentioned in section 141 of this title, not to exceed in any case the rate of \$600 a year; and also the wages of the keepers of the same,

and for the care of offenders, not to exceed, in any case, the sum of \$800 per annum. But no more than four prisons shall be hired in China, one in Turkey, and one in Siam, at such port or ports as the minister, with the sanction of the President, may designate, and the entire expense of prison and prison keepers at the consulate at Bangkok, in Siam, shall not exceed the sum of \$1,000 a year.

The President is authorized to allow, in the adjustment of the accounts of the consul general at Shanghai, the actual expense of the rent of a suitable building, to be used as a prison for American convicts in China, not to exceed \$1,500 a year; and also the wages of the keepers of the same, and for the care of offenders, not to exceed \$5,000 a year; and to allow, in the adjustment of the accounts of the consuls at other ports in China, the actual expense of the hire of constables and the care of offenders, not to exceed in all \$5,000 a year. (R. S. §§ 4121, 4122.)

## DERIVATION

R. S. § 4121 was from act June 22, 1860, ch. 179, § 26, 12 Stat. 77; act Mar. 3, 1869, ch. 125, § 7, 15 Stat. 322.

R. S. § 4122 was from act July 1, 1870, ch. 194, § 9, 16 Stat. 184.

## § 175. Allowance for keeping and feeding prisoners.

No more than 50 cents per day for the keeping and feeding of each prisoner while actually confined shall be allowed or paid for any such keeping and feeding. This is not to be understood as covering cost of medical attendance and medicines when required by such prisoners. (Mar. 2, 1901, ch. 802, § 1 Stat. 893.)

## § 176. Secretary of State to exercise judicial duties when no minister.

If at any time there be no minister in either of the countries mentioned in section 141 of this title, the judicial duties which are imposed by sections 72, 141-143, 145-159, 163-174, 176-181, 183, 211, 212, 218, 219, 251-258 of this title, sections 701-704 of Title 28, and sections 21-24 of Title 50 upon the minister shall devolve upon the Secretary of State, who is authorized and required to discharge the same. (R. S. § 4128.)

## DERIVATION

Act June 22, 1860, ch. 179, § 22, 12 Stat. 76; act July 1, 1870, ch. 194, § 2, 16 Stat. 183.

## § 177. General extension to unnamed countries.

The provisions of sections 72, 141-143, 145-159, 163-174, 176-181, 183, 211, 212, 218, 219, 251-258 of this title, sections 701-704 of Title 28, and sections 21-24 of Title 50 relating to the jurisdiction of consular and diplomatic officers over civil and criminal cases in the countries mentioned in section 141 of this title shall extend to any country of like character with which the United States may after July 1, 1870, enter into treaty relations. And whenever the United States shall negotiate a treaty with any foreign government, in which the American consul general or consul shall be clothed with judicial authority, and securing the right of trial to American citizens residing therein before such consul general or consul, and containing provisions similar to or

like those contained in the treaties with the governments named in section 141 of this title, then such sections, so far as the same may be applicable, shall have full force in reference to said treaty, and shall extend to the country of the government negotiating the same. (R. S. §§ 4127, 4129; June 14, 1878, ch. 193, 20 Stat. 131.)

## DERIVATION

R. S. § 4127 was from act June 22, 1860, ch. 179, § 29, 12 Stat. 78.

R. S. § 4129 was from act July 1, 1870, ch. 194, § 1, 16 Stat. 183.

## § 178. "Minister" and "consul" defined.

The word "minister", when used in sections 72, 141-143, 145-159, 163-174, 176-181, 183, 211, 212, 218, 219, 251-258 of this title, sections 701-704 of Title 28, and sections 21-24 of Title 50 shall be understood to mean the person invested with, and exercising, the principal diplomatic functions. The word "consul" shall be understood to mean any person invested by the United States with, and exercising, the functions of consul general, consul, or vice consul. (R. S. § 4130; Feb. 1, 1876, ch. 6, 19 Stat. 2; Feb. 5, 1915, ch. 23, § 6, 38 Stat. 806.)

## DERIVATION

Act June 22, 1860, ch. 179, § 22, 12 Stat. 76; act July 1, 1870, ch. 194, § 2, 16 Stat. 183.

## § 179. Responsibility as judicial officers.

All such officers shall be responsible for their conduct to the United States, and to the laws thereof, not only as diplomatic or consular officers, but as judicial officers, when they perform judicial duties, and shall be held liable for all negligences and misconduct as public officers. (R. S. § 4110.)

## DERIVATION

Act June 22, 1860, ch. 179, § 23, 12 Stat. 76.

## § 180. Power of consuls in uncivilized countries or countries not recognized by treaties.

The consuls of the United States at islands or in countries not inhabited by any civilized people, or recognized by any treaty with the United States, are authorized to try, hear, and determine all cases in regard to civil rights, whether of person or property, where the real debt or damages do not exceed the sum of \$1,000, exclusive of costs, and upon full hearing of the allegations and evidence of both parties, to give judgment according to the laws of the United States, and according to the equity and right of the matter, in the same manner as justices of the peace were, prior to June 22, 1860, authorized and empowered where the United States have exclusive jurisdiction. They are also invested with the powers conferred by the provisions of sections 145 and 149 of this title for trial of offenses or misdemeanors. (R. S. § 4088; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

## DERIVATION

Act June 22, 1860, ch. 179, § 30, 12 Stat. 78.

## § 181. Provisions of chapter extended to Turkey.

The provisions of sections 72, 141-143, 145-159, 163-174, 176-181, 183, 211, 212, 218, 219, 251-258 of this title, sections 701-704 of Title 28, and sections

21-24 of Title 50, so far as the same relate to crimes and offenses committed by citizens of the United States, shall extend to Turkey, under the treaty with the Sublime Porte of May 7, 1830, and shall be executed in the Ottoman dominions in conformity with the provisions of the treaty, and of such sections, by the ambassador and the consuls appointed to reside therein, who are hereby ex-officio vested with the powers in such sections conferred upon ministers and consuls in China, for the purposes above expressed, so far as regards the punishment of crime, and also for the exercise of jurisdiction in civil cases wherein the same is permitted by the laws of Turkey, or its usages in its intercourse with the Franks, or other foreign Christian nations. (R. S. § 4125; Feb. 27, 1925, ch. 364, 43 Stat. 1015.)

## DERIVATION

Act June 22, 1860, ch. 179, § 21, 12 Stat. 76.

## CROSS REFERENCE

United States Court for China, see sections 191-202 of this title.

### § 182. Suspension by President of consular courts in Turkey and in Egypt.

Whenever the President of the United States shall receive satisfactory information that the Ottoman Government, or that of Egypt, has organized other tribunals on a basis likely to secure to citizens of the United States, in their dominions, the same impartial justice which they now enjoy there under the judicial functions exercised by the minister, consuls, and other functionaries of the United States, pursuant to sections 72, 141-143, 145-159, 163-174, 176-181, 183, 211, 212, 218, 219, 251-258 of this title, sections 701-704 of Title 28, and sections 21-24 of Title 50, he is hereby authorized to suspend the operations of such sections as to the dominions in which such tribunals may be organized, so far as the jurisdiction of said tribunals may embrace matters now cognizable by the minister, consuls, or other functionaries of the United States in said dominions, and to notify the Government of the Sublime Porte, or that of Egypt, or either of them, that the United States, during such suspension will, as aforesaid, accept for their citizens the jurisdiction of the tribunals aforesaid over citizens of the United States which has heretofore been exercised by the minister, consuls, or other functionaries of the United States. (Mar. 23, 1874, ch. 62, § 1, 18 Stat. 23.)

### § 183. Extension of provisions of chapter to Persia; suits between American citizens and subjects of Persia and other countries.

The provisions of sections 72, 141-143, 145-159, 163-174, 176-181, 183, 211, 212, 218, 219, 251-258 of this title, sections 701-704 of Title 28, and sections 21-24 of Title 50 shall extend to Persia, in respect to all suits and disputes which may arise between citizens of the United States therein; and the minister and consuls who may be appointed to reside in Persia are hereby invested, in relation to such suits and disputes, with such powers as are by such sections conferred upon ministers and consuls in China. All suits and disputes arising in Persia between Persian subjects and citizens of the United States shall

be carried before the Persian tribunal to which such matters are usually referred, at the place where a consul or agent of the United States may reside, and shall be discussed and decided according to equity, in the presence of an employee of the consul or agent of the United States; and it shall be the duty of the consular officer to attend the trial in person, and see that justice is administered. All suits and disputes occurring in Persia between the citizens of the United States and the subjects of other foreign powers, shall be tried and adjudicated by the intermediation of their respective ministers or consuls, in accordance with such regulations as shall be mutually agreed upon by the minister of the United States for the time being, and the ministers of such foreign powers, respectively, which regulations shall from time to time be submitted to the Secretary of State. (R. S. § 4126.)

## DERIVATION

Act June 22, 1860, ch. 179, § 28, 12 Stat. 78.

## Chapter 3.—UNITED STATES COURT FOR CHINA

## Sec.

191. Establishment of court; sessions; seal; writs; processes, etc.
192. Jurisdiction of consular courts restricted; appeal from consular courts.
193. Administration of estates of decedents.
194. Appeals for review of judgments, etc., of court.
195. Law applicable to determination of cases.
196. Procedure generally; exclusion of associate aids.
197. Officers of court; appointment and salaries.
- 197a. Salary of judge.
- 197b. Special judge; appointment and compensation.
- 197c. Vice consul at Shanghai to exercise judicial functions of consul general.
198. Commissioner for court; appointment; powers and compensation; district of Shanghai.
- 198a. Commissioner for court; judge of consular court; appointment; compensation; clerk as substitute.
199. Tenure of office of judge; removal of other officers by President.
200. Bond of marshal and clerk; deputies; bond and compensation of deputies.
201. Expenses of judge and of district attorney in attendance on sessions in other cities than Shanghai.
202. Fees of marshal and clerk; payment into Treasury.

### § 191. Establishment of court; sessions; seal; writs; processes, etc.

A court is hereby established, to be called the United States Court for China, which shall have exclusive jurisdiction in all cases and judicial proceedings whereof jurisdiction may have been exercised, prior to June 30, 1906, by United States consuls and ministers by law and by virtue of treaties between the United States and China except insofar as the said jurisdiction is qualified by sections 192 and 193 of this title; and to<sup>1</sup> concurrent jurisdiction of all offenses committed on the high seas in cases in which the person or persons charged with such offenses shall be found in or be brought first into China. The said court shall hold sessions at Shanghai, China, and shall also hold sessions at the cities of Canton, Tientsin, and Hankau at stated periods, the dates of such sessions at each city to be announced in such manner as the court shall direct, and a session of the court shall be held in each of these cities at least once annually. It shall be within the power of the



judge, upon due notice to the parties in litigation, to open and hold court for the hearing of a special cause at any place permitted by the treaties, and where there is a United States consulate, when, in his judgment, it shall be required by the convenience of witnesses, or by some public interest. The place of sitting of the court shall be in the United States consulate at each of the cities, respectively.

The seal of the said United States Court for China shall be the arms of the United States, engraved on a circular piece of steel of the size of a half dollar, with these words on the margin, "The Seal of the United States Court for China."

The seal of said court shall be provided at the expense of the United States.

All writs and processes issuing from the said court and all transcripts,<sup>1</sup> records, copies, jurats, acknowledgments, and other papers requiring certification or to be under seal may be authenticated by said seal, and shall be signed by the clerk of said court. All processes issued from the said court shall bear test from the day of such issue. (June 30, 1906, ch. 3934, § 1, 34 Stat. 814; June 24, 1936, ch. 757, 49 Stat. 1909.)

<sup>1</sup> So in original. Word "to" is probably superfluous.

<sup>2</sup> So in original.

#### TRANSFER OF FUNCTIONS

The United States Court for China has been transferred to the Department of Justice by Ex. Ord. No. 6166, § 6, June 10, 1933, set out in note to section 182 of Title 5, Executive Departments and Government Officers and Employees.

#### § 192. Jurisdiction of consular courts restricted; appeal from consular courts.

Consuls of the United States in the cities of China to which they are respectively accredited shall have the same jurisdiction as they, prior to June 30, 1906, possessed in civil cases where the sum or value of the property involved in the controversy does not exceed \$500 United States money and in criminal cases where the punishment for the offense charged cannot exceed by law \$100 fine or sixty days' imprisonment, or both, and shall have power to arrest, examine, and discharge accused persons or commit them to the said court. From all final judgments of the consular court either party shall have the right of appeal to the United States Court for China. (June 30, 1906, ch. 3934, § 2, 34 Stat. 814.)

#### CROSS REFERENCE

Commissioner of United States Court for China to be ex officio judge of consular court for district of Shanghai, see section 198 of this title.

#### § 193. Administration of estates of decedents.

The United States Court for China shall have and exercise supervisory control over the discharge by consuls and vice consuls of the duties prescribed by the laws of the United States relating to the estates of decedents in China. Within sixty days after the death in China of any citizen of the United States, or any citizen of any territory belonging to the United States, the consul or vice consul whose duty it becomes to take possession of the effects of such deceased person under the laws of the United States shall file with the clerk of said court a sworn inventory of such effects, and shall, as additional effects

come from time to time into his possession, immediately file a supplemental inventory or inventories of the same. He shall also file with the clerk of said court within said sixty days a schedule, under oath, of the debts of said decedent, so far as known, and a schedule or statement of all additional debts thereafter discovered. Such consul or vice consul shall pay no claims against the estate without the written approval of the judge of said court, nor shall he make sale of any of the assets of said estate without first reporting the same to said judge and obtaining a written approval of said sale, and he shall likewise within ten days after any such sale report the fact of such sale to said court and the amount derived therefrom. The said judge shall have power to require at any time reports from consuls or vice consuls in respect of all their acts and doings relating to the estate of any such deceased person. The said court shall have power to require, where it may be necessary, a special bond for the faithful performance of his duty to be given by any consul or vice consul into whose possession the estate of any such deceased citizen shall have come, in such amount and with such sureties as may be deemed necessary; and for failure to give such bond when required, or for failure to properly perform his duties in the premises, the court may appoint some other person to take charge of said estate, such person having first given bond as aforesaid. A record shall be kept by the clerk of said court of all proceedings in respect of any such estate under the provisions hereof. (June 30, 1906, ch. 3934, § 2, 34 Stat. 814.)

#### § 194. Appeals for review of judgments, etc., of court.

Appeals shall lie from all final judgments or decrees of the United States Court for China to the United States Circuit Court of Appeals of the Ninth Judicial Circuit, and thence appeals may be taken from the judgments or decrees of the said circuit court of appeals to the Supreme Court of the United States in the same class of cases as those in which appeals are permitted to judgments of said court of appeals in cases coming from district courts of the United States. Said appeals shall be regulated by the procedure governing appeals within the United States from the district courts to the circuit courts of appeal, and from the circuit courts of appeal to the Supreme Court of the United States, respectively, so far as the same shall be applicable; and said courts are hereby empowered to hear and determine appeals so taken. (June 30, 1906, ch. 3934, § 3, 34 Stat. 815; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

#### CROSS REFERENCE

Certiorari to Supreme Court from Circuit Courts of Appeal, see section 347 (a) of Title 28, Judicial Code and Judiciary.

#### § 195. Law applicable to determination of cases.

Jurisdiction of the United States Court for China, both original and on appeal, in civil and criminal matters, and also the jurisdiction of the consular courts in China, shall in all cases be exercised in conformity with the treaties and the laws of the United States now in force in reference to the American consular courts in China, and all judgments and deci-

sions of said consular courts, and all decisions, judgments, and decrees of said United States court, shall be enforced in accordance with said treaties and laws. But in all such cases when such laws are deficient in the provisions necessary to give jurisdiction or to furnish suitable remedies, the common law and the law as established by the decisions of the courts of the United States shall be applied by said court in its decisions and shall govern the same subject to the terms of any treaties between the United States and China. (June 30, 1906, ch. 3934, § 4, 34 Stat. 815.)

**§ 196. Procedure generally; exclusion of associate aids.**

The procedure of the United States Court for China shall be in accordance, so far as practicable, with the procedure prescribed for consular courts in China in accordance with sections 141-143, 145-159, 163-174, 176-181, 183 of this title: *Provided, however*, That the judge of the said United States Court for China shall have authority from time to time to modify and supplement said rules of procedure. The provisions of sections 152 and 153 of this title allowing consuls in certain cases to summon associates shall have no application to said court. (June 30, 1906, ch. 3934, § 5, 34 Stat. 816.)

**§ 197. Officers of court; appointment and salaries.**

There shall be a district attorney, a marshal, and a clerk of the United States Court for China, with authority possessed by the corresponding officers of the district courts in the United States as far as may be consistent with the conditions of the laws of the United States and the treaties between the United States and China. The judge of said court and the district attorney, who shall be lawyers of good standing and experience, marshal, and clerk shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive as salary, respectively, the sums of \$10,000 per annum for said judge, to be paid in equal monthly installments, \$4,000 per annum for said district attorney, \$3,000 per annum for said marshal, and \$3,000 per annum for said clerk. (June 30, 1906, ch. 3934, § 6, 34 Stat. 816; May 29, 1928, ch. 904, §§ 1, 2, 45 Stat. 997.)

**§ 197a. Salary of judge.**

Subject matter of this section, act May 29, 1928, ch. 904, §§ 1, 2, 45 Stat. 997, has been incorporated into section 197 of this title.

**§ 197b. Special judge; appointment and compensation.**

The President may appoint a special judge of the United States Court for China to act temporarily when necessary—

- (a) During the absence of the judge of said court;
- (b) During any period of disability or disqualification, from sickness or otherwise, to discharge his duties; or
- (c) In the event of a vacancy in the office of judge.

Such special judge shall receive the same rate of compensation, and the same allowances for expenses and transportation when acting outside of Shanghai, as are paid and allowed the judge of said court. No compensation shall be paid to said judge excepting in the actual discharge of his duties as provided by

this section. (June 30, 1906, ch. 3934, § 11, as added Aug. 7, 1935, ch. 452, § 1, 49 Stat. 539.)

**§ 197c. Vice consul at Shanghai to exercise judicial functions of consul general.**

The judicial authority and jurisdiction in civil and criminal cases vested in and reserved to the consul general of the United States at Shanghai, China, under section 192 of this title, shall be vested in and exercised by a vice consul of the United States at Shanghai, China. (Mar. 2, 1909, ch. 235, 35 Stat. 679; Mar. 4, 1915, ch. 145, 38 Stat. 1122.)

**§ 198. Commissioner for court; appointment; powers and compensation; district of Shanghai.**

The judge of the United States Court for China is authorized to appoint, as in the district courts of the United States and with similar powers and tenure of office, a United States commissioner who shall be an attorney regularly admitted to practice before the said United States Court for China and who, when appointed, shall be in addition ex officio judge of the consular court for the district of Shanghai, with all of the judicial authority and jurisdiction exercised prior to June 4, 1920, by the vice consul at Shanghai: *Provided*, That at the discretion of the judge of said court, he may appoint the clerk of the court to perform the duties of commissioner without additional compensation therefor. In the event that it is not practicable or desirable so to appoint the clerk to act as commissioner, the judge may, with approval of the Secretary of State, appoint some qualified attorney to act as commissioner who shall, if not an officer of the court, receive such compensation as may be fixed by the Secretary of State, not exceeding \$5 for each day of service actually rendered. (June 4, 1920, ch. 223, 41 Stat. 746.)

**REPEAL**

Section 2 of act August 7, 1935, cited to text of section 198a of this title, provided: "all laws and parts of laws in conflict herewith are hereby repealed."

**CROSS REFERENCE**

Appointment of commissioner under act August 7, 1935, without reference to this section, see section 198a of this title.

**§ 198a. Commissioner for court; judge of consular court; appointment; compensation; clerk as substitute.**

The judge of the United States Court for China is hereby authorized to appoint, as in the District Courts of the United States and with similar powers and tenure of office, a United States commissioner, who shall in addition to his other duties be judge of the consular court for the district of Shanghai, with all the authority and jurisdiction exercised prior to June 4, 1920, by the vice consul at Shanghai. Said commissioner shall receive for his services as commissioner and judge of said consular court such compensation as may be fixed by the Attorney General, not exceeding \$10 per day for each day of service actually rendered. In the event of a vacancy in the office of said commissioner or the disability or disqualification or absence of said commissioner, the judge of the United States Court for China may appoint the clerk of said court temporarily to perform the duties

of commissioner and judge of the consular court for the district of Shanghai without additional compensation therefor. (June 30, 1906, ch. 3934, § 10, as added Aug. 7, 1935, ch. 452, § 1, 49 Stat. 538.)

#### CROSS REFERENCE

Appointment of commissioner under act June 4, 1920, see section 198 of this title.

§ 199. Tenure of office of judge; removal of other officers by President.

The tenure of office of the judge of the United States Court for China shall be ten years, unless sooner removed by the President for cause; the tenure of office of the other officials of the court shall be at the pleasure of the President. (June 30, 1906, ch. 3934, § 7, 34 Stat. 816.)

§ 200. Bond of marshal and clerk; deputies; bond and compensation of deputies.

The marshal and the clerk of the United States Court for China shall be required to furnish bond for the faithful performance of their duties, in sums and with sureties to be fixed and approved by the judge of the court. They shall each appoint, with the written approval of said judge, deputies at Canton and Tientsin, who shall also be required to furnish bonds for the faithful performance of their duties, which bonds shall be subject, both as to form and sufficiency of the sureties, to the approval of the said judge. Such deputies shall receive compensation at the rate of \$5 for each day the sessions of the court are held at their respective cities. (June 30, 1906, ch. 3934, § 8, 34 Stat. 816.)

§ 201. Expenses of judge and of district attorney in attendance on sessions in other cities than Shanghai.

Section, acts Feb. 27, 1925, ch. 364, title I, 43 Stat. 1025; Apr. 29, 1926, ch. 195, title I, 44 Stat. 341; Feb. 24, 1927, ch. 189, title I, 44 Stat. 1192; Feb. 15, 1928, ch. 57, title I, 45 Stat. 76, was not repeated in subsequent appropriation acts.

§ 202. Fees of marshal and clerk; payment into Treasury.

The tariff of fees of the marshal and clerk of the United States Court for China shall be the same as the tariff fixed prior to July 30, 1906, for the consular courts in China, subject to amendment from time to time by order of the President, and all fees taxed and received shall be paid into the Treasury of the United States. (June 30, 1906, ch. 3934, § 9, 34 Stat. 816.)

#### Chapter 4.—PASSPORTS

Sec.

- 211. Repealed.
- 211a. Authority to grant, issue, and verify passports.
- 212. Who entitled to passport.
- 213. Application for passport.
- 214. Fees for passport; persons excused from payment.
- 214a. Fees erroneously charged and paid; refund.
- 215. Fees for visé of alien's passport.
- 216. Return of fees on refusal to visé.
- 217. Repealed.
- 217a. Validity of passport or visé; limitation of time; renewal; charge for original passport.
- 218. Returns as to passports issued, etc.
- 219. Issuance of false passport; penalty.
- 220. False statement in application; use of passport obtained by false statement; penalty.

Sec.

- 221. Unlawful use of passport; penalty.
- 222. Forging, alteration, etc., of passport; penalty.
- 223. War-time restrictions; generally.
- 224. Same; passport required of citizens.
- 225. Penalty for violation of war-time restrictions.
- 226. "United States" and "person" as used in war-time restriction defined.
- 227. Regulations as to alien passport requirements continued.

§ 211. Repealed. July 3, 1926, ch. 772, § 4, 44 Stat. 887.

Section, R. S. § 4075; act June 14, 1902, ch. 1088, § 1, 32 Stat. 386, provided for issuance of passports.

§ 211a. Authority to grant, issue, and verify passports.

The Secretary of State may grant and issue passports, and cause passports to be granted, issued, and verified in foreign countries by diplomatic representatives of the United States, and by such consul generals, consuls, or vice consuls when in charge, as the Secretary of State may designate, and by the chief or other executive officer of the insular possessions of the United States, under such rules as the President shall designate and prescribe for and on behalf of the United States, and no other person shall grant, issue, or verify such passports. (July 3, 1926, ch. 772, § 1, 44 Stat. 887.)

§ 212. Who entitled to passport.

No passport shall be granted or issued to or verified for any other persons than those owing allegiance, whether citizens or not, to the United States. (R. S. § 4076; June 14, 1902, ch. 1088, § 2, 32 Stat. 386.)

#### DERIVATION

Act May 30, 1886, ch. 102, 14 Stat. 54.

§ 213. Application for passport.

Before a passport is issued to any person by or under authority of the United States such person shall subscribe to and submit a written application duly verified by his oath before a person authorized and empowered to administer oaths, which said application shall contain a true recital of each and every matter of fact which may be required by law or by any rules authorized by law to be stated as a prerequisite to the issuance of any such passport. (June 15, 1917, ch. 30, title IX, § 1, 40 Stat. 227.)

§ 214. Fees for passport; persons excused from payment.

There shall be collected and paid into the Treasury of the United States quarterly a fee of \$1 for executing each application for a passport and \$9 for each passport issued to a citizen or person owing allegiance to or entitled to the protection of the United States: *Provided*, That nothing herein contained shall be construed to limit the right of the Secretary of State by regulation to authorize the retention by State officials of the fee of \$1 for executing an application for a passport: *And provided further*, That no fee shall be collected for passports issued to officers or employees of the United States proceeding abroad in the discharge of their official duties, or to members of their immediate families, or to seamen, or to widows, children, parents, brothers, and sisters of American soldiers, sailors, or marines, buried abroad

whose journey is undertaken for the purpose and with the intent of visiting the graves of such soldiers, sailors, or marines, which facts shall be made a part of the application for the passport. (June 4, 1920, ch. 223, § 1, 41 Stat. 750.)

#### CROSS REFERENCE

Fees for passports, see section 217a of this title.

#### § 214a. Fees erroneously charged and paid; refund.

Whenever a fee is erroneously charged and paid for the issue of a passport to a person who is exempted from the payment of such a fee by section 214 of this title, the Department of State is hereby authorized to refund to the person who paid such fee the amount thereof, and the money for that purpose is hereby authorized to be appropriated. (July 3, 1926, ch. 772, § 3, 44 Stat. 887.)

#### § 215. Fees for visé of alien's passport.

There shall be collected and paid into the Treasury of the United States quarterly a fee of \$1 for executing each application of an alien for a visé and \$9 for each visé of the passport of an alien: *Provided*, That no fee shall be collected from any officer of any foreign Government, or members of his immediate family, its armed forces, or of any State, district, or municipality thereof, traveling to or through the United States. (June 4, 1920, ch. 223, § 2, 41 Stat. 750.)

#### CROSS REFERENCE

Authority of the President to reduce or abolish visé fees for classes of aliens, who are not immigrants, desiring to visit United States, if aliens are citizens of countries granting similar privileges to citizens of United States, see section 202 (1) of Title 8, Aliens and Nationality.

#### § 216. Return of fees on refusal to visé.

Whenever the appropriate officer within the United States of any foreign country refuses to visé a passport issued by the United States, the Department of State is hereby authorized upon request in writing and the return of the unused passport within six months from the date of issue to refund to the person to whom the passport was issued the fees which have been paid to Federal officials, and the money for that purpose is hereby appropriated and directed to be paid upon the order of the Secretary of State. (June 4, 1920, ch. 223, § 4, 41 Stat. 751.)

#### CERTAIN APPROPRIATION ACCOUNTS ABOLISHED

Effective July 1, 1935, enumerated appropriation accounts appearing on the books of the Government were abolished and in lieu thereof there was established an account to be designated "Refund of Moneys Erroneously Received and Covered." See section 725q (b) of Title 31, Money and Finance.

#### § 217. Repealed. July 3, 1926, ch. 772, § 4, 44 Stat. 887.

Section, act June 4, 1920, ch. 223, § 3, 41 Stat. 751, limited time as to validity of passport or visé.

#### § 217a. Validity of passport or visé; limitation of time; renewal; charge for original passport.

The validity of a passport or passport visé shall be limited to a period of two years: *Provided*, That a passport may be renewed under regulations prescribed by the Secretary of State for a period, not to exceed two years, upon payment of a fee of \$5 for

such renewal, but the final date of expiration shall not be more than four years from the original date of issue: *Provided further*, That the Secretary of State may limit the validity of a passport, passport visé, or the period of renewal of a passport to less than two years: *Provided further*, That the charge for the issue of an original passport shall be \$9. (July 3, 1926, ch. 772, § 2, 44 Stat. 887; July 1, 1930, ch. 782, 46 Stat. 839; May 16, 1932, ch. 187, 47 Stat. 157.)

#### § 218. Returns as to passports issued, etc.

All persons who shall be authorized to grant, issue, or verify passports, shall make return of the same to the Secretary of State, in such manner and as often as he shall require; and such returns shall specify the names and all other particulars of the persons to whom the same shall be granted, issued, or verified, as embraced in such passport. (R. S. § 4077.)

#### DERIVATION

Act May 30, 1866, ch. 102, 14 Stat. 54.

#### § 219. Issuance of false passport; penalty.

If any person acting or claiming to act in any office or capacity under the United States, its possessions, or any of the States of the United States, who shall not be lawfully authorized so to do, shall grant, issue, or verify any passport or other instrument in the nature of a passport to or for any person whomsoever, or if any consular officer who shall be authorized to grant, issue, or verify passports shall knowingly and willfully grant, issue, or verify any such passport to or for any person not owing allegiance, whether a citizen or not, to the United States, he shall be imprisoned for not more than one year or fined not more than \$500, or both; and may be charged, proceeded against, tried, convicted, and dealt with therefor in the district where he may be arrested or in custody. (R. S. § 4078; June 14, 1902, ch. 1088, § 3, 32 Stat. 386.)

#### DERIVATION

Act May 30, 1866, ch. 102, 14 Stat. 54.

#### § 220. False statement in application; use of passport obtained by false statement; penalty.

Whoever shall willfully and knowingly make any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws, or whoever shall willfully and knowingly use or attempt to use, or furnish to another for use, any passport the issue of which was secured in any way by reason of any false statement, shall be punished by imprisonment for not more than ten years and may, in the discretion of the court, be fined not more than \$2,000. (June 15, 1917, ch. 30, title IX, § 2, 40 Stat. 227; Mar. 28, 1940, ch. 72, § 7, 54 Stat. 80.)

#### § 221. Unlawful use of passport; penalty.

Whoever shall willfully and knowingly use, or attempt to use, any passport issued or designed for the use of another than himself, or whoever shall willfully and knowingly use or attempt to use any pass-

port in violation of the conditions or restrictions therein contained, or of the rules prescribed pursuant to the laws regulating the issuance of passports, which said rules shall be printed on the passport; or whoever shall willfully and knowingly furnish, dispose of, or deliver a passport to any person, for use by another than the person for whose use it was originally issued and designed, shall be punished by imprisonment for not more than ten years and may, in the discretion of the court, be fined not more than \$2,000. (June 15, 1917, ch. 30, title IX, § 3, 40 Stat. 227; Mar. 28, 1940, ch. 72, § 7, 54 Stat. 80.)

**§ 222. Forging, alteration, etc., of passport; penalty.**

Whoever shall falsely make, forge, counterfeit, mutilate, or alter, or cause or procure to be falsely made, forged, counterfeited, mutilated, or altered any passport or instrument purporting to be a passport, with intent to use the same, or with intent that the same may be used by another; or whoever shall willfully or knowingly use, or attempt to use, or furnish to another for use any such false, forged, counterfeited, mutilated, or altered passport or instrument purporting to be a passport, or any passport validly issued which has become void by the occurrence of any condition therein prescribed invalidating the same, shall be punished by imprisonment for not more than ten years and may, in the discretion of the court, be fined not more than \$2,000. (June 15, 1917, ch. 30, title IX, § 4, 40 Stat. 227; Mar. 28, 1940, ch. 72, § 7, 54 Stat. 80.)

**§ 223. War-time restrictions; generally.**

When the United States is at war, if the President shall find that the public safety requires that restrictions and prohibitions in addition to those provided otherwise than by this section, and the three following, be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful—

(a) For any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe;

(b) For any person to transport or attempt to transport from or into the United States another person with knowledge or reasonable cause to believe that the departure or entry of such other person is forbidden by this section and the three following;

(c) For any person knowingly to make any false statement in an application for permission to depart from or enter the United States with intent to induce or secure the granting of such permission either for himself or for another;

(d) For any person knowingly to furnish or attempt to furnish or assist in furnishing to another a permit or evidence of permission to depart or enter not issued and designed for such other person's use;

(e) For any person knowingly to use or attempt to use any permit or evidence of permission to depart or enter not issued and designed for his use;

(f) For any person to forge, counterfeit, mutilate, or alter, or cause or procure to be forged, counterfeited, mutilated, or altered, any permit or evidence of permission to depart from or enter the United States;

(g) For any person knowingly to use or attempt to use or furnish to another for use any false, forged, counterfeited, mutilated, or altered permit, or evidence of permission, or any permit or evidence of permission which, though originally valid, has become or been made void or invalid. (May 22, 1918, ch. 81, § 1, 40 Stat. 559.)

**§ 224. Same; passport required of citizens.**

After such proclamation as is provided for by section 223 of this title has been made and published and while said proclamation is in force, it shall, except as otherwise provided by the President, and subject to such limitations and exceptions as the President may authorize and prescribe, be unlawful for any citizen of the United States to depart from or enter or attempt to depart from or enter the United States unless he bears a valid passport. (May 22, 1918, ch. 81, § 2, 40 Stat. 559.)

**CROSS REFERENCE**

Passports and visas for aliens, see section 227 of this title.

**§ 225. Penalty for violation of war-time restrictions.**

Any person who shall willfully violate any of the provisions of sections 223 or 224 of this title, or of any order or proclamation of the President promulgated, or of any permit, rule, or regulation issued thereunder, shall, upon conviction, be fined not more than \$10,000, or, if a natural person, imprisoned for not more than twenty years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by like fine or imprisonment, or both; and any vehicle or any vessel, together with its or her appurtenances, equipment, tackle, apparel, and furniture, concerned in any such violation, shall be forfeited to the United States. (May 22, 1918, ch. 81, § 3, 40 Stat. 559.)

**§ 226. "United States" and "person" as used in war-time restriction defined.**

The term "United States" as used in sections 223, 224, and 225 of this title includes the Canal Zone and all territory and waters, continental or insular, subject to the jurisdiction of the United States.

The word "person" as used in sections 223, 224, and 225 of this title shall be deemed to mean any individual, partnership, association, company, or other unincorporated body of individuals, or corporation, or body politic. (May 22, 1918, ch. 81, § 4, 40 Stat. 559.)

**§ 227. Regulations as to alien passport requirements continued.**

The provisions of sections 223, 224, 225, and 226 of this title shall, insofar as they relate to requiring passports and visas from aliens seeking to come to the United States, continue in force and effect until otherwise provided by law. (Mar. 2, 1921, ch. 113, § 1, 41 Stat. 1217.)

## Chapter 5.—PRESERVATION OF FRIENDLY FOREIGN RELATIONS GENERALLY

### Sec.

- 231. Making false statement to influence conduct of foreign government toward United States.
- 232. Wrongful assumption of character of diplomatic or consular officer.
- 233–233g. Transferred.
- 234. Conspiracy to injure property of foreign government; indictment.
- 235. "Foreign government" defined.
- 236–245j–19. Repealed or transferred.
- 246. Wearing without authority uniform, etc., of friendly nation; punishment.
- 247. Transferred.
- 248. Commercial use of coat of arms of Swiss Confederation prohibited; exceptions; punishment.
- 249–250f. Transferred.

### § 231. Making false statement to influence conduct of foreign government toward United States.

Whoever, in relation to any dispute or controversy between a foreign government and the United States, shall willfully and knowingly make any untrue statement, either orally or in writing, under oath before any person authorized and empowered to administer oaths, which the affiant has knowledge or reason to believe will, or may be used to influence the measures or conduct of any foreign government, or of any officer or agent of any foreign government, to the injury of the United States, or with a view or intent to influence any measure of or action by the Government of the United States, or any branch thereof, to the injury of the United States, shall be punished by imprisonment for not more than ten years and may, in the discretion of the court, be fined not more than \$5,000. (June 15, 1917, ch. 30, title VIII, § 1, 40 Stat. 226; Mar. 28, 1940, ch. 72, § 6, 54 Stat. 80.)

### § 232. Wrongful assumption of character of diplomatic or consular officer.

Whoever within the jurisdiction of the United States shall falsely assume or pretend to be a diplomatic or consular, or other official of a foreign government duly accredited as such to the Government of the United States with intent to defraud such foreign government or any person, and shall take upon himself to act as such, or in such pretended character shall demand or obtain, or attempt to obtain from any person or from said foreign government, or from any officer thereof, any money, paper, document, or other thing of value, shall be punished by imprisonment for not more than ten years and may, in the discretion of the court, be fined not more than \$5,000. (June 15, 1917, ch. 30, title VIII, § 2, 40 Stat. 226; Mar. 28, 1940, ch. 72, § 6, 54 Stat. 80.)

### §§ 233–233g. Transferred.

Former sections 233–233g are now sections of this title as follows: 233 is 601; 233a is 611; 233b is 612; 233c is 613; 233d is 614; 233e is 615; 233f is 616; 233g is 611 note

### § 234. Conspiracy to injure property of foreign government; indictment.

If two or more persons within the jurisdiction of the United States conspire to injure or destroy specific property situated within a foreign country and

belonging to a foreign government or to any political subdivision thereof with which the United States is at peace, or any railroad, canal, bridge, or other public utility so situated, and if one or more such persons commits an act within the jurisdiction of the United States to effect the object of the conspiracy, each of the parties to the conspiracy shall be fined not more than \$5,000, or imprisoned not more than three years, or both. Any indictment or information under this section shall describe the specific property which it was the object of the conspiracy to injure or destroy. (June 15, 1917, ch. 30, title VIII, § 5, 40 Stat. 226.)

### § 235. "Foreign government" defined.

The words "foreign government", as used in sections 231, 232, 234, and 601 of this title, shall be deemed to include any government, faction, or body of insurgents within a country with which the United States is at peace, which government, faction, or body of insurgents may or may not have been recognized by the United States as a government. (June 15, 1917, ch. 30, title VIII, § 4, 40 Stat. 226.)

### §§ 236–245j–19. Repealed or transferred.

Former sections 236–245 are now sections of this title as follows: 236 is 409; 237 is 410; 238 is 401; 239 is 402; 240 is 403; 241 is 404; 242 is 405; 243 is 406; 244 is 407; 245 is 408.

Former sections 245a–245i, constituting the Neutrality Act of 1935, were repealed by Res. Nov. 4, 1939, ch. 2, § 19, 54 Stat. 12. They were from Res. Aug. 31, 1935, ch. 837, 49 Stat. 1081; Feb. 29, 1936, ch. 106, 49 Stat. 1153; May 1, 1937, ch. 146, 50 Stat. 121. Proclamations issued under these sections follow: Proc. No. 2349, Sept. 5, 1939, enumerated implements of war under former section 245a, as extended by Proc. No. 2354, Sept. 8, 1939, and No. 2360, Sept. 10, 1939, and was revoked together with said Proc. Nos. 2354, 2360, by Proc. No. 2374, promulgated Nov. 4, 1939, 4 Fed. Reg. 4493; Proc. No. 2327, April 1, 1939, 53 Stat. 2531, revoked Proc. No. 2236, which proclaimed the existence of civil strife in Spain.

Former sections 245j–245j–19 are now sections of this title as follows: 245j is 441; 245j–1 is 442; 245j–2 is 443; 245j–3 is 444; 245j–4 is 445; 245j–5 is 446; 245j–6 is 447; 245j–7 is 448; 245j–8 is 449; 245j–9 is 450; 245j–10 is 451; 245j–11 is 452; 245j–12 is 453; 245j–13 is 454; 245j–14 is 455; 245j–15 is 456; 245j–16 is 441 note; 245j–17 is 457; 245j–18 is 441 note; 245j–19 is 441 note.

### § 246. Wearing without authority uniform, etc., of friendly nation; punishment.

It shall be unlawful for any person, with intent to deceive or mislead, within the United States or Territories, possessions, waters, or places subject to the jurisdiction of the United States, to wear any naval, military, police, or other official uniform, decoration, or regalia of any foreign state, nation, or government with which the United States is at peace, or any uniform, decoration, or regalia so nearly resembling the same as to be calculated to deceive, unless such wearing thereof be authorized by such state, nation, or government.

Any person who violates the provisions of this section shall upon conviction be punished by a fine not exceeding \$300 or imprisonment for not exceeding six months, or by both such fine and imprisonment. (July 8, 1918, ch. 138, 40 Stat. 821.)

**§ 247. Transferred.**

Former section 247 is now section 503 of this title.

**§ 248. Commercial use of coat of arms of Swiss Confederation prohibited; exceptions; punishment.**

It shall be unlawful for any person, partnership, incorporated or unincorporated company, or association within the jurisdiction of the United States to use, whether as a trade mark, commercial label, or portion thereof, or as an advertisement or insignia for any business or organization or for any trade or commercial purpose, the coat of arms of the Swiss Confederation, consisting of an upright white cross with equal arms and lines on a red ground, or any simulation thereof: *Provided*, That no person, corporation, or association that actually used or whose assignors actually used a design or insignia identical with or similar to that described herein for any lawful purpose for ten years next preceding June 20, 1936, shall be deemed forbidden to continue the use thereof for the same purpose.

Any person who willfully violates the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be liable to a fine of not exceeding \$500 or imprisonment for a term not exceeding one year, or both. (June 20, 1936, ch. 635, §§ 1, 2, 49 Stat. 1557.)

**§§ 249–250f. Transferred.**

Former sections 249–250f are now sections of this title as follows: 249 is 501; 249a is 502; 250–250f are 521–527, respectively

**Chapter 6.—FOREIGN DIPLOMATIC AND CONSULAR OFFICERS****Sec.**

- 251. Violation of safe conduct; penalty.
- 252. Suits against ministers and their domestics prohibited.
- 253. Penalty for wrongful suit.
- 254. Exceptions as to suits against servants, etc., of ministers; listing servants.
- 255. Assaulting, etc., foreign minister.
- 255a. Protection for officers and buildings in District of Columbia.
- 255b. Jurisdiction of offenses; penalties; picketing permitted.
- 256. Jurisdiction of consular officers in disputes between seamen.
- 257. Arrest of seamen; procedure generally.
- 258. Commitment and discharge.
- 259. Sale of supplies, etc., to aircraft of foreign military or air attaché.

**§ 251. Violation of safe conduct; penalty.**

Every person who violates any safe conduct or passport duly obtained and issued under authority of the United States shall be imprisoned for not more than three years, and fined, at the discretion of the court. (R. S. § 4062.)

**DERIVATION**

Act Apr. 30, 1790, ch. 9, § 28, 1 Stat. 118.

**§ 252. Suits against ministers and their domestics prohibited.**

Whenever any writ or process is sued out or prosecuted by any person in any court of the United States, or of a State, or by any judge or justice, whereby the person of any ambassador or public

minister of any foreign prince or State, authorized and received as such by the President, or any domestic or domestic servant of any such minister, is arrested or imprisoned, or his goods or chattels are distrained, seized, or attached, such writ or process shall be deemed void. (R. S. § 4063.)

**DERIVATION**

Act Apr. 30, 1790, ch. 9, § 25, 1 Stat. 117.

**§ 253. Penalty for wrongful suit.**

Whenever any writ or process is sued out in violation of section 252 of this title, every person by whom the same is obtained or prosecuted, whether as party or as attorney or solicitor, and every officer concerned in executing it, shall be deemed a violator of the laws of nations and a disturber of the public repose, and shall be imprisoned for not more than three years, and fined at the discretion of the court. (R. S. § 4064.)

**DERIVATION**

Act Apr. 30, 1790, ch. 9, § 26, 1 Stat. 117.

**§ 254. Exceptions as to suits against servants, etc., of minister; listing servants.**

Sections 252 and 253 of this title shall not apply to any case where the person against whom the process is issued is a citizen or inhabitant of the United States in the service of an ambassador or a public minister and the process is founded upon a debt contracted before he entered upon such service; nor shall section 253 of this title apply to any case where the person against whom the process is issued is a domestic servant of an ambassador or a public minister, unless the name of the servant has, before the issuing thereof, been registered in the Department of State and transmitted by the Secretary of State to the marshal of the District of Columbia, who shall upon receipt thereof post the same in some public place in his office. All persons shall have resort to the list of names so posted in the marshal's office and may take copies without fee. (R. S. §§ 4065, 4066.)

**DERIVATION**

R. S. §§ 4065, 4066 were from act Apr. 30, 1790, ch. 9, § 27, 1 Stat. 117.

**§ 255. Assaulting, etc., foreign minister.**

Every person who assaults, strikes, wounds, imprisons, or in any other manner offers violence to the person of an ambassador or a public minister, in violation of the law of nations, shall be imprisoned for not more than three years and fined, at the discretion of the court. (R. S. § 4062.)

**DERIVATION**

Act Apr. 30, 1790, ch. 9, § 28, 1 Stat. 118.

**§ 255a. Protection for officers and buildings in District of Columbia.**

It shall be unlawful to display any flag, banner, placard, or device designed or adapted to intimidate, coerce, or bring into public odium any foreign government, party, or organization, or any officer or officers thereof, or to bring into public disrepute political, social, or economic acts, views, or purposes of any foreign government, party, or organization, or to intimidate, coerce, harass, or bring into public dis-



repute any officer or officers or diplomatic or consular representatives of any foreign government, or to interfere with the free and safe pursuit of the duties of any diplomatic or consular representatives of any foreign government, within five hundred feet of any building or premises within the District of Columbia used or occupied by any foreign government or its representative or representatives as an embassy, legation, consulate, or for other official purposes, except by, and in accordance with, a permit issued by the superintendent of police of the said District; or to congregate within five hundred feet of any such building or premises, and refuse to disperse after having been ordered so to do by the police authorities of the said District. (Feb. 15, 1938, ch. 29, § 1, 52 Stat. 30.)

**§ 255b. Jurisdiction of offenses; penalties; picketing permitted.**

The police court of the District of Columbia shall have jurisdiction of offenses committed in violation of sections 255a, 255b of this title; and any person convicted of violating any of the provisions of sections 255a, 255b of this title shall be punished by a fine not exceeding \$100 or by imprisonment not exceeding sixty days, or both: *Provided, however,* That nothing contained in sections 255a, 255b of this title shall be construed to prohibit picketing, as a result of bona-fide labor disputes regarding the alteration, repair, or construction of either buildings or premises occupied, for business purposes, wholly or in part, by representatives of foreign governments. (Feb. 15, 1938, ch. 29, § 2, 52 Stat. 30.)

**§ 256. Jurisdiction of consular officers in disputes between seamen.**

Whenever it is stipulated by treaty or convention between the United States and any foreign nation that the consul general, consuls, vice consuls, or consular or commercial agents of each nation shall have exclusive jurisdiction of controversies, difficulties, or disorders arising at sea or in the waters or ports of the other nation between the master or officers and any of the crew, or between any of the crew themselves, of any vessel belonging to the nation represented by such consular officer, such stipulations shall be executed and enforced within the jurisdiction of the United States as in the two following sections declared. But before this section shall take effect as to the vessels of any particular nation having such treaty with the United States, the President shall be satisfied that similar provisions have been made for the execution of such treaty by the other contracting party, and shall issue his proclamation to that effect, declaring this section to be in force as to such nation. (R. S. § 4079.)

**DERIVATION**

Act June 11, 1864, ch. 116, § 1, 13 Stat. 121.

**§ 257. Arrest of seamen; procedure generally.**

In all cases within the purview of section 256 of this title the consul general, consul, or other consular or commercial authority of such foreign nation charged with the appropriate duty in the particular case, may make application to any court of record of the United States, or to any judge thereof, or to any United States commissioner, setting forth that

such controversy, difficulty, or disorder has arisen, briefly stating the nature thereof, and when and where the same occurred, and exhibiting a certified copy or extract of the shipping articles, roll, or other proper paper of the vessel, to the effect that the person in question is of the crew or ship's company of such vessel; and further stating and certifying that such person has withdrawn himself, or is believed to be about to withdraw himself, from the control and discipline of the master and officers of the vessel, or that he has refused, or is about to refuse, to submit to and obey the lawful jurisdiction of such consular or commercial authority in the premises; and further stating and certifying that, to the best of the knowledge and belief of the officer certifying, such person is not a citizen of the United States. Such application shall be in writing and duly authenticated by the consular or other sufficient official seal. Thereupon such court, judge, or commissioner shall issue his warrant for the arrest of the person so complained of, directed to the marshal of the United States for the appropriate district, or in his discretion to any person, being a citizen of the United States, whom he may specially depute for the purpose, requiring such person to be brought before him for examination at a certain time and place. (R. S. § 4080; May 28, 1896, ch. 252, § 19, 29 Stat. 184; Mar. 2, 1901, ch. 814, 31 Stat. 956.)

**DERIVATION**

Act June 11, 1864, ch. 116, § 2, 13 Stat. 121.

**CROSS REFERENCE**

District courts or United States commissioners to issue remedial process to carry into effect decrees of any foreign consul, vice consul, or commercial agent, see section 393 of Title 28, Judicial Code and Judiciary.

**§ 258. Commitment and discharge.**

If, on such examination, it is made to appear that the person so arrested is a citizen of the United States, he shall be forthwith discharged from arrest, and shall be left to the ordinary course of law. But if this is not made to appear, and such court, judge, or commissioner finds, upon the papers in the preceding section referred to, a sufficient prima facie case that the matter concerns only the internal order and discipline of such foreign vessel, or, whether in its nature civil or criminal, does not affect directly the execution of the laws of the United States, or the rights and duties of any citizen of the United States, he shall forthwith, by his warrant, commit such person to prison, where prisoners under sentence of a court of the United States may be lawfully committed, or, in his discretion, to the master or chief officer of such foreign vessel, to be subject to the lawful orders, control, and discipline of such master or chief officer, and to the jurisdiction of the consular or commercial authority of the nation to which such vessel belongs, to the exclusion of any authority or jurisdiction in the premises of the United States or any State thereof. No person shall be detained more than two months after his arrest, but at the end of that time shall be set at liberty and shall not again be arrested for the same cause. The expenses of the arrest and the detention of the person so arrested shall be paid by the consular

officers making the application: *Provided*, That nothing in this section or section 257 of this title shall authorize the arrest or imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of foreign nations in the United States and Territories and possessions thereof, and the cooperation, aid, and protection of competent legal authorities in effecting such arrest or imprisonment. (R. S. § 4081; Mar. 4, 1915, ch. 153, §§ 16, 17, 38 Stat. 1184.)

#### DERIVATION

Act June 11, 1864, ch. 116, § 2, 13 Stat. 121.

### § 259. Sale of supplies, etc., to aircraft of foreign military or air attaché.

The Secretary of War, under such regulations as he may prescribe, may provide for the sale to any aircraft operated by any foreign military or air attaché accredited to the United States of fuel, oil, equipment, and supplies, and for the furnishing to such aircraft of mechanical service, shelter, and other assistance. Except for shelter for which no charge shall be made, all such articles shall be sold and such mechanical service and other assistance furnished at the cost thereof to the United States. All amounts received shall be credited to the appropriation from which such cost was paid. (May 31, 1939, ch. 161, 53 Stat. 795.)

### Chapter 7.—INTERNATIONAL BUREAUS, CONGRESSES, ETC.

#### Sec.

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### § 261. Policy as to settlement of disputes and disarmament.

It is hereby declared to be the policy of the United States to adjust and settle its international disputes through mediation or arbitration, to the end that war may be honorably avoided. It looks with apprehension and disfavor upon a general increase of armament throughout the world, but it realizes that no single nation can disarm, and that without a common agreement upon the subject every considerable power must maintain a relative standing in military strength. (Aug. 29, 1916, ch. 417, 39 Stat. 618.)

### § 262. President's participation in international congresses restricted.

The Executive shall not extend or accept any invitation to participate in any international congress, conference, or like event, without first having specific authority of law to do so. (Mar. 4, 1913, ch. 149, § 1, 37 Stat. 913.)

### § 263. International Prison Commission.

The United States shall continue as an adhering member of the International Prison Commission and participate in the work of said commission.

The Secretary of the Treasury be, and he is hereby, authorized annually to pay the pro rata share of the United States in the administration expenses of the International Prison Commission and the necessary expenses of a commissioner to represent the United States on said commission at its annual meetings, together with necessary clerical and other expenses, out of any money which shall be appropriated for such purposes from time to time by Congress. (Feb. 28, 1913, ch. 86, 37 Stat. 692.)

**§ 263a. International Criminal Police Commission.**

The Attorney General is hereby authorized to accept and maintain, on behalf of the United States, membership in the International Criminal Police Commission and to incur the necessary expenses therefor not to exceed \$1,500 per annum. (June 10, 1938, ch. 335, 52 Stat. 640.)

**§ 264. Pan American Union; direction of Secretary of State.**

Section, act Aug. 18, 1894, ch. 301, § 1, 28 Stat. 418, has been rendered inoperative by Convention of 1928, ratified by the United States and providing that the government of the Pan American Union should be vested in a governing board.

**§ 265. Disposition of receipts for support of Pan American Union.**

Section, acts Feb. 27, 1925, ch. 364, title I, 43 Stat. 1020; Apr. 29, 1926, ch. 195, title I, 44 Stat. 336; Feb. 24, 1927, ch. 189, title I, 44 Stat. 1186; Feb. 15, 1928, ch. 57, title I, 45 Stat. 71; Jan. 25, 1929, ch. 102, title I, 45 Stat. 1102, was not repeated in subsequent appropriation acts.

**§ 266. International commission of congresses of navigation; appropriation for expenses.**

The sum of \$3,000 a year is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the support and maintenance of the permanent international commission of the congresses of navigation and for the payment of the actual expenses of the properly accredited national delegates of the United States to the meetings of the congresses and of the commission; and the Secretary of War is authorized to draw his warrant each year upon the Secretary of the Treasury for such sum, not to exceed \$3,000, as may in his opinion be proper to apply to the purposes above mentioned, and the said sum shall be disbursed under such regulations as may be prescribed by the Secretary of War.

The national delegates aforesaid from the United States shall serve without compensation, but shall be reimbursed for their actual expenses incurred while traveling to and from the meetings, and while in attendance thereon, from the funds appropriated in this section and authorized to be expended. (June 28, 1902, ch. 1306, 32 Stat. 485.)

**REPEAL OF APPROPRIATION**

Effective July 1, 1935, the permanent appropriation provided for in this section was repealed by act June 6, 1934, ch. 756, § 2, 48 Stat. 1225, such act authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury. See section 725a (b) of Title 31, Money and Finance.

**§ 266a. International Technical Committee of Aerial Legal Experts; appropriation.**

Section has become section 231 of Title 49, Transportation.

**§ 266b. Repealed. June 11, 1940, ch. 306, 54 Stat. 263.**

Section was derived from Res. Aug. 7, 1935, ch. 455, § 2, 49 Stat. 540, and related to termination of Authorizations for Participation in Work of Committee of International Technical Aerial Legal Experts.

**§ 267. Permanent Commission of International Geodetic Association; representative of United States.**

The duly appointed representative of the United States on the permanent commission of the International Geodetic Association is hereby granted authority to vote with the representatives on the permanent commission from other nations on all matters coming before the association, including the extension of its existence, subject to the approval of Congress. (Mar. 3, 1917, ch. 161, 39 Stat. 1055.)

**§ 267a. Same; appointment of delegates; compensation.**

The President is authorized to appoint delegates, who shall be officers of the United States Coast and Geodetic Survey, to attend the meetings of the International Geodetic Association whenever and where-soever the same shall be held; but no extra salary or additional compensation shall be paid to such officers by reason of such attendance. (July 23, 1894, No. 37, 28 Stat. 587.)

**§ 267b. International joint commission; invitation to establish; personnel; duties.**

The President of the United States is hereby requested to invite the Government of Great Britain to join in the formation of an international commission, to be composed of three members from the United States and three who shall represent the interests of the Dominion of Canada, whose duty it shall be to investigate and report upon the conditions and uses of the waters adjacent to the boundary lines between the United States and Canada, including all of the waters of the lakes and rivers whose natural outlet is by the River Saint Lawrence to the Atlantic Ocean; also upon the maintenance and regulation of suitable levels; and also upon the effect upon the shores of these waters and the structures thereon, and upon the interests of navigation, by reason of the diversion of these waters from or change in their natural flow; and, further, to report upon the necessary measures to regulate such diversion, and to make such recommendations for improvements and regulations as shall best subserve the interests of navigation in said waters. The said commissioners shall report upon the advisability of locating a dam at the outlet of Lake Erie, with a view to determining whether such dam will benefit navigation, and if such structure is deemed advisable, shall make recommendations to their respective Governments looking to an agreement or treaty which shall provide for the construction of the same, and they shall make an estimate of the probable cost thereof. The President, in selecting the three members of said Commission who shall represent the United States, is authorized to appoint one officer of the Corps of Engineers of the United States Army, one civil engineer well versed in the hydraulics of the Great Lakes, and one lawyer of experience in questions of international and riparian law, and said Commission shall be authorized to employ such persons as it may deem needful in the performance of the duties hereby imposed; and for the purpose of paying the expenses and salaries of said Commission the Secretary of War is authorized to expend

from the amounts heretofore appropriated for the Saint Marys River at the Falls, the sum of twenty thousand dollars, or so much thereof as may be necessary to pay that portion of the expenses of said Commission chargeable to the United States. (June 13, 1902, ch. 1079, § 4, 32 Stat. 373.)

#### ESTABLISHMENT OF COMMISSION

The International Joint Commission was established by article VII of the treaty of January 11, 1909, with Great Britain, 36 Stat. 2448.

#### § 268. International Joint Commission; salaries; powers.

The salaries of the members on the part of the United States, of the International Joint Commission, established under the treaty of January 11, 1909, between the United States and Great Britain, relating to boundary waters between the United States and Canada, shall be fixed by the President. Said commission or any member thereof shall have power to administer oaths and to take evidence on oath whenever deemed necessary in any proceeding or inquiry or matter within its jurisdiction under said treaty, and said commission shall be authorized to compel the attendance of witnesses in any proceedings before it or the production of books and papers when necessary by application to the district court of the United States for the district within which such session is held, which court is hereby empowered and directed to make all orders and issue all processes necessary and appropriate for that purpose. (Mar. 4, 1911, ch. 285, § 1, 36 Stat. 1364.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see Rule 45, following section 723c of Title 28, Judicial Code and Judiciary.

#### CROSS REFERENCE

Commissioners on International Joint Commission to serve without additional compensation, see section 268a of this title.

#### § 268a. Same; compensation; traveling expenses.

The Commissioners on the part of the United States shall serve in that capacity without additional compensation: *Provided*, That traveling expenses of the American Commissioners, secretary, and necessary employees shall be allowed in accordance with the provisions of sections 821–833 of Title 5. (May 14, 1940, ch. 189, title I, § 54 Stat. 191.)

#### SIMILAR PROVISIONS

The text of this section was taken from Department of State Appropriation Act, 1941. Similar provisions were contained in the following acts:

- 1939—June 29, 1939, ch. 248, title I, § 53 Stat. 895.
- 1938—Apr. 27, 1938, ch. 180, title I, § 1, 52 Stat. 256.
- 1937—June 16, 1937, ch. 359, title I, § 50 Stat. 270.
- 1936—May 15, 1936, ch. 405, § 1, 49 Stat. 1319.
- 1935—Mar. 22, 1935, ch. 39, § 1, 49 Stat. 75.

#### § 269. Permanent Association of International Road Congresses; annual appropriation for membership.

There is hereby authorized to be appropriated, out of any sums in the Treasury not otherwise appropriated, not exceeding \$3,000 per annum to enable the United States to accept membership in the Permanent Association of International Road Congresses. (June 18, 1926, ch. 623, 44 Stat. 754.)

#### § 269a. Central Bureau of the International Map of the World on the Millionth Scale; appropriation.

There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, an annual sum of \$50 as a contribution on the part of the United States toward the expenses incurred by the Central Bureau of the International Map of the World on the Millionth Scale. (June 27, 1930, ch. 652, 46 Stat. 825.)

#### § 269b. American International Institute for the Protection of Childhood; appropriation.

To enable the United States to become a member of the American International Institute for the Protection of Childhood at Montevideo, Uruguay, there is authorized to be appropriated the sum of \$2,000 per annum for the contribution by the United States toward the support of the institution. (May 3, 1928, ch. 489, 45 Stat. 487.)

#### § 269c. International Statistical Bureau at The Hague; appropriation.

There is authorized to be appropriated, out of any sums in the Treasury not otherwise appropriated, sums not exceeding \$2,500 per annum to enable the United States to maintain membership in the International Statistical Bureau at The Hague, such sums to be expended under the direction of the Secretary of State. (Apr. 28, 1924, ch. 136, 43 Stat. 112.)

#### § 270. International tribunals; administration of oaths; perjury.

Whenever any claim in which the United States or any of its nationals is interested is pending before an international tribunal or commission, established pursuant to an agreement between the United States and any foreign government or governments, each member of such tribunal or commission, or the clerk or a secretary thereof, shall have authority to administer oaths in all proceedings before the tribunal or commission; and every person knowingly and willfully swearing or affirming falsely in any such proceedings, whether held within or outside the United States, its territories or possessions, shall be deemed guilty of perjury and shall, upon conviction, suffer the punishment provided by the laws of the United States for that offense, when committed in its courts of justice. (July 3, 1930, ch. 851, § 1, 46 Stat. 1005.)

#### § 270a. Same; testimony of witnesses; documentary evidence; subpoenas.

Any such international tribunal or commission shall have power to require by subpoena the attendance and the testimony of witnesses and the production of documentary evidence relating to any matter pending before it. Any member of the tribunal or commission may sign subpoenas. (July 3, 1930, ch. 851, § 2, 46 Stat. 1006.)

#### § 270b. Same; contempts.

Any failure to attend as a witness or to testify as a witness or to produce documentary evidence in an appropriate case may be regarded as a contempt of the authority of the tribunal or commission and shall be punishable in any court of the United States

in the same manner as is provided by the laws of the United States for that offense when committed in its courts of justice. (July 3, 1930, ch. 851, § 3, 46 Stat. 1006.)

**§ 270c. Same; commissioners to take evidence; procedure.**

To afford such international tribunal or commission needed facilities for the disposition of cases pending therein said tribunal or commission is authorized and empowered to appoint competent persons, to be named as commissioners, who shall attend the taking of or take evidence in cases that may be assigned to them severally by the tribunal or commission and make report of the findings in the case to the tribunal or commission. Any such commissioner shall proceed under such rules and regulations as may be promulgated by the tribunal or commission and such orders as the tribunal or commission may make in the particular case and may have and perform the general duties that pertain to special masters in suits in equity. He may fix the times for hearings, administer oaths, examine witnesses, and receive evidence. Either party to the proceeding before the tribunal or commission may appear before the commissioner by attorney, produce evidence, and examine witnesses. Subpoenas for witnesses or for the production of testimony before the commissioner may issue out of the tribunal or commission by the clerk thereof and shall be served by a United States marshal in any judicial district in which they are directed. Subpoenas issued by such tribunal or commission requiring the attendance of witnesses in order to be examined before any person commissioned to take testimony therein shall have the same force as if issued from a district court and compliance therewith shall be compelled under such rules and orders as the tribunal or commission shall establish. Any person appointed as commissioner may be removed at the pleasure of the tribunal or commission by which he is appointed. (July 3, 1930, ch. 851, § 4, 46 Stat. 1006.)

**§ 270d. Same; subpoenas; application by agent to United States district court.**

The agent of the United States before any international tribunal or commission, whether previously or hereafter established, in which the United States participates as a party whenever he desires to obtain testimony or the production of books and papers by witnesses may apply to the United States district court for the district in which such witness or witnesses reside or may be found, for the issuance of subpoenas to require their attendance and testimony before the United States district court for that district and the production therein of books and papers, relating to any matter or claim in which the United States on its own behalf or on behalf of any of its nationals is concerned as a party claimant or respondent before such international tribunal or commission. (July 3, 1930, ch. 851, § 5, as added June 7, 1933, ch. 50, 48 Stat. 117.)

**FEDERAL RULES OF CIVIL PROCEDURE**

Subpoena, see Rule 45, following section 723c of Title 28, Judicial Code and Judiciary.

**§ 270e. Same; issuance of subpoenas by United States district court; proceedings thereon; notice to foreign governments; filing transcripts of testimony with agent of United States.**

Any United States district court to which such application shall be made shall have authority to issue or cause to be issued such subpoenas upon the same terms as are applicable to the issuance of subpoenas in suits pending in the United States district court, and the clerk thereof shall have authority to administer oaths respecting testimony given therein, and the marshal thereof shall serve such subpoenas upon the person or persons to whom they are directed. The hearing of witnesses and taking of their testimony and the production of books and papers pursuant to such subpoenas shall be before the United States district court for that district or before a commissioner or referee appointed by it for the taking of such testimony, and the examination may be oral or upon written interrogatories and may be conducted by the agent of the United States or his representative. Reasonable notice thereof shall be given to the agent or agents of the opposing government or governments concerned in such proceedings who shall have the right to be present in person or by representative and to examine or cross-examine such witnesses at such hearing. A certified transcript of such testimony and any proceedings arising out of the issuance of such subpoenas shall be forwarded by the clerk of the district court to the agent of the United States and also to the agent or agents of the opposing government or governments, without cost. (July 3, 1930, ch. 851, § 6, as added June 7, 1933, ch. 50, 48 Stat. 117.)

**FEDERAL RULES OF CIVIL PROCEDURE**

Subpoena, see Rule 45, following section 723c of Title 28, Judicial Code and Judiciary.

**§ 270f. Same; perjury; contempts; penalties.**

Every person knowingly or willfully swearing or affirming falsely in any testimony taken in response to such subpoenas shall be deemed guilty of perjury, and shall, upon conviction thereof, suffer the penalty provided by the laws of the United States for that offense when committed in its courts of justice. Any failure to attend and testify as a witness or to produce any book or paper which is in the possession or control of such witness, pursuant to such subpoena, may be regarded as a contempt of the court and shall be punishable as a contempt by the United States district court in the same manner as is provided by the laws of the United States for that offense in any other proceedings in its courts of justice. (July 3, 1930, ch. 851, § 7, as added June 7, 1933, ch. 50, 48 Stat. 118.)

**§ 270g. District Court of the United States for the District of Columbia a district court of United States.**

For the purposes of sections 270d, 270e, and 270f of this title, the district court of the United States for the District of Columbia shall be considered to be a district court of the United States. (July 3, 1930, ch. 851, § 8, as added June 7, 1933, ch. 50, 48 Stat. 118, and amended June 25, 1936, ch. 804, 49 Stat. 1921.)

## CHANGE OF NAME

Act June 25, 1936, cited to text, changed the name of the "Supreme Court of the District of Columbia" to "district court of the United States for the District of Columbia."

## § 271. International Labor Organization; membership.

The President is hereby authorized to accept membership for the Government of the United States of America in the International Labor Organization, which, through its general conference of representatives of its members and through its International Labor Office, collects information concerning labor throughout the world and prepares international conventions for the consideration of member governments with a view to improving conditions of labor. (June 19, 1934, ch. 676, § 1, 48 Stat. 1182.)

## § 272. Same; no obligation under League of Nations.

In accepting such membership the President shall assume on behalf of the United States no obligation under the covenant of the League of Nations. (June 19, 1934, ch. 676, § 2, 48 Stat. 1183.)

## § 273. Pan American Institute of Geography and History; annual appropriation for membership.

To enable the United States to become a member of the Pan American Institute of Geography and History, there is hereby authorized to be appropriated annually the sum of \$10,000 for the payment of the quota of the United States. (Aug. 2, 1935, ch. 430, § 1, 49 Stat. 512.)

## § 274. International Council of Scientific Unions and Associated Unions; annual appropriation for membership.

There is hereby authorized to be appropriated, to be expended under the direction of the Secretary of State, in paying the annual share of the United States as an adhering member of the International Council of Scientific Unions and Associated Unions, including the International Astronomical Union, International Union of Chemistry, International Union of Geodesy and Geophysics, International Union of Mathematics, International Scientific Radio Union, International Union of Physics, and International Geographical Union, and such other international scientific unions as the Secretary of State may designate, such sum as may be necessary for the payment of such annual share, not to exceed \$9,000 in any one year. (Aug. 7, 1935, ch. 454, 49 Stat. 540.)

## § 275. International Hydrographic Bureau.

To enable the United States to become a member of the International Hydrographic Bureau, and for the first annual contribution of the United States toward the creation and maintenance of such bureau, there is appropriated out of money in the Treasury not otherwise appropriated \$2,500, or so much thereof as may be necessary, to be paid by the Secretary of State when the exact quota shall have been ascertained. (Mar. 2, 1921, ch. 113, 41 Stat. 1215.)

## LATER SIMILAR PROVISIONS

Subsequent annual appropriation acts: June 1, 1922, ch. 204, title I, 42 Stat. 608; Jan. 3, 1923, ch. 21, title I, 42 Stat. 1076; May 28, 1924, ch. 204, 43 Stat. 214; Feb. 27, 1925, ch. 364, title I, 43 Stat. 1023; Apr. 29, 1926, ch. 195, 44 Stat.

339; Feb. 24, 1927, ch. 189, title I, 44 Stat. 1189; Feb. 15, 1928, ch. 57, 45 Stat. 73; Jan. 25, 1929, ch. 102, title I, 45 Stat. 1104; Apr. 18, 1930, ch. 184, 46 Stat. 183; Feb. 23, 1931, ch. 280, title I, 46 Stat. 1318; July 1, 1932, ch. 361, 47 Stat. 484; Mar. 1, 1933, ch. 144, 47 Stat. 1376; Apr. 7, 1934, ch. 104, 48 Stat. 534; Mar. 22, 1935, ch. 39, title I, 49 Stat. 73; May 15, 1936, ch. 405, § 1, 49 Stat. 1315; June 22, 1936, ch. 689, title III, 49 Stat. 1634; June 16, 1937, ch. 359, title I, 50 Stat. 267; Apr. 27, 1938, ch. 180, title I, § 1, 52 Stat. 253; June 29, 1939, ch. 248, title I, 53 Stat. 891; May 14, 1940, ch. 189, title I, 54 Stat. 187.

## § 276. Bureau of Interparliamentary Union; American group; appropriation; disbursements.

An appropriation of \$20,000 annually is hereby authorized, \$10,000 of which shall be for the annual contribution of the United States toward the maintenance of the Bureau of the Interparliamentary Union for the promotion of international arbitration; and \$10,000, or so much thereof as may be necessary, to assist in meeting the expenses of the American group of the Interparliamentary Union for each fiscal year for which an appropriation is made, such appropriation to be disbursed on vouchers to be approved by the President and the executive secretary of the American group. (June 28, 1935, ch. 322, § 1, 49 Stat. 425.)

## LATER SIMILAR PROVISIONS

Subsequent annual appropriation acts: May 15, 1936, ch. 405, 49 Stat. 1315; June 16, 1937, ch. 359, title I, 50 Stat. 267; Apr. 27, 1938, ch. 180, title I, § 1, 52 Stat. 253; June 29, 1939, ch. 248, title I, 53 Stat. 891; May 14, 1940, ch. 189, title I, 54 Stat. 187.

Earlier appropriation acts for State Department also contained annual appropriations for the Interparliamentary Union.

## § 276a. Reports to Congress by American Group.

The American group of the Interparliamentary Union shall submit to the Congress a report for each fiscal year for which an appropriation is made, including its expenditures under such appropriation. (June 28, 1935, ch. 322, § 2, 49 Stat. 426.)

## § 276b. Audit of accounts; certificate of officers of American Group as conclusive.

The certificate of the president and executive secretary of the American Group of the Interparliamentary Union shall hereafter be final and conclusive upon the accounting officers in the auditing of all accounts of the American Group of the Interparliamentary Union. (Aug. 25, 1937, ch. 757, 50 Stat. 770.)

## § 277. International Boundary Commission, United States and Mexico; study of boundary waters.

The President is hereby authorized to designate the American Commissioner on the International Boundary Commission, United States and Mexico, or other Federal agency, to cooperate with a representative or representatives of the Government of Mexico in a study regarding the equitable use of the waters of the lower Rio Grande and the lower Colorado and Tia Juana Rivers, for the purpose of obtaining information which may be used as a basis for the negotiation of a treaty with the Government of Mexico relative to the use of the waters of these rivers and to matters closely related thereto. On completion of such study the results shall be re-

ported to the Secretary of State. (May 13, 1924, ch. 153, 43 Stat. 118; Mar. 3, 1927, ch. 381, 44 Stat. 1403; Aug. 19, 1935, ch. 561, 49 Stat. 660; May 22, 1936, ch. 447, 49 Stat. 1370.)

#### INTERNATIONAL WATER COMMISSION

Act June 30, 1932, ch. 314, § 510, 47 Stat. 417, effective July 1, 1932, abolished the International Water Commission, United States and Mexico, American Section, and transferred its powers, duties, and functions to the International Boundary Commission, United States and Mexico, American Section. See act Feb. 14, 1931, ch. 190, 46 Stat. 1162 and acts cited to text of this section.

#### § 277a. Investigations of commission; construction of works or projects.

The Secretary of State, acting through the American Commissioner, International Boundary Commission, United States and Mexico, is further authorized to conduct technical and other investigations relating to the defining, demarcation, fencing, or monumentation of the land and water boundary between the United States and Mexico, to flood control, water resources, conservation, and utilization of water, sanitation and prevention of pollution, channel rectification, and stabilization and other related matters upon the international boundary between the United States and Mexico; and to construct and maintain fences, monuments and other demarcations of the boundary line between the United States and Mexico, and sewer systems, water systems, and electric light, power and gas systems crossing the international border, and to continue such work and operations through the American Commissioner as are now in progress and are authorized by law.

The President is authorized and empowered to construct, operate, and maintain on the Rio Grande River below Fort Quitman, Texas, any and all works or projects which are recommended to the President as the result of such investigations and by the President are deemed necessary and proper. (May 13, 1924, ch. 153, 43 Stat. 118; Mar. 3, 1927, ch. 381, 44 Stat. 1403; Aug. 19, 1935, ch. 561, 49 Stat. 660; May 22, 1936, ch. 447, 49 Stat. 1370.)

#### CROSS REFERENCE

International Water Commission, see note to section 277 of this title.

#### § 277b. Works or projects; construction under treaty with Mexico; operation, maintenance and supervision.

(a) The President is further authorized to construct any project or works which may be provided for in a treaty entered into with Mexico and to repair, protect, maintain, or complete works now existing or now under construction or those that may be constructed under the treaty provisions aforesaid; and to construct any project or works designed to facilitate compliance with the provisions of treaties between the United States and Mexico; and (b) to operate and maintain any project or works so constructed or, subject to such rules and regulations for continuing supervision by the said American Commissioner or any Federal agency as the President may cause to be promulgated, to turn over the operation and maintenance of such project or works to any Federal agency, or any State, county, municipality, district, or other political subdivision within

which such project or works may be in whole or in part situated, upon such terms, conditions, and requirements as the President may deem appropriate. (May 13, 1924, ch. 153, 43 Stat. 118; Mar. 3, 1927, ch. 381, 44 Stat. 1403; Aug. 19, 1935, ch. 561, 49 Stat. 660; May 22, 1936, ch. 447, 49 Stat. 1370.)

#### CROSS REFERENCE

International Water Commission, see note to section 277 of this title.

#### § 277c. Agreements with political subdivisions; acquisition of lands.

In order to carry out the provisions of sections 277–277d of this title, the President, or any Federal agency he may designate is authorized, (a) in his discretion, to enter into agreements with any one or more of said political subdivisions, in connection with the construction of any project or works provided for in section 277b of this title, under the terms of which agreements there shall be furnished to the United States, gratuitously, except for the examination and approval of titles, the lands or easements in lands necessary for the construction, operation, and maintenance in whole or in part of any such project or works, or for the assumption by one or more of any such political subdivisions making such agreement, of the operation and maintenance of such project or works in whole or in part upon the completion thereof: *Provided, however*, That when an agreement is reached that necessary lands or easements shall be provided by any such political subdivision and for the future operation and maintenance by it of a project or works or a part thereof, in the discretion of the President the title to such lands and easements for such projects or works need not be required to be conveyed to the United States but may be required only to be vested in and remain in such political subdivision; (b) to acquire by purchase, exercise of the power of eminent domain, or by donation, any real or personal property which may be necessary; (c) to withdraw from sale, public entry or disposal of such public lands of the United States as he may find to be necessary and thereupon the Secretary of the Interior shall cause the lands so designated to be withdrawn from any public entry whatsoever, and from sale, disposal, location or settlement under the mining laws or any other law relating to the public domain and shall cause such withdrawal to appear upon the records in the appropriate land office having jurisdiction over such lands, and such lands may be used for carrying out the purposes of sections 277–277d of this title: *Provided*, That any such withdrawal may subsequently be revoked by the President; and (d) to make or approve all necessary rules and regulations. (May 13, 1924, ch. 153, 43 Stat. 118; Mar. 3, 1927, ch. 381, 44 Stat. 1403; Aug. 19, 1935, ch. 561, 49 Stat. 660; May 22, 1936, ch. 447, 49 Stat. 1370.)

#### CROSS REFERENCE

International Water Commission, see note to section 277 of this title.

#### § 277d. Funds received from Mexico; expenditure.

Any moneys contributed by or received from the United Mexican States for the purpose of cooperat-



ing or assisting in carrying out the provisions of sections 277–277d of this title shall be available for expenditure in connection with any appropriation which may be made for the purposes of such sections. (May 13, 1924, ch. 153, 43 Stat. 118; Mar. 3, 1927, ch. 381, 44 Stat. 1403; Aug. 19, 1935, ch. 561, 49 Stat. 660; May 22, 1936, ch. 447, 49 Stat. 1370.)

#### CROSS REFERENCE

International Water Commission, see note to section 277 of this title.

#### § 277e. Disposal of lands; issuance of licenses for use of lands; compensation for injured property.

The Secretary of State be, and he is hereby, authorized to lease to citizens of the United States any land heretofore or hereafter acquired under any Act, Executive order, or treaty in connection with projects, in whole or in part, constructed or administered by the Secretary of State through the said American Commissioner, or to dispose of such lands to American citizens when no longer needed, by sale at public auction, after thirty days advertisement, at a price not less than that which may be fixed by three disinterested appraisers, to be designated by the Secretary of State, or by private sale, or otherwise, at not less than such appraised value: *Provided*, That any of such land as shall have been donated to the United States and which is no longer needed may be reconveyed, without cost, to the grantor or his heirs: *Provided further*, That the lease or disposal of any land pursuant hereto may, in the discretion of the Secretary of State, be subject to reservations in favor of the United States for rights-of-way for irrigation, drainage, river work, and other purposes, and any such disposal may be conditioned upon and made subject to inclusion of such lands in any existing irrigation district in the vicinity of such lands, the proceeds of any such lease or sale to be covered into the Treasury of the United States: *And provided further*, That, in the discretion of the Secretary of State, and subject to such conditions as he may deem appropriate, conveyances of any other of such lands not needed by the United States may be made to the State to which they lie adjacent or to any similarly situated county, city, or other governmental subdivision of such State, without cost, for use for public purposes.

The Secretary of State is further authorized to issue revokable licenses for public or private use for irrigation or other structures or uses not inconsistent with the use of such lands made, or to be made, by the United States, across any lands retained by the United States, and to execute all necessary leases, title instruments, and conveyances, in order to carry out the provisions of this section.

Whenever the construction of any project or works undertaken or administered by the Secretary of State through the International Boundary Commission, United States and Mexico, results in the interference with or necessitates the alteration or restoration of constructed and existing irrigation or water-supply structures, sanitary or sewage disposal works, or other structures or physical property belonging to any municipal or private corporation, company, association, or individual, the Secretary of State may

cause the restoration or reconstruction of such works, structures, or physical property or the construction of others in lieu thereof or he may compensate the owners thereof to the extent of the reasonable value thereof as the same may be agreed upon by the American Commissioner with such owner.

The Secretary of State acting through such officers as he may designate, is further authorized to consider, adjust, and pay from funds appropriated for the project, the construction of which resulted in damages, any claim for damages accruing after March 31, 1937, caused to owners of lands or other private property of any kind by reason of the operations of the United States, its officers or employees, in the survey, construction, operation, or maintenance of any project constructed or administered through the American Commissioner, International Boundary Commission, United States and Mexico, if such claim for damages does not exceed \$1,000 and has been filed with the American Commissioner within one year after the damage is alleged to have occurred, and when in the opinion of the American Commissioner such claim is substantiated by a report of a board appointed by the said Commissioner. (Aug. 27, 1935, ch. 763, 49 Stat. 906; June 19, 1939, ch. 212, 53 Stat. 841.)

#### § 278. Gorgas Memorial Laboratory; location; contributions by Latin-American Governments; administration.

There is hereby authorized to be permanently appropriated for each year, out of any money in the Treasury not otherwise appropriated, the sum of \$50,000, to be paid to the Gorgas Memorial Institute of Tropical and Preventive Medicine, Incorporated (hereinafter referred to as the Gorgas Memorial Institute), for the maintenance and operation by it, of a laboratory to be known as the Gorgas Memorial Laboratory, upon condition (1) that the necessary building or quarters for said laboratory shall be constructed within the five years next ensuing after sections 278–278b of this title shall become a law, either upon the site offered by the Republic of Panama therefor, at, or adjacent to, the city of Panama, or upon a site in the Canal Zone to be provided by the United States; (2) that each of the Latin-American Governments be invited and permitted to contribute annually, on a pro rata basis, according to population, toward the maintenance and operation of such laboratory, the total of such contributions not to exceed 75 per centum of the total contributed by the United States; and (3) that in such manner as the President may determine the United States be represented permanently on the board or council directing the administration of such laboratory, with privilege to the Latin-American Governments contributing as aforesaid to have representation on such board or council; all such representation to be based upon, and in proportion to, the actual respective contributions made to the aforesaid maintenance and operation. (May 7, 1928, ch. 505, § 1, 45 Stat. 491.)

#### CROSS REFERENCE

Gorgas Hospital, see sections 301, 302 of Title 24, Hospitals, Asylums, and Cemeteries.

§ 278a. Annual report to Congress; examination of books and accounts.

The Gorgas Memorial Institute shall make to Congress annually, on the first Monday in December, a full report of the operation and work of the Gorgas Memorial Laboratory up to the first of November next preceding, and shall include therewith a complete statement of the receipts and expenditures of said laboratory for such fiscal year. The books and accounts of the Gorgas Memorial Laboratory shall at all times be open to examination by the Comptroller General of the United States. (May 7, 1928, ch. 505, § 3, 45 Stat. 491.)

§ 278b. Time of report to Congress.

Notwithstanding the provisions of section 278a of this title, the report of the operation and work of the laboratory, including the statement of the receipts and expenditures, shall be made to Congress during the first week of each regular session thereof, such a report to cover a fiscal year period ending on June 30 of the calendar year immediately preceding the convening of each such session. (May 14, 1940, ch. 189, title I, 54 Stat. 187.)

#### SIMILAR PROVISIONS

The text of this section was taken from Department of State Appropriation Act, 1941. Similar provisions were contained in the following acts:

1939—June 29, 1939, ch. 248, 53 Stat. 891.

1938—Apr. 27, 1938, ch. 180, title I, § 1, 52 Stat. 253.

1937—June 16, 1937, ch. 359, title I, 50 Stat. 267.

#### Chapter 8.—FOREIGN SERVICE BUILDINGS

Sec.

- 291. Lease of buildings, etc., for offices, living quarters, heat, light, and equipment.
- 292. Acquisition of sites and buildings for diplomatic and consular establishments; allotment of space.
- 293. Foreign Service Buildings Commission established; composition; duties; prior commission abolished; rules and reports; clerical and other assistants.
- 294. Manner of use of buildings; contracts for construction, etc.
- 294a. Contracts requiring payment in foreign currency.
- 295. Appropriation; Foreign Service Building Fund; expenditures.
- 295a. Additional appropriation.
- 296. Duties of Secretary of State with respect to commission and properties.
- 297. Acquisition of property by lease.
- 298. Repeal of section 133; effect.
- 299. Citation.

§ 291. Lease of buildings, etc., for offices, living quarters, heat, light, and equipment.

The Secretary of State may lease or rent, for periods not exceeding ten years, such buildings and grounds for the use of the Foreign Service as may be necessary; and he may, in accordance with existing practice without cost to them, and within the limit of any appropriation made by Congress, furnish the officers and employees in the Foreign Service with living quarters, heat, light, and household equipment in Government-owned or rented buildings, at places where, in his judgment, it would be in the public interest to do so, notwithstanding the provisions of section 70 of Title 5; and appropriations for "Contingent expenses, foreign missions," and "Contingent expenses, consulates," are hereby made available for

such purposes. (Apr. 18, 1930, ch. 184, title I, § 1, 46 Stat. 177.)

#### CROSS REFERENCE

Gifts of buildings for diplomatic and consular service, see section 134 of this title.

§ 292. Acquisition of sites and buildings for diplomatic and consular establishments; allotment of space.

The Secretary of State is empowered, subject to the direction of the commission established by section 293 of this title, to acquire by purchase or construction in the manner provided by sections 293 and 294 of this title, within the limits of appropriations made pursuant to section 295 of this title, or by exchange, in whole or in part, under such terms and conditions as in the judgment of the commission may best protect the interests of the United States, of any building or grounds of the United States in foreign countries and under the jurisdiction and control of the Secretary of State, sites and buildings in foreign capitals and in other foreign cities, and to alter, repair, and furnish such buildings for the use of the diplomatic and consular establishments of the United States, or for the purpose of consolidating, to the extent deemed advisable by the commission, within one or more buildings, the embassies, legation, consulates, and other agencies of the United States Government there maintained, which buildings shall be appropriately designated by the commission, and the space in which shall be allotted by the Secretary of State under the direction of the commission among the several agencies of the United States Government. (May 7, 1926, ch. 250, § 1, 44 Stat. 403; May 29, 1928, ch. 876, § 1, 45 Stat. 971.)

#### CROSS REFERENCE

Transfer of Foreign Service Buildings Commission and its functions to Department of State, see note under section 293 of this title.

§ 293. Foreign Service Buildings Commission established; composition; duties; prior commission abolished; rules and reports; clerical and other assistants.

(a) There is hereby established a joint commission, to be known as the Foreign Service Buildings Commission, and to be composed of the Secretary of State, the Secretary of the Treasury, the Secretary of Commerce, the chairman and the ranking minority member of the Committee on Foreign Relations of the Senate, and the chairman and the ranking minority member of the Committee on Foreign Affairs of the House of Representatives. A member of the commission may continue to serve as a member thereof until his successor has qualified.

(b) It shall be the duty of the commission to consider, formulate, and to approve plans and proposals for the acquisition and utilization of the sites and buildings authorized by section 292 of this title, and of sites and buildings heretofore acquired or authorized for the use of the diplomatic and consular establishments in foreign countries, including the initial furnishings of such buildings and the initial alteration and repair of purchased buildings and grounds. The commission established by the Act entitled "An Act making appropriations for the Diplomatic and

Consular Service for the fiscal year ending June 30, 1922", approved March 2, 1921, is hereby abolished.

(c) The commission shall prescribe rules and regulations for carrying into effect the provisions of sections 292-294, 295, 296-299, of this title, and shall make an annual report to the Congress.

(d) The commission may appoint, without regard to the civil-service laws or regulations, and fix compensation of, without regard to sections 661-663, 664-673, 674 of Title 5, such clerical and other assistants at the seat of government as the commission deems necessary. The total amount authorized to be expended under this subdivision shall not exceed \$5,000 for any one year. (May 7, 1926, ch. 250, § 2, 44 Stat. 404; May 29, 1928, ch. 876, § 2, 45 Stat. 971.)

#### TRANSFER OF FUNCTIONS

The Foreign Service Buildings Commission and its functions were transferred to the Department of State, with a provision that the "Commission shall exercise advisory functions, but all other functions (including administrative functions) shall be exercised under the direction and supervision of the Secretary of State by such division, bureau, or office in the Department of State as the Secretary shall determine" by Reorganization Plan No. II, § 1 (e), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

#### § 294. Manner of use of buildings; contracts for construction, etc.

Buildings and grounds acquired under sections 292-294, 295, 296-299 of this title or prior to May 7, 1926, acquired or authorized for the use of the diplomatic and consular establishments in foreign countries may, subject to the direction of the commission, be used, in the case of buildings and grounds for the diplomatic establishment, as Government offices or residences or as such offices and residences; or, in the case of other buildings and grounds, as such offices or such offices and residences. The contracts for all work of construction, alteration, and repair under said sections are authorized to be negotiated, the terms of the contracts to be prescribed, and the work to be performed, where necessary, in the judgment of the commission, without regard to such statutory provisions as relate to the negotiation, making, and performance of contracts and performance of work in the United States. (May 7, 1926, ch. 250, § 3, 44 Stat. 404.)

#### CROSS REFERENCE

Transfer of Foreign Service Buildings Commission and its functions to Department of State, see note under section 293 of this title.

#### § 294a. Contracts requiring payment in foreign currency.

Whenever a contract is made for the construction, alteration, or repair of a Foreign Service building which requires payments in a foreign currency, the Secretary of State is authorized to purchase such currency at such times and in such amounts (within the total amount of the payments to be made under such contract) as he may deem necessary, the currency so purchased to be disbursed and accounted for at its cost price. (June 29, 1939, ch. 248, title I, 53 Stat. 890; May 14, 1940, ch. 189, title I, 54 Stat. 186.)

#### § 295. Appropriation; Foreign Service Building Fund; expenditures.

For the purpose of carrying into effect the provisions of sections 292-294, 295, 296-299 of this title there is hereby authorized to be appropriated an amount not exceeding \$10,000,000, and the appropriations made pursuant to this authorization shall constitute a fund to be known as the Foreign Service Building Fund, to remain available until expended. Under this authorization not more than \$2,000,000 shall be appropriated for any one year, but within the total authorization provided in said sections the Secretary of State, subject to the direction of the commission, may enter into contracts for the acquisition of the buildings and grounds authorized by said sections. In the case of the buildings and grounds authorized by said sections, after the initial alterations, repairs, and furnishing have been completed, subsequent expenditures for such purposes shall not be made out of the appropriations authorized by said sections. (May 7, 1926, ch. 250, § 4, 44 Stat. 404.)

#### CROSS REFERENCE

Transfer of Foreign Service Buildings Commission and its functions to Department of State, see note under section 293 of this title.

#### § 295a. Additional appropriation.

For the purpose of further carrying into effect the provisions of sections 292-294, 295, 296-299 of this title, there is authorized to be appropriated, in addition to the amount authorized by such Act, an amount not to exceed \$5,000,000, of which not more than \$1,000,000 shall be appropriated for any one year. Sums appropriated pursuant to this section shall be available for the purposes and be subject to the conditions and limitations of such Act, as amended: *Provided*, That in the expenditure of appropriations for the construction of diplomatic and consular establishments, the Secretary of State shall, unless in his discretion the interests of the Government will not permit, purchase or contract for only articles of manufacture of the United States, notwithstanding that such articles, when delivered abroad, may cost more if such excess of cost be not unreasonable. (May 25, 1938, ch. 275, 52 Stat. 441.)

#### § 296. Duties of Secretary of State with respect to commission and properties.

The Secretary of State is empowered, subject to the direction of the commission, to collect information and to formulate plans for the use of the commission and to supervise and preserve the diplomatic and consular properties of the United States in foreign countries and the properties acquired under sections 292-294, 295, 296-299 of this title. In the collection of such information and in the formulation of such plans he may, subject to the direction of the commission, obtain such special architectural or other expert technical services as may be necessary and pay therefor, not exceeding in any case 5 per centum of the cost of construction or remodeling of the properties in respect to which said special services are rendered, from such appropriations as

Congress may make under said sections, without regard to civil service laws or regulations and the provisions of sections 661, 663, 664–673, 674 of Title 5. (May 7, 1926, ch. 250, § 5, 44 Stat. 404.)

#### CROSS REFERENCE

Transfer of Foreign Service Buildings Commission and its functions to Department of State, see note under section 293 of this title.

#### § 297. Acquisition of property by lease.

The authority granted to acquire sites and buildings by purchase shall, in cases where it is impossible to acquire title, be construed as authority to acquire the property by lease for a term sufficiently long, in the judgment of the commission, to be practically equivalent to the acquisition of title. (May 7, 1926, ch. 250, § 6, 44 Stat. 405.)

#### CROSS REFERENCE

Transfer of Foreign Service Buildings Commission and its functions to Department of State, see note under section 293 of this title.

#### § 298. Repeal of section 133; effect.

Section, act May 7, 1926, ch. 250, § 7, 44 Stat. 406, repealed act Feb. 17, 1911, ch. 105, 36 Stat. 917, incorporated as section 133 of this title, with a provision that such repeal "shall not invalidate appropriations already made under the authority of such Act."

#### § 299. Citation.

Sections 292–294, 295, 296–299 of this title may be cited as the "Foreign Service Buildings Act, 1926." (May 7, 1926, ch. 250, § 8, 44 Stat. 405.)

### Chapter 9.—FOREIGN WARS, WAR MATERIALS, AND NEUTRALITY

#### SUBCHAPTER I.—WAR MATERIALS

- 401. Seizure of war materials intended for unlawful export generally; forfeiture.
- 402. Same; warrant for detention of seized property.
- 403. Same; petition for restoration of seized property.
- 404. Same; libel and sale of seized property.
- 405. Same; method of trial; bond for redelivery.
- 406. Same; sections not to interfere.
- 407. Same; President's discretion to release seized property.
- 408. Same; use of land and naval forces to prevent exportation.
- 409. Exportation of war materials to American countries or countries under United States jurisdiction in state of domestic violence; prohibition.
- 410. Same; penalties.

#### SUBCHAPTER II.—NEUTRALITY ACT

- 441. Proclamation of state of war between foreign states.
- 442. Commerce with states engaged in armed conflict.
- 443. Combat areas.
- 444. American Red Cross vessels.
- 445. Travel on vessels of belligerent states.
- 446. Arming of American merchant vessels prohibited.
- 447. Financial transactions.
- 448. Solicitation and collection of funds and contributions.
- 449. American republics.
- 450. Restrictions on use of American ports.
- 451. Submarines and armed merchant vessels.
- 452. National Munitions Control Board.
- 453. Regulations.
- 454. Unlawful use of the American flag.
- 455. General penalty provision.
- 456. Definitions.
- 457. Appropriations.

#### PROCLAMATIONS RESPECTING WAR AND NEUTRALITY

See notes preceding section 1 of appendix of Title 50, War.

#### SUBCHAPTER I.—WAR MATERIALS

#### § 401. Seizure of war materials intended for unlawful export generally; forfeiture.

Whenever an attempt is made to export or ship from or take out of the United States any arms or munitions of war, or other articles, in violation of law, or whenever there shall be known or probable cause to believe that any such arms or munitions of war, or other articles, are being or are intended to be exported, or shipped from, or taken out of the United States, in violation of law, the several collectors, comptrollers of customs, surveyors, inspectors of customs, and marshals, and deputy marshals of the United States, and every other person duly authorized for the purpose by the President, may seize and detain any articles or munitions of war about to be exported or shipped from, or taken out of the United States, in violation of law, and the vessels or vehicles containing the same, and retain possession thereof until released or disposed of as directed in sections 402–408 of this title. If upon due inquiry as provided in such sections the property seized shall appear to have been about to be so unlawfully exported, shipped from, or taken out of the United States, the same shall be forfeited to the United States. (June 15, 1917, ch. 30, title VI, § 1, 40 Stat. 223; June 17, 1930, ch. 497, title IV, § 523, 46 Stat. 740.)

#### CROSS REFERENCE

Office of Surveyor of Customs abolished except in port of New York, see section 5a of Title 19, Customs Duties.

#### § 402. Same; warrant for detention of seized property.

It shall be the duty of the person making any seizure under sections 401–408 of this title to apply, with due diligence, to the judge of the district court of the United States, or to the judge of the United States district court of the Canal Zone, or to the judge of a court of first instance in the Philippine Islands, having jurisdiction over the place within which the seizure is made, for a warrant to justify the further detention of the property so seized, which warrant shall be granted only on oath or affirmation showing that there is known or probable cause to believe that the property seized is being or is intended to be exported or shipped from or taken out of the United States in violation of law; and if the judge refuses to issue the warrant, or application therefor is not made by the person making the seizure within a reasonable time, not exceeding ten days after the seizure, the property shall forthwith be restored to the owner or person from whom seized. If the judge is satisfied that the seizure was justified under the provisions of sections 401–408 of this title, and issues his warrant accordingly, then the property shall be detained by the person seizing it until the President, who is hereby expressly authorized so to do, orders it to be restored to the owner or claimant, or until it is discharged in due course of law on petition of the claimant, or on trial of condemnation proceedings, as provided in sections 403–408 of this title. (June 15, 1917, ch. 30, title VI, § 2, 40 Stat. 224.)

**§ 403. Same; petition for restoration of seized property.**

The owner or claimant of any property seized under sections 401–408 of this title may, at any time before condemnation proceedings have been instituted, as provided in sections 404–408 of this title, file his petition for its restoration in the district court of the United States, or the district court of the Canal Zone, or the court of first instance in the Philippine Islands, having jurisdiction over the place in which the seizure was made, whereupon the court shall advance the cause for hearing and determination with all possible dispatch, and, after causing notice to be given to the United States attorney for the district and to the person making the seizure, shall proceed to hear and decide whether the property seized shall be restored to the petitioner or forfeited to the United States. (June 15, 1917, ch. 30, title VI, § 3, 40 Stat. 224.)

**FEDERAL RULES OF CIVIL PROCEDURE**

Assignment of cases for trial, see Rules of Civil Procedure, Rule 40, following section 723c of Title 28, Judicial Code and Judiciary.

**§ 404. Same; libel and sale of seized property.**

Whenever the person making any seizure under sections 401–408 of this title applies for and obtains a warrant for the detention of the property, and (a) upon the hearing and determination of the petition of the owner or claimant restoration is denied, or (b) the owner or claimant fails to file a petition for restoration within thirty days after the seizure, the United States attorney for the district wherein it was seized, upon direction of the Attorney General, shall institute libel proceedings in the United States district court or the district court of the Canal Zone or the court of first instance of the Philippine Islands having jurisdiction over the place wherein the seizure was made against the property for condemnation; and if, after trial and hearing of the issues involved, the property is condemned, it shall be disposed of by sale, and the proceeds thereof, less the legal costs and charges, paid into the Treasury: *Provided*, That the court shall order any arms and munitions of war so condemned delivered to the War Department of the United States. (June 15, 1917, ch. 30, title VI, § 4, 40 Stat. 224; Mar. 1, 1929, ch. 420, 45 Stat. 1423.)

**§ 405. Same; method of trial; bond for redelivery.**

The proceedings in such summary trials upon the petition of the owner or claimant of the property seized, as well as in the libel cases provided for in section 404 of this title, shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in such libel cases, and all such proceedings shall be at the suit of and in the name of the United States: *Provided*, That upon the payment of the costs and legal expenses of both the summary trials and the libel proceedings provided for in section 404 of this title, and the execution and delivery of a good and sufficient bond in an amount double the value of the property seized, conditioned that it will not be exported or used or employed contrary to the

provisions of sections 401–408 of this title, the court, in its discretion, may direct that it be delivered to the owners thereof or to the claimants thereof. (June 15, 1917, ch. 30, title VI, § 5, 40 Stat. 224.)

**§ 406. Same; sections not to interfere with foreign trade.**

Except in those cases in which the exportation of arms and munitions of war or other articles is forbidden by proclamation or otherwise by the President, as provided in section 401 of this title, nothing contained in sections 401–408 of this title shall be construed to extend to, or interfere with any trade in such commodities, conducted with any foreign port or place wheresoever, or with any other trade which might have been lawfully carried on before June 15, 1917, under the law of nations, or under the treaties or conventions entered into by the United States, or under the laws thereof. (June 15, 1917, ch. 30, title VI, § 6, 40 Stat. 225.)

**§ 407. Same; President's discretion to release seized property.**

Upon payment of the costs and legal expenses incurred in the summary trial provided for in sections 403–405 of this title for possession or libel proceedings, the President is hereby authorized, in his discretion, to order the release and restoration to the owner or claimant, as the case may be, of any property seized or condemned under the provisions of sections 401–408 of this title. (June 15, 1917, ch. 30, title VI, § 7, 40 Stat. 225.)

**§ 408. Same; use of land and naval forces to prevent exportation.**

The President may employ such part of the land or naval forces of the United States as he may deem necessary to carry out the purposes of sections 401–445 of this title. (June 15, 1917, ch. 30, title VI, § 8, 40 Stat. 225.)

**§ 409. Exportation of war materials to American countries or countries under United States jurisdiction in state of domestic violence; prohibition.**

Whenever the President finds that in any American country, or in any country in which the United States exercises extraterritorial jurisdiction, conditions of domestic violence exist, which are or may be promoted by the use of arms or munitions of war procured from the United States, and makes proclamation thereof, it shall be unlawful to export, except under such limitations and exceptions as the President prescribes, any arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or by Congress. (Jan. 31, 1922, ch. 44, § 1, 42 Stat. 361.)

**§ 410. Same; penalties.**

Whoever exports any arms or munitions of war in violation of section 409 of this title shall, on conviction, be punished by fine not exceeding \$10,000, or by imprisonment not exceeding two years, or both. (Jan. 31, 1922, ch. 44, § 2, 42 Stat. 361.)

## SUBCHAPTER II.—NEUTRALITY ACT

## § 441. Proclamation of state of war between foreign states.

(a) Whenever the President, or the Congress by concurrent resolution, shall find that there exists a state of war between foreign states, and that it is necessary to promote the security or preserve the peace of the United States or to protect the lives of citizens of the United States, the President shall issue a proclamation naming the states involved; and he shall, from time to time, by proclamation, name other states as and when they may become involved in the war.

(b) Whenever the state of war which shall have caused the President to issue any proclamation under the authority of this section shall have ceased to exist with respect to any state named in such proclamation, he shall revoke such proclamation with respect to such state. (Nov. 4, 1939, ch. 2, 12:04 p. m., § 1, 54 Stat. 4.)

## PURPOSE OF AND RIGHTS RESERVED UNDER SUBCHAPTER

The purpose of Res. Nov. 4, 1939, cited to text, was expressed in the first three paragraphs of the act as follows:

"Whereas the United States, desiring to preserve its neutrality in wars between foreign states and desiring also to avoid involvement therein, voluntarily imposes upon its nationals by domestic legislation the restrictions set out in this joint resolution [sections 441-457]; and

"Whereas by so doing the United States waives none of its own rights or privileges, or those of any of its nationals, under international law, and expressly reserves all the rights and privileges to which it and its nationals are entitled under the law of nations; and

"Whereas the United States hereby expressly reserves the right to repeal, change or modify this [sections 441-457] or any other domestic legislation in the interests of the peace, security or welfare of the United States and its people."

## SEPARABILITY OF SUBCHAPTER

Section 17 of Res. Nov. 4, 1939, cited to text, provided as follows: "If any of the provisions of this joint resolution [sections 441-457], or the application thereof to any person or circumstance, is held invalid, the remainder of the joint resolution, and the application of such provision to other persons or circumstances, shall not be affected thereby."

## REPEALS

Section 19 of Res. Nov. 4, 1939, cited to text, provided as follows: "The joint resolution of August 31, 1935, as amended [sections 245a-245i], and the joint resolution of January 8, 1937 [ch. 1, 50 Stat. 3], are hereby repealed; but offenses committed and penalties, forfeitures, or liabilities incurred under either of such joint resolutions prior to the date of enactment of this joint resolution [sections 441-457] may be prosecuted and punished, and suits and proceedings for violations of either of such joint resolutions or of any rule or regulation issued pursuant thereto may be commenced and prosecuted, in the same manner and with the same effect as if such joint resolutions had not been repealed."

Neutrality Act of 1939 not to be deemed repealed or modified in any manner by Res. May 7, 1940, ch. 185, 54 Stat. 179, according to section 3 thereof, which resolution amended section 5 (b) of the Trading With the Enemy Act, see sections 95a of Title 12 and 5 (b) of Appendix to Title 50, which resolution approved and confirmed Ex. Ord. No. 8389, amending Ex. Ord. No. 6560, set out in note under section 95 of Title 12, and regulations and general rulings issued by Secretary of Treasury under said Ex. Ord. No. 8389.

## SHORT TITLE

Section 20 of Res. Nov. 4, 1939, cited to text, provided as follows: "This joint resolution [sections 441-457] may be cited as the 'Neutrality Act of 1939'."

## § 442. Commerce with states engaged in armed conflict.

(a) Whenever the President shall have issued a proclamation under the authority of section 441 (a) of this title it shall thereafter be unlawful for any American vessel to carry any passengers or any articles or materials to any state named in such proclamation.

(b) Whoever shall violate any of the provisions of subsection (a) of this section or of any regulations issued thereunder shall, upon conviction thereof, be fined not more than \$50,000 or imprisoned for not more than five years, or both. Should the violation be by a corporation, organization, or association, each officer or director thereof participating in the violation shall be liable to the penalty prescribed in this subchapter.

(c) Whenever the President shall have issued a proclamation under the authority of section 441 (a) of this title it shall thereafter be unlawful to export or transport, or attempt to export or transport, or cause to be exported or transported, from the United States to any state named in such proclamation, any articles or materials (except copyrighted articles or materials) until all right, title, and interest therein shall have been transferred to some foreign government, agency, institution, association, partnership, corporation, or national. Issuance of a bill of lading under which title to the articles or materials to be exported or transported passes to a foreign purchaser unconditionally upon the delivery of such articles or materials to a carrier, shall constitute a transfer of all right, title, and interest therein within the meaning of this subsection. The shipper of such articles or materials shall be required to file with the collector of the port from or through which they are to be exported a declaration under oath that he has complied with the requirements of this subsection with respect to transfer of right, title, and interest in such articles or materials, and that he will comply with such rules and regulations as shall be promulgated from time to time. Any such declaration so filed shall be a conclusive estoppel against any claim of any citizen of the United States of right, title, or interest in such articles or materials, if such citizen had knowledge of the filing of such declaration; and the exportation or transportation of any articles or materials without filing the declaration required by this subsection shall be a conclusive estoppel against any claim of any citizen of the United States of right, title, or interest in such articles or materials, if such citizen had knowledge of such violation. No loss incurred by any such citizen (1) in connection with the sale or transfer of right, title, and interest in any such articles or materials or (2) in connection with the exportation or transportation of any such copyrighted articles or materials, shall be made the basis of any claim put forward by the Government of the United States.

(d) Insurance written by underwriters on articles or materials included in shipments which are subject to restrictions under the provisions of this subchapter, and on vessels carrying such shipments shall not be deemed an American interest therein,

and no insurance policy issued on such articles or materials, or vessels, and no loss incurred thereunder or by the owners of such vessels, shall be made the basis of any claim put forward by the Government of the United States.

(e) Whenever any proclamation issued under the authority of section 441 (a) of this title shall have been revoked with respect to any state the provisions of this section shall thereupon cease to apply with respect to such state, except as to offenses committed prior to such revocation.

(f) The provisions of subsection (a) of this section shall not apply to transportation by American vessels on or over lakes, rivers, and inland waters bordering on the United States, or to transportation by aircraft on or over lands bordering on the United States; and the provisions of subsection (c) of this section shall not apply (1) to such transportation of any articles or materials other than articles listed in a proclamation referred to in or issued under the authority of section 452 (i) of this title, or (2) to any other transportation on or over lands bordering on the United States of any articles or materials other than articles listed in a proclamation referred to in or issued under the authority of section 452 (i) of this title; and the provisions of subsections (a) and (c) of this section shall not apply to the transportation referred to in this subsection and subsections (g) and (h) of any articles or materials listed in a proclamation referred to in or issued under the authority of section 452 (i) of this title if the articles or materials so listed are to be used exclusively by American vessels, aircraft, or other vehicles in connection with their operation and maintenance.

(g) The provisions of subsections (a) and (c) of this section shall not apply to transportation by American vessels (other than aircraft) of mail, passengers, or any articles or materials (except articles or materials listed in a proclamation referred to in or issued under the authority of section 452 (i) of this title) (1) to any port in the Western Hemisphere south of thirty-five degrees north latitude, (2) to any port in the Western Hemisphere north of thirty-five degrees north latitude and west of sixty-six degrees west longitude, (3) to any port on the Pacific or Indian Oceans, including the China Sea, the Tasman Sea, the Bay of Bengal, and the Arabian Sea, and any other dependent waters of either of such oceans, seas, or bays, or (4) to any port on the Atlantic Ocean or its dependent waters south of thirty degrees north latitude. The exceptions contained in this subsection shall not apply to any such port which is included within a combat area as defined in section 443 of this title which applies to such vessels.

(h) The provisions of subsections (a) and (c) of this section shall not apply to transportation by aircraft of mail, passengers, or any articles or materials (except articles or materials listed in a proclamation referred to in or issued under the authority of section 452 (i) of this title) (1) to any port in the Western Hemisphere, or (2) to any port on the Pacific or Indian Oceans, including the China Sea, the Tasman Sea, the Bay of Bengal, and the Arabian Sea, and any other dependent waters of either of such oceans, seas,

or bays. The exceptions contained in this subsection shall not apply to any such port which is included within a combat area as defined in section 443 of this title which applies to such aircraft.

(i) Every American vessel to which the provisions of subsections (g) and (h) apply, and every neutral vessel to which the provisions of subsection (i) apply, shall, before departing from a port or from the jurisdiction of the United States, file with the collector of customs of the port of departure, or if there is no such collector at such port then with the nearest collector of customs, a sworn statement (1) containing a complete list of all the articles and materials carried as cargo by such vessel, and the names and addresses of the consignees of all such articles and materials, and (2) stating the ports at which such articles and materials are to be unloaded and the ports of call of such vessel. All transportation referred to in subsections (f), (g), (h), and (i) of this section shall be subject to such restrictions, rules, and regulations as the President shall prescribe; but no loss incurred in connection with any transportation excepted under the provisions of subsections (g), (h), and (i) of this section shall be made the basis of any claim put forward by the Government of the United States.

(j) Whenever all proclamations issued under the authority of section 441 (a) of this title shall have been revoked, the provisions of subsections (f), (g), (h), (i), and (l) of this section shall expire.

(k) The provisions of this section shall not apply to the current voyage of any American vessel which has cleared for a foreign port and has departed from a port or from the jurisdiction of the United States in advance of (1) the date of enactment of this subchapter, or (2) any proclamation issued after such date under the authority of section 441 (a) of this title; but any such vessel shall proceed at its own risk after either of such dates, and no loss incurred in connection with any such vessel or its cargo after either of such dates shall be made the basis of any claim put forward by the Government of the United States.

(l) The provisions of subsection (c) of this section shall not apply to the transportation by a neutral vessel to any port referred to in subsection (g) of this section of any articles or materials (except articles or materials listed in a proclamation referred to in or issued under the authority of section 452 (i) of this title) so long as such port is not included within a combat area as defined in section 443, which applies to American vessels. (Nov. 4, 1939, ch. 2, 12:04 p. m., § 2, 54 Stat. 4.)

#### CROSS REFERENCE

Maintenance of and adjustment of obligations with respect to essential vessels affected by Neutrality Act, see section 1242a of Title 46, Shipping.

#### § 443. Combat areas.

(a) Whenever the President shall have issued a proclamation under the authority of section 441 (a) of this title, and he shall thereafter find that the protection of citizens of the United States so requires, he shall, by proclamation, define combat areas, and thereafter it shall be unlawful, except under such rules and regulations as may be prescribed, for any citizen of the United States or any American



vessel to proceed into or through any such combat area. The combat areas so defined may be made to apply to surface vessels or aircraft, or both.

(b) In case of the violation of any of the provisions of this section by any American vessel, or any owner or officer thereof, such vessel, owner, or officer shall be fined not more than \$50,000 or imprisoned for not more than five years, or both. Should the owner of such vessel be a corporation, organization, or association, each officer or director participating in the violation shall be liable to the penalty hereinabove prescribed. In case of the violation of this section by any citizen traveling as a passenger, such passenger may be fined not more than \$10,000 or imprisoned for not more than two years, or both.

(c) The President may from time to time modify or extend any proclamation issued under the authority of this section, and when the conditions which shall have caused him to issue any such proclamation shall have ceased to exist he shall revoke such proclamation and the provisions of this section shall thereupon cease to apply, except as to offenses committed prior to such revocation. (Nov. 4, 1939, ch. 2, 12:04 p. m., § 3, 54 Stat. 7.)

#### DEFINITION OF COMBAT AREAS

##### PROC. NO. 2376, EUROPEAN NORTH ATLANTIC REGION

Proc. No. 2376, Nov. 4, 1939, 3 p. m., 4 Fed. Reg. 4495, 54 Stat. —, provided in part:

Whereas section 3 of the joint resolution of Congress approved November 4, 1939, provides as follows:

"(a) Whenever the President shall have issued a proclamation under the authority of section 1 (a), and he shall thereafter find that the protection of citizens of the United States so requires, he shall, by proclamation, define combat areas, and thereafter it shall be unlawful, except under such rules and regulations as may be prescribed, for any citizen of the United States or any American vessel to proceed into or through any such combat area. The combat areas so defined may be made to apply to surface vessels or aircraft, or both.

"(b) In case of the violation of any of the provisions of this section by any American vessel, or any owner or officer thereof, such vessel, owner, or officer shall be fined not more than \$50,000 or imprisoned for not more than five years, or both. Should the owner of such vessel be a corporation, organization, or association, each officer or director participating in the violation shall be liable to the penalty hereinabove prescribed. In case of the violation of this section by any citizen traveling as a passenger, such passenger may be fined not more than \$10,000 or imprisoned for not more than two years, or both.

"(c) The President may from time to time modify or extend any proclamation issued under the authority of this section, and when the conditions which shall have caused him to issue any such proclamation shall have ceased to exist he shall revoke such proclamation and the provisions of this section shall thereupon cease to apply, except as to offenses committed prior to such revocation."

And whereas it is further provided by section 13 of the said joint resolution that

"The President may, from time to time, promulgate such rules and regulations, not inconsistent with law as may be necessary and proper to carry out any of the provisions of this joint resolution; and he may exercise any power or authority conferred on him by this joint resolution through such officer or officers, or agency or agencies, as he shall direct."

Now, therefore, I, Franklin D. Roosevelt, President of the United States of America, acting under and by virtue of the authority conferred on me by the said joint resolution, do hereby find that the protection of citizens of the United States requires that there be defined a combat

area through or into which it shall be unlawful, except under such rules and regulations as may be prescribed, for any citizen of the United States or any American vessel, whether a surface vessel or an aircraft, to proceed.

And I do hereby define such combat area as follows:

All the navigable waters within the limits set forth hereafter.

Beginning at the intersection of the North Coast of Spain with the meridian of 2°45' longitude west of Greenwich;

Thence due north to a point in 43°54' north latitude;

Thence by rhumb line to a point in 45°00' north latitude; 20°00' west longitude;

Thence due north to 58°00' north latitude;

Thence by a rhumb line to latitude 62° north, longitude 2° east;

Thence by rhumb line to latitude 60° north, longitude 5° east;

Thence due east to the mainland of Norway;

Thence along the coastline of Norway, Sweden, the Baltic Sea and dependent waters thereof, Germany, Denmark, the Netherlands, Belgium, France, and Spain to the point of beginning.

And I do hereby enjoin upon all officers of the United States, charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said joint resolution and in bringing to trial and punishment any offenders against the same.

And I do hereby delegate to the Secretary of State the power to exercise any power or authority conferred on me by the said joint resolution as made effective by this my proclamation issued thereunder, which is not specifically delegated by Executive order to some other officer or agency of this Government, and the power to promulgate such rules and regulations not inconsistent with law as may be necessary and proper to carry out any of its provisions.

##### PROC. NO. 2394, EUROPEAN NORTH ATLANTIC AND ARCTIC REGIONS

Proc. No. 2394, April 10, 1940, 5 Fed. Reg. 1400, 54 Stat. —, provided in part:

Now, Therefore, I, Franklin D. Roosevelt, President of the United States of America, acting under and by virtue of the authority conferred on me by section 3 of the joint resolution of Congress approved November 4, 1939, do hereby find that the protection of citizens of the United States requires that there be an extension of the combat area defined in my proclamation of November 4, 1939, through or into which extended combat area it shall be unlawful, except under such rules and regulations as may be prescribed, for any citizen of the United States or any American vessel, whether a surface vessel or an aircraft, to proceed.

And I do hereby define the extended combat area as follows:

All the navigable waters within the limits set forth hereafter.

Beginning at the intersection of the North Coast of Spain with the meridian of 2°45' longitude west of Greenwich;

Thence due north to a point in 43°54' north latitude;

Thence by a rhumb line to a point in 45° north latitude, 20° west longitude;

Thence due north to 58° north latitude;

Thence by a rhumb line to a point in 76°30' north latitude, 16°35' east longitude;

Thence by a rhumb line to a point in 70° north latitude, 44° east longitude;

Thence due south to the mainland of the Union of Soviet Socialist Republics;

Thence along the coastline of the Union of Soviet Socialist Republics, Finland, Norway, Sweden, the Baltic Sea and dependent waters thereof, Germany, Denmark, the Netherlands, Belgium, France, and Spain to the point of beginning.

And I do hereby enjoin upon all officers of the United States, charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said joint resolution and in bringing to trial and punishment any offenders against the same.

And I do hereby delegate to the Secretary of State the power to exercise any power or authority conferred on me by the said joint resolution as made effective by this my proclamation issued thereunder, which is not specifically delegated by Executive order to some other officer or agency of this Government, and the power to promulgate such rules and regulations not inconsistent with law as may be necessary and proper to carry out any of its provisions.

PROC. NO. 2410. MEDITERRANEAN REGION

Proc. No. 2410, June 11, 1940, 5: 20 p. m. E. S. T., 5 Fed. Reg. 2209, 54 Stat. —, provided in part:

Now, Therefore, I, Franklin D. Roosevelt, President of the United States of America, acting under and by virtue of the authority conferred on me by section 3 of the joint resolution of Congress approved November 4, 1939, do hereby find that the protection of citizens of the United States requires that there be defined combat areas in addition to the combat area defined in my proclamation of April 10, 1940, through or into which additional combat areas it shall be unlawful, except under such rules and regulations as may be prescribed, for any citizen of the United States or any American vessel, whether a surface vessel or an aircraft, to proceed.

And I do hereby define the additional combat areas as follows:

All the navigable waters within the limits set forth hereafter:

1. Beginning at the intersection of the West Coast of Morocco with the parallel of 33°10' north latitude;

Thence due west to 20° west longitude;

Thence due north to 37°05' north latitude;

Thence due east to the mainland of Portugal;

Thence along the coastline of Portugal, Spain, Gibraltar, Spain, France, Italy, Yugoslavia, Albania, and Greece to the intersection of the East Coast of Greece with the parallel of 39°40' north latitude;

Thence due east to the mainland of Turkey;

Thence along the coastline of Turkey, Syria, Palestine, Egypt, Libya, Tunisia, Algeria, and Morocco to the point of beginning.

All the navigable waters within the limits set forth hereafter:

2. Beginning at the intersection of the North Coast of Italian Somaliland with the meridian of 50° longitude east of Greenwich;

Thence due north to the mainland of Arabia;

Thence eastward along the coast of Arabia to the meridian of 51° east longitude;

Thence due south to the mainland of Italian Somaliland;

Thence westward along the coast of Italian Somaliland to the point of beginning.

And I do hereby enjoin upon all officers of the United States, charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said joint resolution and in bringing to trial and punishment any offenders against the same.

And I do hereby delegate to the Secretary of State the power to exercise any power or authority conferred on me by the said joint resolution as made effective by this my proclamation issued thereunder, which is not specifically delegated by Executive order to some other officer or agency of this Government, and the power to promulgate such rules and regulations not inconsistent with law as may be necessary and proper to carry out any of its provisions.

§ 444. American Red Cross vessels.

(a) The provisions of section 442 (a) of this title shall not prohibit the transportation by vessels, unarmed and not under convoy, under charter or other direction and control of the American Red Cross of officers and American Red Cross personnel, medical personnel, and medical supplies, food, and clothing, for the relief of human suffering: *Provided*, That where permission has not been given by the blockading power, no American Red Cross vessel

shall enter a port where a blockade by aircraft, surface vessel, or submarine is being attempted through the destruction of vessels, or into a port of any country where such blockade of the whole country is being so attempted: *Provided further*, That such American Red Cross vessel shall be on a mission of mercy only and carrying only Red Cross materials and personnel.

(b) The provisions of sections 442 (a) and 443 of this title shall not prohibit a vessel, in ballast, unarmed, and not under convoy, and transporting refugee children, under sixteen years of age, from war zones, or combat areas, and shall not prohibit such vessel entering into such war zones or combat areas for this purpose, together with such necessary American citizen adult personnel in charge as may be approved by the Secretary of State, subject to the provisions of the immigration laws, if such vessel is proceeding under safe conduct granted by all of the States named in the proclamations issued under the authority of section 441 (a) of this title, and if such vessel has painted on a large scale prominently, distinctly, and unmistakably on each side thereof and upon the superstructure thereof plainly visible from the air an American flag and a statement to the effect that such vessel is a refugee-child rescue ship of the United States or under United States registry: *Provided*, That every such child so brought into the United States shall, previous to departure from the port of embarkation, have been so sponsored by some responsible American person, natural or corporate, that he will not become a public charge. (Nov. 4, 1939, 12:04 p. m., ch. 2, § 4, 54 Stat. 7; June 26, 1940, ch. 431, 54 Stat. 611; Aug. 27, 1940, ch. 695, 54 Stat. 866.)

§ 445. Travel on vessels of belligerent states.

(a) Whenever the President shall have issued a proclamation under the authority of section 441 (a) of this title it shall thereafter be unlawful for any citizen of the United States to travel on any vessel of any state named in such proclamation, except in accordance with such rules and regulations as may be prescribed.

(b) Whenever any proclamation issued under the authority of section 441 (a) of this title shall have been revoked with respect to any state the provisions of this section shall thereupon cease to apply with respect to such state, except as to offenses committed prior to such revocation. (Nov. 4, 1939, ch. 2, 12:04 p. m., § 5, 54 Stat. 7.)

§ 446. Arming of American merchant vessels prohibited.

Whenever the President shall have issued a proclamation under the authority of section 441 (a) of this title, it shall thereafter be unlawful, until such proclamation is revoked, for any American vessel, engaged in commerce with any foreign state to be armed, except with small arms and ammunition therefor, which the President may deem necessary and shall publicly designate for the preservation of discipline aboard any such vessel. (Nov. 4, 1939, ch. 2, 12:04 p. m., § 6, 54 Stat. 7.)

**§ 447. Financial transactions.**

(a) Whenever the President shall have issued a proclamation under the authority of section 441 (a) of this title, it shall thereafter be unlawful for any person within the United States to purchase, sell, or exchange bonds, securities, or other obligations of the government of any state named in such proclamation, or of any political subdivision of any such state, or of any person acting for or on behalf of the government of any such state, or political subdivision thereof, issued after the date of such proclamation, or to make any loan or extend any credit (other than necessary credits accruing in connection with the transmission of telegraph, cable, wireless and telephone services) to any such government, political subdivision, or person. The provisions of this subsection shall also apply to the sale by any person within the United States to any person in a state named in any such proclamation of any articles or materials listed in a proclamation referred to in or issued under the authority of section 452 (1) of this title.

(b) The provisions of this section shall not apply to a renewal or adjustment of such indebtedness as may exist on the date of such proclamation.

(c) Whoever shall knowingly violate any of the provisions of this section or of any regulations issued thereunder shall, upon conviction thereof, be fined not more than \$50,000 or imprisoned for not more than five years, or both. Should the violation be by a corporation, organization, or association, each officer or director thereof participating in the violation shall be liable to the penalty herein prescribed.

(d) Whenever any proclamation issued under the authority of section 441 (a) of this title shall have been revoked with respect to any state the provisions of this section shall thereupon cease to apply with respect to such state, except as to offenses committed prior to such revocation. (Nov. 4, 1939, ch. 2, 12:04 p. m., § 7, 54 Stat. 8.)

**§ 448. Solicitation and collection of funds and contributions.**

(a) Whenever the President shall have issued a proclamation under the authority of section 441 (a) of this title, it shall thereafter be unlawful for any person within the United States to solicit or receive any contribution for or on behalf of the government of any state named in such proclamation or for or on behalf of any agent or instrumentality of any such state.

(b) Nothing in this section shall be construed to prohibit the solicitation or collection of funds and contributions to be used for medical aid and assistance, or for food and clothing to relieve human suffering, when such solicitation or collection of funds and contributions is made on behalf of and for use by any person or organization which is not acting for or on behalf of any such government, but all such solicitations and collections of funds and contributions shall be in accordance with and subject to such rules and regulations as may be prescribed.

(c) Whenever any proclamation issued under the authority of section 441 (a) of this title shall have been revoked with respect to any state the provisions

of this section shall thereupon cease to apply with respect to such state, except as to offenses committed prior to such revocation. (Nov. 4, 1939, ch. 2, 12:04 p. m., § 8, 54 Stat. 8.)

**§ 449. American republics.**

This subchapter (except section 452 of this title) shall not apply to any American republic engaged in war against a non-American state or states, provided the American republic is not cooperating with a non-American state or states in such war. (Nov. 4, 1939, ch. 2, 12:04 p. m., § 9, 54 Stat. 8.)

**§ 450. Restrictions on use of American ports.**

(a) Whenever, during any war in which the United States is neutral, the President, or any person thereunto authorized by him, shall have cause to believe that any vessel, domestic or foreign, whether requiring clearance or not, is about to carry out of a port or from the jurisdiction of the United States, fuel, men, arms, ammunition, implements of war, supplies, dispatches, or information to any warship, tender, or supply ship of a state named in a proclamation issued under the authority of section 441 (a) of this title, but the evidence is not deemed sufficient to justify forbidding the departure of the vessel as provided for by section 31 of Title 18, and if, in the President's judgment, such action will serve to maintain peace between the United States and foreign states, or to protect the commercial interests of the United States and its citizens, or to promote the security or neutrality of the United States, he shall have the power, and it shall be his duty to require the owner, master, or person in command thereof, before departing from a port or from the jurisdiction of the United States, to give a bond to the United States, with sufficient sureties, in such amount as he shall deem proper, conditioned that the vessel will not deliver the men, or any fuel, supplies, dispatches, information, or any part of the cargo, to any warship, tender, or supply ship of a state named in a proclamation issued under the authority of section 441 (a) of this title.

(b) If the President, or any person thereunto authorized by him, shall find that a vessel, domestic or foreign, in a port of the United States, has previously departed from a port or from the jurisdiction of the United States during such war and delivered men, fuel, supplies, dispatches, information, or any part of its cargo to a warship, tender, or supply ship of a state named in a proclamation issued under the authority of section 441 (a) of this title, he may prohibit the departure of such vessel during the duration of the war.

(c) Whenever the President shall have issued a proclamation under section 441 (a) of this title he may, while such proclamation is in effect, require the owner, master, or person in command of any vessel, foreign or domestic, before departing from the United States, to give a bond to the United States, with sufficient sureties, in such amount as he shall deem proper, conditioned that no alien seaman who arrived on such vessel shall remain in the United States for a longer period than that permitted under the regulations, as amended from time to time, issued

pursuant to section 168 of Title 8. Notwithstanding the provisions of said section 168 of Title 8, the President may issue such regulations with respect to the landing of such seamen as he deems necessary to insure their departure either on such vessel or another vessel at the expense of such owner, master, or person in command. (Nov. 4, 1939, ch. 2, 12:04 p. m., § 10, 54 Stat. 9.)

#### § 451. Submarines and armed merchant vessels.

Whenever, during any war in which the United States is neutral, the President shall find that special restrictions placed on the use of the ports and territorial waters of the United States by the submarines or armed merchant vessels of a foreign state will serve to maintain peace between the United States and foreign states, or to protect the commercial interests of the United States and its citizens, or to promote the security of the United States, and shall make proclamation thereof, it shall thereafter be unlawful for any such submarine or armed merchant vessel to enter a port or the territorial waters of the United States or to depart therefrom, except under such conditions and subject to such limitations as the President may prescribe. Whenever, in his judgment, the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke his proclamation and the provisions of this section shall thereupon cease to apply, except as to offenses committed prior to such revocation. (Nov. 4, 1939, ch. 2, 12:04 p. m., § 11, 54 Stat. 9.)

#### USE OF PORTS OR TERRITORIAL WATERS OF UNITED STATES BY SUBMARINES OF FRANCE; GERMANY; POLAND; OR UNITED KINGDOM, INDIA, AUSTRALIA, CANADA, NEW ZEALAND, OR UNION OF SOUTH AFRICA

Proc. No. 2375, Nov. 4, 1939, 12:04 p. m., 4 Fed. Reg. 4494, 54 Stat. —, provided: Whereas section 11 of the Joint Resolution approved November 4, 1939, provides:

"Whenever, during any war in which the United States is neutral, the President shall find that special restrictions placed on the use of the ports and territorial waters of the United States by the submarines or armed merchant vessels of a foreign state, will serve to maintain peace between the United States and foreign states, or to protect the commercial interests of the United States and its citizens, or to promote the security of the United States, and shall make proclamation thereof, it shall thereafter be unlawful for any such submarine or armed merchant vessel to enter a port or the territorial waters of the United States or to depart therefrom, except under such conditions and subject to such limitations as the President may prescribe. Whenever, in his judgment, the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke his proclamation and the provisions of this section shall thereupon cease to apply, except as to offenses committed prior to such revocation."

Whereas there exists a state of war between Germany and France; Poland; and the United Kingdom, India, Australia, Canada, New Zealand, and the Union of South Africa;

Whereas the United States of America is neutral in such war;

Now, Therefore, I, Franklin D. Roosevelt, President of the United States of America, acting under and by virtue of the authority vested in me by the foregoing provision of section 11 of the joint resolution approved November 4, 1939, do by this proclamation find that special restrictions placed on the use of the ports and territorial waters of the United States, exclusive of the Canal Zone, by the submarines of a foreign belligerent state, both commercial submarines and submarines which are ships of war, will

serve to maintain peace between the United States and foreign states, to protect the commercial interests of the United States and its citizens, and to promote the security of the United States;

And I do further declare and proclaim that it shall hereafter be unlawful for any submarine of France; Germany; Poland; or the United Kingdom, India, Australia, Canada, New Zealand, or the Union of South Africa, to enter ports or territorial waters of the United States, exclusive of the Canal Zone, except submarines of the said belligerent states which are forced into such ports or territorial waters of the United States by *force majeure*; and in such cases of *force majeure*, only when such submarines enter ports or territorial waters of the United States while running on the surface with conning tower and superstructure above water and flying the flags of the foreign belligerent states of which they are vessels. Such submarines may depart from ports or territorial waters of the United States only while running on the surface with conning tower and superstructure above water and flying the flags of the foreign belligerent states of which they are vessels.

And I do hereby enjoin upon all officers of the United States, charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said joint resolution, and this my proclamation issued thereunder, and in bringing to trial and punishment any offenders against the same.

And I do hereby revoke my Proclamation No. 2371 issued by me on October 18, 1939, in regard to the use of ports or territorial waters of the United States by submarines of foreign belligerent states.

This proclamation shall continue in full force and effect unless and until modified, revoked or otherwise terminated, pursuant to law.

#### PROC. NO. 2400. USE OF PORTS OR TERRITORIAL WATERS OF UNITED STATES BY SUBMARINES OF NORWAY

Proc. No. 2400, Apr. 25, 1940, 5 Fed. Reg. 1570, 54 Stat. —, provided in part:

Now, therefore, I, Franklin D. Roosevelt, President of the United States of America, acting under and by virtue of the authority vested in me by the foregoing provision of section 11 of the joint resolution approved November 4, 1939, do by this proclamation declare and proclaim that the provisions of my proclamation of November 4, 1939, in regard to the use of the ports and territorial waters of the United States, exclusive of the Canal Zone, by the submarines of France; Germany; Poland; and the United Kingdom, India, Australia, Canada, New Zealand, and the Union of South Africa, shall also apply to the use of the ports and territorial waters of the United States, exclusive of the Canal Zone, by the submarines of Norway.

And I do hereby enjoin upon all officers of the United States, charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said joint resolution, and this my proclamation issued thereunder, and in bringing to trial and punishment any offenders against the same.

#### PROC. NO. 2406. USE OF PORTS OR TERRITORIAL WATERS OF UNITED STATES BY SUBMARINES OF BELGIUM AND THE NETHERLANDS

Proc. No. 2406, May 11, 1940, 5 Fed. Reg. 1690, 54 Stat. —, provided in part:

Now, therefore, I, Franklin D. Roosevelt, President of the United States of America, acting under and by virtue of the authority vested in me by the foregoing provision of section 11 of the Joint Resolution approved November 4, 1939, do by this proclamation declare and proclaim that the provisions of my proclamation of November 4, 1939, in regard to the use of the ports and territorial waters of the United States, exclusive of the Canal Zone, by the submarines of France; Germany; Poland; and the United Kingdom, India, Australia, Canada, New Zealand, and the Union of South Africa, shall also apply to the use of the ports and territorial waters of the United States, exclusive of the Canal Zone, by the submarines of Belgium and the Netherlands.

And I do hereby enjoin upon all officers of the United States, charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said joint resolution, and this my proclamation issued thereunder,

and in bringing to trial and punishment any offenders against the same.

**PROC. NO. 2409. USE OF PORTS OR TERRITORIAL WATERS OF UNITED STATES BY SUBMARINES OF ITALY**

Proc. No. 2409, June 10, 1940, 10:20 p. m. E. S. T., 5 Fed. Reg. 2192, 54 Stat. —, provided in part:

Now, therefore, I, Franklin D. Roosevelt, President of the United States of America, acting under and by virtue of the authority vested in me by the foregoing provision of section 11 of the joint resolution approved November 4, 1939, do by this proclamation declare and proclaim that the provisions of my proclamation of November 4, 1939, in regard to the use of the ports and territorial waters of the United States, exclusive of the Canal Zone, by the submarines of France; Germany; Poland; and the United Kingdom, India, Australia, Canada, New Zealand, and the Union of South Africa, shall also apply to the use of the ports and territorial waters of the United States, exclusive of the Canal Zone, by the submarines of Italy.

And I do hereby enjoin upon all officers of the United States, charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said joint resolution, and this my proclamation issued thereunder, and in bringing to trial and punishment any offenders against the same.

**PROC. NO. 2445. USE OF PORTS OR TERRITORIAL WATERS OF UNITED STATES BY SUBMARINES OF GREECE**

Provisions of Proc. No. 2375 were made applicable to submarines of Greece by Proc. No. 2445, Nov. 15, 1940, 5 Fed. Reg. 4524, 54 Stat. —.

**§ 452. National Munitions Control Board.**

(a) There is hereby established a National Munitions Control Board (hereinafter referred to as the "Board"). The Board shall consist of the Secretary of State, who shall be chairman and executive officer of the Board, the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, and the Secretary of Commerce. Except as otherwise provided in this section, or by other law, the administration of this section is vested in the Secretary of State. The Secretary of State shall promulgate such rules and regulations with regard to the enforcement of this section as he may deem necessary to carry out its provisions. The Board shall be convened by the chairman and shall hold at least one meeting a year.

(b) Every person who engages in the business of manufacturing, exporting, or importing any arms, ammunition, or implements of war listed in a proclamation referred to in or issued under the authority of subsection (i) of this section, whether as an exporter, importer, manufacturer, or dealer, shall register with the Secretary of State his name, or business name, principal place of business, and places of business in the United States, and a list of the arms, ammunition, and implements of war which he manufactures, imports, or exports.

(c) Every person required to register under this section shall notify the Secretary of State of any change in the arms, ammunition, or implements of war which he exports, imports, or manufactures; and upon such notification the Secretary of State shall issue to such person an amended certificate of registration, free of charge, which shall remain valid until the date of expiration of the original certificate. Every person required to register under the provisions of this section shall pay a registration fee of \$100. Upon receipt of the required registration fee, the Secretary of State shall issue a registration certificate valid for five years, which shall be renewable

for further periods of five years upon the payment for each renewal of a fee of \$100; but valid certificates of registration (including amended certificates) issued under the authority of section 245a-½ or section 245b of this title, as amended, shall, without payment of any additional registration fee, be considered to be valid certificates of registration issued under this subsection, and shall remain valid for the same period as if this subchapter had not been enacted.

(d) It shall be unlawful for any person to export, or attempt to export, from the United States to any other state, any arms, ammunition, or implements of war listed in a proclamation referred to in or issued under the authority of subsection (i) of this section, or to import, or attempt to import, to the United States from any other state, any of the arms, ammunition, or implements of war listed in any such proclamation, without first having submitted to the Secretary of State the name of the purchaser and the terms of sale and having obtained a license therefor.

(e) All persons required to register under this section shall maintain, subject to the inspection of the Secretary of State, or any person or persons designated by him, such permanent records of manufacture for export, importation, and exportation of arms, ammunition, and implements of war as the Secretary of State shall prescribe.

(f) Licenses shall be issued by the Secretary of State to persons who have registered as herein provided for, except in cases of export or import licenses where the export of arms, ammunition, or implements of war would be in violation of this subchapter or any other law of the United States, or of a treaty to which the United States is a party, in which cases such licenses shall not be issued; but a valid license issued under the authority of section 245a-½ or section 245b of this title, as amended, shall be considered to be a valid license issued under this subsection, and shall remain valid for the same period as if this subchapter had not been enacted.

(g) No purchase of arms, ammunition, or implements of war shall be made on behalf of the United States by any officer, executive department, or independent establishment of the Government from any person who shall have failed to register under the provisions of this subchapter.

(h) The Board shall make a report to Congress on January 3 and July 3 of each year, copies of which shall be distributed as are other reports transmitted to Congress. Such reports shall contain such information and data collected by the Board as may be considered of value in the determination of questions connected with the control of trade in arms, ammunition, and implements of war, including the name of the purchaser and the terms of sale made under any such license. The Board shall include in such reports a list of all persons required to register under the provisions of this subchapter, and full information concerning the licenses issued hereunder, including the name of the purchaser and the terms of sale made under any such license.

(i) The President is hereby authorized to proclaim upon recommendation of the Board from time

to time a list of articles which shall be considered arms, ammunition, and implements of war for the purposes of this section; but the proclamation Numbered 2237, of May 1, 1937 (50 Stat. 1834), defining the term "arms, ammunition, and implements of war" shall, until it is revoked, have full force and effect as if issued under the authority of this subsection. (Nov. 4, 1939, ch. 2, 12:04 p. m., § 12, 54 Stat. 10.)

**PROCLAMATION 2237. ARMS, AMMUNITION, AND IMPLEMENTS OF WAR**

Whereas section 5 of the joint resolution of Congress approved May 1, 1937, amending the joint resolution entitled "Joint resolution providing for the prohibition of the export of arms, ammunition, and implements of war to belligerent countries; the prohibition of the transportation of arms, ammunition, and implements of war by vessels of the United States for the use of belligerent states; for the registration and licensing of persons engaged in the business of manufacturing, exporting, or importing arms, ammunition, or implements of war; and restricting travel by American citizens on belligerent ships during war", approved August 31, 1935, as amended February 29, 1936, provides in part as follows:

"The President is hereby authorized to proclaim upon recommendation of the Board from time to time a list of articles which shall be considered arms, ammunition, and implements of war for the purposes of this section."

Now, therefore, I, Franklin D. Roosevelt, President of the United States of America, acting under and by virtue of the authority conferred upon me by the said joint resolution of Congress, and pursuant to the recommendation of the National Munitions Control Board, declare and proclaim that the articles listed below shall, on and after June 1, 1937, be considered arms, ammunition, and implements of war for the purposes of section 5 of the said joint resolution of Congress:

**CATEGORY I**

- (1) Rifles and carbines using ammunition in excess of caliber .22, and barrels for those weapons;
- (2) Machine guns, automatic or autoloading rifles, and machine pistols using ammunition in excess of caliber .22, and barrels for those weapons;
- (3) Guns, howitzers, and mortars of all calibers, their mountings and barrels;
- (4) Ammunition in excess of caliber .22 for the arms enumerated under (1) and (2) above, and cartridge cases or bullets for such ammunition; filled and unfilled projectiles for the arms enumerated under (3) above;
- (5) Grenades, bombs, torpedoes, mines and depth charges, filled or unfilled, and apparatus for their use or discharge;
- (6) Tanks, military armored vehicles, and armored trains.

**CATEGORY II**

Vessels of war of all kinds, including aircraft carriers and submarines, and armor plate for such vessels.

**CATEGORY III**

- (1) Aircraft, unassembled, assembled, or dismantled, both heavier and lighter than air, which are designed, adapted, and intended for aerial combat by the use of machine guns or of artillery or for the carrying and dropping of bombs, or which are equipped with, or which by reason of design or construction are prepared for, any of the appliances referred to in paragraph (2) below;
- (2) Aerial gun mounts and frames, bomb racks, torpedo carriers, and bomb or torpedo release mechanisms.

**CATEGORY IV**

- (1) Revolvers and automatic pistols using ammunition in excess of caliber .22;
- (2) Ammunition in excess of caliber .22 for the arms enumerated under (1) above, and cartridge cases or bullets for such ammunition.

**CATEGORY V**

- (1) Aircraft, unassembled, assembled or dismantled, both heavier and lighter than air, other than those included in Category III;
- (2) Propellers or air screws, fuselages, hulls, wings, tail units, and under-carriage units;
- (3) Aircraft engines, unassembled, assembled, or dismantled.

**CATEGORY VI**

- (1) Livers projectors and flame throwers;
- (2) a. Mustard gas (dichlorethyl sulphide);  
b. Lewisite (Chlorvinylidichlorarsine and dichlorovinylchlorarsine);  
c. Methylidichlorarsine;  
d. Diphenylchlorarsine;  
e. Diphenylcyanarsine;  
f. Diphenylaminchlorarsine;  
g. Phenylidichlorarsine;  
h. Ethylidichlorarsine;  
i. Phenylidibromarsine;  
j. Ethylidibromarsine;  
k. Phosgene;  
l. Monochloromethylchlorformate;  
m. Trichloromethylchlorformate (diphosgene);  
n. Dichlorodimethyl Ether;  
o. Dibromodimethyl Ether;  
p. Cyanogen Chloride;  
q. Ethylbromacetate;  
r. Ethyliodoacetate;  
s. Brombenzylcyanide;  
t. Bromacetone;  
u. Brommethyl ethyl ketone.

**CATEGORY VII**

- (1) Propellant powders;
- (2) High explosives as follows:  
a. Nitrocellulose having a nitrogen content of more than 12%;  
b. Trinitrotoluene;  
c. Trinitroxyene;  
d. Tetryl (trinitrophenol methyl nitramine or tetranitromethylaniline);  
e. Picric acid;  
f. Ammonium picrate;  
g. Trinitroanisole;  
h. Trinitronaphthalene;  
i. Tetranitronaphthalene;  
j. Hexanitrodiphenylamine;  
k. Pentaerythritetetranitrate (Penthrate or Pentrite);  
l. Trimethylenetrinitramine (Hexogen or T.);  
m. Potassium nitrate powders (black saltpeter powder);  
n. Sodium nitrate powders (black soda powder);  
o. Amatol (mixture of ammonium nitrate and trinitrotoluene);  
p. Ammonal (mixture of ammonium nitrate, trinitrotoluene, and powdered aluminum, with or without other ingredients);  
q. Schneiderite (mixture of ammonium nitrate and dinitronaphthalene, with or without other ingredients).

This proclamation shall supersede the proclamation of April 10, 1936, entitled "Enumeration of Arms, Ammunition, and Implements of War", on June 1, 1937.

In witness whereof, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

Done at the city of Washington this first day of May, in the year of our Lord nineteen hundred and [SEAL] thirty-seven, and of the Independence of the United States of America the one hundred and sixty-first. (Promulgated Proc. No. 2237, May 4, 1937; 12:28 p. m., 50 Stat. 1834.)

**§ 453. Regulations.**

The President may, from time to time, promulgate such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out any of the provisions of this subchapter; and he may exercise any power or authority conferred on him by this subchapter through such officer or officers,

or agency or agencies, as he shall direct. (Nov. 4, 1939, ch. 2, 12:04 p. m., § 13, 54 Stat. 11.)

#### PROCLAMATIONS RESPECTING WAR AND NEUTRALITY

See notes preceding section 1 of appendix of Title 50, War.

#### § 454. Unlawful use of the American flag.

(a) It shall be unlawful for any vessel belonging to or operating under the jurisdiction of any foreign state to use the flag of the United States thereon, or to make use of any distinctive signs or markings, indicating that the same is an American vessel.

(b) Any vessel violating the provisions of subsection (a) of this section shall be denied for a period of three months the right to enter the ports or territorial waters of the United States except in cases of force majeure. (Nov. 4, 1939, ch. 2, 12:04 p. m., § 14, 54 Stat. 11.)

#### § 455. General penalty provision.

In every case of the violation of any of the provisions of this subchapter or of any rule or regulation issued pursuant thereto where a specific penalty is not provided in such sections, such violator or violators, upon conviction, shall be fined not more than \$10,000, or imprisoned not more than two years, or both. (Nov. 4, 1939, ch. 2, 12:04 p. m., § 15, 54 Stat. 11.)

#### § 456. Definitions.

For the purposes of this subchapter—

(a) The term "United States", when used in a geographical sense, includes the several States and Territories, the insular possessions of the United States (including the Philippine Islands), the Canal Zone, and the District of Columbia.

(b) The term "person" includes a partnership, company, association, or corporation, as well as a natural person.

(c) The term "vessel" means every description of watercraft and aircraft capable of being used as a means of transportation on, under, or over water.

(d) The term "American vessel" means any vessel documented, and any aircraft registered or licensed, under the laws of the United States.

(e) The term "state" shall include nation, government, and country.

(f) The term "citizen" shall include any individual owing allegiance to the United States, a partnership, company, or association composed in whole or in part of citizens of the United States, and any corporation organized and existing under the laws of the United States as defined in subsection (a) of this section. (Nov. 4, 1939, ch. 2, 12:04 p. m., § 16, 54 Stat. 12.)

#### § 457. Appropriations.

There is hereby authorized to be appropriated from time to time, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to carry out the provisions and accomplish the purposes of this subchapter. (Nov. 4, 1939, ch. 2, 12:04 p. m., § 18, 54 Stat. 12.)

### Chapter 10.—HEMISPHERAL RELATIONS

#### SUBCHAPTER I.—GENERALLY

##### Sec.

- 501. Utilization of services of Government agencies to promote inter-American relations.
- 502. Same; creation of advisory committees.
- 503. Facilitating work of foreign traveling salesmen; licenses and certificates of identification.

#### SUBCHAPTER II.—WAR MATERIALS

- 521. Military and naval assistance to governments of American republics.
- 522. Transmission of information pertaining to implements of war, vessels, etc.
- 523. Restriction in contracts against disposal of implements of war, vessels, etc., or information.
- 524. Information on shipments to be given Chairman of National Munitions Control Board.
- 525. Appropriations and disposition of receipts.
- 526. Protection of patent rights.
- 527. Purchases of implements of war, etc., from American republics.

#### SUBCHAPTER I.—GENERALLY

- § 501. Utilization of services of Government agencies to promote inter-American relations.

In order to render closer and more effective the relationship between the American republics the President of the United States is hereby authorized, subject to such appropriations as are made available for the purpose, to utilize the services of the departments, agencies, and independent establishments of the Government in carrying out the reciprocal undertakings and cooperative purposes enunciated in the treaties, resolutions, declarations, and recommendations signed by all of the twenty-one American republics at the Inter-American Conference for the Maintenance of Peace held at Buenos Aires, Argentina, in 1936, and at the Eighth International Conference of American States held at Lima, Peru, in 1938. (Aug. 9, 1939, ch. 616, § 1, 53 Stat. 1290.)

- § 502. Same; creation of advisory committees.

The President is authorized to create such advisory committees as in his judgment may be of assistance in carrying out the undertakings of this Government under the treaties, resolutions, declarations, and recommendations referred to, but no committee or member thereof shall be allowed any salary or other compensation for services: *Provided, however*, That they may, within the limits of appropriations made available therefor by the Congress, which appropriations are hereby authorized, be paid their actual transportation expenses and not to exceed \$10 per diem in lieu of subsistence and other expenses while away from their homes in attendance upon meetings within the United States under instructions from the Secretary of State. (Aug. 9, 1939, ch. 616, § 2, 53 Stat. 1290.)

- § 503. Facilitating work of foreign traveling salesmen; licenses and certificates of identification.

Whereas the United States has entered into conventions with the Governments of Uruguay, Guatemala, Salvador, Panama, and Venezuela which were signed on August 27, 1918, December 3, 1918, January 28, 1919, February 8, 1919, and July 3, 1919, respectively, for facilitating the work of traveling salesmen; and



Whereas Articles I and II of each of said conventions read as follows:

"ARTICLE I. Manufacturers, merchants, and traders domiciled within the jurisdiction of one of the high contracting parties may operate as commercial travelers either personally or by means of agents or employees within the jurisdiction of the other high contracting party on obtaining from the latter, upon payment of a single fee, a license which shall be valid throughout its entire territorial jurisdiction.

"In case either of the high contracting parties shall be engaged in war it reserves to itself the right to prevent from operating within its jurisdiction under the provisions of this treaty, or otherwise, enemy nationals or other aliens whose presence it may consider prejudicial to public order and national safety.

"ART. II. In order to secure the license above mentioned the applicant must obtain from the country of domicile of the manufacturers, merchants, and traders represented a certificate attesting his character as commercial traveler. This certificate, which shall be issued by the authority to be designated in each country for the purpose, shall be visaed by the consul of the country in which the applicant proposes to operate, and the authorities of the latter shall, upon the presentation of such certificate, issue to the applicant the national license as provided in Article I."

Now, therefore, the Secretary of Commerce, or any person in the Department of Commerce designated by him, is hereby authorized to issue the licenses and certificates of identification which are provided for by the said Articles I and II, respectively, of the said conventions, or which may be provided for by similar articles in any convention or treaty that may, after September 22, 1922, be concluded by the United States with a foreign government, and is further authorized to collect a reasonable fee for each license and certificate of identification issued. The amount of such fee shall be fixed by regulations made by the Secretary of Commerce and shall be paid into the Treasury of the United States quarterly. (Sept. 22, 1922, ch. 414, 42 Stat. 1028.)

## SUBCHAPTER II.—WAR MATERIALS

### § 521. Military and naval assistance to governments of American republics.

(a) The President may, in his discretion, authorize the Secretary of War to manufacture in factories and arsenals under his jurisdiction, or otherwise procure, coast-defense and antiaircraft matériel, including ammunition therefor, on behalf of the government of any American republic; to sell such matériel and ammunition to any such government; to test or prove such matériel and ammunition prior to sale or delivery to any such government; to repair such matériel on behalf of any such government; and to communicate to any such government plans, specifications, or other information relating to such matériel and ammunition as may be sold to any such government.

(b) The President may, in his discretion, authorize the Secretary of the Navy to construct vessels of war on behalf of the government of any American republic in shipyards under his jurisdiction; to manufacture armament and equipment for such ves-

sels on behalf of any such government in arsenals under his jurisdiction; to sell armament and equipment for such vessels to any such government; to manufacture antiaircraft artillery and ammunition therefor, on behalf of any such government in factories and arsenals under his jurisdiction; to sell antiaircraft artillery and ammunition therefor to any such government; to test or prove such vessels, armament, artillery, ammunition, or equipment prior to sale or delivery to any such government; to repair such vessels, armament, artillery, or equipment on behalf of any such government; and to communicate to any such government plans, specifications, and other information relating to such vessels of war and their armament and equipment or antiaircraft artillery and ammunition therefor, as may be sold to any such government or relating to any vessels of war which any such government may propose to construct or manufacture within its own jurisdiction: *Provided*, That nothing contained herein shall be construed as authorizing the violation of any of the provisions of any treaty to which the United States is or may become a party or of any established principles or precedents of international law: *And provided further*, That no transaction authorized herein shall result in expense to the United States, nor involve the extension of credits by the United States: *And provided further*, That no contract shall be entered into under the terms of this subchapter which shall interfere with or delay the United States in the full use of its shipyards, arsenals, munition plants, and other equipment for its own purposes. (June 15, 1940, ch. 365, § 1, 54 Stat. 396.)

### § 522. Transmission of information pertaining to implements of war, vessels, etc.

In carrying out transactions authorized by section 521 of this title, the Secretary of War and the Secretary of the Navy are authorized, in their discretion and provided that it be not inconsistent with any defense requirements of the United States or of its possessions, to communicate or transmit to the government of any American republic or to any duly authorized person for the use of such government information pertaining to the arms, ammunition, or implements of war sold under the terms of that section or to any vessels of war constructed within the jurisdiction of any such government, and to export for the use of any such government coast defense and antiaircraft matériel and ammunition therefor, and vessels of war and their armament and equipment involving such information: *Provided*, That any information thus communicated or transmitted or involved in any such arms, ammunition, implements of war, or equipment when exported shall cease to be considered restricted after one year from the date that such communication or transmission has been authorized or such exportation made. (June 15, 1940, ch. 365, § 2, 54 Stat. 396.)

### § 523. Restriction in contracts against disposal of implements of war, vessels, etc., or information.

All contracts or agreements made by the Secretary of War or the Secretary of the Navy for the sale to the government of any American republic of any of

the arms, ammunition, or implements of war, the sale of which is authorized by this subchapter, shall contain a clause by which the purchaser undertakes not to dispose of such arms, ammunition, or implements of war, or any plans, specifications, or information pertaining thereto, by gift, sale, or any mode of transfer in such manner that such arms, ammunition, implements of war, or plans, specifications, or information pertaining thereto, may become a part of the armament of any state other than an American republic. (June 15, 1940, ch. 365, § 3, 54 Stat. 397.)

**§ 524. Information on shipments to be given Chairman of National Munitions Control Board.**

The Secretary of War or the Secretary of the Navy, as the case may be, shall, when any arms, ammunition, implements of war, or equipment are exported pursuant to the provisions of this subchapter, immediately inform the Secretary of State, Chairman of the National Munitions Control Board, of the quantities, character, value, terms of sale, and destination of the arms, ammunition, implements of war, or equipment so exported. Such information shall be included in the annual report of the Board. (June 15, 1940, ch. 365, § 4, 54 Stat. 397.)

**§ 525. Appropriations and disposition of receipts.**

(a) There is hereby authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, such amounts as may be necessary to carry out the provisions and accomplish the purposes of this subchapter.

(b) All moneys which may be received from the government of any American republic, in payment for any article delivered or service rendered in compliance with the provisions of this subchapter, shall revert to the respective appropriation or appropriations out of which funds were expended in carrying out the transaction for which money is received, and such moneys shall be available for expenditure for the purpose for which such expended funds were appropriated by law, during the fiscal year in which such funds are received and the ensuing fiscal year. (June 15, 1940, ch. 365, § 5, 54 Stat. 397.)

**§ 526. Protection of patent rights.**

The Secretary of War and the Secretary of the Navy shall in all contracts or agreements for the sale of such matériel fully protect the rights of all citizens of the United States who have patent rights in and to any such matériel which is hereby authorized to be sold and the funds collected for royalties on such patents shall be paid to the owners and holders of such patents. (June 15, 1940, ch. 365, § 6, 54 Stat. 397.)

**§ 527. Purchases of implements of war, etc., from American republics.**

The Secretaries of War and of the Navy are hereby authorized to purchase arms, ammunition, and implements of war produced within the jurisdiction of any American republic if such arms, ammunition, or implements of war cannot be produced in the United States. (June 15, 1940, ch. 365, § 7, 54 Stat. 397.)

**Chapter 11.—FOREIGN AGENTS AND PROPAGANDA**

**SUBCHAPTER I.—GENERALLY**

Sec.

601. Acting as foreign governmental agent without notice to Secretary of State.

**SUBCHAPTER II.—REGISTRATION OF FOREIGN PROPAGANDISTS**

Sec.

611. Definitions.

612. Registration statement; filing; contents.

613. Same; additional statement after 6 months; contents.

614. Same; permanent record; public inspection.

615. Failure to register; false statement; omission of material facts; penalties.

616. Rules, regulations, and forms.

**SUBCHAPTER I.—GENERALLY**

**§ 601. Acting as foreign governmental agent without notice to Secretary of State.**

Whoever, other than a diplomatic or consular officer or attaché, shall act in the United States as an agent of a foreign government without prior notification to the Secretary of State shall be punished by imprisonment for not more than ten years and may, in the discretion of the court, be fined not more than \$5,000. (June 15, 1917, ch. 30, title VIII, § 3, 40 Stat. 226; Mar. 28, 1940, ch. 72, § 6, 54 Stat. 80.)

**CROSS REFERENCE**

Definition of foreign government, see section 235 of this title.

**SUBCHAPTER II.—REGISTRATION OF FOREIGN PROPAGANDISTS**

**§ 611. Definitions.**

As used in this subchapter—

(a) The term "person" means an individual, partnership, association, or corporation;

(b) The term "United States" includes the United States and any place subject to the jurisdiction thereof;

(c) The term "foreign principal" includes the government of a foreign country, a political party of a foreign country, a person domiciled abroad, any foreign business, partnership, association, corporation, or political organization, or a domestic organization subsidized, directly or indirectly, in whole or in part by any of the entities described in this subchapter;

(d) The term "agent of a foreign principal" means any person who acts or engages or agrees to act as a public-relations counsel, publicity agent, or as agent, servant, representative, or attorney for a foreign principal, and shall include any person who receives compensation from or is under the direction of a foreign principal: *Provided, however,* That such term shall not include—

(1) a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State of the United States; nor

(2) any official of a foreign government recognized by the United States as a government other than a public-relations counsel or publicity agent or a citizen of the United States, whose status and the character of whose duties as such official are of record in the Department of State of the United States; nor

(3) any member of the staff of or person employed by a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State of the United States, other than a public-relations counsel or publicity agent, whose status and the character of whose duties as such member or employee are of record in the Department of State of the United States; nor

(4) any person performing only private, nonpolitical, financial, mercantile, or other activities in furtherance of the bona fide trade or commerce of such foreign principal; nor

(5) any person engaged only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts.

(e) The term "Secretary" means the Secretary of State of the United States. (June 8, 1938, ch. 327, § 1, 52 Stat. 631; Aug. 7, 1939, ch. 521, § 1, 53 Stat. 1244.)

#### EFFECTIVE DATE OF SUBCHAPTER

Section 7 of act June 8, 1938, cited to text, provided that this subchapter "shall take effect on the ninetieth day after the date of enactment."

#### § 612. Registration statement; filing; contents.

Every person who is now an agent of a foreign principal shall, within thirty days after this subchapter takes effect, and every person who shall hereafter become an agent of a foreign principal shall forthwith file with the Secretary a registration statement, under oath, on a form prescribed by the Secretary which shall set forth—

(a) The name, business address, and residence address of the registrant;

(b) The name of the foreign principal or other person or organization for which such person is acting as agent;

(c) A copy of all contracts of employment under which such person acts or agrees to act as such agent, if written, or a full statement of the terms and conditions thereof, if oral;

(d) The date when each such contract was made, the date of commencement of activity thereunder, and the period during which such contract is to be in effect;

(e) The compensation to be paid, if any, and the form and time of payment, under such contract;

(f) The name of every foreign principal, or other person or organization which has contributed or which has promised to contribute to the compensation provided in such contract; and

(g) If the registrant be a partnership, association, or corporation, a true and complete copy of its charter, articles of incorporation, copartnership association, constitution, and bylaws, and any other instrument or instruments relating to its organization, powers, and purposes. (June 8, 1938, ch. 327, § 2, 52 Stat. 632.)

#### EFFECTIVE DATE

See note under section 611 of this title.

#### § 613. Same; additional statement after 6 months; contents.

Every person who has filed a registration statement required by section 612 of this title shall,

within thirty days after the expiration of each period of six months succeeding the first filing, file with the Secretary a statement, under oath, on a form prescribed by the Secretary, which shall set forth with respect to such preceding six months' period—

(a) Such facts as may be necessary to make the information required under section 612 of this title accurate and current with respect to such period;

(b) The amount and form of compensation received by such person for acting as agent for a foreign principal which has been received during such six months' period either directly or indirectly from any foreign principal; and

(c) A statement containing such details required under this subchapter as the Secretary shall fix, of the activities of such person as agent of a foreign principal during such six months' period. (June 8, 1938, ch. 327, § 3, 52 Stat. 632; Aug. 7, 1939, ch. 521, § 2, 53 Stat. 1245.)

#### EFFECTIVE DATE

See note under section 611 of this title.

#### § 614. Same; permanent record; public inspection.

The Secretary shall retain in permanent form all statements filed under this subchapter, and such statements shall be public records and open to public examination and inspection at all reasonable hours, under such rules and regulations as the Secretary may prescribe: *Provided*, That the Secretary is hereby authorized to withdraw from the public records the registration statement of any person whose activities have ceased to be of a character which requires registration under the terms of this subchapter. (June 8, 1938, ch. 327, § 4, 52 Stat. 632; Aug. 7, 1939, ch. 521, § 3, 53 Stat. 1246.)

#### EFFECTIVE DATE

See note under section 611 of this title.

#### § 615. Failure to register; false statement; omission of material facts; penalties.

Any person who willfully fails to file any statement required to be filed under this subchapter, or in complying with the provisions of such subchapter, makes a false statement of a material fact, or willfully omits to state any material fact required to be stated therein shall, on conviction thereof, be punished by a fine of not more than \$1,000 or imprisonment for not more than two years, or both. (June 8, 1938, ch. 327, § 5, 52 Stat. 633.)

#### EFFECTIVE DATE

See note under section 611 of this title.

#### § 616. Rules, regulations, and forms.

The Secretary is authorized and directed to prescribe such rules, regulations, and forms as may be necessary to carry out this subchapter. (June 8, 1938, ch. 327, § 6, 52 Stat. 633.)

#### EFFECTIVE DATE

See note under section 611 of this title.

## TITLE 23.—HIGHWAYS

Chap.	Sec.	Sec.
1. Federal Highway Act.....	1	20a. Service surveys for classification of highways; reports to Congress.
2. Miscellaneous provisions .....	41	21. Deduction for administration and research; apportionment of remainder among States.
<b>Chapter 1.—FEDERAL HIGHWAY ACT</b>		
Sec.		21a. Apportionment of appropriations among States, approval of projects.
1. Citation.		21b. Reapportionment of unexpended appropriations.
2. Definitions.		21c. Use of funds for engineering costs on national defense highways.
2a, 2b. Highway further defined.		22. Certification of disposition of appropriation.
3. Powers and duties as to highways reposed in Secretary of Agriculture; cooperation with State highway departments and Department of Interior; allocation of funds among States; distribution of maps and other information.		23. Forest roads and trails; appropriation; manner of expenditure.
3a. Highways within Indian reservations; construction; power of Secretary of Agriculture in cooperation with other agencies; payment.		23a. Same; manner of expenditure of appropriation; approval of projects.
3b. Basis of apportionment of funds to States.		23b. Same; administration of appropriation.
4. Establishment of accounting division.		24. Approval of projects in States not permitted to provide for highways.
5. Transfer of war material suitable for highways; distribution.		24a. Safety protective devices at railroad crossings and drawbridges.
6. Projects to receive Federal aid; approval by Secretary of Agriculture; two classes of highways.		25. Effect of partial invalidity.
6a. Percentage of highway mileage of State on which Federal funds may be expended as affected by national forest, Indian, or other Federal Reservation therein.		
6a-1. Priority of approval of national defense highway projects.		<b>§ 1. Citation.</b>
6b. Expenditures of Federal funds on highways within municipalities; construction of bridges within municipalities.		The act of November 9, 1921, ch. 119, 42 Stat. 212, may be cited as the Federal Highway Act. (Nov. 9, 1921, ch. 119, § 1, 42 Stat. 212.)
6c. Same; limitations not to apply.		<b>REFERENCE IN TEXT</b>
7. State funds to be provided.		The Federal Highway Act was incorporated into the Code as sections 1, 2, 3-6, 7, 8, 9, 10, 11-13, 14, 15-21, 22, 23, 24, and 25 of this title and section 3 of Title 50, War.
8. Character of construction, etc., required; approval of Secretary of Agriculture.		<b>§ 2. Definitions.</b>
8a. Approval of methods of bidding, plans and specifications.		When used in this chapter, unless the context indicates otherwise—
9. Freedom from tolls.		The term "highway" includes rights of way, bridges, drainage structures, signs, guard rails, and protective structures in connection with highways, but shall not include any highway or street in a municipality having a population of two thousand five hundred or more as shown by the last available census, except that portion of any such highway or street along which, within a distance of one mile, the houses average more than two hundred feet apart.
9a. Federal aid to toll bridges.		The term "highway" as herein defined shall also be deemed to include such main parkways as may be designated by the State and approved by the Secretary of Agriculture as part of the Federal-aid highway system and that portion of any interstate or international bridge and the approaches thereto, the cost of which is assumed by the State highway department, including such facilities as may be required by the United States Customs and Immigration Services in connection with the operation of such bridge.
9a-1. Same; additional aid.		The term "State highway department" includes any State department, commission, board, or official having adequate powers and suitably equipped and organized to discharge to the satisfaction of the Secretary of Agriculture the duties herein required.
9b. Same; section 9 inapplicable.		The term "maintenance" means the constant making of needed repairs to preserve a smooth-surfaced highway.
10. Width of right of way and wearing surface.		
10a. Planting and maintaining shade trees along Federal-aid highways.		
10b. Construction of roadside and landscape developments; preservation of natural beauty.		
10c. Flight strips adjacent to public highways.		
11. Funds apportioned to States; when payable.		
12. Submission of project statements; approval; setting aside share of Federal aid.		
12a. Amount of Federal aid per mile; limitation of payments.		
13. Construction and reconstruction work; how conducted.		
13a. Emergency relief fund for repair or reconstruction of highways or bridges.		
14. Payment to States of Federal aid; time and manner of making.		
14a. Depreciation of equipment; charges credited to appropriation.		
15. Failure of State to maintain Federal-aid road; duty of Secretary of Agriculture.		
16. Maps of Federal-aid roads.		
17. Consent by United States to conveyance of property acquired therefrom.		
18. Appropriation of public lands for highway purposes; reversion.		
19. Prescription of rules and regulations by Secretary of Agriculture.		
20. Reports to Congress by Secretary of Agriculture.		

The term "construction" means the supervising, inspecting, actual building, and all expenses incidental to the construction of a highway except locating, surveying, mapping, and costs of rights of way.

The term "reconstruction" means a widening or a rebuilding of the highway or any portion thereof to make it a continuous road, and of sufficient width and strength to care adequately for traffic needs.

The term "forest roads" means roads wholly or partly within or adjacent to and serving the national forests.

The term "State funds" includes, for the purposes of this chapter, funds raised under the authority of the State, or any political or other subdivision thereof, and made available for expenditure under the direct control of the State highway department.

The term "bridges" includes railroad-grade separations, whether by means of overhead or underpass crossings. (Nov. 9, 1921, ch. 119, § 2, 42 Stat. 212; June 19, 1922, ch. 227, § 4, par. 3, 42 Stat. 660; June 16, 1936, ch. 582, § 1 (c), 49 Stat. 1519; June 8, 1938, ch. 328, § 1 (e), 52 Stat. 634.)

#### CODIFICATION

Section, except second and last paragraphs, is from act Nov. 9, 1921, cited to text. Second paragraph is from acts June 16, 1936, and June 8, 1938, cited to text. Last paragraph was added by act June 19, 1922, ch. 227, § 4, par. 3, 42 Stat. 660.

#### REFERENCE IN TEXT

In the original "this chapter" reads "this act", meaning the Federal Highway Act, (act Nov. 9, 1921, cited to text). For distribution of said act in this Code, see note under section 1 of this title.

#### §§ 2a, 2b. Highway further defined.

Section 2a, act June 16, 1936, ch. 582, § 1 (c), 49 Stat. 1519, has become part of second paragraph of section 2 of this title.

Section 2b, act June 8, 1938, ch. 328, § 1 (e), 52 Stat. 634, has become part of second paragraph of section 2 of this title.

#### § 3. Powers and duties as to highways reposed in Secretary of Agriculture; cooperation with State highway departments and Department of Interior; allocation of funds among States; distribution of maps and other information.

All powers and duties of the Council of National Defense under the act of August 29, 1916, ch. 418, 39 Stat. 619, in relation to highway or highway transport are transferred to the Secretary of Agriculture. The powers and duties of agencies dealing with highways in the national parks or in military or naval reservations under the control of the United States Army or Navy, or with highways used principally for military or naval purposes, shall not be taken over by the Secretary of Agriculture, but such highways shall remain under the control and jurisdiction of such agencies.

The Secretary of Agriculture is authorized to cooperate with the State highway departments and with the Department of the Interior, in the survey, construction, reconstruction, and maintenance of main roads through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations other than the forest reservations. Such sums as the Congress may authorize to be ap-

propriated under the provisions of this section shall be apportioned among those States having more than 5 per centum of their area in the lands hereinbefore described and shall be prorated and apportioned to said States in the proportion that said lands in each of said States is to the total area of said lands in the States eligible under the provisions of this section, and no contribution from the States shall be required in the expenditure thereof: *Provided*, That in the allocation of any such funds authorized to be appropriated under this section or any subsequent Act preference shall be given to those projects which are located on the Federal-aid highway system as the same are now or may hereafter be designated.

The Secretary of Agriculture shall prepare, publish, and distribute a map and other information, at least annually, showing the progress made in the expenditures of the funds authorized under this section. (Nov. 9, 1921, ch. 119, § 3, 42 Stat. 212; June 24, 1930, ch. 593, § 1, 46 Stat. 805.)

#### REFERENCE IN TEXT

The act of August 29, 1916, ch. 418, 39 Stat. 622, to which reference is made in this section, was titled "An act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes." For distribution of said act into the Code, see tables.

#### § 3a. Highways within Indian reservations; construction; power of Secretary of Agriculture in cooperation with other agencies; payment.

The Secretary of Agriculture is authorized to cooperate with the State highway departments and with the Department of the Interior in the construction of public highways within Indian reservations, and to pay the amount assumed therefor from the funds allotted or apportioned under this chapter to the State wherein the reservation is located. (Nov. 9, 1921, ch. 119, § 3a, as added Feb. 20, 1931, ch. 231, § 1, 46 Stat. 1173.)

#### REFERENCE IN TEXT

In the original "this chapter" reads "this act," meaning the Federal Highway Act (act Nov. 9, 1921, cited to text). For distribution of said act in this Code, see note under section 1 of this title.

#### § 3b. Basis of apportionment of funds to States.

Apportionments of funds made under the second and third paragraphs of section 3 of this title, shall be made on the basis of the area of such lands in each State as shown by certificate of the Secretary of the Interior which he is directed to make as of June 30 each year. (Sept. 5, 1940, ch. 715, § 7, 54 Stat. 869.)

#### § 4. Establishment of accounting division.

The Secretary of Agriculture shall establish an accounting division which shall devise and install a proper method of keeping the accounts. (Nov. 9, 1921, ch. 119, § 4, 42 Stat. 213.)

#### § 5. Transfer of war material suitable for highways; distribution.

Section, acts Feb. 28, 1919, ch. 69, § 7, 40 Stat. 1201; Nov. 9, 1921, ch. 119, § 5, 42 Stat. 213; and Apr. 9, 1924, ch. 86, § 3, 43 Stat. 90, authorized the Secretary of War to transfer certain surplus war materials on hand on November 9, 1921, to the Secretary of Agriculture to be distributed to State highway departments.

**§ 6. Projects to receive Federal aid; approval by Secretary of Agriculture; two classes of highways.**

In approving projects to receive Federal aid under the provisions of this chapter the Secretary of Agriculture shall give preference to such projects as will expedite the completion of an adequate and connected system of highways, interstate in character.

Before any projects are approved in any State, such State, through its State highway department, shall select or designate a system of highways not to exceed 7 per centum of the total highway mileage of such State as shown by the records of the State highway department on November 9, 1921.

Upon this system all Federal-aid apportionments shall be expended.

Highways which may receive Federal aid shall be divided into two classes, one of which shall be known as primary or interstate highways, and shall not exceed three-sevenths of the total mileage which may receive Federal aid, and the other which shall connect or correlate therewith and be known as secondary or intercounty highways, and shall consist of the remainder of the mileage which may receive Federal aid.

The Secretary of Agriculture shall have authority to approve in whole or in part the systems as designated or to require modifications or revisions thereof: *Provided*, That the States shall submit to the Secretary of Agriculture for his approval any proposed revisions of the designated systems of highways above provided for.

Not more than 60 per centum of all Federal aid allotted to any State shall be expended upon the primary or interstate highways until provision has been made for the improvement of the entire system of such highways: *Provided*, That with the approval of any State highway department the Secretary of Agriculture may approve the expenditure of more than 60 per centum of the Federal aid apportioned to such State upon the primary or interstate highways in such State.

The Secretary of Agriculture may approve projects submitted by the State highway departments prior to the selection, designation, and approval of the system of Federal-aid highways herein provided for, if he may reasonably anticipate that such projects will become a part of such system.

Whenever provision has been made by any State for the completion and maintenance of 90 per centum of its system of primary or interstate and secondary or intercounty highways equal to 7 per centum of the total mileage of such State, as required by this chapter, said State through its State highway department, by and with the approval of the Secretary of Agriculture, is hereby authorized to increase the mileage of the primary or interstate and secondary or inter-county systems by additional mileage equal to not more than 1 per centum of said total mileage of such State, and thereafter to make like increases in the mileage of said systems whenever provision has been made for the completion and maintenance of 90 per centum of the mileage of said systems previously authorized in accordance herewith. (Nov. 9, 1921, ch. 119, § 6, 42 Stat. 213; July 21, 1932, ch. 520, § 304, 47 Stat. 722.)

**REFERENCE IN TEXT**

In the original "this chapter" reads "this act", meaning the Federal Highway Act (act Nov. 9, 1921, cited to text). For distribution of said act in this Code, see note under section 1 of this title.

**CROSS REFERENCE**

Federal aid to Hawaii, Puerto Rico, and District of Columbia without regard to the limitations of this section, see sections 41-41b of this title.

**§ 6a. Percentage of highway mileage of State on which Federal funds may be expended as affected by national forest, Indian, or other Federal Reservation therein.**

The system of Federal-aid highways on which Federal funds may be expended in any State may exceed 7 per centum of the total highway mileage of such State by the mileage of roads on said system within national forest, Indian, or other Federal reservations therein. (May 21, 1928, ch. 660, § 3, 45 Stat. 683.)

**§ 6a-1. Priority of approval of national defense highway projects.**

In approving Federal-aid highway projects to be carried out with any unobligated funds apportioned to any State, the Commissioner of Public Roads may give priority of approval to, and expedite and construction of, projects that are recommended by the appropriate Federal defense agency as important to the national defense. (Sept. 5, 1940, ch. 715, § 19, 54 Stat. 872.)

<sup>1</sup> So in original. Probably should read "the".

**§ 6b. Expenditures of Federal funds on highways within municipalities; construction of bridges within municipalities.**

The limitations of this section, act May 21, 1928, ch. 660, § 4, 45 Stat. 683, were made inapplicable by act June 18, 1934, ch. 586, § 13, 48 Stat. 995 (former section 6c of this title).

**§ 6c. Same; limitations not to apply.**

Section, act June 18, 1934, ch. 586, § 13, 48 Stat. 995, removed certain limitations on use of Federal funds for highway construction, reconstruction, and bridges within certain municipalities. See notes under sections 6b and 42 of this title.

**§ 7. State funds to be provided.**

Before any project shall be approved by the Secretary of Agriculture for any State such State shall make provisions for State funds required each year of such States by this chapter for construction, reconstruction, and maintenance of all Federal-aid highways within the State, which funds shall be under the direct control of the State highway department. (Nov. 9, 1921, ch. 119, § 7, 42 Stat. 214.)

**REFERENCE IN TEXT**

In the original "this chapter" reads "this act", meaning the Federal Highway Act, (act Nov. 9, 1921, cited to text). For distribution of said act in this Code, see note under section 1 of this title.

**AVAILABILITY OF UNMATCHED FEDERAL FUNDS DURING FISCAL YEARS 1942, 1943**

Act Sept. 5, 1940, ch. 715, § 3, 54 Stat. 869, provided as follows:

"Sec. 3. If within the fiscal years 1942 and 1943 the Federal Works Administrator shall find with respect to any State (1) that the proceeds of all special taxes on motor-

vehicle transportation, as referred to in section 12 of the act of June 18, 1934 (48 Stat. 995), as amended (section 55 of this title), are applied to highway purposes as defined in said section; (2) that at least 90 per centum of such proceeds are applied to the administrative and operating expenses of the State highway department, the maintenance of the State and Federal-aid highway systems, and the payment of interest on, and the amortization of, bond obligations of the State for the payment of which such revenues have heretofore been pledged; and (3) that the portion of the proceeds of all such special taxes then available for construction and reconstruction, together with funds available to the State from any other sources for highway purposes, will be insufficient to match all, or any part, of the regular and secondary Federal-aid road funds apportioned to such State for such fiscal years in accordance with the provisions of the Federal Highway Act (42 Stat. 212), as amended and supplemented (section 1 et seq. of this title), then such portion of such apportionment as the Federal Works Administrator shall find the State is unable to match shall be made available for expenditure in such State in accordance with said Federal Highway Act without being matched by the State: *Provided*, That any such funds made available to any State without being matched by the State shall be expended by the State on the system of Federal-aid highways and on secondary roads in the construction of projects desirable from the standpoint of national defense."

Prior provisions of a similar nature were contained in act June 8, 1938, ch. 328, § 1 (d), 52 Stat. 634.

#### § 8. Character of construction, etc., required; approval of Secretary of Agriculture.

Only such durable types of surface and kinds of materials shall be adopted for the construction and reconstruction of any highway which is a part of the primary or interstate and secondary or inter-county systems as will adequately meet the existing and probable future traffic needs and conditions thereon. The Secretary of Agriculture shall approve the types and width of construction and reconstruction and the character of improvement, repair, and maintenance in each case, consideration being given to the type and character which shall be best suited for each locality and to the probable character and extent of the future traffic. (Nov. 9, 1921, ch. 119, § 8, 42 Stat. 214.)

#### § 8a. Approval of methods of bidding, plans and specifications.

Hereafter the Secretary of Agriculture shall approve only such methods of bidding and such plans and specifications of highway construction for the type or types proposed as will be effective in securing competition and conducive to safety, durability, and economy of maintenance. (June 8, 1938, ch. 328, § 12, 52 Stat. 636.)

#### § 9. Freedom from tolls.

All highways constructed or reconstructed under the provisions of this chapter shall be free from tolls of all kinds. (Nov. 9, 1921, ch. 119, § 9, 42 Stat. 214.)

##### REFERENCE IN TEXT

In the original "this chapter" reads "this act," meaning the Federal Highway Act (act Nov. 9, 1921, cited to text). For distribution of said act in this Code, see note under section 1 of this title.

##### CROSS REFERENCES

Application of this section to publicly owned toll bridges, see section 9b of this title.

Federal aid authorized for construction of toll bridge by state or other political subdivision where all tolls are

applied to repayment of cost of construction, see section 9a of this title.

#### § 9a. Federal aid to toll bridges.

Notwithstanding any provision of the Act of July 11, 1916, ch. 241, 39 Stat. 355, or of the Federal Highway Act, the Secretary of Agriculture may extend, on the same basis and in the same manner as in the construction of any free bridge, Federal aid under such Acts, in the construction of any toll bridge and approaches thereto, by any State or States, or political subdivision or subdivisions thereof, upon the condition that such bridge is owned and operated by such State or States, or political subdivision or subdivisions thereof, and that all tolls received from the operation thereof, less the actual cost of operation and maintenance, are applied to the repayment to the State or States, or political subdivision or subdivisions thereof, of its or their part of the cost of construction of such bridge, and upon the further condition that when the amount contributed by such State or States, or political subdivision or subdivisions thereof, in the construction of such bridge shall have been repaid from the tolls, the collection of tolls for the use of such bridge shall thereafter cease, and the same shall be maintained and operated as a free bridge. (Mar. 3, 1927, ch. 370, 44 Stat. 1398.)

##### REFERENCE IN TEXT

Sections 6, 7, and 8 of act July 11, 1916, to which reference is made in this section, were incorporated into the Code as sections 12a and 48 of this title and section 503 of Title 16, Conservation, respectively. For distribution of the Federal Highway Act in this Code, see note under section 1 of this title.

#### § 9a-1. Same; additional aid.

In the case of each and every State, or political subdivision or subdivisions thereof, which, prior to July 1, 1941, shall have constructed or acquired any toll bridges on the approved system of Federal-aid highways, and which has caused or shall, prior to July 1, 1941, cause any such toll bridge or toll bridges to be made free, the Federal Works Administrator shall be, and he is hereby, authorized to pay out of the regular and secondary Federal-aid road funds apportioned to such State not to exceed 50 per centum of such amount as may be approved by the Federal Works Administrator as the reasonable value or construction cost of any such bridge whichever shall be least: *Provided*, That no payment of Federal funds shall be made on account of any such bridge which was not constructed in accordance with plans and specifications which would meet the standards required by the Secretary of Agriculture at the time such bridge was constructed, nor on account of any bridge the construction of which was completed prior to March 3, 1927: *And provided further*, That no such payment shall be made which will exceed 50 per centum of the reasonable value or cost of the labor and materials which were actually incorporated in the construction of such bridge, excluding all costs of rights-of-way, property damages, and financing costs, whichever, value or cost, shall be least, and any amount so paid on account of any such bridge from regular Federal-aid road funds shall be used



for matching unobligated regular Federal-aid road funds available to the State for expenditure in the improvement of highways on the system of Federal-aid highways, and any amount so paid on account of any such bridge from secondary Federal-aid road funds shall be used for matching unobligated secondary Federal-aid road funds available to the State for expenditure in the improvement of secondary or feeder roads. (Aug. 14, 1937, ch. 626, 50 Stat. 640; July 19, 1939, ch. 328, § 1, 53 Stat. 1066.)

§ 9b. Same; section 9 inapplicable.

In the administration of this title, section 9 shall not apply to publicly owned toll bridges or approaches thereto, operated by the highway department of any State, subject, however, to the condition that all tolls received from the operation of any such bridge, less the actual cost of operation and maintenance, shall be applied to the repayment of the cost of its construction or acquisition, and when the cost of its construction or acquisition shall have been repaid in full, such bridge thereafter shall be maintained and operated as a free bridge. (Mar. 3, 1933, ch. 203, 47 Stat. 1456; June 16, 1933, ch. 90, Title II, § 204, 48 Stat. 204.)

#### REFERENCE IN TEXT

In the original "this title" reads "the Federal Highway Act, and acts amendatory thereof or supplementary thereto." For distribution of said act in this Code, see note under section 1 of this title.

§ 10. Width of right of way and wearing surface.

All highways in the primary or interstate system constructed after November 9, 1921, shall have a right of way of ample width and a wearing surface of an adequate width which shall not be less than eighteen feet, unless, in the opinion of the Secretary of Agriculture, it is rendered impracticable by physical conditions, excessive costs, probable traffic requirements, or legal obstacles. (Nov. 9, 1921, ch. 119, § 9, 42 Stat. 214.)

§ 10a. Planting and maintaining shade trees along Federal-aid highways.

In every case in which, in the judgment of the Secretary of Agriculture and the highway department of the State in question, it shall be practicable to plant and maintain shade trees along the highways authorized by this chapter, the planting of such trees shall be included in the specifications provided in section 8 of this title. (May 21, 1928, ch. 660, § 2, 45 Stat. 683.)

#### REFERENCE IN TEXT

In the original this section referred to highways authorized by the Federal Highway Act (act Nov. 9, 1921, ch. 119, 42 Stat. 212) and by act May 21, 1928, cited to text. For distribution of the Federal Highway Act in this Code, see note under section 1 of this title. The act of May 21, 1928, was incorporated into the Code as sections 6a, 6b, and 12 of this title.

§ 10b. Construction of roadside and landscape developments; preservation of natural beauty.

Hereafter the construction of highways by the States with the aid of Federal funds may include such roadside and landscape development, including such sanitary and other facilities as may be deemed reasonably necessary to provide for the suitable ac-

commodation of the public, all within the highway right-of-way and adjacent publicly owned or controlled recreational areas of limited size and with provision for convenient and safe access thereto by pedestrian and vehicular traffic, as may be approved by the Public Roads Administration. Such construction likewise may include the purchase of such adjacent strips of land of limited width and primary importance for the preservation of the natural beauty through which highways are constructed, as may be approved by the Public Roads Administration: *Provided*, That not to exceed 3 per centum of the Federal-aid funds apportioned to and matched by any State under Act Sept. 5, 1940, ch. 715, 54 Stat. 867 may be used for the purchase of such adjacent strips of land without being matched by the States. (June 8, 1938, ch. 328, § 1 (c), 52 Stat. 633; Sept. 5, 1940, ch. 715, § 11, 54 Stat. 870.)

§ 10c. Flight strips adjacent to public highways.

The Commissioner of Public Roads, in cooperation with the State Highway Departments of the respective States, is hereby authorized, upon the request of any State, to investigate the location and development of flight strips adjacent to public highways or roadside development areas, for the landing and take-off of aircraft. (Sept. 5, 1940, ch. 715, § 13, 54 Stat. 871.)

§ 11. Funds apportioned to States; when payable.

When any State shall have met the requirements of this chapter, the Secretary of the Treasury, upon receipt of certification from the governor of such State to such effect, approved by the Secretary of Agriculture, shall immediately make available to such State, for the purpose set forth in this chapter, the sum apportioned to such State as herein provided. (Nov. 9, 1921, ch. 119, § 10, 42 Stat. 214.)

#### REFERENCE IN TEXT

In the original "this chapter" reads "this act," meaning the Federal Highway Act (act Nov. 9, 1921, cited to text). For distribution of said act in this Code, see note under section 1 of this title.

§ 12. Submission of project statements; approval; setting aside share of Federal aid.

Any State having complied with the provisions of this chapter, and desiring to avail itself of the benefits thereof, shall by its State highway department submit to the Secretary of Agriculture project statements setting forth proposed construction or reconstruction of any primary or interstate or secondary or intercounty highway therein. If the Secretary of Agriculture approve the project, the State highway department shall furnish to him such surveys, plans, specifications, and estimates therefor as he may require; items included for engineering, inspection, and unforeseen contingencies shall not exceed 10 per centum of the total estimated cost of its construction.

When the Secretary of Agriculture approves such surveys, plans, specifications, and estimates, he shall notify the State highway department and immediately certify the fact to the Secretary of the Treasury. The Secretary of the Treasury shall thereupon set aside the share of the United States payable under

this chapter on account of such projects, which shall not exceed 50 per centum of the total estimated cost thereof, except that in the case of any State containing unappropriated public lands, and nontaxable Indian lands, individual and tribal, exceeding 5 per centum of the total area of all lands in the State, the share of the United States payable under this chapter on account of such project shall not exceed 50 per centum of the total estimated cost thereof plus a percentage of such estimated cost equal to one-half of the percentage which the area of the unappropriated public lands, and nontaxable Indian lands, individual and tribal, in such State bears to the total area of such State: *Provided*, That the limitation of payments not to exceed \$15,000 per mile, under existing law, which the Secretary of Agriculture may make, is increased in proportion to the increased percentage of Federal aid authorized by this section: *And provided further*, That in the case of any State containing unappropriated public lands and nontaxable Indian lands, individual and tribal, exceeding 5 per centum of the total area of all lands in the State in which the population, as shown by the latest available Federal census, does not exceed ten per square mile of area, the Secretary of Agriculture, upon request from the State highway department of such State, may increase the share payable by the United States to any percentage up to and including the whole cost on projects on the primary system of Federal-aid highways and on projects on the secondary system when the latter is a continuation of a route on the primary system or directly connects with a route on the primary system of an adjoining State, but such State shall allocate and expend during the same fiscal year upon some other project or projects on the Federal-aid system, under the direction of the Secretary of Agriculture, the amount it would have been required to expend upon such project. (Nov. 9, 1921, ch. 119, § 11, 42 Stat. 214; June 19, 1922, ch. 227, § 4, 42 Stat. 660; Feb. 12, 1925, ch. 219, § 4, 43 Stat. 890; May 21, 1928, ch. 660, § 1, 45 Stat. 683.)

#### REFERENCE IN TEXT

In the original "this chapter" reads "this act," meaning the Federal Highway Act (act Nov. 9, 1921, cited to text). For distribution of said act in this Code, see note under section 1 of this title.

#### CROSS REFERENCE

Limitations on payments per mile no longer applicable, see note under section 6c of this title.

### § 12a. Amount of Federal aid per mile; limitation of payments.

Section, acts July 11, 1916, ch. 241, § 6, 39 Stat. 357; Nov. 9, 1921, ch. 119, § 6, 42 Stat. 216; Apr. 4, 1930, ch. 105, § 3, 46 Stat. 141, was made inapplicable by terms of former section 6c of this title.

### § 13. Construction and reconstruction work; how conducted.

The construction and reconstruction of the highways or parts of highways under the provisions of this chapter, and all contracts, plans, specifications, and estimates relating thereto, shall be undertaken by the State highway departments subject to the approval of the Secretary of Agriculture. The construction and reconstruction work and labor in each

State shall be done in accordance with its laws and under the direct supervision of the State highway department, subject to the inspection and approval of the Secretary of Agriculture and in accordance with the rules and regulations pursuant to this chapter. (Nov. 9, 1921, ch. 119, § 12, 42 Stat. 215.)

#### REFERENCE IN TEXT

In the original "this chapter" reads "this act," meaning the Federal Highway Act (act Nov. 9, 1921, cited to text). For distribution of said act in this Code, see note under section 1 of this title.

### § 13a. Emergency relief fund for repair or reconstruction of highways or bridges.

Not to exceed \$8,000,000 of any money herein or hereafter appropriated for expenditure in accordance with the provisions of this chapter shall be available for expenditure by the Secretary of Agriculture, in accordance with the provisions of this chapter, as an emergency relief fund, after receipt of an application therefor from the highway department of any State, in the repair or reconstruction of highways and bridges on the system of Federal-aid highways, which he finds, after investigation, have been damaged or destroyed by floods, hurricanes, earthquakes, or landslides, and there is hereby authorized to be appropriated any sum or sums necessary to reimburse the funds so expended from time to time under the authority of this section. (June 8, 1938, ch. 328, § 4, 52 Stat. 634.)

#### REFERENCE IN TEXT

In the original "this chapter" reads "the Federal Highway Act" (act Nov. 9, 1921, ch. 119, 42 Stat. 212). For distribution of said act in this Code, see note under section 1 of this title.

### § 14. Payment to States of Federal aid; time and manner of making.

When the Secretary of Agriculture shall find that any project approved by him has been constructed or reconstructed in compliance with said plans and specifications, he shall cause to be paid to the proper authorities of said State the amount set aside for said project.

The Secretary of Agriculture may, in his discretion, from time to time, make payments on such construction or reconstruction as the work progresses, but these payments, including previous payments, if any, shall not be more than the United States pro rata part of the value of the labor and materials which have been actually put into such construction or reconstruction in conformity to said plans and specifications. The Secretary of Agriculture and the State highway department of each State may jointly determine at what time and in what amounts payments as work progresses shall be made under this chapter.

Such payments shall be made by the Secretary of the Treasury, on warrants drawn by the Secretary of Agriculture, to such official or officials or depository as may be designated by the State highway department and authorized under the laws of the State to receive public funds of the State. (Nov. 9, 1921, ch. 119, § 13, 42 Stat. 215.)

#### REFERENCE IN TEXT

In the original "this chapter" reads "this act," meaning the Federal Highway Act (act Nov. 9, 1921, cited to text).

For distribution of said act in this Code, see note under section 1 of this title.

**§ 14a. Depreciation of equipment; charges credited to appropriation.**

Whenever performing authorized engineering or other services in connection with the survey, construction, and maintenance, or improvement of roads for other Government agencies the charge for such services may include depreciation on engineering and road-building equipment used, and the amounts received on account of such charges shall be credited to the appropriation concerned. (Mar. 3, 1933, ch. 203, 47 Stat. 1456.)

**§ 15. Failure of State to maintain Federal-aid road; duty of Secretary of Agriculture.**

Should any State fail to maintain any highway within its boundaries after construction or reconstruction under the provisions of this chapter, the Secretary of Agriculture shall then serve notice upon the State highway department of that fact, and if within ninety days after receipt of such notice said highway has not been placed in proper condition of maintenance, the Secretary of Agriculture shall proceed immediately to have such highway placed in a proper condition of maintenance and charge the cost thereof against the Federal funds allotted to such State, and shall refuse to approve any other project in such State, except as hereinafter provided.

Upon the reimbursement by the State of the amount expended by the Federal Government for such maintenance, said amount shall be paid into the Federal highway fund for reapportionment among all the States for the construction of roads under this chapter, and the Secretary of Agriculture shall then approve further projects submitted by the State as in this chapter provided.

Whenever it shall become necessary for the Secretary of Agriculture under the provisions of this chapter to place any highway in a proper condition of maintenance the Secretary of Agriculture shall contract with some responsible party or parties for doing such work: *Provided, however,* That in case he is not able to secure a satisfactory contract he may purchase, lease, hire, or otherwise obtain all necessary supplies, equipment, and labor, and may operate and maintain such motor and other equipment and facilities as in his judgment are necessary for the proper and efficient performance of his functions. (Nov. 9, 1921, ch. 119, § 14, 42 Stat. 215.)

**REFERENCE IN TEXT**

In the original "this chapter" reads "this act," meaning the Federal Highway Act (act Nov. 9, 1921, cited to text). For distribution of said act in this Code, see note under section 1 of this title.

**§ 16. Maps of Federal-aid roads.**

At least once a year the Secretary of Agriculture shall publish maps supplementary to those of selected and approved highways and forest roads already in existence and showing his program and the progress made in selection, construction, and reconstruction. (Nov. 9, 1921, ch. 119, § 15, 42 Stat. 216.)

**§ 17. Consent by United States to conveyance of property acquired therefrom.**

For the purpose of this chapter the consent of the United States is given to any railroad or canal company to convey to the highway department of any State any part of its right of way or other property in that State acquired by grant from the United States. (Nov. 9, 1921, ch. 119, § 16, 42 Stat. 216.)

**REFERENCE IN TEXT**

In the original "this chapter" reads "this act," meaning the Federal Highway Act (act Nov. 9, 1921, cited to text). For distribution of said act in this Code, see note under section 1 of this title.

**§ 18. Appropriation of public lands for highway purposes; reversion.**

If the Secretary of Agriculture determines that any part of the public lands or reservations of the United States is reasonably necessary for the right of way of any highway or forest road or as a source of materials for the construction or maintenance of any such highway or forest road adjacent to such lands or reservations, the Secretary of Agriculture shall file with the Secretary of the department supervising the administration of such land or reservation a map showing the portion of such lands or reservations which it is desired to appropriate.

If within a period of four months after such filing the said Secretary shall not have certified to the Secretary of Agriculture that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved, or shall have agreed to the appropriation and transfer under conditions which he deems necessary for the adequate protection and utilization of the reserve, then such land and materials may be appropriated and transferred to the State highway department for such purposes and subject to the conditions so specified.

If at any time the need for any such lands or materials for such purposes shall no longer exist, notice of the fact shall be given by the State highway department to the Secretary of Agriculture, and such lands or materials shall immediately revert to the control of the Secretary of the department from which they had been appropriated. (Nov. 9, 1921, ch. 119, § 17, 42 Stat. 216.)

**§ 19. Prescription of rules and regulations by Secretary of Agriculture.**

The Secretary of Agriculture shall prescribe and promulgate all needful rules and regulations for the carrying out of the provisions of this chapter, including such recommendations to the Congress and the State highway departments as he may deem necessary for preserving and protecting the highways and insuring the safety of traffic thereon. (Nov. 9, 1921, ch. 119, § 18, 42 Stat. 216.)

**REFERENCE IN TEXT**

In the original "this chapter" reads "this act," meaning the Federal Highway Act (act Nov. 9, 1921, cited to text). For distribution of said act in this Code, see note under section 1 of this title.

**§ 20. Reports to Congress by Secretary of Agriculture.**

On or before the first Monday in January of each year the Secretary of Agriculture shall make a report to Congress, which shall include a detailed statement of the work done, the status of each project undertaken, the allocation of appropriations, an itemized statement of the expenditures and receipts during the preceding fiscal year under this chapter, and itemized statement of the traveling and other expenses, including a list of employees, their duties, salaries, and traveling expenses, if any, and his recommendations, if any, for new legislation amending or supplementing this chapter. The Secretary of Agriculture shall also make such special reports as Congress may request. (Nov. 9, 1921, ch. 119, § 19, 42 Stat. 216; June 18, 1934, ch. 586, § 10, 48 Stat. 995.)

**REFERENCE IN TEXT**

In the original "this chapter" reads "this act," meaning the Federal Highway Act (act Nov. 9, 1921, cited to text). For distribution of said act in this Code, see note under section 1 of this title.

**§ 20a. Service surveys for classification of highways; reports to Congress.**

The Commissioner of Public Roads, in cooperation with the State highway departments of the respective States, is hereby directed to investigate the service afforded to traffic, population, and lands by all highways of each State, as determined by State-wide surveys adequate for the purpose. Annually a report will be made to the Congress covering the progress made in classifying the highways into groups composed of roads of similar service importance. (Sept. 5, 1940, ch. 715, § 14, 54 Stat. 871.)

**§ 21. Deduction for administration and research; apportionment of remainder among States.**

So much, not to exceed 2½ per centum, of all moneys appropriated for expenditure under the provisions of this chapter, as the Secretary of Agriculture may deem necessary for administering the provisions of this chapter and for carrying on necessary highway research and investigational studies independently or in cooperation with the State highway departments and other research agencies, and for publishing the results thereof, shall be deducted for such purposes, available until expended.

Within sixty days after the close of each fiscal year the Secretary of Agriculture shall determine what part, if any, of the sums theretofore deducted for such purposes will not be needed and apportioned such part, if any, for the fiscal year then current in the same manner and on the same basis as are other amounts authorized by this chapter apportioned among all the States, and shall certify such apportionment to the Secretary of the Treasury and to the State highway departments.

The Secretary of Agriculture, after making the deduction authorized by this section, shall apportion the remainder of the appropriation made for expenditure under the provision of the chapter for the fiscal year among the several States in the following manner: One-third in the ratio which the area of each State bears to the total area of all the States; one-third in the ratio which the population of each

State bears to the total population of all the States, as shown by the latest available Federal census; one-third in the ratio which the mileage of rural delivery routes and star routes in each State bears to the total mileage of rural delivery and star routes in all the States at the close of the next preceding fiscal year, as shown by certificate of the Postmaster General, which he is directed to make and furnish annually to the Secretary of Agriculture: *Provided*, That no State shall receive less than one-half of 1 per centum of each year's allotment. All moneys appropriated for expenditure under the provisions of this chapter shall be available until the close of the second succeeding fiscal year for which apportionment was made: *Provided further*, That any amount apportioned under the provisions of this chapter unexpended at the end of the period during which it is available for expenditure under the terms of this section shall be reapportioned within sixty days thereafter to all the States in the same manner and on the same basis, and certified to the Secretary of the Treasury and the State highway departments in the same way as if it were being apportioned under this chapter for the first time. (Nov. 9, 1921, ch. 119, § 21, 42 Stat. 217.)

**REFERENCE IN TEXT**

In the original "this chapter" reads "this act," meaning the Federal Highway Act (act Nov. 9, 1921, cited to text). For distribution of said act in this Code, see note under section 1 of this title.

**§ 21a. Apportionment of appropriations among States; approval of projects.**

On or before January 1 of each year, the Secretary of Agriculture shall apportion among the several States, as provided in section 21 of this title, the sums authorized for the fiscal year immediately following. When said apportionment has been made for any fiscal year, the State highway departments may submit projects to the Secretary of Agriculture for his approval. The Secretary of Agriculture shall act upon projects submitted to him under any such apportionment and his approval of any such project shall be deemed a contractual obligation of the Federal Government for the payment of its proportional contribution thereto: *Provided*, That projects approved under any apportionment before the beginning of the fiscal year for which such apportionment has been made may be contracted for by the States and construction thereon may be begun, but the total reimbursements to any State or Territory before the beginning of such fiscal year shall not exceed the total of all previous apportionments to such State or Territory. (June 16, 1936, ch. 582, § 1 (b), 49 Stat. 1519.)

**§ 21b. Reapportionment of unexpended appropriations.**

All sums herein or hereafter authorized and apportioned to the States shall be available for expenditure for one year after the close of the fiscal year for which said sums, respectively, are authorized, and any sum remaining unexpended at the end of the period during which it is available for expenditure shall be reapportioned among the States as provided in section 21 of this title. (June 8, 1938, ch. 328, § 1 (a), 52 Stat. 633.)

**§ 21c. Use of funds for engineering costs on national defense highways.**

Funds authorized and made available under section 21 of this title, as amended, may be used to pay the entire engineering costs of the surveys, plans, specifications, estimates, and supervision of construction of projects for such urgent improvements of highways strategically important from the standpoint of the national defense as may be undertaken on the order of the Federal Works Administrator and as the result of request of the Secretary of War, the Secretary of the Navy, or other authorized national defense agency. (Sept. 5, 1940, ch. 715, § 18, 54 Stat. 871.)

**§ 22. Certification of disposition of appropriation.**

On or before January 20 preceding the commencement of each fiscal year, the Secretary of Agriculture shall certify to the Secretary of the Treasury and to each of the State highway departments the sum he has estimated to be deducted for administering the provisions of this chapter and the sums which he has apportioned to each State for the fiscal year ending June 30. (Nov. 9, 1921, ch. 119, § 22, 42 Stat. 217.)

**REFERENCE IN TEXT**

In the original "this chapter" reads "this act," meaning the Federal Highway Act, (act Nov. 9, 1921, cited to text). For distribution of said act in this Code, see note under section 1 of this title.

**§ 23. Forest roads and trails; appropriation; manner of expenditure.**

(a) Fifty per centum, but not to exceed \$3,000,000 for any one fiscal year, of the appropriation made or that may hereafter be made for the survey, construction, reconstruction, and maintenance of forest roads and trails shall be expended under the direct supervision of the Secretary of Agriculture in the survey, construction, reconstruction, and maintenance of roads and trails of primary importance for the protection, administration, and utilization of the national forests, or when necessary, for the use and development of the resources upon which communities within or adjacent to the national forests are dependent, and shall be apportioned among the several States, Alaska, and Puerto Rico by the Secretary of Agriculture, according to the relative needs of the various national forests, taking into consideration the existing transportation facilities, value of timber, or other resources served, relative fire danger, and comparative difficulties of road and trail construction.

The balance of such appropriations shall be expended by the Secretary of Agriculture in the survey, construction, reconstruction, and maintenance of forest roads of primary importance to the State, counties, or communities within, adjoining, or adjacent to the national forests, and shall be prorated and apportioned by the Secretary of Agriculture for expenditures in the several States, Alaska, and Puerto Rico, according to the area and value of the land owned by the Government within the national forests therein as determined by the Secretary of Agriculture from such information, investigation, sources, and departments as the Secretary of Agriculture may deem most accurate.

(b) Cooperation of Territories, States, and civil subdivisions thereof may be accepted but shall not be required by the Secretary of Agriculture.

(c) The Secretary of Agriculture may enter into contracts with any Territory, State, or civil subdivision thereof for the construction, reconstruction, or maintenance of any forest road or trail or part thereof.

(d) Construction work on forest roads or trails estimated to cost \$5,000 or more per mile, exclusive of bridges, shall be advertised and let to contract.

If such estimated cost is less than \$5,000 per mile, or if, after proper advertising, no acceptable bid is received, or the bids are deemed excessive, the work may be done by the Secretary of Agriculture on his own account; and for such purpose the Secretary of Agriculture may purchase, lease, hire, rent, or otherwise obtain all necessary supplies, materials, tools, equipment, and facilities required to perform the work.

Any appropriation that may be made for expenditure under the provisions of this section may be expended for the purpose authorized in this section and for the payment of wages, salaries, and other expenses for help employed in connection with such work. (Nov. 9, 1921, ch. 119, § 23, 42 Stat. 218; May 17, 1932, ch. 190, 47 Stat. 158.)

**§ 23a. Same; manner of expenditure of appropriation; approval of projects.**

One-third, but not less than \$3,000,000, of the appropriation made for any fiscal year for carrying out the provisions of section 23 of this title may after June 16, 1936 be expended for the purposes enumerated in the first paragraph of clause (a) of said section 23: *Provided*, That on or before January 1 of each year the Secretary of Agriculture shall apportion and prorate among the several States, Alaska, and Puerto Rico, as provided in said section 23, the sum authorized for the fiscal year immediately following and the Secretary of Agriculture is authorized to approve projects under any such apportionment, and to incur obligations or enter into contracts under his apportionment and prorating of the authorization, and his action in so doing shall be deemed a contractual obligation on the part of the Federal Government for the payment of the cost thereof. (June 16, 1936, ch. 582, § 2, 49 Stat. 1520.)

**§ 23b. Same; administration of appropriation.**

Appropriations for forest highways shall be administered in conformity with regulations jointly approved by the Secretary of Agriculture and the Federal Works Administrator. (Sept. 6, 1940, ch. 715, § 6, 54 Stat. 869.)

**§ 24. Approval of projects in States not permitted to provide for highways.**

Section, acts Nov. 9, 1921, ch. 119, § 24, 42 Stat. 218; June 19, 1922, ch. 227, § 4, par. 5, 42 Stat. 661; Feb. 12, 1925, ch. 219, § 5, 43 Stat. 890, provided that Secretary of Agriculture should continue for three years to approve construction projects in States whose constitutions or laws did not permit the State to provide revenue for such purposes provided State had complied with this chapter insofar as its constitution or laws permitted.

### § 24a. Safety protective devices at railroad crossings and drawbridges.

No part of the appropriations made after June 16, 1936 for the purpose of carrying out the provisions of this chapter shall be approved for expenditure on any highway unless proper safety protective devices shall be installed or be in operation at any highway and railroad grade crossing or drawbridge on that portion of the highway with respect to which such expenditures are to be made and said devices shall comply with the safety standards determined by the United States Bureau of Public Roads at that time as being adequate. (June 16, 1936, ch. 582, § 8, 49 Stat. 1521.)

#### REFERENCE IN TEXT

In the original "this chapter" reads "the Federal Highway Act" (act Nov. 9, 1921, cited to text). For distribution of said act in this Code, see note under section 1 of this title.

### § 25. Effect of partial invalidity.

If any provision of this chapter, or the application thereof to any person or circumstances, shall be held invalid, the validity of the remainder of the chapter and of the application of such provision to other persons or circumstances shall not be affected thereby. (Nov. 9, 1921, ch. 119, § 25, 42 Stat. 219; June 19, 1922, ch. 227, § 4, par. 7, 42 Stat. 661.)

#### REFERENCE IN TEXT

In the original "this chapter" reads "this act," meaning the Federal Highway Act (act Nov. 9, 1921, cited to text). For distribution of said act in this Code, see note under section 1 of this title.

## Chapter 2.—MISCELLANEOUS PROVISIONS

### Sec.

41. Federal aid extended to Hawaii.
- 41a. Federal aid extended to Puerto Rico.
- 41b. Federal aid extended to District of Columbia.
42. Limitation of payments per mile.
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46. False statements, etc., as to highway projects; penalty.
47. Consent as requisite for employment on roads of soldiers, sailors, or marines.
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56. No deductions on account of prior loans or advances.
57. Availability of Public Roads Administration funds for relief of certain employees.

### § 41. Federal aid extended to Hawaii.

Beginning with the fiscal year ending June 30, 1925, the Territory of Hawaii shall be entitled to share in appropriations now or which may hereafter become available for apportionment under the Act entitled "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes," approved July 11, 1916, known as the Federal Highway Act<sup>1</sup> and any Act amendatory thereof or supplementary thereto upon the same terms and conditions as any of the several States, and such Territory shall be included in the calculations to determine the basis of apportionment of such funds: *Provided*, That in approving road projects in such Territory to receive Federal aid, the Secretary of Agriculture shall give preference to such projects as will expedite the completion of an adequate system of highways for the national defense or which will connect seaports with units of the national parks: *Provided further*, That the system of roads on which Federal-aid apportionments to the Territory of Hawaii shall be expended may be determined and agreed upon by the governor of said Territory and the Secretary of Agriculture without regard to the limitations in section 6 of this title respecting the selection and designation of such system of roads; and when the system first determined and agreed upon shall have been completed, additions thereto may be made in like manner as funds become available for the construction and maintenance of such additions. The provisions of this section shall in no way impair the right of such Territory to receive the benefits of chapter 1 of this title. (Mar. 10, 1924, ch. 46, § 1, 43 Stat. 17; Feb. 23, 1931, ch. 283, 46 Stat. 1415.)

<sup>1</sup>So in original. The act of July 11, 1916, was not designated the "Federal Highway Act." Congress possibly intended to refer to both the Act of July 11, 1916 (ch. 241, 39 Stat. 355) and the Federal Highway Act (act Nov. 9, 1921, ch. 119, 42 Stat. 212). Sections 6, 7, and 8 of said act July 11, 1916, were incorporated into the Code as sections 12a and 48 of this title and section 503 of Title 16, Conservation. For distribution of the "Federal Highway Act" in the Code, see note under section 1 of this title.

#### REFERENCE IN TEXT

In the original "chapter 1 of this title" reads "the Federal Highway Act." For distribution of said act in this Code, see note under section 1 of this title.

### § 41a. Federal aid extended to Puerto Rico.

Beginning with the fiscal year ending June 30, 1938, the Territory of Puerto Rico shall be entitled to share in appropriations now or which may hereafter become available for apportionment under chapter 1 of this title, and any Act amendatory thereof or supplementary thereto, upon the same terms and conditions as any of the several States, and the Territory of Puerto Rico shall be included in the calculations to determine the basis of apportionment of such funds: *Provided*, That the system of roads on which Federal-aid apportionments to the Territory of Puerto Rico shall be expended may be determined and agreed upon by the highway departments of said Territory and the Secretary of Agriculture without regard to the limitations in section 6 of this title respecting the selection and des-

ignation of such system of roads; and, when the system first determined and agreed upon shall have been completed, additions thereto may be made in like manner as funds become available for the construction and maintenance of such additions. (June 23, 1936, ch. 730, 49 Stat. 1891.)

#### REFERENCE IN TEXT

In the original "chapter 1 of this title" reads "the act \* \* \* of July 11, 1916" (ch. 241, 39 Stat. 355). Sections 6, 7, and 8 of said act were incorporated into the Code as sections 12a and 48 of this title and section 503 of Title 16, Conservation.

#### § 41b. Federal aid extended to District of Columbia.

Beginning with the fiscal year ending June 30, 1940, the District of Columbia shall be entitled to share in all sums herein or hereafter authorized and apportioned to the States, upon the same terms and conditions as any of the several States, and the District of Columbia shall be included in the calculations to determine the basis of apportionment of such funds: *Provided*, That the system of roads on which Federal-aid apportionments to the District of Columbia shall be expended may be determined and agreed upon by the highway department of the said District and the Secretary of Agriculture without regard to the limitations in section 6 of this title respecting the selection and designation of such system of roads; and, when the system first determined and agreed upon shall have been completed, additions thereto may be made in like manner as funds become available for the construction of such additions. (June 8, 1938, ch. 328, § 1 (b), 52 Stat. 633.)

#### § 42. Limitation of payments per mile.

Section, acts Feb. 28, 1919, ch. 69, § 5, 40 Stat. 1201; June 19, 1922, ch. 227, § 4, par. 4, 42 Stat. 660, was made inapplicable by act June 18, 1934, ch. 586, § 13, 48 Stat. 995 (former section 6c of this title).

#### § 43. Time of apportionment.

On or before January 1, preceding the commencement of each fiscal year ending June 30, the Secretary of Agriculture shall apportion among the several States, as provided in section 21, the appropriation authorized for each fiscal year. (Feb. 12, 1925, ch. 219, § 1, 43 Stat. 889.)

#### § 44. Approval of project as creating obligation.

Section, acts June 19, 1922, ch. 227, § 4, 42 Stat. 660; Jan. 22, 1923, ch. 29, 42 Stat. 1157; Feb. 26, 1923, ch. 119, 42 Stat. 1321; June 5, 1924, ch. 266, 43 Stat. 461; Feb. 12, 1925, ch. 219, § 1, 43 Stat. 889 expired with the appropriation acts of which it was a part.

#### § 45. Use of appropriation for obligations created.

Appropriations made for the purpose of carrying out the provisions of section 23 of this title and section 503 of Title 16, and acts amendatory thereof and supplementary thereto, shall be considered available for the purpose of discharging the obligations created thereunder in any State or Territory: *Provided*, That the total expenditures on account of any State or Territory shall at no time exceed its authorized apportionment. (Jan. 22, 1923, ch. 29, § 1, 42 Stat. 1157; May 16, 1928, ch. 572, 45 Stat. 569; Feb. 16, 1929, ch. 227, 45 Stat. 1220.)

#### § 46. False statements, etc., as to highway projects; penalty.

If any officer, agent, or employee of the United States, or any officer, agent, or employee of any State or Territory, or any person, association, firm, or corporation or any officer or agent of any person, association, firm, or corporation shall knowingly make any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction of any project submitted for approval to the Secretary of Agriculture under the provisions of chapter 1 of this title, or shall knowingly make any false statement, false representation, or false report or claim for work or materials for the construction of any project approved by the Secretary of Agriculture under chapter 1 of this title and all amendments thereto, or shall knowingly make any false statement or false representation in any report required to be made under chapter 1 of this title or statutes supplementary thereto with the intent to defraud the United States, he shall, upon conviction thereof, be punished by imprisonment not to exceed five years or by a fine not to exceed \$10,000, or by both fine and imprisonment within said limits. (June 19, 1922, ch. 227, § 4, par. 6, 42 Stat. 661.)

#### REFERENCE IN TEXT

In the original "chapter 1 of this title" reads "the Federal Highway Act," (act Nov. 9, 1921, ch. 119, 42 Stat. 212). For distribution of said act in this Code, see note under section 1 of this title.

#### § 47. Consent as requisite for employment on roads of soldiers, sailors, or marines.

Section, act Feb. 28, 1919, ch. 69, § 9, 40 Stat. 1202, prohibited the use of enlisted men and officers for road work under the Appropriation Act for the Post Office Department of which it was a part, without the consent of the officers or men.

#### § 48. Maintenance of roads constructed.

To maintain the roads constructed under the provisions of this title shall be the duty of the States, or their civil subdivisions, according to the laws of the several States. If at any time the Secretary of Agriculture shall find that any road in any State constructed under the provisions of this title is not being properly maintained, he shall give notice of such fact to the highway department of such State and if within four months from the receipt of said notice said road has not been put in a proper condition of maintenance, then the Secretary of Agriculture shall thereafter refuse to approve any project for road construction in said State, or the civil subdivision thereof, as the fact may be, whose duty it is to maintain said road until it has been put in a condition of proper maintenance. (July 11, 1916, ch. 241, § 7, 39 Stat. 358.)

#### REFERENCE IN TEXT

In the original "this title" reads "this act," meaning act July 11, 1916, cited to text. For distribution of said act in this Code, see note under section 9a of this title.



**§ 49. Exchange, reclamation, and disposition of explosives.**

The Secretary of Agriculture may exchange deteriorated explosives or explosive components, obtained by transfer from the Secretary of War for distribution among the States and for use in the improvement of roads under his direct supervision, for explosives or explosive products in condition for immediate use. The Secretary of Agriculture is further authorized, by contract or otherwise, to reclaim, by reworking, reconditioning, cartridging, or otherwise converting into usable form, such deteriorated explosives or explosive components as cannot be so exchanged, and to pay the cost thereof out of available administrative funds authorized by this title. The Secretary of Agriculture, in his discretion, may transfer to any department or agency of the Federal Government such of the materials acquired from such exchanges, and also such of the explosives or explosive components as may be reworked, reconditioned, cartridged, or otherwise converted hereunder, as may be required by any such department or agency for use in its authorized activities: *Provided*, That the charges incident to the storage, handling, protection, exchange, reworking, reconditioning, cartridging, or conversion of such explosives or explosive components as may be certified by the Secretary of Agriculture to have been incurred against said administrative funds shall be reimbursed, said funds pro rata, by the department or agency of the Federal Government, the State, or other agency receiving such explosives or explosive products. (Feb. 12, 1925. ch. 219, § 3, 43 Stat. 890.)

**REFERENCE IN TEXT**

In the original "this title" reads "the Federal Highway Act \* \* \* and acts amendatory thereof or supplementary thereto." For distribution of said Federal Highway Act in this Code, see note under section 1 of this title.

**§ 50. Loan of tractors.**

The Secretary of War is authorized and empowered, at his discretion and under such rules and regulations as he may prescribe, to loan to any State of the Union, when so requested by the highway department of the State, such tractors as are retained and not distributed under sections 51, 52, and 53 of this title; section 81 of Title 5; section 561 of Title 16; sections 29 and 29a of Title 24; or sections 502 and 503 of Title 39 for use in highway construction by the highway department of such State: *Provided*, That all expenses for repairs and upkeep of tractors so loaned and the expenses of loading and freight shall be paid by the State, both in transfer to the State and the return to the Army. (Apr. 24, 1920, ch. 161, § 7, 41 Stat. 584; Mar. 1, 1921, ch. 88, § 2, 41 Stat. 1155.)

**§ 51. Transfer of motor-propelled vehicles and equipment belonging to Military Establishment to Department of Agriculture; purposes of.**

The Secretary of War is authorized and directed to transfer such motor-propelled vehicles and motor equipment, including spare parts, pertaining to the Military Establishment as are or may hereafter be found to be surplus and no longer required for mili-

tary purposes, to the Department of Agriculture, for use in the improvement of highways and roads under the provisions of section 5 of this title: *Provided, however*, That no more motor-propelled vehicles, motor equipment, and other war material, equipment, and supplies, the transfer of which is authorized in this section, sections 52 and 53 of this title; section 81 of Title 5; section 561 of Title 16; sections 29 or 29a of Title 24; or sections 502 and 503 of Title 39 shall be transferred to the Department of Agriculture for the purposes named in section 5 of this title than said Department of Agriculture shall certify can be efficiently used for such purposes within a reasonable time after such transfer. (Mar. 15, 1920, ch. 100, § 1, 41 Stat. 530.)

**§ 52. Transfer of certain war material, equipment, and supplies for improvement of highways and roads.**

The Secretary of War is authorized and directed to transfer to the Department of Agriculture, under the provisions of section 5 of this title for use in the improvement of highways and roads, as therein provided, following war material, equipment, and supplies pertaining to the Military Establishment as are or may hereafter be found to be surplus and not required for military purposes, to wit, road rollers, graders, and oilers; sprinkling wagons; concrete mixers; derricks; pile-driver outfits complete; air and steam drill outfits; centrifugal and diaphragm pumps with power; rock crushers; clamshell and orange-peel buckets; road scarifiers; caterpillar and drag-line excavators; plows; cranes; trailers; rubber and steam hose; asphalt plants; steam shovels; dump wagons; hoisting engines; air-compressor outfits with power; boilers; drag, Fresno, and wheel scrapers; stump pullers; wheelbarrows; screening plants; wagon loaders; blasting machines; hoisting cable; airhose; corrugated-metal culverts; explosives and exploders; engineers' transits, levels, tapes, and similar supplies and equipment; drafting machines; planimeters; fabricated bridge materials; industrial railway equipment; conveyors, gravity and power; donkey engines; corrugated-metal roofing; steel and iron pipe; wagons and similar equipment and supplies such as are used directly for road-building purposes. (Mar. 15, 1920, ch. 100, § 2, 41 Stat. 530.)

**§ 52a. Freight and incidental charges incurred in transfer of property.**

Freight charges incurred in the transfer of the property provided for in sections 51, 52, and 53 of this title; section 81 of Title 5; section 561 of Title 16; sections 29 or 29a of Title 24; or sections 502 and 503 of Title 39 shall not be defrayed by the War Department, and if the War Department shall load any of said property for shipment the expense of said loading shall be reimbursed the War Department by the department to which the property is transferred by an adjustment of the appropriations of the two departments. (Mar. 15, 1920, ch. 100, § 4, 41 Stat. 531.)

**CODIFICATION**

This section is also set out as section 29a of Title 24, Hospitals, Asylums, and Cemeteries.

### § 53. Title to property transferred to States.

The title to vehicles and equipment mentioned in sections 51, 52, and 53 of this title; section 81 of Title 5; section 561 of Title 16; sections 29 and 29a of Title 24 and sections 502 and 503 of Title 39 shall be and remain vested in the State for use in the improvement of the public highways, and no such vehicles and equipment in serviceable condition shall be sold or the title to the same transferred to any individual, company, or corporation: *Provided*, That any State highway department to which is assigned motor-propelled vehicles and other equipment and supplies, transferred by said sections to the Department of Agriculture, may, in its discretion, arrange for the use of such vehicles and equipment for the purpose of constructing or maintaining public highways, with any State agency or municipal corporation at a fair rental which shall not be less than the cost of maintenance and repair of said vehicles and equipment. (Mar. 15, 1920, ch. 100, § 5, 41 Stat. 531.)

### § 54. Engineering service; performance by Secretary of Agriculture on request of any branch of Government; payment.

The Secretary of Agriculture is authorized, upon the request of any branch of the Federal Government, to perform any engineering service in connection with the survey, construction, maintenance, or improvement of roads, payment of the salaries and expenses of employees so engaged and of the cost of transportation, repairs, and replacements of equipment and supplies of the Department of Agriculture used in such work to be made by transfer of funds in the manner provided by section 686 of Title 31. (Jan. 18, 1927, ch. 39, 44 Stat. 997.)

### § 54a. Expenses for employees of Public Roads Administration performing engineering services beyond continental United States; increase in pay.

The Public Roads Administration is authorized to pay transportation and subsistence expenses of its employees, and of persons appointed under schedule A, subdivision I, paragraph 7, of Civil Service Rules, hereafter assigned to perform engineering services beyond continental United States for any agency or governmental corporation of the United States, including transportation and subsistence expenses of members of the immediate family of any such employee or person in traveling from their headquarters or homes to the post of duty outside continental United States and return; and, with the approval of the Federal Works Administrator, the compensation of any such employee so assigned may be increased during such assignment by not to exceed 25 per centum of his base pay. (Sept. 5, 1940, ch. 715, § 15, 54 Stat. 871.)

### § 55. Gasoline and motor vehicle taxes; application to highway construction as prerequisite to Federal aid.

Since it is unfair and unjust to tax motor-vehicle transportation unless the proceeds of such taxation

are applied to the construction, improvement, or maintenance of highways, after June 30, 1935, Federal aid for highway construction shall be extended only to those States that use at least the amounts now provided by law for such purposes in each State from State motor-vehicle registration fees, licenses, gasoline taxes, and other special taxes on motor-vehicle owners and operators of all kinds for the construction, improvement, and maintenance of highways and administrative expenses in connection therewith, including the retirement of bonds for the payment of which such revenues have been pledged, and for no other purposes, under such regulations as the Secretary of Agriculture shall promulgate from time to time: *Provided*, That in no case shall the provisions of this section operate to deprive any State of more than one-third of the amount to which that State would be entitled under any apportionment hereafter made, for the fiscal year for which the apportionment is made. (June 18, 1934, ch. 586, § 12, 48 Stat. 995.)

### § 55a. Tax on motor fuel sold on military or other reservations; reports to State taxing authority.

Section, act June 16, 1936, ch. 582, § 10, 49 Stat. 1521, has become section 12 of Title 4, Flag and Seal, Seat of Government, and the States.

### § 55b. Reapportionment of sums withheld as a penalty.

Any sums heretofore or hereafter withheld from the Federal-aid road funds apportioned to any State as a penalty for diversion of road-user taxes under the provisions of section 55 of this title, shall be reapportioned in the same manner as any other unexpended balance at the end of the period during which it otherwise would be available for expenditure, in accordance with the provisions of section 21 of this title. (June 8, 1938, ch. 328, § 11, 52 Stat. 636; Sept. 5, 1940, ch. 715, § 16, 54 Stat. 871.)

### § 56. No deductions on account of prior loans or advances.

No deductions shall hereafter be made on account of prior advances and/or loans to the States for the construction of roads under the requirements of chapter 1 of this title or on account of amounts paid under the provisions of section 605a of Title 15 for furnishing relief and work relief to needy and distressed people. (June 18, 1934, ch. 586, § 14, 48 Stat. 996.)

#### REFERENCE IN TEXT

In the original "chapter 1 of this title" reads "the Federal Highway Act," (act Nov. 9, 1921, ch. 119, 42 Stat. 212). For distribution of said act in this Code, see note under section 1 of this title.

### § 57. Availability of Public Roads Administration funds for relief of certain employees.

The appropriations available to the Public Roads Administration may be used in emergency for medical supplies and services and other assistance necessary for the immediate relief of employees engaged on hazardous work under that Administration. (April 18, 1940, ch. 107, § 1, 54 Stat. 128.)



## TITLE 24.—HOSPITALS, ASYLUMS, AND CEMETERIES

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### Chapter 1.—NAVY HOSPITALS, NAVAL HOME, ARMY AND NAVY HOSPITAL, AND HOSPITAL RELIEF FOR SEAMEN AND OTHERS

Sec
1. Word "seaman" defined.
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3. Deduction from pay of seamen for Navy hospital fund.
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24. Moneys derived from Naval Home turned into pension fund.
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26. Additional hospital and sanatorium facilities for various groups authorized.
26a. Beneficiaries of fund for relief of sick and disabled seamen.
27. Hospital properties transferred to Treasury Department for Public Health Service.
28-29a. Transfer of surplus war material for use of Public Health Service.
30. Payments to certain donors of blood to Military Establishment patients.

Sec.
31. Care of naval patients in other Government hospitals where naval hospital facilities not available; members of Naval Reserve and Marine Corps Reserve included.

#### § 1. Word "seaman" defined.

The term "seaman", wherever employed in legislation relating to the Public Health Service, shall be held to include any person employed on board in the care, preservation, or navigation of any vessel, or in the service, on board, of those engaged in such care, preservation, or navigation (Mar. 3, 1875, ch. 156, § 3, 18 Stat. 485; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309.)

#### § 2. Gifts in aid of marine hospitals.

The President is authorized to receive donations of real or personal property, in the name of the United States, for the erection or support of hospitals for sick and disabled seamen. (R. S. § 4801.)

##### DERIVATION

Act July 16, 1798, ch. 77, § 4, 1 Stat. 606.

##### CROSS REFERENCE

Naval hospital funds to be held in trust, see section 725s of Title 31, Money and Finance.

#### § 3. Deduction from pay of seamen for Navy hospital fund.

The Secretary of the Navy shall deduct from the pay due each officer, seaman, and marine, in the Navy, at the rate of 20 cents per month for each person, to be applied to the fund for Navy hospitals. (R. S. §§ 1614, 4808.)

##### DERIVATION

R. S. § 1614 from act Mar. 2, 1799, ch. 36, § 2, 1 Stat. 729; act Feb. 26, 1811, ch. 26, § 1, 2 Stat. 650.

R. S. § 4808 from act Mar. 2, 1799, ch. 36, § 2, 1 Stat. 729; act Feb. 26, 1811, ch. 26, § 1, 2 Stat. 650.

##### CROSS REFERENCE

Naval hospital funds to be held in trust, see section 725s of Title 31, Money and Finance.

#### § 4. Fines on seamen appropriated for Navy hospitals.

All fines imposed on Navy officers, seamen, and marines shall be paid to the Secretary of the Navy, for the maintenance of Navy hospitals. (R. S. § 4809.)

##### DERIVATION

Acts Feb 26, 1811, ch. 26, § 2, 2 Stat. 650; July 10, 1832, ch. 194, § 5, 4 Stat. 573.

##### CROSS REFERENCES

Naval hospital funds to be held in trust, see section 725s of Title 31, Money and Finance.

Transportation of discharged naval prisoners to be paid from fines and forfeitures in certain cases, see section 962 of Title 34, Navy.

**§ 5. Forfeitures from desertion for naval hospital fund.**

All forfeitures on account of desertion shall be passed to the credit of the naval hospital fund. (June 7, 1900, ch. 859, 31 Stat. 697.)

**CROSS REFERENCES**

Naval hospital funds to be held in trust, see section 725e of Title 31, Money and Finance.

Transportation of discharged naval prisoners to be paid from fines and forfeitures in certain cases, see section 962 of Title 34, Navy.

**§ 6. Pension paid to fund for benefit of naval hospital.**

Whenever any officer, seaman, or marine entitled to a pension is admitted to a naval hospital, his pension, while he remains there, shall be deducted from his accounts and paid to the Secretary of the Navy for the benefit of the fund from which such hospital is maintained. (R. S. § 4813; Mar. 3, 1899, ch. 421, 30 Stat. 1027; June 30, 1914, ch. 130, 38 Stat. 398.)

**DERIVATION**

R. S. § 4813 from act Feb. 26, 1811, ch. 26, § 5, 2 Stat. 650.

**CROSS REFERENCES**

Deductions authorized by this section to apply to other Government hospitals, except St. Elizabeths Hospital, see section 31 of this title.

Hospitalization for veterans of certain wars, see section 484 of Title 38, Pensions, Bonuses, and Veterans' Relief.

Navy hospital fund classified on books of Treasury as trust funds, see section 725e (b) (80) of Title 31, Money and Finance.

**§ 7. Lease or sale of marine hospitals.**

The Federal Security Administrator is authorized to lease, or to sell at public auction, to the highest and best bidder, for cash, after due notice in the public newspapers, such marine hospital buildings and lands appertaining thereto as he may deem advisable in the interests of the Public Health Service, and to make, execute, and deliver all needful conveyances to the lessees or purchasers thereof, respectively; and the proceeds of such leases and sales are appropriated for the said service. But the hospital at Portland in Maine shall not be sold or leased. And this section shall not be construed to authorize the Federal Security Administrator to lease or sell any such hospital where the relief furnished to sick mariners shall show an extent of relief equal to twenty cases a day on an average for the last preceding four years, or where no other suitable and sufficient hospital accommodations can be procured upon reasonable terms for the comfort and convenience of the patients. (R. S. § 4806; Mar. 3, 1875, ch. 156, § 4, 18 Stat. 485; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309; July 26, 1916, ch. 256, 39 Stat. 390; Reorg. Plan No. I, §§ 201, 205 (b), eff. July 1, 1939, 4 Fed. Reg. 2728, 2729, 53 Stat. 1424, 1425.)

**TRANSFERS OF FUNCTIONS**

Functions of the Secretary of the Treasury relating to the Public Health Service, except those enumerated in sections 23b and 137e of Title 42, Public Health, were transferred to the Federal Security Administrator by Reorg. Plan No. I, cited to text, which is set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

**DERIVATION**

R. S. § 4806 from acts Apr. 20, 1866, ch. 63, § 1, 14 Stat. 40; June 27, 1866, ch. 142, 14 Stat. 76.

**§ 8. Coast Guard admitted to hospitals; relief for dependent members of family.**

Under such regulations as may be prescribed by the President, upon the recommendation of the Surgeon General with the approval of the Federal Security Administrator, all commissioned officers, chief warrant officers, warrant officers, cadets, and enlisted men of the Coast Guard, including those on shore duty and those on detached duty, whether on active duty or retired, shall be entitled to medical, surgical, and dental treatment and hospitalization by the Public Health Service; and the dependent members of families of officers and enlisted men of the Coast Guard shall be furnished medical advice and out-patient treatment by the Public Health Service at its first-, second-, and third-class relief stations, and such dependent members of families shall be furnished hospitalization at marine hospitals, if suitable accommodations are available, at a per-diem cost to the officer or enlisted man concerned equivalent to the uniform per-diem reimbursement rate for Government hospitals as approved by the President for each fiscal year. Collections of the Public Health Service for the hospitalization of such dependent members of families shall be credited to the applicable appropriation for the operation of marine hospitals and relief stations. (Aug. 4, 1894, ch. 213, 28 Stat. 229; Jan. 28, 1915, ch. 20, § 2, 38 Stat. 801; July 30, 1937, ch. 545, § 2, 50 Stat. 548; Reorg. Plan No. I, §§ 201, 205 (b), eff. July 1, 1939, 4 Fed. Reg. 2728, 2729, 53 Stat. 1424, 1425.)

**TRANSFERS OF FUNCTIONS**

Functions of the Secretary of the Treasury relating to the Public Health Service, except those enumerated in sections 23b and 137e of Title 42, Public Health, were transferred to the Federal Security Administrator by Reorg. Plan No. I, cited to text, which is set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

**§ 9. Officers and employees of Public Health Service entitled to hospital relief.**

Commissioned officers and pharmacists, and those employees of the Public Health Service devoting all their time to field work, shall be entitled to hospital relief when taken sick or injured in line of duty. (June 23, 1913, ch. 3, § 1, 38 Stat. 24.)

**§ 10. Officers and crews of vessels of former Bureau of Fisheries admitted to benefits of Public Health Service.**

Officers and crews of the several vessels belonging to the former Bureau of Fisheries may be admitted to the benefits of the Public Health Service without charge upon the application of their respective commanding officers. (July 1, 1918, ch. 113, § 1, 40 Stat. 694.)

**TRANSFERS OF FUNCTIONS**

Bureau of Fisheries was consolidated with Bureau of Biological Survey into Fish and Wildlife Service in Department of Interior, and offices of Commissioner and Deputy Commissioner of Fisheries were abolished by Reorg. Plan No. III, § 3, eff. June 30, 1940, 5 Fed. Reg. 2108, 54 Stat. 1232, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See, also, sections 8 and 9 of said plan for provisions relating to transfer of records, property, personnel, and funds. The Bureau had been previously transferred to Department of Interior by Reorg. Plan No. II, § 4 (e),

eff. July 1, 1939, 4 Fed. Reg. 1433, 53 Stat. 1433, also set out in note under section 133t of Title 5.

### § 11. Care of foreign seamen.

Sick and disabled seamen of foreign vessels and of vessels not subject to hospital dues may be cared for by the Public Health Service at such rates and under such regulations as the Federal Security Administrator may prescribe. (Mar. 3, 1875, ch. 156, § 6, 18 Stat. 486; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309; Reorg. Plan No. I, §§ 201, 205 (b), eff. July 1, 1939, 4 Fed. Reg. 2728, 2729, 53 Stat. 1424, 1425.)

#### TRANSFERS OF FUNCTIONS

Functions of the Secretary of the Treasury relating to the Public Health Service, except those enumerated in sections 23b and 137e of Title 42, Public Health, were transferred to the Federal Security Administrator by Reorg. Plan No. I, cited to text, which is set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

### § 11a. Same; liability of foreign vessels for hospital charge.

Each seaman admitted to the marine hospitals within the United States on the application of the master of a foreign vessel shall be subject to the charge fixed by the Federal Security Administrator, which shall be paid by the master of such foreign vessel to the collector of the collection district in which the hospital is situated. And the collector shall not grant a clearance to any foreign vessel until the money so due from her master shall be paid. The officer in charge of each hospital is hereby directed, under penalty of \$50, to make out the accounts against each foreign seaman that may be placed in the hospital under his direction, and render the same to the collector. (R. S. § 4805; Mar. 3, 1875, ch. 156, § 6, 18 Stat. 486; Reorg. Plan No. I, §§ 201, 205 (b), eff. July 1, 1939, 4 Fed. Reg. 2728, 2729, 53 Stat. 1424, 1425.)

#### DERIVATION

Act May 3, 1802, ch. 51, § 5, 2 Stat. 193.

#### TRANSFERS OF FUNCTIONS

Functions of the Secretary of the Treasury relating to the Public Health Service, except those enumerated in sections 23b and 137e of Title 42, Public Health, were transferred to the Federal Security Administrator by Reorg. Plan No. I, cited to text, which is set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

### § 12. Employees on canal boats in coasting trade excluded.

No person employed in or connected with the navigation, management, or use of canal boats engaged in the coasting trade shall by reason thereof be entitled to any benefit or relief from the marine-hospital fund. (R. S. § 4804.)

#### DERIVATION

Res. Feb. 10, 1871, No. 27, § 1, 16 Stat. 595.

### § 13. Admission of cases for study.

There may be admitted into marine hospitals for study persons with infectious or other diseases affecting the public health, and not to exceed ten cases in any one hospital at one time. (June 5, 1920, ch. 235, § 1, 41 Stat. 884.)

### § 14. Establishment of Navy hospitals.

The Secretary of the Navy shall procure at suitable places proper sites for Navy hospitals, and if the necessary buildings are not procured with the site, shall cause such to be erected, having due regard to economy, and giving preference to such plans as with most convenience and least cost will admit of subsequent additions, when the funds permit and circumstances require; and shall provide, at one of the establishments, a permanent asylum for disabled and decrepit Navy officers, seamen, and marines: *Provided*, That no sites shall be procured or hospital buildings erected or extensions to existing hospitals made unless authorized by Congress. (R. S. § 4810; Mar. 4, 1913, ch. 148, 37 Stat. 902.)

#### DERIVATION

Acts Feb. 26, 1811, ch. 26, § 3, 2 Stat. 650; July 10, 1832, ch. 149, § 5, 4 Stat. 573.

### § 15. Superintendence of Navy hospitals.

The Secretary of the Navy shall have the general charge and superintendence of Navy hospitals. (R. S. § 4807.)

#### DERIVATION

Acts Feb. 26, 1811, ch. 26, § 1, 2 Stat. 650; July 10, 1832, ch. 194, § 5, 4 Stat. 573.

### § 16. Allowance of rations to Navy hospitals.

For every Navy officer, seaman, or marine admitted into a Navy hospital, the institution shall be allowed one ration per day during his continuance therein, to be deducted from the account of the United States with such officer, seaman, or marine. (R. S. § 4812.)

#### DERIVATION

Act Feb. 26, 1811, ch. 26, § 5, 2 Stat. 650.

#### CROSS REFERENCE

Naval patients, deductions for care in other Government hospitals, see section 31 of this title.

### § 17. Government of Naval Asylum.

The asylum for disabled and decrepit Navy officers, seamen, and marines shall be governed in accordance with the rules and regulations prescribed by the Secretary of the Navy. (R. S. § 4811.)

#### DERIVATION

Act Feb. 26, 1811, ch. 26, § 4, 2 Stat. 650.

### § 18. Rules and regulations for Army and Navy Hospital.

The Army and Navy hospital at Hot Springs, Arkansas, shall be subject to such rules, regulations, and restrictions as shall be provided by the President of the United States and shall remain under the jurisdiction and control of the War Department. (June 30, 1882, ch. 254, § 1, 22 Stat. 121; June 18, 1930, ch. 525, § 2, 46 Stat. 781.)

#### CODIFICATION

Section, except last clause of last sentence, is from act June 30, 1882, cited to text. Last clause of last sentence is from act June 18, 1930, ch. 525, § 2, 46 Stat. 781.

### § 19. Tubercular hospital at Fort Bayard.

The hospital at Fort Bayard, New Mexico, for the treatment of tuberculosis, shall be opened to the

treatment of the officers and men of the Navy and Marine Corps. (Mar. 2, 1907, ch. 2511, 34 Stat. 1172.)

**§ 20. Discipline of patients at Army and Navy Hospital.**

All persons admitted to treatment in the Army and Navy General Hospital at Hot Springs, Arkansas, shall, while patients in said hospital, be subject to the rules and articles for the government of the armies of the United States. (Mar. 3, 1909, ch. 252, 35 Stat. 748; Mar. 3, 1919, ch. 98, § 3, 40 Stat. 1303.)

**§ 21. Limitation on cost of Army hospital buildings.**

No building or structure of a permanent nature, the cost of which shall exceed \$30,000, shall be erected for use as an Army hospital unless by special authority of Congress. (May 12, 1917, ch. 12, 40 Stat. 58.)

**§ 22. Disposition of moneys of deceased inmates of Naval Home.**

All moneys belonging to a deceased beneficiary of the Naval Home or derived from the sale of his personal effects, not claimed by his legal heirs or next of kin, shall be deposited with the pay officer of the Naval Home, and if any sum so deposited shall be unclaimed for a period of two years from the death of such beneficiary it shall be deposited in the Treasury to the credit of the naval pension fund: *Provided*, That the governor of the Naval Home is authorized and directed, under such regulations as may be prescribed by the Secretary of the Navy, to make diligent inquiry in every instance after the death of an inmate to ascertain the whereabouts of his heirs or next of kin: *Provided further*, That claims may be presented at any time within five years after moneys have been so deposited in the Treasury, and, when supported by competent proof in any case after such deposit in the Treasury, shall be certified to Congress for consideration. (June 30, 1914, ch. 130, 38 Stat. 398.)

**CROSS REFERENCES**

Naval pension fund abolished, see section 725h of Title 31, Money and Finance.

Personal funds of deceased inmates of Naval Home to be held in trust, see section 725s (a) (5) of Title 31, Money and Finance.

**§ 23. Disposition of pension of beneficiary in Naval Home.**

The pensions of beneficiaries of the Naval Home shall be disposed of in the same manner as prescribed for inmates of the Soldiers' Home, as provided for in section 52 of this title, under such regulations as the Secretary of the Navy may prescribe, except that in the case of death of any beneficiary leaving no heirs at law nor next of kin any pension due him shall, subject to the foregoing provisions, escheat to the naval pension fund. (June 30, 1914, ch. 130, 38 Stat. 398.)

**CROSS REFERENCE**

Naval pension fund abolished, see section 725h of Title 31, Money and Finance.

**§ 24. Moneys derived from Naval Home turned into pension fund.**

All moneys derived from the sale of material at the Naval Home, which was originally purchased from moneys appropriated from the income from the naval pension fund, and all moneys derived from the rental of Naval Home property, shall be turned into the naval pension fund. (Mar. 4, 1917, ch. 180, 39 Stat. 1175.)

**CROSS REFERENCE**

Naval pension fund abolished, see section 725h of Title 31, Money and Finance.

**§ 25. Employment of beneficiaries in service of Naval Home.**

For the performance of such additional services in and about the Naval Home as may be necessary the Secretary of the Navy is authorized to employ, on the recommendation of the governor, beneficiaries in said home whose compensation shall be fixed by the Secretary and paid from the appropriation for the support of the home. (Aug. 22, 1912, ch. 335, 37 Stat. 334.)

**§ 26. Additional hospital and sanatorium facilities for various groups authorized.**

The Secretary of the Treasury is authorized to provide immediate additional hospital and sanatorium facilities for the care and treatment of discharged sick and disabled soldiers, sailors, and marines, Army and Navy nurses (male and female), patients of the Veterans' Administration who were patients of the former War Risk Insurance Bureau, and the following persons only: Merchant marine seamen, seamen on boats of the Mississippi River Commission, officers and enlisted men of the United States Coast Guard, officers and employees of the Public Health Service, certain keepers and assistant keepers of the United States Lighthouse Service, seamen of the Engineer Corps of the United States Army, officers and enlisted men of the United States Coast and Geodetic Survey, civilian employees entitled to treatment under sections 751-791, inclusive, and section 793 of Title 5, and employees on Army transports not officers or enlisted men of the Army, entitled by law on March 3, 1919, to treatment by the Public Health Service. (Mar. 3, 1919, ch. 98, § 1, 40 Stat. 1302; Aug. 9, 1921, ch. 57, § 7, 42 Stat. 149; July 3, 1930, ch. 863, § 1, 46 Stat. 1016.)

**TRANSFERS OF FUNCTIONS**

Functions of the Secretary of the Treasury relating to the Public Health Service, except those enumerated in sections 23b and 137e of Title 42, Public Health, were transferred to the Federal Security Administrator by Reorg. Plan No. 1, §§ 201, 205 (b), eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424, 1425, set out as note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

**§ 26a. Beneficiaries of fund for relief of sick and disabled seamen.**

The "fund for the relief of sick and disabled seamen", of which separate accounts shall be kept in the Treasury, is appropriated for the expenses of the Public Health Service, and shall be employed, under the direction of the Federal Security Administrator, for the care and relief of sick and disabled seamen



employed in registered, enrolled, and licensed vessels of the United States. (R. S. § 4803; June 26, 1884, ch. 121, § 15, 23 Stat. 57; Mar. 3, 1905, ch. 1484, § 1, 33 Stat. 1217; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309; Reorg. Plan No. 1, §§ 201, 205 (b), eff. July 1, 1939, 4 Fed. Reg. 2728, 2729, 53 Stat. 1424, 1425.)

#### DERIVATION

Act June 29, 1870, ch. 180, §§ 3-5, 16 Stat. 170.

#### TRANSFERS OF FUNCTIONS

Public Health Service and its functions and personnel were transferred to Federal Security Agency, and functions of Secretary of Treasury, other than those relating to acceptance and investment of gifts, were transferred to administrator of said agency by Reorg. Plan No. 1, cited to text, which is set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

### § 27. Hospital properties transferred to Treasury Department for Public Health Service.

This section, Act Mar. 3, 1919, ch. 98, § 2, 40 Stat. 1302, transferred hospital properties to the Treasury Department for use of Public Health Service. All hospital properties which previously had been under the jurisdiction of the Public Health Service or of the Treasury Department were later transferred to the Veterans' Administration by section 434 of Title 38, Pensions, Bonuses, and Veterans' Relief.

### §§ 28-29a. Transfer of surplus war material for use of Public Health Service.

These sections, acts Mar. 3, 1919, ch. 98, § 3, 40 Stat. 1303; Mar. 15, 1920, ch. 100, §§ 1, 4, 41 Stat. 530, 531; Mar. 4, 1921, ch. 158, 41 Stat. 1365, now appear as sections 43, 44, and 45 of Title 42, Public Health.

### § 30. Payments to certain donors of blood to Military Establishment patients.

Any person in the Military Establishment, or who has been a member of the Military Establishment, and any employee of the United States Government, who shall furnish blood from his or her veins for transfusion to the veins of a member or former member of the Military Establishment who is a patient in a Government hospital shall be entitled to be paid therefor such reasonable sum, not to exceed \$50, as may be determined by the head of the hospital concerned, from public funds available for the operation of such hospital: *Provided*, That expenditures heretofore made to persons in Government service for blood furnished from his or her veins for transfusion to the veins of an official patient in a Government hospital are hereby authorized and validated. (Feb. 9, 1927, ch. 91, 44 Stat. 1066; June 2, 1939, ch. 173, 53 Stat. 803.)

### § 31. Care of naval patients in other Government hospitals where naval hospital facilities not available; members of Naval Reserve and Marine Corps Reserve included.

The Secretary of the Navy may provide for the care and treatment of naval patients on the active or retired list and members of the Naval Reserve or Marine Corps Reserve entitled to treatment in naval hospitals in other Government hospitals when appropriate naval hospital facilities are not available and the Government agencies having control of such other hospitals consent thereto. All expenses incident to such care and treatment received by naval patients in other Government hospitals, excepting

Saint Elizabeths Hospital, shall be chargeable to the same appropriation or fund as would be chargeable with the care and treatment of such patients in a naval hospital: *Provided*, That the deductions authorized by sections 6 and 16 of this title, shall apply to such care and treatment in other Government hospitals, except Saint Elizabeths Hospital, and shall be credited to said appropriation or fund. (Jan. 19, 1929, ch. 85, 45 Stat. 1090.)

## Chapter 2.—THE SOLDIERS' HOME

Sec.

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60. Inspection; report.

### § 41. Board of commissioners; composition.

The Surgeon General, The Adjutant General, the Quartermaster General, the Chief of Engineers, the Judge Advocate General, the Chief of Finance, and the Governor of the Soldiers' Home shall constitute a board of commissioners for the Soldiers' Home, and the senior in rank of the members thereof shall be the president of said board of commissioners any four of whom shall be a quorum for the transaction of business, whose duty it shall be to examine and audit the accounts of the treasurer quarter-yearly, and to visit and inspect the Soldiers' Home at least once in every month. The majority shall also have power to establish, from time to time, regulations for the general and internal direction of the institution, to be submitted to the Secretary of War for approval; and may do any other acts necessary for the Government and interests of the same, as authorized by this chapter. (R. S. § 4815; Mar. 3, 1883, ch. 130, § 10, 22 Stat. 565; Mar. 4, 1909, ch. 299, § 1, 35 Stat. 1004; May 11, 1926, ch. 285, 44 Stat. 499.)

#### DERIVATION

Acts Mar. 3, 1851, ch. 25, § 1, 9 Stat. 595; Mar. 3, 1859, ch. 83, § 4, 11 Stat. 434.

#### REFERENCES IN TEXT

In the original "this chapter" refers to chapter two of Title LIX of the Revised Statutes. Said chapter two was incorporated into the Code as sections 41-44, 45, 49-51, 53, and 54 of this title.

### § 42. Report of president.

The president of the board of commissioners shall submit annually to the Secretary of War, for trans-

mission to Congress, a full statement of the financial and other affairs of the home for the preceding fiscal year. (Mar. 4, 1909, ch. 299, § 1, 35 Stat. 1004; May 11, 1926, ch. 285, 44 Stat. 499.)

#### § 43. Officers.

The officers of the Soldiers' Home shall consist of a governor, a deputy governor, and a secretary, for each separate site of the home, the latter to be also treasurer; and the officers shall be taken from the Army, and appointed or removed, from time to time, as the interests of the institution may require. The governor and all other officers of the home shall be selected by the President of the United States, and the treasurer of the home shall be required to give a bond in the penal sum of \$20,000 for the faithful performance of his duty. (R. S. § 4816; Mar. 3, 1883, ch. 130, § 7, 22 Stat. 565.)

##### DERIVATION

Act Mar. 3, 1851, ch. 25, § 3, 9 Stat. 595.

#### § 44. Funds.

For the support of the Soldiers' Home the following funds are set apart and appropriated: All stoppages or fines adjudged against soldiers by sentence of courts martial, over and above any amount that may be due for the reimbursement of Government, or of individuals; all forfeitures on account of desertion; and all moneys belonging to the estates of deceased soldiers, which may be unclaimed for the period of three years subsequent to the death of such soldiers, to be repaid by the commissioners of the institution, upon the demand of the heirs or legal representatives of the deceased. (R. S. § 4818.)

##### DERIVATION

Acts Mar. 3, 1851, ch. 25, § 7, 9 Stat. 596; July 5, 1862, ch. 133, § 2, 12 Stat. 508.

##### CROSS REFERENCE

Funds of Soldiers' Home to be held in trust, see section 725s (a) of Title 31, Money and Finance.

#### § 44a. Same; deductions from pay of enlisted men and warrant officers.

Beginning with March, 1936, there shall be deducted each month from the pay of each enlisted man and warrant officer on the active list of the Regular Army, exclusive of the Philippine Scouts, a sum not to exceed 25 cents, which sum shall be passed to the credit of the permanent fund, United States Soldiers Home (trust fund) in the Treasury of the United States; the exact sum to be so deducted to be fixed from time to time by the Secretary of War, within the limit prescribed above, on the recommendation of the Board of Commissioners of said Home as to the amount required to meet the needs of the Home. (Feb. 13, 1936, ch. 66, 49 Stat. 1137.)

##### CROSS REFERENCE

Funds of Soldiers' Home to be held in trust, see section 725s (a) (59) of Title 31, Money and Finance.

#### § 45. Donations.

The commissioners are authorized to receive all donations of money or property made by any person for the benefit of the institution, and hold the same

for its sole and exclusive use. (R. S. § 4819; June 12, 1906, ch. 3078, 34 Stat. 242; May 11, 1908, ch. 163, 35 Stat. 110.)

##### DERIVATION

Acts Mar. 3, 1851, ch. 25, § 7, 9 Stat. 596; Mar. 3, 1859, ch. 83, § 7, 11 Stat. 434.

##### CROSS REFERENCE

Funds of Soldiers' Home to be held in trust, see section 725s (a) (59) of Title 31, Money and Finance.

#### § 46. Deposit of funds; interest; principal.

All funds of the home not needed for current use, and not on March 3, 1883, invested in United States registered bonds, shall, as soon as received, or as soon as investments of that date can be converted into money without loss, be deposited in the Treasury of the United States to the credit of the home, as a permanent fund, and shall draw interest at the rate of 3 per centum per annum, which shall be paid quarterly to the treasurer of the home; and the proceeds of such registered bonds, as they are paid, shall be deposited in like manner. No part of the principal sum so deposited shall be withdrawn for use except upon a resolution of the board of commissioners stating the necessity and approved by the Secretary of War. (Mar. 3, 1883, ch. 130, § 8, 22 Stat. 565.)

##### CROSS REFERENCES

Custody of funds of Soldiers' Home, see section 47 of this title.

Funds of Soldiers' Home to be held in trust, see section 725s (a) (59) of Title 31, Money and Finance.

#### § 46a. Deposit of interest on funds; when expendable.

Effective July 1, 1935, interest earned pursuant to law on funds of the United States Soldiers' Home deposited in the Treasury of the United States shall be credited to the trust fund "Soldiers' Home, Permanent Fund", and shall not be expendable except in consequence of an appropriation made by Congress. (Apr. 9, 1935, ch. 54, title II, § 1, 49 Stat. 147.)

##### CROSS REFERENCE

Funds of Soldiers' Home to be held in trust, see section 725s (a) (59) of Title 31, Money and Finance.

#### § 46b. Laws governing administration of funds appropriated from Permanent Fund.

Notwithstanding any other provisions of law, the administration, control, procurement, expenditure, accounting, audit, and methods thereof, of funds appropriated from the Soldiers' Home Permanent Fund (trust fund) shall be according to the laws governing and in effect prior to July 1, 1935, relating specifically to the United States Soldiers' Home, and in accordance with procedure followed prior to such date. (July 19, 1937, ch. 511, § 1, 50 Stat. 519.)

##### CROSS REFERENCE

Funds of Soldiers' Home to be held in trust, see section 725s (a) (59) of Title 31, Money and Finance.

#### § 47. Custodian of funds; transfer of funds for outdoor relief.

The Treasurer of the United States is authorized and directed to receive and keep on deposit, subject to the checks or drafts of the treasurer of the Soldiers' Home in the District of Columbia, all funds

which may be furnished the said treasurer of the Soldiers' Home or in any manner come into his possession for use in defraying the current expenses of maintaining the said Soldiers' Home, and, upon the request of said treasurer of the Soldiers' Home, there shall be transferred, from funds to his credit with the United States Treasurer, and placed to his credit with the designated depository of the United States in New York City, New York, such sums as he may require monthly or quarterly for payments on account of "outdoor relief" to members of said Soldiers' Home residing at a distance therefrom. (Jan. 16, 1891, ch. 74, 26 Stat. 718; May 29, 1920, ch. 214, § 1, 41 Stat. 655.)

## CROSS REFERENCE

Deposit of funds of Soldiers' Home, see section 46 of this title.

## § 48. Borrowing money on credit of home.

No officers of the home shall borrow any money on the credit of the home for any purpose, nor shall any pledge of any of its property or securities for any purpose be valid. (Mar. 3, 1883, ch. 130, § 9, 22 Stat. 565.)

## § 49. Persons entitled to membership in and benefits of home.

The following persons shall be members of the Soldiers' Home, and entitled to the rights and benefits conferred, in this chapter and no others:

First. Every soldier of the Army of the United States who has served, or may serve, honestly and faithfully twenty years in the same.

Second. Every soldier and every discharged soldier, whether regular or volunteer, who has suffered, or may suffer, by reason of disease or wounds incurred in the service and in the line of his duty, rendering him incapable of further military service, if such disability was not occasioned by his own misconduct.

Third. The invalid and disabled soldiers, whether regulars or volunteers, of all wars (R. S. §§ 4814, 4821.)

## REFERENCES IN TEXT

In the original "this chapter" refers to chapter two of Title LIX of the Revised Statutes. Said chapter two was incorporated into the Code as sections 41-44, 45, 49-51, 53, and 54 of this title.

## DERIVATION

R. S. § 4814 from act Mar. 3, 1851, ch. 25, § 1, 9 Stat. 596; act Mar. 3, 1859, ch. 83, §§ 5, 7, 11 Stat. 434.

R. S. § 4821, from act Mar. 3, 1851, ch. 25, § 4, 9 Stat. 596; act Mar. 3, 1859, ch. 83, § 5, 11 Stat. 434.

## § 50. Persons excluded.

The benefits of the Soldiers' Home shall not be extended to any soldier, in the regular or volunteer service, convicted of felony or other disgraceful or infamous crimes of a civil nature after his admission into the service of the United States; nor shall any one who has been a deserter, mutineer, or habitual drunkard be received, without such evidence of subsequent service, good conduct, and reformation of character as is satisfactory to the commissioners. (R. S. § 4822.)

## DERIVATION

Act Mar. 3, 1851, ch. 25, § 6, 9 Stat. 596.

## § 51. Rights of pensioners and surrender of pensions.

The fact that one to whom a pension has been granted for wounds or disability received in the military service has not contributed to the funds of the Soldiers' Home shall not preclude him from admission thereto. But all such pensioners shall surrender their pensions to the Soldiers' Home during the time they remain therein and voluntarily receive its benefits. (R. S. § 4820.)

## DERIVATION

Acts Mar. 3, 1851, ch. 25, § 5, 9 Stat. 596; Mar. 3, 1859, ch. 83, § 6, 11 Stat. 434.

## § 52. Allotment of pensions.

Any inmate of the home who is receiving a pension from the Government, and who has a child, wife, or parent living, shall be entitled, by filing with the Veterans' Administration a written direction to that effect, to have his pension, or any part of it, paid to such child, wife, or parent. The pensions of all inmates of the home, except such as shall be assigned as aforesaid, shall be paid to the treasurer of the home. The money thus derived shall not become a part of the funds of the home, but shall be held by the treasurer in trust for the pensioner to whom it would otherwise have been paid, and such part of it as shall not sooner have been paid to him shall be paid to him on his discharge from the institution. The board of commissioners may from time to time pay over to any inmate such part of his pension money as they think best for his interest and consistent with the discipline and good order of the home, but such pensioner shall not be entitled to demand or have the same so long as he remains an inmate of the home. In case of the death of any pensioner, any pension money due him and remaining in the hands of the treasurer shall be paid to his legal heirs, if demand is made within three years; otherwise the same shall escheat to the home. (Mar. 3, 1883, ch. 130, § 4, 22 Stat. 564; Aug. 17, 1912, ch. 301, § 1, 37 Stat. 312; July 3, 1930, ch. 863, § 1, 46 Stat. 1016.)

## § 53. Discharge.

Any soldier admitted into the Soldiers' Home for disability who recovers his health, so as to become fit again for military service, if under fifty years of age, shall be discharged. (R. S. § 4823.)

## DERIVATION

Act Mar. 3, 1851, ch. 25, § 5, 9 Stat. 596.

## § 54. Inmates subject to Articles of War.

Subject matter of this section, R. S. § 4824, is now contained in section 1478 (f) of Title 10, Army.

## § 55. Uniform for inmates.

A suitable uniform shall be furnished to every inmate of the home, without cost to him. (Mar. 3, 1883, ch. 130, § 5, 22 Stat. 565.)

## § 56. Outdoor relief to persons entitled to admission.

The board of commissioners are authorized to aid persons who are entitled to admission to the home, by outdoor relief, in such manner and to such an extent as they may deem proper; but such relief shall not exceed the average cost of maintaining an

inmate of the home. (Mar. 3, 1883, ch. 130, § 6, 22 Stat. 565.)

### § 57. Limitation of expenditures; purchase of supplies.

No new building shall be erected or new grounds purchased, nor shall any expenditure of more than \$5,000 be made, until the action of the board thereon shall be approved by the Secretary of War. All supplies that can be purchased upon contract shall be so purchased, after due notice by advertisement, of the lowest responsible bidder. Such bidder shall give bond, with proper security, for the performance of his contract. (Mar. 3, 1883, ch. 130, § 3, 22 Stat. 564.)

### § 58. Medical supplies.

Upon proper application therefor, the Medical Department of the Army is authorized to sell medical and hospital supplies at its contract prices to the Soldiers' Home in the District of Columbia. (June 4, 1897, ch. 2, § 1, 30 Stat. 54.)

### § 59. Annual report of board; transmission to Congress.

The board of commissioners of the Soldiers' Home shall every year report in writing to the Secretary of War, giving a full statement of all receipts and disbursements of money, of the manner in which the funds are invested, of any changes in the investments, and the reasons therefor, of all admissions and discharges, and generally of all facts that may be necessary to a full understanding of the condition and management of the home. The Secretary of War shall have power to call for and require any omitted facts which in his judgment should be stated to be added. This annual report shall be, by the Secretary of War, together with the report of the inspecting officer provided for in the following section, transmitted to Congress at the first session thereafter, and he shall also cause the same to be published in orders to the Army, a copy thereof to be deposited in each garrison and post library. (Mar. 3, 1883, ch. 130, § 1, 22 Stat. 564.)

### § 60. Inspection; report.

The Inspector General of the Army shall, in person, once in each year thoroughly inspect the home, its records, accounts, management, discipline, and sanitary condition, and shall report thereon in writing, together with such suggestions as he desires to make. (Mar. 3, 1883, ch. 130, § 2, 22 Stat. 564.)

## Chapter 3.—THE NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS

### ESTABLISHMENT AND MANAGEMENT

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| Sec.<br>71-76.<br>77<br>77a.<br>78.<br>79.<br>80.<br>81.<br>82. | The National Home for Disabled Volunteer Soldiers, organization, headquarters, and management.<br>Sites for homes; purchase and erection of buildings.<br>Same; Dayton, Ohio.<br>Condemnation of land.<br>Jurisdiction over sites of branch homes ceded to States.<br>Purchase of supplies and expenditures for new buildings.<br>Supplies.<br>Medical supplies. |
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| Sec.<br>83.<br>84. | Issue of obsolete cannon or ordnance.<br>Annual inspection; report. |
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### OFFICERS AND EMPLOYEES

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| 91.<br>92.<br>93-97. | Officers of home; medical officers.<br>Qualifications of officers.<br>Officers and employees; compensation; expenses; bonds. |
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### FUNDS AND ACCOUNTS

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| 111-123. | Funds of home; donations; appropriations; receipts from sales; security for deposits; disbursements; audits and accounts. |
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### BENEFICIARIES AND PENSIONS

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### BATTLE MOUNTAIN SANITARIUM RESERVE

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| 151.<br>152.<br>153.<br>154. | Battle Mountain Sanitarium Reserve; establishment; rights to lands, not affected.<br>Name; control, rules and regulations.<br>Perfecting bona fide claims to lands; exchange of private lands.<br>Unlawful intrusion, or violation of rules and regulations. |
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### ESTABLISHMENT AND MANAGEMENT

#### DISSOLUTION OF HOME AND CONSOLIDATION IN VETERANS' ADMINISTRATION

Under the authority of act July 3, 1930, ch. 863, 46 Stat. 1016 (sections 11-11f of Title 38, Pensions, Bonuses and Veterans' Relief) and by Ex. Ord. No. 5398, July 21, 1930, the functions of the National Home for Disabled Volunteer Soldiers were consolidated with other veterans agencies to form the Veterans' Administration, at the head of which is the Administrator of Veterans' Affairs, who exercises the powers, duties, and functions of the Board of Managers of the National Home for Disabled Volunteer Soldiers. The property of the Home was transferred to, and the liabilities of the Home assumed by, the United States, and the Home dissolved.

Section 7 of said act of July 3, 1930, provided in part as follows: "All laws relating to \* \* \* the National Home for Disabled Volunteer Soldiers \* \* \* and other Governmental bureaus, agencies, offices, and activities herein authorized and directed to be consolidated, so far as the same are applicable, shall remain in full force and effect, except as herein modified, and shall be administered by the Administrator, except that section 137 of Title 24 is hereby repealed." See section 11f of Title 38, Pensions, Bonuses and Veterans' Relief.

### §§ 71-76. The National Home for Disabled Volunteer Soldiers, organization, headquarters, and management.

These sections, R. S. §§ 4825, 4826, 4827, 4834, and acts Mar. 3, 1885, ch. 360, 23 Stat. 510; Mar. 3, 1887, ch. 362, 24 Stat. 539; Aug. 18, 1894, ch. 301, § 1, 28 Stat. 412; Oct. 19, 1914, No. 49, 38 Stat. 780; July 1, 1916, ch. 209, 39 Stat. 297; and June 7, 1924, ch. 291, 43 Stat. 518, provided for the organization and management of the National Home for Disabled Volunteer Soldiers which was dissolved under the terms of act July 3, 1930, ch. 863, 46 Stat. 1016.

### § 77. Sites for homes; purchase and erection of buildings.

The Administrator of Veterans' Affairs shall have authority to procure from time to time, at suitable

places, sites for military homes for all persons serving in the Army of the United States at any time in the War of the Rebellion, not otherwise provided for, who have been or may be disqualified for procuring their own support by reason of wounds received or sickness contracted while in the line of their duty during the rebellion; and to have the necessary buildings erected, having due regard to the health of location, facility of access, and capacity to accommodate the persons entitled to the benefits thereof. (R. S. § 4830; July 3, 1930, ch. 863, § 2, 46 Stat. 1016.)

#### DERIVATION

Acts Mar. 21, 1866, ch. 21, § 4, 14 Stat. 10; Jan. 23, 1873, ch. 51, § 1, 17 Stat. 417.

#### § 77a. Same; Dayton, Ohio.

This section, act Feb. 20, 1929, ch. 272, § 1, 45 Stat. 1248, related to the acquisition of a hospital site in Dayton, Ohio.

#### § 78. Condemnation of land.

The provisions of sections 257 and 258 of Title 40 shall be construed to apply to the Administrator of Veterans' Affairs in the condemnation of land for the former National Home for Disabled Volunteer Soldiers. (July 19, 1897, ch. 9, § 1, 30 Stat. 121; July 3, 1930, ch. 863, § 2, 46 Stat. 1016.)

#### REFERENCES IN TEXT

The National Home for Disabled Volunteer Soldiers, to which reference is made in this section, has been dissolved and its functions transferred to the Veterans' Administration. See note preceding section 71 of this title, and sections 11-11f of Title 38, Pensions, Bonuses, and Veterans' Relief.

#### § 79. Jurisdiction over sites of branch homes ceded to States.

This section, act Mar. 3, 1901, ch. 853, § 1, 31 Stat. 1175, ceded jurisdiction over certain property in the States of Wisconsin and Kansas to the respective States.

#### § 80. Purchase of supplies and expenditures for new buildings.

This section, act Mar. 3, 1879, ch. 182, § 1, 20 Stat. 390, specified the manner in which purchases for the National Home for Disabled Volunteer Soldiers in excess of \$1,000 should be made.

Act July 3, 1930, ch. 863, §§ 1, 2, 5, 46 Stat. 1016, dissolved the Home and transferred its functions to the Veterans' Administration. See note preceding section 71 of this title and sections 11-11f of Title 38, Pensions, Bonuses, and Veterans' Relief. Insofar as this section related to the procurement of supplies, it was affected by Ex. Ord. No. 6166, § 1, June 10, 1933, set out as note following section 132 of Title 5, Executive Departments and Government Officers and Employees, which created a Procurement Division in the Treasury Department.

#### § 81. Supplies.

Section, act July 1, 1898, ch. 546, § 1, 30 Stat. 640, provided supplies for the National Home for Disabled Soldiers should be purchased, shipped, and distributed by direction of the Board of Managers.

Act July 3, 1930, ch. 863, §§ 1, 2, 5, 46 Stat. 1016, dissolved the National Home for Disabled Volunteer Soldiers and transferred its functions to the Veterans' Administration. See note preceding section 71 of this title and sections 11-11f of Title 38, Pensions, Bonuses, and Veterans' Relief.

To the extent that this section related to the procurement of supplies, it was affected by Ex. Ord. No. 6166, § 1, June 10, 1933, set out in note to section 132 of Title 5, Executive Departments and Government Officers and Em-

ployees, which created a Procurement Division in the Treasury Department.

#### § 82. Medical supplies.

Section, act June 11, 1896, ch. 420, § 1, 29 Stat. 445, authorized the Medical Department of the Army to sell medical and hospital supplies to the National Home for Disabled Volunteer Soldiers.

Act July 3, 1930, ch. 863, §§ 1, 2, 5, 46 Stat. 1016, dissolved the National Home for Disabled Volunteer Soldiers and transferred its functions to the Veterans' Administration. See note preceding section 71 of this title and sections 11-11f of Title 38, Pensions, Bonuses, and Veterans' Relief.

#### § 83. Issue of obsolete cannon or ordnance.

Section, acts Feb. 8, 1889, ch. 116, 25 Stat. 657, and May 26, 1900, ch. 586, 31 Stat. 216, has become section 66 of Title 50, War.

#### § 84. Annual inspection; report.

Section, act Aug. 18, 1894, ch. 301, § 1, 28 Stat. 412, authorized a thorough annual inspection of the National Home for Disabled Volunteer Soldiers by an officer of the Inspector General's Department.

Act July 3, 1930, ch. 863, §§ 1, 2, 5, 46 Stat. 1016, dissolved the Home and transferred its functions to the Veterans' Administration. See note preceding section 71 of this title and sections 11-11f of Title 38, Pensions, Bonuses, and Veterans' Relief.

### OFFICERS AND EMPLOYEES

#### § 91. Officers of home; medical officers.

Section, R. S. § 4829, acts Apr. 11, 1892, ch. 40, 27 Stat. 15, and Feb. 9, 1897, ch. 205, 29 Stat. 517, authorized officers of the National Home for Disabled Volunteer Soldiers and provided for their appointment.

Act July 3, 1930, ch. 863, §§ 1, 2, 5, 46 Stat. 1016, dissolved the National Home for Disabled Volunteer Soldiers and transferred its functions to the Veterans' Administration. See note preceding section 71 of this title and sections 11-11f of Title 38, Pensions, Bonuses, and Veterans' Relief.

#### § 92. Qualifications of officers.

The officers under the Administrator of Veterans' Affairs connected with the former National Home for Disabled Volunteer Soldiers shall be appointed, so far as may be practicable, from persons whose military or naval service would render them eligible, if disabled and not otherwise provided for, for admission to the home, and they may be appointed, removed, and transferred, from time to time, as the interests of the institution may require, by the Administrator. (June 28, 1902, ch. 1301, § 1, 32 Stat. 472; July 3, 1930, ch. 863, § 2, 46 Stat. 1016.)

#### CROSS REFERENCE

Dissolution of National Home for Disabled Volunteer Soldiers and consolidation in Veterans' Administration, see note preceding section 71 of this title.

#### §§ 93-97. Officers and employees; compensation; expenses; bonds.

These sections, acts Mar. 3, 1887, ch. 362, 24 Stat. 540; Aug. 18, 1894, ch. 301, § 1, 28 Stat. 412; June 6, 1900, ch. 791, § 1, 31 Stat. 636; Mar. 3, 1901, ch. 853, § 1, 31 Stat. 1178, related to classification, compensation, expenses, bonds, and duties of officers and employees of the National Home for Disabled Volunteer Soldiers.

Act July 3, 1930, ch. 863, §§ 1, 2, 5, 46 Stat. 1016, dissolved the National Home for Disabled Volunteer Soldiers and transferred its functions to the Veterans' Administration. See note preceding section 71 of this title and sections 11-11f of Title 38, Pensions, Bonuses, and Veterans' Relief.

## FUNDS AND ACCOUNTS

§§ 111-123. Funds of home; donations; appropriations; receipts from sales; security for deposits; disbursements; audits and accounts.

These sections, R. S. § 4831, and acts Mar. 3, 1875, ch. 129, § 1, 18 Stat. 359; July 9, 1886, ch. 756, § 2, 24 Stat. 129; Mar. 3, 1887, ch. 362, 24 Stat. 539; Aug. 5, 1892, ch. 380, § 1, 27 Stat. 384; Mar. 3, 1893, ch. 210, § 1, 27 Stat. 653; Aug. 18, 1894, ch. 301, § 1, 28 Stat. 411, 412; June 6, 1900, ch. 785, § 1, 31 Stat. 294; Mar. 3, 1901, ch. 853, § 1, 31 Stat. 1178; Mar. 3, 1903, ch. 1007, § 1, 32 Stat. 1137; Mar. 3, 1915, ch. 75, § 1, 38 Stat. 850; Mar. 2, 1923, ch. 178, title II, 42 Stat. 1424; July 3, 1930, ch. 863, § 2, 46 Stat. 1016, related to financial matters affecting the National Home for Disabled Volunteer Soldiers.

Act July 3, 1930, ch. 863, §§ 1, 2, 5, 46 Stat. 1016, dissolved the Home and transferred its functions to the Veterans' Administration. See note preceding section 71 of this title and sections 11-11f of Title 38, Pensions, Bonuses, and Veterans' Relief.

## BENEFICIARIES AND PENSIONS

§§ 131-133. Persons entitled to admission; assignment to different branches; outdoor relief.

These sections, R. S. § 4833 and acts Aug. 23, 1894, ch. 316, § 1, 28 Stat. 492; June 5, 1920, ch. 235, § 1, 41 Stat. 905; June 7, 1924, ch. 291, 43 Stat. 519; Mar. 4, 1927, ch. 504, § 2, 44 Stat. 1421; Mar. 26, 1928, ch. 245, 45 Stat. 366; and May 29, 1928, ch. 901, § 1 (123), 45 Stat. 905, specified persons entitled to benefits of the National Home for Disabled Volunteer Soldiers.

Act July 3, 1930, ch. 863, §§ 1, 2, 5, 46 Stat. 1016, dissolved the Home and transferred its functions to the Veterans' Administration. See note preceding section 71 of this title and sections 11-11f of Title 38, Pensions, Bonuses, and Veterans' Relief.

§ 134. Aid to State or Territorial home.

All States or Territories which have established, or which shall establish, State homes for disabled soldiers and sailors of the United States who served in the Civil War or in any previous or subsequent war who are disabled by age, disease, or otherwise, and by reason of such disability are incapable of earning a living, provided such disability was not incurred in service against the United States, shall be paid for every such disabled soldier or sailor who may be admitted and cared for in such home at the rate of \$240 per annum.

The number of such persons for whose care any State or Territory shall receive the said payment under this section shall be ascertained by the Administrator of Veterans' Affairs under such regulations as it may prescribe, but the said State or Territorial homes shall be exclusively under the control of the respective State or Territorial authorities, and the Administrator shall not have nor assume any management or control of said State or Territorial homes.

The Administrator of Veterans' Affairs shall, however, have power to have the said State or Territorial homes inspected at such times as it may consider necessary, and shall report the result of such inspections to Congress in its annual report: *Provided*, That no State shall be paid a sum exceeding one-half the cost of maintenance of each soldier or sailor by such State: *Provided further*, That one-half of any sum or sums retained by State homes on account of pensions received from inmates shall be deducted from the aid provided for in this section. No money shall be apportioned to any State or Territorial home that

maintains a bar or canteen where intoxicating liquors are sold: *Provided further*, That for any sum or sums collected in any manner from inmates of such State or Territorial homes to be used for the support of said homes a like amount shall be deducted from the aid provided for in this section, but this proviso shall not apply to any State or Territorial home into which the wives or widows of soldiers are admitted and maintained. (Aug. 27, 1888, ch. 914, § 1, 25 Stat. 450; Mar. 2, 1889, ch. 411, 25 Stat. 975; Jan. 27, 1920, ch. 56, 41 Stat. 399; Feb. 12, 1925, ch. 225, 43 Stat. 933; Apr. 15, 1926, ch. 146, 44 Stat. 294; Feb. 23, 1927, ch. 167, 44 Stat. 1145; Dec. 22, 1927, ch. 5, § 1, 45 Stat. 39; Mar. 23, 1928, ch. 232, § 1, 45 Stat. 363; Feb. 28, 1929, ch. 366, 45 Stat. 1385; May 28, 1930, ch. 348, 46 Stat. 466; July 3, 1930, ch. 863, § 2, 46 Stat. 1016; Feb. 23, 1931, ch. 281, § 1, 46 Stat. 1375; June 30, 1932, ch. 330, § 1, 47 Stat. 472; Aug. 1, 1939, ch. 408, § 1, 53 Stat. 1145.)

## AMENDMENTS; EFFECTIVE DATE

First paragraph was amended by act Aug. 1, 1939, cited to text, by substituting "\$240 per annum" in lieu of "\$120 per annum." Section 2 of said act provided as follows: "Sec. 2. The amendment made by this act shall apply to payments with respect to the care given to disabled soldiers and sailors on and after the first day of the month next following the month during which this act is enacted: *Provided*, That said payments shall be made regardless of whether said veteran may be receiving domiciliary care or hospitalization in said home and the appropriations of the Veterans' Administration for medical, hospital, and domiciliary care shall be available for this purpose: *Provided further*, That no payment to a State or Territory under this act shall be made for any period prior to the date upon which the Administrator of Veterans' Affairs determines that the veteran on whose account such payment is requested is eligible for such care in a Veterans' Administration facility."

§ 135. Persons entitled to admission to hospital at Pacific branch.

This section, act June 7, 1924, ch. 295, § 2, 43 Stat. 534, specified persons entitled to benefits of the National Home for Disabled Volunteer Soldiers branch at Santa Monica, California.

Act July 3, 1930, ch. 863, §§ 1, 2, 5, 46 Stat. 1016, dissolved the National Home for Disabled Volunteer Soldiers and transferred its functions to the Veterans' Administration. See note preceding section 71 of this title and sections 11-11f of Title 38, Pensions, Bonuses, and Veterans' Relief.

§ 136. Disposition of personal property of deceased members.

The application of any person for membership in the National Home for Disabled Volunteer Soldiers and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the Administrator of Veterans' Affairs that on the death of said applicant while a member of such home, leaving no heirs at law nor next of kin, all personal property owned by said applicant at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Administrator for the sole use and benefit of the post fund of said home, the proceeds to be disposed of and distributed among the several branches as may be ordered by said Administrator, and that all personal property

of said applicant shall, upon his death, while a member, at once pass to and vest in said Administrator, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member. The Administrator of Veterans' Affairs is directed to so change the form of application for membership as to give reasonable notice of this provision to each applicant, and as to contain the consent of the applicant to accept membership upon the conditions provided in this section. (June 25, 1910, ch. 384, § 1, 36 Stat. 736; July 3, 1930, ch. 863, § 2, 46 Stat. 1016.)

#### DISSOLUTION OF HOME AND CONSOLIDATION IN VETERANS' ADMINISTRATION

Act July 3, 1930, ch. 863, §§ 1, 2, 5, 46 Stat. 1016, dissolved the National Home for Disabled Volunteer Soldiers and transferred its functions to the Veterans' Administration. See note preceding section 71 of this title and sections 11–11f of Title 38, Pensions, Bonuses, and Veterans' Relief.

#### CROSS REFERENCE

Disposition of personal property of deceased veteran on premises of Veterans' Administration facility, see section 16 et seq. of Title 38, Pensions, Bonuses, and Veterans' Relief.

§ 137. Repealed. July 3, 1930, ch. 863, § 7, 46 Stat. 1018.

This section, R. S. § 4835, related to application of Articles of War to inmates of National Home for Disabled Volunteer Soldiers.

§ 138. Payment of pension of inmates of home.

All pensions and arrears of pensions payable or to be paid to pensioners who are or may become inmates of the National Home for Disabled Volunteer Soldiers shall be paid to the treasurers of said home, to be disbursed for the benefit of the pensioners without deduction for fines or penalties, under the rules and regulations of said home. Said payments shall be made by the Veterans' Administration upon a certificate of the proper officer of the home that the pensioner is an inmate thereof on the day to which said pension is drawn. The treasurers of said home, respectively, shall give security, to the satisfaction of the Administrator of Veterans' Affairs, for the payment and application by them of all arrears of pension and pension moneys they may receive under the aforesaid provision. Any balance of the pension which may remain at the date of the pensioner's discharge shall be paid over to him. (Feb. 26, 1881, ch. 80, § 2, 21 Stat. 350; Aug. 7, 1882, ch. 433, § 1, 22 Stat. 322; Aug. 17, 1912, ch. 301, § 1, 37 Stat. 312; July 3, 1930, ch. 863, §§ 1, 2, 46 Stat. 1016.)

#### DISSOLUTION OF HOME AND CONSOLIDATION IN VETERANS' ADMINISTRATION

Act July 3, 1930, ch. 863, §§ 1, 2, 5, 46 Stat. 1016, dissolved the National Home for Disabled Volunteer Soldiers and transferred its functions to the Veterans' Administration. See note preceding section of this title and sections 11–11f of Title 38, Pensions, Bonuses, and Veterans' Relief.

#### CONSTRUCTION OF SECTION

Sections 50 and 128 of Title 38, Pensions, Bonuses, and Veterans' Relief, not to be construed as amending or repealing this section, see section 52 of Title 38, Pensions, Bonuses, and Veterans' Relief.

§ 139. Disposition of balance of pension money due deceased inmate.

Any balance of pension money due a member of the National Home for Disabled Volunteer Soldiers at the time of his death shall be paid to his widow, minor children or dependent mother or father in the order named, and should no widow, minor child, or dependent parent be discovered within one year from the time of the death of the pensioner, said balance shall be paid to the post fund of the branch of said national home of which the pensioner was a member at the time of his death, to be used for the common benefit of the members of the home under the direction of the Administrator of Veterans' Affairs, subject to future reclamation by the relatives designated in this section upon application filed with the Administrator within five years after the pensioner's death. (July 1, 1902, ch. 1351, § 1, 32 Stat. 564; July 3, 1930, ch. 863, § 2, 46 Stat. 1016.)

#### DISSOLUTION OF HOME AND CONSOLIDATION IN VETERANS' ADMINISTRATION

Act July 3, 1930, ch. 863, §§ 1, 2, 5, 46 Stat. 1016, dissolved the National Home for Disabled Volunteer Soldiers and transferred its functions to the Veterans' Administration. See note preceding section 71 of this title and sections 11–11f of Title 38, Pensions, Bonuses, and Veterans' Relief.

#### BATTLE MOUNTAIN SANITARIUM RESERVE

§ 151. Battle Mountain Sanitarium Reserve; establishment; rights to lands, not affected.

There are reserved from settlement, entry, sale, or other disposal all those certain tracts, pieces, or parcels of land lying and being situate in the State of South Dakota and within the boundaries particularly described as follows: Beginning at the southwest corner of section 18, township 7 south, range 6 east, Black Hills meridian; thence east to the southeast corner of said section 18; thence south to the southwest corner of the northwest quarter of section 20; thence east to the southeast corner of the northeast quarter of section 21; thence north to the northeast corner of the southeast quarter of section 9; thence west to the center of section 7; thence south to the southwest corner of the southeast quarter of section 7; thence west to the northwest corner of section 18; thence south to the place of beginning, all in township 7 south, range 6 east, Black Hills meridian, in Fall River County, South Dakota: *Provided*, That nothing herein contained shall be construed to affect any valid rights acquired in connection with any of the lands embraced within the limits of said reserve. (Mar. 22, 1906, ch. 1127, § 1, 34 Stat. 83.)

§ 152. Name; control, rules and regulations.

Said reserve shall be known as the Battle Mountain Sanitarium Reserve, and shall be under the exclusive control of the Administrator of Veterans' Affairs in connection with the Battle Mountain Sanitarium at Hot Springs, South Dakota, whose duty it shall be to prescribe such rules and regulations and establish such service as he may deem necessary for the care and management of the same. (Mar. 22,



1906, ch. 1127, § 2, 34 Stat. 83; July 3, 1930, ch. 863, § 2, 46 Stat. 1016.)

**§ 153. Perfecting bona fide claims to lands; exchange of private lands.**

In all cases of unperfected bona fide claims lying within the said boundaries of said reserve, which claims have been properly initiated prior to September 2, 1902, said claims may be perfected upon compliance with the requirements of the laws respecting settlement, residence, improvements, and so forth, in the same manner in all respects as claims are perfected to other Government lands: *Provided*, That to the extent that the lands within said reserve are held in private ownership the Secretary of the Interior is authorized in his discretion to exchange therefor public lands of like area and value, which are surveyed, vacant, unappropriated, not mineral, not timbered, and not required for reservoir sites or other public uses or purposes. The private owners must, at their expense and by appropriate instruments of conveyance, surrender to the Government a full and unencumbered right and title to the private lands included in any exchange before patents are issued for or any rights attached to the public lands included therein, and no charge of any kind shall be made for issuing such patents. Upon completion of any exchange the lands surrendered to the Government shall become a part of said reserve in a like manner as if they had been public lands at the time of the establishment of said reserve. Nothing contained in this section shall be construed to authorize the issuance of any land scrip, and the State of South Dakota is granted the privilege of selecting from the public lands in said State an equal quantity of land in lieu of such portions of section sixteen included within said reserve as have not been sold or disposed of by said State and are not covered by an unperfected bona fide claim as above mentioned. (Mar. 22, 1906, ch. 1127, § 3, 34 Stat. 83.)

**§ 154. Unlawful intrusion, or violation of rules and regulations.**

All persons who shall unlawfully intrude upon said reserve, or who shall without permission appropriate any object therein or commit unauthorized injury or waste in any form whatever upon the lands or other public property therein, or who shall violate any of the rules and regulations prescribed hereunder, shall, upon conviction, be fined in a sum not more than \$1,000, or be imprisoned for a period not more than twelve months, or shall suffer both fine and imprisonment, in the discretion of the court. (Mar. 22, 1906, ch. 1127, § 4, 34 Stat. 83.)

**Chapter 4.—SAINT ELIZABETHS HOSPITAL**

**ESTABLISHMENT AND MANAGEMENT; PENSIONS, MONEYS, AND APPROPRIATIONS**

- Sec.  
161. Establishment.  
162. Board of Visitors.  
163. President of Board of Visitors.  
164. Powers and duties of Board of Visitors.  
165. Superintendent; disbursing agent; pension money of inmates.  
166. Deputy disbursing agent; appointment; bond; powers.

- Sec.  
167. Adjustment of compensation of officers and employees.  
168. Readjustment of salaries; credit to accounts of disbursing agent.  
169. Disposition of money paid for care of patients.  
170. Disbursement of appropriations for insane.  
171. Determining per capita cost of patients.  
172. Sale of surplus products and waste materials.  
173. Sale or exchange of typewriting machines and other equipment.  
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**INMATES; BURDEN OF EXPENSES THEREOF; DETENTION OF INSANE**

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221. Discharge of patients on bond.  
222. Insane persons not to be confined in jail.

**ESTABLISHMENT AND MANAGEMENT; PENSIONS, MONEYS, AND APPROPRIATIONS**

**§ 161. Establishment.**

There shall be in the District of Columbia a Government hospital for the insane, which shall be known and designated as Saint Elizabeths Hospital, and its objects shall be the most humane care and enlightened curative treatment of the insane of the Army and Navy of the United States and of the District of Columbia. (R. S. § 4838; July 1, 1916, ch. 209, § 1, 39 Stat. 309.)

**DERIVATION**

Act Mar. 3, 1855, ch. 199, § 1, 10 Stat. 682.

**TRANSFER OF FUNCTIONS**

Saint Elizabeths Hospital in the Department of the Interior and its functions were transferred to the Federal Security Agency to be administered under the direction

and supervision of the Federal Security Administrator by Reorg. Plan No. IV, § 11, eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1236.

#### § 162. Board of Visitors.

Nine citizens of the District of Columbia, to be appointed by the President, shall constitute a Board of Visitors of Saint Elizabeths Hospital. The term of office of three visitors shall expire biennially on the 30th day of June in every alternate odd-numbered year. Should any vacancy occur by death, resignation, or otherwise, it shall be filled by appointment for the unexpired term of such visitor. The office of visitor shall be honorary and without compensation. (R. S. § 4840; July 1, 1916, ch. 209, § 1, 39 Stat. 309.)

##### DERIVATION

Act Mar. 3, 1855, ch. 199, § 2, 10 Stat. 682.

#### § 163. President of Board of Visitors.

The Board of Visitors shall select from their number a president, to preside at their meetings for one year, or until a successor is elected. (R. S. § 4841.)

##### DERIVATION

Act Mar. 3, 1855, ch. 199, § 2, 10 Stat. 682.

#### § 164. Powers and duties of Board of Visitors.

The Board of Visitors, subject to the approval of the Federal Security Administrator, may make any needful bylaws for the government of themselves, and of the superintendent and his employees, and of the patients, not inconsistent with law; they shall visit the hospital at stated periods, and exercise so careful a supervision over its expenditures and general operations that the Government and community may have confidence in the correctness of its management; they shall make annually to the Federal Security Administrator a report for the preceding fiscal year setting forth the condition and wants of the institution. (R. S. § 4842; Reorg. Plan. No. IV, § 11 (a), eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1236.)

##### DERIVATION

Act Mar. 3, 1855, ch. 199, § 2, 10 Stat. 682.

##### TRANSFERS OF FUNCTIONS

Saint Elizabeths Hospital in Department of Interior and its functions were transferred to Federal Security Agency, to be administered under direction and supervision of Federal Security Administrator; annual report required to be submitted to Congress by superintendent of the Hospital was directed to be submitted through Federal Security Administrator; and annual report required to be furnished to Secretary of Interior by Board of Visitors was directed to be furnished to Federal Security Administrator, by Reorg. Plan No. IV, cited to text, which is set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

#### § 165. Superintendent; disbursing agent; pension money of inmates.

The chief executive officer of Saint Elizabeths Hospital shall be a superintendent, who shall be appointed by the Federal Security Administrator, and shall give bond for the faithful performance of his duties in such sum and with such securities as may be required by Federal Security Administrator. The superintendent shall be a well-educated physician, possessing competent experience in the care and treatment of the insane; he shall reside on the prem-

ises and devote his whole time to the welfare of the institution; he shall, subject to the approval of the board of visitors, appoint a responsible disbursing agent for the institution, who shall give a bond satisfactory to the Federal Security Administrator, and the said superintendent shall engage and discharge all needful and useful employees in the care of the insane and all laborers on the farm and determine their wages and duties; he shall also be an ex officio secretary of the Board of Visitors. The said disbursing agent, under the direction of the superintendent, shall have the custody of and pay out all moneys appropriated by Congress for Saint Elizabeths Hospital, or otherwise received for the purposes of the hospital, and all moneys received by the superintendent in behalf of the hospital or its patients, and keep an accurate account or accounts thereof. The said disbursing agent shall deposit in the Treasury of the United States, under the direction of the superintendent, all funds which may be intrusted to the latter by or for the use of patients, which shall be kept in a separate account; and the said disbursing agent is authorized to draw therefrom, under the direction of the said superintendent, from time to time, under such regulations as the Federal Security Administrator may prescribe, for the use of such patients, but not to exceed for any one patient the amount intrusted to the superintendent on account of such patient. During the time that any pensioner shall be an inmate of Saint Elizabeths Hospital all money due or becoming due upon his or her pension shall be paid by the Veterans' Administration to the superintendent or disbursing agent of the hospital, upon a certificate by such superintendent that the pensioner is an inmate of the hospital and is living, and such pension money shall be by said superintendent or disbursing agent disbursed and used, under regulations to be prescribed by the Federal Security Administrator, for the benefit of the pensioner, and, in case of a male pensioner, his wife, minor children, and dependent parents, or, if a female pensioner, her minor children, if any, in the order named, and to pay his or her board and maintenance in the hospital, the remainder of such pension money, if any, to be placed to the credit of the pensioner and to be paid to the pensioner or the guardian of the pensioner in the event of his or her discharge from the hospital; or, in the event of the death of said pensioner while an inmate of said hospital, shall, if a female pensioner, be paid to her minor children, and, in the case of a male pensioner, be paid to his wife, if living; if no wife survives him, then to his minor children; and in case there is no wife nor minor children, then the said unexpended balance to his or her credit shall be applied to the general uses of said hospital: *Provided*, That in the case of any pensioner transferred to the hospital from the National Home for Disabled Volunteer Soldiers any pension money to his credit at said home at the time of his said transfer shall be transferred with him to said hospital and placed to his credit therein, to be expended as provided in this section, and in case of his return from said hospital to the home any balance to his credit at said hospital shall in like manner be trans-

ferred to said home, to be expended in accordance with the rules established in regard thereto. (R. S. § 4839; Feb. 2, 1909, ch. 58, § 1, 35 Stat. 592; Mar. 4, 1911, ch. 285, § 1, 36 Stat. 1422; Aug. 17, 1912, ch. 301, § 1, 37 Stat. 312; July 1, 1916, ch. 209, § 1, 39 Stat. 309; July 3, 1930, ch. 863, § 1, 46 Stat. 1016; Reorg. Plan No. IV § 11 (a), eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1236.)

#### DERIVATION

Act Mar. 3, 1855, ch. 199, § 3, 10 Stat. 682.

#### TRANSFER OF FUNCTIONS

Disbursement functions of all Government agencies except the War and Navy Departments and the Panama Canal were transferred to Division of Disbursements, Treasury Department by Executive Order No. 6166, § 4, June 10, 1933, and Executive Order No. 6728, May 29, 1934. The Division was consolidated with other agencies into one agency in the Treasury Department known as the Fiscal Service by Reorg. Plan No. III, § 1 (a), eff. June 30, 1940, 5 Fed. Reg. 2107, 54 Stat. 1231.

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

#### DISSOLUTION OF HOME AND CONSOLIDATION IN VETERANS' ADMINISTRATION

Act July 3, 1930, ch. 863, §§ 1, 2, 5, 46 Stat. 1016, dissolved the National Home for Disabled Volunteer Soldiers and transferred its functions to the Veterans' Administration. See note preceding section 71 of this title and sections 11-11f of Title 38, Pensions, Bonuses, and Veterans' Relief.

#### CROSS REFERENCES

Hospitalization for veterans of certain wars, see section 484 of Title 38, Pensions, Bonuses, and Veterans' Relief, which modified this section insofar as inconsistent therewith.

Pension money and personal funds of patients, Saint Elizabeths Hospital, to be held in Treasury as trust funds, see section 725e (15, 16) of Title 31, Money and Finance.

#### § 166. Deputy disbursing agent; appointment; bond; powers.

Authority is granted to appoint a deputy disbursing agent who shall give a bond satisfactory to the Federal Security Administrator, and who shall have the same power as the disbursing agent during the absence of that officer. (June 5, 1920, ch. 235, § 1, 41 Stat. 920; Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1236.)

#### TRANSFER OF FUNCTIONS

Transfer of disbursement functions of most of Government agencies to Fiscal Service, see note under section 165 of this title.

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

#### § 167. Adjustment of compensation of officers and employees.

The Federal Security Administrator is authorized to adjust the compensation of officers and employees at Saint Elizabeths Hospital. (July 19, 1919, ch. 24, § 1, 41 Stat. 205; Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1236.)

#### TRANSFER OF FUNCTIONS

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

#### CROSS REFERENCE

Civil Service provisions as affecting adjusting of compensation of Government employees, see section 661 et seq. of Title 5, Executive Departments and Government Officers and Employees.

#### § 168. Readjustment of salaries; credit to accounts of disbursing agent.

The General Accounting Office is authorized to credit the accounts of the special disbursing agent of Saint Elizabeths Hospital with such amounts as he may pay in carrying out the provision of section 167 of this title relating to the readjustment of salaries at the hospital, and the schedule of salaries and allowances for maintenance, where the latter is not provided by the hospital, approved by the Secretary of the Interior August 1 and November 25, 1919, respectively, or as may be modified by the Federal Security Administrator, notwithstanding the provisions of sections 55 and 74 of Title 5 or section 165 of this title. (Mar. 6, 1920, ch. 94, § 1, 41 Stat. 513; June 10, 1921, ch. 18, § 304, 42 Stat. 24; Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1236.)

#### TRANSFER OF FUNCTIONS

Transfer of disbursement functions of most of Government agencies to Fiscal Service, see note under section 165 of this title.

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

#### CROSS REFERENCE

Civil Service provisions as affecting adjusting of compensation of Government employees, see section 661 et seq. of Title 5, Executive Departments and Government Officers and Employees.

#### § 169. Disposition of money paid for care of patients.

All sums paid to the Superintendent of Saint Elizabeths Hospital for the care of patients that he is authorized by law to receive, shall be deposited to the credit on the books of the Treasury Department, of the appropriation made for the care and maintenance of the patients at Saint Elizabeths Hospital for the year in which the support, clothing, and treatment is provided, and be subject to requisition by the disbursing agent of Saint Elizabeths Hospital, upon the approval of the Federal Security Administrator. (June 18, 1940, ch. 395, § 1, 54 Stat. 460; Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1236.)

#### SIMILAR PROVISIONS

The text of this section was taken from the Interior Department Appropriation Act, 1941. Similar provisions were contained in the following acts:

- 1939—May 10, 1939, ch. 119, § 1, 53 Stat. 787.
- 1938—May 9, 1938, ch. 187, § 1, 52 Stat. 341.
- 1937—Aug. 9, 1937, ch. 570, § 1, 50 Stat. 615.
- 1936—June 22, 1936, ch. 691, § 1, 49 Stat. 1802.
- 1935—May 9, 1935, ch. 101, § 1, 49 Stat. 215.
- 1934—Mar. 2, 1934, ch. 38, § 1, 48 Stat. 394.
- 1933—Feb. 17, 1933, ch. 98, § 1, 47 Stat. 856.
- 1932—Apr. 22, 1932, ch. 125, § 1, 47 Stat. 131.
- 1931—Feb. 14, 1931, ch. 187, § 1, 46 Stat. 1159.
- 1930—May 14, 1930, ch. 273, § 1, 46 Stat. 324.
- 1929—Mar. 4, 1929, ch. 705, § 1, 45 Stat. 1605.
- 1928—Mar. 7, 1928, ch. 137, § 1, 45 Stat. 242.
- 1927—Jan. 12, 1927, ch. 27, § 1, 44 Stat. 970.
- 1926—May 10, 1926, ch. 277, § 1, 44 Stat. 494.
- 1925—Mar. 3, 1925, ch. 462, 43 Stat. 1183.
- 1924—June 5, 1924, ch. 264, 43 Stat. 429.

#### TRANSFER OF FUNCTIONS

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

Transfer of disbursement functions of most of Government agencies to Fiscal Service, see note under section 165 of this title.

**§ 170. Disbursement of appropriations for insane.**

All appropriations of money by Congress for the support of Saint Elizabeths Hospital shall be drawn from the Treasury on the requisition of the Federal Security Administrator, and shall be disbursed and accounted for in all respects according to the laws regulating ordinary disbursements of public money. (R. S. § 4858; July 1, 1916, ch. 209, § 1, 39 Stat. 309; Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1236.)

**DERIVATION**

Act Mar. 3, 1855, ch. 199, § 7, 10 Stat. 683.

**TRANSFER OF FUNCTIONS**

Transfer of disbursement functions of most of Government agencies to Fiscal Service, see note under section 165 of this title.

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

**§ 171. Determining per capita cost of patients.**

In determining the per capita cost of maintenance and treatment of patients in Saint Elizabeths Hospital the expenditures for repair of buildings, roadways, and walks shall be included. (Aug. 24, 1912, ch. 355, § 1, 37 Stat. 461; July 1, 1916, ch. 209, § 1, 39 Stat. 309.)

**§ 172. Sale of surplus products and waste materials.**

The surplus products and waste material of the hospital may be sold or exchanged for the benefit of the hospital, and proceeds to be used and accounted for the same as its other funds. (Aug. 7, 1882, ch. 433, § 1, 22 Stat. 330.)

**§ 173. Sale or exchange of typewriting machines and other equipment.**

Authority is granted to sell or exchange condemned typewriting machines, laundry machinery, and other equipment, applying the proceeds therefrom to replacing new equipment for Saint Elizabeths Hospital. (Aug. 1, 1914, ch. 223, § 1, 38 Stat. 649.)

**§ 174. Exchange of laundry machines and other equipment.**

Authority is granted to exchange laundry machinery and other equipment in purchasing new equipment of the same or like character. (June 12, 1917, ch. 27, § 1, 40 Stat. 153.)

**§ 175. Telephone system.**

Rental for a system of telephones connecting the superintendent's, physicians', and employees' quarters at the hospital with other locations on the hospital grounds may be paid from the appropriations for the support of the hospital. (Apr. 17, 1917, ch. 3, § 1, 40 Stat. 19.)

**§ 176. Disposition of articles made by patients.**

The Federal Security Administrator is authorized to make regulations governing the disposal of articles produced by patients of Saint Elizabeths Hospital in the course of their curative treatment, either by allowing the patient to retain same or by selling the articles and depositing the money received to the credit of the appropriation from

which the materials for making the articles were purchased. (Mar. 6, 1920, ch. 94, § 1, 41 Stat. 513; Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1236.)

**TRANSFER OF FUNCTIONS**

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

**§ 177. Disposition of moneys belonging to deceased inmates; claims thereto.**

All moneys belonging to deceased inmates of Saint Elizabeths Hospital and deposited in the Treasury by the disbursing agent as agent, shall be covered into the Treasury unless claimed by his or her legal heirs within five years from the death of the inmate. And the Superintendent of Saint Elizabeths Hospital is authorized and directed, under such regulations as may be prescribed by the Federal Security Administrator, to make diligent inquiry in every instance after the death of an inmate to ascertain the whereabouts of his or her legal heirs. Claims may be presented at any time, and when established by competent proof in any case more than five years after the death of an inmate shall be certified to Congress for consideration. (June 30, 1906, ch. 3914, § 1, 34 Stat. 730; Feb. 2, 1909, ch. 58, § 1, 35 Stat. 592; July 1, 1916, ch. 209, § 1, 39 Stat. 309; Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1236.)

**TRANSFER OF FUNCTIONS**

Transfer of disbursement functions of most of Government agencies to Fiscal Service, see note under section 165 of this title.

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

**CROSS REFERENCE**

Funds of inmates to be held in trust, see sections 725p and 725s of Title 31, Money and Finance.

**§ 178. Revocable permit to hospital to use certain lands.**

The Secretary of War is authorized to grant a revocable permit to the Saint Elizabeths Hospital for the use of such portions of land as were on October 6, 1917, not under lease, and such other portions thereof as leases thereof expire, of that portion of land lying along Anacostia Flats which has been reclaimed by the War Department and is valuable for farming purposes. (Oct. 6, 1917, ch. 79, § 1, 40 Stat. 373.)

**§ 179. Report of superintendent.**

The Superintendent of Saint Elizabeths Hospital shall make a report to Congress annually at the beginning of each regular session, which shall show in detail the receipts and expenditures for all purposes connected with the hospital for the fiscal year preceding such session. (June 4, 1880, ch. 121, § 1, 21 Stat. 156; July 1, 1916, ch. 209, § 1, 39 Stat. 309.)

**TRANSFER OF FUNCTIONS**

Annual report required to be submitted to Congress by superintendent of Saint Elizabeths Hospital was directed to be submitted through Federal Security Administrator, by Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1236, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

## INMATES; BURDEN OF EXPENSES THEREOF; DETENTION OF INSANE

### § 191. Admission; insane persons of Army, Navy, Marine Corps, and Coast Guard.

The superintendent, upon the order of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Treasury, respectively, shall receive, and keep in custody until they are cured, or removed by the same authority which ordered their reception, insane persons of the following descriptions:

First. Insane persons belonging to the Army, Navy, Marine Corps, and Coast Guard.

Second. Civilians employed in the Quartermaster Corps of the Army who may become insane while in such employment.

Third. Men who, while in the service of the United States, in the Army, Navy, or Marine Corps, have been admitted to the hospital, and have been thereafter discharged from it on the supposition that they have recovered their reason, and have, within three years after such discharge, become again insane from causes existing at the time of such discharge, and have no adequate means of support.

Fourth. Indigent insane persons who have been in either of the said services and been discharged therefrom on account of disability arising from such insanity.

Fifth. Indigent insane persons who have become insane within three years after their discharge from such service, from causes which arose during and were produced by said service. (R. S. § 4843; Feb. 9, 1900, ch. 13, 31 Stat. 7; Aug. 24, 1912, ch. 391, § 3, 37 Stat. 591; Jan. 28, 1915, ch. 20, § 2, 38 Stat. 801.)

#### DERIVATION

Acts June 15, 1860, ch. 66, § 1, 12 Stat. 23; July 13, 1866, ch. 179, §§ 1, 2, 14 Stat. 93, 94.

#### REPEAL

The fifth provision of this section is considered by the Judge Advocate General as repealed by section 717 of Title 38, Pensions, Bonuses, and Veterans' Relief. JAG 705, January 24, 1934.

### § 192. Admission; insane prisoners of war and interned persons.

Interned persons and prisoners of war, under the jurisdiction of the Navy Department, or the War Department, who are or may become insane, shall be entitled to admission for treatment to Saint Elizabeths Hospital. (July 1, 1916, ch. 209, § 1, 39 Stat. 309; Aug. 29, 1916, ch. 417, 39 Stat. 558; Oct. 6, 1917, ch. 79, § 1, 40 Stat. 373.)

### § 193. Admission; insane patients of Public Health Service.

Insane patients of the Public Health Service shall be admitted into Saint Elizabeths Hospital upon the order of the Federal Security Administrator, and shall be cared for therein until cured or until removed by the same authority. The Public Health Service shall pay to Saint Elizabeths Hospital the actual per capita cost of maintenance in the said hospital of patients committed by that service. (Mar. 3, 1875, ch. 156, § 5, 18 Stat. 486; July 1, 1902, ch. 1370, § 1, 32 Stat. 712; Aug. 14, 1912, ch. 288, § 1,

37 Stat. 309; July 1, 1916, ch. 209, § 1, 39 Stat. 309; July 1, 1918, ch. 113, § 1, 40 Stat. 644; Reorg. Plan No. I, §§ 201, 205, eff. July 1, 1939, 4 Fed. Reg. 2728, 2729, 53 Stat. 1424, 1425; Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1236.)

#### TRANSFERS OF FUNCTIONS

Public Health Service and its functions and personnel were transferred to Federal Security Agency, and functions of Secretary of Treasury, other than those relating to acceptance and investment of gifts, were transferred to administrator of said agency by Reorg. Plan No. I, cited to text, which is set out in note under section 138t of Title 5, Executive Departments and Government Officers and Employees.

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

### § 194. Admission; insane inmates of Soldiers' Home.

Any inmate of the Soldiers' Home who may become insane shall, upon an order of the president of the Board of Commissioners of the Soldiers' Home, be admitted to Saint Elizabeths Hospital and treated therein; and the expenses of maintaining any such person shall be paid from the Soldiers' Home fund. (July 7, 1884, ch. 332, 23 Stat. 213; July 1, 1916, ch. 209, § 1, 39 Stat. 309.)

### § 195. Admission; insane inmates of National Home for Disabled Volunteer Soldiers.

Any inmate of the National Home for Disabled Volunteer Soldiers who may become insane shall, upon an order of the Administrator of Veterans' Affairs, be admitted to Saint Elizabeths Hospital and treated therein. (Aug. 7, 1882, ch. 433, § 1, 22 Stat. 330; Feb. 20, 1905, ch. 593, 33 Stat. 731; July 1, 1916, ch. 209, § 1, 39 Stat. 309; July 3, 1930, ch. 863, § 2, 46 Stat. 1016.)

#### DISSOLUTION OF HOME AND CONSOLIDATION IN VETERANS' ADMINISTRATION

Act July 3, 1930, ch. 863, cited to text, dissolved the National Home for Disabled Volunteer Soldiers and transferred its functions to the Veterans' Administration. See note preceding section 71 of this title and sections 11-11f of Title 38, Pensions, Bonuses, and Veterans' Relief.

### § 196. Transfer of American citizens adjudged insane in Canal Zone.

Upon the application of the Governor of the Panama Canal, the Federal Security Administrator is authorized to transfer to Saint Elizabeths Hospital, in the District of Columbia, for treatment, all American citizens legally adjudged insane in the Canal Zone whose legal residence in one of the States and Territories or the District of Columbia it has been impossible to establish. Upon the ascertainment of the legal residence of persons so transferred to the hospital, the superintendent of the hospital shall thereupon transfer such persons to their respective places of residence, and the expenses attendant thereon shall be paid from the appropriation for the support of the hospital. (June 12, 1917, ch. 27, § 1, 40 Stat. 179; Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1236.)

#### TRANSFER OF FUNCTIONS

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

**§ 196a. Transfer of American citizens adjudged insane in Canada.**

Upon the application of the Secretary of State, the Federal Security Administrator is authorized to transfer to Saint Elizabeths Hospital, in the District of Columbia, for treatment, all American citizens legally adjudged insane in the Dominion of Canada, whose legal residence in one of the States, Territories, or the District of Columbia it has been impossible to establish. Upon the ascertainment of the legal residence of persons so transferred to the hospital, the superintendent of the hospital shall thereupon transfer such persons to their respective places of residence, and the expenses attendant thereon shall be paid from the appropriation for the support of the hospital.

Upon the request of any such patient, his relatives or friends, he shall have a hearing in the district court of the United States for the District of Columbia upon his mental condition and the right of the superintendent of Saint Elizabeths Hospital to hold him for treatment. (Mar. 2, 1929, ch. 509, 45 Stat. 1495; June 25, 1936, ch. 804, 49 Stat. 1921; Reorg. Plan No. IV, § 11 (a), eff. June 30, 1939, 5 Fed. Reg. 2422, 54 Stat. 1236.)

**TRANSFER OF FUNCTIONS**

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

**§ 196b. Transfer of American citizens adjudged insane in Virgin Islands.**

Upon the application of the Governor of the Virgin Islands, the Federal Security Administrator is authorized to transfer to Saint Elizabeths Hospital in the District of Columbia for treatment (1) persons who are permanent residents of the Virgin Islands of the United States, who are citizens or nationals of the United States, and who have been legally adjudged to be insane in the Virgin Islands or while temporarily in another insular possession or a Territory of the United States or in the continental United States; and (2) persons who have been legally adjudged to be insane in the Virgin Islands, who are not permanent residents of the Virgin Islands, and who are American citizens whose legal residence in one of the States or Territories or the District of Columbia it has been impossible to establish. The expense of treatment and care may be paid from the appropriation for the support of the hospital.

Upon the ascertainment of the legal residence of American citizens who have been transferred to the hospital and who are not permanent residents of the Virgin Islands, the superintendent of the hospital shall transfer such persons to their respective places of residence, and the expenses of transfer shall be paid from the appropriation for the support of the hospital. (Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1236; July 18, 1940, ch. 638, 54 Stat. 766.)

**TRANSFER OF FUNCTIONS**

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

**§ 197. Care of Army insane and of inmates of National Home for Disabled Volunteer Soldiers on Pacific Coast.**

The Secretary of War may, in his discretion, contract for the care, maintenance, and treatment of the insane of the Army, and inmates of the National Home for Disabled Volunteer Soldiers on the Pacific coast at any State asylum in California, in all cases which he was, on March 3, 1901, authorized by law to cause to be sent to Saint Elizabeths Hospital in the District of Columbia. (Mar. 3, 1901, ch. 853, § 1, 31 Stat. 1163; July 1, 1916, ch. 209, § 1, 39 Stat. 309.)

**DISSOLUTION OF HOME AND CONSOLIDATION IN VETERANS' ADMINISTRATION**

Act July 3, 1930, ch. 863, §§ 1, 2, 5, 46 Stat. 1016, dissolved the National Home for Disabled Volunteer Soldiers and transferred its functions to the Veterans' Administration. See note preceding section 71 of this title and sections 11-11f of Title 38, Pensions, Bonuses, and Veterans' Relief.

**§ 198. Care of insane natives of Philippine Islands serving in Army.**

The Secretary of War may, in his discretion, contract for the care, maintenance, and treatment of the insane natives of the Philippine Islands serving in the Army of the United States at any asylum in the Philippine Islands in all cases which he was, on May 11, 1908, authorized by law to cause to be sent to Saint Elizabeths Hospital in the District of Columbia. (May 11, 1908, ch. 163, 35 Stat. 122; July 1, 1916, ch. 209, § 1, 39 Stat. 309.)

**§ 199. Transfer of insane from military hospitals to nearest public hospitals.**

The Secretary of War is authorized to transfer from any military hospital to the nearest available public hospital for the care of the insane any insane patient who is in need of treatment, preference being given to the hospital nearest to the place of the patient's enlistment. The superintendent of such public hospital shall possess the right to retain the aforementioned class of patients in his hospital in the same manner and to the same extent as was, on October 6, 1917, possessed by the superintendent of Saint Elizabeths Hospital. (Oct. 6, 1917, ch. 79, § 1, 40 Stat. 373.)

**§ 200. Transfer of part of appropriations to public hospitals for support of patients.**

The superintendent of Saint Elizabeths Hospital, with the approval of the Federal Security Administrator, shall transfer to the various public hospitals out of the various appropriations made by Congress for the support and treatment of patients in Saint Elizabeths Hospital a sum sufficient to pay for the support and treatment of patients sent to public hospitals as provided in the preceding section, based upon the per capita cost of maintenance in Saint Elizabeths Hospital, said payment not to exceed at any time the exact cost of support and treatment of such patients. (Oct. 6, 1917, ch. 79, § 1, 40 Stat. 373; Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1236.)

**TRANSFER OF FUNCTIONS**

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

**§§ 201-210. Indigent insane persons of District of Columbia.**

Provisions of these sections pertained only to the District of Columbia and are set out in Title 32 of the District of Columbia Code.

Section 201, R. S. § 4844; act July 1, 1916, ch. 209, § 1, 39 Stat. 309, provided for admission of indigent insane persons of the District of Columbia.

Section 202, acts Mar. 3, 1877, ch. 105, 19 Stat. 347; July 1, 1916, ch. 209, § 1, 39 Stat. 309, related to expense of indigent insane admitted from District of Columbia.

Section 203, acts Mar. 3, 1879, ch. 182, § 1, 20 Stat. 395; July 1, 1916, ch. 209, § 1, 39 Stat. 309, related to payment of part of expense from appropriations for District.

Section 204, R. S. §§ 4853, 4854; act July 1, 1916, ch. 209, § 1, 39 Stat. 309, related to private patients from the District of Columbia.

Section 205, R. S. § 4849; act July 1, 1916, ch. 209, § 1, 39 Stat. 309, related to insane persons from District of Columbia having property.

Section 206, R. S. § 4850, related to admission of non-residents of District of Columbia.

Section 207, acts Jan. 31, 1899, ch. 78, § 7, 30 Stat. 811; July 1, 1916, ch. 209, § 1, 39 Stat. 309, related to return of nonresident indigent insane in District of Columbia.

Section 208, acts Mar. 3, 1903, ch. 1006, § 1, 32 Stat. 1043; Feb. 23, 1905, ch. 738, § 1, 33 Stat. 740, related to proceedings to determine mental conditions of insane persons in District of Columbia.

Section 209, act Feb. 23, 1905, ch. 738, § 1, 33 Stat. 740, related to jury in lunacy proceedings and costs in District of Columbia.

Section 210, acts Feb. 23, 1905, ch. 738, § 2, 33 Stat. 740; July 1, 1916, ch. 209, § 1, 39 Stat. 309; June 25, 1936, ch. 804, 49 Stat. 1921, related to discharge of insane person from District of Columbia as cured.

**§ 211. Admission of insane persons accused of crime.**

If any person, charged with crime, be found, in the court before which he is so charged, to be an insane person, such court shall certify the same to the Federal Security Administrator, who may order such person to be confined in Saint Elizabeths Hospital, and, if he be not indigent, he and his estate shall be charged with expenses of his support in the hospital. (R. S. § 4851; July 1, 1916, ch. 209, § 1, 39 Stat. 309; Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1236.)

**DERIVATION**

Act Feb. 7, 1857, ch. 36, § 5, 11 Stat. 158.

**TRANSFER OF FUNCTIONS**

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

**§ 211a. Admission of insane convicts.**

Any person becoming insane during the continuance of his sentence in the United States penitentiary shall have the same privilege of treatment in Saint Elizabeths Hospital during the continuance of his mental disorder as is granted in section 211 of this title to persons who escape the consequences of criminal acts by reason of insanity, unless it be the opinion, both of the physician to the penitentiary and the superintendent of the hospital, that such insane convict is so depraved and furious in his character as to render his custody in the hospital insecure, and his example pernicious. (R. S. § 4852; July 1, 1916, ch. 209, § 1, 39 Stat. 309.)

**DERIVATION**

Act Feb. 7, 1857, ch. 36, § 4, 11 Stat. 157.

**§ 211b. Insane persons accused of crime; delivery to court on restoration to sanity.**

When any person confined in Saint Elizabeths Hospital charged with crime and subject to be tried therefor, or convicted of crime and undergoing sentence therefor, shall be restored to sanity, the superintendent of the hospital shall give notice thereof to the judge of the criminal court, and deliver him to the court in obedience to the proper precept. (R. S. § 4855; July 1, 1916, ch. 209, § 1, 39 Stat. 309.)

**DERIVATION**

Act Feb. 7, 1857, ch. 36, § 7, 11 Stat. 158.

**§ 212. Transfer of insane convicts.**

Upon the application of the Attorney General the Federal Security Administrator is authorized and directed to transfer to Saint Elizabeths Hospital in the District of Columbia all persons who, having been charged with offenses against the United States, are in the actual custody of its officers, and all persons who have been or shall be convicted of any offense in a court of the United States and are imprisoned in any State prison or penitentiary of any State or Territory, and who during the term of their imprisonment have or shall become and be insane. (June 23, 1874, ch. 465, § 1, 18 Stat. 251; Aug. 7, 1882, ch. 433, § 1, 22 Stat. 330; July 1, 1916, ch. 209, § 1, 39 Stat. 309; Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 Fed. Reg. 2422, 54 Stat. 1236.)

**TRANSFER OF FUNCTIONS**

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

**§ 213. Accommodation of insane convict in State asylums; compensation.**

In all cases where any person convicted in a court of the United States shall, while imprisoned under such conviction in any State prison or penitentiary, become and be insane, and there shall not be accommodation for such insane person at Saint Elizabeths Hospital, or if for other reasons the Attorney General is of opinion that such insane person should be placed at a State insane asylum rather than at said hospital, then the Attorney General shall have power in his discretion to contract with any State insane or lunatic asylum, within the State in which such convict is imprisoned, for his care and custody while remaining so insane; and in all cases where such convicts shall be transferred to a State asylum for insane convicts, in accordance with the laws of such State, the Attorney General is authorized and directed to compensate the said asylum, or the proper authorities controlling the same, for the care and custody of such insane convicts, until their removal or discharge, in such amounts as he shall deem just and reasonable; but no contract shall be made or compensation paid for the care of such insane person beyond their respective terms of imprisonment. (June 23, 1874, ch. 465, § 2, 18 Stat. 251; July 1, 1916, ch. 209, § 1, 39 Stat. 309.)

**§ 214. Return to prison on restoration to sanity.**

Whenever such insane convict shall be restored to sanity, after he or she shall have been transferred under the provisions of sections 212 or 213 of this



title, he or she shall be returned to the prison or penitentiary from which the transfer was made, provided the term of imprisonment shall not have expired. The questions of sanity in all cases arising under this section and sections 212 or 213 of this title shall be determined in accordance with the rules and regulations of existing laws, State or national, on that subject, applicable to the prison, penitentiary, or asylum where such convict shall be confined. (June 23, 1874, ch. 465, § 3, 18 Stat. 252.)

### §§ 215-220. Apprehension and detention of certain insane persons in District of Columbia.

Provisions of these sections pertained only to the District of Columbia.

Section 215, act Apr. 27, 1904, ch. 1618, § 1, 33 Stat. 316, related to apprehension and detention of certain insane persons in District of Columbia.

Section 216, act Apr. 27, 1904, ch. 1618, § 2, 33 Stat. 317, related to arrest at other than public places in District of Columbia.

Section 217, acts Apr. 27, 1904, ch. 1618, § 3, 33 Stat. 317; July 1, 1916, ch. 209, § 1, 39 Stat. 309, related to temporary detention of alleged insane persons found in District of Columbia.

Section 218, acts Apr. 27, 1904, ch. 1618, § 4, 33 Stat. 317; July 1, 1916, ch. 209, § 1, 39 Stat. 309, related to temporary commitment of persons found in District of Columbia to other hospital, or detention in police station.

Section 219, acts Apr. 27, 1904, ch. 1618, § 5, 33 Stat. 318; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, related to certificate by physician as to sanity or insanity found in District of Columbia.

Section 220, act Apr. 27, 1904, ch. 1618, § 6, 33 Stat. 318, related to making false affidavit or certificate.

### § 221. Discharge of patients on bond.

If any person will give bond with sufficient security, to be approved by the district court of the United States for the District of Columbia, or by any judge thereof in vacation, payable to the United States, with condition to restrain and take care of any independent or indigent insane person not charged with a breach of the peace, whether in the hospital or not, until the insane person is restored to sanity, such court or judge thereof may deliver such insane person to the party giving such bond. (R. S. § 4856; June 25, 1936, ch. 804, 49 Stat. 1921.)

#### DERIVATION

Act Feb. 7, 1857, ch. 36, § 9, 11 Stat. 158.

### § 222. Insane persons not to be confined in jail.

This section, R. S. § 4857, provided that no insane person not charged with any breach of the peace should ever be confined in the United States jail in the District of Columbia.

## Chapter 5.—THE COLUMBIA INSTITUTION FOR THE DEAF

This chapter related only to the District of Columbia.

It consisted of sections 231-250 which are set out in Title 31 of the District of Columbia Code.

## Chapter 6.—THE FREEDMEN'S HOSPITAL

This chapter related only to the District of Columbia.

It consisted of sections 261-264 which are set out in Title 32 of the District of Columbia Code.

## Chapter 7.—NATIONAL CEMETERIES

Sec.

271. Manner of acquisition of lands.

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Sec.

272. Appraisement of real estate.

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280a. Confederate soldiers; headstones for graves; preservation of records.

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289. Conveyance to State or municipality of approach road to national cemetery.

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291. Arlington Memorial Amphitheater, commission to make recommendations for inscriptions, entombments, etc.

292. Same; chairman and executive and disbursing officer of commission.

293. Same; specific authorization from Congress for inscriptions, entombments, etc.

294. Same; restrictions on inscriptions, entombments, etc.

295. Same; character of inscriptions, etc.

#### TRANSFERS OF FUNCTIONS

Section 2 of Executive Order, No. 6166, June 10, 1933, set out in note to section 132 of Title 5, Executive Departments and Government Officers and Employees, transferred all functions of administration of national cemeteries located within the continental limits of the United States, including national cemeteries of the War Department to the Director of National Parks, Buildings, and Reservations in the Department of the Interior.

By Ex. Ord., No. 6228, July 28, 1933, also set out in note to section 132 of Title 5, Executive Departments and Government Officers and Employees, the operation of Executive Order No. 6166 as to the transfer of national cemeteries was postponed until further order, except with regard to the following cemeteries located within the continental limits of the United States:

#### NATIONAL MILITARY PARKS

Chickamauga and Chattanooga National Military Park, Georgia and Tennessee.

Fort Donelson National Military Park, Tennessee.

Fredericksburg and Spotsylvania County Battle Fields Memorial, Virginia.

Gettysburg National Military Park, Pennsylvania.

Guilford Courthouse National Military Park, North Carolina.

Kings Mountain National Military Park, South Carolina.

Moore's Creek National Military Park, North Carolina.

Petersburg National Military Park, Virginia.

Shiloh National Military Park, Tennessee.

Stones River National Military Park, Tennessee.

Vicksburg National Military Park, Mississippi.

#### NATIONAL PARKS

Abraham Lincoln National Park, Kentucky.

Fort McHenry National Park, Maryland.

#### BATTLEFIELD SITES

Antietam Battlefield, Maryland.

Appomattox, Virginia.

Brices Cross Roads, Mississippi.

Chalmette Monument and Grounds, Louisiana.

Cowpens, South Carolina.

Fort Necessity, Wharton County, Pennsylvania.  
 Kenesaw Mountain, Georgia.  
 Monocacy, Maryland.  
 Tupelo, Mississippi.  
 White Plains, New York.

#### NATIONAL MONUMENTS

Big Hole Battlefield, Beaverhead County, Montana.  
 Cabrillo Monument, Ft. Rosecrans, California.  
 Castle Pinckney, Charleston, South Carolina.  
 Father Millet Cross, Fort Niagara, New York.  
 Fort Marion, St. Augustine, Florida.  
 Fort Matanzas, Florida.  
 Fort Pulaski, Georgia.  
 Meriwether Lewis, Hardin County, Tennessee.  
 Mound City Group, Chillicothe, Ohio.  
 Statue of Liberty, Fort Wood, New York.

#### MISCELLANEOUS MEMORIALS

Camp Blount Tablets, Lincoln County, Tennessee.  
 Kill Devil Hill Monument, Kitty Hawk, North Carolina.  
 New Echota Marker, Georgia.  
 Lee Mansion, Arlington National Cemetery, Virginia.

#### NATIONAL CEMETERIES

Battleground, District of Columbia.  
 Antietam, (Sharpsburg) Maryland.  
 Vicksburg, Mississippi.  
 Gettysburg, Pennsylvania.  
 Chattanooga, Tennessee.  
 Fort Donelson, (Dover) Tennessee.  
 Shiloh, (Pittsburg Landing) Tennessee.  
 Stones River, (Murfreesboro) Tennessee.  
 Fredericksburg, Virginia.  
 Poplar Grove, (Petersburg) Virginia.  
 Yorktown, Virginia.

#### NATIONAL CEMETERIES IN FOREIGN COUNTRIES

The functions of administration pertaining to national cemeteries located in foreign countries, which were transferred to the Department of State, were revoked and the functions of administration pertaining to national cemeteries and memorials located in Europe, together with personnel, records, etc. were transferred to the American Battle Monuments Commission by Ex. Ord. No. 6614, April 25, 1934, set out in note under section 132 of Title 5, Executive Departments and Government Officers and Employees.

### § 271. Manner of acquisition of lands.

The Director of National Parks, Buildings, and Reservations shall purchase from the owners thereof, at such price as may be mutually agreed upon between the Director and such owners, such real estate as in his judgment is suitable and necessary for the purpose of carrying into effect the provisions for national cemeteries, and obtain from such owners the title in fee simple for the same. And in case the Director of National Parks, Buildings, and Reservations is not able to agree with any owner upon the price to be paid for any real estate needed for such purpose, or to obtain from such owner title in fee simple for the same, Director is authorized to enter upon and appropriate any real estate which, in his judgment, is suitable and necessary for such purposes. (R. S. § 4870; Ex. Ord. No. 6166, § 2, June 10, 1933.)

#### DERIVATION

Act Feb. 22, 1867, ch. 61, § 4, 14 Stat. 400.

#### TRANSFERS OF FUNCTIONS

Effective 61 days from June 10, 1933, the administration of National Cemeteries was transferred from the Secretary of War to the Director of National Parks, Buildings, and Reservations, by Ex. Ord. No. 6166, cited to text. See note preceding this section.

### § 271a. State donations of land.

The Director of National Parks, Buildings, and Reservations is authorized to accept (on behalf of, and without cost to, the United States) from any State title to such land as he deems suitable for national cemetery purposes. Upon the acquisition of such land by the United States, the Director of National Parks, Buildings, and Reservations is authorized to establish thereon a national cemetery and to provide for the care and maintenance of such national cemetery. (June 29, 1938, ch. 808, 52 Stat. 1233; Ex. Ord. No. 6166, § 2, June 10, 1933.)

#### TRANSFERS OF FUNCTIONS

Effective 61 days from June 10, 1933, the administration of National Cemeteries was transferred from the Secretary of War to the Director of National Parks, Buildings, and Reservations, by Ex. Ord. No. 6166, cited to text. See note preceding section 271 of this title.

### § 272. Appraisement of real estate.

The Director of National Parks, Buildings, and Reservations or the owners of any real estate thus entered upon and appropriated are authorized to make application for an appraisement of real estate thus entered upon and appropriated, to any district court within any State or district where such real estate is situated; and such court shall, upon such application, and in such mode and under such rules and regulations as it may adopt, make a just and equitable appraisement of the cash value of the several interests of each and every owner of such real estate and improvements thereon. (R. S. § 4871; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Ex. Ord. No. 6166, § 2, June 10, 1933.)

#### DERIVATION

Act Feb. 22, 1867, ch. 61, § 5, 14 Stat. 400.

#### TRANSFERS OF FUNCTIONS

Effective 61 days from June 10, 1933, the administration of National Cemeteries was transferred from the Secretary of War to the Director of National Parks, Buildings, and Reservations, by Ex. Ord. No. 6166, cited to text. See note preceding section 271 of this title.

### § 273. Payment of appraised value.

When appraisement of the real estate thus entered upon and appropriated has been made under the order and direction of the court, the fee simple thereof shall, upon payment to the owner of the appraised value, or in case such owner refuses or neglects for thirty days after the appraisement of the cash value of the real estate or improvements as aforesaid, to demand the same from the Director of National Parks, Buildings, and Reservations, upon depositing the appraised value in the court making such appraisement, to the credit of such owner, be vested in the United States, and its jurisdiction over such real estate shall be exclusive and the same as its jurisdiction over real estate purchased, ceded, or appropriated for the purposes of navy yards, forts, and arsenals. The Director of National Parks, Buildings, and Reservations is authorized and required to pay to the several owner or owners, respectively, the appraised value of the several pieces or parcels of real estate, as specified in the appraisement of any of such courts, or to pay into any of such courts by deposit, as provided in this section, the appraised

value; and the sum necessary for such purpose may be taken from any moneys appropriated for the purposes of national cemeteries. (R. S. § 4872; Ex. Ord. No. 6166, § 2, June 10, 1933.)

## DERIVATION

Act Feb. 22, 1867, ch. 61, § 6, 14 Stat. 400.

## TRANSFERS OF FUNCTIONS

Effective 61 days from June 10, 1933, the administration of National Cemeteries was transferred from the Secretary of War to the Director of National Parks, Buildings, and Reservations, by Ex. Ord. No. 6166, cited to text. See note preceding section 271 of this title.

## § 274. Superintendents of cemeteries.

The Director of National Parks, Buildings, and Reservations shall cause to be erected at the principal entrance of each national cemetery a suitable building to be occupied as a porter's lodge; and shall appoint a meritorious and trustworthy superintendent to reside therein, for the purpose of guarding and protecting the cemetery and giving information to parties visiting the same. (R. S. § 4873; Ex. Ord. No. 6166, § 2, June 10, 1933.)

## DERIVATION

Act Feb. 22, 1867, ch. 61, § 2, 14 Stat. 400.

## TRANSFERS OF FUNCTIONS

Effective 61 days from June 10, 1933, the administration of National Cemeteries was transferred from the Secretary of War to the Director of National Parks, Buildings, and Reservations, by Ex. Ord. No. 6166, cited to text. See note preceding section 271 of this title.

## § 275. Selection of superintendents.

The superintendents of the national cemeteries shall be selected from meritorious and trustworthy soldiers, either commissioned officers or enlisted men of the Volunteer or Regular Army, who have been honorably mustered out or discharged from the service of the United States, and who may have been disabled for active field service in the line of duty. (R. S. § 4874.)

## DERIVATION

Act May 18, 1872, ch. 173, § 1, 17 Stat. 135.

## § 276. Fuel and quarters for superintendents.

The superintendents of the national cemeteries shall be furnished with quarters and fuel at the several cemeteries. (R. S. § 4875; July 30, 1912, ch. 258, 37 Stat. 240.)

## DERIVATION

Act May 18, 1872, ch. 173, § 2, 17 Stat. 135.

## § 277. Superintendent of Antietam Battlefield.

This section, act Feb. 12, 1925, ch. 225, title II, 43 Stat. 926; act Apr. 15, 1926, ch. 146, title II, 44 Stat. 288, expired with the appropriation acts of which it was a part.

## § 278. Care and maintenance of cemeteries.

The Director of National Parks, Buildings, and Reservations shall provide for the care and maintenance of the national military cemeteries and for this purpose shall submit an estimate with his annual estimates to the Bureau of the Budget. (July 24, 1876, ch. 226, § 1, 19 Stat. 99; June 10, 1921, ch. 18, § 206, 215, 42 Stat. 21, 23; Ex. Ord. No. 6166, § 2, June 10, 1933.)

## TRANSFERS OF FUNCTIONS

Effective 61 days from June 10, 1933, the administration of National Cemeteries was transferred from the Secretary of War to the Director of National Parks, Buildings, and Reservations, by Ex. Ord. No. 6166, cited to text. See note preceding section 271 of this title.

Bureau of the Budget was transferred to the Executive Office of the President by Reorg. Plan No. I, § 1, 4 Fed. Reg. 2727, 53 Stat. 1423.

## § 279. Inclosure, headstones, and registers.

In the arrangement of the national cemeteries established for the burial of deceased soldiers and sailors, the Director of National Parks, Buildings, and Reservations is directed to have the same inclosed with a good and substantial stone or iron fence; and to cause each grave to be marked with a small headstone or block, which shall be of durable stone, and of such design and weight as shall keep it in place when set, and shall bear the name of the soldier and the name of his State inscribed thereon, when the same are known, and also with the number of the grave inscribed thereon, corresponding with the number opposite to the name of the party in a register of burials to be kept at each cemetery and at the Office of National Parks, Buildings, and Reservations, which shall set forth the name, rank, company, regiment, and date of death of the officer or soldier; or if these are unknown, it shall be so recorded. (R. S. § 4877; Ex. Ord. No. 6166, § 2, June 10, 1933.)

## DERIVATION

Acts Feb. 22, 1867, ch. 61, § 1, 14 Stat. 399; June 8, 1872, ch. 368, 17 Stat. 345; Mar. 3, 1873, ch. 229, 17 Stat. 545.

## TRANSFERS OF FUNCTIONS

Effective 61 days from June 10, 1933, the administration of National Cemeteries was transferred from the Secretary of War to the Director of National Parks, Buildings, and Reservations, by Ex. Ord. No. 6166, cited to text. See note preceding section 271 of this title.

## § 280. Headstones in private cemeteries; records.

The Director of National Parks, Buildings, and Reservations is authorized to erect headstones over the graves of soldiers who served in the Regular or Volunteer Army of the United States during the war for the Union, and who have been buried in private village or city cemeteries, in the same manner as provided by section 279 of this title for those interred in national military cemeteries.

The Director of National Parks, Buildings, and Reservations shall cause to be preserved in the records of his office the names and places of burial of all soldiers for whom such headstones shall have been erected by authority of this section or any statutory provisions prior to February 3, 1879. (Feb. 3, 1879, ch. 44, 20 Stat. 281; Ex. Ord. No. 6166, § 2, June 10, 1933.)

## TRANSFERS OF FUNCTIONS

Effective 61 days from June 10, 1933, the administration of National Cemeteries was transferred from the Secretary of War to the Director of National Parks, Buildings, and Reservations, by Ex. Ord. No. 6166, cited to text. See note preceding section 271 of this title.

## § 280a. Confederate soldiers; headstones for graves; preservation of records.

The Director of National Parks, Buildings, and Reservations is authorized to erect headstones over

the graves of soldiers who served in the Confederate Army and who have been buried in national, city, town, or village cemeteries, or in any other places, each grave to be marked with a small headstone or block which shall be of durable stone and of such design and weight as shall keep it in place when set, and shall bear the name of the soldier and the name of his State inscribed thereon when the same are known. The Director of National Parks, Buildings, and Reservations shall cause to be preserved in the records of his office the name, rank, company, regiment, and date of death of the soldier, and his State; if these are unknown it shall be so recorded. (Feb. 26, 1929, ch. 324, 45 Stat. 1307; Ex. Ord. No. 6166, § 2, June 10, 1933.)

#### TRANSFERS OF FUNCTIONS

Effective 61 days from June 10, 1933, the administration of National Cemeteries was transferred from the Secretary of War to the Director of National Parks, Buildings, and Reservations, by Ex. Ord. No. 6166, cited to text. See note preceding section 271 of this title.

§ 280b. Standard headstone or marker in cemeteries where stone markers are unacceptable.

Notwithstanding any provision of existing law the Director of National Parks, Buildings, and Reservations is authorized to furnish, upon application, for use on graves in cemeteries where stone markers are not acceptable, a headstone or marker of such standard design and material as may be approved by him, within the limit of prevailing costs of the standard World War type headstone, for the grave of any deceased person for which the Secretary of War is authorized to furnish a marker or headstone: *Provided*, That the Secretary of War shall furnish the upright stone marker, authorized by section 279 of this title, for cemeteries under the jurisdiction of Director of National Parks, Buildings, and Reservations. (Ex. Ord. No. 6166, § 2, June 10, 1933; Apr. 18, 1940, ch. 109, 54 Stat. 142.)

#### TRANSFERS OF FUNCTIONS

Effective 61 days from June 10, 1933, the administration of National Cemeteries was transferred from the Secretary of War to the Director of National Parks, Buildings, and Reservations, by Ex. Ord. No. 6166, cited to text. See note preceding section 271 of this title.

§ 281. Persons to be buried in national cemeteries; evidence of right.

All soldiers, sailors, or marines and all officers or men of the Coast Guard dying in the service of the United States, or dying in a destitute condition after having been honorably discharged from the service, and all soldiers, sailors, or marines who served, or may serve, during any war in which the United States has been, or may be, engaged, and, with the consent of the Director of National Parks, Buildings, and Reservations, any citizen of the United States who served in the army or navy of any government at war with Germany or Austria during the World War and who died while in such service or after honorable discharge therefrom, may be buried in any national cemetery free of cost. The production of the honorable discharge of a deceased man in the first or second case, and a duly executed permit of the Director of National Parks, Buildings, and Reservations in the last case, shall be sufficient author-

ity for the superintendent of any cemetery to permit the interment. Army nurses honorably discharged from their service as such may be buried in any national cemetery, and, if in a destitute condition, free of cost. The Director of National Parks, Buildings, and Reservations is authorized to issue certificates to those Army nurses entitled to such burial. Persons who were members of the Cabinet of the President of the United States at any time during the period between April 6, 1917, and November 11, 1918, may be buried in any national cemetery: *Provided*, That the interment is without cost to the United States. (R. S. § 4878; Mar. 3, 1897, ch. 378, 29 Stat. 625; Mar. 4, 1911, ch. 285, § 1, 36 Stat. 1389; Jan. 28, 1915, ch. 20, § 1, 38 Stat. 800; Apr. 15, 1920, ch. 140, 41 Stat. 552; Ex. Ord. No. 6166, § 2, June 10, 1933; June 13, 1935, ch. 223 49 Stat. 339.)

#### DERIVATION

Acts July 17, 1862, ch. 200, § 18, 12 Stat. 596; June 1, 1872, ch. 257, 17 Stat. 202; Mar. 3, 1873, ch. 276, 17 Stat. 605.

#### TRANSFERS OF FUNCTIONS

Effective 61 days from June 10, 1933, the administration of National Cemeteries was transferred from the Secretary of War to the Director of National Parks, Buildings, and Reservations, by Ex. Ord. No. 6166, cited to text. See note preceding section 271 of this title.

§ 282. Burial of Confederate veterans.

Persons dying in the District of Columbia or in the immediate vicinity thereof who have served in the Confederate armies during the Civil War may be buried in the Confederate section of the Arlington National Cemetery without additional expense to the United States upon the certificate of Camp Numbered 171, United Confederate Veterans of the District of Columbia, that such persons are entitled to burial under the authority given in this section: *Provided*, That all such interments shall be under the supervision and subject to the approval of the Director of National Parks, Buildings, and Reservations. (Aug. 24, 1912, ch. 355, § 1, 37 Stat. 440; Ex. Ord. No. 6166, § 2, June 10, 1933.)

#### TRANSFERS OF FUNCTIONS

Effective 61 days from June 10, 1933, the administration of National Cemeteries was transferred from the Secretary of War to the Director of National Parks, Buildings, and Reservations, by Ex. Ord. No. 6166, cited to text. See note preceding section 271 of this title.

§ 283. Cemetery near City of Mexico.

The President is authorized to provide, out of the ordinary annual appropriations for establishing and maintaining United States military cemeteries, for the proper care and preservation and maintenance of the cemetery or burial ground near the City of Mexico, in which are interred the remains of officers and soldiers of the United States, and of citizens of the United States, who fell in battle or died in and around said city. (R. S. § 4879.)

#### DERIVATION

Act Mar. 3, 1873, ch. 267, 17 Stat. 602.

§ 284. Regulations for cemetery in Mexico.

The cemetery in Mexico shall be subject to the rules and regulations affecting United States na-

tional military cemeteries within the limits of the United States, so far as they may, in the opinion of the President, be applicable thereto. (R. S. § 4880.)

## DERIVATION

Act Mar. 3, 1873, ch. 267, 17 Stat. 602.

### § 285. Burial ground of Zachary Taylor as national cemetery.

This section, act Feb. 24, 1925, ch. 306, § 2, 43 Stat. 970; act May 10, 1928, ch. 515, 45 Stat. 494, authorized the Secretary of War to accept the land comprising the burial place of President Zachary Taylor, and to establish a national cemetery thereon.

### § 286. Penalty for defacing cemeteries.

Every person who willfully destroys, mutilates, defaces, injures, or removes any monument, gravestone, or other structure, or who willfully destroys, cuts, breaks, injures, or removes any tree, shrub, or plant within the limits of any national cemetery shall be deemed guilty of a misdemeanor, punishable by a fine of not less than \$25, and not more than \$100, or by imprisonment for not less than fifteen days, and not more than sixty. The superintendent in charge of any national cemetery is authorized to arrest forthwith any person engaged in committing any misdemeanor prohibited in this section, and to bring such person before any United States commissioner or judge of any district court of the United States within any State or district where any of the cemeteries are situated, for the purpose of holding such person to answer for such misdemeanor, and then and there shall make complaint in due form. (R. S. § 4881; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

## DERIVATION

Act Feb. 22, 1867, ch. 61, § 3, 14 Stat. 400.

### § 287. Jurisdiction of United States.

From the time any State legislature shall give the consent of such State to the purchase by the United States of any national cemetery, the jurisdiction and power of legislation of the United States over such cemetery shall in all courts and places be held to be the same as is granted by section 8, Article I, of the Constitution of the United States; and all provisions relating to national cemeteries shall be applicable to the same. (R. S. § 4882.)

## DERIVATION

Act July 1, 1870, ch. 200, § 1, 16 Stat. 188.

### § 288. Single approach to cemeteries authorized.

No part of any appropriation for national cemeteries or the repair of roadways thereto shall be expended in the maintenance of more than a single approach to any national cemetery. (Feb. 12, 1925, ch. 225, title II, 43 Stat. 926; Apr. 15, 1926, ch. 146, title II, 44 Stat. 287; Feb. 23, 1927, ch. 167, title II, 44 Stat. 1138; Mar. 23, 1928, ch. 232, title II, 45 Stat. 354; Feb. 28, 1929, ch. 366, title II, 45 Stat. 1375.)

### § 289. Conveyance to State or municipality of approach road to national cemetery.

The Director of National Parks, Buildings, and Reservations is authorized to convey to any State,

county, municipality, or proper agency thereof, in which the same is located, all the right, title, and interest of the United States in and to any Government owned or controlled approach road to any national cemetery: *Provided*, That prior to the delivery of any instrument of conveyance hereunder, the State, county, municipality, or agency to which the conveyance herein authorized is to be made, shall notify the Director of National Parks, Buildings, and Reservations in writing of its willingness to accept and maintain the road included in such conveyance: *Provided further*, That upon the execution and delivery of any conveyance herein authorized, the jurisdiction of the United States of America over the road conveyed, shall cease and determine and shall thereafter vest in the State in which said road is located. (Ex. Ord. No. 6166, § 2, June 10, 1933; June 24, 1940, ch. 415, § 1, 54 Stat. 506.)

## SIMILAR PROVISIONS

The text of this section was taken from the War Department Civil Appropriation Act, 1941. Similar provisions were contained in the following acts:

1939—June 28, 1939, ch. 246, § 1, 53 Stat. 857.

1938—June 11, 1938, ch. 348, § 1, 52 Stat. 668.

## REPEAL

Act Mar. 3, 1925, ch. 418, 43 Stat. 1104, formerly cited to text of this section, was repealed by act Feb. 20, 1931, ch. 235, 46 Stat. 1191. See section 1354 of Title 10, Army.

## TRANSFERS OF FUNCTIONS

Effective 61 days from June 10, 1933, the administration of National Cemeteries was transferred from the Secretary of War to the Director of National Parks, Buildings, and Reservations, by Ex. Ord. No. 6166, cited to text. See note preceding section 271 of this title.

### § 290. Encroachment by railroad on rights-of-way.

No railroad shall be permitted upon any right-of-way which may have been acquired by the United States leading to a national cemetery, or to encroach upon any roads or walks constructed thereon and maintained by the United States. (June 24, 1940, ch. 415, § 1, 54 Stat. 506.)

## SIMILAR PROVISIONS

The text of this section was taken from the War Department Civil Appropriation Act, 1941. Similar provisions were contained in the following acts:

1939—June 28, 1939, ch. 246, § 1, 53 Stat. 857.

1938—June 11, 1938, ch. 348, § 1, 52 Stat. 668.

1937—July 19, 1937, ch. 511, § 1, 50 Stat. 515.

1936—May 15, 1936, ch. 404, § 1, 49 Stat. 1305.

1935—Apr. 9, 1935, ch. 54, title II, 49 Stat. 145.

1934—Apr. 26, 1934, ch. 165, title II, 48 Stat. 639.

1933—Mar. 4, 1933, ch. 281, title II, 47 Stat. 1595.

1932—July 14, 1932, ch. 482, title II, 47 Stat. 689.

1931—Feb. 23, 1931, ch. 279, title II, 46 Stat. 1302.

1930—May 28, 1930, ch. 348, title II, 46 Stat. 458.

1929—Feb. 28, 1929, ch. 366, title II, 45 Stat. 1375.

1928—Mar. 23, 1928, ch. 232, title II, 45 Stat. 354.

1927—Feb. 23, 1927, ch. 167, title II, 44 Stat. 1138.

1926—Apr. 15, 1926, ch. 146, title II, 44 Stat. 287.

1925—Feb. 12, 1925, ch. 54, title II, 49 Stat. 145.

### § 291. Arlington Memorial Amphitheater; commission to make recommendations for inscriptions, entombments, etc.

A commission is created, to be composed of the Secretary of War and the Secretary of the Navy, which shall submit annually to the President, who shall transmit the same to Congress by the first Monday in December, recommendations as to what,

if any, inscriptions, tablets, busts, or other memorials shall be erected, and what, if any, bodies of deceased members of the Army, Navy, and Marine Corps shall be entombed during the next ensuing year within the Arlington Memorial Amphitheater, in the Arlington National Cemetery, Virginia: *Provided*, That no memorial shall be placed and no body shall be interred in the grounds about the Arlington Memorial Amphitheater within a distance of two hundred and fifty feet from the said memorial. (Mar. 4, 1921, ch. 169, § 1, 41 Stat. 1440.)

REFERENCES IN TEXT

The words "first Monday in December" refer to the time when Congress assembled each year pursuant to the Constitution, Art. 1, § 4. This was changed to the 3rd day of January each year by Amendment XX, § 2.

TRANSFERS OF FUNCTIONS

Effective 61 days from June 10, 1933, the administration of National Cemeteries was transferred from the Secretary of War to the Director of National Parks, Buildings, and Reservations, by Ex. Ord. No. 6166, § 2, June 10, 1933. See note preceding section 271 of this title.

§ 292. Same; chairman and executive and disbursing officer of commission.

The Secretary of War shall be the chairman of the commission created in section 291 of this title and the depot quartermaster of the Army in Washington shall be its executive and disbursing officer. (Mar. 4, 1921, ch. 169, § 2, 41 Stat. 1440.)

TRANSFERS OF FUNCTIONS

Effective 61 days from June 10, 1933, the administration of National Cemeteries was transferred from the Secretary of War to the Director of National Parks, Buildings, and Reservations, by Ex. Ord. No. 6166, § 2, June 10, 1933. See note preceding section 271 of this title.

§ 293. Same; specific authorization from Congress for inscriptions, entombments, etc.

No inscription, tablet, bust, or other memorial shall be erected nor shall any body be entombed within the Arlington Memorial Amphitheater unless specifically authorized in each case by Act of the Congress. (Mar. 4, 1921, ch. 169, § 3, 41 Stat. 1440.)

§ 294. Same; restrictions on inscriptions, entombments, etc.

No inscription, tablet, bust, or other memorial as provided for in sections 291-295 of this title shall be erected to commemorate any person who shall not have rendered conspicuously distinguished service in the United States Army, Navy, or Marine Corps, nor shall the body of any such person be entombed in the Arlington Memorial Amphitheater; nor shall any such memorial be erected or any body be entombed therein within ten years after the date of the death of the person so to be commemorated, except as authorized by Congress. (Mar. 4, 1921, ch. 169, § 4, 41 Stat. 1440.)

§ 295. Same; character of inscriptions, etc.

The character, design, and location of any such inscriptions, tablets, busts, or other memorials when authorized as provided for in sections 293 and 294 of this title shall be subject to the approval of the commission created in section 291 of this title, which shall in each case obtain the advice of the Commission of Fine Arts. (Mar. 4, 1921, ch. 169, § 5, 41 Stat. 1440.)

Chapter 7A.—PRIVATE AND COMMERCIAL CEMETERIES

§ 298. Disposal of Government lots in commercial cemeteries.

The Secretary of War is hereby authorized to dispose of by sale or exchange for other lots, in the manner and upon such terms as he shall deem expedient, all the right, title, and interest of the United States of America in and to burial lots located in commercial cemeteries, and to execute and deliver in the name of the United States of America and in its behalf any and all contracts, conveyances, or other instruments necessary to effectuate such sale or exchange, and that the expense of any sale shall be paid from the proceeds thereof and the net proceeds deposited in the Treasury to the credit of miscellaneous receipts. (June 20, 1939, ch. 220, 53 Stat. 843.)

CROSS REFERENCE

Sale of real estate by War Department as prohibited by authority of Congress, see section 1354 of Title 10, Army.

Chapter 8.—GORGAS HOSPITAL

Sec.

301. Ancon Hospital to be known as Gorgas Hospital.

302. Change of name as affecting various rights; records, maps, and public documents.

CROSS REFERENCE

Gorgas Memorial Laboratory, see section 278 et seq of Title 22, Foreign Relations and Intercourse.

§ 301. Ancon Hospital to be known as Gorgas Hospital.

In recognition of his distinguished services to humanity and as a fitting perpetuation of the name and memory of Major General William Crawford Gorgas, the Government hospital within the Canal Zone, near the City of Panama, known prior to March 24, 1928, as the Ancon Hospital, shall after such date be known and designated on the public records as the Gorgas Hospital. (Mar. 24, 1928, ch. 240, § 1, 45 Stat. 365.)

§ 302. Change of name as affecting various rights; records, maps, and public documents.

The change in the name of said hospital shall in no wise affect the rights of the Federal Government, or any municipality, corporation, association, or person; and all records, maps, and public documents of the United States in which said hospital is mentioned or referred to under the name of the Ancon Hospital or otherwise shall be held to refer to the said hospital under and by the name of the Gorgas Hospital. (Mar. 24, 1928, ch. 240, § 2, 45 Stat. 366.)

## TITLE 25.—INDIANS

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### Chapter 1.—BUREAU OF INDIAN AFFAIRS

- Sec.
1. Commissioner of Indian Affairs.
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  12. Agent to negotiate commutation of annuities.
  13. Expenditure of appropriations by Bureau of Indian Affairs.
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#### § 1. Commissioner of Indian Affairs.

There shall be in the Department of the Interior a Commissioner of Indian Affairs, who shall be appointed by the President, by and with the advice and consent of the Senate. (R. S. § 462; Jan. 24, 1923, ch. 42, 42 Stat. 1180.)

#### DERIVATION

Act July 9, 1832, ch. 174, § 1, 4 Stat. 564.

#### § 2. Duties of Commissioner.

The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations. (R. S. § 463.)

#### DERIVATION

Act July 9, 1832, ch. 174, § 1, 4 Stat. 564; act July 27, 1868, ch. 259, § 1, 15 Stat. 228.

#### § 3. Compilation of statutes regulating duties of Indian agents and inspectors.

It shall be the duty of the Commissioner of Indian Affairs to cause to be compiled and printed for the use of Indian agents and inspectors the provisions of the statutes regulating the performance of their respective duties, and also to furnish said officers from time to time information of new enactments upon the same subject. (May 17, 1882, ch. 163, § 7, 22 Stat. 88.)

#### § 4. Defective record of deeds and papers legalized.

The recording of all deeds and papers prior to July 26, 1892, in the office of the Commissioner of Indian Affairs is confirmed, approved, and legalized; and said record theretofore made shall be deemed, taken, and held to be good and valid and shall have all the force and effect and be entitled to the same credit as if it had been made in pursuance of and in conformity to law. But shall have no effect whatever upon the validity or invalidity of the deed or paper so recorded, and shall be no evidence of constructive notice to any persons not actually knowing the contents. (July 26, 1892, ch. 256, § 1, 27 Stat. 272.)

#### § 5. Record of deeds by Indians requiring approval.

The Commissioner of Indian Affairs is hereby empowered and directed to continue to make and keep a record of every deed executed by any Indian, his heirs, representatives, or assigns, which may require the approval of the President of the United States or of the Secretary of the Interior, whenever such approval shall have been given, and the deed so approved returned to said office. (July 26, 1892, ch. 256, § 2, 27 Stat. 273.)

#### § 6. Seal; authenticated and certified documents; evidence.

The Commissioner of Indian Affairs shall cause a seal to be made and provided for the said office, with such device as the President of the United States shall approve, and copies of any public documents, records, books, maps, or papers belonging to or on the files of said office, authenticated by the seal and certified by the commissioner thereof, or by such officer as may, for the time being, be acting as or for such commissioner, shall be evidence equally with the originals thereof. (July 26, 1892, ch. 256, § 3, 27 Stat. 273.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Proof of official record, see Rule 44, following section 723c of Title 28, Judicial Code and Judiciary.

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

#### § 7. Fees for furnishing certified copies of records.

The Commissioner of Indian Affairs shall have the custody of said seal, and shall furnish certified copies



of any such records, books, maps, or papers belonging to or on the files of said office, to any person applying therefor who shall comply with the requirements of said office, upon the payment by such parties at the rate of 10 cents per hundred words, and \$1 for copies of maps or plats, and the additional sum of 25 cents for the commissioner's certificate of verification, with the seal of said office; and one of the employees of said office shall be designated by the commissioner as the receiving clerk, who shall give bond in the sum of \$1,000, and the amounts so received shall, under the direction of the commissioner, be paid into the Treasury of the United States; but fees shall not be demanded for such authenticated copies as may be required by the officers of any branch of the Government or by any Indian who shall satisfy the commissioner by satisfactory legal evidence that he or she is not able, by reason of poverty, to pay such fees, nor for such unverified copies as the commissioner in his discretion may deem proper to furnish. (July 26, 1892, ch. 256, § 4, 27 Stat. 273.)

#### CROSS REFERENCE

Heads of departments; copies of official papers in their custody; fees, see section 488 of Title 5, Executive Departments and Government Officers and Employees.

#### § 8. Accounts for claims and disbursements.

All accounts and vouchers for claims and disbursements connected with Indian affairs shall be transmitted to the commissioner for administrative examination, and by him passed to the General Accounting Office for settlement. (R. S. § 464; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

#### DERIVATION

Act July 9, 1832, ch. 174, § 3, 4 Stat. 564.

#### § 9. Regulations by President.

The President may prescribe such regulations as he may think fit for carrying into effect the various provisions of any act relating to Indian affairs, and for the settlement of the accounts of Indian affairs. (R. S. § 465.)

#### DERIVATION

Act June 30, 1834, ch. 162, § 17, 4 Stat. 738.

#### § 10. Employee to sign letters.

The Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, may designate an employee of the Indian Office to sign letters of that office requiring the signature of the commissioner or assistant commissioner, and all signatures of such employee while acting under such designation shall have the same force and effect as if made by said commissioner or assistant commissioner. (Mar. 3, 1909, ch. 263, 35 Stat. 783.)

#### § 11. Employee or employees to sign approval of tribal deeds.

The Secretary of the Interior is authorized to designate an employee or employees of the Department of the Interior to sign, under the direction of the Secretary, in his name and for him, his approval of tribal deeds to allottees, to purchasers of town lots, to purchasers of unallotted lands, to

persons, corporations, or organizations for lands reserved to them under the law for their use and benefit, and to any tribal deeds made and executed according to law for any of the Five Civilized Tribes of Indians in Oklahoma. (Mar. 3, 1911, ch. 210, § 17, 36 Stat. 1069.)

#### § 12. Agent to negotiate commutation of annuities.

The Commissioner of Indian Affairs is authorized to send a special Indian agent, or other representative of his office, to visit any Indian tribe for the purpose of negotiating and entering into a written agreement with such tribe for the commutation of the perpetual annuities due under treaty stipulations, to be subject to the approval of Congress; and the Commissioner of Indian Affairs shall transmit to Congress said agreements with such recommendations as he may deem proper. (Apr. 30, 1908, ch. 153, 35 Stat. 73.)

#### § 13. Expenditure of appropriations by Bureau of Indian Affairs.

The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for the following purposes:

General support and civilization, including education.

For relief of distress and conservation of health.

For industrial assistance and advancement and general administration of Indian property.

For extension, improvement, operation, and maintenance of existing Indian irrigation systems and for development of water supplies.

For the enlargement, extension, improvement and repair of the buildings and grounds of existing plants and projects.

For the employment of inspectors, supervisors, superintendents, clerks, field matrons, farmers, physicians, Indian police, Indian judges, and other employees.

For the suppression of traffic in intoxicating liquor and deleterious drugs.

For the purchase of horse-drawn and motor-propelled passenger-carrying vehicles for official use.

And for general and incidental expenses in connection with the administration of Indian affairs. (Nov. 2, 1921, ch. 115, 42 Stat. 208.)

#### § 14. Money accruing to Indians from Veterans' Administration or other governmental agencies.

Any money accruing from the Veterans' Administration or other governmental agency to incompetent adult Indians, or minor Indians, who are recognized wards of the Federal Government, for whom no legal guardians or other fiduciaries have been appointed may be paid, in the discretion of the Administrator of Veterans' Affairs, or other head of a governmental bureau or agency, having such funds for payment, to such superintendent or other bonded officer of the Indian Service as the Secretary of the Interior shall designate, for the use of such beneficiaries, or to be paid to or used for, the heirs of such deceased bene-

ficiaries, to be handled and accounted for by him with other moneys under his control, in accordance with existing law and the regulations of the Department of the Interior. (Feb. 25, 1933, ch. 124, 47 Stat. 907.)

## Chapter 2.—OFFICERS OF INDIAN AFFAIRS

Sec.

- 21–24. Board of Indian Commissioners.
- 25. Superintendent for Five Civilized Tribes.
- 25a. Same; application of civil service laws.
- 26–32. Indian agents.
- 33. Superintendents in charge of reservations; administration of oath of office.
- 34. Oaths to expense accounts.
- 35. Acknowledgments of deeds and administration of oaths by Indian agents.
- 36. Special agents and other officers to administer oaths.
- 37. Books of expenditures; acts of agents as misdemeanor.
- 38. Repealed.
- 39. Compensation for extra services.
- 40. Limits of superintendencies, agencies, and sub-agencies.
- 41. Special agents and commissioners.
- 41a. Indian inspectors.
- 42. Interpreters.
- 43. Persons paid for other services not paid for interpreting.
- 44. Employment of Indians.
- 45. Preference to Indians qualified for duties.
- 46. Preference to Indians in employment of clerical, mechanical, and other help.
- 47. Employment of Indian labor and purchase of products of Indian industry.
- 48. Right of tribes to direct employment of persons engaged for them.
- 49. Repealed.
- 50. Holding two offices; leave of absence.
- 51. Additional security from persons charged with disbursement of money or goods.
- 52. New bond for disbursing officer.
- 52a. Special bond for large per capita payments; expenses.
- 53. Disbursing officers; designation of clerk to act for.
- 54. Traveling expenses.
- 55. Expenses of clerks detailed on special duty.
- 56. Quarters, fuel, and light for employees.
- 57. Heat and light for employees' quarters.
- 58. Limitation on number and kind of employment.
- 59. Transfer of funds for payment of employees; details for other service.
- 60. Compensation prescribed to be in full.
- 61. Estimates for personal services in Indian Office.
- 62. Discontinuance and transfer of agencies.
- 63. Consolidation of agencies.
- 64. Services of agents dispensed with.
- 65. Discontinuance of agents, subagents, and interpreters.
- 66. Duties of agents devolved on superintendent of Indian school.
- 67. Superintendent of training school at Cherokee Agency to act as agent.
- 68. Employees not to trade with Indians.
- 68a. Same; purchases from Indians by employees.

### §§ 21–24. Board of Indian Commissioners.

These sections, relating to the Board of Indian Commissioners, were based upon the following statutes:

Section 21—R. S. § 2039.

Section 22—Act Aug. 24, 1912, ch. 368, § 1, 37 Stat. 521.

Section 23—Act May 17, 1882, ch. 163, § 1, 22 Stat. 70.

Section 24—R. S. § 2042.

Ex. Ord. No. 6145, May 25, 1933, provided that the Board of Indian Commissioners be abolished, that its affairs be wound up by the Secretary of the Interior, and that its records, property, and personnel be transferred and/or remain under the supervision of the Secretary of the Interior.

### § 25. Superintendent for Five Civilized Tribes.

The offices of the Commissioner of the Five Civilized Tribes and superintendent of Union Agency, in Oklahoma, are abolished as of September 1, 1914, and in lieu thereof there shall be appointed by the President, by and with the advice and consent of the Senate, a Superintendent for the Five Civilized Tribes, with his office located in the State of Oklahoma, at a salary of \$5,000 per annum, and said superintendent shall exercise the authority and perform the duties exercised prior to September 1, 1914, by the Commissioner to the Five Civilized Tribes and the superintendent of the Union Agency, with authority to reorganize the department and to eliminate all unnecessary clerks, subject to the approval of the Secretary of the Interior. (Aug. 1, 1914, ch. 222, § 17, 38 Stat. 598.)

### § 25a. Same; application of civil service laws.

The position of Superintendent of the Five Civilized Tribes is hereby included within the competitive classified civil service and shall be subject to civil service laws and rules. (Mar. 4, 1929, ch. 705, § 1, 45 Stat. 1583.)

### §§ 26–32. Indian agents.

These sections related exclusively to Indian agents. The services of Indian agents have been dispensed with since 1908. See section 64 of this title and note thereunder.

The sections were based upon the following acts:

Section 26—R. S. § 2052.

Section 27—R. S. § 2062; July 13, 1892, ch. 164, § 1, 27 Stat. 120; July 1, 1898, ch. 545, § 1, 30 Stat. 573.

Section 28—R. S. § 2056; May 17, 1882, ch. 163, § 1, 22 Stat. 87.

Section 29—R. S. § 2057.

Section 30—R. S. § 2060.

Section 31—R. S. § 2058.

Section 32—July 1, 1898, ch. 545, § 1, 30 Stat. 595.

### § 33. Superintendents in charge of reservations; administration of oath of office.

Superintendents and acting superintendents in charge of Indian reservations, schools, irrigation and allotment projects are hereby authorized and empowered to administer the oath of office required of employees placed under their jurisdiction. (June 30, 1913, ch. 4, § 1, 38 Stat. 80.)

### § 34. Oaths to expense accounts.

The superintendent, acting superintendent, and principal clerks of the different Indian superintendencies or Indian agencies, are required, empowered, and authorized, when requested, to administer oaths, required by law or otherwise, to accounts for travel or other expenses against the United States, with like force and effect as officers having a seal; for such services when so rendered, or when rendered on demand by notaries public, who at the time are also salaried officers or employees of the United States, no charge shall be made; and no fee or money paid for the services herein described shall be paid or reimbursed by the United States. (Aug. 24, 1912, ch. 355, § 8, 37 Stat. 487; June 6, 1939, ch. 185, 53 Stat. 810.)

### § 35. Acknowledgments of deeds and administration of oaths by Indian agents.

Section, R. S. § 2064, authorized Indian agents to take acknowledgments of deeds and to administer oaths. Since 1908 there have been no Indian agents. See note under section 64 of this title.

### § 36. Special agents and other officers to administer oaths.

Each special agent, supervisor of schools, or other official charged with the investigation of Indian agencies and schools, in the pursuit of his official duties shall have power to administer oaths and to examine on oath all officers and persons employed in the Indian Service, and all such other persons as may be deemed necessary and proper. (Mar. 1, 1899, ch. 324, § 1, 30 Stat. 927.)

### § 37. Books of expenditures; acts of agents as misdemeanors.

Section, acts Mar. 3, 1875, ch. 132, § 10, 18 Stat. 450; Mar. 3, 1909, ch. 263, 35 Stat. 784, related to the keeping of books by Indian agents and penalties for the falsification thereof. Since 1908 there have been no Indian agents. See section 64 of this title and note thereunder.

### § 38. Repealed. Dec. 16, 1930, ch. 14, § 1, 46 Stat. 1028.

Section, R. S. § 2061, related to visits to Washington, D. C., by agents in California.

### 9. Compensation for extra services.

Section, R. S. § 2063, related to compensation for extra services rendered by Indian agents. Since 1908, there have been no Indian agents. See section 64 of this title and note thereunder.

### § 40. Limits of superintendencies, agencies, and subagencies.

The limits of each superintendency, agency, and subagency shall be established by the Secretary of the Interior, either by tribes or geographical boundaries. (R. S. § 2066.)

#### DERIVATION

Act Mar. 3, 1847, ch. 66, § 1, 9 Stat. 203; act June 30, 1834, ch. 162, § 7, 4 Stat. 736

### § 41. Special agents and commissioners.

All special agents and commissioners not appointed by the President shall be appointed by the Secretary of the Interior. (R. S. § 2067.)

#### DERIVATION

Act Mar. 3, 1863, ch. 99, § 1, 12 Stat. 792.

### § 41a. Indian inspectors.

Indian inspectors shall hereafter be termed inspectors, and shall be included in the classified service. (Mar. 4, 1909, ch. 297, § 1, 35 Stat. 888.)

### § 42. Interpreters.

An interpreter shall be allowed to each agency. Where there are different tribes in the same agency, speaking different languages, one interpreter may be allowed, at the discretion of the Secretary of the Interior, for each of such tribes. Interpreters shall be nominated, by the proper agents, to the Department of the Interior for approval, and may be suspended by the agent from pay and duty, and the circumstances reported to the Department of the Interior for final action. (R. S. § 2068.)

#### DERIVATION

Act June 30, 1834, ch. 162, § 9, 4 Stat. 737.

### § 43. Persons paid for other services not paid for interpreting.

No person employed by the United States and paid for any other service shall be paid for interpreting. (Apr. 4, 1910, ch. 140, § 2, 36 Stat. 272.)

### § 44. Employment of Indians.

In the Indian Service Indians shall be employed as herders, teamsters, and laborers, and where practicable in all other employments in connection with the agencies and the Indian Service. And it shall be the duty of the Secretary of the Interior and the Commissioner of Indian Affairs to enforce this provision. (Aug. 15, 1894, ch. 290, § 10, 28 Stat. 313.)

#### CROSS REFERENCE

Standards for Indians appointed to office, see section 472 of this title.

### § 45. Preference to Indians qualified for duties.

In all cases of the appointments of interpreters or other persons employed for the benefit of the Indians, a preference shall be given to persons of Indian descent, if such can be found, who are properly qualified for the execution of the duties. (R. S. § 2069.)

#### DERIVATION

Act June 30, 1834, ch. 162, § 9, 4 Stat. 737.

#### CROSS REFERENCE

Standards for Indians appointed to office, see section 472 of this title.

### § 46. Preference to Indians in employment of clerical, mechanical, and other help.

Preference shall at all times, as far as practicable, be given to Indians in the employment of clerical, mechanical, and other help on reservations and about agencies. (May 17, 1882, ch. 163, § 6, 22 Stat. 86; July 4, 1884, ch. 180, § 6, 23 Stat. 97.)

#### CROSS REFERENCE

Standards for Indians appointed to office, see section 472 of this title.

### § 47. Employment of Indian labor and purchase of products of Indian industry.

So far as may be practicable Indian labor shall be employed, and purchases of the products of Indian industry may be made in open market in the discretion of the Secretary of the Interior. (Apr. 30, 1908, ch. 153, 35 Stat. 71; June 25, 1910, ch. 431, § 23, 36 Stat. 861.)

#### CROSS REFERENCE

Standards for Indians appointed to Indian Office, see section 472 of this title.

### § 48. Right of tribes to direct employment of persons engaged for them.

Where any of the tribes are, in the opinion of the Secretary of the Interior, competent to direct the employment of their blacksmiths, mechanics, teachers, farmers, or other persons engaged for them, the direction of such persons may be given to the proper authority of the tribe. (R. S. § 2072.)

## DERIVATION

Act June 30, 1834, ch. 162, § 9, 4 Stat. 737.

§ 49. Repealed. June 30, 1932, ch. 317, 47 Stat. 421.

Section, act May 25, 1918, ch. 86, § 1, 40 Stat. 565, related to the qualifications of farmers.

§ 50. Holding two offices; leave of absence.

No person shall hold more than one office at the same time under this title, except as otherwise provided therein, nor shall any agent, subagent, interpreter, or person employed under this title, receive his salary while absent from his agency or employment, without leave of the superintendent or Secretary of the Interior; but such absence shall at no time exceed sixty days. (R. S. § 2074.)

## DERIVATION

Act June 30, 1834, ch. 162, § 10, 4 Stat. 737.

## CROSS REFERENCE

Leaves of absence, see section 30, et seq., of Title 5, Executive Departments and Government Officers and Employees.

§ 51. Additional security from persons charged with disbursement of money or goods.

The President may, from time to time, require additional security, and in larger amounts, from all persons charged or trusted, under the laws of the United States, with the disbursement or application of money, goods, or effects of any kind, on account of Indian affairs. (R. S. § 2075.)

## DERIVATION

Act June 30, 1834, ch. 162, § 8, 4 Stat. 737.

§ 52. New bond for disbursing officer.

When the Secretary of the Interior deems a new bond necessary he may, in his discretion, require any disbursing officer under the jurisdiction of the Commissioner of Indian Affairs to execute a new bond, with approved sureties, in such amount as he may deem necessary, and when accepted and approved by the Secretary of the Interior the new bond shall be valid and the surety or sureties of the prior bond shall be released from liability for all acts or defaults of the principal which may be done or committed from and after the day on which the new bond was approved. (Apr. 30, 1908, ch. 153, 35 Stat. 71.)

§ 52a. Special bond for large per capita payments; expenses.

When it becomes necessary to make large per capita payments to Indians, the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, is authorized to require any disbursing officer of the Indian Department to file a special bond in such amount as may be necessary to make such payment in one installment. (Apr. 21, 1904, ch. 1402, 33 Stat. 191; Aug. 5, 1909, ch. 7, 36 Stat. 125.)

## CROSS REFERENCES

Premiums on bonds not to be paid by United States, see section 14 of Title 8, Official and Penal Bonds.

Rate of premium on bonds required to be not more than 35 per centum in excess of rate for like bonds for year 1908, see section 14 of Title 8, Official and Penal Bonds.

§ 53. Disbursing officers; designation of clerk to act for.

Any disbursing agent of the Indian Service, with the approval of the Commissioner of Indian Affairs, may authorize a clerk employed in his office to act in his place and discharge all the duties devolved upon him by law or regulations during such time as he may be unable to perform the duties of his position because of absence, physical disability, or other disqualifying circumstances: *Provided*, That the official bond given by the disbursing agent to the United States shall be held to cover and apply to the acts of the employee authorized to act in his place, who shall give bond to the disbursing agent in such sums as the latter may require, and with respect to any and all acts performed by him while acting for his principal, shall be subject to all the liabilities and penalties prescribed by law for official misconduct of disbursing agents. (Feb. 14, 1920, ch. 75, § 1, 41 Stat. 414.)

## TRANSFER OF FUNCTIONS

The functions of disbursement of money of all agencies, except as to the War Department, Navy Department, and Panama Canal, were transferred to the Division of Disbursements in the Treasury Department by Ex. Ord. No. 6166, § 4, June 10, 1933, and Ex. Ord. No. 6728, May 29, 1934, set out in note to section 133t of Title 5, Executive Departments and Government Officers and Employees. The Division of Disbursements was consolidated in the Fiscal Service by Reorg. Plan No. III, § 1 (a) (3), June 30, 1940, 5 Fed. Reg. 2107, 54 Stat. 1231, set out in note to section 133t of Title 5, *supra*.

§ 54. Traveling expenses.

Where persons are required, in the performance of their duties, under this title, to travel from one place to another, their actual expenses, or a reasonable sum in lieu thereof, may be allowed them, except that no allowance shall be made to any person for travel or expenses in coming to the seat of government to settle his accounts, unless thereto required by the Secretary of the Interior. (R. S. § 2077.)

## DERIVATION

Act June 30, 1834, ch. 162, § 10, 4 Stat. 737.

## CROSS REFERENCE

Traveling expenses generally, see sections 73, 73a, 73b, 73c, and Chapter 16 of Title 5, Executive Departments and Government Officers and Employees.

§ 55. Expenses of clerks detailed on special duty.

When it becomes necessary to detail clerks and other employees of the Indian Service outside of Washington to assist in the opening of bids, making contracts, and shipping goods, they may be allowed a per diem of not exceeding \$4 per day for hotel and other expenses, which per diem shall be in lieu of all expenses authorized by law, exclusive of railway transportation and sleeping-car fare. (May 17, 1882, ch. 163, § 1, 22 Stat. 86.)

## CROSS REFERENCE

Per diem allowed in lieu of actual necessary expenses of Government employees away on official business, see section 823 et seq. of Title 5, Executive Departments and Government Officers and Employees.

§ 56. Quarters, fuel, and light for employees.

The Secretary of the Interior, in his discretion, may allow quarters, fuel, and light to employees of

the Indian Service whose compensation is not prescribed by law, the salaries of such employees to be fixed on this basis and the cost of providing quarters, fuel, and light to be paid from any funds which are applicable and available therefor: *Provided*, That this authorization shall be retroactive to the extent of approving any expenditures for such purposes authorized by the Secretary of the Interior prior to June 7, 1924. (June 7, 1924, ch. 328, 43 Stat. 634.)

#### § 57. Heat and light for employees' quarters.

The Secretary of the Interior is authorized to allow employees in the Indian Service who are furnished quarters necessary heat and light for such quarters without charge, such heat and light to be paid for out of the fund chargeable with the cost of heating and lighting other buildings at the same place: *And provided further*, That the amount so expended for agency purposes shall not be included in the maximum amounts for compensation of employees prescribed by section 58 of this title. (Aug. 1, 1914, ch. 222, § 1, 38 Stat. 584; May 25, 1918, ch. 86, § 1, 40 Stat. 564; Mar. 3, 1925, ch. 462, 43 Stat. 1147.)

#### § 58. Limitation on number and kind of employment.

The number and kind of employees at each agency shall be prescribed by the Secretary of the Interior and none other shall be employed. (June 7, 1897, ch. 3, § 1, 30 Stat. 90; Apr. 18, 1912, ch. 83, § 10, 37 Stat. 88; Aug. 24, 1912, ch. 388, § 1, 37 Stat. 521; May 25, 1918, ch. 86, § 17, 40 Stat. 578; Feb. 26, 1929, ch. 323, 45 Stat. 1307.)

#### § 59. Transfer of funds for payment of employees; details for other service.

When not required for the purpose for which appropriated, the funds provided for the pay of specified employees at any Indian agency may be used by the Secretary of the Interior for the pay of other employees at such agency, but no deficiency shall be thereby created; and, when necessary, specified employees may be detailed for other service when not required for the duty for which they were engaged. (Mar. 1, 1907, ch. 2285, 34 Stat. 1016.)

#### § 60. Compensation prescribed to be in full.

The several compensations prescribed by this title shall be in full of all emoluments or allowances whatsoever. But where necessary, a reasonable allowance or provision may be made for offices and office contingencies. (R. S. § 2076.)

##### DERIVATION

Act June 30, 1834, ch. 162, § 10, 4 Stat. 737.

#### § 61. Estimates for personal services in Indian Office.

Annual estimates in detail shall be submitted for all personal services required in the Indian Office, and it shall not be lawful to employ in said office any personal services other than those specifically appropriated for in the legislative, executive, and judicial appropriation Acts, except temporary details of field employees for service connected solely with their respective employments. (Aug. 23, 1912, ch. 350, § 1, 37 Stat. 396.)

##### CROSS REFERENCE

Provision on estimate for personal services in Indian Office is also set out as section 583 (26) of Title 31, Money and Finance.

#### § 62. Discontinuance and transfer of agencies.

The President shall, whenever he may judge it expedient, discontinue any Indian agency, or transfer the same, from the place or tribe designated by law, to such other place or tribe as the public service may require. (R. S. § 2059.)

##### DERIVATION

Act June 30, 1834, ch. 162, § 4, 4 Stat. 735.

#### § 63. Consolidation of agencies.

The President may, in his discretion, consolidate two or more agencies into one, and where Indians are located on reservations created by Executive order he may, with the consent of the tribes to be affected thereby, expressed in the usual manner, consolidate one or more tribes, and abolish such agencies as are thereby rendered unnecessary. (May 17, 1882, ch. 163, § 6, 22 Stat. 88; July 4, 1884, ch. 180, § 6, 23 Stat. 97.)

#### § 64. Services of agents dispensed with.

It shall be the duty of the President to dispense with the services of such Indian agents and superintendents as may be practicable; and where it is practicable he shall require the same person to perform the duties of two agencies or superintendencies for one salary. (R. S. § 2053; June 22, 1874, ch. 389, § 1, 18 Stat. 147; Mar. 3, 1875, ch. 132, § 1, 18 Stat. 421.)

##### DERIVATION

Act Feb. 14, 1873, ch. 138, § 1, 17 Stat. 437.

##### INDIAN AGENTS

In a communication, dated November 29, 1940, from the Office of Indian Affairs of the Department of the Interior, it was stated that there have been no Indian agents since 1908, all of the agencies and schools having been placed under the supervision of superintendents.

#### § 65. Discontinuance of agents, subagents, and interpreters.

The Secretary of the Interior shall, under the direction of the President, cause to be discontinued the services of such agents, subagents, interpreters, and mechanics as may from time to time become unnecessary, in consequence of the emigration of the Indians, or other causes. (R. S. § 2073; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 244.)

##### DERIVATION

Act July 9, 1832, ch. 174, § 5, 4 Stat. 564.

##### INDIAN AGENTS

There have been no Indian agents since 1908. See note to section 64 of this title.

#### § 66. Duties of agency devolved on superintendent of Indian school.

The Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, may devolve the duties of any Indian agency or part thereof upon the superintendent of the Indian school located at such agency or part thereof whenever in his judgment such superintendent can properly perform the

duties of such agency. And the superintendent upon whom such duties devolve shall give bond as other Indian agents.

The pay of any superintendent who performs agency duties in addition to those of his superintendency may be increased by the Commissioner of Indian Affairs, in his discretion, to an extent not exceeding \$300 per annum. (Mar. 1, 1907, ch. 2285, 34 Stat. 1020.)

**§ 67. Superintendent of training school at Cherokee Agency to act as agent.**

The superintendent of the Indian training school at Cherokee, North Carolina, shall, in addition to his duties as superintendent, perform the duties required prior to March 3, 1893, of the agent at said Cherokee Agency, and receive in addition to his salary as superintendent \$200 per annum, and shall give bond as other Indian agents, and the office of agent is abolished at that place. (Mar. 3, 1893, ch. 209, § 1, 27 Stat. 614.)

**CROSS REFERENCE**

Duties of agency may be devolved upon superintendent of the Indian school who must give bond and who shall receive for such duties not exceeding \$300 per annum, see section 66 of this title.

**§ 68. Employees not to trade with Indians.**

No person employed in Indian affairs shall have any interest or concern in any trade with the Indians, except for, and on account of, the United States; and any person offending herein, shall be liable to a penalty of \$5,000, and shall be removed from his office. (R. S. § 2078.)

**DERIVATION**

Act June 30, 1834, ch. 162, § 14, 4 Stat. 738.

**CROSS REFERENCES**

Agents and employees forbidden to have interest in Indian contracts, see section 87 of this title.

This section as limitation upon right of Indian employees of Government to Indian benefits, see section 441 of this title.

**§ 68a. Same; purchases from Indians by employees.**

Anything contained in sections 68 and 87 of this title to the contrary notwithstanding, employees of the United States Government, including those in the Indian Service, may, under such rules and regulations as the Secretary of the Interior shall prescribe, be permitted to purchase from any Indian or Indian organization any arts and crafts or any other product, service, or commodity, produced, rendered, owned, controlled, or furnished by any Indian or Indian organization: *Provided, however,* That no employee of the United States Government shall be permitted to make any such purchases for the purpose of engaging directly or indirectly in the commercial selling, reselling, trading, or bartering of said purchases by the said employee. (June 19, 1939, ch. 210, 53 Stat. 840.)

**CODIFICATION**

Section, a portion of act June 19, 1939, cited to text, is duplicated as section 87a of this title. The final proviso of said act constitutes section 441 of this title.

**Chapter 3.—AGREEMENTS WITH INDIANS**

**TREATIES**

**Sec.**

- 71. Future treaties with Indian tribes.
- 72. Abrogation of treaties.

**CONTRACTS WITH INDIANS**

- 81. Contracts with Indian tribes or Indians.
- 81a. Same; by attorneys for prosecution of claims against the United States; cancellation; revival.
- 81b. Same; continuation of contracts with attorneys containing limitation of time where suits have been filed.
- 82. Payments under contracts restricted.
- 83. Payments under prohibited contracts; aiding in making prohibited contracts.
- 84. Assignments of contracts restricted.
- 85. Contracts relating to tribal funds or property.
- 86. Contracts for compensation for services in relation to enrollment in Five Civilized Tribes.
- 87. Interest of agents and employees in Indian contracts.
- 87a. Same; purchases from Indians by employees.
- 88. False vouchers, accounts, or claims.

**TREATIES**

**§ 71. Future treaties with Indian tribes.**

No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871, shall be hereby invalidated or impaired. (R. S. § 2079.)

**DERIVATION**

Act Mar. 3, 1871, ch. 120, § 1, 16 Stat. 566.

**CROSS REFERENCE**

Organization and incorporation of Indian tribes, see sections 476 and 477 of this title.

**§ 72. Abrogation of treaties.**

Whenever the tribal organization of any Indian tribe is in actual hostility to the United States, the President is authorized, by proclamation, to declare all treaties with such tribe abrogated by such tribe if in his opinion the same can be done consistently with good faith and legal and national obligations. (R. S. § 2080.)

**DERIVATION**

Act July 5, 1862, ch. 135, § 1, 12 Stat. 528.

**CONTRACTS WITH INDIANS**

**§ 81. Contracts with Indian tribes or Indians.**

No agreement shall be made by any person with any tribe of Indians, or individual Indians not citizens of the United States, for the payment or delivery of any money or other thing of value, in present or in prospective, or for the granting or procuring any privilege to him, or any other person in consideration of services for said Indians relative to their lands, or to any claims growing out of, or in reference to, annuities, installments, or other moneys, claims, demands, or thing, under laws or treaties with the United States, or official acts of any officers thereof, or in any way connected with or due from the United States, unless such contract or agreement be executed and approved as follows:

First. Such agreement shall be in writing, and a duplicate of it delivered to each party.

Second. It shall be executed before a judge of a court of record, and bear the approval of the Secretary of the Interior and the Commissioner of Indian Affairs indorsed upon it.

Third. It shall contain the names of all parties in interest, their residence and occupations; and if made with a tribe, by their tribal authorities, the scope of authority and the reason for exercising that authority, shall be given specifically.

Fourth. It shall state the time when and place where made, the particular purpose for which made, the special thing or things to be done under it, and, if for the collection of money, the basis of the claim, the source from which it is to be collected, the disposition to be made of it when collected, the amount or rate per centum of the fee in all cases; and if any contingent matter or condition constitutes a part of the contract or agreement, it shall be specifically set forth.

Fifth. It shall have a fixed limited time to run, which shall be distinctly stated.

Sixth. The judge before whom such contract or agreement is executed shall certify officially the time when and place where such contract or agreement was executed, and that it was in his presence, and who are the interested parties thereto, as stated to him at the time; the parties present making the same; the source and extent of authority claimed at the time by the contracting parties to make the contract or agreement, and whether made in person or by agent or attorney of either party or parties.

All contracts or agreements made in violation of this section shall be null and void, and all money or other thing of value paid to any person by any Indian or tribe, or any one else, for or on his or their behalf, on account of such services, in excess of the amount approved by the commissioner and secretary for such services, may be recovered by suit in the name of the United States in any court of the United States, regardless of the amount in controversy; and one-half thereof shall be paid to the person suing for the same, and the other half shall be paid into the Treasury for the use of the Indian or tribe by or for whom it was so paid. (R. S. § 2103.)

#### DERIVATION

Act Mar. 3, 1871, ch. 120, § 3, 16 Stat. 570; act May 21, 1872, ch. 177, §§ 1, 2, 17 Stat. 136.

§ 81a. Same; by attorneys for prosecution of claims against the United States; cancellation; revival.

Any contracts or agreements approved prior to June 26, 1936, by the Secretary of the Interior between the authorities of any tribe, band, or group of Indians and their attorneys for the prosecution of claims against the United States, which provide that such contracts or agreements shall run for a period of years therein specified, and as long thereafter as may be required to complete the business therein provided for, or words of like import, or which provide that compensation for services rendered shall be on a quantum-meruit basis not to exceed a specified percentage, shall be deemed a sufficient compliance with section 81 of this title: *Provided, how-*

*ever*, That nothing herein contained shall limit the power of the Secretary of the Interior, after due notice and hearing and for proper cause shown, to cancel any such contract or agreement: *Provided further*, That the provisions of this section and section 81b of this title shall not be construed to revive any contract which has been terminated by lapse of time, operation of law, or by acts of the parties thereto. (June 26, 1936, ch. 851, § 1, 49 Stat. 1984.)

§ 81b. Same; continuation of contracts with attorneys containing limitation of time where suits have been filed.

Any existing valid contract made and approved prior to June 26, 1936, pursuant to any Act of Congress by any tribe, band, or group of Indians with an attorney or attorneys for the rendition of services in the prosecution of claims against the United States under authority of which suit or suits have been filed, and which contains a limitation of time for the completion of the services to be performed may be continued in full force unless a subsequent contract dealing with the same subject matter has been made and approved. (June 26, 1936, ch. 851, § 2, 49 Stat. 1984.)

§ 82. Payments under contracts restricted.

No money shall be paid to any agent or attorney by an officer of the United States under any such contract or agreement, other than the fees due him for services rendered thereunder; but the moneys due the tribe, Indian, or Indians, as the case may be, shall be paid by the United States, through its own officers or agents, to the party or parties entitled thereto; and no money or thing shall be paid to any person for services under such contract or agreement, until such person shall have first filed with the Commissioner of Indian Affairs a sworn statement, showing each particular act of service under the contract, giving date and fact in detail, and the Secretary of the Interior and Commissioner of Indian Affairs shall determine therefrom whether, in their judgment, such contract or agreement has been complied with or fulfilled; if so, the same may be paid, and, if not, it shall be paid in proportion to the services rendered under the contract. (R. S. § 2104.)

#### DERIVATION

Act May 21, 1872, ch. 177, § 2, 17 Stat. 136.

§ 83. Payments under prohibited contracts; aiding in making prohibited contracts.

The person so receiving such money contrary to the provisions of sections 81 and 82 of this title, and his aiders and abettors, shall, in addition to the forfeiture of such sum, be punishable by imprisonment for not less than six months, and by a fine of not less than \$1,000. And it shall be the duty of all district attorneys to prosecute such cases when applied to do so, and their failure and refusal shall be ground for their removal from office. Any Indian agent, or other person in the employment of the United States, who shall, in violation of the provisions of section 82 of this title, advise, sanction, or in any way aid in the making of such contracts or agreements, or in making such payments



as are here prohibited, shall, in addition to the punishment herein imposed on the person making such contract, or receiving such money, be, on conviction, dismissed from the service of the United States, and be forever disqualified from holding any office of profit or trust under the same. (R. S. § 2105.)

## DERIVATION

Act Mar. 3, 1871, ch. 120, § 3, 16 Stat. 570.

## § 84. Assignments of contracts restricted.

No assignment of any contracts embraced by section 81 of this title or of any part of one shall be valid, unless the names of the assignees and their residences and occupations be entered in writing upon the contract, and the consent of the Secretary of the Interior and the Commissioner of Indian Affairs to such assignment be also indorsed thereon. (R. S. § 2106.)

## DERIVATION

Act May 21, 1872, ch. 177, § 2, 17 Stat. 136.

## § 85. Contracts relating to tribal funds or property.

No contract made with any Indian, where such contract relates to the tribal funds or property in the hands of the United States, shall be valid, nor shall any payment for services rendered in relation thereto be made unless the consent of the United States has previously been given. (June 30, 1913, ch. 4, § 18, 38 Stat. 97.)

## § 86. Contracts for compensation for services in relation to enrollment in Five Civilized Tribes.

Unless the consent of the United States shall have previously been given, all contracts made with any person, or persons, applicants for enrollment as citizens in the Five Civilized Tribes for compensation for services in relation thereto, are declared to be void and of no effect, and the collection or receipt of any moneys from any such applicants for citizenship shall constitute an offense against the laws of the United States, punishable by a fine of not exceeding \$500 or imprisonment for not exceeding six months, or both, and lands allotted to such applicants whether Indians or freedmen shall not be affected or encumbered by any deed, debt, or obligation of any character contracted prior to the time at which said land may be alienated under the laws of the United States. (Aug. 1, 1914, ch. 222, § 17, 38 Stat. 601.)

## § 87. Interest of agents and employees in Indian contracts.

No agent or employee of the United States Government or of any of the departments thereof, while in the service of the Government, shall have any interest, directly or indirectly, contingent or absolute, near or remote, in any contract made, or under negotiation, with the Government or with the Indians, for the purchase or transportation or delivery of goods or supplies for the Indians, or for the removal of the Indians; nor shall any such agent or employee collude with any person who may attempt to obtain any such contract for the purpose of enabling such person to obtain the same. The violation of any of the provisions of this section shall be

a misdemeanor, and shall be punished by a fine of not less than \$500 nor more than \$5,000, and by removal from office; and, in addition thereto, the court shall, in its discretion, have the power to punish by imprisonment of not more than six months. (June 22, 1874, ch. 389, § 10, 18 Stat. 177.)

## CROSS REFERENCE

This section as limitation upon right of Indian employees of Government to Indian benefits, see section 441 of this title.

## § 87a. Same; purchases from Indians by employees.

Anything contained in sections 68 and 87 of this title to the contrary notwithstanding, employees of the United States Government, including those in the Indian Service, may, under such rules and regulations as the Secretary of the Interior shall prescribe, be permitted to purchase from any Indian or Indian organization any arts and crafts or any other product, service, or commodity, produced, rendered, owned, controlled, or furnished by any Indian or Indian organization: *Provided, however,* That no employee of the United States Government shall be permitted to make any such purchases for the purpose of engaging directly or indirectly in the commercial selling, reselling, trading, or bartering of said purchases by the said employee. (June 19, 1939, ch. 210, 53 Stat. 840.)

## CROSS REFERENCE

Section, a portion of act June 19, 1939, cited to text, is duplicated as section 68a of this title. The final proviso of said act constitutes section 441 of this title.

## § 88. False vouchers, accounts, or claims.

Any disbursing or other officer of the United States, or other person, who shall knowingly present, or cause to be presented, any voucher, account, or claim to any officer of the United States, for approval or payment, or for the purpose of securing a credit in any account with the United States, relating to any matter pertaining to the Indian Service, which shall contain any material misrepresentation of fact in regard to the amount due or paid, the name or character of the article furnished or received; or of the service rendered, or to the date of purchase, delivery, or performance of service, or in any other particular, shall not be entitled to payment or credit for any part of said voucher, account, or claim; and if any such credit shall be given or received, or payment made, the United States may recharge the same to the officer or person receiving the credit or payment, and recover the amount from either or from both, in the same manner as other debts due the United States are collected: *Provided,* That where an account contains more than one voucher the foregoing shall apply only to such vouchers as contain the misrepresentation: *And provided further,* That the officers and persons by and between whom the business is transacted shall, in all civil actions in settlement of accounts, be presumed to know the facts in relation to the matter set forth in the voucher, account, or claim: *And provided further,* That the foregoing shall be in addition to the penalties prescribed by law, and in no way affect proceedings under existing law for like offenses. Where practicable this section

shall be printed on the blank forms of vouchers provided for general use. (July 4, 1884, ch. 180, § 8, 23 Stat. 97.)

#### Chapter 4.—PERFORMANCE BY UNITED STATES OF OBLIGATIONS TO INDIANS

##### PURCHASE OF SUPPLIES

- Sec.  
 91, 92. Purchase of goods for Indians.  
 93-95. Repealed.  
 96. Copies of contracts furnished to General Accounting Office before payment.  
 97. Proposals or bids for contracts to be preserved.  
 98. Purchase of supplies without authority.  
 99. Contracts for supplies in advance of appropriations.  
 100. Transportation of supplies under contract or by common carrier.  
 101. Payment for wagon transportation.  
 102. Payment of costs for furnishing coal for Indian Service.  
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##### DISBURSEMENT OF MONEYS AND SUPPLIES

111. Payment of annuities and distribution of goods.  
 112. Persons present at delivery of goods and money.  
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 123. Expenditure from tribal funds without specific appropriations.  
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 124. Expenditures from tribal funds of Five Civilized Tribes without specific appropriations.  
 125. Expenditure of moneys of tribes of Quapaw Agency.  
 126. Payment of claims for Indian depredations.  
 127. Moneys or annuities of hostile Indians.  
 128. Appropriations not paid to Indians at war with United States.  
 129. Moneys due Indians holding captives other than Indians withheld.  
 130. Withholding of moneys or goods on account of intoxicating liquors.  
 131. Advances to disbursing officers.  
 132. Mode of distribution of goods.  
 133. Rolls of Indians entitled to supplies.  
 134. Appropriations for supplies available immediately; time for distribution.  
 135. Supplies distributed so as to prevent deficiencies.  
 136. Commutation of rations and other supplies; payment per capita.  
 137. Supplies distributed to able-bodied males on condition.  
 138. Goods withheld from chiefs violating treaty stipulations.  
 139. Appropriations for subsistence.  
 140. Diversion of appropriations for employees and supplies.  
 141. Rations.  
 142. Repealed.  
 143. Statement of fiscal affairs of Indian tribes.  
 144. Repealed.  
 145. Accounts between United States and tribes under reimbursable appropriations.  
 146. Report of Indians present and receiving food.  
 147. Appropriations for specified buildings; use for transportation of materials.

Sec.

148. Appropriations for supplies; transfer to Indian Service supply fund; expenditure.

##### DEPOSIT, CARE, AND INVESTMENT OF INDIAN MONEYS

151. Deposits in bank by disbursing agents.  
 152. Proceeds of sales of Indian lands.  
 153. Appropriation to carry out treaties.  
 154. Proceeds of sales of lands not subject to certain deductions.  
 155. Disposal of miscellaneous revenues from Indian reservations, etc.  
 156. Deposit of funds from sales of lands and property of Five Civilized Tribes.  
 157. Investments of stock required by treaties.  
 158. Investment of proceeds of lands.  
 159. Moneys due incompetents or orphans.  
 160. Custody of stocks or bonds held in trust for tribes.  
 161. Deposit in Treasury of trust funds.  
 161a. Tribal funds in trust in Treasury Department; rate of interest.  
 161b. Same; "Indian Money, Proceeds of Labor" fund; separate accounts for respective tribes; rate of interest.  
 161c. Same; surplus above requirements of fund; transfer to surplus fund of Treasury; retransfer.  
 161d. Same; disposition of accrued interest.  
 162. Repealed.  
 162a. Deposit of tribal funds in banks; bond or collateral security; investments.  
 163. Roll of membership of Indian tribes.

##### PURCHASE OF SUPPLIES

##### §§ 91, 92. Purchase of goods for Indians.

Subject matter of these sections, R. S. 2083 and R. S. 2084, relating to the purchase of goods for Indians, is now covered by sections 5 and 16 of Title 41, Public Contracts.

##### PROCUREMENT FUNCTIONS

The function of determination of policies and methods of procurement, warehousing, and distribution of property, facilities, structures, improvements, machinery, equipment, stores, and supplies exercised by any agency was transferred to a Procurement Division in the Treasury Department by Ex. Ord. No. 6166, June 10, 1933, set out in note to section 132 of Title 5, Executive Departments and Government Officers and Employees.

##### § 93. Repealed. Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111.

Section, acts June 25, 1910, ch. 431, § 23, 36 Stat. 861; May 18, 1916, ch. 125, § 1, 39 Stat. 126; Jan. 12, 1927, ch. 27, 44 Stat. 936, related to the purchase of Indian supplies and services. The same subject matter is now covered by sections 6-6b of Title 41, Public Contracts.

Construction of repeal, see note under section 6 of Title 41, Public Contracts.

##### § 94. Repealed. Dec. 16, 1930, ch. 14, § 1, 46 Stat. 1028.

Section, act Apr. 30, 1908, ch. 153, 35 Stat. 71, related to the purchase of supplies, advertisement therefor, and supplies for irrigation works. Subject matter of section is now covered by section 5 of Title 41, Public Contracts.

##### § 95. Repealed. Mar. 27, 1939, ch. 18, 53 Stat. 551.

Section, acts Mar. 3, 1875, ch. 132, § 9, 18 Stat. 450; May 18, 1916, ch. 125, § 1, 39 Stat. 129, referred to bids under advertisements for goods or supplies.

##### § 96. Copies of contracts furnished to General Accounting Office before payment.

Copies of all contracts made by the Commissioner of Indian Affairs, or any other officer of the Government for the Indian Service, shall be furnished to the General Accounting Office before any payment

shall be made thereon. (Mar. 3, 1875, ch. 132, § 7, 18 Stat. 450; July 31, 1894, ch. 174, §§ 3, 7, 28 Stat. 205, 206; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

#### CROSS REFERENCE

Similar provision is also contained in section 20 of Title 41, Public Contracts.

#### § 97. Proposals or bids for contracts to be preserved.

In all lettings of contracts in connection with the Indian Service, the proposals or bids received shall be filed and preserved; and an abstract of all bids or proposals received for the supplies or services embraced in any contract shall be attached to, and filed with, the said contract when the same is filed in the General Accounting Office. (Aug. 15, 1876, ch. 289, § 3, 19 Stat. 199; July 31, 1894, ch. 174, § 4, 28 Stat. 205; June 21, 1906, ch. 3504, 34 Stat. 328; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

#### TRANSFER OF FUNCTIONS

The function of determination of policies and methods of procurement, warehousing, and distribution of property, facilities, structures, improvements, machinery, equipment, stores, and supplies exercised by any agency was transferred to a Procurement Division in the Treasury Department by Ex. Ord. No. 6166, June 10, 1933, set out in note to section 132 of Title 5, Executive Departments and Government Officers and Employees.

#### § 98. Purchase of supplies without authority.

No claims for supplies for Indians, purchased without authority of law, shall be paid out of any appropriation for expenses of the Office of Indian Affairs, or for Indians. (R. S. § 2085.)

#### DERIVATION

Act July 15, 1870, ch. 296, § 2, 16 Stat. 380.

#### § 99. Contracts for supplies in advance of appropriations.

The Commissioner of Indian Affairs is authorized to advertise in the spring of each year for bids, and enter into contracts, subject to the approval of the Secretary of the Interior, for goods and supplies for the Indian Service required for the ensuing fiscal year, notwithstanding the fact that the appropriations for such fiscal year have not been made, and the contracts so made shall be on the basis of the appropriations for the preceding fiscal year, and shall contain a clause that no deliveries shall be made under the same and no liability attach to the United States in consequence of such execution if Congress fails to make an appropriation for such contract for the fiscal year for which those supplies are required. (Aug. 15, 1894, ch. 290, § 4, 28 Stat. 312.)

#### TRANSFER OF FUNCTIONS

The function of determination of policies and methods of procurement, warehousing, and distribution of property, facilities, structures, improvements, machinery, equipment, stores, and supplies exercised by any agency was transferred to a Procurement Division in the Treasury Department by Ex. Ord. No. 6166, June 10, 1933, set out in note to section 132 of Title 5, Executive Departments and Government Officers and Employees.

#### § 100. Transportation of supplies under contract or by common carrier.

Indian goods and supplies shall be transported by contract, the contracts if involving an expenditure

of more than \$2,000 being advertised and let to the lowest responsible bidder, or in open market by common carriers, as the Secretary of the Interior in his discretion shall determine. (Mar. 3, 1877, ch. 101, § 1, 19 Stat. 291; July 7, 1898, ch. 571, § 1, 30 Stat. 676.)

#### TRANSFER OF FUNCTIONS

The function of determination of policies and methods of procurement, warehousing, and distribution of property, facilities, structures, improvements, machinery, equipment, stores, and supplies exercised by any agency was transferred to a Procurement Division in the Treasury Department by Ex. Ord. No. 6166, June 10, 1933, set out in note to section 132 of Title 5, Executive Departments and Government Officers and Employees.

#### § 101. Payment for wagon transportation.

All wagon transportation from the point where delivery is made by the last common carrier to the agency, school, or elsewhere, and between points on the reservation or elsewhere, shall be paid from the funds appropriated or otherwise available for the support of the school, agency, or other project for which the supplies to be transported are purchased. (June 30, 1913, ch. 4, § 1, 38 Stat. 79.)

#### TRANSFER OF FUNCTIONS

The function of determination of policies and methods of procurement, warehousing, and distribution of property, facilities, structures, improvements, machinery, equipment, stores, and supplies exercised by any agency was transferred to a Procurement Division in the Treasury Department by Ex. Ord. No. 6166, June 10, 1933, set out in note to section 132 of Title 5, Executive Departments and Government Officers and Employees.

#### § 102. Payment of costs for furnishing coal for Indian Service.

The cost of inspection, storage, transportation, and so forth, of coal for the Indian Service shall be paid from the support fund of the school or agency for which the coal is purchased. (Feb. 14, 1920, ch. 75, § 1, 41 Stat. 412.)

#### § 103. Repealed. Dec. 16, 1930, ch. 14, § 1, 46 Stat. 1028.

Section, act Apr. 30, 1908, ch. 153, 35 Stat. 73, related to the maintenance of warehouses for goods of the Indian Service.

#### § 104. Purchase of articles manufactured at schools.

The Secretary of the Interior is authorized, whenever it can be done advantageously, to purchase for use in the Indian Service, from Indian manual and training schools, in the manner customary among individuals such articles as may be manufactured at such schools, and which are used in the Indian Service. Accounts of such transactions shall be kept in the Indian Bureau and in the training schools, and reports thereof made from time to time. (May 11, 1880, ch. 85, § 1, 21 Stat. 131.)

#### TRANSFER OF FUNCTIONS

The function of determination of policies and methods of procurement, warehousing, and distribution of property, facilities, structures, improvements, machinery, equipment, stores, and supplies exercised by any agency was transferred to a Procurement Division in the Treasury Department by Ex. Ord. No. 6166, June 10, 1933, set out in note to section 132 of Title 5, Executive Departments and Government Officers and Employees.

## DISBURSEMENT OF MONEYS AND SUPPLIES

## § 111. Payment of annuities and distribution of goods.

The payment of all moneys and the distribution of all goods stipulated to be furnished to any Indians, or tribe of Indians, shall be made in one of the following ways, as the President or the Secretary of the Interior may direct:

First. To the chiefs of a tribe, for the tribe.

Second. In cases where the imperious interest of the tribe or the individuals intended to be benefited, or any treaty stipulation, requires the intervention of an agency, then to such person as the tribe shall appoint to receive such moneys or goods; or if several persons be appointed, then upon the joint order or receipt of such persons.

Third. To the heads of the families and to the individuals entitled to participate in the moneys or goods.

Fourth. By consent of the tribe, such moneys or goods may be applied directly, under such regulations, not inconsistent with treaty stipulations, as may be prescribed by the Secretary of the Interior, to such purposes as will best promote the happiness and prosperity of the members of the tribe, and will encourage able-bodied Indians in the habits of industry and peace. (R. S. § 2086.)

## DERIVATION

Act June 30, 1834, ch. 162, § 11, 4 Stat. 737; act Mar. 3, 1847, ch. 66, § 3, 9 Stat. 203; act Aug. 30, 1852, ch. 103, § 3, 10 Stat. 56; act July 15, 1870, ch. 296, §§ 2, 3, 16 Stat. 360.

## CROSS REFERENCES

Allowances to Sioux Indians, see section 474 of this title.

Mission schools to receive rations for enrolled children, see section 279 of this title.

## § 112. Persons present at delivery of goods and money.

The superintendent, agent, or subagent, together with such military officer as the President may direct, shall be present, and certify to the delivery of all goods and money required to be paid or delivered to the Indians. (R. S. § 2088.)

## DERIVATION

Act June 30, 1834, ch. 162, § 13, 4 Stat. 737.

## CROSS REFERENCE

Mode of distribution of goods, see section 132 of this title.

## § 113. Mode of disbursements.

At the discretion of the President all disbursements of moneys, whether for annuities or otherwise, to fulfill treaty stipulations with individual Indians or Indian tribes, shall be made in person by the superintendents of Indian affairs, where superintendencies exist, to all Indians or tribes within the limits of their respective superintendencies, in the presence of the local agents and interpreters, who shall witness the same, under such regulations as the Secretary of the Interior may direct. (R. S. § 2089.)

## DERIVATION

Act Mar. 3, 1857, ch. 90, § 1, 11 Stat. 169.

## TRANSFER OF FUNCTIONS

The function of disbursement of moneys of the United States by any agency, except as to the War Department, Navy Department, and Panama Canal, was transferred to the Treasury Department, and, together with the Office of Disbursing Clerk of that Department, was consolidated in a Division of Disbursement, by section 4 of Ex. Ord. No. 6166, June 10, 1933, and Ex. Ord. No. 6728, May 29, 1934, set out in note to section 132 of Title 5, Executive Departments and Government Officers and Employees. The Division of Disbursements was consolidated in the fiscal service by Reorg. Plan No. III, § 1 (a) (3), June 30, 1940, 5 Fed. Reg. 2107, 54 Stat. 1231, set out in note to section 132t of Title 5, supra.

## § 114. Payment of annuities in coin.

The Secretary of the Treasury is authorized to pay in coin such of the annuities as by the terms of any treaty of the United States with any Indian tribe are required to be paid in coin. (R. S. § 2081.)

## DERIVATION

Act Mar. 3, 1865, ch. 127, § 3, 13 Stat. 561.

## CROSS REFERENCE

Gold coinage discontinued, see section 315b of Title 31, Money and Finance.

## § 115. Payment of annuities in goods.

The President may, at the request of any Indian tribe, to which an annuity is payable in money, cause the same to be paid in goods, purchased as provided in section 91 of this title. (R. S. § 2082.)

## DERIVATION

Act June 30, 1834, ch. 162, § 12, 4 Stat. 737.

## § 116. Indians 18 years of age to have right to receipt for annuity.

All Indians, when they shall arrive at the age of eighteen years, shall have the right to receive and receipt for all annuity money that may be due or become due to them, if not otherwise incapacitated under the regulations of the Indian Office. (Mar. 1, 1899, ch. 324, § 8, 30 Stat. 947.)

## § 117. Payments per capita to individual Indians.

Any sums of money to be paid per capita to individual Indians shall be paid to said Indians by an officer of the Government designated by the Secretary of the Interior. (June 10, 1896, ch. 398, § 1, 29 Stat. 336.)

## TRANSFER OF FUNCTIONS

Disbursement of moneys, see note to section 113 of this title.

## § 118. Payments in satisfaction of judgments.

Payments to Indians made from moneys appropriated by Congress in satisfaction of the judgment of any court shall be made under the direction of the officers of the Interior Department charged by law with the supervision of Indian affairs, and all such payments shall be accounted for to the Treasury in conformity with law. (Mar. 3, 1911, ch. 210, § 28, 36 Stat. 1077.)

## TRANSFER OF FUNCTIONS

Disbursement of moneys, see note to section 113 of this title.

## CROSS REFERENCE

Public accounts to be settled in General Accounting Office, see sections 71, 72, of Title 31, Money and Finance.

**§ 119. Allotment of tribal funds to individual Indians.**

The Secretary of the Interior is authorized, in his discretion, from time to time, to designate any individual Indian belonging to any tribe or tribes whom he may deem to be capable of managing his or her affairs, and he may cause to be apportioned and allotted to any such Indian his or her pro rata share of any tribal or trust funds on deposit in the Treasury of the United States to the credit of the tribe or tribes of which said Indian is a member, and the amount so apportioned and allotted shall be placed to the credit of such Indian upon the books of the Treasury, and the same shall thereupon be subject to the order of such Indian: *Provided*, That no apportionment or allotment shall be made to any Indian until such Indian has first made an application therefor: *Provided further*, That the Secretaries of the Interior and of the Treasury are directed to withhold from such apportionment and allotment a sufficient sum of the said Indian funds as may be necessary or required to pay any existing claims against said Indians that may be pending for settlement by judicial determination in the Court of Claims or in the Executive Departments of the Government, at time of such apportionment and allotment. (Mar. 2, 1907, ch. 2523, § 1, 34 Stat. 1221.)

**CROSS REFERENCE**

Trust funds on deposit in Treasury, see section 725s of Title 31, Money and Finance, and note thereto.

**§ 120. Per capita payments to enrolled members of Choctaw and Chickasaw Tribes.**

The Secretary of the Interior, under rules and regulations to be prescribed by him, is authorized to make per capita payments of not to exceed \$200 annually to the enrolled members of the Choctaw and Chickasaw Tribes of Indians of Oklahoma, entitled under existing law to share in the funds of said tribes, or to their lawful heirs, of all the available money held by the Government of the United States for the benefit of said tribes in excess of that required for expenditures authorized by annual appropriations made therefrom or by existing law. (Feb. 14, 1920, ch. 75, § 18, 41 Stat. 427.)

**§ 121. Payment of share of tribal funds to helpless Indians.**

The pro rata share of any Indian who is mentally or physically incapable of managing his or her own affairs may be withdrawn from the Treasury in the discretion of the Secretary of the Interior and expended for the benefit of such Indian under such rules, regulations, and conditions as the said Secretary may prescribe: *Provided*, That said funds of any Indian shall not be withdrawn from the Treasury until needed by the Indian and upon his application and when approved by the Secretary of the Interior. (Mar. 2, 1907, ch. 2523, § 2, 34 Stat. 1221; May 18, 1916, ch. 125, § 1, 39 Stat. 128.)

**CROSS REFERENCE**

Trust funds on deposit in Treasury, see section 725s of Title 31, Money and Finance, and note thereto.

**§ 122. Limitation on application of tribal funds.**

No funds belonging to any Indian tribe with which treaty relations exist shall be applied in any manner not authorized by such treaty, or by express provisions of law; nor shall money appropriated to execute a treaty be transferred or applied to any other purpose, unless expressly authorized by law. (R. S. § 2097.)

**DERIVATION**

Act July 26, 1866, ch. 266, § 2, 14 Stat. 280.

**§ 123. Expenditure from tribal funds without specific appropriations.**

No money shall be expended from Indian tribal funds without specific appropriation by Congress except as follows: Equalization of allotments, education of Indian children in accordance with existing law, per capita and other payments, all of which are hereby continued in full force and effect: *Provided*, That this shall not change existing law with reference to the Five Civilized Tribes. (May 18, 1916, ch. 125, § 27, 39 Stat. 158.)

**CROSS REFERENCES**

Insurance for protection of tribal property authorized to be paid for out of tribal funds, see section 123a of this title.

Trust funds on deposit in Treasury, see section 725s of Title 31, Money and Finance, and note thereto.

**§ 123a. Tribal funds; use to purchase insurance for protection of tribal property.**

The funds of any tribe of Indians under the control of the United States may be used for payments of insurance premiums for protection of the property of the tribe against fire, theft, tornado, hail, earthquake, and other elements and forces of nature. (Apr. 13, 1926, ch. 118, 44 Stat. 242.)

**§ 123b. Tribal funds for traveling and other expenses.**

Hereafter tribal funds shall be available for appropriation by Congress for traveling and other expenses, including supplies and equipment, of members of tribal councils, business committees, or other tribal organizations, when engaged on business of the tribes. (May 9, 1938, ch. 187, § 1, 52 Stat. 315.)

**§ 124. Expenditures from tribal funds of Five Civilized Tribes without specific appropriations.**

No money shall be expended from tribal funds belonging to the Five Civilized Tribes without specific appropriation by Congress. (May 24, 1922, ch. 199, 42 Stat. 575.)

**§ 125. Expenditure of moneys of tribes of Quapaw Agency.**

No moneys shall be expended from tribal or individual funds belonging to the Quapaw or other tribes of Indians of the Quapaw Agency in the State of Oklahoma without specific authority of law. (June 30, 1919, ch. 4, § 17, 41 Stat. 20.)

**CROSS REFERENCE**

Insurance for protection of tribal property authorized to be paid for out of tribal funds, see section 123a of this title.

**§ 126. Payment of claims for Indian depredations.**

No part of the moneys which may be appropriated in any general act or deficiency bill making appropriations for the current and contingent expenses incurred in Indian affairs, to pay annuities due to or to be used and expended for the care and benefit of any tribe or tribes of Indians, shall be applied to the payment of any claim for depredations that may have been or may be committed by such tribe or tribes, or any member or members thereof. No claims for Indian depredations shall be paid until Congress shall make special appropriation therefor. (R. S. § 2098.)

## DERIVATION

Act July 15, 1870, ch. 296, § 4, 16 Stat. 360.

**§ 127. Moneys or annuities of hostile Indians.**

No moneys or annuities stipulated by any treaty with an Indian tribe for which appropriations are made shall be expended for, or paid, or delivered to any tribe which, since the next preceding payment under such treaty, has engaged in hostilities against the United States, or against its citizens peacefully or lawfully sojourning or traveling within its jurisdiction at the time of such hostilities; nor in such case shall such stipulated payments or deliveries be resumed until new appropriations shall have been made therefor by Congress. (R. S. § 2100; May 29, 1928, ch. 901, § 1, 45 Stat. 992.)

## DERIVATION

Act Mar. 2, 1867, ch. 173, § 2, 14 Stat. 515.

**§ 128. Appropriations not paid to Indians at war with United States.**

None of the appropriations made for the Indian Service shall be paid to any band of Indians or any portion of any band while at war with the United States or with the white citizens of any of the States or Territories. (Mar. 3, 1875, ch. 132, § 2, 18 Stat. 449.)

**§ 129. Moneys due Indians holding captives other than Indians withheld.**

The Secretary of the Interior is authorized to withhold, from any tribe of Indians who may hold any captives other than Indians, any moneys due them from the United States until said captives shall be surrendered to the lawful authorities of the United States. (Mar. 3, 1875, ch. 132, § 1, 18 Stat. 424.)

**§ 130. Withholding of moneys or goods on account of intoxicating liquors.**

No annuities, or moneys, or goods, shall be paid or distributed to Indians while they are under the influence of any description of intoxicating liquor, nor while there are good and sufficient reasons leading the officers or agents, whose duty it may be to make such payments or distribution, to believe that there is any species of intoxicating liquor within convenient reach of the Indians, nor until the chiefs and headmen of the tribe shall have pledged themselves to use all their influence and to make all proper exertions to prevent the introduction and sale of such liquor in their country. (R. S. § 2087.)

## DERIVATION

Act Mar. 3, 1847, ch. 66, § 3, 9 Stat. 203.

**§ 131. Advances to disbursing officers.**

No superintendent of Indian affairs, or Indian agent, or other disbursing officer in such service, shall have advanced to him, on Indian or public account, any money to be disbursed in future, until such superintendent, agent, or officer in such service has settled his accounts of the preceding year, and has satisfactorily shown that all balances in favor of the Government, which may appear to be in his hands, are ready to be paid over on the order of the Secretary of the Interior. (R. S. § 2092.)

## DERIVATION

Act June 27, 1846, ch. 34, § 1, 9 Stat. 20.

## TRANSFER OF FUNCTIONS

Disbursement of money, see note to section 113 of this title.

**§ 132. Mode of distribution of goods.**

Whenever goods and merchandise are delivered to the chiefs of a tribe, for the tribe, such goods and merchandise shall be turned over by the agent or superintendent of such tribe to the chiefs in bulk, and in the original package, as nearly as practicable, and in the presence of the headmen of the tribe, if practicable, to be distributed to the tribe by the chiefs in such manner as the chiefs may deem best, in the presence of the agent or superintendent. (R. S. § 2090.)

## DERIVATION

Act Apr. 10, 1869, ch. 16, § 2, 16 Stat. 39.

## CROSS REFERENCE

Persons present at delivery of goods, see section 112 of this title.

**§ 133. Rolls of Indians entitled to supplies.**

For the purpose of properly distributing the supplies appropriated for the Indian Service, it is made the duty of each agent in charge of Indians and having supplies to distribute, to make out, at the commencement of each fiscal year, rolls of the Indians entitled to supplies at the agency, with the names of the Indians and of the heads of families or lodges, with the number in each family or lodge, and to give out supplies to the heads of families, and not to the heads of tribes or bands, and not to give out supplies for a greater length of time than one week in advance. (Mar. 3, 1875, ch. 132, § 4, 18 Stat. 449.)

## CROSS REFERENCE

Indian agents abolished, see note under section 64 of this title.

**§ 134. Appropriations for supplies available immediately; time for distribution.**

So much of the appropriations of any annual Indian Appropriation Act as may be required to pay for goods and supplies, for expenses incident to their purchase, and for transportation of the same, for the fiscal year for which such appropriations are made, shall be immediately available, upon the approval of such Act, but no such goods or supplies shall be distributed or delivered to any of said In-

dians prior to the beginning of such fiscal year. (Mar. 1, 1907, ch. 2285, 34 Stat. 1016.)

**§ 135. Supplies distributed so as to prevent deficiencies.**

It shall be the duty of the Secretary of the Interior, and the officers charged by law with the distribution of supplies to the Indians, under appropriations made by law, to distribute them and pay them out to the Indians entitled to them, in such proper proportions as that the amount of appropriation made for the current year shall not be expended before the end of such current year, so as to prevent deficiencies; and no expenditure shall be made or liability incurred on the part of the Government on account of the Indian Service for any fiscal year (unless in compliance with existing law) beyond the amount of money previously appropriated for said service during such year. (Mar. 3, 1875, ch. 132, § 6, 18 Stat. 450.)

**§ 136. Commutation of rations and other supplies; payment per capita.**

When, in the judgment of the Secretary of the Interior, any Indian tribe, or part thereof, who are receiving rations and clothing and other supplies under the Act of July 1, 1898, chapter 545, are sufficiently advanced in civilization to purchase such rations and clothing and other supplies judiciously, they may commute the same and pay the value thereof in money per capita to such tribe or part thereof, the manner of such payment to be prescribed by the Secretary of the Interior. (July 1, 1898, ch. 545, § 7, 30 Stat. 596.)

**§ 137. Supplies distributed to able-bodied males on condition.**

For the purpose of inducing Indians to labor and become self-supporting, it is provided that, in distributing the supplies and annuities to the Indians for whom the same are appropriated, the agent distributing the same shall require all able-bodied male Indians between the ages of eighteen and forty-five to perform service upon the reservation, for the benefit of themselves or of the tribe, at a reasonable rate, to be fixed by the agent in charge, and to an amount equal in value to the supplies to be delivered; and the allowances provided for such Indians shall be distributed to them only upon condition of the performance of such labor, under such rules and regulations as the agent may prescribe; *Provided*, That the Secretary of the Interior may, by written order, except any particular tribe, or portion of tribe, from the operation of this provision where he deems it proper and expedient. (Mar. 3, 1875, ch. 132, § 3, 18 Stat. 449.)

**CROSS REFERENCE**

Indian agents abolished, see note under section 64 of this title.

**§ 138. Goods withheld from chiefs violating treaty stipulations.**

No delivery of goods or merchandise shall be made to the chiefs of any tribe, by authority of any treaty, if such chiefs have violated the stipulations contained in such treaty upon their part. (R. S. § 2101.)

**DERIVATION**

Act Apr. 10, 1869, ch. 16, § 2, 16 Stat. 39.

**§ 139. Appropriations for subsistence.**

The Secretary of the Interior, under the direction of the President, may use any surplus that may remain in any of the appropriations for the purchase of subsistence for the several Indian tribes, to an amount not exceeding \$25,000 in the aggregate, to supply any subsistence deficiency that may occur: *Provided*, That any diversions which shall be made under authority of this section shall be reported in detail, and the reason therefor, to Congress, at the session of Congress next succeeding such diversion. (Mar. 1, 1907, ch. 2285, 34 Stat. 1016.)

**§ 140. Diversion of appropriations for employees and supplies.**

The several appropriations made for millers, blacksmiths, engineers, carpenters, physicians, and other persons, and for various articles provided for by treaty stipulation for the several Indian tribes, may be diverted to other uses for the benefit of said tribes, respectively, within the discretion of the President, and with the consent of said tribes, expressed in the usual manner; and he shall cause report to be made to Congress, at its next session thereafter of his action under this provision. (Mar. 1, 1907, ch. 2285, 34 Stat. 1016.)

**§ 141. Rations.**

The President is authorized to cause such rations as he deems proper, and as can be spared from the Army provisions without injury to the service, to be issued, under such regulations as he shall think fit to establish, to Indians who may visit the military posts or agencies of the United States on the frontiers, or in their respective nations; and a special account of these issues shall be kept and rendered. (R. S. § 2110.)

**DERIVATION**

Act June 30, 1834, ch. 162, § 16, 4 Stat. 738.

**§ 142. Repealed. May 29, 1928, ch. 901, § 1 (87), 45 Stat. 992.**

Section, act May 18, 1916, ch. 125, § 27, 39 Stat. 158, related to annual reports to Congress of tribal financial matters.

**§ 143. Statement of fiscal affairs of Indian tribes.**

Annually, on the first Monday in December, the Secretary of the Interior shall transmit to the Speaker of the House of Representatives a statement of the fiscal affairs of all Indian tribes for whose benefit expenditures from either public or tribal funds shall have been made by any officer, clerk, or employee in the Interior Department during the preceding fiscal year; and such statement shall show (1) the total amount of all moneys, from whatever source derived, standing to the credit of each tribe of Indians, in trust or otherwise, at the close of such fiscal year; (2) an analysis of such credits, by funds, showing how and when they were created, whether by treaty stipulation, agreement, or otherwise; (3) the total amount of disbursements from public or trust funds made on account of each tribe of Indians



for such fiscal year; and (4) an analysis of such disbursements showing the amounts disbursed (a) for per capita payments in money to Indians, (b) for salaries or compensation of officers and employees, (c) for compensation of counsel and attorney's fees, and (d) for support and civilization. (Mar. 3, 1911, ch. 210, § 27, 36 Stat. 1077.)

§ 144. Repealed. May 29, 1928, ch. 901, § 1 (66), 45 Stat. 991.

Section, act Aug. 1, 1914, ch. 222, § 1, 38 Stat. 587, related to an annual report of moneys appropriated for encouragement of industry.

§ 145. Accounts between United States and tribes under reimbursable appropriations.

The Secretary of the Interior shall cause to be stated annual accounts between the United States and each tribe of Indians arising under appropriations made, which by law are required to be reimbursed to the United States, crediting in said accounts the sums so reimbursed, if any; and the Secretary of the Interior shall pay, out of any fund or funds belonging to such tribe or tribes of Indians applicable thereto and held by the United States in trust or otherwise, all balances of accounts due to the United States and not already reimbursed to the Treasury, and deposit such sums in the Treasury as miscellaneous receipts; and such accounts shall be received and examined by the General Accounting Office and the balances arising thereon certified to the Secretary of the Treasury. (Apr. 4, 1910, ch. 140, § 1, 36 Stat. 270; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

§ 146. Report of Indians present and receiving food.

Whenever the issue of food, clothing, or supplies of any kind to Indians is provided for, it shall be the duty of the agent or commissioner issuing the same, at such issue thereof, whether it be both of food and clothing, or either of them, or of any kind of supplies, to report to the Commissioner of Indian Affairs the number of Indians present and actually receiving the same. (R. S. § 2109.)

#### DERIVATION

Act Feb. 14, 1873, ch. 138, § 7, 17 Stat. 463-464.

§ 147. Appropriations for specified buildings; use for transportation of materials.

Appropriations for specified buildings in the Indian Service shall be used for the transportation of materials purchased therefrom. (Jan. 12, 1927, ch. 27, § 1, 44 Stat. 939.)

§ 148. Appropriations for supplies; transfer to Indian Service supply fund; expenditure.

From time to time there is authorized to be transferred from each or any appropriation or fund available for the purchase of supplies for the Indian Service, to a fund to be set up and carried on the books of the Treasury as an Indian Service supply fund, such amounts as the Secretary of the Interior may estimate to be required to pay for supplies purchased through Indian warehouses for the Indian field service; and the expenditure of the said Indian Service supply fund for the purpose

stated is hereby authorized, necessary adjustments to be made thereafter to the end that each appropriation and fund ultimately will be charged only with the cost of the supplies legally chargeable thereto. (Jan. 12, 1927, ch. 27, § 1, 44 Stat. 939.)

### DEPOSIT, CARE, AND INVESTMENT OF INDIAN MONEYS

§ 151. Deposits in bank by disbursing agents.

Any United States Indian agent, superintendent, or other disbursing agent of the Indian Service may deposit Indian moneys, individual or tribal, coming into his hands as custodian, in such national bank or banks as he may select: *Provided*, That the bank or banks so selected by him shall first execute to said disbursing agent a bond, with approved surety, in such an amount as will properly safeguard the funds to be deposited. Such bond shall be subject to the approval of the Secretary of the Interior. (Apr. 30, 1908, ch. 153, 35 Stat. 73; June 25, 1910, ch. 431, § 1, 36 Stat. 855; Mar. 3, 1928, ch. 122, 45 Stat. 161; Apr. 30, 1934, ch. 169, 48 Stat. 648.)

#### CODIFICATION

This section is also set out in the last two provisos of section 372 of this title.

#### TRANSFER OF FUNCTIONS

Disbursement of money, see note to section 113 of this title.

#### CROSS REFERENCE

Indian agents abolished, see note under section 64 of this title.

§ 152. Proceeds of sales of Indian lands.

All moneys received from the sales of lands that have been, or may be, ceded to the United States by Indian tribes, by treaties providing for the investment or payment to the Indians, parties thereto, of the proceeds of the lands ceded by them, respectively, after deducting the expenses of survey and sale, any sums stipulated to be advanced, and the expenses of fulfilling any engagements contained therein, shall be paid into the Treasury in the same manner that moneys received from the sales of public lands are paid into the Treasury. (R. S. § 2093.)

#### DERIVATION

Act Jan. 9, 1837, ch. 1, § 1, 5 Stat. 135.

#### CROSS REFERENCE

Proceeds of sales of Indian lands not subject to deductions for expenses of public land service, see section 184 of this title.

§ 153. Appropriation to carry out treaties.

All sums that are or may be required to be paid, and all moneys that are or may be required to be invested by the treaties mentioned in section 152 of this title are appropriated in conformity to them, and shall be drawn from the Treasury as other public moneys are drawn therefrom, under such instructions as may from time to time be given by the President. (R. S. § 2094.)

#### DERIVATION

Act Jan. 9, 1837, ch. 1, § 2, 5 Stat. 135.

**§ 154. Process of sales of lands not subject to certain deductions.**

No part of the expenses of the public lands service shall be deducted from the proceeds of Indian lands sold through the General Land Office, except as authorized by the treaty or agreement providing for the disposition of the lands. (July 4, 1884, ch. 180, § 10, 23 Stat. 98.)

**§ 155. Disposal of miscellaneous revenues from Indian reservations, etc.**

All miscellaneous revenues derived from Indian reservations, agencies, and schools, except those of the Five Civilized Tribes and not the result of the labor of any member of such tribe, which are not required by existing law to be otherwise disposed of, shall be covered into the Treasury of the United States under the caption "Indian moneys, proceeds of labor", and are hereby made available for expenditure, in the discretion of the Secretary of the Interior, for the benefit of the Indian tribes, agencies, and schools on whose behalf they are collected, subject, however, to the limitations as to tribal funds, imposed by sections 123 and 142 of this title. (Mar. 3, 1883, ch. 141, § 1, 22 Stat. 590; Mar. 2, 1887, ch. 320, 24 Stat. 463; May 17, 1926, ch. 309, § 1, 44 Stat. 560; May 29, 1928, ch. 901, § 1, 45 Stat. 991.)

**CROSS REFERENCES**

Indian moneys, proceeds of labor to be classified on books of Treasury as trust fund, see section 725a of Title 31, Money and Finance.

Tribal funds included in fund "Indian Money, Proceeds of Labor" to be carried in Treasury Department in separate accounts for the respective tribes, see section 161b of this title.

**§ 156. Deposit of funds from sales of lands and property of Five Civilized Tribes.**

The net receipts from the sales of surplus and unallotted lands and other tribal property belonging to any of the Five Civilized Tribes, after deducting the necessary expense of advertising and sale, may be deposited in national or State banks in the State of Oklahoma in the discretion of the Secretary of the Interior, such depositories to be designated by him under such rules and regulations governing the rate of interest thereon, the time of deposit and withdrawal thereof, and the security therefor, as he may prescribe. The interest accruing on such funds may be used to defray the expense of the per capita payments of such funds. (Mar. 3, 1911, ch. 210, § 17, 36 Stat. 1070.)

**§ 157. Investments of stock required by treaties.**

All investments of stock, that are or may be required by treaties with the Indians, shall be made under the direction of the President; and special accounts of the funds under such treaties shall be kept at the Treasury, and statements thereof be annually laid before Congress. (R. S. § 2095.)

**DERIVATION**

Act Jan. 9, 1837, ch. 1, § 3, 5 Stat. 135.

**§ 158. Investment of proceeds of lands.**

The Secretary of the Interior shall invest in a manner which shall be in his judgment most safe,

and beneficial for the fund, all moneys that may be received under treaties containing stipulations for the payment to the Indians, annually, of interest upon the proceeds of the lands ceded by them; and he shall make no investment of such moneys, or of any portion, at a lower rate of interest than 5 per centum per annum. (R. S. § 2096.)

**DERIVATION**

Act Jan. 9, 1837, ch. 1, § 4, 5 Stat. 135.

**CROSS REFERENCES**

Custody of stocks or bonds held in trust for tribes to be in Secretary of Treasury, see section 160 of this title.

Deposit of Indian trust funds in Treasury, see section 161 of this title.

**§ 159. Moneys due incompetents or orphans.**

The Secretary of the Interior is directed to cause settlements to be made with all persons appointed by the Indian councils to receive moneys due to incompetent or orphan Indians, and to require all moneys found to be due to such incompetent or orphan Indians to be returned to the Treasury; and all moneys so returned shall bear interest at the rate of 6 per centum per annum, until paid by order of the Secretary of the Interior to those entitled to the same. No money shall be paid to any person appointed by any Indian council to receive moneys due to incompetent or orphan Indians, but the same shall remain in the Treasury of the United States until ordered to be paid by the Secretary to those entitled to receive the same, and shall bear 6 per centum interest until so paid. (R. S. § 2108.)

**DERIVATION**

Act July 5, 1862, ch. 135, § 6, 12 Stat. 529.

**CROSS REFERENCE**

Payment of money accruing to Indian incompetents or minors from Veterans' Administration or other governmental agencies, see section 14 of this title.

**§ 160. Custody of stocks or bonds held in trust for tribes.**

All stocks, bonds, or other securities or evidences of indebtedness held by the Secretary of the Interior on June 10, 1876, in trust for the benefit of certain Indian tribes shall, within thirty days from that date, be transferred to the Treasurer of the United States, who shall become the custodian thereof; and it shall be the duty of said Treasurer to collect all interest falling due on said bonds, stocks, and so forth, and deposit the same in the Treasury of the United States, and to issue certificates of deposit therefor, in favor of the Secretary of the Interior, as trustees for various Indian tribes. And the Treasurer of the United States shall also become the custodian of all bonds and stocks which may be purchased for the benefit of any Indian tribe or tribes after the transfer of funds herein authorized, and shall make all purchases and sales of bonds and stocks authorized by treaty stipulations or by acts of Congress when requested so to do by the Secretary of the Interior: *Provided*, That nothing in this section shall in any manner impair or affect the supervisory and appellate powers and duties in regard to Indian affairs which may be vested in the Secretary of the

Interior as trustee for various Indian tribes, except as to the custody of said bonds and the collection of interest thereon as hereinbefore mentioned. (June 10, 1876, ch. 122, 19 Stat. 58.)

**§ 161. Deposit in Treasury of trust funds.**

The Secretary of the Interior is authorized to deposit, in the Treasury of the United States, any and all sums held by him on April 1, 1880, or which may be received by him, as Secretary of the Interior and trustee of various Indian tribes, on account of the redemption of United States bonds, or other stocks and securities belonging to the Indian trust fund, and all sums received on account of sales of Indian trust lands, and the sales of stocks lately purchased for temporary investment, whenever he is of the opinion that the best interests of the Indians will be promoted by such deposits, in lieu of investments; and the United States shall pay interest semiannually, from the date of deposit of any and all such sums in the United States Treasury, at the rate per annum stipulated by treaties or prescribed by law, and such payments shall be made in the usual manner, as each may become due, without further appropriation by Congress. (Apr. 1, 1880, ch. 41, 21 Stat. 70.)

**APPROPRIATIONS**

Effective July 1, 1935, the permanent appropriation provided for in the last clause of this section was repealed by act June 26, 1934, ch. 756, § 2, 48 Stat. 1225, such act authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury. See section 725a (b) of Title 31, Money and Finance.

**§ 161a. Tribal funds in trust in Treasury Department; rate of interest.**

All funds with account balances exceeding \$500 held in trust by the United States and carried in principal accounts on the books of the Treasury Department to the credit of Indian tribes, upon which interest is not otherwise authorized by law, shall bear simple interest at the rate of 4 per centum per annum. (Feb. 12, 1929, ch. 178, § 1, 45 Stat. 1164; June 13, 1930, ch. 483, 46 Stat. 584.)

**CROSS REFERENCE**

Trust funds on deposit in Treasury, see section 725s of Title 31, Money and Finance, and note thereto.

**§ 161b. Same; "Indian Money, Proceeds of Labor" fund; separate accounts for respective tribes; rate of interest.**

All tribal funds arising under section 155 of this title on June 13, 1930, included in the fund "Indian Money, Proceeds of Labor", shall, on and after July 1, 1930, be carried on the books of the Treasury Department in separate accounts for the respective tribes, and all such funds with account balances exceeding \$500 shall bear simple interest at the rate of 4 per centum per annum from July 1, 1930. (Feb. 12, 1929, ch. 178, § 2, as added June 13, 1930, ch. 483, 46 Stat. 584.)

**CROSS REFERENCE**

Trust funds on deposit in Treasury, see section 725s of Title 31, Money and Finance, and note thereto.

**§ 161c. Same; surplus above requirements of fund; transfer to surplus fund of Treasury; retransfer.**

The amount held in any tribal fund account which, in the judgment of the Secretary of the Interior, is not required for the purpose for which the fund was created, shall be covered into the surplus fund of the Treasury; and so much thereof as is found to be necessary for such purpose may at any time thereafter be restored to the account on books of the Treasury without appropriation by Congress. (Feb. 12, 1929, ch. 178, § 3, as added June 13, 1930, ch. 483, 46 Stat. 584.)

**CROSS REFERENCE**

Trust funds on deposit in Treasury, see section 725s of Title 31, Money and Finance, and note thereto.

**§ 161d. Same; disposition of accrued interest.**

The interest accruing on Indian tribal funds under sections 161a–161c of this title shall be subject to the same disposition as prescribed by existing law for the respective principal funds. (Feb. 12, 1929, ch. 178, § 4, as added June 13, 1930, ch. 483, 46 Stat. 584.)

**CROSS REFERENCE**

Trust funds on deposit in Treasury, see section 725s of Title 31, Money and Finance, and note thereto.

**§ 162. Repealed. June 24, 1938, ch. 648, § 2, 52 Stat. 1037.**

Section, act May 25, 1918, ch. 86, § 28, 40 Stat. 591, related to the segregation, deposit, and investment of tribal funds.

**§ 162a. Deposit of tribal funds in banks; bond or collateral security; investments.**

The Secretary of the Interior is hereby authorized in his discretion, and under such rules and regulations as he may prescribe, to withdraw from the United States Treasury and to deposit in banks to be selected by him the common or community funds of any Indian tribe which are, or may hereafter be, held in trust by the United States and on which the United States is not obligated by law to pay interest at higher rates than can be procured from the banks. The said Secretary is also authorized, under such rules and regulations as he may prescribe, to deposit in banks to be selected by him the funds held in trust by the United States for the benefit of individual Indians: *Provided*, That no individual Indian money shall be deposited in any bank until the bank shall have agreed to pay interest thereon at a reasonable rate, subject, however, to the regulations of the Board of Governors of the Federal Reserve System in the case of member banks, and of the Board of Directors of the Federal Deposit Insurance Corporation in the case of insured nonmember banks, except that the payment of interest may be waived in the discretion of the Secretary of the Interior on any deposit which is payable on demand: *Provided further*, That no tribal or individual Indian money shall be deposited in any bank until the bank shall have furnished an acceptable bond or pledged collateral security therefor in the form of any public-debt obligations of the United States and any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal

by the United States, except that no such bond or collateral shall be required to be furnished by any such bank which is entitled to the benefits of section 264 of Title 12 with respect to any deposits of such tribal or individual funds to the extent that such deposits are insured under such section: *Provided, however*, That nothing contained in this section, or in section 264 of Title 12, shall operate to deprive any Indian having unrestricted funds on deposit in any such bank of the full protection afforded by section 264 of Title 12, irrespective of any interest such Indian may have in any restricted Indian funds on deposit in the same bank to the credit of a disbursing agent of the United States. For the purpose of this section and section 264 of Title 12, said unrestricted funds shall constitute a separate and distinct basis for an insurance claim: *Provided further*, That the Secretary of the Interior, if he deems it advisable and for the best interest of the Indians, may invest the trust funds of any tribe or individual Indian in any public-debt obligations of the United States and in any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States: *And provided further*, That the foregoing shall apply to the funds of the Osage Tribe of Indians, and the individual members thereof, only with respect to the deposit of such funds in banks. (June 24, 1938, ch. 648, § 1, 52 Stat. 1037.)

#### REPEAL OF INCONSISTENT PROVISIONS AND CONSTRUCTION WITH OTHER LAWS

Section 2 of act June 24, 1938, cited to text, repealed act May 25, 1918, ch. 86, § 28, 40 Stat. 591, which was contained in former section 162 of this title, and all other inconsistent acts.

Section 3 of act June 24, 1938, cited to text, provided: "Nothing contained in this act shall be construed as affecting the provisions of the Federal Reserve Act or regulations issued thereunder relating to the payment of interest on deposits."

#### § 163. Roll of membership of Indian tribes.

The Secretary of the Interior is authorized, whenever in his discretion such action would be for the best interest of the Indians, to cause a final roll to be made of the membership of any Indian tribe; such rolls shall contain the ages and quantum of Indian blood, and when approved by the said Secretary are declared to constitute the legal membership of the respective tribes for the purpose of segregating the tribal funds as provided in section 162 of this title, and shall be conclusive both as to ages and quantum of Indian blood: *Provided*, That the foregoing shall not apply to the Five Civilized Tribes or to the Osage Tribe of Indians, or to the Chippewa Indians of Minnesota, or the Menominee Indians of Wisconsin. (June 30, 1919, ch. 4, § 1, 41 Stat. 9.)

#### REFERENCES IN TEXT

Section 162 of this title, to which reference is made in this section, was repealed by act June 24, 1938, ch. 648, § 2, 52 Stat. 1037.

### Chapter 5.—PROTECTION OF INDIANS

#### Sec.

171-173. Repealed.

174. Superintendence by President over tribes west of Mississippi.

#### Sec.

175. District attorneys to represent Indians.

176. Survey of reservations.

177. Purchases or grants of lands from Indians.

178. Fees on behalf of Indian parties in contests under public land laws.

179. Driving stock to feed on lands.

180. Settling on or surveying lands belonging to Indians by treaty.

181. Rights of white men marrying Indian women; tribal property.

182. Rights of Indian women marrying white men; tribal property.

183. Marriage of white men to Indian women; evidence.

184. Rights of children born of marriages between white men and Indian women.

185. Protection of Indians desiring civilized life.

186. Repealed.

187. Suspension of chief for trespass.

188. Sale of buildings belonging to United States.

189. Sale of lands with buildings.

190. Sale of plants or tracts not needed for administrative or allotment purposes.

191. Transfer or sale of Government property at reservations.

192. Sale by agents of cattle or horses not required.

193. Proceedings against goods seized for violation of title.

194. Trial of right of property; burden of proof.

195. Sale of cattle purchased by Government to nontribal members.

196. Sale or other disposition of dead timber.

197. Disposition of dead timber on reservations in Minnesota.

198. Contagious and infectious diseases; quarantine.

199. Access to records of Five Civilized Tribes.

199a. Custody of records; Oklahoma Historical Society.

200. Report of offense or case of Indian incarcerated in agency jail.

201. Penalties under title; how recovered.

§§ 171-173. Repealed. May 21, 1934, ch. 321, 48 Stat. 787.

Sections, R. S. 2111-2113, related to the sending or carrying of seditious messages to Indian tribes and to carrying on correspondence with foreign nations with intent to induce such nation to excite Indian tribes to war with the United States.

#### § 174. Superintendence by President over tribes west of Mississippi.

The President is authorized to exercise general superintendence and care over any tribe or nation which was removed upon an exchange of territory under authority of the act of May 28, 1830, "to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the Mississippi"; and to cause such tribe or nation to be protected, at their new residence, against all interruption or disturbance from any other tribe or nation of Indians, or from any other person or persons whatever. (R. S. § 2114.)

#### DERIVATION

Act May 28, 1830, ch. 148, §§ 7, 8, 4 Stat. 412.

#### § 175. District attorneys to represent Indians.

In all States and Territories where there are reservations or allotted Indians the United States district attorney shall represent them in all suits at law and in equity. (Mar. 3, 1893, ch. 209, § 1, 27 Stat. 631.)

## § 176. Survey of reservations.

Whenever it becomes necessary to survey any Indian or other reservations, or any lands, the same shall be surveyed under the direction and control of the General Land Office, and as nearly as may be in conformity to the rules and regulations under which other public lands are surveyed. (R. S. § 2115.)

## DERIVATION

Act Apr. 8, 1864, ch. 48, § 6, 13 Stat. 41.

## CROSS REFERENCE

General provisions relating to surveys of land are contained in Title 43, Public Lands.

## § 177. Purchases or grants of lands from Indians.

No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution. Every person who, not being employed under the authority of the United States, attempts to negotiate such treaty or convention, directly or indirectly, or to treat with any such nation or tribe of Indians for the title or purchase of any lands by them held or claimed, is liable to a penalty of \$1,000. The agent of any State who may be present at any treaty held with Indians under the authority of the United States, in the presence and with the approbation of the commissioner of the United States appointed to hold the same, may, however, propose to, and adjust with, the Indians the compensation to be made for their claim to lands within such State, which shall be extinguished by treaty. (R. S. § 2116.)

## DERIVATION

Act June 30, 1834, ch. 161, § 12, 4 Stat. 730.

## § 178. Fees on behalf of Indian parties in contests under public land laws.

In contests initiated by or against Indians, to an entry, filing or other claims, under the laws of Congress relating to public lands for any sufficient cause affecting the legality or validity of the entry, filing or claim, the fees to be paid by and on behalf of the Indian party in any case shall be one-half of the fees provided by law in such cases, and said fees shall be paid by the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, on an account stated by the proper land officers through the Commissioner of the General Land Office. (Mar. 3, 1893, ch. 209, § 1, 27 Stat. 631.)

## § 179. Driving stock to feed on lands.

Every person who drives or otherwise conveys any stock of horses, mules, or cattle, to range and feed on any land belonging to any Indian or Indian tribe, without the consent of such tribe, is liable to a penalty of \$1 for each animal of such stock. This section shall not apply to Creek lands. (R. S. § 2117; Mar. 1, 1901, ch. 676, § 37, 31 Stat. 871; June 30, 1902, ch. 1323, § 17, 32 Stat. 504.)

## DERIVATION

Act June 30, 1834, ch. 161, § 9, 4 Stat. 730.

## § 180. Settling on or surveying lands belonging to Indians by treaty.

Every person who makes a settlement on any lands belonging, secured, or granted by treaty with the United States to any Indian tribe, or surveys or attempts to survey such lands, or to designate any of the boundaries by marking trees, or otherwise, is liable to a penalty of \$1,000. The President may, moreover, take such measures and employ such military force as he may judge necessary to remove any such person from the lands. (R. S. § 2118.)

## DERIVATION

Act June 30, 1834, ch. 161, § 11, 4 Stat. 730.

## § 181. Rights of white men marrying Indian women; tribal property.

No white man, not otherwise a member of any tribe of Indians, who may after August 9, 1888, marry an Indian woman, member of any Indian tribe in the United States, or any of its Territories except the Five Civilized Tribes in the Indian Territory, shall by such marriage acquire any right to any tribal property, privilege, or interest whatever to which any member of such tribe is entitled. (Aug. 9, 1888, ch. 818, § 1, 25 Stat. 392.)

## § 182. Rights of Indian women marrying white men; tribal property.

Every Indian woman, member of any such tribe of Indians, who may be married after August 9, 1888, to any citizen of the United States, is declared to become by such marriage a citizen of the United States, with all the rights, privileges, and immunities of any such citizen, being a married woman: *Provided*, That nothing in this section contained shall impair or in any way affect the right or title of such married woman to any tribal property or any interest therein. (Aug. 9, 1888, ch. 818, § 2, 25 Stat. 392.)

## CROSS REFERENCE

Indians born within territorial limits of United States declared citizens but grant of citizenship does not affect right to tribal property, see note under section 601 of Title 8, Aliens and Nationality.

## § 183. Marriage of white men to Indian women; evidence.

Whenever the marriage of any white man with any Indian woman, a member of any such tribe of Indians, is required or offered to be proved in any judicial proceeding, evidence of the admission of such fact by the party against whom the proceeding is had, or evidence of general repute, or of cohabitation as married persons, or any other circumstantial or presumptive evidence from which the fact may be inferred, shall be competent. (Aug. 9, 1888, ch. 818, § 3, 25 Stat. 392.)

## § 184. Rights of children born of marriages between white men and Indian women.

All children born of a marriage solemnized prior to June 7, 1897, between a white man and an Indian woman by blood and not by adoption, where said Indian woman was on that date, or was at the time of her death, recognized by the tribe, shall have

the same rights and privileges to the property of the tribe to which the mother belongs, or belonged at the time of her death, by blood, as any other member of the tribe, and no prior Act of Congress shall be construed as to debar such child of such right. (June 7, 1897, ch. 3, § 1, 30 Stat. 90.)

#### § 185. Protection of Indians desiring civilized life.

Whenever any Indian, being a member of any band or tribe with whom the Government has or shall have entered into treaty stipulations, being desirous to adopt the habits of civilized life, has had a portion of the lands belonging to his tribe allotted to him in severalty, in pursuance of such treaty stipulations, the agent and superintendent of such tribe shall take such measures, not inconsistent with law, as may be necessary to protect such Indian in the quiet enjoyment of the lands so allotted to him. (R. S. § 2119.)

##### DERIVATION

Act June 14, 1862, ch. 101, § 1, 12 Stat. 427.

#### § 186. Repealed. May 21, 1934, ch. 321, 48 Stat. 787.

Section, R. S. § 2120, related to trespassing on lands of civilized Indians.

#### § 187. Suspension of chief for trespass.

Whenever such trespasser as is mentioned in section 186 of this title is the chief or headman of a band or tribe, the superintendent of Indian affairs in his district shall also suspend the trespasser from his office for three months, and shall during that time deprive him of all the benefits and emoluments connected therewith; but the chief or headman may be sooner restored to his former standing if the superintendent shall so direct. (R. S. § 2121.)

##### DERIVATION

Act June 14, 1862, ch. 101, § 3, 12 Stat. 427.

#### § 188. Sale of buildings belonging to United States.

The Secretary of the Interior is authorized to cause all such buildings belonging to the United States, as have been, or hereafter shall be, erected for the use of their agents, teachers, farmers, mechanics, and other persons employed amongst the Indians, to be sold whenever the lands on which the same are erected have become the property of the United States, and are no longer necessary for such purposes. (R. S. § 2122.)

##### DERIVATION

Act Mar. 3, 1848, ch. 78, § 1, 5 Stat. 611.

#### § 189. Sale of lands with buildings.

The Secretary of the Interior is authorized to cause to be sold, at his discretion, with each of such buildings as are mentioned in the preceding section, a quantity of land not exceeding one section; and on the payment of the consideration agreed for into the Treasury of the United States by the purchaser, the Secretary shall make, execute, and deliver to the purchaser a title in fee simple for such lands and tenements. (R. S. § 2123.)

##### DERIVATION

Act Mar. 3, 1848, ch. 78, § 2, 5 Stat. 611.

#### § 190. Sale of plants or tracts not needed for administrative or allotment purposes.

The Secretary of the Interior is authorized in his discretion to sell and convey by deed or patent, under such terms and conditions as he may prescribe, at not less than their appraised value, nonreservation Government tracts or plants or tribal administrative plants or reserves, or parts thereof, not exceeding forty acres in area and not exceeding \$2,000 in value, not longer needed for Indian administrative or allotment purposes, and small unallotted tracts not exceeding forty acres, where a sale will serve the tribal interests. All sales made under this section shall be at public auction, to the highest and best bidder.

And the Secretary of the Interior is further authorized, where a tract to be disposed of under this section or any other Act authorizing the disposition of tribal lands requires survey as basis for a deed or patent, to accept from the grantee, in addition to the purchase price, an amount sufficient to cover the survey costs.

The net proceeds of sale of any tribal site, plant, or tract shall be deposited in the Treasury of the United States to the credit of the Indians owning the same, to be disposed of for their benefit in accordance with existing law; and the net proceeds of sales of Government-owned nontribal plants or lands shall be deposited in the Treasury of the United States. (Apr. 12, 1924, ch. 93, 43 Stat. 93.)

#### § 191. Transfer or sale of Government property at reservations.

Whenever there is on hand at any of the Indian reservations Government property not required for the use and benefit of the Indians on such reservations, the Secretary of the Interior is authorized to cause any such property to be transferred to any other Indian reservation where it may be used advantageously, or to cause it to be sold and the proceeds thereof deposited and covered into the Treasury in conformity with section 487 of Title 31. (July 1, 1898, ch. 545, § 6, 30 Stat. 596; June 25, 1910, ch. 431, § 22, 36 Stat. 861.)

#### § 192. Sale by agents of cattle or horses not required.

The agent of each tribe of Indians, lawfully residing in the Indian country, is authorized to sell for the benefit of such Indians any cattle, horses, or other livestock belonging to the Indians, and not required for their use and subsistence, under such regulations as shall be established by the Secretary of the Interior. But no such sale shall be made so as to interfere with the execution of any order lawfully issued by the Secretary of War, connected with the movement or subsistence of troops. (R. S. § 2127.)

##### DERIVATION

Act Mar. 3, 1865, ch. 127, § 9, 13 Stat. 563.

##### CROSS REFERENCES

Cattle purchased by Government not to be sold to nontribal members except with consent in writing of the agent of the tribe, see section 195 of this title.

Indian agents abolished, see note under section 64 of this title.

**§ 193. Proceedings against goods seized for violation of title.**

When goods or other property shall be seized for any violation of this title it shall be lawful for the person prosecuting on behalf of the United States to proceed against such goods, or other property, in the manner directed to be observed in the case of goods, wares, or merchandise brought into the United States in violation of the revenue laws. (R. S. § 2125.)

DERIVATION

Act June 30, 1834, ch. 161, § 28, 4 Stat. 734.

**§ 194. Trial of right of property; burden of proof.**

In all trials about the right of property in which an Indian may be a party on one side, and a white person on the other, the burden of proof shall rest upon the white person, whenever the Indian shall make out a presumption of title in himself from the fact of previous possession or ownership. (R. S. § 2126.)

DERIVATION

Act June 30, 1834, ch. 161, § 22, 4 Stat. 733.

**§ 195. Sale of cattle purchased by Government to non-tribal members.**

Where Indians are in possession or control of cattle or their increase which have been purchased by the Government such cattle shall not be sold to any person not a member of the tribe to which the owners of the cattle belong or to any citizen of the United States whether intermarried with the Indians or not except with the consent in writing of the agent of the tribe to which the owner or possessor of the cattle belongs. And all sales made in violation of this provision shall be void and the offending purchaser on conviction thereof shall be fined not less than \$500 and imprisoned no less than six months. (July 4, 1884, ch. 180, § 1, 23 Stat. 94.)

**§ 196. Sale or other disposition of dead timber.**

The President of the United States may from year to year in his discretion under such regulations as he may prescribe authorize the Indians residing on reservations or allotments, the fee to which remains in the United States, to fell, cut, remove, sell or otherwise dispose of the dead timber standing, or fallen, on such reservation or allotment for the sole benefit of such Indian or Indians. But whenever there is reasonable cause to believe that such timber has been killed, burned, girdled, or otherwise injured for the purpose of securing its sale under this section then in that case such authority shall not be granted. (Feb. 16, 1889, ch. 172, 25 Stat. 673.)

CROSS REFERENCE

Mature living and dead and down timber on unallotted Indian lands to be sold under regulations prescribed by Secretary of Interior, see section 407 of this title.

**§ 197. Disposition of dead timber on reservations in Minnesota.**

The Secretary of the Interior may in his discretion, from year to year, under such regulations as he may prescribe, authorize the Indians residing on any Indian reservation in the State of Minnesota, whether the same has been allotted in severalty or

is still unallotted, to fell, cut, remove, sell, or otherwise dispose of the dead timber, standing or fallen on such reservation or any part thereof, for the sole benefit of such Indians; and he may also in like manner authorize the Chippewa Indians of Minnesota who have any interest or right in the proceeds derived from the sales of ceded Indian lands or the timber growing thereon, whereof the fee is still in the United States, to fell, cut, remove, or dispose of the dead timber, otherwise than by sale, standing or fallen, on such ceded land. But whenever there is reason to believe that such dead timber in either case has been killed, burned, girdled, or otherwise injured for the purpose of securing its sale under this section, then in that case authority shall not be granted. (June 7, 1897, ch. 3, § 1, 30 Stat. 90; June 27, 1902, ch. 1157, § 4, 32 Stat. 404.)

**§ 198. Contagious and infectious diseases; quarantine.**

Whenever the Secretary of the Interior shall find any Indian afflicted with tuberculosis, trachoma, or other contagious or infectious diseases, he may, if in his judgment the health of the afflicted Indian or that of other persons require it, isolate or quarantine such afflicted Indian in a hospital or other place for treatment. The Secretary of the Interior may employ such means as may be necessary in the isolation, or quarantine, of such Indian, and it shall be the duty of such Indian so afflicted to obey any order or regulation made by the Secretary of the Interior in carrying out this provision. (Aug. 1, 1914, ch. 222, § 1, 38 Stat. 584.)

**§ 199. Access to records of Five Civilized Tribes.**

The Secretary of the Interior, or his accredited representative, shall at all times have access to any books and records of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Tribes, whether in possession of any of the officers of either of said tribes or any officer or custodian thereof, of the State of Oklahoma. (Mar. 1, 1907, ch. 2285, 34 Stat. 1027.)

**§ 199a. Custody of records; Oklahoma Historical Society.**

The Secretary of the Interior is authorized under rules and regulations to be prescribed by him, to place with the Oklahoma Historical Society of the State of Oklahoma any records of the Five Civilized Tribes, including the Cherokees, Creeks, Choctaws, Chickasaws, and Seminoles, which may be in the custody or control of the Secretary of the Interior and the Superintendent for the Five Civilized Tribes; also of the Wichita, Kiowa, Comanche, Caddo, and Apache Indians that may be within his custody or control or of the agent at Anadarko, Oklahoma; also of the Arapaho and Cheyenne Indians that may be within his custody or control or of the agent at Concho, Oklahoma; also of the Sac and Fox, Pottawatomie, Kickapoo, and Iowa Indians that may be within his custody or control or of the agent at Shawnee, Oklahoma; also of the Wyandotte, Seneca, Quapaw, Peoria, Modoc, and Miami Indians that may be within his custody or control or of the agent at Miami, Oklahoma; also of the Tonkawa, Ponca, Pawnee, Otoe, and Kaw Indians that may be within



his custody or control or of the agent at Pawnee, Oklahoma; and of the Osage Indians that may be within his custody or control or of the agent at Pawhuska, Oklahoma. The Oklahoma Historical Society in receiving the custody of such papers, records, and matters of historical interest to receive same as custodian for the United States of America and the Secretary of the Interior, and to hold same under rules and regulations as may be prescribed by him: *Provided*, That copies of any documents, records, books, or papers in the office of and custody of the Oklahoma Historical Society when certified by the secretary or chief clerk of said society under its seal, or when such office or position is vacant by the officer or person acting as secretary or chief clerk for the time, shall be evidence equally with the original, and in making such certified copies such secretary or acting secretary and such chief clerk or acting chief clerk shall be acting as a Federal agent, and such certified copies shall have the same force and effect as if made by the Secretary of the Interior when such documents, records, books, or papers were in his office as Secretary of the Interior and certified by him under seal of his office: *Provided further*, That wherever such certified copies are desired by the Government to be used for the benefit of the Government they shall be furnished without cost: *Provided further*, That any of the records placed with the Historical Society shall be promptly returned to the Government official designated by the said Secretary upon his request therefor. (Mar. 27, 1934, ch. 93, 48 Stat. 501.)

#### § 200. Report of offense or case of Indian incarcerated in agency jail.

Whenever an Indian shall be incarcerated in an agency jail, or any other place of confinement, on an Indian reservation or at an Indian school, a report or record of the offense or case shall be immediately submitted to the superintendent of the reservation or such official or officials as he may designate, and such report shall be made a part of the records of the agency office. (Aug. 1, 1914, ch. 222, § 1, 38 Stat. 586.)

#### § 201. Penalties under title; how recovered.

All penalties which shall accrue under this title shall be sued for and recovered in an action in the nature of an action of debt, in the name of the United States, before any court having jurisdiction of the same, in any State or Territory in which the defendant shall be arrested or found, the one half to the use of the informer and the other half to the use of the United States, except when the prosecution shall be first instituted on behalf of the United States, in which case the whole shall be to their use. (R. S. § 2124.)

##### DERIVATION

Act June 30, 1834, ch. 161, § 27, 4 Stat. 733.

##### REFERENCE IN TEXT

The words "this title," as used in text, referred to Title XXVIII, Indians, of the Revised Statutes. (R. S. § 2039-2078.) For distribution of said title of the Revised Statutes in this Code, see Distribution Tables.

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##### FEDERAL RULES OF CIVIL PROCEDURE

Parties, see Rule 17, following section 723c of Title 28, Judicial Code and Judiciary.

## Chapter 6.—GOVERNMENT OF INDIAN COUNTRY AND RESERVATIONS

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### GENERALLY

#### § 211. Creation of Indian reservations.

No Indian reservation shall be created, nor shall any additions be made to one heretofore created, within the limits of the States of New Mexico and Arizona, except by Act of Congress. (May 25, 1918, ch. 86, § 2, 40 Stat. 570.)

## CROSS REFERENCE

New Indian reservations, see section 467 of this title.

## § 212. Arson.

Every white person who shall set fire, or attempt to set fire, to any house, outhouse, cabin, stable, or other building, in the Indian country, to whomsoever belonging; and every Indian who shall set fire to any house, outhouse, cabin, stable, or other building, in the Indian country, in whole or in part belonging to or in lawful possession of a white person, and whether the same be consumed or not, shall be punishable by imprisonment at hard labor for not more than twenty-one years, nor less than two years. (R. S. § 2143.)

## DERIVATION

Act Mar. 27, 1854, ch. 26, § 4, 10 Stat. 270.

## CROSS REFERENCE

Indians committing certain crimes on Indian reservations to be subject to same laws, tried in same courts, and subjected to same penalties as any other person committing such crimes within exclusive jurisdiction of United States, see section 548 of Title 18, Criminal Code and Criminal Procedure.

## § 213. Assault.

Every white person who shall make an assault upon an Indian, or other person, and every Indian who shall make an assault upon a white person, within the Indian country, with a gun, rifle, sword, pistol, knife, or any other deadly weapon, with intent to kill or maim the person so assaulted, shall be punishable by imprisonment, at hard labor, for not more than five years, nor less than one year. (R. S. § 2142.)

## DERIVATION

Act Mar. 27, 1854, ch. 26, § 5, 10 Stat. 270.

## CROSS REFERENCE

Indians committing certain crimes on Indian reservations to be subject to same laws, tried in same courts, and subjected to same penalties as any other person committing such crimes within exclusive jurisdiction of United States, see section 548 of Title 18, Criminal Code and Criminal Procedure.

## § 214. Disposing of, or removing, cattle from Indian country.

Where restricted Indians are in possession or control of livestock purchased for or issued to them by the Government, or the increase therefrom, such stock shall not be sold, transferred, mortgaged, or otherwise disposed of, except with the consent in writing of the superintendent or other officer in charge of the tribe to which the owner or possessor of the livestock belongs, and all transactions in violation of this provision shall be void. All such livestock so purchased or issued and the increase therefrom belonging to restricted Indians and grazed in the Indian country shall be branded with the I D or reservation brand of the jurisdiction to which the owners of such stock belong, and shall not be removed from the Indian country except with the consent in writing of the superintendent or other officer in charge of the tribe to which the owner or possessor of such livestock belongs, or by order of the Secretary of War, in connection with the movement of troops. Every person who violates the pro-

visions of this section by selling or otherwise disposing of such stock, purchasing, or otherwise acquiring an interest therein, or by removing such stock from the Indian country, shall be fined in any sum not more than \$1,000, or imprisoned for not more than six months, or both such fine and imprisonment. (R. S. § 2138; June 30, 1919, ch. 4, § 1, 41 Stat. 9.)

## DERIVATION

Act Mar. 3, 1865, ch. 127, § 8, 13 Stat. 563.

## § 215. Forgery and depredations on mails.

The general laws of the United States defining and prescribing punishments for forgery and for depredations upon the mails, shall extend to the Indian country. (R. S. § 2144.)

## DERIVATION

Act Mar. 3, 1855, ch. 204, § 8, 10 Stat. 700.

## § 216. Hunting on Indian lands.

Every person, other than an Indian, who, within the limits of any tribe with whom the United States has existing treaties, hunts, or traps, or takes and destroys any peltries or game, except for subsistence in the Indian country, shall forfeit all the traps, guns, and ammunition in his possession, used or procured to be used for that purpose, and all peltries so taken; and shall be liable in addition to a penalty of \$500. (R. S. § 2137.)

## DERIVATION

Act June 30, 1834, ch. 161, § 8, 4 Stat. 730.

## § 217. General laws as to punishment extended to Indian country.

Except as to crimes the punishment of which is expressly provided for in this title, the general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country. (R. S. § 2145.)

## DERIVATION

Act June 30, 1834, ch. 161, § 25, 4 Stat. 733; act Mar. 27, 1854, ch. 26, § 3, 10 Stat. 270.

## REFERENCES IN TEXT

The words, "this title," as used in this section, refer to Title XXVIII, Indians, of the Revised Statutes (R. S. §§ 2039-2078). For distribution of said title of the Revised Statutes in this Code, see Distribution Tables.

## CROSS REFERENCE

Punishment of Indians committing certain crimes on reservation; rape on Indian woman, see section 548 of Title 18, Criminal Code and Criminal Procedure.

## § 217a. Jurisdiction of State of Kansas over offenses committed by or against Indians on Indian reservations.

Jurisdiction is hereby conferred on the State of Kansas over offenses committed by or against Indians on Indian reservations, including trust or restricted allotments, within the State of Kansas, to the same extent as its courts have jurisdiction over offenses committed elsewhere within the State in accordance with the laws of the State: *Provided, however*, That nothing herein contained shall deprive the courts of the United States of jurisdiction

over offenses defined by the laws of the United States committed by or against Indians on Indian reservations. (June 8, 1940, ch. 276, 54 Stat. 249.)

#### CROSS REFERENCE

Jurisdiction of district court over crimes on Indian reservations in South Dakota, see section 549 of Title 18, Criminal Code and Criminal Procedure, and section 51 of Title 28, Judicial Code and Judiciary.

#### § 218. Exceptions as to extension of general laws.

Section 217 of this title shall not be construed to extend to crimes committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively. (R. S. § 2146; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 318.)

#### DERIVATION

Act Mar. 27, 1854, ch. 26, § 3, 10 Stat. 270.

#### §§ 219–226. Repealed. May 21, 1934, ch. 321, 48 Stat. 787.

These sections were enacted respectively as R. S. §§ 2134 and 2147–2153.

#### § 227. Reparation for injuries to property of Indians.

Whenever, in the commission, by a white person, of any crime, offense, or misdemeanor, within the Indian country, the property of any friendly Indian is taken, injured, or destroyed, and a conviction is had for such crime, offense, or misdemeanor, the person so convicted shall be sentenced to pay to such friendly Indian to whom the property may belong, or whose person may be injured, a sum equal to twice the just value of the property so taken, injured, or destroyed. (R. S. § 2154.)

#### DERIVATION

Act June 30, 1834, ch. 161, § 16, 4 Stat. 731

#### § 228. Payment of reparation where offender unable.

If such offender shall be unable to pay a sum at least equal to the just value or amount, whatever such payment shall fall short of the same shall be paid out of the Treasury of the United States. If such offender cannot be apprehended and brought to trial, the amount of such property shall be paid out of the Treasury. But no Indian shall be entitled to any payment out of the Treasury of the United States, for any such property, if he, or any of the nation to which he belongs, have sought private revenge, or have attempted to obtain satisfaction by any force or violence. (R. S. § 2155.)

#### DERIVATION

Act June 30, 1834, ch. 161, § 16, 4 Stat. 731.

#### § 229. Injuries to property by Indians.

If any Indian, belonging to any tribe in amity with the United States, shall, within the Indian country, take or destroy the property of any person lawfully within such country, or shall pass from Indian country into any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy, any horse, or other property belonging

to any citizen or inhabitant of the United States, such citizen or inhabitant, his representative, attorney, or agent, may make application to the proper superintendent, agent, or subagent, who, upon being furnished with the necessary documents and proofs, shall, under the direction of the President, make application to the nation or tribe to which such Indian shall belong, for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction, in a reasonable time not exceeding twelve months, such superintendent, agent, or subagent shall make return of his doings to the Commissioner of Indian Affairs, that such further steps may be taken as shall be proper, in the opinion of the President, to obtain satisfaction for the injury. (R. S. § 2156.)

#### DERIVATION

Act June 30, 1834, ch. 161, § 17, 4 Stat. 731; act Feb. 28, 1859, ch. 66, § 8, 11 Stat. 401.

#### § 230. Depositions by agents touching depredations.

The superintendents, agents, and subagents within their respective districts are authorized and empowered to take depositions of witnesses touching any depredations, within the purview of the three preceding sections, and to administer oaths to the deponents. (R. S. § 2157.)

#### DERIVATION

Act June 30, 1834, ch. 161, § 18, 4 Stat. 732.

#### CROSS REFERENCE

Indian agents abolished, see note under section 64 of this title.

#### § 231. Enforcement of State laws affecting health and education; entry of State employees on Indian lands.

The Secretary of the Interior shall permit the agents and employees of any State to enter upon Indian tribal lands, reservations, or allotments therein for the purpose of making inspection of health and educational conditions and enforcing sanitation and quarantine regulations or to enforce compulsory school attendance of Indian pupils, as provided by the law of the State, under such rules, regulations, and conditions as the Secretary of the Interior may prescribe. (Feb. 15, 1929, ch. 216, 45 Stat. 1185.)

#### TRAFFIC IN INTOXICATING LIQUORS

#### § 241. Intoxicating liquors; selling in, or introducing into, Indian country; penalties; defenses; arrest and trial.

Any person who shall sell, give away, dispose of, exchange, or barter any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or other intoxicating liquor of any kind whatsoever, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever, under any name, label, or brand, which produces intoxication to any Indian to whom an allotment of land has been made while the title to the same shall be held in trust by the Government, or to any Indian who is a ward of the Government under charge of any Indian superintendent or agent, or to any Indian, including mixed bloods, over whom the Government, through its departments, exercises guard-

ianship, and any person who shall introduce or attempt to introduce any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever into the Indian country, which term shall include any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be punished for the first offense by imprisonment for not more than one year, and by a fine of not more than \$500, and for the second offense and each offense thereafter by imprisonment for not more than five years, and by a fine of not more than \$2,000: *Provided, however*, That the person convicted shall be committed until fine and costs are paid: *And provided further*, That first offenses under this section may be prosecuted by information, but no person convicted of a first offense under this section shall be sentenced to imprisonment in a penitentiary or required to perform hard labor. It shall be a sufficient defense to any charge of introducing or attempting to introduce ardent spirits, ale, beer, wine, or intoxicating liquors into the Indian country that the acts charged were done under authority, in writing, from the War Department or any officer duly authorized thereunto by the War Department. All complaints for the arrest of any person or persons made for violation of any of the provisions of this section shall be made in the county where the offense shall have been committed, or if committed upon or within any reservation not included in any county, then in any county adjoining such reservation; but in all cases such arrests shall be made before any United States court commissioner residing in such adjoining county, or before any magistrate or judicial officer authorized by the laws of the State in which such reservation is located to issue warrants for the arrest and examination of offenders by section 591 of Title 18, as amended. And all persons so arrested shall, unless discharged upon examination, be held to answer and stand trial before the court of the United States having jurisdiction of the offense. (R. S. § 2139; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 244; July 23, 1892, ch. 234, 27 Stat. 260; June 15, 1938, ch. 435, § 1, 52 Stat. 696.)

## DERIVATION

Act July 9, 1832, ch. 174, § 4, 4 Stat. 364; act Mar. 15, 1864, ch. 33, 13 Stat. 29.

## REPEAL

This section has been repealed in part by section 244a of this title.

## AMENDMENT

Act June 15, 1938, ch. 435, §§ 2, 3, cited to text, provided as follows:

"Sec. 2. Section 2139 of the Revised Statutes (this section), as amended by this act, shall be deemed to apply to offenses committed subsequent to the date of enactment of this act (June 15, 1938), and any reference in any other act of Congress to the act of January 30, 1897, insofar as it relates to offenses committed subsequent to the date of enactment of this act (June 15, 1938), shall be deemed to be a reference to section 2139 of the Revised Statutes as amended by this act (this section).

"Sec. 3. The act entitled 'An Act to prohibit the sale of intoxicating drinks to Indians, providing penalties therefor, and for other purposes,' approved January 30, 1897, is hereby repealed."

## 3.2 PER CENTUM BEER

Manufacture, sale, and/or possession of 3.2 per centum beer in State of Oklahoma legalized when and if duly legalized by the State, and acts in conflict repealed, see act June 16, 1933, ch. 105, 48 Stat. 311.

## § 241a. Punishment for sale, etc., of liquors in former Indian Territory.

Any person, whether an Indian or otherwise, who shall, in the former Indian Territory, manufacture, sell, give away, or in any manner, or by any means furnish to anyone, either for himself or another, any vinous, malt, or fermented liquors, or any other intoxicating drinks of any kind whatsoever, whether medicated or not, or who shall carry, or in any manner have carried, into said Territory any such liquors or drinks, or who shall be interested in such manufacture, sale, giving away, furnishing to anyone, or carrying into said Territory any of such liquors or drinks, shall, upon conviction thereof, be punished by fine not exceeding \$500 and by imprisonment for not less than one month nor more than five years. (Mar. 1, 1895, ch. 145, § 8, 28 Stat. 697.)

## REPEAL

This section has been repealed in part by section 244a of this title.

## 3.2 PER CENTUM BEER

Manufacture, sale, and/or possession of 3.2 per centum beer in State of Oklahoma legalized when and if duly legalized by the State, and acts in conflict repealed, see act June 16, 1933, ch. 105, 48 Stat. 311.

## § 242. Osage County, Oklahoma, part of Indian country.

All of Osage County, Oklahoma, shall be deemed to be Indian country within the meaning of the Acts of Congress making it unlawful to introduce intoxicating liquors into the Indian country. Except that the manufacture and sale of industrial and beverage alcohol for lawful purposes shall be permitted in said Osage County, in accordance with the laws of the United States pertaining to the regulation of such industry. (Mar. 2, 1917, ch. 146, § 17, 39 Stat. 983; June 13, 1932, ch. 245, 47 Stat. 302.)

## CROSS REFERENCES

Manufacture, sale, and/or possession of 3.2 per centum beer in State of Oklahoma legalized when and if duly legalized by the State, and acts in conflict repealed, see act June 16, 1933, ch. 105, 48 Stat. 311.

Repeal of certain liquor law relating to Oklahoma, see section 244a of this title.

## § 243. Complaints; arrests and examinations.

Section, act July 23, 1892, ch. 234, 27 Stat. 261, now appears as part of section 241 of this title.

## § 244. Possession of intoxicating liquors in Indian country.

Possession by a person of intoxicating liquors in the Indian country or where the introduction is or was prohibited by treaty or Federal statute shall be an offense and punished in accordance with the provisions of section 241 of this title. (May 25, 1918, ch. 86, § 1, 40 Stat. 563; June 30, 1919, ch. 4, § 1, 41 Stat. 4.)

## REPEAL

This section has been repealed in part by section 244a of this title.

## CROSS REFERENCE

Manufacture, sale, and/or possession of 3.2 per centum beer in State of Oklahoma legalized when and if duly legalized by the State, and acts in conflict repealed, see act June 16, 1933, ch. 105, 48 Stat. 311.

**§ 244a. Repeal of certain liquor laws relating to former Indian Territory now a part of Oklahoma.**

Sections 241, 241a, and 244 of this title are repealed insofar as they apply to and affect that part of the State of Oklahoma formerly known as "Indian Territory": *Provided*, That this section shall not be construed to repeal the sections herein referred to insofar as they apply to any tract of land upon which there may be now or hereafter located any Indian school maintained by or under the supervision of the United States Government. (Mar. 5, 1934, ch. 43, 48 Stat. 396.)

**§ 245. Possession of intoxicating liquor prima facie evidence of unlawful introduction.**

The possession by a person of intoxicating liquors in the country where the introduction is prohibited by treaty or Federal statute shall be prima facie evidence of unlawful introduction. (May 18, 1916, ch. 125, § 1, 39 Stat. 124.)

**§ 246. Searches and seizures.**

If any superintendent of Indian affairs, Indian agent, or subagent, or commanding officer of a military post, has reason to suspect or is informed that any white person or Indian is about to introduce or has introduced any spirituous liquor or wine into the Indian country in violation of law, such superintendent, agent, subagent, or commanding officer, may cause the boats, stores, packages, wagons, sleds, and places of deposit of such person to be searched; and if any such liquor is found therein, the same, together with the boats, teams, wagons, and sleds used in conveying the same, and also the goods, packages, and peltries of such person, shall be seized and delivered to the proper officer, and shall be proceeded against by libel in the proper court, and forfeited, one-half to the informer and the other half to the use of the United States; and if such person be a trader, his license shall be revoked and his bond put in suit. It shall moreover be the duty of any person in the service of the United States, or of any Indian, to take and destroy any ardent spirits or wine found in the Indian country, except such as may be introduced therein by the War Department. In all cases arising under this section and section 241 of this title, Indians shall be competent witnesses. (R. S. § 2140.)

## DERIVATION

Act Mar. 15, 1864, ch. 33, 13 Stat. 29.

## CROSS REFERENCE

Indian agents abolished, see note under section 64 of this title.

**§ 247. Vehicles subject to seizure whether used by owner or other persons.**

Automobiles or any other vehicles or conveyances used in introducing, or attempting to introduce, intoxicants into the Indian country, or where the introduction is prohibited by treaty or Federal statute,

whether used by the owner thereof or other person, shall be subject to the seizure, libel, and forfeiture provided in section 246 of this title. (Mar. 2, 1917, ch. 146, § 1, 39 Stat. 970.)

**§ 248. Powers of special agent and deputies to suppress liquor traffic.**

The powers conferred by section 246 of this title upon Indian agents, and subagents, and commanding officers of military posts are hereby conferred upon the special agent of the Indian Bureau for the suppression of the liquor traffic among Indians and in the Indian country and duly authorized deputies working under his supervision. (Mar. 1, 1907, ch. 2285, 34 Stat. 1017.)

**§ 249. Officers, soldiers, or employees of Army furnishing liquor to Indians.**

No part of section 241 or of section 246 of this title shall be a bar to the prosecution of any officer, soldier, sutler or storekeeper, attaché, or employee of the Army of the United States who shall barter, donate, or furnish in any manner whatsoever liquors, beer, or any intoxicating beverage whatsoever to any Indian. (July 4, 1884, ch. 180, § 1, 23 Stat. 94.)

**§ 250. Powers of chief special officer and deputies to suppress liquor traffic.**

The powers conferred by section 504 of Title 28 upon marshals and their deputies are conferred upon the chief special officer for the suppression of the liquor traffic among Indians and duly authorized officers working under his supervision whose appointments are made or affirmed by the Commissioner of Indian Affairs or the Secretary of the Interior. (Aug. 24, 1912, ch. 388, § 1, 37 Stat. 519.)

**§ 251. Setting up distillery.**

Every person who shall, within the Indian country, set up or continue any distillery for manufacturing ardent spirits, shall be liable to a penalty of \$1,000; and the superintendent of Indian affairs, Indian agent, or subagent, within the limits of whose agency any distillery of ardent spirits is set up or continued, shall forthwith destroy and break up the same. (R. S. § 2141.)

## DERIVATION

Act June 30, 1834, ch. 161, § 21, 4 Stat. 732.

**§ 252. Application of provisions as to search and seizure and setting up distillery.**

The provisions of sections 246 and 251 of this title shall also apply to beer and other intoxicating liquors named in section 241 of this title. (May 18, 1916, ch. 125, § 1, 39 Stat. 124.)

## CROSS REFERENCE

Manufacture, sale, and/or possession of 3.2 per centum beer in State of Oklahoma legalized when and if duly legalized by the State, and acts in conflict repealed, see act June 16, 1933, ch. 105, 48 Stat. 311.

**§ 253. Wines for sacramental purposes.**

It shall not be unlawful to introduce and use wines solely for sacramental purposes, under church authority, at any place within the Indian country or any Indian reservation, including the Pueblo Reser-

ventions in New Mexico. (Aug. 24, 1912, ch. 388, § 1, 37 Stat. 519.)

**§ 254. Liquor laws not applicable to lands outside reservations free from restrictions against alienation.**

The special Indian liquor laws shall not apply to former Indian lands now outside of any existing Indian reservation in any case where the land is no longer held by Indians under trust patents or under any other form of deed or patent which contains restrictions against alienation without the consent of some official of the United States Government: *Provided, however*, That nothing in this section shall be construed to discontinue or repeal the provisions of the Indian liquor laws which prohibit the sale, gift, barter, exchange, or other disposition of beer, wine, and other liquors to Indians of the classes set forth in the Act of January 30, 1897 (29 Stat. L. 506), and section 241 of this title. (June 27, 1934, ch. 846, 48 Stat. 1245.)

**REFERENCE IN TEXT**

Act of January 30, 1897, to which reference is made in text, contained subject matter similar to section 241 of this title. Said act was repealed by act June 15, 1938, ch. 435, § 3, 52 Stat. 696, set out in note to section 241.

**TRADERS WITH INDIANS**

**§ 261. Power to appoint traders with Indians.**

The Commissioner of Indian Affairs shall have the sole power and authority to appoint traders to the Indian tribes and to make such rules and regulations as he may deem just and proper specifying the kind and quantity of goods and the prices at which such goods shall be sold to the Indians. (Aug. 15, 1876, ch. 289, § 5, 19 Stat. 200.)

**§ 262. Persons permitted to trade with Indians.**

Any person desiring to trade with the Indians on any Indian reservation shall, upon establishing the fact, to the satisfaction of the Commissioner of Indian Affairs, that he is a proper person to engage in such trade, be permitted to do so under such rules and regulations as the Commissioner of Indian Affairs may prescribe for the protection of said Indians. (Mar. 3, 1901, ch. 832, § 1, 31 Stat. 1066; Mar. 3, 1903, ch. 994, § 10, 32 Stat. 1009.)

**§ 263. Prohibition of trade by President.**

The President is authorized, whenever in his opinion the public interest may require the same, to prohibit the introduction of goods, or of any particular article, into the country belonging to any Indian tribe, and to direct all licenses to trade with such tribe to be revoked, and all applications therefor to be rejected. No trader to any other tribe shall, so long as such prohibition may continue, trade with any Indians of or for the tribe against which such prohibition is issued. (R. S. § 2132.)

**DERIVATION**

Act June 30, 1834, ch. 161, § 3, 4 Stat. 729.

**CROSS REFERENCE**

Persons permitted to trade with Indians, see section 262 of this title.

**§ 264. Trading without license; white persons as clerks.**

Any person other than an Indian of the full blood who shall attempt to reside in the Indian country, or on any Indian reservation, as a trader, or to introduce goods, or to trade therein, without such license, shall forfeit all merchandise offered for sale to the Indians or found in his possession, and shall moreover be liable to a penalty of \$500: *Provided*, That this section shall not apply to any person residing among or trading with the Choctaws, Cherokees, Chickasaws, Creeks, or Seminoles, commonly called the Five Civilized Tribes, residing in said Indian country, and belonging to the Union Agency therein: *And provided further*, That no white person shall be employed as a clerk by any Indian trader, except such as trade with said Five Civilized Tribes, unless first licensed so to do by the Commissioner of Indian Affairs, under and in conformity to regulations to be established by the Secretary of the Interior. (R. S. § 2133; July 31, 1882, ch. 360, 22 Stat. 179.)

**DERIVATION**

Act June 30, 1834, ch. 161, § 4, 4 Stat. 729.

**CROSS REFERENCE**

Persons permitted to trade with Indians, see section 262 of this title.

**§ 265. Prohibited purchases and sales.**

Every person, other than an Indian, who, within the Indian country, purchases or receives of any Indian, in the way of barter, trade, or pledge, a gun, trap, or other article commonly used in hunting, any instrument of husbandry, or cooking utensils of the kind commonly obtained by the Indians in their intercourse with the white people, or any article of clothing, except skins or furs, shall be liable to a penalty of \$50. (R. S. § 2135.)

**DERIVATION**

Act June 30, 1834, ch. 161, § 7, 4 Stat. 730.

**§ 266. Sale of arms in district occupied by uncivilized or hostile Indians.**

The Secretary of the Interior shall adopt such rules as may be necessary to prohibit the sale of arms or ammunition within any district or country occupied by uncivilized or hostile Indians, and shall enforce the same. If any trader, his agent, or any person acting for or under him, shall sell any arms or ammunition at his trading post or other place within any district or country occupied by uncivilized or hostile Indians, contrary to the rules and regulations of the Secretary of the Interior, such trader shall forfeit his right to trade with the Indians, and the Secretary shall exclude such trader, and the agent, or other person so offending, from the district or country so occupied. (R. S. §§ 467, 2136.)

**DERIVATION**

R. S. § 467 from act Feb. 14, 1873, ch. 138, § 1, 17 Stat. 457, 459.

**Chapter 7.—EDUCATION OF INDIANS**

**Sec.**

- 271 Employment of instructors for Indians.
- 272. Superintendent of Indian schools.
- 272a. Same; other duties.

- Sec.  
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 292. Suspension or discontinuance of schools.  
 292a. Discontinuance of boarding and day schools having small attendance.  
 293. Sale of lands purchased for day school or other Indian administrative uses.  
 294. Sale of certain abandoned buildings on lands belonging to Indian tribes.  
 295. Supervision of expenditure of appropriations for school purposes.  
 296. Repealed.  
 297. Expenditure for children with less than one-fourth Indian blood.  
 298. Census of Indians and report of numbers of school children.  
 299-301. Repealed.  
 302. Indian Reform School; rules and regulations; consent of parents to placing youth in reform school.  
 303. Educational loans to worthy youths.

#### § 271. Employment of instructors for Indians.

The President may, in every case where he shall judge improvement in the habits and condition of such Indians practicable, and that the means of instruction can be introduced with their own consent, employ capable persons of good moral character to instruct them in the mode of agriculture suited to their situation; and for teaching their children in reading, writing, and arithmetic, and performing such other duties as may be enjoined according to such instructions and rules as the President may give and prescribe for the regulation of their conduct, in the discharge of their duties. A report of the proceedings adopted in the execution of this provision shall be annually laid before Congress. (R. S. § 2071.)

##### DERIVATION

Act Mar. 3, 1819, ch. 85, § 3 Stat. 516.

##### CROSS REFERENCE

Education of Indians, provisions for, see sections 452-455 and 471 of this title.

#### § 272. Superintendent of Indian schools.

There shall be appointed by the President, by and with the advice and consent of the Senate, a person

of knowledge and experience in the management, training, and practical education of children, to be Superintendent of Indian Schools, whose duty it shall be to visit and inspect the schools in which Indians are taught in whole or in part from appropriations from the United States Treasury, and report to the Commissioner of Indian Affairs, what, in his judgment, are the defects, if any, in any of them in system, in administration, or in means for the most effective advancement of the pupils therein toward civilization and self-support, and what changes are needed to remedy such defects as may exist, and to perform such other duties in connection with Indian schools as may be prescribed by the Secretary of the Interior. (Mar. 2, 1889, ch. 412. § 10, 25 Stat. 1003.)

#### § 272a. Same; other duties.

The Superintendent of Indian schools shall perform such other duties as may be imposed upon him by the Commissioner of Indian Affairs, subject to the approval of the Secretary of the Interior. (Mar. 3, 1905, ch. 1479, § 1, 33 Stat. 1049.)

#### § 273. Detail of Army officer.

The Secretary of War shall be authorized to detail an officer of the Army, not above the rank of captain, for special duty with reference to Indian education. (June 23, 1879, ch. 35, § 7, 21 Stat. 35.)

##### CROSS REFERENCE

Vacant military posts or barracks to be used as schools; Army officer to be detailed for duty at each school so established, see section 276 of this title.

#### § 274. Employment of Indian girls and boys as assistants.

The Commissioner of Indian Affairs shall employ Indian girls as assistant matrons and Indian boys as farmers and industrial teachers in all Indian schools when it is practicable to do so. (June 7, 1897, ch. 3, § 1, 30 Stat. 83.)

##### CROSS REFERENCE

Standards for Indian employees, see section 472 of this title.

#### § 275. Leaves of absence to employees.

Teachers of the Indian schools and physicians of the Indian Service may be allowed, in addition to annual leave, educational leave not to exceed thirty days per calendar year, or sixty days in every alternate year, for attendance at educational gatherings, conventions, institutions, or training schools, if the interest of the service require, and under such regulations as the Secretary of the Interior may prescribe, and no additional salary or expense on account of this leave of absence shall be incurred. (Aug. 24, 1912, ch. 388, § 1, 37 Stat. 519; Aug. 24, 1922, ch. 286, 42 Stat. 829; May 8, 1928, ch. 510, 45 Stat. 493.)

##### CROSS REFERENCE

Reduction in leaves of absence of Government employees, see section 30a of Title 5, Executive Departments and Government Officers and Employees.



**§ 276. Vacant military posts or barracks for schools; detail of Army officers.**

The Secretary of War is authorized to set aside, for use in the establishment of normal and industrial training schools for Indian youth from the nomadic tribes having educational treaty claims upon the United States, any vacant posts or barracks, so long as they may not be required for military occupation, and to detail one or more officers of the Army for duty in connection with Indian education, under the direction of the Secretary of the Interior, at each such school so established: *Provided*, That moneys appropriated or to be appropriated for general purposes of education among the Indians may be expended, under the direction of the Secretary of the Interior, for the education of Indian youth at such posts, institutions, and schools as he may consider advantageous, or as Congress from time to time may authorize and provide. (July 31, 1882, ch. 363, 22 Stat. 181.)

**CROSS REFERENCE**

Detail of Army officer, see section 273 of this title.

**§ 277. Former Apache military post established as Theodore Roosevelt Indian School.**

The Secretary of the Interior is authorized to establish and maintain the former Fort Apache military post as an Indian boarding school for the purpose of carrying out treaty obligations, to be known as the Theodore Roosevelt Indian School: *Provided*, That the Fort Apache military post, and land appurtenant thereto, shall remain in the possession and custody of the Secretary of the Interior so long as they shall be required for Indian school purposes. (Jan. 24, 1923, ch. 42, 42 Stat. 1187.)

**§ 278. No appropriation for sectarian school.**

It is declared to be the settled policy of the Government to make no appropriation whatever out of the Treasury of the United States for education of Indian children in any sectarian school. (June 7, 1897, ch. 3, § 1, 30 Stat. 79; Mar. 2, 1917, ch. 146, § 21, 39 Stat. 988.)

**§ 279. Rations to mission schools.**

Mission schools on an Indian reservation may, under rules and regulations prescribed by the Commissioner of Indian Affairs, receive for such Indian children duly enrolled therein, the rations of food and clothing to which said children would be entitled under treaty stipulations if such children were living with their parents. (June 21, 1906, ch. 3504, 34 Stat. 326.)

**§ 280. Patents of lands to missionary boards of religious organizations.**

The Secretary of the Interior is authorized and directed to issue a patent to the duly authorized missionary board, or other proper authority, of any religious organization engaged in mission or school work on any Indian reservation for such lands thereon as were prior to September 21, 1922, set apart to and were on that date being actually and beneficially used and occupied by such organization solely for mission or school purposes, the area so patented to not exceed one hundred and sixty acres to any

one organization at any station: *Provided*, That such patent shall provide that when no longer used for mission or school purposes said lands shall revert to the Indian owners. (Sept. 21, 1922, ch. 367, § 3, 42 Stat. 995.)

**§ 281. Children taking lands in severalty not excluded.**

In the expenditure of money appropriated for any of the purposes of education of Indian children, those children of Indians who have taken or may take lands in severalty under any existing law shall not, by reason thereof, be excluded from the benefits of such appropriation. (Aug. 15, 1894, ch. 290, § 1, 28 Stat. 311.)

**§ 282. Regulations by Secretary of Interior to secure attendance at school.**

The Secretary of the Interior is authorized to make and enforce such rules and regulations as may be necessary to secure the enrollment and regular attendance of eligible Indian children who are wards of the Government in schools maintained for their benefit by the United States or in public schools. (Feb. 14, 1920, ch. 75, § 1, 41 Stat. 410.)

**CROSS REFERENCE**

Similar provision, see section 284 of this title.

**§ 283. Regulations for withholding rations for non-attendance at schools.**

The Secretary of the Interior may in his discretion, establish such regulations as will prevent the issuing of rations or the furnishing of subsistence either in money or in kind to the head of any Indian family for or on account of any Indian child or children between the ages of eight and twenty-one years who shall not have attended school during the preceding year in accordance with such regulations. This provision shall not apply to reservations or part of reservations where sufficient school facilities have not been furnished nor until full notice of such regulations shall have been given to the Indians to be affected thereby.

The amount and value of subsistence so withheld shall be credited to the tribe or tribes from whom the same is withheld, to be issued and paid when in the judgment of the Secretary of the Interior they shall have fully complied with such regulations. The Secretary of the Interior may in his discretion withhold rations, clothing, and other annuities from Indian parents or guardians who refuse or neglect to send and keep their children of proper school age in some school a reasonable portion of the year. (Mar. 3, 1893, ch. 209, § 1, 27 Stat. 628, 635.)

**§ 284. Regulations by Commissioner of Indian Affairs for attendance at schools.**

Subject matter of this section, act July 13, 1892, ch. 164, § 1, 27 Stat. 143, is now covered by section 282 of this title.

**§ 285. Withholding annuities from Osage Indians for nonattendance at schools.**

The Commissioner of Indian Affairs is authorized in his discretion to withhold any annuities or other payments due to Osage Indian minors, above six years of age, whose parents fail, neglect, or refuse to place such minors in some established school for a reason-

able portion of each year and to keep such children in regular attendance thereof. The Commissioner of Indian Affairs is authorized to make such rules and regulations as may be necessary to put this provision into force and effect. (June 30, 1913, ch. 4, § 18, 38 Stat. 96.)

**§ 286. Sending child to school out of State without consent.**

No Indian child shall be sent from any Indian reservation to a school beyond the State or Territory in which said reservation is situated without the voluntary consent of the father or mother of such child if either of them is living, and if neither of them is living without the voluntary consent of the next of kin of such child. Such consent shall be made before the agent of the reservation, and he shall send to the Commissioner of Indian Affairs his certificate that such consent has been voluntarily given before such child shall be removed from such reservation. And it shall be unlawful for any Indian agent or other employee of the Government to induce, or seek to induce, by withholding rations or by other improper means, the parents or next of kin of any Indian to consent to the removal of any Indian child beyond the limits of any reservation. (Aug. 15, 1894, ch. 290, § 11, 28 Stat. 313; Mar. 2, 1895, ch. 188, § 1, 28 Stat. 906.)

**§ 287. Taking child to school in another State without written consent.**

No Indian child shall be taken from any school in any State or Territory to a school in any other State against its will or without the written consent of its parents. (June 10, 1896, ch. 398, § 1, 29 Stat. 348.)

**§ 288. White children in Indian day schools.**

White children may, under rules and regulations prescribed by the Commissioner of Indian Affairs, be admitted to any Indian day school: *Provided*, That the tuition fees charged for such children shall in no case exceed the tuition fees allowed or charged by the State or county in which such school is situated for the children admitted in the common schools of such State or county: *And provided further*, That all tuition fees paid for white children enrolled in Indian day schools shall be deposited in the United States Treasury to reimburse the funds out of which the schools last mentioned are maintained. (Mar. 1, 1907, ch. 2285, 34 Stat. 1018.)

**§ 289. White children in Indian boarding schools.**

White children may, under rules prescribed by the Commissioner of Indian Affairs, be admitted to Indian boarding schools on the payment of tuition fees at a rate to be fixed in said rules; *Provided further*, That all tuition fees paid for white children so enrolled shall be deposited in the United States Treasury to reimburse the fund out of which the school is supported. (Mar. 3, 1909, ch. 263, 35 Stat. 783.)

**CROSS REFERENCE**

No appropriations to be made for education of children of less than one-fourth Indian blood, see section 297 of this title.

**§ 290. Transportation of pupils under 14 at Government expense.**

No Indian pupil under the age of fourteen years shall be transported at Government expense to any Indian school beyond the limits of the State or Territory in which the parents of such child reside or of the adjoining State or Territory. (Mar. 3, 1909, ch. 263, 35 Stat. 783.)

**§ 291. Removal of Government property at schools.**

Where there is Government property on hand at any of the Indian reservations or schools not required for the use or benefit of the Indians of reservations or said schools, the Secretary of the Interior is authorized to move such property to other Indian reservations or schools where it may be required. (Mar. 1, 1907, ch. 2285, 34 Stat. 1016.)

**§ 292. Suspension or discontinuance of schools.**

The Commissioner of Indian Affairs may, when in his judgment the good of the service will be promoted thereby, suspend or discontinue any reservation Indian school, and, with the approval of the Secretary of the Interior, may sell any reservation school building or plant that is no longer desirable as an Indian school upon any reservation and invest the proceeds in other school buildings and plants, as the needs of the service may demand, under such rules and regulations as he may, with the approval of the Secretary of the Interior, prescribe. (Apr. 21, 1904, ch. 1402, § 1, 33 Stat. 211.)

**CROSS REFERENCE**

Effective July 1, 1935, the appropriation provided for by this section was affected by act June 26, 1934, ch. 756, § 4, 48 Stat. 1227. See section 725c of Title 31, Money and Finance.

**§ 292a. Discontinuance of boarding and day schools having small attendance.**

All reservation and nonreservation boarding schools with an average attendance of less than forty-five and eighty pupils, respectively, shall be discontinued on or before the beginning of the ensuing fiscal year. The pupils in schools so discontinued shall be transferred first, if possible, to Indian day schools or State public schools; second, to adjacent reservation or nonreservation boarding schools, to the limit of the capacity of said schools: *Provided*, That all day schools with an average attendance of less than eight shall be discontinued on or before the beginning of the ensuing fiscal year: *Provided further*, That all moneys appropriated for any school discontinued pursuant to this section or for other cause shall be returned immediately to the Treasury of the United States. (May 10, 1926, ch. 277, § 1, 44 Stat. 468; Jan. 12, 1927, ch. 27, § 1, 44 Stat. 947; Mar. 7, 1928, ch. 137, § 1, 45 Stat. 215; Mar. 4, 1929, ch. 705, § 1, 45 Stat. 1576.)

**§ 293. Sale of lands purchased for day school or other Indian administrative uses.**

The Secretary of the Interior is authorized to cause to be sold, to the highest bidder, under such rules and regulations as he may prescribe any tract or part of a tract of land purchased by the United States for day school or other Indian administrative

uses, not exceeding one hundred and sixty acres in any one tract, when said land or a part thereof is no longer needed for the original purpose; the net proceeds therefrom in all cases to be paid into the Treasury of the United States; title to be evidenced by a patent in fee simple for such lands as can be described in terms of the legal survey, or by deed duly executed by the Secretary of the Interior containing such metes-and-bounds description as will identify the land so conveyed as the land which had been purchased: *Provided*, That where the purchase price was paid from tribal funds, such proceeds shall be placed in the Treasury of the United States to the credit of the respective tribes of Indians. (Mar. 2, 1917, ch. 146, § 1, 39 Stat. 973.)

**§ 294. Sale of certain abandoned buildings on lands belonging to Indian tribes.**

The Secretary of the Interior is authorized to sell and convey at public sale, to the highest bidder, under such regulations and under such terms and conditions as he may prescribe, at not less than the appraised value thereof, any abandoned day or boarding school plant, or any abandoned agency buildings, situated on lands belonging to any Indian tribe and not longer needed for Indian or administrative purposes, and to sell therewith not to exceed one hundred and sixty acres of land on which such plant or buildings may stand. Title to all lands disposed of under the provisions of this section shall pass to the purchaser by deed or by patent in fee, with such reservations or conditions as the said Secretary may deem just and proper, no purchaser to acquire more than one hundred and sixty acres in any one tract: *Provided*, That the proceeds of all such sales shall be deposited in the Treasury of the United States to the credit of the Indians to whom said lands belong, to be disposed of in accordance with existing law. (Feb. 14, 1920, ch. 75, § 1, 41 Stat. 415.)

**§ 295. Supervision of expenditure of appropriations for school purposes.**

All expenditure of money appropriated for school purposes among the Indians shall be at all times under the supervision and direction of the Commissioner of Indian Affairs, and in all respects in conformity with such conditions, rules, and regulations as to the conduct and methods of instruction and expenditure of money as may be from time to time prescribed by him, subject to the supervision of the Secretary of the Interior. (Apr. 30, 1908, ch. 153, 35 Stat. 72.)

**§ 296. Repealed. Mar. 2, 1929, ch. 576, 45 Stat. 1534.**

Section, act Apr. 30, 1908, ch. 153, 35 Stat. 72; act June 30, 1919, ch. 4, § 1, 41 Stat. 6; act Feb. 21, 1925, ch. 280, 43 Stat. 958, placed a limitation on per capita expenditure for school purposes.

**§ 297. Expenditure for children with less than one-fourth Indian blood.**

No appropriation, except appropriations made pursuant to treaties, shall be used to educate children of less than one-fourth Indian blood whose parents are citizens of the United States and of the State wherein they live and where there are adequate free school

facilities provided. (May 25, 1918, ch. 86, § 1, 40 Stat. 564.)

**§ 298. Census of Indians and report of numbers of school children.**

Section, act July 4, 1884, ch. 180, § 9, 23 Stat. 98, required Indian agents in their annual report to submit a census of Indians at the agency. Since 1908, there have been no Indian agents. See note to section 64 of this title.

**§§ 299-301. Repealed. May 29, 1928, ch. 901, § 1, 45 Stat. 990, 991.**

These sections, requiring certain annual reports to Congress by the Secretary of the Interior, were enacted as follows:

§ 299 by act Mar. 2, 1887, ch. 320, § 1, 24 Stat. 465; §§ 300-301 by act Mar. 3, 1911, ch. 210, § 1, 36 Stat. 1060.

**§ 302. Indian Reform School; rules and regulations; consent of parents to placing youth in reform school.**

The Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, is authorized and directed to select and designate some one of the schools or other institution herein specifically provided for as an "Indian Reform School", and to make all needful rules and regulations for its conduct, and the placing of Indian youth therein: *Provided*, That the appropriation for collection and transportation, and so forth, of pupils, and the specific appropriation for such school so selected shall be available for its support and maintenance: *Provided further*, That the consent of parents, guardians, or next of kin shall not be required to place Indian youth in said school. (June 21, 1906, ch. 3504, 34 Stat. 328.)

**§ 303. Educational loans to worthy youths.**

Advances may be made to worthy Indian youths to enable them to take educational courses, including courses in nursing, home economics, forestry, and other industrial subjects in colleges, universities, or other institutions and advances so made shall be reimbursed in not to exceed eight years under such rules and regulations as the Secretary of the Interior may prescribe. (May 9, 1938, ch. 187, § 1, 52 Stat. 303; May 10, 1939, ch. 119, § 1, 53 Stat. 698; June 18, 1940, ch. 395, § 1, 54 Stat. 417.)

**Chapter 7A.—PROMOTION OF SOCIAL AND ECONOMIC WELFARE**

**Sec.**

- 305. "Indian Arts and Crafts Board"; creation and composition; compensation.
- 305a. Promotion of economic welfare through development of arts and crafts; powers of Board enumerated.
- 305b. Rules and regulations; submission to Secretary of Interior.
- 305c. Appropriation.
- 305c-1. Same; availability for per diem payment to Board in lieu of other expenses while away from home.
- 305d. Counterfeiting trade-mark; use of counterfeited or imitated trade-mark; penalty.
- 305e. Offering for sale without trade-mark goods as Indian products; penalty; duty of district attorneys to prosecute.
- 306. Expenditures for encouragement of industry and self-support; repayment.
- 306a. Advances for support of old, disabled, or indigent allottees; lien against land.

**§ 305. "Indian Arts and Crafts Board"; creation and composition; compensation.**

A board is hereby created in the Department of the Interior to be known as "Indian Arts and Crafts Board", and hereinafter referred to as the Board. The Board shall be composed of five commissioners, who shall be appointed by the Secretary of the Interior as soon as possible after August 27, 1935 and shall continue in office, two for a term of two years, one for a term of three years, and two for a term of four years from the date of their appointment, the term of each to be designated by the Secretary of the Interior, but their successors shall be appointed for a term of four years except that any person chosen to fill a vacancy shall be appointed for the unexpired term of the commissioner whom he succeeds. Both public officers and private citizens shall be eligible for membership on the Board. The Board shall elect one of the commissioners as chairman. One or two vacancies on the Board shall not impair the right of the remaining commissioners to exercise all the powers of the Board.

The commissioners shall serve without compensation: *Provided*, That each Commissioner shall be reimbursed for all actual expenses, including travel expenses, subsistence and office overhead, which the Board shall certify to have been incurred as properly incidental to the performance of his duties as a member of the Board. (Aug. 27, 1935, ch. 748, § 1, 49 Stat. 891.)

**§ 305a. Promotion of economic welfare through development of arts and crafts; powers of Board enumerated.**

It shall be the function and the duty of the Board to promote the economic welfare of the Indian tribes and the Indian wards of the Government through the development of Indian arts and crafts and the expansion of the market for the products of Indian art and craftsmanship. In the execution of this function the Board shall have the following powers: (a) To undertake market research to determine the best opportunity for the sale of various products; (b) to engage in technical research and give technical advice and assistance; (c) to engage in experimentation directly or through selected agencies; (d) to correlate and encourage the activities of the various governmental and private agencies in the field; (e) to offer assistance in the management of operating groups for the furtherance of specific projects; (f) to make recommendations to appropriate agencies for loans in furtherance of the production and sale of Indian products; (g) to create Government trade marks of genuineness and quality for Indian products and the products of particular Indian tribes or groups; to establish standards and regulations for the use of such trade marks; to license corporations, associations, or individuals to use them; and to charge a fee for their use; to register them in the United States Patent Office without charge; (h) to employ executive officers, including a general manager, and such other permanent and temporary personnel as may be found necessary, and prescribe the authorities, duties, responsibilities, and tenure and fix the compensation of such officers and other employees:

*Provided*, That sections 661-673 and 674 of Title 5 shall be applicable to all permanent employees except executive officers, and that all employees other than executive officers shall be appointed in accordance with the civil-service laws from lists of eligibles to be supplied by the Civil Service Commission; (i) as a Government agency to negotiate and execute in its own name contracts with operating groups to supply management, personnel, and supervision at cost, and to negotiate and execute in its own name such other contracts and to carry on such other business as may be necessary for the accomplishment of the duties and purposes of the Board: *Provided*, That nothing in the foregoing enumeration of powers shall be construed to authorize the Board to borrow or lend money or to deal in Indian goods. (Aug. 27, 1935, ch. 748, § 2, 49 Stat. 891.)

**§ 305b. Rules and regulations; submission to Secretary of Interior.**

The Board shall prescribe from time to time rules and regulations governing the conduct of its business and containing such provisions as it may deem appropriate for the effective execution and administration of the powers conferred upon it by sections 305-305c and 305d-305e of this title: *Provided*, That before prescribing any procedure for the disbursement of money the Board shall advise and consult with the General Accounting Office: *Provided further*, That all rules and regulations proposed by the Board shall be submitted to the Secretary of the Interior and shall become effective upon his approval. (Aug. 27, 1935, ch. 748, § 3, 49 Stat. 892.)

**TRANSFER OF FUNCTIONS**

The function of disbursement of moneys of the United States by any agency was transferred to the Treasury Department and, together with the Office of Disbursing Clerk of that Department, was consolidated in a Division of Disbursement by section 4 of Ex. Ord. No. 6166, June 10, 1933, set out in note to section 132 of Title 5, Executive Departments and Government Officers and Employees.

**§ 305c. Appropriation.**

There is hereby authorized to be appropriated out of any sums in the Treasury not otherwise appropriated such sums as may be necessary to defray the expenses of the Board and carry out the purposes and provisions of sections 305-305c and 305d-305e of this title. All income derived by the Board from any source shall be covered into the Treasury of the United States and shall constitute a special fund which is hereby appropriated and made available until expended for carrying out the purposes and provisions of said sections. Out of the funds available to it at any time the Board may authorize such expenditures, consistent with the provisions of said sections, as it may determine to be necessary for the accomplishment of the purposes and objectives of said sections. (Aug. 27, 1935, ch. 748, § 4, 49 Stat. 892.)

**§ 305c-1. Same; availability for per diem payment to Board in lieu of other expenses while away from home.**

Hereafter any appropriation for the development of Indian arts and crafts, made pursuant to section 305c of this title, shall be available for the payment

of not to exceed \$10 per diem in lieu of subsistence and other expenses of members of the Indian Arts and Crafts Board, serving without other compensation from the United States while absent from their homes on official business of the Board. (May 10, 1939, ch. 119, § 1, 53 Stat. 699.)

**§ 305d. Counterfeiting trade-mark; use of counterfeited or imitated trade-mark; penalty.**

Any person who shall counterfeit or colorably imitate any Government trade mark used or devised by the Board as provided in section 305a of this chapter, or shall, except as authorized by the Board, affix any such Government trade mark, or shall knowingly, willfully, and corruptly affix any reproduction, counterfeit, copy, or colorable imitation thereof upon any products, Indian or otherwise, or to any labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of such products, or any person who shall knowingly make any false statement for the purpose of obtaining the use of any such Government trade mark, shall be guilty of a misdemeanor, and upon conviction thereof shall be enjoined from further carrying on the act or acts complained of and shall be subject to a fine not exceeding \$2,000 or imprisonment not exceeding six months, or both such fine and imprisonment. (Aug. 27, 1935, ch. 748, § 5, 49 Stat. 892.)

**§ 305e. Offering for sale without trade-mark goods as Indian products; penalty; duty of district attorneys to prosecute.**

Any person who shall willfully offer or display for sale any goods, with or without any Government trade mark, as Indian products or Indian products of a particular Indian tribe or group, resident within the United States or the Territory of Alaska, when such person knows such goods are not Indian products or are not Indian products of the particular Indian tribe or group, shall be guilty of a misdemeanor and be subject to a fine not exceeding \$2,000 or imprisonment not exceeding six months, or both such fine and imprisonment.

It shall be the duty of each district attorney, to whom the Board shall report in writing any violation of the provisions of this section which has occurred within his jurisdiction, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States for the enforcement of the penalties herein provided. (Aug. 27, 1935, ch. 748, § 6, 49 Stat. 893.)

**§ 306. Expenditures for encouragement of industry and self-support; repayment.**

Hereafter the expenditures for the purpose of encouraging industry and self-support among the Indians and to aid them in the culture of fruits, grains, and other crops shall be under conditions to be prescribed by the Secretary of the Interior for repayment to the United States on or before the expiration of five years, except in the case of loans on irrigable lands for permanent improvement of said lands, in which the period for repayment may run for not exceeding twenty years, in the discre-

tion of the Secretary of the Interior. (May 9, 1938, ch. 187, § 1, 52 Stat. 302.)

**§ 306a. Advances for support of old, disabled, or indigent allottees; lien against land.**

Hereafter the Secretary of the Interior is authorized, in his discretion and under such rules and regulations as he may prescribe, to make advances to old, disabled, or indigent Indian allottees, for their support, to remain a charge and lien against their land until paid; such advances for fiscal years after 1939 to be made from appropriations specifically available for such purposes. (May 9, 1938, ch. 187, § 1, 52 Stat. 302.)

**Chapter 8.—RIGHTS-OF-WAY THROUGH INDIAN LANDS**

**Sec.**

- 311. Opening highways.
- 312. Rights-of-way for railway, telegraph, and telephone lines; town-site stations.
- 313. Width of right-of-way.
- 314. Survey; maps; compensation.
- 315. Time for completion of road; forfeiture.
- 316. Rights of several roads through canyons.
- 317. Regulations.
- 318. Amendment or repeal of sections.
- 318a. Roads on Indian reservations; appropriation.
- 318b. Same; approval of location and design by Public Roads Administration.
- 319. Rights-of-way for telephone and telegraph lines.
- 320. Acquisition of lands for reservoirs or materials.
- 321. Rights-of-way for pipe lines.
- 322. Application of certain sections to Pueblo Indians.

**§ 311. Opening highways.**

The Secretary of the Interior is authorized to grant permission, upon compliance with such requirements as he may deem necessary, to the proper State or local authorities for the opening and establishment of public highways, in accordance with the laws of the State or Territory in which the lands are situated, through any Indian reservation or through any lands which have been allotted in severalty to any individual Indian under any laws or treaties but which have not been conveyed to the allottee with full power of alienation. (Mar. 3, 1901, ch. 832, § 4, 31 Stat. 1084.)

**§ 312. Rights-of-way for railway, telegraph, and telephone lines; town-site stations.**

A right of way for a railway, telegraph, and telephone line through any Indian reservation in any State or Territory, except Oklahoma, or through any lands reserved for an Indian agency or for other purposes in connection with the Indian service, or through any lands which have been allotted in severalty to any individual Indian under any law or treaty, but which have not been conveyed to the allottee with full power of alienation, is granted to any railroad company organized under the laws of the United States, or of any State or Territory, which shall comply with the provisions of sections 312–318 of this title and such rules and regulations as may be prescribed thereunder: *Provided*, That no right of way shall be granted under said sections until the Secretary of the Interior is satisfied that the company applying has made said application in good faith and with intent and ability to construct said

road, and in case objection to the granting of such right of way shall be made, said Secretary shall afford the parties so objecting a full opportunity to be heard: *Provided further*, That where a railroad has heretofore been constructed, or is in actual course of construction, no parallel right of way within ten miles on either side shall be granted by the Secretary of the Interior unless, in his opinion, public interest will be promoted thereby: *Provided also*, That as a condition precedent to each and every grant of a right of way under authority of said sections, each and every railway company applying for such grant shall stipulate that it will construct and permanently maintain suitable passenger and freight stations for the convenience of each and every town site established by the Government along said right of way. (Mar. 2, 1899, ch. 374, § 1, 30 Stat. 990; Feb. 28, 1902, ch. 134, § 23, 32 Stat. 50; June 25, 1910, ch. 431, § 16, 36 Stat. 859.)

#### § 313. Width of right-of-way.

Such right of way shall not exceed fifty feet in width on each side of the center line of the road, except where there are heavy cuts and fills, when it shall not exceed one hundred feet in width on each side of the road, and may include grounds adjacent thereto for station buildings, depots, machine shops, sidetracks, turn-outs, and water stations, not to exceed two hundred feet in width by a length of three thousand feet, and not more than one station to be located within any one continuous length of ten miles of road. (Mar. 2, 1899, ch. 374, § 2, 30 Stat. 990; June 21, 1906, ch. 3504, 34 Stat. 330.)

#### § 314. Survey; maps; compensation.

The line of route of said road may be surveyed and located through and across any of said lands at any time, upon permission therefor being obtained from the Secretary of the Interior; but before the grant of such right of way shall become effective a map of the survey of the line or route of said road must be filed with and approved by the Secretary of the Interior, and the company must make payment to the Secretary of the Interior for the benefit of the tribe or nation, of full compensation for such right of way, including all damage to improvements and adjacent lands, which compensation shall be determined and paid under the direction of the Secretary of the Interior, in such manner as he may prescribe. Before any such railroad shall be constructed through any land, claim, or improvement, held by individual occupants or allottees in pursuance of any treaties or laws of the United States, compensation shall be made to such occupant or allottee for all property to be taken, or damage done, by reason of the construction of such railroad. In case of failure to make amicable settlement with any such occupant or allottee, such compensation shall be determined by the appraisal of three disinterested referees, to be appointed by the Secretary of the Interior, who, before entering upon the duties of their appointment, shall take and subscribe before competent authority an oath that they will faithfully and impartially discharge the duties of their appointment, which oath, duly certified, shall be returned with their award to

the Secretary of the Interior. If the referees cannot agree, then any two of them are authorized to make the award. Either party being dissatisfied with the finding of the referees shall have the right within sixty days after the making of the award and notice of the same, to appeal, if said land is situated in any State or Territory other than Oklahoma, to the United States district court for such State or Territory, where the case shall be tried de novo and the judgment for damages rendered by the court shall be final and conclusive.

When proceedings are commenced in court as aforesaid, the railroad company shall deposit the amount of the award made by the referees with the court to abide the judgment thereof, and then have the right to enter upon the property sought to be condemned and proceed with the construction of the railway. Each of the referees shall receive for his compensation the sum of \$4 per day while engaged in the hearing of any case submitted to them under sections 312–318 of this title. Witnesses shall receive the fees usually allowed by courts within the district where such land is located. Costs, including compensation of the referees, shall be made part of the award or judgment, and be paid by such railroad company. (Mar. 2, 1899, ch. 374, § 3, 30 Stat. 991; Feb. 28, 1902, ch. 134, § 23, 32 Stat. 50.)

#### § 315. Time for completion of road; forfeiture.

If any such company shall fail to construct and put in operation one-tenth of its entire line in one year, or to complete its road within three years after the approval of its map of location by the Secretary of the Interior, the right of way hereby granted shall be deemed forfeited and abandoned ipso facto as to that portion of the road not then constructed and in operation: *Provided*, That the Secretary may, when he deems proper, extend, for a period not exceeding two years, the time for the completion of any road for which right of way has been granted and a part of which shall have been built. (Mar. 2, 1899, ch. 374, § 4, 30 Stat. 991.)

#### § 316. Rights of several roads through canyons.

The provisions of section 935 of Title 43 relating to the rights of several railroads through any canyon, pass, or defile are extended and made applicable to rights of way granted under sections 312–318 of this title, and to railroad companies obtaining such rights of way. (Mar. 2, 1899, ch. 374, § 6, 30 Stat. 992.)

#### § 317. Regulations.

The Secretary of the Interior shall make all needful rules and regulations, not inconsistent with sections 312–318 of this title, for the proper execution and carrying into effect of all the provisions of said sections. (Mar. 2, 1899, ch. 374, § 7, 30 Stat. 992.)

#### § 318. Amendment or repeal of sections.

Congress hereby reserves the right at any time to alter, amend, or repeal the sections 312–318 of this title or any portion thereof. (Mar. 2, 1899, ch. 374, § 8, 30 Stat. 992.)

**§ 318a. Roads on Indian reservations; appropriation.**

Appropriations are hereby authorized out of any money in the Treasury not otherwise appropriated for material, equipment, supervision and engineering, and the employment of Indian labor in survey, improvement, construction, and maintenance of Indian reservation roads not eligible to Government aid under the Federal Highway Act and for which no other appropriation is available, under such rules and regulations as may be prescribed by the Secretary of the Interior. (May 26, 1928, ch. 756, 45 Stat. 750.)

**REFERENCE IN TEXT**

The Federal Highway Act, to which reference is made in text, is the act of November 9, 1921, ch. 119, 42 Stat. 212. For distribution of said act in this code, see note to section 1 of Title 23, Highways.

**§ 318b. Same; approval of location and design by Public Roads Administration.**

The location, type, and design of all roads constructed under the provisions of section 318a of this title, shall be approved by the Public Roads Administration before any expenditures are made thereon, and all such construction done by contract shall be under the general supervision of the Public Roads Administration. (June 16, 1936, ch. 582, § 6, 49 Stat. 1521; Sept. 5, 1940, ch. 715, § 10, 54 Stat. 870.)

**CHANGE IN NAME**

Act September 5, 1940, cited to text, substituted "Public Roads Administration" for "Bureau of Public Roads."

**§ 319. Rights-of-way for telephone and telegraph lines.**

The Secretary of the Interior is authorized and empowered to grant a right of way, in the nature of an easement, for the construction, operation, and maintenance of telephone and telegraph lines and offices for general telephone and telegraph business through any Indian reservation, through any lands held by an Indian tribe or nation in the former Indian Territory, through any lands reserved for an Indian agency or Indian school, or for other purpose in connection with the Indian service, or through any lands which have been allotted in severalty to any individual Indian under any law or treaty, but which have not been conveyed to the allottee with full power of alienation, upon the terms and conditions herein expressed. No such lines shall be constructed across Indian lands, as above mentioned, until authority therefor has first been obtained from the Secretary of the Interior, and the maps of definite location of the lines shall be subject to his approval. The compensation to be paid the tribes in their tribal capacity and the individual allottees for such right of way through their lands shall be determined in such manner as the Secretary of the Interior may direct, and shall be subject to his final approval; and where such lines are not subject to State or Territorial taxation the company or owner of the line shall pay to the Secretary of the Interior, for the use and benefit of the Indians, such annual tax as he may designate, not exceeding \$5 for each ten miles of line so constructed and maintained; and all such lines shall be constructed and maintained under such rules and regulations as said

Secretary may prescribe. But nothing herein contained shall be so construed as to exempt the owners of such lines from the payment of any tax that may be lawfully assessed against them by either State, Territorial, or municipal authority; and Congress hereby expressly reserves the right to regulate the tolls or charges for the transmission of messages over any lines constructed under the provisions of this section: *Provided*, That incorporated cities and towns into or through which such telephone or telegraphic lines may be constructed shall have the power to regulate the manner of construction therein, and nothing herein contained shall be so construed as to deny the right of municipal taxation in such towns and cities. (Mar. 3, 1901, ch. 832, § 3, 31 Stat. 1083.)

**§ 320. Acquisition of lands for reservoirs or materials.**

When, in the judgment of the Secretary of the Interior, it is necessary for any railway company owning or operating a line of railway in any Indian reservation to acquire lands in such Indian reservation for reservoirs, material, or ballast pits for the construction, repair, and maintenance of its railway, or for the purpose of planting and growing thereon trees to protect its line of railway, the said Secretary is authorized to grant such lands to any such railway company under such terms and conditions and such rules and regulations as may be prescribed by the said Secretary.

When any railway company desiring to secure the benefits of this provision shall file with the Secretary of the Interior an application describing the lands which it desires to purchase, upon the payment of the price agreed upon the said Secretary shall cause such lands to be conveyed to the railway company applying therefor upon such terms and conditions as he may deem proper: *Provided*, That no lands shall be acquired under the terms of this provision in greater quantities than forty acres for any one reservoir, and one hundred and sixty acres for any material or ballast pit, to the extent of not more than one reservoir and one material or gravel pit in any one section of ten miles of any such railway in any Indian reservation: *And provided further*, That the lands acquired for tree planting shall be taken only at such places along the line of the railway company applying therefor as in the judgment of the said Secretary may be necessary, and shall be taken in strips adjoining and parallel with the right of way of the railway company taking the same, and shall not exceed one hundred and fifty feet in width.

All moneys paid for such lands shall be deposited in the Treasury of the United States to the credit of the tribe or tribes, and the moneys received by said Secretary as damages sustained by individual members of the Indian tribe, which damages shall be ascertained by the Secretary of the Interior and paid by the railway company taking such lands, shall be paid by said Secretary to the Indian or Indians sustaining such damages. The provisions of this section are extended and made applicable to any lands which have been allotted in severalty to any individual Indian under any law or treaty, but which have not been conveyed to the allottee with full power



of alienation; the damages and compensation to be paid to any Indian allottee shall be ascertained and fixed in such manner as the Secretary of the Interior may direct and shall be paid by the railway company to said Secretary; the damages and compensation paid to the Secretary of the Interior by the railway company taking any such land shall be paid by said Secretary to the allottee sustaining such damages. (Mar. 3, 1909, ch. 263, 35 Stat. 781, 782; May 6, 1910, ch. 204, 36 Stat. 349.)

#### CROSS REFERENCE

Acquisition of lands, see section 465 of this title.

### § 321. Rights-of-way for pipe lines.

The Secretary of the Interior is authorized and empowered to grant a right-of-way in the nature of an easement for the construction, operation, and maintenance of pipe lines for the conveyance of oil and gas through any Indian reservation, through any lands held by an Indian tribe or nation in the former Indian Territory, through any lands reserved for an Indian agency or Indian school, or for other purpose in connection with the Indian Service, or through any lands which have been allotted in severalty to any individual Indian under any law or treaty, but which have not been conveyed to the allottee with full power of alienation upon the terms and conditions herein expressed. Before title to rights of way applied for hereunder shall vest, maps of definite location shall be filed with and approved by the Secretary of the Interior: *Provided*, That before such approval the Secretary of the Interior may, under such rules and regulations as he may prescribe, grant temporary permits revocable in his discretion for the construction of such lines: *Provided*, That the construction of lateral lines from the main pipe line establishing connection with oil and gas wells on the individual allotments of citizens may be constructed without securing authority from the Secretary of the Interior and without filing maps of definite location, when the consent of the allottee upon whose lands oil or gas wells may be located and of all other allottees through whose lands said lateral pipe lines may pass has been obtained by the pipe-line company: *Provided further*, That in case it is desired to run a pipe line under the line of any railroad, and satisfactory arrangements cannot be made with the railroad company, then the question shall be referred to the Secretary of the Interior, who shall prescribe the terms and conditions under which the pipe-line company shall be permitted to lay its lines under said railroad. The compensation to be paid the tribes in their tribal capacity and the individual allottees for such right of way through their lands shall be determined in such manner as the Secretary of the Interior may direct, and shall be subject to his final approval. And where such lines are not subject to State or Territorial taxation the company or owner of the line shall pay to the Secretary of the Interior, for the use and benefit of the Indians, such annual tax as he may designate, not exceeding \$5 for each ten miles of line so constructed and maintained under such rules and regulations as said Secretary may prescribe. But nothing herein contained shall be so construed as to exempt the owners of such lines from

the payment of any tax that may be lawfully assessed against them by either State, Territorial, or municipal authority. And incorporated cities and towns into and through which such pipe lines may be constructed shall have the power to regulate the manner of construction therein, and nothing herein contained shall be so construed as to deny the right of municipal taxation in such towns and cities, and nothing herein shall authorize the use of such right of way except for pipe line, and then only so far as may be necessary for its construction, maintenance, and care: *Provided*, That the rights herein granted shall not extend beyond a period of twenty years: *Provided further*, That the Secretary of the Interior, at the expiration of said twenty years, may extend the right to maintain any pipe line constructed under this section for another period not to exceed twenty years from the expiration of the first right, upon such terms and conditions as he may deem proper. The right to alter, amend, or repeal this section is expressly reserved. (Mar. 11, 1904, ch. 505, §§ 1, 2, 33 Stat. 65; Mar. 2, 1917, ch. 146, § 1, 39 Stat. 973.)

#### CROSS REFERENCE

Acquisition of lands, see section 465 of this title.

### § 322. Application of certain sections to Pueblo Indians.

The provisions of the Statutes of the United States governing the acquisition of rights-of-way through Indian lands, to wit, sections 311, 312, 313, 314, 315, 317, 318, 319, and 321 of this title and section 935 of Title 43, and the basic Acts of Congress cited in such sections are extended over and made applicable to the Pueblo Indians of New Mexico and their lands, under such rules, regulations, and conditions as the Secretary of the Interior may prescribe. (Apr. 21, 1928, ch. 400, 45 Stat. 442.)

## Chapter 9.—ALLOTMENT OF INDIAN LANDS

### Sec.

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### § 331. Allotments on reservations; irrigable and non-irrigable lands.

In all cases where any tribe or band of Indians has been or shall be located upon any reservation created for their use by treaty stipulation, Act of Congress, or Executive order, the President shall be authorized to cause the same or any part thereof to be surveyed or resurveyed whenever in his opinion such reservation or any part may be advantageously utilized for agricultural or grazing purposes by such Indians, and to cause allotment to each Indian located thereon to be made in such areas as in his opinion may be for their best interest not to exceed eighty acres of agricultural or one hundred and sixty acres of grazing land to any one Indian. And whenever it shall appear to the President that lands on any Indian reservation subject to allotment by authority of law have been or may be brought within any irrigation project, he may cause allotments of such irrigable lands to be made to the Indians entitled thereto in such areas as may be for their best interest, not to exceed, however, forty acres to any one Indian, and such irrigable land shall be held to be equal in quantity to twice the number of acres of nonirrigable agricultural land and four times the number of acres of nonirrigable grazing land: *Provided*, That the remaining area to which any Indian may be entitled under existing law after he shall have received his proportion of irrigable land on the basis of equalization herein established may be allotted to him from nonirrigable agricultural or grazing lands: *Provided further*, That where a treaty or Act of Congress setting apart such reservation provides for allotments in severalty in quantity greater or less than that herein authorized, the President shall cause allotments on such reservations to be made in quantity as specified in such treaty or Act, subject, however, to the basis of equalization between irrigable and nonirrigable lands established herein, but in such cases allotments may be made in quantity as specified herein, with the consent of the Indians expressed in such manner as the President in his discretion may require. (Feb. 8, 1887, ch. 119, § 1, 24 Stat. 388; Feb. 28, 1891, ch. 383, § 1, 26 Stat. 794; June 25, 1910, ch. 431, § 17, 36 Stat. 859.)

#### CREEK NATION, ALLOTMENTS TO

Act Mar. 2, 1917, ch. 146, § 18, 39 Stat. 986 provided in part as follows: "Hereafter no allotments of land shall be made to members of the Creek Nation."

#### CROSS REFERENCES

Allotments in severalty, see section 461 of this title.  
Surrender of patent and selection of other land, see section 350 of this title.

### § 332. Selection of allotments.

All allotments set apart under the provisions of sections 331–333 of this title shall be selected by the Indians, heads of families selecting for their minor children, and the agents shall select for each orphan child, and in such manner as to embrace the improvements of the Indians making the selection. Where the improvements of two or more Indians have been made on the same legal subdivision of land, unless they shall otherwise agree, a provisional line may be run dividing said lands between them, and the amount to which each is entitled shall be equalized in the assignment of the remainder of the land to which they are entitled under said sections: *Provided*, That if any one entitled to an allotment shall fail to make a selection within four years after the President shall direct that allotments may be made on a particular reservation, the Secretary of the Interior may direct the agent of such tribe or band, if such there be, and if there be no agent, then a special agent appointed for that purpose, to make a selection for such Indian, which selection shall be allotted as in cases where selections are made by the Indians, and patents shall issue in like manner. (Feb. 8, 1887, ch. 119, § 2, 24 Stat. 388.)

#### CROSS REFERENCE

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

### § 333. Making of allotments by agents.

The allotments provided for in sections 331–333 of this title, shall be made by special agents appointed by the President for such purpose, and the superintendents or agents in charge of the respective reservations on which the allotments are directed to be made, or, in the discretion of the Secretary of the Interior, such allotments may be made by the superintendent or agent in charge of such reservation, under such rules and regulations as the Secretary of the Interior may from time to time prescribe, and shall be certified by such special allotting agents, superintendents, or agents to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the General Land Office. (Feb. 8, 1887, ch. 119, § 3, 24 Stat. 389; June 25, 1910, ch. 431, § 9, 36 Stat. 858.)

#### CROSS REFERENCE

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

### § 334. Allotments to Indians not residing on reservations.

Where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, Act of Congress, or Executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application

to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in sections 331-333 of this title for Indians residing upon reservations; and when such settlement is made upon unsurveyed lands the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto; and patents shall be issued to them for such lands in the manner and with the restrictions as provided in sections 348 and 349. And the fees to which the officers of such local land office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them, from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Commissioner of the General Land Office, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior. (Feb. 8, 1887, ch. 119, § 4, 24 Stat. 389.)

#### PERMANENT APPROPRIATION; REPEAL

Effective July 1, 1935, the permanent appropriation provided for in the last sentence of this section was repealed by act June 26, 1934, ch. 756, § 1, 48 Stat. 1225. See section 725 (b) of Title 31, Money and Finance.

#### CROSS REFERENCES

Allotments to Indians making settlement on public lands, see section 336 of this title.

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

#### § 335. Extension of provisions as to allotments.

Unless otherwise specifically provided, the provisions of sections 331-334, 339, 341, 342, 348, 349, and 381 of this title are extended to all lands heretofore purchased or which may be purchased by authority of Congress for the use or benefit of any individual Indian or band or tribe of Indians. (Feb. 14, 1923, ch. 76, 42 Stat. 1246.)

#### CROSS REFERENCE

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

#### § 336. Allotments to Indians making settlement.

Where any Indian entitled to allotment under existing laws shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her and to his or her children in manner as provided by law for allotments to Indians residing upon reservations, and such allotments to Indians on the public domain as herein provided shall be made in such areas as the President may deem proper, not to exceed, however, forty acres of irrigable land or eighty acres of nonirrigable agricultural land or one hundred sixty acres of nonirrigable grazing land to any one Indian; and when such settlement is made upon unsurveyed lands the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto, and patent shall be issued to them for such lands in the manner and with the restrictions provided in sections 348 and 349. And the fees to which the officers of such local

land office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Commissioner of the General Land Office, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior. (Feb. 28, 1891, ch. 383, § 4, 26 Stat. 795; June 25, 1910, ch. 431, § 17, 36 Stat. 860.)

#### PERMANENT APPROPRIATION; REPEAL

Effective July 1, 1935, the permanent appropriation provided for in the last sentence of this section was repealed by act June 26, 1934, ch. 756, § 1, 48 Stat. 1225. See section 725 (b) of Title 31, Money and Finance.

#### § 337. Allotments in national forests.

The Secretary of the Interior is authorized, in his discretion, to make allotments within the national forests in conformity with the general allotment laws, to any Indian occupying, living on, or having improvements on land included within any such national forest who is not entitled to an allotment on any existing Indian reservation, or for whose tribe no reservation has been provided, or whose reservation was not sufficient to afford an allotment to each member thereof. All applications for allotments under the provisions of this section shall be submitted to the Secretary of Agriculture who shall determine whether the lands applied for are more valuable for agricultural or grazing purposes than for the timber found thereon; and if it be found that the lands applied for are more valuable for agricultural or grazing purposes, then the Secretary of the Interior shall cause allotment to be made as herein provided. (June 25, 1910, ch. 431, § 31, 36 Stat. 863.)

#### § 337a. San Juan County, Utah; discontinuance of allotments.

No further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah. (Mar. 1, 1933, ch. 160, § 1, 47 Stat. 1418.)

#### CODIFICATION

Section is repeated in section 190a of Title 43, Public Lands.

#### § 338. Repealed. May 29, 1928, ch. 901, § 1 (64), 45 Stat. 991.

Section, act Apr. 4, 1910, ch. 140, § 1, 36 Stat. 270, required the Secretary of Interior to submit to Congress a cost account of survey and allotment work.

#### § 339. Tribes excepted from certain provisions.

The provisions of sections 331-334, 341, 342, 348, 349, and 381 of this title shall not extend to the territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osage, Miamies and Peorias, and Sacs and Foxes, in Oklahoma, nor to any of the reservations of the Seneca Nation of New York Indians in the State of New York, nor to that strip of territory in the State of Nebraska adjoining the Sioux Nation on the south added by Executive order. (Feb. 8, 1887, ch. 119, § 8, 24 Stat. 391.)

**§ 340. Extension of certain provisions.**

The provisions of sections 331–334, 339, 341, 342, 348, 349, and 381, of this title, are declared to extend to and are made applicable to the Confederate Wea, Peoria, Kaskaskia, and Piankeshaw tribes of Indians, and the Western Miami tribe of Indians, located in the northeastern part of the former Indian Territory and to their reservation, in the same manner and to the same extent as if said tribes had not been excepted from the provisions of said sections, except and as otherwise hereinafter provided. (Mar. 2, 1889, ch. 422, § 1, 25 Stat. 1013.)

**§ 341. Power to grant rights-of-way not affected.**

Nothing in sections 331–334, 339, 342, 348, 349, and 381 of this title shall be so construed as to affect the right and power of Congress to grant the right of way through any lands granted to an Indian, or a tribe of Indians, for railroads or other highways, or telegraph lines, for the public use, or to condemn such lands to public uses, upon making just compensation. (Feb. 8, 1887, ch. 119, § 10, 24 Stat. 391.)

**§ 342. Removal of Southern Utes to new reservation.**

Nothing in sections 331–334, 339, 341, 348, 349, and 381 of this title, shall be so construed as to prevent the removal of the Southern Ute Indians from their present reservation in southwestern Colorado to a new reservation by and with the consent of a majority of the adult male members of said tribe. (Feb. 8, 1887, ch. 119, § 11, 24 Stat. 391.)

**§ 343. Correction of errors in allotments and patents.**

In all cases where it shall appear that a double allotment of land has been wrongfully or erroneously made by the Secretary of the Interior to any Indian by an assumed name or otherwise, or where a mistake has been made in the description of the land inserted in any patent, said Secretary is authorized and directed, during the time that the United States may hold the title to the land in trust for any such Indian, and for which a conditional patent may have been issued, to rectify and correct such mistakes and cancel any patent which may have been thus erroneously and wrongfully issued whenever in his opinion the same ought to be canceled for error in the issue thereof, and if possession of the original patent cannot be obtained, such cancellation shall be effective if made upon the records of the General Land Office; and no proclamation shall be necessary to open to settlement the lands to which such an erroneous allotment patent has been canceled, provided such lands would otherwise be subject to entry: *And provided*, That such lands shall not be open to settlement for sixty days after such cancellation: *And further provided*, That no conditional patent that has been or that may be executed in favor of any Indian allottee, excepting in cases hereinbefore authorized, and excepting in cases where the conditional patent is relinquished by the patentee or his heirs to take another allotment, shall be subject to cancellation without authority of Congress. (Jan. 26, 1895, ch. 50, 28 Stat. 641; Apr. 23, 1904, ch. 1489, 33 Stat. 297.)

**§ 344. Cancellation of allotment of unsuitable land.**

If any Indian of a tribe whose surplus lands have been ceded or opened to disposal has received an allotment embracing lands unsuitable for allotment purposes, such allotment may be canceled and other unappropriated, unoccupied, and unreserved land of equal area, within the ceded portions of the reservation upon which such Indian belongs, allotted to him upon the same terms and with the same restrictions as the original allotment, and lands described in any such canceled allotment shall be disposed of as other ceded lands of such reservation. This provision shall not apply to the lands formerly comprising Indian Territory. The Secretary of the Interior is authorized to prescribe rules and regulations to carry this law into effect. (Mar. 3, 1909, ch. 263, 35 Stat. 784.)

**CROSS REFERENCE**

Provisions of sections 331–334, 339, 341, 342, 348, 349, and 381 not to extend to any Indians in the former Indian Territory, see section 349 of this title.

**§ 344a. Cancellation of patent issued to Indian allottee dying without heirs.**

The Secretary of the Interior is authorized to investigate the allotment in the name of any deceased Indian and if it be shown to his satisfaction that the allottee died without heirs he shall report the facts to Congress with a recommendation for the cancellation of the patent issued in the name of such Indian. (June 25, 1910, ch. 431, § 12, 36 Stat. 858.)

**§ 345. Actions for allotments.**

All persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment Act or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district court of the United States; and said district courts are given jurisdiction to try and determine any action, suit, or proceeding arising within their respective jurisdictions involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty (and in said suit the parties thereto shall be the claimant as plaintiff and the United States as party defendant); and the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him, but this provision shall not apply to any lands held August 15, 1894, by either of the Five Civilized Tribes, nor to any of the lands within the Quapaw Indian Agency: *Provided*, That the right of appeal shall be allowed to either party as in other cases. (Aug. 15, 1894, ch. 290, § 1, 28 Stat. 305; Feb. 6, 1901, ch. 217, § 1, 31 Stat. 760; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

**§ 346. Proceedings in actions for allotments.**

The plaintiff shall cause a copy of his petition filed under section 345 of this title, to be served upon the district attorney of the United States in the district wherein suit is brought, and shall mail a copy of same, by registered letter, to the Attorney General of the United States, and shall thereupon cause to be filed with the clerk of the court wherein suit is instituted an affidavit of such service and the mailing of such letter. It shall be the duty of the district attorney upon whom service of petition is made as aforesaid to appear and defend the interests of the Government in the suit, and within sixty days after the service of petition upon him, unless the time should be extended by order of the court made in the case to file a plea, answer, or demurrer on the part of the Government, and to file a notice of any counterclaim, set-off, claim for damages, or other demand or defense whatsoever of the Government in the premises: *Provided*, That should the district attorney neglect or refuse to file the plea, answer, demurrer, or defense, as required, the plaintiff may proceed with the case under such rules as the court may adopt in the premises; but the plaintiff shall not have judgment or decree for his claim, or any part thereof, unless he shall establish the same by proof satisfactory to the court. (Feb. 6, 1901, ch. 217, § 2, 31 Stat. 760.)

**§ 347. Limitations of actions for lands patented in severalty under treaties.**

In all actions brought in any State court or United States court by any patentee, his heirs, grantees, or any person claiming under such patentee, for the possession or rents or profits of lands patented in severalty to the members of any tribe of Indians under any treaty between it and the United States of America, where a deed has been approved by the Secretary of the Interior to the land sought to be recovered, the statutes of limitations of the States in which said land is situate shall be held to apply, and it shall be a complete defense to such action that the same has not been brought within the time prescribed by the statutes of said State the same as if such action had been brought for the recovery of land patented to others than members of any tribe of Indians. (May 31, 1902, ch. 946, § 1, 32 Stat. 284.)

**§ 348. Patents to be held in trust; descent and partition.**

Upon the approval of the allotments provided for in sections 331-334 of this title, by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*,

That the President of the United States may in any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: *Provided*, That the law of descent and partition in force in the State or Territory where such lands are situate shall apply thereto after patents therefor have been executed and delivered, except as herein otherwise provided: *And provided further*, That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress, and the form and manner of executing such release shall also be prescribed by Congress: *Provided, however*, That all lands adapted to agriculture, with or without irrigation so sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers and shall be disposed of by the United States to actual and bona fide settlers only in tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe, subject to grants which Congress may make in aid of education: *And provided further*, That no patents shall issue therefor except to the person so taking the same as and for a homestead, or his heirs, and after the expiration of five years' occupancy thereof as such homestead; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of such patent, shall be null and void. And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians; to whom such reservations belonged; and the same, with interest thereon at 3 per centum per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians or the members thereof. The patents aforesaid shall be recorded in the General Land Office, and afterwards delivered, free of charge, to the allottee entitled thereto. And if any religious society or other organization was occupying on February 8, 1887, any of the public lands to which sections 331-334, 339, 341, 342, 348, 349, and 381 of this title are applicable, for religious or educational work among the Indians, the Secretary of the Interior is authorized to confirm such occupation to such society or organization, in quantity not exceeding one hundred and sixty acres in any one tract, so long as the same shall be so occupied, on such terms as he shall deem just; but

nothing herein contained shall change or alter any claim of such society for religious or educational purposes heretofore granted by law. And in the employment of Indian police, or any other employees in the public service among any of the Indian tribes or bands affected by the aforementioned sections, and where Indians can perform the duties required, those Indians who have availed themselves of the provisions of the said sections and become citizens of the United States shall be preferred.

*Provided further*, That whenever the Secretary of the Interior shall be satisfied that any of the Indians of the Siletz Indian Reservation, in the State of Oregon, fully capable of managing their own business affairs, and being of the age of twenty-one years or upward, shall, through inheritance or otherwise, become the owner of more than eighty acres of land upon said reservation, he shall cause patents to be issued to such Indian or Indians for all of such lands over and above the eighty acres thereof. Said patent or patents shall be issued for the least valuable portions of said lands, and the same shall be discharged of any trust and free of all charge, incumbrance, or restriction whatsoever; and the Secretary of the Interior is authorized and directed to ascertain, as soon as shall be practicable, whether any of said Indians of the Siletz Reservation should receive patents conveying in fee lands to them under the provisions of sections 331–334, 339, 341, 342, 348, 349, and 381 of this title. (Feb. 8, 1887, ch. 119, § 5, 24 Stat. 389; Mar. 3, 1901, ch. 832, § 9, 31 Stat. 1085.)

CROSS REFERENCES

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

Continuance of restrictions on alienation in patents of Indian lands, see section 391 of this title.

Negotiations for cession to United States of surplus unallotted lands to be made through United States Indian inspector and be subject to ratification by Congress, see section 1195 of Title 43, Public Lands.

§ 349. Patents in fee to allottees.

At the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section 348, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law: *Provided*, That the Secretary of the Interior may, in his discretion, and he is authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent: *Provided further*, That until the issuance of fee-simple patents all allottees to whom trust patents shall be issued shall be subject to the exclusive jurisdiction of the United States: *And provided further*, That the provisions of sections 331–334, 339, 341, 342, 349, and 381 of this title shall not extend to any Indians in

the former Indian Territory. (Feb. 8, 1887, ch. 119, § 6, 24 Stat. 390; May 8, 1906, ch. 2348, 34 Stat. 182.)

CROSS REFERENCE

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

§ 350. Surrender of patent, and selection of other land.

The Secretary of the Interior is authorized, in his discretion, and whenever for good and sufficient reason he shall consider it to be for the best interest of the Indians, in making allotments under sections 331–333 of this title, to permit any Indian to whom a patent has been issued for land on the reservation to which such Indian belongs, under treaty or existing law, to surrender such patent with formal relinquishment by such Indian to the United States of all his or her right, title, and interest in the land conveyed thereby, properly indorsed thereon, and to cancel such surrendered patent: *Provided*, That the Indian so surrendering the same shall make a selection, in lieu thereof, of other land and receive patent therefor, under the provisions of sections 331–334, 339, 341, 342, 348, 349, and 381 of this title. (Oct. 19, 1888, ch. 1214, § 2, 25 Stat. 612.)

CROSS REFERENCE

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

§ 351. Patents with restrictions for lots in villages in Washington.

The Secretary of the Interior is authorized, whenever in his opinion it shall be conducive to the best welfare and interest of the Indians living within any Indian village on any of the Indian reservations in the State of Washington to issue a patent to each of said Indians for the village or town lot occupied by him, which patent shall contain restrictions against the alienation of the lot described therein to persons other than members of the tribe, except on approval of the Secretary of the Interior; and if any such Indian shall die subsequent to June 25, 1910, and before receiving patent to the lot occupied by him, the lot to which such Indian would have been entitled if living shall be patented in his name and shall be disposed of as provided for in section 372 of this title. (June 25, 1910, ch. 431, § 10, 36 Stat. 858.)

CROSS REFERENCE

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

§ 352. Cancellation of trust patents within power or reservoir sites.

The Secretary of the Interior, after notice and hearing, is authorized to cancel trust patents issued to Indian allottees for allotments within any power or reservoir site and for allotments or such portions of allotments as are located upon or include lands set aside, reserved, or required within any Indian reservation for irrigation purposes under authority of Congress: *Provided*, That any Indian allottee whose allotment shall be so canceled shall be reimbursed for all improvements on his canceled allotment, out of any moneys available for the construction of the irrigation project for which the said power or reservoir site may be set aside: *Provided further*, That

any Indian allottee whose allotment, or part thereof, is so canceled shall be allotted land of equal value within the area subject to irrigation by any such project. (June 25, 1910, ch. 431, § 14, 36 Stat. 859.)

#### CROSS REFERENCE

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

#### § 352a. Cancellation of patents in fee simple for allotments held in trust.

The Secretary of the Interior is hereby authorized, in his discretion, to cancel any patent in fee simple issued to an Indian allottee or to his heirs before the end of the period of trust described in the original or trust patent issued to such allottee, or before the expiration of any extension of such period of trust by the President, where such patent in fee simple was issued without the consent or an application therefor by the allottee or by his heirs: *Provided*, That the patentee has not mortgaged or sold any part of the land described in such patent: *Provided also*, That upon cancellation of such patent in fee simple the land shall have the same status as though such fee patent had never been issued. (Feb. 26, 1927, ch. 215, 44 Stat. 1247.)

#### § 352b. Same; partial cancellation; issuance of new trust patents.

Where patents in fee have been issued for Indian allotments, during the trust period, without application by or consent of the patentees, and such patentees or Indian heirs have sold a part of the land included in the patents, or have mortgaged the lands or any part thereof and such mortgages have been satisfied, such lands remaining undisposed of and without incumbrance by the patentees, or Indian heirs, may be given a trust patent status and the Secretary of the Interior is, on application of the allottee or his or her Indian heirs, hereby authorized, in his discretion, to cancel patents in fee so far as they cover such unsold lands not encumbered by mortgage, and to cause new trust patents to be issued therefor, to the allottees or their Indian heirs, of the form and legal effect as provided by sections 348 and 349 of this title, such patents to be effective from the date of the original trust patents, and the land shall be subject to any extensions of the trust made by Executive order on other allotments of members of the same tribe, and such lands shall have the same status as though such fee patents had never been issued: *Provided*, That this section and section 352a of this title shall not apply where any such lands have been sold for unpaid taxes assessed after the date of a mortgage or deed executed by the patentee or his heirs, or sold in execution of a judgment for debt incurred after date of such mortgage or deed, and the period of redemption has expired. (Feb. 26, 1927, ch. 215, § 2, as added Feb. 21, 1931, ch. 271, 46 Stat. 1205.)

#### CROSS REFERENCE

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

#### § 352c. Same; reimbursement of allottees or heirs for taxes paid on lands.

The Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe, to reimburse Indian allottees and Indian heirs of allottees for all taxes paid on so much of their allotted lands as, having been patented in fee prior to the expiration of the period of trust, without application by or consent of the patentee, has been or may be restored to trust status through cancellation of the fee patent by the Secretary of the Interior: *Provided*, That in any case in which a claim against a State, county, or political subdivision thereof for taxes collected upon such lands while the patent in fee was outstanding has been reduced to judgment, and such judgment remains unsatisfied, the Secretary of the Interior is authorized, upon reimbursement by him to the Indian of the amount of taxes, including penalties and interest, paid thereon, and upon payment by the State, county, or political subdivision thereof of the costs of the suit, to cause such judgment to be released: *Provided further*, That in any case in which a claim has been reduced to judgment and such judgment has been satisfied, the Secretary of the Interior is authorized, upon proof of satisfaction thereof, to reimburse the State, county, or political subdivision thereof, for the actual amount of the judgment, exclusive of the costs of litigation. (June 11, 1940, ch. 315, § 1, 54 Stat. 298.)

#### § 353. Sections inapplicable to certain tribes.

The provisions of sections 337, 351, 352, 372, 373, 403, 406, 407, and 408 of this title shall not apply to the Osage Indians, nor to the Five Civilized Tribes, in Oklahoma. Where deeds to tribal lands in the Five Civilized Tribes have been or may be issued, in pursuance of any tribal agreement or Act of Congress, to a person who had died, or who dies before the approval of such deed, the title to the land designated therein shall inure to and become vested in the heirs, devisees, or assigns of such deceased grantee as if the deed had issued to the deceased grantee during life. (June 25, 1910, ch. 431, §§ 32, 33, 36 Stat. 863.)

#### § 354. Lands not liable for debts prior to final patent.

No lands acquired under the provisions of sections 331-334 of this title shall, in any event, become liable to the satisfaction of any debt contracted prior to the issuing of the final patent in fee therefor. (Feb. 8, 1787, ch. 119, 24 Stat. 388; June 21, 1906, ch. 3504, 34 Stat. 327.)

#### § 355. Laws applicable to lands of full-blooded members of Five Civilized Tribes.

The lands of full-blooded members of any of the Five Civilized Tribes are made subject to the laws of the State of Oklahoma, providing for the partition of real estate. Any land allotted in such proceedings to a full-blood Indian, or conveyed to him upon his election to take the same at the appraisalment, shall remain subject to all restrictions upon alienation and taxation obtaining prior to such partition. In case of a sale under any decree, or partition, the conveyance thereunder shall operate to relieve the land



described of all restrictions of every character. (June 14, 1918, ch. 101, § 2, 40 Stat. 606.)

**§ 356. Allowance of undisputed claims of restricted allottees of Five Civilized Tribes.**

No undisputed claims to be paid from individual moneys of restricted allottees, or their heirs, or uncontested agricultural and mineral leases (excluding oil and gas leases) made by individual restricted Indian allottees, or their heirs, shall be forwarded to the Secretary of the Interior for approval, but all such undisputed claims or uncontested leases (except oil and gas leases) shall be paid, approved, rejected, or disapproved by the Superintendent for the Five Civilized Tribes of Oklahoma: *Provided, however,* That any party aggrieved by any decision or order of the Superintendent for the Five Civilized Tribes of Oklahoma may appeal from the same to the Secretary of the Interior within thirty days from the date of said decision or order. (Feb. 14, 1920, ch. 75, § 18, 41 Stat. 426.)

**§ 357. Condemnation of lands under laws of States.**

Lands allotted in severalty to Indians may be condemned for any public purpose under the laws of the State or Territory where located in the same manner as land owned in fee may be condemned, and the money awarded as damages shall be paid to the allottee. (Mar. 3, 1901, ch. 832, § 3, 31 Stat. 1084.)

**§ 358. Repeal of statutory provisions relating to survey, classification, and allotments which provide for repayment out of Indian moneys.**

Any and all provisions contained in any Act passed prior to March 7, 1928, for the survey, resurvey, classification, and allotment of lands in severalty under sections 331 and 334 of this title, which provide for the repayment of funds appropriated proportionately out of any Indian moneys held in trust or otherwise by the United States and available by law for such reimbursable purposes, are hereby repealed: *Provided further,* That the repeal hereby authorized shall not affect any funds authorized to be reimbursed by any special Act of Congress wherein a particular or special fund is mentioned from which reimbursement shall be made. (Mar. 7, 1928, ch. 137, § 1, 45 Stat. 206.)

**Chapter 10.—DESCENT AND DISTRIBUTION;  
HEIRS OF ALLOTTEE**

Sec.	
371.	Descent of land.
372.	Ascertainment of heirs of deceased allottees; settlement of estates; sale of lands; deposit of Indian moneys.
372a.	Heirs by adoption.
373.	Disposal by will of allotments held under trust.
374.	Attendance of witnesses.
375.	Determination of heirship of deceased members of Five Civilized Tribes.
376.	Oaths in investigations; witnesses.
377.	Payment or deduction of cost of determining heirs.
378.	Partition of allotment among heirs; patents.
379.	Sale of allotted lands by heirs.
380.	Lease of inherited allotments by superintendent.

**§ 371. Descent of land.**

For the purpose of determining the descent of land to the heirs of any deceased Indian under the provi-

sions of section 348, of this title, whenever any male and female Indian shall have cohabited together as husband and wife according to the custom and manner of Indian life the issue of such cohabitation shall be, for the purpose aforesaid, taken and deemed to be the legitimate issue of the Indians so living together, and every Indian child, otherwise illegitimate, shall for such purpose be taken and deemed to be the legitimate issue of the father of such child: *Provided,* That the provisions of this section and sections 331, 336, and 397 of this title shall not be held or construed as to apply to the lands commonly called and known as the "Cherokee Outlet." (Feb. 28, 1891, ch. 383, § 5, 26 Stat. 795.)

**CROSS REFERENCE**

Determination of heirship of deceased members of Five Civilized Tribes, see section 375 of this title.

**§ 372. Ascertainment of heirs of deceased allottees; settlement of estates; sale of lands; deposit of Indian moneys.**

When any Indian to whom an allotment of land has been made, or may hereafter be made, dies before the expiration of the trust period and before the issuance of a fee simple patent, without having made a will disposing of said allotment as hereinafter provided, the Secretary of the Interior, upon notice and hearing, under such rules as he may prescribe, shall ascertain the legal heirs of such decedent, and his decision thereon shall be final and conclusive. If the Secretary of the Interior decides the heir or heirs of such decedent competent to manage their own affairs, he shall issue to such heir or heirs a patent in fee for the allotment of such decedent; if he shall decide one or more of the heirs to be incompetent, he may, in his discretion, cause such lands to be sold: *Provided,* That if the Secretary of the Interior shall find that the lands of the decedent are capable of partition to the advantage of the heirs, he may cause the shares of such as are competent, upon their petition, to be set aside and patents in fee to be issued to them therefor. All sales of lands allotted to Indians authorized by any other Act shall be made under such rules and regulations and upon such terms as the Secretary of the Interior may prescribe, and he shall require a deposit of 10 per centum of the purchase price at the time of the sale. Should the purchaser fail to comply with the terms of sale prescribed by the Secretary of the Interior, the amount so paid shall be forfeited; in case the balance of the purchase price is to be paid on such deferred payments, all payments made, together with all interest paid on such deferred installments, shall be so forfeited for failure to comply with the terms of the sale. All forfeitures shall inure to the benefit of the allottee or his heirs. Upon payment of the purchase price in full, the Secretary of the Interior shall cause to be issued to the purchaser patent in fee for such land: *Provided,* That the proceeds of the sale of inherited lands shall be paid to such heir or heirs as may be competent and held in trust subject to use and expenditure during the trust period for such heir or heirs as may be incompetent as their respective interests shall appear: *Provided further,* That the Secretary of the Interior is authorized, in

his discretion, to issue a certificate of competency, upon application therefor, to any Indian, or in case of his death to his heirs, to whom a patent in fee containing restrictions on alienation has been or may hereafter be issued, and such certificate shall have the effect of removing the restrictions on alienation contained in such patent: *Provided further*, That any United States Indian agent, superintendent, or other disbursing agent of the Indian Service may deposit Indian moneys, individual or tribal, coming into his hands as custodian, in such bank or banks as he may select: *Provided*, That the bank or banks so selected by him shall first execute to the said disbursing agent a bond, with approved surety, in such amount as will properly safeguard the funds to be deposited. Such bonds shall be subject to the approval of the Secretary of the Interior. (June 25, 1910, ch. 431, § 1, 36 Stat. 855; Mar. 3, 1928, ch. 122, 45 Stat. 161; Apr. 30, 1934, ch. 169, 48 Stat. 647.)

#### CROSS REFERENCE

Deposits in banks, see section 151 of this title.

#### § 372a. Heirs by adoption.

In probate matters under the exclusive jurisdiction of the Secretary of the Interior, no person shall be recognized as an heir of a deceased Indian by virtue of an adoption—

- (1) Unless such adoption shall have been—
  - (a) by a judgment or decree of a State court;
  - (b) by a judgment or decree of an Indian court;
  - (c) by a written adoption approved by the superintendent of the agency having jurisdiction over the tribe of which either the adopted child or the adoptive parent is a member, and duly recorded in a book kept by the superintendent for that purpose; or
  - (d) by an adoption in accordance with a procedure established by the tribal authority, recognized by the Department of the Interior, of the tribe either of the adopted child or the adoptive parent, and duly recorded in a book kept by the tribe for that purpose; or
- (2) Unless such adoption shall have been recognized by the Department of the Interior prior to the effective date of this section or in the distribution of the estate of an Indian who has died prior to that date: *Provided*, That an adoption by Indian custom made prior to the effective date of this section may be made valid by recordation with the superintendent if both the adopted child and the adoptive parent are still living, if the adoptive parent requests that the adoption be recorded, and if the adopted child is an adult and makes such a request or the superintendent on behalf of a minor child approves of the recordation.

This section shall not apply with respect to the distribution of the estates of Indians of the Five Civilized Tribes or the Osage Tribe in the State of Oklahoma, or with respect to the distribution of estates of Indians who have died prior to the effective date of this section. (July 8, 1940, ch. 555, §§ 1, 2, 54 Stat. 746.)

#### EFFECTIVE DATE

Section 3 of act July 8, 1940, cited to text, provided as follows: "This act shall become effective six months after the date of its approval."

#### § 373. Disposal by will of allotments held under trust.

Any persons of the age of twenty-one years having any right, title, or interest in any allotment held under trust or other patent containing restrictions on alienation or individual Indian moneys or other property held in trust by the United States shall have the right prior to the expiration of the trust or restrictive period, and before the issuance of a fee simple patent or the removal of restrictions, to dispose of such property by will, in accordance with regulations to be prescribed by the Secretary of the Interior: *Provided, however*, That no will so executed shall be valid or have any force or effect unless and until it shall have been approved by the Secretary of the Interior: *Provided further*, That the Secretary of the Interior may approve or disapprove the will either before or after the death of the testator, and in case where a will has been approved and it is subsequently discovered that there has been fraud in connection with the execution or procurement of the will the Secretary of the Interior is authorized within one year after the death of the testator to cancel the approval of the will, and the property of the testator shall thereupon descend or be distributed in accordance with the laws of the State wherein the property is located: *Provided further*, That the approval of the will and the death of the testator shall not operate to terminate the trust or restrictive period, but the Secretary of the Interior may, in his discretion, cause the lands to be sold and the money derived therefrom, or so much thereof as may be necessary, used for the benefit of the heir or heirs entitled thereto, remove the restrictions, or cause patent in fee to be issued to the devisee or devisees, and pay the moneys to the legatee or legatees either in whole or in part from time to time as he may deem advisable, or use it for their benefit: *Provided also*, That this and section 372 of this title shall not apply to the Five Civilized Tribes or the Osage Indians. (June 25, 1910, ch. 431, § 2, 36 Stat. 856; Feb. 14, 1913, ch. 55, 37 Stat. 678.)

#### § 374. Attendance of witnesses.

The authority delegated to judges of the United States courts by section 56 of Title 35 is conferred upon the Secretary of the Interior to require the attendance of witnesses at hearings, upon proper showing by any of the parties to determine the heirs of decedents, held in accordance with sections 372 and 373 of this title, under such rules and regulations as he may prescribe. (Aug. 1, 1914, ch. 222, § 1, 38 Stat. 586.)

#### § 375. Determination of heirship of deceased members of Five Civilized Tribes.

A determination of the question of fact as to who are the heirs of any deceased citizen allottee of the Five Civilized Tribes of Indians who may die or may have heretofore died, leaving restricted heirs, by the probate court of the State of Oklahoma having jurisdiction to settle the estate of said deceased, conducted in the manner provided by the laws of said State for the determination of heirship in closing up the estates of deceased persons, shall be conclusive of said question: *Provided*, That an appeal may

be taken in the manner and to the court provided by law, in cases of appeal in probate matters generally: *Provided further*, That where the time limited by the laws of said State for the institution of administration proceedings has elapsed without their institution, as well as in cases where there exists no lawful ground for the institution of administration proceedings in said courts, a petition may be filed therein having for its object a determination of such heirship and the case shall proceed in all respects as if administration proceedings upon other proper grounds had been regularly begun, but this proviso shall not be construed to reopen the question of the determination of an heirship already ascertained by competent legal authority under existing laws: *Provided further*, That said petition shall be verified, and in all cases arising hereunder service by publication may be had on all unknown heirs, the service to be in accordance with the method of serving nonresident defendants in civil suits in the district courts of said State; and if any person so served by publication does not appear and move to be heard within six months from the date of the final order, he shall be concluded equally with parties personally served or voluntarily appearing. (June 14, 1918, ch. 101, § 1, 40 Stat. 606.)

#### § 376. Oaths in investigations; witnesses.

Any officer or employee appointed or designated by the Secretary of the Interior or the Commissioner of Indian Affairs as special examiner in heirship cases shall be authorized to administer oaths in investigations committed to him: *Provided further*, That the provisions of this paragraph shall not apply to the Osage Indians nor to the Five Civilized Tribes of Indians in Oklahoma. (Aug. 1, 1914, ch. 222, § 1, 38 Stat. 586.)

#### § 377. Payment or deduction of cost of determining heirs.

Upon a determination of the heirs to any trust or restricted Indian property of the value of \$250 or more, or to any allotment, or, after approval by the Secretary of the Interior, of any will covering such trust or restricted property, there shall be paid by such heirs, or by the beneficiaries under such will, or from the estate of the decedent, or from the proceeds of sale of the allotment, or from any trust funds belonging to the estate of the decedent, the sum of \$20 where the appraised value of the estate of the decedent is \$250 or more and does not exceed \$1,000. Where the appraised value of the estate of the decedent is more than \$1,000 and less than \$2,000, \$25; where the appraised value of the estate of the decedent is \$2,000 or more and does not exceed \$3,000, \$30; where the appraised value of the estate of the decedent is more than \$3,000 but does not exceed \$5,000, \$50; where the appraised value of the estate of the decedent is more than \$5,000 but does not exceed \$7,500, \$65; and where the appraised value of the estate of the decedent is more than \$7,500, \$75; which amount shall be accounted for and paid into the Treasury of the United States: *Provided*, That the provisions of this paragraph shall not apply to the Osage Indians nor to the Five Civilized Tribes of

Oklahoma. (Jan. 24, 1923, ch. 42, 42 Stat. 1185; May 29, 1928, ch. 901, § 1 (84), 45 Stat. 992.)

#### § 378. Partition of allotment among heirs; patents.

If the Secretary of the Interior shall find that any inherited trust allotment or allotments are capable of partition to the advantage of the heirs, he may cause such lands to be partitioned among them, regardless of their competency, patents in fee to be issued to the competent heirs for their shares and trust patents to be issued to the incompetent heirs for the lands respectively or jointly set apart to them, the trust period to terminate in accordance with the terms of the original patent or order of extension of the trust period set out in said patent. (May 18, 1916, ch. 125, § 1, 39 Stat. 127.)

#### CROSS REFERENCE

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

#### § 379. Sale of allotted lands by heirs.

The adult heirs of any deceased Indian to whom a trust or other patent containing restrictions upon alienation has been or shall be issued for lands allotted to him may sell and convey the lands inherited from such decedent, but in case of minor heirs their interests shall be sold only by a guardian duly appointed by the proper court upon the order of such court, made upon petition filed by the guardian, but all such conveyances shall be subject to the approval of the Secretary of the Interior, and when so approved shall convey a full title to the purchaser, the same as if a final patent without restriction upon the alienation had been issued to the allottee. All allotted land so alienated by the heirs of an Indian allottee and all land so patented to a white allottee shall thereupon be subject to taxation under the laws of the State or Territory where the same is situate: *Provided*, That the sale herein provided for shall not apply to the homestead during the life of the father, mother, or the minority of any child or children. (May 27, 1902, ch. 888, § 7, 32 Stat. 275.)

#### CROSS REFERENCES

Allotments of deceased Indians located within limits of National Forest in Minnesota may be relinquished by the heirs to the United States, see act May 23, 1908, ch. 193, § 3, 39 Stat. 271.

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

#### § 380. Lease of inherited allotments by superintendent.

Restricted allotments of deceased Indians may be leased, except for oil and gas mining purposes, by the superintendents of the reservation within which the lands are located (1) when the heirs or devisees of such decedents have not been determined and (2) when the heirs or devisees of the decedents have been determined, and such lands are not in use by any of the heirs and the heirs have not been able during a three-months' period to agree upon a lease by reason of the number of the heirs, their absence from the reservation, or for other cause, under such rules and regulations as the Secretary of the Interior may prescribe. The proceeds derived from such leases shall be credited to the estates or other accounts of the individuals entitled thereto in accord-

ance with their respective interests. (July 8, 1940, ch. 554, 54 Stat. 745.)

## Chapter 11.—IRRIGATION OF ALLOTTED LANDS

### Sec.

- 381. Irrigation lands; regulation of use of water.
- 382. Irrigation projects under Reclamation Act.
- 383. Estimates of cost; limitations as to.
- 384. Employment of superintendents of irrigation.
- 385. Maintenance charges; reimbursement of construction costs; apportionment of cost; reports.
- 386. Reimbursement of construction charges.
- 386a. Adjustment of reimbursable debts; construction charges.
- 387. Basis of apportionment of costs of irrigation projects including maintenance; liens.
- 388. Claims for damages; settlement by agreement.
- 389. Investigation and adjustment of irrigation charges on lands within projects on Indian reservations.
- 389a. Same; declaring lands to be temporarily nonirrigable.
- 389b. Elimination to permanently nonirrigable lands.
- 389c. Same; cancellation of charges in absence of lien or contract for payment.
- 389d. Same; rules and regulations.
- 389e. Same; reports to Congress.

### § 381. Irrigation lands; regulation of use of water.

In cases where the use of water for irrigation is necessary to render the lands within any Indian reservation available for agricultural purposes, the Secretary of the Interior is authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such reservations; and no other appropriation or grant of water by any riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor. (Feb. 8, 1887, ch. 119, § 7, 24 Stat. 390.)

#### CROSS REFERENCE

Irrigation projects under Reclamation Act to be carried on under such arrangements and agreements as Secretary of Interior deems for best interests of the Indians, see section 382 of this title.

### § 382. Irrigation projects under Reclamation Act.

In carrying out any irrigation project which may be undertaken under the provisions of sections 372, 373, 381, 383, 391, 392, 411, 416, 419, 421, 431, 432, 434, 439, 461, 491, and 498 of Title 43, and which may make possible, and provide for in connection with the reclamation of other lands, the irrigation of all or any part of the irrigable lands heretofore included in allotments made to Indians under section 334 of this title, the Secretary of the Interior is authorized to make such arrangement and agreement in reference thereto as said Secretary deems for the best interest of the Indians: *Provided*, That no lien or charge for construction, operation, or maintenance shall thereby be created against any such lands. (Apr. 30, 1908, ch. 153, 35 Stat. 85; Mar. 3, 1909, ch. 263, 35 Stat. 798.)

### § 383. Estimates of cost; limitations as to.

No new irrigation project on any Indian reservation, allotments, or lands, shall be undertaken until it shall have been estimated for and a maximum limit of cost ascertained from surveys, plans, and reports submitted by the chief irrigation engineer in the Indian Service and approved by the Commis-

sioner of Indian Affairs and the Secretary of the Interior, and such limit of cost shall in no case be exceeded without express authorization of Congress, and no project to cost in the aggregate to exceed \$35,000 shall be undertaken on any Indian reservation or allotment, without specific authority of Congress. (Apr. 4, 1910, ch. 140, § 1, 36 Stat. 270.)

### § 384. Employment of superintendents of irrigation.

The Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, may employ superintendents of irrigation who shall be skilled irrigation engineers, not to exceed seven in number. (Apr. 4, 1910, ch. 140, § 1, 36 Stat. 271.)

### § 385. Maintenance charges; reimbursement of construction costs; apportionment of cost; reports.

For lands irrigable under any irrigation system or reclamation project the Secretary of the Interior may fix maintenance charges which shall be paid as he may direct, such payments to be available for use in maintaining the project or system for which collected: *Provided further*, That all moneys expended under this provision shall be reimbursable where the Indians have adequate funds to repay the Government, such reimbursements to be made under such rules and regulations as the Secretary of the Interior may prescribe: *Provided further*, That the Secretary of the Interior is authorized and directed to apportion the cost of any irrigation project constructed for Indians and made reimbursable out of tribal funds of said Indians in accordance with the benefits received by each individual Indian so far as practicable from said irrigation project, said cost to be apportioned against such individual Indian under such rules, regulations, and conditions as the Secretary of the Interior may prescribe, and annually thereafter, the Secretary of the Interior shall transmit annually to Congress a cost account in detail of all moneys, from whatever source derived, expended on each such irrigation project for the preceding fiscal year, including a résumé of previous expenditures, which shall show the number of Indians on the reservation where the land is irrigated, irrigable area under ditch, irrigable area under project (approximate), irrigable area cultivated by Indians, irrigable area cultivated by lessees, amount expended on construction to June 30 of the preceding fiscal year, amount necessary to complete, and cost per acre when completed (estimated); value of land when irrigated, and such other detailed information as may be requisite for a thorough understanding of the conditions on each system or project. (Apr. 4, 1910, ch. 140, §§ 1, 3, 36 Stat. 270, 272; Aug. 1, 1914, ch. 222, § 1, 38 Stat. 583.)

### § 386. Reimbursement of construction charges.

The Secretary of the Interior is authorized and directed to require the owners of irrigable land under any irrigation system constructed for the benefit of Indians and to which water for irrigation purposes can be delivered to begin partial reimbursement of the construction charges, where reimbursement is required by law, at such times and in such amounts as he may deem best; all payments hereunder to be credited on a per acre basis in favor of the land in

behalf of which such payments shall have been made and to be deducted from the total per acre charge assessable against said land. (Feb. 14, 1920, ch. 75, § 1, 41 Stat. 409.)

**§ 386a. Adjustment of reimbursable debts; construction charges.**

The Secretary of the Interior is hereby authorized and directed to adjust or eliminate reimbursable charges of the Government of the United States existing as debts against individual Indians or tribes of Indians in such a way as shall be equitable and just in consideration of all the circumstances under which such charges were made: *Provided*, That the collection of all construction costs against any Indian-owned lands within any Government irrigation project is hereby deferred, and no assessments shall be made on behalf of such charges against such lands until the Indian title thereto shall have been extinguished, and any construction assessments heretofore levied against such lands in accordance with the provisions of section 386 of this title, and uncollected, are hereby canceled: *Provided further*, That a report shall be made to Congress annually, on the first Monday in December, showing adjustments so made during the preceding fiscal year: *Provided further*, That any proceedings hereunder shall not be effective until approved by Congress unless Congress shall have failed to act favorably or unfavorably thereon by concurrent resolution within sixty legislative days after the filing of said report, in which case they shall become effective at the termination of the said sixty legislative days. (July 1, 1932, ch. 369, 47 Stat. 564.)

**§ 387. Basis of apportionment of costs of irrigation projects including maintenance; liens.**

The costs of irrigation projects and of operating and maintaining such projects where reimbursement thereof is required by law shall be apportioned on a per acre basis against the lands under the respective projects and shall be collected by the Secretary of the Interior as required by such law, and any unpaid charges outstanding against such lands shall constitute a first lien thereon, which shall be recited in any patent or instrument issued for such lands. (Mar. 7, 1928, ch. 137, § 1, 45 Stat. 210; Mar. 4, 1929, ch. 705, § 1, 45 Stat. 1573; May 14, 1930, ch. 273, § 1, 46 Stat. 290; Feb. 14, 1931, ch. 187, § 1, 46 Stat. 1126; Apr. 22, 1932, ch. 125, § 1, 47 Stat. 100; Feb. 17, 1933, ch. 98, § 1, 47 Stat. 829; Mar. 2, 1934, ch. 38, § 1, 48 Stat. 370; May 9, 1935, ch. 101, § 1, 49 Stat. 186; June 22, 1936, ch. 691, § 1, 49 Stat. 1769; Aug. 9, 1937, ch. 570, § 1, 50 Stat. 577; May 9, 1938, ch. 187, § 1, 52 Stat. 304; May 10, 1939, ch. 119, § 1, 53 Stat. 700; June 18, 1940, ch. 395, § 1, 54 Stat. 419.)

**§ 388. Claims for damages; settlement by agreement.**

The Secretary of the Interior is authorized to pay out of funds available for the Indian irrigation projects for damages caused to owners of lands or other private property of any kind by reason of the operations of the United States, its officers or employees, in the survey, construction, operation, or maintenance of irrigation works of such projects and which may be compromised by agreement between the claimant

and the Secretary of the Interior or such officers as he may designate: *Provided*, That the total of any such claims authorized to be settled as herein contemplated shall not exceed 5 per centum of the funds available for the project under which such claims arise during any one fiscal year. (Feb. 20, 1929, ch. 279, 45 Stat. 1252.)

**1. Investigation and adjustment of irrigation charges on lands within projects on Indian reservations.**

The Secretary of the Interior is authorized and directed to cause an investigation to be made to determine whether the owners of non-Indian lands under Indian irrigation projects and under projects where the United States has purchased water rights for Indians are unable to pay irrigation charges, including construction, maintenance, and operating charges, because of inability to operate such lands profitably by reason of lack of fertility of the soil, inadequacy of water supply, defects of irrigation works, or for any other causes. Where the Secretary finds that said landowners are unable to make payment due to the existence of such causes, he may adjust, defer, or cancel such charges, in whole or in part, as the facts and conditions warrant. In adjusting or deferring any such charges the Secretary may enter into contracts with said land owners for the payment of past due charges, but such contracts shall not extend the payment of such charges over a period in excess of ten years. (June 22, 1936, ch. 692, § 1, 49 Stat. 1803.)

**§ 389a. Same; declaring lands to be temporarily non-irrigable.**

Where the Secretary finds that any such lands cannot be cultivated profitably due to a present lack of water supply, proper drainage facilities, or need of additional construction work, he shall declare such lands temporarily nonirrigable for periods not to exceed five years and no charges shall be assessed against such lands during such periods. (June 22, 1936, ch. 692, § 2, 49 Stat. 1804.)

**§ 389b. Elimination to permanently nonirrigable lands.**

Where the Secretary finds that any such lands are permanently nonirrigable he may, with the consent of the landowner, eliminate such lands from the project. (June 22, 1936, ch. 692, § 3, 49 Stat. 1804.)

**§ 389c. Same; cancellation of charges in absence of lien or contract for payment.**

Where irrigation assessments against any such lands remained unpaid at the time the Indian title to such lands became extinguished and no lien existed and attached to such lands for the payment of charges so assessed and no contract for the payment of such charges was entered into, the Secretary shall cancel all such charges. (June 22, 1936, ch. 692, § 4, 49 Stat. 1804.)

**§ 389d. Same; rules and regulations.**

The Secretary shall have power to make such rules and regulations as may be necessary to carry out the provisions of sections 389–389c of this title. (June 22, 1936, ch. 692, § 5, 49 Stat. 1804.)

§ 389a. Same; reports to Congress.

The Secretary shall make reports to the Congress on the first Monday of each regular session, and from time to time thereafter, showing the action taken under the provisions of sections 389-389d of this title during the preceding year. No proceedings under sections 389-389d of this title shall become effective until approved by the Congress. (June 22, 1936, ch. 692, § 6, 49 Stat. 1804.)

#### APPROVAL OF SECRETARY'S ACTION

The action of the Secretary of the Interior in deferring the collection of certain irrigation charges against lands under the Blackfeet Indian irrigation project in Montana was approved by Joint Resolution of Congress Apr. 11, 1940, ch. 78, 54 Stat. 105.

### Chapter 12.—LEASE, SALE, OR SURRENDER OF ALLOTTED OR UNALLOTTED LANDS

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§ 391. Continuance of restrictions on alienation in patent.

Prior to the expiration of the trust period of any Indian allottee to whom a trust or other patent containing restrictions upon alienation has been or shall be issued under any law or treaty the President may, in his discretion, continue such restrictions on alienation for such period as he may deem best: *Provided, however*, That this shall not apply to lands in the former Indian Territory. (June 21, 1906, ch. 3504, 34 Stat. 326.)

#### CROSS REFERENCE

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

§ 391a. Sale for town site; removal of restriction.

For the purpose of allowing any Indian allottee to sell for townsite purposes any portion of the lands allotted to him, the Secretary of the Interior may, by order, remove restrictions upon the alienation of such lands and issue fee-simple patents therefor under such rules and regulations as he may prescribe. (June 21, 1906, ch. 3504, 34 Stat. 373.)

#### CROSS REFERENCE

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

§ 392. Consent to or approval of alienation of allotments by Secretary of Interior.

Whenever, in any law or treaty or in any patent issued to Indian allottees for lands in severalty pursuant to such law or treaty, there appears a provision to the effect that the lands so allotted cannot be alienated without the consent of the President of the United States, the Secretary of the Interior shall have full power and authority to consent to or approve of the alienation of such allotments, in whole or in part, in his discretion, by deed, will, lease, or any other form of conveyance, and such consent or approval by the Secretary of the Interior had in all such cases shall have the same force and legal effect as though the consent or approval of the President had previously been obtained: *Provided, however*, That the approval by the Secretary of the Interior of wills by Indian allottees or their heirs involving lands held under such patents shall not operate to remove the restrictions against alienation unless such order of approval by said Secretary shall specifically so direct. (Sept. 21, 1922, ch. 367, § 6, 42 Stat. 995.)

#### CROSS REFERENCE

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

**§ 393. Leases of restricted allotments.**

The restricted allotment of any Indian may be leased for farming and grazing purposes by the allottee or his heirs, subject only to the approval of the superintendent or other officer in charge of the reservation where the land is located, under such rules and regulations as the Secretary of the Interior may prescribe: *Provided*, That this provision shall not apply to the Five Civilized Tribes. (Mar. 3, 1921, ch. 119, § 1, 41 Stat. 1232.)

**CROSS REFERENCE**

Lease of inherited allotments by superintendent in certain cases, see section 380 of this title.

**§ 393a. Same; lands of Five Civilized Tribes.**

From and after thirty days from February 11, 1936 the restricted lands belonging to Indians of the Five Civilized Tribes in Oklahoma of one-half or more Indian blood, enrolled or unenrolled, may be leased for periods of not to exceed five years for farming and grazing purposes, under such rules and regulations as the Secretary of the Interior may prescribe and not otherwise. Such leases shall be made by the owner or owners of such lands, if adults, subject to approval by the superintendent or other official in charge of the Five Civilized Tribes Agency, and by such superintendent or other official in charge of said agency in cases of minors and of Indians who are non compos mentis. (Feb. 11, 1936, ch. 50, 49 Stat. 1135.)

**§ 394. Leases of arid allotted lands.**

Whenever it shall appear to the satisfaction of the Secretary of the Interior that the allotted lands of any Indian are arid but susceptible of irrigation and that the allottee, by reason of old age or other disability, cannot personally occupy or improve his allotment or any portion thereof, such lands, or such portion thereof, may be leased for a period not exceeding ten years, under such terms, rules, and regulations as may be prescribed by the Secretary of the Interior. (May 18, 1916, ch. 125, § 1, 39 Stat. 128.)

**CROSS REFERENCE**

Restricted allotments authorized to be leased for farming and grazing purposes, see section 393 of this title.

**§ 395. Leases of allotted lands where allottee is incapacitated.**

Whenever it shall be made to appear to the Secretary of the Interior that, by reason of age, disability, or inability, any allottee of Indian lands cannot personally, and with benefit to himself, occupy or improve his allotment or any part thereof, the same may be leased upon such terms, regulations, and conditions as shall be prescribed by the Secretary for a term not exceeding five years, for farming purposes only. (May 31, 1900, ch. 598, § 1, 31 Stat. 229.)

**CROSS REFERENCES**

Lands held in trust may be leased by allottee for period not to exceed five years under rules and regulations of the Secretary of the Interior, see section 403 of this title.

Leases of arid allotted lands susceptible of irrigation where Indian is unable personally to occupy and improve his allotment, see section 394 of this title.

**§ 396. Leases of allotted lands for mining purposes.**

All lands allotted to Indians in severalty, except allotments made to members of the Five Civilized Tribes and Osage Indians in Oklahoma, may by said allottee be leased for mining purposes for any term of years as may be deemed advisable by the Secretary of the Interior; and the Secretary of the Interior is authorized to perform any and all acts and make such rules and regulations as may be necessary for the purpose of carrying the provisions of this paragraph into full force and effect. (Mar. 3, 1909, ch. 263, 35 Stat. 783.)

**CROSS REFERENCE**

Lands held in trust may be leased by allottee for period not to exceed five years under rules and regulations of the Secretary of the Interior, see section 403 of this title.

**§ 396a. Leases of unallotted lands for mining purposes; duration of leases.**

Hereafter unallotted lands within any Indian reservation or lands owned by any tribe, group, or band of Indians under Federal jurisdiction, except those specifically excepted from the provisions of this section by section 396f of this title, may, with the approval of the Secretary of the Interior, be leased for mining purposes, by authority of the tribal council or other authorized spokesmen for such Indians, for terms not to exceed ten years and as long thereafter as minerals are produced in paying quantities. (May 11, 1938, ch. 198, § 1, 52 Stat. 347.)

**REPEAL OF INCONSISTENT ACTS**

Section 7 of act May 11, 1938, cited to text, provided as follows: "All acts or parts of acts inconsistent herewith are hereby repealed."

**§ 396b. Public auction of oil and gas leases; requirements.**

Leases for oil- and/or gas-mining purposes covering such unallotted lands shall be offered for sale to the highest responsible qualified bidder, at public auction or on sealed bids, after notice and advertisement, upon such terms and subject to such conditions as the Secretary of the Interior may prescribe. Such advertisement shall reserve to the Secretary of the Interior the right to reject all bids whenever in his judgment the interest of the Indians will be served by so doing, and if no satisfactory bid is received, or the accepted bidder fails to complete the lease, or the Secretary of the Interior shall determine that it is unwise in the interest of the Indians to accept the highest bid, said Secretary may readvertise such lease for sale, or with the consent of the tribal council or other governing tribal authorities, a lease may be made by private negotiations: *Provided*, That the foregoing provisions shall in no manner restrict the right of tribes organized and incorporated under sections 476 and 477 of this title, to lease lands for mining purposes as therein provided and in accordance with the provisions of any constitution and charter adopted by any Indian tribe pursuant to sections 461, 462, 463, 464-475, 476-478, and 479 of this title. (May 11, 1938, ch. 198, § 2, 52 Stat. 347.)



## REPEAL OF INCONSISTENT ACTS

Section 7 of act May 11, 1938, cited to text, provided as follows: "All acts or parts of acts inconsistent herewith are hereby repealed."

**§ 396c. Lessees of restricted lands to furnish bonds for performance.**

Hereafter lessees of restricted Indian lands, tribal or allotted, for mining purposes, including oil and gas, shall furnish corporate surety bonds, in amounts satisfactory to the Secretary of the Interior, guaranteeing compliance with the terms of their leases: *Provided*, That personal surety bonds may be accepted where the sureties deposit as collateral with the said Secretary of the Interior any public-debt obligations of the United States guaranteed as to principal and interest by the United States equal to the full amount of such bonds, or other collateral satisfactory to the Secretary of the Interior, or show ownership to unencumbered real estate of a value equal to twice the amount of the bonds. (May 11, 1938, ch. 198, § 3, 52 Stat. 348.)

## REPEAL OF INCONSISTENT ACTS

Section 7 of act May 11, 1938, cited to text, provided as follows: "All acts or parts of acts inconsistent herewith are hereby repealed."

**§ 396d. Rules and regulations governing operations; limitations on oil or gas leases.**

All operations under any oil, gas, or other mineral lease issued pursuant to the terms of any act affecting restricted Indian lands shall be subject to the rules and regulations promulgated by the Secretary of the Interior. In the discretion of the said Secretary, any lease for oil or gas issued under the provisions of sections 396a-396f of this title shall be made subject to the terms of any reasonable cooperative unit or other plan approved or prescribed by said Secretary prior or subsequent to the issuance of any such lease which involves the development or production of oil or gas from land covered by such lease. (May 11, 1938, ch. 198, § 4, 52 Stat. 348.)

## REPEAL OF INCONSISTENT ACTS

Section 7 of act May 11, 1938, cited to text, provided as follows: "All acts or parts of acts inconsistent herewith are hereby repealed."

**§ 396e. Officials authorized to approve leases.**

The Secretary of the Interior may, in his discretion, authorize superintendents or other officials in the Indian Service to approve leases for oil, gas, or other mining purposes covering any restricted Indian lands, tribal or allotted. (May 11, 1938, ch. 198, § 5, 52 Stat. 348.)

## REPEAL OF INCONSISTENT ACTS

Section 7 of act May 11, 1938, cited to text, provided as follows: "All acts or parts of acts inconsistent herewith are hereby repealed."

**§ 396f. Lands excepted from leasing provisions.**

Sections 396a, 396b, 396c, and 396d of this title shall not apply to the Papago Indian Reservation in Arizona, the Crow Reservation in Montana, the ceded lands of the Shoshone Reservation in Wyoming, the Osage Reservation in Oklahoma, nor to the coal and asphalt lands of the Choctaw and Chickasaw Tribes

in Oklahoma. (May 11, 1938, ch. 198, § 6, 52 Stat. 348.)

## REPEAL OF INCONSISTENT ACTS

Section 7 of act May 11, 1938, cited to text, provided as follows: "All acts or parts of acts inconsistent herewith are hereby repealed."

**§ 397. Leases of lands for grazing or mining.**

Where lands are occupied by Indians who have bought and paid for the same, and which lands are not needed for farming or agricultural purposes, and are not desired for individual allotments, the same may be leased by authority of the council speaking for such Indians, for a period not to exceed five years for grazing, or ten years for mining purposes in such quantities and upon such terms and conditions as the agent in charge of such reservation may recommend, subject to the approval of the Secretary of the Interior. (Feb. 28, 1891, ch. 383, § 3, 26 Stat. 795.)

## CROSS REFERENCES

Lands held in trust may be leased by allottee for period not to exceed five years under rules and regulations of Secretary of Interior, see section 403 of this title.

Unallotted lands authorized to be leased for oil and gas, mining purposes, see section 398 of this title.

**§ 398. Leases of unallotted lands for oil and gas mining purposes.**

Unallotted land on Indian reservations other than lands of the Five Civilized Tribes and the Osage Reservation subject to lease for mining purposes for a period of ten years under section 397 of this title may be leased at public auction by the Secretary of the Interior, with the consent of the council speaking for such Indians, for oil and gas mining purposes for a period of not to exceed ten years, and as much longer as oil or gas shall be found in paying quantities, and the terms of any existing oil and gas mining lease may in like manner be amended by extending the term thereof for as long as oil or gas shall be found in paying quantities: *Provided*, That the production of oil and gas and other minerals on such lands may be taxed by the State in which said lands are located in all respects the same as production on unrestricted lands, and the Secretary of the Interior is authorized and directed to cause to be paid the tax so assessed against the royalty interests on said lands: *Provided, however*, That such tax shall not become a lien or charge of any kind or character against the land or the property of the Indian owner. (May 29, 1924, ch. 210, 43 Stat. 244.)

**§ 398a. Leases of unallotted lands for oil and gas mining purposes within Executive order Indian reservations.**

Unallotted lands within the limits of any reservation or withdrawal created by Executive order for Indian purposes or for the use or occupancy of any Indians or tribe may be leased for oil and gas mining purposes in accordance with the provisions contained in section 398 of this title. (Mar. 3, 1927, ch. 299, § 1, 44 Stat. 1347.)

**§ 398b. Same; proceeds from rentals, royalties, and bonuses; disposition.**

The proceeds from rentals, royalties, or bonuses of oil and gas leases upon lands within Executive order

Indian reservations or withdrawals shall be deposited in the Treasury of the United States to the credit of the tribe of Indians for whose benefit the reservation or withdrawal was created or who are using and occupying the land, and shall draw interest at the rate of 4 per centum per annum and be available for appropriation by Congress for expenses in connection with the supervision of the development and operation of the oil and gas industry and for the use and benefit of such Indians: *Provided*, That said Indians, or their tribal council, shall be consulted in regard to the expenditure of such money, but no per capita payment shall be made except by Act of Congress. (Mar. 3, 1927, ch. 299, § 2, 44 Stat. 1347.)

**§ 398c. Same; taxes.**

Taxes may be levied and collected by the State or local authority upon improvements, output of mines or oil and gas wells, or other rights, property, or assets of any lessee upon lands within Executive order Indian reservations in the same manner as such taxes are otherwise levied and collected, and such taxes may be levied against the share obtained for the Indians as bonuses, rentals, and royalties, and the Secretary of the Interior is hereby authorized and directed to cause such taxes to be paid out of the tribal funds in the Treasury: *Provided*, That such taxes shall not become a lien or charge of any kind against the land or other property of such Indians. (Mar. 3, 1927, ch. 299, § 3, 44 Stat. 1347.)

**§ 398d. Same; changes in boundaries of Executive order reservations.**

Changes in the boundaries of reservations created by Executive order, proclamation, or otherwise for the use and occupation of Indians shall not be made except by Act of Congress: *Provided*, That this shall not apply to temporary withdrawals by the Secretary of the Interior. (Mar. 3, 1927, ch. 299, § 4, 44 Stat. 1347.)

**§ 398e. Same; applications for permits to prospect for oil and gas filed under other statutes; disposition.**

The Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe, to allow any person who prior to May 27, 1924, filed an application for a permit in accordance with the provisions of sections 181-201, 202-222, 223, 224-232, 234-236, and 241-263 of Title 30 to prospect for oil and gas upon lands within an Indian reservation or withdrawal created by Executive order who shall show to the satisfaction of the Secretary of the Interior that he, or the party with whom he has contracted, has done prior to January 1, 1926, any or all of the following things, to wit, expended money or labor in geologically surveying the lands covered by such application, has built a road for the benefit of such lands, or has drilled or contributed toward the drilling of the geologic structure upon which such lands are located, or who in good faith has either filed a motion for reinstatement or rehearing; or performed any other act which in the judgment of the Secretary of the Interior entitles him to equitable relief, to prospect for a period of two years from March 3, 1927, or for such further time as the Secre-

tary of the Interior may deem reasonable or necessary for the full exploration of the land described in his application under the terms and conditions therein set out, and a substantial contribution toward the drilling of the geologic structure thereon by such applicant for a permit thereon may be considered as prospecting under the provisions hereof; and upon establishing to the satisfaction of the Secretary of the Interior that valuable deposits of oil and gas have been discovered within the limits of the land embraced in any such application, he shall be entitled to a lease for one-fourth of the land embraced in the application: *Provided*, That the applicant shall be granted a lease for as much as one hundred and sixty acres of said lands if there be that number of acres within the application. The area to be selected by the applicant shall be in compact form and, if surveyed, to be described by the legal subdivisions of the public land surveyed; if unsurveyed, to be surveyed by the Government at the expense of the applicant for lease in accordance with rules and regulations to be prescribed by the Secretary of the Interior, and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such surveys; deposit made to cover expense of surveys shall be deemed appropriated for that purpose, and any excess deposits may be repaid to the person or persons making such deposit or their legal representatives. Such leases shall be for a term of twenty years upon a royalty of 5 per centum in amount or value of the production and the annual payment in advance of a rental of \$1 per acre, the rental paid for any one year to be credited against the royalties as they may accrue for that year, with the preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior. The applicant shall also be entitled to a preference right to a lease for the remainder of the land in his application at a royalty of not less than 12½ per centum in amount or value of the production, the royalty to be determined by competitive bidding or fixed by such other methods as the Secretary of the Interior may by regulations prescribe: *Provided further*, That the Secretary of the Interior shall have the right to reject any or all bids. (Mar. 3, 1927, ch. 299, § 5, 44 Stat. 1347.)

**§ 399. Leases of unallotted mineral lands withdrawn from entry under mining laws.**

*Authority of Secretary of Interior to lease.*—The Secretary of the Interior is authorized and empowered, under general regulations to be fixed by him and under such terms and conditions as he may prescribe, not inconsistent with the terms of this section, to lease to citizens of the United States, or to any association of such persons, or to any corporation organized under the laws of the United States or of any State or Territory thereof, any part of the unallotted lands within any Indian reservation within the States of Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Washington, or Wyoming withdrawn prior to June 30, 1919, from entry under the mining laws for the purpose of mining for deposits of gold, silver, copper, and other valuable

metalliferous minerals, and nonmetalliferous minerals, not including oil and gas, which leases shall be irrevocable, except as herein provided, but which may be declared null and void upon breach of any of their terms.

*Location of mining claims.*—Unallotted lands, or such portion thereof as the Secretary of the Interior shall determine, within Indian reservations withheld prior to June 30, 1919, from disposition under the mining laws may be declared by the Secretary of the Interior to be subject to exploration for the discovery of deposits of gold, silver, copper, and other valuable metalliferous minerals and nonmetalliferous minerals, not including oil and gas, by citizens of the United States, and after such declaration mining claims may be located by such citizens in the same manner as mining claims are located under the mining laws of the United States.

*Preference right of locators of claims to lease of lands.*—The locators of all such mining claims, or their heirs, successors, or assigns, shall have a preference right to apply to the Secretary of the Interior for a lease, under the terms and conditions of this section, within one year after the date of the location of any mining claim, and any such locator who shall fail to apply for a lease within one year from the date of location shall forfeit all rights to such mining claim.

*Filing copies of location notices.*—Duplicate copies of the location notice shall be filed within sixty days with the superintendent in charge of the reservation on which the mining claim is located, and application for a lease under this section may be filed with such superintendent for transmission, through official channels, to the Secretary of the Interior.

*Lands excepted from entry as mining claims.*—Lands containing springs, water holes, or other bodies of water needed or used by the Indians for watering livestock, irrigation, or water-power purposes shall not be designated by the Secretary of the Interior as subject to entry under this section.

*Term of lease; renewal.*—Leases under this section shall be for a period of twenty years, with the preferential right in the lessee to renew the same for successive periods of ten years, upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the time of the expiration of such periods.

*Relinquishment of rights by lessee.*—The lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease and upon acceptance thereof be thereby relieved of all future obligations under said lease.

*Lease of additional land for camp sites and other purposes.*—In addition to areas of mineral land to be included in leases under this section the Secretary of the Interior, in his discretion, may grant to the lessee the right to use, during the life of the lease, subject to the payment of an annual rental of not less than \$1 per acre, a tract of unoccupied land, not exceeding forty acres in area, for camp sites, milling, smelting, and refining works, and for other purposes connected with and necessary to the proper development and use of the deposits covered by the lease.

*Reservation of surface of leased land to United States; easements.*—The Secretary of the Interior, in his discretion, in making any lease under this section, may reserve to the United States the right to lease for a term not exceeding that of the mineral lease, the surface of the lands embraced within such lease under existing law or laws hereafter enacted, insofar as said surface is not necessary for use of the lessee in extracting and removing the deposits therein: *Provided*, That the said Secretary, during the life of the lease, is hereby authorized to issue such permits for easements herein provided to be reserved.

*Rights and duties of successors to lessees.*—Any successor in interest or assignee of any lease granted under this section, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the conditions of the lease under which such rights are held and also subject to all the provisions and conditions of this section to the same extent as though such successor or assign were the original lessee hereunder.

*Forfeiture of leases; notice.*—Any lease granted under this section may be forfeited and canceled by appropriate proceedings in the United States district court for the district in which said property or some part thereof is situated whenever the lessee, after reasonable notice in writing, as prescribed in the lease, shall fail to comply with the terms of this section or with such conditions not inconsistent herewith as may be specifically recited in the lease.

*Royalties payable by lessees.*—For the privilege of mining or extracting the mineral deposits in the ground covered by the lease the lessee shall pay to the United States, for the benefit of the Indians, a royalty which shall not be less than 5 per centum of the net value of the output of the minerals at the mine, due and payable at the end of each month succeeding that of the extraction of the minerals from the mine, and an annual rental, payable at the date of such lease and annually thereafter on the area covered by such lease, at the rate of not less than 25 cents per acre for the first calendar year thereafter; not less than 50 cents per acre for the second, third, fourth, and fifth years, respectively; and not less than \$1 per acre for each and every year thereafter during the continuance of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year.

*Development work by locators or lessees; damage to land.*—In addition to the payment of the royalties and rentals as herein provided the lessee shall expend annually not less than \$100 in development work for each mining claim located or leased in the same manner as an annual expenditure for labor or improvements is required to be made under the mining laws of the United States: *Provided*, That the lessee shall also agree to pay all damages occasioned by reason of his mining operations to the land or allotment of any Indian or to the crops or improvements thereon.

*Cutting timber by lessees.*—No timber shall be cut upon the reservation by the lessee except for mining purposes and then only after first obtaining a permit from the superintendent of the reservation and upon payment of the fair value thereof.

**Examination of books and accounts of lessees.**—The Secretary of the Interior is authorized to examine the books and accounts of lessees, and to require them to submit statements, representations, or reports, including information as to cost of mining, all of which statements, representations, or reports so required shall be upon oath, unless otherwise specified, and in such form and upon such blanks as the Secretary of the Interior may require; and any person making any false statement, representation, or report under oath shall be subject to punishment as for perjury.

**Disposition of rentals and royalties.**—All moneys received from royalties and rentals under the provisions of this section shall be deposited in the Treasury of the United States to the credit of the Indians belonging and having tribal rights on the reservation where the leased land is located, which moneys shall be at all times subject to appropriation by Congress for their benefit, unless otherwise provided by treaty or agreement ratified by Congress: *Provided*, That such moneys shall be subject to the laws authorizing the pro rata distribution of Indian tribal funds.

**Protection of interests of Indians.**—The Secretary of the Interior is authorized to perform any and all acts and to make such rules and regulations not inconsistent with this section as may be necessary and proper for the protection of the interests of the Indians and for the purpose of carrying the provisions of this section into full force and effect: *Provided*, That nothing in this section shall be construed or held to affect the right of the States or other local authority to exercise any rights which they may have to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee.

**Mining locations by and leases to Indians declared competent.**—Mining locations, under the terms of this section, may be made on unallotted lands within Indian reservations by Indians who have heretofore or may hereafter be declared by the Secretary of the Interior to be competent to manage their own affairs; and the said Secretary is authorized and empowered to lease such lands to such Indians in accordance with the provisions of this section.

**Mining locations by and leases to other Indians.**—The Secretary of the Interior is authorized to permit other Indians to make locations and obtain leases under the provisions of this section, under such rules and regulations as he may prescribe in regard to the working, developing, disposition, and selling of the products, and the disposition of the proceeds thereof of any such mine by such Indians.

**"Metalliferous" defined.**—Wherever the term "metalliferous" is used in this section it shall be defined and construed by the Secretary of the Interior to include magnesite, gypsum, limestone, and asbestos. (June 30, 1919, ch. 4, § 26, 41 Stat. 31; Mar. 3, 1921, ch. 119, § 1, 41 Stat. 1231; Dec. 16, 1926, ch. 12, 44 Stat. 922.)

**§ 400. Leases for mining purposes of reserved and unallotted lands in Fort Peck and Blackfeet Indian Reservations.**

Lands reserved for school and agency purposes and all other unallotted lands on the Fort Peck and

Blackfeet Indian Reservations, in the State of Montana, reserved from allotment or other disposition, may be leased for mining purposes under regulations prescribed by the Secretary of the Interior. (Sept. 20, 1922, ch. 347, 42 Stat. 857.)

**§ 400a. Lease for mining purposes of land reserved for agency or school; disposition of proceeds; royalty.**

The Secretary of the Interior is authorized under such rules and regulations as he may prescribe, to lease at public auction upon not less than thirty days' public notice for mining purposes land on any Indian reservation reserved for Indian agency or school purposes, in accordance with existing law applicable to other lands in such reservation, and the proceeds arising therefrom shall be deposited in the Treasury of the United States to the credit of the Indians for whose benefit the lands are reserved subject to appropriation by Congress for educational work among the Indians or in paying expenses of administration of agencies: *Provided*, That a royalty of at least one-eighth shall be reserved in all leases. (Apr. 17, 1926, ch. 156, 44 Stat. 300.)

**§ 401. Leases for mining purposes of unallotted lands in Kaw Reservation.**

The Secretary of the Interior is authorized to lease for mining purposes lands reserved from allotment to be used as a cemetery and not needed for that purpose, and lands reserved for school and agency purposes in the Kaw Reservation in the State of Oklahoma, and for the use and benefit of the members of the Kansas or Kaw Tribe of Indians, at public auction, upon such terms and conditions and under such rules and regulations as he may prescribe: *Provided*, That the production of oil and gas and other minerals on such lands may be taxed by the State in which said lands are located in all respects the same as production on unrestricted lands, and the Secretary of the Interior is hereby authorized and directed to cause to be paid the tax so assessed against the royalty interests on said lands: *Provided, however*, That such tax shall not become a lien or charge of any kind or character against the land or the property of the Indian owner. (Apr. 28, 1924, ch. 135, 43 Stat. 111.)

**§ 402. Leases of surplus lands.**

The surplus lands of any tribe may be leased for farming purposes by the council of such tribe under the same rules and regulations and for the same term of years as was on August 15, 1894, allowed in the case of leases for grazing purposes. (Aug. 15, 1894, ch. 290, § 1, 28 Stat. 305.)

#### CROSS REFERENCE

Lease on unallotted irrigable lands for farming purposes, see section 402a of this title.

**§ 402a. Lease of unallotted irrigable lands for farming purposes.**

The unallotted irrigable lands on any Indian reservation may be leased for farming purposes for not to exceed ten years with the consent of the tribal council, business committee, or other authorized body representative of the Indians, under such rules

and regulations as the Secretary of the Interior may prescribe. (July 3, 1926, ch. 787, 44 Stat. 894.)

#### § 403. Leases of lands held in trust.

Any Indian allotment held under a trust patent may be leased by the allottee for a period not to exceed five years, subject to and in conformity with such rules and regulations as the Secretary of the Interior may prescribe, and the proceeds of any such lease shall be paid to the allottee or his heirs, or expended for his or their benefit, in the discretion of the Secretary of the Interior. (June 25, 1910, ch. 431, § 4, 36 Stat. 856.)

##### CROSS REFERENCE

Leases of restricted allotments and arid allotted lands, see sections 393, 394 of this title.

#### § 403a. Lease of lands on Port Madison and Snohomish or Tulalip Indian Reservations in Washington.

Notwithstanding any other provision of law, any Indian lands on the Port Madison and Snohomish or Tulalip Indian Reservations in the State of Washington, may be leased by the Indians with the approval of the Secretary of the Interior, and upon such terms and conditions as he may prescribe, for a term not exceeding twenty-five years: *Provided, however,* That such leases may provide for renewal for an additional term not exceeding twenty-five years, and the Secretary of the Interior is hereby authorized to prescribe such rules and regulations as may be necessary to carry out the provisions of this section. (Oct. 9, 1940, ch. 781, 54 Stat. 1057.)

#### § 404. Sale on petition of allottee or heirs.

The lands, or any part thereof, allotted to any Indian, or any inherited interest therein, which can be sold under existing law by authority of the Secretary of the Interior, except the lands in Oklahoma and the States of Minnesota and South Dakota, may be sold on the petition of the allottee, or his heirs, on such terms and conditions and under such regulations as the Secretary of the Interior may prescribe; and the lands of a minor, or of a person deemed incompetent by the Secretary of the Interior to petition for himself, may be sold in the same manner, on the petition of the natural guardian in the case of infants, and in the case of Indians deemed incompetent as aforesaid, and of orphans without a natural guardian, on petition of a person designated for the purpose by the Secretary of the Interior. When any Indian who has received an allotment of land dies before the expiration of the trust period, the Secretary of the Interior shall ascertain the legal heirs of such Indian, and if satisfied of their ability to manage their own affairs shall cause to be issued in their names a patent in fee simple for said lands; but if he finds them incapable of managing their own affairs, the land may be sold as hereinbefore provided: *Provided,* That the proceeds derived from all sales hereunder shall be used, during the trust period, for the benefit of the allottee, or heir, so disposing of his interest, under the supervision of the Commissioner of Indian Affairs: *And provided further,* That upon the approval of any sale hereunder by the Secretary of the Interior, he shall cause a

patent in fee to issue in the name of the purchaser for the lands so sold: *And provided further,* That nothing in this section herein contained shall apply to the States of Minnesota and South Dakota. (May 29, 1908, ch. 216, § 1, 35 Stat. 444.)

##### CROSS REFERENCE

Sale of land of deceased allottee, see section 372 of this title.

#### § 405. Sale of allotment of noncompetent Indian.

Any noncompetent Indian to whom a patent containing restrictions against alienation has been issued for an allotment of land in severalty, under any law or treaty, or who may have an interest in any allotment by inheritance, may sell or convey all or any part of such allotment or such inherited interest on such terms and conditions and under such rules and regulations as the Secretary of the Interior may prescribe, and the proceeds derived therefrom shall be used for the benefit of the allottee or heir so disposing of his land or interest, under the supervision of the Commissioner of Indian Affairs; and any conveyance made hereunder and approved by the Secretary of the Interior shall convey full title to the land or interest so sold, the same as if fee-simple patent had been issued to the allottee. (Mar. 1, 1907, ch. 2285, 34 Stat. 1018.)

#### § 406. Sale of timber on allotments held under trust.

The timber on any Indian allotment held under a trust or other patent containing restrictions on alienations may be sold by the allottee, with the consent of the Secretary of the Interior, and the proceeds thereof shall be paid to the allottee or disposed of for his benefit under regulations to be prescribed by the Secretary of the Interior. (June 25, 1910, ch. 431, § 8, 36 Stat. 857.)

#### § 407. Sale of timber on unallotted lands.

The mature living and dead and down timber on unallotted lands of any Indian reservation may be sold under regulations to be prescribed by the Secretary of the Interior, and the proceeds from such sales shall be used for the benefit of the Indians of the reservation in such manner as he may direct: *Provided,* That this section shall not apply to the States of Minnesota and Wisconsin. (June 25, 1910, ch. 431, § 7, 36 Stat. 857.)

#### §§ 407a-407c. Modification of contracts for sale of tribal timber.

The authority to modify contracts of sale of tribal timber granted by these sections, act Mar. 4, 1933, ch. 275, §§ 1-3, 47 Stat. 1568; June 16, 1933, ch. 104, 48 Stat. 311; Mar. 5, 1934, ch. 46, 48 Stat. 397; May 6, 1936, ch. 340, 49 Stat. 1266, expired on Sept. 4, 1936, by virtue of the amendment of May 6, 1936.

#### § 408. Surrender of allotments by relinquishment for benefit of children.

In any case where an Indian has an allotment of land, or any right, title, or interest in such an allotment, the Secretary of the Interior, in his discretion, may permit such Indian to surrender such allotment, or any right, title, or interest therein, by such formal relinquishment as may be prescribed by the

Secretary of the Interior, for the benefit of any of his or her children to whom no allotment of land shall have been made; and thereupon the Secretary of the Interior shall cause the estate so relinquished to be allotted to such child or children subject to all conditions which attached to it before such relinquishment. (June 25, 1910, ch. 431, § 3, 36 Stat. 856.)

**§ 409. Sale of lands within reclamation projects.**

Any Indian allotted lands under any law or treaty without the power of alienation, and within a reclamation project approved by the Secretary of the Interior, may sell and convey any part thereof, under rules and regulations prescribed by the Secretary of the Interior, but such conveyance shall be subject to his approval, and when so approved shall convey full title to the purchaser the same as if final patent without restrictions had been issued to the allottee: *Provided*, That the consideration shall be placed in the Treasury of the United States, and used by the Commissioner of Indian Affairs to pay the construction charges that may be assessed against the unsold part of the allotment, and to pay the maintenance charges thereon during the trust period, and any surplus shall be a benefit running with the water right to be paid to the holder thereof. (June 21, 1906, ch. 3504, 34 Stat. 327.)

**§ 409a. Sale of restricted lands; reinvestment in other restricted lands.**

Whenever any nontaxable land of a restricted Indian of the Five Civilized Tribes or of any other Indian tribe is sold to any State, county, or municipality for public-improvement purposes, or is acquired, under existing law, by any State, county, or municipality by condemnation or other proceedings for such public purposes, or is sold under existing law to any other person or corporation for other purposes, the money received for said land may, in the discretion and with the approval of the Secretary of the Interior, be reinvested in other lands selected by said Indian, and such land so selected and purchased shall be restricted as to alienation, lease, or incumbrance, and nontaxable in the same quantity and upon the same terms and conditions as the nontaxable lands from which the reinvested funds were derived, and such restrictions shall appear in the conveyance. (Mar. 2, 1931, ch. 374, 46 Stat. 1471; June 30, 1932, ch. 333, 47 Stat. 474.)

**§ 410. Moneys from lease or sale of trust lands not liable for certain debts.**

No money accruing from any lease or sale of lands held in trust by the United States for any Indian shall become liable for the payment of any debt of, or claim against, such Indian contracted or arising during such trust period, or, in case of a minor, during his minority, except with the approval and consent of the Secretary of the Interior. (June 21, 1906, ch. 3504, 34 Stat. 327.)

**§ 411. Interest on moneys from proceeds of sale.**

The shares of money due minor Indians as their proportion of the proceeds from the sale of ceded or tribal Indian lands, whenever such shares have been withheld from their parents, legal guardians, or

others, and retained in the United States Treasury by direction of the Secretary of the Interior, shall draw interest at the rate of 3 per centum per annum, unless otherwise provided for, from the period when such proceeds have been or shall be distributed per capita among the members of the tribe of which such minor is a member; and the Secretary of the Treasury is authorized and directed to allow interest on such unpaid amounts belonging to said minors as shall be certified by the Secretary of the Interior as entitled to draw interest under this section. (June 21, 1906, ch. 3504, 34 Stat. 327.)

**§ 412. Payment of taxes from share of allottee in tribal funds.**

In any case where the restrictions as to alienation have been removed with respect to any Indian allottee, or as to any portion of the lands of any Indian allottee, and such allottee as an individual, or as a member of any tribe, has an interest in any fund held by the United States beyond the amount by law chargeable to such Indian or tribe on account of advances, the Commissioner of Indian Affairs is authorized, prior to the date at which any penalties for the nonpayment of taxes would accrue under the laws of the State or Territory in which such land is situated, to pay such taxes and charge the amount thereof to such allottee, to be deducted from the share of such allottee in the final distribution or payment to him from such fund: *Provided*, That no such payment shall be made by said commissioner where it is in excess of the amount which will ultimately be due said allottee. (Mar. 1, 1907, ch. 2285, 34 Stat. 1016.)

**§ 412a. Exemption from taxation of lands subject to restrictions against alienation; determination of homestead.**

All homesteads, heretofore purchased out of the trust or restricted funds of individual Indians, are hereby declared to be instrumentalities of the Federal Government and shall be nontaxable until otherwise directed by Congress: *Provided*, That the title to such homesteads shall be held subject to restrictions against alienation or encumbrance except with the approval of the Secretary of the Interior: *And provided further*, That the Indian owner or owners shall select, with the approval of the Secretary of the Interior, either the agricultural and grazing lands, not exceeding a total of one hundred and sixty acres, or the village, town, or city property, not exceeding in cost \$5,000, to be designated as a homestead. (June 20, 1936, ch. 622, § 2, 49 Stat. 1542; May 19, 1937, ch. 227, 50 Stat. 188.)

**§ 413. Fee to cover expense of sale of allotments or leases of tribal or allotted lands.**

The Secretary of the Interior is hereby authorized, in his discretion, and under such rules and regulations as he may prescribe, to collect reasonable fees to cover the cost of any and all work performed for Indian tribes or for individual Indians, to be paid by vendees, lessees, or assignees, or deducted from the proceeds of sale, leases, or other sources of revenue: *Provided*, That the amounts so collected shall be covered into the Treasury as miscellaneous receipts,

except when the expenses of the work are paid from Indian tribal funds, in which event they shall be credited to such funds. (Feb. 14, 1920, ch. 75, § 1, 41 Stat. 415; Mar. 1, 1933, ch. 158, 47 Stat. 1417.)

#### § 414. Reservation of minerals in sale of Choctaw-Chickasaw lands.

After August 25, 1937, in all sales of tribal lands of the Choctaw and Chickasaw Indians in Oklahoma provided for by existing law, the Secretary of the Interior is hereby authorized to offer such lands for sale subject to a reservation of the mineral rights therein, including oil and gas, for the benefit of said Indians, whenever in his judgment the interests of the Indians will best be served thereby. (Aug. 25, 1937, ch. 778, 50 Stat. 810.)

### Chapter 13.—CEDED INDIAN LANDS

#### §§ 421-427. Ceded lands.

These sections are now set out as sections 179, 180, 187b, 731, and 1195-1197 of Title 43, Public Lands. They were derived as follows: § 421 from act May 17, 1900, ch. 479, § 1, 31 Stat. 179; § 422 from act Jan. 26, 1901, ch. 180, 31 Stat. 740; § 423 from act May 22, 1902, ch. 821, § 2, 32 Stat. 203; § 424 from act Mar. 3, 1901, ch. 832, § 1, 31 Stat. 1077; § 425 from act June 6, 1912, ch. 155, 37 Stat. 125; § 426 from act Mar. 3, 1891, ch. 561, § 10, 26 Stat. 1099; and § 427 from act Feb. 9, 1903, ch. 531, 32 Stat. 820.

### Chapter 14.—MISCELLANEOUS

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#### GENERAL PROVISIONS

##### § 441. Indian employees of Government; entitlement to Indian benefits.

Nothing contained in sections 68 and 87 of this title shall be construed as preventing Indian employees of the United States Government, of whatever degree of Indian blood, during their term of employment or otherwise, from obtaining or receiving any benefit or benefits made available to the Indians generally or to the members of any particular tribe, under any Act of Congress, nor to prevent such employees having Indian blood from being members of or receiving benefits by reason of their membership in Indian tribes, corporations, or co-operative associations organized by the Indians, when authorized by the Secretary of the Interior under appropriate regulations to be promulgated by him. (June 19, 1939, ch. 210, 53 Stat. 840.)

#### CONTRACTS FOR EDUCATION, ETC.

##### § 451. Donations for Indian institutions; authority to accept.

The Secretary of the Interior is authorized in his discretion to accept contributions or donations of funds or other property, real, personal, or mixed, which may be tendered to, or for the benefit of, Federal Indian schools, hospitals, or other institutions conducted for the benefit of Indians, or for the advancement of the Indian race, and to apply or dispose of such donations for the use and benefit of such school, hospital, or other institution or for the benefit of individual Indians. (Feb. 14, 1931, ch. 171, 46 Stat. 1106.)

#### CROSS REFERENCE

Deposit of funds received in Treasury as trust funds, see section 725e of Title 31, Money and Finance.

##### § 452. Contracts for education, medical attention, relief and social welfare of Indians.

The Secretary of the Interior is authorized, in his discretion, to enter into a contract or contracts with any State or Territory, or political subdivision thereof, or with any State university, college, or school, or with any appropriate State or private corporation, agency, or institution, for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory, through the agencies of the State or Territory or of the corporations and organizations hereinbefore named, and to expend under such contract or contracts, moneys appropriated by

Congress for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory. (Apr. 16, 1934, ch. 147, § 1, 48 Stat. 596; June 4, 1936, ch. 490, 49 Stat. 1458.)

##### § 453. Same; use of Government property by States and Territories.

The Secretary of the Interior, in making any contract authorized by sections 452-454 of this title, may permit such contracting party to utilize, for the purposes of said sections, existing school buildings, hospitals, and other facilities, and all equipment therein or appertaining thereto, including livestock and other personal property owned by the Government, under such terms and conditions as may be agreed upon for their use and maintenance. (Apr. 16, 1934, ch. 147, § 2, 48 Stat. 596; June 4, 1936, ch. 490, 49 Stat. 1458.)

##### § 454. Same; rules and regulations; minimum standards of service.

The Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations, including minimum standards of service, as may be necessary and proper for the purpose of carrying the provisions of sections 452-454 of this title into effect: *Provided*, That such minimum standards of service are not less than the highest maintained by the States or Territories within which said contract or contracts, as herein provided, are to be effective. (Apr. 16, 1934, ch. 147, § 3, 48 Stat. 596; June 4, 1936, ch. 490, 49 Stat. 1458.)

##### § 455. Same; annual reports to Congress.

The Secretary of the Interior shall report annually to the Congress any contract or contracts made under the provisions of sections 452-454 of this title, and the moneys expended thereunder. (Apr. 16, 1934, ch. 147, § 4, 48 Stat. 596; June 4, 1936, ch. 490, 49 Stat. 1458.)

##### § 456. Same; provisions inapplicable to Oklahoma.

Section, act Apr. 16, 1934, ch. 147, § 5, 48 Stat. 596, was omitted from amendatory re-enactment of said act by act June 4, 1936, ch. 490, 49 Stat. 1458.

#### PROTECTION OF INDIANS AND CONSERVATION OF RESOURCES

##### § 461. Allotment of land on Indian reservations.

No land of any Indian reservation, created or set apart by treaty or agreement with the Indians, Act of Congress, Executive order, purchase, or otherwise, shall be allotted in severalty to any Indian. (June 18, 1934, ch. 576, § 1, 48 Stat. 984.)

#### CROSS REFERENCES

Allotments on reservations, see section 331 of this title.  
 Reservations wherein a majority of the adult Indians vote against application of act of which this section is a part, see section 478 of this title.

Territories, colonies, or insular possessions of United States and certain Indian tribes, application to, see sections 473 and 473a of this title.

**§ 462. Existing periods of trust and restrictions on alienation extended.**

The existing periods of trust placed upon any Indian lands and any restriction on alienation thereof are hereby extended and continued until otherwise directed by Congress. (June 18, 1934, ch. 576, § 2, 48 Stat. 984.)

**CROSS REFERENCES**

Reservations wherein a majority of the adult Indians vote against application of act of which this section is a part, see section 478 of this title.

Territories, colonies, or insular possessions of United States and certain Indian tribes, application to, see section 473 of this title.

**§ 463. Restoration of lands to tribal ownership; protection of existing rights; Papago Indian Reservation.**

(a) The Secretary of the Interior, if he shall find it to be in the public interest, is hereby authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation opened before June 18, 1934, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public-land laws of the United States: *Provided, however,* That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by sections 461, 462, 463, 464-473, 474, 475, 476-478, and 479 of this title: *Provided further,* That this section shall not apply to lands within any reclamation project authorized before June 18, 1934, in any Indian reservation.

(b) (1) The order of the Department of the Interior signed, dated, and approved by Honorable Ray Lyman Wilbur, as Secretary of the Interior, on October 28, 1932, temporarily withdrawing lands of the Papago Indian Reservation in Arizona from all forms of mineral entry or claim under the public land mining laws, is hereby revoked and rescinded, and the lands of the said Papago Indian Reservation are hereby restored to exploration and location, under the existing mining laws of the United States, in accordance with the express terms and provisions declared and set forth in the Executive orders establishing said Papago Indian Reservation: *Provided,* That damages shall be paid to the superintendent or other officer in charge of the reservation for the credit of the owner thereof, for loss of any improvements on any land located for mining in such a sum as may be determined by the Secretary of the Interior to be the fair and reasonable value of such improvements: *Provided further,* That a yearly rental not to exceed 5 cents per acre shall be paid to the superintendent or other officer in charge of the reservation for deposit in the Treasury of the United States to the credit of the Papago Tribe for loss of the use or occupancy of any land withdrawn by the requirements of mining operations.

(2) In the event any person or persons, partnership, corporation, or association desires a mineral patent, according to the mining laws of the United States, he or they shall first pay to the superintendent or other officer in charge of the reservation, for deposit in the Treasury of the United States to the credit of the Papago Tribe, the sum of \$1 per acre in

lieu of annual rental, as hereinbefore provided, to compensate for the loss of the use or occupancy of the lands withdrawn by the requirements of mining operations; but the sum thus deposited, except for a deduction of rental at the annual rate hereinbefore provided, shall be refunded to the applicant in the event that patent is not acquired: *Provided,* That an applicant for patent shall also pay to the superintendent or other officer in charge of the said reservation for the credit of the owner thereof, damages for the loss of improvements not theretofore paid, in such a sum as may be determined by the Secretary of the Interior to be the fair value thereof.

(3) Water reservoirs, charcos, water holes, springs, wells, or any other form of water development by the United States or the Papago Indians shall not be used for mining purposes under the terms of sections 461, 462, 463, 464-473, 474, 475, 476-478, and 479, of this title, except under permit from the Secretary of the Interior approved by the Papago Indian Council: *Provided,* That nothing herein shall be construed as interfering with or affecting the validity of the water rights of the Indians of this reservation: *Provided further,* That the appropriation of living water heretofore or hereafter affected, by the Papago Indians is hereby recognized and validated subject to all the laws applicable thereto.

(4) Nothing herein contained shall restrict the granting or use of permits for easements or rights-of-way; or ingress or egress over the lands for all proper and lawful purposes; and nothing contained herein, except as expressly provided, shall be construed as authority for the Secretary of the Interior, or any other person, to issue or promulgate a rule or regulation in conflict with the Executive order of February 1, 1917, creating the Papago Indian Reservation in Arizona or the Act of February 21, 1931 (46 Stat. 1202). (June 18, 1934, ch. 576, § 3, 48 Stat. 984; Aug. 28, 1937, ch. 866, 50 Stat. 862.)

**CROSS REFERENCES**

Territories, colonies, or insular possessions of United States, application to, see section 473 of this title.

Umatilla Indian Reservation lands restored, see sections 463d-463g of this title.

**§ 463a. Extension of boundaries of Papago Indian Reservation.**

Whenever all privately owned lands except mining claims within the following-described area have been purchased and acquired as authorized in sections 463b and 463c of this title, the boundary of the Papago Indian Reservation in Arizona shall be extended to include the west half of section 4; west half of section 9, township 17 south, range 8 east; all of township 18 south, range 2 west, all of fractional township 19 south, range 2 west; and all of fractional townships 18 and 19 south, range 3 west, except sections 6, 7, 18, 19, 30, and 31 in township 18 south, range 3 west, Gila and Salt River meridian. This extension shall not affect any valid rights initiated prior to July 28, 1937, nor the reservation of a strip of land sixty feet wide along the United States-Mexico boundary made by proclamation of the President dated May 27, 1907 (35 Stat. 2136). The lands herein described when added to the Papago Indian Reservation as provided in this section and sections 463b,

463c of this title shall become a part of said reservation in all respects and upon all the same terms as if said lands had been included in the Executive order issued by the President on February 1, 1917: *Provided*, That lands acquired under this section and sections 463b, 463c of this title shall remain tribal lands and shall not be subject to allotment to individual Indians. (July 28, 1937, ch. 527, § 1, 50 Stat. 536.)

**§ 463b. Same; purchase; limitations.**

The Secretary of the Interior is authorized to purchase for the use and benefit of the Papago Indians with any available funds heretofore or hereafter appropriated, pursuant to authority contained in section 465 of this title, all privately owned lands, water rights, and reservoir site reserves within townships 18 and 19 south, ranges 2 and 3 west, together with all grazing privileges and including improvements upon public lands appurtenant to the so-called Menager Dam property, at the appraised value of \$40,016.37. (July 28, 1937, ch. 527, § 2, 50 Stat. 536.)

**§ 463c. Same; gift of lands by Arizona.**

The State of Arizona may relinquish in favor of the Papago Indians such tracts within the townships referred to in section 463a as it may see fit and shall have the right to select other unreserved and non-mineral public lands within the State of Arizona equal in area to those relinquished, said lieu selections to be made in the same manner as is provided for in the Enabling Act of June 20, 1910 (36 Stat. 558), or in the discretion of the State of Arizona under the provisions of section 315g of Title 43. The payment of fees or commissions is hereby waived in all lieu selections made pursuant to this section. (July 28, 1937, ch. 527, § 3, 50 Stat. 536.)

**REFERENCE IN TEXT**

Section 24 of the act of June 20, 1910, to which reference is made in text, provides that, subject to certain limitations, lieu selections of land in Arizona are to be made pursuant to sections 851 and 852 of Title 43, Public Lands.

**§ 463d. Restoration of lands in Umatilla Indian Reservation to tribal ownership.**

The Secretary of the Interior is hereby authorized in his discretion to restore to tribal ownership the undisposed of surplus lands of the Umatilla Indian Reservation, Oregon, heretofore opened to entry or other form of disposal under the public-land laws: *Provided*, That restoration shall be subject to any existing valid rights. (Aug. 10, 1939, ch. 662, § 1, 53 Stat. 1351.)

**§ 463e. Exchanges of land.**

For the purpose of effecting land consolidations between Indians and non-Indians within the reservation, the Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe, to acquire through purchase, exchange, or relinquishment, any interest in lands, water rights, or surface rights to lands within said reservation. Exchanges of lands hereunder shall be made on the basis of equal value and the value of improvements on lands to be relinquished to the Indians or by Indians to non-Indians shall be given due consideration and allowance made therefor in the valuation of lieu lands.

This section shall apply to tribal, trust, or otherwise restricted Indian allotments whether the allottee be living or deceased. (Aug. 10, 1939, ch. 662, § 2, 53 Stat. 1351.)

**§ 463f. Title to lands.**

Title to lands or any interest therein acquired pursuant to sections 463d–463g of this title for Indian use shall be taken in the name of the United States of America in trust for the tribe or individual Indian for which acquired. (Aug. 10, 1939, ch. 662, § 3, 53 Stat. 1351.)

**§ 463g. Use of funds appropriated under section 465.**

For the purpose of carrying into effect the land-purchase provision of sections 463d–463g of this title, the Secretary of the Interior is hereby authorized to use so much as may be necessary of any funds heretofore or hereafter appropriated pursuant to section 465 of this title. (Aug. 10, 1939, ch. 662, § 4, 53 Stat. 1351.)

**§ 464. Transfer of restricted Indian lands or shares in assets of Indian tribes or corporation; exchange of lands.**

Except as provided in sections 461, 462, 463, 464–473, 474, 475, 476–478, and 479 of this title, no sale, devise, gift, exchange, or other transfer of restricted Indian lands or of shares in the assets of any Indian tribe or corporation organized hereunder, shall be made or approved: *Provided, however*, That such lands or interests may, with the approval of the Secretary of the Interior, be sold, devised, or otherwise transferred to the Indian tribe in which the lands or shares are located or from which the shares were derived or to a successor corporation; and in all instances such lands or interests shall descend or be devised, in accordance with the then existing laws of the State, or Federal laws where applicable, in which said lands are located or in which the subject matter of the corporation is located, to any member of such tribe or of such corporation or any heirs of such member: *Provided further*, That the Secretary of the Interior may authorize voluntary exchanges of lands of equal value and the voluntary exchange of shares of equal value whenever such exchange, in his judgment, is expedient and beneficial for or compatible with the proper consolidation of Indian lands and for the benefit of cooperative organizations. (June 18, 1934, ch. 576, § 4, 48 Stat. 985.)

**CROSS REFERENCES**

Exchanges of land on Umatilla Indian Reservation, see section 463e of this title.

Territories, colonies, or insular possessions of United States, and certain Indian tribes, application to, see section 473 of this title.

**§ 465. Acquisition of lands, water rights, or surface rights; appropriation.**

The Secretary of the Interior is hereby authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed \$2,000,000 in any one fiscal year: *Provided*, That no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona, nor in New Mexico, in the event that legislation to define the exterior boundaries of the Navajo Indian Reservation in New Mexico, and for other purposes, or similar legislation, becomes law.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to sections 461, 462, 463, 464-473, 474, 475, 476-478, and 479 of this title shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation. (June 18, 1934, ch. 576, § 5, 48 Stat. 985.)

#### CROSS REFERENCES

Reservations wherein a majority of the adult Indians vote against application of act of which this section is a part, see section 478 of this title.

Territories, colonies, or insular possessions of United States and certain Indian tribes, application to, see sections 473 and 473a of this title.

Umatilla Indian Reservation lands, application to, see section 463g of this title.

#### § 466. Indian forestry units; rules and regulations.

The Secretary of the Interior is directed to make rules and regulations for the operation and management of Indian forestry units on the principle of sustained-yield management, to restrict the number of livestock grazed on Indian range units to the estimated carrying capacity of such ranges, and to promulgate such other rules and regulations as may be necessary to protect the range from deterioration, to prevent soil erosion, to assure full utilization of the range, and like purposes. (June 18, 1934, ch. 576, § 6, 48 Stat. 986.)

#### CROSS REFERENCES

Reservations wherein a majority of the adult Indians vote against application of act of which this section is a part, see section 478 of this title.

Territories, colonies or insular possessions of United States and certain Indian tribes, application to, see section 473 of this title.

#### § 467. New Indian reservations.

The Secretary of the Interior is hereby authorized to proclaim new Indian reservations on lands acquired pursuant to any authority conferred by sections 461, 462, 463, 464-473, 474, 475, 476-478, and 479 of this title, or to add such lands to existing reservations: *Provided*, That lands added to existing reservations shall be designated for the exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservations. (June 18, 1934, ch. 576, § 7, 48 Stat. 986.)

#### CROSS REFERENCES

Reservations in New Mexico and Arizona, creation and extension, see sections 211 and 463a-463c of this title

Territories, colonies, or insular possessions of United States, and certain Indian tribes, application to, see sections 473 and 473a of this title.

#### § 468. Allotments or holdings outside of reservations.

Nothing contained in sections 461, 462, 463, 464-473, 474, 475, 476-478, and 479 of this title shall be construed to relate to Indian holdings of allotments or homesteads upon the public domain outside of the geographic boundaries of any Indian reservation now existing or established hereafter. (June 18, 1934, ch. 576, § 8, 48 Stat. 986.)

#### § 469. Indian corporations; appropriation for organizing.

There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, such sums as may be necessary, but not to exceed \$250,000 in any fiscal year, to be expended at the order of the Secretary of the Interior, in defraying the expenses of organizing Indian chartered corporations or other organizations created under sections 461, 462, 463, 464-473, 474, 475, 476-478, and 479 of this title. (June 18, 1934, ch. 576, § 9, 48 Stat. 986.)

#### § 470. Same; appropriation for loans; report.

There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the sum of \$10,000,000 to be established as a revolving fund from which the Secretary of the Interior, under such rules and regulations as he may prescribe, may make loans to Indian chartered corporations for the purpose of promoting the economic development of such tribes and of their members, and may defray the expenses of administering such loans. Repayment of amounts loaned under this authorization shall be credited to the revolving fund and shall be available for the purposes for which the fund is established. A report shall be made annually to Congress of transactions under this authorization. (June 18, 1934, ch. 576, § 10, 48 Stat. 986.)

#### § 471. Vocational and trade schools; appropriation for tuition.

There is hereby authorized to be appropriated, out of any funds in the United States Treasury not otherwise appropriated, a sum not to exceed \$250,000 annually, together with any unexpended balances of previous appropriations made pursuant to this section, for loans to Indians for the payment of tuition and other expenses in recognized vocational and trade schools: *Provided*, That not more than \$50,000 of such sum shall be available for loans to Indian students in high schools and colleges. Such loans shall be reimbursable under rules established by the Commissioner of Indian Affairs. (June 18, 1934, ch. 576, § 11, 48 Stat. 986.)

#### § 472. Standards for Indians appointed to Indian Office.

The Secretary of the Interior is directed to establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed, without regard to civil-service laws, to the various positions maintained, now or hereafter, by the Indian Office, in the administration of functions

or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appointment to vacancies in any such positions. (June 18, 1934, ch. 576, § 12, 48 Stat. 986.)

#### CROSS REFERENCE

Employment of Indians, see sections 44, 45, 46, 47 of this title.

#### § 473. Application of sections.

The provisions of sections 461, 462, 463, 464-473, 474, 475, 476-478 and 479 of this title shall not apply to any of the Territories, colonies, or insular possessions of the United States, except that sections 469, 470, 471, 472, and 476 shall apply to the Territory of Alaska: *Provided*, That Sections 462, 464, 467, 476, 477, and 478 of this title shall not apply to the following-named Indian tribes, the members of such Indian tribes, together with members of other tribes affiliated with such named tribes located in the State of Oklahoma, as follows: Cheyenne, Arapaho, Apache, Comanche, Kiowa, Caddo, Delaware, Wichita, Osage, Kaw, Otoe, Tonkawa, Pawnee, Ponca, Shawnee, Ottawa, Quapaw, Seneca, Wyandotte, Iowa, Sac and Fox, Kickapoo, Pottawatomie, Cherokee, Chickasaw, Choctaw, Creek, and Seminole. Section 464 of this title shall not apply to the Indians of the Klamath Reservation in Oregon. (June 18, 1934, ch. 576, § 13, 48 Stat. 986.)

#### CROSS REFERENCES

Oklahoma Indians as having right to enjoy rights and privileges secured to organized Indian tribes under sections to which reference is made in text, see section 503 of this title.

Tribes or bands authorized to be organized with charter allowing them to participate in revolving credit fund and to enjoy other rights or privileges secured to organized tribes under sections to which reference is made in text, see section 503 of this title.

#### § 473a. Same; application to Alaska.

Sections 461, 465, 467, 468, 475, 477 and 479 of this title shall after May 1, 1936, apply to the Territory of Alaska: *Provided*, That groups of Indians in Alaska not recognized prior to May 1, 1936, as bands or tribes, but having a common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district, may organize to adopt constitutions and bylaws and to receive charters of incorporation and Federal loans under sections 470, 476 and 477 of this title. (May 1, 1936, ch. 254, § 1, 49 Stat. 1250.)

#### CROSS REFERENCE

This section is also set out as section 362 of Title 48, Territories and Insular Possessions.

#### § 474. Continuation of allowances.

The Secretary of the Interior is hereby directed to continue the allowance of the articles enumerated in section 17 of the Act of March 2, 1889 (23 Stat. L. 894),<sup>1</sup> or their commuted cash value under the Act of June 10, 1896 (29 Stat. L. 334), to all Sioux Indians who would be eligible, but for the provisions of sections 461, 462, 463, 464-473, 474, 475, 476-478 and 479 of this title, to receive allotments of lands in severalty under section 19 of the Act of May 29, 1908 (25 Stat. L. 451),<sup>2</sup> or under any prior

Act, and who have the prescribed status of the head of a family or single person over the age of eighteen years, and his approval shall be final and conclusive, claims therefor to be paid as formerly from the permanent appropriation made by said section 17 and carried on the books of the Treasury for this purpose. No person shall receive in his own right more than one allowance of the benefits, and application must be made and approved during the lifetime of the allottee or the right shall lapse. Such benefits shall continue to be paid upon such reservation until such time as the lands available therein for allotment on June 18, 1934, would have been exhausted by the award to each person receiving such benefits of an allotment of eighty acres of such land. (June 18, 1934, ch. 576, § 14, 48 Stat. 987.)

<sup>1</sup> So in original. Probably should read "(25 Stat. L. 894)."

<sup>2</sup> So in original. Probably should read "(35 Stat. L. 451)."

#### REFERENCES IN TEXT

Section 17 of the act of March 2, 1889, to which reference is made in the text, contains a proviso that each head of family or single person over the age of eighteen years of the Sioux Nation of Indians, "who shall have or may hereafter take his or her allotment of land in severalty, shall be provided with two milch cows, one pair of oxen, with yoke and chain, or two mares and one set of harness in lieu of said oxen, yoke and chain, as the Secretary of the Interior may deem advisable, and they shall also receive one plow, one wagon, one harrow, one hoe, one axe, and one pitchfork, all suitable to the work they may have to do, and also fifty dollars in cash; to be expended under the direction of the Secretary of the Interior in aiding such Indians to erect a house and other buildings suitable for residence or the improvement of his allotment; no sales, barter or bargains shall be made by any person other than said Indians with each other, of any of the personal property hereinbefore provided for, and any violation of this provision shall be deemed a misdemeanor and punished by fine not exceeding one hundred dollars, or imprisonment not exceeding one year or both in the discretion of the court."

Act of June 10, 1896, to which reference is made in text, contains a provision directing the Secretary of the Interior to ascertain the number of Sioux and Ponca Indians in South Dakota and Nebraska who would not be benefited by the fulfillment of the proviso quoted above from the act of March 2, 1889, and who desire to have the articles of personal property therein mentioned converted into money, and in lieu of such articles of personal property, or any part thereof he may think proper, to convert or commute the same, or so much thereof as he may think proper, into money, and to pay the amount thereof to such Indians.

Section 19 of the act of May 29, 1908, to which reference is made in text, authorizes the Secretary of the Interior to cause allotments to be made under the provisions of act Mar. 2, 1889, ch. 405, 25 Stat. 888, to any living children of the Sioux tribe of Indians belonging on any of the Great Sioux reservations affected thereby and who had not prior to May 29, 1908, been allotted, so long as the tribe to which such Indian children belong is possessed of any unallotted tribal or reservation lands. The section further provides that where, for any reason, an Indian did not receive the quantity of land to which he was entitled under the provisions of said act March 2, 1889, the Secretary of the Interior shall cause to be allotted to him sufficient additional lands on the reservation to which he belongs to make, together with the quantity of land theretofore allotted to him, the acreage to which he is entitled under said act March 2, 1889; and in case of the death of any such Indian, the additional lands to which he is of right entitled may be allotted to his heirs: *Provided*, the tribe to which he belonged is possessed of any unallotted tribal or reservation lands.

## CROSS REFERENCE

Appropriation for civilization of the Sioux repealed, see section 725a of Title 31, Money and Finance.

**§ 475. Claims or suits of Indian tribes against United States; rights unimpaired.**

Nothing in sections 461, 462, 463, 464-473, 474, 475, 476-478, and 479 of this title shall be construed to impair or prejudice any claim or suit of any Indian tribe against the United States. It is hereby declared to be the intent of Congress that no expenditures for the benefit of Indians made out of appropriations authorized by said sections of this title shall be considered as offsets in any suit brought to recover upon any claim of such Indians against the United States. (June 18, 1934, ch. 576, § 15, 48 Stat. 987.)

**§ 475a. Same; offsets of gratuities.**

In all suits now pending in the Court of Claims by an Indian tribe or band which have not been tried or submitted, and in any suit hereafter filed in the Court of Claims by any such tribe or band, the Court of Claims is hereby directed to consider and to offset against any amount found due the said tribe or band all sums expended gratuitously by the United States for the benefit of the said tribe or band; and in all cases now pending or hereafter filed in the Court of Claims in which an Indian tribe or band is party plaintiff, wherein the duty of the court is merely to report its findings of fact and conclusions to Congress, the said Court of Claims is hereby directed to include in its report a statement of the amount of money which has been expended by the United States gratuitously for the benefit of the said tribe or band: *Provided*, That expenditures made prior to the date of the law, treaty, agreement, or Executive order under which the claims arise shall not be offset against the claims or claim asserted; and expenditures under sections 461, 462, 463, 464, 466-473, 474, 475, 476-478, and 479 of this title shall not be charged as offsets against any claim on behalf of an Indian tribe or tribes now pending in the Court of Claims or hereafter filed: *Provided further*, That funds appropriated and expended from tribal funds shall not be construed as gratuities; and this section shall not be deemed to amend or affect the various Acts granting jurisdiction to the Court of Claims to hear and determine the claims listed on page 678 of the hearings before the subcommittee of the House Committee on Appropriations on the second deficiency appropriation bill for the fiscal year 1935: *And provided further*, That no expenditure under any emergency appropriation or allotment made subsequently to March 4, 1933, and generally applicable throughout the United States for relief in stricken agricultural areas, relief from distress caused by unemployment and conditions resulting therefrom, the prosecution of public works and public projects for the relief of unemployment or to increase employment, and for work relief (including the civil-works program) shall be considered in connection with the operation of this section. (Aug. 12, 1935, ch. 508, § 2, 49 Stat. 596.)

**§ 476. Organization of Indian tribes; constitution and bylaws; special election.**

Any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and bylaws, when ratified as aforesaid and approved by the Secretary of the Interior, shall be revocable by an election open to the same voters and conducted in the same manner as hereinabove provided. Amendments to the constitution and bylaws may be ratified and approved by the Secretary in the same manner as the original constitution and bylaws.

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local Governments. The Secretary of the Interior shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress. (June 18, 1934, ch. 576, § 16, 48 Stat. 987.)

## CROSS REFERENCE

Application to certain tribes, see sections 473, 473a and 478 of this title.

**§ 477. Incorporation of Indian tribes; charter; ratification by election.**

The Secretary of the Interior may, upon petition by at least one-third of the adult Indians, issue a charter of incorporation to such tribe: *Provided*, That such charter shall not become operative until ratified at a special election by a majority vote of the adult Indians living on the reservation. Such charter may convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with law; but no authority shall be granted to sell, mortgage, or lease for a period exceeding ten years any of the land included in the limits of the reservation. Any charter so issued shall not be revoked or surrendered except by Act of Congress. (June 18, 1934, ch. 576, § 17, 48 Stat. 988.)

**§ 478. Acceptance of sections 461-479 optional.**

Sections 461, 462, 463, 464-473, 474, 475, 476-478, and 479 of this title shall not apply to any reservation

wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application. It shall be the duty of the Secretary of the Interior, within one year after June 18, 1934, to call such an election, which election shall be held by secret ballot upon thirty days' notice. (June 18, 1934, ch. 576, § 18, 48 Stat. 988.)

**EXTENSIONS OF TIME**

The time for holding an election under this section was extended to June 18, 1936, by act June 15, 1935, ch. 260, § 2, 49 Stat. 378.

Act June 15, 1935, ch. 260, § 3, 49 Stat. 378 provided that the periods of trust or the restrictions on alienation of Indian lands should be extended to Dec. 31, 1936, in case of a vote against the application of sections 461 to 479.

**§ 478a. Procedure.**

In any election heretofore or hereafter held under sections 461, 462, 463, 464-473, 474, 475, 476-478, and 479 of this title, on the question of excluding a reservation from the application of the said sections or on the question of adopting a constitution and bylaws or amendments thereto or on the question of ratifying a charter, the vote of a majority of those actually voting shall be necessary and sufficient to effectuate such exclusion, adoption, or ratification, as the case may be: *Provided, however*, That in each instance the total vote cast shall not be less than 30 per centum of those entitled to vote. (June 15, 1935, ch. 260, § 1, 49 Stat. 378.)

**§ 478b. Laws, treaties and rights unaffected by passage of sections 461-479.**

All laws, general and special, and all treaty provisions affecting any Indian reservation which has voted or may vote to exclude itself from the application of sections 461, 462, 463, 464-473, 474, 475, 476-478, and 479 of this title shall be deemed to have been continuously effective as to such reservation, notwithstanding the passage of said sections. Nothing in said sections shall be construed to abrogate or impair any rights guaranteed under any existing treaty with any Indian tribe, where such tribe voted not to exclude itself from the application of said sections. (June 15, 1935, ch. 260, § 4, 49 Stat. 378.)

**§ 479. Definitions.**

The term "Indian" as used in sections 461, 462, 463, 464-473, 474, 475, 476-478, and 479 of this title shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of said sections, Eskimos and other aboriginal peoples of Alaska shall be considered Indians. The term "tribe" wherever used in said sections shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation. The words "adult Indians" wherever used in said sections shall be construed to refer to Indians who have attained the age of twenty-one years. (June 18, 1934, ch. 576, § 19, 48 Stat. 988.)

**§ 480. Indians eligible for loans.**

Hereafter no individual of less than one-quarter degree of Indian blood shall be eligible for a loan from funds made available in accordance with the provisions of sections 461, 462, 463, 464-473, 474, 475, 476-478, 479 and 501-509 of this title. (May 10, 1939, ch. 119, § 1, 53 Stat. 698.)

**§ 481. Tribal organizing work; allowance to Indians traveling away from home.**

In the discretion of the Secretary of the Interior, not to exceed \$3 per diem in lieu of subsistence may be allowed to Indians actually traveling away from their place of residence when assisting in organizing Indian chartered corporations, or other tribal organizations, in accordance with the provisions of sections 473a, 476-479, and 501-509 of this title. (May 10, 1939, ch. 119, § 1, 53 Stat. 693; June 18, 1940, ch. 395, § 1, 54 Stat. 413.)

**PROMOTION OF WELFARE OF INDIANS IN OKLAHOMA**

**§ 501. Acquisition of agricultural and grazing lands for Indians; title to lands; exemption from taxation.**

The Secretary of the Interior is hereby authorized, in his discretion, to acquire by purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing Indian reservations, including trust or otherwise restricted lands now in Indian ownership: *Provided*, That such lands shall be agricultural and grazing lands of good character and quality in proportion to the respective needs of the particular Indian or Indians for whom such purchases are made. Title to all lands so acquired shall be taken in the name of the United States, in trust for the tribe, band, group, or individual Indian for whose benefit such land is so acquired, and while the title thereto is held by the United States said lands shall be free from any and all taxes, save that the State of Oklahoma is authorized to levy and collect a gross-production tax, not in excess of the rate applied to production from lands in private ownership, upon all oil and gas produced from said lands, which said tax the Secretary of the Interior is hereby authorized and directed to cause to be paid. (June 26, 1936, ch. 831, § 1, 49 Stat. 1967.)

**CROSS REFERENCE**

Inapplicability of section to Osage County, Oklahoma, see section 508 of this title.

**§ 502. Purchase of restricted Indian lands; preference to Secretary of Interior.**

Whenever any restricted Indian land or interests in land, other than sales or leases of oil, gas, or other minerals therein, are offered for sale, pursuant to the terms of any Act of Congress, the Secretary of the Interior shall have a preference right, in his discretion, to purchase the same for or in behalf of any other Indian or Indians of the same or any other tribe, at a fair valuation to be fixed by the appraisement satisfactory to the Indian owner or owners, or if offered for sale at auction said Secretary shall have a preference right, in his discretion, to purchase



the same for or in behalf of any other Indian or Indians by meeting the highest bid otherwise offered therefor. (June 26, 1936, ch. 831, § 2, 49 Stat. 1967.)

#### CROSS REFERENCE

Inapplicability of section to Osage County, Oklahoma, see section 508 of this title.

#### § 503. Organization of tribes or bands; constitution; charter; right to participate in revolving credit fund.

Any recognized tribe or band of Indians residing in Oklahoma shall have the right to organize for its common welfare and to adopt a constitution and by-laws, under such rules and regulations as the Secretary of the Interior may prescribe. The Secretary of the Interior may issue to any such organized group a charter of incorporation, which shall become operative when ratified by a majority vote of the adult members of the organization voting: *Provided, however*, That such election shall be void unless the total vote cast be at least 30 per centum of those entitled to vote. Such charter may convey to the incorporated group, in addition to any powers which may properly be vested in a body corporate under the laws of the State of Oklahoma, the right to participate in the revolving credit fund and to enjoy any other rights or privileges secured to an organized Indian tribe under sections 476 and 477 of this title: *Provided*, That the corporate funds of any such chartered group may be deposited in any national bank within the State of Oklahoma or otherwise invested, utilized, or disbursed in accordance with the terms of the corporate charter. (June 26, 1936, ch. 831, § 3, 49 Stat. 1967.)

#### CROSS REFERENCES

Inapplicability of section to Osage County, Oklahoma, see section 508 of this title.

Per diem, in lieu of subsistence, to Indians traveling on organization work, see section 481 of this title.

#### § 504. Cooperative associations; charter; purposes; voting rights.

Any ten or more Indians, as determined by the official tribal rolls, or Indian descendants of such enrolled members, or Indians as defined in section 479 of this title, who reside within the State of Oklahoma in convenient proximity to each other may receive from the Secretary of the Interior a charter as a local cooperative association for any one or more of the following purposes: Credit administration, production, marketing, consumers' protection, or land management. The provisions of sections 501-509 of this title, the regulations of the Secretary of the Interior, and the charters of the cooperative associations issued pursuant thereto shall govern such cooperative associations: *Provided*, That in those matters not covered by said chapter, regulations, or charters, the laws of the State of Oklahoma, if applicable, shall govern. In any stock or nonstock cooperative association no one member shall have more than one vote, and membership therein shall be open to all Indians residing within the prescribed district. (June 26, 1936, ch. 831, § 4, 49 Stat. 1967.)

#### CROSS REFERENCE

Inapplicability of section to Osage County, Oklahoma, see section 508 of this title.

#### § 505. Same; amendment or revocation of charters; suits by and against associations.

The charters of any cooperative association organized pursuant to section 504 of this title shall not be amended or revoked by the Secretary except after a majority vote of the membership. Such cooperative associations may sue and be sued in any court of the State of Oklahoma or of the United States having jurisdiction of the cause of action, but a certified copy of all papers filed in any action against a cooperative association in a court of Oklahoma shall be served upon the Secretary of the Interior, or upon an employee duly authorized by him to receive such service. Within thirty days after such service or within such extended time as the trial court may permit, the Secretary of the Interior may intervene in such action or may remove such action to the United States district court to be held in the district where such petition is pending by filing in such action in the State court a petition for such removal, together with the certified copy of the papers served upon the Secretary. It shall then be the duty of the State court to accept such petition and to proceed no further in such action. The said copy shall be entered in the said district court within thirty days after the filing of the petition for removal, and the said district court is hereby given jurisdiction to hear and determine said action. (June 26, 1936, ch. 831, § 5, 49 Stat. 1968.)

#### CROSS REFERENCE

Inapplicability of section to Osage County, Oklahoma, see section 508 of this title.

#### § 506. Loans to individuals and groups; appropriation.

The Secretary is authorized to make loans to individual Indians and to associations or corporate groups organized pursuant to sections 503 and 504 of this title. For the making of such loans and for expenses of the cooperative associations organized pursuant to said sections there shall be appropriated, out of the Treasury of the United States, the sum of \$2,000,000. (June 26, 1936, ch. 831, § 6, 49 Stat. 1968.)

#### CROSS REFERENCES

Inapplicability of section to Osage County, Oklahoma, see section 508 of this title.

Indians eligible for loans, see section 480 of this title.

#### § 507. Availability and allocation of funds; royalties from mineral deposits.

All funds appropriated under the several grants of authority contained in sections 465 and 469-471 of this title, are hereby made available for use under the provisions of sections 501 to 509 of this title, and Oklahoma Indians shall be accorded and allocated a fair and just share of any and all funds appropriated after June 26, 1936, under the authorization herein set forth: *Provided*, That any royalties, bonuses, or other revenues derived from mineral deposits underlying lands purchased in Oklahoma under the authority granted by sections 501 to 509 of this title, or by sections 461, 462, 463, 464-473, 474, 475, 476-478, and 479 of this title, shall be deposited in the Treasury of the United States, and such revenues are hereby made available for expenditure by the Secretary of the Interior for the acquisition

of lands and for loans to Indians in Oklahoma as authorized by sections 470 and 506 of this title. (June 26, 1936, ch. 831, § 7, 49 Stat. 1968.)

#### CROSS REFERENCE

Inapplicability of section to Osage County, Oklahoma, see section 508 of this title.

#### § 508. Inapplicability of sections 501-509 to Osage County.

Sections 501-509 of this title shall not relate to or affect Osage County, Oklahoma. (June 26, 1936, ch. 831, § 8, 49 Stat. 1968.)

#### § 509. Rules and regulations; separability provisions.

The Secretary of the Interior is hereby authorized to prescribe such rules and regulations as may be necessary to carry out the provisions of sections 501-509 of this title. All Acts or parts of Acts inconsistent with such sections are hereby repealed. (June 26, 1936, ch. 831, § 9, 49 Stat. 1968.)

#### § 510. Payment of gross production taxes; method.

Whenever restricted Indian lands in the State of Oklahoma are subject to gross production tax on minerals, including oil and gas, the Secretary of the Interior, in his discretion, may cause such tax or taxes due the State of Oklahoma to be paid in the manner provided for by the statutes of the State of Oklahoma. (Aug. 25, 1937, ch. 772, 50 Stat. 806.)

### REVOLVING LOAN FUND FOR KLAMATH INDIANS

#### § 530. Capital reserve fund; interest for administrative expenses.

The Secretary of the Interior shall cause to be established on the books of the Treasury, out of any unobligated tribal funds of the Indians of the Klamath Reservation in Oregon (hereinafter referred to as the "Klamath Indians") on deposit in the Treasury of the United States, a capital reserve fund for said Klamath Indians. Such fund shall be created by setting aside the sum of \$50,000 for the fiscal year 1937, and shall be augmented by additions of \$50,000 for each fiscal year thereafter. Such fund shall be held in the Treasury of the United States and shall bear interest as provided by law. The interest upon such fund shall be used, insofar as it is sufficient, for the payment of the expenses of administration of the Klamath Indian Reservation in Oregon. (Aug. 28, 1937, ch. 874, § 1, 50 Stat. 872.)

#### CROSS REFERENCES

Addition to fund and limitation on further additions, see section 542 (a) of this title.

Transfer of certain judgment funds to capital reserve fund, see section 542 (c) of this title.

#### § 531. Reimbursable loan fund; purposes for which loans authorized.

The Secretary of the Interior shall cause to be established on the books of the Treasury, out of any unobligated tribal funds of the Klamath Indians on deposit in the Treasury, a reimbursable loan fund from which loans may be made to enrolled Klamath Indians for industrial and agricultural assistance and the construction and improvement of homes (including the purchase of land and interests in

land, building material, farming equipment, industrial equipment, trucks, livestock, feed, food, seed, tools, machinery, implements, household goods, bedding, clothing, or any other equipment or supplies necessary to enable such Indians to fit themselves for or to engage in farming, the livestock industry, or such other industrial or agricultural pursuits or avocations as will enable them to become self-supporting); for the educational advancement of such Indians; for financial assistance in cases of illness, death, or other emergency; for the maintenance and support of the aged, infirm, and incapacitated Klamath Indians; and for the repayment of reimbursable loans previously made to such Indians from tribal funds. For the establishment of such loan fund, the Secretary of the Interior shall immediately set aside the unexpended balance of any funds heretofore appropriated or authorized to be used out of the tribal funds of the Klamath Indians for the establishment of reimbursable loan funds for industrial assistance or for any other purpose; and in addition thereto, out of any unobligated tribal funds, \$100,000 shall be set aside for the fiscal year 1938 and \$50,000 for each of the next three fiscal years. (Aug. 28, 1937, ch. 874, § 2, 50 Stat. 872.)

#### § 532. Same; administration of fund; loan board, personnel; preference in land sales; limitation on administrative expenses.

The reimbursable loan fund provided for in section 531 of this subchapter shall be administered, under and subject to such rules and regulations as the Secretary of the Interior may prescribe, by a loan board composed of Klamath Indians of not to exceed five members: *Provided*, That in the event any property pledged as security is offered for sale to satisfy any obligation, the Klamath Indians shall have preferential right, except there shall be no discrimination as to terms of sale, to purchase the same: *Provided further*, That the expenses of administering such fund, including such per diem for members of the loan board as may be authorized by the Secretary of the Interior, shall be paid from such loan fund. After the fiscal year 1939 the aforesaid expenses of administration shall not exceed the amount received from service fees, surcharges, and interest paid in on loans. (Aug. 28, 1937, ch. 874, § 3, 50 Stat. 872.)

#### § 533. Security for loans.

For the purpose of providing adequate security for any loans made from the revolving reimbursable loan fund provided for in section 531 of this subchapter, the Klamath Indians are hereby authorized to include in the securities offered therefor, in addition to any unrestricted real or personal property owned by them, any lands, interest in lands, rights, funds, future per-capita payments and other distributions of tribal assets, and other property, real, personal, or mixed, of any nature whatsoever, belonging to individual Klamath Indians, regarded or classed prior to August 28, 1937, as trust or restricted Indian property. (Aug. 28, 1937, ch. 874, § 4, 50 Stat. 872.)

#### § 534. Repayments credited to fund.

All repayments made upon any loans made from the reimbursable loan fund herein provided for,

all repayments made upon any loans made from reimbursable loan funds for industrial assistance or for other purposes established prior to August 28, 1937, out of Klamath tribal funds, and all interest, surcharges, and service fees paid upon any such loans, shall be credited to the reimbursable loan fund herein provided for and shall become available for the purposes herein authorized. (Aug. 28, 1937, ch. 874, § 5, 50 Stat. 873.)

#### § 535. Additions to loan funds; limitation.

The amounts which the Secretary of the Interior shall cause to be added to the capital and loan funds established at his direction under the provisions of sections 530 and 531 of this subchapter during each fiscal year shall not exceed the amount of unobligated Klamath tribal funds on deposit in the Treasury of the United States available for that purpose. (Aug. 28, 1937, ch. 874, § 6, 50 Stat. 873.)

### KLAMATH TRIBE; DISPOSITION OF CERTAIN TRIBAL FUNDS

#### § 541. Creation of individual credits; authorized purchases.

The Secretary of the Interior is hereby authorized and directed, from the judgment fund of the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians created as the result of the passage of the Act of June 25, 1938, and accrued interest thereon, to credit the sum of \$2,000 upon the books of the Office of Indian Affairs, to each person determined by the Secretary of the Interior to be entitled to enrollment upon the annuity roll of said tribes of the Klamath Reservation, Oregon, living upon the date of the enactment of this subchapter. The share of each adult member and not to exceed \$1,500 of the share of any minor shall be available for expenditure, under such rules and regulations as the Secretary of the Interior may prescribe, for the following purposes:

Purchase of land; improvement of lands acquired or already held by the Indian; erection and improvement of suitable homes; repayment of any loans received from the United States or from the Klamath tribal funds; purchase of building material, farming equipment, livestock, feed, food, seed, grain, tools, machinery, implements, household goods, bedding, clothing, and any other equipment or supplies necessary to enable the Indians to fit themselves for or to engage in farming, livestock, industry, or such other pursuits or vocations, including education, as will enable them to become self-supporting; and health purposes: *Provided, however*, That the funds of the aged, infirm, decrepit, and incapacitated members, and of minors, may be used for their proper maintenance and support. The remainder of the share of each minor Indian shall be held intact until such Indian reaches his majority, when it, together with interest at the rate of 4 per centum per annum, shall be available for expenditure for the purposes specified herein. As herein used, the term "minor" shall include all members of the tribe less than twenty-one years of age, except that minors eighteen years of

age or over and who are married or have families of their own to support, shall be regarded as adults. On the death of any enrolled member, adult, or minor, the sum on deposit to his credit shall be distributed as personal property, and shall be available for expenditure by the distributees only for the purposes herein authorized: *Provided, however*, That of the aforesaid \$2,000 to be prorated to each person, \$100 shall be paid to each member of said tribes as a per capita payment, free from the aforesaid restrictions, under rules and regulations prescribed by the Secretary of the Interior. (Aug. 7, 1939, ch. 552, § 1, 53 Stat. 1252.)

#### REFERENCE IN TEXT

Reference in text to "act of June 25, 1938," was probably intended to be to the Second Deficiency Appropriation Act, fiscal year 1938, ch. 681, § 203 (a), 52 Stat. 1156. Section 203 (a) of said act provided for an appropriation for payment of judgments rendered by the court of claims and reported to the 75th Congress in Senate Document Numbered 191, and House Documents Numbered 661 and 686. House Document No. 661 listed a judgment in favor of the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians in the sum of \$5,313,347.32, with interest on a part thereof to date of payment, for the taking of land.

#### § 542. Limitations on remainder of fund.

After the segregation provided for in section 541 hereof shall have been made, the remainder of such judgment fund, including interest, shall be available for expenditure subject to the following limitations and conditions:

(a) Three hundred thousand dollars shall be transferred to and added to the loan fund authorized by section 531 of this title. After the fiscal year 1939 no further sums shall be transferred to and added to the loan fund authorized by said section from the unobligated tribal funds on deposit in the Treasury of the United States, and said section is hereby amended accordingly.

(b) Three hundred and seventy-five thousand dollars for immediate payment in a lump sum of \$1,500 to each adult unallotted Indian found to be entitled to payment in lieu of allotment, as authorized in sections 551-556 of this title: *Provided*, That the amount due any minor under the provisions of said Act shall be withheld until he becomes an adult, as herein defined, when it shall be paid to him in a lump sum from any funds, principal, or interest, on deposit to the credit of the Klamath Tribe, and section 552 of this title, is hereby amended accordingly.

(c) Such moneys as shall remain in the principal fund shall be transferred to and become a part of the capital reserve fund created by section 530 of this title. (Aug. 7, 1939, ch. 552, § 2, 53 Stat. 1253.)

#### § 543. Exemption of fund from certain debts.

In no event shall any portion of the judgment fund to which reference is made in section 541 of this title become liable, payable, or subject to any debt or debts contracted prior to the passage of this subchapter by any Indian of the Klamath Tribe except debts to the United States or to the tribe. (Aug. 7, 1939, ch. 552, § 3, 53 Stat. 1253.)

# **KLAMATH TRIBE; PAYMENTS IN LIEU OF ALLOTMENTS; INHERITANCE OF RESTRICTED PROPERTY**

## **§ 551. Definition of "Klamath Tribe."**

As used in this subchapter the term "Klamath Tribe" includes the members of the Klamath and Modoc Tribes and the Yahooskin Band of Snakes and all other Indians having rights on the Klamath Indian Reservation in the State of Oregon. (June 1, 1938, ch. 310, § 1, 52 Stat. 605.)

## **§ 552. Payments in lieu of allotments.**

Each enrolled member of the Klamath Tribe living on the date of the enactment of this subchapter who has not received an allotment of land shall be paid the sum of \$1,500 from unobligated Klamath tribal funds on deposit in the Treasury of the United States, under such rules and regulations as the Secretary of the Interior shall prescribe, in installments of not to exceed \$300 per annum: *Provided*, That no member of the Klamath Tribe who shall not be enrolled within one year from the date of the enactment of this subchapter shall receive a payment in lieu of allotment. No member of the Klamath Tribe born after the date of the enactment of this subchapter shall be entitled to receive any allotment of land or money payment in lieu thereof. (June 1, 1938, ch. 310, § 2, 52 Stat. 605.)

### **CROSS REFERENCE**

Minor's funds withheld until he becomes an adult, see section 542 (b) of this title.

## **§ 553. Same; deposit and expenditure of payments.**

The payments herein authorized shall be deposited to the credit of the individual Indian money accounts of such Indians subject to expenditure by such Indians, under such rules and regulations as the Secretary of the Interior may prescribe for (1) industrial and agricultural assistance, and the construction and improvement of homes, including the purchase of land and interests in land, building material, farming equipment, industrial equipment, trucks, livestock, feed, food, seed, tools, machinery, implements, household goods, bedding, clothing, and any other equipment or supplies necessary to enable the Indians to fit themselves for or to engage in the farming, livestock industry, or such other industrial or agricultural pursuits or avocations as will enable them to become self-supporting; (2) the educational advancement of such Indians; (3) financial assistance in cases of illness, death, or other emergency; (4) the repayment of reimbursable debts previously contracted; or (5) security for or the repayment of loans made to such Indians from any Klamath revolving loan fund now existent or which shall hereafter be created. (June 1, 1938, ch. 310, § 3, 52 Stat. 605.)

## **§ 554. Same; disposition of payment on death of Indian.**

In the event of the death of any such Indian entitled to receive a payment in lieu of allotment after the date of the enactment of this subchapter, any unexpended balance of said \$1,500 still due the

decendent shall first be applied to the repayment of any loans received by such Indian from the United States or from the Klamath Tribal funds, and the balance thereafter shall be distributed as personal property. (June 1, 1938, ch. 310, § 4, 52 Stat. 606.)

## **§ 555. Restricted or trust property; qualifications of heirs and devisees; dower and curtesy.**

Hereafter only enrolled members of the Klamath Tribe of not less than one-sixteenth degree Indian blood of the Klamath Tribe shall inherit or take by devise any restricted or trust property within the Klamath Reservation: *Provided*, That the surviving spouse shall be entitled to the use of one-half part during his or her natural life of all the land included in any such property whereof the decedent was seized of an estate of inheritance at any time during coverture. (June 1, 1938, ch. 310, § 5, 52 Stat. 606.)

## **§ 556. Same; reversion to tribe on death without heirs or devisees.**

If any enrolled member of the Klamath Tribe dies without lawful heirs or devisees,<sup>1</sup> all interest which such member has in any restricted or trust property within the Klamath Reservation shall revert to and become part of the common tribal property. (June 1, 1938, ch. 310, § 6, 52 Stat. 606.)

<sup>1</sup> So in original. Probably should be "devisees".

## **FEES AND CHARGES**

### **§ 561. Fees for general services.**

In the discretion of the Secretary of the Interior, and under such rules and regulations as may be prescribed by him, fees may be collected from individual Indians for services performed for them, and any fees so collected shall be covered into the Treasury of the United States. (May 9, 1938, ch. 187, § 1, 52 Stat. 313; May 10, 1939, ch. 119, § 1, 53 Stat. 708; June 18, 1940, ch. 395, § 1, 54 Stat. 427.)

### **§ 562. Fees for medical service.**

In the discretion of the Secretary of the Interior and under such rules and regulations as may be prescribed by him, fees may be collected from Indians for medical, hospital, and dental service and any fees so collected shall be covered into the Treasury of the United States. (May 9, 1938, ch. 187, § 1, 52 Stat. 312; May 10, 1939, ch. 119, § 1, 53 Stat. 707; June 18, 1940, ch. 395, § 1, 54 Stat. 427.)

### **§ 563. Salaries and expenses for Klamath Tribe Officials.**

The Secretary of the Interior, or such official as may be designated by him, is hereby authorized beginning as of July 1, 1937, and until otherwise directed by Congress, to pay out of any unobligated tribal funds of the Klamath Indians in the Treasury of the United States the following salaries and expenses:

To the chairman, secretary, and interpreter of the Klamath General Council and members of the Klamath Business Committee or other committees appointed by the general council (except the Klamath Reimbursable Loan Fund Board), when engaged on business of the tribe, a salary of not to exceed \$5 per

day and a per diem of not to exceed \$3 in lieu of subsistence and all other expenses; to such official delegates of the Klamath Tribe who may carry on the business of the tribe at the seat of government a salary of not to exceed \$5 per day and a per diem of \$5 in lieu of subsistence and all other expenses: *Provided*, That the rate of salary and per diem paid shall be fixed in advance by the general council of said tribe or by the business committee of the said tribe if authorized by said general council: *Provided further*, That the official delegates of the tribe carrying on said business at the seat of government shall receive, if travel is by rail, the usual railroad and sleeping-car transportation to and from the seat of government or, if travel is by automobile, delegates furnishing such transportation shall receive an amount equivalent to the cost of their railroad and sleeping-car transportation to and from the seat of government, but salary and per diem shall not be paid to delegates traveling by automobile for any period in excess of the time required to perform the travel by railroad: *Provided further*, That the aforesaid official delegates shall also receive reimbursement for telegraphic expenses incurred on tribal business: *Provided further*, That the aforesaid salaries and expenses shall not exceed \$7,500 per annum: *Provided further*, That the length of stay of the official delegates at the seat of government shall be determined by the Commissioner of Indian Affairs. (June 25, 1938, ch. 710, 52 Stat. 1207; Aug. 7, 1939, ch. 519, 53 Stat. 1244.)

#### SHOSHONE TRIBE; DISTRIBUTION OF JUDGMENT FUND

##### § 571. Shoshone Tribe; roll of living members.

The Secretary of the Interior is hereby authorized and directed, with the advice and consent of the business council of the Shoshone Tribe of the Wind River Reservation in Wyoming, to prepare a roll showing the members of said tribe living on the date of the approval of this subchapter, and such roll shall form the basis for the distribution of the judgment fund of said tribe created as the result of the passage of the Act of June 25, 1938 (52 Stat. 1114-1156), and accrued interest thereon. (July 27, 1939, ch. 387, § 1, 53 Stat. 1128.)

#### REFERENCE IN TEXT

Section 203 (a) of act of June 25, 1938, to which reference is made in text, provided for an appropriation for payment of judgments rendered by the court of claims and reported to the 75th Congress in Senate Document Numbered 191, and House Documents Numbered 661 and 686. House Document No. 661 listed a judgment in favor of the Shoshone Tribe of Indians of the Wind River Reservation in Wyoming, in the sum of \$4,408,444.23, with interest on a part thereof to the date of payment, for the taking of land.

##### § 572. Payments to individuals; expenditure of payments.

There shall be credited on the books of the Office of Indian Affairs the sum of \$2,450 to each member of said tribe whose name appears on the roll provided for in section 571 of this title, and out of such sum so credited the Secretary of the Interior is hereby authorized to make available immediately to each individual member of the tribe the sum of \$100;

and, under such rules and regulations as he may prescribe, the sum of \$1,350 to each adult and the sum of \$500 to each minor for the following purposes: Purchase of land, improvement of lands to be acquired or already held by the Indian, for the erection and improvement of suitable homes, the purchase of building material, farming equipment, livestock, feed, food, seed, grain, tools, machinery, implements, household goods, bedding, clothing, and any other equipment or supplies necessary to enable the Indians to fit themselves for or to engage in farming, livestock, industry, or such other pursuits or vocations, including education, as will enable them to become self-supporting: *Provided, however*, That the funds of the aged, infirm, decrepit, and incapacitated members may be used for their proper maintenance and support in the discretion of the Secretary of the Interior. The remainder of the share of each adult individual Indian, including accrued interest, shall be made available under such rules and regulations as the Secretary of the Interior may prescribe, and the remainder of the share of each minor Indian shall, with accrued interest, be held intact until such Indian reaches the age of eighteen years, when it shall be available under the same conditions as herein provided for adults. As herein used the term "adult" shall include the members of the tribe eighteen years of age or over, and the term "minor" shall include all members less than eighteen years of age. On the death of any enrolled member, adult or minor, the sum on deposit to his credit shall be available for expenditure for the benefit of his heirs for the purposes herein authorized. (July 27, 1939, ch. 387, § 2, 53 Stat. 1128.)

##### § 573. Purchase of lands; loan fund; productive enterprises.

(a) Not to exceed \$1,000,000 of the judgment fund to which reference is made in section 571 of this title, or interest thereon, shall be available for expenditure upon the request of the tribe and with the approval of the Secretary of the Interior, for the purchase of lands in the manner prescribed in section 576 of this title.

(b) The sum of \$125,000 of said judgment fund, or interest thereon, shall, at the request of the tribe and with the approval of the Secretary of the Interior, be set aside as a loan fund for making loans to individual members, or groups of members, of said tribe under such rules and regulations as may be prescribed by the Secretary of the Interior.

(c) The remainder of said judgment fund, including interest thereon, after making the segregation provided for in section 572 of this title, and after setting aside the respective amounts authorized by this section, shall be available for appropriation, upon the recommendation of the Secretary of the Interior, and with the consent of the tribe, for purposes of benefit to the tribe, including the establishment and administration of productive enterprises for the benefit of said tribe, and any income derived from such enterprises shall be credited to the Shoshone tribal judgment fund: *Provided*, That should such enterprises also benefit the Arapaho Tribe repayment proportionate to the benefit to the Arap-

aho Tribe shall be made into the Shoshone judgment fund by the Arapaho Tribe out of such tribal income as the Arapaho Tribe may enjoy. (July 27, 1939, ch. 387, § 3, 53 Stat. 1129.)

#### § 574. Consolidation of lands.

The Secretary of the Interior is hereby authorized and directed to establish land-use districts within the diminished and ceded portions of the Wind River Indian Reservation, Wyoming, and, under such rules and regulations as he may prescribe, to effect the consolidation of Indian and privately owned lands within said districts through exchange, relinquishment, donation, assignment, or purchase of lands or interests therein, including water rights or surface rights to lands, improvements thereon and improvements on undisposed-of ceded lands, to the end that the respective Indian and non-Indian land holdings may be consolidated for more beneficial use. Exchanges of lands hereunder shall be made on the basis of equal value, and the value of improvements on lands to be relinquished to the Indians or by Indians to non-Indians shall be given due consideration, and allowance made therefor in the valuation of lieu lands. This section shall apply to tribal land, and trust or otherwise restricted Indian allotments, whether the allottees be living or deceased. In all transactions involving tribal Indian land, the consent of the Shoshone and Arapaho Tribes shall first be obtained. Title to all lands or interests therein acquired by the Government through exchange of tribal land shall be taken in the name of the United States in trust for the Shoshone and Arapaho Tribes of Indians of the Wind River Reservation, Wyoming. Title to lands exchanged for individual Indian allotments, or purchased for individual Indians with restricted funds shall be taken by the United States in trust for the individual Indian allottee or heir. The right herein granted individual Indians to acquire lands by purchase with restricted funds or by exchange shall not extend to lands on the ceded or opened portion of the reservation. (July 27, 1939, ch. 387, § 4, 53 Stat. 1129.)

#### § 575. Restoration of lands.

The Secretary of the Interior is hereby directed to restore to tribal ownership all undisposed-of surplus or ceded lands within the land use districts which are not at present under lease or permit to non-Indians; and, further, to restore to tribal ownership the balance of said lands progressively as and when the non-Indian owned lands within a given land use district are acquired by the Government for Indian use pursuant to the provisions of this subchapter. All such restorations shall be subject to valid existing rights and claims: *Provided*, That no restoration to tribal ownership shall be made of any lands within any reclamation project heretofore authorized within the diminished or ceded portions of the reservation. (July 27, 1939, ch. 387, § 5, 53 Stat. 1129.)

#### § 576. Purchase of lands; reimbursement of expenditures.

The sum of \$1,000,000 authorized in section 573 of this title for use in carrying out the land purchase

and consolidation program hereinbefore authorized shall remain available until expended and any amount expended shall be reimbursed with interest at 4 per centum per annum to the Shoshone Tribe of Indians of the Wind River Reservation from joint funds to the credit of the Shoshone and Arapaho Tribes of the Wind River Reservation or from future accruals to said joint fund, as and when said funds accrue. Title to all land purchases made hereunder shall be taken in the name of the United States in trust for the Shoshone and Arapaho Tribes of Indians of the Wind River Reservation, Wyoming. All purchases of lands or interests therein made pursuant to this section shall receive the approval of the Shoshone and Arapaho Tribal Councils or of the business committees thereof. (July 27, 1939, ch. 387, § 6, 53 Stat. 1130.)

#### § 577. Liability of judgment funds for debts.

In no event shall any portion of the Shoshone judgment fund become liable, payable, or subject to any debt or debts contracted prior to the passage of this subchapter by any Indian of the Shoshone Tribe except debts to the United States or to the tribe. (July 27, 1939, ch. 387, § 7, 53 Stat. 1130.)

#### CROSS REFERENCE

Shoshone judgment fund, see section 571 of this title and note.

#### CHIPPEWA TRIBE

#### § 591. Reservation of Chippewa National Forest lands for Minnesota Chippewa Tribe.

Subject to the payments prescribed by section 592 of this title the following-described lands are hereby eliminated from the Chippewa National Forest and permanently reserved for the use of the Minnesota Chippewa Tribe without in any manner affecting existing reserves for church, cemetery, and other purposes, or individual rights or interest in said lands: South half northwest quarter southwest quarter, southeast quarter southwest quarter, section 12; northwest quarter northwest quarter, west half northeast quarter northwest quarter, south half northwest quarter, west half southwest quarter, lots 2, 4, 5, and 6, section 13; northeast quarter southeast quarter, section 14; lots 11, 12, 13, 3, 4, 6, 7, 8, and 9, section 24, township 142 north, range 31 west, fifth principal meridian, Minnesota, excepting a tract containing approximately one and ninety one-hundredths acres, being that portion of lot 4, section 13, township 142 north, range 31 west, beginning at angle point 1, lot 5, section 13, township 142 north, range 31 west; thence north thirty-three degrees forty-two minutes east one hundred and twenty-nine and five-tenths feet; thence south eighty-nine degrees forty-eight minutes east two hundred and thirty-one and four-tenths feet; thence south one degree fifty-four minutes west eighty-five and two-tenths feet; thence south nine degrees thirty-one minutes east two hundred and five and two-tenths feet; thence south nine degrees no minutes west eighty and four-tenths feet; thence south forty-one degrees nineteen minutes west one hundred and nineteen and four-tenths feet to angle point 4, lot 5; thence along the boundary of lot 5, north fifty-

one degrees no minutes west one hundred and twenty and one-tenth feet to angle point 5, lot 5, north thirty-seven degrees forty-five minutes east one hundred and twenty and one-tenth feet to angle point 6, lot 5, north fifty-one degrees no minutes west two hundred and eighty-seven and one-tenth feet to angle point 1, lot 5, and point of beginning. (June 8, 1940, ch. 285, § 1, 54 Stat. 254.)

**§ 592. Withdrawal of tribal funds to reimburse United States; consent of Minnesota Chippewa Tribe; disposition of receipts.**

The Secretary of the Interior is hereby authorized to withdraw from the Minnesota Chippewa tribal fund now held in trust in the Treasury of the United States a sufficient sum to reimburse the United States for the land and timber thereon, the value of the land to be calculated at \$1.25 per acre, and the value of the timber to be ascertained by the Secretary of Agriculture after the same has been examined and appraised under his supervision: *Provided, however*, That the transaction contemplated in this section and section 591 of this title shall be effected only with the consent of the Minnesota Chippewa Tribe expressed through the body authorized to represent it: *And provided further*, That all money received by the United States under the authority of sections 591-593 of this title shall be deposited in the Treasury of the United States, and the same is hereby appropriated for the acquisition of forest land within the Chippewa National Forest

under the provisions of sections 513-517, 518, 519, and 521 of Title 16. (June 8, 1940, ch. 285, § 2, 54 Stat. 254.)

**§ 593. Exchanges of allotted, restricted, and tribal lands for Chippewa National Forest lands.**

Exchanges of Indian allotted, restricted, and tribal lands for lands in the Chippewa National Forest are hereby authorized. In order to consummate exchanges involving allotted and restricted Indian lands, the Secretary of the Interior is hereby authorized to accept relinquishments or conveyances of Indian lands, which lands shall thereupon become a part of the Chippewa National Forest, and to issue trust patents to the Indians for the lands received by them in exchange: *Provided*, That with the consent of the Indians involved title to the lands received in any such exchange may be taken in the name of the tribe, in which case the transfer of title shall be evidenced by an order of the Secretary of Agriculture transferring the lands to the Secretary of the Interior in trust for the Minnesota Chippewa Tribe: *Provided further*, That exchanges involving tribal lands shall be made only with the consent of the Indians and shall be evidenced by appropriate orders of transfer executed by the Secretary of Agriculture and the Secretary of the Interior: *And provided further*, That the land exchanges authorized herein shall be made on the basis of lands of equal value, and no exchange shall be made unless it is first approved by the Secretary of Agriculture. (June 8, 1940, ch. 285, § 3, 54 Stat. 255.)





## TITLE 26.—INTERNAL REVENUE CODE

Act Feb. 10, 1939, ch. 2, 53 Stat. 1-504

The Internal Revenue Code set out herein supplants provisions of former Titles 26, Internal Revenue, U. S. Code, 1925 and 1934 editions.

Revenue acts from 1916 to time of enactment of Internal Revenue Code are listed below.

1916—Sept. 8, 1916, ch. 463, 39 Stat. 756.  
1917—Oct. 3, 1917, ch. 63, 40 Stat. 300.  
1919—Feb. 24, 1919, ch. 18, 40 Stat. 1057.  
1921—Nov. 23, 1921, ch. 136, 42 Stat. 227.  
1924—June 2, 1924, ch. 234, 43 Stat. 253.  
1926—Feb. 26, 1926, ch. 27, 44 Stat. 9.  
1928—May 29, 1928, ch. 852, 45 Stat. 791.  
1932—June 6, 1932, ch. 209, 47 Stat. 169.  
1934—May 10, 1934, ch. 277, 48 Stat. 680.  
1935—Aug. 30, 1935, ch. 839, 49 Stat. 1014.  
1936—June 22, 1936, ch. 690, 49 Stat. 1648.  
1937—Aug. 26, 1937, ch. 815, 50 Stat. 818.  
1938—May 28, 1938, ch. 289, 52 Stat. 447.

### DISTRIBUTION TABLE

Tables showing where corresponding sections of former Titles 26, Internal Revenue, U. S. Code, 1925 and 1934 editions, are now incorporated in Internal Revenue Code, set out herein, will be found in Volume 3

#### § 1. Internal Revenue Code.

The laws of the United States hereinafter codified and set forth as a part of this title under the heading "Internal Revenue Title" are hereby enacted into law. (53 Stat. 1.)

#### § 2. Citation.

This title and the internal revenue title incorporated herein shall be known as the Internal Revenue Code and may be cited as "I. R. C." (53 Stat. 1.)

#### § 3. Effective date.

Except as otherwise provided herein, this title shall take effect on the day following the date of its enactment. (53 Stat. 1.)

#### § 4. Repeal and savings provisions.

(a) The Internal Revenue Title, as hereinafter set forth, is intended to include all general laws of the United States and parts of such laws, relating exclusively to internal revenue, in force on the 2d day of January 1939 (1) of a permanent nature and (2) of a temporary nature if embraced in said Internal Revenue Title. In furtherance of that purpose, all such laws and parts of laws codified herein, to the extent they relate exclusively to internal revenue, are repealed, effective, except as provided in section 5, on the day following the date of the enactment of this title.

(b) Such repeal shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal, but all rights and liabilities under said acts shall continue, and may be enforced in

the same manner, as if said repeal had not been made; nor shall any office, position, employment, board, or committee, be abolished by such repeal, but the same shall continue under the pertinent provisions of the Internal Revenue Title.

(c) All offenses committed, and all penalties or forfeitures incurred under any statute hereby repealed, may be prosecuted and punished in the same manner and with the same effect as if this title had not been passed.

(d) All acts of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, hereby repealed shall not be affected thereby, but all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising, or acts done or committed, prior to said repeal, may be commenced and prosecuted within the same time as if this title had not been passed.

(e) The authority vested in the President of the United States, or in any officer or officers of the Treasury Department, by the law as it existed immediately prior to the enactment of this title, hereafter to give publicity to tax returns required under any internal revenue law in force immediately prior to the enactment of this title or any information therein contained, and to furnish copies thereof and to prescribe the terms and conditions upon which such publicity may be given or such copies furnished, and to make rules and regulations with respect to such publicity, is hereby preserved. And the provisions of law authorizing such publicity and prescribing the terms, conditions, limitations, and restrictions upon such publicity and upon the use of the information gained through such publicity and the provisions of law prescribing penalties for unlawful publicity of such returns and for unlawful use of such information are hereby preserved and continued in full force and effect. (53 Stat. 1.)

#### § 5. Continuance of existing law.

Any provision of law in force on the 2d day of January 1939 corresponding to a provision contained in the Internal Revenue Title shall remain in force until the corresponding provision under such Title takes effect. (53 Stat. 1a.)

#### § 6. Arrangement, classification, and cross references.

The arrangement and classification of the several provisions of the Internal Revenue Title have been made for the purpose of a more convenient and orderly arrangement of the same, and, therefore, no inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or

provision or portion thereof, nor shall any outline, analysis, cross reference, or descriptive matter relating to the contents of said Title be given any legal effect. (53 Stat. 1a.)

#### § 7. Effect upon subsequent legislation.

The enactment of this title shall not repeal nor affect any act of Congress passed since the 2d day of January 1939, and all acts passed since that date shall have full effect as if passed after the enactment of this title; but, so far as such acts vary from, or conflict with, any provision contained in this title, they are to have effect as subsequent statutes, and as repealing any portion of this title inconsistent therewith. (53 Stat. 1a.)

#### § 8. Copies as evidence of original.

Copies of this title printed at the Government Printing Office and bearing its imprint shall be conclusive evidence of the original Internal Revenue Code in the custody of the Secretary of State. (53 Stat. 1a.)

#### § 9. Publication.

The said Internal Revenue Code shall be published as a separate part of a volume of the United States Statutes at Large,<sup>1</sup> with an appendix and index, but without marginal references; the date of enactment, bill number, public and chapter number shall be printed as a headnote. (53 Stat. 1a.)

<sup>1</sup> United States Statutes at Large, Volume 53, Part 1, Internal Revenue Code.

#### § 10. Internal Revenue Title.

The Internal Revenue Title, heretofore referred to, and hereby and herein enacted into law, is as follows: (53 Stat. 1a.)

##### HISTORY OF INTERNAL REVENUE CODE

The Internal Revenue Code, approved February 10, 1939, consists of the preliminary sections relating to enactment, set out above, and the Internal Revenue Title, containing all United States statutes of a general and permanent nature relating exclusively to internal revenue, in force on January 2, 1939.

This code is not an innovation in Federal legislation, for the Criminal Code and the Judicial Code are two modern statutes enacted by Congress for the purpose of codifying the laws relating to their respective topics. However, it is the first Federal act of its kind relating exclusively to internal revenue since the publication of the Revised Statutes of the United States, approved June 22, 1874.

The Internal Revenue Code traces its ultimate origin to 164 separate enactments of Congress. The earliest of these was approved July 1, 1862, and the latest on June 16, 1938.

These statutes were codified without substantive change and with only such change of form as was required by arrangement and consolidation. The only provision not derived from a law approved prior to January 3, 1939, was that relating to the effective date.

In June 1926 Congress passed the "Code of the Laws of the United States" which was the first general codification of Federal statutes since the Revised Statutes. It was revised in 1934 and again in 1940. The compilers of the United States Code acting under the supervision of the Revision of Laws Committee of the House of Representatives, incorporated all internal revenue laws of a general and permanent nature in Title 26, Internal Revenue.

Title 26 of the United States Code was derived from the same general sources used in preparing the Internal Revenue Code. Many sections in this title were taken from

the Revised Statutes and others were based upon provisions of enactments passed subsequent to the Revised Statutes and in force on December 7, 1925. The title was supplemented annually by the compilers as Congress enacted new internal revenue acts. It was *prima facie* evidence of the internal revenue laws of a general and permanent nature from 1926 until the statutes upon which it was based were repealed in 1939 by the Internal Revenue Code.

The Internal Revenue Code was drafted by the Joint Committee on Internal Revenue Taxation, with the assistance of the Department of the Treasury and the Department of Justice.

By section 4 of the codifying act of Feb. 10, 1939, 53 Stat. 1, all laws and parts of laws embodied in the code to the extent they related exclusively to Internal Revenue were repealed.

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**SUBCHAPTER A.—INTRODUCTORY PROVISIONS****§ 1. Application of chapter.**

The provisions of this chapter shall apply only to taxable years beginning after December 31, 1938. Income, war-profits, and excess-profits taxes for taxable years beginning prior to January 1, 1939, shall not be affected by the provisions of this chapter, but shall remain subject to the applicable provisions of the Revenue Act of 1938 and prior revenue acts, except as such provisions are modified by legislation enacted subsequent to the Revenue Act of 1938. (53 Stat. 4.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 1, 52 Stat. 452.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 1, 49 Stat. 1652.  
 1934—May 10, 1934, ch. 277, § 1, 48 Stat. 683.  
 1932—June 6, 1932, ch. 209, § 1, 47 Stat. 173.  
 1928—May 29, 1928, ch. 852, § 1, 45 Stat. 795.

**§ 2. Cross references.**

The cross references in this chapter to other portions of the chapter, where the word "see" is used, are made only for convenience, and shall be given no legal effect. (53 Stat. 4.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 2, 52 Stat. 452.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 2, 49 Stat. 1652.  
 1934—May 10, 1934, ch. 277, § 2, 48 Stat. 684.  
 1932—June 6, 1932, ch. 209, § 2, 47 Stat. 173.  
 1928—May 29, 1928, ch. 852, § 2, 45 Stat. 795.

**§ 3. Classification of provisions.**

The provisions of this chapter are herein classified and designated as—

Subchapter A—Introductory provisions,

Subchapter B—General provisions, divided into Parts and sections,

Subchapter C—Supplemental provisions, divided into Supplements and sections. (53 Stat. 4.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 3, 52 Stat. 452.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 3, 49 Stat. 1652.

1934—May 10, 1934, ch. 277, § 3, 48 Stat. 684.

1932—June 6, 1932, ch. 209, § 3, 47 Stat. 174.

1928—May 29, 1928, ch. 852, § 3, 45 Stat. 795.

**§ 4. Special classes of taxpayers.**

The application of the General Provisions and of Supplements A to D, inclusive, to each of the following special classes of taxpayers, shall be subject to the exceptions and additional provisions found in the Supplement applicable to such class, as follows:

(a) Estates and trusts and the beneficiaries thereof,—Supplement E.

(b) Members of partnerships,—Supplement F.

(c) Insurance companies,—Supplement G.

(d) Nonresident alien individuals,—Supplement H.

(e) Foreign corporations,—Supplement I.

(f) Individual citizens of any possession of the United States who are not otherwise citizens of the United States and who are not residents of the United States,—Supplement J.

(g) Individual citizens of the United States or domestic corporations, satisfying the conditions of section 251 by reason of deriving a large portion of their gross income from sources within a possession of the United States,—Supplement J.

(h) China Trade Act corporations,—Supplement K.

(i) Foreign personal holding companies and their shareholders,—Supplement P.

(j) Mutual investment companies,—Supplement. (53 Stat. 4.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 4, 52 Stat. 452.

**SIMILAR PROVISIONS**

1937—Aug. 26, 1937, ch. 815, title 2, § 207 (a), 50 Stat. 826

1936—June 22, 1936, ch. 690 § 4, 49 Stat. 1653.

1934—May 10, 1934, ch. 277, § 4, 48 Stat. 684.

1932—June 6, 1932, ch. 209, § 4, 47 Stat. 174.

1928—May 29, 1928, ch. 852, § 4, 45 Stat. 795.

**SUBCHAPTER B.—GENERAL PROVISIONS****PART I.—RATES OF TAX****§ 11. Normal tax on individuals.**

There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax of 4 per centum of the amount of the net income in excess of the credits against net income provided in section 25. (53 Stat. 5.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 11, 52 Stat. 452.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 11, 49 Stat. 1653.

1934—May 10, 1934, ch. 277, § 11, 48 Stat. 684.

1932—June 6, 1932, ch. 209, § 11, 47 Stat. 174.

1928—May 29, 1928, ch. 852, § 11, 45 Stat. 795.

1926—Feb. 26, 1926, ch. 27, § 210, 44 Stat. 21.

1924—June 2, 1924, ch. 234, § 210, 43 Stat. 264.

1923—Mar. 4, 1923, ch. 280, § 1, 42 Stat. 1507.

1921—Nov. 23, 1921, ch. 136, § 210, 42 Stat. 1507.

1919—Feb. 24, 1919, ch. 18, § 210, 40 Stat. 84.

1916—Sept. 8, 1916, ch. 463, 1 (a), 39 Stat. 756.

1913—Oct. 3, 1913, ch. 16, § II, A. 38 Stat. 166.

**§ 12. Surtax on individuals—(a) Definition of "surtax net income."**

As used in this section the term "surtax net income" means the amount of the net income in excess of the credits against net income provided in section 25 (b).

**(b) Rates of surtax.**

There shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual a surtax as follows:

Upon a surtax net income of \$4,000 there shall be no surtax; upon surtax net incomes in excess of \$4,000 and not in excess of \$6,000, 4 per centum of such excess.

\$80 upon surtax net incomes of \$6,000; and upon surtax net incomes in excess of \$6,000 and not in excess of \$8,000, 6 per centum in addition of such excess.

\$200 upon surtax net incomes of \$8,000; and upon surtax net incomes in excess of \$8,000 and not in excess of \$10,000, 8 per centum in addition of such excess.

\$360 upon surtax net incomes of \$10,000; and upon surtax net incomes in excess of \$10,000 and not in excess of \$12,000, 10 per centum in addition of such excess.

\$560 upon surtax net incomes of \$12,000; and upon surtax net incomes in excess of \$12,000 and not in excess of \$14,000, 12 per centum in addition of such excess.

\$800 upon surtax net incomes of \$14,000; and upon surtax net incomes in excess of \$14,000 and not in excess of \$16,000, 15 per centum in addition of such excess.

\$1,100 upon surtax net incomes of \$16,000; and upon surtax net incomes in excess of \$16,000 and not in excess of \$18,000, 18 per centum in addition of such excess.

\$1,460 upon surtax net incomes of \$18,000; and upon surtax net incomes in excess of \$18,000 and not in excess of \$20,000, 21 per centum in addition of such excess.

\$1,880 upon surtax net incomes of \$20,000; and upon surtax net incomes in excess of \$20,000 and not in excess of \$22,000, 24 per centum in addition of such excess.

\$2,360 upon surtax net incomes of \$22,000; and upon surtax net incomes in excess of \$22,000 and not in excess of \$26,000, 27 per centum in addition of such excess.

\$3,440 upon surtax net incomes of \$26,000; and upon surtax net incomes in excess of \$26,000 and not in excess of \$32,000, 30 per centum in addition of such excess.



\$5,240 upon surtax net incomes of \$32,000; and upon surtax net incomes in excess of \$32,000 and not in excess of \$38,000, 33 per centum in addition of such excess.

\$7,220 upon surtax net incomes of \$38,000; and upon surtax net incomes in excess of \$38,000 and not in excess of \$44,000, 36 per centum in addition of such excess.

\$9,380 upon surtax net incomes of \$44,000; and upon surtax net incomes in excess of \$44,000 and not in excess of \$50,000, 40 per centum in addition of such excess.

\$11,780 upon surtax net incomes of \$50,000; and upon surtax net incomes in excess of \$50,000 and not in excess of \$60,000, 44 per centum in addition of such excess.

\$16,180 upon surtax net incomes of \$60,000; and upon surtax net incomes in excess of \$60,000 and not in excess of \$70,000, 47 per centum in addition of such excess.

\$20,880 upon surtax net incomes of \$70,000; and upon surtax net incomes in excess of \$70,000 and not in excess of \$80,000, 50 per centum in addition of such excess.

\$25,880 upon surtax net incomes of \$80,000; and upon surtax net incomes in excess of \$80,000 and not in excess of \$90,000, 53 per centum in addition of such excess.

\$31,180 upon surtax net incomes of \$90,000; and upon surtax net incomes in excess of \$90,000 and not in excess of \$100,000, 56 per centum in addition of such excess.

\$36,780 upon surtax net incomes of \$100,000; and upon surtax net incomes in excess of \$100,000 and not in excess of \$150,000, 58 per centum in addition of such excess.

\$65,780 upon surtax net incomes of \$150,000; and upon surtax net incomes in excess of \$150,000 and not in excess of \$200,000, 60 per centum in addition of such excess.

\$95,780 upon surtax net incomes of \$200,000; and upon surtax net incomes in excess of \$200,000 and not in excess of \$250,000, 62 per centum in addition of such excess.

\$126,780 upon surtax net incomes of \$250,000; and upon surtax net incomes in excess of \$250,000 and not in excess of \$300,000, 64 per centum in addition of such excess.

\$158,780 upon surtax net incomes of \$300,000; and upon surtax net incomes in excess of \$300,000 and not in excess of \$400,000, 66 per centum in addition of such excess.

\$224,780 upon surtax net incomes of \$400,000; and upon surtax net incomes in excess of \$400,000 and not in excess of \$500,000, 68 per centum in addition of such excess.

\$292,780 upon surtax net incomes of \$500,000; and upon surtax net incomes in excess of \$500,000 and not in excess of \$750,000, 70 per centum in addition of such excess.

\$467,780 upon surtax net incomes of \$750,000; and upon surtax net incomes in excess of \$750,000 and not in excess of \$1,000,000, 72 per centum in addition of such excess.

\$647,780 upon surtax net incomes of \$1,000,000; and upon surtax net incomes in excess of \$1,000,000 and not in excess of \$2,000,000, 73 per centum in addition of such excess.

\$1,377,780 upon surtax net incomes of \$2,000,000; and upon surtax net incomes in excess of \$2,000,000 and not in excess of \$5,000,000, 74 per centum in addition of such excess.

\$3,597,780 upon surtax net incomes of \$5,000,000; and upon surtax net incomes in excess of \$5,000,000, 75 per centum in addition of such excess.

(c) Tax in case of capital gains or losses.

For rate and computation of alternative tax in lieu of normal tax and surtax in the case of a capital gain or loss from the sale or exchange of capital assets held for more than eighteen months, see section 117 (c).

(d) Sale of oil or gas properties.

For limitation of surtax attributable to the sale of oil or gas properties, see section 105.

(e) Tax on personal holding companies.

For surtax on personal holding companies, see section 500.

(f) Avoidance of surtaxes by incorporation.

For surtax on corporations which accumulate surplus to avoid surtax on shareholders, see section 102.

(53 Stat. 5; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title I, § 2, 54 Stat. 516.)

DERIVATION

Act May 28, 1938, ch. 289, § 12, 52 Stat. 453.

1940 AMENDMENT

Subsection (b) was amended by act June 25, 1940, cited to text.

TREATY OBLIGATIONS

Section 8 of act June 25, 1940, cited to text, provided as follows:

"No amendment made by this title (sections 1-9 of 1940 act) shall apply in any case where its application would be contrary to any treaty obligation of the United States"

TAXABLE YEARS AFFECTED

Section 9 of act June 25, 1940, cited to text, provided as follows:

"The amendments made by this title (sections 1-9 of 1940 act), except the amendments made by section 5 (sections 143, 144 of Internal Revenue Code), shall be applicable only with respect to taxable years beginning after December 31, 1939."

SIMILAR PROVISIONS

- 1937—Aug. 26, 1937, ch. 815, title I, § 2, 50 Stat. 817.
- 1936—June 22, 1936, ch. 690, § 12, 49 Stat. 1653.
- 1935—Aug. 30, 1935, ch. 829, §§ 101, 107, 49 Stat. 1014, 1019.
- 1934—May 10, 1934, ch. 277, § 12, 48 Stat. 684.
- 1932—June 6, 1932, ch. 209, § 12, 47 Stat. 174.
- 1928—May 29, 1928, ch. 852, § 12, 45 Stat. 796.
- 1926—Feb. 26, 1926, ch. 27, § 211, 44 Stat. 21.
- 1924—June 2, 1924, ch. 234, § 211, 43 Stat. 265.
- 1921—Nov. 23, 1921, ch. 136, § 211, 42 Stat. 233.
- 1919—Feb. 24, 1919, ch. 18, § 211, 40 Stat. 1062.
- 1917—Oct. 3, 1917, ch. 63, § 2, 40 Stat. 301.
- 1916—Sept. 8, 1916, ch. 463, § 1 (b), 39 Stat. 756.
- 1913—Oct. 3, 1913, ch. 16, § II, A, subd. 2, 38 Stat. 166.

§ 13. Tax on corporations in general—(a) Definitions.

For the purposes of this chapter—

(1) Adjusted net income.

The term "adjusted net income" means the net income minus the credit provided in section 26 (a), relating to interest on certain obligations of the United States and Government corporations.

**(2) Normal-tax net income.**

The term "normal-tax net income" means the adjusted net income minus the credit for dividends received provided in section 26 (b).

**(b) Imposition of tax.**

There shall be levied, collected, and paid for each taxable year upon the normal-tax net income of every corporation the normal-tax net income of which is more than \$25,000 (except a corporation subject to the tax imposed by section 14, section 231 (a), Supplement G, or Supplement Q) whichever of the following taxes is the lesser:

**(1) General rule.**

A tax of 22 $\frac{1}{10}$  per centum of the normal-tax net income; or

**(2) Alternative tax (corporations with normal-tax net income slightly more than \$25,000).**

A tax of \$3,775, plus 35 per centum of the amount of the normal-tax net income in excess of \$25,000.

**(c) Exempt corporations.**

For corporations exempt from taxation under this chapter, see section 101.

**(d) Tax on personal holding companies.**

For surtax on personal holding companies, see section 500.

**(e) Improper accumulation of surplus.**

For surtax on corporations which accumulate surplus to avoid surtax on shareholders, see section 102.

(53 Stat. 7; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 201, 53 Stat. 863; June 25, 1940, 11:45 A. M., E. S. T., ch. 419, title I, § 3 (a), 54 Stat. 517; Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title I, § 101 (a), 54 Stat. 974.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 13, 52 Stat. 455.

**1940 AMENDMENT**

Subsection (b) was amended by acts June 25, 1940, and Oct. 8, 1940, cited to text, which changed "18 per centum" to "22 $\frac{1}{10}$  per centum," "\$3,525" to "\$3,775," and "32 per centum" to "35 per centum." Act October 8, 1940, cited to text, was applicable only with respect to taxable years beginning after December 31, 1939, by section 101(e) of said act.

**TREATY OBLIGATIONS**

Section 8 of act June 25, 1940, cited to text, provided as follows: "No amendment made by this title (sections 1-9 of 1940 act) shall apply in any case where its application would be contrary to any treaty obligation of the United States."

**TAXABLE YEARS AFFECTED**

Section 9 of act June 25, 1940, cited to text, provided as follows: "The amendments made by this title (sections 1-9 of 1940 act), except the amendments made by section 5 (sections 143, 144, of Internal Revenue Code), shall be applicable only with respect to taxable years beginning after December 31, 1939."

**1939 AMENDMENT**

Act June 29, 1939, cited to text, which was made applicable only with respect to taxable years beginning after December 31, 1939, by section 229 thereof, amended subsections (a)-(e) and omitted subsections (f)-(j).

**SIMILAR PROVISIONS**

1937—Aug. 26, 1937, ch. 815, title I, § 2, 50 Stat. 817.  
1936—June 22, 1936, ch. 690, §§ 13, 14, 49 Stat. 1655.  
1935—Aug. 30, 1935, ch. 829, § 102 (a), 49 Stat. 1015.  
1934—May 10, 1934, ch. 277, § 13, 48 Stat. 686.  
1932—June 6, 1932, ch. 209, § 13, 47 Stat. 177.  
1928—May 29, 1928, ch. 852, § 13, 45 Stat. 797.  
1926—Feb. 26, 1926, ch. 27, § 230, 44 Stat. 39.

1924—June 2, 1924, ch. 284, § 230, 43 Stat. 282.

1921—Nov. 23, 1921, ch. 136, §§ 229, 230, 42 Stat. 252.

1917—Oct. 3, 1917, ch. 63, §§ 4, 1206, 40 Stat. 302, 333.

1916—Sept. 8, 1916, ch. 463, § 10, 39 Stat. 765.

1913—Oct. 3, 1913, ch. 16, § II, G, 38 Stat. 172.

**§ 14. Tax on special classes of corporations—(a) Imposition of tax.**

There shall be levied, collected, and paid for each taxable year upon the normal-tax net income of the following corporations (in lieu of the tax imposed by section 13) the tax hereinafter in this section specified.

**(b) Corporations with normal-tax net incomes of not more than \$25,000.**

If the normal-tax net income of the corporation is not more than \$25,000, and if the corporation does not come within one of the classes specified in subsection (c), (d), or (e) of this section, the tax shall be as follows:

Upon normal-tax net incomes not in excess of \$5,000, 13 $\frac{1}{2}$  per centum.

\$675 upon normal-tax net incomes of \$5,000, and upon normal-tax net incomes in excess of \$5,000 and not in excess of \$20,000, 15 per centum in addition of such excess.

\$2,925 upon normal-tax net incomes of \$20,000, and upon normal-tax net incomes in excess of \$20,000, 17 per centum in addition of such excess.

**(c) Foreign corporations.**

(1) In the case of a foreign corporation engaged in trade or business within the United States or having an office or place of business therein, the tax shall be an amount equal to 22 $\frac{1}{10}$  per centum of the normal-tax net income, regardless of the amount thereof.

(2) In the case of a foreign corporation not engaged in trade or business within the United States and not having an office or place of business therein, the tax shall be as provided in section 231 (a).

**(d) Insurance companies.**

In the case of insurance companies, the tax shall be as provided in Supplement G.

**(e) Mutual investment companies.**

In the case of mutual investment companies, as defined in Supplement Q, the tax shall be as provided in such Supplement.

**(f) Exempt corporations.**

For corporations exempt from taxation under this chapter, see section 101.

**(g) Tax on personal holding companies.**

For surtax on personal holding companies, see section 500.

**(h) Improper accumulation of surplus.**

For surtax on corporations which accumulate surplus to avoid surtax on shareholders, see section 102.

(53 Stat. 8; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 201, 53 Stat. 863; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title I, § 3 (b), 54 Stat. 517; Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title I, § 101 (b), 54 Stat. 974.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 14, 52 Stat. 456.

## 1940 AMENDMENT

Subsection (b) was amended by act June 25, 1940, cited to text.

Subsection (c) (1) was amended by acts June 25, 1940, and Oct. 8, 1940, cited to text, which increased tax from "18 per centum" to "22½ per centum."

Amendment by act October 8, 1940, was made applicable only with respect to taxable years beginning after December 31, 1939, by section 101 (e) of said act.

## TREATY OBLIGATIONS

Section 8 of act June 25, 1940, cited to text, provided as follows:

"No amendment made by this title (sections 1-9 of 1940 Act) shall apply in any case where its application would be contrary to any treaty obligation of the United States."

## TAXABLE YEARS AFFECTED

Section 9 of act June 25, 1940, cited to text, provided as follows:

"The amendments made by this title (sections 1-9 of 1940 act), except the amendments made by section 5 (sections 143, 144 of Internal Revenue Code), shall be applicable only with respect to taxable years beginning after December 31, 1939."

## 1939 AMENDMENT

Act June 29, 1939, cited to text, which was made applicable only with respect to taxable years beginning after Dec. 31, 1939, by section 229 thereof, amended subsections (a)-(h) and omitted subsections (i), (j).

## SIMILAR PROVISIONS

1937—Aug. 26, 1937, ch. 815, title I, § 2, 50 Stat. 817.

1936—June 22, 1936, ch. 690, §§ 13, 14, 49 Stat. 1655.

1935—Aug. 30, 1935, ch. 829, § 102 (a), 49 Stat. 1015.

1934—May 10, 1934, ch. 277, § 13, 48 Stat. 686.

## § 15. Defense tax for 5 years.

In the case of any taxpayer, the amount of tax under this chapter for any taxable year beginning after December 31, 1939, and before January 1, 1945, shall be the tax computed without regard to this section, increased by 10 per centum; except that in the case of a corporation the increase shall be limited to 10 per centum of the tax computed without regard to the amendments made by section 101 (a), (b), and (c) of the Second Revenue Act of 1940. In no case shall the effect of this section be to increase the tax computed without regard to this section by more than 10 per centum of the amount by which the net income exceeds such tax. For the purposes of this section, the tax computed without regard to this section shall be such tax before the application of the credit provided in section 31 ("foreign tax credit"), and the credit provided in section 32 (taxes withheld at the source). (Added June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, § 201, 54 Stat. 520, and amended Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title I, § 101 (d), 54 Stat. 974.)

## OMISSION OF FORMER SECTION

Section 15 relating to corporate taxes effective for two taxable years was omitted by act June 29, 1939, 10 p. m., ch. 247, title II, § 201, 53 Stat. 863, which amended sections 13, 14, and 15 to "read as follows" and failed to reenact section 15. Amendment omitting section 15 was made applicable only with respect to taxable years beginning after December 31, 1939 by § 229 of said act.

## 1940 AMENDMENT

First sentence was amended by act October 8, 1940, cited to text, applicable only with respect to taxable years beginning after December 31, 1939, by section 101 (e) of said act.

## AMENDMENTS BY SECTION 101 (a), (b), (c) OF SECOND REVENUE ACT OF 1940

Second Revenue Act of 1940, Act Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title I, § 101 (a), (b), (c), 54 Stat. 974. amended sections 13 (b), 14 (c) (1), and 362 (b), respectively, of this title.

## CROSS REFERENCE

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain government obligations, see note under section 757b of Title 31, Money and Finance.

## PART II.—COMPUTATION OF NET INCOME

## § 21. Net income—(a) Definition.

"Net income" means the gross income computed under section 22, less the deductions allowed by section 23.

## (b) Cross references.

For definition of "adjusted net income" and "normal-tax net income", see section 13. (53 Stat. 9; June 29, 1939, 10 p. m., E. S. T., ch. 247, title II, § 210 (a), 53 Stat. 866.)

## DERIVATION

Act May 28, 1938, ch. 289 § 21, 52 Stat. 457.

## 1939 AMENDMENT

Subsection (b) was amended by act June 29, 1939, cited to text, and amendment made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of said act. Prior to said amendment subsection read as follows:

"(b) Cross references.

"For definition of 'adjusted net income', see section 13 (a); for definition of 'special class net income', see section 14 (a)."

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 21, 49 Stat. 1657.

1934—May 10, 1934, ch. 277, § 21, 48 Stat. 686.

1932—June 6, 1932, ch. 209, § 21, 47 Stat. 178.

1928—May 29, 1928, ch. 852, § 21, 45 Stat. 797.

1926—Feb. 26, 1926, ch. 27, § 212, 44 Stat. 23.

1924—June 2, 1924, ch. 234, § 212, 43 Stat. 267.

## § 22. Gross income—(a) General definition.

"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. In the case of Presidents of the United States and judges of courts of the United States taking office after June 6, 1932, the compensation received as such shall be included in gross income; and all Acts fixing the compensation of such Presidents and judges are hereby amended accordingly. In the case of judges of courts of the United States who took office on or before June 6, 1932, the compensation received as such shall be included in gross income.

**(b) Exclusions from gross income.**

The following items shall not be included in gross income and shall be exempt from taxation under this chapter:

**(1) Life insurance.**

Amounts received under a life insurance contract paid by reason of the death of the insured, whether in a single sum or otherwise (but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income);

**(2) Annuities, etc.**

Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts and other than amounts received as annuities) under a life insurance or endowment contract, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income. Amounts received as an annuity under an annuity or endowment contract shall be included in gross income; except that there shall be excluded from gross income the excess of the amount received in the taxable year over an amount equal to 3 per centum of the aggregate premiums or consideration paid for such annuity (whether or not paid during such year), until the aggregate amount excluded from gross income under this chapter or prior income tax laws in respect of such annuity equals the aggregate premiums or consideration paid for such annuity. In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance, endowment, or annuity contract, or any interest therein, only the actual value of such consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be exempt from taxation under paragraph (1) or this paragraph;

**(3) Gifts, bequests, and devises.**

The value of property acquired by gift, bequest, devise, or inheritance (but the income from such property shall be included in gross income);

**(4) Tax-free interest.**

Interest upon (A) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or (B) obligations of a corporation organized under Act of Congress, if such corporation is an instrumentality of the United States; or (C) the obligations of the United States or its possessions. Every person owning any of the obligations enumerated in clause (A), (B), or (C) shall, in the return required by this chapter, submit a statement showing the number and amount of such obligations owned by him and the income received therefrom, in such form and with such information as the Commissioner may require. In the case of obligations of the United States issued after September 1, 1917 (other than postal savings certificates of deposit) and in the case of obligations of a corporation organized under Act of Congress, the interest shall be exempt only if and to the

extent provided in the respective Acts authorizing the issue thereof as amended and supplemented, and shall be excluded from gross income only if and to the extent it is wholly exempt from the taxes imposed by this chapter;

**(5) Compensation for injuries or sickness.**

Amounts received, through accident or health insurance or under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness;

**(6) Ministers.**

The rental value of a dwelling house and appurtenances thereof furnished to a minister of the gospel as part of his compensation;

**(7) Income exempt under treaty.**

Income of any kind, to the extent required by any treaty obligation of the United States;

**(8) Miscellaneous items.**

The following items, to the extent provided in section 116:

Earned income from sources without the United States;

Salaries of certain Territorial employees;

The income of foreign governments;

Income of States, municipalities, and other political subdivisions;

Receipts of shipowners' mutual protection and indemnity associations;

Dividends from China Trade Act corporations;

Compensation of employees of foreign governments.

**(9) Income from discharge of indebtedness.**

In the case of a corporation, the amount of any income of the taxpayer attributable to the discharge, within the taxable year, of any indebtedness of the taxpayer or for which the taxpayer is liable evidenced by a security (as hereinafter in this paragraph defined) if—

(A) it is established to the satisfaction of the Commissioner, or

(B) it is certified to the Commissioner by any Federal agency authorized to make loans on behalf of the United States to such corporation or by any Federal agency authorized to exercise regulatory power over such corporation,

that at the time of such discharge the taxpayer was in an unsound financial condition, and if the taxpayer makes and files at the time of filing the return, in such manner as the Commissioner, with the approval of the Secretary, by regulations prescribes, its consent to the regulations prescribed under section 113 (b) (3) then in effect. In such case the amount of any income of the taxpayer attributable to any unamortized premium (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be included in gross income and the amount of the deduction attributable to any unamortized discount (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be allowed as a deduction. As used in this para-

graph the term "security" means any bond, debenture, note, or certificate, or other evidence of indebtedness, issued by any corporation, in existence on June 1, 1939. This paragraph shall not apply to any discharge occurring before the date of the enactment of the Revenue Act of 1939,<sup>1</sup> or in a taxable year beginning after December 31, 1942.

**(c) Inventories.**

Whenever in the opinion of the Commissioner the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Commissioner, with the approval of the Secretary, may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income.

**(d) Method of inventorying goods.**

(1) A taxpayer may use the following method (whether or not such method has been prescribed under subsection (c)) in inventorying goods specified in the application required under paragraph (2):

(A) Inventory them at cost;

(B) Treat those remaining on hand at the close of the taxable year as being: First, those included in the opening inventory of the taxable year (in the order of acquisition) to the extent thereof, and second, those acquired in the taxable year; and

(C) Treat those included in the opening inventory of the taxable year in which such method is first used as having been acquired at the same time and determine their cost by the average cost method.

(2) The method described in paragraph (1) may be used—

(A) Only in inventorying goods (required under subsection (c) to be inventoried) specified in an application to use such method filed at such time and in such manner as the Commissioner may prescribe; and

(B) Only if the taxpayer establishes to the satisfaction of the Commissioner that the taxpayer has used no procedure other than that specified in subparagraphs (B) and (C) of paragraph (1) in inventorying (to ascertain income, profit, or loss, for credit purposes, or for the purpose of reports to shareholders, partners, or other proprietors, or to beneficiaries) such goods for any period beginning with or during the first taxable year for which the method described in paragraph (1) is to be used.

(3) The change to, and the use of, such method shall be in accordance with such regulations as the Commissioner, with the approval of the Secretary, may prescribe as necessary in order that the use of such method may clearly reflect income.

(4) In determining income for the taxable year preceding the taxable year for which such method is first used, the closing inventory of such preceding year of the goods specified in such application shall be at cost.

(5) If a taxpayer, having complied with paragraph (2), uses the method described in paragraph (1) for any taxable year, then such method shall be used in all subsequent taxable years unless—

(A) With the approval of the Commissioner a change to a different method is authorized; or

(B) The Commissioner determines that the taxpayer has used for any period beginning with or during any subsequent taxable year some procedure other than that specified in subparagraph (B) of paragraph (1) in inventorying (for ascertaining income, profit, or loss, for credit purposes, or for the purpose of reports to shareholders, partners, or other proprietors, or to beneficiaries) the goods specified in the application, and requires a change to a method different from that prescribed in paragraph (1) beginning with such subsequent taxable year or any taxable year thereafter.

In either of the above cases, the change to, and the use of, the different method shall be in accordance with such regulations as the Commissioner, with the approval of the Secretary, may prescribe as necessary in order that the use of such method may clearly reflect income.

**(e) Distributions by corporations.**

Distributions by corporations shall be taxable to the shareholders as provided in section 115.

**(f) Determination of gain or loss.**

In the case of a sale or other disposition of property, the gain or loss shall be computed as provided in section 111.

**(g) Gross income from sources within and without United States.**

For computation of gross income from sources within and without the United States, see section 119.

**(h) Foreign personal holding companies.**

For provisions relating to gross income of foreign personal holding companies and of their shareholders, see section 334.

**(i) Consent dividends.**

For inclusion in gross income of amounts specified in shareholders' consents, see section 28.

**(j) Income from mortgages made or obligations issued by joint stock land banks.**

For taxable status of income derived from mortgages made or obligations issued by joint stock land banks, see section 3799.

(53 Stat. 9; Apr. 12, 1939, ch. 59, title I, §§ 1, 3, 53 Stat. 574, 575; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, §§ 215 (a), 219 (a), 53 Stat. 875, 877.)

<sup>1</sup> Revenue Act of 1939 enacted June 29, 1939, 10 p. m. E. S. T.

**DERIVATION**

Act May 28, 1938, ch. 289, § 22, 52 Stat. 457.

**1939 AMENDMENT**

Subsection (a) was amended by sections 1 and 3 of the act of April 12, 1939, cited to text, which inserted words "including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing" after the words "compensation for personal service," and by adding the last sentence of paragraph (a) requiring the compensation of judges of courts of the United States who took office on or before June 6, 1932, to be included in gross income.

Subsection (b), paragraph (9) was added by act June 29, 1939, cited to text, and made applicable to taxable years beginning December 31, 1938, by § 215 (c) of said act.

Subsection (d) was amended by act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938, by § 219 (b) of said act.

## AMENDMENT TO 1938 ACT

Act June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 219 (c), 53 Stat. 877, provided as follows:

"(c) AMENDMENT TO 1938 ACT.—Section 22 (d) of the Revenue Act of 1938 (relating to inventories in certain industries) is amended to read as follows:

"(d) If the inventory method described in section 22 (d) (1), as amended, of the Internal Revenue Code is used for the first taxable year beginning after December 31, 1938, then, in determining income for the preceding taxable year, the closing inventory of such year of the goods specified in the application under section 22 (d) (2), as amended, of such Code shall be at cost."

## PUBLIC SALARY TAX ACT

The Public Salary Tax Act, April 12, 1939, ch. 59, title II, §§ 201–211, 53 Stat. 575–577, as amended June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title IV, § 401, 54 Stat. 527, in addition to amendments of paragraph (a) of this section, contained provisions of a temporary nature as follows:

"Sec. 201. Any amount of income tax (including interest, additions to tax, and additional amounts) for any taxable year beginning prior to January 1, 1938, to the extent attributable to compensation for personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing—

"(a) shall not be assessed, and no proceeding in court for the collection thereof shall be begun or prosecuted (unless pursuant to an assessment made prior to January 1, 1939);

"(b) if assessed after December 31, 1938, the assessment shall be abated, and any amount collected in pursuance of such assessment shall be credited or refunded in the same manner as in the case of an income tax erroneously collected; and

"(c) shall, if collected on or before the date of the enactment of this Act, be credited or refunded in the same manner as in the case of an income tax erroneously collected, in the following cases—

"(1) Where a claim for refund of such amount was filed before January 19, 1939, and was not disallowed on or before the date of the enactment of this Act;

"(2) Where such claim was so filed but has been disallowed and the time for beginning suit with respect thereto has not expired on the date of the enactment of this Act;

"(3) Where a suit for the recovery of such amount is pending on the date of the enactment of this Act; and

"(4) Where a petition to the Board of Tax Appeals has been filed with respect to such amount and the Board's decision has not become final before the date of the enactment of this Act.

"Sec. 202. In the case of any taxable year beginning after December 31, 1937, and before January 1, 1939, compensation for personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing, shall not be included in the gross income of any individual under Title I of the Revenue Act of 1938 (May 28, 1938, ch. 289, 52 Stat. 452) and shall be exempt from taxation under such title, if such individual either—

"(a) did not include in his return for a taxable year beginning after December 31, 1936, and before January 1, 1938, any amount as compensation for personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing; or

"(b) did include any such amount in such return, but is entitled under section 201 of this Act to have the tax attributable thereto credited or refunded.

"Sec. 203. Any amount of income tax (including interest, additions to tax, and additional amounts) collected on, before, or after the date of the enactment of this act for any taxable year beginning prior to January 1, 1939, to the extent attributable to compensation for personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing, shall be credited or refunded in the same manner as in the case of an income tax erroneously collected, if claim for refund with respect thereto is filed after January 18, 1939, and the Commis-

sioner of Internal Revenue, under regulations prescribed by him with the approval of the Secretary of the Treasury, finds that disallowance of such claim would result in the application of the doctrines in the cases of *Helvering against Therrell* (308 U. S. 218) [58 Sup. Ct. 539, 82 L. Ed. 768, reversing 88 F. 2d 869], *Helvering against Gerhardt* (304 U. S. 405) [58 Sup. Ct. 969, 82 L. Ed. 1427 reversing 92 F. 2d 999. Rehearing denied 59 Sup. Ct. 57, 305 U. S. 669, 83 L. Ed. —], and *Graves et al. against New York ex rel. O'Keefe*, decided March 27, 1939 [306 U. S. 466, 59 Sup. Ct. 595, 83 L. Ed. 927, 120 A. L. R. 1466, reversing 278 N. Y. 691, 16 N. E. 2d 404, affirming 253 App. Div. 91, 1 N. Y. S. 2d 195], extending the classes of officers and employees subject to Federal taxation.

"Sec. 204. Neither section 201 nor section 203 shall apply in any case where the claim for refund, or the institution of the suit, or the filing of the petition with the Board, was, at the time filed or begun, barred by the statute of limitations properly applicable thereto.

"Sec. 205. Compensation shall not be considered as compensation within the meaning of sections 201, 202, and 203 to the extent that it is paid directly or indirectly by the United States or any agency or instrumentality thereof. If the amount of the deficiency in income tax for any taxable year beginning before January 1, 1939, attributable to compensation paid indirectly by the United States, or any agency or instrumentality thereof, for personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any of the foregoing, is paid on or before March 15, 1941, then with respect to failure to pay such amount or make return of such compensation: (a) No criminal penalty shall apply; and (b) the additions to tax provided in sections 291 and 293 of the Internal Revenue Code shall not apply." (As amended June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title IV, § 401, 54 Stat. 527.)

"Sec. 206. The terms used in this Act shall have the same meaning as when used in Chapter I of the Internal Revenue Code. (Section 1 et seq. of this title.)

"Sec. 207. No collection of any tax (including interest, additions to tax, and penalties) imposed by any State, Territory, possession, or local taxing authority on the compensation received before January 1, 1939, for personal service as an officer or employee of the United States or any agency or instrumentality thereof which is exempt from Federal income taxation and, if a corporate agency or instrumentality, is one (a) a majority of the stock of which is owned by or on behalf of the United States, or (b) the power to appoint or select a majority of the board of directors of which is exercisable by or on behalf of the United States, shall be made after the date of the enactment of this act.

"Sec. 208. This title shall not apply with respect to any officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing, after the Secretary of the Treasury has determined and proclaimed that it is the policy of such State to collect from any individual any tax, interest, additions to tax, or penalties, on account of compensation received by such individual prior to January 1, 1939, for personal service as an officer or employee of the United States or any agency or instrumentality thereof. In making such determination the Secretary of the Treasury shall disregard the taxation of officers and employees of any corporate agency or instrumentality which is not exempt from Federal income taxation, or which if so exempt is one (a) a majority of the stock of which is not owned by or on behalf of the United States and (b) the power to appoint or select a majority of the board of directors of which is not exercisable by or on behalf of the United States.

"Sec. 209. In the case of the judges of the Supreme Court, and of the inferior courts of the United States created under article III of the Constitution, who took office on or before June 6, 1932, the compensation received as such shall not be subject to income tax under the Revenue Act of 1938 (May 28, 1938, ch. 289, 52 Stat. 452) or any prior revenue act.

"Sec. 210. For the purposes of this act, the term 'officer or employee' includes a member of a legislative body and a judge or officer of a court.

"Sec. 211. If either title of this act, or the application thereof to any person or circumstances, is held invalid, the other title of the act shall not be affected thereby."

#### SIMILAR PROVISIONS

1937—Aug. 26, 1937, ch. 815, title 2, § 207(b), 50 Stat. 826.  
 1936—June 22, 1936, ch. 690, § 22, 49 Stat. 1657.  
 1934—May 10, 1934, ch. 277, § 22, 48 Stat. 686.  
 1932—June 6, 1932, ch. 209, § 22, 47 Stat. 178.  
 1928—May 29, 1928, ch. 852, § 22, 45 Stat. 797.  
 1926—Feb. 26, 1926, ch. 27, §§ 205, 213, 233, 44 Stat. 16, 23, 41.  
 1925—Feb. 2, 1925, ch. 345, § 12, 43 Stat. 997.  
 1924—June 2, 1924, ch. 234, §§ 205, 213, 233, 43 Stat. 260, 267, 283.  
 1922—Sept. 19, 1922, ch. 346, § 26, 42 Stat. 856.  
 1921—Nov. 23, 1921, ch. 136, §§ 203, 213, 233, 42 Stat. 231, 237, 254.  
 1919—Feb. 24, 1919, ch. 18, §§ 203, 213, 233, 40 Stat. 1060, 1065, 1077.  
 1917—Oct. 3, 1917, ch. 63, §§ 1200, 1211, 40 Stat. 329, 336.  
 1916—Sept. 8, 1916, ch. 463, §§ 2(a), 4, 11(b), 30, 39 Stat. 757, 758, 767.  
 1913—Oct. 3, 1913, ch. 16, § II, B, G, 38 Stat. 167, 172.

### § 23. Deductions from gross income.

In computing net income there shall be allowed as deductions:

#### (a) Expenses.

##### (1) In general.

All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

##### (2) Corporate charitable contributions.

No deduction shall be allowable under paragraph (1) to a corporation for any contribution or gift which would be allowable as a deduction under subsection (q) were it not for the 5 per centum limitation therein contained and for the requirement therein that payment must be made within the taxable year.

##### (b) Interest.

All interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations (other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer) the interest upon which is wholly exempt from the taxes imposed by this chapter.

##### (c) Taxes generally.

Taxes paid or accrued within the taxable year, except—

(1) Federal income, war-profits, and excess-profits taxes (other than the excess-profits tax imposed by section 106 of the Revenue Act of 1935 (49 Stat. 1019), or by section 602 of the Revenue Act of 1938 (52 Stat. 567), and other than the declared value excess-profits tax imposed by section 600);

(2) income, war-profits, and excess-profits taxes imposed by the authority of any foreign country or possession of the United States; but this deduction shall be allowed in the case of a taxpayer who does not signify in his return his desire to have to any extent the benefits of section 131 (relating to credit for taxes of foreign countries and possessions of the United States);

(3) estate, inheritance, legacy, succession, and gift taxes; and

(4) taxes assessed against local benefits of a kind tending to increase the value of the property assessed; but this paragraph shall not exclude the allowance as a deduction of so much of such taxes as is properly allocable to maintenance or interest charges.

##### (d) Taxes of shareholder paid by corporation.

The deduction for taxes allowed by subsection (c) shall be allowed to a corporation in the case of taxes imposed upon a shareholder of the corporation upon his interest as shareholder which are paid by the corporation without reimbursement from the shareholder, but in such cases no deduction shall be allowed the shareholder for the amount of such taxes.

##### (e) Losses by individuals.

In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

(1) if incurred in trade or business; or

(2) if incurred in any transaction entered into for profit, though not connected with the trade or business; or

(3) of property not connected with the trade or business, if the loss arises from fires, storms, shipwreck, or other casualty, or from theft. No loss shall be allowed as a deduction under this paragraph if at the time of the filing of the return such loss has been claimed as a deduction for estate tax purposes in the estate tax return.

##### (f) Losses by corporations.

In the case of a corporation, losses sustained during the taxable year and not compensated for by insurance or otherwise.

##### (g) Capital losses.

###### (1) Limitation.

Losses from sales or exchanges of capital assets shall be allowed only to the extent provided in section 117.

###### (2) Securities becoming worthless.

If any securities (as defined in paragraph (3) of this subsection) become worthless during the taxable year and are capital assets, the loss resulting therefrom shall, for the purposes of this chapter, be considered as a loss from the sale or exchange, on the last day of such taxable year, of capital assets.

###### (3) Definition of securities.

As used in this subsection the term "securities" means (A) shares of stock in a corporation, and (B) rights to subscribe for or to receive such shares.



**(h) Wagering losses.**

Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions.

**(i) Basis for determining loss.**

The basis for determining the amount of deduction for losses sustained, to be allowed under subsection (e) or (f), and for bad debts, to be allowed under subsection (k), shall be the adjusted basis provided in section 113 (b) for determining the loss from the sale or other disposition of property.

**(j) Loss on wash sales of stock or securities.**

For disallowance of loss deduction in the case of sales of stock or securities where within thirty days before or after the date of the sale the taxpayer has acquired substantially identical property, see section 118.

**(k) Bad debts.****(1) General rule.**

Debts ascertained to be worthless and charged off within the taxable year (or, in the discretion of the Commissioner, a reasonable addition to a reserve for bad debts); and when satisfied that a debt is recoverable only in part, the Commissioner may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction. This paragraph shall not apply in the case of a taxpayer, other than a bank, as defined in section 104, with respect to a debt evidenced by a security as defined in paragraph (3) of this subsection.

**(2) Securities becoming worthless.**

If any securities (as defined in paragraph (3) of this subsection) are ascertained to be worthless and charged off within the taxable year and are capital assets, the loss resulting therefrom shall, in the case of a taxpayer other than a bank, as defined in section 104, for the purposes of this chapter, be considered as a loss from the sale or exchange, on the last day of such taxable year, of capital assets.

**(3) Definition of securities.**

As used in this subsection the term "securities" means bonds, debentures, notes, or certificates, or other evidences of indebtedness, issued by any corporation (including those issued by a government or political subdivision thereof), with interest coupons or in registered form.

**(l) Depreciation.**

A reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence. In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.

**(m) Depletion.**

In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance

for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the Commissioner, with the approval of the Secretary. In any case in which it is ascertained as a result of operations or of development work that the recoverable units are greater or less than the prior estimate thereof, then such prior estimate (but not the basis for depletion) shall be revised and the allowance under this subsection for subsequent taxable years shall be based upon such revised estimate. In the case of leases the deductions shall be equitably apportioned between the lessor and lessee. In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.

For percentage depletion allowable under this subsection see section 114 (b), (3) and (4).

**(n) Basis for depreciation and depletion.**

The basis upon which depletion, exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be as provided in section 114.

**(o) Charitable and other contributions.**

In the case of an individual, contributions or gifts payment of which is made within the taxable year to or for the use of:

(1) The United States, any State, Territory, or any political subdivision thereof or the District of Columbia, or any possession of the United States, for exclusively public purposes;

(2) A corporation, trust, or community chest, fund, or foundation, created or organized in the United States or in any possession thereof or under the law of the United States or of any State or Territory or of any possession of the United States, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(3) the special fund for vocational rehabilitation authorized by section 12 of the World War Veterans' Act, 1924, 43 Stat. 611 (U. S. C., Title 38, § 440);

(4) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual; or

(5) a domestic fraternal society, order, or association, operating under the lodge system, but only if such contributions or gifts are to be used exclusively for religious, charitable, scientific, literary, or educa-

tional purposes, or for the prevention of cruelty to children or animals;

to an amount which in all the above cases combined does not exceed 15 per centum of the taxpayer's net income as computed without the benefit of this subsection. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner, with the approval of the Secretary.

For unlimited deduction if contributions and gifts exceed 90 per centum of the net income, see section 120.

**(p) Pension trusts.**

**(1) General rule.**

An employer establishing or maintaining a pension trust to provide for the payment of reasonable pensions to his employees shall be allowed as a deduction (in addition to the contributions to such trust during the taxable year to cover the pension liability accruing during the year, allowed as a deduction under subsection (a) of this section) a reasonable amount transferred or paid into such trust during the taxable year in excess of such contributions, but only if such amount (1) has not theretofore been allowable as a deduction, and (2) is apportioned in equal parts over a period of ten consecutive years beginning with the year in which the transfer or payment is made.

**(2) Deductions under prior income tax acts.**

Any deduction allowable under section 23 (q) of the Revenue Act of 1928, 45 Stat. 802, or the Revenue Act of 1932, 47 Stat. 182, or the Revenue Act of 1934, 48 Stat. 691, under section 23 (p) of the Revenue Act of 1936, 49 Stat. 1661, or the Revenue Act of 1938, 52 Stat. 464, which under such section was apportioned to any taxable year beginning after December 31, 1937, shall be allowed as a deduction in the years to which so apportioned to the extent allowable under such section if it had remained in force with respect to such year.

**(3) Exemption of trusts under section 165.**

The provisions of paragraphs (1) and (2) of this subsection shall be subject to the qualification that the deduction under either paragraph shall be allowable only with respect to a taxable year (whether the year of the transfer or payment or a subsequent year) of the employer ending within or with a taxable year of the trust with respect to which the trust is exempt from tax under section 165.

**(q) Charitable and other contributions by corporations.**

In the case of a corporation, contributions or gifts payment of which is made within the taxable year to or for the use of a corporation, trust, or community chest, fund, or foundation, created or organized in the United States or in any possession thereof or under the law of the United States, or of any State or Territory, or of the District of Columbia, or of any possession of the United States, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children (but in the case of contributions or gifts to a trust, chest, fund, or foundation, only if such contributions or gifts are

to be used within the United States or any of its possessions exclusively for such purposes), no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; to an amount which does not exceed 5 per centum of the taxpayer's net income as computed without the benefit of this subsection. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner, with the approval of the Secretary.

**(r) Dividends paid by banking corporations.**

For deduction of dividends paid by certain banking corporations, see section 121.

**(s) Net operating loss deduction.**

For any taxable year beginning after December 31, 1939, the net operating loss deduction computed under section 122.

**(t) Amortization deduction.**

The deduction for amortization provided in section 124. (53 Stat. 12; June 29, 1939, 10 p. m., E. S. T., ch. 247, title II, §§ 211 (a), 224, 53 Stat. 867, 880; Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title III, § 301, title V, § 506 (b), 54 Stat. 998, 1008.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 23, 52 Stat. 460.

**1940 AMENDMENTS**

Subsection (c) (1) was amended by act October 8, 1940, § 506 (b), cited to text, effective February 10, 1939.

Subsection (t) was added by act October 8, 1940, § 301, cited to text.

**1939 AMENDMENTS**

Subsection (o), paragraphs (1) and (2), were amended by act June 29, 1939, cited to text and amendment made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of said act. Prior to said amendment paragraphs (1) and (2) read as follows:

"(1) the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

"(2) a domestic corporation, or domestic trust, or domestic community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;"

Subsection (q) was amended by act June 29, 1939, cited to text, and amendment made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of said act. Prior to said amendment subsection read as follows:

"(q) *Charitable and other contributions by corporations.* In the case of a corporation, contributions or gifts payment of which is made within the taxable year to or for the use of a domestic corporation, or domestic trust, or domestic community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or the prevention of cruelty to children (but in the case of contributions or gifts to a trust, chest, fund, or foundation, only if such contributions or gifts are to be used within the United States exclusively for such purposes), no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; to an amount which does not exceed 5 per centum of the taxpayer's net income as computed without the benefit of this subsection. Such

contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner, with the approval of the Secretary."

Subsection (s) was added by act June 29, 1939, cited to text.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 23, 49 Stat. 1658.  
 1935—Aug. 30, 1935, ch. 829, § 102 (c) (h), 49 Stat. 1015.  
 1934—May 10, 1934, ch. 277, § 23, 48 Stat. 688.  
 1932—June 6, 1932, ch. 209, § 23, 47 Stat. 179.  
 1928—May 29, 1928, ch. 852, § 23, 45 Stat. 799.  
 1926—Feb. 26, 1926, ch. 27, §§ 214, 234, 44 Stat. 26, 41.  
 1924—June 2, 1924, ch. 234, §§ 214, 234, 43 Stat. 266, 283.  
 1922—Sept. 19, 1922, ch. 346, § 27, 42 Stat. 856.  
 1921—Nov. 23, 1921, ch. 136, §§ 214, 234, 42 Stat. 239, 254.  
 1919—Feb. 24, 1919, ch. 18, §§ 214, 234, 40 Stat. 1066, 1077.  
 1917—Oct. 3, 1917, ch. 63, §§ 1201, 1207, 40 Stat. 330, 334.  
 1916—Sept. 8, 1916, ch. 463, §§ 5, 12, 39 Stat. 759, 767.  
 1913—Oct. 3, 1913, ch. 16, § II, B, G, 38 Stat. 167, 172.

**§ 24. Items not deductible—(a) General rule.**

In computing net income no deduction shall in any case be allowed in respect of—

- (1) Personal, living, or family expenses;
- (2) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;
- (3) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made;
- (4) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy; or
- (5) Any amount otherwise allowable as a deduction which is allocable to one or more classes of income other than interest (whether or not any amount of income of that class or classes is received or accrued) wholly exempt from the taxes imposed by this chapter.

**(b) Losses from sales or exchanges of property—(1) Losses disallowed.**

In computing net income no deduction shall in any case be allowed in respect of losses from sales or exchanges of property, directly or indirectly—

- (A) Between members of a family, as defined in paragraph (2) (D);
- (B) Except in the case of distributions in liquidation, between an individual and a corporation more than 50 per centum in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual;
- (C) Except in the case of distributions in liquidation, between two corporations more than 50 per centum in value of the outstanding stock of each of which is owned, directly or indirectly, by or for the same individual, if either one of such corporations, with respect to the taxable year of the corporation preceding the date of the sale or exchange was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company;

(D) Between a grantor and a fiduciary of any trust;

(E) Between the fiduciary of a trust and the fiduciary of another trust, if the same person is a grantor with respect to each trust; or

(F) Between a fiduciary of a trust and a beneficiary of such trust.

**(2) Stock ownership, family, and partnership rule.**

For the purposes of determining, in applying paragraph (1), the ownership of stock—

(A) Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust, shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries;

(B) An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family;

(C) An individual owning (otherwise than by the application of subparagraph (B)) any stock in a corporation shall be considered as owning the stock owned, directly or indirectly, by or for his partner;

(D) The family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; and

(E) Constructive ownership as actual ownership.—Stock constructively owned by a person by reason of the application of subparagraph (A) shall, for the purpose of applying subparagraph (A), (B), or (C), be treated as actually owned by such person, but stock constructively owned by an individual by reason of the application of subparagraph (B) or (C) shall not be treated as owned by him for the purpose of again applying either of such subparagraphs in order to make another the constructive owner of such stock.

**(c) Unpaid expenses and interest.**

In computing net income no deduction shall be allowed under section 23 (a), relating to expenses incurred, or under section 23 (b), relating to interest accrued—

(1) If such expenses or interest are not paid within the taxable year or within two and one half months after the close thereof; and

(2) If, by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not, unless paid, includible in the gross income of such person for the taxable year in which or with which the taxable year of the taxpayer ends; and

(3) If, at the close of the taxable year of the taxpayer or at any time within two and one half months thereafter, both the taxpayer and the person to whom the payment is to be made are persons between whom losses would be disallowed under section 24 (b).

**(d) Holders of life or terminable interest.**

Amounts paid under the laws of any State, Territory, District of Columbia, possession of the United States, or foreign country as income to the holder of a life or terminable interest acquired by gift, bequest, or inheritance shall not be reduced or diminished by any deduction for shrinkage (by whatever name called) in the value of such interest due to the lapse of time, nor by any deduction allowed by this chapter (except the deductions provided for in subsections (l) and (m) of section 23) for the purpose of computing the net income of an estate or trust but not allowed under the laws of such State, Territory, District of Columbia, possession of

the United States, or foreign country for the purpose of computing the income to which such holder is entitled.

**(e) Tax withheld on tax-free covenant bonds.**

For nondeductibility of tax withheld on tax-free covenant bonds, see section 143 (a) (3).

(53 Stat. 16.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 24, 52 Stat. 464.

**SIMILAR PROVISIONS**

1937—Aug. 26, 1937, ch. 815, title III, § 301, 50 Stat. 827.  
 1936—June 22, 1936, ch. 690, § 24, 49 Stat. 1662.  
 1934—May 10, 1934, ch. 277, § 24, 48 Stat. 691.  
 1932—June 6, 1932, ch. 309, § 24, 47 Stat. 183.  
 1928—May 29, 1928, ch. 852, § 24, 45 Stat. 802.  
 1926—Feb. 26, 1926, ch. 27, §§ 215, 235, 44 Stat. 28, 43.  
 1924—June 2, 1924, ch. 234, §§ 215, 235, 43 Stat. 271, 285.  
 1921—Nov. 23, 1921, ch. 136, §§ 215, 235, 42 Stat. 242, 257.  
 1919—Feb. 24, 1919, ch. 18, §§ 215, 235, 40 Stat. 1069, 1080.

**§ 25. Credits of individual against net income—(a) Credits for normal tax only.**

There shall be allowed for the purpose of the normal tax, but not for the surtax, the following credits against the net income:

**(1) Interest on United States obligations.**

The amount received as interest upon obligations of the United States which is included in gross income under section 22.

**(2) Interest on obligations of instrumentalities of the United States.**

The amount received as interest on obligations of a corporation organized under Act of Congress, if (A) such corporation is an instrumentality of the United States; and (B) such interest is included in gross income under section 22; and (C) under the Act authorizing the issue thereof, as amended and supplemented, such interest is exempt from normal tax.

**(3) Earned income credit.**

10 per centum of the amount of the earned net income, but not in excess of 10 per centum of the amount of the net income.

**(4) Earned income definitions.**

For the purposes of this section—

(A) "Earned income" means wages, salaries, professional fees, and other amounts received as compensation for personal services actually rendered, but does not include any amount not included in gross income, nor that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered. In the case of a taxpayer engaged in a trade or business in which both personal services and capital are material income producing factors, a reasonable allowance as compensation for the personal services actually rendered by the taxpayer, not in excess of 20 per centum of his share of the net profits of such trade or business, shall be considered as earned income.

(B) "Earned income deductions" means such deductions as are allowed by section 23 for the purpose

of computing net income, and are properly allocable to or chargeable against earned income.

(C) "Earned net income" means the excess of the amount of the earned income over the sum of the earned income deductions. If the taxpayer's net income is not more than \$3,000, his entire net income shall be considered to be earned net income, and if his net income is more than \$3,000, his earned net income shall not be considered to be less than \$3,000. In no case shall the earned net income be considered to be more than \$14,000.

**(b) Credits for both normal tax and surtax.**

There shall be allowed for the purposes of the normal tax and the surtax the following credits against net income:

**(1) Personal exemption.**

In the case of a single person or a married person not living with husband or wife, a personal exemption of \$800; or in the case of the head of a family or a married person living with husband or wife, a personal exemption of \$2,000. A husband and wife living together shall receive but one personal exemption. The amount of such personal exemption shall be \$2,000. If such husband and wife make separate returns, the personal exemption may be taken by either or divided between them.

**(2) Credit for dependents.**

\$400 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer if such dependent person is under eighteen years of age or is incapable of self-support because mentally or physically defective.

**(3) Change of status.**

If the status of the taxpayer, insofar as it affects the personal exemption or credit for dependents, changes during the taxable year, the personal exemption and credit shall be apportioned, under rules and regulations prescribed by the Commissioner with the approval of the Secretary, in accordance with the number of months before and after such change. For the purpose of such apportionment a fractional part of a month shall be disregarded unless it amounts to more than half a month in which case it shall be considered as a month. (53 Stat. 17; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title I, § 6 (a), 54 Stat. 519.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 25, 52 Stat. 466.

**1940 AMENDMENT**

Subsection (b) (1) was amended by act June 25, 1940, cited to text, which substituted "\$800" for "\$1,000" and "\$2,000" for "\$2,500."

**TREATY OBLIGATIONS**

Section 8 of act June 25, 1940, cited to text, provided as follows: "No amendment made by this title (sections 1-9 of 1940 act) shall apply in any case where its application would be contrary to any treaty obligation of the United States."

**TAXABLE YEARS AFFECTED**

Section 9 of act June 25, 1940, cited to text, provided: "The amendments made by this title (sections 1-9 of 1940 act), except the amendments made by section 5 (sections 143, 144 of Internal Revenue Code), shall be applicable only with respect to taxable years beginning after December 31, 1939."

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 25, 49 Stat. 1662.  
 1934—May 10, 1934, ch. 277, § 25, 48 Stat. 692.  
 1932—June 6, 1932, ch. 209, § 25, 47 Stat. 184.  
 1928—May 29, 1928, ch. 852, §§ 25, 31, 45 Stat. 802, 804.  
 1926—Feb. 26, 1926, ch. 27, §§ 209, 216, 44 Stat. 20, 29.  
 1924—June 2, 1924, ch. 234, §§ 209, 216, 43 Stat. 263, 272.  
 1923—Mar. 4, 1923, ch. 280, § 2, 42 Stat. 1507.  
 1921—Nov. 23, 1921, ch. 136, § 216, 42 Stat. 242, as amended by act Sept. 19, 1922, ch. 846, § 27, 42 Stat. 856.  
 1919—Feb. 24, 1919, ch. 18, § 216, 40 Stat. 1069.  
 1917—Oct. 3, 1917, ch. 63, § 3, 40 Stat. 301.  
 1916—Sept. 8, 1916, ch. 463, §§ 5, 7, 39 Stat. 759, 761, as amended by act Oct. 3, 1917, ch. 63, §§ 1201, 1203, 40 Stat. 330, 331.  
 1913—Oct. 3, 1913, ch. 16, § II, C, 38 Stat. 168.

## § 26. Credits of corporations.

In the case of a corporation the following credits shall be allowed to the extent provided in the various sections imposing tax—

## (a) Interest on obligations of the United States and its instrumentalities.

The amount received as interest upon obligations of the United States or of corporations organized under Act of Congress which is allowed to an individual as a credit for purposes of normal tax by section 25 (a) (1) or (2).

## (b) Dividends received.

85 per centum of the amount received as dividends from a domestic corporation which is subject to taxation under this chapter, but not in excess of 85 per centum of the adjusted net income. The credit allowed by this subsection shall not be allowed in respect of dividends received from a corporation organized under the China Trade Act, 1922, 42 Stat. 849 (U. S. C., Title 15, ch. 4), or from a corporation which under section 251 is taxable only on its gross income from sources within the United States by reason of its receiving a large percentage of its gross income from sources within a possession of the United States.

## (c) Net operating loss of preceding year—(1) Amount of credit.

The amount of the net operating loss (as defined in paragraph (2)) of the corporation for the preceding taxable year (if beginning after December 31, 1937), but not in excess of the adjusted net income for the taxable year.

## (2) Definition.

As used in this section the term "net operating loss" means the excess of the deductions allowed by this section over the gross income, with the following exceptions and limitations—

(A) The deduction for depletion shall not exceed the amount which would be allowable if computed without reference to discovery value or to percentage depletion under section 114 (b) (2), (3), or (4);

(B) There shall be included in computing gross income the amount of interest received which is wholly exempt from the taxes imposed by this chapter, decreased by the amount of interest paid or accrued which is not allowed as a deduction by section 23 (b), relating to interest on indebtedness incurred or continued to purchase or carry certain tax-exempt obligations.

In the case of a taxable year beginning after December 31, 1937, and before January 1, 1939, the term "net operating loss" means net operating loss as defined in section 26 (c) of the Revenue Act of 1938, 52 Stat. 467.

## (d) Bank affiliates.

In the case of a holding company affiliate (as defined in section 2 of the Banking Act of 1933), the amount of the earnings or profits which the Board of Governors of the Federal Reserve System certifies to the Commissioner has been devoted by such affiliate during the taxable year to the acquisition of readily marketable assets other than bank stock in compliance with section 5144 of the Revised Statutes. The aggregate of the credits allowable under this subsection for all taxable years beginning after December 31, 1935, shall not exceed the amount required to be devoted under such section 5144 to such purposes, and the amount of the credit for any taxable year shall not exceed the adjusted net income for such year.

## (e) Dividends paid credit.

For corporation dividends paid credit, see section 27.

## (f) Consent dividends credit.

For corporation consent dividends credit, see section 28.

(53 Stat. 18; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 211 (j), 53 Stat. 869.)

## DERIVATION

Act May 28, 1938, ch. 289, § 26, 52 Stat. 467.

## 1939 AMENDMENT

Subsection (c), paragraph (2), was amended by act June 29, 1939, cited to text.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 26, 49 Stat. 1664.  
 1934—May 10, 1934, ch. 277, § 26, 48 Stat. 693.  
 1932—June 6, 1932, ch. 209, § 26, 47 Stat. 185.  
 1928—May 29, 1928, ch. 852, § 26, 45 Stat. 803.  
 1926—Feb. 26, 1926, ch. 27, § 236, 44 Stat. 43.  
 1924—June 2, 1924, ch. 234, § 236, 43 Stat. 285.  
 1921—Nov. 23, 1921, ch. 136, § 236, 42 Stat. 257.  
 1919—Feb. 24, 1919, ch. 18, § 236, 40 Stat. 1080.

## § 27. Corporation dividends paid credit—(a) Definition in general.

As used in this chapter with respect to any taxable year the term "dividends paid credit" means the sum of:

(1) The basic surtax credit for such year, computed as provided in subsection (b);

(2) The dividend carry-over to such year, computed as provided in subsection (c);

(3) The amount, if any, by which any deficit in the accumulated earnings and profits, as of the close of the preceding taxable year (whether beginning on, before, or after January 1, 1939), exceeds the amount of the credit provided in section 26 (c) (relating to net operating losses), for such preceding taxable year (if beginning after December 31, 1937); and

(4) Amounts used or irrevocably set aside to pay or to retire indebtedness of any kind, if such amounts are reasonable with respect to the size and terms of such indebtedness. As used in this paragraph the term "indebtedness" means only an indebtedness of the corporation existing at the close of business on December 31, 1937, and evidenced by a bond, note,

debenture, certificate of indebtedness, mortgage, or deed of trust, issued by the corporation and in existence at the close of business on December 31, 1937, or by a bill of exchange accepted by the corporation prior to, and in existence at, the close of business on such date. Where the indebtedness is for a principal sum, with interest, no credit shall be allowed under this paragraph for amounts used or set aside to pay such interest. A renewal (however evidenced) of an indebtedness shall be considered an indebtedness.

**(b) Basic surtax credit.**

As used in this chapter the term "basic surtax credit" means the sum of:

(1) The dividends paid during the taxable year, increased by the consent dividends credit provided in section 28, and reduced by the amount of the credit provided in section 26 (a), relating to interest on certain obligations of the United States and Government corporations;

(2) The net operating loss credit provided in section 26 (c) (1);

(3) The bank affiliate credit provided in section 26 (d).

The aggregate of the amounts under paragraphs (2) and (3) shall not exceed the adjusted net income for the taxable year.

**(c) Dividend carry-over.**

There shall be computed with respect to each taxable year of a corporation a dividend carry-over to such year from the two preceding taxable years, which shall consist of the sum of—

(1) The amount of the basic surtax credit for the second preceding taxable year, reduced by the adjusted net income for such year, and further reduced by the amount, if any, by which the adjusted net income for the first preceding taxable year exceeds the sum of—

(A) The basic surtax credit for such year; and

(B) The excess, if any, of the basic surtax credit for the third preceding taxable year over the adjusted net income for such year; and

(2) The amount, if any, by which the basic surtax credit for the first preceding taxable year exceeds the adjusted net income for such year.

In the case of a preceding taxable year, referred to in this subsection, which begins in 1937, the adjusted net income shall be the adjusted net income as defined in section 14 of the Revenue Act of 1936, and the basic surtax credit shall be only the dividends paid credit computed under the Revenue Act of 1936 without the benefit of the dividend carry-over provided in section 27 (b) of such Act. In the case of a preceding taxable year, referred to in this subsection, which begins in 1938, the adjusted net income shall be the adjusted net income as defined in section 13 (a) of the Revenue Act of 1938, 52 Stat. 455, and the basic surtax credit shall be the basic surtax credit as defined in section 27 of the Revenue Act of 1938, 52 Stat. 468.

**(d) Dividends in kind.**

If a dividend is paid in property other than money (including stock of the corporation if held by the corporation as an investment) the amount with re-

spect thereto which shall be used in computing the basic surtax credit shall be the adjusted basis of the property in the hands of the corporation at the time of the payment, or the fair market value of the property at the time of the payment, whichever is the lower.

**(e) Dividends in obligations of the corporation.**

If a dividend is paid in obligations of the corporation, the amount with respect thereto which shall be used in computing the basic surtax credit shall be the face value of the obligations, or their fair market value at the time of the payment, whichever is the lower. If the fair market value of any such dividend paid in any taxable year of the corporation beginning after December 31, 1935, is lower than the face value, then when the obligation is redeemed by the corporation the excess of the amount for which redeemed over the fair market value at the time of the dividend payment (to the extent not allowable as a deduction in computing net income for any taxable year) shall be treated as a dividend paid in the taxable year in which the redemption occurs.

**(f) Taxable stock dividends.**

In case of a stock dividend or stock right which is a taxable dividend in the hands of shareholders under section 115 (f), the amount with respect thereto which shall be used in computing the basic surtax credit shall be the fair market value of the stock or the stock right at the time of the payment.

**(g) Distributions in liquidation.**

In the case of amounts distributed in liquidation the part of such distribution which is properly chargeable to the earnings or profits accumulated after February 28, 1913, shall, for the purposes of computing the basic surtax credit under this section, be treated as a taxable dividend paid.

**(h) Preferential dividends.**

The amount of any distribution (although each portion thereof is received by a shareholder as a taxable dividend), not made in connection with a consent distribution (as defined in section 28 (a) (4)), shall not be considered as dividends paid for the purpose of computing the basic surtax credit, unless such distribution is pro rata, with no preference to any share of stock as compared with other shares of the same class, and with no preference to one class of stock as compared with another class except to the extent that the former is entitled (without reference to waivers of their rights by shareholders) to such preference.

For a distribution made in connection with a consent distribution, see section 28.

**(i) Nontaxable distributions.**

If any part of a distribution (including stock dividends and stock rights) is not a taxable dividend in the hands of such of the shareholders as are subject to taxation under this chapter for the period in which the distribution is made, such part shall not be included in computing the basic surtax credit. (53 Stat. 19; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 222, 53 Stat. 879.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 27, 52 Stat. 468.

1939 AMENDMENT

Subsection (a), paragraph (4), last sentence, was added by act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938, by § 222 (b) of said act.

AMENDMENT OF 1938 ACT

Act June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 222 (c) and (d), 53 Stat. 879, provided as follows:

"(c) Section 27 (a) (4) of the Revenue Act of 1938 (relating to corporation credit for amounts used or set aside to pay indebtedness) is amended by inserting at the end thereof the following new sentence: 'A renewal (however evidenced) of an indebtedness shall be considered an indebtedness.'

"(d) The amendment made by subsection (c) shall be applicable to taxable years beginning after December 31, 1937."

SIMILAR PROVISIONS

Act June 22, 1936, ch. 690, §§ 26 (c) (2), 27, 49 Stat. 1667.

§ 28. Consent dividends credit—(a) Definitions.

As used in this section—

(1) Consent stock.

The term "consent stock" means the class or classes of stock entitled, after the payment of preferred dividends (as defined in paragraph (2)), to a share in the distribution (other than in complete or partial liquidation) within the taxable year of all the remaining earnings or profits, which share constitutes the same proportion of such distribution regardless of the amount of such distribution.

(2) Preferred dividends.

The term "preferred dividends" means a distribution (other than in complete or partial liquidation), limited in amount, which must be made on any class of stock before a further distribution (other than in complete or partial liquidation) of earnings or profits may be made within the taxable year.

(3) Consent dividends day.

The term "consent dividends day" means the last day of the taxable year of the corporation, unless during the last month of such year there have occurred one or more days on which was payable a partial distribution (as defined in paragraph (5)), in which case it means the last of such days.

(4) Consent distribution.

The term "consent distribution" means the distribution which would have been made if on the consent dividends day (as defined in paragraph (3)) there had actually been distributed in cash and received by each shareholder making a consent filed by the corporation under subsection (d), the specific amount stated in such consent.

(5) Partial distribution.

The term "partial distribution" means such part of an actual distribution, payable during the last month of the taxable year of the corporation, as constitutes a distribution on the whole or any part of the consent stock (as defined in paragraph (1)), which part of the distribution, if considered by itself and not in connection with a consent distribution (as defined in paragraph (4)), would be a preferential distribution, as defined in paragraph (6).

(6) Preferential distribution.

The term "preferential distribution" means a distribution which is not pro rata, or which is with

preference to any share of stock as compared with other shares of the same class, or to any class of consent stock as compared with any other class of consent stock.

(b) Corporations not entitled to credit.

A corporation shall not be entitled to a consent dividends credit with respect to any taxable year—

(1) Unless, at the close of such year, all preferred dividends (for the taxable year and, if cumulative, for prior taxable years) have been paid; or

(2) If, at any time during such year, the corporation has taken any steps in, or in pursuance of a plan of, complete or partial liquidation of all or any part of the consent stock.

(c) Allowance of credit.

There shall be allowed to the corporation, as a part of its basic surtax credit for the taxable year, a consent dividends credit equal to such portion of the total sum agreed to be included in the gross income of shareholders by their consents filed under subsection (d) as it would have been entitled to include in computing its basic surtax credit if actual distribution of an amount equal to such total sum had been made in cash and each shareholder making such a consent had received, on the consent dividends day, the amount specified in the consent.

(d) Shareholders' consents.

The corporation shall not be entitled to a consent dividends credit with respect to any taxable year—

(1) Unless it files with its return for such year (in accordance with regulations prescribed by the Commissioner with the approval of the Secretary) signed consents made under oath by persons who were shareholders, on the last day of the taxable year of the corporation, of any class of consent stock; and

(2) Unless in each such consent the shareholder agrees that he will include as a taxable dividend, in his return for the taxable year in which or with which the taxable year of the corporation ends, a specific amount; and

(3) Unless the consents filed are made by such of the shareholders and the amount specified in each consent is such, that the consent distribution would not have been a preferential distribution—

(A) If there was no partial distribution during the last month of the taxable year of the corporation, or

(B) If there was such a partial distribution, then when considered in connection with such partial distribution;

and

(4) Unless in each consent made by a shareholder who is taxable with respect to a dividend only if received from sources within the United States, such shareholder agrees that the specific amount stated in the consent shall be considered as a dividend received by him from sources within the United States; and

(5) Unless each consent filed is accompanied by cash, or such other medium of payment as the Commissioner may by regulations authorize, in an amount equal to the amount that would be required by section 143 (b) or 144 to be deducted and withheld by the corporation if the amount specified in the consent



had been, on the last day of the taxable year of the corporation, paid to the shareholder in cash as a dividend. The amount accompanying the consent shall be credited against the tax imposed by section 211 (a) or 231 (a) upon the shareholder.

(e) Consent distribution as part of entire distribution.

If during the last month of the taxable year with respect to which shareholders' consents are filed by the corporation under subsection (d) there is made a partial distribution, then, for the purposes of this chapter, such partial distribution and the consent distribution shall be considered as having been made in connection with each other and each shall be considered together with the other as one entire distribution.

(f) Taxability of amounts specified in consents.

The total amount specified in a consent filed under subsection (d) shall be included as a taxable dividend in the gross income of the shareholder making such consent, and, if the shareholder is taxable with respect to a dividend only if received from sources within the United States, shall be included in the computation of his tax as a dividend received from sources within the United States; regardless of—

(1) Whether he actually so includes it in his return; and

(2) Whether the distribution by the corporation of an amount equal to the total sum included in all the consents filed, had actual distribution been made, would have been in whole or in part a taxable dividend; and

(3) Whether the corporation is entitled to any consent dividends credit by reason of the filing of such consents, or to a credit less than the total sum included in all the consents filed.

(g) Corporate shareholders.

If the shareholder who makes the consent is a corporation, the amount specified in the consent shall be considered as part of its earnings or profits for the taxable year, and shall be included in the computation of its accumulated earnings and profits.

(h) Basis of stock in hands of shareholders.

The amount specified in a consent made under subsection (d) shall, for the purpose of adjusting the basis of the consent stock with respect to which the consent was given, be treated as having been reinvested by the shareholder as a contribution to the capital of the corporation; but only in an amount which bears the same ratio to the consent dividends credit of the corporation as the amount of such shareholder's consent stock bears to the total amount of consent stock with respect to which consents are made.

(i) Effect on capital account of corporation.

The amount of the consent dividends credit allowed under subsection (c) shall be considered as paid in surplus or as a contribution to the capital of the corporation, and the accumulated earnings and profits as of the close of the taxable year shall be correspondingly reduced.

(j) Amounts not included in shareholder's return.

The failure of a shareholder of consent stock to include in his gross income for the proper taxable year the amount specified in the consent made by him and filed by the corporation, shall have the same effect, with respect to the deficiency resulting therefrom, as is provided in section 272 (f) with respect to a deficiency resulting from a mathematical error appearing on the face of the return. (53 Stat. 21.)

DERIVATION

Act May 28, 1938, ch. 289, § 28, 52 Stat. 470.

PART III.—CREDITS AGAINST TAX

§ 31. Taxes of foreign countries and possessions of United States.

The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax, to the extent provided in section 131. (53 Stat. 24.)

DERIVATION

Act May 28, 1938, ch. 289, § 31, 52 Stat. 472.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 31, 49 Stat. 1666.  
1934—May 10, 1934, ch. 277, § 31, 48 Stat. 693.  
1932—June 6, 1932, ch. 209, § 31, 47 Stat. 185.  
1928—May 29, 1928, ch. 852, § 32, 45 Stat. 804.  
1926—Feb. 26, 1926, ch. 27, §§ 222, 238, 44 Stat. 36, 44.  
1924—June 2, 1924, ch. 234, §§ 222, 238, 43 Stat. 279, 286.  
1921—Nov. 23, 1921, ch. 136, §§ 222, 238, 42 Stat. 249, 258.  
1919—Feb. 24, 1919, ch. 18, §§ 222, 238, 40 Stat. 1073, 1080.

§ 32. Taxes withheld at source.

The amount of tax withheld at the source under section 143 or 144 shall be allowed as a credit against the tax. (53 Stat. 24.)

DERIVATION

Act May 28, 1938, ch. 289, § 32, 52 Stat. 472.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 32, 49 Stat. 1666.  
1934—May 10, 1934, ch. 277, § 32, 48 Stat. 693.  
1932—June 6, 1932, ch. 209, § 32, 47 Stat. 185.  
1928—May 29, 1928, ch. 852, § 33, 45 Stat. 804.

§ 33. Credit for overpayments.

For credit against the tax of overpayments of taxes imposed by this chapter for other taxable years, see section 322.

(53 Stat. 24.)

DERIVATION

Act May 28, 1938, ch. 289, § 33, 52 Stat. 473.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 33, 49 Stat. 1666.  
1934—May 10, 1934, ch. 277, § 33, 48 Stat. 693.

PART IV.—ACCOUNTING PERIODS AND METHODS OF ACCOUNTING

§ 41. General rule.

The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in

accordance with such method as in the opinion of the Commissioner does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 48 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year.

For use of inventories, see section 22 (c).

(53 Stat. 24.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 41, 52 Stat. 473.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 41, 49 Stat. 1666.  
 1934—May 10, 1934, ch. 277, § 41, 48 Stat. 694.  
 1932—June 6, 1932, ch. 209, § 41, 47 Stat. 185.  
 1928—May 29, 1928, ch. 852, § 41, 45 Stat. 805.  
 1926—Feb. 26, 1926, ch. 27, §§ 212, 232, 44 Stat. 23, 41.  
 1924—June 2, 1924, ch. 234, §§ 212, 231, 43 Stat. 267, 283.  
 1921—Nov. 23, 1921, ch. 136, §§ 212, 232, 42 Stat. 237, 254.  
 1919—Feb. 24, 1919, ch. 18, §§ 212, 232, 40 Stat. 1084, 1077.

#### § 42. Period in which items of gross income included.

The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under section 41, any such amounts are to be properly accounted for as of a different period. In the case of the death of a taxpayer there shall be included in computing net income for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly includible in respect of such period or a prior period. (53 Stat. 24.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 42, 52 Stat. 473.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 42, 49 Stat. 1666.  
 1934—May 10, 1934, ch. 277, § 42, 48 Stat. 694.  
 1932—June 6, 1932, ch. 209, § 42, 47 Stat. 185.  
 1928—May 29, 1928, ch. 852, § 42, 45 Stat. 805.  
 1926—Feb. 26, 1926, ch. 27, § 213, 44 Stat. 23.  
 1924—June 2, 1924, ch. 234, § 213, 43 Stat. 267, as amended by act Feb. 26, 1925, ch. 945, § 12, 43 Stat. 997.  
 1921—Nov. 23, 1921, ch. 136, § 213, 42 Stat. 237.  
 1919—Feb. 24, 1919, ch. 18, § 213, 40 Stat. 1065.

#### § 43. Period for which deductions and credits taken.

The deductions and credits (other than the corporation dividends paid credit provided in section 27) provided for in this chapter shall be taken for the taxable year in which "paid or accrued" or "paid or incurred", dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income the deductions or credits should be taken as of a different period. In the case of the death of a taxpayer there shall be allowed as deductions and credits for the taxable period in which falls the date of his death, amounts accrued up to the date of his death (except deductions under section 23 (o)) if not otherwise properly allowable in respect of such period or a prior period. (53 Stat. 24.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 43, 52 Stat. 473.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 43, 49 Stat. 1666.  
 1934—May 10, 1934, ch. 277, § 43, 48 Stat. 694.  
 1932—June 6, 1932, ch. 209, § 43, 47 Stat. 185.  
 1928—May 29, 1928, ch. 852, § 43, 45 Stat. 805.  
 1926—Feb. 26, 1926, ch. 27, § 200, 44 Stat. 10.  
 1924—June 2, 1924, ch. 234, § 200, 43 Stat. 254.

#### § 44. Installment basis—(a) Dealers in personal property.

Under regulations prescribed by the Commissioner with the approval of the Secretary, a person who regularly sells or otherwise disposes of personal property on the installment plan may return as income therefrom in any taxable year that proportion of the installment payments actually received in that year which the gross profit realized or to be realized when payment is completed, bears to the total contract price.

#### (b) Sales of realty and casual sales of personality.<sup>1</sup>

In the case (1) of a casual sale or other casual disposition of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year), for a price exceeding \$1,000, or (2) of a sale or other disposition of real property, if in either case the initial payments do not exceed 30 per centum of the selling price (or, in case the sale or other disposition was in a taxable year beginning prior to January 1, 1934, the percentage of the selling price prescribed in the law applicable to such year), the income may, under regulations prescribed by the Commissioner with the approval of the Secretary, be returned on the basis and in the manner above prescribed in this section. As used in this section the term "initial payments" means the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable period in which the sale or other disposition is made.

#### (c) Change from accrual to installment basis.

If a taxpayer entitled to the benefits of subsection (a) elects for any taxable year to report his net income on the installment basis, then in computing his income for the year of change or any subsequent year, amounts actually received during any such year on account of sales or other dispositions of property made in any prior year shall not be excluded.

#### (d) Gain or loss upon disposition of installment obligations.

If an installment obligation is satisfied at other than its face value or distributed, transmitted, sold, or otherwise disposed of, gain or loss shall result to the extent of the difference between the basis of the obligation and (1) in the case of satisfaction at other than face value or a sale or exchange—the amount realized, or (2) in case of a distribution, transmission, or disposition otherwise than by sale or exchange—the fair market value of the obligation at the time of such distribution, transmission, or disposition. Any gain or loss so resulting shall be considered as resulting from the sale or exchange of the property in respect of which the installment obligation was received. The basis of the obligation

shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full. This subsection shall not apply to the transmission at death of installment obligations if there is filed with the Commissioner, at such time as he may by regulation prescribe, a bond in such amount and with such sureties as he may deem necessary, conditioned upon the return as income, by the person receiving any payment on such obligations, of the same proportion of such payment as would be returnable as income by the decedent if he had lived and had received such payment. If an installment obligation is distributed by one corporation to another corporation in the course of a liquidation, and under section 112 (b) (6) no gain or loss with respect to the receipt of such obligation is recognized in the case of the recipient corporation, then no gain or loss with respect to the distribution of such obligation shall be recognized in the case of the distributing corporation. (53 Stat. 24.)

<sup>1</sup> So in original. Probably should read "personalty."

#### DERIVATION

Act May 28, 1938, ch. 289, § 44, 52 Stat. 473.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 44, 49 Stat. 1667.  
 1934—May 10, 1934, ch. 277, § 44, 48 Stat. 694.  
 1932—June 6, 1932, ch. 209, § 44, 47 Stat. 185.  
 1928—May 29, 1928, ch. 852, § 44, 45 Stat. 805.  
 1926—Feb. 26, 1926, ch. 27, § 212, 44 Stat. 23.

### § 45. Allocation of income and deductions.

In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Commissioner is authorized to distribute, apportion, or allocate gross income or deductions between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades, or businesses. (53 Stat. 25.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 45, 52 Stat. 474.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 45, 49 Stat. 1667.  
 1934—May 10, 1934, ch. 277, § 45, 48 Stat. 695.  
 1932—June 6, 1932, ch. 209, § 45, 47 Stat. 186.  
 1928—May 29, 1928, ch. 852, § 45, 45 Stat. 806.  
 1926—Feb. 26, 1926, ch. 27, § 240, 44 Stat. 46.  
 1924—June 2, 1924, ch. 234, § 240, 43 Stat. 288.

### § 46. Change of accounting period.

If a taxpayer changes his accounting period from fiscal year to calendar year, from calendar year to fiscal year, or from one fiscal year to another, the net income shall, with the approval of the Commissioner, be computed on the basis of such new accounting period, subject to the provisions of section 47. (53 Stat. 26.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 46, 52 Stat. 474.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 46, 49 Stat. 1668.  
 1934—May 10, 1934, ch. 277, § 46, 48 Stat. 695.  
 1932—June 6, 1932, ch. 209, § 46, 47 Stat. 186.  
 1928—May 29, 1928, ch. 852, § 46, 45 Stat. 806.  
 1926—Feb. 26, 1926, ch. 27, § 212, 44 Stat. 23.  
 1924—June 2, 1924, ch. 234, § 212, 43 Stat. 267.  
 1921—Nov. 23, 1921, ch. 136, § 212, 42 Stat. 237.  
 1919—Feb. 24, 1919, ch. 18, § 212, 40 Stat. 1064.

### § 47. Returns for a period of less than 12 months—(a) Returns for short period resulting from change of accounting period.

If a taxpayer, with the approval of the Commissioner, changes the basis of computing net income from fiscal year to calendar year a separate return shall be made for the period between the close of the last fiscal year for which return was made and the following December 31. If the change is from calendar year to fiscal year, a separate return shall be made for the period between the close of the last calendar year for which return was made and the date designated as the close of the fiscal year. If the change is from one fiscal year to another fiscal year a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year.

### (b) Income computed on basis of short period.

Where a separate return is made under subsection (a) on account of a change in the accounting period, and in all other cases where a separate return is required or permitted, by regulations prescribed by the Commissioner with the approval of the Secretary, to be made for a fractional part of a year, then the income shall be computed on the basis of the period for which separate return is made.

### (c) Income placed on annual basis.

If a separate return is made (except returns of the income of a corporation) under subsection (a) on account of a change in the accounting period, the net income, computed on the basis of the period for which separate return is made, shall be placed on an annual basis by multiplying the amount thereof by twelve and dividing by the number of months included in the period for which the separate return is made. The tax shall be such part of the tax computed on such annual basis as the number of months in such period is of twelve months.

### (d) Earned income.

The Commissioner with the approval of the Secretary shall by regulations prescribe the method of applying the provisions of subsections (b) and (c) (relating to computing income on the basis of a short period, and placing such income on an annual basis) to cases where the taxpayer makes a separate return under subsection (a) on account of a change in the accounting period, and it appears that for the period for which the return is so made he has received earned income.

### (e) Reduction of credits against net income.

In the case of a return made for a fractional part of a year, except a return made under subsection (a), on account of a change in the accounting period, the personal exemption and credit for dependents shall be reduced respectively to amounts which bear the same ratio to the full credits provided as the num-

ber of months in the period for which return is made bears to twelve months.

(f) Closing of taxable year in case of jeopardy.

For closing of taxable year in case of jeopardy, see section 146.

(53 Stat. 26.)

DERIVATION

Act May 28, 1938, ch. 289, § 47, 52 Stat. 475.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 47, 49 Stat. 1668.  
 1934—May 10, 1934, ch. 277, § 47, 48 Stat. 695.  
 1932—June 6, 1932, ch. 209, § 47, 47 Stat. 187.  
 1928—May 29, 1928, ch. 852, § 47, 45 Stat. 806.  
 1926—Feb. 26, 1926, ch. 27, §§ 226, 239, 44 Stat. 38, 45.  
 1924—June 2, 1924, ch. 234, §§ 226, 239, 43 Stat. 281, 287.  
 1921—Nov. 23, 1921, ch. 136, §§ 226, 239, 42 Stat. 251, 259.  
 1919—Feb. 24, 1919, ch. 18, §§ 226, 239, 40 Stat. 1075, 1081.  
 1916—Sept. 8, 1916, ch. 463, § 13, 39 Stat. 770, as amended by act Oct. 3, 1917, ch. 63, § 1208, 40 Stat. 335.  
 1913—Oct. 3, 1913, ch. 16, § II, G, 38 Stat. 175.

§ 48. Definitions.

When used in this chapter—

(a) Taxable year.

"Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this Part. "Taxable year" includes, in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the Commissioner with the approval of the Secretary, the period for which such return is made.

(b) Fiscal year.

"Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.

(c) "Paid or incurred," "paid or accrued."

The terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this Part.

(d) Trade or business.

The term "trade or business" includes the performance of the functions of a public office. (53 Stat. 26.)

DERIVATION

Act May 28, 1938, ch. 289, § 48, 52 Stat. 475.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 48, 49 Stat. 1669, as amended by act Aug. 26, 1937, ch. 815, title VI, § 602, 50 Stat. 831.  
 1934—May 10, 1934, ch. 277, § 48, 48 Stat. 696.  
 1932—June 6, 1932, ch. 209, § 48, 47 Stat. 187.  
 1928—May 29, 1928, ch. 852, § 48, 45 Stat. 807.  
 1926—Feb. 26, 1926, ch. 27, § 200, 44 Stat. 10.  
 1924—June 2, 1924, ch. 234, § 200, 43 Stat. 254.  
 1921—Nov. 23, 1921, ch. 136, § 200, 42 Stat. 227.  
 1919—Feb. 24, 1919, ch. 18, § 200, 40 Stat. 1058.

PART V.—RETURNS AND PAYMENT OF TAX

§ 51. Individual returns—(a) Requirement.

The following individuals shall each make under oath a return stating specifically the items of his gross income and the deductions and credits allowed under this chapter and such other information for the purpose of carrying out the provisions of this

chapter as the Commissioner with the approval of the Secretary may by regulations prescribe—

(1) Every individual who is single or who is married but not living with husband or wife, if having a gross income for the taxable year of \$800 or over.

(2) Every individual who is married and living with husband or wife, if no joint return is made under subsection (b) and if—

(A) Such individual has for the taxable year a gross income of \$2,000 or over, and the other spouse has no gross income; or

(B) Such individual and his spouse each has for the taxable year a gross income and the aggregate gross income is \$2,000 or over.

(b) Husband and wife.

In the case of a husband and wife living together the income of each (even though one has no gross income) may be included in a single return made by them jointly, in which case the tax shall be computed on the aggregate income, and the liability with respect to the tax shall be joint and several. No joint return may be made if either the husband or wife is a nonresident alien.

(c) Persons under disability.

If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

(d) Signature presumed correct.

The fact that an individual's name is signed to a filed return shall be prima facie evidence for all purposes that the return was actually signed by him.

(e) Fiduciaries.

For returns to be made by fiduciaries, see section 142.

(53 Stat. 27; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title I, § 7 (a), 54 Stat. 519.)

DERIVATION

Act May 28, 1938, ch. 289, § 51, 52 Stat. 476.

1940 AMENDMENT

Subsection (a) was amended by act June 25, 1940, cited to text.

TREATY OBLIGATIONS

Section 8 of act June 25, 1940, cited to text, provided as follows: "No amendment made by this title (sections 1-9 of 1940 act) shall apply in any case where its application would be contrary to any treaty obligation of the United States."

TAXABLE YEARS AFFECTED

Section 9 of act June 25, 1940, cited to text, provided as follows: "The amendments made by this title (sections 1-9 of 1940 act), except the amendments made by section 5 (sections 143, 144 of Internal Revenue Code), shall be applicable only with respect to taxable years beginning after December 31, 1939."

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 51, 49 Stat. 1670.  
 1934—May 10, 1934, ch. 277, § 51, 48 Stat. 697.  
 1932—June 6, 1932, ch. 209, § 51, 47 Stat. 188.  
 1928—May 29, 1928, ch. 852, § 51, 45 Stat. 807.  
 1926—Feb. 26, 1926, ch. 27, § 223, 44 Stat. 37.  
 1924—June 2, 1924, ch. 234, § 223, 43 Stat. 280.  
 1921—Nov. 23, 1921, ch. 136, § 223, 42 Stat. 250.  
 1919—Feb. 24, 1919, ch. 18, § 223, 40 Stat. 1074.  
 1917—Oct. 3, 1917, ch. 63, § 3, 40 Stat. 301.  
 1916—Sept. 8, 1916, ch. 463, §§ 8, 19, 39 Stat. 761, 776, section 8 of said act amended by act Oct. 3, 1917, ch. 63, § 1204, 40 Stat. 331.  
 1913—Oct. 3, 1913, ch. 16, § II, D, 38 Stat. 168.

**§ 52. Corporation returns—(a) Requirement.**

Every corporation subject to taxation under this chapter shall make a return, stating specifically the items of its gross income and the deductions and credits allowed by this chapter and such other information for the purpose of carrying out the provisions of this chapter as the Commissioner with the approval of the Secretary may by regulations prescribe. The return shall be sworn to by the president, vice president, or other principal officer and by the treasurer, assistant treasurer, or chief accounting officer. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns made by receivers, trustees, or assignees shall be collected in the same manner as if collected from the corporations of whose business or property they have custody and control.

**(b) Cross reference.**

For provisions as to consolidated returns in the case of railroad corporations, see section 141.

(53 Stat. 27.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 52, 52 Stat. 476.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 52, 49 Stat. 1670.  
 1934—May 10, 1934, ch. 277, § 52, 48 Stat. 697.  
 1932—June 6, 1932, ch. 209, § 52, 47 Stat. 188.  
 1928—May 29, 1928, ch. 852, § 52, 45 Stat. 808.  
 1926—Feb. 26, 1926, ch. 27, § 239, 44 Stat. 45.  
 1924—June 2, 1924, ch. 234, § 239, 43 Stat. 287.  
 1921—Nov. 23, 1921, ch. 136, § 239, 42 Stat. 259.  
 1919—Feb. 24, 1919, ch. 18, § 239, 40 Stat. 1081.  
 1916—Sept. 8, 1916, ch. 463, § 13, 39 Stat. 770, as amended by act Oct. 3, 1917, ch. 63, § 1208, 40 Stat. 335.  
 1913—Oct. 3, 1913, ch. 16, § II, G, 38 Stat. 175.

**§ 53. Time and place for filing returns—(a) Time for filing—(1) General rule.**

Returns made on the basis of the calendar year shall be made on or before the 15th day of March following the close of the calendar year. Returns made on the basis of a fiscal year shall be made on or before the 15th day of the third month following the close of the fiscal year.

**(2) Extension of time.**

The Commissioner may grant a reasonable extension of time for filing returns, under such rules and regulations as he shall prescribe with the approval of the Secretary. Except in the case of taxpayers who are abroad, no such extension shall be for more than six months.

**(b) To whom return made—(1) Individuals.**

Returns (other than corporation returns) shall be made to the collector for the district in which is located the legal residence or principal place of business of the person making the return, or, if he has no legal residence or principal place of business in the United States, then to the collector at Baltimore, Maryland.

**(2) Corporations.**

Returns of corporations shall be made to the collector of the district in which is located the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in the United States, then to the collector at Baltimore, Maryland. (53 Stat. 28.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 53, 52 Stat. 477.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 53, 49 Stat. 1670.  
 1934—May 10, 1934, ch. 277, § 53, 48 Stat. 697.  
 1932—June 6, 1932, ch. 209, § 53, 47 Stat. 188.  
 1928—May 29, 1928, ch. 852, § 53, 45 Stat. 808.  
 1926—Feb. 26, 1926, ch. 27, §§ 227, 241, 44 Stat. 39, 46.  
 1924—June 2, 1924, ch. 234, §§ 227, 241, 43 Stat. 281, 283.  
 1921—Nov. 23, 1921, ch. 136, §§ 227, 241, 42 Stat. 251, 260.  
 1919—Feb. 24, 1919, ch. 18, §§ 227, 241, 40 Stat. 1075, 1082.  
 1916—Sept. 8, 1916, ch. 463, §§ 8, 13, 39 Stat. 761, 770, as amended by act Oct. 3, 1917, ch. 63, § 1204, 40 Stat. 331.  
 1913—Oct. 3, 1913, ch. 16, §§ II, D, G, 38 Stat. 168, 174.

**§ 54. Records and special returns—(a) By taxpayer.**

Every person liable to any tax imposed by this chapter or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

**(b) To determine liability to tax.**

Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records, as the Commissioner deems sufficient to show whether or not such person is liable to tax under this chapter.

**(c) Information at the source.**

For requirement of statements and returns by one person to assist in determining the tax liability of another person, see sections 147 to 150.

**(d) Copies of returns.**

If any person, required by law or regulations made pursuant to law to file a copy of any income return for any taxable year, fails to file such copy at the time required, there shall be due and assessed against such person \$5 in the case of an individual return or \$10 in the case of a fiduciary, partnership, or corporation return, and the collector with whom the return is filed shall prepare such copy. Such amount shall be collected and paid, without interest, in the same manner as the amount of tax due in excess of that shown by the taxpayer upon a return in the case of a mathematical error appearing on the face of the return. Copies of returns filed or prepared pursuant to this subsection shall remain on file for a period of not less than two years from the date they are required to be filed, and may be destroyed at any time thereafter under the direction of the Commissioner.

**(e) Foreign personal holding companies.**

For information returns by officers, directors, and large shareholders, with respect to foreign personal holding companies, see sections 338, 339, and 340.

For information returns by attorneys, accountants, and so forth, as to formation, and so forth, of foreign corporations, see section 3604.

(53 Stat. 28.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 54, 52 Stat. 477.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 54, 49 Stat. 1671, as amended by act Aug. 26, 1937, ch. 815, title II, § 207 (c), 50 Stat. 826.

1934—May 10, 1934, ch. 277, § 54, 48 Stat. 698, as amended by act Apr. 10, 1936, ch. 189, 49 Stat. 1199.

1932—June 6, 1932, ch. 209, § 54, 47 Stat. 189.

1928—May 29, 1928, ch. 852, § 54, 45 Stat. 808.

1926—Feb. 26, 1926, ch. 27, § 1102, 44 Stat. 112.

1924—June 2, 1924, ch. 234, § 1002, 43 Stat. 339.

1917—Oct. 3, 1917, ch. 63, § 1001, 40 Stat. 825.

1916—Sept. 8, 1916, ch. 463, § 409, 39 Stat. 793.

1914—Oct. 22, 1914, ch. 331, § 23, 38 Stat. 764.

### § 55. Publicity of returns—(a) Public record and inspection.

(1) Returns made under this chapter upon which the tax has been determined by the Commissioner shall constitute public records; but, except as hereinafter provided in this section, they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary and approved by the President.

(2) And all returns made under this chapter, subchapters A, B, D, and E of chapter 2, subchapter B of chapter 3, chapters 4, 7, 12, and 21, subchapter A of chapter 29, and subchapters A and B of chapter 30, shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President.

(3) Whenever a return is open to the inspection of any person a certified copy thereof shall, upon request, be furnished to such person under rules and regulations prescribed by the Commissioner with the approval of the Secretary. The Commissioner may prescribe a reasonable fee for furnishing such copy.

#### (b) Inspection by states—(1) State officers.

The proper officers of any State may, upon the request of the governor thereof, have access to the returns of any corporation, or to an abstract thereof showing the name and income of the corporation, at such times and in such manner as the Secretary may prescribe.

#### (2) State bodies or commissions.

All income returns filed under this chapter (or copies thereof, if so prescribed by regulations made under this subsection), shall be open to inspection by any official, body, or commission, lawfully charged with the administration of any State tax law, if the inspection is for the purpose of such administration or for the purpose of obtaining information to be furnished to local taxing authorities as provided in this paragraph. The inspection shall be permitted only upon written request of the governor of such State, designating the representative of such official, body, or commission to make the inspection on behalf of such official, body, or commission. The inspection shall be made in such manner, and at such times and places, as shall be prescribed by regulations made by the Commissioner

with the approval of the Secretary. Any information thus secured by any official, body, or commission of any State may be used only for the administration of the tax laws of such State, except that upon written request of the Governor of such State any such information may be furnished to any official, body, or commission of any political subdivision of such State, lawfully charged with the administration of the tax laws of such political subdivision, but may be furnished only for the purpose of, and may be used only for, the administration of such tax laws.

#### (c) Inspection by shareholders.

All bona fide shareholders of record owning 1 per centum or more of the outstanding stock of any corporation shall, upon making request of the Commissioner, be allowed to examine the annual income returns of such corporation and of its subsidiaries.

#### (d) Inspection by committees of Congress—(1) Committees on Ways and Means and Finance.

(A) The Secretary and any officer or employee of the Treasury Department, upon request from the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, or a select committee of the Senate or House specially authorized to investigate returns by a resolution of the Senate or House, or a joint committee so authorized by concurrent resolution, shall furnish such committee sitting in executive session with any data of any character contained in or shown by any return.

(B) Any such committee shall have the right, acting directly as a committee, or by or through such examiners or agents as it may designate or appoint, to inspect any or all of the returns at such times and in such manner as it may determine.

(C) Any relevant or useful information thus obtained may be submitted by the committee obtaining it to the Senate or the House, or to both the Senate and the House, as the case may be.

#### (2) Joint Committee on Internal Revenue Taxation.

The Joint Committee on Internal Revenue Taxation shall have the same right to obtain data and to inspect returns as the Committee on Ways and Means or the Committee on Finance, and to submit any relevant or useful information thus obtained to the Senate, the House of Representatives, the Committee on Ways and Means, or the Committee on Finance. The Committee on Ways and Means or the Committee on Finance may submit such information to the House or to the Senate, or to both the House and the Senate, as the case may be.

#### (e) Inspection in collector's office of list of taxpayers.

The Commissioner shall as soon as practicable in each year cause to be prepared and made available to public inspection in such manner as he may determine, in the office of the collector in each internal revenue district and in such other places as he may determine, lists containing the name and the post-office address of each person making an income-tax return in such district.

#### (f) Penalties for disclosing information—(1) Federal employees and other persons.

It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of

the United States to divulge or to make known in any manner whatever not provided by law to any person the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment.

**(2) State employees.**

Any officer, employee, or agent of any State or political subdivision, who divulges (except as authorized in paragraph 2 of subsection (b), or when called upon to testify in any judicial or administrative proceeding to which the State or political subdivision, or such State or local official, body, or commission, as such, is a party) any information acquired by him through an inspection permitted him or another under paragraph 2 of subsection (b) shall be guilty of a misdemeanor and shall upon conviction be punished by a fine of not more than \$1,000, or by imprisonment for not more than one year, or both.

**(3) Shareholders.**

Any shareholder who pursuant to the provisions of this section is allowed to examine the return of any corporation, and who makes known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any such return, shall be guilty of a misdemeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both.

**(4) Cross reference.**

For penalties for disclosing operations, style of work, or apparatus of any manufacturer or producer, see section 4047.

(53 Stat. 29; Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title V, § 507, 54 Stat. 1008.)

**DERIVATION**

Subsection (a). Acts May 28, 1938, ch. 289, § 55 (a), 52 Stat. 478; June 22, 1936, ch. 690, § 55 (a), 49 Stat. 1671; Feb. 26, 1926, ch. 27, § 257 (a), 44 Stat. 51.

Subsection (b). Acts May 28, 1938, ch. 289, § 55 (b) (1) (2), 52 Stat. 478; Feb. 26, 1926, ch. 27, § 257 (c), 44 Stat. 51.

Subsection (c). Act Feb. 26, 1926, ch. 27, § 257 (d), 44 Stat. 51.

Subsection (d). Act Feb. 26, 1926, ch. 27, §§ 257 (b), 1203 (d), 44 Stat. 51, 128.

Subsection (e). Act Feb. 26, 1926, ch. 27, § 257 (e), 44 Stat. 52.

Subsection (f). Acts May 28, 1938, ch. 289, § 55 (b) (2), 52 Stat. 478; June 22, 1936, ch. 690, § 55 (a), 49 Stat. 1671; Feb. 26, 1926, ch. 27, §§ 257 (d), 1115, 44 Stat. 51, 117; Feb. 24, 1919, ch. 18, § 1317, 40 Stat. 1146; R. S. § 3167

which was revised from act June 30, 1864, ch. 178, § 38, 13 Stat. 238.

**1940 AMENDMENT**

Subsection (a) (2) was amended by act October 8, 1940, cited to text, by substituting "Subchapters A, B, D, and E of Chapter 2" in lieu of "Subchapters A, B, and D of Chapter 2."

**SIMILAR PROVISIONS**

1934—May 10, 1934, ch. 277, § 55 (b), 48 Stat. 698, as amended by act Apr. 19, 1935, ch. 74, 49 Stat. 158.

1932—June 6, 1932, ch. 209, § 55, 47 Stat. 189.

1924—June 2, 1924, ch. 234, §§ 257, 1018, 43 Stat. 293, 345.

1921—Nov. 23, 1921, ch. 136, § 257, 42 Stat. 270.

1919—Feb. 24, 1919, ch. 18, § 257, 40 Stat. 1086.

1916—Sept. 8, 1916, ch. 463, § 14, 39 Stat. 770.

1913—Oct. 3, 1913, ch. 16, § II, G, 38 Stat. 177.

**§ 56. Payment of tax—(a) Time of payment.**

The total amount of tax imposed by this chapter shall be paid on the fifteenth day of March following the close of the calendar year, or, if the return should be made on the basis of a fiscal year, then on the fifteenth day of the third month following the close of the fiscal year.

**(b) Installment payments.**

The taxpayer may elect to pay the tax in four equal installments, in which case the first installment shall be paid on the date prescribed for the payment of the tax by the taxpayer, the second installment shall be paid on the fifteenth day of the third month, the third installment on the fifteenth day of the sixth month, and the fourth installment on the fifteenth day of the ninth month, after such date. If any installment is not paid on or before the date fixed for its payment, the whole amount of the tax unpaid shall be paid upon notice and demand from the collector.

**(c) Extension of time for payment—(1) General rule.**

At the request of the taxpayer, the Commissioner may extend the time for payment of the amount determined as the tax by the taxpayer, or any installment thereof, for a period not to exceed six months from the date prescribed for the payment of the tax or an installment thereof. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

**(2) Liquidation of personal holding companies.**

At the request of the taxpayer, the Commissioner may (under regulations prescribed by the Commissioner with the approval of the Secretary) extend (for a period not to exceed five years from the date prescribed for the payment of the tax) the time for the payment of such portion of the amount determined as the tax by the taxpayer as is attributable to the short-term or long-term capital gain derived by the taxpayer from the receipt by him of property other than money upon the complete liquidation (as defined in section 115 (c)) of a corporation. This paragraph shall apply only if the corporation, for its taxable year preceding the year in which occurred the complete liquidation (or the first of the series of distributions referred to in such section), was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company. An extension under this paragraph shall be granted only if it is shown to the satisfaction of the



Commissioner that the failure to grant it will result in undue hardship to the taxpayer. If an extension is granted the amount with respect to which the extension is granted shall be paid on or before the date of the expiration of the extension. If an extension is granted under this paragraph the Commissioner may require the taxpayer to furnish a bond in such amount, not exceeding double the amount with respect to which the extension is granted, and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the amount with respect to which the extension is granted in accordance with the terms of the extension.

(d) Voluntary advance payment.

A tax imposed by this chapter, or any installment thereof, may be paid, at the election of the taxpayer, prior to the date prescribed for its payment.

(e) Advance payment in case of jeopardy.

For advance payment in case of jeopardy, see section 146.

(f) Tax withheld at source.

For requirement of withholding tax at the source in the case of nonresident aliens and foreign corporations, and in the case of so-called "tax-free covenant bonds," see sections 143 and 144.

(g) Fractional parts of cent.

In the payment of any tax under this chapter a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(h) Receipts.

Every collector to whom any payment of any income tax is made shall upon request give to the person making such payment a full written or printed receipt therefor. (53 Stat. 31.)

DERIVATION

Act May 28, 1938, ch. 289, § 56, 52 Stat. 478.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 56, 49 Stat. 1672.  
1934—May 10, 1934, ch. 277, § 56, 48 Stat. 698.  
1932—June 6, 1932, ch. 209, § 56, 47 Stat. 189.  
1928—May 29, 1928, ch. 852, § 56, 45 Stat. 809.  
1926—Feb. 26, 1926, ch. 27, § 270, 44 Stat. 54.  
1924—June 2, 1924, ch. 234, § 270, 43 Stat. 295.  
1921—Nov. 23, 1921, ch. 136, § 250, 42 Stat. 264.  
1919—Feb. 24, 1919, ch. 18, § 250, 40 Stat. 1082.  
1917—Oct. 3, 1917, ch. 63, §§ 1009, 1205, 40 Stat. 326, 332.

PROVISIONS SIMILAR TO SUBSECTION (H)

1921—Nov. 23, 1921, ch. 136, § 251, 42 Stat. 267.  
1919—Feb. 24, 1919, ch. 18, § 251, 40 Stat. 1084.  
1916—Sept. 8, 1916, ch. 463, § 17, 39 Stat. 775.  
1913—Oct. 3, 1913, ch. 16, § II, J, 38 Stat. 179.  
1894—Aug. 27, 1894, ch. 349, § 37, 28 Stat. 560.

§ 57. Examination of return and determination of tax.

As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax. (53 Stat. 32.)

DERIVATION

Act May 28, 1938, ch. 289, § 57, 52 Stat. 479.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 57, 49 Stat. 1673.  
1934—May 10, 1934, ch. 277, § 57, 48 Stat. 699.  
1932—June 6, 1932, ch. 209, § 57, 47 Stat. 190.  
1928—May 29, 1928, ch. 852, § 57, 45 Stat. 810.  
1926—Feb. 26, 1926, ch. 27, § 271, 44 Stat. 55.  
1924—June 2, 1924, ch. 234, § 271, 43 Stat. 296.

§ 58. Additions to tax and penalties.

(a) For additions to the tax in case of negligence or fraud in the nonpayment of tax or failure to file return therefor, see Supplement M.

(b) For criminal penalties for nonpayment of tax or failure to file return therefor, see section 145.

(53 Stat. 32.)

DERIVATION

Act May 28, 1938, ch. 289, § 58, 52 Stat. 480.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 58, 49 Stat. 1673.  
1934—May 10, 1934, ch. 277, § 59, 48 Stat. 699.

§ 59. Administrative proceedings.

For administrative proceedings in respect of the nonpayment or overpayment of a tax imposed by this chapter, see as follows:

(a) Supplement L, relating to assessment and collection of deficiencies.

(b) Supplement M, relating to interest and additions to tax.

(c) Supplement N, relating to claims against transferees and fiduciaries.

(d) Supplement O, relating to overpayments.

(53 Stat. 32.)

DERIVATION

Act May 28, 1938, ch. 289, § 59, 52 Stat. 480.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 59, 49 Stat. 1673.  
1934—May 10, 1934, ch. 277, § 59, 48 Stat. 699.

§ 60. Cross references.

For general provisions relating to—

(a) Information and returns, see chapter 34.

(b) Assessment, see chapter 35.

(c) Collection, see chapter 36.

(53 Stat. 32.)

PART VI.—MISCELLANEOUS PROVISIONS

§ 61. Laws made applicable.

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, shall be extended to and made a part of this chapter. (53 Stat. 32.)

DERIVATION

Act May 28, 1938, ch. 289, § 61, 52 Stat. 480.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 61, 49 Stat. 1673.  
1934—May 10, 1934, ch. 277, § 61, 48 Stat. 699.  
1932—June 6, 1932, ch. 209, § 61, 47 Stat. 190.  
1928—May 29, 1928, ch. 852, § 61, 45 Stat. 810.  
1926—Feb. 26, 1926, ch. 27, § 1100, 44 Stat. 111.  
1924—June 2, 1924, ch. 234, § 1000, 43 Stat. 339.  
1921—Nov. 23, 1921, ch. 136, § 1300, 42 Stat. 308.  
1919—Feb. 24, 1919, ch. 18, § 1305, 40 Stat. 1142.  
1917—Oct. 3, 1917, ch. 63, § 1001, 40 Stat. 825.  
1916—Sept. 8, 1916, ch. 463, §§ 22, 211, 409, 39 Stat. 776, 780, 792.  
1914—Oct. 22, 1914, ch. 331, § 23, 38 Stat. 764.  
1913—Oct. 3, 1913, ch. 16, § II, L, 38 Stat. 179.  
1898—June 13, 1898, ch. 448, § 31, 30 Stat. 448.

§ 62. Rules and regulations.

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter. (53 Stat. 32.)

DERIVATION

Act May 28, 1938, ch. 289, § 62, 52 Stat. 480.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 62, 49 Stat. 1673.  
 1934—May 10, 1934, ch. 277, § 62, 48 Stat. 700.  
 1932—June 6, 1932, ch. 209, § 62, 47 Stat. 191.  
 1928—May 29, 1928, ch. 852, § 62, 45 Stat. 810.  
 1926—Feb. 26, 1926, ch. 27, § 1101, 44 Stat. 111.  
 1924—June 2, 1924, ch. 234, § 1001, 43 Stat. 339.  
 1921—Nov. 23, 1921, ch. 136, § 1303, 42 Stat. 309.  
 1919—Feb. 24, 1919, ch. 18, § 1309, 40 Stat. 1143.  
 1917—Oct. 3, 1917, ch. 63, § 1005, 40 Stat. 326.  
 1916—Sept. 8, 1916, ch. 463, § 212, 39 Stat. 780.

## § 63. Publication of statistics.

The Commissioner, with the approval of the Secretary, shall prepare and publish annually statistics reasonably available with respect to the operation of the income, war-profits and excess-profits tax laws, including classifications of taxpayers and of income, the amounts allowed as deductions, exemptions, and credits, and any other facts deemed pertinent and valuable. (53 Stat. 32.)

## DERIVATION

Act. Feb. 26, 1926, ch. 27, § 258, 44 Stat. 52.

## SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 258, 43 Stat. 293.  
 1921—Nov. 23, 1921, ch. 136, § 258, 42 Stat. 270.  
 1919—Feb. 24, 1919, ch. 18, § 258, 40 Stat. 1087.  
 1916—Sept. 8, 1916, ch. 463, § 21, 39 Stat. 771.

## § 64. Definitions.

For definitions of a general character, see section 3797. (53 Stat. 32.)

## SUBCHAPTER C.—SUPPLEMENTAL PROVISIONS

## SUPPLEMENT A.—RATES OF TAX

[Supplementary to Subchapter B, Part I]

## § 101. Exemptions from tax on corporations.

The following organizations shall be exempt from taxation under this chapter—

- (1) Labor, agricultural, or horticultural organizations;
- (2) Mutual savings banks not having a capital stock represented by shares;
- (3) Fraternal beneficiary societies, orders, or associations, (A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system; and (B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;
- (4) Domestic building and loan associations substantially all the business of which is confined to making loans to members; and cooperative banks without capital stock organized and operated for mutual purposes and without profit;
- (5) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual;
- (6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for

religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(7) Business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(8) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes;

(9) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder;

(10) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 per centum or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses;

(11) Farmers' or other mutual hail, cyclone, casualty, or fire insurance companies or associations (including interinsurers and reciprocal underwriters) the income of which is used or held for the purpose of paying losses or expenses;

(12) Farmers', fruit growers', or like associations organized and operated on a cooperative basis (a) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (b) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses. Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 per centum per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose. Such an association may market the products of nonmembers in an amount the

value of which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 per centum of the value of all its purchases. Business done for the United States or any of its agencies shall be disregarded in determining the right to exemption under this paragraph;

(13) Corporations organized by an association exempt under the provisions of paragraph (12), or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 per centum per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, upon dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose;

(14) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this chapter;

(15) Corporations organized under Act of Congress, if such corporations are instrumentalities of the United States and if, under such Act, as amended and supplemented, such corporations are exempt from Federal income taxes;

(16) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (A) no part of their net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (B) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;

(17) Teachers' retirement fund associations of a purely local character, if (A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and (B) the income consists solely of amounts received from public taxation, amounts received from assessments upon the teaching salaries of members, and income in respect of investments;

(18) Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if

the members thereof include (at the time of filing their returns) in their gross income their entire pro-rata shares, whether distributed or not, of the net income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

(19) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if (A) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and (B) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual. (53 Stat. 23; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 217, 53 Stat. 876.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 101, 52 Stat. 480.

#### 1939 AMENDMENT

Paragraph (19) was added by act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938, by § 217 (b) of said act.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 101, 49 Stat. 1673.

1934—May 10, 1934, ch. 277, § 101, 48 Stat. 700.

1932—June 6, 1932, ch. 209, § 103, 47 Stat. 198.

1928—May 29, 1928, ch. 852, § 103, 45 Stat. 812.

1926—Feb. 26, 1926, ch. 27, § 231, 44 Stat. 39.

1924—June 2, 1924, ch. 234, § 231, 43 Stat. 282.

1921—Nov. 23, 1921, ch. 136, § 231, 42 Stat. 253.

1919—Feb. 24, 1919, ch. 18, § 231, 40 Stat. 1076.

1916—Sept. 8, 1916, ch. 463, § 11, 39 Stat. 766.

1913—Oct. 3, 1913, ch. 16, § II, G, 38 Stat. 172.

#### CROSS REFERENCE

Services performed in employ of exempt organizations, inclusion in definition of employment under Title II of the Social Security Act, see section 409 of Title 42, The Public Health and Welfare.

#### § 102. Surtax on corporations improperly accumulating surplus—(a) Imposition of tax.

There shall be levied, collected, and paid for each taxable year (in addition to other taxes imposed by this chapter) upon the net income of every corporation (other than a personal holding company as defined in section 501 or a foreign personal holding company as defined in Supplement P) if such corporation, however created or organized, is formed or availed of for the purpose of preventing the imposition of the surtax upon its shareholders or the shareholders of any other corporation, through the medium of permitting earnings or profits to accumulate instead of being divided or distributed, a surtax equal to the sum of the following:

25 per centum of the amount of the undistributed section 102 net income not in excess of \$100,000 plus

35 per centum of the undistributed section 102 net income in excess of \$100,000.

#### (b) Prima facie evidence.

The fact that any corporation is a mere holding or investment company shall be prima facie evidence of a purpose to avoid surtax upon shareholders.

**(c) Evidence determinative of purpose.**

The fact that the earnings or profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid surtax upon shareholders unless the corporation by the clear preponderance of the evidence shall prove to the contrary.

**(d) Definitions.**

As used in this chapter—

**(1) Section 102 net income.**

The term "section 102 net income" means the net income, computed without the net operating loss deduction provided in section 23 (s), minus the sum of—

**(A) Taxes.**

Federal income, war-profits, and excess-profits taxes paid or accrued during the taxable year, to the extent not allowed as a deduction by section 23, but not including the tax imposed by this section or a corresponding section of a prior income-tax law.

**(B) Disallowed charitable, etc., contributions.**

Contributions or gifts payment of which is made within the taxable year, not otherwise allowed as a deduction, to or for the use of donees described in section 23 (o), for the purposes therein specified.

**(C) Disallowed losses.**

Losses from sales or exchanges of capital assets which are disallowed as a deduction by section 117 (d).

**(2) Undistributed section 102 net income.**

The term "undistributed section 102 net income" means the section 102 net income minus the basic surtax credit provided in section 27 (b), but the computation of such credit under section 27 (b) (1) shall be made without its reduction by the amount of the credit provided in section 26 (a), relating to interest on certain obligations of the United States and Government corporations.

**(e) Tax on personal holding companies.**

For surtax on personal holding companies, see section 500.

(53 Stat. 35; June 29, 1939, 10 p. m., E. S. T., ch. 247, title II, § 211 (f), 53 Stat. 868.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 102, 52 Stat. 483.

**1939 AMENDMENT**

Subsection (d), paragraph (1) was amended by act June 29, 1939, cited to text.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 102, 49 Stat. 1676, as amended by act Aug. 26, 1937, ch. 815, titles I, VI, §§ 2, 801, 50 Stat. 815, 830.

1934—May 10, 1934, ch. 277, § 102, 48 Stat. 702.

1932—June 6, 1932, ch. 209, § 104, 47 Stat. 195, as amended by act June 16, 1933, ch. 90, title 2, § 214, 48 Stat. 207.

1928—May 29, 1928, ch. 852, § 104, 45 Stat. 814.

1926—Feb. 26, 1926, ch. 27, § 220, 44 Stat. 34.

1924—June 2, 1924, ch. 234, § 220, 43 Stat. 277.

1921—Nov. 23, 1921, ch. 136, § 220, 42 Stat. 247.

1919—Feb. 24, 1919, ch. 18, § 220, 40 Stat. 1072.

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**CROSS REFERENCE**

Construction reserve fund deposits under Merchant Marine Act of 1936 as not constituting accumulation of earnings or profits, see section 1161 (f) of Title 46, Shipping.

**§ 103. Rates of tax on citizens and corporations of certain foreign countries.**

Whenever the President finds that, under the laws of any foreign country, citizens or corporations of the United States are being subjected to discriminatory or extraterritorial taxes, the President shall so proclaim and the rates of tax imposed by sections 11, 12, 13, 14, 201 (b), 204 (a), 207, 211 (a), 231 (a), and 362 shall, for the taxable year during which such proclamation is made and for each taxable year thereafter, be doubled in the case of each citizen and corporation of such foreign country; but the tax at such doubled rate shall be considered as imposed by sections 11, 12, 13, 14, 201 (b), 204 (a), 207, 211 (a), 231 (a), or 362, as the case may be. In no case shall this section operate to increase the taxes imposed by such sections (computed without regard to this section) to an amount in excess of 80 per centum of the net income of the taxpayer. Whenever the President finds that the laws of any foreign country with respect to which the President has made a proclamation under the preceding provisions of this section have been modified so that discriminatory and extraterritorial taxes applicable to citizens and corporations of the United States have been removed, he shall so proclaim, and the provisions of this section providing for doubled rates of tax shall not apply to any citizen or corporation of such foreign country with respect to any taxable year beginning after such proclamation is made. (53 Stat. 36.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 103, 52 Stat. 483.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 103, 49 Stat. 1677.

1934—May 10, 1934, ch. 277, § 103, 48 Stat. 703.

**§ 104. Banks and trust companies—(a) Definition.**

As used in this section the term "bank" means a bank or trust company incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia), of any State, or of any Territory, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted to national banks under section 11 (k) of the Federal Reserve Act, 38 Stat. 262 (U. S. C., Title 12, § 248k), as amended, and which is subject by law to supervision and examination by State, Territorial or Federal authority having supervision over banking institutions.

**(b) Rate of tax.**

Banks shall be subject to tax under section 13 or section 14 (b). (53 Stat. 36; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 202, 53 Stat. 865.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 104, 52 Stat. 484.

**1939 AMENDMENT**

Subsection (b) was amended by act June 29, 1939, cited to text, and amendment made applicable only with respect

to taxable years beginning after December 31, 1939, by § 229 of said act. Prior to said amendment subsection (b) read as follows:

"(b) *Rate of tax.* Banks shall be taxable under section 14 (d)."

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 104, 49 Stat. 1677.

### § 105. Sale of oil or gas properties.

In the case of a bona fide sale of any oil or gas property, or any interest therein, where the principal value of the property has been demonstrated by prospecting or exploration or discovery work done by the taxpayer, the portion of the tax imposed by section 12 attributable to such sale shall not exceed 30 per centum of the selling price of such property or interest. (53 Stat. 36.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 105, 52 Stat. 484.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 105, 49 Stat. 1678.

1932—June 6, 1932, ch. 209, § 102, 47 Stat. 192.

1928—May 29, 1928, ch. 852, § 102, 45 Stat. 812.

1926—Feb. 26, 1926, ch. 27, § 211, 44 Stat. 21.

1924—June 2, 1924, ch. 234, § 211, 43 Stat. 265.

### § 106. Claims against United States involving acquisition of property.

In the case of amounts (other than interest) received by a taxpayer from the United States with respect to a claim against the United States involving the acquisition of property and remaining unpaid for more than fifteen years, the portion of the tax imposed by section 12 attributable to such receipt shall not exceed 30 per centum of the amount (other than interest) so received. (53 Stat. 36.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 106, 52 Stat. 484.

### § 107. Compensation for services rendered for a period of 5 years or more.

In the case of compensation (a) received, for personal services rendered by an individual in his individual capacity, or as a member of a partnership, and covering a period of five calendar years or more from the beginning to the completion of such services, (b) paid (or not less than 95 per centum of which is paid) only on completion of such services, and (c) required to be included in gross income of such individual for any taxable year beginning after December 31, 1938, the tax attributable to such compensation shall not be greater than the aggregate of the taxes attributable to such compensation had it been received in equal portions in each of the years included in such period. (Added June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 220 (a), 53 Stat. 878.)

Section was made applicable to taxable years beginning after December 31, 1938, by § 220 (b) of act June 29, 1939, cited to text.

#### SUPPLEMENT B.—COMPUTATION OF NET INCOME

[Supplementary to Subchapter B, Part II]

### § 111. Determination of amount of, and recognition of, gain or loss—(a) Computation of gain or loss.

The gain from the sale or other disposition of property shall be the excess of the amount realized

therefrom over the adjusted basis provided in section 113 (b) for determining gain, and the loss shall be the excess of the adjusted basis provided in such section for determining loss over the amount realized.

#### (b) Amount realized.

The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received.

#### (c) Recognition of gain or loss.

In the case of a sale or exchange, the extent to which the gain or loss determined under this section shall be recognized for the purposes of this chapter, shall be determined under the provisions of section 112.

#### (d) Installment sales.

Nothing in this section shall be construed to prevent (in the case of property sold under contract providing for payment in installments) the taxation of that portion of any installment payment representing gain or profit in the year in which such payment is received. (53 Stat. 37.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 111, 52 Stat. 484.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 111, 49 Stat. 1678.

1934—May 10, 1934, ch. 277, § 111, 48 Stat. 703.

1932—June 6, 1932, ch. 209, § 111, 47 Stat. 195.

1928—May 29, 1928, ch. 852, § 111, 45 Stat. 815.

1926—Feb. 26, 1926, ch. 27, § 202, 44 Stat. 11.

1924—June 2, 1924, ch. 234, § 202, 43 Stat. 255.

#### CROSS REFERENCE

Recognition of gain or loss on transfer of obsolete vessels under Merchant Marine Act, section 1101 et seq. of Title 46, see section 1160 (e) of Title 46, Shipping.

### § 112. Recognition of gain or loss—(a) General rule.

Upon the sale or exchange of property the entire amount of the gain or loss, determined under section 111, shall be recognized, except as hereinafter provided in this section.

#### (b) Exchanges solely in kind—(1) Property held for productive use or investment.

No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment.

#### (2) Stock for stock of same corporation.

No gain or loss shall be recognized if common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation.

#### (3) Stock for stock on reorganization.

No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corpo-

ration or in another corporation a party to the reorganization.

**(4) Same—Gain of corporation.**

No gain or loss shall be recognized if a corporation a party to a reorganization exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

**(5) Transfer to corporation controlled by transferor.**

No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and immediately after the exchange such person or persons are in control of the corporation; but in the case of an exchange by two or more persons this paragraph shall apply only if the amount of the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange. Where the transferee assumes a liability of a transferor, or where the property of a transferor is transferred subject to a liability, then for the purpose only of determining whether the amount of stock or securities received by each of the transferors is in the proportion required by this paragraph, the amount of such liability (if under subsection (k) it is not to be considered as "other property or money") shall be considered as stock or securities received by such transferor.

**(6) Property received by corporation on complete liquidation of another.**

No gain or loss shall be recognized upon the receipt by a corporation of property distributed in complete liquidation of another corporation. For the purposes of this paragraph a distribution shall be considered to be in complete liquidation only if—

(A) the corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) possessing at least 80 per centum of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 per centum of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends), and was at no time on or after the date of the adoption of the plan of liquidation and until the receipt of the property the owner of a greater percentage of any class of stock than the percentage of such class owned at the time of the receipt of the property; and

(B) no distribution under the liquidation was made before the first day of the first taxable year of the corporation beginning after December 31, 1935; and either

(C) the distribution is by such other corporation in complete cancellation or redemption of all its stock, and the transfer of all the property occurs within the taxable year; in such case the adoption by the shareholders of the resolution under which is authorized the distribution of all the assets of such corporation in complete cancellation or redemption of all its stock, shall be considered an adoption of a plan of liquidation, even though no time for the

completion of the transfer of the property is specified in such resolution; or

(D) such distribution is one of a series of distributions by such other corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within three years from the close of the taxable year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under subparagraph (A) until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation.

If such transfer of all the property does not occur within the taxable year the Commissioner may require of the taxpayer such bond, or waiver of the statute of limitations on assessment and collection, or both, as he may deem necessary to insure, if the transfer of the property is not completed within such three-year period, or if the taxpayer does not continue qualified under subparagraph (A) until the completion of such transfer, the assessment and collection of all income, war-profits, and excess-profits taxes then imposed by law for such taxable year or subsequent taxable years, to the extent attributable to property so received. A distribution otherwise constituting a distribution in complete liquidation within the meaning of this paragraph shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for the purposes of this paragraph a transfer of property of such other corporation to the taxpayer shall not be considered as not constituting a distribution (or one of a series of distributions) in complete cancellation or redemption of all the stock of such other corporation, merely because the carrying out of the plan involves (i) the transfer under the plan to the taxpayer by such other corporation of property, not attributable to shares owned by the taxpayer, upon an exchange described in paragraph (4) of this subsection, and (ii) the complete cancellation or redemption under the plan, as a result of exchanges described in paragraph (3) of this subsection, of the shares not owned by the taxpayer.

**(8)<sup>1</sup> Exchanges and distributions in obedience to orders of Securities and Exchange Commission.**

In the case of any exchange or distribution described in section 371, no gain or loss shall be recognized to the extent specified in such section with respect to such exchange or distribution.

**(c) Gain from exchanges not solely in kind.**

(1) If an exchange would be within the provisions of subsection (b) (1), (2), (3), or (5) of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraph to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess

of the sum of such money and the fair market value of such other property.

(2) If a distribution made in pursuance of a plan of reorganization is within the provisions of paragraph (1) of this subsection but has the effect of the distribution of a taxable dividend, then there shall be taxed as a dividend to each distributee such an amount of the gain recognized under paragraph (1) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after February 28, 1913. The remainder, if any, of the gain recognized under paragraph (1) shall be taxed as a gain from the exchange of property.

**(d) Same—Gain of corporation.**

If an exchange would be within the provisions of subsection (b) (4) of this section if it were not for the fact that the property received in exchange consists not only of stock or securities permitted by such paragraph to be received without the recognition of gain, but also of other property or money, then—

(1) If the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

(2) If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not so distributed.

**(e) Loss from exchanges not solely in kind.**

If an exchange would be within the provisions of subsection (b) (1) to (5), inclusive, of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraph to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

**(f) Involuntary conversions.**

If property (as a result of its destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation, or the threat or imminence thereof) is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the Commissioner with the approval of the Secretary, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, no gain or loss shall be recognized. If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended.

**(g) Definition of reorganization.**

As used in this section and section 113—

(1) The term "reorganization" means (A) a statutory merger or consolidation, or (B) the acquisition by one corporation, in exchange solely for all or a part of its voting stock, of at least 80 per centum of the voting stock and at least 80 per centum of the total number of shares of all other classes of stock of another corporation, or (C) the acquisition by one corporation, in exchange solely for all or a part of its voting stock, of substantially all the properties of another corporation, but in determining whether the exchange is solely for voting stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded, or (D) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its shareholders or both are in control of the corporation to which the assets are transferred, or (E) a recapitalization, or (F) a mere change in identity, form, or place of organization, however effected.

(2) The term "a party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another.

**(h) Definition of control.**

As used in this section the term "control" means the ownership of stock possessing at least 80 per centum of the total combined voting power of all classes of stock entitled to vote and at least 80 per centum of the total number of shares of all other classes of stock of the corporation.

**(i) Foreign corporations.**

In determining the extent to which gain shall be recognized in the case of any of the exchanges described in subsection (b) (3), (4), (5), or (6), or described in so much of subsection (c) as refers to subsection (b) (3) or (5), or described in subsection (d), a foreign corporation shall not be considered as a corporation unless, prior to such exchange, it has been established to the satisfaction of the Commissioner that such exchange is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes.

**(j) Installment obligations.**

For nonrecognition of gain or loss in the case of installment obligations, see section 44 (d).

**(k) Assumption of liability not recognized.**

Where upon an exchange the taxpayer receives as part of the consideration property which would be permitted by subsection (b) (4) or (5) of this section to be received without the recognition of gain if it were the sole consideration, and as part of the consideration another party to the exchange assumes a liability of the taxpayer or acquires from the taxpayer property subject to a liability, such assumption or acquisition shall not be considered as "other property or money" received by the taxpayer within the meaning of subsection (c), (d), or (e) of this section and shall not prevent the exchange from being within the provisions of subsection (b) (4) or (5); except that if, taking into consideration the nature of the liability and the circumstances in the light of which



the arrangement for the assumption or acquisition was made, it appears that the principal purpose of the taxpayer with respect to the assumption or acquisition was a purpose to avoid Federal income tax on the exchange, or, if not such purpose, was not a bona fide business purpose, such assumption or acquisition (in the amount of the liability) shall, for the purposes of this section, be considered as money received by the taxpayer upon the exchange. In any suit or proceeding where the burden is on the taxpayer to prove that such assumption or acquisition is not to be considered as money received by the taxpayer, such burden shall not be considered as sustained unless the taxpayer sustains such burden by the clear preponderance of the evidence. (53 Stat. 37; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 213 (a)-(c), 53 Stat. 870.)

<sup>1</sup> So in original. Probably should read "(7)".

#### DERIVATION

Act May 28, 1938, ch. 289, § 112, 52 Stat. 485, as amended June 29, 1939, ch. 247, title II, § 213 (g) (h), 53 Stat. 871, 872.

#### 1939 AMENDMENT

Subsection (b), paragraph (5), last sentence was added by act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938, by § 213 (e) of said act.

Subsection (g), paragraph (1), was amended by act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938, by § 213 (e) of said act.

Subsection (k) was added by act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938, by § 213 (e) of said act.

Act Aug 10, 1939, ch. 666, title IX, § 910, 53 Stat. 1402, provided as follows:

"(a) The provisions of section 213 (f) of the Revenue Act of 1939 (set out in note under this section) shall apply without regard to the exception therein provided, if (1) the taxpayer in the determination referred to in such exception is a corporation (2) such determination is by a decision of the Board of Tax Appeals or of a court, (3) under the law applicable to the taxable year in which the exchange occurred, the basis of the property, acquired upon the exchange from the taxpayer by the party assuming a liability of the taxpayer or acquiring the property subject to a liability, is the cost to such party of the property acquired upon the exchange, and (4) the taxpayer in pursuance of the plan of reorganization effected a complete liquidation immediately subsequent to the exchange.

"(b) No overpayment determined to have been made for any taxable year by reason of the provisions of paragraph (a) of this section shall be refunded or credited unless a claim for refund is filed within the period of limitations otherwise provided by law for filing a claim for refund for such taxable year, or within one year from the date of enactment of the Revenue Act of 1939 (approved June 29, 1939, 10 p. m. E. S. T.), whichever of such periods expires the later. No interest shall be allowed or paid on the amount of any overpayment refunded or credited by reason of the provisions of this section."

Act June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 213 (f)-(h), 53 Stat. 871, provided as follows:

"(f) ASSUMPTION OF LIABILITY NOT RECOGNIZED UNDER PRIOR ACTS.—

"(1) Where upon an exchange occurring in a taxable year ending after December 31, 1923, and beginning before January 1, 1939, the taxpayer received as part of the consideration property which would be permitted by subsection (b) (4) or (5) of section 112 of the Revenue Act of 1938, or the corresponding provisions of the Revenue Act of 1924 or subsequent revenue Acts, to be received without the recognition of gain if it were the sole consideration, and as part of the consideration another party to the

exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, such assumption or acquisition shall not be considered as 'other property or money' received by the taxpayer within the meaning of subsection (c), (d), or (e) of section 112 of the Revenue Act of 1938, or the corresponding provisions of the Revenue Act of 1924 or subsequent revenue Acts, and shall not prevent the exchange from being within the provisions of subsection (b) (4) or (5) of section 112 of the Revenue Act of 1938, or the corresponding provisions of the Revenue Act of 1924 or subsequent revenue Acts; except that if, in the determination of the tax liability of such taxpayer for the taxable year in which the exchange occurred, by a decision of the Board of Tax Appeals or of a court which became final before the ninetieth day after the date of enactment of the Revenue Act of 1939, or by a closing agreement, gain was recognized to such taxpayer by reason of such assumption or acquisition of property, then for the purposes of section 112 of the Revenue Act of 1938, and corresponding provisions of the Revenue Act of 1924 or subsequent revenue Acts, such assumption or acquisition (in the amount of the liability considered in computing the gain) shall be considered as money received by the taxpayer upon the exchange.

"(2) Paragraph (1) shall be effective with respect to the Revenue Act of 1924 and subsequent revenue Acts as of the date of enactment of each such Act.

"(g) DEFINITION OF REORGANIZATION UNDER PRIOR ACTS.—

"(1) Section 112 (g) (1) of the Revenue Acts of 1938, 1936, and 1934 are amended to read as follows:

"(1) The term 'reorganization' means (A) a statutory merger or consolidation, or (B) the acquisition by one corporation, in exchange solely for all or a part of its voting stock, of substantially all the properties of another corporation, but in determining whether the exchange is solely for voting stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded; or the acquisition by one corporation in exchange solely for all or a part of its voting stock of at least 80 per centum of the voting stock and at least 80 per centum of the total number of shares of all other classes of stock of another corporation, or (C) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its shareholders or both are in control of the corporation to which the assets are transferred, or (D) a recapitalization, or (E) a mere change in identity, form, or place of organization, however effected."

"(2) The amendments made by paragraph (1) to the respective Acts amended shall be effective as to each of such Acts as of the date of enactment of such Act.

"(h) SUBSTANTIALLY PROPORTIONATE INTERESTS UNDER PRIOR ACTS.—

"(1) Section 112 (b) (5) of the Revenue Acts of 1938, 1936, 1934, 1932, and 1928, and section 203 (b) (4) of the Revenue Acts of 1926 and 1924 are amended by inserting at the end thereof the following: 'Where the transferee assumes a liability of a transferor, or where the property of a transferor is transferred subject to a liability, then for the purpose only of determining whether the amount of stock or securities received by each of the transferors is in the proportion required by this paragraph, the amount of such liability (if under section 213 of the Revenue Act of 1939 it is not considered as "other property or money") shall be considered as stock or securities received by such transferor. If, as the result of a determination of the tax liability of the taxpayer for the taxable year in which the exchange occurred, by a decision of the Board of Tax Appeals or of a court which became final before the ninetieth day after the date of the enactment of the Revenue Act of 1939, or by a closing agreement, the treatment of the amount of such liability was different from the treatment which would result from the application of the preceding sentence, such sentence shall not apply and the result of such determination shall be deemed proper.'

"(2) The amendments made by paragraph (1) to the respective Acts amended shall be effective as to each of such Acts as of the date of enactment of such Act."

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 112, 49 Stat. 1678, as amended by act June 29, 1939, ch. 247, title II, § 213 (g) (h), 53 Stat. 871, 872.

1934—May 10, 1934, ch. 277, § 112, 48 Stat. 704, as amended by acts Aug. 30, 1935, ch. 829, § 110, 49 Stat. 1020; June 29, 1939, ch. 247, title II, § 213 (g) (h), 53 Stat. 871, 872.

1932—June 6, 1932, ch. 209, § 112, 47 Stat. 196, as amended by act June 29, 1939, ch. 247, title II, § 213 (h), 53 Stat. 872.

1928—May 29, 1928, ch. 852, § 112, 45 Stat. 816, as amended by act June 29, 1939, ch. 247, title II, § 213 (h), 53 Stat. 872.

1926—Feb. 26, 1926, ch. 27, § 203, 44 Stat. 12, as amended by act June 29, 1939, ch. 247, title II, § 213 (h), 53 Stat. 872.

1924—June 2, 1924, ch. 234, § 203, 43 Stat. 256, as amended by act June 29, 1939, ch. 247, title II, § 213 (h), 53 Stat. 872.

1921—Nov. 23, 1921, ch. 136, § 202, 42 Stat. 229, as amended by act Mar. 4, 1923, ch. 294, §§ 1, 2, 42 Stat. 1569

1919—Feb. 24, 1919, ch. 18, § 202, 40 Stat. 1060.

### § 113. Adjusted basis for determining gain or loss— (a) Basis (unadjusted) of property.

The basis of property shall be the cost of such property; except that—

#### (1) Inventory value.

If the property should have been included in the last inventory, the basis shall be the last inventory value thereof.

#### (2) Gifts after December 31, 1920.

If the property was acquired by gift after December 31, 1920, the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that for the purpose of determining loss the basis shall be the basis so determined or the fair market value of the property at the time of the gift, whichever is lower. If the facts necessary to determine the basis in the hands of the donor or the last preceding owner are unknown to the donee, the Commissioner shall, if possible, obtain such facts from such donor or last preceding owner, or any other person cognizant thereof. If the Commissioner finds it impossible to obtain such facts, the basis in the hands of such donor or last preceding owner shall be the fair market value of such property as found by the Commissioner as of the date or approximate date at which, according to the best information that the Commissioner is able to obtain, such property was acquired by such donor or last preceding owner.

#### (3) Transfer in trust after December 31, 1920.

If the property was acquired after December 31, 1920, by a transfer in trust (other than by a transfer in trust by a bequest or devise) the basis shall be the same as it would be in the hands of the grantor, increased in the amount of gain or decreased in the amount of loss recognized to the grantor upon such transfer under the law applicable to the year in which the transfer was made.

#### (4) Gift or transfer in trust before January 1, 1921.

If the property was acquired by gift or transfer in trust on or before December 31, 1920, the basis shall be the fair market value of such property at the time of such acquisition.

#### (5) Property transmitted at death.

If the property was acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent, the basis shall be the fair market value of such property at the time of such acquisition. In the case of property transferred in trust to pay the income for life to or upon the order or direction of the grantor, with the right reserved to the grantor at all times prior to his death to revoke the trust, the basis of such property in the hands of the persons entitled under the terms of the trust instrument to the property after the grantor's death shall, after such death, be the same as if the trust instrument had been a will executed on the day of the grantor's death. For the purpose of this paragraph property passing without full and adequate consideration under a general power of appointment exercised by will shall be deemed to be property passing from the individual exercising such power by bequest or devise. If the property was acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent, and if the decedent died after August 26, 1937, and if the property consists of stock or securities of a foreign corporation, which with respect to its taxable year next preceding the date of the decedent's death was, under the law applicable to such year, a foreign personal holding company, then the basis shall be the fair market value of such property at the time of such acquisition or the basis in the hands of the decedent, whichever is lower.

#### (6) Tax-free exchanges generally.

If the property was acquired, after February 28, 1913, upon an exchange described in section 112 (b) to (e), inclusive, the basis (except as provided in paragraphs (15), (17), or (18) of this subsection) shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange under the law applicable to the year in which the exchange was made. If the property so acquired consisted in part of the type of property permitted by section 112 (b) to be received without the recognition of gain or loss, and in part of other property, the basis provided in this paragraph shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange. Where as part of the consideration to the taxpayer another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, such assumption or acquisition (in the amount of the liability) shall, for the purposes of this paragraph, be considered as money received by the taxpayer upon the exchange. This paragraph shall not apply to property acquired by a corporation by the issuance of its stock or securities as the consideration in whole or in part for the transfer of the property to it.

**(7) Transfers to corporation.**

If the property was acquired—

(A) after December 31, 1917, and in a taxable year beginning before January 1, 1936, by a corporation in connection with a reorganization, and immediately after the transfer an interest or control in such property of 50 per centum or more remained in the same persons or any of them, or

(B) in a taxable year beginning after December 31, 1935, by a corporation in connection with a reorganization,

then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made. This paragraph shall not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the issuance of stock or securities of the transferee as the consideration in whole or in part for the transfer.

**(8) Property acquired by issuance of stock or as paid-in surplus.**

If the property was acquired after December 31, 1920, by a corporation—

(A) by the issuance of its stock or securities in connection with a transaction described in section 112 (b) (5) (including, also, cases where part of the consideration for the transfer of such property to the corporation was property or money, in addition to such stock or securities), or

(B) as paid-in surplus or as a contribution to capital, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made.

**(9) Involuntary conversion.**

If the property was acquired, after February 28, 1913, as the result of a compulsory or involuntary conversion described in section 112 (f), the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made.

**(10) Wash sales of stock.**

If the property consists of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under section 118 of this chapter or corresponding provisions of prior income tax laws, relating to wash sales) of the loss from the sale or other disposition of substantially identical stock or securities, then the basis shall be the basis of the stock or securities so sold or disposed of, increased or decreased, as the case may

be, by the difference, if any, between the price at which the property was acquired and the price at which such substantially identical stock or securities were sold or otherwise disposed of.

**(11) Property acquired during affiliation.**

In the case of property acquired by a corporation, during a period of affiliation, from a corporation with which it was affiliated, the basis of such property, after such period of affiliation, shall be determined, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, without regard to intercompany transactions in respect of which gain or loss was not recognized. For the purposes of this paragraph, the term "period of affiliation" means the period during which such corporations were affiliated (determined in accordance with the law applicable thereto) but does not include any taxable year beginning on or after January 1, 1922, unless a consolidated return was made, nor any taxable year after the taxable year 1928. The basis in case of property acquired by a corporation during any period, in the taxable year 1929 or any subsequent taxable year, in respect of which a consolidated return is made by such corporation under section 141 of this chapter or the Revenue Act of 1928, 45 Stat. 831, or the Revenue Act of 1932, 47 Stat. 213, or the Revenue Act of 1934, 48 Stat. 720, or the Revenue Act of 1936, 49 Stat. 1698, shall be determined in accordance with regulations prescribed under section 141 (b) of this chapter or the Revenue Act of 1928 or the Revenue Act of 1932 or the Revenue Act of 1934 or the Revenue Act of 1936. The basis in the case of property held by a corporation during any period, in the taxable year 1929 or any subsequent taxable year, in respect of which a consolidated return is made by such corporation under section 141 of this chapter or the Revenue Act of 1928 or the Revenue Act of 1932 or the Revenue Act of 1934 or the Revenue Act of 1936, shall be adjusted in respect of any items relating to such period, in accordance with regulations prescribed under section 141 (b) of this chapter or the Revenue Act of 1928 or the Revenue Act of 1932 or the Revenue Act of 1934 or the Revenue Act of 1936, applicable to such period.

**(12) Basis established by Revenue Act of 1932.**

If the property was acquired, after February 28, 1913, in any taxable year beginning prior to January 1, 1934, and the basis thereof, for the purposes of the Revenue Act of 1932, 47 Stat. 199, was prescribed by section 113 (a) (6), (7), or (9) of such Act, then for the purposes of this chapter the basis shall be the same as the basis therein prescribed in the Revenue Act of 1932.

**(13) Partnerships.**

If the property was acquired, after February 28, 1913, by a partnership and the basis is not otherwise determined under any other paragraph of this subsection, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made. If the property was distributed in kind by a partnership to any partner, the basis of

such property in the hands of the partner shall be such part of the basis in his hands of his partnership interest as is properly allocable to such property.

**(14) Property acquired before March 1, 1913.**

In the case of property acquired before March 1, 1913, if the basis otherwise determined under this subsection, adjusted (for the period prior to March 1, 1913) as provided in subsection (b), is less than the fair market value of the property as of March 1, 1913, then the basis for determining gain shall be such fair market value. In determining the fair market value of stock in a corporation as of March 1, 1913, due regard shall be given to the fair market value of the assets of the corporation as of that date.

**(15) Property received by a corporation on complete liquidation of another.**

If the property was received by a corporation upon a distribution in complete liquidation of another corporation within the meaning of section 112 (b) (6), then the basis shall be the same as it would be in the hands of the transferor. The basis of property with respect to which election has been made in pursuance of the last sentence of section 113 (a) (15) of the Revenue Act of 1936, as amended, shall, in the hands of the corporation making such election, be the basis prescribed in the Revenue Act of 1934, as amended.

**(16) Basis established by Revenue Act of 1934.**

If the property was acquired, after February 28, 1913, in any taxable year beginning prior to January 1, 1936, and the basis thereof, for the purposes of the Revenue Act of 1934 was prescribed by section 113 (a) (6), (7), or (8) of such Act, then for the purposes of this chapter the basis shall be the same as the basis therein prescribed in the Revenue Act of 1934.

**(17) Property acquired in connection with exchanges and distributions in obedience to certain orders of Securities and Exchange Commission.**

If the property was acquired in any manner described in section 372, the basis shall be that prescribed in such section with respect to such property.

**(18) Property received in certain corporate liquidations.**

If the property was acquired by a shareholder in the liquidation of a corporation in cancellation or redemption of stock with respect to which gain was realized, but with respect to which, as the result of an election made by him under paragraph (7) of section 112 (b), of the Revenue Act of 1938, 52 Stat. 487, the extent to which gain was recognized was determined under such paragraph, then the basis shall be the same as the basis of such stock cancelled or redeemed in the liquidation, decreased in the amount of any money received by him, and increased in the amount of gain recognized to him.

**(19) Property acquired by corporate stock distribution.**

(A) If the property was acquired by a shareholder in a corporation and consists of stock in such corporation, or rights to acquire such stock, acquired by him after February 28, 1913, in a distribution by such corporation (hereinafter in this paragraph called "new stock"), or consists of stock in respect of which such distribution was made

(hereinafter in this paragraph called "old stock") and

(i) the new stock was acquired in a taxable year beginning before January 1, 1936; or

(ii) the new stock was acquired in a taxable year beginning after December 31, 1935, and its distribution did not constitute income to the shareholder within the meaning of the Sixteenth Amendment to the Constitution;

then the basis of the new stock and of the old stock, respectively, shall, in the shareholder's hands, be determined by allocating between the old stock and the new stock the adjusted basis of the old stock; such allocation to be made under regulations which shall be prescribed by the Commissioner with the approval of the Secretary.

(B) Where the new stock consisted of rights to acquire stock and such rights were sold in a taxable year beginning before January 1, 1939, and there was included in the gross income for such year the entire amount of the proceeds of such sale, then, if before the date of the enactment of the Revenue Act of 1939 the taxpayer has not asserted (by claim for a refund or credit or otherwise) that any part of the proceeds of the sale of such new stock should be excluded from gross income for the year of its sale, the basis of the old stock shall be determined without regard to subparagraph (A); and no part of the proceeds of the sale of such new stock shall ever be excluded from the gross income of the year of such sale.

(C) Subparagraph (A) shall not apply if the new stock was acquired in a taxable year beginning before January 1, 1936, and there was included, as a dividend, in gross income for such year an amount on account of such stock, and after such inclusion such amount was not (before the date of the enactment of the Revenue Act of 1939) excluded from gross income for such year.

(D) Subparagraph (A) shall not apply if the new stock or the old stock was sold or otherwise disposed of in a taxable year beginning prior to January 1, 1936, and the basis (determined by a decision of a court or the Board of Tax Appeals, or a closing agreement, and the decision or agreement became final before the ninetieth day after the date of the enactment of the Revenue Act of 1939) for determining gain or loss on such sale or other disposition was ascertained by a method other than that of allocation of the basis of the old stock.

**(b) Adjusted basis.**

The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under subsection (a), adjusted as hereinafter provided.

**(1) General rule.**

Proper adjustment in respect of the property shall in all cases be made—

(A) For expenditures, receipts, losses, or other items, properly chargeable to capital account, including taxes and other carrying charges on unimproved and unproductive real property, but no such adjustment shall be made for taxes or other carrying

charges for which deductions have been taken by the taxpayer in determining net income for the taxable year or prior taxable years;

(B) in respect of any period since February 28, 1913, for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent allowed (but not less than the amount allowable) under this chapter or prior income tax laws. Where for any taxable year prior to the taxable year 1932 the depletion allowance was based on discovery value or a percentage of income, then the adjustment for depletion for such year shall be based on the depletion which would have been allowable for such year if computed without reference to discovery value or a percentage of income;

(C) in respect of any period prior to March 1, 1913, for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent sustained;

(D) in the case of stock (to the extent not provided for in the foregoing subparagraphs) for the amount of distributions previously made which, under the law applicable to the year in which the distribution was made, either were tax-free or were applicable in reduction of basis (not including distributions made by a corporation, which was classified as a personal service corporation under the provisions of the Revenue Act of 1918, Feb. 24, 1919, ch. 18, 40 Stat. 1057, or the Revenue Act of 1921, Nov. 23, 1921, ch. 136, 42 Stat. 227, out of its earnings or profits which were taxable in accordance with the provisions of section 218 of the Revenue Act of 1918 or 1921);

(E) to the extent provided in section 337 (f) in the case of the stock of United States shareholders in a foreign personal holding company; and

(F) to the extent provided in section 28 (h) in the case of amounts specified in a shareholder's consent made under section 28.

(G) in the case of property pledged to the Commodity Credit Corporation, to the extent of the amount received as a loan from the Commodity Credit Corporation and treated by the taxpayer as income for the year in which received pursuant to section 123 of this chapter, and to the extent of any deficiency on such loan with respect to which the taxpayer has been relieved from liability.

### (2) Substituted basis.

The term "substituted basis" as used in this subsection means a basis determined under any provision of subsection (a) of this section or under any corresponding provision of a prior income tax law, providing that the basis shall be determined—

(A) by reference to the basis in the hands of a transferor, donor, or grantor, or

(B) by reference to other property held at any time by the person for whom the basis is to be determined.

Whenever it appears that the basis of property in the hands of the taxpayer is a substituted basis, then the adjustments provided in paragraph (1) of this subsection shall be made after first making in respect of such substituted basis proper adjustments of a similar nature in respect of the period during which the property was held by the transferor, donor, or grantor, or during which the other property was

held by the person for whom the basis is to be determined. A similar rule shall be applied in the case of a series of substituted bases.

### (3) Discharge of indebtedness.

Where in the case of a corporation any amount is excluded from gross income under section 22 (b) (9) on account of the discharge of indebtedness the whole or a part of the amount so excluded from gross income shall be applied in reduction of the basis of any property held (whether before or after the time of the discharge) by the taxpayer during any portion of the taxable year in which such discharge occurred. The amount to be so applied (not in excess of the amount so excluded from gross income, reduced by the amount of any deduction disallowed under section 22 (b) (9)) and the particular properties to which the reduction shall be allocated, shall be determined under regulations (prescribed by the Commissioner with the approval of the Secretary) in effect at the time of the filing of the consent by the taxpayer referred to in section 22 (b) (9). The reduction shall be made as of the first day of the taxable year in which the discharge occurred except in the case of property not held by the taxpayer on such first day, in which case it shall take effect as of the time the holding of the taxpayer began. (53 Stat. 40; June 29, 1939, 10 p. m., E. S. T., ch. 247, title II, §§ 213 (d), 214 (a), 215 (b), 223 (b), 53 Stat. 871, 872, 879.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 113, 52 Stat. 490, as amended by act June 29, 1939, ch. 247, title II, § 213 (1), 53 Stat. 872.

#### 1939 AMENDMENT

Subsection (a), paragraph (6), next to last sentence was added by act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938, by § 213 (e) of said act.

Subsection (a), paragraph (19), was added by act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938, by § 214 (d) of said act.

Subsection (b), paragraph (1), subparagraph (G) was added by act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938, by § 223 (c) of said act.

Subsection (b), paragraph (3), was added by act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938, by § 215 (c) of said act.

Act June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 213 (1), 53 Stat. 872, provided as follows:

"(1) BASIS UNDER PRIOR ACTS.—

"(1) Section 113 (a) (6) of the Revenue Acts of 1938, 1936, 1934, 1932, and 1928, and section 204 (a) (6) of the Revenue Acts of 1926 and 1924 are amended by inserting before the last sentence thereof the following: 'Where as part of the consideration to the taxpayer another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, such assumption or acquisition (in the amount of the liability) shall, for the purposes of this paragraph, be considered as money received by the taxpayer upon the exchange.'

"(2) The amendments made by paragraph (1) to the respective Acts amended shall be effective as to each of such Acts as of the date of enactment of such Act."

Act June 29, 1939, 10 p. m., E. S. T., ch. 247, title II, § 214 (e) and (f), 53 Stat. 874, provided as follows:

"(e) BASIS UNDER PRIOR ACTS.—The following rules shall be applied, for the purposes of the Revenue Act of 1938 or any prior revenue Act as if such rules were a part of each such Act when it was enacted, in determining the basis

of property acquired by a shareholder in a corporation which consists of stock in such corporation, or rights to acquire such stock, acquired by him after February 28, 1913, in a distribution by such corporation (hereinafter in this subsection called 'new stock'), or consisting of stock in respect of which such distribution was made (hereinafter in this subsection called 'old stock') if the new stock was acquired in a taxable year beginning before January 1, 1936, or acquired in a taxable year beginning after December 31, 1935, and its distribution did not constitute income to the shareholder within the meaning of the Sixteenth Amendment to the Constitution:

"(1) The basis of the new stock and of the old stock, respectively, shall, in the shareholder's hands, be determined by allocating between the old stock and the new stock the adjusted basis of the old stock; such allocation to be made under regulations which shall be prescribed by the Commissioner with the approval of the Secretary.

"(2) Where the new stock consisted of rights to acquire stock and such rights were sold and there was included in the gross income for the taxable year of the sale the entire amount of the proceeds of such sale, then, if before the date of the enactment of this Act the taxpayer has not asserted (by claim for a refund or credit or otherwise) that any part of the proceeds of the sale of such new stock should be excluded from gross income for the year of its sale, the basis of the old stock shall be determined without regard to paragraph (1) and no part of the proceeds of the sale of such new stock shall ever be excluded from the gross income of the year of such sale.

"(3) Paragraph (1) shall not apply if the new stock was acquired in a taxable year beginning before January 1, 1936, and there was included, as a dividend, in gross income for such year an amount on account of such stock, and after such inclusion such amount was not (before the date of the enactment of this Act) excluded from gross income for such year.

"(4) Paragraph (1) shall not apply if the new stock or the old stock was sold or otherwise disposed of in a taxable year beginning before January 1, 1936, and the basis (determined by a decision of a court or the Board of Tax Appeals, or a closing agreement, and the decision or agreement became final before the ninetieth day after the date of the enactment of this Act) for determining gain or loss on such sale or other disposition was ascertained by a method other than that of allocation of the basis of the old stock.

"(f) DETERMINATION UNDER PRIOR ACTS OF PERIOD FOR WHICH HELD.—For the purposes of the Revenue Act of 1938 or any prior revenue Act, in determining the period for which the taxpayer has held stock or rights to acquire stock, received upon a distribution, if the basis of such stock or rights is determined under section 214 (e) (1) of the Revenue Act of 1939, there shall (under regulations which shall be prescribed by the Commissioner with the approval of the secretary) be included the period for which he held the stock in the distributing corporation prior to the receipt of such stock or rights upon such distribution. This subsection shall be applicable as if it were a part of each such Act when such Act was enacted."

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 113, 49 Stat. 1682, as amended by act June 29, 1939, ch. 247, title II, § 213 (1), 53 Stat. 872.

1934—May 10, 1934, ch. 277, § 113, 48 Stat. 706, as amended by act June 29, 1939, ch. 247, title II, § 213 (1), 53 Stat. 872.

1932—June 6, 1932, ch. 209, § 113, 47 Stat. 198, as amended by act June 29, 1939, ch. 247, title II, § 213 (1), 53 Stat. 872.

1928—May 29, 1928, ch. 852, § 113, 45 Stat. 818, as amended by act June 29, 1939, ch. 247, title II, § 213 (1), 53 Stat. 872.

1926—Feb. 26, 1926, ch. 27, § 204, 44 Stat. 14, as amended by act June 29, 1939, ch. 247, title II, § 213 (1), 53 Stat. 872.

1924—June 2, 1924, ch. 234, § 204, 43 Stat. 258, as amended by act June 29, 1939, ch. 247, title II, § 213 (1), 53 Stat. 872.

1921—Nov. 28, 1921, ch. 136, § 202, 42 Stat. 229, as amended by act Mar. 4, 1923, ch. 294, §§ 1, 2, 42 Stat. 1560.

1919—Feb. 24, 1919, ch. 18, § 202, 40 Stat. 1060.

1916—Sept. 8, 1916, ch. 463, §§ 2, 10, 39 Stat. 757, 765, as amended by act Oct. 3, 1917, ch. 63, §§ 1200, 1206, 40 Stat. 329, 333.

#### CROSS REFERENCE

Basis for determining gain or loss on new vessel acquired in exchange for obsolete vessel under Merchant Marine Act, section 1101 et seq. of Title 46, see section 1160 (e) of Title 46, Shipping.

#### § 114. Basis for depreciation and depletion—(a) Basis for depreciation.

The basis upon which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 113 (b) for the purpose of determining the gain upon the sale or other disposition of such property.

#### (b) Basis for depletion—(1) General rule.

The basis upon which depletion is to be allowed in respect of any property shall be the adjusted basis provided in section 113 (b) for the purpose of determining the gain upon the sale or other disposition of such property, except as provided in paragraphs (2), (3), and (4) of this subsection.

#### (2) Discovery value in case of mines.

In the case of mines (other than metal, coal, or sulphur mines) discovered by the taxpayer after February 28, 1913, the basis for depletion shall be the fair market value of the property at the date of discovery or within thirty days thereafter, if such mines were not acquired as the result of purchase of a proven tract or lease, and if the fair market value of the property is materially disproportionate to the cost. The depletion allowance under section 23 (m) based on discovery value provided in this paragraph shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property upon which the discovery was made, except that in no case shall the depletion allowance under section 23 (m) be less than it would be if computed without reference to discovery value. Discoveries shall include minerals in commercial quantities contained within a vein or deposit discovered in an existing mine or mining tract by the taxpayer after February 28, 1913, if the vein or deposit thus discovered was not merely the uninterrupted extension of a continuing commercial vein or deposit already known to exist, and if the discovered minerals are of sufficient value and quantity that they could be separately mined and marketed at a profit.

#### (3) Percentage depletion for oil and gas wells.

In the case of oil and gas wells the allowance for depletion under section 23 (m) shall be 27½ per centum of the gross income from the property during the taxable year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance under section 23 (m) be less than it would be if computed without reference to this paragraph.



**(4) Percentage depletion for coal and metal mines and sulphur.**

The allowance for depletion under section 23 (m) shall be, in the case of coal mines, 5 per centum, in the case of metal mines, 15 per centum, and, in the case of sulphur mines or deposits, 23 per centum, of the gross income from the property during the taxable year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property. A taxpayer making his first return under this chapter in respect of a property shall state whether he elects to have the depletion allowance for such property for the taxable year for which the return is made computed with or without regard to percentage depletion, and the depletion allowance in respect of such property for such year shall be computed according to the election thus made. If the taxpayer fails to make such statement in the return, the depletion allowance for such property for such year shall be computed without reference to percentage depletion. The method, determined as above, of computing the depletion allowance shall be applied in the case of the property for all taxable years in which it is in the hands of such taxpayer, or of any other person if the basis of the property (for determining gain) in his hands is, under section 113, determined by reference to the basis in the hands of such taxpayer, either directly or through one or more substituted bases, as defined in that section. The above right of election shall be subject to the qualification that this paragraph shall, for the purpose of determining whether the method of computing the depletion allowance follows the property, be considered a continuation of section 114 (b) (4) of the Revenue Act of 1934, 48 Stat. 710, and the Revenue Act of 1936, 49 Stat. 1686, and the Revenue Act of 1938, 52 Stat. 494, and as giving no new election in cases where either of such sections would, if applied, give no new election. (53 Stat. 45.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 114, 52 Stat. 494.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 114, 49 Stat. 1686.

1934—May 10, 1934, ch. 277, § 114, 48 Stat. 710.

1932—June 6, 1932, ch. 209, § 114, 47 Stat. 202.

1928—May 29, 1928, ch. 852, § 114, 45 Stat. 821.

1926—Feb. 26, 1926, ch. 27, § 204, 44 Stat. 14, as amended by act June 29, 1939, ch. 247, title II, § 213 (1), 53 Stat. 872.

1924—June 2, 1924, ch. 234, § 204, 43 Stat. 258, as amended by act June 29, 1939, ch. 247, title II, § 213 (1), 53 Stat. 872.

**§ 115. Distributions by corporations—(a) Definition of dividend.**

The term "dividend" when used in this chapter (except in section 203 (a) (3) and section 207 (c) (1), relating to insurance companies) means any distribution made by a corporation to its shareholders, whether in money or in other property, (1) out of its earnings or profits accumulated after February 28, 1913, or (2) out of the earnings or profits of the taxable year (computed as of the close of the taxable

year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made.

**(b) Source of distributions.**

For the purposes of this chapter every distribution is made out of earnings or profits to the extent thereof, and from the most recently accumulated earnings or profits. Any earnings or profits accumulated, or increase in value of property accrued, before March 1, 1913, may be distributed exempt from tax, after the earnings and profits accumulated after February 28, 1913, have been distributed, but any such tax-free distribution shall be applied against and reduce the adjusted basis of the stock provided in section 113.

**(c) Distributions in liquidation.**

Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock, and amounts distributed in partial liquidation of a corporation shall be treated as in part or full payment in exchange for the stock. The gain or loss to the distributee resulting from such exchange shall be determined under section 111, but shall be recognized only to the extent provided in section 112. Despite the provisions of section 117, the gain so recognized shall be considered as a short-term capital gain, except in the case of amounts distributed in complete liquidation. For the purpose of the preceding sentence, "complete liquidation" includes any one of a series of distributions made by a corporation in complete cancellation or redemption of all of its stock in accordance with a bona fide plan of liquidation and under which the transfer of the property under the liquidation is to be completed within a time specified in the plan, not exceeding, from the close of the taxable year during which is made the first of the series of distributions under the plan, (1) three years, if the first of such series of distributions is made in a taxable year beginning after December 31, 1937, or (2) two years, if the first of such series of distributions was made in a taxable year beginning before January 1, 1938. In the case of amounts distributed (whether before January 1, 1939, or on or after such date) in partial liquidation (other than a distribution to which the provisions of subsection (h) of this section are applicable) the part of such distribution which is properly chargeable to capital account shall not be considered a distribution of earnings or profits. If any distribution in complete liquidation (including any one of a series of distributions made by the corporation in complete cancellation or redemption of all its stock) is made by a foreign corporation which with respect to any taxable year beginning on or before, and ending after, August 26, 1937, was a foreign personal holding company, and with respect to which a United States group (as defined in section 331 (a) (2)) existed after August 26, 1937, and before January 1, 1938, then, despite the foregoing provisions of this subsection, the gain recognized resulting from such distribution shall be considered as a short-term capital gain—

(1) Unless such liquidation is completed before July 1, 1938; or



(2) Unless (if it is established to the satisfaction of the Commissioner by evidence submitted before July 1, 1938, that due to the laws of the foreign country in which such corporation is incorporated, or for other reason, it is or will be impossible to complete the liquidation of such company before such date) the liquidation is completed on or before such date as the Commissioner may find reasonable, but not later than December 31, 1938.

**(d) Other distributions from capital.**

If any distribution made by a corporation to its shareholders is not out of increase in value of property accrued before March 1, 1913, and is not a dividend, then the amount of such distribution shall be applied against and reduce the adjusted basis of the stock provided in section 113, and if in excess of such basis, such excess shall be taxable in the same manner as a gain from the sale or exchange of property. This subsection shall not apply to a distribution in partial or complete liquidation or to a distribution which, under subsection (f) (1), is not treated as a dividend, whether or not otherwise a dividend.

**(e) Distributions by personal service corporations.**

Any distribution made by a corporation, which was classified as a personal service corporation under the provisions of the Revenue Act of 1918 or the Revenue Act of 1921, out of its earnings or profits which were taxable in accordance with the provisions of section 218 of the Revenue Act of 1918, 40 Stat. 1070, or section 218 of the Revenue Act of 1921, 42 Stat. 245, shall be exempt from tax to the distributees.

**(f) Stock dividends—(1) General rule.**

A distribution made by a corporation to its shareholders in its stock or in rights to acquire its stock shall not be treated as a dividend to the extent that it does not constitute income to the shareholder within the meaning of the Sixteenth Amendment to the Constitution.

**(2) Election of shareholders as to medium of payment.**

Whenever a distribution by a corporation is, at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either (A) in its stock or in rights to acquire its stock, of a class which if distributed without election would be exempt from tax under paragraph (1), or (B) in money or any other property (including its stock or in rights to acquire its stock, of a class which if distributed without election would not be exempt from tax under paragraph (1)), then the distribution shall constitute a taxable dividend in the hands of all shareholders, regardless of the medium in which paid.

**(g) Redemption of stock.**

If a corporation cancels or redeems its stock (whether or not such stock was issued as a stock dividend) at such time and in such manner as to make the distribution and cancellation or redemption in whole or in part essentially equivalent to the distribution of a taxable dividend, the amount so distributed in redemption or cancellation of the stock, to the extent that it represents a distribution

of earnings or profits accumulated after February 28, 1913, shall be treated as a taxable dividend.

**(h) Effect on earnings and profits of distributions of stock.**

The distribution (whether before January 1, 1939, or on or after such date) to a distributee by or on behalf of a corporation of its stock or securities, of stock or securities in another corporation, or of property or money, shall not be considered a distribution of earnings or profits of any corporation—

(1) if no gain to such distributee from the receipt of such stock or securities, property or money, was recognized by law, or

(2) if the distribution was not subject to tax in the hands of such distributee because it did not constitute income to him within the meaning of the Sixteenth Amendment to the Constitution or because exempt to him under section 115 (f) of the Revenue Act of 1934, 48 Stat. 712, or a corresponding provision of a prior Revenue Act.

As used in this subsection the term "stock or securities" includes rights to acquire stock or securities.

**(i) Definition of partial liquidation.**

As used in this section the term "amounts distributed in partial liquidation" means a distribution by a corporation in complete cancellation or redemption of a part of its stock, or one of a series of distributions in complete cancellation or redemption of all or a portion of its stock.

**(j) Valuation of dividend.**

If the whole or any part of a dividend is paid to a shareholder in any medium other than money the property received other than money shall be included in gross income at its fair market value at the time as of which it becomes income to the shareholder.

**(k) Consent distributions.**

For taxability as dividends of amounts agreed to be included in gross income by shareholders' consents, see section 28.

**(l) Effect on earnings and profits of gain or loss and of receipt of tax-free distributions.**

The gain or loss realized from the sale or other disposition (after February 28, 1913) of property by a corporation—

(1) for the purpose of the computation of earnings and profits of the corporation, shall be determined, except as provided in paragraph (2), by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain, except that no regard shall be had to the value of the property as of March 1, 1913; but

(2) for the purpose of the computation of earnings and profits of the corporation for any period beginning after February 28, 1913, shall be determined by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain.

Gain or loss so realized shall increase or decrease the earnings and profits to, but not beyond, the extent to which such a realized gain or loss was recognized in computing net income under the law

applicable to the year in which such sale or disposition was made. Where in determining the adjusted basis used in computing such realized gain or loss the adjustment to the basis differs from the adjustment proper for the purpose of determining earnings or profits, then the latter adjustment shall be used in determining the increase or decrease above provided. Where a corporation receives (after February 28, 1913) a distribution from a second corporation which (under the law applicable to the year in which the distribution was made) was not a taxable dividend to the shareholders of the second corporation, the amount of such distribution shall not increase the earnings and profits of the first corporation in the following cases:

(1) No such increase shall be made in respect of the part of such distribution which (under such law) is directly applied in reduction of the basis of the stock in respect of which the distribution was made.

(2) No such increase shall be made if (under such law) the distribution causes the basis of the stock in respect of which the distribution was made to be allocated between such stock and the property received.

(m) **Earnings and profits**—Increase in value accrued before March 1, 1913.

(1) If any increase or decrease in the earnings or profits for any period beginning after February 28, 1913, with respect to any matter would be different had the adjusted basis of the property involved been determined without regard to its March 1, 1913, value, then, except as provided in paragraph (2), an increase (properly reflecting such difference) shall be made in that part of the earnings and profits consisting of increase in value of property accrued before March 1, 1913.

(2) If the application of subsection (l) to a sale or other disposition after February 28, 1913, results in a loss which is to be applied in decrease of earnings and profits for any period beginning after February 28, 1913, then, notwithstanding subsection (l) and in lieu of the rule provided in paragraph (1) of this subsection, the amount of such loss so to be applied shall be reduced by the amount, if any, by which the adjusted basis of the property used in determining the loss, exceeds the adjusted basis computed without regard to the value of the property on March 1, 1913, and if such amount so applied in reduction of the decrease exceeds such loss, the excess over such loss shall increase that part of the earnings and profits consisting of increase in value of property accrued before March 1, 1913. (53 Stat. 46; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 214 (b), 53 Stat. 873; Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title V, § 501 (a) (b), 54 Stat. 1004.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 115, 52 Stat. 496.

#### 1940 AMENDMENT

Subsections (l) and (m) were added by act October 8, 1940, cited to text, applicable to taxable years beginning after December 31, 1938, by section 501 (b) of said act.

Section 501 (c) of said act provided as follows:

"(c) **UNDER PRIOR ACTS**—For the purposes of the Revenue Act of 1938 or any prior Revenue Act the amendments made to the Internal Revenue Code by subsection (a) of

this section shall be effective as if they were a part of each such Revenue Act on the date of its enactment. Nothing in this subsection shall affect the tax liability of any taxpayer for any year which, on September 20, 1940, was pending before, or was theretofore determined by, the Board of Tax Appeals, or any court of the United States."

#### 1939 AMENDMENT

Subsection (d) was amended by act June 29, 1939, cited to credit, and made applicable to taxable years beginning after December 31, 1938, by § 214 (d) of said act.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 115, 49 Stat. 1687, as amended by act Aug. 26, 1937, ch. 815, title II, § 205, 50 Stat. 825.

1934—May 10, 1934, ch. 277, § 115, 48 Stat. 711.

1932—June 6, 1932, ch. 209, § 115, 47 Stat. 203.

1928—May 29, 1928, ch. 852, § 115, 45 Stat. 822.

1926—Feb. 26, 1926, ch. 27, § 201, 44 Stat. 10.

1924—June 2, 1924, ch. 234, § 201, 43 Stat. 254.

1921—Nov. 23, 1921, ch. 136, § 201, 42 Stat. 228.

1919—Feb. 24, 1919, ch. 18, § 201, 40 Stat. 1059.

1916—Sept. 8, 1916, ch. 463, § 31, as added by act Oct. 3, 1917, ch. 63, § 1211, 40 Stat. 371.

1916—Sept. 8, 1916, ch. 463, §§ 2, 10, 39 Stat. 757, 765, as amended by act Oct. 3, 1917, ch. 63, §§ 1200, 1206, 40 Stat. 329, 333.

#### § 116. Exclusions from gross income.

In addition to the items specified in section 22 (b), the following items shall not be included in gross income and shall be exempt from taxation under this chapter:

(a) **Earned income from sources without United States.**

In the case of an individual citizen of the United States, a bona fide nonresident of the United States for more than six months during the taxable year, amounts received from sources without the United States (except amounts paid by the United States or any agency thereof) if such amounts would constitute earned income as defined in section 25 (a) if received from sources within the United States; but such individual shall not be allowed as a deduction from his gross income any deductions properly allocable to or chargeable against amounts excluded from gross income under this subsection.

(b) **Repealed.** Apr. 12, 1939, ch. 59, title I, § 2, 53 Stat. 575.

(c) **Income of foreign governments.**

The income of foreign governments received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments, or from interest on deposits in banks in the United States of moneys belonging to such foreign governments, or from any other source within the United States.

(d) **Income of States, municipalities, etc.**

Income derived from any public utility or the exercise of any essential governmental function and accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, or income accruing to the government of any possession of the United States, or any political subdivision thereof.

Whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, prior to September 8, 1916, entered in good faith into a contract with any person, the

object and purpose of which is to acquire, construct, operate, or maintain a public utility—

(1) If by the terms of such contract the tax imposed by this chapter is to be paid out of the proceeds from the operation of such public utility, prior to any division of such proceeds between the person and the State, Territory, political subdivision, or the District of Columbia, and if, but for the imposition of the tax imposed by this chapter, a part of such proceeds for the taxable year would accrue directly to or for the use of such State, Territory, political subdivision, or the District of Columbia, then a tax upon the net income from the operation of such public utility shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this chapter, but there shall be refunded to such State, Territory, political subdivision, or the District of Columbia (under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary) an amount which bears the same relation to the amount of the tax as the amount which (but for the imposition of the tax imposed by this chapter) would have accrued directly to or for the use of such State, Territory, political subdivision, or the District of Columbia, bears to the amount of the net income from the operation of such public utility for such taxable year.

(2) If by the terms of such contract no part of the proceeds from the operation of the public utility for the taxable year would, irrespective of the tax imposed by this chapter, accrue directly to or for the use of such State, Territory, political subdivision, or the District of Columbia, then the tax upon the net income of such person from the operation of such public utility shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this chapter.

**(e) Bridges to be acquired by State or political subdivision.**

Whenever any State or political subdivision thereof, in pursuance of a contract to which it is not a party entered into before May 29, 1928, is to acquire a bridge—

(1) If by the terms of such contract the tax imposed by this chapter is to be paid out of the proceeds from the operation of such bridge prior to any division of such proceeds, and if, but for the imposition of the tax imposed by this chapter, a part of such proceeds for the taxable year would accrue directly to or for the use of or would be applied for the benefit of such State or political subdivision, then a tax upon the net income from the operation of such bridge shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this chapter, but there shall be refunded to such State or political subdivision (under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary) an amount which bears the same relation to the amount of the tax as the amount which (but for the imposition of the tax imposed by this chapter) would have accrued directly to or for the use of or would be applied for the benefit of such State or political subdivision, bears to the amount of the net income from the operation of such bridge

for such taxable year. No such refund shall be made unless the entire amount of the refund is to be applied in part payment for the acquisition of such bridge.

(2) If by the terms of such contract no part of the proceeds from the operation of the bridge for the taxable year would, irrespective of the tax imposed by this chapter, accrue directly to or for the use of or be applied for the benefit of such State or political subdivision, then the tax upon the net income from the operation of such bridge shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this chapter.

**(f) Dividend from "China Trade Act" corporation.**

In the case of a person, amounts distributed as dividends to or for his benefit by a corporation organized under the China Trade Act, 1922, 42 Stat. 849 (U. S. C., Title 15, ch. 4), if, at the time of such distribution, he is a resident of China, and the equitable right to the income of the shares of stock of the corporation is in good faith vested in him.

**(g) Shipowners' protection and indemnity associations.**

The receipts of shipowners' mutual protection and indemnity associations not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder; but such corporations shall be subject as other persons to the tax upon their net income from interest, dividends, and rents.

**(h) Compensation of employees of foreign governments—(1) Rule for exclusion.**

Wages, fees, or salary of an employee of a foreign government (including a consular or other officer, or a nondiplomatic representative) received as compensation for official services to such government—

(A) If such employee is not a citizen of the United States; and

(B) If the services are of a character similar to those performed by employees of the Government of the United States in foreign countries; and

(C) If the foreign government whose employee is claiming exemption grants an equivalent exemption to employees of the Government of the United States performing similar services in such foreign country.

**(2) Certificate by Secretary of State.**

The Secretary of State shall certify to the Secretary of the Treasury the names of the foreign countries which grant an equivalent exemption to the employees of the Government of the United States performing services in such foreign countries, and the character of the services performed by employees of the Government of the United States in foreign countries.

**(i) Treasury bills.**

For exemption from taxation of gain derived from the sale or other disposition of Treasury bills, issued after June 17, 1930, under the second Liberty bond act, as amended, see act of June 17, 1930, ch. 512, 46 Stat. 775 (U. S. C., Title 31, § 754).

(53 Stat. 48; Apr. 12, 1939, ch. 59, § 2, 53 Stat. 575.)

**REPEAL**

Subdivision (b) relating to teachers in Alaska and Hawaii was repealed by act April 12, 1939, cited to text.

## DERIVATION

Act May 28, 1938, ch. 289, § 116, 52 Stat. 498.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 116, 49 Stat. 1689.

1934—May 10, 1934, ch. 277, § 116, 48 Stat. 712, as amended by act Aug. 27, 1935, ch. 767, § 1, 49 Stat. 908.

1932—June 6, 1932, ch. 209, § 116, 47 Stat. 204.

1928—May 29, 1928, ch. 852, § 116, 45 Stat. 823.

1926—Feb. 26, 1926, ch. 27, § 213, 44 Stat. 23.

1924—June 2, 1924, ch. 234, § 213, 43 Stat. 267, as amended by act Feb. 26, 1925, ch. 345, § 12, 43 Stat. 997.

1921—Nov. 23, 1921, ch. 136, § 213, 42 Stat. 237, as amended by act Sept. 19, 1922, ch. 346, § 26, 42 Stat. 856.

1919—Feb. 24, 1919, ch. 18, § 213, 40 Stat. 1065.

Various exemptions were contained in act Sept. 8, 1916, ch. 463, § 4, 39 Stat. 758, as amended by act Oct. 3, 1917, ch. 63, § 1200, 40 Stat. 329; act Sept. 8, 1916, ch. 463, §§ 11b, 30, 39 Stat. 767, as amended by act Oct. 3, 1917, ch. 63, § 1211, 40 Stat. 336; act Oct. 3, 1913, ch. 16, § II, subd. B, G, 38 Stat. 167, 172.

### § 117. Capital gains and losses—(a) Definitions.

As used in this chapter—

#### (1) Capital assets.

The term "capital assets" means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 23 (1);

#### (2) Short-term capital gain.

The term "short-term capital gain" means gain from the sale or exchange of a capital asset held for not more than 18 months, if and to the extent such gain is taken into account in computing net income;

#### (3) Short-term capital loss.

The term "short-term capital loss" means loss from the sale or exchange of a capital asset held for not more than 18 months, if and to the extent such loss is taken into account in computing net income;

#### (4) Long-term capital gain.

The term "long-term capital gain" means gain from the sale or exchange of a capital asset held for more than 18 months, if and to the extent such gain is taken into account in computing net income;

#### (5) Long-term capital loss.

The term "long-term capital loss" means loss from the sale or exchange of a capital asset held for more than 18 months, if and to the extent such loss is taken into account in computing net income;

#### (6) Net short-term capital gain.

The term "net short-term capital gain" means the excess of short-term capital gains for the taxable year over the sum of (A) short-term capital losses for the taxable year, plus (B) the net short-term capital loss of the preceding taxable year (if beginning after December 31, 1937), to the extent brought forward to the taxable year under subsection (e);

#### (7) Net short-term capital loss.

The term "net short-term capital loss" means the excess of short-term capital losses for the taxable year over the short-term capital gains for such year;

#### (8) Net long-term capital gain.

The term "net long-term capital gain" means the excess of long-term capital gains for the taxable year over the long-term capital losses for such year;

#### (9) Net long-term capital loss.

The term "net long-term capital loss" means the excess of long-term capital losses for the taxable year over the long-term capital gains for such year.

#### (b) Percentage taken into account.

In the case of a taxpayer, other than a corporation, only the following percentages of the gain or loss recognized upon the sale or exchange of a capital asset shall be taken into account in computing net income:

100 per centum if the capital asset has been held for not more than 18 months;

66⅔ per centum if the capital asset has been held for more than 18 months but not for more than 24 months;

50 per centum if the capital asset has been held for more than 24 months.

#### (c) Alternative taxes—(1) In case of net long-term capital gain.

If for any taxable year a taxpayer (other than a corporation) derives a net long-term capital gain, there shall be levied, collected, and paid, in lieu of the tax imposed by sections 11 and 12, a tax determined as follows, if and only if such tax is less than the tax imposed by such sections:

A partial tax shall first be computed upon the net income reduced by the amount of the net long-term capital gain, at the rates and in the manner as if this subsection had not been enacted, and the total tax shall be the partial tax plus 30 per centum of the net long-term capital gain.

#### (2) In case of net long-term capital loss.

If for any taxable year a taxpayer (other than a corporation) sustains a net long-term capital loss, there shall be levied, collected, and paid, in lieu of the tax imposed by sections 11 and 12, a tax determined as follows, if and only if such tax is greater than the tax imposed by such sections:

A partial tax shall first be computed upon the net income increased by the amount of the net long-term capital loss, at the rates and in the manner as if this subsection had not been enacted, and the total tax shall be the partial tax minus 30 per centum of the net long-term capital loss.

#### (d) Limitation on capital losses.

Long-term capital losses shall be allowed, but short-term capital losses shall be allowed only to the extent of short-term capital gains.

#### (e) Net short-term capital loss carry-over.

If any taxpayer sustains in any taxable year, beginning after December 31, 1937, in the case of a taxpayer other than a corporation, or beginning after December 31, 1939, in the case of a corporation, a net short-term capital loss, such loss (in an amount not in excess of the net income for such year) shall be

treated in the succeeding taxable year as a short-term capital loss, except that it shall not be included in computing the net short-term capital loss for such year.

**(f) Retirement of bonds, etc.**

For the purposes of this chapter, amounts received by the holder upon the retirement of bonds, debentures, notes, or certificates or other evidences of indebtedness issued by any corporation (including those issued by a government or political subdivision thereof), with interest coupons or in registered form, shall be considered as amounts received in exchange therefor.

**(g) Gains and losses from short sales, etc.**

For the purpose of this chapter—

(1) gains or losses from short sales of property shall be considered as gains or losses from sales or exchanges of capital assets; and

(2) gains or losses attributable to the failure to exercise privileges or options to buy or sell property shall be considered as short-term capital gains or losses.

**(h) Determination of period for which held.**

For the purpose of this section—

(1) In determining the period for which the taxpayer has held property received on an exchange there shall be included the period for which he held the property exchanged, if under the provisions of section 113, the property received has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as the property exchanged.

(2) In determining the period for which the taxpayer has held property however acquired there shall be included the period for which such property was held by any other person, if under the provisions of section 113, such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of such other person.

(3) In determining the period for which the taxpayer has held stock or securities received upon a distribution where no gain was recognized to the distributee under the provisions of section 112 (g) of the Revenue Act of 1928, 45 Stat. 818, or the Revenue Act of 1932, 48 Stat. 705, or under the provisions of section 371 (c) of the Revenue Act of 1938 or this chapter, there shall be included the period for which he held the stock or securities in the distributing corporation prior to the receipt of the stock or securities upon such distribution.

(4) In determining the period for which the taxpayer has held stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under section 118 of this chapter or section 118 of the Revenue Act of 1928, 45 Stat. 826, or the Revenue Act of 1932, 47 Stat. 208, or the Revenue Act of 1934, 48 Stat. 715, or the Revenue Act of 1936, 49 Stat. 1692, or the Revenue Act of 1938, 52 Stat. 503, relating to wash sales) of the loss from the sale or other disposition of substantially identical stock or securities, there shall be included the period for which he held the stock or

securities the loss from the sale or other disposition of which was not deductible.

(5) In determining the period for which the taxpayer has held stock or rights to acquire stock received upon a distribution, if the basis of such stock or rights is determined under section 113 (a) (19) (A), there shall (under regulations prescribed by the Commissioner with the approval of the Secretary) be included the period for which he held the stock in the distributing corporation prior to the receipt of such stock or rights upon such distribution. (53 Stat. 50; June 29, 1939, 10 p. m., E. S. T., ch. 247, title II, §§ 212 (a), (b), 214 (c), 53 Stat. 869, 873.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 117, 52 Stat. 500.

**1939 AMENDMENT**

Subsection (d) and (e) were amended by act June 29, 1939, cited to text, and amendment made applicable only with respect to taxable years beginning after December 31, 1939 by § 229 of said act.

Prior to said amendment subsections read as follows:  
**"(d) Limitation on capital losses.—(1) Corporations.** In the case of a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of \$2,000 plus the gains from such sales or exchanges. If a bank or trust company incorporated under the laws of the United States (including laws relating to the District of Columbia) or of any State or Territory, a substantial part of whose business is the receipt of deposits, sells any bond, debenture, note, or certificate or other evidence of indebtedness issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, any loss resulting from such sale (except such portion of the loss as does not exceed the amount, if any, by which the adjusted basis of such instrument exceeds the par or face value thereof) shall not be subject to the foregoing limitation and shall not be included in determining the applicability of such limitation to other losses.

**"(2) Other taxpayers.** In the case of a taxpayer other than a corporation, short-term capital losses shall be allowed only to the extent of short-term capital gains.

**"(e) Net short-term capital loss carry-over.** If any taxpayer (other than a corporation) sustains in any taxable year beginning after December 31, 1937, a net short-term capital loss, such loss (in an amount not in excess of the net income for such year) shall be treated in the succeeding taxable year as a short-term capital loss, except that it shall not be included in computing the net short-term capital loss for such year."

Subsection (h), paragraph (5) was added by act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938, by § 214 (d) of said act.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 117, 49 Stat. 1691.  
 1934—May 10, 1934, ch. 277, § 117, 48 Stat. 714.  
 1932—June 6, 1932, ch. 209, § 101, 47 Stat. 191.  
 1928—May 29, 1928, ch. 852, § 101, 45 Stat. 811.  
 1926—Feb. 26, 1926, ch. 27, § 208, 44 Stat. 19.  
 1924—June 2, 1924, ch. 234, § 208, 43 Stat. 262.  
 1921—Nov. 23, 1921, ch. 136, § 208, 42 Stat. 232.

**§ 118. Loss from wash sales of stock or securities.**

(a) In the case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities where it appears that, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date, the taxpayer has acquired (by purchase or by an exchange upon which the entire amount of gain or loss was recognized by law), or has entered into a contract or option so to acquire, substantially identical stock or securities, then no deduction for the

loss shall be allowed under section 23 (e) (2); nor shall such deduction be allowed under section 23 (f) unless the claim is made by a corporation, a dealer in stocks or securities, and with respect to a transaction made in the ordinary course of its business.

(b) If the amount of stock or securities acquired (or covered by the contract or option to acquire) is less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the loss from the sale or other disposition of which is not deductible shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary.

(c) If the amount of stock or securities acquired (or covered by the contract or option to acquire) is not less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility of the loss shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary. (53 Stat. 53.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 118, 52 Stat. 503.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 118, 49 Stat. 1692.

1934—May 10, 1934, ch. 277, § 118, 48 Stat. 715.

1932—June 6, 1932, ch. 209, § 118, 47 Stat. 208.

1928—May 29, 1928, ch. 852, § 118, 45 Stat. 828.

1926—Feb. 26, 1926, ch. 27, §§ 214, 234, 44 Stat. 26, 41.

1924—June 2, 1924, ch. 234, §§ 214, 234, 43 Stat. 269, 283.

#### § 119. Income from sources within United States—(a) Gross income from sources in United States.

The following items of gross income shall be treated as income from sources within the United States:

##### (1) Interest.

Interest from the United States, any Territory, any political subdivision of a Territory, or the District of Columbia, and interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, not including—

(A) interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States and not having an office or place of business therein, or

(B) interest received from a resident alien individual, a resident foreign corporation, or a domestic corporation, when it is shown to the satisfaction of the Commissioner that less than 20 per centum of the gross income of such resident payor or domestic corporation has been derived from sources within the United States, as determined under the provisions of this section, for the three-year period ending with the close of the taxable year of such payor preceding the payment of such interest, or for such part of such period as may be applicable, or

(C) income derived by a foreign central bank of issue from bankers' acceptances;

##### (2) Dividends.

The amount received as dividends—

(A) from a domestic corporation other than a corporation entitled to the benefits of section 251, and other than a corporation less than 20 per centum

of whose gross income is shown to the satisfaction of the Commissioner to have been derived from sources within the United States, as determined under the provisions of this section, for the three-year period ending with the close of the taxable year of such corporation preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence), or

(B) from a foreign corporation unless less than 50 per centum of the gross income of such foreign corporation for the three-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under the provisions of this section; but only in an amount which bears the same ratio to such dividends as the gross income of the corporation for such period derived from sources within the United States bears to its gross income from all sources; but dividends from a foreign corporation shall, for the purposes of section 131 (relating to foreign tax credit), be treated as income from sources without the United States;

##### (3) Personal services.

Compensation for labor or personal services performed in the United States, but in the case of a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of ninety days during the taxable year, compensation received by such an individual (if such compensation does not exceed \$3,000 in the aggregate) for labor or services performed as an employee of or under a contract with a nonresident alien, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, shall not be deemed to be income from sources within the United States;

##### (4) Rentals and royalties.

Rentals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using in the United States, patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like property; and

##### (5) Sale of real property.

Gains, profits, and income from the sale of real property located in the United States.

##### (6) Sale of personal property.

For gains, profits, and income from the sale of personal property, see subsection (e).

##### (b) Net income from sources in United States.

From the items of gross income specified in subsection (a) of this section there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as net income from sources within the United States.

**(c) Gross income from sources without United States.**

The following items of gross income shall be treated as income from sources without the United States:

(1) Interest other than that derived from sources within the United States as provided in subsection (a) (1) of this section;

(2) Dividends other than those derived from sources within the United States as provided in subsection (a) (2) of this section;

(3) Compensation for labor or personal services performed without the United States;

(4) Rentals or royalties from property located without the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using without the United States, patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like properties; and

(5) Gains, profits, and income from the sale of real property located without the United States.

**(d) Net income from sources without United States.**

From the items of gross income specified in subsection (c) of this section there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto, and a ratable part of any expenses, losses, or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be treated in full as net income from sources without the United States.

**(e) Income from sources partly within and partly without United States.**

Items of gross income, expenses, losses and deductions, other than those specified in subsections (a) and (c) of this section, shall be allocated or apportioned to sources within or without the United States, under rules and regulations prescribed by the Commissioner with the approval of the Secretary. Where items of gross income are separately allocated to sources within the United States, there shall be deducted (for the purpose of computing the net income therefrom) the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of other expenses, losses or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as net income from sources within the United States. In the case of gross income derived from sources partly within and partly without the United States, the net income may first be computed by deducting the expenses, losses, or other deductions apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which can not definitely be allocated to some item or class of gross income; and the portion of such net income attributable to sources within the United States may be determined by processes or formulas of general apportionment prescribed by the Commissioner with the approval of the Secretary. Gains, profits, and income from—

(1) transportation or other services rendered partly within and partly without the United States, or

(2) from the sale of personal property produced (in whole or in part) by the taxpayer within and sold without the United States, or produced (in whole or in part) by the taxpayer without and sold within the United States,

shall be treated as derived partly from sources within and partly from sources without the United States. Gains, profits and income derived from the purchase of personal property within and its sale without the United States or from the purchase of personal property without and its sale within the United States, shall be treated as derived entirely from sources within the country in which sold, except that gains, profits, and income derived from the purchase of personal property within a possession of the United States and its sale within the United States shall be treated as derived partly from sources within and partly from sources without the United States.

**(f) Definitions.**

As used in this section the words "sale" or "sold" include "exchange" or "exchanged"; and the word "produced" includes "created", "fabricated", "manufactured", "extracted", "processed", "cured", or "aged". (53 Stat. 53.)

**DERIVATION**

Act of May 28, 1938, ch. 289, § 119, 52 Stat. 503.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 119, 49 Stat. 1693.

1934—May 10, 1934, ch. 277, § 119, 48 Stat. 716

1932—June 6, 1932, ch. 209, § 119, 47 Stat. 208.

1928—May 29, 1928, ch. 852, § 119, 45 Stat. 826.

1926—Feb. 26, 1926, ch. 27, §§ 217, 233, 44 Stat. 30, 41.

1924—June 2, 1924, ch. 234, §§ 217, 233, 43 Stat. 273, 283.

1921—Nov. 23, 1921, ch. 136, §§ 217, 233, 42 Stat. 243, 254

1919—Feb. 24, 1919, ch. 18, §§ 217, 233, 40 Stat. 1069, 1077.

**§ 120. Unlimited deduction for charitable and other contributions.**

In the case of an individual if in the taxable year and in each of the ten preceding taxable years the amount of the contributions or gifts described in section 23 (c) (or corresponding provisions of prior revenue Acts) plus the amount of income, war-profits, or excess-profits taxes paid during such year in respect of preceding taxable years, exceeds 90 per centum of the taxpayer's net income for each such year, as computed without the benefit of the applicable subsection, then the 15 per centum limit imposed by section 23 (c) shall not be applicable. (53 Stat. 56.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 120, 52 Stat. 506.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 120, 49 Stat. 1695.

1934—May 10, 1934, ch. 277, § 120, 48 Stat. 718.

1932—June 6, 1932, ch. 209, § 120, 47 Stat. 210.

1928—May 29, 1928, ch. 852, § 120, 45 Stat. 828.

1926—Feb. 26, 1926, ch. 27, § 214, 44 Stat. 26.

1924—June 2, 1924, ch. 234, § 214, 43 Stat. 269.

**§ 121. Deduction of dividends paid on certain preferred stock of certain corporations.**

In computing the net income of any national banking association, or of any bank or trust company organized under the laws of any State, Territory, possession of the United States, or the Canal Zone,



or of any other banking corporation engaged in the business of industrial banking and under the supervision of a State banking department or of the Comptroller of the Currency, or of any incorporated domestic insurance company, there shall be allowed as a deduction from gross income, in addition to deductions otherwise provided for in this chapter, any dividend (not including any distribution in liquidation) paid, within the taxable year, to the United States or to any instrumentality thereof exempt from Federal income taxes, on the preferred stock of the corporation owned by the United States or such instrumentality. The amount allowable as a deduction under this section shall be deducted from the basic surtax credit otherwise computed under section 27 (b). (53 Stat. 56.)

## DERIVATION

Act May 28, 1938, ch. 289, § 121, 52 Stat. 506.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 121, 49 Stat. 1696.

1934—May 10, 1934, ch. 277, § 121, as added Aug. 27, 1935, ch. 767, § 3, 49 Stat. 908.

### § 122. Net operating loss deduction—(a) Definition of net operating loss.

As used in this section, the term "net operating loss" means the excess of the deductions allowed by this chapter over the gross income, with the exceptions and limitations provided in subsection (d).

#### (b) Amount of carry-over.

The term "net operating loss carry-over" means in the case of any taxable year the sum of:

(1) The amount, if any, of the net operating loss for the first preceding taxable year; and

(2) The amount of the net operating loss, if any, for the second preceding taxable year reduced by the excess, if any, of the net income (computed with the exceptions and limitations provided in subsection (d) (1), (2), (3), and (4)) for the first preceding taxable year over the net operating loss for the third preceding taxable year.

#### (c) Amount of net operating loss deduction.

The amount of the net operating loss deduction shall be the amount of the net operating loss carry-over reduced by the amount, if any, by which the net income (computed with the exceptions and limitations provided in subsection (d) (1), (2), (3), and (4)) exceeds, in the case of a taxpayer other than a corporation, the net income (computed without such deduction), or, in the case of a corporation, the normal-tax net income (computed without such deduction);

#### (d) Exceptions and limitations.

The exceptions and limitations referred to in subsections (a), (b), and (c) shall be as follows:

(1) The deduction for depletion shall not exceed the amount which would be allowable if computed without reference to discovery value or to percentage depletion under section 114 (b) (2), (3), or (4);

(2) There shall be included in computing gross income the amount of interest received which is wholly exempt from the taxes imposed by this chapter, decreased by the amount of interest paid or accrued which is not allowed as a deduction by section 23 (b), relating to interest on indebtedness incurred or con-

tinued to purchase or carry certain tax-exempt obligations;

(3) No net operating loss deduction shall be allowed;

(4) Long-term capital gains and long-term capital losses shall be taken into account without regard to the provisions of section 117 (b). As so computed the amount deductible on account of long-term capital losses shall not exceed the amount includible on account of the long-term capital gains, and the amount deductible on account of short-term capital losses shall not exceed the amount includible on account of the short-term capital gains;

(5) Deductions otherwise allowed by law not attributable to the operation of a trade or business regularly carried on by the taxpayer shall (in the case of a taxpayer other than a corporation) be allowed only to the extent of the amount of the gross income not derived from such trade or business. For the purposes of this paragraph deductions and gross income shall be computed with the exceptions and limitations specified in paragraphs (1) to (4) of this subsection.

#### (e) No carry-over from year prior to 1939.

As used in this section, the terms "third preceding taxable year", "second preceding taxable year", and "first preceding taxable year" do not include any taxable year beginning prior to January 1, 1939. (Added June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 211 (b), 53 Stat. 867.)

### § 123. Commodity credit loans.

(a) Amounts received as loans from the Commodity Credit Corporation shall, at the election of the taxpayer, be considered as income and shall be included in gross income for the taxable year in which received.

(b) If a taxpayer exercises the election provided for in subsection (a) for any taxable year beginning after December 31, 1938, then the method of computing income so adopted shall be adhered to with respect to all subsequent taxable years unless with the approval of the Commissioner a change to a different method is authorized. (Added June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 223 (a), 53 Stat. 879.)

## EFFECTIVE DATE; RETROACTIVE OPERATION

Section was made applicable to taxable years beginning after December 31, 1938, by § 223 (c) of act June 29, 1939, cited to text.

Act June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 223 (d) and (e), 53 Stat. 879, provided as follows:

"(d) RETROACTIVE APPLICATION.—The provisions of subsection (a) [this section] shall be retroactively applied in computing income for any taxable year subject to the provisions of the Revenue Act of 1934, the Revenue Act of 1936, or the Revenue Act of 1938, or any of such Acts as amended, if—

"(1) The taxpayer elects in writing (in accordance with regulations prescribed by the Commissioner with the approval of the secretary) within one year from the date of the enactment of this Act to treat such loans as income for such year, and

"(2) The records of the taxpayer are sufficient to permit an accurate computation of income for such year, and

"(3) The taxpayer consents in writing to the assessment, within such period as may be agreed upon, of any deficiency for such year, even though the statutory period for the assessment of any such deficiency had expired prior to the filing of such consent.

"Any tax overpaid for any such year shall be credited or refunded, subject to the statutory period of limitation properly applicable thereto.

"(e) **ADJUSTMENT OF BASIS FOR PRIOR YEARS.**—In computing income for any taxable year subject to the provisions of the Revenue Act of 1934, the Revenue Act of 1936, or the Revenue Act of 1938, or any of such Acts as amended, the basis, for determining gain or loss from the sale or other disposition of any property, pledged to the Commodity Credit Corporation as security on a loan obtained therefrom, shall be adjusted for the amount of such loan to the extent it was considered as income and included in gross income for the year in which received, and for the amount of any deficiency on such loan with respect to which the taxpayer was relieved from liability."

**§ 124. Amortization deduction—(a) General rule.**

Every corporation, at its election, shall be entitled to a deduction with respect to the amortization of the adjusted basis of any emergency facility (as defined in subsection (e)), based on a period of sixty months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the adjusted basis of the facility at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such adjusted basis at the end of the month shall be computed without regard to the amortization deduction for such month. The amortization deduction above provided with respect to any month shall, except to the extent provided in subsection (g) of this section, be in lieu of the deduction with respect to such facility for such month provided by section 23 (1), relating to exhaustion, wear and tear, and obsolescence. The sixty-month period shall begin as to any emergency facility, at the election of the taxpayer, with the month following the month in which the facility was completed or acquired, or with the succeeding taxable year.

**(b) Election of amortization.**

The election of the taxpayer to take the amortization deduction and to begin the sixty-month period with the month following the month in which the facility was completed or acquired shall (except as provided in subsection (d) (3)) be made only by a statement to that effect in its return for the taxable year in which the facility was completed or acquired. Its election to take the amortization deduction and to begin such period with the taxable year succeeding such year shall be made only by a statement to that effect in its return for such succeeding taxable year.

**(c) Termination of amortization deduction.**

A taxpayer which has elected under subsection (b) to take the amortization deduction provided in subsection (a) may, at any time after making such election, discontinue the amortization deductions with respect to the remainder of the amortization period, such discontinuance to begin as of the beginning of any month specified by the taxpayer in a notice in writing filed with the Commissioner before the beginning of such month. The deduction provided under section 23 (1) shall be allowed, beginning with the first month as to which the amortization deduction is not applicable, and the

taxpayer shall not (except as provided in subsection (d)) be entitled to any further amortization deductions with respect to such emergency facility.

**(d) Termination of amortization period.**

(1) If the President has proclaimed the ending of the emergency period (as defined in subsection (e)), or if the Secretary of War or the Secretary of the Navy has, in accordance with regulations prescribed by the President, certified to the Commissioner that an emergency facility ceased, on the date specified in the certificate, to be necessary in the interest of national defense during the emergency period, and if the date of such proclamation or the date specified in such certificate occurs within sixty months from the beginning of the amortization period with respect to such emergency facility, then the taxpayer may elect (in accordance with paragraph (4) of this subsection) to terminate the amortization period with respect to such emergency facility as of the end of the month in which such proclamation was issued or in which occurred the date specified in such certificate, whichever is the earlier. In such case the amortization period with respect to such facility shall end with the end of such month in lieu of the end of the sixty-month period.

(2) If the date of the proclamation or the date specified in the certificate referred to in paragraph (1) of this subsection occurs within sixty months from the beginning of the amortization period with respect to such emergency facility and after the beginning of the month which the taxpayer has previously fixed under subsection (c) for the taking, in lieu of the amortization deduction provided in this section, of the deduction allowed by section 23 (1), the taxpayer may elect (in accordance with paragraph (4) of this subsection) to terminate the amortization period with respect to such emergency facility as of the end of the month in which such proclamation was issued or in which occurred the date specified in such certificate, whichever is the earlier. In such case the amortization period with respect to such facility shall end with the end of such month in lieu of the end of the sixty-month period, and the termination of the amortization deduction under subsection (c) shall be disregarded.

(3) In the case of a taxpayer which has not in either of its returns specified in subsection (b) elected to take an amortization deduction with respect to an emergency facility, if the date of the proclamation or the date specified in the certificate, referred to in paragraph (1) of this subsection, whichever is earlier, is before the expiration of sixty months from the last day of the month in which such emergency facility was completed or acquired, then the taxpayer may elect (in accordance with paragraph (4) of this subsection) the amortization deduction provided in subsection (a), using an amortization period beginning with the month following the month in which the emergency facility was completed or acquired and ending as of the end of the month within which such proclamation was issued or within which occurred the date specified in such certificate, whichever is the earlier.

(4) The election provided in paragraph (1), (2), or (3) shall be made by filing with the Commissioner, in such manner, in such form, and within such time, as the Commissioner with the approval of the Secretary may by regulations prescribe, a statement of such election. When such election has been so made, then, under regulations prescribed by the Commissioner with the approval of the Secretary, the taxes for all taxable years, beginning with the taxable year in which the amortization period began, shall be computed in accordance with an amortization deduction computed in accordance with the method provided in subsection (a), but using (in lieu of the sixty-month period provided in such subsection) the amortization period specified in paragraph (1), (2), or (3), as the case may be.

(5) Recomputation of tax in case of election under this subsection. If the adjustment of the income or excess-profits tax liability for any taxable year necessary to give effect to paragraph (4) of this subsection is prevented (A) on the date of the certificate of the Secretary of War or the Secretary of the Navy or on the date of the President's proclamation, whichever is the basis of the taxpayer's election under this subsection, or (B) within one year from such date, by any provision of law (other than this paragraph and other than section 3761, relating to compromises), an adjustment of the tax liability shall nevertheless be made if in respect of such taxable year a notice of deficiency is mailed or a claim for refund is filed, as the case may be, within one year after the date of such certificate or such proclamation, whichever is the basis of the taxpayer's election under this subsection. If at the time of the mailing of such notice of deficiency or the filing of such claim for refund, the adjustment is so prevented, then the amount of the adjustment authorized in this paragraph shall be limited to the increase or decrease in the tax previously determined for such taxable year which results solely from the effect of paragraph (4) of this subsection, and such amount shall be assessed and collected, or credited or refunded, in the same manner as if it were a deficiency or an overpayment, as the case may be, for such taxable year and as if on the date of such certificate or such proclamation, whichever is the basis of the taxpayer's election under this subsection, one year remained before the expiration of the periods of limitation upon assessment or filing claim for refund for the taxable year. The tax previously determined shall be ascertained in accordance with section 3801 (d). The amount to be assessed and collected under this paragraph in the same manner as if it were a deficiency, or to be refunded or credited in the same manner as if it were an overpayment, shall not be diminished by any credit or set-off based upon any item, inclusion, deduction, credit, exemption, gain, or loss, other than one resulting from the effect of paragraph (4) of this subsection. Such amount, if paid, shall not be recovered by a claim or suit for refund or suit for erroneous refund based upon any item, inclusion, deduction, credit, exemption, gain, or loss, other than one resulting from the effect of paragraph (4) of this subsection.

(e) Definitions.

(1) Emergency facility.

As used in this section, the term "emergency facility" means any facility, land, building, machinery, or equipment, or part thereof, the construction, reconstruction, erection, or installation of which was completed after June 10, 1940, or which was acquired after such date, and with respect to which a certificate under subsection (f) has been made.

(2) Emergency period.

As used in this section, the term "emergency period" means the period beginning June 10, 1940, and ending on the date on which the President proclaims that the utilization of a substantial portion of the emergency facilities with respect to which certifications under subsection (f) have been made, is no longer required in the interest of national defense.

(f) Determination of adjusted basis of emergency facility.

In determining, for the purposes of subsection (a) or subsection (h), the adjusted basis of an emergency facility—

(1) There shall be included only so much of the amount otherwise constituting such adjusted basis as is properly attributable to such construction, reconstruction, erection, installation, or acquisition after June 10, 1940, as the Advisory Commission to the Council of National Defense and either the Secretary of War or the Secretary of the Navy have certified, within the time specified in paragraph (3) of this subsection, and under such regulations as the President may prescribe, as necessary in the interest of national defense during the emergency period;

(2) After the completion or acquisition of any emergency facility with respect to which a certificate under paragraph (1) has been made, any expenditure (attributable to such facility and to the period after such completion or acquisition) which does not represent construction, reconstruction, erection, installation, or acquisition included in such certificate, but with respect to which a separate certificate is made under paragraph (1), shall not be applied in adjustment of the basis of such facility and shall be considered as an expenditure with respect to a new emergency facility; and

(3) The certificate provided for in paragraph (1) shall have no effect unless made before whichever of the following dates is the later: (A) The beginning of such construction, reconstruction, erection, or installation, or the date of such acquisition, or (B) the one hundred and twentieth day after the date of the enactment of the Second Revenue Act of 1940.<sup>1</sup>

(g) Depreciation deduction.

If the adjusted basis of the emergency facility computed without regard to subsection (f) of this section is in excess of the adjusted basis computed under such subsection, the deduction provided by section 23 (l) shall, despite the provisions of subsection (a) of this section, be allowed with respect to such emergency facility as if its adjusted basis were an amount equal to the amount of such excess.

**(h) Payment by United States of unamortized cost of facility.**

If an amount is properly includible in the gross income of the taxpayer on account of a payment with respect to an emergency facility and such payment is certified as provided in this paragraph, then, at the election of the taxpayer in its return for the taxable year in which such amount is so includible—

(1) The amortization deduction for the month in which such amount is so includible shall (in lieu of the amount of the deduction for such month computed under subsection (a)) be the amount so includible, but such deduction shall not be in excess of the adjusted basis of the emergency facility as of the end of such month (computed without regard to any amortization deduction for such month). Payments referred to in this paragraph shall be payments the amounts of which are certified, under such regulations as the President may prescribe, by either the Secretary of War or the Secretary of the Navy as compensation to the taxpayer for the unamortized cost of the emergency facility made because—

(A) A contract with the United States involving the use of the facility has been terminated by its terms or by cancellation, or

(B) the taxpayer had reasonable grounds (either from provisions of a contract with the United States involving the use of the facility, or from written or oral representations made under authority of the United States) for anticipating future contracts involving the use of the facility, which future contracts have not been made.

(2) In case the taxpayer is not entitled to any amortization deduction with respect to the emergency facility the deduction allowable under section 23 (1) on account of the month in which such amount is so includible shall be increased by such amount, but such deduction on account of such month shall not be in excess of the adjusted basis of the emergency facility as of the end of such month (computed without regard to any amount allowable, on account of such month, under section 23 (1) or this paragraph).

**(i) Protection of the United States.**

If the taxpayer has been or will be reimbursed by the United States for all or a part of the cost of any emergency facility pursuant to any contract with the United States, either—

(1) directly, by a provision therein dealing expressly with such reimbursement, or

(2) indirectly, because the price paid by the United States (insofar as return of cost of the facility is used as a factor in the fixing of such price) is recognized by the contract as including a return of cost greater than the normal exhaustion, wear and tear,

no amortization deduction with respect to such emergency facility shall be allowed for any month after the end of the month in which such contract is made, unless, before the expiration of ninety days after the making of such contract or one hundred and twenty days after the date of the enactment of the Second Revenue Act of 1940,<sup>1</sup> whichever of such periods expires the later, the Advisory Commission to the Council of National Defense, and either the

Secretary of War or the Secretary of the Navy certify to the Commissioner that such contract adequately protects the United States with reference to the future use and disposition of such emergency facility. A certificate by the Advisory Commission to the Council of National Defense and either the Secretary of War or the Secretary of the Navy, made to the Commissioner before the expiration of ninety days after the making of a contract or one hundred and twenty days after the date of the enactment of the Second Revenue Act of 1940,<sup>1</sup> whichever of such periods expires the later, to the effect that, under such contract, reimbursement for all or a part of the cost of any emergency facility is not provided for within the meaning of clause (1) or clause (2), shall be conclusive for the purposes of this subsection.

The terms and conditions of contracts with reference to reimbursement of the cost of emergency facilities and the protecting of the United States with reference to the future use and disposition of such emergency facilities shall be made available to the public. (Added Oct. 8, 1940, 11 p. m. E. S. T., ch. 757, title III, § 302, 54 Stat. 992.)

<sup>1</sup> Second Revenue Act of 1940 was enacted October 8, 1940, 11 p. m., E. S. T.

**SUPPLEMENT C.—CREDITS AGAINST TAX**

**[Supplementary to Subchapter B, Part III]**

**§ 131. Taxes of foreign countries and possessions of United States—(a) Allowance of credit.**

If the taxpayer signifies in his return his desire to have the benefits of this section, the tax imposed by this chapter, except the tax imposed under section 102, shall be credited with:

**(1) Citizen and domestic corporation.**

In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war-profits, and excess-profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

**(2) Resident of United States.**

In the case of a resident of the United States, the amount of any such taxes paid or accrued during the taxable year to any possession of the United States; and

**(3) Alien resident of United States.**

In the case of an alien resident of the United States, the amount of any such taxes paid or accrued during the taxable year to any foreign country, if the foreign country of which such alien resident is a citizen or subject, in imposing such taxes, allows a similar credit to citizens of the United States residing in such country; and

**(4) Partnerships and estates.**

In the case of any such individual who is a member of a partnership or a beneficiary of an estate or trust, his proportionate share of such taxes of the partnership or the estate or trust paid or accrued during the taxable year to a foreign country or to any possession of the United States, as the case may be.

**(b) Limit on credit.**

The amount of the credit taken under this section shall be subject to each of the following limitations:

(1) The amount of the credit in respect of the tax paid or accrued to any country shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources within such country bears to his entire net income, in the case of a taxpayer other than a corporation, or to the normal-tax net income, in the case of a corporation, for the same taxable year; and

(2) The total amount of the credit shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources without the United States bears to his entire net income, in the case of a taxpayer other than a corporation, or to the normal-tax net income, in the case of a corporation, for the same taxable year.

**(c) Adjustments on payment of accrued taxes.**

If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer, or if any tax paid is refunded in whole or in part, the taxpayer shall notify the Commissioner, who shall redetermine the amount of the tax for the year or years affected, and the amount of tax due upon such redetermination, if any, shall be paid by the taxpayer upon notice and demand by the collector, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 322. In the case of such a tax accrued but not paid, the Commissioner as a condition precedent to the allowance of this credit may require the taxpayer to give a bond with sureties satisfactory to and to be approved by the Commissioner in such sum as the Commissioner may require, conditioned upon the payment by the taxpayer of any amount of tax found due upon any such redetermination; and the bond herein prescribed shall contain such further conditions as the Commissioner may require.

**(d) Year in which credit taken.**

The credits provided for in this section may, at the option of the taxpayer and irrespective of the method of accounting employed in keeping his books, be taken in the year in which the taxes of the foreign country or the possession of the United States accrued, subject, however, to the conditions prescribed in subsection (c) of this section. If the taxpayer elects to take such credits in the year in which the taxes of the foreign country or the possession of the United States accrued, the credits for all subsequent years shall be taken upon the same basis, and no portion of any such taxes shall be allowed as a deduction in the same or any succeeding year.

**(e) Proof of credits.**

The credits provided in this section shall be allowed only if the taxpayer establishes to the satisfaction of the Commissioner (1) the total amount of income derived from sources without the United States, determined as provided in section 119, (2) the amount of income derived from each country, the tax paid or accrued to which is claimed as a credit under this section, such amount to be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary, and (3) all other information necessary for the verification and computation of such credits.

**(f) Taxes of foreign subsidiary.**

For the purposes of this section a domestic corporation which owns a majority of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall be deemed to have paid the same proportion of any income, war-profits, or excess-profits taxes paid by such foreign corporation to any foreign country or to any possession of the United States, upon or with respect to the accumulated profits of such foreign corporation from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits: *Provided*, That the amount of tax deemed to have been paid under this subsection shall in no case exceed the same proportion of the tax against which credit is taken which the amount of such dividends bears to the amount of the normal-tax net income of the domestic corporation in which such dividends are included. The term "accumulated profits" when used in this subsection in reference to a foreign corporation, means the amount of its gains, profits, or income in excess of the income, war-profits, and excess-profits taxes imposed upon or with respect to such profits or income; and the Commissioner with the approval of the Secretary shall have full power to determine from the accumulated profits of what year or years such dividends were paid; treating dividends paid in the first sixty days of any year as having been paid from the accumulated profits of the preceding year or years (unless to his satisfaction shown otherwise), and in other respects treating dividends as having been paid from the most recently accumulated gains, profits, or earnings. In the case of a foreign corporation, the income, war-profits, and excess-profits taxes of which are determined on the basis of an accounting period of less than one year, the word "year" as used in this subsection shall be construed to mean such accounting period.

**(g) Corporations treated as foreign.**

For the purposes of this section the following corporations shall be treated as foreign corporations:

(1) A corporation entitled to the benefits of section 251, by reason of receiving a large percentage of its gross income from sources within a possession of the United States;

(2) A corporation organized under the China Trade Act, 1922, 42 Stat. 849 (U. S. C., Title 15, ch. 4), and entitled to the credit provided for in section 262. (53 Stat. 56; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 216, 53 Stat. 876.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 131, 52 Stat. 506.

**1939 AMENDMENT**

Subsections (a), (b) and (f) were amended by act June 29, 1939, cited to text, and amendment made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of said act. Prior to said amendment subsections read as follows:

"(a) *Allowance of credit.* If the taxpayer signifies in his return his desire to have the benefits of this section, the tax imposed by this chapter shall be credited with:

"(1) *Citizen and domestic corporation.* In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war-profits, and excess-profits taxes paid or accrued during the taxable year to

any foreign country or to any possession of the United States; and

"(2) *Resident of United States.* In the case of a resident of the United States, the amount of any such taxes paid or accrued during the taxable year to any possession of the United States; and

"(3) *Alien resident of United States.* In the case of an alien resident of the United States, the amount of any such taxes paid or accrued during the taxable year to any foreign country, if the foreign country of which such alien resident is a citizen or subject, in imposing such taxes, allows a similar credit to citizens of the United States residing in such country; and

"(4) *Partnerships and estates.* In the case of any such individual who is a member of a partnership or a beneficiary of an estate or trust, his proportionate share of such taxes of the partnership or the estate or trust paid or accrued during the taxable year to a foreign country or to any possession of the United States, as the case may be."

"(b) *Limit on credit.* The amount of the credit taken under this section shall be subject to each of the following limitations:

"(1) The amount of the credit in respect of the tax paid or accrued to any country shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources within such country bears to his entire net income for the same taxable year; and

"(2) The total amount of the credit shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources without the United States bears to his entire net income for the same taxable year."

"(f) *Taxes of foreign subsidiary.* For the purposes of this section a domestic corporation which owns a majority of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall be deemed to have paid the same proportion of any income, war-profits, or excess-profits taxes paid by such foreign corporation to any foreign country or to any possession of the United States, upon or with respect to the accumulated profits of such foreign corporation from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits: *Provided*, That the amount of tax deemed to have been paid under this subsection shall in no case exceed the same proportion of the tax against which credit is taken which the amount of such dividends bears to the amount of the entire net income of the domestic corporation in which such dividends are included. The term 'accumulated profits' when used in this subsection in reference to a foreign corporation, means the amount of its gains, profits, or income in excess of the income, war-profits, and excess-profits taxes imposed upon or with respect to such profits or income; and the Commissioner with the approval of the Secretary shall have full power to determine from the accumulated profits of what year or years such dividends were paid; treating dividends paid in the first sixty days of any year as having been paid from the accumulated profits of the preceding year or years (unless to his satisfaction shown otherwise), and in other respects treating dividends as having been paid from the most recently accumulated gains, profits, or earnings. In the case of a foreign corporation, the income, war-profits, and excess-profits taxes of which are determined on the basis of an accounting period of less than one year, the word 'year' as used in this subsection shall be construed to mean such accounting period."

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 131, 49 Stat. 1696.  
1934—May 10, 1934, ch. 277, § 131, 48 Stat. 718.  
1932—June 6, 1932, ch. 209, § 131, 47 Stat. 211.  
1928—May 29, 1928, ch. 852, § 131, 45 Stat. 829.  
1926—Feb. 26, 1926, ch. 27, §§ 222, 238, 44 Stat. 36, 44.  
1924—June 2, 1924, ch. 234, §§ 222, 238, 43 Stat. 279, 286.  
1921—Nov. 23, 1921, ch. 136, §§ 222, 238, 42 Stat. 249, 258, as section 238 was amended by act Sept. 19, 1922, ch. 346, § 23, 42 Stat. 856.  
1919—Feb. 24, 1919, ch. 18, §§ 222, 238, 40 Stat. 1073, 1080.

#### SUPPLEMENT D.—RETURNS AND PAYMENT OF TAX

##### [Supplementary to Subchapter B, Part V]

#### § 141. Consolidated returns of railroad corporations— (a) Privilege to file consolidated returns.

An affiliated group of corporations shall, subject to the provisions of this section, have the privilege of making a consolidated return for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all the corporations which have been members of the affiliated group at any time during the taxable year for which the return is made consent to all the regulations under subsection (b) (or, in case such regulations are not prescribed prior to the making of the return, then the regulations prescribed under section 141 (b) of the Revenue Act of 1936, 49 Stat. 1698, insofar as not inconsistent with this chapter) prescribed prior to the making of such return; and the making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

##### (b) Regulations.

The Commissioner, with the approval of the Secretary, shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be determined, computed, assessed, collected, and adjusted in such manner as clearly to reflect the income and to prevent avoidance of tax liability.

##### (c) Computation and payment of tax.

In any case in which a consolidated return is made the tax shall be determined, computed, assessed, collected, and adjusted in accordance with the regulations under subsection (b) (or, in case such regulations are not prescribed prior to the making of the return, then the regulations prescribed under section 141 (b) of the Revenue Act of 1936 insofar as not inconsistent with this chapter) prescribed prior to the date on which such return is made.

##### (d) Definition of "affiliated group."

As used in this section an "affiliated group" means one or more chains of corporations connected through stock ownership with a common parent corporation if—

(1) At least 95 per centum of the stock of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations; and

(2) The common parent corporation owns directly at least 95 per centum of the stock of at least one of the other corporations; and

(3) Each of the corporations is either (A) a corporation whose principal business is that of a common carrier by railroad or (B) a corporation the assets of which consist principally of stock in such corporations and which does not itself operate a business other than that of a common carrier by railroad. For the purpose of determining whether

the principal business of a corporation is that of a common carrier by railroad, if a common carrier by railroad has leased its railroad properties and such properties are operated as such by another common carrier by railroad, the business of receiving rents for such railroad properties shall be considered as the business of a common carrier by railroad. As used in this paragraph, the term "railroad" includes a street, suburban, or interurban electric railway, or a street or suburban trackless trolley system of transportation, or a street or suburban bus system of transportation operated as part of a street or suburban electric railway or trackless trolley system. As used in this subsection (except in paragraph (3)) the term "stock" does not include non-voting stock which is limited and preferred as to dividends.

**(e) Foreign corporations.**

A foreign corporation shall not be deemed to be affiliated with any other corporation within the meaning of this section.

**(f) China Trade Act corporations.**

A corporation organized under the China Trade Act, 1922, 42 Stat. 849 (U. S. C., Title 15, ch. 4), shall not be deemed to be affiliated with any other corporation within the meaning of this section.

**(g) Corporations deriving income from possessions of United States.**

For the purposes of this section a corporation entitled to the benefits of section 251, by reason of receiving a large percentage of its income from possessions of the United States, shall be treated as a foreign corporation.

**(h) Subsidiary formed to comply with foreign law.**

In the case of a domestic corporation owning or controlling, directly or indirectly, 100 per centum of the capital stock (exclusive of directors' qualifying shares) of a corporation organized under the laws of a contiguous foreign country and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, such foreign corporation may, at the option of the domestic corporation, be treated for the purpose of this chapter as a domestic corporation.

**(i) Suspension of running of statute of limitations.**

If a notice under section 272 (a) in respect of a deficiency for any taxable year is mailed to a corporation, the suspension of the running of the statute of limitations, provided in section 277, shall apply in the case of corporations with which such corporation made a consolidated return for such taxable year.

**(j) Receivership cases.**

If the common parent corporation of an affiliated group making a consolidated return would, if filing a separate return, be entitled to the benefits of section 13 (e), the affiliated group shall be entitled to the benefits of such subsection. In all other cases the affiliated group making a consolidated return shall not be entitled to the benefits of such subsection, regardless of the fact that one or more of the corporations in the group are in bankruptcy or in receivership.

**(k) Allocation of income and deductions.**

For allocation of income and deductions of related trades or businesses, see section 45.

(53 Stat. 58; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 210 (b), 53 Stat. 866.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 141, 52 Stat. 508.

**1939 AMENDMENT**

Subsection (j) was made inapplicable with respect to a taxable year beginning after December 31, 1939, by § 229 of said act.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 141, 49 Stat. 1698.

1934—May 10, 1934, ch. 277, § 141, 48 Stat. 720, as amended by act Aug. 30, 1935, ch. 829, § 102 (b), 49 Stat. 1015

1932—June 6, 1932, ch. 209, § 141, 47 Stat. 213, as amended by act June 16, 1933, ch. 90, title 2, § 218 (e), 48 Stat. 209.

1928—May 29, 1928, ch. 852, §§ 141, 142, 45 Stat. 831, 832.

1926—Feb. 26, 1926, ch. 27, § 240, 44 Stat. 46, as amended by act May 29, 1928, ch. 852, § 501 (a), 45 Stat. 869.

1924—June 2, 1924, ch. 234, § 240, 43 Stat. 288.

1921—Nov. 23, 1921, ch. 136, § 240, 42 Stat. 260, as amended by act Sept. 19, 1922, ch. 346, § 24, 42 Stat. 856.

1919—Feb. 24, 1919, ch. 18, § 240, 40 Stat. 1081.

**§ 142. Fiduciary returns—(a) Requirement of return.**

Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for any of the following individuals, estates, or trusts for which he acts, stating specifically the items of gross income thereof and the deductions and credits allowed under this chapter and such other information for the purpose of carrying out the provisions of this chapter as the Commissioner with the approval of the Secretary may by regulations prescribe—

(1) Every individual having a gross income for the taxable year of \$800 or over, if single, or if married and not living with husband or wife;

(2) Every individual having a gross income for the taxable year of \$2,000 or over, if married and living with husband or wife;

(3) Every estate the gross income of which for the taxable year is \$800 or over;

(4) Every trust the net income of which for the taxable year is \$100 or over, or the gross income of which for the taxable year is \$800 or over, regardless of the amount of the net income; and

(5) Every estate or trust of which any beneficiary is a nonresident alien.

**(b) Joint fiduciaries.**

Under such regulations as the Commissioner with the approval of the Secretary may prescribe a return made by one of two or more joint fiduciaries and filed in the office of the collector of the district where such fiduciary resides shall be sufficient compliance with the above requirement. Such fiduciary shall make oath (1) that he has sufficient knowledge of the affairs of the individual, estate, or trust for which the return is made, to enable him to make the return, and (2) that the return is, to the best of his knowledge and belief, true and correct.



**(c) Law applicable to fiduciaries.**

Any fiduciary required to make a return under this chapter shall be subject to all the provisions of law which apply to individuals. (53 Stat. 60; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title I, § 7 (b), 54 Stat. 519.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 142, 52 Stat. 510.

**1940 AMENDMENT**

Subsection (a) was amended by act June 25, 1940, cited to text.

**TREATY OBLIGATIONS**

Section 8 of act June 25, 1940, cited to text, provided as follows: "No amendment made by this title (sections 1-9 of 1940 act) shall apply in any case where its application would be contrary to any treaty obligation of the United States."

**TAXABLE YEARS AFFECTED**

Section 9 of act June 25, 1940, cited to text, provided as follows:

"The amendments made by this title (sections 1-9 of 1940 act), except the amendments made by section 5 (sections 143, 144 of Internal Revenue Code), shall be applicable only with respect to taxable years beginning after December 31, 1939."

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 142, 49 Stat. 1700.  
 1934—May 10, 1934, ch. 277, § 142, 48 Stat. 722.  
 1932—June 6, 1932, ch. 209, § 142, 47 Stat. 214.  
 1928—May 29, 1928, ch. 852, § 143, 45 Stat. 843.  
 1926—Feb. 26, 1926, ch. 27, § 225, 44 Stat. 37.  
 1924—June 2, 1924, ch. 234, § 225, 43 Stat. 280.  
 1919—Feb. 24, 1919, ch. 18, § 225, 40 Stat. 1074.  
 1916—Sept. 8, 1916, ch. 463, § 13 (c), 39 Stat. 770, as amended by act Oct. 3, 1917, ch. 63, § 1208, 40 Stat. 335.

**§ 143. Withholding of tax at source—(a) Tax-free covenant bonds—(1) Requirement of withholding.**

In any case where bonds, mortgages, or deeds of trust, or other similar obligations of a corporation, issued before January 1, 1934, contain a contract or provision by which the obligor agrees to pay any portion of the tax imposed by this chapter upon the obligee, or to reimburse the obligee for any portion of the tax, or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon, or to retain therefrom under any law of the United States, the obligor shall deduct and withhold a tax equal to 2 per centum of the interest upon such bonds, mortgages, deeds of trust, or other obligations, whether such interest is payable annually or at shorter or longer periods, if payable to an individual, a partnership, or a foreign corporation not engaged in trade or business within the United States and not having any office or place of business therein: *Provided*, That if the liability assumed by the obligor does not exceed 2 per centum of the interest, then the deduction and withholding shall be at the following rates: (A) 15 per centum in the case of a nonresident alien individual (except that such rate shall be reduced, in the case of a resident of a contiguous country, to such rate, not less than 5 per centum, as may be provided by treaty with such country), or of any partnership not engaged in trade or business within the United States and not having any office or place of business therein and composed in whole or in part of nonresident aliens, (B) in the case of such a foreign corporation, 15 per centum, and (C) 2 per centum in the case of other individuals and partnerships: *Provided further*, That

if the owners of such obligations are not known to the withholding agent the Commissioner may authorize such deduction and withholding to be at the rate of 2 per centum, or, if the liability assumed by the obligor does not exceed 2 per centum of the interest, then at the rate of 15 per centum.

**(2) Benefit of credits against net income.**

Such deduction and withholding shall not be required in the case of a citizen or resident entitled to receive such interest, if he files with the withholding agent on or before February 1 a signed notice in writing claiming the benefit of the credits provided in section 25 (b); nor in the case of a nonresident alien individual if so provided for in regulations prescribed by the Commissioner under section 215.

**(3) Income of obligor and obligee.**

The obligor shall not be allowed a deduction for the payment of the tax imposed by this chapter, or any other tax paid pursuant to the tax-free covenant clause, nor shall such tax be included in the gross income of the obligee.

**(b) Nonresident aliens.**

All persons, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States, having the control, receipt, custody, disposal, or payment of interest (except interest on deposits with persons carrying on the banking business paid to persons not engaged in business in the United States and not having an office or place of business therein), dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income (but only to the extent that any of the above items constitutes gross income from sources within the United States), of any nonresident alien individual, or of any partnership not engaged in trade or business within the United States and not having any office or place of business therein and composed in whole or in part of nonresident aliens, shall (except in the cases provided for in subsection (a) of this section and except as otherwise provided in regulations prescribed by the Commissioner under section 215) deduct and withhold from such annual or periodical gains, profits, and income a tax equal to 15 per centum thereof, except that such rate shall be reduced, in the case of a nonresident alien individual a resident of a contiguous country, to such rate (not less than 5 per centum) as may be provided by treaty with such country: *Provided*, That no such deduction or withholding shall be required in the case of dividends paid by a foreign corporation unless (1) such corporation is engaged in trade or business within the United States or has an office or place of business therein, and (2) more than 85 per centum of the gross income of such corporation for the three-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under the provisions of section 119: *Provided further*, That the Commissioner may authorize such tax to be

deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent. Under regulations prescribed by the Commissioner, with the approval of the Secretary, there may be exempted from such deduction and withholding the compensation for personal services of nonresident alien individuals who enter and leave the United States at frequent intervals.

**(c) Return and payment.**

Every person required to deduct and withhold any tax under this section shall make return thereof on or before March 15 of each year and shall on or before June 15, in lieu of the time prescribed in section 56, pay the tax to the official of the United States Government authorized to receive it. Every such person is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this section.

**(d) Income of recipient.**

Income upon which any tax is required to be withheld at the source under this section shall be included in the return of the recipient of such income, but any amount of tax so withheld shall be credited against the amount of income tax as computed in such return.

**(e) Tax paid by recipient.**

If any tax required under this section to be deducted and withheld is paid by the recipient of the income, it shall not be re-collected from the withholding agent; nor in cases in which the tax is so paid shall any penalty be imposed upon or collected from the recipient of the income or the withholding agent for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment.

**(f) Refunds and credits.**

Where there has been an overpayment of tax under this section any refund or credit made under the provisions of section 322 shall be made to the withholding agent unless the amount of such tax was actually withheld by the withholding agent.

**(g) Cross reference.**

For definition of "withholding agent," see section 3797 (a) (16).

**(h) Rates until January 1945.**

For the period after June 25, 1940, and before January 1, 1945, the rate provided in this section and section 144, of 15 per centum shall be 16½ per centum. This subsection or section 15 shall not apply in any case where its operation would be contrary to any treaty obligation of the United States, nor to a resident of, or a corporation organized under the laws of, a contiguous country so long as there is in effect with such country a treaty, ratified prior to August 26, 1937, relating to rates of income tax. (53 Stat. 60; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title I, § 5 (a), title II, § 202, 54 Stat. 519, 520.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 143, 52 Stat. 511.

**EFFECTIVE DATE**

Amendment by act June 25, 1940, cited to text, was made effective on June 26, 1940 by section 5 (c) of said act.

**1940 AMENDMENT**

Subsection (a), act June 25, 1940, cited to text, struck out "10 per centum" wherever it occurred and inserted in lieu thereof "15 per centum."

Subsection (h) was added by act June 25, 1940, cited to text.

**TREATY OBLIGATIONS**

Section 8 of act June 25, 1940, cited to text, provided as follows: "No amendment made by this title (sections 1-9 of 1940 act) shall apply in any case where its application would be contrary to any treaty obligation of the United States."

**CROSS REFERENCE**

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain Government obligations, see note under section 757b of Title 31, Money and Finance.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 143, 49 Stat. 1700.  
 1934—May 10, 1934, ch. 277, § 143, 48 Stat. 723.  
 1932—June 6, 1932, ch. 209, § 143, 47 Stat. 215.  
 1928—May 29, 1928, ch. 852, § 144, 45 Stat. 883.  
 1926—Feb. 26, 1926, ch. 27, §§ 221, 234, 270 (e), 44 Stat. 35, 41, 54.  
 1924—June 2, 1924, ch. 234, §§ 221, 234, 270 (d), 43 Stat. 277, 283, 295.  
 1921—Nov. 23, 1921, ch. 136, § 221, 42 Stat. 248.  
 1919—Feb. 24, 1919, ch. 18, § 221, 40 Stat. 1072.  
 1917—Oct. 3, 1917, ch. 63, § 3, 40 Stat. 301.  
 1916—Sept. 8, 1916, ch. 463, §§ 8, 9, 13, 39 Stat. 761, 763, 770, as amended by act Oct. 3, 1917, ch. 63, §§ 1204, 1205, 1208, 40 Stat. 331, 332, 335.  
 1913—Oct. 3, 1913, ch. 16, § II, subds. D, E, 38 Stat. 168, 169.

**§ 144. Payment of corporation income tax at source.**

In the case of foreign corporations subject to taxation under this chapter not engaged in trade or business within the United States and not having any office or place of business therein, there shall be deducted and withheld at the source in the same manner and upon the same items of income as is provided in section 143 a tax equal to 15 per centum thereof, and except that in the case of corporations organized under the laws of a contiguous country such rate with respect to dividends shall be reduced to such rate (not less than 5 per centum) as may be provided by treaty with such country; and such tax shall be returned and paid in the same manner and subject to the same conditions as provided in that section: *Provided*, That in the case of interest described in subsection (a) of that section (relating to tax-free covenant bonds) the deduction and withholding shall be at the rate specified in such subsection. (53 Stat. 62; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title I, § 5 (b), 54 Stat. 519.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 144, 52 Stat. 513.

**INCREASE OF RATE AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945**

Rate of 15 per centum provided for in this section is increased to 16½ per centum by section 143 (h) of this title.

**1940 AMENDMENT**

Act June 25, 1940, cited to text, struck out "except that in the case of dividends the rate shall be 10 per centum, and" after "a tax equal to 15 per centum thereof" and struck out "of 10 per centum" after "such rate of".

**EFFECTIVE DATE**

Amendment by act June 25, 1940, cited to text, was made effective on June 26, 1940, by section 5 (c) of said act.

**TREATY OBLIGATIONS**

Section 8 of act June 25, 1940, cited to text, provided as follows: "No amendment made by this title (sections 1-9 of 1940 act) shall apply in any case where its application would be contrary to any treaty obligation of the United States."

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 144, 49 Stat. 1702.  
 1934—May 10, 1934, ch. 277, § 144, 48 Stat. 729, as amended by act Aug. 30, 1935, ch. 829, § 102 (f), (i), 49 Stat. 1016.  
 1932—June 6, 1932, ch. 209, § 144, 47 Stat. 216.  
 1928—May 29, 1928, ch. 852, § 145, 45 Stat. 835.  
 1926—Feb. 26, 1926, ch. 27, § 237, 44 Stat. 43.  
 1924—June 2, 1924, ch. 234, § 237, 43 Stat. 285.  
 1921—Nov. 23, 1921, ch. 136, § 237, 42 Stat. 258.  
 1919—Feb. 24, 1919, ch. 18, § 237, 40 Stat. 1080.

**§ 145. Penalties—(a) Failure to file returns, submit information, or pay tax.**

Any person required under this chapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this chapter, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

**(b) Failure to collect and pay over tax, or attempt to defeat or evade tax.**

Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

**(c) Person defined.**

The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

**(d) Cross reference.**

For penalties for failure to file information returns with respect to foreign personal holding companies and foreign corporations, see section 340.

(53 Stat. 62.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 145, 52 Stat. 513.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 145, 49 Stat. 1706, as amended by act Aug. 26, 1937, ch. 815, title II, § 207 (e), 50 Stat. 826.  
 1934—May 10, 1934, ch. 277, § 145, 48 Stat. 724.

1932—June 6, 1932, ch. 209, § 145, 47 Stat. 217.  
 1928—May 29, 1928, ch. 852, § 146, 45 Stat. 835.  
 1926—Feb. 26, 1926, ch. 27, § 1114, 44 Stat. 116.  
 1924—June 2, 1924, ch. 234, § 1017, 43 Stat. 343.  
 1921—Nov. 23, 1921, ch. 136, § 253, 42 Stat. 268.  
 1919—Feb. 24, 1919, ch. 18, § 253, 40 Stat. 1085.  
 1916—Sept. 8, 1916, ch. 463, §§ 14, 18, 39 Stat. 772, 775; as section 18 was amended by act Oct. 3, 1917, ch. 63, § 1209, 40 Stat. 1085.  
 1913—Oct. 3, 1913, ch. 16, § II, subds. F, G, 38 Stat. 171, 177.

**§ 146. Closing by Commissioner of taxable year—(a) Tax in jeopardy—(1) Departure of taxpayer or removal of property from United States.**

If the Commissioner finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax for the taxable year then last past or the taxable year then current unless such proceedings be brought without delay, the Commissioner shall declare the taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section the finding of the Commissioner, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of the taxpayer's design.

**(2) Corporation in liquidation.**

If the Commissioner finds that the collection of the tax of a corporation for the current or last preceding taxable year will be jeopardized by the distribution of all or a portion of the assets of such corporation in the liquidation of the whole or any part of its capital stock, the Commissioner shall declare the taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the last preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable.

**(b) Security for payment.**

A taxpayer who is not in default in making any return or paying income, war-profits, or excess-profits tax under any Act of Congress may furnish to the United States, under regulations to be prescribed by the Commissioner, with the approval of the Secretary, security approved by the Commissioner that he will duly make the return next thereafter required to be filed and pay the tax next there-

after required to be paid. The Commissioner may approve and accept in like manner security for return and payment of taxes made due and payable by virtue of the provisions of this section, provided the taxpayer has paid in full all other income, war-profits, or excess-profits taxes due from him under any Act of Congress.

(c) Same—exemption from section.

If security is approved and accepted pursuant to the provisions of this section and such further or other security with respect to the tax or taxes covered thereby is given as the Commissioner shall from time to time find necessary and require, payment of such taxes shall not be enforced by any proceedings under the provisions of this section prior to the expiration of the time otherwise allowed for paying such respective taxes.

(d) Citizens.

In the case of a citizen of the United States or of a possession of the United States about to depart from the United States the Commissioner may, at his discretion, waive any or all of the requirements placed on the taxpayer by this section.

(e) Departure of alien.

No alien shall depart from the United States unless he first procures from the collector or agent in charge a certificate that he has complied with all the obligations imposed upon him by the income, war-profits, and excess-profits tax laws.

(f) Addition to tax.

If a taxpayer violates or attempts to violate this section there shall, in addition to all other penalties, be added as part of the tax 25 per centum of the total amount of the tax or deficiency in the tax, together with interest at the rate of 6 per centum per annum from the time the tax became due. (53 Stat. 63.)

DERIVATION

Act May 28, 1938, ch. 289, § 146, 52 Stat. 513.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 146, 49 Stat. 1703.  
1934—May 10, 1934, ch. 277, § 146, 48 Stat. 725.  
1932—June 6, 1932, ch. 209, § 146, 47 Stat. 217.  
1928—May 29, 1928, ch. 852, § 147, 45 Stat. 836.  
1926—Feb. 26, 1926, ch. 27, § 285, 44 Stat. 68.  
1924—June 2, 1924, ch. 234, § 282, 43 Stat. 302.

§ 147. Information at source—(a) Payments of \$1,000 or more.

All persons, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, and employers, making payment to another person, of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments described in section 148 (a) or 149), of \$800 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Commissioner, under such regulations and in such form and manner and to such extent as may be prescribed

by him with the approval of the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

(b) Returns regardless of amount of payment.

Such returns may be required, regardless of amounts, (1) in the case of payments of interest upon bonds, mortgages, deeds of trust, or other similar obligations of corporations, and (2) in the case of collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest upon the bonds of and dividends from foreign corporations by persons undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange.

(c) Recipient to furnish name and address.

When necessary to make effective the provisions of this section the name and address of the recipient of income shall be furnished upon demand of the person paying the income.

(d) Obligations of United States.

The provisions of this section shall not apply to the payment of interest on obligations of the United States. (53 Stat. 64; June 25, 1940, 11:45 a. m. E. S. T., ch. 419, title I, § 7 (c), 54 Stat. 520.)

DERIVATION

Act May 28, 1938, ch. 289, § 147, 52 Stat. 515.

1940 AMENDMENT

Subsection (a) was amended by act June 25, 1940, cited to text, which substituted "\$800" for "\$1,000" wherever occurring therein.

TREATY OBLIGATIONS

Section 8 of act June 25, 1940, cited to text, provided as follows: "No amendment made by this title (sections 1-9 of 1940 act) shall apply in any case where its application would be contrary to any treaty obligation of the United States."

TAXABLE YEARS AFFECTED

Section 9 of act June 25, 1940, cited to text, provided as follows:

"The amendments made by this title (sections 1-9 of 1940 act) except the amendments made by section 5 (sections 143, 144 of Internal Revenue Code), shall be applicable only with respect to taxable years beginning after December 31, 1939."

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 147, 49 Stat. 1704.  
1934—May 10, 1934, ch. 277, § 147, 48 Stat. 726.  
1932—June 6, 1932, ch. 209, § 147, 47 Stat. 218.  
1928—May 29, 1928, ch. 852, § 148, 45 Stat. 836.  
1926—Feb. 26, 1926, ch. 27, § 256, 44 Stat. 50.  
1924—June 2, 1924, ch. 234, § 256, 43 Stat. 292.  
1921—Nov. 23, 1921, ch. 136, § 256, 42 Stat. 269.  
1919—Feb. 24, 1919, ch. 18, § 256, 40 Stat. 1086.  
1916—Sept. 8, 1916, ch. 463, § 28, as added by act Oct. 3, 1917, ch. 63, § 1211, 40 Stat. 336.

§ 148. Information by corporations—(a) Dividend payments.

Every corporation shall, when required by the Commissioner, render a correct return, duly verified under oath, of its payments of dividends, stating the name and address of each shareholder, the number of shares owned by him, and the amount of dividends paid to him.

**(b) Profits declared as dividends.**

Every corporation shall, when required by the Commissioner, furnish him a statement of such facts as will enable him to determine the portion of the earnings or profits of the corporation (including gains, profits, and income not taxed) accumulated during such periods as the Commissioner may specify, which have been distributed or ordered to be distributed, respectively, to its shareholders during such taxable years as the Commissioner may specify.

**(c) Accumulated earnings and profits.**

When requested by the Commissioner, or any collector, every corporation shall forward to him a correct statement of accumulated earnings and profits and the names and addresses of the individuals or share holders who would be entitled to the same if divided or distributed, and of the amounts that would be payable to each.

**(d) Contemplated dissolution or liquidation.**

Every corporation shall, within thirty days after the adoption by the corporation of a resolution or plan for the dissolution of the corporation or for the liquidation of the whole or any part of its capital stock, render a correct return to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Commissioner shall, with the approval of the Secretary, by regulations prescribe.

**(e) Distributions in liquidation.**

Every corporation shall, when required by the Commissioner, render a correct return, duly verified under oath, of its distributions in liquidation, stating the name and address of each shareholder, the number and class of shares owned by him, and the amount paid to him or, if the distribution is in property other than money, the fair market value (as of the date the distribution is made) of the property distributed to him.

**(f) Compensation of officers and employees.**

Under regulations prescribed by the Commissioner with the approval of the Secretary, every corporation subject to taxation under this chapter shall, in its return, submit a list of the names of all officers and employees of such corporation and the respective amounts paid to them during the taxable year of the corporation by the corporation as salary, commission, bonus, or other compensation for personal services rendered, if the aggregate amount so paid to the individual is in excess of \$75,000.

The Secretary shall compile from the returns made a list containing the names of, and the amounts paid to, each such officer and employee and the name of the paying corporation, and shall make such list available to the public. It shall be unlawful for any person to sell, offer for sale, or circulate, for any consideration whatsoever, any copy or reproduction of any list, or part thereof, authorized to be made public by this Act or by any prior Act relating to the publication of information derived from income-tax returns; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both, at the

discretion of the court: *Provided*, That nothing in this sentence shall be construed to be applicable with respect to any newspaper, or other periodical publication, entitled to admission to the mails as second-class mail matter. (53 Stat. 65; June 29, 1939, 10 p. m. E. S. T., ch. 247, title IV, § 407, 53 Stat. 884.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 148, 52 Stat. 515.

**1939 AMENDMENT**

Subsection (f), last sentence, was added by act June 29, 1939, cited to text.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 148, 49 Stat. 1705.  
 1934—May 10, 1934, ch. 277, § 148, 48 Stat. 726.  
 1932—June 6, 1932, ch. 209, § 148, 47 Stat. 218.  
 1928—May 29, 1928, ch. 852, § 149, 45 Stat. 837.  
 1926—Feb. 26, 1926, ch. 27, §§ 239, 254, 44 Stat. 45, 50.  
 1924—June 2, 1924, ch. 234, §§ 220, 239, 254, 43 Stat. 277, 287, 292.  
 1921—Nov. 23, 1921, ch. 136, §§ 239, 254, 42 Stat. 259, 269.  
 1919—Feb. 24, 1919, ch. 18, §§ 239, 254, 40 Stat. 1081, 1085.  
 1916—Sept. 8, 1916, ch. 463, §§ 13, 26, as added by act Mar. 3, 1917, ch. 159, § 402, 39 Stat. 1003, and amended by act Oct. 3, 1917, ch. 63, §§ 1208, 1210, 40 Stat. 335, 336.  
 1913—Oct. 3, 1913, ch. 16, § II, G, 38 Stat. 175.

**§ 149. Returns of brokers.**

Every person doing business as a broker shall, when required by the Commissioner, render a correct return duly verified under oath, under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe, showing the names of customers for whom such person has transacted any business, with such details as to the profits, losses, or other information which the Commissioner may require, as to each of such customers, as will enable the Commissioner to determine whether all income tax due on profits or gains of such customers has been paid. (53 Stat. 65.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 149, 52 Stat. 516.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 149, 49 Stat. 1705.  
 1934—May 10, 1934, ch. 277, § 149, 48 Stat. 727.  
 1932—June 6, 1932, ch. 209, § 149, 47 Stat. 219.  
 1928—May 29, 1928, ch. 852, § 150, 45 Stat. 837.  
 1926—Feb. 26, 1926, ch. 27, § 255, 44 Stat. 50.  
 1924—June 2, 1924, ch. 234, § 255, 43 Stat. 292.  
 1921—Nov. 23, 1921, ch. 136, § 255, 42 Stat. 269.  
 1919—Feb. 24, 1919, ch. 18, § 255, 40 Stat. 1085.  
 1916—Sept. 8, 1916, ch. 463, § 27, as added by act Oct. 3, 1917, ch. 63, § 1211, 40 Stat. 336.

**§ 150. Collection of foreign items.**

All persons undertaking as a matter of business or for profit the collection of foreign payments of interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner and shall be subject to such regulations enabling the Government to obtain the information required under this chapter as the Commissioner, with the approval of the Secretary, shall prescribe; and whoever knowingly undertakes to collect such payments without having obtained a license therefor, or without complying with such regulations, shall be guilty of a misdemeanor and shall be fined not more than \$5,000 or imprisoned for not more than one year, or both. (53 Stat. 65.)

## DERIVATION

Act May 28, 1938, ch. 289, § 150, 52 Stat. 516.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 150, 49 Stat. 1705.  
 1934—May 10, 1934, ch. 277, § 150, 48 Stat. 727.  
 1932—June 6, 1932, ch. 209, § 150, 47 Stat. 219.  
 1928—May 29, 1928, ch. 852, § 151, 45 Stat. 838.  
 1926—Feb. 26, 1926, ch. 27, § 259, 44 Stat. 52.  
 1924—June 2, 1924, ch. 234, § 259, 43 Stat. 293.  
 1921—Nov. 23, 1921, ch. 136, § 259, 42 Stat. 270.  
 1919—Feb. 24, 1919, ch. 18, § 259, 40 Stat. 1087.  
 1916—Sept. 8, 1916, ch. 463, § 9, 39 Stat. 763, as amended  
 by act Oct. 3, 1917, ch. 63, § 1205, 40 Stat. 332.  
 1913—Oct. 3, 1913, ch. 16, § II, E, 38 Stat. 171.

## § 151. Foreign personal holding companies.

For information returns by officers, directors, and large shareholders, with respect to foreign personal holding companies, see sections 338, 339, and 340.

For information returns by attorneys, accountants, and so forth, as to formation, and so forth, of foreign corporations, see section 3604.

(53 Stat. 66.)

## DERIVATION

Act May 28, 1938, ch. 289, § 151, 52 Stat. 516.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 151, as added by act Aug. 26, 1937, ch. 815, title II, § 207 (d), 50 Stat. 826.

## § 152. Pan-American trade corporations.

If a domestic corporation engaged in the active conduct of a trade or business within the United States (hereinafter referred to as the "parent corporation") owns directly 100 per centum of the capital stock of one or more domestic corporations each of which is engaged solely in the active conduct of a trade or business in Central or South America (hereinafter referred to as a Pan-American trade corporation), such corporations (including the "parent corporation") shall be deemed to be an affiliated group of corporations within the meaning of section 141 of this chapter, provided that the following conditions are satisfied:

(1) At least 80 per centum of the gross income for the taxable year of the parent corporation is derived from sources other than royalties, rents, dividends, interest, annuities, and gains from the sale or exchange of stock or securities; and

(2) At least 90 per centum of the gross income for the taxable year of each of the Pan-American trade corporations is derived from sources other than royalties, rents, dividends, interest, annuities, and gains from the sale or exchange of stock or securities; and

(3) No part of the gross income for the taxable year of any of the Pan-American trade corporations is derived from sources within the United States. (Added June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 225, 53 Stat. 880.)

## EFFECTIVE DATE

Section made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of act June 29, 1939, cited to credit.

## SUPPLEMENT E.—ESTATES AND TRUSTS

## § 161. Imposition of tax—(a) Application of tax.

The taxes imposed by this chapter upon individuals shall apply to the income of estates or of any kind of property held in trust, including—

(1) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) Income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

## (b) Computation and payment.

The tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary, except as provided in section 166 (relating to revocable trusts) and section 167 (relating to income for benefit of the grantor).

## (c) Cross reference.

For return made by beneficiary, see section 142.

(53 Stat. 66.)

## DERIVATION

Act May 28, 1938, ch. 289, § 161, 52 Stat. 517.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 161, 49 Stat. 1706.  
 1934—May 10, 1934, ch. 277, § 161, 48 Stat. 727.  
 1932—June 6, 1932, ch. 209, § 161, 47 Stat. 219.  
 1928—May 29, 1928, ch. 852, § 161, 45 Stat. 838.  
 1926—Feb. 26, 1926, ch. 27, § 219, 44 Stat. 32.  
 1924—June 2, 1924, ch. 234, § 219, 43 Stat. 275.  
 1921—Nov. 23, 1921, ch. 136, § 219, 42 Stat. 246.  
 1919—Feb. 24, 1919, ch. 18, § 219, 40 Stat. 1071.  
 1916—Sept. 8, 1916, ch. 463, § 2 (b), 39 Stat. 757, as amended by act Oct. 3, 1917, ch. 63, § 1200, 40 Stat. 329.

## § 162. Net income.

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

(a) There shall be allowed as a deduction (in lieu of the deduction for charitable, etc., contributions authorized by section 23 (o)) any part of the gross income, without limitation, which pursuant to the terms of the will or deed creating the trust, is during the taxable year paid or permanently set aside for the purposes and in the manner specified in section 23 (o), or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance or operation of a public cemetery not operated for profit;

(b) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under

subsection (c) of this section in the same or any succeeding taxable year;

(c) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year, which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary. (53 Stat. 66.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 162, 52 Stat. 517.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 162, 49 Stat. 1706.  
 1934—May 10, 1934, ch. 277, § 162, 48 Stat. 728.  
 1932—June 6, 1932, ch. 209, § 162, 47 Stat. 220.  
 1928—May 29, 1928, ch. 852, § 162, 45 Stat. 838.  
 1926—Feb. 26, 1926, ch. 27, § 219, 44 Stat. 32.  
 1924—June 2, 1924, ch. 234, § 219, 43 Stat. 275.  
 1921—Nov. 23, 1921, ch. 136, § 219, 42 Stat. 246.  
 1919—Feb. 24, 1919, ch. 18, § 219, 40 Stat. 1071.  
 1916—Sept. 8, 1916, ch. 463, § 2 (b), 39 Stat. 757, as amended by act Oct. 3, 1917, ch. 63, § 1200, 40 Stat. 329.

#### § 163. Credits against net income—(a) Credits of estate or trust.

(1) For the purpose of the normal tax and the surtax an estate shall be allowed the same personal exemption as is allowed to a single person under section 25 (b) (1), and a trust shall be allowed (in lieu of the personal exemption under section 25 (b) (1)) a credit of \$100 against net income.

(2) If no part of the income of the estate or trust is included in computing the net income of any legatee, heir, or beneficiary, then the estate or trust shall be allowed the same credits against net income for interest as are allowed by section 25 (a).

#### (b) Credits of beneficiary.

If any part of the income of an estate or trust is included in computing the net income of any legatee, heir, or beneficiary, such legatee, heir, or beneficiary shall, for the purpose of the normal tax, be allowed as credits against net income, in addition to the credits allowed to him under section 25, his proportionate share of such amounts of interest specified in section 25 (a) as are, under this Supplement, required to be included in computing his net income. Any remaining portion of such amounts specified in section 25 (a) shall, for the purpose of the normal tax, be allowed as credits to the estate or trust. (53 Stat. 67.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 163, 52 Stat. 518.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 163, 49 Stat. 1707.  
 1934—May 10, 1934, ch. 277, § 163, 48 Stat. 728.  
 1932—June 6, 1932, ch. 209, § 163, 47 Stat. 220.  
 1928—May 29, 1928, ch. 852, § 163, 45 Stat. 839.  
 1926—Feb. 26, 1926, ch. 27, § 219, 44 Stat. 32.  
 1924—June 2, 1924, ch. 234, § 219, 43 Stat. 275.  
 1921—Nov. 23, 1921, ch. 136, § 219, 42 Stat. 249.  
 1919—Feb. 24, 1919, ch. 18, § 219, 40 Stat. 1071.

1916—Sept. 8, 1916, ch. 463, § 2 (b), 39 Stat. 757, as amended by act Oct. 3, 1917, ch. 63, § 1200, 40 Stat. 329.

#### § 164. Different taxable years.

If the taxable year of a beneficiary is different from that of the estate or trust, the amount which he is required, under section 162 (b), to include in computing his net income, shall be based upon the income of the estate or trust for any taxable year of the estate or trust (whether beginning on, before, or after January 1, 1939) ending within or with his taxable year. (53 Stat. 67.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 164, 52 Stat. 518.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 164, 49 Stat. 1707.  
 1934—May 10, 1934, ch. 277, § 164, 48 Stat. 729.  
 1932—June 6, 1932, ch. 209, § 164, 47 Stat. 220.  
 1928—May 29, 1928, ch. 852, § 164, 45 Stat. 839.  
 1926—Feb. 26, 1926, ch. 27, § 219, 44 Stat. 32.  
 1924—June 2, 1924, ch. 234, § 219, 43 Stat. 275.  
 1921—Nov. 23, 1921, ch. 136, § 219, 42 Stat. 246.  
 1919—Feb. 24, 1919, ch. 18, § 219, 40 Stat. 1071.  
 1916—Sept. 8, 1916, ch. 463, § 2 (b), 39 Stat. 757, as amended by act Oct. 3, 1917, ch. 63, § 1200, 40 Stat. 329.

#### § 165. Employees' trusts—(a) Exemption from tax.

A trust forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of some or all of his employees—

(1) if contributions are made to the trust by such employer, or employees, or both, for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, and

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees,

shall not be taxable under section 161, but the amount actually distributed or made available to any distributee shall be taxable to him in the year in which so distributed or made available to the extent that it exceeds the amounts paid in by him. Such distributees shall for the purpose of the normal tax be allowed as credits against net income such part of the amount so distributed or made available as represents the items of interest specified in section 25 (a).

#### (b) Taxable year beginning prior to January 1, 1940.

The provisions of clause (2) of subsection (a) shall not apply to a taxable year beginning prior to January 1, 1940. (53 Stat. 67; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 218, 53 Stat. 876.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 165, 52 Stat. 518.

#### 1939 AMENDMENT

Subsection (a) was amended and subsection (b) was added by act June 29, 1939, cited to text, and made applicable only with respect to taxable years beginning after December 31, 1939 by § 229 of said act.

Prior to said amendment section read as follows: "A trust forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of some or all of his employees—



"(1) If contributions are made to the trust by such employer, or employees, or both, for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, and

"(2) If under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees,

shall not be taxable under section 161, but the amount actually distributed or made available to any distributee shall be taxable to him in the year in which so distributed or made available to the extent that it exceeds the amounts paid in by him. Such distributees shall for the purpose of the normal tax be allowed as credits against net income such part of the amount so distributed or made available as represents the items of interest specified in section 25 (a)."

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 165, 49 Stat. 1707.  
 1934—May 10, 1934, ch. 277, § 165, 48 Stat. 729.  
 1932—June 6, 1932, ch. 209, § 165, 47 Stat. 221.  
 1928—May 29, 1928, ch. 852, § 165, 45 Stat. 839.  
 1926—Feb. 26, 1926, ch. 27, § 219, 44 Stat. 32.  
 1924—June 2, 1924, ch. 234, § 219, 43 Stat. 275.  
 1921—Nov. 23, 1921, ch. 136, § 219, 42 Stat. 246.  
 1919—Feb. 24, 1919, ch. 18, § 219, 40 Stat. 1071.  
 1916—Sept. 8, 1916, ch. 463, § 2 (b), 39 Stat. 757, as amended by act Oct. 3, 1917, ch. 63, § 1200, 40 Stat. 329.

#### § 166. Revocable trusts.

Where at any time the power to revest in the grantor title to any part of the corpus of the trust is vested—

(1) in the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, or

(2) in any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, then the income of such part of the trust shall be included in computing the net income of the grantor. (53 Stat. 68.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 166, 52 Stat. 519.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 166, 49 Stat. 1707.  
 1934—May 10, 1934, ch. 277, § 166, 48 Stat. 729.  
 1932—June 6, 1932, ch. 209, § 166, 47 Stat. 221.  
 1928—May 29, 1928, ch. 852, § 166, 45 Stat. 840.  
 1926—Feb. 26, 1926, ch. 27, § 219, 44 Stat. 32.  
 1924—June 2, 1924, ch. 234, § 219, 43 Stat. 275.  
 1921—Nov. 23, 1921, ch. 136, § 219, 42 Stat. 249.  
 1919—Feb. 24, 1919, ch. 18, § 219, 40 Stat. 1071.  
 1916—Sept. 8, 1916, ch. 463, § 2 (b), 39 Stat. 757, as amended by act Oct. 3, 1917, ch. 63, § 1200, 40 Stat. 329.

#### § 167. Income for benefit of grantor.

(a) Where any part of the income of a trust—

(1) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, held or accumulated for future distribution to the grantor; or

(2) may, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, be distributed to the grantor; or

(3) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in

the disposition of such part of the income may be, applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in section 23 (c), relating to the so-called "charitable contribution" deduction); then such part of the income of the trust shall be included in computing the net income of the grantor.

(b) As used in this section the term "in the discretion of the grantor" means "in the discretion of the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of the part of the income in question." (53 Stat. 68.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 167, 52 Stat. 519.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 167, 49 Stat. 1707.  
 1934—May 10, 1934, ch. 277, § 167, 48 Stat. 729.  
 1932—June 6, 1932, ch. 209, § 167, 47 Stat. 221.  
 1928—May 29, 1928, ch. 852, § 167, 45 Stat. 840.  
 1926—Feb. 26, 1926, ch. 27, § 219, 44 Stat. 32.  
 1924—June 2, 1924, ch. 234, § 219, 43 Stat. 32.  
 1921—Nov. 23, 1921, ch. 136, § 219, 42 Stat. 246.  
 1919—Feb. 24, 1919, ch. 18, § 219, 40 Stat. 1071.  
 1916—Sept. 8, 1916, ch. 463, § 2 (b), 39 Stat. 757, as amended by act Oct. 3, 1917, ch. 63, § 1200, 40 Stat. 329.

#### § 168. Taxes of foreign countries and possessions of United States.

The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as credit against the tax of the beneficiary of an estate or trust to the extent provided in section 131. (53 Stat. 68.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 168, 52 Stat. 519.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 168, 49 Stat. 1708.  
 1934—May 10, 1934, ch. 277, § 168, 48 Stat. 730.  
 1932—June 6, 1932, ch. 209, § 170, 47 Stat. 222.  
 1928—May 29, 1928, ch. 852, § 170, 45 Stat. 840.

#### § 169. Common trust funds—(a) Definitions.

The term "common trust fund" means a fund maintained by a bank (as defined in section 104)—

(1) exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian; and

(2) in conformity with the rules and regulations, prevailing from time to time, of the Board of Governors of the Federal Reserve System pertaining to the collective investment of trust funds by national banks.

#### (b) Taxation of common trust funds.

A common trust fund shall not be subject to taxation under this chapter, subchapters A or B of chapter 2, or section 105 or 106 of the Revenue Act of 1935, 49 Stat. 1017, 1019, or chapter 6 and for the purposes of such chapters and subchapters shall not be considered a corporation.

#### (c) Income of participants in fund—(1) Inclusions in net income.

Each participant in the common trust fund in computing its net income shall include, whether or

not distributed and whether or not distributable—

(A) As a part of its short-term capital gains or losses, its proportionate share of the net short-term capital gain or loss of the common trust fund;

(B) As a part of its long-term capital gains or losses, its proportionate share of the net long-term capital gain or loss of the common trust fund;

(C) Its proportionate share of the ordinary net income or the ordinary net loss of the common trust fund, computed as provided in subsection (d).

(2) Credit for partially exempt interest.

The proportionate share of each participant in the amount of interest specified in section 25 (a) received by the common trust fund shall for the purposes of this Supplement be considered as having been received by such participant as such interest.

(d) Computation of common trust fund income.

The net income of the common trust fund shall be computed in the same manner and on the same basis as in the case of an individual, except that—

(1) There shall be segregated the short-term capital gains and losses and the long-term capital gains and losses, and the net short-term capital gain or loss and the net long-term capital gain or loss shall be computed;

(2) After excluding all items of either short-term or long-term capital gain or loss, there shall be computed—

(A) An ordinary net income which shall consist of the excess of the gross income over the deductions; or

(B) An ordinary net loss which shall consist of the excess of the deductions over the gross income;

(3) The so-called "charitable contribution" deduction allowed by section 23 (c) shall not be allowed.

(e) Admission and withdrawal.

No gain or loss shall be realized by the common trust fund by the admission or withdrawal of a participant. The withdrawal of any participating interest by a participant shall be treated as a sale or exchange of such interest by the participant.

(f) Returns by bank.

Every bank (as defined in section 104) maintaining a common trust fund shall make a return under oath for each taxable year, stating specifically, with respect to such fund, the items of gross income and the deductions allowed by this chapter, and shall include in the return the names and addresses of the participants who would be entitled to share in the net income if distributed and the amount of the proportionate share of each participant. The return shall be sworn to as in the case of a return filed by the bank under section 52.

(g) Different taxable years of common trust fund and participant.

If the taxable year of the common trust fund is different from that of a participant, the inclusions with respect to the net income of the common trust fund, in computing the net income of the participant for its taxable year shall be based upon the net income of the common trust fund for any taxable year of the common trust fund (whether beginning

on, before, or after January 1, 1939) ending within or with the taxable year of the participant. (53 Stat. 68.)

DERIVATION

Act May 28, 1938, ch. 289, § 169 (a)-(g) (1), 52 Stat. 519.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 169, 49 Stat. 1708.

§ 170. Net operating losses.

The benefit of the deduction for net operating losses allowed by section 23 (s) shall be allowed to estates and trusts under regulations prescribed by the Commissioner with the approval of the Secretary. The benefit of such deduction shall not be allowed to a common trust fund, but shall be allowed to the participants in the common trust fund under regulations prescribed by the Commissioner with the approval of the Secretary. (Added June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 211 (c), 53 Stat. 868.)

SUPPLEMENT F.—PARTNERSHIPS

§ 181. Partnership not taxable.

Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity. (53 Stat. 69.)

DERIVATION

Act May 28, 1938, ch. 289, § 181, 52 Stat. 521.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 181, 49 Stat. 1709.

1934—May 10, 1934, ch. 277, § 181, 48 Stat. 730.

1932—June 6, 1932, ch. 209, § 181, 47 Stat. 222.

1928—May 29, 1928, ch. 852, § 181, 45 Stat. 840.

1926—Feb. 26, 1926, ch. 27, § 218, 44 Stat. 32.

1924—June 2, 1924, ch. 234, § 218, 43 Stat. 275.

1921—Nov. 23, 1921, ch. 136, § 218, 42 Stat. 245.

1919—Feb. 24, 1919, ch. 18, § 218, 40 Stat. 1070.

1916—Sept. 8, 1916, ch. 463, § 8, 39 Stat. 761, as amended

by act Oct. 3, 1917, ch. 63, § 1204, 40 Stat. 331.

1913—Oct. 3, 1913, ch. 16, § II, D, 38 Stat. 168.

§ 182. Tax of partners.

In computing the net income of each partner, he shall include, whether or not distribution is made to him—

(a) As a part of his short-term capital gains or losses, his distributive share of the net short-term capital gain or loss of the partnership.

(b) As a part of his long-term capital gains or losses, his distributive share of the net long-term capital gain or loss of the partnership.

(c) His distributive share of the ordinary net income or the ordinary net loss of the partnership, computed as provided in section 183 (b). (53 Stat. 69.)

DERIVATION

Act May 28, 1938, ch. 289, § 182, 52 Stat. 521.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 182, 49 Stat. 1709.

1934—May 10, 1934, ch. 277, § 182, 48 Stat. 730.

1932—June 6, 1932, ch. 209, § 182, 47 Stat. 222, as amended by act June 16, 1933, ch. 90, title II, § 218 (d), 48 Stat. 209.

1928—May 29, 1928, ch. 852, § 182, 45 Stat. 840.

1926—Feb. 26, 1926, ch. 27, § 218, 44 Stat. 32.

1924—June 2, 1924, ch. 234, § 218, 43 Stat. 275.

1921—Nov. 23, 1921, ch. 136, § 218, 42 Stat. 245.

1919—Feb. 24, 1919, ch. 18, § 218, 40 Stat. 1070.

**§ 183. Computation of partnership income—(a) General rule.**

The net income of the partnership shall be computed in the same manner and on the same basis as in the case of an individual, except as provided in subsections (b) and (c).

**(b) Segregation of items—(1) Capital gains and losses.**

There shall be segregated the short-term capital gains and losses and the long-term capital gains and losses, and the net short-term capital gain or loss and the net long-term capital gain or loss shall be computed.

**(2) Ordinary net income or loss.**

After excluding all items of either short-term or long-term capital gain or loss, there shall be computed—

(A) An ordinary net income which shall consist of the excess of the gross income over the deductions; or

(B) An ordinary net loss which shall consist of the excess of the deductions over the gross income.

**(c) Charitable contributions.**

In computing the net income of the partnership the so-called "charitable contribution" deduction allowed by section 23 (c) shall not be allowed; but each partner shall be considered as having made payment, within his taxable year, of his distributive portion of any contribution or gift, payment of which was made by the partnership within its taxable year, of the character which would be allowed to the partnership as a deduction under such section if this subsection had not been enacted. (53 Stat. 70.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 183, 52 Stat. 521.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 183, 49 Stat. 1709.  
1934—May 10, 1934, ch. 277, § 183, 48 Stat. 730.  
1932—June 6, 1932, ch. 209, § 183, 47 Stat. 222.  
1928—May 29, 1928, ch. 852, § 183, 45 Stat. 841.  
1926—Feb. 26, 1926, ch. 27, § 218, 44 Stat. 32.  
1924—June 2, 1924, ch. 234, § 218, 43 Stat. 275.  
1921—Nov. 23, 1921, ch. 136, § 218, 42 Stat. 245.  
1919—Feb. 24, 1919, ch. 18, § 218, 40 Stat. 1070.

**§ 184. Credits against net income.**

The partner shall, for the purpose of the normal tax, be allowed as a credit against his net income, in addition to the credits allowed to him under section 25, his proportionate share of such amounts (not in excess of the net income of the partnership) of interest specified in section 25 (a) as are received by the partnership. (53 Stat. 70.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 184, 52 Stat. 521.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 184, 49 Stat. 1709.  
1934—May 10, 1934, ch. 277, § 184, 48 Stat. 730.  
1932—June 6, 1932, ch. 209, § 184, 47 Stat. 223.  
1928—May 29, 1928, ch. 852, § 184, 45 Stat. 841.  
1926—Feb. 26, 1926, ch. 27, § 218, 44 Stat. 32.  
1924—June 2, 1924, ch. 234, § 218, 43 Stat. 275.  
1921—Nov. 23, 1921, ch. 136, § 218, 42 Stat. 245.  
1919—Feb. 24, 1919, ch. 18, § 218, 40 Stat. 1070.

**§ 185. Earned income.**

In the case of the members of a partnership the proper part of each share of the net income which consists of earned income shall be determined under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary and shall be separately shown in the return of the partnership. (53 Stat. 70.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 185, 52 Stat. 522.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 185, 49 Stat. 1709.  
1934—May 10, 1934, ch. 277, § 185, 48 Stat. 730.  
1932—June 6, 1932, ch. 209, § 185, 47 Stat. 223.  
1928—May 29, 1928, ch. 852, § 185, 45 Stat. 841.  
1926—Feb. 26, 1926, ch. 27, § 209, 44 Stat. 20.  
1924—June 2, 1924, ch. 234, § 209, 43 Stat. 263.

**§ 186. Taxes of foreign countries and possessions of United States.**

The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax of the member of a partnership to the extent provided in section 131. (53 Stat. 70.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 186, 52 Stat. 522.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 186, 49 Stat. 1709.  
1934—May 10, 1934, ch. 277, § 186, 48 Stat. 730.  
1932—June 6, 1932, ch. 209, § 188, 47 Stat. 223.  
1928—May 29, 1928, ch. 852, § 188, 45 Stat. 842.

**§ 187. Partnership returns.**

Every partnership shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowed by this chapter and such other information for the purpose of carrying out the provisions of this chapter as the Commissioner with the approval of the Secretary may by regulations prescribe, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners. (53 Stat. 70.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 187, 52 Stat. 522.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 187, 49 Stat. 709.  
1934—May 10, 1934, ch. 277, § 187, 48 Stat. 730.  
1932—June 6, 1932, ch. 209, § 189, 47 Stat. 223.  
1928—May 29, 1928, ch. 852, § 189, 45 Stat. 842.  
1926—Feb. 26, 1926, ch. 27, § 224, 44 Stat. 37.  
1924—June 2, 1924, ch. 234, § 224, 43 Stat. 280.  
1921—Nov. 23, 1921, ch. 136, § 224, 42 Stat. 250.  
1919—Feb. 24, 1919, ch. 18, § 224, 40 Stat. 1074.  
1918—Sept. 8, 1918, ch. 463, § 8, 39 Stat. 761, as amended by act Oct. 3, 1917, ch. 63, § 1204, 40 Stat. 331.

**§ 188. Different taxable years of partner and partnership.**

If the taxable year of a partner is different from that of the partnership, the inclusions with respect to the net income of the partnership, in computing the net income of the partner for his taxable year, shall be based upon the net income of the partnership for any taxable year of the partnership (whether

beginning on, before, or after January 1, 1939) ending within or with the taxable year of the partner. (53 Stat. 71.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 188 (a), 52 Stat. 522.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 188, 49 Stat. 1710.  
 1934—May 10, 1934, ch. 277, §§ 182, 188, 48 Stat. 730, 731.  
 1932—June 6, 1932, ch. 209, § 182, 47 Stat. 222, as amended by act June 16, 1933, ch. 90, title II, § 218 (d), 48 Stat. 209.  
 1928—May 29, 1928, ch. 852, § 182, 45 Stat. 840.  
 1926—Feb. 26, 1926, ch. 27, §§ 207, 218, 44 Stat. 18, 32.  
 1924—June 2, 1924, ch. 234, §§ 207, 218, 43 Stat. 261, 275.

### § 189. Net operating losses.

The benefit of the deduction for net operating losses allowed by section 23 (s) shall not be allowed to a partnership but shall be allowed to the members of the partnership under regulations prescribed by the Commissioner with the approval of the Secretary. (Added June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 211 (d), 53 Stat. 868.)

#### SUPPLEMENT G.—INSURANCE COMPANIES

### § 201. Tax on life insurance companies—(a) Definition.

When used in this chapter the term "life insurance company" means an insurance company engaged in the business of issuing life insurance and annuity contracts (including contracts of combined life, health, and accident insurance), the reserve funds of which held for the fulfillment of such contracts comprise more than 50 per centum of its total reserve funds.

#### (b) Imposition of tax—(1) In general.

In lieu of the tax imposed by sections 13 and 14, there shall be levied, collected, and paid for each taxable year upon the normal-tax net income of every life insurance company a tax at the rates provided in section 13 or section 14 (b).

#### (2) Normal-tax net income of foreign life insurance companies.

In the case of a foreign life insurance company, the normal-tax net income shall be an amount which bears the same ratio to the normal-tax net income, computed without regard to this paragraph, as the reserve funds required by law and held by it at the end of the taxable year upon business transacted within the United States bear to the reserve funds held by it at the end of the taxable year upon all business transacted.

#### (3) No United States insurance business.

Foreign life insurance companies not carrying on an insurance business within the United States and holding no reserve funds upon business transacted within the United States, shall not be taxable under this section but shall be taxable as other foreign corporations. (53 Stat. 71; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 203, 53 Stat. 865.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 201, 52 Stat. 522.

#### 1939 AMENDMENT

Subsection (b) was amended by act June 29, 1939, cited to credit, and amendment made applicable only with re-

spect to taxable years beginning after December 31, 1939, by § 229 of said act. Prior to said amendment subsection (b) read as follows:

"(b) *Imposition of tax—(1) In general.* In lieu of the tax imposed by sections 13 and 14, there shall be levied, collected, and paid for each taxable year upon the special class net income of every life insurance company a tax of 16½ per centum of the amount thereof.

"(2) *Special class net income of foreign life insurance companies.* In the case of a foreign life insurance company, the special class net income shall be an amount which bears the same ratio to the special class net income, computed without regard to this paragraph, as the reserve funds required by law and held by it at the end of the taxable year upon business transacted within the United States bear to the reserve funds held by it at the end of the taxable year upon all business transacted.

"(3) *No United States insurance business.* Foreign life insurance companies not carrying on an insurance business within the United States and holding no reserve funds upon business transacted within the United States, shall not be taxable under this section but shall be taxable as other foreign corporations."

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 201, 49 Stat. 1710.  
 1934—May 10, 1934, ch. 277, § 201, 48 Stat. 731, as amended by act Aug. 30, 1935, ch. 829, § 103, 49 Stat. 1017.  
 1932—June 6, 1932, ch. 209, § 201, 47 Stat. 223.  
 1928—May 29, 1928, ch. 852, § 201, 45 Stat. 842.  
 1926—Feb. 26, 1926, ch. 27, §§ 242, 243, 44 Stat. 47.  
 1924—June 2, 1924, ch. 234, §§ 242, 243, 43 Stat. 288, 289.  
 1921—Nov. 23, 1921, ch. 136, §§ 242, 243, 42 Stat. 261.  
 1916—Sept. 8, 1916, ch. 463, § 10, 39 Stat. 765, as amended by act Oct. 3, 1917, ch. 63, § 1206, 40 Stat. 333.  
 1913—Oct. 3, 1913, ch. 16, § II, G, 38 Stat. 172.

### § 202. Gross income of life insurance companies—(a) Gross income defined—(1) In general.

In the case of a life insurance company the term "gross income" means the gross amount of income received during the taxable year from interest, dividends, and rents.

#### (2) Cross reference.

For inclusion in computation of tax of amount specified in shareholder's consent, see section 28.

#### (b) Reserve funds required by law, defined.

The term "reserve funds required by law" includes, in the case of assessment insurance, sums actually deposited by any company or association with State or Territorial officers pursuant to law as guaranty or reserve funds, and any funds maintained under the charter or articles of incorporation of the company or association exclusively for the payment of claims arising under certificates of membership or policies issued upon the assessment plan and not subject to any other use. (53 Stat. 71.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 202, 52 Stat. 523.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 202, 49 Stat. 1710.  
 1934—May 10, 1934, ch. 277, § 202, 48 Stat. 731.  
 1932—June 6, 1932, ch. 209, § 202, 47 Stat. 224.  
 1928—May 29, 1928, ch. 852, § 202, 45 Stat. 842.  
 1926—Feb. 26, 1926, ch. 27, § 244, 44 Stat. 47.  
 1924—June 2, 1924, ch. 234, § 244, 43 Stat. 289.  
 1921—Nov. 23, 1921, ch. 136, § 244, 42 Stat. 261.

### § 203. Net income of life insurance companies—(a) General rule.

In the case of a life insurance company the term "net income" means the gross income less—

**(1) Tax-free interest.**

The amount of interest received during the taxable year which under section 22 (b) (4) is excluded from gross income;

**(2) Reserve funds.**

An amount equal to 4 per centum of the mean of the reserve funds required by law and held at the beginning and end of the taxable year, except that in the case of any such reserve fund which is computed at a lower interest assumption rate, the rate of 3¾ per centum shall be substituted for 4 per centum. Life insurance companies issuing policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation, shall be allowed, in addition to the above, a deduction of 3¾ per centum of the mean of such reserve funds (not required by law) held at the beginning and end of the taxable year, as the Commissioner finds to be necessary for the protection of the holders of such policies only;

**(3) Reserve for dividends.**

An amount equal to 2 per centum of any sums held at the end of the taxable year as a reserve for dividends (other than dividends payable during the year following the taxable year) the payment of which is deferred for a period of not less than five years from the date of the policy contract;

**(4) Investment expenses.**

Investment expenses paid during the taxable year: *Provided*, That if any general expenses are in part assigned to or included in the investment expenses, the total deduction under this paragraph shall not exceed one-fourth of 1 per centum of the book value of the mean of the invested assets held at the beginning and end of the taxable year;

**(5) Real estate expenses.**

Taxes and other expenses paid during the taxable year exclusively upon or with respect to the real estate owned by the company, not including taxes assessed against local benefits of a kind, tending to increase the value of the property assessed, and not including any amount paid out for new buildings, or for permanent improvements or betterments made to increase the value of any property. The deduction allowed by this paragraph shall be allowed in the case of taxes imposed upon a shareholder of a company upon his interest as shareholder, which are paid by the company without reimbursement from the shareholder, but in such cases no deduction shall be allowed the shareholder for the amount of such taxes;

**(6) Depreciation.**

A reasonable allowance, as provided in section 23 (I), for the exhaustion, wear and tear of property, including a reasonable allowance for obsolescence; and

**(7) Interest.**

All interest paid within the taxable year on its indebtedness, except on indebtedness incurred or continued to purchase or carry obligations (other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the

taxpayer) the interest upon which is wholly exempt from taxation under this chapter.

**(8) [Net operating loss].<sup>1</sup>**

The amount of the net operating loss deduction provided in section 23 (s).

**(b) Rental value of real estate.**

The deduction under subsection (a) (5) or (6) of this section on account of any real estate owned and occupied in whole or in part by a life insurance company, shall be limited to an amount which bears the same ratio to such deduction (computed without regard to this subsection) as the rental value of the space not so occupied bears to the rental value of the entire property. (53 Stat. 71; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 211 (e) (1), 53 Stat. 868.)

<sup>1</sup> Catchline supplied by editor.

**DERIVATION**

Act May 28, 1938, ch. 289, § 203, 52 Stat. 523.

**1939 AMENDMENT**

Subsection (a), paragraph (8) was added by act June 29, 1939, cited to credit.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 203, 49 Stat. 1710.  
1934—May 10, 1934, ch. 277, § 203, 48 Stat. 732.  
1932—June 6, 1932, ch. 209, § 203, 47 Stat. 224.  
1928—May 29, 1928, ch. 852, § 203, 45 Stat. 842.  
1926—Feb. 26, 1926, ch. 27, § 245, 44 Stat. 47.  
1924—June 2, 1924, ch. 234, § 245, 43 Stat. 289.  
1921—Nov. 23, 1921, ch. 136, § 245, 42 Stat. 261, as amended by act Sept. 19, 1922, ch. 346, § 27, 42 Stat. 856.

**§ 204. Insurance companies other than life or mutual—  
(a) Imposition of tax—(1) In general.**

In lieu of the tax imposed by sections 13 and 14, there shall be levied, collected, and paid for each taxable year upon the normal-tax net income of every insurance company (other than a life or mutual insurance company) a tax at the rates provided in section 13 or section 14 (b).

**(2) Normal-tax net income of foreign companies.**

In the case of a foreign insurance company (other than a life or mutual insurance company), the normal-tax net income shall be the net income from sources within the United States minus the sum of—

**(A) Interest on obligations of the United States and its instrumentalities.**

The credit provided in section 26 (a).

**(B) Dividends received.**

The credit provided in section 26 (b).

**(3) No United States insurance business.**

Foreign insurance companies not carrying on an insurance business within the United States shall not be taxable under this section but shall be taxable as other foreign corporations.

**(b) Definition of income, etc.**

In the case of an insurance company subject to the tax imposed by this section—

**(1) Gross income.**

"Gross income" means the sum of (A) the combined gross amount earned during the taxable year, from investment income and from underwriting income as provided in this subsection, computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Con-

vention of Insurance Commissioners, and (B) gain during the taxable year from the sale or other disposition of property, and (C) all other items constituting gross income under section 22;

(2) Net income.

"Net income" means the gross income as defined in paragraph (1) of this subsection less the deductions allowed by subsection (c) of this section;

(3) Investment income.

"Investment income" means the gross amount of income earned during the taxable year from interest, dividends, and rents, computed as follows:

To all interest, dividends and rents received during the taxable year, add interest, dividends and rents due and accrued at the end of the taxable year, and deduct all interest, dividends and rents due and accrued at the end of the preceding taxable year;

(4) Underwriting income.

"Underwriting income" means the premiums earned on insurance contracts during the taxable year less losses incurred and expenses incurred;

(5) Premiums earned.

"Premiums earned on insurance contracts during the taxable year" means an amount computed as follows:

From the amount of gross premiums written on insurance contracts during the taxable year, deduct return premiums and premiums paid for reinsurance. To the result so obtained add unearned premiums on outstanding business at the end of the preceding taxable year and deduct unearned premiums on outstanding business at the end of the taxable year;

(6) Losses incurred.

"Losses incurred" means losses incurred during the taxable year on insurance contracts, computed as follows:

To losses paid during the taxable year, add salvage and reinsurance recoverable outstanding at the end of the preceding taxable year, and deduct salvage and reinsurance recoverable outstanding at the end of the taxable year. To the result so obtained add all unpaid losses outstanding at the end of the taxable year and deduct unpaid losses outstanding at the end of the preceding taxable year;

(7) Expenses incurred.

"Expenses incurred" means all expenses shown on the annual statement approved by the National Convention of Insurance Commissioners, and shall be computed as follows:

To all expenses paid during the taxable year add expenses unpaid at the end of the taxable year and deduct expenses unpaid at the end of the preceding taxable year. For the purpose of computing the net income subject to the tax imposed by this section there shall be deducted from expenses incurred as defined in this paragraph all expenses incurred which are not allowed as deductions by subsection (c) of this section.

(c) Deductions allowed.

In computing the net income of an insurance company subject to the tax imposed by this section there shall be allowed as deductions:

(1) All ordinary and necessary expenses incurred, as provided in section 23 (a);

(2) All interest as provided in section 23 (b);

(3) Taxes as provided in section 23 (c);

(4) Losses incurred as defined in subsection (b) of this section;

(5) Subject to the limitation contained in section 117 (d), losses sustained during the taxable year from the sale or other disposition of property;

(6) Bad debts in the nature of agency balances and bills receivable ascertained to be worthless and charged off within the taxable year;

(7) The amount of interest earned during the taxable year which under section 22 (b) (4) is excluded from gross income;

(8) A reasonable allowance for the exhaustion, wear and tear of property, as provided in section 23 (I);

(9) Charitable, and so forth, contributions, as provided in section 23 (q);

(10) Deductions (other than those specified in this subsection) as provided in section 23.

(d) Deductions of foreign corporations.

In the case of a foreign corporation the deductions allowed in this section shall be allowed to the extent provided in Supplement I in the case of a foreign corporation engaged in trade or business within the United States or having an office or place of business therein.

(e) Double deductions.

Nothing in this section shall be construed to permit the same item to be twice deducted. (53 Stat. 72; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, §§ 204, 226, 53 Stat. 865, 881.)

DERIVATION

Act May 28, 1938, ch. 289, § 204, 52 Stat. 524.

1939 AMENDMENT

Subsection (a) was amended by act June 29, 1939, cited to text, and amendment made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of said act. Prior to said amendment subsection read as follows:

"(a) *Imposition of tax*—(1) *In general.* In lieu of the tax imposed by sections 13 and 14, there shall be levied, collected, and paid for each taxable year upon the special class net income of every insurance company (other than a life or mutual insurance company) a tax of 16½ per centum of the amount thereof.

"(2) *Special class net income of foreign companies.* In the case of a foreign insurance company (other than a life or mutual insurance company), the special class net income shall be the net income from sources within the United States minus the sum of—

"(A) *Interest on obligations of the United States and its instrumentalities.* The credit provided in section 26 (a).

"(B) *Dividends received.* The credit provided in section 26 (b).

"(3) *No United States insurance business.* Foreign insurance companies not carrying on an insurance business within the United States shall not be taxable under this section but shall be taxable as other foreign corporations."

Subsection (c), paragraph (10) was amended by act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938, by § 226 (b) of said act.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 204, 49 Stat. 1711.

1934—May 10, 1934, ch. 277, § 204, 48 Stat. 733, as amended by act Aug. 30, 1935, ch. 829, §§ 102 (d), 104, 49 Stat. 1016, 1017.

1932—June 6, 1932, ch. 209, § 204, 47 Stat. 225.  
 1928—May 29, 1928, ch. 852, § 204, 45 Stat. 844.  
 1926—Feb. 26, 1926, ch. 27, §§ 246, 247, 44 Stat. 48, 49.  
 1924—June 2, 1924, ch. 234, §§ 246, 247, 43 Stat. 290, 291.  
 1921—Nov. 23, 1921, ch. 136, § 246, 42 Stat. 262.

#### § 205. Taxes of foreign countries and possessions of United States.

The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax of a domestic insurance company subject to the tax imposed by section 201, 204, or 207, to the extent provided in the case of a domestic corporation in section 131, and in the case of the tax imposed by section 201 or 204 "net income" as used in section 131 means the net income as defined in this Supplement. (53 Stat. 74.)

##### DERIVATION

Act May 28, 1938, ch. 289, § 205, 52 Stat. 526.

##### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 205, 49 Stat. 1713.  
 1934—May 10, 1934, ch. 277, § 205, 48 Stat. 735.  
 1932—June 6, 1932, ch. 209, § 206, 47 Stat. 227.  
 1928—May 29, 1928, ch. 852, § 206, 45 Stat. 846.  
 1926—Feb. 26, 1926, ch. 27, § 238, 44 Stat. 44.  
 1924—June 2, 1924, ch. 234, § 238, 43 Stat. 286.  
 1921—Nov. 23, 1921, ch. 136, § 238, 42 Stat. 258, as amended by act Sept. 19, 1922, ch. 346, § 23, 42 Stat. 856.  
 1919—Feb. 24, 1919, ch. 18, § 238, 40 Stat. 1080.

#### § 206. Computation of gross income.

The gross income of insurance companies subject to the tax imposed by section 201 or 204 shall not be determined in the manner provided in section 119. (53 Stat. 74.)

##### DERIVATION

Act May 28, 1938, ch. 289, § 206, 52 Stat. 526.

##### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 206, 49 Stat. 1713.  
 1934—May 10, 1934, ch. 277, § 206, 48 Stat. 735.  
 1932—June 6, 1932, ch. 209, § 207, 47 Stat. 227.  
 1928—May 29, 1928, ch. 852, § 207, 45 Stat. 846.  
 1926—Feb. 26, 1926, ch. 27, § 233, 44 Stat. 41.  
 1924—June 2, 1924, ch. 234, § 233, 43 Stat. 283.  
 1921—Nov. 23, 1921, ch. 136, § 233, 42 Stat. 254.  
 1919—Feb. 24, 1919, ch. 18, § 233, 40 Stat. 1077.

#### § 207. Mutual insurance companies other than life— (a) Imposition of tax—(1) In general.

There shall be levied, collected, and paid for each taxable year upon the normal-tax net income of every mutual insurance company (other than a life insurance company) a tax at the rates provided in section 13 or section 14 (b).

##### (2) Foreign corporations.

The tax imposed by paragraph (1) shall apply to foreign corporations as well as domestic corporations; but foreign insurance companies not carrying on an insurance business within the United States shall be taxable as other foreign corporations.

##### (b) Gross income.

Mutual marine insurance companies shall include in gross income the gross premiums collected and received by them less amounts paid for reinsurance.

##### (c) Deductions.

In addition to the deductions allowed to corporations by section 23 the following deductions to insur-

ance companies shall also be allowed, unless otherwise allowed—

##### (1) Mutual insurance companies other than life insurance.

In the case of mutual insurance companies other than life insurance companies—

(A) the net addition required by law to be made within the taxable year to reserve funds (including in the case of assessment insurance companies the actual deposit of sums with State or Territorial officers pursuant to law as additions to guarantee or reserve funds); and

(B) the sums other than dividends paid within the taxable year on policy and annuity contracts.

##### (2) Mutual marine insurance companies.

In the case of mutual marine insurance companies, in addition to the deductions allowed in paragraph (1) of this subsection, unless otherwise allowed, amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment and the payment thereof;

##### (3) Mutual insurance companies other than life and marine.

In the case of mutual insurance companies (including interinsurers and reciprocal underwriters, but not including mutual life or mutual marine insurance companies) requiring their members to make premium deposits to provide for losses and expenses, the amount of premium deposits returned to their policyholders and the amount of premium deposits retained for the payment of losses, expenses, and reinsurance reserves. (53 Stat. 74; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 205, 53 Stat. 865.)

##### DERIVATION

Act May 28, 1938, ch. 289, § 207, 52 Stat. 526.

##### 1939 AMENDMENT

Subsection (a) was amended by act June 29, 1939, cited to text, and amendment made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of said act. Prior to said amendment subsection (a) read as follows:

"(a) *Imposition of tax—(1) In general.* There shall be levied, collected, and paid for each taxable year upon the special class net income of every mutual insurance company (other than a life insurance company) a tax equal to 16½ per centum thereof.

"(2) *Foreign corporations.* The tax imposed by paragraph (1) shall apply to foreign corporations as well as domestic corporations; but foreign insurance companies not carrying on an insurance business within the United States shall be taxable as other foreign corporations."

##### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 207, 49 Stat. 1713.  
 1934—May 10, 1934, ch. 277, § 207, 48 Stat. 735.  
 1932—June 6, 1932, ch. 209, § 208, 47 Stat. 227.  
 1928—May 29, 1928, ch. 852, § 208, 45 Stat. 846.  
 1926—Feb. 26, 1926, ch. 27, §§ 233, 234, 44 Stat. 41.  
 1924—June 2, 1924, ch. 234, §§ 233, 234, 43 Stat. 283.  
 1921—Nov. 23, 1921, ch. 136, § 233, 42 Stat. 254.  
 1919—Feb. 24, 1919, ch. 18, § 233, 40 Stat. 1077.

#### § 208. Net operating losses.

The benefit of the deduction for net operating losses allowed by section 23 (s) shall be allowed to insurance companies subject to the taxes imposed in this supplement under regulations prescribed by



the Commissioner with the approval of the Secretary. (Added June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 211 (e) (2), 53 Stat. 868.)

#### SUPPLEMENT H.—NONRESIDENT ALIEN INDIVIDUALS

##### § 211. Tax on nonresident alien individuals—(a) No United States business or office—(1) General rule—(A) Imposition of tax.

There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by sections 11 and 12, upon the amount received, by every nonresident alien individual not engaged in trade or business within the United States and not having an office or place of business therein, from sources within the United States as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, a tax of 15 per centum of such amount, except that such rate shall be reduced, in the case of a resident of a contiguous country, to such rate (not less than 5 per centum) as may be provided by treaty with such country.

##### (B) Cross reference.

For inclusion in computation of tax of amount specified in shareholder's consent, see section 28.

##### (2) Aggregate more than \$24,000.

The tax imposed by paragraph (1) shall not apply to any individual if the aggregate amount received during the taxable year from the sources therein specified is more than \$24,000.

##### (3) Residents of contiguous countries.

Despite the provisions of paragraph (2), the provisions of paragraph (1) shall apply to a resident of a contiguous country so long as there is in effect a treaty with such country (ratified prior to August 26, 1937) under which the rate of tax under section 211 (a) of the Revenue Act of 1936, 49 Stat. 1714, prior to its amendment by section 501 (a) of the Revenue Act of 1937, 50 Stat. 830, was reduced.

##### (b) United States business or office.

A nonresident alien individual engaged in trade or business in the United States or having an office or place of business therein shall be taxable without regard to the provisions of subsection (a). As used in this section, section 119, section 143, section 144, and section 231, the phrase "engaged in trade or business within the United States" includes the performance of personal services within the United States at any time within the taxable year, but does not include the performance of personal services for a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of ninety days during the taxable year and whose compensation for such services does not exceed in the aggregate \$3,000. Such phrase does not include the effecting of transactions in the United States in stocks, securities, or commodities through a resident broker, commission agent, or custodian.

##### (c) No United States business or office and gross income of more than \$24,000.

A nonresident alien individual not engaged in trade or business within the United States and not having an office or place of business therein who has a gross income for any taxable year of more than \$24,000 from the sources specified in subsection (a) (1), shall be taxable without regard to the provisions of subsection (a) (1), except that—

(1) The gross income shall include only income from the sources specified in subsection (a) (1);

(2) The deductions (other than the so-called "charitable deduction" provided in section 213 (c)) shall be allowed only if and to the extent that they are properly allocable to the gross income from the sources specified in subsection (a) (1);

(3) The aggregate of the normal and surtax under sections 11 and 12 shall, in no case, be less than 15 per centum of the gross income from the sources specified in subsection (a) (1); and

(4) This subsection shall not apply to a resident of a contiguous country so long as there is in effect a treaty with such country (ratified prior to August 26, 1937) under which the rate of tax under section 211 (a) of the Revenue Act of 1936, prior to its amendment by section 501 (a) of the Revenue Act of 1937, was reduced. (53 Stat. 75; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title I, § 4, 54 Stat. 518.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 211, 52 Stat. 527.

#### 1940 AMENDMENT

Subsection (a) (1) (A) was amended by act June 25, 1940, cited to text, which inserted "15 per centum" in lieu of "10 per centum."

Subsection (a) (2) was amended by act June 25, 1940, cited to text, which substituted "\$24,000" for "\$21,600."

Subsection (c) was amended by act June 25, 1940, cited to text, which inserted "\$24,000" in lieu of "\$21,600" and "15 per centum" in lieu of "10 per centum."

#### TREATY OBLIGATIONS

Section 8 of act June 25, 1940, cited to text, provided as follows: "No amendment made by this title (sections 1-9 of 1940 act) shall apply in any case where its application would be contrary to any treaty obligation of the United States."

#### TAXABLE YEARS AFFECTED

Section 9 of act June 25, 1940, cited to text, provided as follows: "The amendments made by this title (section 1-9 of 1940 act), except the amendments made by section 5 (sections 143, 144 of Internal Revenue Code), shall be applicable only with respect to taxable years beginning after December 31, 1939."

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 211, 49 Stat. 1714, as amended Aug. 26, 1937, ch. 815, title V, § 501, 50 Stat. 830.

##### § 212. Gross income—(a) General rule.

In the case of a nonresident alien individual gross income includes only the gross income from sources within the United States.

##### (b) Ships under foreign flag.

The income of a nonresident alien individual which consists exclusively of earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States shall not

be included in gross income and shall be exempt from taxation under this chapter. (53 Stat. 76.)

## DERIVATION

Act May 28, 1938, ch. 289, § 212, 52 Stat. 527.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 212, 49 Stat. 1715.  
 1934—May 10, 1934, ch. 277, § 211, 48 Stat. 735.  
 1932—June 6, 1932, ch. 209, § 212, 47 Stat. 228.  
 1928—May 29, 1928, ch. 852, § 212, 45 Stat. 847.  
 1926—Feb. 26, 1926, ch. 27, §§ 210, 213, 44 Stat. 21, 23.  
 1924—June 2, 1924, ch. 234, §§ 210, 213, 43 Stat. 264, 267,  
 as section 213 was amended by act Feb. 26, 1925, ch. 345,  
 § 12, 43 Stat. 997.

## § 213. Deductions—(a) General rule.

In the case of a nonresident alien individual the deductions shall be allowed only if and to the extent that they are connected with income from sources within the United States; and the proper apportionment and allocation of the deductions with respect to sources of income within and without the United States shall be determined as provided in section 119, under rules and regulations prescribed by the Commissioner with the approval of the Secretary.

## (b) Losses.

(1) The deduction, for losses not connected with the trade or business if incurred in transactions entered into for profit, allowed by section 23 (e) (2) shall be allowed whether or not connected with income from sources within the United States, but only if the profit, if such transaction had resulted in a profit, would be taxable under this chapter.

(2) The deduction for losses of property not connected with the trade or business if arising from certain casualties or theft, allowed by section 23 (e) (3), shall be allowed whether or not connected with income from sources within the United States, but only if the loss is of property within the United States.

## (c) Charitable, etc., contributions.

The so-called "charitable contribution" deduction allowed by section 23 (o) shall be allowed whether or not connected with income from sources within the United States, but only as to contributions or gifts made to domestic corporations, or to community chests, funds, or foundations, created in the United States, or to the vocational rehabilitation fund. (53 Stat. 76.)

## DERIVATION

Act May 28, 1938, ch. 289, § 213, 52 Stat. 528.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 213, 49 Stat. 1715.  
 1934—May 10, 1934, ch. 277, § 212, 48 Stat. 736.  
 1932—June 6, 1932, ch. 209, § 213, 47 Stat. 228.  
 1928—May 29, 1928, ch. 852, § 213, 45 Stat. 847.  
 1926—Feb. 26, 1926, ch. 27, § 214, 44 Stat. 26.  
 1924—June 2, 1924, ch. 234, § 214, 43 Stat. 269.

## § 214. Credits against net income.

In the case of a nonresident alien individual the personal exemption allowed by section 25 (b) (1) of this chapter shall be only \$800. The credit for dependents allowed by section 25 (b) (2) shall not be allowed in the case of a nonresident alien individual unless he is a resident of a contiguous country. (53 Stat. 77; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title I, § 6 (b), 54 Stat. 519.)

## DERIVATION

Act May 28, 1938, ch. 289, § 214, 52 Stat. 528.

## 1940 AMENDMENT

Act June 25, 1940, cited to text, substituted "\$800" for "\$1,000."

## TREATY OBLIGATIONS

Section 8 of act June 25, 1940, cited to text, provided as follows: "No amendment made by this title (sections 1-9 of 1940 act) shall apply in any case where its application would be contrary to any treaty obligation of the United States."

## TAXABLE YEARS AFFECTED

Section 9 of act June 25, 1940, cited to text, provided as follows: "The amendments made by this title (sections 1-9 of 1940 act), except the amendments made by section 5 (sections 143, 144 of Internal Revenue Code), shall be applicable only with respect to taxable years beginning after December 31, 1939."

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 214, 49 Stat. 1715.  
 1934—May 10, 1934, ch. 277, § 213, 48 Stat. 736.  
 1932—June 6, 1932, ch. 209, § 214, 47 Stat. 229.  
 1928—May 29, 1928, ch. 852, § 214, 45 Stat. 848.  
 1926—Feb. 26, 1926, ch. 27, § 216, 44 Stat. 29.  
 1924—June 2, 1924, ch. 234, § 216, 43 Stat. 272.

## § 215. Allowance of deductions and credits—(a) Return to contain information.

A nonresident alien individual shall receive the benefit of the deductions and credits allowed to him in this chapter only by filing or causing to be filed with the collector a true and accurate return of his total income received from all sources in the United States, in the manner prescribed in this chapter; including therein all the information which the Commissioner may deem necessary for the calculation of such deductions and credits.

## (b) Tax withheld at source.

The benefit of the personal exemption and credit for dependents may, in the discretion of the Commissioner and under regulations prescribed by him with the approval of the Secretary, be received by a nonresident alien individual entitled thereto, by filing a claim therefor with the withholding agent. (53 Stat. 77.)

## DERIVATION

Act May 28, 1938, ch. 289, § 215, 52 Stat. 528.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 215, 49 Stat. 1716.  
 1934—May 10, 1934, ch. 277, § 214, 48 Stat. 736.  
 1932—June 6, 1932, ch. 209, § 215, 47 Stat. 229.  
 1928—May 29, 1928, ch. 852, § 215, 45 Stat. 848.  
 1926—Feb. 26, 1926, ch. 27, § 217, 44 Stat. 30.  
 1924—June 2, 1924, ch. 234, § 217, 43 Stat. 273.  
 1921—Nov. 23, 1921, ch. 136, § 217, 42 Stat. 243.  
 1919—Feb. 24, 1919, ch. 18, § 217, 40 Stat. 1069.  
 1916—Sept. 8, 1916, ch. 463, § 6, 39 Stat. 760, as amended  
 by act Oct. 3, 1917, ch. 63, § 1202, 40 Stat. 330.

## § 216. Credits against tax.

A nonresident alien individual shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 131. A nonresident alien individual shall be allowed as a credit against his tax the amount required by section 396 to be paid by the personal service corporation of which he is a shareholder with respect to his tax liability under Supplement S. (53 Stat. 77; Oct. 8, 1940, 11 p. m. E. S. T., ch. 757, title V, § 504, 54 Stat. 1007.)

## DERIVATION

Act May 28, 1938, ch. 289, § 216, 52 Stat. 528.

## 1940 AMENDMENT

Last sentence was added by act October 8, 1940, cited to text.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 216, 49 Stat. 1716.

1934—May 10, 1934, ch. 277, § 216, 48 Stat. 737.

1932—June 6, 1932, ch. 209, § 216, 47 Stat. 229.

1928—May 29, 1928, ch. 852, § 216, 45 Stat. 848.

## § 217. Returns—(a) Requirement.

In the case of a nonresident alien individual the return, in lieu of the time prescribed in section 53 (a) (1), shall be made on or before the fifteenth day of the sixth month following the close of the fiscal year, or, if the return is made on the basis of the calendar year, then on or before the fifteenth day of June.

## (b) Exemption from requirement.

Subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Commissioner, with the approval of the Secretary, nonresident alien individuals subject to the tax imposed by section 211 (a) may be exempted from the requirement of filing returns of such tax. (53 Stat. 77.)

## DERIVATION

Act May 28, 1938, ch. 289, § 217, 52 Stat. 529.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 217, 49 Stat. 1716.

1934—May 10, 1934, ch. 277, § 216, 48 Stat. 737.

1932—June 6, 1932, ch. 209, § 217, 47 Stat. 229.

1928—May 29, 1928, ch. 852, § 217, 45 Stat. 848.

1926—Feb. 26, 1926, ch. 27, § 270 (a), 44 Stat. 39.

1924—June 2, 1924, ch. 234, § 270 (a), 43 Stat. 281.

1921—Nov. 23, 1921, ch. 136, § 227, 42 Stat. 251.

1919—Feb. 24, 1919, ch. 18, § 227, 40 Stat. 1075.

1916—Sept. 8, 1916, ch. 463, § 8, 39 Stat. 761, as amended by act Oct. 3, 1917, ch. 63, § 1204, 40 Stat. 331.

1913—Oct. 3, 1913, ch. 16, § II, D, 38 Stat. 168.

## § 218. Payment of tax—(a) Time of payment.

In the case of a nonresident alien individual the total amount of tax imposed by this chapter shall be paid, in lieu of the time prescribed in section 56 (a), on the fifteenth day of June following the close of the calendar year, or, if the return should be made on the basis of a fiscal year, then on the fifteenth day of the sixth month following the close of the fiscal year.

## (b) Withholding at source.

For withholding at source of tax on income of nonresident aliens, see section 143.

(53 Stat. 77.)

## DERIVATION

Act May 28, 1938, ch. 289, § 218, 52 Stat. 529.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 218, 49 Stat. 1716.

1934—May 10, 1934, ch. 277, § 217, 48 Stat. 737.

1932—June 6, 1932, ch. 209, § 218, 47 Stat. 229.

1928—May 29, 1928, ch. 852, § 218, 45 Stat. 848.

1926—Feb. 26, 1926, ch. 27, § 207a, 44 Stat. 54.

1924—June 2, 1924, ch. 234, § 270, 43 Stat. 295.

1921—Nov. 23, 1921, ch. 136, § 250, 42 Stat. 264.

1919—Feb. 24, 1919, ch. 18, § 250, 40 Stat. 1082.

1917—Oct. 3, 1917, ch. 63, § 1009, 40 Stat. 326.

1916—Sept. 8, 1916, ch. 463, §§ 9, 14, 39 Stat. 763, 772, as amended by act Oct. 3, 1917, ch. 63, § 1205, 40 Stat. 332.

1913—Oct. 3, 1913, ch. 16, § II, E, G, 38 Stat. 169, 176.

## § 219. Partnerships.

For the purpose of this chapter, a nonresident alien individual shall be considered as being engaged in a trade or business within the United States if the partnership of which he is a member is so engaged and as having an office or place of business within the United States if the partnership of which he is a member has such an office or place of business. (53 Stat. 78.)

## DERIVATION

Act May 28, 1938, ch. 289, § 219, 52 Stat. 530.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 219, 49 Stat. 1716.

## SUPPLEMENT I.—FOREIGN CORPORATIONS

## § 231. Tax on foreign corporations—(a) Nonresident corporations—(1) Imposition of tax.

There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by sections 13 and 14, upon the amount received by every foreign corporation not engaged in trade or business within the United States and not having an office or place of business therein, from sources within the United States as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, a tax of 15 per centum of such amount, and except that in the case of corporations organized under the laws of a contiguous country such rate with respect to dividends shall be reduced to such rate (not less than 5 per centum) as may be provided by treaty with such country.

## (2) Cross reference.

For inclusion in computation of tax of amount specified in shareholder's consent, see section 28.

## (b) Resident corporations.

A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable as provided in section 14 (c) (1).

## (c) Gross income.

In the case of a foreign corporation gross income includes only the gross income from sources within the United States.

## (d) Ships under foreign flag.

The income of a foreign corporation, which consists exclusively of earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States, shall not be included in gross income and shall be exempt from taxation under this chapter. (53 Stat. 78; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 206, 53 Stat. 866; June 25, 1940, 11:45 a. m. E. S. T., ch. 419, title I, § 3 (c), 54 Stat. 517.)

## DERIVATION

Act May 28, 1938, ch. 289, § 231, 52 Stat. 530.

## 1940 AMENDMENT

Subsection (a) (1) was amended by act June 25, 1940, cited to text, which struck out "except that in the case of dividends the rate shall be 10 per centum, and" after "a tax of 15 per centum of such amount" and struck out "of 10 per centum" after "such rate" in last clause.

## TREATY OBLIGATIONS

Section 8 of act June 25, 1940, cited to text, provided as follows:

"No amendment made by this title (sections 1-9 of 1940 act) shall apply in any case where its application would be contrary to any treaty obligation of the United States."

## TAXABLE YEARS AFFECTED

Section 9 of act June 25, 1940, cited to text, provided as follows:

"The amendments made by this title (sections 1-9 of 1940 act), except the amendments made by section 5 (sections 143, 144 of Internal Revenue Code), shall be applicable only with respect to taxable years beginning after December 31, 1939."

## 1939 AMENDMENT

Subsection (b) was amended by act June 29, 1939, cited to text, and amendment made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of said act. Prior to said amendment subsection (b) read as follows:

"(b) *Resident corporations.* A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable as provided in section 14 (e) (1)."

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 231, 49 Stat. 1717.  
 1934—May 10, 1934, ch. 277, § 231, 48 Stat. 737.  
 1932—June 6, 1932, ch. 209, § 231, 47 Stat. 229.  
 1928—May 29, 1928, ch. 852, § 231, 45 Stat. 849.  
 1926—Feb. 26, 1926, ch. 27, §§ 213, 233, 44 Stat. 23, 41.  
 1924—June 2, 1924, ch. 234, §§ 213, 233, 43 Stat. 267, 283, as amended by act Feb. 26, 1925, ch. 345, § 12, 43 Stat. 997.  
 1921—Nov. 23, 1921, ch. 136, § 233, 42 Stat. 254.  
 1919—Feb. 24, 1919, ch. 18, § 233, 40 Stat. 1077.

## § 232. Deductions—(a) In general.

In the case of a foreign corporation the deductions shall be allowed only if and to the extent that they are connected with income from sources within the United States; and the proper apportionment and allocation of the deductions with respect to sources within and without the United States shall be determined as provided in section 119, under rules and regulations prescribed by the Commissioner with the approval of the Secretary.

## (b) Charitable, and so forth, contributions.

The so-called "charitable contribution" deduction allowed by section 23 (q) shall be allowed whether or not connected with income from sources within the United States. (53 Stat. 78.)

## DERIVATION

Act May 28, 1938, ch. 289, § 232, 52 Stat. 531.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 232, 49 Stat. 1717.  
 1934—May 10, 1934, ch. 277, § 232, 48 Stat. 737, as amended by act Aug. 30, 1935, ch. 829, § 102(e), 49 Stat. 1016.  
 1932—June 6, 1932, ch. 209, § 232, 47 Stat. 230.  
 1928—May 29, 1928, ch. 852, § 232, 45 Stat. 849.  
 1926—Feb. 26, 1926, ch. 27, § 234, 44 Stat. 41.  
 1924—June 2, 1924, ch. 234, § 234, 43 Stat. 283.  
 1921—Nov. 23, 1921, ch. 136, § 234, 42 Stat. 254, as amended by act Sept. 19, 1922, ch. 346, § 27, 42 Stat. 856.  
 1919—Feb. 24, 1919, ch. 18, § 234, 40 Stat. 1077.

1916—Sept. 8, 1916, ch. 468, § 12, 39 Stat. 767, as amended by act Oct. 3, 1917, ch. 63, § 1207, 40 Stat. 334.

1913—Oct. 3, 1913, ch. 16, § II, G, 38 Stat. 172.

## § 233. Allowance of deductions and credits.

A foreign corporation shall receive the benefit of the deductions and credits allowed to it in this chapter only by filing or causing to be filed with the collector a true and accurate return of its total income received from all sources in the United States, in the manner prescribed in this chapter; including therein all the information which the Commissioner may deem necessary for the calculation of such deductions and credits. (53 Stat. 79.)

## DERIVATION

Act May 28, 1938, ch. 289, § 233, 52 Stat. 531.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 233, 49 Stat. 1717.  
 1934—May 10, 1934, ch. 277, § 233, 48 Stat. 737.  
 1932—June 6, 1932, ch. 209, § 233, 47 Stat. 230.  
 1928—May 29, 1928, ch. 852, § 233, 45 Stat. 849.  
 1926—Feb. 26, 1926, ch. 27, §§ 217, 232, 44 Stat. 30, 41.  
 1924—June 2, 1924, ch. 234, §§ 217, 232, 43 Stat. 273, 283.  
 1921—Nov. 23, 1921, ch. 136, §§ 217, 232, 42 Stat. 243, 254.  
 1919—Feb. 24, 1919, ch. 18, §§ 217, 232, 40 Stat. 1069, 1077.

## § 234. Credits against tax.

Foreign corporations shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 131. A foreign corporation shall be allowed as a credit against its tax the amount required by section 396 to be paid by the personal service corporation of which it is a shareholder with respect to its tax liability under Supplement S. (53 Stat. 79; Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title V, § 505, 54 Stat. 1007.)

## DERIVATION

Act May 28, 1938, ch. 289, § 234, 52 Stat. 531.

## 1940 AMENDMENT

Last sentence was added by act October 8, 1940, cited to text.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 234, 49 Stat. 1718.  
 1934—May 10, 1934, ch. 277, § 234, 48 Stat. 737.  
 1932—June 6, 1932, ch. 209, § 234, 47 Stat. 230.  
 1928—May 29, 1928, ch. 852, § 234, 45 Stat. 849.

## § 235. Returns—(a) Time of filing.

In the case of a foreign corporation not having any office or place of business in the United States the return, in lieu of the time prescribed in section 53 (a) (1), shall be made on or before the fifteenth day of the sixth month following the close of the fiscal year, or, if the return is made on the basis of the calendar year then on or before the fifteenth day of June. If any foreign corporation has no office or place of business in the United States but has an agent in the United States, the return shall be made by the agent.

## (b) Exemption from requirement.

Subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Commissioner, with the approval of the Secretary, corporations subject to the tax imposed by section 231 (a) may be exempted from the

requirement of filing returns of such tax. (53 Stat. 79.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 235, 52 Stat. 531.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 235, 49 Stat. 1718.  
 1934—May 10, 1934, ch. 277, § 235, 48 Stat. 738.  
 1932—June 6, 1932, ch. 209, § 235, 47 Stat. 230.  
 1928—May 29, 1928, ch. 852, § 235, 45 Stat. 849.  
 1926—Feb. 26, 1926, ch. 27, §§ 239, 241, 44 Stat. 45.  
 1924—June 2, 1924, ch. 234, §§ 239, 241, 43 Stat. 287.  
 1921—Nov. 23, 1921, ch. 136, §§ 239, 241, 42 Stat. 259, 260.  
 1919—Feb. 24, 1919, ch. 18, §§ 239, 241, 40 Stat. 1081, 1082.  
 1916—Sept. 8, 1916, ch. 463, § 13, 39 Stat. 770, as amended by act Oct. 3, 1917, ch. 63, § 1208, 40 Stat. 335.  
 1913—Oct. 3, 1913, ch. 16, § II, G, 38 Stat. 174, 175.

#### § 236. Payment of tax—(a) Time of payment.

In the case of a foreign corporation not having any office or place of business in the United States the total amount of tax imposed by this chapter shall be paid, in lieu of the time prescribed in section 56 (a), on the fifteenth day of June following the close of the calendar year, or, if the return should be made on the basis of a fiscal year, then on the fifteenth day of the sixth month following the close of the fiscal year.

#### (b) Withholding at source.

For withholding at source of tax on income of foreign corporations, see section 144.

(53 Stat. 79.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 236, 52 Stat. 531.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 236, 49 Stat. 1718.  
 1934—May 10, 1934, ch. 277, § 236, 48 Stat. 738.  
 1932—June 6, 1932, ch. 209, § 236, 47 Stat. 230.  
 1928—May 29, 1928, ch. 852, § 236, 45 Stat. 849.  
 1926—Feb. 26, 1926, ch. 27, § 270a, 44 Stat. 54.  
 1924—June 2, 1924, ch. 234, § 270a, 43 Stat. 295.  
 1921—Nov. 23, 1921, ch. 136, § 250, 42 Stat. 264.  
 1919—Feb. 24, 1919, ch. 18, § 250, 40 Stat. 1082.  
 1917—Oct. 3, 1917, ch. 63, § 1009, 40 Stat. 326.  
 1916—Sept. 8, 1916, ch. 463, §§ 9, 14, 39 Stat. 763, 772, as amended by act Oct. 3, 1917, ch. 63, § 1205, 40 Stat. 332.  
 1913—Oct. 3, 1913, ch. 16, § II, E, G, 38 Stat. 167, 176.

#### § 237. Foreign insurance companies.

For special provisions relating to foreign insurance companies, see Supplement G.

(53 Stat. 79.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 237, 52 Stat. 531.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 237, 49 Stat. 1718.  
 1934—May 10, 1934, ch. 277, § 237, 48 Stat. 738.

#### § 238. Affiliation.

A foreign corporation shall not be deemed to be affiliated with any other corporation within the meaning of section 141. (53 Stat. 79.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 238, 52 Stat. 532.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 238, 49 Stat. 1718.  
 1934—May 10, 1934, ch. 277, § 238, 48 Stat. 738.  
 1932—June 6, 1932, ch. 209, § 238, 47 Stat. 230.  
 1928—May 29, 1928, ch. 852, § 238, 45 Stat. 850.

#### SUPPLEMENT J.—POSSESSIONS OF THE UNITED STATES

#### § 251. Income from sources within possessions of United States—(a) General rule.

In the case of citizens of the United States or domestic corporations, satisfying the following conditions, gross income means only gross income from sources within the United States—

(1) If 80 per centum or more of the gross income of such citizen or domestic corporation (computed without the benefit of this section), for the three-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession of the United States; and

(2) If, in the case of such corporation, 50 per centum or more of its gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States; or

(3) If, in case of such citizen, 50 per centum or more of his gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States either on his own account or as an employee or agent of another.

#### (b) Amounts received in United States.

Notwithstanding the provisions of subsection (a) there shall be included in gross income all amounts received by such citizens or corporations within the United States, whether derived from sources within or without the United States.

#### (c) Tax in case of corporations—(1) Corporation tax.

A domestic corporation entitled to the benefits of this section shall be subject to tax under section 13 or section 14 (b).

#### (2) Cross reference.

For inclusion in computation of tax of amount specified in shareholder's consent, see section 28.

#### (d) Definition.

As used in this section the term "Possession of the United States" does not include the Virgin Islands of the United States.

#### (e) Deductions.

(1) Citizens of the United States entitled to the benefits of this section shall have the same deductions as are allowed by Supplement H in the case of a nonresident alien individual engaged in trade or business within the United States or having an office or place of business therein.

(2) Domestic corporations entitled to the benefits of this section shall have the same deductions as are allowed by Supplement I in the case of a foreign corporation engaged in trade or business within the United States or having an office or place of business therein.

#### (f) Credits against net income.

A citizen of the United States entitled to the benefits of this section shall be allowed a personal exemption of only \$800 and shall not be allowed the credit for dependents provided in section 25 (b) (2).

**(g) Allowance of deductions and credits.**

Citizens of the United States and domestic corporations entitled to the benefits of this section shall receive the benefit of the deductions and credits allowed to them in this chapter only by filing or causing to be filed with the collector a true and accurate return of their total income received from all sources in the United States, in the manner prescribed in this chapter; including therein all the information which the Commissioner may deem necessary for the calculation of such deductions and credits.

**(h) Credits against tax.**

Persons entitled to the benefits of this section shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 131.

**(i) Affiliation.**

A corporation entitled to the benefits of this section shall not be deemed to be affiliated with any other corporation within the meaning of section 141. (53 Stat. 79; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 207, 53 Stat. 866; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title I, § 6 (c), 54 Stat. 519.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 251, 52 Stat. 532.

**1940 AMENDMENT**

Subsection (f) was amended by act June 25, 1940, cited to text, which substituted "\$800" for "\$1,000."

**TREATY OBLIGATION**

Section 8 of act June 25, 1940, cited to text, provided as follows: "No amendment made by this title (sections 1-9 of 1940 act) shall apply in any case where its application would be contrary to any treaty obligation of the United States."

**TAXABLE YEARS AFFECTED**

Section 9 of act June 25, 1940, cited to text, provided as follows: "The amendments made by this title (sections 1-9 of 1940 act), except the amendments made by section 5 (sections 143, 144 of Internal Revenue Code), shall be applicable only with respect to taxable years beginning after December 31, 1939."

**1939 AMENDMENT**

Subsection (c), paragraph (1) was amended by act June 29, 1939, cited to text, and amendment made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of said act. Prior to said amendment subsection (c), paragraph (1) read as follows:

"(c) *Tax in case of corporations*—(1) *Section imposing tax.* A domestic corporation entitled to the benefits of this section shall be taxable as provided in section 14 (d)."

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 251, 49 Stat. 1718.  
1934—May 10, 1934, ch. 277, § 251, 48 Stat. 738.  
1932—June 6, 1932, ch. 209, § 251, 47 Stat. 231.  
1928—May 29, 1928, ch. 852, § 251, 45 Stat. 850.  
1926—Feb. 26, 1926, ch. 27, §§ 214, 216, 217, 222, 232, 234, 238, 240, 262, 44 Stat. 26, 29, 30, 36, 41, 44, 46, 53.  
1924—June 2, 1924, ch. 234, §§ 214, 216, 217, 222, 232, 234, 238, 240, 262, 43 Stat. 269, 272, 273, 279, 283, 286, 288, 294.

**§ 252. Citizens of possessions of United States.**

(a) Any individual who is a citizen of any possession of the United States (but not otherwise a citizen of the United States) and who is not a resident of the United States, shall be subject to taxation under this chapter only as to income derived from sources within the United States, and in such case the tax

shall be computed and paid in the same manner and subject to the same conditions as in the case of other persons who are taxable only as to income derived from such sources.

(b) Nothing in this section shall be construed to alter or amend the provisions of the Act entitled "An Act making appropriations for the naval service for the fiscal year ending June 30, 1922, and for other purposes," approved July 12, 1921, ch. 44, 42 Stat. 123 (U. S. C., title 48, § 1397), relating to the imposition of income taxes in the Virgin Islands of the United States. (53 Stat. 80.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 252, 52 Stat. 533.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 252, 49 Stat. 1719.  
1934—May 10, 1934, ch. 277, § 252, 48 Stat. 739.  
1932—June 6, 1932, ch. 209, § 252, 47 Stat. 232.  
1928—May 29, 1928, ch. 852, § 252, 45 Stat. 851.  
1926—Feb. 26, 1926, ch. 27, § 260, 44 Stat. 52.  
1924—June 2, 1924, ch. 234, § 260, 43 Stat. 294.  
1921—Nov. 23, 1921, ch. 136, § 260, 42 Stat. 270.  
1919—Feb. 24, 1919, ch. 18, § 260, 40 Stat. 1087.

**SUPPLEMENT K.—CHINA TRADE ACT CORPORATIONS****§ 261. Taxation in general.—(a) Corporation tax.**

A corporation organized under the China Trade Act, 1922, 42 Stat. 849 (U. S. C., 1934 ed., title 15, ch. 4), shall be subject to tax under section 13 or section 14 (b).

**(b) Cross reference.**

For inclusion in computation of tax of amount specified in shareholder's consent, see section 28.

(53 Stat. 81; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 208, 53 Stat. 866.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 261, 52 Stat. 533.

**1939 AMENDMENT**

Subsection (a) was amended by act June 29, 1939, cited to text, and amendment made applicable only with respect to taxable years beginning after December 31, 1939 by § 229 of said act. Prior to said amendment subsection (a) read as follows:

"(a) *Imposition of tax.* A corporation organized under the China Trade Act, 1922, 42 Stat. 849 (U. S. C., title 15, ch. 4), shall be taxable as provided in section 14 (d)."

**SIMILAR PROVISIONS**

Act June 22, 1936, ch. 690, § 261, 49 Stat. 1720.

**§ 262. Credit against net income.—(a) Allowance of credit.**

For the purpose only of the taxes imposed by sections 13, 14, and 600 of this title and section 106 of the Revenue Act of 1935 there shall be allowed, in the case of a corporation organized under the China Trade Act, 1922, in addition to the credits against net income otherwise allowed such corporation, a credit against the net income of an amount equal to the proportion of the net income derived from sources within China (determined in a similar manner to that provided in section 119) which the par value of the shares of stock of the corporation owned on the last day of the taxable year by (1) persons resident in China, the United States, or possessions of the United States, and (2) individual citizens of the United States or China wherever resident, bears

to the par value of the whole number of shares of stock of the corporation outstanding on such date: *Provided*, That in no case shall the diminution, by reason of such credit, of the tax imposed by such section 13 or 14 (computed without regard to this section) exceed the amount of the special dividend certified under subsection (b) of this section; and in no case shall the diminution, by reason of such credit, of the tax imposed by such section 106 or 600 (computed without regard to this section) exceed the amount by which such special dividend exceeds the diminution permitted by this section in the tax imposed by such section 13 or 14.

(b) **Special dividend.**

Such credit shall not be allowed unless the Secretary of Commerce has certified to the Commissioner—

(1) The amount which, during the year ending on the date fixed by law for filing the return, the corporation has distributed as a special dividend to or for the benefit of such persons as on the last day of the taxable year were resident in China, the United States, or possessions of the United States, or were individual citizens of the United States or China, and owned shares of stock of the corporation;

(2) That such special dividend was in addition to all other amounts, payable or to be payable to such persons or for their benefit, by reason of their interest in the corporation; and

(3) That such distribution has been made to or for the benefit of such persons in proportion to the par value of the shares of stock of the corporation owned by each; except that if the corporation has more than one class of stock, the certificates shall contain a statement that the articles of incorporation provide a method for the apportionment of such special dividend among such persons, and that the amount certified has been distributed in accordance with the method so provided.

(c) **Ownership of stock.**

For the purposes of this section shares of stock of a corporation shall be considered to be owned by the person in whom the equitable right to the income from such shares is in good faith vested.

(d) **Definition of China.**

As used in this section the term "China" shall have the same meaning as when used in the China Trade Act, 1922. (53 Stat. 81; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 210 (c), 53 Stat. 866.)

**DERIVATION**

Act, May 28, 1938, § 262, 52 Stat. 533.

**1939 AMENDMENT**

Subsection (a) was amended by act June 29, 1939, cited to text by inclusion of taxes imposed by section 13, and amendment made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of said act.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 262, 49 Stat. 1720.  
1934—May 10, 1934, ch. 277, § 261, 48 Stat. 739.  
1932—June 6, 1932, ch. 209, § 261, 47 Stat. 232.  
1928—May 29, 1928, ch. 852, § 261, 45 Stat. 851.  
1926—Feb. 26, 1926, ch. 27, § 263, 44 Stat. 53.  
1924—June 2, 1924, ch. 234, § 263, 43 Stat. 295, as amended by act Feb. 26, 1925, ch. 345, § 11, 43 Stat. 996.

1921—Nov. 23, 1921, ch. 136, § 264, as added by act Sept. 19, 1922, ch. 346, § 21, 42 Stat. 855.

§ 263. **Credits against the tax.**

A corporation organized under the China Trade Act, 1922, shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 131. (53 Stat. 82.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 263, 52 Stat. 534.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 263, 49 Stat. 1721.  
1934—May 10, 1934, ch. 277, § 262, 48 Stat. 740.  
1932—June 6, 1932, ch. 209, § 262, 47 Stat. 233.  
1928—May 29, 1928, ch. 852, § 262, 45 Stat. 852.

§ 264. **Affiliation.**

A corporation organized under the China Trade Act, 1922, shall not be deemed to be affiliated with any other corporation within the meaning of section 141. (53 Stat. 82.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 264, 52 Stat. 534.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 264, 49 Stat. 1721.  
1934—May 10, 1934, ch. 277, § 263, 48 Stat. 740.  
1932—June 6, 1932, ch. 209, § 263, 47 Stat. 233.  
1928—May 29, 1928, ch. 852, § 263, 45 Stat. 852.  
1926—Feb. 26, 1926, ch. 27, § 240, 44 Stat. 46.  
1924—June 2, 1924, ch. 234, § 240, 43 Stat. 288.

§ 265. **Income of shareholders.**

For exclusion of dividends from gross income, see section 116.

(53 Stat. 82.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 265, 52 Stat. 534.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 265, 49 Stat. 1721.  
1934—May 10, 1934, ch. 277, § 264, 48 Stat. 740.

**SUPPLEMENT L.—ASSESSMENT AND COLLECTION OF DEFICIENCIES**

§ 271. **Definition of deficiency.**

As used in this chapter in respect of a tax imposed by this chapter "deficiency" means—

(a) The amount by which the tax imposed by this chapter exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or

(b) If no amount is shown as the tax by the taxpayer upon his return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax. (53 Stat. 82.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 271, 52 Stat. 534.



## SIMILAR PROVISIONS

- 1936—June 22, 1936, ch. 690, § 271, 49 Stat. 1721.  
 1934—May 10, 1934, ch. 277, § 271, 48 Stat. 740.  
 1932—June 6, 1932, ch. 209, § 271, 47 Stat. 238.  
 1928—May 29, 1928, ch. 852, § 271, 45 Stat. 852.  
 1926—Feb. 26, 1926, ch. 27, § 240, 44 Stat. 46.  
 1924—June 2, 1924, ch. 234, § 240, 43 Stat. 288.

### § 272. Procedure in general—(a) (1) Petition to Board of Tax Appeals.

If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this chapter, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within ninety days after such notice is mailed (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) the taxpayer may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this chapter and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such ninety-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3653 (a) the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court. In the case of a joint return filed by husband and wife such notice of deficiency may be a single joint notice, except that if the Commissioner has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, duplicate originals of the joint notice must be sent by registered mail to each spouse at his last known address.

#### (2) Cross references.

For exceptions to the restrictions imposed by this subsection, see—Subsection (d) of this section, relating to waivers by the taxpayer;

Subsection (f) of this section, relating to notifications of mathematical errors appearing upon the face of the return;

Section 273, relating to jeopardy assessments;

Section 274, relating to bankruptcy and receiverships; and

Section 1145, relating to assessment or collection of the amount of the deficiency determined by the Board pending court review.

#### (b) Collection of deficiency found by Board.

If the taxpayer files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the decision of the Board which has become final shall be assessed or be collected by distraint or by proceeding in court with or without assessment.

#### (c) Failure to file petition.

If the taxpayer does not file a petition with the Board within the time prescribed in subsection (a) of this section, the deficiency, notice of which has been mailed to the taxpayer, shall be assessed, and

shall be paid upon notice and demand from the collector.

#### (d) Waiver of restrictions.

The taxpayer shall at any time have the right, by a signed notice in writing filed with the Commissioner, to waive the restrictions provided in subsection (a) of this section on the assessment and collection of the whole or any part of the deficiency.

#### (e) Increase of deficiency after notice mailed.

The Board shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the taxpayer, and to determine whether any penalty, additional amount or addition to the tax should be assessed—if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

#### (f) Further deficiency letters restricted.

If the Commissioner has mailed to the taxpayer notice of a deficiency as provided in subsection (a) of this section, and the taxpayer files a petition with the Board within the time prescribed in such subsection, the Commissioner shall have no right to determine any additional deficiency in respect of the same taxable year, except in the case of fraud, and except as provided in subsection (e) of this section, relating to assertion of greater deficiencies before the Board, or in section 273 (c), relating to the making of jeopardy assessments. If the taxpayer is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered (for the purposes of this subsection, or of subsection (a) of this section, prohibiting assessment and collection until notice of deficiency has been mailed, or of section 322 (c), prohibiting credits or refunds after petition to the Board of Tax Appeals) as a notice of a deficiency, and the taxpayer shall have no right to file a petition with the Board based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a) of this section.

#### (g) Jurisdiction over other taxable years.

The Board in redetermining a deficiency in respect of any taxable year shall consider such facts with relation to the taxes for other taxable years as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other taxable year has been overpaid or underpaid.

#### (h) Final decisions of Board.

For the purposes of this chapter the date on which a decision of the Board becomes final shall be determined according to the provisions of section 1140.

#### (i) Prorating of deficiency to installments.

If the taxpayer has elected to pay the tax in installments and a deficiency has been assessed, the deficiency shall be prorated to the four installments. Except as provided in section 273 (relating to jeopardy assessments), that part of the deficiency so

prorated to any installment the date for payment of which has not arrived, shall be collected at the same time as and as part of such installment. That part of the deficiency so prorated to any installment the date for payment of which has arrived, shall be paid upon notice and demand from the collector.

(j) Extension of time for payment of deficiencies.

Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the taxpayer the Commissioner, under regulations prescribed by the Commissioner, with the approval of the Secretary, may grant an extension for the payment of such deficiency for a period not in excess of eighteen months, and, in exceptional cases, for a further period not in excess of twelve months. If an extension is granted, the Commissioner may require the taxpayer to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties, as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension. No extension shall be granted if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(k) Address for notice of deficiency.

In the absence of notice to the Commissioner under section 312 (a) of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by this chapter, if mailed to the taxpayer at his last known address, shall be sufficient for the purposes of this chapter even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence. (53 Stat. 82.)

DERIVATION

Act May 28, 1938, ch. 289, § 272, 52 Stat. 535.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 272, 49 Stat. 1721.  
 1934—May 10, 1934, ch. 277, §§ 272, 501, 48 Stat. 741, 755.  
 1932—June 6, 1932, ch. 209, § 272, 47 Stat. 233.  
 1928—May 29, 1928, ch. 852, § 272, 45 Stat. 852.  
 1926—Feb. 26, 1926, ch. 27, § 274, 44 Stat. 55.  
 1924—June 2, 1924, ch. 234, § 274, 43 Stat. 297.  
 1921—Nov. 23, 1921, ch. 136, § 228, 42 Stat. 252.  
 1919—Feb. 24, 1919, ch. 18, § 228, 40 Stat. 1075.  
 1916—Sept. 8, 1916, ch. 463, § 19, 39 Stat. 776.  
 1913—Oct. 3, 1913, ch. 16, § II, D, 38 Stat. 168.

Act May 28, 1938, ch. 289, § 816, 52 Stat. 578, provided that 30 days after enactment of the 1938 act the requirement of section 272 (j) of the 1936, 1934, 1932, and 1928 acts, section 274 (k) of the 1926 act, section 274 (g) of the 1924 act, section 250 (f) of the 1921 act, that the Secretary approve an extension of time for payment of deficiency in income, estate, or gift taxes should not apply, but that approval should be by the Commissioner under regulations prescribed by him with the approval of the Secretary.

§ 273. Jeopardy assessments—(a) Authority for making.

If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall immediately assess such deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) and notice and demand shall be made by the collector for the payment thereof.

(b) Deficiency letters.

If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 272 (a), then the Commissioner shall mail a notice under such subsection within sixty days after the making of the assessment.

(c) Amount assessable before decision of Board.

The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the taxpayer, despite the provisions of section 272 (f) prohibiting the determination of additional deficiencies, and whether or not the taxpayer has theretofore filed a petition with the Board of Tax Appeals. The Commissioner may, at any time before the decision of the Board is rendered, abate such assessment, or any unpaid portion thereof, to the extent that he believes the assessment to be excessive in amount. The Commissioner shall notify the Board of the amount of such assessment, or abatement, if the petition is filed with the Board before the making of the assessment or is subsequently filed, and the Board shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) Amount assessable after decision of Board.

If the jeopardy assessment is made after the decision of the Board is rendered such assessment may be made only in respect of the deficiency determined by the Board in its decision.

(e) Expiration of right to assess.

A jeopardy assessment may not be made after the decision of the Board has become final or after the taxpayer has filed a petition for review of the decision of the Board.

(f) Bond to stay collection.

When a jeopardy assessment has been made the taxpayer, within 10 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in section 297. If any portion of the jeopardy assessment is abated by the Commissioner before the decision of the Board is rendered, the bond shall, at the request of the taxpayer, be proportionately reduced.

(g) Same—Further conditions.

If the bond is given before the taxpayer has filed his petition with the Board under section 272 (a), the bond shall contain a further condition that if a petition is not filed within the period provided in such subsection, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of

6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subsection.

(h) Waiver of stay.

Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the taxpayer, be proportionately reduced. If the Board determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Board is rendered the bond shall, at the request of the taxpayer, be proportionately reduced.

(i) Collection of unpaid amounts.

When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded to the taxpayer as provided in section 322, without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

(j) Claims in abatement.

No claim in abatement shall be filed in respect of any assessment in respect of any tax imposed by this chapter. (53 Stat. 84.)

DERIVATION

Act May 28, 1938, ch. 289, § 273, 52 Stat. 537.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 273, 49 Stat. 1723.  
1934—May 10, 1934, ch. 277, § 273, 48 Stat. 743.  
1932—June 6, 1932, ch. 209, § 273, 47 Stat. 235.  
1928—May 29, 1928, ch. 852, § 273, 45 Stat. 854.  
1926—Feb. 26, 1926, ch. 27, § 279, 44 Stat. 59.  
1924—June 2, 1924, ch. 234, §§ 274 (d), 279, 43 Stat. 297, 300.

§ 274. Bankruptcy and receiverships—(a) Immediate assessment.

Upon the adjudication of bankruptcy of any taxpayer in any bankruptcy proceeding or the appointment of a receiver for any taxpayer in any receivership proceeding before any court of the United States or of any State or Territory or of the District of Columbia, any deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) determined by the Commissioner in respect of a tax imposed by this chapter upon such taxpayer shall, despite the restrictions imposed by section 272 (a) upon assessments be immediately assessed if such deficiency has not theretofore been

assessed in accordance with law. In such cases the trustee in bankruptcy or receiver shall give notice in writing to the Commissioner of the adjudication of bankruptcy or the appointment of the receiver, and the running of the statute of limitations on the making of assessments shall be suspended for the period from the date of adjudication in bankruptcy or the appointment of the receiver to a date 30 days after the date upon which the notice from the trustee or receiver is received by the Commissioner; but the suspension under this sentence shall in no case be for a period in excess of two years. Claims for the deficiency and such interest, additional amounts and additions to the tax may be presented, for adjudication in accordance with law, to the court before which the bankruptcy or receivership proceeding is pending, despite the pendency of proceedings for the redetermination of the deficiency in pursuance of a petition to the Board; but no petition for any such redetermination shall be filed with the Board after the adjudication of bankruptcy or the appointment of the receiver.

(b) Unpaid claims.

Any portion of the claim allowed in such bankruptcy or receivership proceeding which is unpaid shall be paid by the taxpayer upon notice and demand from the collector after the termination of such proceeding, and may be collected by distraint or proceeding in court within 6 years after termination of such proceeding. Extensions of time for such payment may be had in the same manner and subject to the same provisions and limitations as are provided in section 272 (j) and section 296 in the case of a deficiency in a tax imposed by this chapter. (53 Stat. 86.)

DERIVATION

Act May 28, 1938, ch. 289, § 274, 52 Stat. 538.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 274, 49 Stat. 1725.  
1934—May 10, 1934, ch. 277, §§ 274, 505 (a), 48 Stat. 744, 757.  
1932—June 6, 1932, ch. 209, § 274, 47 Stat. 237.  
1928—May 29, 1928, ch. 852, § 274, 45 Stat. 856.  
1926—Feb. 26, 1926, ch. 27, § 282, 44 Stat. 62.

§ 275. Period of limitation upon assessment and collection.

Except as provided in section 276—

(a) General rule.

The amount of income taxes imposed by this chapter shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

(b) Request for prompt assessment.

In the case of income received during the lifetime of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within eighteen months after written request therefor (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of three years after the return

was filed. This subsection shall not apply in the case of a corporation unless—

(1) Such written request notifies the Commissioner that the corporation contemplates dissolution at or before the expiration of such 18 months' period; and

(2) The dissolution is in good faith begun before the expiration of such 18 months' period; and

(3) The dissolution is completed.

(c) Omission from gross income.

If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 per centum of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 5 years after the return was filed.

(d) Constructive dividends.

If the taxpayer omits from gross income an amount properly includible therein—

(1) Foreign personal-holding companies.

Under section 337 (b) (relating to the inclusion in the gross income of United States shareholders of their distributive shares of the undistributed Supplement P net income of a foreign personal-holding company); or

(2) Personal service corporations.

Under section 394 (b) (relating to the inclusion in the gross income of shareholders of their distributive shares of undistributed Supplement S net income of a personal service corporation);

the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within seven years after the return was filed.

(e) Distributions in liquidation to shareholders.

If the taxpayer omits from gross income an amount properly includible therein under section 115 (c) as an amount distributed in liquidation of a corporation, other than a foreign personal holding company, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within four years after the return was filed.

(f) For the purposes of subsections (a), (b), (c), (d), and (e), a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

(g) Corporation and shareholder.

If a corporation makes no return of the tax imposed by this chapter, but each of the shareholders includes in his return his distributive share of the net income of the corporation, then the tax of the corporation shall be assessed within four years after the last date on which any such shareholder's return was filed. (53 Stat. 86; Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title V, § 503, 54 Stat. 1007.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 275, 52 Stat. 539.

#### 1940 AMENDMENT

Subsection (d) was amended by act October 8, 1940, cited to text.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 275, 49 Stat. 1725, as amended by act Aug. 26, 1937, ch. 815, title II, § 206, 50 Stat. 826.

1934—May 10, 1934, ch. 277, § 275, 48 Stat. 745.

1932—June 6, 1932, ch. 209, § 275, 47 Stat. 237.

1928—May 29, 1928, ch. 852, § 275, 45 Stat. 856.

1926—Feb. 26, 1926, ch. 27, § 277, 44 Stat. 58, as amended by act May 29, 1928, ch. 852, §§ 503, 504 (a), 45 Stat. 869, 870.

1924—June 2, 1924, ch. 234, § 277, 43 Stat. 299.

§ 276. Same—Exceptions—(a) False return or no return.

In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(b) Waiver.

Where before the expiration of the time prescribed in section 275 for the assessment of the tax, both the Commissioner and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(c) Collection after assessment.

Where the assessment of any income tax imposed by this chapter has been made within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer before the expiration of such six-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. (53 Stat. 87.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 276, 52 Stat. 540.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 276, 49 Stat. 1726.

1934—May 10, 1934, ch. 277, § 276, 48 Stat. 745.

1932—June 6, 1932, ch. 209, § 276, 47 Stat. 238.

1928—May 29, 1928, ch. 852, § 276, 45 Stat. 857.

1926—Feb. 26, 1926, ch. 27, § 278, 44 Stat. 59, as amended by act May 29, 1928, ch. 852, § 506 (a), 45 Stat. 870.

1924—June 2, 1924, ch. 234, § 278, 43 Stat. 299.

§ 277. Suspension of running of statute.

The running of the statute of limitations provided in section 275 or 276 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under section 272 (a)) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Board, until the decision of the Board becomes final), and for sixty days thereafter. (53 Stat. 87.)

## DERIVATION

Act May 28, 1938, ch. 289, § 277, 52 Stat. 540.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 277, 49 Stat. 1726.  
 1934—May 10, 1934, ch. 277, § 277, 48 Stat. 746.  
 1932—June 6, 1932, ch. 209, § 277, 47 Stat. 238.  
 1928—May 29, 1928, ch. 852, § 277, 45 Stat. 857.  
 1926—Feb. 26, 1926, ch. 27, § 277, 44 Stat. 58, as amended  
 by act May 29, 1928, ch. 852, §§ 503, 504 (a), 45 Stat.  
 869, 870.  
 1924—June 2, 1924, ch. 234, § 277, 43 Stat. 299.

# **SUPPLEMENT M.—INTEREST AND ADDITIONS TO THE TAX** **§ 291. Failure to file return.**

In case of any failure to make and file return required by this chapter, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the tax: 5 per centum if the failure is for not more than thirty days with an additional 5 per centum for each additional thirty days or fraction thereof during which such failure continues, not exceeding 25 per centum in the aggregate. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax. The amount added to the tax under this section shall be in lieu of the 25 per centum addition to the tax provided in section 3612 (d) (1). (53 Stat. 88.)

## DERIVATION

Act May 28, 1938, ch. 289, § 291, 52 Stat. 540.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 291, 49 Stat. 1727.  
 1934—May 10, 1934, ch. 277, § 291, 48 Stat. 746.  
 1932—June 6, 1932, ch. 209, § 291, 47 Stat. 238.  
 1928—May 29, 1928, ch. 852, § 291, 45 Stat. 857.

# **§ 292. Interest on deficiencies.**

Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed, or, in the case of a waiver under section 272 (d), to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier. (53 Stat. 88.)

## DERIVATION

Act May 28, 1938, ch. 289, § 292, 52 Stat. 541.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 292, 49 Stat. 1727.  
 1934—May 10, 1934, ch. 277, § 292, 48 Stat. 746.  
 1932—June 6, 1932, ch. 209, § 292, 47 Stat. 238.  
 1928—May 29, 1928, ch. 852, § 292, 45 Stat. 858.  
 1926—Feb. 26, 1926, ch. 27, § 274 (j), 44 Stat. 55.  
 1924—June 2, 1924, ch. 234, § 274 (f), 43 Stat. 297.

# **l. Additions to the tax in case of deficiency—(a) Negligence.**

If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, 5 per centum of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of section 272 (i), relating to the prorating of a deficiency, and of section 292, relating to interest on deficiencies, shall not be applicable.

# **(b) Fraud.**

If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid, in lieu of the 50 per centum addition to the tax provided in section 3612 (d) (2). (53 Stat. 88.)

## DERIVATION

Act May 28, 1938, ch. 289, § 293, 52 Stat. 541.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 293, 49 Stat. 1727.  
 1934—May 10, 1934, ch. 277, § 293, 48 Stat. 746.  
 1932—June 6, 1932, ch. 209, § 293, 47 Stat. 239.  
 1928—May 29, 1928, ch. 852, § 293, 45 Stat. 858.  
 1926—Feb. 26, 1926, ch. 27, § 275, 44 Stat. 57.  
 1924—June 2, 1924, ch. 234, § 275, 43 Stat. 298.

# **§ 294. Additions to the tax in case of nonpayment—** **(a) Tax shown on return—(1) General rule.**

Where the amount determined by the taxpayer as the tax imposed by this chapter, or any installment thereof, or any part of such amount or installment, is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 6 per centum per annum from the date prescribed for its payment until it is paid.

# **(2) If extension granted.**

Where an extension of time for payment of the amount so determined as the tax by the taxpayer, or any installment thereof, has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under section 295, is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subsection, interest at the rate of 6 per centum per annum shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

# **(b) Deficiency.**

Where a deficiency, or any interest or additional amounts assessed in connection therewith under section 292, or under section 293, or any addition to the tax in case of delinquency provided for in section 291, is not paid in full within ten days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid. If any part of a deficiency prorated to any unpaid installment under section 272 (i) is not paid in full on or before the date prescribed for the payment of such installment, there shall be collected as part of

the tax interest upon the unpaid amount at the rate of 6 per centum per annum from such date until it is paid.

(c) Filing of jeopardy bond.

If a bond is filed, as provided in section 273, the provisions of subsection (b) of this section shall not apply to the amount covered by the bond. (53 Stat. 88.)

DERIVATION

Act May 28, 1938, ch. 289, § 294, 52 Stat. 541.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 294, 49 Stat. 1727.  
1934—May 10, 1934, ch. 277, § 294, 48 Stat. 747.  
1932—June 6, 1932, ch. 209, § 294, 47 Stat. 239.  
1928—May 29, 1928, ch. 852, § 294, 45 Stat. 858.  
1926—Feb. 26, 1926, ch. 27, § 276, 44 Stat. 57.  
1924—June 2, 1924, ch. 234, § 276, 43 Stat. 298.

§ 295. Time extended for payment of tax shown on return.

If the time for payment of the amount determined as the tax by the taxpayer, or any installment thereof, is extended under the authority of section 56 (c), there shall be collected as a part of such amount, interest thereon at the rate of 6 per centum per annum from the date when such payment should have been made if no extension had been granted, until the expiration of the period of the extension. (53 Stat. 89.)

DERIVATION

Act May 28, 1938, ch. 289, § 295, 52 Stat. 542.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 295, 49 Stat. 1728.  
1934—May 10, 1934, ch. 277, § 295, 48 Stat. 747.  
1932—June 6, 1932, ch. 209, § 295, 47 Stat. 240.  
1928—May 29, 1928, ch. 852, § 295, 45 Stat. 859.  
1926—Feb. 26, 1926, ch. 27, § 270 (c), 44 Stat. 54.  
1924—June 2, 1924, ch. 234, § 270 (c), 43 Stat. 295.

§ 296. Time extended for payment of deficiency.

If the time for the payment of any part of a deficiency is extended, there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. If the part of the deficiency the time for payment of which is so extended is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 6 per centum per annum for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period. (53 Stat. 89.)

DERIVATION

Act May 28, 1938, ch. 289, § 296, 52 Stat. 542.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 296, 49 Stat. 1728.  
1934—May 10, 1934, ch. 277, § 296, 48 Stat. 748.  
1932—June 6, 1932, ch. 209, § 296, 47 Stat. 240.  
1928—May 29, 1928, ch. 852, § 296, 45 Stat. 859.  
1926—Feb. 26, 1926, ch. 27, § 274 (k), 44 Stat. 55, as amended by act May 29, 1928, ch. 852, § 502, 45 Stat. 869.  
1924—June 2, 1924, ch. 234, § 274 (g), 43 Stat. 297.

§ 297. Interest in case of jeopardy assessments.

In the case of the amount collected under section 273 (i) there shall be collected at the same time as such amount, and as a part of the tax, interest at the rate of 6 per centum per annum upon such amount from the date of the jeopardy notice and demand to the date of notice and demand under section 273 (i), or, in the case of the amount collected in excess of the amount of the jeopardy assessment, interest as provided in section 292. If the amount included in the notice and demand from the collector under section 273 (i) is not paid in full within ten days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid. (53 Stat. 89.)

DERIVATION

Act May 28, 1938, ch. 289, § 297, 52 Stat. 542.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 297, 49 Stat. 1728.  
1934—May 10, 1934, ch. 277, § 297, 48 Stat. 748.  
1932—June 6, 1932, ch. 209, § 297, 47 Stat. 240.  
1928—May 29, 1928, ch. 852, § 297, 45 Stat. 859.

§ 298. Bankruptcy and receiverships.

If the unpaid portion of the claim allowed in a bankruptcy or receivership proceeding, as provided in section 274, is not paid in full within ten days from the date of notice and demand from the collector, then there shall be collected as a part of such amount interest upon the unpaid portion thereof at the rate of 6 per centum per annum from the date of such notice and demand until payment. (53 Stat. 89.)

DERIVATION

Act May 28, 1938, ch. 289, § 298, 52 Stat. 542.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 298, 49 Stat. 1729.  
1934—May 10, 1934, ch. 277, § 298, 48 Stat. 748.  
1932—June 6, 1932, ch. 209, § 298, 47 Stat. 240.  
1928—May 29, 1928, ch. 852, § 298, 45 Stat. 859.  
1926—Feb. 26, 1926, ch. 27, § 282, 44 Stat. 62.

§ 299. Removal of property or departure from United States.

For additions to tax in case of leaving the United States or concealing property in such manner as to hinder collection of the tax, see section 146.

(53 Stat. 89.)

DERIVATION

Act May 28, 1938, ch. 289, § 299, 52 Stat. 543.

SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 299, 49 Stat. 1729.  
1934—May 10, 1934, ch. 277, § 299, 48 Stat. 748.

SUPPLEMENT N.—CLAIMS AGAINST TRANSFEREES AND FIDUCIARIES

§ 311. Transferred assets—(a) Method of collection.

The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this chapter (including the provisions in case of delinquency in payment after notice and demand, the

provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) **Transferees.**

The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this chapter.

(2) **Fiduciaries.**

The liability of a fiduciary under section 3467 of the Revised Statutes, as amended, (U. S. C., Title 31, § 192) in respect of the payment of any such tax from the estate of the taxpayer.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) **Period of limitation.**

The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) In the case of the liability of an initial transferee of the property of the taxpayer,—within one year after the expiration of the period of limitation for assessment against the taxpayer;

(2) In the case of the liability of a transferee of a transferee of the property of the taxpayer,—within one year after the expiration of the period of limitation for assessment against the preceding transferee, but only if within three years after the expiration of the period of limitation for assessment against the taxpayer;—

except that if before the expiration of the period of limitation for the assessment of the liability of the transferee, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the taxpayer or last preceding transferee, respectively,—then the period of limitation for assessment of the liability of the transferee shall expire one year after the return of execution in the court proceeding.

(3) In the case of the liability of a fiduciary,—not later than one year after the liability arises or not later than the expiration of the period for collection of the tax in respect of which such liability arises, whichever is the later;

(4) Where before the expiration of the time prescribed in paragraph (1), (2), or (3) for the assessment of the liability, both the Commissioner and the transferee or fiduciary have consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(c) **Period for assessment against taxpayer.**

For the purposes of this section, if the taxpayer is deceased, or in the case of a corporation, has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period that would be in effect had death or termination of existence not occurred.

(d) **Suspension of running of statute of limitations.**

The running of the statute of limitations upon the assessment of the liability of a transferee or fiduciary shall, after the mailing to the transferee or fiduciary of the notice provided for in section 272 (a), be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Board, until the decision of the Board becomes final), and for sixty days thereafter.

(e) **Address for notice of liability.**

In the absence of notice to the Commissioner under section 312 (b) of the existence of a fiduciary relationship, notice of liability enforceable under this section in respect of a tax imposed by this chapter, if mailed to the person subject to the liability at his last known address, shall be sufficient for the purposes of this chapter even if such person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(f) **Definition of "transferee."**

As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee. (53 Stat. 90.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 311, 52 Stat. 543.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 311, 49 Stat. 1729.

1934—May 10, 1934, ch. 277, § 311, 48 Stat. 748, as amended by act May 28, 1938, ch. 289, § 814 (b), 52 Stat. 578.

1932—June 6, 1932, ch. 209, § 311, 47 Stat. 240, as amended by act May 28, 1938, ch. 289, § 814 (b), 52 Stat. 578.

1928—May 29, 1928, ch. 852, § 311, 45 Stat. 860, as amended by act May 28, 1938, ch. 289, § 814 (b), 52 Stat. 578.

1926—Feb. 26, 1926, ch. 27, § 280, 44 Stat. 61, as amended by act May 28, 1938, ch. 289, § 814 (a), 52 Stat. 578, and act May 29, 1928, ch. 852, § 505 (a), 45 Stat. 870.

**§ 312. Notice of fiduciary relationship—(a) Fiduciary of taxpayer.**

Upon notice to the Commissioner that any person is acting in a fiduciary capacity such fiduciary shall assume the powers, rights, duties, and privileges of the taxpayer in respect of a tax imposed by this chapter (except as otherwise specifically provided and except that the tax shall be collected from the estate of the taxpayer), until notice is given that the fiduciary capacity has terminated.

(b) **Fiduciary of transferee.**

Upon notice to the Commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 311, the fiduciary shall assume, on behalf of such person, the powers, rights, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person) until notice is given that the fiduciary capacity has terminated.

(c) **Manner of notice.**

Notice under subsection (a) or (b) shall be given in accordance with regulations prescribed by the



Commissioner with the approval of the Secretary.  
(53 Stat. 91.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 312, 52 Stat. 544.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 312, 49 Stat. 1730.  
1934—May 10, 1934, ch. 277, § 312, 48 Stat. 750.  
1932—June 6, 1932, ch. 209, § 312, 47 Stat. 242.  
1928—May 29, 1928, ch. 852, § 312, 45 Stat. 861.  
1926—Feb. 26, 1926, ch. 27, § 281, 44 Stat. 62

### § 313. Cross reference.

For prohibition of suits to restrain enforcement of liability of transferee or fiduciary, see section 3653 (b).

(53 Stat. 91.)

#### SUPPLEMENT O.—OVERPAYMENTS

### § 321. Overpayment of installment.

If the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the overpayment shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the overpayment shall be credited or refunded as provided in section 322. (53 Stat. 91.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 321, 52 Stat. 544

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 321, 49 Stat. 1730.  
1934—May 10, 1934, ch. 277, § 321, 48 Stat. 750.  
1932—June 6, 1932, ch. 209, § 321, 47 Stat. 242.  
1928—May 29, 1928, ch. 852, § 321, 45 Stat. 861.  
1926—Feb. 26, 1926, ch. 27, § 272, 44 Stat. 55.  
1924—June 2, 1924, ch. 234, § 272, 43 Stat. 296.

### § 322. Refunds and credits—(a) Authorization.

Where there has been an overpayment of any tax imposed by this chapter, the amount of such overpayment shall be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance shall be refunded immediately to the taxpayer.

#### (b) Limitation on allowance—(1) Period of limitation.

Unless a claim for credit or refund is filed by the taxpayer within three years from the time the return was filed by the taxpayer or within two years from the time the tax was paid, no credit or refund shall be allowed or made after the expiration of whichever of such periods expires the later. If no return is filed by the taxpayer, then no credit or refund shall be allowed or made after two years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer.

#### (2) Limit on amount of credit or refund.

The amount of the credit or refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or, if no claim was filed, then during the three years immediately preceding the allowance of the credit or refund.

#### (c) Effect of petition to Board.

If the Commissioner has mailed to the taxpayer a notice of deficiency under section 272 (a) and if the taxpayer files a petition with the Board of Tax Appeals within the time prescribed in such subsection, no credit or refund in respect of the tax for the taxable year in respect of which the Commissioner has determined the deficiency shall be allowed or made and no suit by the taxpayer for the recovery of any part of such tax shall be instituted in any court except—

(1) As to overpayments determined by a decision of the Board which has become final; and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the Board which has become final; and

(3) As to any amount collected after the period of limitation upon the beginning of distraint or a proceeding in court for collection has expired; but in any such claim for credit or refund or in any such suit for refund the decision of the Board which has become final, as to whether such period has expired before the notice of deficiency was mailed, shall be conclusive.

#### (d) Overpayment found by Board.

If the Board finds that there is no deficiency and further finds that the taxpayer has made an overpayment of tax in respect of the taxable year in respect of which the Commissioner determined the deficiency, the Board shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Board has become final, be credited or refunded to the taxpayer. No such credit or refund shall be made of any portion of the tax unless the Board determines as part of its decision that such portion was paid (1) within three years before the filing of the claim or the filing of the petition, whichever is earlier, or (2) after the mailing of the notice of deficiency.

#### (e) Tax withheld at source.

For refund or credit in case of excessive withholding at the source, see section 143 (f).

(53 Stat. 91.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 322, 52 Stat. 544.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 322, 49 Stat. 1731, as amended by act May 28, 1938, ch. 289, § 809 (a), 52 Stat. 575.

1934—May 10, 1934, ch. 277, § 322, 48 Stat. 750, as amended by act May 28, 1938, ch. 289, § 809 (a), 52 Stat. 575

1932—June 6, 1932, ch. 209, § 322, 47 Stat. 242, as amended by acts May 28, 1938, ch. 289, § 809 (c), 52 Stat. 576, and May 10, 1934, ch. 277, § 504 (a) (e), 48 Stat. 756.

1928—May 29, 1928, ch. 852, § 322, 45 Stat. 861, as amended by acts May 28, 1938, ch. 289, § 809 (c), 52 Stat. 576, and May 10, 1934, ch. 277, § 504 (a) (e), 48 Stat. 756

1926—Feb. 26, 1926, ch. 27, § 284, 44 Stat. 66, as amended by acts May 28, 1938, ch. 289, § 809 (d), 52 Stat. 576; May 10, 1934, ch. 277, § 504 (c), 48 Stat. 756; May 29, 1928, ch. 852, § 507, 45 Stat. 871.

1924—June 2, 1924, ch. 234, § 281, 43 Stat. 301, as amended by act Mar. 3, 1925, ch. 435, 43 Stat. 1115.

1921—Nov. 23, 1921, ch. 136, § 252, 42 Stat. 268, as amended by acts Mar. 4, 1923, ch. 276, 42 Stat. 1504, and Mar. 13, 1924, ch. 55, 43 Stat. 22.

1919—Feb. 24, 1919, ch. 18, § 252, 40 Stat. 1085

**SUPPLEMENT P.—FOREIGN PERSONAL HOLDING COMPANIES**

**§ 331. Definition of foreign personal holding company—(a) General rule.**

For the purposes of this chapter the term "foreign personal holding company" means any foreign corporation if—

**(1) Gross income requirement.**

At least 60 per centum of its gross income (as defined in section 334 (a)) for the taxable year is foreign personal holding company income as defined in section 332; but if the corporation is a foreign personal holding company with respect to any taxable year ending after August 26, 1937, then, for each subsequent taxable year, the minimum percentage shall be 50 per centum in lieu of 60 per centum, until a taxable year during the whole of which the stock ownership required by paragraph (2) does not exist, or until the expiration of three consecutive taxable years in each of which less than 50 per centum of the gross income is foreign personal holding company income. For the purposes of this paragraph there shall be included in the gross income the amount includible therein as a dividend by reason of the application of section 334 (c) (2); and

**(2) Stock ownership requirement.**

At any time during the taxable year more than 50 per centum in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals who are citizens or residents of the United States, hereinafter called "United States group".

**(b) Exceptions.**

The term "foreign personal holding company" does not include a corporation exempt from taxation under section 101. (53 Stat. 92.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 331, 52 Stat. 545.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 331, as added by act Aug. 26, 1937, ch. 815, title II, § 201, 50 Stat. 818.

**§ 332. Foreign personal holding company income.**

For the purposes of this chapter the term "foreign personal holding company income" means the portion, of the gross income determined for the purposes of section 331 (a) (1), which consists of:

**(a) Dividends, interest, royalties, annuities.**

**(b) Stock and securities transactions.**

Except in the case of regular dealers in stock or securities, gains from the sale or exchange of stock or securities.

**(c) Commodities transactions.**

Gains from futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange. This subsection shall not apply to gains by a producer, processor, merchant, or handler of the commodity which arise out of bona fide hedging transactions reasonably necessary to the conduct of its business in the manner in which such business is customarily and usually conducted by others.

**(d) Estates and trusts.**

Amounts includible in computing the net income of the corporation under Supplement E; and gains from the sale or other disposition of any interest in an estate or trust.

**(e) Personal service contracts.**

(1) Amounts received under a contract under which the corporation is to furnish personal services; if some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract; and (2) amounts received from the sale or other disposition of such a contract. This subsection shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 per centum or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

**(f) Use of corporation property by shareholder.**

Amounts received as compensation (however designated and from whomsoever received) for the use of or right to use, property of the corporation in any case where, at any time during the taxable year, 25 per centum or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for an individual entitled to the use of the property; whether such right is obtained directly from the corporation or by means of a sublease or other arrangement.

**(g) Rents.**

Rents, unless constituting 50 per centum or more of the gross income. For the purposes of this subsection the term "rents" means compensation, however designated, for the use of, or right to use, property; but does not include amounts constituting foreign personal holding company income under subsection (f). (53 Stat. 93.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 332, 52 Stat. 546.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 332, as added by act Aug. 26, 1937, ch. 815, title 2, § 201, 50 Stat. 820.

**§ 333. Stock ownership—(a) Constructive ownership.**

For the purpose of determining whether a foreign corporation is a foreign personal holding company, insofar as such determination is based on stock ownership under section 331 (a) (2), section 332 (e), or section 332 (f)—

**(1) Stock not owned by individual.**

Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

**(2) Family and partnership ownership.**

An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For the purposes of

this paragraph the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

**(3) Options.**

If any person has an option to acquire stock such stock shall be considered as owned by such person. For the purposes of this paragraph an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

**(4) Application of family-partnership and option rules.**

Paragraphs (2) and (3) shall be applied—

(A) For the purposes of the stock ownership requirement provided in section 331 (a) (2), if, but only if, the effect is to make the corporation a foreign personal holding company;

(B) For the purposes of section 332 (e) (relating to personal service contracts), or of section 332 (f) (relating to the use of property by shareholders), if, but only if, the effect is to make the amounts therein referred to includible under such subsection as foreign personal holding company income.

**(5) Constructive ownership as actual ownership.**

Stock constructively owned by a person by reason of the application of paragraph (1) or (3) shall, for the purpose of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for the purpose of again applying such paragraph in order to make another the constructive owner of such stock.

**(6) Option rule in lieu of family and partnership rule.**

If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

**(b) Convertible securities.**

Outstanding securities convertible into stock (whether or not convertible during the taxable year) shall be considered as outstanding stock—

(1) For the purpose of the stock ownership requirement provided in section 331 (a) (2), but only if the effect of the inclusion of all such securities is to make the corporation a foreign personal holding company;

(2) For the purpose of section 332 (e) (relating to personal service contracts), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such subsection as foreign personal holding company income; and

(3) For the purpose of section 332 (f) (relating to the use of property by shareholders), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such subsection as foreign personal holding company income.

The requirement in paragraphs (1), (2), and (3) that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date

may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included. (53 Stat. 93.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 333, 52 Stat. 547.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 333, as added by act Aug. 26, 1937, ch. 815, title II, § 201, 50 Stat. 819.

**§ 334. Gross income of foreign personal holding companies—(a) General rule.**

As used in this Supplement with respect to a foreign corporation the term "gross income" means gross income computed (without regard to the provisions of Supplement I) as if the foreign corporation were a domestic corporation.

**(b) Additions to gross income.**

In the case of a foreign personal holding company (whether or not a United States group, as defined in section 331 (a) (2), existed with respect to such company on the last day of its taxable year) which was a shareholder in another foreign personal holding company on the day in the taxable year (whether beginning before, on, or after January 1, 1939) of the second company which was the last day on which a United States group existed with respect to the second company, there shall be included, as a dividend, in the gross income of the first company, for the taxable year in which or with which the taxable year of the second company ends, the amount the first company would have received as a dividend if on such last day there had been distributed by the second company, and received by the shareholders, an amount which bears the same ratio to the undistributed Supplement P net income of the second company for its taxable year as the portion of such taxable year up to and including such last day bears to the entire taxable year.

**(c) Application of subsection (b).**

The rule provided in subsection (b)—

(1) shall be applied in the case of a foreign personal holding company for the purpose of determining its undistributed Supplement P net income which, or a part of which, is to be included in the gross income of its shareholders, whether United States shareholders or other foreign personal holding companies;

(2) shall be applied in the case of every foreign corporation with respect to which a United States group exists on some day of its taxable year, for the purpose of determining whether such corporation meets the gross income requirements of section 331 (a) (1). (53 Stat. 94.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 334, 52 Stat. 548.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 334, as added by act Aug. 26, 1937, ch. 815, title II, § 201, 50 Stat. 820.

**§ 335. Undistributed Supplement P net income.**

For the purposes of this chapter the term "undistributed Supplement P net income" means the Supplement P net income (as defined in section 336)

minus the amount of the basic surtax credit provided in section 27 (b) (computed without its reduction, under section 27 (b) (1), by the amount of the credit provided in section 26 (a), relating to interest on certain obligations of the United States and Government corporations). (53 Stat. 95.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 335, 52 Stat. 548.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 335, as added by act Aug. 26, 1937, ch. 815, title II, § 201, 50 Stat. 821.

### § 336. Supplement P net income.

For the purposes of this chapter the term "Supplement P net income" means the net income with the following adjustments:

#### (a) Additional deductions.

There shall be allowed as deductions—

(1) Federal income, war-profits, and excess-profits taxes paid or accrued during the taxable year to the extent not allowed as a deduction under section 23; but not including the tax imposed by section 102, section 500, or a section of a prior income-tax law corresponding to either of such sections.

(2) In lieu of the deduction allowed by section 23 (q), contributions or gifts payment of which is made within the taxable year to or for the use of donees described in section 23 (q) for the purposes therein specified, to an amount which does not exceed 15 per centum of the company's net income, computed without the benefit of this paragraph and section 23 (q), and without the deduction of the amount disallowed under subsection (b) of this section, and without the inclusion in gross income of the amounts includible therein as dividends by reason of the application of the provisions of section 334 (b) (relating to the inclusion in the gross income of a foreign personal holding company of its distributive share of the undistributed Supplement P net income of another foreign personal holding company in which it is a shareholder).

#### (b) Deductions not allowed—(1) Taxes and pension trusts.

The deductions provided in section 23 (d), relating to taxes of a shareholder paid by the corporation, and in section 23 (p), relating to pension trusts, shall not be allowed.

#### (2) Expenses and depreciation.

The aggregate of the deductions allowed under section 23 (a), relating to expenses, and section 23 (l) relating to depreciation, which are allocable to the operation and maintenance of property owned or operated by the company, shall be allowed only in an amount equal to the rent or other compensation received for the use or right to use the property, unless it is established (under regulations prescribed by the Commissioner with the approval of the Secretary) to the satisfaction of the Commissioner:

(A) That the rent or other compensation received was the highest obtainable, or, if none was received, that none was obtainable;

(B) That the property was held in the course of a business carried on bona fide for profit; and

(C) Either that there was reasonable expectation

that the operation of the property would result in a profit, or that the property was necessary to the conduct of the business.

#### (3) Net loss carry-over disallowed.

The deduction for net operating losses provided in section 23 (s) shall not be allowed.

#### (c) Capital losses.

The net income shall be computed without regard to section 117 (d) and (e), and losses from sales or exchanges of capital assets shall be allowed only to the extent of \$2,000 plus the gains from such sales or exchanges. (53 Stat. 95; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, §§ 211, 212 (c), 53 Stat. 869.)

#### DERIVATION

Section derived from act May 28, 1938, ch. 289, § 336, 52 Stat. 549.

#### 1939 AMENDMENT

Subsection (b), paragraph (3) was added by act June 29, 1939, cited to text.

Subsection (c) was added by act June 29, 1939, cited to text, and made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of said act.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 336, as added by act Aug. 26, 1937, ch. 815, title II, § 201, 50 Stat. 821.

### § 337. Corporation income taxed to United States shareholders—(a) General rule.

The undistributed Supplement P net income of a foreign personal holding company shall be included in the gross income of the citizens or residents of the United States, domestic corporations, domestic partnerships, and estates or trusts (other than estates or trusts the gross income of which under this chapter includes only income from sources within the United States), who are shareholders in such foreign personal holding company (hereinafter called "United States shareholders") in the manner and to the extent set forth in this Supplement.

#### (b) Amount included in gross income.

Each United States shareholder, who was a shareholder on the day in the taxable year of the company which was the last day on which a United States group (as defined in section 331 (a) (2)) existed with respect to the company, shall include in his gross income, as a dividend, for the taxable year in which or with which the taxable year of the company ends, the amount he would have received as a dividend if on such last day there had been distributed by the company, and received by the shareholders, an amount which bears the same ratio to the undistributed Supplement P net income of the company for the taxable year as the portion of such taxable year up to and including such last day bears to the entire taxable year.

#### (c) Credit for obligations of United States and its instrumentalities.

Each United States shareholder shall be allowed a credit against net income, for the purpose of the tax imposed by sections 11, 13, 14, 201, 204, 207, or 362, of his proportionate share of the interest specified in section 25 (a) (1) or (2) which is included in the gross income of the company otherwise than by the application of the provisions of section 334 (b)

(relating to the inclusion in the gross income of a foreign personal holding company of its distributive share of the undistributed Supplement P net income of another foreign personal holding company in which it is a shareholder).

**(d) Information in return.**

Every United States shareholder who is required under subsection (b) to include in his gross income any amount with respect to the undistributed Supplement P net income of a foreign personal holding company and who, on the last day on which a United States group existed with respect to the company, owned 5 per centum or more in value of the outstanding stock of such company, shall set forth in his return in complete detail the gross income, deductions and credits, net income, Supplement P net income, and undistributed Supplement P net income of such company.

**(e) Effect on capital account of foreign personal holding company.**

An amount which bears the same ratio to the undistributed Supplement P net income of the foreign personal holding company for its taxable year as the portion of such taxable year up to and including the last day on which a United States group existed with respect to the company bears to the entire taxable year, shall, for the purpose of determining the effect of distributions in subsequent taxable years by the corporation, be considered as paid-in surplus or as a contribution to capital and the accumulated earnings and profits as of the close of the taxable year shall be correspondingly reduced, if such amount or any portion thereof is required to be included as a dividend, directly or indirectly, in the gross income of United States shareholders.

**(f) Basis of stock in hands of shareholders.**

The amount required to be included in the gross income of a United States shareholder under subsection (b) shall, for the purpose of adjusting the basis of his stock with respect to which the distribution would have been made (if it had been made), be treated as having been reinvested by the shareholder as a contribution to the capital of the corporation; but only to the extent to which such amount is included in his gross income in his return, increased or decreased by any adjustment of such amount in the last determination of the shareholder's tax liability, made before the expiration of seven years after the date prescribed by law for filing the return.

**(g) Basis of stock in case of death.**

For basis of stock or securities in a foreign personal holding company acquired from a decedent, see section 113 (a) (5).

**(h) Liquidation.**

For amount of gain taken into account on liquidation of foreign personal holding company, see section 115 (c).

**(i) Period of limitation on assessment and collection.**

For period of limitation on assessment and collection without assessment, in case of failure to include in gross income the amount properly includible therein under subsection (b), see section 275 (d).

(53 Stat. 96.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 337, 52 Stat. 549.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 337, as added by act Aug. 26, 1937, ch. 815, title II, § 201, 50 Stat. 822.

**§ 338. Information returns by officers and directors—**  
**(a) Monthly returns.**

On the fifteenth day of each month each individual who on such day is an officer or a director of a foreign corporation which, with respect to its taxable year preceding the taxable year (whether beginning on, before, or after January 1, 1939) in which such month occurs, was a foreign personal holding company, shall file with the Commissioner a return setting forth with respect to the preceding calendar month the name and address of each shareholder, the class and number of shares held by each, together with any changes in stockholdings during such period, the name and address of any holder of securities convertible into stock of such corporation, and such other information with respect to the stock and securities of the corporation as the Commissioner with the approval of the Secretary shall by regulations prescribe as necessary for carrying out the provisions of this title. The Commissioner, with the approval of the Secretary, may by regulations prescribe, as the period with respect to which returns shall be filed, a longer period than a month. In such case the return shall be due on the fifteenth day of the succeeding period, and shall be filed by the individuals who on such day are officers and directors of the corporation.

**(b) Annual returns.**

On the sixtieth day after the close of the taxable year of a foreign personal holding company each individual who on such sixtieth day is an officer or director of the corporation shall file with the Commissioner a return setting forth—

(1) In complete detail the gross income, deductions and credits, net income, Supplement P net income, and undistributed Supplement P net income of such foreign personal holding company for such taxable year; and

(2) The same information with respect to such taxable year as is required in subsection (a); except that if all the required returns with respect to such year have been filed under subsection (a) no information under this paragraph need be set forth in the return filed under this subsection. (53 Stat. 97.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 338, 52 Stat. 551.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 338, as added by act Aug. 26, 1937, ch. 815, title II, § 201, 50 Stat. 823.

**§ 339. Information returns by shareholders—**  
**(a) Monthly returns.**

On the fifteenth day of each month each United States shareholder, by or for whom 50 per centum or more in value of the outstanding stock of a foreign corporation is owned directly or indirectly (including in the case of an individual, stock owned by the members of his family as defined in section 333 (a) (2)), if such foreign corporation with respect to its

taxable year preceding the taxable year (whether beginning on, before, or after January 1, 1939) in which such month occurs was a foreign personal holding company, shall file with the Commissioner a return setting forth with respect to the preceding calendar month the name and address of each shareholder, the class and number of shares held by each, together with any changes in stockholdings during such period, the name and address of any holder of securities convertible into stock of such corporation, and such other information with respect to the stock and securities of the corporation as the Commissioner with the approval of the Secretary shall by regulations prescribe as necessary for carrying out the provisions of this title. The Commissioner, with the approval of the Secretary, may by regulations prescribe, as the period with respect to which returns shall be filed, a longer period than a month. In such case the return shall be due on the fifteenth day of the succeeding period, and shall be filed by the persons who on such day are United States shareholders.

#### (b) Annual returns.

On the sixtieth day after the close of the taxable year of a foreign personal holding company each United States shareholder by or for whom on such sixtieth day 50 per centum or more in value of the outstanding stock of such company is owned directly or indirectly (including in the case of an individual, stock owned by members of his family as defined in section 333 (a) (2)), shall file with the Commissioner a return setting forth the same information with respect to such taxable year as is required in subsection (a); except that if all the required returns with respect to such year have been filed under subsection (a) no return shall be required under this subsection. (53 Stat. 98.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 339, 52 Stat. 551.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 339, as added by act Aug. 26, 1937, ch. 815, title II, § 201, 50 Stat. 823.

#### § 340. Penalties.

Any person required under section 338 or 339 to file a return, or to supply any information, who willfully fails to file such return, or supply such information, at the time or times required by law or regulations, shall, in lieu of the penalties provided in section 145 (a) for such offense, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$2,000, or imprisoned for not more than one year, or both. (53 Stat. 98.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 340, 52 Stat. 552.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 341, as added by act Aug. 26, 1937, ch. 815, title II, § 201, 50 Stat. 824.

#### SUPPLEMENT Q.—MUTUAL INVESTMENT COMPANIES

#### § 361. Definition—(a) In general.

For the purposes of this chapter the term "mutual investment company" means any domestic corporation (whether chartered or created as an investment

trust, or otherwise), other than a personal holding company as defined in section 501, if—

(1) It is organized for the purpose of, and substantially all its business consists of, holding, investing, or reinvesting in stock or securities; and

(2) At least 95 per centum of its gross income is derived from dividends, interest, and gains from sales or other disposition of stock or securities; and

(3) Less than 30 per centum of its gross income is derived from the sale or other disposition of stock or securities held for less than six months; and

(4) An amount not less than 90 per centum of its net income is distributed to its shareholders as taxable dividends during the taxable year; and

(5) Its shareholders are, upon reasonable notice, entitled to redemption of their stock for their proportionate interests in the corporation's properties, or the cash equivalent thereof less a discount not in excess of 3 per centum thereof.

#### (b) Limitations.

Despite the provisions of paragraph (1) a corporation shall not be considered as a mutual investment company if at any time during the taxable year—

(1) More than 5 per centum of the gross assets of the corporation, taken at cost, was invested in stock or securities, or both, of any one corporation, government, or political subdivision thereof, but this limitation shall not apply to investments in obligations of the United States or in obligations of any corporation organized under general Act of Congress if such corporation is an instrumentality of the United States; or

(2) It owned more than 10 per centum of the outstanding stock or securities, or both, of any one corporation; or

(3) It had any outstanding bonds or indebtedness in excess of 10 per centum of its gross assets taken at cost; or

(4) It fails to comply with any rule or regulation prescribed by the Commissioner, with the approval of the Secretary, for the purpose of ascertaining the actual ownership of its outstanding stock. (53 Stat. 98.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 361, 52 Stat. 552.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 48 (e), 49 Stat. 1669, as amended by act Aug. 26, 1937, ch. 815, title VI, § 602, 50 Stat. 831.

#### § 362. Tax on mutual investment companies—(a) Supplement Q net income.

For the purposes of this chapter the term "Supplement Q net income" means the adjusted net income, computed without the net operating loss deduction provided in section 23 (s), minus the basic surtax credit computed under section 27 (b) without the application of paragraphs (2) and (3).

#### (b) Imposition of tax.

There shall be levied, collected, and paid for each taxable year upon the Supplement Q net income of every mutual investment company a tax equal to 22 $\frac{1}{4}$  per centum of the amount thereof. (53 Stat. 99; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, §§ 209,

211 (h), 53 Stat. 866, 869; June 25, 1940, 11:45 a. m. E. S. T., ch. 419, title I, § 3 (d), 54 Stat. 518; Oct. 8, 1940, 11 p. m. E. S. T., ch. 757, title I, § 101 (c), 54 Stat. 974.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 362, 52 Stat. 553.

#### 1940 AMENDMENT

Subsection (b) was amended by acts June 25, 1940, and October 8, 1940, cited to text, which increased tax from "18 per centum" to "22 $\frac{1}{10}$  per centum." Act October 8, 1940, was made applicable only with respect to taxable years beginning after December 31, 1939, by section 101 (e) of said act.

#### TREATY OBLIGATIONS

Section 8 of act June 25, 1940, cited to text, provided as follows:

"No amendment made by this title (sections 1-9 of 1940 act) shall apply in any case where its application would be contrary to any treaty obligation of the United States."

#### TAXABLE YEARS AFFECTED

Section 9 of act June 25, 1940, cited to text, provided as follows: "The amendments made by this title (sections 1-9 of 1940 act), except the amendments made by section 5 (sections 143, 144 of Internal Revenue Code), shall be applicable only with respect to taxable years beginning after December 31, 1939."

#### 1939 AMENDMENT

Subsection (a) was amended by section 211 (h) of act June 29, 1939, cited to text.

Subsection (b) was amended by section 209 of act June 29, 1939, cited to text, and amendment made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of said act. Prior to said amendment subsection (b) read as follows:

"(b) *Imposition of tax.* There shall be levied, collected, and paid for each taxable year upon the Supplement Q net income of every mutual investment company a tax equal to 18 $\frac{1}{2}$  per centum of the amount thereof."

#### SUPPLEMENT R.—EXCHANGES AND DISTRIBUTIONS IN OBEDIENCE TO ORDERS OF SECURITIES AND EXCHANGE COMMISSION

##### § 371. Nonrecognition of gain or loss—(a) Exchanges of stock or securities only.

No gain or loss shall be recognized to the transferor if stock or securities in a corporation which is a registered holding company or a majority-owned subsidiary company are transferred to such corporation or to an associate company thereof which is a registered holding company or a majority-owned subsidiary company solely in exchange for stock or securities (other than stock or securities which are nonexempt property), and the exchange is made by the transferee corporation in obedience to an order of the Securities and Exchange Commission.

##### (b) Exchanges of property for property by corporations.

No gain or loss shall be recognized to a transferor corporation which is a registered holding company or an associate company of a registered holding company, if such corporation, in obedience to an order of the Securities and Exchange Commission transfers property solely in exchange for property (other than nonexempt property), and such order recites that such exchange by the transferor corporation is necessary or appropriate to the integration or simplification of the holding company system of which the transferor corporation is a member.

##### (c) Distribution of stock or securities only.

If there is distributed, in obedience to an order of the Securities and Exchange Commission, to a shareholder in a corporation which is a registered holding company or a majority-owned subsidiary company, stock or securities (other than stock or securities which are nonexempt property), without the surrender by such shareholder of stock or securities in such corporation, no gain to the distributee from the receipt of the stock or securities so distributed shall be recognized.

##### (d) Transfers within system group.

(1) No gain or loss shall be recognized to a corporation which is a member of a system group (A) if such corporation transfers property to another corporation which is a member of the same system group in exchange for other property, and the exchange by each corporation is made in obedience to an order of the Securities and Exchange Commission, or (B) if there is distributed to such corporation as a shareholder in a corporation which is a member of the same system group, property, without the surrender by such shareholder of stock or securities in the corporation making the distribution, and the distribution is made and received in obedience to an order of the Securities and Exchange Commission. If an exchange by or a distribution to a corporation with respect to which no gain or loss is recognized under any of the provisions of this paragraph may also be considered to be within the provisions of subsection (a), (b), or (c), then the provisions of this paragraph only shall apply.

(2) If the property received upon an exchange which is within any of the provisions of paragraph (1) of this subsection consists in whole or in part of stock or securities issued by the corporation from which such property was received, and if in obedience to an order of the Securities and Exchange Commission such stock or securities (other than stock which is not preferred as to both dividends and assets) are sold and the proceeds derived therefrom are applied in whole or in part in the retirement or cancellation of stock or of securities of the recipient corporation outstanding at the time of such exchange, no gain or loss shall be recognized to the recipient corporation upon the sale of the stock or securities with respect to which such order was made; except that if any part of the proceeds derived from the sale of such stock or securities is not so applied, or if the amount of such proceeds is in excess of the fair market value of such stock or securities at the time of such exchange, the gain, if any, shall be recognized, but in an amount not in excess of the proceeds which are not so applied, or in an amount not more than the amount by which the proceeds derived from such sale exceed such fair market value, whichever is the greater.

##### (e) Exchanges not solely in kind.

(1) If an exchange (not within any of the provisions of subsection (d)) would be within the provisions of subsection (a) or (b) if it were not for the fact that property received in exchange consists not only of property permitted by such subsection to be received without the recognition of gain or loss,



but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property, and the loss, if any, to the recipient shall not be recognized.

(2) If an exchange is within the provisions of paragraph (1) of this subsection and if it includes a distribution which has the effect of the distribution of a taxable dividend, then there shall be taxed as a dividend to each distributee such an amount of the gain recognized under such paragraph (1) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after February 28, 1913. The remainder, if any, of the gain recognized under such paragraph (1) shall be taxed as a gain from the exchange of property.

**(f) Application of section.**

The provisions of this section shall not apply to an exchange or distribution unless (1) the order of the Securities and Exchange Commission in obedience to which such exchange or distribution was made recites that such exchange or distribution is necessary or appropriate to effectuate the provisions of section 11 (b) of the Public Utility Holding Company Act of 1935, 49 Stat. 820, (U. S. C., Supp. III, Title 15, § 79 (b)), (2) such order specifies and itemizes the stock and securities and other property which are ordered to be transferred and received upon such exchange or distribution, and (3) such exchange or distribution was made in obedience to such order and was completed within the time prescribed therefor in such order.

**(g) Nonapplication of other provisions.**

If an exchange or distribution made in obedience to an order of the Securities and Exchange Commission is within any of the provisions of this section and may also be considered to be within any of the provisions of section 112 (other than the provisions of paragraph (8) of subsection (b)), then the provisions of this section only shall apply. (53 Stat. 99.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 371, 52 Stat. 553.

**§ 372. Basis for determining gain or loss—(a) Exchanges generally.**

If the property was acquired upon an exchange subject to the provisions of section 371 (a), (b), or (e), the basis shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange under the law applicable to the year in which the exchange was made. If the property so acquired consisted in part of the type of property permitted by section 371 (a) or (b) to be received without the recognition of gain or loss, and in part of nonexempt property, the basis provided in this subsection shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such non-exempt property (other than money) an amount equivalent to its fair market value at the date of

the exchange. This subsection shall not apply to property acquired by a corporation by the issuance of its stock or securities as the consideration in whole or in part for the transfer of the property to it.

**(b) Transfers to corporations.**

If, in connection with a transfer subject to the provisions of section 371 (a), (b), or (e), the property was acquired by a corporation, either as paid-in surplus or as a contribution to capital, or in consideration for stock or securities issued by the corporation receiving the property (including cases where part of the consideration for the transfer of such property to the corporation consisted of property or money in addition to such stock or securities), then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made.

**(c) Distributions of stock or securities.**

If the stock or securities were received in a distribution subject to the provisions of section 371 (c), then the basis in the case of the stock in respect of which the distribution was made shall be apportioned, under rules and regulations prescribed by the Commissioner with the approval of the Secretary, between such stock and the stock or securities distributed.

**(d) Transfers within system group.**

If the property was acquired by a corporation which is a member of a system group upon a transfer or distribution described in section 371 (d) (1), then the basis shall be the same as it would be in the hands of the transferor; except that if such property is stock or securities issued by the corporation from which such stock or securities were received and they were issued (1) as the sole consideration for the property transferred to such corporation, then the basis of such stock or securities shall be either (A) the same as in the case of the property transferred therefor, or (B) the fair market value of such stock or securities at the time of their receipt, whichever is the lower; or (2) as part consideration for the property transferred to such corporation, then the basis of such stock or securities shall be either (A) an amount which bears the same ratio to the basis of the property transferred as the fair market value of such stock or securities at the time of their receipt bears to the total fair market value of the entire consideration received, or (B) the fair market value of such stock or securities at the time of their receipt, whichever is the lower. (53 Stat. 101.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 372, 52 Stat. 555.

**§ 373. Definitions.**

As used in this supplement—

(a) The term "order of the Securities and Exchange Commission" means an order (1) issued after May 28, 1938, and prior to January 1, 1941, by the Securities and Exchange Commission to effectuate the provisions of section 11 (b) of the Public Utility Holding Company Act of 1935, 49 Stat. 820 (U. S. C., Supp. III, Title 15, § 79 (b)), or (2) issued by the

Commission subsequent to December 31, 1940, in which it is expressly stated that an order of the character specified in clause (1) is amended or supplemented, and (3) which has become final in accordance with law.

(b) The terms "registered holding company", "holding-company system", and "associate company" shall have the meanings assigned to them by section 2 of the Public Utility Holding Company Act of 1935, 49 Stat. 804 (U. S. C., Supp. III, Title 15, § 79 (b), (c)).

(c) The term "majority-owned subsidiary company" of a registered holding company means a corporation, stock of which, representing in the aggregate more than 50 per centum of the total combined voting power of all classes of stock of such corporation entitled to vote (not including stock which is entitled to vote only upon default or non-payment of dividends or other special circumstances) is owned wholly by such registered holding company, or partly by such registered holding company and partly by one or more majority-owned subsidiary companies thereof, or by one or more majority-owned subsidiary companies of such registered holding company.

(d) The term "system group" means one or more chains of corporations connected through stock ownership with a common parent corporation if—

(1) At least 90 per centum of each class of the stock (other than stock which is preferred as to both dividends and assets) of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations; and

(2) The common parent corporation owns directly at least 90 per centum of each class of the stock (other than stock which is preferred as to both dividends and assets) of at least one of the other corporations; and

(3) Each of the corporations is either a registered holding company or a majority-owned subsidiary company.

(e) The term "nonexempt property" means—

(1) Any consideration in the form of a cancellation or assumption of debts or other liabilities (including a continuance of encumbrances subject to which the property was transferred);

(2) Short-term obligations (including notes, drafts, bills of exchange, and bankers' acceptances) having a maturity at the time of issuance of not exceeding twenty-four months, exclusive of days of grace;

(3) Securities issued or guaranteed as to principal or interest by a government or subdivision thereof (including those issued by a corporation which is an instrumentality of a government or subdivision thereof);

(4) Stock or securities which were acquired after February 28, 1938, unless such stock or securities (other than obligations described as nonexempt property in paragraph (2) or (3)) were acquired in obedience to an order of the Securities and Exchange Commission;

(5) Money, and the right to receive money not evidenced by a security other than an obligation

described as nonexempt property in paragraph (2) or (3).

(f) The term "stock or securities" means shares of stock in any corporation, certificates of stock or interest in any corporation, notes, bonds, debentures, and evidences of indebtedness (including any evidence of an interest in or right to subscribe to or purchase any of the foregoing). (53 Stat. 102; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 221, 53 Stat. 878.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 373, 52 Stat. 556.

#### 1939 AMENDMENT

Subsection (a) was amended by act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938, by § 221 (b) of said act.

#### SUPPLEMENT S.—TAX OF SHAREHOLDERS OF PERSONAL SERVICE CORPORATIONS

Supplement was added to Internal Revenue Code by act Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title V, § 502, 54 Stat. 1005.

#### § 391. Applicability of Supplement.

If a personal service corporation (as defined in section 725) is exempt under such section for any taxable year from the excess profits tax imposed by such subchapter, the provisions of this Supplement shall be applicable with respect to each shareholder of such corporation who was a shareholder in such corporation on the last day of such taxable year of the corporation. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title V, § 502, 54 Stat. 1005.)

#### § 392. Undistributed Supplement S net income.

For the purposes of this chapter, the term "undistributed Supplement S net income" means the Supplement S net income (as defined in section 393) minus the amount of the dividends paid during the taxable year. For the purposes of this section the amount of dividends paid shall be computed in the same manner as provided in subsections (d), (e), (f), (g), (h), and (i) of section 27 for the purpose of the basic surtax credit provided in section 27. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title V, § 502, 54 Stat. 1005.)

#### § 393. Supplement S net income.

For the purposes of this chapter "Supplement S net income" means the net income, except that there shall be allowed as additional deductions—

(a) The Federal income tax payable under this chapter for the taxable year; and

(b) In lieu of the deduction allowed by section 23 (q), contributions or gifts, payment of which is made within the taxable year, to or for the use of donees described in section 23 (q) for the purposes therein specified, to an amount which does not exceed 15 per centum of the corporation's net income, computed without the benefit of this subsection and section 23 (q). (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title V, § 502, 54 Stat. 1005.)

#### § 394. Corporation income taxed to shareholders—

##### (a) General rule.

The undistributed Supplement S net income of a personal service corporation shall be included in the

gross income of the shareholders in the manner and to the extent set forth in this Supplement.

**(b) Amount included in gross income.**

Each shareholder who, on the last day of the taxable year of the corporation, was a shareholder in such corporation shall include in his gross income, as a dividend, for the taxable year in which or with which the taxable year of the corporation ends, the amount he would have received as a dividend if on such last day there had been distributed by the corporation, and received by the shareholders, an amount equal to the undistributed Supplement S net income of the corporation for its taxable year.

**(c) Credit for obligations of the United States and its instrumentalities.**

Each such shareholder shall be allowed a credit against net income, for the purposes of the tax imposed by sections 11, 13, 14, 201, 204, 207, or 362, of his proportionate share of the interest specified in section 25 (a) (1) or (2) which is included in the gross income of the corporation.

**(d) Effect on capital account of personal service corporation.**

An amount equal to the undistributed Supplement S net income of the personal service corporation for its taxable year shall be considered as paid in as of the close of such taxable year as paid-in surplus or as a contribution to capital, and the accumulated earnings and profits as of the close of such taxable year shall be correspondingly reduced, if such amount or any portion thereof is required to be included as a dividend in the gross income of the shareholders.

**(e) Basis of stock in hands of shareholders.**

The amount required to be included in the gross income of the shareholder under subsection (b) shall, for the purpose of adjusting the basis of his stock with respect to which the distribution would have been made (if it had been made), be treated as having been reinvested by the shareholder as a contribution to the capital of the corporation; but only to the extent to which such amount is included in his gross income in his return, increased or decreased by any adjustment of such amount in the last determination of the shareholder's tax liability, made before the expiration of seven years after the date prescribed by law for filing the return.

**(f) Period of limitation on assessment and collection.**

For period of limitation on assessment and collection without assessment, in the case of failure to include in gross income the amount properly includible therein under subsection (b), see section 275 (d). (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title V, § 502, 54 Stat. 1005.)

**§ 395. Nonresident alien individuals and foreign corporations.**

In the case of a shareholder taxable under section 211 (a) or 231 (a), his distributive share of the undistributed Supplement S net income of the corporation required to be included in the gross income shall be considered as a dividend received by him from sources within the United States. (Added Oct.

8, 1940, 11 p. m., E. S. T., ch. 757, title V, § 502, 54 Stat. 1005.)

**§ 396. Shareholder's tax paid by corporation.**

If a personal service corporation is exempt for any taxable year under section 725 from excess profits tax, it shall, at the time of filing its return, pay to the collector an amount equal to the amount that would be required by section 143 (b) or section 144 to be deducted and withheld by the corporation if any amount required by this Supplement to be included in the gross income of the shareholder had been, on the last day of the taxable year of the corporation, paid to the shareholder in cash as a dividend. Such amount shall be collected and paid in the same manner as the amount of tax due in excess of that shown by the taxpayer upon a return in the case of a mathematical error appearing on the face of the return. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title V, § 502, 54 Stat. 1005.)

**Chapter 2.—ADDITIONAL INCOME TAXES**

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## SUBCHAPTER A.—PERSONAL HOLDING COMPANIES

## § 500. Surtax on personal holding companies—(a) General rule.

There shall be levied, collected, and paid, for each taxable year beginning after December 31, 1938, upon the undistributed subchapter A net income of every personal holding company (in addition to the taxes imposed by chapter 1) a surtax equal to the sum of the following:

- (1) 65 per centum of the amount thereof not in excess of \$2,000; plus
- (2) 75 per centum of the amount thereof in excess of \$2,000.

## (b) Defense tax for five years.

In the case of every personal holding company, the amount of surtax under this subchapter for any taxable year beginning after December 31, 1939, and before January 1, 1945, shall be 10 per centum greater than the amount of surtax computed without regard to this subsection. (53 Stat. 104; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, § 203, 54 Stat. 521.)

## DERIVATION

Act May 28, 1938, ch. 289, § 401, 52 Stat. 557.

## 1940 AMENDMENT

Subsection (a) was created from section as originally enacted and heading "(a) General Rule" was inserted by act June 25, 1940, cited to text.

Subsection (b) was added by act June 25, 1940, cited to text.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 351, 49 Stat. 1732, as amended by act Aug. 26, 1937, ch. 815, title I, § 1, 50 Stat. 813.

1934—May 10, 1934, ch. 277, § 351, 48 Stat. 751.

## CROSS REFERENCE

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of

certain Government obligations, see note under section 757b of Title 31, Money and Finance.

## § 501. Definition of personal holding company—(a) General rule.

For the purposes of this subchapter and chapter 1, the term "personal holding company" means any corporation if—

## (1) Gross income requirement.

At least 80 per centum of its gross income for the taxable year is personal holding company income as defined in section 502; but if the corporation is a personal holding company with respect to any taxable year beginning after December 31, 1936, then, for each subsequent taxable year, the minimum percentage shall be 70 per centum in lieu of 80 per centum, until a taxable year during the whole of the last half of which the stock ownership required by paragraph (2) does not exist, or until the expiration of three consecutive taxable years in each of which less than 70 per centum of the gross income is personal holding company income; and

## (2) Stock ownership requirement.

At any time during the last half of the taxable year more than 50 per centum in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals.

## (b) Exceptions.

The term "personal holding company" does not include a corporation exempt from taxation under section 101, a bank as defined in section 104, a life insurance company, a surety company, or a foreign personal holding company as defined in section 331, or a licensed personal finance company, under State supervision, at least 80 per centum of the gross income of which is lawful interest received from individuals each of whose indebtedness to such company did not at any time during the taxable year exceed \$300 in principal amount, if such interest is not payable in advance or compounded and is computed only on unpaid balances.

## (c) Corporations making consolidated returns.

If the common parent corporation of an affiliated group of corporations making a consolidated return under the provisions of section 141 satisfies the stock ownership requirement provided in section 501 (a) (2), and the income of such affiliated group, determined as provided in section 141, satisfies the gross income requirement provided in section 501 (a) (1), such affiliated group shall be subject to the surtax imposed by this subchapter. (53 Stat. 104.)

## DERIVATION

Act May 28, 1938, ch. 289, § 402, 52 Stat. 557.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 352, as added by act Aug. 26, 1937, ch. 815, title I, § 1, 50 Stat. 814.

1934—May 10, 1934, ch. 277, § 351, 48 Stat. 751.

## § 502. Personal holding company income.

For the purposes of this subchapter the term "personal holding company income" means the portion of the gross income which consists of:

(a) Dividends, interest (other than interest constituting rent as defined in subsection (g)), royalties (other than mineral, oil, or gas royalties), annuities.

(b) Stock and securities transactions.

Except in the case of regular dealers in stock or securities, gains from the sale or exchange of stock or securities.

(c) Commodities transactions.

Gains from futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange. This subsection shall not apply to gains by a producer, processor, merchant, or handler of the commodity which arise out of bona fide hedging transactions reasonably necessary to the conduct of its business in the manner in which such business is customarily and usually conducted by others.

(d) Estates and trusts.

Amounts includible in computing the net income of the corporation under Supplement E of chapter 1; and gains from the sale or other disposition of any interest in an estate or trust.

(e) Personal service contracts.

(1) Amounts received under a contract under which the corporation is to furnish personal services; if some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract; and (2) amounts received from the sale or other disposition of such a contract. This subsection shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 per centum or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

(f) Use of corporation property by shareholder.

Amounts received as compensation (however designated and from whomsoever received) for the use of, or right to use, property of the corporation in any case where, at any time during the taxable year, 25 per centum or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for an individual entitled to the use of the property; whether such right is obtained directly from the corporation or by means of a sublease or other arrangement.

(g) Rents.

Rents, unless constituting 50 per centum or more of the gross income. For the purposes of this subsection the term "rents" means compensation, however designated, for the use of, or right to use, property, and the interest on debts owed to the corporation, to the extent such debts represent the price for which real property held primarily for sale to customers in the ordinary course of its trade or business was sold or exchanged by the corporation; but does not include amounts constituting personal holding company income under subsection (f).

(h) Mineral, oil, or gas royalties.

Mineral, oil, or gas royalties, unless (1) constituting 50 per centum or more of the gross income, and (2) the deductions allowable under section 23 (a) (relating to expenses) other than compensation for personal services rendered by shareholders, constitute 15 per centum or more of the gross income. (53 Stat. 105.)

#### DERIVATION

Act May 28, 1938, ch. 289, § 403, 52 Stat. 558.

#### SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 353, as added by act Aug. 26, 1937, ch. 815, title I, § 1, 50 Stat. 814.

1934—May 10, 1934, ch. 277, § 351, 48 Stat. 751.

§ 503. Stock ownership—(a) Constructive ownership.

For the purpose of determining whether a corporation is a personal holding company, insofar as such determination is based on stock ownership under section 501 (a) (2), section 502 (e), or section 502 (f)—

(1) Stock not owned by individual.

Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

(2) Family and partnership ownership.

An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For the purposes of this paragraph the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(3) Options.

If any person has an option to acquire stock such stock shall be considered as owned by such person. For the purposes of this paragraph an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(4) Application of family-partnership and option rules.

Paragraphs (2) and (3) shall be applied—

(A) For the purposes of the stock ownership requirement provided in section 501 (a) (2), if, but only if, the effect is to make the corporation a personal holding company;

(B) For the purposes of section 502 (e) (relating to personal service contracts), or of section 502 (f) (relating to the use of property by shareholders), if, but only if, the effect is to make the amounts therein referred to includible under such subsection as personal holding company income.

(5) Constructive ownership as actual ownership.

Stock constructively owned by a person by reason of the application of paragraph (1) or (3) shall, for the purpose of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for the purpose of again applying such paragraph in order to make another the constructive owner of such stock.

**(6) Option rule in lieu of family and partnership rule.**

If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

**(b) Convertible securities.**

Outstanding securities convertible into stock (whether or not convertible during the taxable year) shall be considered as outstanding stock—

(1) For the purpose of the stock ownership requirement provided in section 501 (a) (2), but only if the effect of the inclusion of all such securities is to make the corporation a personal holding company;

(2) For the purpose of section 502 (e) (relating to personal service contracts), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such subsection as personal holding company income; and

(3) For the purpose of section 502 (f) (relating to the use of property by shareholders), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such subsection as personal holding company income.

The requirement in paragraphs (1), (2), and (3) that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included. (53 Stat. 106.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 404, 52 Stat. 559.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 354, as added by act Aug 26, 1937, ch. 815, title I, § 1, 50 Stat. 815.

1934—May 10, 1934, ch. 277, § 351, 48 Stat. 751

**§ 504. Undistributed subchapter A net income.**

For the purposes of this subchapter the term “undistributed subchapter A net income” means the subchapter A net income (as defined in section 505) minus—

(a) The amount of the dividends paid credit provided in section 27 (a) without the benefit of paragraphs (3) and (4) thereof (computed without its reduction, under section 27 (b) (1), by the amount of the credit provided in section 26 (a), relating to interest on certain obligations of the United States and Government corporations); but, in the computation of the dividends paid credit for the purposes of this subchapter, the amount allowed under subsection (c) of this section in the computation of the tax under this subchapter for any preceding taxable year shall be considered as a dividend paid in such preceding taxable year and not in the year of distribution, and, in the computation of the dividend carry-over for the purposes of this subchapter, the term “adjusted net income” as used in section 27 (c) means the adjusted net income minus the deduction allowed for Federal taxes under section 505 (a) (1);

(b) Amounts used or irrevocably set aside to pay or to retire indebtedness of any kind incurred prior

to January 1, 1934, if such amounts are reasonable with reference to the size and terms of such indebtedness.

(c) Dividends paid after the close of the taxable year and before the 15th day of the third month following the close of the taxable year, if claimed under this subsection in the return, but only to the extent to which such dividends are includible, for the purposes of chapter 1, in the computation of the basic surtax credit for the year of distribution; but the amount allowed under this subsection shall not exceed either:

(1) The accumulated earnings and profits as of the close of the taxable year; or

(2) The undistributed subchapter A net income for the taxable year computed without regard to this subsection; or

(3) 10 per centum of the sum of—

(A) The dividends paid during the taxable year (reduced by the amount allowed under this subsection in the computation of the tax under this subchapter for the taxable year preceding the taxable year); and

(B) The consent dividends credit for the taxable year. (53 Stat. 107; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 228, 53 Stat. 881.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 405, 52 Stat. 560.

**1939 AMENDMENT**

Subsection (a) was amended by act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938, by § 228 (b) of said act.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 355, as added by act Aug 26, 1937, ch. 815, title I, § 1, 50 Stat. 816.

1934—May 10, 1934, ch. 277, § 351, 48 Stat. 751.

**§ 505. Subchapter A Net Income.**

For the purposes of this subchapter the term “Subchapter A Net Income” means the net income with the following adjustments:

**(a) Additional deductions.**

There shall be allowed as deductions—

(1) Federal income, war-profits, and excess-profits taxes paid or accrued during the taxable year to the extent not allowed as a deduction under section 23; but not including the tax imposed by section 102, section 500, or a section of a prior income-tax law corresponding to either of such sections.

(2) In lieu of the deduction allowed by section 23 (q), contributions or gifts, payment of which is made within the taxable year to or for the use of donees described in section 23 (q) for the purposes therein specified, to an amount which does not exceed 15 per centum of the taxpayer's net income, computed without the benefit of this paragraph and section 23 (q), and without the deduction of the amount disallowed under subsection (b) of this section.

(3) In the case of a corporation organized prior to January 1, 1936, to take over the assets and liabilities of the estate of a decedent, amounts paid in liquidation of any liability of the corporation based on the liability of the decedent to make contributions or gifts to or for the use of donees described in section 23 (o) for the purposes therein specified, to

the extent such liability of the decedent existed prior to January 1, 1934. No deduction shall be allowed under paragraph (2) of this subsection for a taxable year for which a deduction is allowed under this paragraph.

**(b) Deductions not allowed.**

The aggregate of the deductions allowed under section 23 (a), relating to expenses, and section 23 (l), relating to depreciation, which are allocable to the operation and maintenance of property owned or operated by the corporation, shall be allowed only in an amount equal to the rent or other compensation received for the use of, or the right to use, the property, unless it is established (under regulations prescribed by the Commissioner with the approval of the Secretary) to the satisfaction of the Commissioner:

(1) That the rent or other compensation received was the highest obtainable, or, if none was received, that none was obtainable;

(2) That the property was held in the course of a business carried on bona fide for profit; and

(3) Either that there was reasonable expectation that the operation of the property would result in a profit, or that the property was necessary to the conduct of the business.

**(c) Net loss carry-over disallowed.**

The deduction for net operating losses provided in section 23 (s) shall not be allowed.

**(d) Capital losses.**

The net income shall be computed without regard to section 117 (d) and (e), and losses from sales or exchanges of capital assets shall be allowed only to the extent of \$2,000 plus the gains from such sales or exchanges. (53 Stat. 108; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, §§ 211 (l), 212 (d), 53 Stat. 869.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 406, 52 Stat. 561.

**1939 AMENDMENT**

Subsection (c) was added by act June 29, 1939, cited to text.

Subsection (d) was added by act June 29, 1939, cited to text, and made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of said act.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 356, as added by act Aug 26, 1937, ch. 815, title I, § 1, 50 Stat. 816.

1934—May 10, 1934, ch. 277, § 351, 48 Stat. 751.

**§ 506. Deficiency dividends—credits and refunds—(a) Credit against unpaid deficiency.**

If the amount of a deficiency with respect to the tax imposed by this subchapter for any taxable year has been established—

(1) by a decision of the Board of Tax Appeals which has become final; or

(2) by a closing agreement made under section 3760; or

(3) by a final judgment in a suit to which the United States is a party;

then a deficiency dividend credit shall be allowed against the amount of the deficiency so established and all interest, additional amounts, and additions

to the tax provided by law not paid on or before the date when claim for a deficiency dividend credit is filed under subsection (d). The amount of such credit shall be 65 per centum of the amount of deficiency dividends, as defined in subsection (c), not in excess of \$2,000, plus 75 per centum of the amount of such dividends in excess of \$2,000; but such credit shall not exceed the portion of the deficiency so established which is not paid on or before the date of the closing agreement, or the date the decision of the Board or the judgment becomes final, as the case may be. Such credit shall be allowed as of the date the claim for deficiency dividend credit is filed.

**(b) Credit or refund of deficiency paid.**

When the Commissioner has determined that there is a deficiency with respect to the tax imposed by this subchapter and the corporation has paid any portion of such asserted deficiency and it has been established—

(1) by a decision of the Board of Tax Appeals which has become final; or

(2) by a closing agreement made under section 3760; or

(3) by a final judgment in a suit against the United States for refund—

(A) if such suit is brought within six months after the corporation became entitled to bring suit, and

(B) if claim for refund was filed within six months after the payment of such amount;

that any portion of the amount so paid was the whole or a part of a deficiency at the time when paid, then there shall be credited or refunded to the corporation an amount equal to 65 per centum of the amount of deficiency dividends not in excess of \$2,000, plus 75 per centum of the amount of such dividends in excess of \$2,000, but such credit or refund shall not exceed the portion so paid by the corporation. Such credit or refund shall be made as provided in section 322 but without regard to subsection (b) or subsection (c) thereof. No interest shall be allowed on such credit or refund. No credit or refund shall be made under this subsection with respect to any amount of tax paid after the date of the closing agreement, or the date the decision of the Board or the judgment becomes final, as the case may be.

**(c) Deficiency dividends—(1) Definition.**

For the purpose of this subchapter, the term "deficiency dividends" means the amount of the dividends paid, on or after the date of the closing agreement or on or after the date the decision of the Board or the judgment becomes final, as the case may be, and prior to filing claim under subsection (d), which are includible, for the purposes of chapter 1, in the computation of the basic surtax credit for the year of distribution. No dividends shall be considered as deficiency dividends for the purposes of allowance of credit under subsection (a) unless (under regulations prescribed by the Commissioner with the approval of the Secretary) the corporation files, within thirty days after the date of the closing agreement, or the date upon which the decision of the Board or judgment becomes final, as the case may be, notification (which specifies the amount of the



credit intended to be claimed) of its intention to have the dividends so considered.

**(2) Effect on dividends paid credit—(A) For taxable year in which paid.**

Deficiency dividends paid in any taxable year (to the extent of the portion thereof with respect to which the credit under subsection (a), or the credit or refund under subsection (b), or both, are allowed) shall be subtracted from the basic surtax credit for such year, but only for the purpose of computing the tax under this subchapter for such year and succeeding years.

**(B) For prior taxable year.**

Deficiency dividends paid in any taxable year (to the extent of the portion thereof with respect to which the credit under subsection (a), or the credit or refund under subsection (b), or both are allowed) shall not be allowed under section 504 (c) in the computation of the tax under this subchapter for any taxable year preceding the taxable year in which paid.

**(d) Claim required.**

No deficiency dividends credit shall be allowed under subsection (a) and no credit or refund shall be made under subsection (b) unless (under regulations prescribed by the Commissioner with the approval of the Secretary) claim therefor is filed within sixty days after the date of the closing agreement, or the date upon which the decision of the Board or judgment becomes final, as the case may be.

**(e) Suspension of statute of limitations and stay of collection—(1) Suspension of running of statute.**

If the corporation files a notification, as provided in subsection (c), to have dividends considered as deficiency dividends, the running of the statute of limitations provided in section 275 or 276 on the making of assessments and the bringing of distraint or a proceeding in court for collection, in respect of the deficiency and all interest, additional amounts, and additions to the tax provided by law, shall be suspended for a period of two years after the date of the filing of such notification.

**(2) Stay of collection.**

In the case of any deficiency with respect to the tax imposed by this subchapter established as provided in subsection (a)—

(A) The collection of the deficiency and all interest, additional amounts, and additions to the tax provided for by law shall, except in cases of jeopardy, be stayed until the expiration of thirty days after the date of the closing agreement, or the date upon which the decision of the Board or judgment becomes final, as the case may be.

(B) If notification has been filed, as provided in subsection (c), the collection of such part of the deficiency as is not in excess of either the credit allowable under subsection (a) or the amount which, in the notification, is specified as intended to be claimed as credit, shall, except in cases of jeopardy, be stayed until the expiration of sixty days after the date of the closing agreement, or the date upon which the decision of the Board or judgment becomes final, as the case may be.

(C) If claim for deficiency dividend credit is filed under subsection (d), the collection of such part of the deficiency as is not in excess of either the credit allowable under subsection (a) or the amount claimed, shall be stayed until the date the claim for credit is disallowed (in whole or in part), and if disallowed in part collection shall be made only of the part disallowed.

No distraint or proceeding in court shall be begun for the collection of an amount the collection of which is stayed under subparagraph (A), (B), or (C) during the period for which the collection of such amount is stayed.

**(f) Credit or refund denied if fraud, etc.**

No deficiency dividend credit shall be allowed under subsection (a) and no credit or refund shall be made under subsection (b) if the closing agreement, decision of the Board, or judgment contains a finding that any part of the deficiency is due to fraud with intent to evade tax, or to failure to file the return under this subchapter within the time prescribed by law or prescribed by the Commissioner in pursuance of law, unless it is shown that such failure to file is due to reasonable cause and not due to willful neglect. (53 Stat. 108.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 407, 52 Stat. 561.

**§ 507. Meaning of terms used—(a) General rule.**

The terms used in this subchapter shall have the same meaning as when used in chapter 1.

**(b) Insurance companies other than life or mutual.**

Notwithstanding subsection (a), the term "gross income", as used in this subchapter, means, in the case of an insurance company other than life or mutual, the gross income, as defined in section 204 (b) (1), increased by the amount of losses incurred, as defined in section 204 (b) (6), and the amount of expenses incurred, as defined in section 204 (b) (7), and decreased by the amount deductible under section 204 (c) (7) (relating to tax-free interest). (53 Stat. 111; June 29, 1939, 10 p. m. E. S. T., ch. 247, title II, § 227 (a), 53 Stat. 881.)

**DERIVATION**

Section derived from act May 28, 1938, ch. 289, § 408, 52 Stat. 564.

**EFFECTIVE DATE**

Amendment of section by act June 29, 1939, cited to text, was made applicable to taxable years beginning after December 31, 1938, by § 227 (b) of said act.

**SIMILAR PROVISIONS**

1936—June 22, 1936, ch. 690, § 357, as added by act Aug 26, 1937, ch. 815, title I, § 1, 50 Stat. 817.

**§ 508. Administrative provisions.**

All provisions of law (including penalties) applicable in respect of the taxes imposed by chapter 1, shall insofar as not inconsistent with this subchapter, be applicable in respect of the tax imposed by this subchapter, except that the provisions of section 131 shall not be applicable. (53 Stat. 111.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 409, 52 Stat. 564.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 358, as added by act Aug. 26, 1937, ch. 815, title I, § 1, 50 Stat. 817.  
 1934—May 10, 1934, ch. 277, § 351, 48 Stat. 751.

## § 509. Improper accumulation of surplus.

For surtax on corporations which accumulate surplus to avoid surtax on shareholders, see section 102.

(53 Stat. 111.)

## DERIVATION

Act May 28, 1938, ch. 289, § 410, 52 Stat. 564.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 359, as added by act Aug. 26, 1937, ch. 815, title I, § 1, 50 Stat. 817.  
 1934—May 10, 1934, ch. 277, § 351, 48 Stat. 751.

## § 510. Foreign personal holding companies.

For provisions relating to foreign personal holding companies and their shareholders, see Supplement P of chapter 1.

(53 Stat. 111.)

## DERIVATION

Act May 28, 1938, ch. 289, § 411, 52 Stat. 564.

## SIMILAR PROVISIONS

1936—June 22, 1936, ch. 690, § 360, as added by act Aug. 26, 1937, ch. 815, title I, § 1, 50 Stat. 817.

## § 511. Publicity of returns.

For provisions with respect to publicity of returns under this subchapter, see subsection (a) (2) of section 55.

(53 Stat. 111.)

## SUBCHAPTER B.—DECLARED VALUE EXCESS-PROFITS TAX

Above heading was inserted in lieu of old, which read "Excess-Profits Tax", by act Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title V, § 506 (a), 54 Stat. 1008, effective Feb. 10, 1939.

## § 600. Rate of tax—(a) General rule.

If any corporation is taxable under section 1200 with respect to any year ending June 30, there shall be imposed upon its net income for the income-tax taxable year ending after the close of such year, an<sup>1</sup> declared value excess-profits tax equal to the sum of the following:

6 per centum of such portion of its net income for such income-tax taxable year as is in excess of 10 per centum and not in excess of 15 per centum of the adjusted declared value;

12 per centum of such portion of its net income for such income-tax taxable year as is in excess of 15 per centum of the adjusted declared value.

## (b) Defense tax for five years.

In the case of any taxpayer, the amount of tax payable under this section for any income-tax taxable year ending after June 30, 1940, and before July 1, 1945, shall be 10 per centum greater than the amount of tax which would be payable if computed without regard to this subsection. (53 Stat. 111; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, § 204, 54 Stat. 521; Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title V, § 506 (a), 54 Stat. 1008, eff. Feb. 10, 1939.)

<sup>1</sup> So in original.

## DERIVATION

Act May 28, 1938, ch. 289, § 602 (a), 52 Stat. 568.

## 1940 AMENDMENT

Subsection (a) was created from section as originally enacted and heading "(a) General Rule" was inserted by act June 25, 1940, cited to text.

First paragraph of subsection (a) was amended by act October 8, 1940, cited to text, effective February 10, 1939, by substituting "declared value excess-profits tax" in lieu of "excess-profits tax".

Subsection (b) was added by act June 25, 1940, cited to text.

## SIMILAR PROVISIONS

1935—Aug. 30, 1935, ch. 829, § 106 (a), 49 Stat. 1019.  
 1934—May 10, 1934, ch. 277, § 702 (a), 48 Stat. 770.  
 1933—June 16, 1933, ch. 90, §§ 215, 216, 48 Stat. 207.

## CROSS REFERENCE

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain Government obligations, see note under section 757b of Title 31, Money and Finance.

## § 601. Adjusted declared value.

The adjusted declared value shall be determined as provided in section 1202 as of the close of the preceding income-tax taxable year (or as of the date of organization if it had no preceding income-tax taxable year). If the income-tax taxable year in respect of which the tax under section 600 is imposed is a period of less than 12 months, such adjusted declared value shall be reduced to an amount which bears the same ratio thereto as the number of months in the period bears to 12 months. (53 Stat. 111.)

## DERIVATION

Act May 28, 1938, ch. 289, § 602 (b), 52 Stat. 568.

## SIMILAR PROVISIONS

1935—Aug. 30, 1935, ch. 829, § 106 (b), 49 Stat. 1019.  
 1934—May 10, 1934, ch. 277, § 702 (a), 48 Stat. 770.  
 1933—June 16, 1933, ch. 90, §§ 215, 216, 48 Stat. 207, 208.

## § 602. Net income.

For the purposes of this subchapter the net income shall be the same as the net income for income-tax purposes for the year in respect of which the tax under section 600 is imposed, computed without the deduction of the tax imposed by section 600, but with a credit against net income equal to the credit for dividends received provided in section 26 (b) of chapter 1. (53 Stat. 111.)

## DERIVATION

Act May 28, 1938, ch. 289, § 602 (b), 52 Stat. 568.

## SIMILAR PROVISIONS

1935—Aug. 30, 1935, ch. 829, § 106 (b), 49 Stat. 1019, as amended by act June 22, 1936, ch. 690, § 402 (a), 49 Stat. 1733.  
 1934—May 10, 1934, ch. 277, § 702, 48 Stat. 770.  
 1933—June 16, 1933, ch. 90, §§ 215, 216, 48 Stat. 207, 208

## § 603. Other laws applicable.

All provisions of law (including penalties) applicable in respect of the taxes imposed by chapter 1, shall, insofar as not inconsistent with this subchapter, be applicable in respect of the tax imposed by section 600, except that the provisions of section 131 of that chapter shall not be applicable. (53 Stat. 111.)

## DERIVATION

Act May 28, 1938, ch. 289, § 602 (c), 52 Stat. 568.

## SIMILAR PROVISIONS

1935—Aug. 30, 1935, ch. 829, § 106 (c), 49 Stat. 1019.

1934—May 10, 1934, ch. 277, § 702 (b), 48 Stat. 771.  
 1933—June 16, 1933, ch. 90, §§ 215, 216, 48 Stat. 207, 208.

#### § 604. Publicity of returns.

For provisions with respect to publicity of returns under this subchapter, see subsection (a) (2) of section 55.

(53 Stat. 111.)

### SUBCHAPTER C.—EXCESS PROFITS ON NAVY CONTRACTS

#### § 650. Method of collection.

If the amount of profit required to be paid into the Treasury under section 3 of the Act of March 27, 1934, ch. 95, 48 Stat. 505, as amended by the Act of June 25, 1936, ch. 812, 49 Stat. 1926 (U. S. C., Supp. III, Title 34, § 496), with respect to contracts completed within income-tax taxable years beginning after December 31, 1938, is not voluntarily paid, the Secretary shall collect the same under the usual methods employed under the internal revenue laws to collect federal income taxes. (53 Stat. 112.)

#### DERIVATION

Act June 25, 1936, ch. 812, 49 Stat. 1926, amending act Mar. 27, 1934, ch. 95, § 3 (b), 48 Stat. 505.

#### § 651. Laws applicable.

All provisions of law (including penalties) applicable with respect to the taxes imposed by Title I of the Revenue Act of 1934, 48 Stat. 683, and not inconsistent with section 3 of said act of March 27, 1934, shall be applicable with respect to the assessment, collection, or payment of excess profits to the Treasury as provided by section 650, and to refunds by the Treasury of overpayments of excess profits into the Treasury. (53 Stat. 112.)

#### DERIVATION

Act June 25, 1936, ch. 812, 49 Stat. 1926, amending act Mar. 27, 1934, ch. 95, § 3 (b), 48 Stat. 505.

### SUBCHAPTER D.—UNJUST ENRICHMENT

#### § 700. Tax on net income from certain sources.

(a) The following taxes shall be levied, collected, and paid for each taxable year (in addition to any other tax on net income), upon the net income of every person which arises from the sources specified below:

(1) A tax equal to 80 per centum of that portion of the net income from the sale of articles with respect to which a Federal excise tax was imposed on such person but not paid which is attributable to shifting to others to any extent the burden of such Federal excise tax and which does not exceed such person's net income for the entire taxable year from the sale of articles with respect to which such Federal excise tax was imposed.

(2) A tax equal to 80 per centum of the net income from reimbursement received by such person from his vendors of amounts representing Federal excise-tax burdens included in prices paid by such person to such vendors, to the extent that such net income does not exceed the amount of such Federal excise-tax burden which such person in turn shifted to his vendees.

(3) A tax equal to 80 per centum of the net income from refunds or credits to such person from the United States of Federal excise taxes erroneously or illegally collected with respect to any articles, to the extent that such net income does not exceed the amount of the burden of such Federal excise taxes with respect to such articles which such person shifted to others.

(b) The net income (specified in subsection (a) (1)) from the sale of articles with respect to which the Federal excise tax was not paid, and the net income specified in subsection (a) (2) or (3), shall not include the net income from the sale of any article, from reimbursement with respect to any article, or from refund or credit of Federal excise tax with respect to any article (1) if such article (or the articles processed therefrom) were not sold by the taxpayer on or before the date of the termination of the Federal excise tax; (2) if the taxpayer made a tax adjustment with respect to such article (or the articles processed therefrom) with his vendee; or (3) if under the terms of any statute the taxpayer would have been entitled to a refund from the United States of the Federal excise tax with respect to the article otherwise than as an erroneous or illegal collection (assuming, in case the tax was not paid, that it had been paid).

(c) The net income from the sales specified in subsection (a) (1) shall be computed as follows:

(1) From the gross income from such sales there shall be deducted the allocable portion of the deductions from gross income for the taxable year which are allowable under the applicable Revenue Act; or

(2) If the taxpayer so elects by filing his return on such basis, the total net income for the taxable year from the sale of all articles with respect to which each Federal excise tax was imposed (computed by deducting from the gross income from such sales the allocable portion of the deductions from gross income which are allowable under the applicable Revenue Act, but without deduction of the amount of such Federal excise tax which was paid or of the amount of reimbursement to purchasers with respect to such Federal excise tax) shall be divided by the total quantity of such articles sold during the taxable year and the quotient shall be multiplied by the quantity of such articles involved in the sales specified in subsection (a) (1). Such quantities shall be expressed in terms of the unit on the basis of which the Federal excise tax was imposed.

For the purposes of this section the proper apportionment and allocation of deductions with respect to gross income shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary.

(d) The net income from reimbursement or refunds specified in subsection (a) (2) or (3) shall be computed as follows: From the total payment or accrual (1) of reimbursement to the taxpayer from vendors for amounts representing Federal excise tax burdens included in prices paid by the taxpayer to such vendors or (2) of refunds or credits to the taxpayer of Federal excise taxes erroneously or illegally collected, there shall be deducted the expenses

and fees reasonably incurred in obtaining such reimbursement or refunds.

(e) For the purposes of subsection (a) (1), (2), and (3), the extent to which the taxpayer shifted to others the burden of a Federal excise tax shall be presumed to be an amount computed as follows:

(1) From the selling price of the articles there shall be deducted the sum of (A) the cost of such articles plus (B) the average margin with respect to the quantity involved; or

(2) If the taxpayer so elects by filing his return on such basis, from the aggregate selling price of all articles with respect to which such Federal excise tax was imposed and which were sold by him during the taxable year (computed without deduction of reimbursement to purchasers with respect to such Federal excise tax) there shall be deducted the aggregate cost of such articles, and the difference shall be reduced to a margin per unit in terms of the basis on which the Federal excise tax was imposed. The excess of such margin per unit over the average margin (computed for the same unit) shall be multiplied by the number of such units represented by the articles with respect to which the computation is being made; but

(3) In no case shall the extent to which the taxpayer shifted to others the burden of the Federal excise tax with respect to the articles be deemed to exceed the amount of such tax with respect to such articles minus (A) the portion of the amount of the Federal excise tax (or of the reimbursement specified in subsection (a) (2)) with respect to the articles which is paid or credited by the taxpayer to any purchasers as specified in subsection (f) (3) and minus (B) the amount of any increase in the tax under section 3400 for which the taxpayer under this section became liable as the result of the non-payment or refund of the Federal excise tax with respect to the articles.

(f) As used in this section—

(1) The term "margin" means the difference between the selling price of articles and the cost thereof, and the term "average margin" means the average difference between the selling price and the cost of similar articles sold by the taxpayer during his six taxable years preceding the initial imposition of the Federal excise tax in question, except that if during any part of such six-year period the taxpayer was not in business, or if his records for any part of such period are so inadequate as not to furnish satisfactory data, the average margin of the taxpayer for such part of such period shall, when necessary for a fair comparison, be deemed to be the average margin, as determined by the Commissioner, of representative concerns engaged in a similar business and similarly circumstanced.

(2) The term "cost" means, in the case of articles manufactured or produced by the taxpayer, the cost to the taxpayer of materials entering into the articles; or, in the case of articles purchased by the taxpayer for resale, the price paid by him for such articles (reduced in both cases by the amount for which he is reimbursed by his vendor).

(3) The term "selling price" means selling price minus (A) amounts subsequently paid or credited to

the purchaser on or before June 1, 1936, or thereafter in the bona fide settlement of a written agreement entered into on or before March 3, 1936, as reimbursement for the amount included in such price on account of a Federal excise tax; and minus (B) the allocable portion of any professional fees and expenses of litigation incurred in securing the refund or preventing the collection of the Federal excise tax, not to exceed 10 per centum of the amount of such tax.

(g) In determining costs, selling prices, and net income, the taxpayer shall, unless otherwise shown, be deemed to have sold articles in the order in which they were manufactured, produced, or acquired. Where the taxpayer's records do not adequately establish the quantity of a commodity taxable under the Agricultural Adjustment Act, 48 Stat. 31, as amended, entering into articles sold by him, such quantities shall be computed by the use of the conversion factors prescribed in regulations under such act, as amended.

(h) If the taxpayer made any purchase or sale otherwise than through an arm's-length transaction, and at a price other than the fair market price, the Commissioner may determine the purchase or sale price to be that for which such purchases or sales were at that time made in the ordinary course of trade.

(i) Either the taxpayer or the Commissioner may rebut the presumption established by subsection (e) by proof of the actual extent to which the taxpayer shifted to others the burden of the Federal excise tax. Such proof may include, but shall not be limited to:

(1) Proof that the change or lack of change in the margin was due to changes in factors other than the tax. Such factors shall include any clearly shown change (A) in the type or grade of article or materials, or (B) in costs of production. If the taxpayer asserts that the burden of the tax was borne by him while the burden of any other increased cost was shifted to others, the Commissioner shall determine, from the respective effective dates of the tax and of the other increase in cost as compared with the date of the change in margin, and from the general experience of the industry, whether the tax or the increase in other cost was shifted to others. If the Commissioner determines that the change in margin was due in part to the tax and in part to the increase in other cost, he shall apportion the change in margin between them.

(2) Proof that the taxpayer modified contracts of sale, or adopted a new contract of sale, to reflect the initiation, termination, or change in amount of the Federal excise tax, or at any such time changed the sale price of the article (including the effect of a change in size, package, discount terms, or any other merchandising practice) by substantially the amount of the tax or change therein, or at any time billed the tax as a separate item to any vendee or indicated by any writing that the sale price included the amount of the tax, or contracted to refund any part of the sale price in the event of recovery of the tax or decision of its invalidity; but the taxpayer may establish that such acts were caused by factors other

than the tax, or that they do not represent his practice during the period in which the articles in question were sold.

(j) As used in this section—

(1) The term "Federal excise tax" means a tax or exaction with respect to the sale, lease, manufacture, production, processing, ginning, importation, transportation, refining, recovery, or holding for sale or other disposition, of commodities or articles, provided for by any Federal statute, whether valid or invalid, if denominated a "tax" by such statute. A Federal excise tax shall be deemed to have been imposed with respect to an article if it was imposed with respect to (or with respect to the processing of) any commodity or other article, from which such article was processed.

(2) The term "date of the termination of the Federal excise tax" means, in the case of a Federal excise tax held invalid by a decision of the Supreme Court, the date of such decision.

(3) The term "refund or credit" does not include a refund or credit made in accordance with the provisions and limitations set forth in Title VII of the Revenue Act of 1936, 49 Stat. 1747, or in section 3443 (d).

(4) The term "tax adjustment" means a repayment or credit by the taxpayer to his vendee of an amount equal to the Federal excise tax with respect to an article (less reasonable expense to the vendor in connection with the nonpayment or recovery by him of the amount of such tax and in connection with the making of such repayment or credit) if such repayment or credit is made on or before June 1, 1936, or thereafter in the bona fide settlement of a written agreement entered into on or before March 3, 1936.

(5) The term "taxpayer" means a person subject to a tax imposed by this section.

(k) All references in this section to the purchase or sale (or to parties to the sale) of articles with respect to which a Federal excise tax was imposed shall be deemed to include the purchase or sale (or parties to the sale) of services with respect to which a Federal excise tax was imposed, and for the purposes of subsection (a) the extent to which the taxpayer shifted to others the burden of such Federal excise tax with respect to such services shall be presumed to be an amount computed as follows: From the selling price of the services there shall be deducted the average price received by the taxpayer for performing similar services during the six taxable years preceding the initial imposition of the Federal excise tax in question. The balance (to the extent that it does not exceed the amount of such Federal excise tax with respect to such services minus any payments or credits with respect to the services made to purchasers as specified in subsection (f) (3)) shall be the extent to which the taxpayer shifted the burden of such Federal excise tax to others. If during any part of such six-year period the taxpayer was not in business, or if his records for any part of such period are so inadequate as not to furnish satisfactory data, the average price of the taxpayer for such part of such period shall, when necessary for a fair comparison, be deemed to be the

average price, as determined by the Commissioner, of representative concerns engaged in a similar business and similarly circumstanced. The presumption established by this subsection may be rebutted by proof of the character described in subsection (i).

(l) The taxes imposed by subsection (a) shall be imposed on the net income from the sources specified therein, regardless of any loss arising from the other transactions of the taxpayer, and regardless of whether the taxpayer had a taxable net income (under the income-tax provisions of the applicable Revenue Act) for the taxable year as a whole; except that if such application of the tax imposed by subsection (a) is held invalid, the tax under subsection (a) shall apply to that portion of the taxpayer's entire net income for the taxable year which is attributable to the net income from the sources specified in such subsection. (53 Stat. 112.)

#### DERIVATION

Act June 22, 1936, ch. 690, § 501, 49 Stat. 1734.

### § 701. Credit for other taxes on income.

There shall be credited against the total amount of the taxes imposed by this subchapter an amount equivalent to the excess of—

(a) The amount of the other Federal income and excess-profits taxes payable by the taxpayer for the taxable year, over

(b) The amount of the other Federal income and excess-profits taxes which would have been payable by the taxpayer for the taxable year if his net income were decreased by the amount of net income taxable under this subchapter. (53 Stat. 116.)

#### DERIVATION

Act June 22, 1936, ch. 690, § 502, 49 Stat. 1738.

### § 702. Administrative provisions.

(a) All provisions of law (including penalties) applicable with respect to taxes imposed by chapter 1, shall, insofar as not inconsistent with this subchapter, be applicable with respect to the taxes imposed by this subchapter, except that the provisions of sections 101, 131, 251, and 252 shall not be applicable.

(b) Every person (1) upon whom a Federal excise tax was imposed but not paid, or (2) who received any reimbursement specified in section 700 (a) (2), or (3) who received a refund or credit of Federal excise tax, shall make a return under this subchapter, which return shall contain such information and be made in such manner as the Commissioner, with the approval of the Secretary, shall prescribe.

(c) If the Commissioner finds that the payment, on the date prescribed for the payment thereof, of any part of the amount determined by the taxpayer as the tax under this subchapter, or of any deficiency with respect thereto, would impose undue hardship upon the taxpayer, the Commissioner may grant an extension for the payment of any such part for a period not in excess of three years. In such case the amount with respect to which the extension is granted shall be paid on or before the date of the expiration of the period of the extension, and the running of the statute of limitations for assessment and collection shall be suspended for the period of any such extension. If an extension is granted, the

Commissioner may require the taxpayer to furnish a bond in such amount, not exceeding double the amount with respect to which the extension is granted, and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the amount with respect to which the extension is granted in accordance with the terms of the extension. There shall be collected, as a part of any amount with respect to which an extension is granted, interest thereon at the rate of 6 per centum per annum from the expiration of six months after the due date thereof to the expiration of the period of the extension. (53 Stat. 116.)

## DERIVATION

Act June 22, 1936, ch. 690, § 503, 49 Stat. 1738.

### § 703. Taxable years to which subchapter is applicable.

The taxes imposed by this subchapter shall apply only with respect to taxable years ending during the calendar year 1939 and to subsequent taxable years. (53 Stat. 117.)

## DERIVATION

Act June 22, 1936, ch. 690, § 504, 49 Stat. 1739.

### § 704. Application of subchapter to possessions.

With respect to the following income, the tax under this subchapter shall be in force in any possession of the United States (including the Philippine Islands); such tax shall (without regard to the residence or citizenship or place of organization of the taxpayer) be collected by the appropriate internal-revenue officers of such possession; and the proceeds thereof shall accrue to the general government of such possession: (a) Any income specified in subsection (a) (1) or (3) of section 700 if the Federal excise tax with respect to the articles in question accrued in such possession; and (b) any income specified in subsection (a) (2) of section 700 if the reimbursement specified therein relates to articles sold in such possession by the taxpayer under this subchapter and if the geographical scope of the Federal excise tax in question extended to such possession. Income taxable as provided in this section shall not be otherwise taxable under this subchapter. In applying section 700 to such income, the gross income and deductions shall be determined in accordance with the Federal Revenue Act applicable to the taxable year. In applying section 701 to such income, income taxes paid to such possession shall be deemed to be Federal income taxes. (53 Stat. 117.)

## DERIVATION

Act June 22, 1936, ch. 690, § 505, 49 Stat. 1739.

### § 705. Closing agreements.

Any person who is liable for the tax imposed by this subchapter and who has filed any claim or claims for refund of any amount paid or collected as tax under the Agricultural Adjustment Act, 48 Stat. 31, as amended, may apply to the Commissioner for an adjustment of such liability for tax in conjunction with such claim or claims for refund, and thereafter, the Commissioner, for such purposes, may, in his discretion, consider such liability and such claim or claims as one case and, in his discretion, may enter into a written agreement with such person for the

settlement of such case by such payment by, or refund to, such person as may be specified in such agreement. Such agreement shall be a final settlement of the liability for tax and the claim or claims for refund covered by such agreement, except in case of fraud, malfeasance, or misrepresentation of a material fact. In the absence of fraud or mistake in mathematical calculation, any action taken or any consideration given by the Commissioner pursuant to this section shall not be subject to review by any court, or any administrative, or accounting officer, employee, or agent of the United States. (53 Stat. 117.)

## DERIVATION

Act June 22, 1936, ch. 690, § 506, 49 Stat. 1739.

### § 706. Publicity of returns.

For provisions with respect to publicity of returns under this subchapter, see subsection (a) (2) of section 55. (53 Stat. 117.)

## SUBCHAPTER E—EXCESS PROFITS TAX

### PART I

Subchapter was added to Internal Revenue Code by act Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 975.

### § 710. Imposition of tax—(a) Imposition.

There shall be levied, collected, and paid, for each taxable year beginning after December 31, 1939, on the adjusted excess profits net income, as defined in subsection (b), of every corporation (except a corporation exempt under section 727) a tax as follows:

(1) Upon adjusted excess profits net incomes of less than \$20,000, 25 per centum of the adjusted excess profits net income.

\$5,000 upon adjusted excess profits net incomes of \$20,000; and upon adjusted excess profits net incomes in excess of \$20,000, and not in excess of \$50,000, 30 per centum in addition of such excess.

\$14,000 upon adjusted excess profits net incomes of \$50,000; and upon adjusted excess profits net incomes in excess of \$50,000, and not in excess of \$100,000, 35 per centum in addition of such excess.

\$31,500 upon adjusted excess profits net incomes of \$100,000; and upon adjusted excess profits net incomes in excess of \$100,000, and not in excess of \$250,000, 40 per centum in addition of such excess.

\$91,500 upon adjusted excess profits net incomes of \$250,000; and upon adjusted excess profits net incomes in excess of \$250,000, and not in excess of \$500,000, 45 per centum in addition of such excess.

\$204,000 upon adjusted excess profits net incomes of \$500,000; and upon adjusted excess profits net incomes in excess of \$500,000, 50 per centum in addition of such excess.

### (2) Application of rates in case of certain exchanges.

If the taxpayer's highest bracket amount for the taxable year computed under section 752 (relating to certain exchanges) is less than \$500,000, then in the application of paragraph (1) of this subsection to such taxpayer, in lieu of each amount, other than the percentages, specified in such paragraph, there shall be substituted an amount which bears the same

ratio to the amount so specified as the highest bracket amount so computed bears to \$500,000.

**(b) Definition of adjusted excess profits net income.**

As used in this section, the term "adjusted excess profits net income" in the case of any taxable year means the excess profits net income (as defined in section 711) minus the sum of:

**(1) Specific exemption.**

A specific exemption of \$5,000;

**(2) Excess profits credit.**

The amount of the excess profits credit allowed under section 712; and

**(3) Unused excess profits credit.**

In the case of a taxpayer the normal-tax net income of which for the taxable year is not more than \$25,000, the amount by which the excess profits credit for the preceding taxable year (if beginning after December 31, 1939) exceeds the excess profits net income for such preceding taxable year. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 975.)

**§ 711. Excess profits net income—(a) Taxable years beginning after December 31, 1939.**

The excess profits net income for any taxable year beginning after December 31, 1939, shall be the normal-tax net income, as defined in section 13 (a) (2), for such year except that the following adjustments shall be made:

**(1) Excess profits credit computed under income credit.**

If the excess profits credit is computed under section 713, the adjustments shall be as follows:

**(A) Income taxes.**

The deduction for taxes shall be increased by an amount equal to the tax (not including the tax under section 102) under Chapter 1 for such taxable year;

**(B) Long-term gains and losses.**

There shall be excluded long-term capital gains and losses. There shall be excluded the excess of gains from the sale or exchange of property held for more than eighteen months which is of a character which is subject to the allowance for depreciation provided in section 23 (l) over the losses from the sale or exchange of such property;

**(C) Income from retirement or discharge of bonds, and so forth.**

There shall be excluded, in the case of any taxpayer, income derived from the retirement or discharge by the taxpayer of any bond, debenture, note, or certificate or other evidence of indebtedness, if the obligation of the taxpayer has been outstanding for more than eighteen months, including, in case the issuance was at a premium, the amount includible in income for such year solely because of such retirement or discharge;

**(D) Refunds and interest on Agricultural Adjustment Act taxes.**

There shall be excluded income attributable to refund of tax paid under the Agricultural Adjustment Act of 1933, as amended,<sup>1</sup> and interest upon any such refund;

**(E) Recoveries of bad debts.**

There shall be excluded income attributable to the recovery of a bad debt if a deduction with reference to such debt was allowable from gross income for any taxable year beginning prior to January 1, 1940;

**(F) Dividends received.**

The credit for dividends received shall apply, without limitation, to dividends on stock of domestic corporations.

**(2) Excess profits credit computed under invested capital credit.**

If the excess profits credit is computed under section 714, the adjustments shall be as follows:

**(A) Dividends received.**

The credit for dividends received shall apply, without limitation, to all dividends on stock of all corporations, except dividends (actual or constructive) on stock of foreign personal-holding companies;

**(B) Interest.**

The deduction for interest shall be reduced by an amount equal to 50 per centum of so much of such interest as represents interest on the indebtedness included in the daily amounts of borrowed capital (determined under section 719 (a));

**(C) Income taxes.**

The deduction for taxes shall be increased by an amount equal to the tax (not including the tax under section 102) under Chapter 1 for such taxable year;

**(D) Long-term gains and losses.**

There shall be excluded long-term capital gains and losses. There shall be excluded the excess of gains from the sale or exchange of property held for more than eighteen months which is of a character which is subject to the allowance for depreciation provided in section 23 (l) over the losses from the sale or exchange of such property;

**(E) Income from retirement or discharge of bonds, and so forth.**

There shall be excluded, in the case of any taxpayer, income derived from the retirement or discharge by the taxpayer of any bond, debenture, note, or certificate or other evidence of indebtedness, if the obligation of the taxpayer has been outstanding for more than eighteen months, including, in case the issuance was at a premium, the amount includible in income for such year solely because of such retirement or discharge;

**(F) Refunds and interest on Agricultural Adjustment Act taxes.**

There shall be excluded income attributable to refund of tax paid under the Agricultural Adjustment Act of 1933, as amended,<sup>1</sup> and interest upon any such refund;

**(G) Interest on certain Government obligations.**

The normal-tax net income shall be increased by an amount equal to the amount of the interest on obligations held during the taxable year which are described in section 22 (b) (4) any part of the interest from which is excludible from gross income or allowable as a credit against net income, if the taxpayer has so elected under section 720 (d); and



**(H) Recoveries of bad debts.**

There shall be excluded income attributable to the recovery of a bad debt if a deduction with reference to such debt was allowable from gross income for any taxable year beginning prior to January 1, 1940.

**(3) Taxable year less than 12 months.**

If the taxable year is a period of less than twelve months the excess profits net income shall be placed on an annual basis by multiplying the amount thereof by the number of days in the twelve months ending with the close of the taxable year and dividing by the number of days in the taxable year. The tax shall be such part of the tax computed on such annual basis as the number of days in the taxable year is of the number of days in the twelve months ending with the close of the taxable year.

**(b) Taxable years in base period.****(1) General rule and adjustments.**

The excess profits net income for any taxable year subject to the Revenue Act of 1936 shall be the normal-tax net income, as defined in section 13 (a) of such act; and for any other taxable year beginning after December 31, 1937, and before January 1, 1940, shall be the special-class net income, as defined in section 14 (a) of the applicable revenue law. In either case the following adjustments shall be made (for additional adjustments in case of certain reorganizations, see section 742 (e)):

**(A) Income taxes.**

The deduction for taxes shall be increased by an amount equal to the tax (not including the tax under section 102) for such taxable year under Title I or Chapter 1, as the case may be, of the revenue law applicable to such year;

**(B) Long-term gains and losses.**

There shall be excluded long-term capital gains and losses. There shall be excluded the excess of gains from the sale or exchange of property held for more than eighteen months which is of a character which is subject to the allowance for depreciation provided in section 23 (l) over the losses from the sale or exchange of such property;

**(C) Income from retirement or discharge of bonds, and so forth.**

There shall be excluded, in the case of any taxpayer, income derived from the retirement or discharge by the taxpayer of any bond, debenture, note, or certificate or other evidence of indebtedness, if the obligation of the taxpayer has been outstanding for more than eighteen months, including, in case the issuance was at a premium, the amount includible in income for such year solely because of such retirement or discharge;

**(D) Deductions on account of retirement or discharge of bonds, and so forth.**

If during the taxable year the taxpayer retires or discharges any bond, debenture, note, or certificate or other evidence of indebtedness, if the obligation of the taxpayer has been outstanding for more than eighteen months, the following deductions for such taxable year shall not be allowed:

(i) The deduction allowable under section 23 (a) for expenses paid or incurred in connection with such retirement or discharge;

(ii) The deduction for losses allowable by reason of such retirement or discharge; and

(iii) In case the issuance was at a discount, the amount deductible for such year solely because of such retirement or discharge;

**(E) Casualty, demolition, and similar losses.**

Deductions under section 23 (f) for losses arising from fires, storms, shipwreck, or other casualty, or from theft, or arising from the demolition, abandonment, or loss of useful value of property, not compensated for by insurance or otherwise, shall not be allowed;

**(F) Repayment of processing tax to vendees.**

The deduction under section 23 (a), for any taxable year, for expenses shall be decreased by an amount which bears the same ratio to the amount deductible on account of any repayment or credit by the corporation to its vendee of any amount attributable to any tax under the Agricultural Adjustment Act of 1933, as amended,<sup>1</sup> as the excess of the aggregate of the amounts so deductible in the base period over the aggregate of the amounts attributable to taxes under such Act<sup>1</sup> collected from its vendees which were includible in the corporation's gross income in the base period and which were not paid, bears to the aggregate of the amounts so deductible in the base period;

**(G) Payment of judgments, and so forth.**

Deductions attributable to any claim, award, judgment, or decree against the taxpayer, or interest on any of the foregoing, shall not be allowed if in the light of the taxpayer's business it was abnormal for the taxpayer to incur a liability of such character or, if the taxpayer normally incurred such liability, the amount of such liability in the taxable year was grossly disproportionate to the amount of such liability in the four previous taxable years;

(H) All expenditures for intangible drilling and development costs paid or incurred in or for the drilling of wells or the preparation of wells for the production of oil or gas, or expenditures for development costs in the case of mines, which the taxpayer has deducted from gross income as an expense, shall not be allowed to the extent that in the light of the taxpayer's business it was abnormal for the taxpayer to incur<sup>2</sup> a liability of such character or, if the taxpayer normally incurred such liability, to the extent that the amount of such liability in the taxable year was grossly disproportionate to the amount of such liability in the four previous taxable years; and

**(I) Dividends received.**

The credit for dividends received shall apply, without limitation, to dividends on stock of domestic corporations.

**(2) Capital gains and losses.**

For the purposes of this subsection the normal-tax net income and the special-class net income referred to in paragraph (1) shall be computed as if section 23 (g) (2), section 23 (k) (2), and section 117 were

part of the revenue law applicable to the taxable year the excess profits net income of which is being computed, with the exception that the net short-term capital loss carry-over provided in subsection (e) of section 117 shall be applicable to net short-term capital losses for taxable years beginning after December 31, 1934. Such exception shall not apply for the purposes of computing the tax under this subchapter for any taxable year beginning before January 1, 1941. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 976.)

<sup>1</sup> Section 601 et seq. of Title 7, Agriculture.

<sup>2</sup> So in original. Should read "incur".

**§ 712. Excess profits credit—allowance—(a) Domestic corporations.**

In the case of a domestic corporation which was in existence before January 1, 1940, the excess profits credit for any taxable year shall, at the election of the taxpayer made in its return for such taxable year, be an amount computed under section 713 or section 714. (For election in case of certain reorganizations of corporations not qualified under the preceding sentence, see section 741.) In the case of all other domestic corporations the excess profits credit for any taxable year shall be an amount computed under section 714. In the case of a domestic corporation which for any taxable year does not file a return before the expiration of the time prescribed by law for filing such return, the excess profits credit for such taxable year shall be an amount computed under section 714.

**(b) Foreign corporations.**

In the case of a foreign corporation engaged in trade or business within the United States or having an office or place of business therein, the first taxable year of which under this subchapter begins on any date in 1940, which was in existence on the day forty-eight months prior to such date and which at any time during each of the taxable years in such forty-eight months was engaged in trade or business within the United States or had an office or place of business therein, the excess profits credit for any taxable year shall, at the election of the taxpayer in its return for such taxable year, be an amount computed under section 713 or section 714. In the case of all other such foreign corporations the excess profits credit for any taxable year shall be an amount computed under section 714. In the case of a foreign corporation which for any taxable year does not file a return before the expiration of the time prescribed by law for filing such return, the excess profits credit for such taxable year shall be an amount computed under section 714. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 979.)

**§ 713. Excess profits credit—based on income—(a) Amount of excess profits credit.**

The excess profits credit for any taxable year, computed under this section, shall be—

**(1) Domestic corporations.**

In the case of a domestic corporation—

(A) 95 per centum of the average base period net income, as defined in subsection (b),

(B) Plus 8 per centum of the net capital addition as defined in subsection (c), or

(C) Minus 6 per centum of the net capital reduction as defined in subsection (c).

**(2) Foreign corporations.**

In the case of a foreign corporation, 95 per centum of the average base period net income.

**(b) Average base period net income.**

For the purposes of this section the average base period net income of the taxpayer shall be determined as follows:

(1) By computing the aggregate of the excess profits net income for each of the taxable years of the taxpayer beginning after December 31, 1935, and before January 1, 1940, reduced, in the case of each such taxable year in which the deductions plus the credit for dividends received exceeded the gross income, by the amount attributable to such excess under paragraph (4);

(2) By dividing the amount ascertained under paragraph (1) by the total number of months in all such taxable years; and

(3) By multiplying the amount ascertained under paragraph (2) by twelve.

(4) For the purposes of paragraph (1)—

(A) In determining whether, for any taxable year, the deductions plus the credit for dividends received exceeded the gross income, and in determining the amount of such excess, the adjustments provided in section 711 (b) (1) shall be made; and

(B) The amount attributable to any taxable year in which there is such an excess shall be the amount of such excess, except that such amount shall be zero if there is only one such year, or, if more than one, shall be zero for the year in which such excess is the greatest.

(5) For the purposes of paragraph (1), if the taxpayer was in existence during only part of the 48 months preceding the beginning of its first taxable year under this subchapter (hereinafter in this paragraph called "base period"), its excess profits net income—

(A) for each taxable year of twelve months (beginning with the beginning of such base period) during which it was not in existence, shall be an amount equal to 8 per centum of the excess of—

(i) the daily invested capital for the first day of the taxpayer's first taxable year beginning after December 31, 1939, over

(ii) an amount equal to the same percentage of such daily invested capital as is applicable under section 720 in reduction of the average invested capital of the preceding taxable year;

(B) for the taxable year of less than twelve months consisting of that part of the remainder of the base period during which it was not in existence, shall be the amount ascertained for a full year under subparagraph (A), multiplied by the number of days in such taxable year of less than twelve months and divided by the number of days in the twelve months ending with the close of such taxable year.

(6) In no case shall the average base period net income be less than zero.

(7) For computation of average base period net income in case of certain reorganizations, see section 742.

**(c) Adjustments in excess profits credit on account of capital changes.**

For the purposes of this section—

(1) The net capital addition for the taxable year shall be the excess, divided by the number of days in the taxable year, of the aggregate of the daily capital addition for each day of the taxable year over the aggregate of the daily capital reduction for each day of the taxable year.

(2) The net capital reduction for the taxable year shall be the excess, divided by the number of days in the taxable year, of the aggregate of the daily capital reduction for each day of the taxable year over the aggregate of the daily capital addition for each day of the taxable year.

(3) The daily capital addition for any day of the taxable year shall be the aggregate of the amounts of money and property paid in for stock, or as paid-in surplus, or as a contribution to capital, after the beginning of the taxpayer's first taxable year under this subchapter and prior to such day. In determining the amount of any property paid in, such property shall be included in an amount determined in the manner provided in section 718 (a) (2). A distribution by the taxpayer to its shareholders in its stock or rights to acquire its stock shall not be regarded as money or property paid in for stock, or as paid-in surplus, or as a contribution to capital. The amount ascertained under this paragraph shall be reduced by the excess, if any, of the excluded capital for such day over the excluded capital for the first day of the taxpayer's first taxable year under this subchapter. For the purposes of this paragraph the excluded capital for any day shall be an amount equal to the sum of the following:

(A) The aggregate of the adjusted basis (for determining loss upon sale or exchange) as of the beginning of such day, of obligations held by the taxpayer at the beginning of such day, which are described in section 22 (b) (4) (A), (B), or (C) any part of the interest from which is excludible from gross income or allowable as a credit against net income; and

(B) The aggregate of the adjusted basis (for determining loss upon sale or exchange) as of the beginning of such day, of stock of domestic corporations held by the taxpayer at the beginning of such day.

The daily capital addition shall in no case be less than zero. (For daily capital additions and reductions in case of certain reorganizations, see section 743.)

(4) The daily capital reduction for any day of the taxable year shall be the aggregate of the amounts of distributions to shareholders, not out of earnings and profits, after the beginning of the taxpayer's first taxable year under this subchapter and prior to such day. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 980.)

**§ 714. Excess profits credit—based on invested capital.**

The excess profits credit, for any taxable year, computed under this section, shall be an amount equal to 8 per centum of the taxpayer's invested capital for the taxable year, determined under section 715. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 981.)

**§ 715. Definition of invested capital.**

For the purposes of this subchapter the invested capital for any taxable year shall be the average invested capital for such year, determined under section 716, reduced by an amount computed under section 720 (relating to inadmissible assets). If the Commissioner finds that in any case the determination of invested capital, on a basis other than a daily basis, will produce an invested capital differing by not more than \$1,000 from an invested capital determined on a daily basis, he may, under regulations prescribed by him with the approval of the Secretary, provide for such determination on such other basis. (For computation of invested capital in case of foreign corporations and corporations entitled to the benefits of section 251, see section 724.) (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 982.)

**§ 716. Average invested capital.**

The average invested capital for any taxable year shall be the aggregate of the daily invested capital for each day of such taxable year, divided by the number of days in such taxable year. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 982.)

**§ 717. Daily invested capital.**

The daily invested capital for any day of the taxable year shall be the sum of the equity invested capital for such day plus the borrowed invested capital for such day determined under section 719. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 982.)

**§ 718. Equity invested capital—(a) Definition.**

The equity invested capital for any day of any taxable year shall be determined as of the beginning of such day and shall be the sum of the following amounts, reduced as provided in subsection (b)—

**(1) Money paid in.**

Money previously paid in for stock, or as paid-in surplus, or as a contribution to capital;

**(2) Property paid in.**

Property (other than money) previously paid in (regardless of the time paid in) for stock, or as paid-in surplus, or as a contribution to capital. Such property shall be included in an amount equal to its basis (unadjusted) for determining loss upon sale or exchange. If the property was disposed of before such taxable year, such basis shall be determined in the same manner as if the property were still held at the beginning of such taxable year. If such unadjusted basis is a substituted basis it shall be adjusted, with respect to the period before the property was

paid in, in the manner provided in section 113 (b) (2);

**(3) Distributions in stock.**

**Distributions in stock—**

(A) Made prior to such taxable year to the extent to which they are considered distributions of earnings and profits; and

(B) Previously made during such taxable year to the extent to which they are considered distributions of earnings and profits other than earnings and profits of such taxable year;

**(4) Earnings and profits at beginning of year.**

The accumulated earnings and profits as of the beginning of such taxable year; and

**(5) Increase on account of gain on tax-free liquidation.**

In the case of the previous receipt of property (other than property described in the last sentence of section 113 (a) (15)) by the taxpayer in complete liquidation of another corporation under section 112 (b) (6), or the corresponding provision of a prior revenue law, an amount, with respect to each such liquidation, equal to the amount by which the aggregate of the amount of the money so received and of the adjusted basis, at the time of receipt, of all property (other than money) so received, exceeds the sum of:

(A) The aggregate of the adjusted basis of each share of stock with respect to which such property was received; such adjusted basis of each share to be determined immediately prior to the receipt of any property in such liquidation with respect to such share, and

(B) The aggregate of the liabilities of such other corporation assumed by the taxpayer in connection with the receipt of such property, of the liabilities (not assumed by the taxpayer) to which such property so received was subject, and of any other consideration (other than the stock with respect to which such property was received) given by the taxpayer for such property so received.

**(b) Reduction in equity invested capital.**

The amount by which the equity invested capital for any day shall be reduced as provided in subsection (a) shall be the sum of the following amounts—

**(1) Distributions in previous years.**

Distributions made prior to such taxable year which were not out of accumulated earnings and profits;

**(2) Distributions during the year.**

Distributions previously made during such taxable year which are not out of the earnings and profits of such taxable year;

**(3) Earnings and profits of another corporation.**

The earnings and profits of another corporation which previously at any time were included in accumulated earnings and profits by reason of a transaction described in section 112 (b) to (e), both inclusive, or in the corresponding provision of a prior revenue law, or by reason of the transfer by such other corporation to the taxpayer of property the basis of which in the hands of the taxpayer is or was determined with reference to its basis in the

hands of such other corporation, or would have been so determined if the property had been other than money; and

**(4) Reduction on account of loss on tax-free liquidation.**

In the case of the previous receipt of property (other than property described in the last sentence of section 113 (a) (15)) by the taxpayer in complete liquidation of another corporation under section 112 (b) (6), or the corresponding provision of a prior revenue law, an amount, with respect to each such liquidation, equal to the amount by which the sum of—

(A) The aggregate of the adjusted basis of each share of stock with respect to which such property was received; such adjusted basis of each share to be determined immediately prior to the receipt of any property in such liquidation with respect to such share, and

(B) The aggregate of the liabilities of such other corporation assumed by the taxpayer in connection with the receipt of such property, of the liabilities (not assumed by the taxpayer) to which such property so received was subject, and of any other consideration (other than the stock with respect to which such property was received) given by the taxpayer for such property so received,

exceeds the aggregate of the amount of the money so received and of the adjusted basis, at the time of receipt, of all property (other than money) so received. The amount of the reduction under this paragraph shall not exceed the accumulated earnings and profits as of the beginning of such taxable year.

**(c) Rules for application of subsections (a) and (b).**

For the purposes of subsections (a) and (b)—

**(1) Distributions to shareholders.**

The term "distribution" means a distribution by a corporation to its shareholders, and the term "distribution in stock" means a distribution by a corporation in its stock or rights to acquire its stock. To the extent that a distribution in stock is not considered a distribution of earnings and profits it shall not be considered a distribution. A distribution in stock shall not be regarded as money or property paid in for stock, or as paid-in surplus, or as a contribution to capital.

**(2) Distributions in first 60 days of taxable year.**

In the application of such subsections to any taxable year beginning after December 31, 1940, so much of the distributions (taken in the order of time) made during the first sixty days thereof as does not exceed the accumulated earnings and profits as of the beginning thereof (computed without regard to this paragraph) shall be considered to have been made on the last day of the preceding taxable year.

**(3) Computation of earnings and profits of taxable year.**

For the purposes of subsections (a) (3) (B) and (b) (2) in determining whether a distribution is out of the earnings and profits of any taxable year, such earnings and profits shall be computed as of the close of such taxable year without diminution

by reason of any distribution made during such taxable year or by reason of the tax under this subchapter for such year and the determination shall be made without regard to the amount of earnings and profits at the time the distribution was made.

**(4) Stock in case of merger or consolidation.**

If a corporation owns stock in another corporation, and—

(A) such corporations are merged or consolidated in a statutory merger or consolidation, or

(B) such corporations are parties to a transaction which results in the elimination of such stock in a manner similar to that resulting from a statutory merger or consolidation, then such stock shall not be considered as property paid in for stock of, or as paid-in surplus of, or as a contribution to capital of, the corporation resulting from the transaction referred to in subparagraph (A) or (B).

(d) For special rules affecting computation of property paid in for stock in connection with certain exchanges and liquidations, see section 751 (a).

(e) For determination of equity invested capital in special cases, see section 723. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 982.)

**§ 719. Borrowed invested capital—(a) Borrowed capital.**

The borrowed capital for any day of any taxable year shall be determined as of the beginning of such day and shall be the sum of the following:

(1) The amount of the outstanding indebtedness (not including interest, and not including indebtedness described in section 751 (b) relating to certain exchanges) of the taxpayer which is evidenced by a bond, note, bill of exchange, debenture, certificate of indebtedness, mortgage, or deed of trust, plus,

(2) In the case of a taxpayer having a contract (made before the expiration of 30 days after the date of the enactment of the Second Revenue Act of 1940<sup>1</sup>) with a foreign government to furnish articles, materials, or supplies to such foreign government, if such contract provides for advance payment and for repayment by the vendor of any part of such advance payment upon cancellation of the contract by such foreign government, the amount which would be required to be so repaid if cancellation occurred at the beginning of such day, but no amount shall be considered as borrowed capital under this paragraph which has been includible in gross income.

**(b) Borrowed invested capital.**

The borrowed invested capital for any day of any taxable year shall be determined as of the beginning of such day and shall be an amount equal to 50 per centum of the borrowed capital for such day. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 984.)

<sup>1</sup> Second Revenue Act of 1940 was enacted October 8, 1940, 11 p. m., E. S. T.

**§ 720. Admissible and inadmissible assets—(a) Definitions.**

For the purposes of this subchapter—

(1) The term "inadmissible assets" means—

(A) Stock in corporations except stock in a foreign personal-holding company; and

(B) Except as provided in subsection (d), obligations described in section 22 (b) (4) any part of the interest from which is excludible from gross income or allowable as a credit against net income.

(2) The term "admissible assets" means all assets other than inadmissible assets.

**(b) Ratio of inadmissibles to total assets.**

The amount by which the average invested capital for any taxable year shall be reduced as provided in section 715 shall be an amount which is the same percentage of such average invested capital as the percentage which the total of the inadmissible assets is of the total of admissible and inadmissible assets. For such purposes, the amount attributable to each asset held at any time during such taxable year shall be determined by ascertaining the adjusted basis thereof (or, in the case of money, the amount thereof) for each day of such taxable year so held and adding such daily amounts. The determination of such daily amounts shall be made under regulations prescribed by the Commissioner with the approval of the Secretary. The adjusted basis shall be the adjusted basis for determining loss upon sale or exchange as determined under section 113.

**(c) Computation of short-term capital gain.**

If during the taxable year there has been a short-term capital gain with respect to an inadmissible asset, then so much of the amount attributable to such inadmissible asset under subsection (b) as bears the same ratio thereto as such gain bears to the sum of such gain plus the dividends and interest on such asset for such year, shall, for the purpose of determining the ratio of inadmissible assets to the total of admissible and inadmissible assets, be added to the total of admissible assets and subtracted from the total of inadmissible assets.

**(d) Treatment of Government obligations as admissible assets.**

If the excess profits credit for any taxable year is computed under section 714, the taxpayer may in its return for such year elect to increase its normal-tax net income for such taxable year by an amount equal to the amount of the interest on all obligations held during the taxable year which are described in section 22 (b) (4) any part of the interest from which is excludible from gross income or allowable as a credit against net income. In such case, for the purposes of this section, the term "admissible assets" includes such obligations, and the term "inadmissible assets" does not include such obligations. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 985.)

**§ 721. Abnormalities in income in taxable period.**

If there is includible in the gross income of the taxpayer for any taxable year an item of income of any one or more of the following classes:

(a) Arising out of a claim, award, judgment, or decree, or interest on any of the foregoing; or

(b) Constituting an amount payable under a contract the performance of which required more than 12 months; or

(c) Resulting from exploration, discovery, prospecting, research, or development of tangible property, patents, formulae, or processes, or any combination of the foregoing, extending over a period of more than 12 months; or

(d) Includible in gross income for the taxable year rather than for a different taxable year by reason of a change in the taxpayer's accounting period or method of accounting; or

(e) In the case of a lessor of real property, amounts included in gross income for the taxable year by reason of the termination of the lease; or

(f) Dividends on stock of foreign corporations, except foreign personal holding companies;

and, in the light of the taxpayer's business, it is abnormal for the taxpayer to derive income of such class, or, if the taxpayer normally derives income of such class, the item includible in the gross income of the taxable year is grossly disproportionate to the gross income of the same class in the four previous taxable years, then: (1) the amount of such item attributable to any previous taxable year or years shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary; (2) the amount of such item attributable to any future taxable year or years shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary and shall, for the purposes of this subchapter, be included in the gross income for the future year or years to which attributable; and (3) the tax under this subchapter for the taxable year (in which the whole of such item would, without regard to this section, be includible) shall not exceed the sum of:

(A) The tax under this subchapter for such taxable year computed without the inclusion in gross income of the portion of such item which is attributable to any other taxable year, and

(B) The aggregate of the increase in the tax under this subchapter which would have resulted for each previous taxable year to which any portion of such item is attributable, computed as if an amount equal to such portion had been included in gross income for such previous taxable year. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 986.)

#### § 722. Adjustment of abnormalities in income and capital by the Commissioner.

For the purposes of this subchapter, the Commissioner shall also have authority to make such adjustments as may be necessary to adjust abnormalities affecting income or capital, and his decision shall be subject to review by the United States Board of Tax Appeals. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 986.)

#### § 723. Equity invested capital in special cases.

Where the Commissioner determines that the equity invested capital as of the beginning of the taxpayer's first taxable year under this subchapter cannot be determined in accordance with section 718, the equity invested capital as of the beginning of such year shall be an amount equal to the sum of (a) the money plus (b) the aggregate of the ad-

justed basis of the assets of the taxpayer held by the taxpayer at such time, such sum being reduced by the indebtedness outstanding at such time. The amount of the money, assets, and indebtedness at such time shall be determined in accordance with rules and regulations prescribed by the Commissioner with the approval of the Secretary. In such case, the equity invested capital for each day after the beginning of the taxpayer's first taxable year under this subchapter shall be determined, in accordance with rules and regulations prescribed by the Commissioner with the approval of the Secretary, using as the basic figure the equity invested capital as so determined. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 986.)

#### § 724. Foreign corporations and corporations entitled to benefits of section 251—invested capital.

Notwithstanding section 715, in the case of a foreign corporation engaged in trade or business within the United States or having an office or place of business therein, and in the case of a corporation entitled to the benefits of section 251, the invested capital for any taxable year shall be determined in accordance with rules and regulations prescribed by the Commissioner with the approval of the Secretary, under which—

##### (a) General rule.

The daily invested capital for any day of the taxable year shall be the aggregate of the adjusted basis of each United States asset held by the taxpayer on the beginning of such day. In the application of section 720 in reduction of the average invested capital (determined on the basis of such daily invested capital), the terms "admissible assets" and "inadmissible assets" shall include only United States assets; or

##### (b) Exception.

If the Commissioner determines that the United States assets of the taxpayer cannot satisfactorily be segregated from its other assets, the invested capital for the taxable year shall be an amount which is the same percentage of the aggregate of the adjusted basis of all assets held by the taxpayer as of the end of the last day of the taxable year which the net income for the taxable year from sources within the United States is of the total net income of the taxpayer for such year.

##### (c) Definition of United States asset.

As used in this subsection, the term "United States asset" means an asset held by the taxpayer in the United States, determined in accordance with rules and regulations prescribed by the Commissioner with the approval of the Secretary. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 987.)

#### § 725. Personal service corporations—(a) Definition.

As used in this subchapter, the term "personal service corporation" means a corporation whose income is to be ascribed primarily to the activities of shareholders who are regularly engaged in the active conduct of the affairs of the corporation and are the owners at all times during the taxable year of at least 70 per centum in value of each class of stock of the corporation, and in which capital is not a

material income-producing factor; but does not include any foreign corporation, nor any corporation 50 per centum or more of whose gross income consists of gains, profits, or income derived from trading as a principal. For the purposes of this subsection, an individual shall be considered as owning, at any time, the stock owned at such time by his spouse or minor child or by any guardian or trustee representing them.

**(b) Election as to taxability.**

If a personal service corporation signifies, in its return under Chapter 1 for any taxable year, its desire not to be subject to the tax imposed under this subchapter for such taxable year, it shall be exempt from such tax for such year, and the provisions of Supplement S of Chapter 1 shall apply to the shareholders in such corporation who were such shareholders on the last day of such taxable year of the corporation. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 987.)

**§ 726. Corporations completing contracts under Merchant Marine Act, 1936.**

(a) If the United States Maritime Commission certifies to the Commissioner that the taxpayer has completed within the taxable year any contracts or subcontracts which are subject to the provisions of section 505 (b) of the Merchant Marine Act of 1936, as amended,<sup>1</sup> then the tax imposed by this subchapter for such taxable year shall be, in lieu of a tax computed under section 710, a tax computed under subsection (b) of this section, if, and only if, the tax computed under subsection (b) is less than the tax computed under section 710.

(b) The tax computed under this subsection shall be the excess of—

(1) A tentative tax computed under section 710 with the normal-tax net income increased by the amount of any payments made, or to be made, to the United States Maritime Commission with respect to such contracts or subcontracts; over

(2) The amount of such payments. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 988.)

<sup>1</sup> Section 1155 (b) of Title 46, Shipping.

**§ 727. Exempt corporations.**

The following corporations shall be exempt from the tax imposed by this subchapter:

(a) Corporations exempt under section 101 from the tax imposed by Chapter 1.

(b) Foreign personal-holding companies, as defined in section 331.

(c) Mutual investment companies, as defined in section 381.

(d) Investment companies which under the Investment Company Act of 1940<sup>1</sup> are registered as diversified companies at all times during the taxable year. For the purposes of this subsection, if a company is so registered before July 1, 1941, it shall be considered as so registered at all times prior to the date of such registration.

(e) Personal-holding companies, as defined in section 501.

(f) Foreign corporations not engaged in trade or business within the United States and not having an office or place of business therein.

(g) Domestic corporations satisfying the following conditions:

(1) If 95 per centum or more of the gross income of such domestic corporation for the three-year period immediately preceding the close of the taxable year (or for such part of such period during which the corporation was in existence) was derived from sources other than sources within the United States; and

(2) If 50 per centum or more of its gross income for such period or such part thereof was derived from the active conduct of a trade or business.

(h) Any corporation subject to the provisions of Title IV of the Civil Aeronautics Act of 1938,<sup>2</sup> in the gross income of which for any taxable year beginning after December 31, 1939, there is includible compensation received from the United States for the transportation of mail by aircraft if, after excluding from its gross income such compensation, its adjusted excess profits net income for such year is zero or less. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 988.)

<sup>1</sup> Section 80a-1 et seq. of Title 15, Commerce and Trade, and sections 72 (a), last sentence, and 107 (f) of Title 11, Bankruptcy.

<sup>2</sup> Section 481 et seq. of Title 49, Transportation, and section 471 of Title 39, The Postal Service.

**§ 728. Meaning of terms used.**

The terms used in this subchapter shall have the same meaning as when used in Chapter 1. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 989.)

**§ 729. Laws applicable—(a) General rule.**

All provisions of law (including penalties) applicable in respect of the taxes imposed by Chapter 1, shall, insofar as not inconsistent with this subchapter, be applicable in respect of the tax imposed by this subchapter.

**(b) Returns.**

Notwithstanding subsection (a), no return under section 52 (a) shall be required to be filed by any taxpayer under this subchapter for any taxable year for which its excess profits net income, computed with the adjustments provided in section 711 (a) (2) and placed on an annual basis as provided in section 711 (a) (3), is not greater than \$5,000.

**(c) Foreign taxes paid.**

In the application of section 131 for the purposes of this subchapter the tax paid or accrued to any country shall be deemed to be the amount of such tax reduced by the amount of the credit allowed with respect to such tax against the tax imposed by Chapter 1.

**(d) Limitations on amount of foreign tax credit.**

The amount of the credit taken under this section shall be subject to each of the following limitations:

(1) The amount of the credit in respect of the tax paid or accrued to any country shall not exceed the same proportion of the tax against which such credit



is taken, which the taxpayer's excess profits net income from sources within such country bears to its entire excess profits net income for the same taxable year; and

(2) The total amount of the credit shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's excess profits net income from sources without the United States bears to its entire excess profits net income for the same taxable year. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 989.)

**§ 730. Consolidated returns—(a) Privilege to file consolidated returns.**

An affiliated group of corporations shall, subject to the provisions of this section, have the privilege of making a consolidated return for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all the corporations which have been members of the affiliated group at any time during the taxable year for which the return is made consent to all the regulations under subsection (b) prescribed prior to the last day prescribed by law for the filing of such return; and the making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

**(b) Regulations.**

The Commissioner, with the approval of the Secretary, shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the excess profits tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

**(c) Computation and payment of tax.**

In any case in which a consolidated return is made the tax shall be determined, computed, assessed, collected, and adjusted in accordance with the regulations under subsection (b) prescribed prior to the last day prescribed by law for the filing of such return. Only one specific exemption of \$5,000 provided in section 710 (b) (1) shall be allowed for the entire affiliated group of corporations.

**(d) Definition of "affiliated group."**

As used in this section, an "affiliated group" means one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if—

(1) At least 95 per centum of each class of the stock of each of the includible corporations (except the common parent corporation) is owned directly by one or more of the other includible corporations; and

(2) The common parent corporation owns directly at least 95 per centum of each class of the stock of at least one of the other includible corporations.

As used in this subsection, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

**(e) Definition of "includible corporation."**

As used in this section, the term "includible corporation" means any corporation except—

(1) Corporations exempt from the tax imposed by this subchapter.

(2) Foreign corporations.

(3) Corporations organized under the China Trade Act, 1922.<sup>1</sup>

(4) Corporations entitled to the benefits of section 251, by reason of receiving a large percentage of their income from possessions of the United States.

(5) Personal service corporations.

(6) Insurance companies subject to taxation under section 201, 204, or 207.

**(f) Includible insurance companies.**

Despite the provisions of paragraph (6) of subsection (e), two or more domestic insurance companies each of which is subject to taxation under the same section of Chapter 1 shall be considered as includible corporations for the purpose of the application of subsection (d) to such insurance companies alone.

**(g) Subsidiary formed to comply with foreign law.**

In the case of a domestic corporation owning or controlling, directly or indirectly, 100 per centum of the capital stock (exclusive of directors' qualifying shares) of a corporation organized under the laws of a contiguous foreign country and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, such foreign corporation may, at the option of the domestic corporation, be treated for the purpose of this subchapter as a domestic corporation.

**(h) Suspension of running of statute of limitations.**

If a notice under section 272 (a) in respect of a deficiency for any taxable year is mailed to a corporation, the suspension of the running of the statute of limitations, provided in section 277, shall apply in the case of corporations with which such corporation made a consolidated return for such taxable year. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 989.)

<sup>1</sup> Section 141 et seq. of Title 15, Commerce and Trade, and section 53 of Title 28, Judicial Code and Judiciary.

**§ 731. Corporations engaged in mining of strategic metals.**

In the case of any domestic corporation engaged in the mining of tungsten, quicksilver, manganese, platinum, antimony, chromite, or tin, the portion of the adjusted excess profits net income attributable to such mining in the United States shall be exempt from the tax imposed by this subchapter. The tax on the remaining portion of such adjusted excess profits net income shall be an amount which bears the same ratio to the tax computed without regard to this section as such remaining portion bears to the entire adjusted excess profits net income. (Added

Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 990.)

## PART II—RULES IN CONNECTION WITH CERTAIN EXCHANGES

### SUPPLEMENT A—EXCESS PROFITS CREDIT BASED ON INCOME

#### § 740. Definitions.

For the purposes of this Supplement—

##### (a) Acquiring corporation.

The term "acquiring corporation" means—

(1) A corporation which has acquired—

(A) substantially all the properties of another corporation and the whole or a part of the consideration for the transfer of such properties is the transfer to such other corporation of all the stock of all classes (except qualifying shares) of the corporation which has acquired such properties, or

(B) substantially all the properties of another corporation and the sole consideration for the transfer of such properties is the transfer to such other corporation of voting stock of the corporation which has acquired such properties, or

(C) before October 1, 1940, properties of another corporation solely as paid-in surplus or a contribution to capital in respect of voting stock owned by such other corporation.

For the purposes of subparagraphs (B) and (C) in determining whether such voting stock or such paid-in surplus or contribution to capital is the sole consideration, the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded. Subparagraph (B) or (C) shall apply only if the corporation transferring such properties is forthwith completely liquidated in pursuance of the plan under which the acquisition is made, and the transaction of which the acquisition is a part has the effect of a statutory merger or consolidation.

(2) A corporation which has acquired property from another corporation in a transaction with respect to which gain or loss was not recognized under section 112 (b) (6) of Chapter 1 or a corresponding provision of a prior revenue law;

(3) A corporation the result of a statutory merger of two or more corporations; or

(4) A corporation the result of a statutory consolidation of two or more corporations.

##### (b) Component corporation.

The term "component corporation" means—

(1) In the case of a transaction described in subsection (a) (1), the corporation which transferred the assets;

(2) In the case of a transaction described in subsection (a) (2), the corporation the property of which was acquired;

(3) In the case of a statutory merger, all corporations merged, except the corporation resulting from the merger; or

(4) In the case of a statutory consolidation, all corporations consolidated, except the corporation resulting from the consolidation.

##### (c) Qualified component corporation.

The term "qualified component corporation" means a component corporation which was in existence on the date of the beginning of the taxpayer's base period.

##### (d) Base period.

In the case of a taxpayer which is an acquiring corporation the base period shall be:

(1) If the tax is being computed for any taxable year beginning in 1940, the forty-eight months preceding the beginning of such taxable year; or

(2) If the tax is being computed for any taxable year beginning after December 31, 1940, the forty-eight months preceding what would have been its first taxable year beginning in 1940 if it had had a taxable year beginning in 1940 on the date on which the taxable year for which the tax is being computed began.

##### (e) Base period years.

In the case of a taxpayer which is an acquiring corporation its base period years shall be the four successive twelve-month periods beginning on the same date as the beginning of its base period.

##### (f) Existence of acquiring corporation.

For the purposes of subsection (c) and section 741, if any component corporation was in existence on the date of the beginning of the taxpayer's base period (either actually or by reason of this subsection), its acquiring corporation shall be considered to have been in existence on such date.

##### (g) Component corporations of component corporations.

If a corporation is a component corporation of an acquiring corporation, under subsection (b) or under this subsection, it shall (except for the purposes of section 742 (d) (1) and (2) and section 743 (a)) also be a component corporation of the corporation of which such acquiring corporation is a component corporation. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 991.)

#### § 741. Election of income credit.

In addition to the corporations which under section 712 (a) may elect the excess profits credit computed under section 713 or the excess profits credit computed under section 714, a taxpayer which is an acquiring corporation which was in existence on the date of the beginning of its base period shall have such election. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 992.)

#### § 742. Average base period net income.

In the case of a taxpayer which is an acquiring corporation which was actually in existence on the date of the beginning of its base period, or which is entitled under section 741 to elect the excess profits credit computed under section 713, its average base period net income (for the purpose of the credit computed under section 713) shall be computed as follows, in lieu of the method provided in section 713:

(a) By ascertaining with respect to each of its base period years—

(1) The amount of its excess profits net income for each of its taxable years beginning after Decem-

ber 31, 1935, and ending with or within such base period year; or, in the case of each such taxable year in which the deductions plus the credit for dividends received exceeded the gross income, the amount of such excess;

(2) With respect to each of its qualified component corporations, the amount of its excess profits net income for each of its taxable years beginning after December 31, 1935, and ending with or within such base period year of the taxpayer; or, in the case of each such taxable year in which the deductions plus the credit for dividends received exceeded the gross income, the amount of such excess;

(3) (A) The aggregate of the amounts of excess profits net income ascertained under paragraphs (1) and (2); (B) the aggregate of the excesses ascertained under paragraphs (1) and (2); and (C) the difference between the aggregates found under clause (A) and clause (B). If the aggregate ascertained under clause (A) is greater than the aggregate found under clause (B), the difference shall for the purposes of subsection (b) be designated a "plus amount", and if the aggregate ascertained under clause (B) is greater than the aggregate found under clause (A), the difference shall for the purposes of subsection (b) be designated a "minus amount."

(b) By adding the plus amounts ascertained under subsection (a) (3) for each year of the base period; and by subtracting from such sum, if for two or more years of the base period there was a minus amount, the sum of such minus amounts, excluding the greatest.

(c) By dividing the amount ascertained under subsection (b) by four.

(d) In no case shall the average base period net income be less than zero. In the case of a taxpayer which becomes an acquiring corporation in any taxable year beginning after December 31, 1939, if, on September 11, 1940, and at all times until the taxpayer became an acquiring corporation—

(1) the taxpayer owned not less than 75 per centum of each class of stock of each of the qualified component corporations involved in the transaction in which the taxpayer became an acquiring corporation; or

(2) one of the qualified component corporations involved in the transaction owned not less than 75 per centum of each class of stock of the taxpayer, and of each of the other qualified component corporations involved in the transaction,

the average base period net income of the taxpayer shall not be less than (A) the average base period net income of that one of its qualified component corporations involved in the transaction the average base period net income of which is greatest, or (B) the average base period net income of the taxpayer computed without regard to the base period net income of any of its qualified component corporations involved in the transaction.

(e) For the purposes of subsection (a) (1) and (2) of this section—

(1) There shall be excluded, in the various computations, any dividends paid by the taxpayer or any of its qualified component corporations during any

of the taxable years of the payor which are included in the computation of the taxpayer's average base period net income. If the payor corporation is a corporation described in subsection (f) (1) or (2) of this section, the dividends to be excluded under this paragraph shall be only such as are paid after such payor corporation first became an acquiring corporation; and

(2) In determining whether, for any taxable year, the deductions plus the credit for dividends received exceeded the gross income, and in determining the amount of such excess, the adjustments provided in section 711 (b) (1) shall be made.

(f) (1) In the case of a taxpayer which is an acquiring corporation and which was not actually in existence on the date of the beginning of its base period, there shall be excluded from the various computations under subsection (a) (1) of this section the portion of its excess profits net income, or of the excess over gross income therein referred to, which is attributable to any period before it first became an acquiring corporation.

(2) In the case of a component corporation which became a qualified component corporation only by reason of section 740 (f), there shall be excluded from the various computations under subsection (a) (2) of this section the portion of its excess profits net income, or of the excess over gross income therein referred to, which is attributable to any period before it first became an acquiring corporation.

(3) In the case of a qualified component corporation which was actually in existence on the date of the beginning of the taxpayer's base period, there shall be excluded from the various computations under subsection (a) (2) of this section the portion of its excess profits net income, or of the excess over gross income therein referred to, which is attributable to the period before such date.

(4) If during the taxable year for which tax is computed under this subchapter the taxpayer acquires assets in a transaction which constitutes it an acquiring corporation, the amount includible under subsection (a) (2), attributable to such transaction, shall be limited to an amount which bears the same ratio to the amount computed without regard to this paragraph as the number of days in the taxable year after such transaction bears to the total number of days in such taxable year. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 992.)

#### § 743. Net capital changes.

(a) For the purposes of section 713 (c), upon the date of the transaction which constitutes a corporation an acquiring corporation, there shall be added to its daily capital addition or reduction for such day, the net capital addition or reduction, as the case may be, of each of the component corporations involved in such transaction, but no other capital addition or reduction shall be considered as having been made by reason of such transaction.

(b) For the purposes of this section—

(1) In computing the net capital addition of each such component corporation there shall be disre-

garded property paid in to such corporation by the taxpayer or by any of its component corporations.

(2) In computing the net capital reduction of each such component corporation there shall be disregarded distributions made to the taxpayer or to any of such component corporations. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 994.)

#### § 744. Foreign corporations.

The term "corporation" as used in this Supplement does not include a foreign corporation. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 994.)

#### SUPPLEMENT B—HIGHEST BRACKET AMOUNT AND INVESTED CAPITAL

#### § 750. Definitions.

As used in this Supplement—

##### (a) Exchange.

The term "exchange" means an exchange, to which section 112 (b) (4) or (5) or so much of section 112 (c), (d), or (e) as refers to section 112 (b) (4) or (5), or to which a corresponding provision of a prior revenue law, is or was applicable, by one corporation of its property wholly or in part for stock or securities of another corporation, or a transfer of property by one corporation to another corporation after December 31, 1917, the basis of which in the hands of such other corporation is or was determined under section 113 (a) (8) (B), or would have been so determined had such section been in effect.

##### (b) Transferor upon an exchange.

The term "transferor upon an exchange" means a corporation which upon an exchange transfers property to another corporation in exchange, wholly or in part, for stock or securities of such other corporation, or transfers property to another corporation after December 31, 1917, the basis of which in the hands of such other corporation is or was determined under section 113 (a) (8) (B), or would have been so determined had such section been in effect.

##### (c) Transferee upon an exchange.

The term "transferee upon an exchange" means a corporation which upon an exchange acquires property from another corporation in exchange, wholly or in part, for its stock or securities, or which acquires property from another corporation after December 31, 1917, the basis of which in its hands is or was determined under section 113 (a) (8) (B), or would have been so determined had such section been in effect.

##### (d) Control.

The term "control" means the ownership of stock possessing at least 90 per centum of the total combined voting power of all classes of stock entitled to vote and at least 90 per centum of the total value of shares of all classes of stock of the corporation.

##### (e) Highest bracket amount.

The term "highest bracket amount" means \$500,000 or the highest bracket amount computed under section 752, whichever is the smaller. (Added Oct.

8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 994.)

#### § 751. Determination of property paid in for stock and of borrowed capital in connection with certain exchanges—(a) Property paid in for stock.

In the application of section 718 (a) to a transferee upon an exchange in determining the amount paid in for stock of the transferee, or as paid-in surplus or as a contribution to capital of the transferee, in connection with such exchange, only an amount shall be deemed to have been so paid in equal to the excess of the basis in the hands of the transferee of the property of the transferor received by the transferee upon the exchange over the sum of—

(1) Any liability of the transferor assumed upon such exchange and any liability subject to which the property was received upon such exchange, plus

(2) The aggregate of the amount of money and the fair market value of any other property transferred to the transferor not permitted to be received by such transferor without the recognition of gain.

##### (b) Borrowed capital.

In the application of section 719 (a) to a transferee upon an exchange, the term "borrowed capital" shall not include indebtedness originally evidenced by securities issued by the transferee upon such exchange as consideration for the property of the transferor received by the transferee upon such exchange if (1) such securities were property permitted to be received by the person to whom such securities were issued without the recognition of gain and (2) the indebtedness originally evidenced by such securities did not arise out of indebtedness of the transferor (other than indebtedness which in the transferor's hands was subject to the limitations of this subsection) assumed by the transferee in connection with such exchange. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 995.)

#### § 752. Computation of highest bracket amount in connection with exchanges—(a) Special application of daily invested capital of transferor upon exchange.

For the purposes of this section, the daily invested capital of a transferor upon an exchange for the day after the exchange shall be the daily invested capital determined under section 717 reduced by an amount equal to the amount by which the equity invested capital of the transferee upon such exchange was increased by reason of the receipt of property from such transferor upon such exchange.

##### (b) Highest bracket amount of transferor.

###### (1) Taxable year of exchange.

In the case of a transferor upon an exchange after the beginning of its first taxable year under this subchapter, its highest bracket amount for the taxable year in which the exchange takes place shall be the sum of—

(A) Its highest bracket amount immediately preceding the exchange multiplied by the number of days in the taxable year up to and including the day of the exchange, plus

(B) Its highest bracket amount for the taxable year after the exchange, multiplied by the number of days in the taxable year remaining after the day of the exchange,

divided by the number of days in the taxable year.

**(2) Taxable years after exchange involving control.**

In the case of a transferor upon an exchange after the beginning of its first taxable year under this subchapter, if immediately after the exchange the transferor or its shareholders, or both, are in control of the transferee, the transferor's highest bracket amount for any taxable year after the taxable year in which the exchange takes place shall be an amount which is a percentage of its highest bracket amount immediately preceding the exchange equal to the percentage which its daily invested capital for the day after the exchange is of its daily invested capital for the day of the exchange.

**(3) Taxable years after exchange not involving control.**

In the case of a transferor upon an exchange (other than a transferor described in paragraph (4) of this subsection) after the beginning of its first taxable year under this subchapter, if immediately after the exchange no transferor or its shareholders, or both, upon the exchange are in control of the transferee, and if the shareholders of the transferee immediately preceding the exchange are not in control of the transferee immediately after the exchange, the transferor's highest bracket amount for any taxable year after the exchange shall be the excess, if any, of the sum of the transferor's highest bracket amount immediately preceding the exchange and the transferee's highest bracket amount immediately preceding the exchange, over \$500,000.

**(4) Taxable years after certain exchanges under section 112 (b) (5).**

In the case of an exchange after the beginning of the first taxable year under this subchapter of any transferor or transferee upon such exchange, involving two or more transferors, or one or more transferors and one or more other persons, if immediately after the exchange no one of such transferors, or its shareholders, or both, and no one or more of such other persons are in control of the transferee and if such exchange is an exchange described in section 112 (b) (5) or so much of section 112 (c) or 112 (e) as refers to section 112 (b) (5), the highest bracket amount of any such transferor for any taxable year after the exchange shall be an amount equal to its highest bracket amount immediately preceding the exchange—

(A) Minus an amount which bears the same ratio to its highest bracket amount immediately preceding the exchange as the excess of its daily invested capital for the day of the exchange over its daily invested capital for the day after the exchange bears to its daily invested capital for the day of the exchange, and

(B) Plus an amount which bears the same ratio to the excess over \$500,000 of the sum of the amounts computed under subparagraph (A) with respect to each transferor, as the amount computed under subparagraph (A) with respect to such transferor bears

to the sum of the amounts computed under such subparagraph with respect to each transferor.

**(c) Highest bracket amount of transferee.**

**(1) Taxable year of exchange involving control.**

In the case of a transferee upon an exchange after the beginning of the first taxable year under this subchapter of a transferor upon such exchange the transferee's highest bracket amount for the taxable year in which the exchange takes place shall be the sum of—

(A) Its highest bracket amount immediately preceding the exchange multiplied by the number of days in the taxable year up to and including the day of the exchange, plus

(B) Its highest bracket amount for the taxable year after the exchange multiplied by the number of days in the taxable year remaining after the day of the exchange,

divided by the number of days in the taxable year.

For the purposes of this paragraph and subsection (d) of this section "exchange" includes a liquidation described in paragraph (5) of this subsection, and such exchange shall be deemed to have taken place on the day such liquidation was completed.

**(2) Taxable years after exchange involving control.**

In the case of a transferee upon an exchange after the beginning of the first taxable year under this subchapter of a transferor upon such exchange, if immediately after the exchange any transferor upon such exchange or its shareholders, or both, are in control of the transferee, the transferee's highest bracket amount for any taxable year after the exchange shall be an amount which is a percentage of such transferor's highest bracket amount immediately preceding the exchange equal to the percentage which the excess of the transferee's daily invested capital for the day after the exchange over its daily invested capital for the day of the exchange is of such transferor's daily invested capital for the day of the exchange.

**(3) Taxable years after exchange not involving control.**

In the case of a transferee upon an exchange (other than a transferee described in paragraph (4) of this subsection) after the beginning of the first taxable year under this subchapter of a transferor upon such exchange, if immediately after the exchange no transferor or its shareholders, or both, are in control of the transferee, and if the shareholders of the transferee immediately preceding the exchange are not in control of the transferee immediately after the exchange, the transferee's highest bracket amount for any taxable year after the exchange shall be an amount equal to (A) the sum of the transferor's highest bracket amount immediately preceding the exchange and the transferee's highest bracket amount immediately preceding the exchange, or (B) \$500,000, whichever is the smaller.

**(4) Taxable years after certain exchanges under section 112 (b) (5).**

In the case of an exchange described in subsection (b) (4) of this section, the highest bracket amount of the transferee upon such exchange for any taxable

year after the exchange shall be an amount equal (A) to the sum of the amounts computed under subparagraph (A) of such subsection with respect to each transferor or (B) \$500,000, whichever is the smaller.

(5) **Taxable years after liquidation in case of corporation receiving property under section 112 (b) (6).**

Upon the receipt by a corporation during any taxable year under this subchapter of property in complete liquidation of another corporation, gain or loss upon which is not recognized by reason of section 112 (b) (6), the highest bracket amount of the corporation receiving such property for any taxable year after the liquidation is completed shall be an amount equal to its highest bracket amount immediately preceding the completion of the liquidation increased, but in no case to an amount above \$500,000, by an amount equal to the highest bracket amount of such other corporation immediately preceding the completion of such liquidation, if previously and after the beginning of the first taxable year under this subchapter of the corporation receiving such property such corporation was a transferor upon an exchange with respect to which such other corporation was a transferee.

(d) **Highest bracket amount in case of two or more exchanges in same taxable year.**

(1) If a transferor upon an exchange is in the same taxable year involved in more than one exchange (either as transferor or transferee), its highest bracket amount for such taxable year shall be the amount determined under subsection (b) (1) with respect to the last exchange in such taxable year. Its highest bracket amount immediately preceding any exchange in such taxable year subsequent to the first exchange therein shall be the amount computed under subsection (b) (1) with respect to the immediately preceding exchange as if the taxable year closed on the day of such subsequent exchange.

(2) If a transferee upon an exchange is in the same taxable year involved in more than one exchange (either as transferee or transferor), its highest bracket amount for such taxable year shall be the amount determined under subsection (c) (1) with respect to the last exchange in such taxable year. Its highest bracket amount immediately preceding any exchange in such taxable year subsequent to the first exchange therein shall be the amount computed under subsection (c) (1) with respect to the immediately preceding exchange as if the taxable year closed on the day of such subsequent exchange.

(3) If a transferor or transferee upon an exchange is in the same taxable year involved in more than one exchange (either as transferor or transferee), its highest bracket amount for any taxable year after the taxable year in which such exchanges took place shall be the amount computed under subsection (b) (2), (3), or (4), or (c) (2), (3), (4), or (5), as the case may be, with respect to the last such exchange. (Added Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title II, § 201, 54 Stat. 995.)

## Chapter 3.—ESTATE TAX

### SUBCHAPTER A.—BASIC ESTATE TAX

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**SUBCHAPTER C.—DEFENSE TAX FOR FIVE YEARS**

951. Defense tax for five years.

**DERIVATION**

Act Feb. 26, 1926, ch. 27, title III, 44 Stat. 69, as amended and supplemented.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, title III, part I, 43 Stat. 303.  
 1921—Nov. 23, 1921, ch. 136, title IV, 42 Stat. 277.  
 1919—Feb. 24, 1919, ch. 18, title IV, 40 Stat. 1096.  
 1916—Sept. 8, 1916, ch. 463, title II, 39 Stat. 777.  
 All of above acts have been repealed, subject, however, to saving provisions continuing them in force for the assessment and collection of taxes which had accrued prior to their repeal, and the imposition and collection of penalties, etc., in relation thereto.

**WAR REVENUE ACT OF 1898**

The tax on legacies and distributive shares of personalty imposed by the War Revenue Act of June 13, 1898, ch. 448, §§ 29, 30, 30 Stat. 464, 465, and the act amendatory thereof, act Mar. 2, 1901, ch. 806, § 11, 31 Stat. 948, was abrogated by the repeal of section 29 of said act June 13, 1898, ch. 448, by act Apr. 12, 1902, ch. 500, § 7, 32 Stat. 97.

**R. S. §§ 3438-3440**

These sections provided for the payment, assessment, and collection of taxes on legacies and successions which were then subject to tax under provisions of acts in force prior to October 1, 1870; said taxes, on and after that date, having been repealed by act July 14, 1870, ch. 255, § 3, 16 Stat. 256.

**SUBCHAPTER A.—BASIC ESTATE TAX****PART I.—INTRODUCTORY PROVISIONS****§ 800. Application of subchapter.**

The provisions of this subchapter shall apply only to estates of decedents dying after the date of the enactment of this title. Estate taxes in the case of decedents dying on or prior to the date of the enactment of this title shall not be affected by the provisions of this subchapter, but shall remain subject to the applicable provisions of the Revenue Act of 1926 and prior revenue acts, except as such provisions are modified by legislation enacted subsequent to the Revenue Act of 1926. (53 Stat. 119.)

**DERIVATION**

Acts Aug. 30, 1935, ch. 829, §§ 202 (b), 203 (c), 49 Stat. 1023; June 6, 1932, ch. 209, § 811 (b), 47 Stat. 284; May 29, 1928, ch. 852, § 401 (b), 45 Stat. 862; Feb. 26, 1926, ch. 27, title III, 44 Stat. 69.

**§ 801. Classification of provisions.**

The provisions of this subchapter are herein classified and designated as—

**Part I.—Introductory provisions.**

Part II.—Citizens or residents of the United States.

Part III.—Nonresidents not citizens of the United States.

Part IV.—Supplemental provisions. (53 Stat. 119.)

**DERIVATION**

Acts Aug. 30, 1935, ch. 829, §§ 202 (b), 203 (c), 49 Stat. 1023; June 6, 1932, ch. 209, § 811 (b), 47 Stat. 284; May 29, 1928, ch. 852, § 401 (b), 45 Stat. 862; Feb. 26, 1926, ch. 27, title III, 44 Stat. 69.

**§ 802. Application of parts.**

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of nonresidents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. Part IV shall apply to the estates both of citizens or residents of the United States and nonresidents not citizens of the United States. (53 Stat. 119.)

**DERIVATION**

Acts Aug. 30, 1935, ch. 829, §§ 202 (b), 203 (c), 49 Stat. 1023; June 6, 1932, ch. 209, § 811 (b), 47 Stat. 284; May 29, 1928, ch. 852, § 401 (b), 45 Stat. 862; Feb. 26, 1926, ch. 27, title III, 44 Stat. 69.

**PART II.—ESTATES OF CITIZENS OR RESIDENTS OF THE UNITED STATES****SUBPART I.—COMPUTATION OF TAX****§ 810. Rate of tax.**

A tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 812) shall be imposed upon the transfer of the net estate of every decedent, citizen or resident of the United States, dying after the date of the enactment of this title.

1 per centum of the amount of the net estate not in excess of \$50,000;

2 per centum of the amount by which the net estate exceeds \$50,000 and does not exceed \$100,000;

3 per centum of the amount by which the net estate exceeds \$100,000 and does not exceed \$200,000;

4 per centum of the amount by which the net estate exceeds \$200,000 and does not exceed \$400,000;

5 per centum of the amount by which the net estate exceeds \$400,000 and does not exceed \$600,000;

6 per centum of the amount by which the net estate exceeds \$600,000 and does not exceed \$800,000;

7 per centum of the amount by which the net estate exceeds \$800,000 and does not exceed \$1,000,000;

8 per centum of the amount by which the net estate exceeds \$1,000,000 and does not exceed \$1,500,000;

9 per centum of the amount by which the net estate exceeds \$1,500,000 and does not exceed \$2,000,000;

10 per centum of the amount by which the net estate exceeds \$2,000,000 and does not exceed \$2,500,000;

11 per centum of the amount by which the net estate exceeds \$2,500,000 and does not exceed \$3,000,000;

12 per centum of the amount by which the net estate exceeds \$3,000,000 and does not exceed \$3,500,000;



13 per centum of the amount by which the net estate exceeds \$3,500,000 and does not exceed \$4,000,000;

14 per centum of the amount by which the net estate exceeds \$4,000,000 and does not exceed \$5,000,000;

15 per centum of the amount by which the net estate exceeds \$5,000,000 and does not exceed \$6,000,000;

16 per centum of the amount by which the net estate exceeds \$6,000,000 and does not exceed \$7,000,000;

17 per centum of the amount by which the net estate exceeds \$7,000,000 and does not exceed \$8,000,000;

18 per centum of the amount by which the net estate exceeds \$8,000,000 and does not exceed \$9,000,000;

19 per centum of the amount by which the net estate exceeds \$9,000,000 and does not exceed \$10,000,000;

20 per centum of the amount by which the net estate exceeds \$10,000,000. (53 Stat. 120.)

#### DERIVATION

Act Feb. 26, 1926, ch. 27, § 301 (a), 44 Stat. 69.

#### SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 301, 43 Stat. 303, as amended by act Feb. 26, 1926, ch. 27, § 322, 44 Stat. 85

1921—Nov. 23, 1921, ch. 136, § 401, 42 Stat. 277.

1919—Feb. 24, 1919, ch. 18, § 401, 40 Stat. 1096.

1916—Sept. 8, 1916, ch. 463, § 201, 39 Stat. 777, as amended by act Mar. 3, 1917, ch. 159, § 300, 39 Stat. 1002

#### § 811. Gross estate.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

##### (a) Decedent's interest.

To the extent of the interest therein of the decedent at the time of his death;

##### (b) Dower or curtesy interests.

To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower, curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy;

##### (c) Transfers in contemplation of, or taking effect at death.

To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, or of which he has at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Any transfer of a material part

of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this subchapter;

##### (d) Revocable transfers—(1) Transfers after June 22, 1936.

To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished in contemplation of decedent's death;

##### (2) Transfers on or prior to June 22, 1936.

To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Except in the case of transfers made after June 22, 1936, no interest of the decedent of which he has made a transfer shall be included in the gross estate under paragraph (1) unless it is includible under this paragraph;

##### (3) Date of existence of power.

For the purposes of this subsection the power to alter, amend, or revoke shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, or revocation takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interests which would have been excluded from the power if the decedent had lived, and for such purpose if the notice has not been given or the power has not been exercised on or before the date of his death, such notice shall be considered to have been given, or the power exercised, on the date of his death.

##### (4) Relinquishment of power in contemplation of death.

The relinquishment of any such power, not admitted or shown to have been in contemplation of the decedent's death, made within two years prior to his death without such a consideration and affecting the interest or interests (whether arising from one or more transfers or the creation of one or more trusts) of any one beneficiary of a value or aggre-

gate value, at the time of such death, in excess of \$5,000, then, to the extent of such excess, such relinquishment or relinquishments shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this subchapter.

**(e) Joint interests.**

To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: *Provided*, That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further*, That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants.

**(f) Property passing under general power of appointment.**

To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of or intended to take effect in possession or enjoyment at or after his death, or (3) by deed under which he has retained for his life or any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession or enjoyment of, or the right to the income from, the property, or (B) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth; and

**(g) Proceeds of life insurance.**

To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over \$40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life.

**(h) Prior interests.**

Except as otherwise specifically provided therein, subsections (b), (c), (d), (e), (f), and (g) shall apply to the transfers, trusts, estates, interests,

rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after February 26, 1926.

**(i) Transfers for insufficient consideration.**

If any one of the transfers, trusts, interests, rights, or powers, enumerated and described in subsections (c), (d), and (f) is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

**(j) Optional valuation.**

If the executor so elects upon his return (if filed within the time prescribed by law or prescribed by the Commissioner in pursuance of law), the value of the gross estate shall be determined by valuing all the property included therein on the date of the decedent's death as of the date one year after the decedent's death, except that (1) property included in the gross estate on the date of death and, within one year after the decedent's death, distributed by the executor (or, in the case of property included in the gross estate under subsection (c), (d), or (f) of this section, distributed by the trustee under the instrument of transfer), or sold, exchanged, or otherwise disposed of, shall be included at its value as of the time of such distribution, sale, exchange, or other disposition, whichever first occurs, instead of its value as of the date one year after the decedent's death, and (2) any interest or estate which is affected by mere lapse of time shall be included at its value as of the time of death (instead of the later date) with adjustment for any difference in its value as of the later date not due to mere lapse of time. No deduction under this subchapter of any item shall be allowed if allowance for such item is in effect given by the valuation under this subsection. Wherever in any other subsection or section of this chapter, reference is made to the value of property at the time of the decedent's death, such reference shall be deemed to refer to the value of such property used in determining the value of the gross estate. In case of an election made by the executor under this subsection, then for the purposes of the deduction under section 812 (d) or section 861 (a) (3), any bequest, legacy, devise, or transfer enumerated therein shall be valued as of the date of decedent's death with adjustment for any difference in value (not due to mere lapse of time or the occurrence or nonoccurrence of a contingency) of the property as of the date one year after the decedent's death (substituting the date of sale or exchange in the case of property sold or exchanged during such one-year period).

**(k) Cross reference.**

For provision that relinquishment of marital estates shall not be deemed a consideration "in money or money's worth," see section 812 (b).

(53 Stat. 120.)

## DERIVATION

Opening paragraph was derived from act Feb. 26, 1926, ch. 27, § 302, 44 Stat. 70, as amended by act May 10, 1934, ch. 277, § 404, 48 Stat. 754.

Subsections (a), (b), were derived from act Feb. 26, 1926, ch. 27, § 302, 44 Stat. 70.

Subsection (c) was derived from act Feb. 26, 1926, ch. 27, § 302 (c), 44 Stat. 70, as amended by act June 6, 1932, ch. 209, § 803 (a), 47 Stat. 279.

Subsection (d) (1) was derived from act Feb. 26, 1926, ch. 27, § 302 (d), 44 Stat. 71, as amended by act June 22, 1936, ch. 690, § 805 (a), 49 Stat. 1744.

Subsection (d) (2) was derived from act Feb. 26, 1926, ch. 27, § 302 (d), 44 Stat. 71, as amended by acts May 10, 1934, ch. 277, § 401, 48 Stat. 752; June 22, 1936, ch. 690, § 805 (b), 49 Stat. 1744.

Subsection (d) (3) (4) was derived from act Feb. 26, 1926, ch. 27, § 302 (d), 44 Stat. 71, as amended by act May 10, 1934, ch. 277, § 401, 48 Stat. 753.

Subsection (e) was derived from act Feb. 26, 1926, ch. 27, § 302 (e), 44 Stat. 71.

Subsection (f) was derived from act Feb. 26, 1926, ch. 27, § 302 (f), 44 Stat. 71, as amended by act June 6, 1932, ch. 209, § 803 (b), 47 Stat. 279.

Subsections (g)-(i) were derived from act Feb. 26, 1926, ch. 27, § 302 (g)-(i), 44 Stat. 71.

Subsection (j) was derived from act Feb. 26, 1926, ch. 27, § 302 (j), as added by act Aug. 30, 1935, ch. 829, § 202 (a), 49 Stat. 1022. Subsection (b) of section 202 of act August 30, 1935, ch. 829, provided that amendment by subsection (a) of such act should be effective only with respect to transfers of estates of decedents dying after August 30, 1935.

## SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 302, 43 Stat. 304.

1921—Nov. 23, 1921, ch. 136, § 402, 42 Stat. 278.

1919—Feb. 24, 1919, ch. 18, § 402, 40 Stat. 1097.

1916—Sept. 8, 1916, ch. 463, § 202, 39 Stat. 777.

## § 812. Net estate.

For the purpose of the tax the value of the net estate shall be determined, in the case of a citizen or resident of the United States by deducting from the value of the gross estate—

## (a) Exemption.

An exemption of \$100,000;

## (b) Expenses, losses, indebtedness, and taxes.

Such amounts—

- (1) for funeral expenses,
- (2) for administration expenses,
- (3) for claims against the estate,
- (4) for unpaid mortgages upon, or any indebtedness in respect to, property where the value of decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate, and

(5) reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent,

as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or property taxes not accrued before his death, or any estate, succession, legacy, or inheritance taxes. The deduction herein allowed in the case of claims against the estate, unpaid mortgages, or any indebtedness shall, when founded upon a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth.

There shall also be deducted losses incurred during the settlement of estates arising from fires, storms, shipwrecks, or other casualties, or from theft, when such losses are not compensated for by insurance or otherwise, and if at the time of the filing of the return such losses have not been claimed as a deduction for income tax purposes in an income tax return.

For the purposes of this subchapter, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration "in money or money's worth."

## (c) Property previously taxed.

An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under chapter 4, or an estate tax imposed under this subchapter, the Revenue Act of 1926, 44 Stat. 69, or any prior Act of Congress, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift, or the gross estate of such prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate, and only if in determining the value of the net estate of the prior decedent no deduction was allowable under this paragraph in respect of the property or property given in exchange therefor.

Where a deduction was allowed of any mortgage or other lien in determining the gift tax, or the estate tax of the prior decedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable under this paragraph shall be reduced by the amount so paid. The deduction allowable under this subsection shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under subsections (a), (b) and (d) as the amount otherwise deductible under this subsection bears to the value of the decedent's gross estate. Where the property referred to in this subsection consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction.

## (d) Transfers for public, charitable, and religious uses.

The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including

the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. If the tax imposed by section 810, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes. The amount of the deduction under this subsection for any transfer shall not exceed the value of the transferred property required to be included in the gross estate. (53 Stat. 123.)

#### DERIVATION

Opening paragraph was derived from act Feb. 26, 1926, ch. 27, § 303 (a), 44 Stat. 72, as amended by act May 10, 1934, ch. 277, § 403 (a), 48 Stat. 753.

Subsection (a) was derived from act Feb. 26, 1926, ch. 27, § 303 (a) (4), 47 Stat. 73.

Subsection (b) was derived from act Feb. 26, 1926, ch. 27, § 303 (a) (1), (d), 44 Stat. 72, 73, as amended by act June 6, 1932, ch. 209, §§ 804, 805, 47 Stat. 280.

Subsection (c) was derived from act Feb. 26, 1926, ch. 27, § 303 (a) (2), 44 Stat. 72, as amended by acts May 10, 1934, ch. 277, § 402, 48 Stat. 753; June 6, 1932, ch. 209, § 806 (a), 47 Stat. 281.

Subsection (d) was derived from act Feb. 26, 1926, ch. 27, § 303 (a) (3), 44 Stat. 72, as amended by acts May 10, 1934, ch. 277, § 406, 48 Stat. 755; June 6, 1932, ch. 209, § 807, 47 Stat. 282.

#### SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 303, 43 Stat. 305.

1921—Nov. 23, 1921, ch. 136, § 403, 42 Stat. 279.

1919—Feb. 24, 1919, ch. 18, § 403, 40 Stat. 1098.

1916—Sept. 8, 1916, ch. 463, § 203, 39 Stat. 778.

#### § 813. Credits against tax—(a) Gift tax—(1) Revenue Act of 1924.

In case a tax has been imposed under section 319 of the Revenue Act of 1924, 43 Stat. 313, as amended by section 324 of the Revenue Act of 1926, 44 Stat. 36, upon any gift, and thereafter upon the death of the donor the amount thereof is required by any provision of this subchapter to be included in the gross estate of the decedent then there shall be credited against and applied in reduction of the estate tax, which would otherwise be chargeable against the estate of the decedent under the provisions of this subchapter, an amount equal to the tax paid with respect to such gift; and in the event the donor has in any year paid the tax imposed by said section 319 with respect to a gift or gifts which upon the death of the donor must be included in his gross estate and a gift or gifts not required to be so in-

cluded, then the amount of the tax which shall be deemed to have been paid with respect to the gift or gifts required to be so included shall be that proportion of the entire tax paid on account of all such gifts which the amount of the gift or gifts required to be so included bears to the total amount of gifts in that year.

#### (2) Revenue Act of 1932.

(A) If a tax has been paid under chapter 4 on a gift, and thereafter upon the death of the donor any amount in respect of such gift is required to be included in the value of the gross estate of the decedent for the purposes of chapter 3, then there shall be credited against the tax imposed by section 810 the amount of the tax paid under chapter 4 with respect to so much of the property which constituted the gift as is included in the gross estate except that the amount of such credit shall not exceed an amount which bears the same ratio to the tax imposed by section 810 as the value (at the time of the gift or at the time of the death, whichever is lower) of so much of the property which constituted the gift as is included in the gross estate, bears to the value of the entire gross estate.

(B) For the purposes of paragraph (A), the amount of tax paid for any year under chapter 4 with respect to any property shall be an amount which bears the same ratio to the total tax paid for such year as the value of such property bears to the total amount of net gifts (computed without deduction of the specific exemption) for such year.

#### (b) Estate, succession, legacy, and inheritance taxes.

The tax imposed by section 810 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, or any possession of the United States, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent). The credit allowed by this subsection shall not exceed 80 per centum of the tax imposed by section 810 (after deducting from such tax the credits provided by section 813 (a) (2)), and shall include only such taxes as were actually paid and credit therefor claimed within four years after the filing of the return required by section 821 or 864, except that—

(1) If a petition for redetermination of a deficiency has been filed with the Board of Tax Appeals within the time prescribed in section 871, then within such four-year period or before the expiration of 30 days after the decision of the Board becomes final.

(2) If, under section 822 (a) (2) or section 871 (h), an extension of time has been granted for payment of the tax shown on the return, or of a deficiency, then within such four-year period or before the date of the expiration of the period of the extension.

Refund based on the credit may (despite the provisions of sections 910 to 912, inclusive), be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest. (53 Stat. 125; June 29, 1939, 10 p. m. E. S. T., ch. 247, title IV, § 403, 53 Stat. 883.)

**DERIVATION**

Subsection (a) (1) was derived from acts June 2, 1924, ch. 234, § 322, 43 Stat. 315; May 29, 1928, ch. 852, § 404, 45 Stat. 863.

Subsection (a) (2) was derived from act Feb. 26, 1926, ch. 27, § 301, 44 Stat. 69, as amended by act June 6, 1932, ch. 209, § 801, 47 Stat. 278.

Subsection (b) was derived from act Feb. 26, 1926, ch. 27, § 301 (b), 44 Stat. 70 as amended by act June 6, 1932, ch. 209, § 802, 47 Stat. 278.

**1939 AMENDMENT**

Subsection (b) was amended by act June 29, 1939, cited to text, and made applicable only with respect to estates of decedents dying after date of enactment of Revenue Act of 1939; namely, June 29, 1939, 10 p. m., E. S. T.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 301 (b), 43 Stat. 303.

**SUBPART II.—RETURNS AND PAYMENT OF TAX****§ 820. Executor's notice.**

The executor, within two months after the decedent's death, or within a like period after qualifying as such, shall give written notice thereof to the collector. (53 Stat. 126.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 304 (a), 44 Stat. 74.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 304, 43 Stat. 307.

1921—Nov. 23, 1921, ch. 136, § 404, 42 Stat. 281.

1919—Feb. 24, 1919, ch. 18, § 404, 40 Stat. 1099.

1916—Sept. 8, 1916, ch. 463, § 205, 39 Stat. 778.

**§ 821. Returns—(a) Requirement—(1) Returns by executor.**

In all cases where the gross estate at the death of a citizen or resident exceeds the amount of the specific exemption provided in section 812 (a), the executor shall make a return under oath in duplicate, setting forth (1) the value of the gross estate of the decedent at the time of his death; (2) the deductions allowed under section 812; (3) the value of the net estate of the decedent as defined in section 812; and (4) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

**(2) Returns by beneficiaries.**

If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate.

**(3) Cross reference.**

For provision requiring a return where the gross estate exceeds \$40,000, see section 937.

**(b) Time for filing.**

The return required of the executor under subsection (a) shall be filed at such times and in such manner as may be required by regulations made pursuant to law.

**(c) Place for filing.**

The return required of the executor under subsection (a) shall be filed with the collector of the district in which was the domicile of the decedent at

the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner.

**(d) Records, statements, and returns.**

Every person liable to any tax imposed by this subchapter, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

**(e) Cross references.**

For general provisions relating to returns, see the following—

Section 3603. Notice requiring records, statements, and special returns.

Section 3611. Returns executed by taxpayer.

Section 3612. Returns executed by Commissioner or collector.

Section 3614. Verification and making of returns by Commissioner.

Section 3615. Summons from collector to produce books and give testimony.

Section 3631. Restrictions on examination of taxpayers.

Section 3632. Authority to administer oaths, take testimony, and certify.

Section 3634. Extension of time for filing returns.

(53 Stat. 126.)

**DERIVATION**

Subsections (a) (1), (2), was derived from act Feb. 26, 1926, ch. 27, § 304, 44 Stat. 74, as amended by acts May 10, 1934, ch. 277, § 403 (e), 48 Stat. 753; May 28, 1938, ch. 289, § 501, 52 Stat. 564.

Subsection (b) was derived from act Feb. 26, 1926, ch. 27, § 304 (a), 44 Stat. 74.

Subsection (c) was derived from act Feb. 26, 1926, ch. 27, §§ 300 (d), 304 (a), 44 Stat. 69, 74.

Subsection (d) was derived from act Feb. 26, 1926, ch. 27, § 1102 (a), 44 Stat. 112.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 304, 43 Stat. 307.

1921—Nov. 23, 1921, ch. 136, § 404, 42 Stat. 281.

1919—Feb. 24, 1919, ch. 18, § 404, 40 Stat. 1099.

1917—Oct. 3, 1917, ch. 63, § 1001, 40 Stat. 325.

1916—Sept. 8, 1916, ch. 463, §§ 205, 206, 409, 39 Stat. 778, 779, 792.

1914—Oct. 22, 1914, ch. 331, § 23, 38 Stat. 764.

**§ 822. Payment of tax—(a) Time of payment—(1) General rule.**

The tax imposed by this subchapter shall be due and payable fifteen months after the decedent's death.

**(2) Extension of time.**

Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part not to exceed ten years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension, and the running of the statute of limitations for assessment and collection, as provided in section 874, shall be suspended for the period of any such extension. If

an extension is granted, the Commissioner may, if he deems it necessary, require the executor to furnish security for the payment of the amount in respect of which the extension is granted in accordance with the terms of the extension.

**(3) Cross reference.**

For extension of time in case of future interests, see Supplement F.

**(b) Liability for payment.**

The tax imposed by this subchapter shall be paid by the executor to the collector. (53 Stat. 127.)

**DERIVATION**

Subsection (a) (1) was derived from act Feb. 26, 1926, ch. 27, § 305 (a), 44 Stat. 74, as amended by act Aug. 30, 1935, ch. 829, § 203 (a), 49 Stat. 1023.

Subsection (a) (2) was derived from act Feb. 26, 1926, ch. 27, § 305 (b), 44 Stat. 74, as amended by acts June 6, 1932, ch. 209, § 808 (a), 47 Stat. 282; May 28, 1938, ch. 289, § 503, 52 Stat. 564.

Subsection (b) was derived from act Feb. 26, 1926, ch. 27, § 305 (a), 44 Stat. 74, as amended by act Aug. 30, 1935, ch. 829, § 203 (a), 49 Stat. 1023.

**EFFECTIVE DATE**

Subsection (c) of section 203 of act August 30, 1935, ch. 829, provided that amendment by subsection (a) of such act should be effective only with respect to transfers of estates of decedents dying after August 30, 1935.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 304, 43 Stat. 307  
 1921—Nov. 23, 1921, ch. 136, §§ 404, 405, 42 Stat. 281  
 1919—Feb. 24, 1919, ch. 18, §§ 404, 405, 40 Stat. 1099  
 1917—Oct. 3, 1917, ch. 63, § 1001, 40 Stat. 325.  
 1916—Sept. 8, 1916, ch. 463, §§ 205, 206, 409, 39 Stat. 778, 779, 792.  
 1914—Oct. 22, 1914, ch. 331, § 23, 38 Stat. 764.

**§ 823. Duplicate receipts.**

The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts. (53 Stat. 127.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 313 (a), 44 Stat. 79.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 313, 43 Stat. 311  
 1921—Nov. 23, 1921, ch. 136, § 407, 42 Stat. 281.  
 1919—Feb. 24, 1919, ch. 18, § 407, 40 Stat. 1100.  
 1916—Sept. 8, 1916, ch. 463, § 207, 39 Stat. 779.

**§ 824. Examination of return and determination of tax.**

As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax. (53 Stat. 127.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 306, 44 Stat. 74.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 306, 43 Stat. 308.  
 1921—Nov. 23, 1921, ch. 136, § 404, 42 Stat. 281.  
 1919—Feb. 24, 1919, ch. 18, § 404, 40 Stat. 1099.  
 1916—Sept. 8, 1916, ch. 463, § 205, 39 Stat. 778.

**§ 825. Discharge of executor from personal liability—  
 (a) Application for discharge.**

If the executor makes written application to the Commissioner for determination of the amount of the tax and discharge from personal liability there-

for, the Commissioner (as soon as possible, and in any event within one year after the making of such application, or, if the application is made before the return is filed, then within one year after the return is filed, but not after the expiration of the period prescribed for the assessment of the tax in sections 874 and 875) shall notify the executor of the amount of the tax. The executor, upon payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

**(b) Cross reference.**

For continuance of lien upon the gross estate after discharge of executor, see section 827 (c).

(53 Stat. 127.)

**DERIVATION**

Subsection (a) was derived from act Feb. 26, 1926, ch. 27, § 313 (b), 44 Stat. 79.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 313, 43 Stat. 311  
 1921—Nov. 23, 1921, ch. 136, § 407, 42 Stat. 281.

**§ 826. Collection of unpaid tax—(a) Sale of property.**

If the tax herein imposed is not paid on or before the due date thereof the collector shall, upon instruction from the Commissioner, proceed to collect the tax under the provisions of general law; or appropriate proceedings may be commenced in any court of the United States having jurisdiction, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. This subsection in so far as it applies to the collection of a deficiency shall be subject to the provisions of sections 871 and 891.

**(b) Reimbursement out of estate.**

If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this subchapter that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution.

**(c) Liability of life insurance beneficiaries.**

If any part of the gross estate consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the

proceeds, in excess of \$40,000, of such policies bear to the net estate. If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries in the same ratio. (53 Stat. 127.)

#### DERIVATION

Act Feb. 26, 1926, ch. 27, § 314 (a), (b), 44 Stat. 79.

#### SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 314, 43 Stat. 311.  
 1921—Nov. 23, 1921, ch. 136, § 408, 42 Stat. 282.  
 1919—Feb. 24, 1919, ch. 18, § 408, 40 Stat. 1100.  
 1916—Sept. 8, 1916, ch. 463, § 208, 39 Stat. 779.

#### § 827. Lien for tax—(a) Upon gross estate.

Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

#### (b) Upon property of transferee.

If (1) except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death, or makes a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession or enjoyment of, or the right to the income from, the property, or (B) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom, or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

#### (c) Continuance after discharge of executor.

The provisions of section 825 shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless the title to such part of the gross estate has passed to a bona fide purchaser for

value, in which case such part shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

#### (d) Cross reference.

For authority of collector to release lien, see sections 3673 and 3674.

(53 Stat. 128.)

#### DERIVATION

Subsection (a) was derived from act Feb. 26, 1926, ch. 27, § 315 (a), 44 Stat. 80, as amended by acts May 29, 1928, ch. 852, § 613 (b), 45 Stat. 876; June 6, 1932, ch. 209, § 809, 47 Stat. 283.

Subsection (b) was derived from act Feb. 26, 1926, ch. 27, § 315 (b), 44 Stat. 80, as amended by act June 6, 1932, ch. 209, § 803 (c), 47 Stat. 280.

Subsection (c) was derived from act Feb. 26, 1926, ch. 27, § 313 (c), 44 Stat. 79.

#### SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, §§ 313, 315, 43 Stat. 311, 312.

1921—Nov. 23, 1921, ch. 136, §§ 407, 409, 42 Stat. 281, 283.

1919—Feb. 24, 1919, ch. 18, § 409, 40 Stat. 1100.

1916—Sept. 8, 1916, ch. 463, § 209, 39 Stat. 780.

1898—June 13, 1898, ch. 448, §§ 29, 30, 30 Stat. 464, as amended by acts Mar. 2, 1901, ch. 806, § 11, 31 Stat. 948, Apr. 12, 1902, ch. 500, § 8, 32 Stat. 97.

#### § 828. Cross references.

For payment of tax in case of estates in China, see Supplement E of part IV.

For interest, additions to tax, and penalties, see Supplement B of part IV.

For general provisions relating to assessment, collection, closing agreements, compromises, and refunds, see chapters 35, 36, and 37 of subtitle D.

(53 Stat. 129.)

#### SUBPART III.—MISCELLANEOUS PROVISIONS

#### § 840. Other laws applicable.

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, shall be extended to and made a part of this subchapter. (53 Stat. 129.)

#### DERIVATION

Act Feb. 26, 1926, ch. 27, § 1100, 44 Stat. 111.

#### SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 1000, 43 Stat. 339.

1921—Nov. 23, 1921, ch. 136, § 1300, 42 Stat. 308.

1919—Feb. 24, 1919, ch. 18, § 1305, 40 Stat. 1142.

#### § 841. Cross references.

For authority of the Commissioner, with the approval of the Secretary, to prescribe and publish all needful rules and regulations for the enforcement of this subchapter, see section 3791.

For other administrative provisions of a general character, see subtitle D.

(53 Stat. 129.)

#### SUBPART IV.—SPECIAL CLASSES OF RESIDENTS

#### § 850. Missionaries in foreign service.

Missionaries duly commissioned and serving under boards of foreign missions of the various religious denominations in the United States, dying while in the foreign missionary service of such boards, shall not, by reason merely of their intention to perma-



nently remain in such foreign service, be deemed nonresidents of the United States, but shall be presumed to be residents of the State, the District of Columbia, or the Territories of Alaska or Hawaii wherein they respectively resided at the time of their commission and their departure for such foreign service. (53 Stat. 129.)

#### DERIVATION

Act Feb. 26, 1926, ch. 27, § 303 (f), 44 Stat. 74.

#### SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 303 (f), 43 Stat. 307.

### § 851. Citizens with estates in China.

The term "resident" as used in this subchapter includes a citizen of the United States with respect to whose property any probate or administration proceedings are had in the United States Court for China. (53 Stat. 129.)

#### DERIVATION

Act Feb. 26, 1926, ch. 27, § 321 (a), 44 Stat. 85.

#### SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 318, 43 Stat. 313

1921—Nov. 23, 1921, ch. 136, § 411, 42 Stat. 283.

### PART III.—ESTATES OF NONRESIDENTS NOT CITIZENS OF THE UNITED STATES

### § 860. Rate of tax.

A tax equal to the sum of the percentages set forth in section 810 of the value of the net estate (determined as provided in section 861) shall be imposed upon the transfer of the net estate of every decedent nonresident not a citizen of the United States dying after the date of the enactment of this title. (53 Stat. 129.)

#### DERIVATION

Act Feb. 26, 1926, ch. 27, § 301 (a) 44 Stat. 69.

#### CROSS REFERENCE

See notes under section 810 of this title.

### § 861. Net estate—(a) Deductions allowed.

For the purpose of the tax the value of the net estate shall be determined, in the case of a nonresident not a citizen of the United States, by deducting from the value of that part of his gross estate (determined as provided in section 811), which at the time of his death is situated in the United States—

#### (1) Expenses, losses, indebtedness, and taxes.

That proportion of the deductions specified in subsection (b) of section 812 which the value of such part bears to the value of his entire gross estate, wherever situated.

#### (2) Property previously taxed.

An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be

allowed only where a gift tax imposed under chapter 4, or an estate tax imposed under this subchapter, the Revenue Act of 1926, 44 Stat. 69, or any prior Act of Congress, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift, or the gross estate of such prior decedent, and only to the extent that the value of such property is included in that part of the decedent's gross estate which at the time of his death is situated in the United States, and only if in determining the value of the net estate of the prior decedent no deduction was allowable under this paragraph in respect of the property or property given in exchange therefor. Where a deduction was allowed of any mortgage or other lien in determining the gift tax, or the estate tax of the prior decedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable under this paragraph shall be reduced by the amount so paid. The deduction allowable under this paragraph shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under paragraphs (1) and (3) of this subsection as the amount otherwise deductible under this paragraph bears to the value of that part of the decedent's gross estate which at the time of his death is situated in the United States. Where the property referred to in this paragraph consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction.

#### (3) Transfers for public, charitable, and religious uses.

The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used within the United States by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. If the tax imposed by section 860, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or

devises reduced by the amount of such taxes. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

**(b) Condition of allowance of deductions.**

No deduction shall be allowed in the case of a nonresident not a citizen of the United States unless the executor includes in the return required to be filed under section 864 the value at the time of his death of that part of the gross estate of such nonresident not situated in the United States. (53 Stat. 129.)

**DERIVATION**

Subsection (a) was derived from act Feb. 26, 1926, ch. 27, § 303 (b), 44 Stat. 72, 73, as amended by act May 10, 1934, ch. 277, § 403 (b), 48 Stat. 753.

Subsection (a) (1) was derived from act Feb. 26, 1926, ch. 27, § 303 (b) (1), 44 Stat. 73, as amended by act May 29, 1928, ch. 852, § 401 (a), 45 Stat. 862.

Subsection (a) (2) was derived from act Feb. 26, 1926, ch. 27, § 303 (b) (2), 44 Stat. 73, as amended by acts June 6, 1932, ch. 209, § 806 (b), 47 Stat. 281; May 10, 1934, ch. 277, § 402, 48 Stat. 753.

Subsection (a) (3) was derived from act Feb. 26, 1926, ch. 27, § 303 (b) (3), 44 Stat. 72, as amended by acts, June 6, 1932, ch. 209, § 807, 47 Stat. 282; May 10, 1934, ch. 277, § 406, 48 Stat. 755.

Subsection (b) was derived from act Feb. 26, 1926, § 303 (c), 44 Stat. 72, as amended act May 10, 1934, ch. 277, § 403 (c), 48 Stat. 753.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 303, 43 Stat. 305.

**§ 862. Property within the United States.**

For the purpose of this subchapter—

**(a) Stock in domestic corporation.**

Stock in a domestic corporation owned and held by a nonresident not a citizen of the United States shall be deemed property within the United States; and

**(b) Revocable transfers and transfers in contemplation of death.**

Any property of which the decedent has made a transfer, by trust or otherwise, within the meaning of section 811 (c) or (d), shall be deemed to be situated in the United States, if so situated either at the time of the transfer, or at the time of the decedent's death. (53 Stat. 131.)

**DERIVATION**

Act Feb. 26, 1926, § 303 (d), 44 Stat. 73, as subsection (a) was amended by act May 10, 1934, ch. 277, § 403 (d), 48 Stat. 753.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 303, 43 Stat. 305.

**§ 863. Property without the United States.**

The following items shall not, for the purpose of this subchapter, be deemed property within the United States:

**(a) Proceeds of life insurance.**

The amount receivable as insurance upon the life of a nonresident not a citizen of the United States; and

**(b) Bank deposits.**

Any moneys deposited with any person carrying on the banking business, by or for a nonresident

not a citizen of the United States who was not engaged in business in the United States at the time of his death. (53 Stat. 131.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 303 (e), 44 Stat. 73, as amended by act May 10, 1934, ch. 277, § 403 (d), 48 Stat. 753.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 303, 43 Stat. 305.

**§ 864. Returns—(a) Requirement—(1) Returns by executor.**

In the case of the estate of every nonresident not a citizen of the United States any part of whose gross estate is situated in the United States, the executor shall make a return under oath in duplicate, setting forth (1) the value of that part of the gross estate of the decedent situated in the United States at the time of his death; (2) the deductions allowed under section 861; (3) the value of the net estate of the decedent as defined in section 861; (4) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

**(2) Returns by beneficiaries.**

If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate.

**(b) Time for filing.**

The return required of the executor under subsection (a) shall be filed at such times and in such manner as may be required by regulations made pursuant to law.

**(c) Place for filing.**

The return required of the executor under subsection (a) shall be filed with the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of such district as may be designated by the Commissioner. (53 Stat. 131.)

**DERIVATION**

Subsections (a), (b) were derived from act Feb. 26, 1926, ch. 27, § 304 (a) (b), 44 Stat. 74, as subsection (a) (1) was amended by act May 10, 1934, ch. 277, § 403 (e), 48 Stat. 753.

Subsection (c) was derived from act Feb. 26, 1926, ch. 27, §§ 300 (d), 304 (a), 44 Stat. 69, 74.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 304, 43 Stat. 307.

1921—Nov. 23, 1921, ch. 136, §§ 404, 405, 42 Stat. 281.

1919—Feb. 24, 1919, ch. 18, §§ 404, 405, 40 Stat. 1099.

1916—Sept. 8, 1916, ch. 463, §§ 205, 206, 39 Stat. 778, 779.

**§ 865. Cross reference.**

For missionaries in foreign service, see section 860.

(53 Stat. 131.)

## PART IV.—SUPPLEMENTAL PROVISIONS

## SUPPLEMENT A.—ASSESSMENT AND COLLECTION OF DEFICIENCIES

## § 870. Definition of deficiency.

As used in this subchapter in respect of the tax imposed by this subchapter the term "deficiency" means—

(1) The amount by which the tax imposed by this subchapter exceeds the amount shown as the tax by the executor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the executor upon his return, or if no return is made by the executor, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax. (53 Stat. 132.)

## DERIVATION

Act Feb. 26, 1926, ch. 27, § 307, 44 Stat. 74.

## SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 307, 43 Stat. 308.

## § 871. Procedure in general—(a) (1) Petition to Board of Tax Appeals.

If the Commissioner determines that there is a deficiency in respect of the tax imposed by this subchapter, the Commissioner is authorized to send notice of such deficiency to the executor by registered mail. Within 90 days after such notice is mailed (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day), the executor may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this subchapter and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the executor, nor until the expiration of such 90-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3653 (a) the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

## (2) Cross references.

For exceptions to the restrictions imposed by this subsection see—

Subsection (d) of this section, relating to waivers by the executor;

Subsection (f) of this section, relating to notifications of mathematical errors appearing upon the face of the return.

Section 872, relating to jeopardy assessments; and

Section 1145, relating to assessment or collection of the amount of the deficiency determined by the Board pending court review.

## (b) Collection of deficiency found by Board.

If the executor files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the decision of the Board which has become final shall be assessed or be collected by distraint or by proceeding in court with or without assessment.

## (c) Failure to file petition.

If the executor does not file a petition with the Board within the time prescribed in subsection (a) the deficiency, notice of which has been mailed to the executor, shall be assessed, and shall be paid upon notice and demand from the collector.

## (d) Waiver of restrictions.

The executor shall at any time have the right, by a signed notice in writing filed with the Commissioner, to waive the restrictions provided in subsection (a) on the assessment and collection of the whole or any part of the deficiency.

## (e) Increase of deficiency after notice mailed.

The Board shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the executor, and to determine whether any additional amount or addition to the tax should be assessed, if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

## (f) Further deficiency letters restricted.

If the Commissioner has mailed to the executor notice of a deficiency as provided in subsection (a), and the executor files a petition with the Board within the time prescribed in such subsection, the Commissioner shall have no right to determine any additional deficiency, except in the case of fraud, and except as provided in subsection (e) or section 872 (c). If the executor is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered, for the purposes of this subsection or of subsection (a), or of section 911, as a notice of a deficiency, and the executor shall have no right to file a petition with the Board of Tax Appeals based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a).

## (g) Final decisions of Board.

For the purposes of this subchapter the date on which a decision of the Board becomes final shall be determined according to the provisions of section 1140.

## (h) Extension of time for payment of deficiency.

Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner,

under regulations prescribed by the Commissioner, with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax), may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of four years. If an extension is granted, the Commissioner may require the executor to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension. In such case the running of the statute of limitations for assessment and collection, as provided in section 874, shall be suspended for the period of any such extension.

(i) 50 per cent addition treated as deficiency.

The 50 per centum addition to the tax provided by section 3612 (d) (2) shall, when assessed in connection with an estate tax, be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of section 891 shall not be applicable. (53 Stat. 132.)

DERIVATION

Subsections (a)–(g) were derived from act Feb. 26, 1926, ch. 27, § 308 (a)–(g), 44 Stat. 75–76, as subsection (a) (1) was amended by act May 10, 1934, ch. 277, § 501, 48 Stat. 755.

Subsection (h) was derived from act Feb. 26, 1926, ch. 27, § 308 (i), 44 Stat. 76, as amended by act June 6, 1932, ch. 209, § 808 (b), 47 Stat. 282; May 28, 1938, ch. 289, § 816, 52 Stat. 578.

Subsection (l) was derived from act Feb. 26, 1926, ch. 27, § 308 (j), 44 Stat. 76.

SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 308, 43 Stat. 308

§ 872. Jeopardy assessments—(a) Authority for making.

If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall immediately assess such deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) and notice and demand shall be made by the collector for the payment thereof.

(b) Deficiency letters.

If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 871 (a), then the Commissioner shall mail a notice under such subsection within 60 days after the making of the assessment.

(c) Amount assessable before decision of Board.

The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the executor, despite the provisions of section 871 (f) and whether or not the executor has theretofore filed a petition with the Board of Tax Appeals. The Commissioner may, at any time before the decision of the Board is rendered, abate such assessment, or any unpaid portion thereof, to the extent that he believes the assessment to be excessive in amount. The Commissioner shall notify the Board of the amount of such assessment,

or abatement, if the petition is filed with the Board before the making of the assessment or is subsequently filed, and the Board shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) Amount assessable after decision of Board.

If the jeopardy assessment is made after the decision of the Board is rendered such assessment may be made only in respect of the deficiency determined by the Board in its decision.

(e) Expiration of right to assess.

A jeopardy assessment may not be made after the decision of the Board has become final or after the executor has filed a petition for review of the decision of the Board.

(f) Bond to stay collection.

When a jeopardy assessment has been made the executor, within 30 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in section 892 or 893 (b) (4). If any portion of the jeopardy assessment is abated by the Commissioner before the decision of the Board is rendered, the bond shall, at the request of the taxpayer, be proportionately reduced.

(g) Same—further conditions.

If the bond is given before the executor has filed his petition with the Board under subsection (a) of section 871, the bond shall contain a further condition that if a petition is not filed within the period provided in such subsection, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subsection.

(h) Waiver of stay.

Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The executor shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the executor, be proportionately reduced. If the Board determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Board is rendered the bond shall, at the request of the executor, be proportionately reduced.

**(i) Collection of unpaid amounts.**

When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be refunded. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector. (53 Stat. 133.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 312 (a)-(1), 44 Stat. 77-79, as subsections (c), (f) were amended by act May 28, 1938, ch. 289, § 819 (d) (e), 52 Stat. 580.

**SIMILAR PROVISION**

1924—June 2, 1924, ch. 234, § 308 (d), 43 Stat. 308.

**§ 873. Claims in abatement.**

No claim in abatement shall be filed in respect of the assessment of any estate tax imposed by this subchapter. (53 Stat. 135.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 312 (K), 44 Stat. 79.

**SIMILAR PROVISION**

1924—June 2, 1924, ch. 234, § 312, 43 Stat. 310.

**§ 874. Period of limitation upon assessment and collection—(a) General rule.**

Except as provided in subsection (b) the amount of estate taxes imposed by this subchapter shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of three years after the return was filed.

**(b) Exceptions—(1) False return or no return.**

In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

**(2) Collection after assessment.**

Where the assessment of any tax imposed by this subchapter has been made within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the executor. (53 Stat. 135.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, §§ 310 (a), 311 (a) (b), 44 Stat. 77.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, §§ 310, 311, 43 Stat. 310.

**§ 875. Suspension of running of statute.**

The running of the statute of limitations provided in section 874 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under section 871 (a)) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter. (53 Stat. 135.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 310 (b), 44 Stat. 77, as amended by act May 29, 1928, ch. 852, § 402 (a), 45 Stat. 862.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 310, 43 Stat. 310.

**§ 876. Cross reference.**

For collection of unpaid deficiencies under provisions of general law and sale of property under judgment, see section 826 (a).

(53 Stat. 135.)

**SUPPLEMENT B.—INTEREST, ADDITIONS TO THE TAX, AND PENALTIES****§ 890. Interest on extended payments—(a) Tax shown on return.**

If the time for the payment is extended as provided in section 822 (a) (2) there shall be collected, as a part of such amount, interest thereon from the expiration of three months after the due date of the tax to the expiration of the period of the extension. In the case of any such extension, the rate of interest shall be 4 per centum per annum.

**(b) Deficiency.**

In case an extension for the payment of a deficiency is granted, as provided in section 871 (h), there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. (53 Stat. 135.)

**DERIVATION**

Subsection (a) was derived from act Feb. 26, 1926, ch. 27, § 305 (c), 44 Stat. 74, as amended by acts Aug. 30, 1935, ch. 829, § 203 (b), 49 Stat. 1023, and May 28, 1938, ch. 289, § 504, 52 Stat. 585.

Subsection (b) was derived from act Feb. 26, 1926, ch. 27, § 308 (1), 44 Stat. 76, as amended by act June 6, 1932, ch. 209, § 808 (b), 47 Stat. 282.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, §§ 305 (c), 308 (f), 43 Stat. 308.

**§ 891. Interest on deficiencies.**

Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the due date of the tax to the date the deficiency is assessed, or, in the case of a waiver under

section 871 (d), to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier. (53 Stat. 135.)

#### DERIVATION

Act Feb. 26, 1926, ch. 27, § 308 (h), 44 Stat. 76.

#### SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 308 (e), 43 Stat. 308.

### § 892. Interest on jeopardy assessments.

In the case of the amount collected under section 872 (i) there shall be collected at the same time as such amount, and as a part of the tax, interest at the rate of 6 per centum per annum upon such amount from the date of the jeopardy notice and demand to the date of notice and demand under section 872 (i), or, in the case of the amount collected in excess of the amount of the jeopardy assessment, interest as provided in section 891. (53 Stat. 136.)

#### DERIVATION

Act Feb. 26, 1926, ch. 27, § 312 (j), 44 Stat. 78

### § 893. Additions to the tax in case of nonpayment— (a) Tax shown on return—(1) Payment not extended.

Where the amount determined by the executor as the tax imposed by this subchapter, or any part of such amount, is not paid on the due date of the tax, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 6 per centum per annum from the due date until it is paid.

#### (2) Payment extended.

Where an extension of time for payment of the amount so determined as the tax by the executor has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under section 890 (a), is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subsection, interest at the rate of 6 per centum per annum shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

#### (b) Deficiency—(1) Payment not extended.

Where a deficiency, or any interest assessed in connection therewith under section 891, or any addition to the tax provided for in section 3612 (d), is not paid in full within 30 days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid.

#### (2) Filing of jeopardy bond.

If a bond is filed, as provided in section 872, the provisions of paragraph (1) of this subsection shall not apply to the amount covered by the bond.

#### (3) Payment extended.

If the part of the deficiency the time for payment of which is extended as provided in section 871 (h) is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 6 per centum per annum for the period from the time

fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period.

#### (4) Jeopardy assessment—Payment stayed by bond.

If the amount included in the notice and demand from the collector under section 872 (i) is not paid in full within 30 days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid. (53 Stat. 136.)

#### DERIVATION

Subsection (a) (1) (2) was derived from act Feb. 26, 1926, ch. 27, § 309 (a) (1) (2), 44 Stat. 76, as amended by act Aug. 30, 1935, ch. 829, § 404, 49 Stat. 1027.

Subsection (b) (1) (2) was derived from act Feb. 26, 1926, ch. 27, § 309 (b) (c), 44 Stat. 77, as (b) (1) amended by act Aug. 30, 1935, ch. 829, § 404, 49 Stat. 1027.

Subsection (b) (3) was derived from act Feb. 26, 1926, ch. 27, § 308 (i), 44 Stat. 76, as amended by acts June 6, 1932, ch. 209, § 808 (b), 47 Stat. 282, and Aug. 30, 1935, ch. 829, § 404, 49 Stat. 1027.

Subsection (b) (4) was derived from act Feb. 26, 1926, ch. 27, § 312 (j), 44 Stat. 78, as amended by act Aug. 30, 1935, ch. 829, § 404, 49 Stat. 1027.

#### SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, §§ 308 (f), 309, 43 Stat. 308, 309

1921—Nov. 23, 1921, ch. 136, §§ 406, 407, 42 Stat. 281.

1919—Feb. 24, 1919, ch. 18, §§ 406, 407, 40 Stat. 1099, 1100

1916—Sept. 8, 1916, ch. 463, §§ 204, 207, 39 Stat. 778, 779

### § 894. Penalties—(a) Ad valorem.

#### FAILURE TO FILE RETURN

For addition to the tax for failure to file return, see section 3612 (d) (1).

#### FALSE OR FRAUDULENT RETURN

For 50 per centum addition to the tax in case of a false or fraudulent return, see section 3612 (d) (2).

#### (b) Specific—(1) Civil.

Whoever fails to comply with any duty imposed upon him by section 820, 821, or 864, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Commissioner or any collector or law officer of the United States or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this subchapter, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States.

#### (2) Criminal.

(A) Whoever knowingly makes any false statement in any notice or return required to be filed under this subchapter shall be liable to a penalty of not exceeding \$5,000, or imprisonment not exceeding one year, or both.

(B) Any person required under this subchapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this subchapter, who willfully fails to pay such tax, make such return, keep such records,

or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(C) Any person required under this subchapter to collect, account for and pay over any tax imposed by this subchapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this subchapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(D) The term "person" as used in paragraphs (B) and (C) includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

### (3) Cross reference.

For other penalties of a general character, see section 3793.

(53 Stat. 136.)

#### DERIVATION

Act Feb. 26, 1926, ch. 27, §§ 320 (a), (b), 1114 (a), (b), (f), 44 Stat. 85, 116-117.

#### SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, §§ 317, 1017, 43 Stat. 313, 343.

1921—Nov. 23, 1921, ch. 136, §§ 253, 410, 42 Stat. 268, 283

1919—Feb. 24, 1919, ch. 18, §§ 253, 410, 40 Stat. 1085, 1101.

1916—Sept. 8, 1916, ch. 463, §§ 14, 18, 210, 39 Stat. 772, 775, 780, as section 18 was amended by act Oct. 3, 1917, ch. 63, § 1209, 40 Stat. 336.

1914—Oct. 22, 1914, ch. 331, § 23, 38 Stat. 764.

1913—Oct. 3, 1913, ch. 16, § II, F, G, 38 Stat. 171, 177.

### § 895. Cross reference.

For interest on refunds, see section 3771.

(53 Stat. 137.)

#### SUPPLEMENT C.—CLAIMS AGAINST TRANSFEREES AND FIDUCIARIES

##### 0. Transferred assets—(a) Method of collection.

The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this subchapter (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

##### (1) Transferees.

The liability, at law or in equity, of a transferee of property of a decedent, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed by this subchapter.

##### (2) Fiduciaries.

The liability of a fiduciary under section 3467 of the Revised Statutes (U. S. C., Title 31, § 192) in respect of the payment of any such tax from the estate of the decedent.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

##### (b) Period of limitation.

The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the executor.

(2) If a court proceeding against the executor for the collection of the tax has been begun within the period provided in paragraph (1)—then within one year after return of execution in such proceeding.

##### (c) Suspension of running of statute of limitations.

The running of the statute of limitations, upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under section 871 (a) to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.

##### (d) Prohibition of suits to restrain enforcement of liability of transferee or fiduciary.

No suit shall be maintained in any court for the purpose of restraining the assessment or collection of (1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any estate tax, or (2) the amount of the liability of a fiduciary under section 3467 of the Revised Statutes (U. S. C., Title 31, § 192) in respect of any such tax.

##### (e) Definition of "transferee."

As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee. (53 Stat. 137.)

#### DERIVATION

Subsections (a)–(c), (e) were derived from act Feb. 26, 1926, ch. 27, § 316 (a)–(c), (e), 44 Stat. 80, 81, as subsection (c) was amended by act May 29, 1928, ch. 852, § 403 (a), 45 Stat. 863.

Subsection (d) was derived from act May 29, 1928, ch. 852, § 604, 45 Stat. 873

##### § 901. Notice of fiduciary relationship—(a) Fiduciary of decedent.

Upon notice to the Commissioner that any person is acting as executor, such person shall assume the powers, rights, duties, and privileges of an executor in respect of the tax imposed by this subchapter until notice is given that such person is no longer acting as executor.

##### (b) Fiduciary of transferee.

Upon notice to the Commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 900, the fiduciary



shall assume on behalf of such person the powers, rights, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person), until notice is given that the fiduciary capacity has terminated.

**(c) Manner of notice.**

Notice under subsection (a) or (b) shall be given in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.

**(d) Address for notice of liability.**

In the absence of any notice to the Commissioner under subsection (a) or (b), notice under this subchapter of a deficiency or other liability, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for the purposes of this subchapter. (53 Stat. 138.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 317, 44 Stat. 81.

**SUPPLEMENT D.—REFUNDS**

**§ 910. Period of limitation for filing claims.**

All claims for the refunding of the tax imposed by this subchapter alleged to have been erroneously or illegally assessed or collected must be presented to the Commissioner within three years next after the payment of such tax. The amount of the refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the three years immediately preceding the allowance of the refund. (53 Stat. 138.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 319 (b), 44 Stat. 81, as amended by act June 6, 1932, ch. 209, § 810 (a), 47 Stat. 283

**§ 911. Effect of petition to board.**

If the Commissioner has mailed to the executor a notice of deficiency under section 871 (a) and if the executor files a petition with the Board of Tax Appeals within the time prescribed in such subsection, no refund in respect of the tax shall be allowed or made and no suit for the recovery of any part of such tax shall be instituted in any court, except—

(a) As to overpayments determined by a decision of the Board which has become final; and

(b) As to any amount collected in excess of an amount computed in accordance with the decision of the Board which has become final; and

(c) As to any amount collected after the statutory period of limitations upon the beginning of distraint or a proceeding in court for collection has expired; but in any such claim for refund or in any such suit for refund the decision of the Board which has become final, as to whether such period had expired before the notice of deficiency was mailed, shall be conclusive. (53 Stat. 139.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 319 (a), 44 Stat. 84.

**§ 912. Overpayment found by Board.**

If the Board finds that there is no deficiency and further finds that the executor has made an over-

payment of tax, the Board shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Board has become final, be credited or refunded to the executor as provided in section 3770 (a). No such refund shall be made of any portion of the tax unless the Board determines as part of its decision that such portion was paid within three years before the filing of the claim or the filing of the petition, whichever is earlier, or that such portion was paid after the mailing of the notice of deficiency. (53 Stat. 139.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 319 (c), 44 Stat. 84, as amended by acts May 10, 1934, ch. 277, § 504 (d), 48 Stat. 756, and act May 28, 1938, ch. 289, § 809 (e), 52 Stat. 576, act Feb. 26, 1926, ch. 27, § 319 (c), was also amended by act June 6, 1932, ch. 209, § 810 (b), 47 Stat. 283.

**§ 913. Cross references.**

For other provisions affecting refunds of estate taxes,

Section 3770 (a) (1), Authority of Commissioner to make refunds.

Section 3772, Limitations on suits for refunds.

Section 3770 (a) (2), Refund of amounts collected after period of limitation.

Section 3746, Recovery of amounts erroneously refunded.

Section 3760, Closing agreements.

Section 3771, Interest on refunds.

(53 Stat. 139.)

**SUPPLEMENT E.—ESTATES IN CHINA**

**§ 920. Payment of tax.**

In the case of a resident within the meaning of section 851—

**(a) To clerk of United States Court for China.**

Where no part of the gross estate of the decedent is situated in the United States at the time of his death, the total amount of tax due under this subchapter shall be paid to or collected by the clerk of the United States Court for China;

**(b) To collector.**

Where any part of the gross estate of the decedent is situated in the United States at the time of his death, the tax due under this subchapter shall be paid to or collected by the collector of the district in which is situated the part of the gross estate in the United States, or, if such part is situated in more than one district, then the collector of such district as may be designated by the Commissioner. (53 Stat. 139.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 321 (a), 44 Stat. 85.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 318, 43 Stat. 313.

1921—Nov. 23, 1921, ch. 136, § 411, 42 Stat. 283.

**§ 921. Authority of clerk of United States Court for China to act as collector.**

For the purpose of section 920 the clerk of the United States Court for China shall be a collector for the territorial jurisdiction of such court, and taxes shall be collected by and paid to him in the same manner and subject to the same provisions of law, including penalties, as the taxes collected by and

paid to a collector in the United States. (53 Stat. 139.)

DERIVATION

Act Feb. 26, 1926, ch. 27, § 321 (b), 44 Stat. 85.

SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 318, 43 Stat. 313.

1921—Nov. 23, 1921, ch. 136, § 411, 42 Stat. 283.

SUPPLEMENT F.—EXTENSION OF PAYMENT IN CASE OF FUTURE INTERESTS

§ 925. Period of extension.

Where there is included in the value of the gross estate the value of a reversionary or remainder interest in property, the payment of the part of the tax imposed by this subchapter attributable to such interest may, at the election of the executor, be postponed until six months after the termination of the precedent interest or interests in the property, and the amount the payment of which is so postponed shall then be payable, together with interest thereon at the rate of 4 per centum per annum from eighteen months after the date of the decedent's death until such amount is paid. (53 Stat. 140.)

DERIVATION

Act Feb. 26, 1926, ch. 27, § 305, 44 Stat. 74, as amended by act June 6, 1932, ch. 209, § 811 (a), 47 Stat. 284.

§ 926. Requirements for extension.

The postponement of payment of such amount shall be under such regulations as the Commissioner with the approval of the Secretary may prescribe, and shall be upon condition that the executor, or any other person liable for the tax, shall furnish a bond in such an amount, and with such sureties, as the Commissioner deems necessary, conditioned upon the payment within six months after the termination of such precedent interest or interests of the amount the payment of which is so postponed, together with interest thereon, as provided in section 925. (53 Stat. 140.)

DERIVATION

Act Feb. 26, 1926, ch. 27, § 305, 44 Stat. 74, as amended by act June 6, 1932, ch. 209, § 811 (a), 47 Stat. 284.

§ 927. Credit for State death taxes.

Such part of any estate, inheritance, legacy, or succession taxes allowable as a credit against the tax imposed by this subchapter as is attributable to such reversionary or remainder interest may be allowed as a credit against the tax attributable to such interest, subject to the percentage limitation contained in section 813 (b), if such part is paid, and credit therefor claimed, at any time prior to the expiration of 60 days after the termination of the precedent interest or interests in the property. (53 Stat. 140.)

DERIVATION

Act Feb. 26, 1926, ch. 27, § 305, 44 Stat. 74, as amended by act June 6, 1932, ch. 209, § 811 (a), 47 Stat. 284.

SUPPLEMENT G.—DEFINITIONS

§ 930. "Executor," "net estate," "month," "collector."

When used in this subchapter—

(a) The term "executor" means the executor or administrator of the decedent, or, if there is no exec-

utor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent;

(b) The term "net estate" means the net estate as determined under the provisions of section 812 or 861;

(c) The term "month" means calendar month; and

(d) The term "collector" means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner. (53 Stat. 140.)

DERIVATION

Act Feb. 26, 1926, ch. 27, § 300, 44 Stat. 69.

SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 300, 43 Stat. 303.

1921—Nov. 23, 1921, ch. 136, § 400, 42 Stat. 277.

1919—Feb. 24, 1919, ch. 18, § 400, 40 Stat. 1096.

1916—Sept. 8, 1916, ch. 463, § 200, 39 Stat. 777.

§ 931. Cross references—(a) "Transferee."

For definition of "transferee," see section 900 (e).

(b) "Resident."

For "resident" as including citizen with estate in China, see section 851.

(53 Stat. 140.)

SUBCHAPTER B.—ADDITIONAL ESTATE TAX

§ 935. Rate of tax.

(a) In addition to the estate tax imposed by section 810 or 860, there shall be imposed upon the transfer of the net estate of every decedent dying after the date of the enactment of this title, whether a citizen or resident of the United States or a non-resident not a citizen of the United States, a tax equal to the excess of—

(1) the amount of a tentative tax computed under subsection (b) of this section, over

(2) the amount of the tax imposed by section 810, in the case of a citizen or resident of the United States, or 860, in the case of a nonresident not a citizen of the United States, computed without regard to the provisions of this subchapter.

(b) The tentative tax referred to in subsection (a)

(1) of this section shall equal the sum of the following percentages of the value of the net estate:

Upon net estates not in excess of \$10,000, 2 per centum.

\$200 upon net estates of \$10,000; and upon net estates in excess of \$10,000 and not in excess of \$20,000, 4 per centum in addition of such excess.

\$600 upon net estates of \$20,000; and upon net estates in excess of \$20,000 and not in excess of \$30,000, 6 per centum in addition of such excess.

\$1,200 upon net estates of \$30,000; and upon net estates in excess of \$30,000 and not in excess of \$40,000, 8 per centum in addition of such excess.

\$2,000 upon net estates of \$40,000; and upon net estates in excess of \$40,000 and not in excess of \$50,000, 10 per centum in addition of such excess.

\$3,000 upon net estates of \$50,000; and upon net estates in excess of \$50,000 and not in excess of \$70,000, 12 per centum in addition of such excess.

\$5,400 upon net estates of \$70,000; and upon net estates in excess of \$70,000 and not in excess of \$100,000, 14 per centum in addition of such excess.

\$9,600 upon net estates of \$100,000; and upon net estates in excess of \$100,000 and not in excess of \$200,000, 17 per centum in addition of such excess.

\$26,600 upon net estates of \$200,000; and upon net estates in excess of \$200,000 and not in excess of \$400,000, 20 per centum in addition of such excess.

\$66,600 upon net estates of \$400,000; and upon net estates in excess of \$400,000 and not in excess of \$600,000, 23 per centum in addition of such excess.

\$112,600 upon net estates of \$600,000; and upon net estates in excess of \$600,000 and not in excess of \$800,000, 26 per centum in addition of such excess.

\$164,600 upon net estates of \$800,000; and upon net estates in excess of \$800,000 and not in excess of \$1,000,000, 29 per centum in addition of such excess.

\$222,600 upon net estates of \$1,000,000; and upon net estates in excess of \$1,000,000 and not in excess of \$1,500,000, 32 per centum in addition of such excess.

\$382,600 upon net estates of \$1,500,000; and upon net estates in excess of \$1,500,000 and not in excess of \$2,000,000, 35 per centum in addition of such excess.

\$557,600 upon net estates of \$2,000,000; and upon net estates in excess of \$2,000,000 and not in excess of \$2,500,000, 38 per centum in addition of such excess.

\$747,600 upon net estates of \$2,500,000; and upon net estates in excess of \$2,500,000 and not in excess of \$3,000,000, 41 per centum in addition of such excess.

\$952,600 upon net estates of \$3,000,000; and upon net estates in excess of \$3,000,000 and not in excess of \$3,500,000, 44 per centum in addition of such excess.

\$1,172,600 upon net estates of \$3,500,000; and upon net estates in excess of \$3,500,000 and not in excess of \$4,000,000, 47 per centum in addition of such excess.

\$1,407,600 upon net estates of \$4,000,000; and upon net estates in excess of \$4,000,000 and not in excess of \$4,500,000, 50 per centum in addition of such excess.

\$1,657,600 upon net estates of \$4,500,000; and upon net estates in excess of \$4,500,000 and not in excess of \$5,000,000, 53 per centum in addition of such excess.

\$1,922,600 upon net estates of \$5,000,000; and upon net estates in excess of \$5,000,000 and not in excess of \$6,000,000, 56 per centum in addition of such excess.

\$2,482,600 upon net estates of \$6,000,000; and upon net estates in excess of \$6,000,000 and not in excess of \$7,000,000, 59 per centum in addition of such excess.

\$3,072,600 upon net estates of \$7,000,000; and upon net estates in excess of \$7,000,000 and not in excess of \$8,000,000, 61 per centum in addition of such excess.

\$3,682,600 upon net estates of \$8,000,000; and upon net estates in excess of \$8,000,000 and not in excess of \$9,000,000, 63 per centum in addition of such excess.

\$4,312,600 upon net estates of \$9,000,000; and upon net estates in excess of \$9,000,000 and not in excess of \$10,000,000, 65 per centum in addition of such excess.

\$4,962,600 upon net estates of \$10,000,000; and upon net estates in excess of \$10,000,000 and not in excess of \$20,000,000, 67 per centum in addition of such excess.

\$11,662,600 upon net estates of \$20,000,000; and upon net estates in excess of \$20,000,000 and not in excess of \$50,000,000, 69 per centum in addition of such excess.

\$32,362,600 upon net estates of \$50,000,000; and upon net estates in excess of \$50,000,000, 70 per centum in addition of such excess.

(c) For the purposes of this section the value of the net estate shall be determined as provided in subchapter A, except that in lieu of the exemption of \$100,000 provided in section 812 (a), the exemption shall be \$40,000. (53 Stat. 141.)

#### DERIVATION

Act June 6, 1932, ch. 209, § 401 (a), (b), (c), 47 Stat. 243, as subsections (b), (c) were amended by act Aug. 30, 1935, ch. 829, § 201 (a), (b), 49 Stat. 1021-1022, act June 6, 1932, ch. 209, § 401 (b), was also amended by act May 10, 1934, ch. 277, § 405 (a), 48 Stat. 754.

#### § 936. Credits against tax.

(a) The credit provided in section 813 (b) (80 per centum credit), shall not be allowed in respect of such additional tax.

(b) (1) If a tax has been paid under chapter 4 on a gift, and thereafter upon the death of the donor any amount in respect of such gift is required to be included in the value of the gross estate of the decedent for the purposes of this subchapter, then there shall be credited against the tax imposed by section 935 the amount of the tax paid under chapter 4 with respect to so much of the property which constituted the gift as is included in the gross estate, except that the amount of such credit (A) shall not exceed an amount which bears the same ratio to the tax imposed by section 935 as the value (at the time of the gift or at the time of the death, whichever is lower) of so much of the property which constituted the gift as is included in the gross estate, bears to the value of the entire gross estate, and (B) shall not exceed the amount by which the gift tax paid under chapter 4 with respect to so much of the property as constituted the gift as is included in the gross estate, exceeds the amount of the credit under section 813 (b).

(2) For the purposes of paragraph (1), the amount of tax paid for any year under chapter 4 with respect to any property shall be an amount which bears the same ratio to the total tax paid for such year as the value of such property bears to the total amount of net gifts (computed without deduction

of the specific exemption) for such year. (53 Stat. 142.)

#### DERIVATION

Act June 6, 1932, ch. 209, § 402, 47 Stat. 245.

### § 937. Assessment, collection, and payment of tax.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, except that in the case of a citizen or resident of the United States a return shall be required if the value of the gross estate at the time of decedent's death exceeds the amount of the specific exemption provided in section 935 (c). (53 Stat. 143.)

#### DERIVATION

Act June 26, 1932, ch. 209, § 403, 47 Stat. 245, as amended by acts May 10, 1934, ch. 277, § 403 (f), 48 Stat. 758, Aug. 30, 1935, ch. 829, § 201 (c), 49 Stat. 1022, and May 28, 1938, ch. 289, § 502, 52 Stat. 564.

### § 938. Publicity of returns.

For provisions with respect to publicity of returns under this chapter, see subsection (a) (2) of section 55.

(53 Stat. 143.)

## SUBCHAPTER C.—DEFENSE TAX FOR FIVE YEARS

Subchapter C added by act June 25, 1940, ch. 419, title II, § 206, 54 Stat. 521

### § 951. Defense tax for five years.

In the case of a decedent dying after the date of the enactment of the Revenue Act of 1940<sup>1</sup> and before the expiration of five years after such date, the total amount of tax payable under this chapter shall be 10 per centum greater than the amount of tax which would be payable if computed without regard to this section. For the purposes of this section, the tax computed without regard to this section shall be such tax after the application of the credits provided for in section 813 and section 936. (Added June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, § 206, 54 Stat. 521.)

<sup>1</sup> June 25, 1940.

#### CROSS REFERENCE

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain government obligations, see note under section 757b of Title 31, Money and Finance.

## Chapter 4.—GIFT TAX

#### Sec.

- 1000. Imposition of tax.
- 1001. Computation of tax.
- 1002. Transfer for less than adequate and full consideration.
- 1003. Net gifts
- 1004. Deductions.
- 1005. Gifts made in property.
- 1006. Returns.
- 1007. Records and special returns.
- 1008. Payment of tax.
- 1009. Lien for tax.
- 1010. Examination of return and determination of tax.
- 1011. Definition of deficiency.
- 1012. Assessment and collection of deficiencies.
- 1013. Jeopardy assessments.
- 1014. Claims in abatement.

#### Sec.

- 1015. Bankruptcy and receiverships.
- 1016. Period of limitation upon assessment and collection.
- 1017. Suspension of running of statute.
- 1018. Addition to the tax in case of delinquent return.
- 1019. Additions to the tax in case of deficiency.
- 1020. Interest on extended payments.
- 1021. Interest on deficiencies.
- 1022. Interest on jeopardy assessments.
- 1023. Additions to the tax in case of nonpayment.
- 1024. Penalties.
- 1025. Transferred assets.
- 1026. Notice of fiduciary relationship.
- 1027. Refunds and credits.
- 1028. Laws made applicable.
- 1029. Rules and regulations.
- 1030. Definitions.
- 1031. Publicity of returns.

#### SIMILAR PROVISIONS

Similar provisions relating to Gift Taxes were contained in act June 2, 1924, ch. 234, §§ 319-324, 43 Stat. 313-316, which was repealed by act Feb. 26, 1926, ch. 27, § 1200, 44 Stat. 125.

### § 1000. Imposition of tax.

(a) For the calendar year 1940 and each calendar year thereafter a tax, computed as provided in section 1001, shall be imposed upon the transfer during such calendar year by any individual, resident or nonresident, of property by gift. Gift taxes for the calendar years 1932-1939, inclusive, shall not be affected by the provisions of this chapter, but shall remain subject to the applicable provisions of the Revenue Act of 1932, except as such provisions are modified by legislation enacted subsequent to the Revenue Act of 1932.

(b) The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible; but, in the case of a nonresident not a citizen of the United States, shall apply to a transfer only if the property is situated within the United States. (53 Stat. 144.)

#### DERIVATION

Act June 6, 1932, ch. 209, § 501 (a), (b), 47 Stat. 245, as subsection (a) was amended by act Aug. 30, 1935, ch. 829, § 301 (c), 49 Stat. 1025. Subsection (c) of act June 6, 1932, ch. 209, § 501, was repealed by act May 10, 1934, ch. 277, § 511, 48 Stat. 758.

### § 1001. Computation of tax.

(a) The tax for each calendar year shall be an amount equal to the excess of—

(1) a tax, computed in accordance with the Rate Schedule hereinafter set forth, on the aggregate sum of the net gifts for such calendar year and for each of the preceding calendar years, over

(2) a tax, computed in accordance with the said Rate Schedule, on the aggregate sum of the net gifts for each of the preceding calendar years.

#### RATE SCHEDULE

Upon net gifts not in excess of \$10,000, 1½ per centum.

\$150 upon net gifts of \$10,000; and upon net gifts in excess of \$10,000 and not in excess of \$20,000, 3 per centum in addition of such excess.

\$450 upon net gifts of \$20,000; and upon net gifts in excess of \$20,000 and not in excess of \$30,000, 4½ per centum in addition of such excess.

\$900 upon net gifts of \$30,000; and upon net gifts in excess of \$30,000 and not in excess of \$40,000, 6 per centum in addition of such excess.

\$1,500 upon net gifts of \$40,000; and upon net gifts in excess of \$40,000 and not in excess of \$50,000, 7½ per centum in addition of such excess.

\$2,250 upon net gifts of \$50,000; and upon net gifts in excess of \$50,000 and not in excess of \$70,000, 9 per centum in addition of such excess.

\$4,050 upon net gifts of \$70,000; and upon net gifts in excess of \$70,000 and not in excess of \$100,000, 10½ per centum in addition of such excess.

\$7,200 upon net gifts of \$100,000; and upon net gifts in excess of \$100,000 and not in excess of \$200,000, 12¾ per centum in addition of such excess.

\$19,950 upon net gifts of \$200,000; and upon net gifts in excess of \$200,000 and not in excess of \$400,000, 15 per centum in addition of such excess.

\$49,950 upon net gifts of \$400,000; and upon net gifts in excess of \$400,000 and not in excess of \$600,000, 17¼ per centum in addition of such excess.

\$84,450 upon net gifts of \$600,000; and upon net gifts in excess of \$600,000 and not in excess of \$800,000, 19½ per centum in addition of such excess.

\$123,450 upon net gifts of \$800,000; and upon net gifts in excess of \$800,000 and not in excess of \$1,000,000, 21¾ per centum in addition of such excess.

\$166,950 upon net gifts of \$1,000,000; and upon net gifts in excess of \$1,000,000 and not in excess of \$1,500,000, 24 per centum in addition of such excess.

\$286,950 upon net gifts of \$1,500,000; and upon net gifts in excess of \$1,500,000 and not in excess of \$2,000,000, 26¼ per centum in addition of such excess.

\$418,200 upon net gifts of \$2,000,000; and upon net gifts in excess of \$2,000,000 and not in excess of \$2,500,000, 28½ per centum in addition of such excess.

\$560,700 upon net gifts of \$2,500,000; and upon net gifts in excess of \$2,500,000 and not in excess of \$3,000,000, 30¾ per centum in addition of such excess.

\$714,450 upon net gifts of \$3,000,000; and upon net gifts in excess of \$3,000,000 and not in excess of \$3,500,000, 33 per centum in addition of such excess.

\$879,450 upon net gifts of \$3,500,000; and upon net gifts in excess of \$3,500,000 and not in excess of \$4,000,000, 35¼ per centum in addition of such excess.

\$1,055,700 upon net gifts of \$4,000,000; and upon net gifts in excess of \$4,000,000 and not in excess of \$4,500,000, 37½ per centum in addition of such excess.

\$1,243,200 upon net gifts of \$4,500,000; and upon net gifts in excess of \$4,500,000 and not in excess of \$5,000,000, 39¾ per centum in addition of such excess.

\$1,441,950 upon net gifts of \$5,000,000; and upon net gifts in excess of \$5,000,000 and not in excess of \$6,000,000, 42 per centum in addition of such excess.

\$1,861,950 upon net gifts of \$6,000,000; and upon net gifts in excess of \$6,000,000 and not in excess of \$7,000,000, 44¼ per centum in addition of such excess.

\$2,304,450 upon net gifts of \$7,000,000; and upon net gifts in excess of \$7,000,000 and not in excess of \$8,000,000, 45¾ per centum in addition of such excess.

\$2,761,950 upon net gifts of \$8,000,000; and upon net gifts in excess of \$8,000,000 and not in excess of \$9,000,000, 47¼ per centum in addition of such excess.

\$3,234,450 upon net gifts of \$9,000,000; and upon net gifts in excess of \$9,000,000 and not in excess of \$10,000,000, 48¾ per centum in addition of such excess.

\$3,721,950 upon net gifts of \$10,000,000; and upon net gifts in excess of \$10,000,000 and not in excess of \$20,000,000, 50¼ per centum in addition of such excess.

\$8,746,950 upon net gifts of \$20,000,000; and upon net gifts in excess of \$20,000,000 and not in excess of \$50,000,000, 51¾ per centum in addition of such excess.

\$24,271,950 upon net gifts of \$50,000,000; and upon net gifts in excess of \$50,000,000, 52½ per centum in addition of such excess.

(b) For the purpose of this section the term "preceding calendar years" means the calendar year 1932 and all calendar years intervening between the calendar year 1932 and the calendar year for which the tax is being computed.

(c) Cross reference.

For definition of "calendar year," see section 1030 (a).

(d) Defense tax for 1940-1945.

Despite the provisions of subsection (a)—

(1) The tax for each of the calendar years 1941 to 1945, both inclusive, shall be an amount equal to the excess of—

(A) 110 per centum of a tax, computed in accordance with the Rate Schedule hereinbefore set forth, on the aggregate sum of the net gifts for such calendar year and for each of the preceding calendar years, over

(B) 110 per centum of a tax, computed in accordance with the said Rate Schedule, on the aggregate sum of the net gifts for each of the preceding calendar years.

(2) The tax for the calendar year 1940 shall be the sum of (A) the tax computed under subsection (a), plus (B) an amount which bears the same ratio to 10 per centum of the tax so computed as the amount of gifts made after the date of the enactment of the Revenue Act of 1940 bears to the total amount of gifts made during the year. For the purposes of this paragraph, the term "gifts" does not include gifts which, under section 1003 (b) (2), are not to be included in computing the total amount of gifts made during the calendar year 1940, or gifts which, in the case of a citizen or resident, are allowed as a deduction by section 1004 (a) (2), or gifts which, in the case of a nonresident not a citizen of the United States, are allowed as a deduction by section 1004 (b). (53 Stat. 144; June 25, 1940, 11:45 a. m. E. S. T., ch. 419, title II, § 207, 54 Stat. 521.)

#### DERIVATION

Section, except subsection (c), was derived from act June 6, 1932, ch. 209, § 502, 47 Stat. 246, as subsection (a) was amended by act Aug. 30, 1935, ch. 829, § 301 (a), (c), 49 Stat. 1023. Act June 6, 1932, ch. 209, § 502, was also amended by act May 10, 1934, ch. 277, § 520 (a), (b), 48 Stat. 761.

## 1940 AMENDMENT

Subsection (d) was added by act June 25, 1940, cited to text.

## CROSS REFERENCE

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain government obligations, see note under section 757b of Title 31, Money and Finance.

### § 1002. Transfer for less than adequate and full consideration.

Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this chapter, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year. (53 Stat. 146.)

## DERIVATION

Act June 6, 1932, ch. 209, § 503. 47 Stat. 247.

### § 1003. Net gifts—(a) General definition.

The term "net gifts" means the total amount of gifts made during the calendar year, less the deductions provided in section 1004.

#### (b) Exclusions from gifts—(1) Gifts prior to 1939.

In the case of gifts (other than of future interests in property) made to any person by the donor during the calendar year 1938 and previous calendar years, the first \$5,000 of such gifts to such person shall not, for the purposes of subsection (a), be included in the total amount of gifts made during such year.

#### (2) Gifts after 1938.

In the case of gifts (other than gifts in trust or of future interests in property) made to any person by the donor during the calendar year 1939 and subsequent calendar years, the first \$4,000 of such gifts to such person shall not, for the purposes of subsection (a), be included in the total amount of gifts made during such year. (53 Stat. 146.)

## DERIVATION

Act June 6, 1932, ch. 209, § 504, 47 Stat. 247, as subsection (b) was amended by act May 28, 1938, ch. 289, § 505, 52 Stat. 565.

### § 1004. Deductions.

In computing net gifts for the calendar year 1939 and preceding calendar years, there shall be allowed (except as otherwise provided in paragraph (1) of subsection (a)) such deductions as are provided for under the gift tax laws applicable to the years in which the gifts were made.

In computing net gifts for the calendar year 1940 and subsequent calendar years, there shall be allowed as deductions:

#### (a) Residents.

In the case of a citizen or resident—

##### (1) Specific exemption.

An exemption of \$40,000, less the aggregate of the amounts claimed and allowed as specific exemption in the computation of gift taxes for the calendar year 1932 and all calendar years intervening between that calendar year and the calendar year for which

the tax is being computed under the laws applicable to such years. This exemption shall be applied in all computations in respect of the calendar year 1939 and previous calendar years for the purpose of computing the tax for the calendar year 1940 or any calendar year thereafter.

##### (2) Charitable, etc., gifts.

The amount of all gifts made during such year to or for the use of—

(A) the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(B) a corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals; no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(C) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(D) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual;

(E) the special fund for vocational rehabilitation authorized by section 12 of the World War Veterans' Act, 1924, 43 Stat. 611 (U. S. C., title 38, § 440).

##### (b) Nonresidents.

In the case of a nonresident not a citizen of the United States, the amount of all gifts made during such year to or for the use of—

(1) the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals; no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(3) a trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; but only if such gifts are to be used within the United States exclusively for such purposes;

(4) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used within the United States exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(5) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual;

(6) the special fund for vocational rehabilitation authorized by section 12 of the World War Veterans' Act, 1924, 43 Stat. 611 (U. S. C., Title 38, § 440).

(c) **Extent of deductions.**

The deductions provided in subsection (a) (2) or (b) shall be allowed only to the extent that the gifts therein specified are included in the amount of gifts against which such deductions are applied. (53 Stat. 146.)

**DERIVATION**

Subsection (a) (1) was derived from act June 6, 1932, ch. 209, § 505 (a) (1), 47 Stat. 247, as amended by act Aug. 30, 1935, ch. 829, § 301 (b), (c), 49 Stat. 1025.

Subsection (a) (2) (B) was derived from act June 6, 1932, ch. 209, § 505 (a), (2) (B), 47 Stat. 247, as amended by act May 10, 1934, ch. 277, § 517 (a), 48 Stat. 760.

Subsections (a) (2) (A), (a) (2) (C-E), (b) (1), (b) (4-6), (c), were derived from act June 6, 1932, ch. 209, § 505 (a) (2) (A), (a) (C-E), (b) (1), (b) (4-6), (c), 47 Stat. 247.

Subsection (b) (2), (b) (3) was derived from act June 6, 1932, ch. 209, § 505 (b) (2), (b) (3), 47 Stat. 247, as amended by act May 10, 1934, ch. 277, § 517 (a), (b), 48 Stat. 760.

**§ 1005. Gifts made in property.**

If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift. (53 Stat. 148.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 506, 47 Stat. 248.

**§ 1006. Returns—(a) Requirement.**

Any individual who within the calendar year 1940 or any calendar year thereafter makes any transfers by gift (except those which under section 1003 are not to be included in the total amount of gifts for such year) shall make a return under oath in duplicate. The return shall set forth (1) each gift made during the calendar year which under section 1003 is to be included in computing net gifts; (2) the deductions claimed and allowable under section 1004; (3) the net gifts for each of the preceding calendar years; and (4) such further information as may be required by regulations made pursuant to law.

(b) **Time and place for filing.**

The return shall be filed on or before the 15th day of March following the close of the calendar year with the collector for the district in which is located the legal residence of the donor, or if he has no legal residence in the United States, then (unless the Commissioner designates another district) with the collector at Baltimore, Maryland. (53 Stat. 148.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 507, 47 Stat. 248.

**§ 1007. Records and special returns—(a) By donor.**

Every person liable to any tax imposed by this chapter or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(b) **To determine liability to tax.**

Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records, as the Commissioner deems sufficient to show whether or not such person is liable to tax under this chapter. (53 Stat. 148.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 508, 47 Stat. 249.

**§ 1008. Payment of tax—(a) Time of payment.**

The tax imposed by this chapter shall be paid by the donor on or before the 15th day of March following the close of the calendar year.

(b) **Extension of time for payment.**

At the request of the donor, the Commissioner may extend the time for payment of the amount determined as the tax by the donor, for a period not to exceed six months from the date prescribed for the payment of the tax. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

(c) **Voluntary advance payment.**

A tax imposed by this chapter, may be paid, at the election of the donor, prior to the date prescribed for its payment.

(d) **Fractional parts of cent.**

In the payment of any tax under this chapter a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(e) **Receipts.**

The collector to whom any payment of any gift tax is made shall, upon request, grant to the person making such payment a receipt therefor. (53 Stat. 148.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 509, 47 Stat. 249.

**§ 1009. Lien for tax.**

The tax imposed by this chapter shall be a lien upon all gifts made during the calendar year, for ten years from the time the gifts are made. If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. Any part of the property comprised in the gift sold by the donee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien herein imposed and the lien, to the extent of the value of such gift, shall attach to all the property of the donee (including after-acquired property)



except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth. If the Commissioner is satisfied that the tax liability has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all of the property from the lien herein imposed. (53 Stat. 149.)

DERIVATION

Act June 6, 1932, ch. 209, § 510, 47 Stat. 249.

**§ 1010. Examination of return and determination of tax.**

As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax. (53 Stat. 149.)

DERIVATION

Act June 6, 1932, ch. 209, § 511, 47 Stat. 250.

**§ 1011. Definition of deficiency.**

As used in this chapter in respect of the tax imposed by this chapter the term "deficiency" means—

(1) The amount by which the tax imposed by this chapter exceeds the amount shown as the tax by the donor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the donor upon his return, or if no return is made by the donor, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax. (53 Stat. 149.)

DERIVATION

Act June 6, 1932, ch. 209, § 512, 47 Stat. 250.

**§ 1012. Assessment and collection of deficiencies—**  
**(a) (1) Petition to Board of Tax Appeals.**

If the Commissioner determines that there is a deficiency in respect of the tax imposed by this chapter, the Commissioner is authorized to send notice of such deficiency to the donor by registered mail. Within 90 days after such notice is mailed (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day), the donor may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this chapter and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the donor, nor until the expiration of such 90-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3653 (a) the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

**(2) Cross references.**

For exceptions to the restrictions imposed by this subsection see—

Subsection (d) of this section, relating to waivers by the donor;

Subsection (f) of this section, relating to notifications of mathematical errors appearing upon the face of the return;

Section 1013, relating to jeopardy assessments;

Section 1015, relating to bankruptcy and receiverships; and

Section 1145, relating to assessment or collection of the amount of the deficiency determined by the Board pending court review.

**(b) Collection of deficiency found by Board.**

If the donor files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the decision of the Board which has become final shall be assessed or be collected by distraint or by proceeding in court with or without assessment.

**(c) Failure to file petition.**

If the donor does not file a petition with the Board within the time prescribed in subsection (a) the deficiency, notice of which has been mailed to the donor, shall be assessed, and shall be paid upon notice and demand from the collector.

**(d) Waiver of restrictions.**

The donor shall at any time have the right, by a signed notice in writing filed with the Commissioner, to waive the restrictions provided in subsection (a) on the assessment and collection of the whole or any part of the deficiency.

**(e) Increase of deficiency after notice mailed.**

The Board shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the donor, and to determine whether any additional amount or addition to the tax should be assessed, if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

**(f) Further deficiency letters restricted.**

If the Commissioner has mailed to the donor notice of a deficiency as provided in subsection (a) of this section, and the donor files a petition with the Board within the time prescribed in such subsection, the Commissioner shall have no right to determine any additional deficiency in respect of the same calendar year, except in the case of fraud, and except as provided in subsection (e) of this section, relating to assertion of greater deficiencies before the Board, or in section 1013 (c), relating to the making of jeopardy assessments. If the donor is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered (for the purposes of this subsection, or of subsection (a) of this section, pro-

hibiting assessment and collection until notice of deficiency has been mailed, or of section 1027 (c), prohibiting credits or refunds after petition to the Board of Tax Appeals) as a notice of a deficiency, and the donor shall have no right to file a petition with the Board based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a) of this section.

**(g) Jurisdiction over other calendar years.**

The Board in redetermining a deficiency in respect of any calendar year shall consider such facts with relation to the taxes for other calendar years as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other calendar year has been overpaid or underpaid.

**(h) Final decisions of Board.**

For the purposes of this chapter the date on which a decision of the Board becomes final shall be determined according to the provisions of section 1140.

**(i) Extension of time for payment of deficiencies.**

Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the donor the Commissioner, under regulations prescribed by the Commissioner, with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax), may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of eighteen months, and, in exceptional cases, for a further period not in excess of twelve months. If an extension is granted, the Commissioner may require the donor to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties, as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension.

**(j) Address for notice of deficiency.**

In the absence of notice to the Commissioner under section 1026 (a) of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by this chapter, if mailed to the donor at his last known address, shall be sufficient for the purposes of this chapter even if such donor is deceased, or is under a legal disability. (53 Stat. 149.)

**DERIVATION**

Subsection (a) was derived from act June 6, 1932, ch 209, § 513 (a), 47 Stat. 250, as amended by act May 10, 1934, ch. 277, § 501, 48 Stat. 755.

Subsections (b)–(h), (j), were derived from act June 6, 1932, ch. 209, § 513 (b)–(h), (j), 47 Stat. 250–251, 252.

Subsection (i) was derived from act June 6, 1932, ch. 209, § 513 (i), 47 Stat. 251, as amended by act May 28, 1938, ch 289, § 816, 52 Stat. 278.

**§ 1013. Jeopardy assessments—(a) Authority for making.**

If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall immediately assess such deficiency (together with all interest, additional amounts, or

additions to the tax provided for by law) and notice and demand shall be made by the collector for the payment thereof.

**(b) Deficiency letters.**

If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 1012 (a), then the Commissioner shall mail a notice under such subsection within 60 days after the making of the assessment.

**(c) Amount assessable before decision of Board.**

The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the donor, despite the provisions of section 1012 (f) prohibiting the determination of additional deficiencies, and whether or not the donor has theretofore filed a petition with the Board of Tax Appeals. The Commissioner may, at any time before the decision of the Board is rendered, abate such assessment, or any unpaid portion thereof, to the extent that he believes the assessment to be excessive in amount. The Commissioner shall notify the Board of the amount of such assessment, or abatement, if the petition is filed with the Board before the making of the assessment or is subsequently filed, and the Board shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

**(d) Amount assessable after decision of Board.**

If the jeopardy assessment is made after the decision of the Board is rendered such assessment may be made only in respect of the deficiency determined by the Board in its decision.

**(e) Expiration of right to assess.**

A jeopardy assessment may not be made after the decision of the Board has become final or after the donor has filed a petition for review of the decision of the Board.

**(f) Bond to stay collection.**

When a jeopardy assessment has been made the donor, within 10 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in section 1022 or 1023 (b) (4). If any portion of the jeopardy assessment is abated by the Commissioner before the decision of the Board is rendered, the bond shall, at the request of the taxpayer, be proportionately reduced.

**(g) Same—Further conditions.**

If the bond is given before the donor has filed his petition with the Board under section 1012 (a), the bond shall contain a further condition that if a petition is not filed within the period provided in such subsection, then the amount the collection of

which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subsection.

**(h) Waiver of stay.**

Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The donor shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the donor, be proportionately reduced. If the Board determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Board is rendered the bond shall, at the request of the donor, be proportionately reduced.

**(i) Collection of unpaid amounts.**

When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded as provided in section 1027, without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector. (53 Stat. 151.)

**DERIVATION**

Subsections (a), (b), (d), (e), (g)–(i), were derived from act June 6, 1932, ch. 209, § 514 (a), (b), (d), (e), (g)–(i), 47 Stat. 252.

Subsections (c), (f), were derived from act June 6, 1932, ch. 209, § 514 (c), (f), 47 Stat. 252, as amended by act May 28, 1938, ch. 289, § 819 (c), (e), 52 Stat. 580.

**§ 1014. Claims in abatement.**

No claim in abatement shall be filed in respect of any assessment in respect of any tax imposed by this chapter. (53 Stat. 152.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 515, 47 Stat. 253.

**§ 1015. Bankruptcy and receiverships—(a) Immediate assessment.**

Upon the adjudication of bankruptcy of any donor in any bankruptcy proceeding or the appointment of a receiver for any donor in any receivership proceeding before any court of the United States or of any State or Territory or of the District of Columbia, any deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) determined by the Commissioner in respect of a tax imposed by this chapter upon such donor shall, despite the restrictions imposed by section 1012 (a)

upon assessments be immediately assessed if such deficiency has not theretofore been assessed in accordance with law. Claims for the deficiency and such interest, additional amounts and additions to the tax may be presented, for adjudication in accordance with law, to the court before which the bankruptcy or receivership proceeding is pending, despite the pendency of proceedings for the redetermination of the deficiency in pursuance of a petition to the Board; but no petition for any such redetermination shall be filed with the Board after the adjudication of bankruptcy or the appointment of the receiver.

**(b) Unpaid claims.**

Any portion of the claim allowed in such bankruptcy or receivership proceeding which is unpaid shall be paid by the donor upon notice and demand from the collector after the termination of such proceeding, and may be collected by distraint or proceeding in court within six years after termination of such proceeding. Extensions of time for such payment may be had in the same manner and subject to the same provisions and limitations as are provided in sections 1012 (i), 1020 (b), and 1023 (b) (3) in the case of a deficiency in a tax imposed by this chapter. (53 Stat. 152.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 516, 47 Stat. 253.

**§ 1016. Period of limitation upon assessment and collection—(a) General rule.**

Except as provided in subsection (b), the amount of taxes imposed by this chapter shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of three years after the return was filed.

**(b) Exceptions—(1) False return or no return.**

In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

**(2) Collection after assessment.**

Where the assessment of any tax imposed by this chapter has been made within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the donor. (53 Stat. 153.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 517, 47 Stat. 254.

**§ 1017. Suspension of running of statute.**

The running of the statute of limitations provided in section 1016 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under section 1012 (a)) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court (and

in any event, if a proceeding in respect of the deficiency is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter. (53 Stat. 153.)

## DERIVATION

Act June 6, 1932, ch. 209, § 518, 47 Stat. 254.

### § 1018. Addition to the tax in case of delinquent return.

For addition to the tax in case of failure to make and file a return required by this chapter within the time prescribed by law or prescribed by the Commissioner in pursuance of the law, see section 3612 (d) (1).

(53 Stat. 153.)

### § 1019. Additions to the tax in case of deficiency—(a) Negligence.

If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, 5 per centum of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of section 1021, relating to interest on deficiencies, shall not be applicable.

#### (b) Fraud.

If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid, in lieu of the 50 per centum addition to the tax provided in section 3612 (d) (2). (53 Stat. 153.)

## DERIVATION

Act June 6, 1932, ch. 209, § 520, 47 Stat. 254.

### § 1020. Interest on extended payments—(a) Tax shown on return.

If the time for payment of the amount determined as the tax by the donor is extended under the authority of section 1008 (b), there shall be collected as a part of such amount, interest thereon at the rate of 6 per centum per annum from the date when such payment should have been made if no extension had been granted, until the expiration of the period of the extension.

#### (b) Deficiency.

In case an extension for the payment of a deficiency is granted, as provided in section 1012 (1), there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. (53 Stat. 154.)

## DERIVATION

Act June 6, 1932, ch. 209, § 521, 47 Stat. 255.

### § 1021. Interest on deficiencies.

Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the due date of the tax to the date the deficiency is assessed, or, in the case of a waiver under

section 1012 (d), to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier. (53 Stat. 154.)

## DERIVATION

Act June 6, 1932, ch. 209, § 522, 47 Stat. 255.

### § 1022. Interest on jeopardy assessments.

In the case of the amount collected under section 1013 (f) there shall be collected at the same time as such amount, and as a part of the tax, interest at the rate of 6 per centum per annum upon such amount from the date of the jeopardy notice and demand to the date of notice and demand under section 1013 (1), or, in the case of the amount collected in excess of the amount of the jeopardy assessment, interest as provided in section 1021. (53 Stat. 154.)

## DERIVATION

Section derived from act June 6, 1932, ch. 209, § 523, 47 Stat. 255.

### § 1023. Additions to the tax in case of nonpayment—(a) Tax shown on return—(1) Payment not extended.

Where the amount determined by the donor as the tax imposed by this chapter, or any part of such amount, is not paid on the due date of the tax, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 6 per centum per annum from the due date until it is paid.

#### (2) Payment extended.

Where an extension of time for payment of the amount so determined as the tax by the donor has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under section 1020 (a), is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subsection, interest at the rate of 6 per centum per annum shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

#### (b) Deficiency—(1) Payment not extended.

Where a deficiency, or any interest assessed in connection therewith under section 1021, or any addition to the tax provided for in section 3612 (d), is not paid in full within 10 days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid.

#### (2) Filing of jeopardy bond.

If a bond is filed, as provided in section 1013, the provisions of paragraph (1) of this subsection shall not apply to the amount covered by the bond.

#### (3) Payment extended.

If the part of the deficiency the time for payment of which is extended as provided in section 1012 (1) is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 6 per centum per annum for the period from the time fixed by the terms of the extension for its payment until

it is paid, and no other interest shall be collected on such unpaid amount for such period.

**(4) Jeopardy assessment—Payment stayed by bond.**

If the amount included in the notice and demand from the collector under section 1013 (1) is not paid in full within 10 days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid.

**(5) Interest in case of bankruptcy and receiverships.**

If the unpaid portion of the claim allowed in a bankruptcy or receivership proceeding, as provided in section 1015, is not paid in full within 10 days from the date of notice and demand from the collector, then there shall be collected as a part of such amount interest upon the unpaid portion thereof at the rate of 6 per centum per annum from the date of such notice and demand until payment. (53 Stat. 154.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 524, 47 Stat. 255.

**§ 1024. Penalties.**

(a) Any person required under this chapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this chapter, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, on conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution. (53 Stat. 155.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 525, 47 Stat. 256.

**§ 1025. Transferred assets—(a) Method of collection.**

The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in the tax imposed by this chapter (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

**(1) Transferees.**

The liability, at law or in equity, of a transferee of property of a donor, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed by this chapter.

**(2) Fiduciaries.**

The liability of a fiduciary under section 3467 of the Revised Statutes (U. S. C., title 31, § 192) in respect of the payment of any such tax from the estate of the donor.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

**(b) Period of limitation.**

The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the donor.

(2) If a court proceeding against the donor for the collection of the tax has been begun within the period provided in paragraph (1),—then within one year after return of execution in such proceeding.

**(c) Period for assessment against donor.**

For the purposes of this section, if the donor is deceased, the period of limitation for assessment against the donor shall be the period that would be in effect had the death not occurred.

**(d) Suspension of running of statute of limitations.**

The running of the statute of limitations upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under section 1012 (a) to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.

**(e) Prohibition of suits to restrain enforcement of liability of transferee or fiduciary.**

No suit shall be maintained in any court for the purpose of restraining the assessment or collection of (1) the amount of the liability, at law or in equity, of a transferee of property of a donor in respect of any gift tax, or (2) the amount of the liability of a fiduciary under section 3467 of the Revised Statutes (U. S. C., Title 31, § 192) in respect of any such tax.

**(f) Definition of "transferee."**

As used in this section the term "transferee" includes donee, heir, legatee, devisee, and distributee.

**(g) Address for notice of liability.**

In the absence of notice to the Commissioner under section 1026 (b) of the existence of a fiduciary relationship, notice of liability enforceable under this section in respect of a tax imposed by this chapter, if mailed to the person subject to the liability at his last known address, shall be sufficient for the purposes of this chapter even if such person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence. (53 Stat. 155.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 526, 47 Stat. 256.

**§ 1026. Notice of fiduciary relationship—(a) Fiduciary of donor.**

Upon notice to the Commissioner that any person is acting in a fiduciary capacity such fiduciary shall assume the powers, rights, duties, and privileges of the donor in respect of a tax imposed by this chapter (except as otherwise specifically provided and except that the tax shall be collected from the estate of the donor), until notice is given that the fiduciary capacity has terminated.

**(b) Fiduciary of transferee.**

Upon notice to the Commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 1025, the fiduciary shall assume, on behalf of such person, the powers, rights, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person), until notice is given that the fiduciary capacity has terminated.

**(c) Manner of notice.**

Notice under subsection (a) or (b) shall be given in accordance with regulations prescribed by the Commissioner with the approval of the Secretary. (53 Stat. 156.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 527, 47 Stat. 257.

**§ 1027. Refunds and credits—(a) Authorization.**

Where there has been an overpayment of any tax imposed by this chapter, the amount of such overpayment shall be credited against any gift tax then due from the taxpayer, and any balance shall be refunded immediately to the taxpayer.

**(b) Limitation on allowance—(1) Period of limitation.**

No such credit or refund shall be allowed or made after three years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer.

**(2) Limit on amount of credit or refund.**

The amount of the credit or refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the three years immediately preceding the allowance of the credit or refund.

**(c) Effect of petition to Board.**

If the Commissioner has mailed to the taxpayer a notice of deficiency under section 1012 (a) and if the taxpayer files a petition with the Board of Tax Appeals within the time prescribed in such subsection, no credit or refund in respect of the tax for the calendar year in respect of which the Commissioner has determined the deficiency shall be allowed or made and no suit by the taxpayer for the recovery of any part of such tax shall be instituted in any court except—

(1) As to overpayments determined by a decision of the Board which has become final; and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the Board which has become final; and

(3) As to any amount collected after the period of limitation upon the beginning of distraint or a pro-

ceeding in court for collection has expired; but in any such claim for credit or refund or in any such suit for refund the decision of the Board which has become final, as to whether such period has expired before the notice of deficiency was mailed, shall be conclusive.

**(d) Overpayment found by Board.**

If the Board finds that there is no deficiency and further finds that the taxpayer has made an overpayment of tax in respect of the taxable year in respect of which the Commissioner determined the deficiency, the Board shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Board has become final, be credited or refunded to the taxpayer. No such credit or refund shall be made of any portion of the tax unless the Board determines as part of its decision that such portion was paid within three years before the filing of the claim or the filing of the petition, whichever is earlier, or that such portion was paid after the mailing of the notice of deficiency. (53 Stat. 156.)

**DERIVATION**

Subsections (a)–(c) were derived from act June 6, 1932, ch. 209, § 528 (a)–(c), 47 Stat. 258.

Subsection (d) was derived from act June 6, 1932, ch. 209, § 528 (d), 47 Stat. 25, as amended by acts May 10, 1934, ch. 277, § 504 (b), 48 Stat. 756, and May 28, 1938, ch. 289, § 809 (b), 52 Stat. 575.

**§ 1028. Laws made applicable.**

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this chapter. (53 Stat. 157.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 529, 47 Stat. 258.

**§ 1029. Rules and regulations.**

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter. (53 Stat. 157.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 530, 47 Stat. 259.

**§ 1030. Definitions.**

For the purposes of this chapter—

**(a) Calendar year.**

The term "calendar year" includes only the calendar year 1932 and succeeding calendar years, and, in the case of the calendar year 1932, includes only the portion of such year after June 6, 1932.

**(b) Property within the United States.**

Stock in a domestic corporation owned and held by a nonresident shall be deemed property situated within the United States. (53 Stat. 157.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 531, 47 Stat. 259.

**§ 1031. Publicity of returns.**

For provisions with respect to publicity of returns under this chapter, see subsection (a) (2) of section 55.

(53 Stat. 157.)

**Chapter 5.—BOARD OF TAX APPEALS****SUBCHAPTER A.—ORGANIZATION, JURISDICTION AND PROCEDURE****PART I.—ORGANIZATION AND JURISDICTION****Sec.**

- 1100. Status.
- 1101. Jurisdiction.
- 1102. Membership.
- 1103. Organization.
- 1104. Offices.
- 1105. Times and places of meetings.

**PART II.—PROCEDURE**

- 1110. Fee for filing petition.
- 1111. Rules of practice, procedure, and evidence.
- 1112. Burden of proof in fraud cases.
- 1113. Service of process.
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- 1115. Witness fees.
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**PART III.—MISCELLANEOUS PROVISIONS**

- 1130. Employees.
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**SUBCHAPTER B.—COURT REVIEW OF BOARD DECISIONS**

- 1140. Date when Board decision becomes final.
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- 1143. Change of Commissioner.
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- 1146. Refund, credit, or abatement of amounts disallowed.

**SUBCHAPTER A.—ORGANIZATION, JURISDICTION AND PROCEDURE****PART I.—ORGANIZATION AND JURISDICTION****§ 1100. Status.**

The Board of Tax Appeals (hereinafter referred to as the "Board") shall be continued as an independent agency in the Executive Branch of the Government. (53 Stat. 158.)

**DERIVATION**

Act June 2, 1924, ch. 234, § 900, as added by act Feb. 26, 1926, ch. 27, § 1000, 44 Stat. 105.

**§ 1101. Jurisdiction.**

The Board and its divisions shall have such jurisdiction as is conferred on them by chapters 1, 2, 3, and 4 of this title, by Title II and Title III of the Revenue Act of 1926, 44 Stat. 9, or by laws enacted subsequent to February 26, 1926. (53 Stat. 158.)

**DERIVATION**

Section derived from act June 2, 1924, ch. 234, § 904, as added by act Feb. 26, 1926, ch. 27, § 1000, 44 Stat. 106.

**§ 1102. Membership—(a) Number.**

The Board shall be composed of 16 members.

**(b) Appointment.**

Members of the Board shall be appointed by the President, by and with the advice and consent of the

Senate, solely on the grounds of fitness to perform the duties of the office.

**(c) Salary.**

Each member shall receive salary at the rate of \$10,000 per annum.

**(d) Expenses for travel and subsistence.**

The members of the Board shall receive necessary traveling expenses, and expenses actually incurred for subsistence while traveling on duty and away from their designated stations, subject to the same limitations in amount as are now or may hereafter be applicable to the United States Customs Court.

**(e) Term of office.**

The terms of office of the sixteen members first taking office after June 1, 1926, shall expire, as designated by the President at the time of nomination, four at the end of the sixth year, four at the end of the eighth year, four at the end of the tenth year, and four at the end of the twelfth year, after June 2, 1926. The terms of office of all successors shall expire twelve years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor.

**(f) Removal from office.**

Members of the Board may be removed by the President, after notice and opportunity for public hearing, for inefficiency, neglect of duty, or malfeasance in office, but for no other cause.

**(g) Disbarment of removed members.**

A member of the Board removed from office in accordance with subsection (f) shall not be permitted at any time to practice before the Board. (53 Stat. 159.)

**DERIVATION**

Subsection (a) was derived from act June 2, 1924, ch. 234, § 900, as added by act Feb. 26, 1926, ch. 27, § 1000, 44 Stat. 106.

Subsections (b), (c), (e), (f), were derived from act June 2, 1924, ch. 234, § 901 (a) (b), as added by act Feb. 26, 1926, ch. 27, § 1000, 44 Stat. 106.

Subsection (d) was derived from act June 2, 1924, ch. 234, § 910, as added by act Feb. 26, 1926, ch. 27, 44 Stat. 104, and amended by act May 28, 1926, ch. 411, § 1, 44 Stat. 669.

Subsection (g) was derived from act June 2, 1924, ch. 234, § 902, as added by act Feb. 26, 1926, ch. 27, § 1000, 44 Stat. 106.

**§ 1103. Organization—(a) Seal.**

The Board shall have a seal which shall be judicially noticed.

**(b) Designation of chairman.**

The Board shall at least biennially designate a member to act as chairman.

**(c) Divisions.**

The chairman may from time to time divide the Board into divisions of one or more members, assign the members of the Board thereto, and in case of a division of more than one member, designate the chief thereof. If a division, as a result of a vacancy or the absence or inability of a member assigned thereto to serve thereon, is composed of less than the



number of members designated for the division, the chairman may assign other members to the division or direct the division to proceed with the transaction of business without awaiting any additional assignment of members thereto.

**(d) Quorum.**

A majority of the members of the Board or of any division thereof shall constitute a quorum for the transaction of the business of the Board or of the division, respectively. A vacancy in the Board or in any division thereof shall not impair the powers nor affect the duties of the Board or division nor of the remaining members of the Board or division, respectively. (53 Stat. 159.)

**DERIVATION**

Subsections (a), (b), were derived from act June 2, 1924, ch. 234, § 903, as added by act Feb. 26, 1926, ch. 27, § 1000, 44 Stat. 106.

Subsection (c) was derived from act June 2, 1924, ch. 234, § 906 (a), as amended by act May 29, 1928, ch. 852, § 601, 45 Stat. 871.

Subsection (d) was derived from act June 2, 1924, ch. 234, § 905, as added by act Feb. 26, 1926, ch. 27, § 1000, 44 Stat. 106.

**§ 1104. Offices.**

The principal office of the Board shall be in the District of Columbia, but the Board or any of its divisions may sit at any place within the United States. The Secretary of the Treasury shall provide the Board with suitable rooms in courthouses or other buildings when necessary for hearings by the Board, or any division thereof, outside the District of Columbia. (53 Stat. 159.)

**DERIVATION**

Act June 2, 1924, ch. 234, § 907 (e), (f), as added by act Feb. 26, 1926, ch. 27, § 1000, 44 Stat. 108.

**§ 1105. Times and places of meetings.**

The times and places of the meetings of the Board and of its divisions shall be prescribed by the chairman with a view to securing reasonable opportunity to taxpayers to appear before the Board or any of its divisions, with as little inconvenience and expense to taxpayers as is practicable. (53 Stat. 159.)

**DERIVATION**

Act June 2, 1924, ch. 234, § 904, as added by act Feb. 26, 1926, ch. 27, § 1000, 44 Stat. 108.

**PART II.—PROCEDURE**

**§ 1110. Fee for filing petition.**

The Board is authorized to impose a fee in an amount not in excess of \$10 to be fixed by the Board for the filing of any petition for the redetermination of a deficiency. (53 Stat. 160.)

**DERIVATION**

Act June 2, 1924, ch. 234, § 904, as added by act Feb. 26, 1926, ch. 27, § 1000, 44 Stat. 106.

**§ 1111. Rules of practice, procedure, and evidence.**

The proceedings of the Board and its divisions shall be conducted in accordance with such rules of practice and procedure (other than rules of evidence) as the Board may prescribe and in accordance with the rules of evidence applicable in the courts of the Dis-

trict of Columbia in the type of proceedings which prior to September 16, 1938, were within the jurisdiction of the courts of equity of said District. (53 Stat. 160.)

**DERIVATION**

Act June 2, 1924, ch. 234, § 907, as amended by act May 29, 1928, ch. 852, § 601, 45 Stat. 872.

**§ 1112. Burden of proof in fraud cases.**

In any proceeding involving the issue whether the petitioner has been guilty of fraud with intent to evade tax, the burden of proof in respect of such issue shall be upon the Commissioner. (53 Stat. 160.)

**DERIVATION**

Act June 2, 1924, ch. 234, § 907 (a), as amended by act May 29, 1928, ch. 852, § 601, 45 Stat. 872.

**§ 1113. Service of process.**

The mailing by registered mail of any pleading, decision, order, notice, or process in respect of proceedings before the Board shall be held sufficient service of such pleading, decision, order, notice, or process. (53 Stat. 160.)

**DERIVATION**

Act June 2, 1924, ch. 234, § 907 (a), as amended by act May 29, 1928, ch. 852, § 601, 45 Stat. 872.

**§ 1114. Administration of oaths and procurement of testimony.**

For the efficient administration of the functions vested in the Board or any division thereof, any member of the Board, or any employee of the Board designated in writing for the purpose by the chairman, may administer oaths, and any member of the Board may examine witnesses and require, by subpoena ordered by the Board or any division thereof and signed by the member, (1) the attendance and testimony of witnesses, and the production of all necessary returns, books, papers, documents, correspondence, and other evidence, from any place in the United States at any designated place of hearing, or (2) the taking of a deposition before any designated individual competent to administer oaths under this title. In the case of a deposition the testimony shall be reduced to writing by the individual taking the deposition or under his direction and shall then be subscribed by the deponent. (53 Stat. 160.)

**DERIVATION**

Act June 2, 1924, ch. 234, § 908, as added by act Feb. 26, 1926, ch. 27, § 1000, 44 Stat. 108.

**FEDERAL RULES OF CIVIL PROCEDURE**

Subpoena, see Rule 45, following section 723c of Title 28, Judicial Code and Judiciary.

**§ 1115. Witness fees—(a) Amount.**

Any witness summoned or whose deposition is taken under section 1114 shall receive the same fees and mileage as witnesses in courts of the United States.

**(b) Payment.**

Such fees and mileage and the expenses of taking any such deposition shall be paid as follows:

**(1) Witnesses for Commissioner.**

In the case of witnesses for the Commissioner, such payments shall be made by the Secretary out

of any moneys appropriated for the collection of internal-revenue taxes, and may be made in advance.

**(2) Other witnesses.**

In the case of any other witnesses, such payments shall be made, subject to rules prescribed by the Board, by the party at whose instance the witness appears or the deposition is taken. (53 Stat. 160.)

**DERIVATION**

Act June 2, 1924, ch. 234, §§ 909 (a), 909, as added by act Feb. 26, 1926, ch. 27, § 1000, 44 Stat. 108.

**§ 1116. Hearings.**

Notice and opportunity to be heard upon any proceeding instituted before the Board shall be given to the taxpayer and the Commissioner. If an opportunity to be heard upon the proceeding is given before a division of the Board, neither the taxpayer nor the Commissioner shall be entitled to notice and opportunity to be heard before the Board upon review, except upon a specific order of the chairman. Hearings before the Board and its divisions shall be open to the public, and the testimony, and, if the Board so requires, the argument shall be stenographically reported. The Board is authorized to contract (by renewal of contract or otherwise) for the reporting of such hearings, and in such contract to fix the terms and conditions under which transcripts will be supplied by the contractor to the Board and to other persons and agencies. (53 Stat. 160.)

**DERIVATION**

Act June 2, 1924, ch. 234, § 907 (a), as amended by act May 29, 1928, ch. 852, § 601, 45 Stat. 872

**§ 1117. Reports and decisions—(a) Requirement.**

A report upon any proceeding instituted before the Board and a decision thereon shall be made as quickly as practicable. The decision shall be made by a member in accordance with the report of the Board, and such decision so made shall, when entered, be the decision of the Board.

**(b) Inclusion of findings of fact or opinions in report.**

It shall be the duty of the Board and of each division to include in its report upon any proceeding its findings of fact or opinion or memorandum opinion. The Board shall report in writing all its findings of fact, opinions and memorandum opinions.

**(c) Date of decision.**

A decision of the Board (except a decision dismissing a proceeding for lack of jurisdiction) shall be held to be rendered upon the date that an order specifying the amount of the deficiency is entered in the records of the Board. If the Board dismisses a proceeding for reasons other than lack of jurisdiction and is unable from the record to determine the amount of the deficiency determined by the Commissioner, or if the Board dismisses a proceeding for lack of jurisdiction, an order to that effect shall be entered in the records of the Board, and the decision of the Board shall be held to be rendered upon the date of such entry.

**(d) Effect of decision dismissing petition.**

If a petition for a redetermination of a deficiency has been filed by the taxpayer, a decision of the Board dismissing the proceeding shall be considered as its decision that the deficiency is the amount determined by the Commissioner. An order specifying such amount shall be entered in the records of the Board unless the Board can not determine such amount from the record in the proceeding, or unless the dismissal is for lack of jurisdiction.

**(e) Effect of decision that tax is barred by limitation.**

If the assessment or collection of any tax is barred by any statute of limitations, the decision of the Board to that effect shall be considered as its decision that there is no deficiency in respect of such tax.

**(f) Findings of fact as evidence.**

The findings of the Board made in connection with any decision prior to February 26, 1926 shall, notwithstanding the enactment of the Revenue Act of 1926, 44 Stat. 9, continue to be prima facie evidence of the facts therein stated.

**(g) Proceeding frivolous.**

Whenever it appears to the Board that proceedings before it have been instituted by the taxpayer merely for delay, damages in an amount not in excess of \$500 shall be awarded to the United States by the Board in its decision. Damages so awarded shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax.

**(h) Cross references.**

(1) For special provisions relating to reports of divisions, see section 1118.

(2) For publication of reports, see section 1121.

(53 Stat. 161.)

**DERIVATION**

Subsections (a), (b) were derived from act June 2, 1924, ch. 234, § 907 (a), (b), as amended by act May 29, 1928, ch. 234, § 601, 45 Stat. 872.

Subsections (c), (d), (e), (f) were derived from act June 2, 1924, ch. 234, § 906 (c), (d), (e), (f), respectively, as amended by act May 29, 1928, ch. 852, § 601, 45 Stat. 871, 872.

Subsection (g) was derived from act June 2, 1924, ch. 234, § 911, as added by act Feb. 26, 1926, ch. 27, § 1000, 44 Stat. 109.

**§ 1118. Provisions of special application to divisions—  
(a) Hearings, determinations, and reports.**

A division shall hear, and make a determination upon, any proceeding instituted before the Board and any motion in connection therewith, assigned to such division by the chairman, and shall make a report of any such determination which constitutes its final disposition of the proceeding.

**(b) Effect of action by a division.**

The report of the division shall become the report of the Board within 30 days after such report by the division, unless within such period the chairman has directed that such report shall be reviewed by the Board. Any preliminary action by a division which does not form the basis for the entry of the final decision shall not be subject to review by the Board except in accordance with such rules as the Board

may prescribe. The report of a division shall not be a part of the record in any case in which the chairman directs that such report shall be reviewed by the Board. (53 Stat. 161.)

#### DERIVATION

Act June 2, 1924, ch. 234, § 906 (a), (b), as amended by act May 29, 1928, ch. 852, § 601, 45 Stat. 871.

#### § 1119. Provisions of special application to transferees—(a) Burden of proof.

In proceedings before the Board the burden of proof shall be upon the Commissioner to show that a petitioner is liable as a transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax.

#### (b) Evidence.

Upon application to the Board, a transferee of property of a taxpayer shall be entitled, under rules prescribed by the Board, to a preliminary examination of books, papers, documents, correspondence and other evidence of the taxpayer or a preceding transferee of the taxpayer's property, if the transferee making the application is a petitioner before the Board for the redetermination of his liability in respect of the tax (including interest, penalties, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer. Upon such application the Board may require by subpoena, ordered by the Board or any division thereof and signed by a member, the production of all such books, papers, documents, correspondence, and other evidence within the United States the production of which, in the opinion of the Board or division thereof, is necessary to enable the transferee to ascertain the liability of the taxpayer or preceding transferee and will not result in undue hardship to the taxpayer or preceding transferee. Such examination shall be had at such time and place as may be designated in the subpoena. (53 Stat. 162.)

#### DERIVATION

Act June 2, 1924, ch. 234, §§ 912, 913, as added by act May 29, 1928, ch. 852, § 602, 45 Stat. 873.

#### FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see Rule 45, following section 723c of Title 28, Judicial Code and Judiciary.

#### § 1120. Publicity of proceedings.

All reports of the Board and all evidence received by the Board and its divisions, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public; except that after the decision of the Board in any proceeding has become final the Board may, upon motion of the taxpayer or the Commissioner, permit the withdrawal by the party entitled thereto of originals of books, documents, and records, and of models, diagrams, and other exhibits, introduced in evidence before the Board or any division; or the Board may, on its own motion, make such other disposition thereof as it deems advisable. (53 Stat. 162.)

#### DERIVATION

Act June 2, 1924, ch. 234, § 907 (c), as added by act Feb. 26, 1926, ch. 27, § 1000, 44 Stat. 107.

#### § 1121. Publication of reports.

The Board shall provide for the publication of its reports at the Government Printing Office in such form and manner as may be best adapted for public information and use, and such authorized publication shall be competent evidence of the reports of the Board therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. Such reports shall be subject to sale in the same manner and upon the same terms as other public documents. (53 Stat. 162.)

#### DERIVATION

Act June 2, 1924, ch. 234, § 907 (d), as added by act Feb. 26, 1926, ch. 27, § 1000, 44 Stat. 108.

### PART III.—MISCELLANEOUS PROVISIONS

#### § 1130. Employees—(a) Appointment and compensation.

The Board is authorized in accordance with the civil service laws to appoint, and in accordance with the Classification Act of 1923, 42 Stat. 1488 (U. S. C., Title 5, § 13') as amended to fix the compensation of, such employees as may be necessary efficiently to execute the functions vested in the Board.

#### (b) Expenses for travel and subsistence.

The employees of the Board shall receive their necessary traveling expenses, and expenses for subsistence while traveling on duty and away from their designated stations, as provided in the Subsistence Expense Act of 1926, 44 Stat. 688 (U. S. C., Title 5, ch. 16.) (53 Stat. 162.)

<sup>1</sup> So in original. Probably should read "§ 673."

<sup>2</sup> So in original. Probably should read "Stat."

#### DERIVATION

Subsection (a) was derived from act June 2, 1924, ch. 234, § 910, as added by act Feb. 26, 1926, ch. 27, § 1000, 44 Stat. 109.

Subsection (b) was derived from act June 2, 1924, ch. 234, § 910, as added by act Feb. 26, 1926, ch. 27, § 1000, 44 Stat. 108; act June 3, 1926, ch. 457, § 3, 44 Stat. 689, as amended by act June 30, 1932, ch. 314, § 207, 47 Stat. 405.

#### § 1131. Expenditures.

The Board is authorized to make such expenditures (including expenditures for personal services and rent at the seat of Government and elsewhere, and for law books, books of reference, and periodicals), as may be necessary efficiently to execute the functions vested in the Board. All expenditures of the Board shall be allowed and paid, out of any moneys appropriated for the purposes of the Board, upon presentation of itemized vouchers therefor signed by the chairman. (53 Stat. 163.)

#### DERIVATION

Act June 2, 1924, ch. 234, § 910, as added by act Feb. 26, 1926, ch. 27, § 1000, 44 Stat. 109.

#### § 1132. Disposition of fees.

All fees received by the Board shall be covered into the Treasury as miscellaneous receipts. Section 3709 of the Revised Statutes (U. S. C., Title 41, § 5) shall not be construed to apply to any purchase or service rendered for the Board when the aggregate amount involved does not exceed the sum of \$25. (53 Stat. 163.)

## DERIVATION

Act June 2, 1924, ch. 234, § 910, as added by act Feb. 26, 1926, ch. 27, § 1000, 44 Stat. 109.

## § 1133. Fee for transcript of record.

The Board is authorized to fix a fee, not in excess of the fee fixed by law to be charged and collected therefor by the clerks of the district courts, for comparing, or for preparing and comparing, a transcript of the record, or for copying any record, entry, or other paper and the comparison and certification thereof. (53 Stat. 163.)

## DERIVATION

Act Feb. 26, 1926, ch. 27, § 1004 (b), 44 Stat. 110, as amended by act June 8, 1932, ch. 209, § 1102, 47 Stat. 286.

## SUBCHAPTER B.—COURT REVIEW OF BOARD DECISIONS

## § 1140. Date when board decision becomes final.

The decision of the Board shall become final—

## (a) Petition for review not filed on time.

Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; or

## (b) Decision affirmed or petition for review dismissed—(1) Petition for certiorari not filed on time.

Upon the expiration of the time allowed for filing a petition for certiorari, if the decision of the Board has been affirmed or the petition for review dismissed by the Circuit Court of Appeals and no petition for certiorari has been duly filed; or

## (2) Petition for certiorari denied.

Upon the denial of a petition for certiorari, if the decision of the Board has been affirmed or the petition for review dismissed by the Circuit Court of Appeals; or

## (3) After mandate of Supreme Court.

Upon the expiration of 30 days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the decision of the Board be affirmed or the petition for review dismissed.

## (c) Decision modified or reversed—(1) Upon mandate of Supreme Court.

If the Supreme Court directs that the decision of the Board be modified or reversed, the decision of the Board rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of 30 days from the time it was rendered, unless within such 30 days either the Commissioner or the taxpayer has instituted proceedings to have such decision corrected to accord with the mandate, in which event the decision of the Board shall become final when so corrected.

## (2) Upon mandate of the Circuit Court of Appeals.

If the decision of the Board is modified or reversed by the Circuit Court of Appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the Court has been affirmed by the Supreme Court, then the decision of the Board rendered in accordance with the mandate of the Circuit

Court of Appeals shall become final on the expiration of 30 days from the time such decision of the Board was rendered, unless within such 30 days either the Commissioner or the taxpayer has instituted proceedings to have such decision corrected so that it will accord with the mandate, in which event the decision of the Board shall become final when so corrected.

## (d) Rehearing.

If the Supreme Court orders a rehearing; or if the case is remanded by the Circuit Court of Appeals to the Board for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the Court has been affirmed by the Supreme Court, then the decision of the Board rendered upon such rehearing shall become final in the same manner as though no prior decision of the Board had been rendered.

## (e) Definitions.

As used in this section—

## (1) Circuit Court of Appeals.

The term "Circuit Court of Appeals" includes the United States Court of Appeals for the District of Columbia;

## (2) Mandate.

The term "mandate," in case a mandate has been recalled prior to the expiration of 30 days from the date of issuance thereof, means the final mandate. (53 Stat. 163.)

## DERIVATION

Acts Feb. 26, 1926, ch. 27, § 1005, 44 Stat. 110; June 7, 1934, ch. 426, 48 Stat. 926.

## § 1141. Courts of review—(a) Jurisdiction.

The Circuit Courts of Appeals and the United States Court of Appeals for the District of Columbia shall have exclusive jurisdiction to review the decisions of the Board, except as provided in section 239 of the Judicial Code, as amended, 43 Stat. 938 (U. S. C., Title 28, § 346); and the judgment of any such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in section 240 of the Judicial Code, as amended, 43 Stat. 938 (U. S. C., title 28, § 347.)

## (b) Venue—(1) In general.

Except as provided in paragraph 2, such decisions may be reviewed by the Circuit Court of Appeals for the circuit in which is located the collector's office to which was made the return of the tax in respect of which the liability arises or, if no return was made, then by the United States Court of Appeals for the District of Columbia.

## (2) By agreement.

Notwithstanding the provisions of paragraph 1, such decisions may be reviewed by any circuit court of appeals, or the United States Court of Appeals for the District of Columbia, which may be designated by the Commissioner and the taxpayer by stipulation in writing.

**(3) Application of subsection.**

This subsection shall be applicable to all decisions of the Board rendered on and after May 10, 1934, and section 1002 of the Revenue Act of 1926, 44 Stat. 110, as in force prior to May 10, 1934, shall be applicable to such decisions rendered prior thereto, except that paragraph 2 of this subsection may be applied to any such decision rendered prior to May 10, 1934.

**(c) Powers—(1) To affirm, modify, or reverse.**

Upon such review, such courts shall have power to affirm or, if the decision of the Board is not in accordance with law, to modify or to reverse the decision of the Board, with or without remanding the case for a rehearing, as justice may require.

**(2) To make rules.**

Such courts are authorized to adopt rules for the filing of the petition for review, the preparation of the record for review, and the conduct of proceedings upon such review.

**(3) To require additional security.**

Nothing in section 1145 shall be construed as relieving the petitioner from making or filing such undertakings as the court may require as a condition of or in connection with the review.

**(4) To impose damages.**

The Circuit Court of Appeals, the United States Court of Appeals for the District of Columbia, and the Supreme Court shall have power to impose damages in any case where the decision of the Board is affirmed and it appears that the petition was filed merely for delay. (53 Stat. 164.)

**DERIVATION**

Subsection (a) was derived from acts Feb. 26, 1926, ch. 27, § 1001 (a); June 7, 1934, ch. 426, 48 Stat. 926.

Subsection (b) was derived from act Feb. 26, 1926, ch. 27, § 1002, 44 Stat. 110, as amended by acts May 10, 1934, ch. 277, § 519, 48 Stat. 760; June 7, 1934, ch. 428, 48 Stat. 926.

Subsection (c) (1) was derived from act Feb. 26, 1926, ch. 27, § 1003 (b), 44 Stat. 110.

Subsection (c) (2) was derived from act Feb. 26, 1926, ch. 27, § 1001 (b), 44 Stat. 109.

Subsection (c) (3) was derived from act Feb. 26, 1926, ch. 27, § 1001 (e), 44 Stat. 110.

Subsection (c) (4) was derived from acts Feb. 26, 1926, ch. 27, § 1004 (a), 44 Stat. 110; June 7, 1934, ch. 426, 48 Stat. 926.

**§ 1142. Petition for review.**

The decision of the Board rendered after February 26, 1926 (except as provided in subdivision (j) of section 283 and in subdivision (h) of section 318 of the Revenue Act of 1926, 44 Stat. 65, 83, relating to hearings before the Board prior to February 26, 1926) may be reviewed by a Circuit Court of Appeals, or the United States Court of Appeals for the District of Columbia, as provided in section 1141, if a petition for such review is filed by either the Commissioner or the taxpayer within three months after the decision is rendered, or, in the case of a decision rendered on or before June 6, 1932, within six months after the decision is rendered. (53 Stat. 165.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 1001 (a), 44 Stat. 109, as amended by acts June 6, 1932, ch. 209, § 1101, 47 Stat. 286; June 7, 1934, ch. 426, 48 Stat. 926.

**CROSS REFERENCE**

Date of decision of the Board, see section 1117 (c) of this title.

**§ 1143. Change of Commissioner.**

When the incumbent of the office of Commissioner changes, no substitution of the name of his successor shall be required in proceedings pending after May 10, 1934, before any appellate court reviewing the action of the Board. (53 Stat. 165.)

**DERIVATION**

Act June 2, 1924, ch. 234, § 907 (g), as added by act May 10, 1934, ch. 277, § 516, 48 Stat. 760.

**§ 1144. Cross reference.**

For authority of the Board to fix fees for transcripts of records, see section 1133.

(53 Stat. 165.)

**§ 1145. Bond to stay assessment and collection.**

Notwithstanding any provision of law imposing restrictions on the assessment and collection of deficiencies, the review under section 1142 shall not operate as a stay of assessment or collection of any portion of the amount of the deficiency determined by the Board unless a petition for review in respect of such portion is duly filed by the taxpayer, and then only if the taxpayer (1) on or before the time his petition for review is filed has filed with the Board a bond in a sum fixed by the Board not exceeding double the amount of the portion of the deficiency in respect of which the petition for review is filed, and with surety approved by the Board, conditioned upon the payment of the deficiency as finally determined, together with any interest, additional amounts, or additions to the tax provided for by law, or (2) has filed a jeopardy bond under the income or estate tax laws. If as a result of a waiver of the restrictions on the assessment and collection of a deficiency any part of the amount determined by the Board is paid after the filing of the review bond, such bond shall, at the request of the taxpayer, be proportionately reduced. (53 Stat. 165.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 1001 (c), as amended by act May 29, 1928, ch. 852, § 603, 45 Stat. 873.

**§ 1146. Refund, credit, or abatement of amounts disallowed.**

In cases where assessment or collection has not been stayed by the filing of a bond, then if the amount of the deficiency determined by the Board is disallowed in whole or in part by the court, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim therefor, or, if collection has not been made, shall be abated. (53 Stat. 165.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 1001 (c), as amended by act May 29, 1928, ch. 852, § 603, 45 Stat. 873.

## SUBTITLE B.—MISCELLANEOUS TAXES

Chap.		Sec.
6.	Capital stock .....	1200
7.	Tax on transfers to avoid income tax.....	1250
8.	Alaskan railroads tax.....	1300
9.	Employment taxes.....	1400
9A.	Defense tax for 5 years.....	1650
10.	Admissions and dues.....	1700
11.	Documents, other instruments, and play- ing cards.....	1800
12.	Safe-deposit boxes.....	1850
13.	Circulation other than of national banks..	1900
14.	Cotton futures.....	1920
15.	Tobacco, snuff, cigars, and cigarettes.....	2000
16.	Oleomargarine, adulterated butter, and process or renovated butter.....	2300
17.	Filled cheese .....	2350
18.	Mixed flour .....	2380
21. <sup>1</sup>	Coconut and other vegetable oils.....	2470
22.	Fish, animal, and vegetable oils.....	2490
23.	Narcotics .....	2550
24.	White-phosphorus matches.....	2650
25.	Firearms.....	2700
26.	Liquor.....	2800
27.	Occupational taxes.....	3200
28.	Provisions common to miscellaneous taxes..	3300

<sup>1</sup> So in original. There are no chapters numbered 19 and 20.

### Chapter 6.—CAPITAL STOCK

Sec.	
1200.	Tax.
1201.	Exemptions.
1202.	Adjusted declared value.
1203.	Returns.
1204.	Publicity of returns.
1205.	Payment of tax.
1206.	Addition to the tax in case of delinquency.
1207.	Other laws applicable.

#### § 1200. Tax—(a) Domestic corporations.

For each year ending June 30, beginning with the year ending June 30, 1939, there shall be imposed upon every domestic corporation with respect to carrying on or doing business for any part of such year an excise tax of \$1 for each \$1,000 of the adjusted declared value of its capital stock.

#### (b) Foreign corporations.

For each year ending June 30, beginning with the year ending June 30, 1939, there shall be imposed upon every foreign corporation with respect to carrying on or doing business in the United States for any part of such year an excise tax equivalent to \$1 for each \$1,000 of the adjusted declared value of capital employed in the transaction of its business in the United States.

#### (c) Defense tax for five years.

For the year ending June 30, 1940, and for the four succeeding years ending June 30, the rates provided in subsections (a) and (b) shall be \$1.10 in lieu of

§1. (53 Stat. 169; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, § 205, 54 Stat. 521.)

#### DERIVATION

Acts Aug. 30, 1935, ch. 829, § 105 (a), (b), 49 Stat. 1017, as amended by act June 22, 1938, ch. 690, § 401 (a), 49 Stat. 1733; May 28, 1938, ch. 289, § 601, 52 Stat. 565.

#### 1940 AMENDMENT

Subsection (c) was added by act June 25, 1940, cited to text.

#### SIMILAR PROVISIONS

1933—June 16, 1933, ch. 90, §§ 215, 216, 48 Stat. 207, 208  
1924—June 2, 1924, ch. 234, § 700, 43 Stat. 325.  
1921—Nov. 23, 1921, ch. 136, § 1000, 42 Stat. 294.  
1919—Feb. 24, 1919, ch. 18, § 1000, 40 Stat. 1126.  
1916—Sept. 8, 1916, ch. 463, § 407, 39 Stat. 789.

#### CROSS REFERENCE

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain government obligations, see note under section 757b of Title 31, Money and Finance

#### § 1201. Exemptions.

(a) The taxes imposed by section 1200 shall not apply—

##### (1) Corporations exempt from income tax.

To any corporation enumerated in section 101;

##### (2) Insurance companies.

To any insurance company subject to the tax imposed by section 201, 204, or 207.

##### (b) Common trust funds.

For exemption of common trust funds from the capital stock tax, see section 169 (b) of chapter 1.

(53 Stat. 169.)

#### DERIVATION

Acts Aug. 30, 1935, ch. 829, § 105 (c) 49 Stat. 1017, as amended by act June 22, 1938, ch. 690, § 401 (b), 49 Stat. 1733; May 28, 1938, ch. 289, § 601, 52 Stat. 565.

#### SIMILAR PROVISIONS

1934—May 10, 1934, ch. 277, § 701, 48 Stat. 769.  
1933—June 16, 1933, ch. 90, §§ 215, 216, 48 Stat. 207, 208.  
1924—June 2, 1924, ch. 234, § 700, 43 Stat. 325.  
1921—Nov. 23, 1921, ch. 136, § 1000, 42 Stat. 294.  
1919—Feb. 24, 1919, ch. 18, § 1000, 40 Stat. 1126.  
1916—Sept. 8, 1916, ch. 463, § 407, 39 Stat. 789.

#### § 1202. Adjusted declared value—(a) Declaration year.

(1) The adjusted declared value shall be determined with respect to three-year periods beginning with the year ending June 30, 1938, and each third year thereafter. The first year of each such three-year period, or, in case of a corporation not subject to the tax imposed for such year, the first year of such three-year period for which the corporation is subject to such tax, shall constitute a "declaration year."

(2) For the declaration year of the first three-year period the adjusted declared value shall be the value as declared by the corporation in its return under section 601 of the Revenue Act of 1938, 52

Stat. 565, for the year ended June 30, 1938, or in the case of a corporation not subject to the tax imposed for such year, the value as declared in its return filed under this chapter for the first year with respect to which it is subject to the tax. For each subsequent three-year period, the adjusted declared value for a declaration year shall be the value as declared by the corporation in its return for such declaration year. The value declared by a corporation in its return for a declaration year (which declaration of value cannot be amended) shall be as of the close of its last income-tax taxable year ending with or prior to the close of such declaration year (or as of the date of organization in the case of a corporation having no income-tax taxable year ending with or prior to the close of such declaration year).

**(b) Subsequent years—(1) Domestic corporations.**

For each year of any three-year period subsequent to the declaration year, the adjusted declared value in the case of a domestic corporation shall be the value declared in the return for the declaration year plus—

(A) the cash, and the fair market value of property, paid in for stock or shares,

(B) paid-in surplus and contributions to capital,

(C) its net income,

(D) its income wholly exempt from Federal income tax, and

(E) the amount, if any, by which the deduction for depletion exceeds the amount which would be allowable if computed without regard to discovery value or to percentage depletion, under section 114 (b) (2), (3), or (4) of chapter 1 or a corresponding section of a later Revenue Act;

and minus—

(i) the cash, and the fair market value of property, distributed to shareholders,

(ii) the amount disallowed as a deduction by section 24 (a) (5) of chapter 1 or a corresponding provision of a later Revenue Act, and

(iii) the excess of the deductions allowable for income tax purposes over its gross income.

The adjustments provided in this paragraph shall be made for each income-tax taxable year included in the three-year period from the date as of which the value was declared in the return for the declaration year to the close of the last income-tax taxable year ending with or prior to the close of the year for which the tax is imposed by this section. The amount of such adjustment for each such year shall be computed (on the basis of a separate return) according to the income tax law applicable to such year.

**(2) Foreign corporations.**

For each year of any three-year period subsequent to the declaration year, the adjusted declared value in the case of a foreign corporation shall be the value declared in the return for the declaration year adjusted (for the same income-tax taxable years as in the case of a domestic corporation), in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, to reflect increases or decreases in the capital employed in the transaction of its business in the United States.

**(c) Corporations in bankruptcy or receivership.**

The capital-stock tax year beginning with or within an income-tax taxable year within which bankruptcy or receivership, due to insolvency, of a domestic corporation, is terminated shall constitute a declaration year. In such case the adjusted declared value for any subsequent year of the three-year period shall be determined on the basis of the value declared in the return for such declaration year.

**(d) Credit for China Trade Act corporations.**

For the purpose of the tax imposed by section 1200 there shall be allowed in the case of a corporation organized under the China Trade Act, 1922, 42 Stat. 849 (U. S. C., Title 15, ch. 4), as a credit against the adjusted declared value of its capital stock, an amount equal to the proportion of such adjusted declared value which the par value of the shares of stock of the corporation, owned on the last day of the taxable year by (1) persons resident in China, the United States, or possessions of the United States, and (2) individual citizens of the United States or China wherever resident, bears to the par value of the whole number of shares of stock of the corporation outstanding on such date. For the purposes of this subsection shares of stock of a corporation shall be considered to be owned by the person in whom the equitable right to the income from such shares is in good faith vested; and as used in this subsection the term "China" shall have the same meaning as when used in the China Trade Act, 1922.

**(e) Additional declaration years.**

In the case of any domestic corporation, the year ending June 30, 1939, and the year ending June 30, 1940, shall each, if not otherwise a declaration year, constitute an additional declaration year if with respect to such year (1) the taxpayer so elects (which election cannot be changed) in its return filed before the expiration of the statutory filing period or any authorized extension thereof, and (2) the value declared by the taxpayer is in excess of the adjusted declared value computed under paragraph (1) of subsection (b). If, under this subsection, the year ending June 30, 1939, is a declaration year, the computation, under paragraph (1) of subsection (b), of the adjusted declared value for the year ending June 30, 1940, shall be made on the basis of the value declared for the year ending June 30, 1939. (53 Stat. 169; June 29, 1939, 10 p. m. E. S. T., ch. 247, title III, § 301, 53 Stat. 882.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 601 (f) (g), 52 Stat. 566, 567

**1939 AMENDMENT**

Subsection (e) was added by act June 29, 1939, cited to text.

**SIMILAR PROVISIONS**

1934—May 10, 1934, ch. 277, § 701, 48 Stat. 769.

1933—June 16, 1933, ch. 90, §§ 215, 216, 48 Stat. 207, 208.

1924—June 2, 1924, ch. 234, § 700, 43 Stat. 325.

1921—Nov. 23, 1921, ch. 136, § 1000, 42 Stat. 294.

1919—Feb. 24, 1919, ch. 18, § 1000, 40 Stat. 1126.

1916—Sept. 8, 1916, ch. 463, § 407, 39 Stat. 789.



**§ 1203. Returns—(a) Requirement.**

Every corporation liable for tax under section 1200 shall make a return under oath. Such return shall contain such information and be made in such manner as the Commissioner with the approval of the Secretary may by regulations prescribe.

**(b) Time for filing—(1) General rule.**

Such return shall be made within one month after the close of the year with respect to which such tax is imposed.

**(2) Extension of time.**

The Commissioner may extend the time for making the returns, under such rules and regulations as he may prescribe with the approval of the Secretary, but no such extension shall be for more than sixty days.

**(c) Place for filing.**

The return shall be made to the collector for the district in which is located the principal place of business of the corporation, or, if it has no principal place of business in the United States, then to the collector at Baltimore, Maryland. (53 Stat. 171.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 601 (a), 52 Stat. 565.

**SIMILAR PROVISIONS**

1934—May 10, 1934, ch. 277, § 701, 48 Stat. 769.  
1933—June 16, 1933, ch. 90, §§ 215, 216, 48 Stat. 207, 208.  
1924—June 2, 1924, ch. 234, § 700, 43 Stat. 325.  
1921—Nov. 23, 1921, ch. 136, § 1000, 42 Stat. 294.  
1919—Feb. 24, 1919, ch. 18, § 1000, 40 Stat. 1126.  
1916—Sept. 8, 1916, ch. 463, § 407, 39 Stat. 789.

**§ 1204. Publicity of returns.**

Returns required to be filed for the purpose of the tax imposed by section 1200 shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under chapter 1, except that paragraph (2) of subsections (b) and (f) of section 55 shall not apply. (53 Stat. 171.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 601 (d), 52 Stat. 565.

**SIMILAR PROVISIONS**

1934—May 10, 1934, ch. 277, § 701, 48 Stat. 769.  
1933—June 16, 1933, ch. 90, §§ 215, 216, 48 Stat. 207, 208.  
1924—June 2, 1924, ch. 234, § 700, 43 Stat. 325.  
1921—Nov. 23, 1921, ch. 136, § 1000, 42 Stat. 294.  
1919—Feb. 24, 1919, ch. 18, § 1000, 40 Stat. 1126.  
1916—Sept. 8, 1916, ch. 463, § 407, 39 Stat. 789.

**§ 1205. Payment of tax—(a) Time of payment.**

The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector before the expiration of the period for filing the return.

**(b) Extension of time.**

The Commissioner may extend the time for paying the taxes imposed by section 1200, under such rules and regulations as he may prescribe with the approval of the Secretary, but no such extension shall be for more than sixty days. (53 Stat. 171.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 601 (d), 52 Stat. 565.

**SIMILAR PROVISIONS**

1934—May 10, 1934, ch. 277, § 701, 48 Stat. 769.  
1933—June 16, 1933, ch. 90, §§ 215, 216, 48 Stat. 207, 208.  
1924—June 2, 1924, ch. 234, § 700, 43 Stat. 325.  
1921—Nov. 23, 1921, ch. 136, § 1000, 42 Stat. 294.  
1919—Feb. 24, 1919, ch. 18, § 1000, 40 Stat. 1126.  
1916—Sept. 8, 1916, ch. 463, § 407, 39 Stat. 789.

**§ 1206. Addition to the tax in case of delinquency.**

If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time when the tax became due until paid. (53 Stat. 171.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 601 (d), 52 Stat. 565

**SIMILAR PROVISIONS**

1934—May 10, 1934, ch. 277, § 701, 48 Stat. 769.  
1933—June 16, 1933, ch. 90, §§ 215, 216, 48 Stat. 207, 208.  
1924—June 2, 1924, ch. 234, § 700, 43 Stat. 325.  
1921—Nov. 23, 1921, ch. 136, § 1000, 42 Stat. 294.  
1919—Feb. 24, 1919, ch. 18, § 1000, 40 Stat. 1126.  
1916—Sept. 8, 1916, ch. 463, § 407, 39 Stat. 789.

**§ 1207. Other laws applicable.**

All provisions of law (including penalties) applicable in respect of the taxes imposed by section 2700 shall, insofar as not inconsistent with this chapter, be applicable in respect of the taxes imposed by section 1200. (53 Stat. 171.)

**DERIVATION**

Act May 28, 1938, ch. 289, § 601 (d), 52 Stat. 565

**SIMILAR PROVISIONS**

1934—May 10, 1934, ch. 277, § 701, 48 Stat. 769.  
1933—June 16, 1933, ch. 90, §§ 215, 216, 48 Stat. 207, 208.  
1924—June 2, 1924, ch. 234, § 700, 43 Stat. 325.  
1921—Nov. 23, 1921, ch. 136, § 1000, 42 Stat. 294.  
1919—Feb. 24, 1919, ch. 18, § 1000, 40 Stat. 1126.  
1916—Sept. 8, 1916, ch. 463, § 407, 39 Stat. 789.

**Chapter 7.—TAX ON TRANSFERS TO AVOID INCOME TAX****Sec.**

- 1250. Imposition of tax.
- 1251. Nontaxable transfers
- 1252. Definition of "foreign trust."
- 1253. Payment and collection.
- 1254. Publicity of returns.

**§ 1250. Imposition of tax—(a) General rule.**

There shall be imposed upon the transfer of stock or securities by a citizen or resident of the United States, or by a domestic corporation or partnership, or by a trust which is not a foreign trust, to a foreign corporation as paid-in surplus or as a contribution to capital, or to a foreign trust, or to a foreign partnership, an excise tax equal to 25 per centum of the excess of (1) the value of the stock or securities so transferred over (2) its adjusted basis in the hands of the transferor as determined under section 113 of the Revenue Act of 1932, 47 Stat. 198.

**(b) Defense tax for five years.**

In the case of any transfer during the period after the date of the enactment of the Revenue Act of 1940 and before July 1, 1945, the rate provided in subsection (a) shall be 27½ per centum in lieu of 25 per centum. (53 Stat. 172; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, § 208, 54 Stat. 522.)

## DERIVATION

Act June 6, 1932, ch. 209, § 901, 47 Stat. 284.

## 1940 AMENDMENT

Subsection (a) was created from section as originally enacted and heading "(a) General Rule" was inserted by act June 25, 1940, cited to text.

Subsection (b) was added by act June 25, 1940, cited to text.

## CROSS REFERENCE

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain government obligations, see note under section 757b of Title 31, Money and Finance.

## § 1251. Nontaxable transfers.

The tax imposed by section 1250 shall not apply—

(a) if the transferee is an organization exempt from income tax under section 103 of the Revenue Act of 1932; or

(b) if prior to the transfer it has been established to the satisfaction of the Commissioner that such transfer is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes. (53 Stat. 172.)

## DERIVATION

Act June 6, 1932, ch. 209, § 902, 47 Stat. 284.

## § 1252. Definition of "foreign trust."

A trust shall be considered a foreign trust within the meaning of this chapter if, assuming a subsequent sale by the trustee, outside the United States and for cash, of the property so transferred, the profit, if any, from such sale would not be included in the gross income of the trust under Title I of the Revenue Act of 1932. (53 Stat. 172.)

## DERIVATION

Act June 6, 1932, ch. 209, § 903, 47 Stat. 285.

## § 1253. Payment and collection.

(a) The tax imposed by section 1250 shall, without assessment or notice and demand, be due and payable by the transferor at the time of the transfer, and shall be assessed, collected, and paid under regulations prescribed by the Commissioner with the approval of the Secretary.

(b) Under regulations prescribed by the Commissioner with the approval of the Secretary the tax may be abated, remitted, or refunded if after the transfer it has been established to the satisfaction of the Commissioner that such transfer was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes.

(c) All administrative, special, or stamp provisions of law, including penalties and including the law relating to the assessment of taxes, so far as applicable, shall be extended to and made a part of this chapter. (53 Stat. 172.)

## DERIVATION

Act June 6, 1932, ch. 209, § 904, 47 Stat. 285.

## § 1254. Publicity of returns.

For provisions with respect to publicity of returns under this chapter, see subsection (a) (2) of section 55.

(53 Stat. 172.)

## Chapter 8.—ALASKAN RAILROADS TAX

Sec.

1300 Rate of tax.

1301 Assessment and collection of tax.

## § 1300. Rate of tax.

There shall be levied and collected, for each taxable year beginning after December 31, 1938, a tax of one per centum on the gross annual income of all railroad corporations doing business in Alaska, on business done in Alaska. (53 Stat. 173.)

## DERIVATION

Act July 18, 1914, ch. 187, 38 Stat. 517.

## SIMILAR PROVISIONS

1913—Oct. 3, 1913, ch. 16, § II, G, 38 Stat. 172.

1899—Mar. 3, 1899, ch. 429, title II, § 460, 30 Stat. 1337.

## § 1301. Assessment and collection of tax.

The tax imposed by section 1300 shall be computed and collected in the manner provided in section II of the act of October 3, 1913, ch. 16, 38 Stat. 114, 174. The proceeds of such tax when collected shall be deposited into the Treasury as miscellaneous receipts, and amounts equal thereto are (1) authorized to be appropriated annually from the general fund of the Treasury, (2) paid to the treasurer of Alaska, and (3) made applicable to general Territorial purposes. If the total of receipts for any fiscal year is greater than the amount appropriated for the payment of such receipts to the Alaskan government, such excess is authorized to be appropriated for the following fiscal year. (53 Stat. 173.)

## DERIVATION

Acts July 18, 1914, ch. 187, 38 Stat. 517; June 26, 1934, ch. 756, § 4, 48 Stat. 1227.

## SIMILAR PROVISIONS

1913—Oct. 3, 1913, ch. 16, § II, G, 38 Stat. 172.

1899—Mar. 3, 1899, ch. 429, title II, § 460, 30 Stat. 1337.

## Chapter 9.—EMPLOYMENT TAXES

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- 1601. Credits against tax.
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- 1603. Approval of State laws.
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**SUBCHAPTER A.—EMPLOYMENT BY OTHERS THAN CARRIERS****PART I.—TAX ON EMPLOYEES**

**SOCIAL INSURANCE AND LABOR RELATIONS OF RAILROAD COAL-MINING EMPLOYEES; RETROACTIVE OPERATION OF ACT AUGUST 13, 1940, CH. 664, 54 STAT. 785; EFFECT ON PAYMENTS, RIGHTS, ETC.**

Sections 4-7 of said act August 13, 1940, with regard to the operation and effect of these changes, provided as follows:

"Sec. 4 (a) The laws hereby expressly amended (section 1532 of Title 26, and sections 151, 215, 228a, 261, and 361 of Title 45), the Social Security Act, approved August 14, 1935 (section 301 et seq. of Title 42), and all amendments thereto, shall operate as if each amendment herein contained had been enacted as a part of the law it amends, at the time of the original enactment of such law.

"(b) No person (as defined in the Carriers Taxing Act of 1937 (section 261 et seq. of Title 45)) shall be entitled, by reason of the provisions of this Act, to a refund of, or relief from liability for, any income or excise taxes paid or accrued, pursuant to the provisions of the Carriers Taxing Act of 1937 (section 261 et seq. of Title 45) or subchapter B of chapter 9 of the Internal Revenue Code (section 1500 et seq. of Title 26), prior to the date of the enactment of this act by reason of employment in the service of any carrier by railroad subject to part I of the Interstate Commerce Act (section 1 et seq. of Title 49), but any individual who has been employed in such service of any carrier by railroad subject to part I of the Interstate Commerce Act (section 1 et seq. of Title 49) as is excluded by the amendments made by this Act from coverage under the Carriers Taxing Act of 1937 (section 261 et seq. of Title 45) and subchapter B of chapter 9 of the Internal Revenue Code (section 1500 et seq. of Title

26), and who has paid income taxes under the provisions of such act or subchapter, and any carrier by railroad subject to part I of the Interstate Commerce Act (section 1 et seq. of Title 49) which has paid excise taxes under the provisions of the Carriers Taxing Act of 1937 (section 261 et seq. of Title 45) or subchapter B of chapter 9 of the Internal Revenue Code (section 1500 et seq. of Title 26), may, upon making proper application therefor to the Bureau of Internal Revenue, have the amount of taxes so paid applied in reduction of such tax liability with respect to employment, as may, by reason of the amendments made by this Act, accrue against them under the provisions of title VIII of the Social Security Act (section 1001 et seq. of Title 42) or the Federal Insurance Contributions Act (subchapter A of chapter 9 of the Internal Revenue Code) (section 1400 et seq. of Title 26).

"(c) Nothing contained in this act shall operate (1) to affect any annuity, pension, or death benefit granted under the Railroad Retirement Act of 1935 (sections 215-228 of Title 45) or the Railroad Retirement Act of 1937 (section 228a et seq. of Title 45), prior to the date of enactment of this act, or (2) to include any of the services on the basis of which any such annuity or pension was granted, as employment within the meaning of section 210 (b) of the Social Security Act or section 209 (b) of such act, as amended (sections 410 (b) and 409 (b), respectively, of Title 42). In any case in which a death benefit alone has been granted, the amount of such death benefit attributable to services, coverage of which is affected by this act, shall be deemed to have been paid to the deceased under section 204 of the Social Security Act (section 404 of Title 42) in effect prior to January 4, 1940 and deductions shall be made from any insurance benefit or benefits payable under the Social Security Act, as amended (section 301 et seq. of Title 42), with respect to wages paid to an individual for such services until such deductions total the amount of such death benefit attributable to such services.

"(d) Nothing contained in this act shall operate to affect the benefit rights of any individual under the Railroad Unemployment Insurance Act (section 351 et seq. of Title 45) for any day of unemployment (as defined in section 1 (k) of such act (section 351 (k) of Title 45)) occurring prior to the date of enactment of this act.

"Sec. 5. Any application for payment filed with the Railroad Retirement Board prior to, or within sixty days after, the enactment of this act shall, under such regulations as the Social Security Board may prescribe, be deemed to be an application filed with the Social Security Board by such individual or by any person claiming any payment with respect to the wages of such individual, under any provision of section 202 of the Social Security Act, as amended (section 402 of Title 42).

"Sec. 6. Nothing contained in this act, nor the action of Congress in adopting it, shall be taken or considered as affecting the question of what carriers, companies, or individuals, other than those in this act specifically provided for, are included in or excluded from the provisions of the various laws to which this act is an amendment.

"Sec. 7. (a) Notwithstanding the provisions of section 1605 (b) of the Internal Revenue Code, no interest shall, during the period February 1, 1940, to the eighty-ninth day after the date of enactment of this act, inclusive, accrue by reason of delinquency in the payment of the tax imposed by section 1600 with respect to services affected by this act performed during the period July 1, 1939, to December 31, 1939, inclusive, with respect to which services amounts have been paid as contributions under the Railroad Unemployment Insurance Act (section 351 et seq. of Title 45) prior to the date of enactment of this act.

"(b) Notwithstanding the provisions of section 1601 (a) (3) of the Internal Revenue Code, the credit allowable under section 1601 (a) against the tax imposed by section 1600 for the calendar year 1939 shall not be disallowed or reduced by reason of the payment into a State unemployment fund after January 31, 1940, of contributions with respect to services affected by this act performed during the period July 1, 1939, to December 31, 1939, inclusive, with respect to which services amounts have been paid as contributions under the Railroad Unemployment Insurance Act (section 351 et seq. of Title 45)

prior to the date of enactment of this act: *Provided*, That this subsection shall be applicable only if the contributions with respect to such services are paid into the State unemployment fund before the ninetieth day after the date of enactment of this act."

Act Aug. 13, 1940, ch. 664, 54 Stat. 785-787, specifically amended section 1532 of Title 26 and sections 151, 215, 228a, 261, and 351 of Title 45, by redefining the terms "employer," "employee," and "carrier." In its report on the bill, the Senate committee approved the policy that coal-mining activities of railroads and their subsidiaries for the purpose of railroad operations, "whether conducted directly by carriers or by subsidiaries of carriers, should for purposes of a social-insurance program and for purposes of labor relations be covered by the system of laws applicable to coal-mining generally rather than the system of laws applicable to the railroad industry." The committee accordingly recommended the enactment of the bill "so as to exclude coal-mining operations from the acts covering the railroad industry . . ."

#### CROSS REFERENCE

Railroad coal-mining employees, transfer of social insurance and labor relations coverage to laws applicable to coal mining generally from laws applicable to railroad industry by act August 13, 1940, see note under heading of this chapter.

#### § 1400. Rate of tax.

In addition to other taxes, there shall be levied, collected, and paid upon the income of every individual a tax equal to the following percentages of the wages (as defined in section 1426 (a)) received by him after December 31, 1936, with respect to employment (as defined in section 1426 (b)) after such date:

(1) With respect to wages received during the calendar years 1939, 1940, 1941, and 1942, the rate shall be 1 per centum.

(2) With respect to wages received during the calendar years 1943, 1944, and 1945, the rate shall be 2 per centum.

(3) With respect to wages received during the calendar years 1946, 1947, and 1948, the rate shall be 2½ per centum.

(4) With respect to wages received after December 31, 1948, the rate shall be 3 per centum. (53 Stat. 175; Aug. 10, 1939, ch. 666, title VI, § 601, 53 Stat. 1381.)

#### DERIVATION

Act Aug. 14, 1935, ch. 531, title VIII, § 801, 49 Stat. 636

#### DEDUCTIONS

Act Aug. 10, 1939, ch. 666, title IX, § 907, 53 Stat. 1402, provided as follows: "In addition to any other deductions made under section 203 of the Social Security Act (section 403 of Title 42), as amended, deductions shall be made from any primary insurance benefit or benefits to which an individual is entitled or from any other insurance benefit payable with respect to such individual's wages, until such deductions total 1 per centum of any wages paid him for services performed in 1939, and subsequent to his attaining age sixty-five, with respect to which the taxes imposed by section 1400 of the Internal Revenue Code (section 1400 of Title 26) have not been deducted by his employer from his wages or paid by such employer."

#### CROSS REFERENCES

Collection of tax on services made necessary by hurricane, see note under section 1410 of this title.

Foreign government service exemption from tax prior to January 1, 1940, see note under section 1426 of this title.

Penalty for fraud against Social Security Act, see section 1307 of Title 42, The Public Health and Welfare.

Service by individual having attained age of sixty-five as employment, see note under section 1426 of this title.

Tax paid by employer not included in definition of wages under title II of the Social Security Act, see section 409 of Title 42, The Public Health and Welfare.

#### § 1401. Deduction of tax from wages. (a) Requirement.

The tax imposed by section 1400 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid.

#### (b) Indemnification of employer.

Every employer required so to deduct the tax shall be liable for the payment of such tax, and shall be indemnified against the claims and demands of any person for the amount of any such payment made by such employer.

#### (c) Adjustments.

If more or less than the correct amount of tax imposed by section 1400 is paid with respect to any payment of remuneration, proper adjustments, with respect both to the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as may be prescribed by regulations made under this subchapter.

#### (d) Special refund.

If by reason of an employee rendering service for more than one employer during any calendar year after the calendar year 1939, the wages of the employee with respect to employment during such year exceed \$3,000, the employee shall be entitled to a refund of any amount of tax, with respect to such wages, imposed by section 1400, deducted from such wages and paid to the collector, which exceeds the tax with respect to the first \$3,000 of such wages paid. Refund under this section may be made in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax; except that no such refund shall be made unless (1) the employee makes a claim, establishing his right thereto, after the calendar year in which the employment was performed with respect to which refund of tax is claimed, and (2) such claim is made within two years after the calendar year in which the wages are paid with respect to which refund of tax is claimed. No interest shall be allowed or paid with respect to any such refund. (53 Stat. 175; Aug. 10, 1939, ch. 666, title VI, § 602, 53 Stat. 1382.)

#### DERIVATION

Act Aug. 14, 1935, ch. 531, title VIII, § 802, 49 Stat. 636

#### 1939 AMENDMENT

Subsection (c) amended by act August 10, 1939, cited to text.

Subsection (d) added by act August 10, 1939, cited to text.

#### § 1402. Nondeductibility of tax from net income.

For the purposes of the income tax imposed by chapter 1 or by any act of Congress in substitution therefor, the tax imposed by section 1400 shall not be allowed as a deduction to the taxpayer in computing his net income for the year in which such tax is deducted from his wages. (53 Stat. 175.)

#### DERIVATION

Act Aug. 14, 1935, ch. 531, title VIII, § 803, 49 Stat. 637

**§ 1403. Receipts for employees—(a) Requirement.**

Every employer shall furnish to each of his employees a written statement or statements, in a form suitable for retention by the employee, showing the wages paid by him to the employee after December 31, 1939. Each statement shall cover a calendar year or one, two, three, or four calendar quarters, whether or not within the same calendar year, and shall show the name of the employer, the name of the employee, the period covered by the statement, the total amount of wages paid within such period, and the amount of the tax imposed by section 1400 with respect to such wages. Each statement shall be furnished to the employee not later than the last day of the second calendar month following the period covered by the statement, except that, if the employee leaves the employ of the employer, the final statement shall be furnished on the day on which the last payment of wages is made to the employee. The employer may, at his option, furnish such a statement to any employee at the time of each payment of wages to the employee during any calendar quarter, in lieu of a statement covering such quarter; and, in such case, the statement may show the date of payment of the wages, in lieu of the period covered by the statement.

**(b) Penalty for failure to furnish.**

Any employer who wilfully fails to furnish a statement to an employee in the manner, at the time, and showing the information, required under subsection (a), shall for each such failure be subject to a civil penalty of not more than \$5. (Added Aug. 10, 1939, ch. 666, title VI, § 603, 53 Stat. 1382.)

**PART II.—TAX ON EMPLOYERS****§ 1410. Rate of tax.**

In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 1426 (a)) paid by him after December 31, 1936, with respect to employment (as defined in section 1426 (b)) after such date:

(1) With respect to wages paid during the calendar years 1939, 1940, 1941, and 1942, the rate shall be 1 per centum.

(2) With respect to wages paid during the calendar years 1943, 1944, and 1945, the rate shall be 2 per centum.

(3) With respect to wages paid during the calendar years 1946, 1947, and 1948, the rate shall be 2½ per centum.

(4) With respect to wages paid after December 31, 1948, the rate shall be 3 per centum. (53 Stat. 175; Aug. 10, 1939, ch. 666, title VI, § 604, 53 Stat. 1383.)

**DERIVATION**

Act Aug. 14, 1935, ch. 531, title VIII, § 804, 49 Stat. 637.

**HURRICANE SALVAGE AND REPAIR WORK**

Act Aug. 11, 1939, ch. 719, § 2, 53 Stat. 1420, provided as follows: "Sec. 2. No tax shall be collected under title VIII or IX of the Social Security Act (sections 1001-1011, 1101-1110 of Title 42) or under the Federal Insurance Contributions Act (sections 1400 et seq. of this title) or the Federal Unemployment Tax Act (sections 1600 et seq. of

this title), with respect to services rendered prior to January 1, 1940, in the employ of the owner or tenant of land, in salvaging timber on such land or clearing such land of brush and other debris left by a hurricane; and any such tax heretofore collected (including penalty and interest with respect thereto, if any), shall be refunded in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax. No interest shall be allowed or paid on the amount of any such refund. No payment shall be made under title II of the Social Security Act with respect to such services rendered prior to January 1, 1940."

**CROSS REFERENCES**

Service by individual having attained age of sixty-five as employment, see note under section 1426 of this title.

Services which are exempt or immune from this tax not included in definition of employment under title II of the Social Security Act, see section 409 of Title 42, The Public Health and Welfare.

**§ 1411. Adjustment of tax.**

If more or less than the correct amount of tax imposed by section 1410 is paid with respect to any payment of remuneration, proper adjustments with respect to the tax shall be made, without interest, in such manner and at such times as may be prescribed by regulations made under this subchapter. (53 Stat. 176; Aug. 10, 1939, ch. 666, title VI, § 605, 53 Stat. 1383.)

**DERIVATION**

Act Aug. 14, 1935, ch. 531, title VIII, § 805, 49 Stat. 637.

**PART III.—GENERAL PROVISIONS****§ 1420. Collection and payment of taxes—(a) Administration.**

The taxes imposed by this subchapter shall be collected by the Bureau of Internal Revenue under the direction of the Secretary and shall be paid into the Treasury of the United States as internal-revenue collections.

**(b) Addition to tax in case of delinquency.**

If the tax is not paid when due, there shall be added as part of the tax interest (except in the case of adjustments made in accordance with the provisions of sections 1401 (c) and 1411) at the rate of 6 per centum per annum from the date the tax became due until paid.

**(c) Method of collection and payment.**

Such taxes shall be collected and paid in such manner, at such times, and under such conditions, not inconsistent with this subchapter (either by making and filing returns, or by stamps, coupons, tickets, books, or other reasonable devices or methods necessary or helpful in securing a complete and proper collection and payment of the tax or in securing proper identification of the taxpayer), as may be prescribed by the Commissioner, with the approval of the Secretary.

**(d) Fractional parts of a cent.**

In the payment of any tax under this subchapter a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. (53 Stat. 176.)

**DERIVATION**

Subsections (a), (b) from acts Aug. 14, 1935, ch. 531, title VIII, § 807 (a), 49 Stat. 637; Aug. 30, 1935, ch. 829, § 404, 49 Stat. 1027.

Subsections (c), (d) from act Aug. 14, 1935, ch. 531, title VIII, § 807 (b), (d), 49 Stat. 637, 638.

#### CROSS REFERENCES

Collection of tax on services made necessary by hurricane, see note to section 1410 of this title.

Disclosure of information in possession of board, see section 1306 of Title 42, The Public Health and Welfare.

#### § 1421. Overpayments and underpayments.

If more or less than the correct amount of tax imposed by section 1400 or 1410 is paid or deducted with respect to any wage payment and the overpayment or underpayment of tax cannot be adjusted under section 1401 (c) or 1411 the amount of the overpayment shall be refunded and the amount of the underpayment shall be collected, in such manner and at such times (subject to the statutes of limitations properly applicable thereto) as may be prescribed by regulations made under this subchapter. (53 Stat. 176.)

#### DERIVATION

Act Aug. 14, 1935, ch. 531, title VIII, § 806, 49 Stat. 637

#### § 1422. Erroneous payments.

Any tax paid under this subchapter by a taxpayer with respect to any period with respect to which he is not liable to tax under this subchapter shall be credited against the tax, if any, imposed by subchapter B upon such taxpayer, and the balance, if any, shall be refunded. (53 Stat. 176.)

#### DERIVATION

Act June 29, 1937, ch. 405, § 7 (e), 50 Stat. 439.

#### § 1423. Sale of stamps by postmasters—(a) Supply.

The Commissioner shall furnish to the Postmaster General without prepayment a suitable quantity of stamps, coupons, tickets, books, or other devices prescribed by the Commissioner under section 1420 (c) for the collection or payment of any tax imposed by this subchapter, to be distributed to, and kept on sale by, all post offices of the first and second classes, and such post offices of the third and fourth classes as (1) are located in county seats, or (2) are certified by the Secretary to the Postmaster General as necessary to the proper administration of this subchapter.

#### (b) Bond and accounting.

The Postmaster General may require each such postmaster to furnish bond in such increased amount as he may from time to time determine, and each such postmaster shall deposit the receipts from the sale of such stamps, coupons, tickets, books, or other devices, to the credit of, and render accounts to, the Postmaster General at such times and in such form as the Postmaster General may by regulations prescribe.

#### (c) Deposit of receipts.

The Postmaster General shall at least once a month transfer to the Treasury as internal-revenue collections all receipts so deposited. (53 Stat. 177.)

#### DERIVATION

Act Aug. 14, 1935, ch. 531, title VIII, § 809, 49 Stat. 638.

#### § 1424. Expenditures incurred by the Post Office Department.

The Postmaster General shall at least once a month transfer to the Treasury, together with the receipts required to be deposited under section 1423, a statement of the additional expenditures in the District of Columbia and elsewhere incurred by the Post Office Department in performing the duties imposed upon said Department by this subchapter, and the Secretary shall be authorized and directed to advance from time to time to the credit of the Post Office Department from appropriations made for the collection of the taxes imposed by this subchapter, such sums as may be required for such additional expenditures incurred by the Post Office Department. (53 Stat. 177.)

#### DERIVATION

Act Aug. 14, 1935, ch. 531, title VIII, § 809, 49 Stat. 638.

#### § 1425. Penalties relating to stamps and other collection devices—(a) Unauthorized use, sale, etc.

Whoever buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in this subchapter or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device, prescribed by the Commissioner under section 1420 (c) for the collection or payment of any tax imposed by this subchapter, shall be fined not more than \$1,000 or imprisoned for not more than six months, or both.

#### (b) Counterfeiting, etc.

Whoever, with intent to defraud, alters, forges, makes, or counterfeits any stamp, coupon, ticket, book, or other device prescribed by the Commissioner under section 1420 (c) for the collection or payment of any tax imposed by this subchapter, or uses, sells, lends, or has in his possession any such altered, forged, or counterfeited stamp, coupon, ticket, book, or other device, or makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such stamp, coupon, ticket, book, or other device, shall be fined not more than \$5,000 or imprisoned not more than five years, or both. (53 Stat. 177.)

#### DERIVATION

Act Aug. 14, 1935, ch. 531, title VIII, § 810, 49 Stat. 638.

#### § 1426. Definitions.

When used in this subchapter—

#### (a) Wages.

The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) That part of the remuneration which, after remuneration equal to \$3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year;

(2) The amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his

employees (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical and hospitalization expenses in connection with sickness or accident disability, or (D) death, provided the employee (i) has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his employer, and (ii) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer;

(3) The payment by an employer (without deduction from the remuneration of the employee) (A) of the tax imposed upon an employee under section 1400 or (B) of any payment required from an employee under a State unemployment compensation law; or

(4) Dismissal payments which the employer is not legally required to make.

(b) Employment.

The term "employment" means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date, and any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him, irrespective of the citizenship or residence of either, (A) within the United States, or (B) on or in connection with an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if the employee is employed on and in connection with such vessel when outside the United States, except—

(1) Agricultural labor (as defined in subsection (h) of this section);

(2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(3) Casual labor not in the course of the employer's trade or business;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed on or in connection with a vessel not an American vessel by an employee, if the employee is employed on and in connection with such vessel when outside the United States;

(6) Service performed in the employ of the United States Government, or of an instrumentality of the United States which is (A) wholly owned by the United States, or (B) exempt from the tax imposed by section 1410 by virtue of any other provision of law;

(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political sub-

divisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 1410;

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(9) Service performed by an individual as an employee or employee representative as defined in section 1532;

(10) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 101, if—

(i) the remuneration for such service does not exceed \$45, or

(ii) such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association, and is performed away from the home office, or is ritualistic service in connection with any such society, order, or association, or

(iii) such service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university;

(B) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 101 (1);

(C) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (i) no part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (ii) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;

(D) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if (i) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and (ii) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual;

(E) Service performed in any calendar quarter in the employ of a school, college, or university, not exempt from income tax under section 101, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university, and the remuneration for such service does not exceed \$45 (exclusive of room, board, and tuition);



(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law;

(14) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except (A) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and (B) service performed on or in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States); or

(15) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

**(c) Included and excluded service.**

If the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the per-

son employing him, where any of such service is excepted by paragraph (9) of subsection (b).

**(d) Employee.**

The term "employee" includes an officer of a corporation.

**(e) State.**

The term "State" includes Alaska, Hawaii, and the District of Columbia.

**(f) Person.**

The term "person" means an individual, a trust or estate, a partnership, or a corporation.

**(g) American vessel.**

The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

**(h) Agricultural labor.**

The term "agricultural labor" includes all services performed—

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 1141j (g) of Title 12, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. (53 Stat. 177; Aug. 10, 1939, ch. 666, title VI, § 606, 53 Stat. 1383.)

#### DERIVATION

Subsections (a), (b) (1-8) from act Aug. 14, 1935, ch. 531, title VIII, § 811, 49 Stat. 639.

Subsection (b) (9), (10) from act June 29, 1937, ch. 405, § 9 (a), 50 Stat. 439.

Subsections (c), (d), (e) from act Aug. 14, 1935, ch. 531, §§ 1101 (a) (6), 1101 (a) (1), 1101 (a) (3), 49 Stat. 647.

#### 1939 AMENDMENT

Amendment by act August 10, 1939, cited to text, was made effective January 1, 1940, by section 606 of said act.

#### REPEAL

Subsection (b), paragraph (4), as it existed prior to amendment by section 606 of act August 10, 1939, cited to text, was repealed "as of effective date thereof" by section 905 (a) of said act. See note hereto.

Prior to amendment by act August 10, 1939, section 1426 read as follows:

When used in this subchapter—

(a) *Wages.* The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include that part of the remuneration which, after remuneration equal to \$3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year.

(b) *Employment.* The term "employment" means any service of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;  
(2) Domestic service in a private home;  
(3) Casual labor not in the course of the employer's trade or business;

(4) Service performed by an individual who has attained the age of sixty-five;

(5) Service performed as an officer or member of the crew of a vessel documented under the laws of the United States or of any foreign country;

(6) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(7) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(9) Service performed by an individual as an employee as defined in section 1532 (b); or

(10) Service performed as an employee representative as defined in section 1532 (c).

(c) *Employee.* The term "employee" includes an officer of a corporation.

(d) *State.* The term "State" includes Alaska, Hawaii, and the District of Columbia.

(e) *Person.* The term "person" means an individual, a trust or estate, a partnership, or a corporation.

Section 902 (f) of act August 10, 1939, cited to text, provided as follows: "No tax shall be collected under title VIII (section 1001 et seq. of Title 42) or IX (section 1101 et seq. of Title 42) of the Social Security Act or under the Federal Insurance Contributions Act (section 1400 et seq. of Title 26) or the Federal Unemployment Tax Act (section 1600 et seq. of Title 26), with respect to services rendered prior to January 1, 1940, which are described in subpara-

graphs (11) and (12) of sections 1426 (b) and 1607 (c) of the Internal Revenue Code, as amended, and any such tax heretofore collected (including penalty and interest with respect thereto, if any), shall be refunded in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax. No interest shall be allowed or paid on the amount of any such refund. No payment shall be made under title II of the Social Security Act (section 401 et seq. of Title 42) with respect to services rendered prior to January 1, 1940, which are described in subparagraphs (11) and (12) of section 209 (b) of such act, as amended."

Act Aug. 10, 1939, ch. 666, title IX, § 905, 53 Stat. 1400, provided as follows: "(a) No service performed at any time during the calendar year 1939 by any individual shall, by reason of the individual having attained the age of sixty-five, be excepted from employment as defined in section 1426 (b) of subchapter A of chapter 9 of the Internal Revenue Code (section 1426 of Title 26). Paragraph (4) of such section (which excepts such service from employment) is repealed as of the effective date thereof, and paragraph (4) of section 811 (b) of the Social Security Act (section 1011 of Title 42) is repealed as of January 1, 1939. The tax on employees imposed by section 1400 of such subchapter and the tax on employers imposed by section 1410 of such subchapter, and the provisions of law applicable to such taxes, shall apply with respect to remuneration paid after December 31, 1938, for service which, by reason of the enactment of this section, constitutes employment as so defined.

"(b) Notwithstanding any other provision of law, no employer shall be liable for the tax on any employee, imposed by section 1400 of such subchapter (unless the employer collects such tax from the employee), with respect to service performed before the date of enactment of this act which constitutes employment by reason of the enactment of this section, except to the extent that the employer has under his control at any time on or after the ninetieth day after such date amounts of remuneration earned at any time by the employee."

#### CROSS REFERENCE

Coal-mining employees of railroads, transfer of social insurance and labor relations coverage to laws applicable to coal mining generally from laws applicable to railroad industry by act August 13, 1940, see note under this chapter, preceding section 1400

#### § 1427. Deductions as constructive payments.

Whenever under this subchapter or any Act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for the purposes of this subchapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction. (53 Stat. 178.)

#### DERIVATION

Act Aug. 14, 1935, ch. 531, title VIII, § 1101 (c), 49 Stat. 647.

#### § 1428. Estimate of revenue reduction.

The Secretary at intervals of not longer than three years shall estimate the reduction in the amount of taxes collected under this subchapter by reason of the operation of paragraph (9) of subsection (b) of section 1426 and shall include such estimate in his annual report. (53 Stat. 178; Aug. 10, 1939, ch. 666, title IX, § 904, 53 Stat. 1400.)

#### DERIVATION

Act June 29, 1937, ch. 405, § 9 (b), 50 Stat. 440.

## 1939 AMENDMENT

Act August 10, 1939, cited to text, which inserted "paragraph (9)" in lieu of "paragraphs (9) and (10)", made effective January 1, 1940, by section 904 of said act.

## § 1429. Rules and regulations.

The Secretary shall make and publish such rules and regulations, not inconsistent with this subchapter, as may be necessary to the efficient administration of the functions with which he is charged under this subchapter. The Commissioner, with the approval of the Secretary, shall make and publish rules and regulations for the enforcement of this subchapter. (53 Stat. 178.)

## DERIVATION

Act Aug. 14, 1935, ch. 531, title VIII, §§ 808, 1132, 49 Stat. 638, 647.

## § 1430. Other laws applicable.

All provisions of law, including penalties, applicable with respect to any tax imposed by section 2700 or section 1800, and the provisions of section 3661, shall, insofar as applicable and not inconsistent with the provisions of this subchapter, be applicable with respect to the taxes imposed by this subchapter. (53 Stat. 178; Aug. 10, 1939, ch. 666, title IX, § 903, 53 Stat. 1400.)

## DERIVATION

Act Aug. 14, 1935, ch. 531, title VIII, § 807 (c), 49 Stat. 638.

## § 1431. Effective date of subchapter.

This subchapter shall take effect on the first day of that quarter of the calendar year occurring next after the enactment of this title. (53 Stat. 179.)

## § 1432. Short title.

This subchapter<sup>1</sup> may be cited as the "Federal Insurance Contributions Act." (Added Aug. 10, 1939, ch. 666, title VI, § 607, 53 Stat. 1387.)

<sup>1</sup> Sections 1400-1403, 1410, 1411, 1420-1432 of this title

## SUBCHAPTER B.—EMPLOYMENT BY CARRIERS

## PART I.—TAX ON EMPLOYEES

## CROSS REFERENCE

Coal-mining employees of railroads, transfer of social insurance and labor relations coverage to laws applicable to coal mining generally from laws applicable to railroad industry by act August 13, 1940, see note under this chapter, preceding section 1400.

## § 1500. Rate of tax.

In addition to other taxes, there shall be levied, collected, and paid upon the income of every employee a tax equal to the following percentages of so much of the compensation of such employee as is not in excess of \$300 for any calendar month, earned by him after the effective date of this subchapter—

1. With respect to compensation earned during the calendar year 1939, the rate shall be 2¾ per centum;
2. With respect to compensation earned during the calendar years 1940, 1941, and 1942, the rate shall be 3 per centum;
3. With respect to compensation earned during the calendar years 1943, 1944, and 1945, the rate shall be 3¼ per centum;

4. With respect to compensation earned during the calendar years 1946, 1947, and 1948, the rate shall be 3½ per centum;

5. With respect to compensation earned after December 31, 1948, the rate shall be 3¾ per centum. (53 Stat. 179)

## DERIVATION

Act June 29, 1937, ch. 405, § 2 (a), 50 Stat. 437.

## § 1501. Deduction of tax from compensation—(a) Requirement.

The tax imposed by section 1500 shall be collected by the employer of the taxpayer by deducting the amount of the tax from the compensation of the employee as and when paid. If an employee is paid compensation by more than one employer with respect to any calendar month, then, under regulations made under this subchapter, the Commissioner may prescribe the proportion of the tax to be deducted by each employer from the compensation paid by him to the employee with respect to such month.

## (b) Indemnification of employer.

Every employer required under subsection (a) to deduct the tax shall be made liable for the payment of such tax and shall not be liable to any person for the amount of any such payment.

## (c) Adjustments.

If more or less than the correct amount of tax imposed by section 1500 is paid with respect to any compensation payment, then, under regulations made under this subchapter by the Commissioner, with the approval of the Secretary, proper adjustments, with respect both to the tax and the amount to be deducted, shall be made, without interest, in connection with subsequent compensation payments to the same employee by the same employer. (53 Stat. 179.)

## DERIVATION

Act June 29, 1937, ch. 405, § 2, (b), (c), 50 Stat. 437.

## § 1502. Overpayments and underpayments.

If more or less than the correct amount of the tax imposed by section 1500 is paid or deducted with respect to any compensation payment and the overpayment or underpayment of the tax cannot be adjusted under section 1501 (c), the amount of the overpayment shall be refunded, or the amount of the underpayment shall be collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations under this subchapter as made by the Commissioner, with the approval of the Secretary. (53 Stat. 179.)

## DERIVATION

Act June 29, 1937, ch. 405, § 4, 50 Stat. 438.

## § 1503. Nondeductibility of tax from net income.

For the purposes of the income tax imposed by chapter 1 or by any Act of Congress in substitution therefor, the tax imposed by section 1500 shall not be allowed as a deduction to the taxpayer in computing his net income. (53 Stat. 179.)

## DERIVATION

Act June 29, 1937, ch. 405, § 6, 50 Stat. 439.

**PART II.—TAX ON EMPLOYEE REPRESENTATIVES****§ 1510. Rate of tax.**

In addition to other taxes, there shall be levied, collected, and paid upon the income of each employee representative a tax equal to the following percentages of so much of the compensation of such employee representative as is not in excess of \$300 for any calendar month earned by him after the effective date of this subchapter:

1. With respect to compensation earned during the calendar year 1939, the rate shall be 5½ per centum;

2. With respect to compensation earned during the calendar years 1940, 1941, and 1942, the rate shall be 6 per centum;

3. With respect to compensation earned during the calendar years 1943, 1944, and 1945, the rate shall be 6½ per centum;

4. With respect to compensation earned during the calendar years 1946, 1947, and 1948, the rate shall be 7 per centum;

5. With respect to compensation earned after December 31, 1948, the rate shall be 7½ per centum. (53 Stat. 180.)

**DERIVATION**

Act June 29, 1937, ch. 405, § 5, 50 Stat. 438.

**§ 1511. Determination of compensation.**

The compensation of an employee representative for the purpose of ascertaining the tax thereon shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in section 1532 (a). (53 Stat. 180.)

**DERIVATION**

Act June 29, 1937, ch. 405, § 5, 50 Stat. 438

**§ 1512. Non-deductibility of tax from net income.**

For the purposes of the income tax imposed by chapter 1 or by any Act of Congress in substitution therefor, the taxes imposed by section 1510 shall not be allowed as a deduction to the taxpayer in computing his net income. (53 Stat. 180.)

**DERIVATION**

Act June 29, 1937, ch. 405, § 6, 50 Stat. 439.

**PART III.—TAX ON EMPLOYERS****§ 1520. Rate of tax.**

In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of so much of the compensation as is not in excess of \$300 for any calendar month paid by him to any employee for services rendered to him after December 31, 1936: *Provided, however,* That if an employee is paid compensation by more than one employer with respect to any such calendar month, the tax imposed by this section shall apply to not more than \$300 of the aggregate compensation paid to said employee by all said employers with respect to such calendar month, and each such employer shall be liable for that proportion of the tax with respect to such compensation which his payment to the employee with respect to such calendar month bears to the aggregate

compensation paid to such employee by all employers with respect to such calendar month:

1. With respect to compensation paid to employees for services rendered during the calendar year 1939, the rate shall be 2¾ per centum;

2. With respect to compensation paid to employees for services rendered during the calendar years 1940, 1941, and 1942, the rate shall be 3 per centum;

3. With respect to compensation paid to employees for services rendered during the calendar year 1943, 1944, and 1945, the rate shall be 3¼ per centum;

4. With respect to compensation paid to employees for services rendered during the calendar years 1946, 1947, and 1948, the rate shall be 3½ per centum;

5. With respect to compensation paid to employees for services rendered after December 31, 1948, the rate shall be 3¾ per centum. (53 Stat. 180.)

**DERIVATION**

Act June 29, 1937, ch. 405, § 3 (a), 50 Stat. 437.

**§ 1521. Adjustments.**

If more or less than the correct amount of the tax imposed by section 1520 is paid with respect to any compensation payment, then, under regulations made by the Commissioner, with the approval of the Secretary, proper adjustments with respect to the tax shall be made, without interest, in connection with subsequent excise-tax payments made by the same employer. (53 Stat. 181.)

**DERIVATION**

Act June 29, 1937, ch. 405, § 3 (b), 50 Stat. 438

**§ 1522. Overpayments and underpayments.**

If more or less than the correct amount of the tax imposed by section 1520 is paid or deducted with respect to any compensation payment and the overpayment or underpayment of the tax cannot be adjusted under section 1521, the amount of the overpayment shall be refunded, or the amount of the underpayment shall be collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations under this subchapter as made by the Commissioner, with the approval of the Secretary. (53 Stat. 181.)

**DERIVATION**

Act June 29, 1937, ch. 405, § 4, 50 Stat. 438.

**PART IV.—GENERAL PROVISIONS****§ 1530. Collection and payment of taxes—(a) Administration.**

The taxes imposed by this subchapter shall be collected by the Bureau of Internal Revenue and shall be paid into the Treasury of the United States as internal-revenue collections.

**(b) Time and manner of payment.**

The taxes imposed by this subchapter shall be collected and paid quarterly or at such other times and in such manner and under such conditions not inconsistent with this subchapter as may be prescribed by the Commissioner with the approval of the Secretary.

(c) Addition to tax in case of delinquency.

If a tax imposed by this subchapter is not paid when due, there shall be added as part of the tax (except in the case of adjustments made in accordance with the provisions of this subchapter) interest at the rate of 6 per centum per annum from the date the tax became due until paid.

(d) Fractional parts of a cent.

In the payment of any tax under this subchapter, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. (53 Stat. 181.)

DERIVATION

Act June 29, 1937, ch. 405, § 7 (a), (b), (d), 50 Stat. 439

§ 1531. Erroneous payments.

Any tax paid under this subchapter by a taxpayer with respect to any period with respect to which he is not liable to tax under this subchapter shall be credited against the tax, if any, imposed by subchapter A upon such taxpayer, and the balance, if any, shall be refunded. (53 Stat. 181.)

DERIVATION

Act June 29, 1937, ch. 405, § 7 (e), 50 Stat. 439.

§ 1532. Definitions.

As used in this subchapter—

(a) Employer.

The term "employer" means any carrier (as defined in subsection (h) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: *Provided, however,* That the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Commissioner of Internal Revenue, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad

transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended,<sup>1</sup> and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws of such organizations. The term "employer" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

(b) Employee.

The term "employee" means any person in the service of one or more employers for compensation: *Provided, however,* That the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual is in the employment relation to a carrier if he is on furlough, subject to call for service within or outside the United States and ready and willing to serve, or on leave of absence, or absent on account of sickness or disability; all in accordance with the established rules and practices in effect on the carrier: *Provided, however,* That an individual shall not be deemed to be in the employment relation to a carrier unless during the last pay-roll period in which he rendered service to it he was with respect to that service in the service of an employer in accordance with subsection (d) of this section.

The term "employee" includes an officer of an employer.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(c) Employee representative.

The term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employer" as defined in subsection (a), who before or after June 29, 1937, was in the service of an employer as defined in subsection (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, 44 Stat. 577 (U. S. C., Title 45, ch. 18<sup>1</sup>), as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

(d) Service.

An individual is in the service of an employer whether his service is rendered within or without the United States if he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, which service he renders for compensation: *Provided, however,*

That an individual shall be deemed to be in the service of an employer not conducting the principal part of its business in the United States only when he is rendering service to it in the United States: *Provided further*, That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof; and the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable there at all times prior to that date.

**(e) Compensation.**

The term "compensation" means any form of money remuneration earned by an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. Such term does not include tips, or the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 1500. Compensation which is earned during the period for which the Commissioner shall require a return of taxes under this subchapter to be made and which is payable during the calendar month following such period shall be deemed to have been paid during such period only. For the purpose of determining the amount of taxes under sections 1500 and 1520, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than \$3 and (1) such compensation is earned before April 1, 1940, and the taxes thereon under such sections are not paid before July 1, 1940, or (2) such compensation is earned after March 31, 1940.

**(f) United States.**

The term "United States" when used in a geographical sense means the States, Alaska, Hawaii, and the District of Columbia.

**(g) Company.**

The term "company" includes corporations, associations, and joint-stock companies.

**(h) Carrier.**

The term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.

**(i) Person.**

The term "person" means an individual, a partnership, an association, a joint-stock company, or a corporation. (53 Stat. 181; June 11, 1940, ch. 307, § 3, 54 Stat. 264; Aug. 13, 1940, ch. 664, §§ 1, 3, 54 Stat. 785, 786, eff. Feb. 10, 1939; Oct. 10, 1940, ch. 842, § 27 (a), 54 Stat. 1101.)

<sup>1</sup> Sections 151-188 of Title 45, Railroads.

<sup>2</sup> So in original. Probably should read "ch. 8".

**DERIVATION**

Act June 29, 1937, ch. 405, § 1, 50 Stat. 435.

**1940 AMENDMENTS**

Subsection (a), last sentence, was added by section 1 of act August 13, 1940, cited to text.

Subsection (b), last paragraph, was added by section 3 of act August 13, 1940, cited to text. The second proviso of this subsection was amended by act June 11, 1940, cited to text.

Subsection (d) was amended by act June 11, 1940, cited to text, which added second proviso.

Subsection (e), last sentence, was added by act October 10, 1940, cited to text.

**EFFECTIVE DATE**

Act June 11, 1940, cited to text, provided in part as follows: "The amendments in this section (affecting subsections (b) and (d) of this section) shall operate in the same manner and have the same effect as if they had been part of the Internal Revenue Code when that code was enacted on February 10, 1939, and as if they had been part correspondingly of subsections (b) and (d) of the Carriers Taxing Act of 1937 (50 Stat. 435) (228a-228r of Title 45) when that act was enacted on June 29, 1937."

**EFFECTIVE DATE OF ACT OCTOBER 10, 1940, CITED TO TEXT**

Section 1 of act Oct. 10, 1940, ch. 842, 54 Stat. 1094, which act affected section 1532 of this title, sections 228a, 228i, 262 note, 351, 352, 353, 354, 355, 356, 361, and 362 of Title 45, provided:

"That the provisions of this Act shall take effect on November 1, 1940, except that sections 2, 11, 25, 26, and 27 (affecting sections 228a (h), 228i, 262 note, 351 (g), and 352 (d) of Title 45, and section 1532 (e) of Title 26) shall be effective as of July 1, 1940, and sections 19 and 20 (affecting section 355 (c) of Title 45) shall become effective upon the approval of this act: *Provided, however*, That—

"(a) A half-month which has begun prior to November 1, 1940, in accordance with the Railroad Unemployment Insurance Act (section 351 et seq of Title 45) and regulations thereunder, and which includes such date, shall continue, and benefits with respect thereto shall be computed and paid as if this act had not been enacted;

"(b) All benefit years current on October 31, 1940, shall terminate (1) on October 31, 1940, or (2) on the last day of a half-month which includes October 31, 1940 and November 1, 1940, whichever is later, and, for the purposes of section 2 (c) of the Railroad Unemployment Insurance Act (section 352 (c) of Title 45), as amended by this act, all benefits paid for unemployment in half-months begun subsequent to June 30, 1940, and prior to November 1, 1940, shall be deemed to have been paid for unemployment within the benefit year ending June 30, 1941;

"(c) Benefits for unemployment in the first registration period, beginning after October 31, 1940, of an employee who has, subsequent to June 30, 1940, completed a waiting period under section 3 (b) of the Railroad Unemployment Insurance Act (section 353 (b) of Title 45), shall be determined and computed as though such registration period were a subsequent registration period in the same benefit year."

**CROSS REFERENCES**

Operation and effect of act August 13, 1940, cited to text, see sections 4-7 thereof, set out in note under this chapter, preceding section 1400.

Service performed as an employee or employee representative not included in definition of employment under Title II of the Social Security Act, see section 409 of Title 42, The Public Health and Welfare.

Section 1533 was not used by Congress in enacting the Internal Revenue Code.

**§ 1534. Court jurisdiction.**

The several district courts of the United States and the District Court of the United States for the District of Columbia, respectively, shall have jurisdiction to entertain an application by the Attorney General on behalf of the Commissioner to compel an employee or other person residing within the juris-

diction of the court or an employer subject to service of process within its jurisdiction to comply with any obligations imposed on such employee, employer, or other person under the provisions of this subchapter. The jurisdiction herein specifically conferred upon such Federal courts shall not be held exclusive of any jurisdiction otherwise possessed by such courts to entertain actions at law or suits in equity in aid of the enforcement of rights or obligations arising under the provisions of this subchapter. (53 Stat. 183.)

## DERIVATION

Act June 29, 1937, ch. 405, § 8, 50 Stat. 439.

## § 1535. Rules and regulations.

The Commissioner, with the approval of the Secretary, shall make and publish such rules and regulations as may be necessary for the enforcement of this subchapter. (53 Stat. 183.)

## DERIVATION

Act June 29, 1937, ch. 405, § 12, 50 Stat. 440.

## § 1536. Other laws applicable.

All provisions of law, including penalties, applicable with respect to any tax imposed by section 2700 or section 1800, and the provisions of section 3762, insofar as applicable and not inconsistent with the provisions of this subchapter, shall be applicable with respect to the taxes imposed by this subchapter. (53 Stat. 183.)

## DERIVATION

Act June 29, 1937, ch. 405, § 7 (c), 50 Stat. 439.

## § 1537. Effective date of subchapter.

This subchapter shall take effect on the first day of that quarter of the calendar year occurring next after the enactment of this title. (53 Stat. 183.)

## SUBCHAPTER C.—TAX ON EMPLOYERS OF EIGHT OR MORE

## § 1600. Rate of tax.

Every employer (as defined in section 1607 (a)) shall pay for the calendar year 1939 and for each calendar year thereafter an excise tax, with respect to having individuals in his employ, equal to 3 per centum of the total wages (as defined in section 1607 (b)) paid by him during the calendar year with respect to employment (as defined in section 1607 (c)) after December 31, 1938. (53 Stat. 183; Aug. 10, 1939, ch. 666, title VI, § 608, 53 Stat. 1387.)

## DERIVATION

Act Aug. 14, 1935, ch. 531, title IX, § 901, 49 Stat. 639

## CREDIT AGAINST FEDERAL UNEMPLOYMENT TAXES

Act Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title VII, § 701, 54 Stat. 1017, provided as follows:

"(a) *Allowance of credit.*—Against the tax imposed by section 901 of the Social Security Act (section 1101 of Title 42) for the calendar year 1936, 1937, or 1938, or against the tax imposed by the Federal Unemployment Tax Act (section 1600 et seq. of Title 26) for the calendar year 1939, any taxpayer shall be allowed credit for the amount of contributions paid by him into an unemployment fund under a State law—

"(1) Before the sixtieth day after the date of the enactment of this Act;

"(2) On or after such sixtieth day (except in the case of the tax for the calendar year 1939) with respect to

wages paid after the fortieth day after such date of enactment;

"(3) Without regard to the date of payment, if the assets of the taxpayer are, at any time during the fifty-nine-day period following such date of enactment, in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction.

The amount of such credit, in the case of contributions with respect to the calendar year 1939 paid after the last day upon which the taxpayer was required under section 1604 of the Federal Unemployment Tax Act (section 1604 of Title 26) to file a return for such year, shall not exceed 90 per centum of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last day. The provisions of the Social Security Act (section 301 et seq. of Title 42) in force prior to February 11, 1939 (except the provision limiting the credit to amounts paid before the date of filing returns) shall, with respect to the tax for the calendar year 1936, 1937, or 1938, apply to allowance of credit under this section, and the provisions of the Federal Unemployment Tax Act (section 1600 et seq. of Title 26) (except section 1601 (a) (3) (section 1601 (a) (3) of Title 26)) shall, with respect to the tax for the calendar year 1939, apply to allowance of credit under this section. The terms used in this subsection shall, with respect to the tax for the calendar year 1936, 1937, or 1938, have the same meaning as when used in title IX of the Social Security Act (section 1101 et seq. of Title 42) prior to February 11, 1939, and shall, with respect to the tax for the calendar year 1939, have the same meaning as when used in the Federal Unemployment Tax Act (section 1600 et seq. of Title 26). The total credit allowable against the tax imposed by section 901 of the Social Security Act (section 1101 of Title 42) for the calendar year 1936, 1937, or 1938, or against the tax imposed by section 1600 of the Federal Unemployment Tax Act (section 1600 of Title 26) for the calendar year 1939, shall not exceed 90 per centum of such tax.

"(b) *Refund.*—Refund of the tax (including penalty and interest collected with respect thereto, if any), based on any credit allowable under this section, may be made in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax. No interest shall be allowed or paid on the amount of any such refund."

## PENALTIES OR FORFEITURES

Section 902 (1) of act August 10, 1939, cited to text, provided as follows: "No part of the tax imposed by the Federal Unemployment Tax Act (section 1600 et seq. of Title 26) or by title IX of the Social Security Act (section 1101 et seq. of Title 42), whether or not the taxpayer is entitled to a credit against such tax, shall be deemed to be a penalty or forfeiture within the meaning of section 57j of the act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' (Title 11) approved July 1, 1898, as amended."

## CROSS REFERENCES

Coal-mining employees of railroads, transfer of social insurance and labor relations coverage to laws applicable to coal mining generally from laws applicable to railroad industry by act August 13, 1940, see note under this chapter, preceding section 1400.

Collection of tax on services made necessary by hurricane, see note to section 1410 of this title.

Foreign government service exemption from tax prior to January 1, 1940, see note under section 1607 of this title.

Penalty for fraud against Social Security Act, see section 1307 of Title 42, The Public Health and Welfare.

## § 1601. Credits against tax.—(a) Contributions to State unemployment funds.

(1) The taxpayer may, to the extent provided in this subsection and subsection (c), credit against the tax imposed by section 1600 the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the un-



employment compensation law of a State which is certified for the taxable year as provided in section 1603.

(2) The credit shall be permitted against the tax for the taxable year only for the amount of contributions paid with respect to such taxable year.

(3) The credit against the tax for any taxable year shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required under section 1604 to file a return for such year; except that credit shall be permitted for contributions paid after such last day but before July 1 next following such last day, but such credit shall not exceed 90 per centum of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last day. The preceding provisions of this subdivision shall not apply to the credit against the tax of a taxpayer for any taxable year if such taxpayer's assets, at any time during the period from such last day for filing a return for such year to June 30 next following such last day, both dates inclusive, are in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction.

(4) Upon the payment of contributions into the unemployment fund of a State which are required under the unemployment compensation law of that State with respect to remuneration on the basis of which, prior to such payment into the proper fund, the taxpayer erroneously paid an amount as contributions under another unemployment compensation law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions with respect to services subject to such other law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made on the date the return for the taxable year was filed under section 1604.

(5) Refund of the tax (including penalty and interest collected with respect thereto, if any), based on any credit allowable under this section, may be made in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax. No interest shall be allowed or paid on the amount of any such refund.

**(b) Additional credit.**

In addition to the credit allowed under subsection (a), a taxpayer may credit against the tax imposed by section 1600 for any taxable year an amount, with respect to the unemployment compensation law of each State certified for the taxable year as provided in section 1602 (or with respect to any provisions thereof so certified), equal to the amount, if any, by which the contributions required to be paid by him with respect to the taxable year were less than the contributions such taxpayer would have been required to pay if throughout the taxable year he had been subject under such State law to the highest rate applied thereunder in the taxable year to any person having individuals in his employ,

or to a rate of 2.7 per centum, whichever rate is lower.

**(c) Limit on total credits.**

The total credits allowed to a taxpayer under this subchapter shall not exceed 90 per centum of the tax against which such credits are allowable. (53 Stat. 183; Aug. 10, 1939, ch. 666, title VI, § 609, 53 Stat. 1387.)

**DERIVATION**

Subsection (a) from act Aug. 14, 1935, ch. 531, title IX, § 902, 49 Stat. 639.

Subsections (b) (1), (b) (2), (c) from act Aug. 14, 1935, ch. 531, title IX, §§ 909 (a), (b), (c), 49 Stat. 643.

**CREDIT AGAINST TAX**

Section 902 (e) of act August 10, 1939, cited to text, provided as follows: "Notwithstanding the provisions of section 1601 (a) (2) of the Internal Revenue Code, as amended, credit shall be permitted under such section 1601, against the tax for the taxable year in which remuneration is paid for services rendered during a prior year, for the amounts of contributions with respect to such remuneration which have not been credited against the tax for any prior taxable year. Credit shall be permitted under this subsection only against the tax for the years 1940, 1941, and 1942, and only for contributions with respect to remuneration for services rendered after December 31, 1938."

**CROSS REFERENCE**

Coal-mining employees of railroads, transfer of social insurance and labor relations coverage to laws applicable to coal mining generally from laws applicable to railroad industry by act August 13, 1940, see note under this chapter, preceding section 1400.

**§ 1602. Conditions of additional credit allowance—(a) State standards.**

A taxpayer shall be allowed an additional credit under section 1601 (b) with respect to any reduced rate of contributions permitted by a State law, only if the Board finds that under such law—

(1) No reduced rate of contributions to a pooled fund or to a partially pooled account, is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the three consecutive years immediately preceding the computation date;

(2) No reduced rate of contributions to a guaranteed employment account is permitted to a person (or a group of persons) having individuals in his (or their) employ unless (A) the guaranty of remuneration was fulfilled in the year preceding the computation date; and (B) the balance of such account amounts to not less than 2½ per centum of that part of the pay roll or pay rolls for the three years preceding the computation date by which contributions to such account were measured; and (C) such contributions were payable to such account with respect to three years preceding the computation date;

(3) Such lower rate, with respect to contributions to a separate reserve account, is permitted only when (A) compensation has been payable from such account throughout the preceding calendar year, and (B) such account amounts to not less than five times the largest amount of compensation paid from such account within any one of the three preceding calendar years, and (C) such account amounts to not

less than  $7\frac{1}{2}$  per centum of the total wages payable by him (plus the total wages payable by any other employers who may be contributing to such account) with respect to employment in such State in the preceding calendar year.

(4) Effective January 1, 1942, paragraph (3) of this subsection is amended to read as follows:

"(3) No reduced rate of contributions to a reserve account is permitted to a person (or group of persons) having individuals in his (or their) employ unless (A) compensation has been payable from such account throughout the year preceding the computation date, and (B) the balance of such account amounts to not less than five times the largest amount of compensation paid from such account within any one of the three years preceding such date, and (C) the balance of such account amounts to not less than  $2\frac{1}{2}$  per centum of that part of the pay roll or pay rolls for the three years preceding such date by which contributions to such account were measured, and (D) such contributions were payable to such account with respect to the three years preceding the computation date."

(b) Certification by the Board with respect to additional credit allowance.

(1) On December 31 in each taxable year, the Board shall certify to the Secretary of the Treasury the law of each State (certified with respect to such year by the Board as provided in section 1603) with respect to which it finds that reduced rates of contributions were allowable with respect to such taxable year only in accordance with the provisions of subsection (a) of this section.

(2) If the Board finds that under the law of a single State (certified by the Board as provided in section 1603) more than one type of fund or account is maintained, and reduced rates of contributions to more than one type of fund or account were allowable with respect to any taxable year, and one or more of such reduced rates were allowable under conditions not fulfilling the requirements of subsection (a) of this section, the Board shall, on December 31 of such taxable year, certify to the Secretary of the Treasury only those provisions of the State law pursuant to which reduced rates of contributions were allowable with respect to such taxable year under conditions fulfilling the requirements of subsection (a) of this section, and shall, in connection therewith, designate the kind of fund or account, as defined in subsection (c) of this section, established by the provisions so certified. If the Board finds that a part of any reduced rate of contributions payable under such law or under such provisions is required to be paid into one fund or account and a part into another fund or account, the Board shall make such certification pursuant to this paragraph as it finds will assure the allowance of additional credits only with respect to that part of the reduced rate of contributions which is allowed under provisions which do fulfill the requirements of subsection (a) of this section.

(3) The Board shall, within thirty days after any State law is submitted to it for such purpose, certify to the State agency its findings with respect to reduced rates of contributions to a type of fund or

account, as defined in subsection (c) of this section, which are allowable under such State law only in accordance with the provisions of subsection (a) of this section. After making such findings, the Board shall not withhold its certification to the Secretary of the Treasury of such State law, or of the provisions thereof with respect to which such findings were made, for any taxable year pursuant to paragraph (1) or (2) of this subsection unless, after reasonable notice and opportunity for hearing to the State agency, the Board finds the State law no longer contains the provisions specified in subsection (a) of this section or the State has, with respect to such taxable year, failed to comply substantially with any such provision.

(c) Definitions.

As used in this section—

(1) Reserve account.

The term "reserve account" means a separate account in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ, from which account, unless such account is exhausted, is paid all and only compensation payable on the basis of services performed for such person (or for one or more of the persons comprising the group).

(2) Pooled fund.

The term "pooled fund" means an unemployment fund or any part thereof (other than a reserve account or a guaranteed employment account) into which the total contributions of persons contributing thereto are payable, in which all contributions are mingled and undivided, and from which compensation is payable to all individuals eligible for compensation from such fund.

(3) Partially pooled account.

The term "partially pooled account" means a part of an unemployment fund in which part of the fund all contributions thereto are mingled and undivided, and from which part of the fund compensation is payable only to individuals to whom compensation would be payable from a reserve account or from a guaranteed employment account but for the exhaustion or termination of such reserve account or of such guaranteed employment account. Payments from a reserve account or guaranteed employment account into a partially pooled account shall not be construed to be inconsistent with the provisions of paragraph (1) or (4) of this subsection.

(4) Guaranteed employment account.

The term "guaranteed employment account" means a separate account, in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ who, in accordance with the provisions of the State law or of a plan thereunder approved by the State agency,

(A) guarantees in advance at least thirty hours of work, for which remuneration will be paid at not less than stated rates, for each of forty weeks (or if more, one weekly hour may be deducted for each added week guaranteed) in a year, to all the individuals who are in his (or their) employ in, and who

continue to be available for suitable work in, one or more distinct establishments, except that any such individual's guaranty may commence after a probationary period (included within the eleven or less consecutive weeks immediately following the first week in which the individual renders services), and

(B) gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties, from which account, unless such account is exhausted or terminated, is paid all and only compensation, payable on the basis of services performed for such person (or for one or more of the persons comprising the group), to any such individual whose guaranteed remuneration has not been paid (either pursuant to the guaranty or from the security or assurance provided for the fulfillment of the guaranty), or whose guaranty is not renewed and who is otherwise eligible for compensation under the State law.

**(5) Year.**

The term "year" means any twelve consecutive calendar months.

**(6) Balance.**

The term "balance", with respect to a reserve account or a guaranteed employment account, means the amount standing to the credit of the account as of the computation date; except that, if subsequent to January 1, 1940, any moneys have been paid into or credited to such account other than payments thereto by persons having individuals in their employ, such term shall mean the amount in such account as of the computation date less the total of such other moneys paid into or credited to such account subsequent to January 1, 1940.

**(7) Computation date.**

The term "computation date" means the date, occurring at least once in each calendar year and within twenty-seven weeks prior to the effective date of new rates of contributions, as of which such rates are computed.

**(8) Reduced rate.**

The term "reduced rate" means a rate of contributions lower than the standard rate applicable under the State law, and the term "standard rate" means the rate on the basis of which variations therefrom are computed. (53 Stat. 184; Aug. 10, 1939, ch. 666, title VI, § 610, 53 Stat. 1388.)

**DERIVATION**

Act Aug. 14, 1935, ch. 531, title VIII, 49 Stat. 644.

**§ 1603. Approval of State laws—(a) Requirements.**

The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that—

(1) All compensation is to be paid through public employment offices or such other agencies as the Board may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;

(3) All money received in the unemployment fund shall (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 1606 (b))

immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 1104 of Title 42;

(4) All money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 1606 (b);

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

**(b) Notification.**

The Board shall, upon approving such law, notify the Governor of the State of its approval.

**(c) Certification.**

On December 31 of each taxable year the Board shall certify to the Secretary each State whose law it has previously approved, except that it shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Board finds has changed its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provision.

**(d) Notice of noncertification.**

If, at any time during the taxable year, the Board has reason to believe that a State whose law it has previously approved, may not be certified under subsection (c), it shall promptly so notify the Governor of such State. (53 Stat. 185; Aug. 10, 1939, ch. 666, title VI, § 611, 53 Stat. 1391.)

**DERIVATION**

Act Aug. 14, 1935, ch. 531, title IX, § 903, 49 Stat. 640

**CROSS REFERENCE**

Withdrawal as breach of conditions, see note under section 363 of Title 45, Railroads.

**§ 1604. Returns—(a) Requirement.**

Not later than January 31, next following the close of the taxable year, each employer shall make a return of the tax under this subchapter for such taxable year. Each such return shall be made under oath, shall be filed with the collector for the district in which is located the principal place of business of the employer, or, if he has no principal place of business in the United States, then with the collector at Baltimore, Maryland, and shall contain such information and be made in such manner as the Com-

missioner, with the approval of the Secretary, may by regulations prescribe.

**(b) Extension of time for filing.**

The Commissioner may extend the time for filing the return of the tax imposed by this subchapter, under such rules and regulations as he may prescribe with the approval of the Secretary, but no such extension shall be for more than ninety days.

**(c) Publicity.**

Returns filed under this subchapter shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under chapter 1, except that paragraph (2) of subsections (a), (b) and (f) of section 55 shall not apply. (53 Stat. 186; Aug. 10, 1939, ch. 666, title VI, § 612, 53 Stat. 1391.)

**DERIVATION**

Subsections (a), (b) from act Aug. 14, 1935, ch. 531, title IX, § 905 (b), 49 Stat. 641.

Subsection (c) from act Aug. 14, 1935, ch. 531, title IX, § 905 (c), 49 Stat. 642.

**1939 AMENDMENT**

Subsection (b) amended by act August 10, 1939, cited to text.

**§ 1605. Payment of taxes—(a) Administration.**

The tax imposed by this subchapter shall be collected by the Bureau of Internal Revenue under the direction of the Secretary and shall be paid into the Treasury as internal-revenue collections.

**(b) Addition to tax in case of delinquency.**

If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the date the tax became due until paid.

**(c) Installment payments.**

The taxpayer may elect to pay the tax in four equal installments instead of in a single payment, in which case the first installment shall be paid not later than the last day prescribed for the filing of returns, the second installment shall be paid on or before the last day of the third month, the third installment on or before the last day of the sixth month, and the fourth installment on or before the last day of the ninth month, after such last day. If the tax or any installment thereof is not paid on or before the last day of the period fixed for its payment, the whole amount of the tax unpaid shall be paid upon notice and demand from the collector.

**(d) Extension of time for payment.**

At the request of the taxpayer the time for payment of the tax or any installment thereof may be extended under regulations prescribed by the Commissioner with the approval of the Secretary, for a period not to exceed six months from the last day of the period prescribed for the payment of the tax or any installment thereof. The amount of the tax in respect of which any extension is granted shall be paid (with interest at the rate of one-half of 1 per centum per month) on or before the date of the expiration of the period of the extension.

**(e) Fractional parts of a cent.**

In the payment of any tax under this subchapter a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. (53 Stat. 186.)

**DERIVATION**

Subsections (a), (b) from acts Aug. 14, 1935, ch. 531, title IX, § 905 (a), 49 Stat. 642; Aug. 30, 1935, ch. 829, § 404, 49 Stat. 1027.

Subsections (c), (d), (e) from act Aug. 14, 1935, ch. 531, title IX, § 905 (d), (e), (f), 49 Stat. 642.

**CROSS REFERENCE**

Coal-mining employees of railroads, transfer of social insurance and labor relations coverage to laws applicable to coal mining generally from laws applicable to railroad industry by act August 13, 1940, see note under this chapter, preceding section 1400.

**§ 1606. Interstate commerce and Federal instrumentalities.**

(a) No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce.

(b) The legislature of any State may require any instrumentality of the United States (except such as are (A) wholly owned by the United States, or (B) exempt from the tax imposed by section 1600 by virtue of any other provision of law), and the individuals in its employ, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Board under section 1603 and (except as provided in section 5240 of the Revised Statutes, as amended,<sup>1</sup> and as modified by subsection (c) of this section) to comply otherwise with such law. The permission granted in this subsection shall apply (1) only to the extent that no discrimination is made against such instrumentality, so that if the rate of contribution is uniform upon all other persons subject to such law on account of having individuals in their employ, and upon all employees of such persons, respectively, the contributions required of such instrumentality or the individuals in its employ shall not be at a greater rate than is required of such other persons and such employees, and if the rates are determined separately for different persons or classes of persons having individuals in their employ or for different classes of employees, the determination shall be based solely upon unemployment experience and other factors bearing a direct relation to unemployment risk, and (2) only if such State law makes provision for the refund of any contributions required under such law from an instrumentality of the United States or its employees for any year in the event said State is not certified by the Board under section 1603 with respect to such year.

(c) Nothing contained in section 5240 of the Revised Statutes, as amended,<sup>1</sup> shall prevent any State from requiring any national banking association to render returns and reports relative to the association's employees, their remuneration and services, to the same extent that other persons are required to render like returns and reports under a State law

requiring contributions to an unemployment fund. The Comptroller of the Currency shall, upon receipt of a copy of any such return or report of a national banking association from, and upon request of, any duly authorized official, body, or commission of a State, cause an examination of the correctness of such return or report to be made at the time of the next succeeding examination of such association, and shall thereupon transmit to such official, body, or commission a complete statement of his findings respecting the accuracy of such returns or reports.

(d) No person shall be relieved from compliance with a State unemployment compensation law on the ground that services were performed on land or premises owned, held, or possessed by the United States, and any State shall have full jurisdiction and power to enforce the provisions of such law to the same extent and with the same effect as though such place were not owned, held, or possessed by the United States. (53 Stat. 187; Aug. 10, 1939, ch. 666, title VI, § 613, 53 Stat. 1391.)

<sup>1</sup> See sections 481-485 of Title 12, Banks and Banking.

#### DERIVATION

Act Aug. 14, 1935, ch. 531, title IX, § 906, 49 Stat. 642.

### § 1607. Definitions.

When used in this subchapter—

#### (a) Employer.

The term "employer" does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were employed by him in employment for some portion of the day (whether or not at the same moment of time) was eight or more.

#### (b) Wages.

The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) That part of the remuneration which, after remuneration equal to \$3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year;

(2) The amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his employees (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical and hospitalization expenses in connection with sickness or accident disability, or (D) death, provided the employee (i) has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his employer, and (ii) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive

a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer;

(3) The payment by an employer (without deduction from the remuneration of the employee) (A) of the tax imposed upon an employee under section 1400 or (B) of any payment required from an employee under a State unemployment compensation law; or

(4) Dismissal payments which the employer is not legally required to make.

#### (c) Employment.

The term "employment" means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date, and any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him, irrespective of the citizenship or residence of either, except—

(1) Agricultural labor (as defined in subsection (2));

(2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(3) Casual labor not in the course of the employer's trade or business;

(4) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(5) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(6) Service performed in the employ of the United States Government or of an instrumentality of the United States which is (A) wholly owned by the United States, or (B) exempt from the tax imposed by section 1600 by virtue of any other provision of law;

(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 1600;

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(9) Service performed by an individual as an employee or employee representative as defined in section 351 of Title 45;

(10) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 101, if—

(i) the remuneration for such service does not exceed \$45, or

(ii) such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association, and is performed away from the home office, or is ritualistic service in connection with any such society, order, or association, or

(iii) such service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university;

(B) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 101 (1);

(C) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (i) no part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (ii) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;

(D) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if (i) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and (ii) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual;

(E) Service performed in any calendar quarter in the employ of a school, college, or university, not exempt from income tax under section 101, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university, and the remuneration for such service does not exceed \$45 (exclusive of room, board, and tuition);

(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law;

(14) Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission; or

(15) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

(d) Included and excluded service.

If the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by paragraph (9) of subsection (c).

(e) State agency.

The term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(f) Unemployment fund.

The term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 1104 of Title 42, as amended, shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State until expended by such State agency. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year, or such portion of the year as the unemployment fund was in existence, no part of the moneys of such fund was expended for any purpose other than the payment of compensation (exclusive of expenses of administration) and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 1606 (b).

**(g) Contributions.**

The term "contributions" means payments required by a State law to be made into an unemployment fund by any person on account of having individuals in his employ, to the extent that such payments are made by him without being deducted or deductible from the remuneration of individuals in his employ.

**(h) Compensation.**

The term "compensation" means cash benefits payable to individuals with respect to their unemployment.

**(i) Employee.**

The term "employee" includes an officer of a corporation.

**(j) State.**

The term "State" includes Alaska, Hawaii, and the District of Columbia.

**(k) Person.**

The term "person" means an individual, a trust or estate, a partnership, or a corporation.

**(l) Agricultural labor.**

The term "agricultural labor" includes all service performed—

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 1141j (g) of Title 12, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. (53 Stat. 187; Aug. 10, 1939, ch. 666, title VI, § 614, 53 Stat. 1392.)

**DERIVATION**

Subsections (a), (b) from act Aug. 14, 1935, ch. 531, title IX, § 907 (a), (b), 49 Stat. 642.

Subsection (c) from act Aug. 14, 1935, ch. 531, title IX, § 907 (c), 49 Stat. 642. Said section 907 (c) was amended by act June 25, 1938, ch. 680, § 13 (a), 52 Stat. 1110, by addition of paragraph (8), which read: "service performed in the employ of an employer as defined in the Railroad Unemployment Insurance Act and service performed as an employee representative as defined in said Act." This paragraph was omitted when subsection (c) was enacted in this act.

Subsections (d)–(g) from act Aug. 14, 1935, ch. 531, title IX, § 907 (d)–(g), 49 Stat. 642.

Subsections (b), (1), (j) from act Aug. 14, 1935, ch. 531, title IX, §§ 1101 (a) (6), 1101 (a) (1), 1101 (a) (3), 49 Stat. 647.

**1939 AMENDMENT**

Amendment by act August 10, 1939, cited to text, was made effective January 1, 1940, by section 614 of said act.

Prior to amendment by act August 10, 1939, section 1607 read as follows: When used in this subchapter—

(a) *Employer.* The term "employer" does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were in his employ for some portion of the day (whether or not at the same moment of time) was eight or more.

(b) *Wages.* The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.

(c) *Employment.* The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) *State agency.* The term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(e) *Unemployment fund.* The term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation.

(f) *Contributions.* The term "contributions" means payments required by a State law to be made by an employer into an unemployment fund, to the extent that such payments are made by him without any part thereof being deducted or deductible from the wages of individuals in his employ.



(g) *Compensation.* The term "compensation" means cash benefits payable to individuals with respect to their unemployment.

(h) *Employee.* The term "employee" includes an officer of a corporation.

(i) *State.* The term "State" includes Alaska, Hawaii, and the District of Columbia.

(f) *Person.* The term "person" means an individual, a trust or estate, a partnership, or a corporation.

Section 902 (f) of act August 10, 1939, cited to text, provided as follows: "No tax shall be collected under title VIII (section 1001 et seq. of Title 42) or IX (section 1101 et seq. of Title 42) of the Social Security Act or under the Federal Insurance Contributions Act (section 1400 et seq. of Title 26) or the Federal Unemployment Tax Act (section 1600 et seq. of Title 26), with respect to services rendered prior to January 1, 1940, which are described in subparagraphs (11) and (12) of sections 1426 (b) and 1607 (c) of the Internal Revenue Code, as amended, and any such tax heretofore collected (including penalty and interest with respect thereto, if any), shall be refunded in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax. No interest shall be allowed or paid on the amount of any such refund. No payment shall be made under title II of the Social Security Act (section 401 et seq. of Title 42) with respect to services rendered prior to January 1, 1940, which are described in subparagraphs (11) and (12) of section 209 (b) of such act, as amended."

#### § 1608. Deductions as constructive payments.

Whenever under this subchapter or any Act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for the purposes of this subchapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction. (53 Stat. 188.)

#### DERIVATION

Act Aug. 14, 1935, ch. 531, title IX, § 1101 (c), 49 Stat. 647.

#### § 1609. Rules and regulations.

The Secretary and the Social Security Board, respectively, shall make and publish such rules and regulations, not inconsistent with this subchapter, as may be necessary to the efficient administration of the functions with which each is charged under this subchapter. The Commissioner, with the approval of the Secretary, shall make and publish rules and regulations for the enforcement of this subchapter, except sections 1602 and 1603. (53 Stat. 188.)

#### DERIVATION

Act Aug. 14, 1935, ch. 531, title IX, §§ 908, 1102, 49 Stat. 643, 647.

#### § 1610. Other laws applicable.

All provisions of law (including penalties) applicable in respect of the taxes imposed by section 2700, shall, insofar as not inconsistent with this subchapter, be applicable in respect of the tax imposed by this subchapter. (53 Stat. 188.)

#### DERIVATION

Act Aug. 14, 1935, ch. 531, title IX, § 905 (b), 49 Stat. 642.

#### § 1611. Short title.

This subchapter<sup>1</sup> may be cited as the "Federal Unemployment Tax Act". (Added Aug. 10, 1939, ch. 666, title VI, § 615, 53 Stat. 1396.)

<sup>1</sup> Sections 1600-1611 of this title.

### Chapter 9A.—DEFENSE TAX FOR FIVE YEARS

#### Sec.

1650. Defense tax for five years.

Chapter heading was added by act June 25, 1940, ch. 419, title II, § 210, 54 Stat. 522.

#### § 1650. Defense tax for five years.

(a) In lieu of the rates of tax specified in such of the sections of this title as are set forth in the following table, the rates applicable with respect to the period after June 30, 1940, and before July 1, 1945, shall be the rates set forth under the heading "Defense-Tax Rate":

Section	Description of tax	Old rate	Defense-tax rate
1700 (b).....	Box seats.....	10 percent	11 percent
1700 (c).....	Sales outside box office.....	10 percent.	11 percent.
1700 (e).....	Cabaret.....	1½ cents.....	2 cents.
1710 (a) (1).....	Dues.....	10 percent.	11 percent.
1710 (a) (2).....	Initiation fees.....	10 percent.	11 percent.
1801.....	Corporate securities.....	10 cents.....	11 cents.
1802 (a).....	Capital stock issues.....	10 cents.....	11 cents.
1802 (a).....	Capital stock issues.....	2 cents.....	3 cents.
1802 (b).....	Capital stock transfers.....	4 cents.....	5 cents.
1802 (b).....	Capital stock transfers.....	5 cents.....	6 cents.
1804.....	Insurance policies.....	3 cents.....	4 cents.
1806.....	Passage tickets.....	\$1.....	\$1.10.
1806.....	Passage tickets.....	\$3.....	\$3.30.
1806.....	Passage tickets.....	\$5.....	\$5.50.
1850 (a).....	Safe-deposit boxes.....	10 percent.	11 percent.
2700 (a).....	Pistols and revolvers.....	10 percent.	11 percent.
3250 (a) (1).....	Wholesalers in liquor.....	\$100.....	\$110.
3250 (b).....	Retailers in liquor.....	\$25.....	\$27.50.
3250 (c).....	Brewers.....	\$100.....	\$110.
3250 (c).....	Brewers.....	\$50.....	\$55.
3250 (d).....	Wholesalers in malt liquors.....	\$50.....	\$55.
3250 (e).....	Retailers.....	\$20.....	\$22.
3250 (e) (3).....	Special cases.....	\$2.....	\$2.20.
3250 (f) (1).....	Rectifiers.....	\$200.....	\$220.
3250 (f) (1).....	Rectifiers.....	\$100.....	\$110.
3250 (j).....	Stills.....	\$50.....	\$55.
3250 (j).....	Stills.....	\$20.....	\$22.
3400 (1).....	Tires.....	2¼ cents.....	2½ cents
3400 (2).....	Tubes.....	4 cents.....	4½ cents
3401.....	Toilet preparations.....	10 percent.	11 percent.
3403 (a).....	Automobile truck chassis, etc.....	2 percent.....	2¼ percent.
3403 (b).....	Automobiles, etc.....	3 percent.....	3¼ percent.
3403 (c).....	Parts.....	2 percent.....	2¼ percent.
3404.....	Radios.....	5 percent.....	5½ percent.
3405.....	Mechanical refrigerators.....	5 percent.....	5½ percent.
3407.....	Firearms.....	10 percent.	11 percent.
3409.....	Matches.....	5 cents.....	5½ cents.
3411.....	Electrical energy.....	3 percent.....	3¼ percent.
3412.....	Gasoline.....	1 cent.....	1¼ cents.
3413.....	Lubricating oils.....	4 cents.....	4½ cents.
3460 (a) (1), (2), and (3).....	Transportation of oil.....	4 percent.....	4½ percent.
3481 (a).....	Transfer of bonds.....	4 cents.....	5 cents
3482.....	Conveyances.....	50 cents.....	55 cents.

(b) In the application of section 3441 (c) to the articles with respect to which the rate of tax is increased by this section, where the lease, contract of sale, or conditional sale, and delivery thereunder,

was made before July 1, 1940, the total tax referred to in such section shall be the tax at the rate in force on June 30, 1940, and not at the increased rate. (Added June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, § 210, 54 Stat. 522.)

#### CROSS REFERENCE

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain government obligations, see note under section 757b of Title 31, Money and Finance.

### Chapter 10.—ADMISSIONS AND DUES

#### SUBCHAPTER A.—ADMISSIONS

##### Sec.

- 1700. Tax.
- 1701. Exemptions from tax.
- 1702. Printing of price on ticket.
- 1703. Penalties.
- 1704. Admission defined.

#### SUBCHAPTER B.—DUES

- 1710. Tax.
- 1711. Exemptions from tax.
- 1712. Definitions.

#### SUBCHAPTER C.—PROVISIONS COMMON TO ADMISSIONS AND DUES

- 1715. Payment of tax.
- 1716. Returns.
- 1717. Addition to tax in case of nonpayment.
- 1718. Penalties.
- 1719. Discretionary method allowed Commissioner for collecting tax.
- 1720. Records, statements, and returns.
- 1721. Rules and regulations.
- 1722. Other laws applicable.
- 1723. Effective date of chapter.
- 1724. Cross references.

#### SUBCHAPTER A.—ADMISSIONS

##### § 1700. Tax.

There shall be levied, assessed, collected, and paid—

##### (a) Single or season ticket; subscription—(1) Rate.

A tax of 1 cent for each 10 cents or fraction thereof of the amount paid for admission to any place, including admission by season ticket or subscription; except that in case the amount paid for admission, until July 1, 1940, is less than 41 cents, and after June 30, 1940, and before July 1, 1945, is less than 21 cents and thereafter is \$3 or less, no tax shall be imposed. In the case of persons (except bona fide employees, municipal officers on official business, and children under 12 years of age) admitted free or at reduced rates to any place at a time when and under circumstances under which an admission charge is made to other persons, an equivalent tax shall be collected based on the price so charged to such other persons for the same or similar accommodations, to be paid by the person so admitted, except that no tax shall be imposed in the case of persons admitted free to any spoken play (not a mechanical reproduction), whether or not set to music or with musical parts or accompaniments, which is a consecutive narrative interpreted by a single set of characters, all necessary to the development of the plot, in two or more acts, the performance consuming more than 1 hour and 45 minutes of time, and except that in the case of tickets or

cards of admission to any such spoken play sold at the ticket office of theaters at reduced rates the tax shall be based upon the price for which sold. Amounts paid for admission by season ticket or subscription shall be exempt only if the amount which would be charged to the holder or subscriber for a single admission is less than 41 cents until July 1, 1940, and is less than 21 cents after June 30, 1940, and before July 1, 1945, and thereafter \$3 or less.

##### (2) By whom paid.

The tax imposed under paragraph (1) shall be paid by the person paying for such admission.

##### (b) Permanent use or lease of boxes or seats—(1) Rate.

In the case of persons having the permanent use of boxes or seats in an opera house or any place of amusement or a lease for the use of such box or seat in such opera house or place of amusement (in lieu of the tax imposed under paragraph (1) of subsection (a)), a tax equivalent to 10 per centum of the amount for which a similar box or seat is sold for each performance or exhibition at which the box or seat is used or reserved by or for the lessee or holder.

##### (2) By whom paid.

The tax imposed under paragraph (1) shall be paid by the lessee or holder.

##### (c) Sales outside box office—(1) Rate.

Upon tickets or cards of admission to theaters, operas, and other places of amusement, sold at news stands, hotels, and places other than the ticket offices of such theaters, operas, or other places of amusement, at a price in excess of the sum of the established price therefor at such ticket offices plus the amount of any tax imposed under paragraph (1) of subsection (a), a tax equivalent to 10 per centum of the amount of such excess.

##### (2) By whom paid.

The taxes imposed under paragraph (1) shall be returned and paid by the person selling such tickets.

##### (3) How paid.

The taxes imposed under paragraph (1) shall be returned and paid in the manner and subject to the interest provided in sections 1715, 1716, and 1717.

##### (d) Sales by proprietors in excess of regular price—(1) Rate.

A tax equivalent to 50 per centum of the amount for which the proprietors, managers, or employees of any opera house, theater, or other place of amusement sell or dispose of tickets or cards of admission in excess of the regular or established price or charge therefor.

##### (2) By whom paid.

The tax imposed under paragraph (1) shall be returned and paid by the persons selling such tickets.

##### (3) How paid.

The tax imposed under paragraph (1) shall be returned and paid in the manner and subject to the interest provided in sections 1715, 1716, and 1717.

##### (e) Sales where price includes refreshments, service, or merchandise—(1) Rate.

A tax of 1½ cents for each 10 cents or fraction thereof of the amount paid for admission to any pub-

lic performance for profit at any roof garden, cabaret, or other similar entertainment, to which the charge for admission is wholly or in part included in the price paid for refreshment, service, or merchandise; the amount paid for such admission to be deemed to be 20 per centum of the amount paid for refreshment, service, and merchandise. Where the amount paid for admission is 50 cents or less, no tax shall be imposed.

(2) By whom paid.

The tax imposed under paragraph (1) shall be paid by the person paying for such refreshment, service, or merchandise.

(f) Cross reference.

For provisions requiring the tax so collected to be held as a special fund in trust for the United States, see section 3661.

(53 Stat. 189; June 29, 1939, 10 p. m., E. S. T., ch. 247, title I, § 1, 53 Stat. 862; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, § 211, 54 Stat. 523.)

INCREASE OF RATES AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945

Rates of tax on box seats and sales outside box office under subsections (b) and (c) are increased from 10 percent to 11 percent, and rate of tax on cabaret admissions under subsection (e) is increased from 1½ cents to 2 cents by section 1650 of this title.

DERIVATION

Subsection (a) (1) was derived from act Feb. 26, 1926, ch. 27, § 500 (a) (1), 44 Stat. 91, as amended by acts May 29, 1928, ch. 852, § 411 (a), 45 Stat. 863; June 6, 1932, ch. 209, § 711 (a), (e), 47 Stat. 271; June 16, 1933, ch. 90, §§ 212, 219, 48 Stat. 206, 209; June 28, 1935, ch. 333, 49 Stat. 431; June 29, 1937, ch. 402, 50 Stat. 358; May 28, 1938, ch. 289, § 712 (a), 52 Stat. 573.

Subsection (a) (2) was derived from act Feb. 26, 1926, ch. 27, § 500 (a) (1), 44 Stat. 91, as amended by act June 6, 1932, ch. 209, § 711 (a), 47 Stat. 271.

Subsection (b) was derived from act Feb. 26, 1926, ch. 27, § 500 (a) (4), 44 Stat. 91.

Subsection (c) was derived from act Feb. 26, 1926, ch. 27, § 500 (a) (2), 44 Stat. 91, as amended by act June 6, 1932, ch. 209, § 711 (b), 47 Stat. 271.

Subsections (d), (e) were derived from act Feb. 26, 1926, ch. 27, § 500 (a) (3), (a) (5), 44 Stat. 91.

1940 AMENDMENT

Subsection (a) (1) was amended by act June 25, 1940, cited to text, which struck out "until July 1, 1941, is less than 41 cents" and inserted in lieu thereof "until July 1, 1940, is less than 41 cents, and after June 30, 1940, and before July 1, 1945, is less than 21 cents," and struck out "is less than 41 cents until July 1, 1941" and inserted in lieu thereof "is less than 41 cents until July 1, 1940 and is less than 21 cents after June 30, 1940, and before July 1, 1945."

Exemption of 1941 Presidential Inauguration tickets from provisions of this section was provided for in Res. Oct. 9, 1940, ch. 798, 54 Stat. 1090.

SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 500, 43 Stat. 320.  
1921—Nov. 23, 1921, ch. 136, § 800, 42 Stat. 289.  
1919—Feb. 24, 1919, ch. 18, § 800, 40 Stat. 1120.  
1917—Oct. 3, 1917, ch. 63, § 700, 40 Stat. 318.

CROSS REFERENCE

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain government obligations, see note under section 757b of Title 31, Money and Finance.

§ 1701. Exemptions from tax.

No tax shall be levied under this subchapter in respect of—

(a) Religious, educational, or charitable entertainments.

Except in the case of admissions to any athletic game or exhibition the proceeds of which inure wholly or partly to the benefit of any college or university (including any academy of the military or naval forces of the United States), any admissions all the proceeds of which inure (1) exclusively to the benefit of religious, educational, or charitable institutions, societies, or organizations, societies for the prevention of cruelty to children or animals, or societies or organizations conducted for the sole purpose of maintaining symphony orchestras and receiving substantial support from voluntary contributions, or of improving any city, town, village, or other municipality, or of maintaining a cooperative or community center moving-picture theater—if such admissions are not to wrestling matches, prize fights, or boxing, sparring, or other pugilistic matches or exhibitions and no part of the net earnings thereof inures to the benefit of any private stockholder or individual; or (2) exclusively to the benefit of persons in the military or naval forces of the United States; or (3) exclusively to the benefit of persons who have served in such forces and are in need; or (4) exclusively to the benefit of National Guard organizations, Reserve Officers' associations or organizations, posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private stockholder or individual; or (5) exclusively to the benefit of members of the police or fire department of any city, town, village, or other municipality, or the dependents or heirs of such members; or

(b) Agricultural fairs.

Any admissions to agricultural fairs if no part of the net earnings thereof inures to the benefit of any stockholders or members of the association conducting the same, or admissions to any exhibit, entertainment, or other pay feature conducted by such association as part of any such fair—if the proceeds therefrom are used exclusively for the improvement, maintenance, and operation of such agricultural fairs; or

(c) Certain concerts.

Any admissions to concerts conducted by a civic or community membership association if no part of the net earnings thereof inures to the benefit of any stockholders or members of such association. (53 Stat. 190.)

DERIVATION

Subsection (a) was derived from act Feb. 26, 1926, ch. 27, § 500 (b) (1), (e), 44 Stat. 92, as amended by act June 6, 1932, ch. 290, § 711 (c), 47 Stat. 271.

Subsection (b) was derived from act Feb. 26, 1926, ch. 27, § 500 (b) (2), 44 Stat. 92.

Subsection (c) was derived from act Feb. 26, 1926, ch. 27, § 500 (b) (2), as added by act June 22, 1936, ch. 690, § 801, 49 Stat. 1743.

SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 500, 43 Stat. 320.  
1921—Nov. 23, 1921, ch. 136, § 800, 42 Stat. 289.  
1919—Feb. 24, 1919, ch. 18, § 800, 40 Stat. 1120.  
1917—Oct. 3, 1917, ch. 63, § 700, 40 Stat. 318.

**§ 1702. Printing of price on ticket.**

The price (exclusive of the tax to be paid by the person paying for admission) at which every admission ticket or card is sold shall be conspicuously and indelibly printed, stamped, or written on the face or back of that part of the ticket which is to be taken up by the management of the theater, opera, or other place of amusement, together with the name of the vendor if sold other than at the ticket office of the theater, opera, or other place of amusement. (53 Stat. 191.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 500 (d), 44 Stat. 92.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 500, 43 Stat. 320.  
1921—Nov. 23, 1921, ch. 136, § 800, 42 Stat. 289.  
1919—Feb. 24, 1919, ch. 18, § 800, 40 Stat. 1120.  
1917—Oct. 3, 1917, ch. 63, § 700, 40 Stat. 318.

**§ 1703. Penalties—(a) Failure to print correct price on ticket.**

Whoever sells an admission ticket or card on which the name of the vendor and price is not printed, stamped, or written, as provided in section 1702, or at a price in excess of the price so printed, stamped, or written thereon, is guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$100.

**(b) Cross reference.**

For other penalties relating to admissions, see section 1718.

(53 Stat. 191.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 500 (d), 44 Stat. 92.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 500, 43 Stat. 320.  
1921—Nov. 23, 1921, ch. 136, § 800, 42 Stat. 289.  
1919—Feb. 24, 1919, ch. 18, § 800, 40 Stat. 1120.  
1917—Oct. 3, 1917, ch. 63, § 700, 40 Stat. 318.

**§ 1704. Admission defined.**

The term "admission" as used in this chapter includes seats and tables, reserved or otherwise and other similar accommodations, and the charges made therefor. (53 Stat. 191.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 500 (c), 44 Stat. 92.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 500, 43 Stat. 320.  
1921—Nov. 23, 1921, ch. 136, § 800, 42 Stat. 289.  
1919—Feb. 24, 1919, ch. 18, § 800, 40 Stat. 1120.  
1917—Oct. 3, 1917, ch. 63, § 700, 40 Stat. 318.

**SUBCHAPTER B.—DUES****§ 1710. Tax—(a) Rate.**

There shall be levied, assessed, collected, and paid—

**(1) Dues or membership fees.**

A tax equivalent to 10 per centum of any amount paid as dues or membership fees to any social, athletic, or sporting club or organization, if the dues or fees of an active resident annual member are in excess of \$25 per year.

**(2) Initiation fees.**

A tax equivalent to 10 per centum of any amount paid as initiation fees to such a club or organization,

if such fees amount to more than \$10, or if the dues or membership fees, not including initiation fees, of an active resident annual member are in excess of \$25 per year.

**(3) Life memberships.**

In the case of life memberships, a tax equivalent to the tax upon the amount paid by active resident annual members for dues or membership fees other than assessments, but no tax shall be paid upon the amount paid for life membership. In such a case, the tax shall be paid annually at the time for the payment of dues by active resident annual members.

**(b) By whom paid.**

The taxes imposed by subdivision (a) shall be paid by the person paying such dues or fees, or holding such life membership. (53 Stat. 192.)

**INCREASE OF RATES AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945**

Rates of tax on dues and initiation fees under subsections (a) (1), (2), are increased from 10 percent to 11 percent by section 1650 of this title.

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 501, 44 Stat. 92, as amended by act May 29, 1928, ch. 852, § 413 (a), 45 Stat. 864.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 501, 43 Stat. 321.  
1921—Nov. 23, 1921, ch. 136, § 801, 42 Stat. 291.  
1919—Feb. 24, 1919, ch. 18, § 801, 40 Stat. 1121.  
1917—Oct. 3, 1917, ch. 63, § 701, 40 Stat. 319.

**§ 1711. Exemptions from tax.**

There shall be exempted from the provisions of section 1710 all amounts paid as dues or fees to a fraternal society, order, or association, operating under the lodge system, or to any local fraternal organization among the students of a college or university. (53 Stat. 192.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 501, 44 Stat. 92, as amended by act May 29, 1928, ch. 852, § 413 (a), 45 Stat. 864.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 501, 43 Stat. 321.  
1921—Nov. 23, 1921, ch. 136, § 801, 42 Stat. 291.  
1919—Feb. 24, 1919, ch. 18, § 801, 40 Stat. 1121.  
1917—Oct. 3, 1917, ch. 63, § 701, 40 Stat. 319.

**§ 1712. Definitions.**

As used in this subchapter—

**(a) Dues.**

The term "dues" includes any assessment irrespective of the purpose for which made; and

**(b) Initiation fees.**

The term "initiation fees" includes any payment, contribution, or loan, required as a condition precedent to membership, whether or not any such payment, contribution or loan is evidenced by a certificate of interest or indebtedness or share of stock, and irrespective of the person or organization to whom paid, contributed, or loaned. (53 Stat. 192.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 501, 44 Stat. 92, as amended by act May 29, 1928, ch. 852, § 413 (a), 45 Stat. 864.

## SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 501, 43 Stat. 321.  
 1921—Nov. 23, 1921, ch. 136, § 801, 42 Stat. 291.  
 1919—Feb. 24, 1919, ch. 18, § 801, 40 Stat. 1121.  
 1917—Oct. 3, 1917, ch. 63, § 701, 40 Stat. 319.

SUBCHAPTER C.—PROVISIONS COMMON TO  
ADMISSIONS AND DUES

## § 1715. Payment of tax—(a) Collection by recipient of admissions, dues, and fees.

Every person receiving any payments for admission, dues, or fees, subject to the tax imposed by section 1700 or 1710 shall collect the amount thereof from the person making such payments. Every club or organization having life members shall collect from such members the amount of the tax imposed by section 1710.

## (b) Place for payment.

The taxes collected under subsection (a) shall be paid to the collector of the district in which the principal office or place of business is located.

## (c) Time for payment.

The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time fixed for filing the return.

## (d) Excess payments.

(1) Any person making a refund of any payment upon which tax is collected under this section may repay therewith the amount of the tax collected on such payment; and the amount so repaid may be credited against amounts included in any subsequent return.

(2) In the case of any overpayment or overcollection of any tax imposed by this chapter, the person making such overpayment or overcollection may take credit therefor against taxes due upon any return, and shall make refund of any excessive amount collected by him upon proper application by the person entitled thereto.

## (e) Cross reference.

For provisions requiring the tax so collected to be held as a special fund in trust for the United States, see section 3661.

(53 Stat. 192.)

## DERIVATION

Subsections (a), (b) were derived from act Feb. 26, 1926, ch. 27, § 502 (a), 44 Stat. 93.

Subsection (c) was derived from act Feb. 26, 1926, ch. 27, § 502 (d), 44 Stat. 93.

Subsection (d) (1) was derived from act Feb. 26, 1926, ch. 27, § 502 (b), 44 Stat. 93.

Subsection (d) (2) was derived from act Feb. 26, 1926, ch. 27, § 1120, 44 Stat. 121.

## SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 1023, 43 Stat. 347.  
 1921—Nov. 23, 1921, ch. 136, §§ 802, 1304, 42 Stat. 291, 309.  
 1919—Feb. 24, 1919, ch. 18, §§ 802, 1310, 40 Stat. 1121, 1143.  
 1917—Oct. 3, 1917, ch. 63, § 702, 40 Stat. 319.

## § 1716. Returns—(a) Requirement.

Every person required under subsection (a) of section 1715 to collect the taxes imposed by this chapter shall make returns under oath, in duplicate, in such manner and containing such information as

the Commissioner, with the approval of the Secretary, may, by regulation, prescribe.

## (b) Time for filing.

The returns required under this section shall be made at such times as the Commissioner, with the approval of the Secretary, may, by regulation, prescribe.

## (c) Place for filing.

The returns provided for in this section shall be filed with the collector of the district in which the principal office or place of business is located. (53 Stat. 193.)

## DERIVATION

Acts Feb. 26, 1926, ch. 27, § 502 (a), 44 Stat. 93, as amended by act May 28, 1938, ch. 852, § 414 (a), 45 Stat. 864; Feb. 26, 1926, ch. 27, § 502 (c), 44 Stat. 93.

## SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 1023, 43 Stat. 347.  
 1921—Nov. 23, 1921, ch. 136, §§ 802, 1304, 42 Stat. 291, 309.  
 1919—Feb. 24, 1919, ch. 18, §§ 802, 1310, 40 Stat. 1121, 1143.  
 1917—Oct. 3, 1917, ch. 63, § 702, 40 Stat. 319.

## § 1717. Addition to tax in case of nonpayment.

If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time when the tax became due until paid. (53 Stat. 193.)

## DERIVATION

Acts Feb. 26, 1926, ch. 27, § 502 (d), 44 Stat. 93; Aug. 30, 1935, ch. 829, § 404, 49 Stat. 1027.

## SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 1023, 43 Stat. 347.  
 1921—Nov. 23, 1921, ch. 136, §§ 802, 1304, 42 Stat. 291, 309.  
 1919—Feb. 24, 1919, ch. 18, §§ 802, 1310, 40 Stat. 1121, 1143.  
 1917—Oct. 3, 1917, ch. 63, § 702, 40 Stat. 319.

## § 1718. Penalties.

(a) Any person required under this chapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this chapter, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Any person required under this chapter to collect, account for and pay over any tax imposed by this chapter who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) Any person who willfully fails to pay, collect, or truthfully account for and pay over, any tax im-

posed by this chapter, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subsection for any offense for which a penalty may be assessed under authority of section 3612.

(d) The term "person" as used in this section includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. (53 Stat. 193.)

DERIVATION

Act Feb. 26, 1926, ch. 27, § 1114 (a), (b), (d), (f), 44 Stat. 116, 117.

SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 1017, 43 Stat. 343.  
1921—Nov. 23, 1921, ch. 136, § 253, 42 Stat. 268.  
1919—Feb. 24, 1919, ch. 18, § 253, 40 Stat. 1085.  
1916—Sept. 8, 1916, ch. 463, §§ 14, 18, 39 Stat. 772, 775, as section 18 was amended by Oct. 3, 1917, ch. 63, § 1209, 40 Stat. 336.  
1914—Oct. 22, 1914, ch. 331, § 23, 38 Stat. 764.  
1913—Oct. 3, 1913, ch. 16, § II, F, G, 38 Stat. 171.

§ 1719. Discretionary method allowed Commissioner for collecting tax.

Whether or not the method of collecting any tax imposed by this chapter is specifically provided herein, any such tax may, under regulations prescribed by the Commissioner, with the approval of the Secretary, be collected by stamp, coupon, serial-numbered ticket, or such other reasonable device or method as may be necessary or helpful in securing a complete and prompt collection of the tax. All administrative and penalty provisions of subchapters A, B, and C of chapter 11, in so far as applicable, shall apply to the collection of any tax which the Commissioner determines or prescribes shall be collected in such manner. (53 Stat. 194.)

DERIVATION

Act Feb. 26, 1926, ch. 27, § 1119, 44 Stat. 120.

SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 1022, 43 Stat. 347.  
1921—Nov. 23, 1921, ch. 136, § 1301, 42 Stat. 308.  
1919—Feb. 24, 1919, ch. 18, § 1307, 40 Stat. 1143.  
1917—Oct. 3, 1917, ch. 63, § 1006, 40 Stat. 326.

§ 1720. Records, statements, and returns.

Every person liable to any tax imposed by this chapter, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe. (53 Stat. 194.)

DERIVATION

Act Feb. 26, 1926, ch. 27, § 1102 (a), 44 Stat. 112.

SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 1002 (a), 43 Stat. 339.  
1921—Nov. 23, 1921, ch. 136, § 1300, 42 Stat. 308.  
1919—Feb. 24, 1919, ch. 18, § 1305, 40 Stat. 1142.

§ 1721. Rules and regulations.

For authority of the Commissioner, with the approval of the Secretary, to prescribe and publish all needful rules and regulations for the enforcement of this chapter, see section 3791.

(53 Stat. 194.)

§ 1722. Other laws applicable.

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, shall be extended to and made a part of this chapter. (53 Stat. 194.)

DERIVATION

Act Feb. 26, 1926, ch. 27, § 1100, 44 Stat. 111.

SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 1000, 43 Stat. 339.  
1921—Nov. 23, 1921, ch. 136, § 1300, 42 Stat. 308.  
1919—Feb. 24, 1919, ch. 18, § 1305, 40 Stat. 1142.  
1917—Oct. 3, 1917, ch. 63, § 1001, 40 Stat. 325.  
1916—Sept. 8, 1916, ch. 463, §§ 22, 211, 409, 39 Stat. 776, 780, 792.  
1914—Oct. 22, 1914, ch. 331, § 23, 38 Stat. 764.  
1913—Oct. 3, 1913, ch. 16, § II, L, 38 Stat. 179.  
1898—June 13, 1898, ch. 446, § 31, 30 Stat. 448.

§ 1723. Effective date of chapter.

This chapter shall take effect on the first day of that calendar month occurring next after the enactment of this title. (53 Stat. 194.)

§ 1724. Cross references.

For general provisions relating to stamps, information and returns, assessment, collection, and refund, see sections 3310 to 3313, and chapters 34 to 37, inclusive.

(53 Stat. 194.)

Chapter 11.—DOCUMENTS, OTHER INSTRUMENTS, AND PLAYING CARDS

SUBCHAPTER A.—RATE AND PAYMENT OF TAX

Sec.

1800. Imposition of tax.  
1801. Corporate securities.  
1802. Capital stock (and similar interests).  
1804. Insurance policies.  
1805. Silver bullion.  
1806. Passage tickets  
1807. Playing cards.  
1808. Exemptions.  
1809. Payment of tax.

SUBCHAPTER B.—STAMPS

1815. Affixing.  
1816. Cancellation.  
1817. Supply.  
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SUBCHAPTER C.—PENALTIES AND FORFEITURES

1820. Underpayment of tax.  
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1822. Use of uncanceled stamps.  
1823. Frauds relating to stamps.

SUBCHAPTER D.—SPECIAL PROVISIONS APPLICABLE TO PLAYING CARDS

1830. Exemption in case of exportation.  
1831. Manufacturers.  
1832. Stamps.

## SUBCHAPTER E.—MISCELLANEOUS PROVISIONS

## Sec.

- 1835. Records, statements, and returns.
- 1836. Rules and regulations.
- 1837. Other laws applicable.
- 1838. Cross references.

## SUBCHAPTER A.—RATE AND PAYMENT OF TAX

## § 1800. Imposition of tax.

There shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in sections 1801 to 1807, inclusive, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, are written or printed, the several taxes specified in such sections. (53 Stat. 195.)

## DERIVATION

Act Feb. 26, 1926, ch. 27, § 800, 44 Stat. 99.

## SIMILAR PROVISIONS

- 1924—June 2, 1924, ch. 234, § 800, 43 Stat. 331.
- 1921—Nov. 23, 1921, ch. 136, § 1100, 42 Stat. 301.
- 1919—Feb. 24, 1919, ch. 18, §§ 1100, 1311, 40 Stat. 1133, 1144.
- 1917—Oct. 3, 1917, ch. 63, §§ 800, 1006, 40 Stat. 319, 326.
- 1914—Oct. 22, 1914, ch. 331, 38 Stat. 753.
- 1898—June 13, 1898, ch. 448, § 6, 30 Stat. 45, as amended by act Mar. 2, 1902, ch. 806, § 5, 31 Stat. 940.

## § 1801. Corporate securities.

On all bonds, debentures, or certificates of indebtedness issued by any corporation, and all instruments, however termed, issued by any corporation with interest coupons or in registered form, known generally as corporate securities, on each \$100 of face value or fraction thereof, 10 cents until July 1, 1945, and 5 cents thereafter: *Provided*, That every renewal of the foregoing shall be taxed as a new issue: *Provided further*, That when a bond conditioned for the repayment or payment of money is given in a penal sum greater than the debt secured, the tax shall be based upon the amount secured. The tax under this section shall not apply to any instrument under the terms of which the obligee is required to make payment therefor in installments and is not permitted to make in any year a payment of more than 20 per centum of the cash amount to which entitled upon maturity of the instrument. (53 Stat. 195; June 29, 1939, 10 p. m., E. S. T., ch. 247, title I, § 1, 53 Stat. 862; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, § 209, 54 Stat. 522.)

## INCREASE OF RATE AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945

Rate of tax on corporate securities is increased from 10 cents to 11 cents by section 1650 of this title.

## DERIVATION

Acts Feb. 26, 1926, ch. 27, Schedule A (1), 44 Stat. 101, as amended by act June 6, 1932, ch. 209, § 721 (a), 47 Stat. 272; June 16, 1933, ch. 90, § 212, 48 Stat. 206; June 28, 1935, ch. 333, 49 Stat. 431; June 29, 1937, ch. 402, 50 Stat. 358.

## 1940 AMENDMENT

Act June 25, 1940, cited to text, struck out "1941" and inserted in lieu thereof "1945."

## SIMILAR PROVISIONS

Similar provisions in prior acts, see note under section 1800 of this title.

## CROSS REFERENCES

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain government obligations, see note under section 757b of Title 31, Money and Finance.

## § 1802. Capital stock (and similar interests)—(a) Original issue.

On each original issue, whether on organization or reorganization, of shares or certificates of stock, or of profits, or of interest in property or accumulations, by any corporation, or by any investment trust or similar organization (or by any person on behalf of such investment trust or similar organization) holding or dealing in any of the instruments mentioned or described in this subsection or section 1801 (whether or not such investment trust or similar organization constitutes a corporation within the meaning of this title), on each \$100 of par or face value or fraction thereof of the certificates issued by such corporation or by such investment trust or similar organization (or of the shares where no certificates were issued), 10 cents until July 1, 1945, and 5 cents thereafter: *Provided*, That where such shares or certificates are issued without par or face value, the tax shall be 10 cents until July 1, 1945, and 5 cents thereafter, per share (corporate share, or investment trust or other organization share, as the case may be), unless the actual value is in excess of \$100 per share; in which case the tax shall be 10 cents until July 1, 1945, and 5 cents thereafter, on each \$100 of actual value or fraction thereof of such certificates (or of the shares where no certificates were issued), or unless the actual value is less than \$100 per share, in which case the tax shall be 2 cents until July 1, 1945, and 1 cent thereafter, on each \$20 of actual value, or fraction thereof, of such certificates (or of the shares where no certificates were issued). The stamps representing the tax imposed by this subsection shall be attached to the stock books or corresponding records of the organization and not to the certificates issued.

## (b) Sales and transfers.

On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to any of the shares or certificates mentioned or described in subsection (a), or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation or other organization, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale (whether entitling the holder in any manner to the benefit of such share, certificate, interest, or rights, or not), on each \$100 of par or face value or fraction thereof of the certificates of such corporation or other organization (or of the shares where no certificates were issued) 4 cents until July 1, 1945, and 2 cents thereafter, and where such shares or certificates are without par or face value, the tax shall be 4 cents until July 1, 1945, and 2



cents thereafter, on the transfer or sale or agreement to sell on each share (corporate share, or investment trust or other organization share, as the case may be): *Provided*, That in case the selling price, if any, is \$20 or more per share the above rate shall be 5 cents instead of 4 cents until July 1, 1945: *Provided further*, That it is not intended by this chapter to impose a tax upon an agreement evidencing a deposit of certificates as collateral security for money loaned thereon, which certificates are not actually sold, nor upon the delivery or transfer for such purpose of certificates so deposited nor upon the return of stock loaned: *Provided further*, That the tax shall not be imposed upon deliveries or transfers to a broker or his registered nominee for sale, nor upon deliveries or transfers by a broker or his registered nominee to a customer for whom and upon whose order the broker has purchased same, nor upon deliveries or transfers by a purchasing broker to his registered nominee if the shares or certificates so delivered or transferred are to be held by such nominee for the same purpose as if held by the broker, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: *Provided further*, That the tax shall not be imposed upon deliveries or transfers from a fiduciary to a nominee of such fiduciary, or from one nominee of such fiduciary to another, if such shares or certificates continue to be held by such nominee for the same purpose for which they would be held if retained by such fiduciary, or from the nominee to such fiduciary, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: *Provided further*, That in case of sale where the evidence of transfer is shown only by the books of the corporation or other organization the stamp shall be placed upon such books; and where the change of ownership is by transfer of the certificate the stamp shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers: *Provided further*, That as used in this section the term "registered nominee" shall mean any person registered with the collector in accordance with such rules and regulations as the Commissioner with the approval of the Secretary shall prescribe. The tax shall not be imposed upon deliveries or transfers of shares or certificates—

(1) From the owner to a custodian if under a written agreement between the parties the shares or certificates are to be held or disposed of by such custodian for, and subject at all times to the instructions of, the owner; or from such custodian to such owner;

(2) From such custodian to a registered nominee of such custodian, or from one such nominee to another such nominee, if in either case the shares or certificates continue to be held by such nominee

for the same purpose for which they would be held if retained by such custodian; or from such nominee to such custodian. No exemption shall be granted under this paragraph unless the deliveries or transfers are accompanied by a certificate setting forth such facts as the Commissioner, with the approval of the Secretary, may by regulation prescribe as necessary for the evidencing of the right to such exemption. No delivery or transfer to a nominee shall be exempt under this paragraph unless such nominee, in accordance with regulations prescribed by the Commissioner, with the approval of the Secretary, is registered with the Commissioner.

The tax imposed by this subsection shall not be imposed upon any delivery or transfer by an executor or administrator to a legatee, heir, or distributee of shares or certificates of stock if it is shown to the satisfaction of the Commissioner that the value of such shares or certificates is not greater than the amount of the tax that would otherwise be imposed on such delivery or transfer. (53 Stat. 196; June 29, 1939, 10 p. m., E. S. T., ch. 247, title I, § 1, title IV, § 402, 53 Stat. 862, 883; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, § 209, 54 Stat. 522.)

#### INCREASE OF RATES AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945

Rates of tax on capital stock issues under subsection (a) are increased from 10 cents to 11 cents and from 2 cents to 3 cents, respectively, and rates of tax on capital stock transfers under subsection (b) are increased from 4 cents to 5 cents and from 5 cents to 6 cents, respectively, by section 1650 of this title.

#### DERIVATION

Subsection (a) was derived from acts Feb. 26, 1926, ch. 27, Schedule A (2), 44 Stat. 101, as amended by act June 6, 1932, ch. 209, § 722 (a), 47 Stat. 272; June 16, 1933, ch. 90, § 212, 48 Stat. 206; June 28, 1935, ch. 333, 49 Stat. 431; June 29, 1937, ch. 402, 50 Stat. 358.

Subsection (b) was derived from acts Feb. 26, 1926, ch. 27, Schedule A (3), as amended by act June 29, 1936, ch. 865, 49 Stat. 2029; June 29, 1937, ch. 402, 50 Stat. 358 as amended by act May 28, 1938, ch. 289, § 711 (a), 52 Stat. 572.

#### 1940 AMENDMENT

Act June 25, 1940, cited to text, struck out "1941" and inserted in lieu thereof "1945".

#### 1939 AMENDMENT

"1941" inserted in lieu of "1939" by act June 29, 1939, cited to text.

#### SIMILAR PROVISIONS

Similar provisions in prior acts, see note under section 1800 of this title.

#### CROSS REFERENCE

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain government obligations, see note under section 757b of Title 31, Money and Finance.

#### § 1804.<sup>1</sup> Insurance policies.

On each policy of insurance, or certificate, binder, covering note, memorandum, cablegram, letter, or other instrument by whatever name called whereby insurance is made or renewed upon property within the United States (including rents and profits) against peril by sea or on inland waters or in transit on land (including transshipments and storage at

termini or way points) or by fire, lightning, tornado, windstorm, bombardment, invasion, insurrection or riot, issued to or for or in the name of a domestic corporation or partnership or an individual resident of the United States by any foreign corporation or partnership or any individual not a resident of the United States, when such policy or other instrument is not signed or countersigned by an officer or agent of the insurer in a State, Territory, or District of the United States within which such insurer is authorized to do business, a tax of 3 cents on each dollar, or fractional part thereof of the premium charged: *Provided*, That policies of reinsurance shall be exempt from the tax imposed by this section. (53 Stat. 197.)

<sup>1</sup> Section 1803 was not used by Congress in enacting the Internal Revenue Code.

**INCREASE OF RATE AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945**

Rate of tax on insurance policies is increased from 3 cents to 4 cents by section 1650 of this title.

**DERIVATION**

Act Feb. 26, 1926, ch. 27, schedule A (7), 44 Stat. 103.

**SIMILAR PROVISIONS**

Similar provisions in prior acts, see Historical Note under section 1800 of this title.

**§ 1805. Silver bullion.**

On all transfers of any interest in silver bullion, if the price for which such interest is or is to be transferred exceeds the total of the cost thereof and allowed expenses, 50 per centum of the amount of such excess. On every such transfer there shall be made and delivered by the transferor to the transferee a memorandum to which there shall be affixed lawful stamps in value equal to the tax thereon. Every such memorandum shall show the date thereof, the names and addresses of the transferor and transferee, the interest in silver bullion to which it refers, the price for which such interest is or is to be transferred and the cost thereof and the allowed expenses. Stamps affixed under this section shall be canceled (in lieu of the manner provided in section 1816) by such officers and in such manner as regulations under this section shall prescribe. Such officers shall cancel such stamps only if it appears that the proper tax is being paid, and when stamps with respect to any transfer are so canceled, the transferor and not the transferee shall be liable for any additional tax found due or penalty with respect to such transfer. The Commissioner shall abate or refund, in accordance with regulations issued hereunder, such portion of any tax hereunder as he finds to be attributable to profits (1) realized in the course of the transferor's regular business of furnishing silver bullion for industrial, professional, or artistic use and (a) not resulting from a change in the market price of silver bullion, or (b) offset by contemporaneous losses incurred in transactions in interests in silver bullion determined, in accordance with such regulations, to have been specifically related hedging transactions; or (2) offset by contemporaneous losses attributable to changes in the market price of silver bullion and incurred in transactions in silver foreign exchange determined, in accordance with such regulations, to

have been hedged specifically by the interest in silver bullion transferred. The provisions of this section shall extend to all transfers in the United States of any interest in silver bullion, and to all such transfers outside the United States if either party thereto is a resident of the United States or is a citizen of the United States who has been a resident thereof within three months before the date of the transfer or if such silver bullion or interest therein is situated in the United States; and shall extend to transfers to the United States Government (the tax in such cases to be payable by the transferor), but shall not extend to transfers of silver bullion by deposit or delivery at a United States mint under proclamation by the President or in compliance with any Executive order issued pursuant to section 7 of the Silver Purchase Act of 1934, 48 Stat. 1179 (U. S. C., Title 31 § 316 (a)).

As used in this section—

The term "cost" means the cost of the interest in silver bullion to the transferor, except that (a) in case of silver bullion produced from materials containing silver which has not previously entered into industrial, commercial, or monetary use, the cost to a transferor who is the producer shall be deemed to be the market price at the time of production determined in accordance with regulations issued hereunder; (b) in the case of an interest in silver bullion acquired by the transferor otherwise than for valuable consideration, the cost shall be deemed to be the cost thereof to the last previous transferor by whom it was acquired for a valuable consideration; and (c) in the case of any interest in silver bullion acquired by the transferor in a wash sale, the cost shall be deemed to be the cost to him of the interest transferred by him in such wash sale, but with proper adjustment, in accordance with regulations under this section, when such interests are in silver bullion for delivery at different times.

The term "transfer" means a sale, agreement of sale, agreement to sell, memorandum of sale or delivery of, or transfer, whether made by assignment in blank or by any delivery, or by any paper or agreement or memorandum or any other evidence of transfer or sale; or means to make a transfer as so defined.

The term "interest in silver bullion" means any title or claim to, or interest in, any silver bullion or contract therefor.

The term "allowed expenses" means usual and necessary expenses actually incurred in holding, processing, or transporting the interest in silver bullion as to which an interest is transferred (including storage, insurance, and transportation charges but not including interest, taxes, or charges in the nature of overhead), determined in accordance with regulations issued hereunder.

The term "memorandum" means a bill, memorandum, agreement, or other evidence of a transfer.

The term "wash sale" means a transaction involving the transfer of an interest in silver bullion and, within thirty days before or after such transfer, the acquisition by the same person of an interest in

silver bullion. Only so much of the interest so acquired as does not exceed the interest so transferred, and only so much of the interest so transferred as does not exceed the interest so acquired, shall be deemed to be included in the wash sale.

The term "silver bullion" means silver which has been melted, smelted, or refined and is in such state or condition that its value depends primarily upon the silver content and not upon its form.

The Secretary is authorized to issue, with the approval of the President, such rules and regulations as the Secretary may deem necessary or proper to carry out the purposes of this section, or of any order issued hereunder.

As used in this section—

The term "person" means an individual, partnership, association, or corporation;

The term "the continental United States" means the States of the United States, the District of Columbia, and the Territory of Alaska. (53 Stat. 198.)

#### DERIVATION

Act Feb. 26, 1926, ch. 27, Schedule A (10), as added by acts June 19, 1934, ch. 674, §§ 8-10, 48 Stat. 1179; May 28, 1938, ch. 289, § 701 (j), 52 Stat. 568.

#### § 1806. Passage tickets.

Passage ticket, one way or round trip, for each passenger, sold or issued in the United States for passage by any vessel to a port or place not in the United States, Canada, Mexico, Cuba, or Puerto Rico, if costing not exceeding \$30, \$1; costing more than \$30 and not exceeding \$60, \$3; costing more than \$60, \$5. This section shall not apply to passage tickets costing \$10 or less. (53 Stat. 199.)

INCREASE OF RATES AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945

Rates of tax on passage tickets are increased from \$1 to \$1.10, from \$3 to \$3.30, and from \$5 to \$5.50, respectively, by section 1650 of this title.

#### DERIVATION

Act Feb. 26, 1926, ch. 27, Schedule A (5), 44 Stat. 103, as amended by acts May 29, 1928, ch. 852, § 442, 45 Stat. 867; Aug. 28, 1937, ch. 871, 50 Stat. 870.

#### § 1807. Playing cards—(a) General rule.

Upon every pack of playing cards containing not more than fifty-four cards, manufactured or imported, and sold, or removed for consumption or sale, a tax of 10 cents per pack. This tax shall be in addition to any import duties imposed on such articles of foreign manufacture.

#### (b) Defense tax for five years.

In lieu of the rate of tax specified in subsection (a), the rate of tax for the period after June 30, 1940, and before July 1, 1945, shall be 11 cents. (53 Stat. 199; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, § 215, 54 Stat. 526.)

#### DERIVATION

Acts Aug. 27, 1894, ch. 349, § 46, 28 Stat. 562; Feb. 26, 1926, ch. 27, Schedule A (6), 44 Stat. 103.

#### 1940 AMENDMENT

Subsection (a) was created from section as originally enacted and heading "(a) General Rule" was inserted by act June 25, 1940, cited to text.

Subsection (b) was added by act June 25, 1940, cited to text.

#### CROSS REFERENCE

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain government obligations, see note under section 757b of Title 31, Money and Finance.

#### § 1808. Exemptions.

There shall not be taxed under this chapter—

#### (a) Government and State obligations.

Any bond, note, or other instrument, issued by the United States, or by any foreign Government, or by any State, Territory, or the District of Columbia, or local subdivision thereof, or municipal or other corporation exercising the taxing power; or

#### (b) Bonds of indemnity.

Any bond of indemnity required to be filed by any person to secure payment of any pension, allowance, allotment, relief, or insurance by the United States, or to secure a duplicate for, or the payment of, any bond, note, certificate of indebtedness, war-savings certificate, warrant or check, issued by the United States; or

#### (c) Stocks and bonds of domestic building and loan associations and mutual ditch or irrigation companies.

Stocks and bonds issued by domestic building and loan associations substantially all the business of which is confined to making loans to members, or by mutual ditch or irrigation companies; or

#### (d) Stocks and bonds of farmers', fruit growers', or cooperative associations.

Stocks and bonds and other certificates of indebtedness issued by any farmers' or fruit growers' or like associations organized and operated on a cooperative basis for the purposes, and subject to the conditions, prescribed in paragraph (12) of section 101.

#### (e) Reorganization of railroads engaged in interstate commerce.

The provisions of sections 1801, 1802, and 1821 (b) of this chapter and sections 3481 and 3482 of chapter 31 shall not apply to the issuance, transfers, or exchanges of securities or filing of conveyances to make effective any plan of reorganization confirmed under the provisions of section 77 of the National Bankruptcy Act, as amended by section 1 of the Act of March 3, 1933, ch. 204, 47 Stat. 1474 (U. S. C., Title 11, § 205).

#### (f) Corporate reorganizations.

The provisions of sections 1801, 1802, and 1821 (b) of this chapter and the provisions of sections 3481 and 3482 of chapter 31 shall not apply to the issuance, transfers, or exchange of securities or making or delivery of conveyances to make effective any plan of reorganization confirmed under section 77B of the National Bankruptcy Act, as amended by the Act of June 7, 1934, ch. 424, 48 Stat. 919 (U. S. C., Title 11, § 207').

#### (g) Cross reference.

For exemption in case of playing cards exported to a foreign country, see section 1830.

(53 Stat. 199.)

<sup>1</sup> Section 77B of the Bankruptcy Act, together with other sections thereof, was amended and incorporated as chap-

tars 10-14 of that Act. See section 501 et seq. of Title 11. Bankruptcy, for present provisions on this subject.

#### DERIVATION

Subsections (a)-(d) were derived from act Feb. 26, 1926, ch. 27, § 801, 44 Stat. 99, as amended by act May 29, 1928, ch. 852, § 441, 45 Stat. 867.

Subsection (e) was derived from act July 1, 1898, ch. 541, § 77 (1), as amended by act Mar. 3, 1933, ch. 204, § 1, 47 Stat. 1480.

Subsection (f) was derived from act July 1, 1898, ch. 541, § 77B (f), as amended by act June 7, 1934, ch. 424, § 1, 48 Stat. 919.

#### SIMILAR PROVISIONS TO SUBSECTIONS (a)-(d)

1924—June 2, 1924, ch. 234, § 801, 43 Stat. 332.

1921—Nov. 23, 1921, ch. 136, § 1101, 42 Stat. 301.

1919—Feb. 24, 1919, ch. 18, § 1101, 40 Stat. 1133.

1917—Oct. 3, 1917, ch. 63, § 801, 40 Stat. 319.

1914—Oct. 22, 1914, ch. 331, § 15, 38 Stat. 757.

1898—June 13, 1898, ch. 448, § 15, 30 Stat. 455.

Provisions similar to subsection (e) were contained in act Aug. 27, 1935, ch. 774, 49 Stat. 911.

#### § 1809. Payment of tax—(a) By whom paid.

The tax imposed by this chapter shall be paid by any person who makes, signs, issues, sells, removes, consigns, or ships any of the documents, instruments, matters, and things mentioned and described in sections 1801 to 1807, inclusive, or for whose use or benefit the same are made, signed, issued, sold, removed, consigned, or shipped.

#### (b) Method of payment—(1) Stamps.

The Commissioner shall cause to be prepared and distributed for the payment of the taxes prescribed in this chapter suitable stamps denoting the tax on the documents, articles, or things to which the same may be affixed.

#### (2) Assessment.

All internal revenue laws relating to the assessment and collection of taxes shall be extended to and made a part of this chapter, so far as applicable, for the purpose of collecting stamp taxes omitted through mistake or fraud from any instrument, document, paper, writing, parcel, package, or article named herein.

#### (3) Cross reference.

For general provisions relating to assessment and collection, see part II of subchapter A of chapter 28, and chapters 34, 35, and 36.

(53 Stat. 200.)

#### DERIVATION

Subsection (a) was derived from act Feb. 26, 1926, ch. 27, § 800, 44 Stat. 99.

Subsections (b) (1), (b) (2) were derived from act Feb. 26, 1926, ch. 27, § 805 (a), (b), 44 Stat. 100.

#### SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, §§ 800, 805, 43 Stat. 331, 333.

1921—Nov. 23, 1921, ch. 136, § 1105, 42 Stat. 302.

1919—Feb. 24, 1919, ch. 18, § 1105, 40 Stat. 1134.

1917—Oct. 3, 1917, ch. 63, § 805, 40 Stat. 320.

1914—Oct. 22, 1914, ch. 331, § 22, 38 Stat. 759. See, also, Historical Note under section 900 of this title.

### SUBCHAPTER B.—STAMPS

#### § 1815. Affixing.

The Commissioner shall prescribe such method for the affixing of the stamps prescribed in section 1809

(b) (1) in substitution for, or in addition to the

method provided in this chapter, as he may deem expedient. (53 Stat. 200.)

#### DERIVATION

Act Feb. 26, 1926, ch. 27, § 805 (a), 44 Stat. 100.

#### SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 805, 43 Stat. 333.

1921—Nov. 23, 1921, ch. 136, § 1105 (a), 42 Stat. 302.

1919—Feb. 24, 1919, ch. 18, § 1105 (a), 40 Stat. 1134.

1917—Oct. 3, 1917, ch. 63, § 805 (a), 40 Stat. 320.

1914—Oct. 22, 1914, ch. 331, § 22, 38 Stat. 759.

#### § 1816. Cancellation—(a) General rule.

Whenever an adhesive stamp is used for denoting any tax imposed by this chapter, except as herein-after provided, the person using or affixing the same shall write or stamp or cause to be written or stamped thereupon the initials of his or its name and the date upon which the same is attached or used, so that the same may not again be used: *Provided*, That the Commissioner may prescribe such other method for the cancellation of such stamps as he may deem expedient.

#### (b) Cross reference.

For method of canceling stamps in the case of silver sales and transfers, see section 1805.

(53 Stat. 201.)

#### DERIVATION

Act Feb. 26, 1926, ch. 27, § 804, 44 Stat. 100.

#### SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 804, 43 Stat. 333.

1921—Nov. 23, 1921, ch. 136, § 1104, 42 Stat. 302.

1919—Feb. 24, 1919, ch. 18, § 1104, 40 Stat. 1134.

1917—Oct. 3, 1917, ch. 63, § 804, 40 Stat. 320.

1914—Oct. 22, 1914, ch. 331, § 8, 38 Stat. 755.

1894—Aug. 27, 1894, ch. 349, § 39, 28 Stat. 560.

#### § 1817. Supply—(a) Post Office.

The Commissioner shall furnish to the Postmaster General without prepayment a suitable quantity of adhesive stamps to be distributed to and kept on sale by the various postmasters in the United States in all postoffices of the first and second classes and such post offices of the third and fourth classes as are located in county seats. The Postmaster General may require each such postmaster to give additional or increased bond as postmaster for the value of the stamps so furnished, and each such postmaster shall deposit the receipts from the sale of such stamps to the credit of and render accounts to the Postmaster General at such times and in such form as he may by regulations prescribe. The Postmaster General shall at least once monthly transfer all collections from this source to the Treasury as internal-revenue collections.

#### (b) Designated depository of the United States.

Each collector shall furnish, without prepayment, to any designated depository of the United States, located in the district of such collector, a suitable quantity of adhesive stamps to be kept on sale by such designated depository.

#### (c) State agents.

Each collector shall furnish, without prepayment, to any person who is (1) located in the district of such collector, (2) duly appointed and acting as agent of any State for the sale of stock transfer

stamps of such State, and (3) designated by the Commissioner for the purpose, a suitable quantity of such adhesive stamps as are required by section 1802, to be kept on sale by such person. (53 Stat. 201.)

**DERIVATION**

Subsection (a) was derived from act Feb. 26, 1926, ch. 27, § 808, as added by act May 29, 1928, ch. 852, § 443, 45 Stat. 867, and amended by act Mar. 1, 1933, ch. 146, 47 Stat. 1413.

Subsections (b), (c) were derived from act Feb. 26, 1926, ch. 27, § 807 (a), (b), 44 Stat. 101.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 807, 43 Stat. 333.  
1921—Nov. 23, 1921, ch. 136, § 1107, 42 Stat. 303.  
1919—Feb. 24, 1919, ch. 18, § 1107, 40 Stat. 1135.  
1917—Oct. 3, 1917, ch. 63, § 807, 40 Stat. 321.  
1914—Oct. 22, 1914, ch. 331, § 10, 38 Stat. 755.

**§ 1818. Methods of safeguarding—(a) Bond.**

In cases coming within the provisions of subsections (b) and (c) of section 1817 the collector may require a bond, with sufficient sureties, in a sum to be fixed by the Commissioner, conditioned for the faithful return, whenever so required, of all quantities or amounts undisposed of, and for the payment monthly of all quantities or amounts sold or not remaining on hand.

**(b) Regulations.**

The Secretary may from time to time make such regulations as he may find necessary to insure the safe-keeping or prevent the illegal use of all the adhesive stamps referred to in section 1817 (b) and (c). (53 Stat. 201.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 807 (c), 44 Stat. 101.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 807, 43 Stat. 333.  
1921—Nov. 23, 1921, ch. 136, § 1107, 42 Stat. 303.  
1919—Feb. 24, 1919, ch. 18, § 1107, 40 Stat. 1135.  
1917—Oct. 3, 1917, ch. 63, § 807, 40 Stat. 321.  
1914—Oct. 22, 1914, ch. 331, § 10, 38 Stat. 755.

**§ 1819. Cross reference.**

For general provisions relating to stamps, see part I of subchapter A of chapter 28.

(53 Stat. 201.)

**SUBCHAPTER C.—PENALTIES AND FORFEITURES**

**§ 1820. Underpayment of tax.**

Whoever—

**(a) Instruments.**

Makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever without the full amount of tax thereon being duly paid; or

**(b) Merchandise.**

Manufactures or imports and sells, or offers for sale, or causes to be manufactured or imported and sold, or offered for sale, any playing cards, package, or other article without the full amount of tax being duly paid;

is guilty of a misdemeanor and upon conviction thereof shall pay a fine of not more than \$100 for each offense. (53 Stat. 201.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 802, 44 Stat. 99.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 802, 43 Stat. 332.  
1921—Nov. 23, 1921, ch. 136, § 1102, 42 Stat. 302.  
1919—Feb. 24, 1919, ch. 18, § 1102, 40 Stat. 1133.  
1917—Oct. 3, 1917, ch. 63, § 802, 40 Stat. 320.

**§ 1821. Nonpayment or evasion of tax—(a) In general.**

(1) Any person required under this chapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this chapter, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(2) Any person required under this chapter to collect, account for and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(3) Any person who willfully fails to pay, collect, or truthfully account for and pay over, any tax imposed by this chapter, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this paragraph for any offense for which a penalty may be assessed under authority of section 3612.

(4) The term "person" as used in this subsection includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

**(b) In particular—(1) Capital stock sales or transfers.**

Any person liable to pay the tax as provided in subsection (b) of section 1802, or anyone who acts in the matter as agent or broker for such person, who makes any such sale, or who in pursuance of any such sale delivers any certificate or evidence of the sale of any stock, share, interest or right, or bill or memorandum thereof, as required in that subsection, without having the proper stamps affixed thereto, with intent to evade the provisions of such subsection, shall be deemed guilty of a misdemeanor, and

upon conviction thereof shall pay a fine of not exceeding \$1,000, or be imprisoned not more than six months, or both.

(2) Any person who, with intent to evade the tax provided in subsection (b) of section 1802, falsely makes a certificate accompanying any delivery or transfer shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$1,000, or imprisoned not more than six months, or both.

(3) Insurance policies.

Any person to or for whom or in whose name any insurance policy or other instrument referred to in section 1804 is issued, or any solicitor or broker acting for or on behalf of such person in the procurement of any such policy or other instrument, shall affix the proper stamps to such policy or other instrument, and for failure to affix such stamps with intent to evade the tax shall, in addition to other penalties provided therefor, pay a fine of double the amount of the tax.

(4) Silver bullion sales or transfers.

Any person liable for payment of tax under section 1805 (or anyone who acts in the matter as agent or broker for any such person) who is a party to any such transfer, or who in pursuance of any such transfer delivers any silver bullion or interest therein, without a memorandum stating truly and completely the information herein required, or who delivers any such memorandum without having the proper stamps affixed thereto, with intent to evade the provisions of section 1805, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding \$1,000 or be imprisoned not more than six months, or both.

(5) Playing cards.

For penalty imposed for failure of manufacturers of playing cards to register, see subsection (c) of section 1831.

(53 Stat. 202.)

DERIVATION

Subsection (a) was derived from act Feb. 26, 1926, ch. 27, § 1114 (a), (b), (d), (f), 44 Stat. 116, 117.

Subsection (b) (1) was derived from act Feb. 26, 1926, ch. 27, Schedule A (3), as amended June 29, 1936, ch. 865, 49 Stat. 2029.

Subsection (b) (2) was derived from act Feb. 26, 1926, ch. 27, Schedule A (3), 44 Stat. 101, as amended by act May 28, 1938, ch. 289, § 711 (a), 52 Stat. 572.

Subsection (b) (3) was derived from act Feb. 26, 1926, ch. 27, Schedule A (7), 44 Stat. 103.

Subsection (b) (4) was derived from act Feb. 26, 1926, ch. 27, Schedule A (10), as added by act June 19, 1934, ch. 674, § 8, 48 Stat. 1179.

SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 1017, 43 Stat. 343.

1921—Nov. 23, 1921, ch. 136, § 253, 42 Stat. 268.

1919—Feb. 24, 1919, ch. 18, § 253, 40 Stat. 1085.

1916—Sept. 8, 1916, ch. 463, §§ 14, 18, 39 Stat. 772, 775;

as section 18 was amended by act Oct. 3, 1917, ch. 63,

§ 1209, 40 Stat. 336; Oct. 22, 1914, ch. 331, § 23, 38 Stat. 764.

1913—Oct. 3, 1913, ch. 16, § II, G, 38 Stat. 171, 177.

§ 1822. Use of uncanceled stamps.

Whoever makes use of any adhesive stamp to denote any tax imposed by this chapter without can-

celling or obliterating such stamp as prescribed in section 1816, is guilty of a misdemeanor and upon conviction thereof shall pay a fine of not more than \$100 for each offense. (53 Stat. 203.)

DERIVATION

Act Feb. 26, 1926, ch. 27, § 802 (c), 44 Stat. 99, 100.

SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 802, 43 Stat. 332.

1921—Nov. 23, 1921, ch. 136, § 1102, 42 Stat. 302.

1919—Feb. 24, 1919, ch. 18, § 1102, 40 Stat. 1133.

1917—Oct. 3, 1917, ch. 63, § 802, 40 Stat. 320.

1894—Aug. 27, 1894, ch. 349, § 39, 28 Stat. 560.

§ 1823. Frauds relating to stamps.

Whoever—

(a) Mutilation or removal.

Fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this chapter, any adhesive stamp or the impression of any stamp, die, plate, or other article provided, made, or used in pursuance of this chapter;

(b) Use of mutilated, insufficient, and counterfeit stamps.

Fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this chapter, (1) any adhesive stamp, or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this chapter; or (2) any adhesive stamp or the impression of any stamp, die, plate, or other article of insufficient value; or (3) any forged or counterfeited stamp, or the impression of any forged or counterfeited stamp, die, plate, or other article;

(c) Reuse of stamps—(1) Preparation for reuse.

Willfully removes, or alters the cancellation or defacing marks of, or otherwise prepares, any adhesive stamp, with intent to use, or cause the same to be used, after it has already been used;

(2) Trafficking.

Knowingly or willfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same; or

(3) Possession.

Knowingly and without lawful excuse (the burden of proof of such excuse being on the accused) has in possession any washed, restored, or altered stamp, which has been removed from any vellum, parchment, paper, instrument, writing, package, or article; shall, upon conviction, be punished by a fine of not more than \$1,000, or by imprisonment for not more than five years, or both, and any such reused, canceled, or counterfeit stamp and the vellum, parchment, document, paper, package, or article upon which it is placed or impressed shall be forfeited to the United States. (53 Stat. 203.)

DERIVATION

Acts Mar. 4, 1909, ch. 321, § 335, 35 Stat. 1152; Feb. 26, 1926, ch. 27, § 803, 44 Stat. 100, as amended by act Dec. 16, 1930, ch. 15, 46 Stat. 1029.

## SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 803, 43 Stat. 332.  
 1921—Nov. 23, 1921, ch. 136, § 1103, 42 Stat. 302.  
 1919—Feb. 24, 1919, ch. 18, § 1103, 40 Stat. 1133.  
 1917—Oct. 3, 1917, ch. 63, § 803, 40 Stat. 320.  
 1894—Aug. 27, 1894, ch. 349, §§ 42, 44, 28 Stat. 561, 562.

SUBCHAPTER D.—SPECIAL PROVISIONS  
APPLICABLE TO PLAYING CARDS

## § 1830. Exemption in case of exportation.

Playing cards may be removed from the place of manufacture for export to a foreign country, without payment of tax, or affixing stamps thereto, under such regulations and the filing of such bonds as the Commissioner, with the approval of the Secretary, may prescribe. (53 Stat. 204.)

## DERIVATION

Act Aug. 27, 1894, ch. 349, § 43, 28 Stat. 562.

## § 1831. Manufacturers—(a) Definition.

Every person who offers or exposes for sale playing cards, whether the articles so offered or exposed are of foreign manufacture and imported or are of domestic manufacture, shall be deemed the manufacturer thereof, and subject to all the duties, liabilities, and penalties imposed by law in regard to the sale of domestic articles without the use of the proper stamps denoting the tax paid thereon.

## (b) Registration.

Every manufacturer of playing cards shall register with the collector of the district his name or style, place of residence, trade, or business, and the place where such business is to be carried on.

## (c) Penalty for failure to register.

Every manufacturer of playing cards who fails to register as provided and required in subsection (b) shall be subject to a penalty of \$50. (53 Stat. 204.)

## DERIVATION

Subsection (a) was derived from act Aug. 27, 1894, ch. 349, § 46, 28 Stat. 562.

Subsections (b), (c) were derived from act Aug. 27, 1894, ch. 349, § 40, 28 Stat. 560.

## § 1832. Stamps—(a) Supply.

The stamps on playing cards shall be furnished to the collectors requiring them, and collectors shall, if there be any manufacturers of playing cards within their respective districts, keep on hand at all times a supply equal in amount to two months' sales thereof, and shall sell the same only to such manufacturers as have registered as required by law and to importers of playing cards, who are required to affix the same to imported playing cards.

## (b) Collector's account.

Every collector shall keep an account of the number and denominate values of the stamps sold by him to each manufacturer and importer. (53 Stat. 204.)

## DERIVATION

Act Aug. 27, 1894, ch. 349, § 41, 28 Stat. 560.

## SUBCHAPTER E.—MISCELLANEOUS PROVISIONS

## § 1835. Records, statements, and returns.

Every person liable to any tax imposed by this chapter or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe. (53 Stat. 204.)

## DERIVATION

Act Feb. 26, 1926, ch. 27, § 1102 (a), 44 Stat. 112.

## SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 1002 (a), 43 Stat. 339.  
 1921—Nov. 23, 1921, ch. 136, § 1300, 42 Stat. 308.  
 1919—Feb. 24, 1919, ch. 18, § 1305, 40 Stat. 1142.

## § 1836. Rules and regulations.

For authority of the Commissioner, with the approval of the Secretary, to prescribe and publish all needful rules and regulations for the enforcement of this chapter see section 3791.

(53 Stat. 204.)

## § 1837. Other laws applicable.

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, shall be extended to and made a part of this chapter. (53 Stat. 204.)

## DERIVATION

Act Feb. 26, 1926, ch. 27, § 1100, 44 Stat. 111.

## § 1838. Cross references.

For general provisions relating to stamps, information and returns, assessment, collection, and refund, see chapters 28 and 34 to 37, inclusive.

(53 Stat. 204.)

## Chapter 12.—SAFE DEPOSIT BOXES

## Sec.

1850. Tax.  
 1851. Collection of tax by lessor.  
 1852. Returns.  
 1853. Payment of tax.  
 1854. Refunds and credits.  
 1855. Regulations.  
 1856. Applicability of administrative provisions.  
 1857. Definition of safe deposit box.  
 1858. Publicity of returns.  
 1859. Effective date of chapter.

## § 1850. Tax—(a) Rate.

There shall be imposed a tax equivalent to 10 per centum of the amount collected for the use of any safe deposit box.

## (b) By whom paid.

The tax imposed by subsection (a) shall be paid by the person paying for the use of the safe deposit box. (53 Stat. 205.)

INCREASE OF RATE AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945.

Rate of tax on safe-deposit boxes under subsection (a) is increased from 10 percent to 11 percent by section 1650 of this title.

## DERIVATION

June 6, 1932, ch. 209, § 741 (a), 47 Stat. 276.



**§ 1851. Collection of tax by lessor—(a) Requirement.**

Every person making any collections specified in subsection (a) of section 1850 shall collect the amount of tax imposed by such subsection from the person paying for the use of the safe deposit box.

**(b) Cross reference.**

For provision requiring the amount of tax so collected to be held in a special fund in trust for the United States, see section 3762.

(53 Stat. 205.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 741 (c), 47 Stat. 276.

**§ 1852. Returns—(a) Requirement.**

Every person making any collections specified in subsection (a) of section 1850 shall on or before the last day of each month make a return, under oath, for the preceding month. Such returns shall contain such information and be made in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

**(b) Place for filing.**

The return shall be made to the collector for the district in which is located the principal place of business of the person making any collections specified in subsection (a) of section 1850, or, if he has no principal place of business in the United States, then to the collector at Baltimore, Maryland. (53 Stat. 205.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 741 (c), 47 Stat. 276.

**§ 1853. Payment of tax—(a) Time for payment.**

The tax imposed by section 1850 shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time fixed for filing the return.

**(b) Place for payment.**

The tax shall be paid to the collector for the district in which is located the principal place of business of the person making any collections specified in subsection (a) of section 1850, or, if he has no principal place of business in the United States, then to the collector at Baltimore, Maryland.

**(c) Addition to the tax in case of delinquency.**

If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time the tax became due until paid. (53 Stat. 205.)

**DERIVATION**

Subsection (a) was derived from act June 6, 1932, ch. 209, § 771, 47 Stat. 277.

Subsection (b) was derived from act June 6, 1932, ch. 209, § 741 (c), 47 Stat. 276.

Subsection (c) was derived from acts June 6, 1932, ch. 209, § 771, 47 Stat. 277; Aug. 30, 1935, ch. 829, § 404, 49 Stat. 1027.

**§ 1854. Refunds and credits—(a) Allowance.**

Credit or refund of any overpayment of tax imposed by section 1850 may be allowed to the person who collected the tax and paid it to the United States if such person establishes, to the satisfaction of the Commissioner, under such regulations as the Commissioner with the approval of the Secretary may

prescribe, that he has repaid the amount of such tax to the person from whom he collected it, or obtained the consent of such person to the allowance of such credit or refund.

**(b) Credit on monthly returns.**

Any person entitled to refund of tax under section 1850 paid, or collected and paid, to the United States by him may take credit therefor against taxes due upon any monthly return.

**(c) Adjustments for refunded payments.**

Any person making a refund of any payment on which tax under section 1850 has been collected, may repay therewith the amount of tax collected on such payment, and the amount of tax so repaid may be credited against the tax under any subsequent return. (53 Stat. 206.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 772, 47 Stat. 277.

**§ 1855. Regulations.**

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter. (53 Stat. 206.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 773, 47 Stat. 278.

**§ 1856. Applicability of administrative provisions.**

All provisions of law (including penalties) applicable in respect of the taxes imposed by section 1700 shall, in so far as applicable and not inconsistent with this chapter, be applicable in respect of the tax imposed by section 1850. (53 Stat. 206.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 774, 47 Stat. 278.

**§ 1857. Definition of safe deposit box.**

For the purposes of this chapter any vault, safe, box, or other receptacle, of not more than 40 cubic feet capacity, used for the safe-keeping or storage of jewelry, plate, money, specie, bullion, stocks, bonds, securities, valuable papers of any kind, or other valuable personal property, shall be regarded as a safe deposit box. (53 Stat. 206.)

**DERIVATION**

Act June 6, 1932, ch. 27, § 741 (b), 47 Stat. 276.

**§ 1858. Publicity of returns.**

For provisions with respect to publicity of returns under this chapter, see subsection (a) (2) of section 55. (53 Stat. 206.)

**§ 1859. Effective date of chapter.**

This chapter shall take effect on the first day of that calendar month occurring next after the enactment of this title. (53 Stat. 206.)

## Chapter 13.—CIRCULATION OTHER THAN OF NATIONAL BANKS

**Sec.**

1900. Rate of tax

1901. Exemption from tax.

1902. Returns and payment of tax

1903. Estimation of outstanding circulation in default of return.

## Sec.

1904. Penalty for refusal or neglect to make return or payment.  
 1905. Definition of bank or banker.  
 1906. Application of chapter to national banks.  
 1907. Effective date of chapter.

**§ 1900. Rate of tax—(a) Average circulation outstanding.**

There shall be levied, collected, and paid—

**(1) Entire circulation.**

A tax of one-twelfth of 1 per centum each month upon the average amount of circulation issued by any bank, association, corporation, company, or person, including as circulation all certified checks and all notes and other obligations calculated or intended to circulate or to be used as money, but not including that in the vault of the bank, or redeemed and on deposit for said bank; and

**(2) Circulation exceeding 90 per centum of capital.**

An additional tax of one-sixth of 1 per centum each month upon the average amount of such circulation, issued as aforesaid, beyond the amount of 90 per centum of the capital of any such bank, association, corporation, company, or person.

In the case of banks with branches, the tax herein provided shall be assessed upon the circulation of each branch severally, and the amount of capital of each branch shall be considered to be the amount allotted to it.

**(b) Circulation paid out—(1) Own circulation.**

Every person, firm, association other than national bank associations, and every corporation, State bank, or State banking association, shall pay a tax of 10 per centum on the amount of their own notes used for circulation and paid out by them.

**(2) Other circulation.**

Every such person, firm, association, corporation, State bank, or State banking association, and also every national banking association, shall pay a like tax of 10 per centum on the amount of notes of any person, firm, association other than a national banking association, or of any corporation, State bank, or State banking association, or of any town, city, or municipal corporation, used for circulation and paid out by them. (53 Stat. 207.)

**DERIVATION**

Subsection (a) was derived from R. S. § 3408, which was in nature of a revision of acts July 13, 1866, ch. 184, § 9, 14 Stat. 136; June 6, 1872, ch. 315, § 37, 17 Stat. 625.

Subsection (b) was derived from act Feb. 8, 1875, ch. 36, §§ 19, 20, 18 Stat. 311.

**SIMILAR PROVISIONS**

Provisions similar to subsection (b) were contained in R. S. §§ 3412, 3413, which were in nature of a revision of acts Mar. 3, 1865, ch. 78, 13 Stat. 484; July 13, 1866, ch. 184, 14 Stat. 146; Mar. 26, 1867, ch. 8, 15 Stat. 6.

**§ 1901. Exemption from tax—(a) Circulation reduced to not over 5 per centum of capital.**

Whenever the outstanding circulation of any bank, association, corporation, company, or person is reduced to an amount not exceeding 5 per centum of the chartered or declared capital existing at the time the same was issued, said circulation shall be free from taxation; and

**(b) Circulation under redemption in whole.**

Whenever any bank which has ceased to issue notes for circulation deposits in the Treasury of the United States, in lawful money, the amount of its outstanding circulation, to be redeemed at par, under such regulations as the Secretary shall prescribe, it shall be exempt from any tax upon such circulation.

**(c) Circulation of insolvent banks.**

For exemption in case of insolvent banks, see section 3798.

(53 Stat. 207.)

**DERIVATION**

R S § 3411, which was in nature of a revision of acts Mar. 3, 1865, ch. 78, § 14, 13 Stat. 486; July 13, 1866, ch. 184, § 9, 14 Stat. 146.

**§ 1902. Returns and payment of tax—(a) Circulation outstanding—(1) Time for making return.**

A true and complete return of the monthly amount of circulation as aforesaid for the previous six months shall be made and rendered in duplicate on the 1st day of December, and the 1st day of June, by each of such banks, associations, corporations, companies, or persons, with a declaration annexed thereto, under the oath of such person, or of the president or cashier of such bank, association, corporation, or company, in such form and manner as may be prescribed by the Commissioner, that the same contains a true and faithful statement of the amounts subject to tax, as aforesaid; and

**(2) To whom return made.**

One copy shall be transmitted to the collector of the district in which any such bank, association, corporation, or company is situated, or in which such person has his place of business, and one copy to the Commissioner.

**(3) Calculation and time for payment of tax.**

The taxes provided in section 1900 (a) shall be paid semi-annually, on the 1st day of January and the 1st day of July; but the same shall be calculated at the rate per month as prescribed by said section, so that the tax for six months shall not be less than the aggregate would be if such taxes were collected monthly.

**(4) Return and payment when State bank converted into national bank.**

Whenever any State bank or banking association has been converted into a national banking association, and such national banking association has assumed the liabilities of such State bank or banking association, including the redemption of its bills, by any agreement or understanding whatever with the representatives of such State bank or banking association, such national banking association shall be held to make the required return and payment on the circulation outstanding, so long as such circulation shall exceed 5 per centum of the capital before such conversion of such State bank or banking association.

**(b) Circulation paid out.**

The amount of circulating notes referred to in section 1900 (b), and of the tax due thereon, shall be returned, and the tax paid at the same time, and in the same manner, and with like penalties for

failure to return and pay the same, as provided by law for the return and payment of taxes on circulation imposed by subsection (a) of that section. (53 Stat. 208.)

## DERIVATION

Subsections (a) (1), (a) (2) was derived from R. S. § 3414, which was in nature of a revision of acts July 13, 1866, ch. 184, § 9, 14 Stat. 137; Dec. 24, 1872, ch. 13, § 5, 17 Stat. 403.

Subsection (a) (3) was derived from R. S. § 3409, which was in nature of a revision of act June 6, 1872, ch. 315, § 37, 17 Stat. 256.

Subsection (a) (4) was derived from R. S. § 3416, which was in nature of a revision of acts Mar. 3, 1865, ch. 78, § 14, 13 Stat. 486; July 13, 1866, ch. 184, § 9, 14 Stat. 147.

Subsection (b) was derived from act Feb. 8, 1875, ch. 36, § 21, 18 Stat. 311.

## SIMILAR PROVISIONS

1883—Mar. 3, 1883, ch. 121, § 1, 22 Stat. 488.

1872—June 6, 1872, ch. 315, § 37, 17 Stat. 256.

1867—Mar. 26, 1867, ch. 8, § 2, 15 Stat. 6.

1864—June 30, 1864, ch. 173, § 110, 13 Stat. 278.

### § 1903. Estimation of outstanding circulation in default of return.

In default of the returns provided in section 1902, the amount of circulation and notes of persons, town, city, and municipal corporations, State banks, and State banking associations paid out, as aforesaid, shall be estimated by the Commissioner, upon the best information he can obtain. (53 Stat. 208.)

## DERIVATION

R. S. § 3415, which was in nature of a revision of acts July 13, 1866, ch. 184, § 9, 14 Stat. 137; Dec. 24, 1872, ch. 13, § 2, 17 Stat. 402.

## SIMILAR PROVISIONS

1883—Mar. 3, 1883, ch. 121, § 1, 22 Stat. 488.

1864—June 30, 1864, ch. 173, § 110, 13 Stat. 278.

### § 1904. Penalty for refusal or neglect to make return or payment.

For any refusal or neglect to make return and payment, any bank, association, corporation, company, or person in default as described in the preceding section, shall pay a penalty of \$200, besides the additional penalty and forfeitures provided in other cases. (53 Stat. 208.)

## DERIVATION

R. S. § 3415, which was in nature of a revision of acts July 13, 1866, ch. 184, § 9, 14 Stat. 137; Dec. 24, 1872, ch. 13, § 2, 17 Stat. 402.

## SIMILAR PROVISIONS

1883—Mar. 3, 1883, ch. 121, § 1, 22 Stat. 488.

1864—June 30, 1864, ch. 173, § 110, 13 Stat. 278.

### § 1905. Definition of bank or banker.

Every incorporated or other bank, and every person, firm, or company having a place of business where credits are opened by the deposit or collection of money or currency, subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount or for sale, shall be regarded as a bank or as a banker. (53 Stat. 209.)

## DERIVATION

R. S. § 3407, which was in nature of a revision of acts June 30, 1864, ch. 173, § 79, 13 Stat. 251; July 13, 1866, ch. 184, § 9, 14 Stat. 115.

### § 1906. Application of chapter to national banks.

The provisions of this chapter, relating to the tax on the circulation of banks, and to their returns, except as contained in sections 1900 (b) (2), 1901 (a) and (b), 1902 (a) (4), and such parts of sections 1902 (a) (1) and (2) and (b), 1903, and 1904 as relate to the tax of 10 per centum on certain notes, shall not apply to associations which are taxed as national banks. (53 Stat. 209.)

## DERIVATION

R. S. § 3417, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 137.

## SIMILAR PROVISIONS

1883—Mar. 3, 1883, ch. 121, § 1, 22 Stat. 488.

1875—Feb. 18, 1875, ch. 80, § 1, 18 Stat. 319.

1864—June 30, 1864, ch. 173, § 110, 13 Stat. 278.

### § 1907. Effective date of chapter.

This chapter shall take effect on the first day of June or the first day of December, whichever occurs first, next after the enactment of this title. (53 Stat. 209.)

## Chapter 14.—COTTON FUTURES

## Sec.

## 1920. Tax.

1921. Exemption of spot cotton.

1922. Exemption of basis grade contracts.

1923. Exemption of tendered grade contracts.

1924. Exemption of specific grade contracts.

1925. Form and validity of contracts.

1926. Cotton standards.

1927. Bona fide spot markets.

1928. Collection and enforcement.

1929. Penalties.

1930. Immunity of witnesses.

1931. Definitions.

1932. Liability of principal for acts of agent.

1933. Reports of Secretary of Agriculture.

1934. Other laws applicable.

1935. Operation of State laws.

### § 1920. Tax—(a) Rate.

Upon each contract of sale of any cotton for future delivery made at, on, or in any exchange, board of trade, or similar institution or place of business, there shall be levied a tax in the nature of an excise of 2 cents for each pound of the cotton involved in any such contract.

#### (b) By whom paid.

The tax imposed by subsection (a) shall be paid by the seller of the cotton involved in the contract of sale.

#### (c) How paid.

The tax imposed by subsection (a) shall be paid by means of stamps which shall be affixed to such contracts, or to the memoranda evidencing the same, and canceled in compliance with rules and regulations which shall be prescribed by the Secretary of the Treasury.

(d) Cross reference.

For authority of the Secretary of the Treasury to promulgate rules and regulations for the collection of the tax, see section 1928 (a).

(53 Stat. 210.)

DERIVATION

Subsection (a) from act Aug. 11, 1916, ch. 313, § 3, 39 Stat. 476.

Subsections (b), (c) from act Aug. 11, 1916, ch. 313, § 11, 39 Stat. 480.

SIMILAR PROVISIONS

1914—Aug. 18, 1914, ch. 255, § 3, 38 Stat. 693.

§ 1921. Exemption of spot cotton.

This chapter shall not be construed to impose a tax on any sale of spot cotton. (53 Stat. 210.)

DERIVATION

Act Aug. 11, 1916, ch. 313, § 10, 39 Stat. 480.

SIMILAR PROVISIONS

1914—Aug. 18, 1914, ch. 255, § 10, 38 Stat. 696.

§ 1922. Exemption of basis grade contracts—(a) Conditions.

No tax shall be levied under this chapter on any contract of sale mentioned in section 1920 (a) if the contract comply with each of the following conditions:

(1) Conformity with section 1925 (a) and regulations.

Conform to the requirements in section 1925 (a) of, and the rules and regulations made pursuant to, this chapter.

(2) Specification of grade, price, dates of sale and settlement.

Specify the basis grade for the cotton involved in the contract, which shall be one of the grades for which standards are established by the Secretary of Agriculture, except grades prohibited from being delivered on a contract made under this section by the fifth paragraph of this subsection, the price per pound at which the cotton of such basis grade is contracted to be bought or sold, the date when the purchase or sale was made, and the month or months in which the contract is to be fulfilled or settled: *Provided*, That middling shall be deemed the basis grade incorporated into the contract if no other basis grade be specified either in the contract or in the memorandum evidencing the same.

(3) Provision for delivery of standard grades only.

Provide that the cotton dealt with therein or delivered thereunder shall be of or within the grades for which standards are established by the Secretary of Agriculture except grades prohibited from being delivered on a contract made under this section by the fifth paragraph of this subsection and no other grade or grades.

(4) Provision for settlement on basis of actual commercial differences.

Provide that in case cotton of grade other than the basis grade be tendered or delivered in settlement of such contract, the differences above or below the contract price which the receiver shall pay for such grades other than the basis grade shall be the actual commercial differences, determined as hereinafter provided.

(5) Prohibition of delivery of inferior cotton.

Provide that cotton that, because of the presence of extraneous matter of any character, or irregularities or defects, is reduced in value below that of low middling, or cotton that is below the grade of low middling, or, if tinged, cotton that is below the grade of strict middling, or, if yellow stained, cotton that is below the grade of good middling, the grades mentioned being of the official cotton standards of the United States, or cotton that is less than seven-eighths of an inch in length of staple, or cotton of perished staple, or of immature staple, or cotton that is "gin cut" or reginned, or cotton that is "repacked" or "false packed" or "mixed packed" or "water packed," shall not be delivered on, under, or in settlement of such contract.

(6) Provisions for tender in full, notice of delivery date, and certificate of grade.

Provide that all tenders of cotton under such contract shall be the full number of bales involved therein, except that such variations of the number of bales may be permitted as is necessary to bring the total weight of the cotton tendered within the provisions of the contract as to weight; that, on the fifth business day prior to delivery, the person making the tender shall give to the person receiving the same written notice of the date of delivery, and that, on or prior to the date so fixed for delivery, and in advance of final settlement of the contract, the person making the tender shall furnish to the person receiving the same a written notice or certificate stating the grade of each individual bale to be delivered and, by means of marks or numbers, identifying each bale with its grade.

(7) Provision for tender and settlement in accordance with Government classification.

Provide that all tenders of cotton and settlements therefor under such contract shall be in accordance with the classification thereof made under the regulations of the Secretary of Agriculture by such officer or officers of the Government as shall be designated for the purpose, and the costs of such classification shall be fixed, assessed, collected, and paid as provided in such regulations. All moneys collected as such costs may be used as a revolving fund for carrying out the purposes of this paragraph. The Secretary of Agriculture is authorized to prescribe regulations for carrying out the purposes of this paragraph, and the certificates of the officers of the Government as to the classification of any cotton for the purposes of this paragraph shall be accepted in the courts of the United States in all suits between the parties to such contract, or their privies, as prima facie evidence of the true classification of the cotton involved.

(b) Incorporation of conditions in contracts.

The provisions of the third, fourth, fifth, sixth, and seventh paragraphs of subsection (a) shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memoranda evidencing the same, at or prior to the time the same is signed, the phrase "subject to Internal Revenue Code, section 1922."

**(c) Delivery allowances.**

For the purposes of this section the differences above or below the contract price which the receiver shall pay for cotton of grades above or below the basis grade in the settlement of a contract of sale for the future delivery of cotton shall be determined by the actual commercial differences in value thereof upon the sixth business day prior to the day fixed, in accordance with the sixth paragraph of subsection (a), for the delivery of cotton on the contract, established by the sale of spot cotton in the spot markets of not less than five places designated for the purpose from time to time by the Secretary of Agriculture, as such values were established by the sales of spot cotton, in such designated five or more markets: *Provided*, That for the purpose of this subsection such values in the said spot markets be based upon the standards for grades of cotton established by the Secretary of Agriculture: *And provided further*, That whenever the value of one grade is to be determined from the sale or sales of spot cotton of another grade or grades, such value shall be fixed in accordance with rules and regulations which shall be prescribed for the purpose by the Secretary of Agriculture. (53 Stat. 210.)

**DERIVATION**

Subsections (a) and (b) from acts Aug. 11, 1916, ch. 313, § 5, 39 Stat. 478, as amended by act Mar. 4, 1919, ch. 125, § 6, 40 Stat. 1351; May 31, 1920, ch. 217, § 1, 41 Stat. 725.

Subsection (c) from act Aug. 11, 1916, ch. 313, § 6, 39 Stat. 478, as amended by act Feb. 26, 1927, ch. 219, 44 Stat. 1248.

**SIMILAR PROVISIONS**

Provisions similar to subsection (c) were contained in act Aug. 18, 1914, ch. 255, § 6, 38 Stat. 695.

**§ 1923. Exemption of tendered grade contracts—(a) Conditions.**

No tax shall be levied under this chapter on any contract of sale mentioned in section 1920 (a) if the contract—

**(1) Compliance with section 1922.**

Comply with all the terms and conditions of section 1922 not inconsistent with this section; and

**(2) Provision for contingent specific performance.**

Provide that, in case of cotton of grade or grades other than the basis grade specified in the contract shall be tendered in performance of the contract, the parties to such contract may agree, at the time of the tender, as to the price of the grade or grades so tendered, and that if they shall not then agree as to such price, then, and in that event, the buyer of said contract shall have the right to demand the specific fulfillment of such contract by the actual delivery of cotton of the basis grade named therein and at the price specified for such basis grade in said contract.

**(b) Incorporation of conditions in contract.**

Contracts made in compliance with this section shall be known as "Section 1923 Contracts." The provisions of this section shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memorandum evidencing the same, at or prior to the time the same is

signed, the phrase "Subject to Internal Revenue Code, section 1923."

**(c) Application of section.**

Nothing in this section shall be so construed as to relieve from the tax levied by section 1920 (a) of this chapter any contract in which, or in the settlement of or in respect to which, any device or arrangement whatever is resorted to, or any agreement is made, for the determination or adjustment of the price of the grade or grades tendered other than the basis grade specified in the contract by any "fixed difference" system, or by arbitration, or by any other method not provided for by this chapter. (53 Stat. 212.)

**DERIVATION**

Act Aug. 11, 1916, ch. 313, § 6 A, 39 Stat. 478.

**§ 1924. Exemption of specific grade contracts—(a) Conditions.**

No tax shall be levied under this chapter on any contract of sale mentioned in section 1920 (a) if the contract comply with each of the following conditions:

**(1) Conformity with rules and regulations.**

Conform to the rules and regulations made pursuant to this chapter.

**(2) Specification of grade, price, dates of sale and delivery.**

Specify the grade, type, sample, or description of the cotton involved in the contract, the price per pound at which such cotton is contracted to be bought or sold, the date of the purchase or sale, and the time when shipment or delivery of such cotton is to be made.

**(3) Prohibition of delivery of other than specified grade.**

Provide that cotton of or within the grade or of the type, or according to the sample or description, specified in the contract shall be delivered thereunder, and that no cotton which does not conform to the type, sample, or description, or which is not of or within the grade specified in the contract shall be tendered or delivered thereunder.

**(4) Provision for specific performance.**

Provide that the delivery of cotton under the contract shall not be effected by means of "set-off" or "ring" settlement, but only by the actual transfer of the specified cotton mentioned in the contract.

**(b) Incorporation of conditions in contract.**

The provisions of the first, third, and fourth paragraphs of subsection (a) shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the document or memorandum evidencing the same, at or prior to the time the same is entered into, the words "subject to Internal Revenue Code, section 1924."

**(c) Application of section.**

This section shall not be construed to apply to any contract of sale made in compliance with section 1922 or section 1923. (53 Stat. 212.)

**DERIVATION**

Subsections (a), (b) from act Aug. 11, 1916, ch. 313, § 10, 39 Stat. 479.

Subsection (c) from act Aug. 11, 1916, ch. 313, §§ 6 A, 10, 39 Stat. 478-480.

#### SIMILAR PROVISIONS

1914—Aug. 18, 1914, ch. 255, 38 Stat. 696.

### § 1925. Form and validity of contracts—(a) Form.

Each contract of sale of cotton for future delivery mentioned in section 1920 (a) of this chapter shall be in writing plainly stating, or evidenced by written memorandum showing, the terms of such contract, including the quantity of the cotton involved and the names and addresses of the seller and buyer in such contract, and shall be signed by the party to be charged, or by his agent in his behalf. If the contract or memorandum specify in bales the quantity of the cotton involved, without giving the weight, each bale shall, for the purposes of this chapter, be deemed to weigh five hundred pounds.

#### (b) Validity.

No contract of sale of cotton for future delivery mentioned in section 1920 (a) of this chapter, which does not conform to the requirements of subsection (a) and has not the necessary stamps affixed thereto as required by section 1920 (c) shall be enforceable in any court of the United States by, or on behalf of, any party to such contract or his privies. (53 Stat. 213.)

#### DERIVATION

Act Aug. 11, 1916, ch. 313, §§ 4, 12, 39 Stat. 476, 480.

#### SIMILAR PROVISIONS

1914—Aug. 18, 1914, ch. 255, §§ 4, 13, 38 Stat. 692, 697.

### § 1926. Cotton standards—(a) Source and description.

Subject to the provisions of section 6 of the Act of March 4, 1923, 42 Stat. 1518 (U. S. C., title 7, § 56), the Secretary of Agriculture is authorized, from time to time, to establish and promulgate standards of cotton by which its quality or value may be judged or determined, including its grade, length of staple, strength of staple, color, and such other qualities, properties, and conditions as may be standardized in practical form, which, for the purposes of this chapter shall be known as the "Official cotton standards of the United States": *Provided*, That any standard of any cotton established and promulgated under this chapter by the Secretary of Agriculture shall not be changed or replaced within a period less than one year from and after the date of the promulgation thereof by the Secretary of Agriculture: *Provided further*, That no change or replacement of any standard of any cotton established and promulgated under this chapter by the Secretary of Agriculture shall become effective until after one year's public notice thereof, which notice shall specify the date when same is to become effective.

#### (b) Practical forms—(1) Preparation, certification, and distribution.

The Secretary of Agriculture is authorized and directed to prepare practical forms of the official cotton standards which shall be established by him, and to furnish such practical forms from time to time, upon request, to any person, the cost thereof, as determined by the Secretary of Agriculture, to be paid by the person requesting the same, and to certify such practical forms under the seal of the De-

partment of Agriculture and under the signature of the said Secretary, thereto affixed by himself or by some official or employee of the Department of Agriculture thereunto duly authorized by the said Secretary.

#### (2) Disposition of receipts from sales.

All sums collected by the Secretary of Agriculture for furnishing practical forms under paragraph (1) shall be deposited and covered into the Treasury as miscellaneous receipts. (53 Stat. 213.)

#### DERIVATION

Subsections (a), (b) (1) from act Aug. 11, 1916, ch. 313, § 9, 39 Stat. 479.

Subsection (b) (2) from act Aug. 11, 1916, ch. 313, § 19, 39 Stat. 481.

#### SIMILAR PROVISIONS

1914—Aug. 18, 1914, ch. 255, § 9, 38 Stat. 696.

### § 1927. Bona fide spot markets—(a) Definition.

For the purposes of this chapter the only markets which shall be considered bona fide spot markets shall be those which the Secretary of Agriculture shall, from time to time, after investigation, determine and designate to be such, and of which he shall give public notice.

#### (b) Determination.

In determining, pursuant to the provisions of this chapter, what markets are bona fide spot markets, the Secretary of Agriculture is directed to consider only markets in which spot cotton is sold in such volume and under such conditions as customarily to reflect accurately the value of middling cotton and the differences between the prices or values of middling cotton and of other grades of cotton for which standards shall have been established by the Secretary of Agriculture: *Provided*, That if there be not sufficient places, in the markets of which are made bona fide sales of spot cotton of grades for which standards are established by the Secretary of Agriculture, to enable him to designate at least five spot markets in accordance with section 1922 (c) of this chapter, he shall, from data as to spot sales collected by him, make rules and regulations for determining the actual commercial differences in the value of spot cotton of the grades established by him as reflected by bona fide sales of spot cotton, of the same or different grades, in the markets selected and designated by him, from time to time, for that purpose, and in that event, differences in value of cotton of various grades involved in contracts made pursuant to section 1922 (a) and (b) shall be determined in compliance with such rules and regulations: *Provided further*, That it shall be the duty of any person engaged in the business of dealing in cotton, when requested by the Secretary of Agriculture or any agent acting under his instructions, to answer correctly to the best of his knowledge, under oath or otherwise, all questions touching his knowledge of the number of bales, the classification, the price or bona fide price offered, and other terms of purchase or sale, of any cotton involved in any transaction participated in by him, or to produce all books, letters, papers, or documents in his possession or under his control relating to such matter. (53 Stat. 214.)

## DERIVATION

Subsection (a) from act Aug. 11, 1916, ch. 313, § 7, 39 Stat. 478.

Subsection (b) from act Aug. 11, 1916, ch. 313, § 8, 39 Stat. 479, as amended by act Mar. 4, 1919, ch. 125, § 6, 40 Stat. 1352.

## SIMILAR PROVISIONS

1914—Aug. 18, 1914, ch. 255, §§ 7, 8, 38 Stat. 695.

### § 1928. Collection and enforcement—(a) Rules and regulations.

The Secretary of the Treasury is authorized to make and promulgate such rules and regulations as he may deem necessary to collect the tax imposed by this chapter and otherwise to enforce its provisions.

#### (b) Records and returns.

Further to effect the purpose of subsection (a), the Secretary shall require all persons coming within its provisions to keep such records and statements of account, and may require such persons to make such returns verified under oath or otherwise, as will fully and correctly disclose all transactions mentioned in section 1920 (a) of this chapter, including the making, execution, settlement, and fulfillment thereof; he may require all persons who act in the capacity of a clearing house, clearing association, or similar institution for the purpose of clearing, settling, or adjusting transactions mentioned in section 1920 (a) of this chapter to keep such records and to make such returns as will fully and correctly disclose all facts in their possession relating to such transactions; and

#### (c) Employment of agents.

He may appoint agents to conduct the inspection necessary to collect said tax and otherwise to enforce this chapter and all rules and regulations made by him in pursuance hereof, and may fix the compensation of such agents. (53 Stat. 214.)

## DERIVATION

Act Aug. 11, 1916, ch. 313, § 13, 39 Stat. 480.

## SIMILAR PROVISIONS

1914—Aug. 18, 1914, ch. 255, § 14, 38 Stat. 697.

### § 1929. Penalties—(a) In general—(1) Nonpayment or evasion of tax.

Any person liable to the payment of any tax imposed by this chapter who fails to pay, or evades, or attempts to evade the payment of such tax; and

#### (2) Other violations.

Any person who otherwise violates any provision of this chapter, or any rule or regulation made in pursuance hereof, upon conviction thereof, shall be fined not less than \$100 nor more than \$20,000, in the discretion of the court; and, in case of natural persons, may, in addition, be punished by imprisonment for not less than sixty days nor more than three years, in the discretion of the court.

#### (b) Additional.

In addition to the foregoing punishment there shall be imposed, on account of each violation of this chapter, a penalty of \$2,000, to be recovered in an action founded on this chapter in the name of the United States as plaintiff, and when so recovered one-half of said amount shall be paid over to the person giving the information upon which such recovery was based. It shall be the duty of United

States attorneys, to whom satisfactory evidence of violations of this chapter is furnished, to institute and prosecute actions for the recovery of the penalties prescribed by this subsection.

#### (c) Withholding information.

Any person engaged in the business of dealing in cotton who shall, within a reasonable time prescribed by the Secretary of Agriculture or any agent acting under his instructions, willfully fail or refuse to answer questions or to produce books, letters, papers, or documents, as required under section 1927 (b), or who shall willfully give any answer that is false or misleading, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding \$500. (53 Stat. 215.)

## DERIVATION

Subsection (a) from acts Mar. 4, 1909, ch. 321, § 335, 35 Stat. 1152; Aug. 11, 1916, ch. 313, § 14, 39 Stat. 480, as amended by act Dec. 16, 1930, ch. 15, 46 Stat. 1029.

Subsection (b) from act Aug. 11, 1916, ch. 313, § 15, 39 Stat. 481.

Subsection (c), from acts Aug. 11, 1916, ch. 313, § 8, 49 Stat. 479, as amended by act Mar. 4, 1919, ch. 125, § 6, 40 Stat. 1352; May 31, 1920, ch. 217, § 1, 41 Stat. 725.

## SIMILAR PROVISIONS

1914—Aug. 18, 1914, ch. 255, §§ 15, 16, 38 Stat. 697.

### § 1930. Immunity of witnesses.

No person whose evidence is deemed material by the officer prosecuting on behalf of the United States in any case brought under any provision of this chapter shall withhold his testimony because of complicity by him in any violation of this chapter or of any regulation made pursuant to this chapter, but any such person called by such officer who testifies in such case shall be exempt from prosecution for any offense to which his testimony relates. (53 Stat. 215.)

## DERIVATION

Act Aug. 11, 1916, ch. 313, § 16, 39 Stat. 481.

## SIMILAR PROVISIONS

1914—Aug. 18, 1914, ch. 255, § 17, 38 Stat. 698.

### § 1931. Definitions—(a) Contract of sale.

For the purposes of this chapter the term "contract of sale" shall be held to include sales, agreements of sale, and agreements to sell.

#### (b) Person.

The word "person" wherever used in this chapter, shall be construed to import the plural or singular, as the case demands, and shall include individuals, associations, partnerships, and corporations. (53 Stat. 215.)

## DERIVATION

Act Aug. 11, 1916, ch. 313, § 2, 39 Stat. 476.

## SIMILAR PROVISIONS

1914—Aug. 18, 1914, ch. 255, § 2, 38 Stat. 693.

### § 1932. Liability of principal for acts of agent.

When construing and enforcing the provisions of this chapter, the act, omission, or failure of any official, agent, or other person acting for or employed by any association, partnership, or corporation within the scope of his employment or office, shall, in every case, also be deemed the act, omission, or



failure of such association, partnership, or corporation as well as that of the person. (53 Stat. 215.)

#### DERIVATION

Act Aug. 11, 1916, ch. 313, § 2, 39 Stat. 476.

#### SIMILAR PROVISIONS

1914—Aug. 18, 1914, ch. 255, § 2, 38 Stat. 693.

### § 1933. Reports of Secretary of Agriculture.

The Secretary of Agriculture is directed to publish from time to time the results of investigations made in pursuance of this chapter. (53 Stat. 216.)

#### DERIVATION

Act Aug. 11, 1916, ch. 313, § 19, 39 Stat. 481.

#### SIMILAR PROVISIONS

1914—Aug. 18, 1914, ch. 255, § 20, 38 Stat. 698.

### § 1934. Other laws applicable.

The provisions of the internal revenue laws of the United States, so far as applicable, including section 3615 of this title, shall be extended, and made to apply, to this chapter. (53 Stat. 216.)

#### DERIVATION

Act Aug. 11, 1916, ch. 313, § 13, 39 Stat. 480.

### § 1935. Operation of State laws.

The payment of any tax levied by this chapter shall not exempt any person from any penalty or punishment now or hereafter provided by the laws of any State for entering into contracts of sale of cotton for future delivery, nor shall the payment of any tax imposed by this chapter be held to prohibit any State or municipality from imposing a tax on the same transaction. (53 Stat. 216.)

#### DERIVATION

Act Aug. 11, 1916, ch. 313, § 17, 39 Stat. 481.

#### SIMILAR PROVISIONS

1914—Aug. 18, 1914, ch. 255, 38 Stat. 698.

## Chapter 15.—TOBACCO, SNUFF, CIGARS, AND CIGARETTES

### SUBCHAPTER A.—RATE AND PAYMENT OF TAX

#### Sec.

- 2000. Rate of tax.
- 2001. Taxpayer.
- 2002. Payment of tax.
- 2003. Cross references.
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### SUBCHAPTER B.—MANUFACTURERS, DEALERS, AND PEDDLERS

#### PART I.—DEFINITION AND REQUIREMENTS OF TOBACCO AND SNUFF MANUFACTURERS

- 2010. Definition.
- 2011. Registration.
- 2012. Statement.
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- 2014. Certificate.
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#### PART II.—DEFINITION AND REQUIREMENTS OF CIGAR AND CIGARETTE MANUFACTURERS

- 2030. Definition.
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#### Sec.

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- 2050. Definition.
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- 2059. Restrictions on sales or shipments.
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### PART IV.—DEFINITION AND REQUIREMENTS OF PEDDLERS OF TOBACCO

- 2070. Definition.
- 2071. Registration.
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### SUBCHAPTER C.—PACKING, STAMPING, AND SELLING REQUIREMENTS

#### PART I.—TOBACCO AND SNUFF

- 2100. Packages.
- 2101. Tobacco in bulk.
- 2102. Snuff flour
- 2103. Stamps.
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#### PART II.—CIGARS AND CIGARETTES

- 2110. Classification.
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- 2113. Sales of cigars and cigarettes.
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### SUBCHAPTER D.—IMPORTATION AND EXPORTATION

#### PART I.—IMPORTATION

- 2130. Packing and stamping.

#### PART II.—EXPORTATION

- 2135. Exemption from tax.
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### SUBCHAPTER E.—PENALTIES AND FORFEITURES

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- 2150. Failure to register, penalty.
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**PART II.—PENALTIES AND FORFEITURES OF SPECIAL APPLICATION TO TOBACCO AND SNUFF**

Sec.

- 2160. Persons in general.
- 2161. Manufacturers.
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- 2170. Unlawful boxing, penalty and forfeiture.
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**SUBPART B.—MANUFACTURERS AND CUSTOMS OFFICERS**

- 2180. Manufacturers.
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- 2190. Disposal of forfeited tobacco, snuff, cigars, and cigarettes.
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- 2195. Rules and regulations.
- 2196. Other laws applicable.
- 2197. Territorial extent of law.
- 2198. Redemption of stamps on packages withdrawn from market.
- 2199. Cross references.

**SUBCHAPTER A.—RATE AND PAYMENT OF TAX****§ 2000. Rate of tax—(a) Tobacco and snuff.**

Upon all tobacco and snuff manufactured in or imported into the United States, and sold by the manufacturer or importer, or removed for consumption or sale, there shall be levied, collected, and paid the following taxes:

**(1) Snuff.**

On snuff, manufactured of tobacco or any substitute for tobacco, ground, dry, damp, pickled, scented, or otherwise, of all descriptions, when prepared for use, a tax of 18 cents per pound.

**(2) Tobacco.**

On all chewing and smoking tobacco, fine-cut, cavendish, plug or twist, cut or granulated, of every description; on tobacco twisted by hand or reduced into a condition to be consumed, or in any manner other than the ordinary mode of drying and curing, prepared for sale or consumption, even if prepared without the use of any machine or instrument, and without being pressed or sweetened; and on all fine-cut shorts and refuse scraps, clippings, cuttings, and sweepings of tobacco, a tax of 18 cents per pound.

The tax imposed by this subsection shall be in addition to any import duties imposed upon imported tobacco and snuff.

**(b) Snuff flour.**

Snuff flour, when sold, or removed for use or consumption, shall be taxed as snuff.

**(c) Cigars and cigarettes.**

Upon cigars and cigarettes manufactured in or imported into the United States, which are sold by the manufacturer or importer, or removed for consumption or sale, there shall be levied, collected, and paid the following taxes:

**(1) Cigars.**

On cigars of all descriptions made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand, 75 cents per thousand;

On cigars made of tobacco, or any substitute therefor, and weighing more than three pounds per thousand, if manufactured or imported to retail at not more than 5 cents each, \$2 per thousand;

If manufactured or imported to retail at more than 5 cents each and not more than 8 cents each, \$3 per thousand;

If manufactured or imported to retail at more than 8 cents each and not more than 15 cents each, \$5 per thousand;

If manufactured or imported to retail at more than 15 cents each and not more than 20 cents each, \$10.50 per thousand;

If manufactured or imported to retail at more than 20 cents each, \$13.50 per thousand;

Whenever in this paragraph reference is made to cigars manufactured or imported to retail at not over a certain price each, then in determining the tax to be paid regard shall be had to the ordinary retail price of a single cigar in its principal market.

**(2) Cigarettes.**

On cigarettes made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand, \$3 per thousand;

Weighing more than three pounds per thousand, \$7.20 per thousand; except that if more than 6½ inches in length they shall be taxable at the rate provided in the preceding paragraph, counting each 2¾ inches (or fraction thereof) of the length of each as one cigarette.

The tax imposed by this subsection shall be in addition to any import duties imposed upon imported cigars and cigarettes.

**(d) Cigarette paper.**

There shall be levied, collected, and paid upon cigarette paper made up into packages, books, sets, or tubes, made up in or imported into the United States and sold by the manufacturer or importer to any person (other than to a manufacturer of cigarettes for use by him in the manufacture of cigarettes), the following taxes:

On each package, book, or set containing more than twenty-five but not more than fifty papers, ½ cent;

Containing more than fifty but not more than one hundred papers, 1 cent;

Containing more than one hundred papers, ½ cent for each fifty papers or fractional part thereof; and

Upon tubes, 1 cent for each fifty tubes or fractional part thereof. (53 Stat. 219.)

**INCREASE OF RATES AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945**

Rates of tax specified in subsection (c) (2) are increased to \$3.25 and \$7.80, respectively, by section 2004 of this title.

## DERIVATION

Subsection (a) from R. S. § 3368, which was in nature of a revision of acts July 20, 1868, ch. 186, § 61, 15 Stat. 152; June 6, 1872, ch. 315, § 31, 17 Stat. 250, as amended by act Aug. 5, 1909, ch. 6, § 31, 36 Stat. 109; R. S. § 3377, which was in nature of a revision of act July 20, 1868, ch. 186, § 77, 15 Stat. 158; act Feb. 26, 1926, ch. 27, § 401 (a), 44 Stat. 88.

Subsection (b) from R. S. § 3368, which was in nature of a revision of acts July 20, 1868, ch. 186, § 61, 15 Stat. 152; June 6, 1872, ch. 315, § 31, 17 Stat. 250, as amended by act Aug. 5, 1909, ch. 6, § 31, 36 Stat. 109.

Subsection (c) (1) from act Aug. 5, 1909, ch. 6, § 33, 36 Stat. 110; Feb. 26, 1926, ch. 27, § 400 (a) (b), 44 Stat. 87.

Subsection (c) (2) from R. S. §§ 3402, 3387, 3394, which were in nature of a revision of act July 20, 1868, ch. 186, §§ 81, 82, 93, 15 Stat. 160, 163; act Feb. 26, 1926, ch. 27, § 400 (a), as amended by act May 10, 1934, ch. 277, § 610, 48 Stat. 768.

Subsection (d) from act Feb. 26, 1926, ch. 27, § 402, 44 Stat. 89.

## SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, §§ 400, 402, 43 Stat. 316, 318.

1921—Nov. 23, 1921, ch. 136, title VII, §§ 700, 701 (a), 703, 42 Stat. 286, 287, 288.

1919—Feb. 24, 1919, ch. 18, §§ 700, 701 (a), 702, 703, 40 Stat. 1116, 1117, 1118.

1917—Oct. 3, 1917, ch. 63, §§ 400, 401, 403, 404, 40 Stat. 312, 313, 314; R. S. § 3394, as amended by act Mar. 3, 1875, ch. 127, § 2, 18 Stat. 339.

1902—July 1, 1902, ch. 1371, § 2, 32 Stat. 715.

1897—July 24, 1897, ch. 11, § 10, 30 Stat. 206.

## CROSS REFERENCES

Cigarettes subject to tax under subsection (c) of this section held by any person for sale on July 1, 1940, to be taxed at rate equal to increase in tax made by section 2004, see section 2005 (a).

Provisions of law, including penalties, applicable in respect of taxes imposed by this section to be applicable with respect to floor stock taxes imposed by section 2005 (a), see section 2005 (c).

## § 2001. Taxpayer—(a) Manufacturer or importer.

The taxes imposed by section 2000 shall be paid by the manufacturer or importer.

## (b) Manufacturer on commission, shares, or contract—(1) Tobacco and snuff.

Whenever tobacco or snuff of any description is manufactured, in whole or in part, upon commission or shares, or the material from which any such articles are made, or are to be made, is furnished by one person and made and manufactured by another, or the material is furnished or sold by one person with an understanding or agreement with another that the manufactured article is to be received in payment therefor or for any part thereof, the stamps required by law shall be affixed by the actual maker or manufacturer before the article passes from the place of making or manufacturing.

## (2) Cigars and cigarettes.

Whenever cigars or cigarettes of any description are manufactured, in whole or in part, upon commission or shares, or the material is furnished by one party and manufactured by another, or the material is furnished or sold by one party with an understanding or agreement with another that the cigars or cigarettes are to be received in payment therefor, or for any part thereof, the stamps required by law shall be affixed by the actual maker before the cigars or cigarettes are removed from the place of manufacturing. (53 Stat. 220.)

## DERIVATION

Subsection (a) from act Feb. 26, 1926, ch. 27, §§ 400 (a), 401 (a), 402, 44 Stat. 87, 88, 89.

Subsection (b) (1) from R. S. § 3370, which was in nature of a revision of act July 20, 1868, ch. 186, § 75, 15 Stat. 158.

Subsection (b) (2) from R. S. §§ 3399, 3387, which were in nature of a revision of act July 20, 1868, ch. 186, §§ 82, 91, 15 Stat. 160, 163.

## SIMILAR PROVISIONS

Provisions similar to subsection (a) were contained in act June 2, 1924, ch. 234, §§ 400 (a), 401 (a), 402, 43 Stat. 316, 317, 318.

## § 2002. Payment of tax—(a) Stamp—(1) Tobacco and snuff.

The Commissioner shall cause to be prepared suitable and special stamps for the payment of the tax on tobacco and snuff, which shall indicate the weight and class of the article on which payment is to be made.

## (2) Snuff flour.

Snuff flour, when sold or removed for use or consumption, shall be stamped in the same manner as snuff.

## (3) Cigars and cigarettes.

The Commissioner shall cause to be prepared, for payment of the tax upon cigars and cigarettes, suitable stamps denoting the tax thereon.

## (b) Assessment—(1) Tobacco, snuff, cigars, and cigarettes.

Whenever any manufacturer of tobacco, snuff, cigars, or cigarettes sells, or removes for sale or consumption, any tobacco, snuff, cigars, or cigarettes, upon which a tax is required to be paid by stamps, without the use of the proper stamps, it shall be the duty of the Commissioner, subject to the limitations prescribed in section 3312, upon satisfactory proof, to estimate the amount of tax which has been omitted to be paid, and to make an assessment therefor, and certify the same to the collector. The tax so assessed shall be in addition to the penalties imposed by law for such sale or removal: *Provided, however,* That no such assessment shall be made until and after notice to the manufacturer of the alleged sale and removal to show cause against said assessment; and the Commissioner shall, upon a full hearing of all the evidence, determine what assessment, if any, should be made.

## (2) Snuff flour.

For provision taxing snuff flour as snuff, see section 2000 (b).

## (c) Other methods.

Whether or not the method of collecting any tax imposed by section 2000 is specifically provided herein, any such tax may, under regulations prescribed by the Commissioner with the approval of the Secretary, be collected by stamp, coupon, serial-numbered ticket, or such other reasonable device or method as may be necessary or helpful in securing a complete and prompt collection of the tax. All administrative and penalty provisions of subchapters A, B, and C of chapter 11, in so far as applicable, shall apply to the collection of any tax which the Commissioner determines or prescribes shall be collected in such manner. (53 Stat. 220.)

## DERIVATION

Subsection (a) (1) from R. S. § 3369, which was in nature of a revision of acts July 20, 1868, ch. 186, § 67, 15 Stat. 155; June 6, 1872, ch. 315, § 31, 17 Stat. 250.

Subsection (a) (2) from R. S. § 3368, which was in nature of a revision of acts July 20, 1868, ch. 186, § 61, 15 Stat. 152; June 6, 1872, ch. 315, § 31, 17 Stat. 250, as amended by act Aug. 5, 1909, ch. 6, § 31, 36 Stat. 109.

Subsection (a) (3) from R. S. §§ 3395, 3387, which were in nature of a revision of act July 20, 1868, ch. 186, §§ 87, 82, 15 Stat. 162, 160; act Feb. 26, 1926, ch. 27, § 400 (d), 44 Stat. 88.

Subsection (b) (1) from R. S. §§ 3371, 3387, which were in nature of a revision of acts June 6, 1872, ch. 315, § 31, 17 Stat. 252; July 20, 1868, ch. 186, § 82, 15 Stat. 160, as R. S. § 3371, was amended by act Mar. 1, 1879, ch. 125, § 14, 20 Stat. 346; act Feb. 26, 1926, ch. 27, § 1109 (a), 44 Stat. 114.

Subsection (c) from act Feb. 26, 1926, ch. 27, § 1119, 44 Stat. 120.

## SIMILAR PROVISIONS

Provisions similar to subsection (c) were contained in acts June 2, 1924, ch. 234, § 1022, 43 Stat. 347; Nov. 23, 1921, ch. 136, § 1301, 42 Stat. 308.

## § 2003. Cross references—(a) Tax on leaf tobacco.

For tax on leaf tobacco unlawfully sold, removed, or shipped, see section 2060.

## (b) Exemption and drawback.

For exemption and drawback in case of exportation, see sections 2135 and 2136.

(53 Stat. 221.)

## § 2004. Defense tax for five years.

In lieu of the rates of tax specified in section 2000 (c) (2), the rates of tax for the period after June 30, 1940, and before July 1, 1945, shall be \$3.25 and \$7.80, respectively. (Added June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, § 212, 54 Stat. 524.)

## CROSS REFERENCE

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain government obligations, see note under section 757b of Title 31, Money and Finance.

## § 2005. Floor stocks tax—(a) Floor stocks tax.

Upon cigarettes subject to tax under section 2000 (c) (2) which on July 1, 1940, are held by any person for sale, there shall be levied, assessed, collected, and paid a floor stocks tax at a rate equal to the increase in rate of tax made applicable to such articles by section 2004.

## (b) Returns.

Every person required by this section to pay any floor stocks tax shall, on or before August 1, 1940, under such regulations as the Commissioner with the approval of the Secretary shall prescribe, make a return and pay such tax, except that in the case of articles held by manufacturers and importers the Commissioner may collect the tax with respect to all or part of such articles by means of stamp rather than return, and in such case may make an assessment against such manufacturer or importer having tobacco tax stamps on hand July 1, 1940, for the difference between the amount paid for such stamps and the increased rates specified in section 2004.

## (c) Laws applicable.

All provisions of law, including penalties, applicable in respect of the taxes imposed by section 2000 shall, insofar as applicable and not inconsistent with this section, be applicable with respect to the floor

stocks tax imposed by subsection (a). (Added June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, § 212, 54 Stat. 524.)

## CROSS REFERENCE

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain Government obligations, see note under section 757b of Title 31, Money and Finance.

## SUBCHAPTER B.—MANUFACTURERS, DEALERS, AND PEDDLERS

## PART I.—DEFINITION AND REQUIREMENTS OF TOBACCO AND SNUFF MANUFACTURERS

## § 2010. Definition—(a) "Manufacturer of tobacco"—(1) Manufacturer of tobacco or snuff.

Every person whose business it is to manufacture tobacco or snuff for himself, or who employs others to manufacture tobacco or snuff, whether such manufacture be by cutting, pressing, grinding, crushing, or rubbing of any raw or leaf tobacco, or otherwise preparing raw or leaf tobacco, or manufactured or partially manufactured tobacco or snuff, or the putting up for use or consumption of scraps, waste, clippings, stems, or deposits of tobacco resulting from any process of handling tobacco, or by the working or preparation of leaf tobacco, tobacco stems, scraps, clippings, or waste, by sifting, twisting, screening, or any other process, shall be regarded as a manufacturer of tobacco.

## (2) Sellers of leaf tobacco.

Every person shall also be regarded as a manufacturer of tobacco whose business it is to sell leaf tobacco in quantities less than a hogshead, case, or bale; or who sells directly to consumers, or to persons other than duly registered dealers in leaf tobacco, or duly registered manufacturers of tobacco, snuff, cigars, or cigarettes, or to persons who purchase in packages for export.

## (b) Farmers and growers.

Farmers and growers of tobacco who sell leaf tobacco of their own growth and raising shall not be regarded as manufacturers of tobacco. (53 Stat. 221.)

## DERIVATION

Subsection (a) (1) from act Aug. 27, 1894, ch. 349, § 69, 28 Stat. 568.

Subsection (a) (2) from act Aug. 27, 1894, ch. 349, § 69, 28 Stat. 568; R. S. § 3387, which was in nature of a revision of act July 20, 1868, ch. 186, § 82, 15 Stat. 160.

Subsection (b) from act Aug. 27, 1894, ch. 349, § 69, 28 Stat. 569.

## § 2011. Registration.

Every manufacturer of tobacco shall register with the collector of the district his name, or style, place of residence, trade, or business, and the place where such trade or business is to be carried on. (53 Stat. 222.)

## DERIVATION

Act Oct. 1, 1890, ch. 1244, § 26, 26 Stat. 618.

## § 2012. Statement.

Every person before commencing the manufacture of tobacco or snuff, shall furnish, without previous demand therefor, to the collector of the district where the manufacture is to be carried on, a statement in duplicate, subscribed under oath,

setting forth the place, and if in a city, the street and number of the street, where the manufacture is to be carried on; the number of cutting-machines, presses, snuff-mills, hand-mills, or other machines; the name, kind, and quality of the article manufactured or proposed to be manufactured; and when the same is manufactured by him as agent for any other person, or to be sold and delivered to any other person under a special contract, the name and residence and business or occupation of the person for whom the said article is to be manufactured, or to whom it is to be delivered. (53 Stat. 222.)

## DERIVATION

R. S. § 3355, which was in nature of a revision of acts July 20, 1868, ch. 186, § 63, 15 Stat. 153; June 6, 1872, ch. 315, § 31, 17 Stat. 253, as amended by act Mar. 1, 1879, ch. 125, § 14, 20 Stat. 344. R. S. § 3355 was also amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 248.

## § 2013. Bond.

Every person, before commencing the manufacture of tobacco or snuff, shall give a bond, to be approved by the collector of the district, in the sum of not less than \$2,000 nor more than \$20,000, to be fixed by the collector of the district, according to the quantum of business proposed to be done by the manufacturer, with right of appeal by the manufacturer to the Commissioner in respect to the amount of said bond, conditioned that he shall not engage in any attempt, by himself or by collusion with others, to defraud the Government of any tax on his manufactures; that he shall render truly and completely all the returns, statements, and inventories prescribed by law or regulations; that whenever he adds to the number of cutting-machines, presses, snuff-mills, hand-mills, or other mills or machines enumerated in the statement required under section 2012, he shall immediately give notice thereof to the collector of the district; that he shall stamp, in accordance with law, all tobacco and snuff manufactured by him before he removes any part thereof from the place of manufacture; that he shall not knowingly sell, purchase, expose, or receive for sale, any manufactured tobacco or snuff which has not been stamped as required by law; and that he shall comply with all the requirements of law relating to the manufacture of tobacco or snuff. Additional sureties may be required by the collector from time to time. (53 Stat. 222.)

## DERIVATION

R. S. § 3355, which was in nature of a revision of acts July 20, 1868, ch. 186, § 63, 15 Stat. 153; June 6, 1872, ch. 315, § 31, 17 Stat. 253, as amended by act Mar. 1, 1879, ch. 125, § 14, 20 Stat. 344.

## § 2014. Certificate.

Every manufacturer of tobacco shall obtain a certificate from the collector of the district, who is directed to issue the same, setting forth the kind and number of machines, presses, snuff-mills, hand-mills, or other mills and machines enumerated in the statement required under section 2012; which certificate shall be posted in a conspicuous place within the manufactory. (53 Stat. 222.)

## DERIVATION

R. S. § 3355, which was in nature of a revision of acts July 20, 1868, ch. 186, § 63, 15 Stat. 153; June 6, 1872,

ch. 315, § 31, 17 Stat. 253, as amended by act Mar. 1, 1879, ch. 125, § 14, 20 Stat. 344.

## § 2015. Sign.

Every manufacturer of tobacco shall place and keep on the side or end of the building wherein his business is carried on, so that it can be distinctly seen, a sign, with letters thereon not less than three inches in length, painted in oil-colors or gilded, giving his full name and business. (53 Stat. 222.)

## DERIVATION

R. S. § 3356, which was in nature of a revision of act July 20, 1868, ch. 186, § 64, 15 Stat. 154.

## § 2016. Factory number.

Every collector shall cause the several manufactories of tobacco or snuff in his district to be numbered consecutively, which numbers shall not be thereafter changed, except for reasons satisfactory to himself and approved by the Commissioner. (53 Stat. 222.)

## DERIVATION

R. S. § 3357, which was in nature of a revision of acts July 20, 1868, ch. 186, § 65, 15 Stat. 154; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401, as amended by act Oct. 1, 1890, ch. 1244, § 33, 26 Stat. 620.

## § 2017. Inventory.

Every person engaged in the manufacture of tobacco or snuff shall make and deliver to the collector of the district a true inventory, in such form as may be prescribed by the Commissioner, and verified by his own oath, of the quantity of each of the different kinds of tobacco, snuff-flour, snuff, stems, scraps, clippings, waste, tin-foil, licorice, sugar, gum, and other materials held or owned by him on the first day of January of each year, or at the time of commencing and at the time of concluding business, if before or after the 1st of January; setting forth what portion of said goods and materials, and what kinds were manufactured and produced by him and what was purchased from others. The collector shall make personal examination of the stock sufficient to satisfy himself as to the correctness of the inventory, and shall verify the fact of such examination by oath, to be indorsed on or affixed to the inventory. (53 Stat. 223.)

## DERIVATION

R. S. § 3358, which was in nature of a revision of act July 20, 1868, ch. 186, § 66, 15 Stat. 155.

## § 2018. Books.

Every person engaged in the manufacture of tobacco or snuff shall keep a book or books, the forms of which shall be prescribed by the Commissioner, and enter therein daily an accurate account of all the articles referred to in section 2017 purchased by him, the quantity of tobacco, snuff, and snuff-flour, stems, scraps, clippings, waste, tin-foil, licorice, sugar, gum, and other material, of whatever description, manufactured, sold, consumed, or removed for consumption or sale, or removed from the place of manufacture in bond, and to what district removed; also the number of net pounds of lumps of plug tobacco made in the lump-room, and the number of

packages and pounds thereof produced in the press-room each day. (53 Stat. 223.)

#### DERIVATION

R. S. § 3358, which was in nature of a revision of act July 20, 1868, ch. 186, § 66, 15 Stat. 155.

#### § 2019. Monthly abstracts.

Every person engaged in the manufacture of tobacco or snuff, shall on or before the 10th day of each month, furnish to the collector a true and complete abstract from the book required under section 2018 to be kept, verifying the same by his oath, of all such purchases, sales, and removals made during the month next preceding. (53 Stat. 223.)

#### DERIVATION

R. S. § 3358, which was in nature of a revision of act July 20, 1868, ch. 186, § 66, 15 Stat. 155.

#### § 2020. Cross reference.

For packing and selling requirements, see subchapter C. (53 Stat. 223.)

### PART II.—DEFINITION AND REQUIREMENTS OF CIGAR AND CIGARETTE MANUFACTURERS

#### § 2030. Definition.

Every person whose business it is to make or manufacture cigars or cigarettes for himself, or who employs others to make or manufacture cigars or cigarettes, shall be regarded as a manufacturer of cigars or cigarettes, respectively. (53 Stat. 223.)

#### DERIVATION

R. S. §§ 3244, Tenth, 3387, which were in nature of a revision of acts July 20, 1868, ch. 186, § 59, 15 Stat. 150; June 6, 1872, ch. 315, § 31, 17 Stat. 251; July 20, 1868, ch. 186, § 82, 15 Stat. 160.

#### § 2031. Registration.

Every manufacturer of cigars or cigarettes shall register with the collector of the district his name, or style, place of residence, trade, or business, and the place where such trade or business is to be carried on. (53 Stat. 223.)

#### DERIVATION

R. S. § 3387, which was in nature of a revision of act July 20, 1868, ch. 186, § 82, 15 Stat. 160; act Oct. 1, 1890, ch. 1244, § 26, 26 Stat. 618.

#### § 2032. Statement.

Every person before commencing the manufacture of cigars or cigarettes, shall furnish, without previous demand therefor, to the collector of the district a statement in duplicate, under oath, setting forth the place, and, if in a city, the street and number of the street, where the manufacture is to be carried on; and when the same are to be manufactured for, or to be sold and delivered to, any other person, the name and residence and business or occupation of the person for whom they are to be manufactured, or to whom they are to be delivered. (53 Stat. 223.)

#### DERIVATION

R. S. § 3387, which was in nature of a revision of act July 20, 1868, ch. 186, § 82, 15 Stat. 160.

#### § 2033. Bond.

Every person before commencing the manufacture of cigars or cigarettes, shall give bond, in conformity with the provisions of this chapter, in such penal sum as the collector may require, not less than \$100, and the sum of said bond may be increased from time to time and additional sureties required, at the discretion of the collector, or under the instructions of the Commissioner. Said bond shall be conditioned that he shall not engage in any attempt, by himself or by collusion with others, to defraud the Government of any tax on his manufactures; that he shall render correctly all the returns, statements, and inventories prescribed; that he shall stamp, in accordance with law, all cigars or cigarettes manufactured by him before he offers the same or any part thereof for sale, and before he removes any part thereof from the place of manufacture; that he shall not knowingly sell, purchase, expose, or receive for sale, any cigars or cigarettes which have not been stamped as required by law; and that he shall comply with all the requirements of law relating to the manufacture of cigars or cigarettes. (53 Stat. 224.)

#### DERIVATION

R. S. § 3387, which was in nature of a revision of act July 20, 1868, ch. 186, § 82, 15 Stat. 160, as amended by act Mar. 1, 1879, ch. 125, § 16, 20 Stat. 347; act Oct. 1, 1890, ch. 1244, § 35, 26 Stat. 620.

#### § 2034. Sign.

Every cigar or cigarette manufacturer shall place and keep on the side or end of the building within which his business is carried on, so that it can be distinctly seen, a sign, with letters thereon not less than three inches in length, painted in oil-colors or gilded, giving his full name and business. (53 Stat. 224.)

#### DERIVATION

R. S. §§ 3387, 3388, which were in nature of a revision of act July 20, 1868, ch. 186, §§ 82, 83, 15 Stat. 160.

#### § 2035. Factory number.

Every collector shall cause the several manufactories of cigars or cigarettes in his district to be numbered consecutively, which number shall not thereafter be changed. (53 Stat. 224.)

#### DERIVATION

R. S. §§ 3387, 3389, which were in nature of a revision of act July 20, 1868, ch. 186, §§ 84, 82, 15 Stat. 161, 160, as R. S. § 3389 was amended by act Oct. 1, 1890, ch. 1244, § 34, 26 Stat. 620.

#### § 2036. Inventory.

Every person engaged in the manufacture of cigars or cigarettes shall make and deliver to the collector of the district a true inventory, in such form as may be prescribed by the Commissioner, of the quantity of leaf tobacco, cigars, cigarettes, stems, scraps, clippings, and waste, and of the number of cigar and cigarette boxes and the capacity of each box, held or owned by him on the first day of January of each year, or at the time of commencing and at the time of concluding business, if before or after the 1st of January; setting forth what portion and kinds of said goods were manufactured or produced by him, and what were purchased from others, and shall

verify said inventory by his oath indorsed thereon. The collector shall make personal examination of the stock sufficient to satisfy himself as to the correctness of the inventory; and shall verify the fact of such examination by oath to be indorsed on the inventory. (53 Stat. 224.)

DERIVATION

R. S. §§ 3390, 3387, which were in nature of a revision of act July 20, 1868, ch. 186, §§ 86, 82, 15 Stat. 161, 160.

§ 2037. Books.

Every person engaged in the manufacture of cigars or cigarettes shall enter daily in a book, the form of which shall be prescribed by the Commissioner, an accurate account of all the articles enumerated in section 2036 purchased by him, the quantity of leaf-tobacco, cigars, cigarettes, stems, cigar or cigarette boxes, of whatever description, manufactured, sold, consumed or removed for consumption or sale, or removed from the place of manufacture. (53 Stat. 224.)

DERIVATION

R. S. §§ 3387, 3390, which were in nature of a revision of act July 20, 1868, ch. 186, §§ 86, 82, 15 Stat. 161, 160.

§ 2038. Monthly abstracts.

Every person engaged in the manufacture of cigars or cigarettes shall, on or before the tenth day of each and every month, furnish to the collector of the district a true and accurate abstract from the book required under section 2037 verified by his oath, of all such purchases, sales, and removals made during the month next preceding. (53 Stat. 224.)

DERIVATION

R. S. §§ 3387, 3390, which were in nature of a revision of act July 20, 1868, ch. 186, §§ 86, 82, 15 Stat. 161, 160.

§ 2039. Additional requirements on cigarette manufacturers purchasing cigarette tubes.

Every manufacturer of cigarettes purchasing any cigarette paper made up into tubes shall—

(a) Bond.

Give bond in an amount and with sureties satisfactory to the Commissioner that he will use such tubes in the manufacture of cigarettes or pay thereon a tax equivalent to the tax imposed by section 2000 (d); and

(b) Records and returns.

Keep such records and render under oath such returns as the Commissioner finds necessary to show the disposition of all tubes purchased or imported by such manufacturer of cigarettes. (53 Stat. 225.)

DERIVATION

Act Feb. 26, 1926, ch. 27, § 402, 44 Stat. 89.

SIMILAR PROVISIONS

1924—June 2, 1924, ch. 284, § 402, 43 Stat. 318.  
1921—Nov. 23, 1921, ch. 186, § 703, 42 Stat. 288.  
1919—Feb. 24, 1919, ch. 18, § 703, 40 Stat. 1118.  
1917—Oct. 3, 1917, ch. 63, § 404, 40 Stat. 314.

§ 2040. Purchases of leaf tobacco from other manufacturers or dealers.

It shall be lawful for any licensed manufacturer of cigars or cigarettes to purchase leaf tobacco of any other licensed manufacturer or dealer in quan-

titles less than the original package, for use in his own manufactory exclusively. (53 Stat. 225.)

DERIVATION

R. S. § 3244, Sixth, which was in nature of a revision of acts July 20, 1868, ch. 186, § 59, 15 Stat. 150; June 6, 1872, ch. 315, § 31, 17 Stat. 250, as amended by act Mar. 1, 1879, ch. 125, § 14, 20 Stat. 343; R. S. § 3387, which was in nature of a revision of act July 20, 1868, ch. 186, § 82, 15 Stat. 160.

PART III.—DEFINITION AND REQUIREMENTS OF DEALERS IN LEAF TOBACCO

§ 2050. Definition—(a) General.

Every person shall be regarded as a dealer in leaf tobacco, whose business it is, for himself or on commission, to sell, or offer for sale, or consign for sale on commission, leaf tobacco.

(b) Farmers, growers, and cooperative associations.

A farmer or grower of tobacco or a tobacco growers' cooperative association shall not be regarded as a dealer in leaf tobacco in respect to the leaf tobacco produced by him or handled by such association: *Provided*, That such cooperative associations shall be required to keep available records of all purchases and sales of tobacco, such records to be open to inspection by the agents of the Government. As used in this subsection the term "tobacco growers' cooperative association" means an association of farmers or growers of tobacco organized and operated as sales agent for the purpose of marketing the tobacco produced by its members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity and quality of tobacco furnished by them. (53 Stat. 225.)

DERIVATION

Subsection (a) from R. S. § 3244, Sixth, which was in nature of a revision of acts July 20, 1868, ch. 186, § 59, 15 Stat. 150; June 6, 1872, ch. 315, § 31, 17 Stat. 250, as amended by act Mar. 1, 1879, ch. 125, § 14, 20 Stat. 343.

Subsection (b) from R. S. § 3360, which was in nature of a revision of acts July 20, 1868, ch. 186, § 76, 15 Stat. 158; June 6, 1872, ch. 315, § 31, 17 Stat. 250, as amended by act Feb. 26, 1926, ch. 27, § 403, 44 Stat. 91.

§ 2051. Registration.

Every dealer in leaf tobacco shall register with the collector of the district his name, or style, place of residence, trade, or business, and the place where such trade or business is to be carried on. (53 Stat. 225.)

DERIVATION

Act Oct. 1, 1890, ch. 1244, § 26, 26 Stat. 618.

§ 2052. Statement of location of business and places of storage.

Every dealer in leaf tobacco shall file with the collector of the district in which his business is carried on a statement in duplicate, subscribed under oath, setting forth the place, and, if in a city, the street and number of the street, where his business is to be carried on, and the exact location of each place where leaf tobacco is held by him on storage, and, whenever he adds to or discontinues any of his leaf tobacco storage places, he shall give immediate notice to the collector of the district in which he is registered. (53 Stat. 225.)



## DERIVATION

R. S. § 3360, which was in nature of a revision of act July 20, 1868, ch. 186, § 76, 15 Stat. 158, as amended by act Feb. 26, 1926, ch. 27, § 403, 44 Stat. 89. R. S. § 3360 was also amended by acts Mar. 1, 1879, ch. 125, § 14, 20 Stat. 345; Feb. 24, 1919, ch. 18, § 704, 40 Stat. 1119; Nov. 23, 1921, ch. 136, § 704, 42 Stat. 288; June 2, 1924, ch. 234, § 403, 43 Stat. 818.

## § 2053. Bond.

Every dealer in leaf tobacco shall give a bond with surety, satisfactory to, and to be approved by, the collector of the district, in such penal sum as the collector may require, not less than \$500; and a new bond may be required in the discretion of the collector, or under instructions of the Commissioner. (53 Stat. 225.)

## DERIVATION

R. S. § 3360, which was in nature of a revision of act July 20, 1868, ch. 186, § 76, 15 Stat. 158, as amended by act Feb. 26, 1926, ch. 27, § 403, 44 Stat. 89.

See note to section 2052 of this title.

## § 2054. Certificate and number.

Every dealer in leaf tobacco shall be assigned a number by the collector of the district, which number shall appear in every inventory, invoice and report rendered by the dealer, who shall also obtain certificates from the collector of the district setting forth the place where his business is carried on and the places designated by the dealer as the places of storage of his tobacco, which certificates shall be posted conspicuously within the dealer's registered place of business, and within each designated place of storage. (53 Stat. 226.)

## DERIVATION

R. S. § 3360, which was in nature of a revision of act July 20, 1868, ch. 186, § 76, 15 Stat. 158, as amended by act Feb. 26, 1926, ch. 27, § 403, 44 Stat. 90.

See note to section 2052 of this title.

## § 2055. Inventory.

Every dealer in leaf tobacco shall make and deliver to the collector of the district a true inventory of the quantity of the different kinds of tobacco held or owned, and where stored by him, on the first day of January of each year, or at the time of commencing and at the time of concluding business, if before or after the first day of January, such inventory to be made under oath and rendered in such form as may be prescribed by the Commissioner. (53 Stat. 226.)

## DERIVATION

R. S. § 3360, which was in nature of a revision of act July 20, 1868, § 76, 15 Stat. 158, as amended by act Feb. 26, 1926, ch. 27, § 403, 44 Stat. 90.

See note to section 2052 of this title.

## § 2056. Records and invoices.

Every dealer in leaf tobacco shall render such invoices and keep such records as shall be prescribed by the Commissioner, and shall enter therein, day by day, and upon the same day on which the circumstance, thing or act to be recorded is done or occurs, an accurate account of the number of hogsheads, tierces, cases and bales, and quantity of leaf tobacco contained therein, purchased or received by him, on assignment, consignment, for stor-

age, by transfer or otherwise, and of whom purchased or received, and the number of hogsheads, tierces, cases and bales, and the quantity of leaf tobacco contained therein, sold by him, with the name and residence in each instance of the person to whom sold, and if shipped, to whom shipped, and to what district; such records shall be kept at his place of business at all times and preserved for a period of two years, and the same shall be open at all hours for the inspection of any internal revenue officer or agent. (53 Stat. 226.)

## DERIVATION

R. S. § 3360, which was in nature of a revision of act July 20, 1868, ch. 186, § 76, 15 Stat. 158, as amended by act Feb. 26, 1926, ch. 27, § 403, 44 Stat. 90.

See note to section 2052 of this title.

## § 2057. Monthly reports.

Every dealer in leaf tobacco on or before the tenth day of each month, shall furnish to the collector of the district a true and complete report of all purchases, receipts, sales and shipments of leaf tobacco made by him during the month next preceding, which report shall be verified and rendered in such form as the Commissioner, with the approval of the Secretary, shall prescribe. (53 Stat. 226.)

## DERIVATION

R. S. § 3360, which was in nature of a revision of act July 20, 1868, ch. 186, § 76, 15 Stat. 158, as amended by act Feb. 26, 1926, ch. 27, § 403, 44 Stat. 90.

See note to section 2052 of this title.

## § 2058. Demand statement of sales.

It shall be the duty of any dealer in leaf tobacco, or in any material used in manufacturing tobacco, snuff, cigars, or cigarettes, on demand of any officer of internal revenue, to render a true and complete statement, under oath, of the quantity and amount of such leaf tobacco or materials sold or delivered to any person named in such demand, and in case of refusal or neglect to render such statement, or if there is cause to believe such statement to be incorrect or fraudulent, the collector shall make an examination of persons, books, and papers, in the manner provided in relation to frauds and evasions. (53 Stat. 226.)

## DERIVATION

R. S. §§ 3359, 3391, 3387, which were in nature of a revision of act July 20, 1868, ch. 186, §§ 66, 86, 82, 15 Stat. 155, 162, 160.

## SIMILAR PROVISIONS

1909—Aug. 5, 1909, ch. 6, § 35, 36 Stat. 110, which was repealed by act Feb. 24, 1919, ch. 18, § 704, 40 Stat. 1118.

## § 2059. Restrictions on sales or shipments.

Sales or shipments of leaf tobacco by a dealer in leaf tobacco shall be in quantities of not less than a hoghead, tierce, case, or bale, except loose leaf tobacco comprising the breaks on warehouse floors, and except to a duly registered manufacturer of cigars for use in his own manufactory exclusively.

Dealers in leaf tobacco shall make shipments of leaf tobacco only to other dealers in leaf tobacco, to registered manufacturers of tobacco, snuff, cigars, or cigarettes, or for export. (53 Stat. 226.)

## DERIVATION

R. S. § 3360, which was in nature of a revision of act July 20, 1868, ch. 186, § 76, 15 Stat. 158, as amended by act Feb. 26, 1926, ch. 27, § 403, 44 Stat. 90.

See note to section 2052 of this title.

## § 2060. Tax for violating sections 2057 and 2059.

Upon all leaf tobacco sold, removed or shipped by any dealer in leaf tobacco in violation of the provisions of section 2059 or in respect to which no report has been made by such dealer in accordance with the provisions of section 2057, there shall be levied, assessed, collected, and paid a tax equal to the tax then in force upon manufactured tobacco, such tax to be assessed and collected in the same manner as the tax on manufactured tobacco. (53 Stat. 227.)

## DERIVATION

R. S. § 3360, which was in nature of a revision of act July 20, 1868, ch. 186, § 76, 15 Stat. 158, as amended by act Feb. 26, 1926, ch. 27, § 403, 44 Stat. 90.

See note to section 2052 of this title.

## PART IV.—DEFINITION AND REQUIREMENTS OF PEDDLERS OF TOBACCO

## § 2070. Definition.

Any person who sells or offers to sell and deliver manufactured tobacco, snuff, cigars, or cigarettes, traveling from place to place, in the town or through the country, shall be regarded as a peddler of tobacco: *Provided*, That manufacturers of, jobbers, and wholesale dealers in, manufactured tobacco, snuff, cigars, and cigarettes, and the agents or salesmen of such manufacturers, jobbers, and wholesale dealers, traveling from place to place, in the town or through the country, and selling and delivering or offering to sell and deliver such products only to dealers, shall not be construed to be peddlers. (53 Stat. 227.)

## DERIVATION

R. S. §§ 3244, Eleventh, 3387, which were in nature of a revision of acts June 6, 1872, ch. 315, § 31, 17 Stat. 251; July 20, 1868, ch. 186, § 82, 15 Stat. 160, as R. S. § 3244, was amended by act Sept. 7, 1916, ch. 453, 39 Stat. 740.

## § 2071. Registration.

Every peddler of tobacco shall register with the collector of the district his name, or style, place of residence, trade, or business, and the place where such trade or business is to be carried on. (53 Stat. 227.)

## DERIVATION

Act Oct. 1, 1890, ch. 1244, § 26, 26 Stat. 618.

## § 2072. Statement.

Every peddler of tobacco, before commencing to peddle tobacco, snuff, cigars, or cigarettes, shall furnish to the collector of his district a statement accurately setting forth the place of his residence, and, if in a city, the street and number of the street where he resides; the State or States through which he proposes to travel; also whether he proposes to sell his own manufactures or the manufactures of others, and, if he sells for other parties, the person for whom he sells. (53 Stat. 227.)

## DERIVATION

R. S. § 3381, which was in nature of a revision of act June 6, 1872, ch. 315, § 31, 17 Stat. 251, as amended by act Oct. 1, 1890, ch. 1244, § 28, 26 Stat. 618.

## § 2073. Bond.

Every peddler of tobacco shall give a bond in the sum of \$500, to be approved by the collector of the district, conditioned that he shall not engage in any attempt, by himself or by collusion with others, to defraud the Government of any tax on tobacco, snuff, cigars, or cigarettes; that he shall neither sell, nor offer for sale, any tobacco, snuff, cigars, or cigarettes, except in original and full packages, as the law requires the same to be put up and prepared by the manufacturer for sale, or for removal for sale or consumption, and except such packages of tobacco, snuff, cigars, or cigarettes, as bear the manufacturer's label or caution notice, and his legal marks and brands, and genuine internal revenue stamps which have never before been used. (53 Stat. 227.)

## DERIVATION

R. S. §§ 3381, 3387, which were in nature of a revision of acts June 6, 1872, ch. 315, § 31, 17 Stat. 251; July 20, 1868, ch. 186, § 82, 15 Stat. 160, as amended by act Oct. 1, 1890, ch. 1244, § 26, 26 Stat. 618.

## § 2074. Certificate.

Every peddler of tobacco shall obtain a certificate from the collector of his collection district, who is authorized and directed to issue the same, giving the name of the peddler, his residence, and the fact of his having filed the required bond; and shall on demand of any officer of internal revenue produce and exhibit his certificate. (53 Stat. 227.)

## DERIVATION

R. S. § 3383, which was in nature of a revision of acts June 6, 1872, ch. 315, § 31, 17 Stat. 252; Dec. 24, 1872, ch. 13, §§ 1, 6, 17 Stat. 401, 403, as amended by act Oct. 1, 1890, ch. 1244, § 29, 26 Stat. 618.

## § 2075. Sign.

Every peddler of tobacco traveling with a wagon, shall affix and keep on the same, in a conspicuous place, a sign painted in oil-colors, or gilded, giving his full name, business, and collection district. (53 Stat. 227.)

## DERIVATION

R. S. § 3382, which was in nature of a revision of act June 6, 1872, ch. 315, § 31, 17 Stat. 251.

## § 2076. Restrictions on sales.

For restrictions on sales, see sections 2104 and 2170 (a) (2).

(53 Stat. 227.)

## SUBCHAPTER C.—PACKING, STAMPING, AND SELLING REQUIREMENTS

## PART I.—TOBACCO AND SNUFF

## § 2100. Packages.

All manufactured tobacco shall be put up and prepared by the manufacturer for sale, or removal for sale or consumption, in packages of the following description and in no other manner:

**(a) Size—(1) Smoking and chewing tobacco and snuff.**

All smoking tobacco, snuff, fine-cut chewing tobacco, all cut and granulated tobacco, all shorts, the refuse of fine-cut chewing, which has passed through a riddle of thirty-six meshes to the square inch, and all refuse, scraps, clippings, cuttings, and sweepings of tobacco, and all other kinds of tobacco not otherwise provided for, in packages containing one-eighth of an ounce, three-eighths of an ounce, and further packages with a difference between each package and the one next smaller of one-eighth of an ounce up to and including two ounces, and further packages with a difference between each package and the one next smaller of one-fourth of an ounce up to and including four ounces, and further packages with a difference between each package and the one next smaller of one ounce up to and including sixteen ounces: *Provided*, That snuff may, at the option of the manufacturer, be put up in bladders and in jars containing not exceeding twenty pounds.

**(2) Cavendish, plug, and twist tobacco.**

All cavendish, plug, and twist tobacco, in wooden packages not exceeding two hundred pounds net weight. And every such wooden package shall have printed or marked thereon the manufacturer's name and place of manufacture, the registered number of the manufactory, and the gross weight, the tare and the net weight of the tobacco in each package.

**(b) Material.**

Wood, metal, paper, or other materials may be used separately or in combination for packing tobacco and snuff under such regulations as the Commissioner may establish.

**(c) Exceptions—(1) Export packages.**

The limitations and descriptions of packages contained in subsection (a) shall not apply to tobacco and snuff transported in bond for exportation and actually exported.

**(2) Leaf tobacco sold by persons regarded as manufacturers.**

All tobacco sold in the manner described in section 2010 (a) (2) by persons defined as manufacturers of tobacco thereunder shall be regarded as manufactured tobacco and shall be put up and prepared by such manufacturer in such packages only as the Commissioner, with the approval of the Secretary, shall prescribe.

**(d) Enclosures and designs.**

No packages of manufactured tobacco or snuff, prescribed by law, shall be permitted to have packed in, or attached to, or connected with them, nor affixed to, branded, stamped, marked, written, or printed upon them, any paper, certificate, or instrument purporting to be or represent a ticket, chance, share or interest in, or dependent upon, the event of a lottery, nor any indecent or immoral picture, representation, print, or words; and any violation of the provisions of this subsection shall subject the offender to the penalties and punishment provided by section 2161 (m).

**(e) Label.**

Every manufacturer of tobacco or snuff shall, in addition to all other requirements of this title relating to tobacco, print on each package, or securely affix by pasting on each package containing tobacco or snuff manufactured by or for him, a label on which shall be printed the number of the manufactory, the district and State in which it is situated, and these words:

"NOTICE.—The manufacturer of this tobacco has complied with all requirements of law. Every person is cautioned, under penalties of law, not to use this package for tobacco again."

This subsection shall not apply to tobacco or snuff transported in bond for exportation and actually exported. (53 Stat. 228.)

**DERIVATION**

Subsections (a)–(c) (1) from R. S. § 3362, which was in nature of a revision of acts July 20, 1868, ch. 186, § 62, 15 Stat. 153; June 6, 1872, ch. 315, § 31, 17 Stat. 251, as amended by act Feb. 26, 1926, ch. 27, § 401 (b), 44 Stat. 88.

Subsection (c) (2) from act Aug. 27, 1894, ch. 349, § 69, 28 Stat. 568.

Subsection (d) from R. S. § 3394, which was in nature of a revision of act July 29, 1868, ch. 186, § 81, 15 Stat. 160, as amended by act Aug. 5, 1909, ch. 6, § 33, 36 Stat. 110.

Subsection (e) from R. S. §§ 3364, 3362, which were in nature of a revision of acts July 20, 1868, ch. 186, §§ 68, 62, 15 Stat. 156, 153; June 6, 1872, ch. 315, § 31, 17 Stat. 252, as R. S. 3362 was amended by act Feb. 26, 1926, ch. 27, § 401 (b), 44 Stat. 89; Mar. 3, 1883, ch. 121, § 5, 22 Stat. 489.

**§ 2101. Tobacco in bulk.**

Perique tobacco, snuff flour, fine-cut shorts, the refuse of fine-cut chewing tobacco, refuse scraps, clippings, cuttings, and sweepings of tobacco, may be sold in bulk as material, and without the payment of tax, by one manufacturer directly to another manufacturer, or for export, under such restrictions, rules, and regulations as the Commissioner may prescribe. (53 Stat. 229.)

**DERIVATION**

R. S. § 3362, which was in nature of a revision of acts July 20, 1868, ch. 186, § 62, 15 Stat. 153; June 6, 1872, ch. 315, § 31, 17 Stat. 251, as amended by act Feb. 26, 1926, ch. 27, § 401 (b), 44 Stat. 89. R. S. § 3362, was also amended by acts June 2, 1924, ch. 234, § 401 (b), 43 Stat. 317; Nov. 23, 1921, ch. 136, § 701 (b), 42 Stat. 287; Feb. 24, 1919, ch. 18, § 701 (b), 42 Stat. 287; Feb. 24, 1919, ch. 18, § 701 (b), 40 Stat. 1117; Aug. 5, 1909, ch. 6, § 30, 36 Stat. 108; July 1, 1902, ch. 1371, § 1, 32 Stat. 174; Jan. 9, 1883, ch. 16, 22 Stat. 401; Mar. 1, 1879, ch. 125, § 14, 20 Stat. 345; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 248.

**§ 2102. Snuff flour.**

Snuff flour, when sold, or removed for use or consumption, shall be put up in packages in the same manner as snuff. (53 Stat. 229.)

**DERIVATION**

R. S. § 3363, which was in nature of a revision of acts July 20, 1868, ch. 186, § 61, 15 Stat. 152; June 6, 1872, ch. 315, § 31, 17 Stat. 250, as amended by act Aug. 5, 1909, ch. 6, § 31, 36 Stat. 109.

**§ 2103. Stamps—(a) Affixing and canceling—(1) Mode.**

The stamps provided for in section 2002 (a) (1) shall be affixed and canceled in the mode prescribed by the Commissioner, and stamps when used on any

wooden package shall be canceled by sinking a portion of the same into the wood with a steel die.

(2) **Furnishing of instruments.**

The instruments or other means prescribed under section 3301 (a) for attaching, protecting, and canceling stamps for tobacco and snuff shall be furnished by the United States to the persons using the stamps to be affixed therewith, under such regulations as the Commissioner may prescribe.

(3) **Cross reference.**

For general provisions relating to the attachment and cancellation of stamps, see sections 3301 and 3303.

(b) **Issue for restamping.**

The Commissioner may, under regulations prescribed by him with the approval of the Secretary, issue stamps for restamping packages of tobacco and snuff which have been duly stamped but from which the stamps have been lost or destroyed by unavoidable accident.

(c) **Supply.**

The stamps provided for under section 2002 (a) (1) shall be furnished to the collectors requiring them, and each collector shall keep at all times a supply equal in amount to three months' sale thereof, and shall sell the same only to the manufacturers of tobacco and snuff in their respective districts who have given bonds as required by law, and to owners or consignees of tobacco or snuff, upon the requisition of the proper customhouse officer having the custody of such tobacco or snuff.

(d) **Collector's account—(1) Requirement.**

Every collector shall keep an account of the number, amount, and denominate values of stamps sold by him to each manufacturer or other person aforesaid.

(2) **Credit in case of sale under distraint or forfeiture.**

Such stamps as may be required to stamp tobacco or snuff, sold under distraint by any collector, or for stamping any tobacco or snuff, which may have been abandoned, condemned, or forfeited, and sold by order of court or of any Government officer for the benefit of the United States, may, under such rules and regulations as the Commissioner shall prescribe, be used by the collector making such sale, or furnished by a collector to a United States marshal, or to any other Government officer making such sale for the benefit of the United States, without making payment for said stamps so used or delivered; and any revenue collector using or furnishing stamps in manner as aforesaid, on presenting vouchers satisfactory to the Commissioner shall be allowed credit for the same in settling his stamp account with the Department.

(e) **Emptied packages.**

Whenever any stamped box, bag, vessel, wrapper, or envelope of any kind, containing tobacco or snuff, is emptied, the stamp or stamps thereon shall be destroyed by the person in whose hands the same may be.

(f) **Absence of stamps.**

The absence of the proper stamp on any package of manufactured tobacco or snuff shall be notice to

all persons that the tax has not been paid thereon, and shall be prima facie evidence of the nonpayment thereof.

(g) **Cross references.**

**IMPORTED TOBACCO AND SNUFF**

For stamps in case of imported tobacco or snuff, see section 2130 (a).

**REDEMPTION OF STAMPS**

For redemption of stamps, see sections 2198 and 3304.

**GENERAL STAMP PROVISIONS**

For general provisions relating to stamps, see subchapter A of chapter 28.

(53 Stat. 229.)

**DERIVATION**

Subsection (a) (1) from R. S. § 3369, which was in nature of a revision of acts July 20, 1868, ch. 186, § 67, 15 Stat. 155; June 6, 1872, ch. 315, § 31, 17 Stat. 253.

Subsection (a) (2) from R. S. § 3445, which was in nature of a revision of acts July 20, 1868, ch. 186, § 43, 15 Stat. 142; June 6, 1872, ch. 315, § 12, 17 Stat. 240.

Subsection (b) from R. S. § 3315, which was in nature of a revision of act June 6, 1872, ch. 315, § 15, 17 Stat. 245, as amended by acts Feb. 24, 1919, ch. 18, § 1315, 40 Stat. 1145; Feb. 26, 1926, ch. 27, § 1124, 44 Stat. 122. R. S. § 3315 was also amended by acts Nov. 23, 1921, ch. 136, § 1330, 42 Stat. 319; June 2, 1924, ch. 234, § 1027, 43 Stat. 349.

Subsections (c), (d) from R. S. § 3369, which was in nature of a revision of acts July 20, 1868, ch. 186, § 67, 15 Stat. 155; June 6, 1872, ch. 315, § 31, 17 Stat. 253.

Subsection (e) from R. S. § 3378, which was in nature of a revision of acts July 20, 1868, ch. 186, § 72, 15 Stat. 156; June 6, 1872, ch. 315, § 31, 17 Stat. 253.

Subsection (f) from R. S. § 3373, which was in nature of a revision of act July 20, 1868, ch. 186, § 70, 15 Stat. 156.

**§ 2104. Sales of tobacco—(a) Limitation as to packages.**

No manufactured tobacco shall be sold or offered for sale unless put up in packages and stamped as prescribed in this chapter, except at retail by retail dealers from the packages authorized by section 2100.

(b) **Limitation on dealers in leaf tobacco.**

For restrictions on sales and shipments by dealers in leaf tobacco to manufacturers of tobacco, see section 2059.

(c) **Sales of leaf tobacco to cigar manufacturers.**

For authority of licensed manufacturers of cigars and cigarettes to purchase leaf tobacco from other registered manufacturers or registered dealers in small quantities, see section 2040

(53 Stat. 230.)

**DERIVATION**

R. S. § 3363, which was in nature of a revision of act July 20, 1868, § 78, 15 Stat. 159, as amended by act Oct. 1, 1890, ch. 1244, § 31, 26 Stat. 619.

**PART II.—CIGARS AND CIGARETTES**

**§ 2110. Classification—(a) Cigars.**

All rolls of tobacco, or any substitute therefor, wrapped with tobacco, shall be classed as cigars.

(b) **Cigarettes.**

All rolls of tobacco, or any substitute therefor, wrapped in paper or any substance other than tobacco, shall be classed as cigarettes. (53 Stat. 230.)

## DERIVATION

R. S. § 3394, which was in nature of a revision of act July 20, 1868, ch. 186, § 81, 15 Stat. 160, as amended by act Aug. 5, 1909, ch. 6, § 33, 36 Stat. 110. R. S. § 3394, was also amended by act July 24, 1897, ch. 11, § 10, 30 Stat. 206.

## § 2111. Packages—(a) Size—(1) Cigars.

All cigars weighing more than three pounds per thousand shall be packed in boxes not before used for that purpose containing, respectively, three, five, seven, ten, twelve, thirteen, twenty, twenty-five, fifty, one hundred, two hundred, two hundred fifty, or five hundred cigars each.

## (2) Cigarettes and small cigars.

Every manufacturer of cigarettes (including small cigars weighing not more than three pounds per thousand) shall put up all the cigarettes and such small cigars that he manufactures or has manufactured for him, and sells or removes for consumption or sale, in packages or parcels containing five, eight, ten, twelve, fifteen, sixteen, twenty, twenty-four, forty, fifty, eighty, or one hundred cigarettes each.

## (3) Exception in case of cigars or cigarettes for export.

Cigars or cigarettes packed expressly for export, and which shall be exported to a foreign country under the restrictions and regulations prescribed by the Commissioner, and approved by the Secretary, shall be exempt from the provisions of this subsection.

## (b) Material.

Wood, metal, paper, or other materials may be used separately or in combination for packing cigars or cigarettes, under such regulations as the Commissioner may establish.

## (c) Enclosures and designs.

No package of cigars or cigarettes prescribed by law, shall be permitted to have packed in, or attached to, or connected with, them, nor affixed to, branded, stamped, marked, written, or printed upon them, any paper, certificate, or instrument purporting to be or represent a ticket, chance, share or interest in, or dependent upon, the event of a lottery, nor any indecent or immoral picture, representation, print, or words; and any violation of the provisions of this subsection shall subject the offender to the penalties and punishments provided by section 2180 (I).

## (d) Labels—(1) Indicating compliance with law.

Every manufacturer of cigars shall securely affix, by pasting on each box containing cigars manufactured by or for him, a label, on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words:

"NOTICE.—The manufacturer of the cigars herein contained has complied with all the requirements of law. Every person is cautioned not to use either this box for cigars again, or the stamp thereon again, nor to remove the contents of this box without destroying said stamp, under the penalties provided by law in such cases."

Cigars packed expressly for export, and which shall be exported to a foreign country under the restrictions and regulations prescribed by the Commissioner, and approved by the Secretary, shall be exempt from the provisions of this subsection. Cigarettes shall be held to be cigars under the meaning of paragraph (1) of this subsection.

## (2) Indicating clause under which tax paid.

The Commissioner may, by regulation, require the manufacturer or importer to affix to each box, package, or container a conspicuous label indicating the clause of section 2000, under which the cigars therein contained have been tax-paid, which must correspond with the tax-paid stamp on such box or container.

## (e) Factory brand—(1) Requirement.

Every box of cigars or cigarettes shall before removal from any manufactory or place where cigars or cigarettes are made have stamped, indented, burned, or impressed into each box, in a legible and durable manner, the number of the cigars or cigarettes contained therein, the number of the manufactory, and the number of the district and the State.

## (2) Exception in case of export packages.

Cigars or cigarettes packed expressly for export, and which shall be exported to a foreign country under the restrictions and regulations prescribed by the Commissioner, and approved by the Secretary, shall be exempt from the provisions of this subsection.

## (f) Exemption in case of cigars or cigarettes used by employees.

Each employee of a manufacturer of cigars or cigarettes shall be permitted to use, for personal consumption and for experimental purposes, not to exceed twenty-one cigars or cigarettes per week without the manufacturer of cigars or cigarettes being required to pack the same in boxes or to stamp or pay any internal revenue tax thereon, such exemption to be allowed under such rules and regulations as the Secretary may prescribe. (53 Stat. 230.)

## DERIVATION

Subsection (a) (1) from R. S. § 3392, which was in nature of a revision of act July 20, 1868, ch. 186, § 86, 15 Stat. 161, as amended by act May 29, 1928, ch. 852, § 425, 45 Stat. 866. R. S. § 3392, was also amended by acts Aug. 5, 1909, ch. 6, § 32, 36 Stat. 109; June 2, 1924, ch. 234, § 400 (e), 43 Stat. 317; Feb. 26, 1926, ch. 27, § 400 (e), 44 Stat. 88.

Subsection (a) (2) from act Feb. 26, 1926, ch. 27, § 400 (d), 44 Stat. 87.

Subsection (a) (3) from R. S. §§ 3397, 3387, which were in nature of a revision of acts July 20, 1868, ch. 186, § 89, 15 Stat. 162; June 6, 1872, ch. 315, § 31, 17 Stat. 255; July 20, 1868, ch. 186, § 82, 15 Stat. 160, as § 3397 was amended by act Mar. 1, 1879, ch. 125, § 16, 20 Stat. 349.

Subsection (b) from R. S. §§ 3362, 3387, which were in nature of a revision of acts July 20, 1868, ch. 186, § 62, 15 Stat. 153; June 6, 1872, ch. 315, § 31, 17 Stat. 252; July 20, 1868, ch. 186, § 82, 15 Stat. 160, as § 3362 was amended by act Feb. 26, 1926, ch. 27, § 401 (b), 44 Stat. 89. R. S. § 3362 was also amended by acts Feb. 27, 1877, ch. 69, § 1, 19 Stat. 248; Mar. 1, 1879, ch. 125, § 14, 20 Stat. 345; Jan. 9, 1883, ch. 16, 22 Stat. 401; July 1, 1902, ch. 1371, § 1, 32 Stat. 714; Aug. 5, 1909, ch. 6, § 30, 36 Stat. 108; Feb. 24, 1919, ch. 18, § 701 (b), 40 Stat. 1117; Nov. 23, 1921, ch. 136, § 701 (b), 42 Stat. 287; June 2, 1924, ch. 234, § 401 (b), 43 Stat. 317.

Subsection (c) from R. S. § 3394, which was in nature of a revision of act July 20, 1868, ch. 186, § 81, 15 Stat.

160, as amended by act Aug. 5, 1909, ch. 6, § 33, 36 Stat. 110. R. S. § 3394 was also amended by acts July 24, 1897, ch. 11, § 10, 30 Stat. 206; July 1, 1902, ch. 1371, § 2, 32 Stat. 715.

Subsection (d) (1) from R. S. § 3393, which was in nature of a revision of acts July 20, 1868, ch. 186, § 88, 15 Stat. 162; Apr. 10, 1869, ch. 18, § 1, 16 Stat. 43, as amended by act Mar. 1, 1897, ch. 125, § 16, 20 Stat. 348; R. S. § 3397, which was in nature of a revision of acts July 20, 1868, ch. 186, § 89, 15 Stat. 162; June 6, 1872, ch. 315, § 31, 17 Stat. 255, as amended by act Mar. 1, 1879, ch. 125, § 16, 20 Stat. 349; R. S. § 3387, which was in nature of a revision of act July 20, 1868, ch. 186, § 82, 15 Stat. 160.

Subsection (d) (2) from acts Feb. 26, 1926, ch. 27, § 400 (c), 44 Stat. 87.

Subsection (e) from R. S. §§ 3397, 3387, which were in nature of a revision of acts July 20, 1868, ch. 186, § 89, 15 Stat. 162; June 6, 1872, ch. 315, § 31, 17 Stat. 255; July 20, 1868, ch. 186, § 82, 15 Stat. 160, as § 3397 was amended by act Mar. 1, 1879, ch. 125, § 16, 20 Stat. 348.

Subsection (f) from R. S. §§ 3392, 3387, which were in nature of a revision of act July 20, 1868, ch. 186, §§ 86, 82, 15 Stat. 161, 160, as § 3392 was amended by act May 29, 1928, ch. 852, § 425, 45 Stat. 866. R. S. § 3392 was also amended by acts Aug. 5, 1909, ch. 6, § 32, 36 Stat. 109; June 2, 1924, ch. 234, § 400 (e), 43 Stat. 317; Feb. 26, 1926, ch. 27, § 400 (e), 44 Stat. 88.

#### SIMILAR PROVISIONS

Provisions similar to subsection (a) (1) were contained in act Feb. 26, 1926, ch. 27, § 400 (f), 44 Stat. 88.

Provisions similar to subsection (a) (2) were contained in act June 2, 1924, ch. 234, § 400 (d), 43 Stat. 316; Nov. 23, 1921, ch. 136, § 700, 42 Stat. 286; Feb. 24, 1919, ch. 18, § 700, 40 Stat. 1116; Oct. 3, 1917, ch. 63, § 400, 40 Stat. 313; R. S. § 3392, as amended by act Feb. 10, 1913, ch. 34, 37 Stat. 664.

Provisions similar to subsection (d) (2) were contained in acts June 2, 1924, ch. 234, § 400 (c), 43 Stat. 316; Nov. 23, 1921, ch. 136, § 700, 42 Stat. 286; Feb. 24, 1919, ch. 18, § 700, 40 Stat. 1116; Oct. 3, 1917, ch. 63, § 400, 40 Stat. 312.

#### § 2112. Stamps—(a) Affixing and canceling—(1) Mode—(A) Cigarettes and small cigars.

Every manufacturer of cigarettes (including small cigars weighing not more than three pounds per thousand) shall securely affix to each of the packages or parcels described in section 2111 (a) (2) a suitable stamp denoting the tax thereon and shall properly cancel the same prior to sale or removal for consumption or sale under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe.

#### (B) Cigars.

For authority of Commissioner to prescribe the method for affixing and canceling cigar stamps, see sections 3301 and 3303.

#### (2) Furnishing of instruments.

The instruments or other means prescribed under section 3301 (a) for attaching, protecting, and cancelling stamps for cigars and cigarettes shall be furnished by the United States to the persons using the stamps to be affixed therewith under such regulations as the Commissioner may prescribe.

#### (b) Issue for restamping.

The Commissioner may, under regulations prescribed by him with the approval of the Secretary, issue stamps for restamping packages of cigars and cigarettes which have been duly stamped but from which the stamps have been lost or destroyed by unavoidable accident.

#### (c) Supply.

The stamps provided for under section 2002 (a) (3) shall be furnished to collectors requiring them, and collectors shall, if there be any cigar or cigarette manufacturers within their respective districts, keep on hand at all times a supply equal in amount to two months' sales thereof, and shall sell the same only to the cigar or cigarette manufacturers who have given bonds, as required by law, in their districts respectively, and to importers of cigars or cigarettes who are required to affix the same to imported cigars or cigarettes in the custody of customs officers.

#### (d) Collector's account—(1) Requirement.

Every collector shall keep an account of the number, amount, and denominate values of the stamps sold by him to each cigar or cigarette manufacturer, and to the importers described in subsection (c).

#### (2) Credit in case of sale under distraint or forfeiture.

Such stamps as may be required to stamp cigars or cigarettes sold under distraint by any collector, or for stamping any cigars or cigarettes which may have been abandoned, condemned, or forfeited, and sold by order of court or of any Government officer for the benefit of the United States, may, under such rules and regulations as the Commissioner shall prescribe, be used by the collector making such sale, or furnished by a collector to a United States marshal, or to any other Government officer making such sale for the benefit of the United States, without making payment for said stamps so used or delivered; and any revenue collector using or furnishing stamps in manner as aforesaid, on presenting vouchers satisfactory to the Commissioner, shall be allowed credit for the same in settling his stamp account with the Department.

#### (e) Destruction on emptied packages.

Whenever any stamped box containing cigars or cigarettes is emptied, it shall be the duty of the persons in whose hands the same is to destroy utterly the stamps thereon.

#### (f) Absence of stamps.

The absence of the proper revenue stamp on any box of cigars or cigarettes sold, or offered for sale, or kept for sale, shall be notice to all persons that the tax has not been paid thereon, and shall be prima facie evidence of the nonpayment thereof.

#### (g) Redemption of stamps.

For redemption of stamps, see sections 2198 and 3304. (53 Stat. 231.)

#### DERIVATION

Subsection (a) (1) from act Feb. 26, 1926, ch. 27, § 400 (d), 44 Stat. 87.

Subsection (a) (2) from R. S. §§ 3445, 3387, which were in nature of a revision of acts July 20, 1868, ch. 186, § 43, 15 Stat. 142; June 6, 1872, ch. 315, § 12, 17 Stat. 240; July 20, 1868, ch. 186, § 82, 15 Stat. 160.

Subsection (b) from R. S. § 3315, which was in nature of a revision of act June 6, 1872, ch. 315, § 15, 17 Stat. 245, as amended by acts Feb. 24, 1919, ch. 18, § 1315, 40 Stat. 1145; Feb. 26, 1926, ch. 27, § 1124, 44 Stat. 122. R. S. § 3315 was also amended by acts Mar. 1, 1879, ch. 126, § 5, 20 Stat. 338; Nov. 23, 1921, ch. 136, § 1330, 42 Stat. 319; June 2, 1924, ch. 234, § 1027, 43 Stat. 349.

Subsection (c) from R. S. §§ 3395, 3387, which were in nature of a revision of acts July 20, 1868, ch. 186, §§ 87,

82, 15 Stat. 162, 160; Oct. 1, 1890, ch. 1244, § 26, 26 Stat. 618.

Subsection (d) (1) from R. S. §§ 3395, 3387, which was in nature of a revision of act July 20, 1868, ch. 186, §§ 87, 82, 15 Stat. 162, 160.

Subsection (d) (2) from R. S. §§ 3369, 3387, which was in nature of a revision of acts July 20, 1868, ch. 186, § 67, 15 Stat. 155; June 6, 1872, ch. 315, § 31, 17 Stat. 253; July 20, 1868, ch. 186, § 82, 15 Stat. 160.

Subsection (e) from R. S. § 3406, which was in nature of a revision of acts Mar. 2, 1867, ch. 169, § 32, 14 Stat. 484; July 20, 1868, ch. 186, §§ 72, 89, 15 Stat. 156, 162; June 6, 1872, ch. 315, § 33, 17 Stat. 255.

Subsection (f) from R. S. §§ 3398, 3387, which were in nature of a revision of act July 20, 1868, ch. 186, §§ 90, 82, 15 Stat. 163, 160.

#### SIMILAR PROVISIONS

Provisions similar to subsection (a) were contained in acts June 2, 1924, ch. 234, § 400 (d), 43 Stat. 316; Nov. 23, 1921, ch. 136, § 700, 42 Stat. 286; Feb. 24, 1919, ch. 18, § 700, 40 Stat. 1116; Oct. 3, 1917, ch. 63, § 400, 40 Stat. 312; R. S. 3392, as amended by acts Aug. 5, 1909, ch. 6, § 32, 36 Stat. 109; Feb. 10, 1913, ch. 34, 37 Stat. 664.

#### § 2113. Sales of cigars and cigarettes.

For limitation on sales of cigars and cigarettes, see section 2170.

(53 Stat. 232.)

#### § 2114. Cross references—(a) Imported cigars and cigarettes.

For stamps in case of imported cigars and cigarettes, see subsections (b) and (c) of section 2130.

#### (b) General stamp provisions.

For general provisions relating to stamps, see subchapter A of chapter 28.

(53 Stat. 233.)

### SUBCHAPTER D.—IMPORTATION AND EXPORTATION

#### PART I.—IMPORTATION

#### § 2130. Packing and stamping—(a) Tobacco and snuff.

All manufactured tobacco and snuff imported from foreign countries shall have the same stamps respectively affixed as in the case of like kinds of tobacco and snuff manufactured in the United States. Such stamps shall be affixed and canceled on all such articles so imported by the owner or importer thereof, while they are in the custody of the proper customhouse officers, and such articles shall not pass out of the custody of said officers until the stamps have been affixed and canceled. Such tobacco and snuff shall be put up in packages, as prescribed by law for like articles manufactured in the United States before the stamps are affixed; and the owner or importer shall be liable to all the penal provisions prescribed for manufacturers of tobacco and snuff manufactured in the United States. Whenever it is necessary to take any such articles, so imported, to any place for the purpose of repacking, affixing, and canceling such stamps, other than the public stores of the United States, the collector of customs of the port where they are entered shall designate a bonded warehouse to which they shall be taken, under the control of such customs officer as he may direct.

#### (b) Cigars.

All cigars imported from foreign countries shall have the same stamps affixed as prescribed by law

for cigars manufactured in the United States. The stamps shall be affixed and canceled by the owner or importer of the cigars while they are in the custody of the proper custom-house officers, and the cigars shall not pass out of the custody of such officers until the stamps have been so affixed and canceled, but shall be put up in boxes containing quantities as prescribed in this chapter for cigars manufactured in the United States, before the stamps are affixed. And the owner or importer of such cigars shall be liable to all the penal provisions of this title prescribed for manufacturers of cigars manufactured in the United States. Whenever it is necessary to take any cigars so imported to any place other than the public stores of the United States, for the purpose of affixing and canceling such stamps, the collector of customs of the port where such cigars are entered shall designate a bonded warehouse to which they shall be taken, under the control of such customs officer as such collector may direct.

#### (c) Cigarettes.

All cigarettes imported from a foreign country shall be packed, stamped, and the stamps canceled in a like manner as in the case of cigarettes manufactured in the United States, in addition to the import stamp indicating inspection of the custom house before they are withdrawn therefrom.

#### (d) Scraps, cuttings, and clippings of tobacco.

Scraps, cuttings, and clippings of tobacco imported from any foreign country may, after the proper customs duty has been paid thereon, be withdrawn in bulk without the payment of the internal revenue tax, and transferred as material directly to the factory of a manufacturer of tobacco or snuff, or of a cigar manufacturer, under such restrictions and regulations as shall be prescribed by the Commissioner and approved by the Secretary.

#### (e) Cross reference.

For duty upon reimportation of tax-free exports, see act of June 17, 1930, ch. 497, § 314, 46 Stat. 695 (U. S. C., Title 19, § 1314).

(53 Stat. 233.)

#### DERIVATION

Subsection (a) from R. S. § 3377, which was in nature of a revision of act July 20, 1868, ch. 186, § 77, 15 Stat. 158; Feb. 26, 1926, ch. 27, § 401, 44 Stat. 88.

Subsection (b) from R. S. § 3402, which was in nature of a revision of act July 20, 1868, ch. 186, § 93, 15 Stat. 163; Feb. 26, 1926, ch. 27, § 400, 44 Stat. 87.

Subsection (c) from act Feb. 26, 1926, ch. 27, § 400 (d), 44 Stat. 88.

Subsection (d) from R. S. § 3377, which was in nature of a revision of act July 20, 1868, ch. 186, § 77, 15 Stat. 158, as amended by act Mar. 1, 1879, ch. 125, § 14, 20 Stat. 346.

#### SIMILAR PROVISIONS

Provisions similar to subsection (a), (b) were contained in act June 2, 1924, ch. 234, §§ 401 (a), 400 (a), 43 Stat. 317, 316.

Provisions similar to subsection (c) were contained in acts June 2, 1924, ch. 234, § 400 (d), 43 Stat. 316; Nov. 23, 1921, ch. 136, § 700, 42 Stat. 286; Feb. 24, 1919, ch. 18, § 700, 40 Stat. 1116; Oct. 3, 1917, ch. 63, § 400, 40 Stat. 312; R. S. § 3392, as amended by acts Aug. 5, 1909, ch. 6, § 32, 36 Stat. 109; Feb. 10, 1913, ch. 34, 37 Stat. 664.



PART II.—EXPORTATION

§ 2135. Exemption from tax—(a) Shipments to foreign countries and possessions of the United States—  
(1) Manufactures.

Manufactured tobacco, snuff, cigars or cigarettes may be removed for export to a foreign country or for shipment to a possession of the United States without payment of tax under such rules and regulations and the making of such entries, and the filing of such bonds and bills of lading as the Commissioner, with the approval of the Secretary, shall prescribe.

(2) Materials.

Perique tobacco, snuff flour, fine-cut shorts, the refuse of fine-cut chewing tobacco, refuse scraps, clippings, cuttings, and sweepings of tobacco, may be sold in bulk as material, and without the payment of tax, for export under such restrictions, rules, and regulations as the Commissioner may prescribe.

(3) Cigarette papers and tubes.

Under such rules and regulations as the Commissioner with the approval of the Secretary may prescribe, the taxes imposed by subsection (d) of section 2000 shall not apply in respect of cigarette papers or tubes sold for export or for shipment to a possession of the United States and in due course so exported or shipped.

(b) Cross references.

For provisions relating to the exemption from any internal revenue tax of articles shipped from the United States to Puerto Rico, the Philippines, or the Virgin Islands, see sections 3341, 3351, and 3361.

For definition of exportation, see section 2197 (b).

For exportation free of internal revenue tax see act of June 17, 1930, ch. 497, § 317, 46 Stat. 696 (U. S. C., title 19, § 1317).

(53 Stat. 234.)

DERIVATION

Subsection (a) (1) from acts Aug. 4, 1886, ch. 896, § 1, 24 Stat. 218; Feb. 26, 1926, ch. 27, § 1121, 44 Stat. 121; R. S. § 3387, which was in nature of a revision of act July 20, 1868, ch. 186, § 82, 15 Stat. 160.

Subsection (a) (2) from R. S. § 3362, which was in nature of a revision of acts July 20, 1868, ch. 186, § 62, 15 Stat. 153; June 6, 1872, ch. 315, § 31, 17 Stat. 252, as amended by act Feb. 26, 1926, ch. 27, § 401 (b), 44 Stat. 89. R. S. § 3362 was also amended by acts Feb. 27, 1877, ch. 69, § 1, 19 Stat. 248; Mar. 1, 1879, ch. 125, § 14, 20 Stat. 345; Jan. 9, 1883, ch. 16, 22 Stat. 401; July 1, 1902, ch. 1371, § 1, 32 Stat. 714; Aug. 5, 1909, ch. 6, § 30, 36 Stat. 108; Feb. 24, 1919, ch. 18, § 701 (b), 40 Stat. 1117; Nov. 23, 1921, ch. 136, § 701 (b), 42 Stat. 287; June 2, 1924, ch. 234, § 401 (b), 43 Stat. 317.

Subsection (a) (3) from act Feb. 26, 1926, ch. 27, § 1121, 44 Stat. 121.

SIMILAR PROVISIONS

Provisions similar to subsection (a) (1) were contained in act Feb. 8, 1875, ch. 36, § 24, 18 Stat. 312; R. S. 3385, which was in nature of a revision of acts July 20, 1868, ch. 186, § 73, 15 Stat. 157; June 6, 1872, ch. 315, § 31, 17 Stat. 254, as amended by acts June 9, 1880, ch. 161, § 1, 21 Stat. 167; Aug. 8, 1882, ch. 468, 22 Stat. 372; Jan. 13, 1883, ch. 24, 22 Stat. 402.

Provisions similar to subsection (a) (3) were contained in acts June 2, 1924, ch. 234, § 1024, 43 Stat. 348; Nov. 23, 1921, ch. 136, § 1305, 42 Stat. 310; Feb. 24, 1919, ch. 18, § 1310, 40 Stat. 1143.

§ 2136. Drawback—(a) In general.

There shall be an allowance of drawback on tobacco, snuff, cigars, or cigarettes on which the tax

has been paid by suitable stamps affixed thereto before removal from the place of manufacture, when the same are exported, equal in amount to the value of the stamps found to have been so affixed; the evidence that the stamps were so affixed, and the amount of tax so paid, and of the subsequent exportation of the said tobacco, snuff, cigars, or cigarettes, to be ascertained under such regulations as shall be prescribed by the Commissioner and approved by the Secretary. Any sums found to be due under the provisions of this section shall be paid out of annual appropriations from the general fund of the Treasury: *Provided*, That no claim for an allowance of drawback shall be entertained or allowed until a certificate from the collector of customs at the port from which the goods have been exported, or other evidence satisfactory to the Commissioner, has been furnished, that the stamps affixed to the tobacco, snuff, cigars, or cigarettes entered and cleared for export to a foreign country were totally destroyed before such clearance; nor until the claimant has filed a bond, with good and sufficient sureties, to be approved by the collector of the district from which the goods are shipped, in a penal sum double the amount of the tax for which said claim is made, that he will procure, within a reasonable time, evidence satisfactory to the Commissioner that said tobacco, snuff, cigars, or cigarettes have been landed at any port without the jurisdiction of the United States, or that after shipment the same were lost at sea, and have not been relanded within the limits of the United States.

(b) Shipments to Puerto Rico and Philippine Islands.

For provisions relating to the allowance of drawback of internal revenue tax on articles shipped to Puerto Rico or the Philippine Islands, see sections 3361 and 3341, respectively.

(53 Stat. 234.)

DERIVATION

R. S. § 3386, 3387, which were in nature of a revision of acts July 20, 1868, ch. 186, § 74, 15 Stat. 157; June 6, 1872, ch. 315, § 31, 17 Stat. 254; July 20, 1868, ch. 186, § 82, 15 Stat. 160, as § 3386 was amended by act Mar. 1, 1879, ch. 125, § 16, 20 Stat. 347; act June 26, 1934, ch. 756, § 2, 48 Stat. 1225.

§ 2137. Refund to exporter instead of manufacturer.

Under such rules and regulations as the Commissioner with the approval of the Secretary may prescribe, the amount of any internal revenue tax erroneously or illegally collected in respect of articles exported or shipped under section 2135 (a) (1) and (3) may be refunded to the exporter or shipper of the articles, instead of to the manufacturer, if the manufacturer waives any claim for the amount so to be refunded. (53 Stat. 235.)

DERIVATION

Act Feb. 26, 1926, ch. 27, § 1121, 44 Stat. 121.

SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 1024, 43 Stat. 348.

1921—Nov. 23, 1921, ch. 136, § 1305, 42 Stat. 310.

1919—Feb. 24, 1919, ch. 18, § 1310, 40 Stat. 1143.

## SUBCHAPTER E.—PENALTIES AND FORFEITURES

### PART I.—PENALTIES AND FORFEITURES COMMON TO TOBACCO, SNUFF, CIGARS, AND CIGARETTES

#### § 2150. Failure to register, penalty.

Every dealer in leaf tobacco, manufacturer of tobacco, manufacturer of cigars or cigarettes, or peddler of tobacco who fails to register with the collector as required under sections 2051, 2011, 2031, and 2071, respectively, shall be subject to a penalty of \$50. (53 Stat. 235.)

#### DERIVATION

R. S. § 3387, which was in nature of a revision of act July 20, 1868, ch. 186, § 82, 15 Stat. 160; act Oct. 1, 1890, ch. 1244, § 26, 26 Stat. 618.

#### § 2151. Fraudulently stamped packages, possession, sale of, or from, penalty.

Every manufacturer or other person who—

(a) Sells or offers for sale any box or other package of tobacco, snuff, cigars, or cigarettes, having affixed thereto any fraudulent, spurious, imitation, or counterfeit stamp, or stamp that has been previously used; or

(b) Sells from any such fraudulently stamped box or package; or

(c) Has in his possession any box or package as aforesaid, knowing the same to be fraudulently stamped;

shall, for each such offense, be fined not less than \$100 nor more than \$500, and imprisoned for not less than one year nor more than three years. (53 Stat. 235.)

#### DERIVATION

R. S. §§ 3376, 3387, which were in nature of a revision of acts July 20, 1868, ch. 186, § 72, 15 Stat. 156; June 6, 1872, ch. 315, § 31, 17 Stat. 253; July 20, 1868, ch. 186, § 82, 15 Stat. 160.

#### § 2152. Peddling unlawfully, penalty.

Every person who—

(a) Failure to obtain certificate.

Is found peddling tobacco, snuff, cigars, or cigarettes, without having previously obtained the collector's certificate as provided for in section 2074; or

(b) Failure to give bond.

Is found peddling tobacco, snuff, cigars, or cigarettes, without having given the bond required under section 2073; or

(c) Failure to affix sign.

Fails to have affixed to his wagon, in a conspicuous place, a sign, painted in oil-colors, or gilded, giving his full name, business, and collection district; or

(d) Selling in unauthorized packages.

Sells tobacco, snuff, cigars, or cigarettes otherwise than in full and original packages as put up by the manufacturer; or

(e) Possession of used stamps.

Has in his possession any internal revenue stamp which has been removed from any box or other package of tobacco, snuff, cigars, or cigarettes; or

(f) Possession of broken packages with undestroyed stamps.

Has in his possession any empty or partially emptied box or other package which has been used for tobacco, snuff, cigars, or cigarettes, the stamp or stamps on which have not been destroyed; shall for each such offense, be fined not less than \$100 nor more than \$500, or imprisoned not less than six months nor more than one year, or both, at the discretion of the court. (53 Stat. 235.)

#### DERIVATION

R. S. §§ 3384, 3387, which were in nature of a revision of acts June 6, 1872, § 31, 17 Stat. 252; July 20, 1868, ch. 186, § 82, 15 Stat. 160.

#### § 2153. Peddler's certificate, refusal to permit inspection, penalty.

Refusal or failure to produce for inspection the collector's certificate for peddlers, when demanded by any internal revenue agent, shall subject the party guilty thereof to a fine of not more than \$500 and to imprisonment not more than twelve months. (53 Stat. 236.)

#### DERIVATION

R. S. § 3383, which was in nature of a revision of acts June 6, 1872, ch. 315, § 31, 17 Stat. 252; Dec. 24, 1872, ch. 15, §§ 1, 6, 17 Stat. 401, 403, as amended by act Oct. 1, 1890, ch. 1244, § 29, 26 Stat. 618. R. S. § 3383 was also amended by act Mar. 1, 1879, ch. 125, § 15, 20 Stat. 346.

#### § 2154. Peddlers, forfeitures relating to—(a) Offenses mentioned in section 2152.

Any collector or deputy collector finding any person peddling tobacco, snuff, cigars, or cigarettes, in the act of offending as to any of the offenses mentioned in section 2152, may seize the horse or horses, mule or mules, wagon and contents, or pack, bundle, or basket, of any such person; and the collector shall thereupon proceed upon such seizure as provided in subsection (b).

(b) Refusal to permit inspection of certificate.

Whenever any peddler refuses to exhibit the collector's certificate for peddlers on demand of any officer of internal revenue, said officer may seize the horse or mule, wagon, and contents, or pack, bundle, or basket, of any person so refusing; and the collector of the district in which the seizure occurs may, on ten days' notice, published in any newspaper in the district, or served personally on the peddler, or at his dwelling house, require such peddler to show cause, if any he has, why the horses or mules, wagons, and contents, pack, bundle, or basket so seized shall not be forfeited. In case no sufficient cause is shown, proceedings for the forfeiture of the property seized shall be taken under the general provisions of the internal revenue laws relating to forfeitures. (53 Stat. 236.)

#### DERIVATION

Subsection (a). R. S. §§ 3384, 3387, which were in nature of a revision of acts June 6, 1872, ch. 315, § 31, 17 Stat. 252; July 20, 1868, ch. 186, § 82, 15 Stat. 160, as amended by act Mar. 1, 1879, ch. 125, § 15, 20 Stat. 346.

Subsection (b). R. S. § 3383, which was in nature of a revision of acts June 6, 1872, ch. 315, § 31, 17 Stat. 252; Dec. 24, 1872, ch. 15, §§ 1, 6, 17 Stat. 401, 403; as amended by act Oct. 1, 1890, ch. 1244, § 29, 26 Stat. 618. R. S. § 3383 was also amended by act Mar. 1, 1879, ch. 125, § 15, 20 Stat. 346.

**§ 2155. Relanding unlawfully when shipped for export, penalty and forfeiture—(a) Penalty.**

Every person who, with the intent to defraud the revenue laws of the United States, relands or causes to be relanded, within the jurisdiction of the United States, any manufactured tobacco, snuff, cigars, or cigarettes, which have been shipped for exportation under the provisions of section 2135, without properly entering such tobacco, snuff, cigars, or cigarettes at a customhouse, and paying the proper customs and internal revenue tax thereon, or who receives such relanded tobacco, snuff, cigars, or cigarettes, and every person who aids or abets in such relanding or receiving such tobacco, snuff, cigars, or cigarettes, shall, on conviction, be fined not exceeding \$5,000, or imprisoned not more than three years; and

**(b) Forfeiture.**

All tobacco, snuff, cigars, cigarettes so relanded shall be forfeited to the United States. (53 Stat. 236.)

**DERIVATION**

R. S. §§ 3385, 3387, which were in nature of a revision of acts July 20, 1868, ch. 186, § 73, 15 Stat. 157; June 6, 1872, ch. 315, § 31, 17 Stat. 254; Feb. 8, 1875, ch. 36, § 24, 18 Stat. 312; July 20, 1868, ch. 186, § 82, 15 Stat. 160, as amended by acts June 9, 1880, ch. 161, § 1, 21 Stat. 167; Aug. 8, 1882, ch. 468, 22 Stat. 373.

**§ 2156. Information, returns, and payment of tax, violations relating to; penalties.**

(a) Any person required under this chapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this chapter who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Any person required under this chapter to collect, account for and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony, and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) Any person who willfully fails to pay, collect, or truthfully account for and pay over, any tax imposed by this chapter, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this

subsection for any offense for which a penalty may be assessed under authority of section 3612.

(d) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. (53 Stat. 236.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 1114 (a), (b), (d), (f), 44 Stat. 116, 117.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 1017, 43 Stat. 343.

1921—Nov. 23, 1921, ch. 136, § 253, 42 Stat. 268.

1919—Feb. 24, 1919, ch. 18, § 258, 40 Stat. 1085.

1916—Sept. 8, 1916, ch. 463, §§ 14, 18, 39 Stat. 772, 775, as section 18 was amended by act Oct. 3, 1917, ch. 63, § 1029, 40 Stat. 336; Oct. 22, 1914, ch. 331, § 23, 38 Stat. 764; Oct. 3, 1913, ch. 16, § II, F, G, 38 Stat. 171, 177.

**PART II.—PENALTIES AND FORFEITURES OF SPECIAL APPLICATION TO TOBACCO AND SNUFF**

**§ 2160. Persons in general—(a) Removal from factory improperly packed or stamped, penalty.**

Every person who removes from any manufactory, or from any place where tobacco or snuff is made, any manufactured tobacco or snuff without the same being put up in proper packages, or without the proper stamp for the amount of tax thereon being affixed and canceled, as required by law, except for export as provided in section 2135, shall for each such offense, respectively, be fined not less than \$1,000 nor more than \$5,000, and be imprisoned not less than six months nor more than two years.

**(b) Use, sale, or possession without proper stamps, penalty.**

Every person who—

(1) Uses, sells, or offers for sale, or has in possession, except in the manufactory, or while in transfer under bond from any manufactory for exportation to a foreign country, any manufactured tobacco or snuff, without proper stamps for the amount of tax thereon being affixed and canceled; or

(2) Sells, or offers for sale, for consumption in the United States, any manufactured tobacco or snuff, or uses, or has in possession, except in the manufactory, or while in transfer under bond from any manufactory for exportation to a foreign country, any manufactured tobacco or snuff which has been inspected and removed for export;

shall for each such offense, respectively, be fined not less than \$1,000 nor more than \$5,000, and be imprisoned not less than six months nor more than two years.

**(c) Sale when improperly packed or stamped, penalty.**

Every person who sells or offers for sale any snuff or any kind of manufactured tobacco not put up in packages and stamped as prescribed in this chapter, except at retail as provided in section 2104, shall be fined not less than \$500 nor more than \$5,000, and imprisoned not less than six months nor more than two years.

**(d) Purchase or receipt for sale without proper brands or stamps, penalty.**

Every person who purchases, or receives for sale, any manufactured tobacco or snuff which has not been branded or stamped according to law shall be liable to a penalty of \$50 for each offense.

**(e) Affixing false or used stamps, penalty.**

Every person who affixes to any package containing tobacco or snuff, any false, forged, fraudulent, spurious, or counterfeit stamp, or a stamp which has been before used, shall be deemed guilty of a felony, and shall be fined not less than \$1,000 nor more than \$5,000, and imprisoned not less than two years nor more than five years.

**(f) Willful neglect or refusal to destroy stamps on emptied packages, penalty.**

Every person who willfully neglects or refuses to destroy the stamp or stamps on any empty box, bag, vessel, wrapper, or envelope of any kind which contained tobacco or snuff, as required in section 2103 (e), shall for each such offense be fined \$50 and imprisoned not less than ten days nor more than six months.

**(g) Reuse of stamps or emptied stamped packages, penalty.**

Every manufacturer or other person who—

(1) Puts tobacco or snuff into any box, bag, vessel, wrapper, or envelope which contained tobacco or snuff, the same having been either emptied or partially emptied; or

(2) Has in his possession any stamp which has been previously used; or

(3) Affixes to any box or other package any stamp which has been previously used;

shall for each offense be fined not less than \$100 nor more than \$500 and imprisoned for not less than one year nor more than three years.

**(h) Absence of stamp, forfeiture.**

Manufactured tobacco or snuff contained in any package from which the proper stamp is absent shall be forfeited to the United States.

**(i) Trafficking in used stamps or emptied stamped packages, penalty.**

Every person who sells or gives away, or who buys or accepts from another any empty stamped box, bag, vessel, wrapper, or envelope of any kind, which contained tobacco or snuff, or the stamp or stamps taken from any such empty box, bag, vessel, wrapper, or envelope of any kind, shall, for each such offense, be fined \$100 and imprisoned for not less than twenty days, and not more than one year.

**(j) Fraudulent claim for drawback, penalty.**

If any person or persons shall fraudulently claim or seek to obtain an allowance or drawback of taxes on any manufactured tobacco, or shall fraudulently claim any greater allowance or drawback thereon than the tax actually paid, such person or persons shall forfeit triple the amount wrongfully or fraudulently claimed or sought to be obtained, or the sum of \$500, at the election of the Secretary, to be recovered as in other cases of forfeiture provided for in the internal revenue laws. (53 Stat. 237.)

**DERIVATION**

Subsections (a), (b) from R. S. § 3374, which was in nature of a revision of acts July 20, 1868, ch. 186, § 71, 15 Stat. 156; June 6, 1872, ch. 315, § 31, 17 Stat. 253; Feb. 24, 1919, ch. 18, § 606, 40 Stat. 1109.

Subsection (c) from R. S. § 3363, which was in nature of a revision of act July 20, 1868, ch. 186, § 78, 15 Stat. 159, as amended by act Oct. 1, 1890, ch. 1244, § 31, 26 Stat. 619.

Subsection (d) from R. S. § 3366, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 126.

Subsection (e) from R. S. § 3375, which was in nature of a revision of act July 20, 1868, ch. 186, § 71, 15 Stat. 156.

Subsections (f), (g) from R. S. § 3376, which was in nature of a revision of acts July 20, 1868, ch. 186, § 72, 15 Stat. 156; June 6, 1872, ch. 315, § 31, 17 Stat. 253.

Subsection (h) from R. S. § 3373, which was in nature of a revision of act July 20, 1868, ch. 186, § 70, 15 Stat. 156.

Subsection (i) from R. S. § 3376, which was in nature of a revision of acts July 20, 1868, ch. 186, § 72, 15 Stat. 156; June 6, 1872, ch. 315, § 31, 17 Stat. 253.

Subsection (j) from act Feb. 8, 1875, ch. 36, § 25, 18 Stat. 312.

**§ 2161. Manufacturers—(a) Manufacturing without bond, penalty.**

Every person who manufactures tobacco or snuff of any description without first giving bond as required under section 2013, shall be fined not less than \$1,000 nor more than \$5,000, and imprisoned for not less than one nor more than five years.

**(b) Selling or removing without bond, forfeiture.**

Every manufacturer of tobacco who removes, otherwise than as provided by law, or sells any tobacco or snuff, without having given bond as required by law, shall, in addition to the penalties elsewhere provided by law for such offenses forfeit to the United States all the raw material and manufactured or partly manufactured tobacco and snuff, and all machinery, tools, implements, apparatus, fixtures, boxes, and barrels, and all other materials which may be found in his possession, in his manufactory, or elsewhere.

**(c) Neglect or refusal to obtain certificate, penalty.**

Every manufacturer of tobacco who neglects or refuses to obtain the certificate required under section 2014, or to keep the same posted as provided in that section, shall be fined not less than \$100 nor more than \$500.

**(d) Neglect to put up sign, penalty.**

Every manufacturer of tobacco who neglects to place and keep on the side or end of the building wherein his business is carried on, so that it can be distinctly seen, the sign required under section 2015 shall be fined not less than \$100 or more than \$500.

**(e) Refusal or willful neglect to deliver inventory, penalty.**

Whenever any person engaged in the manufacture of tobacco or snuff refuses or willfully neglects to deliver the inventory required under section 2017, he shall be fined not less than \$500 nor more than \$5,000, and imprisoned not less than 6 months nor more than 3 years.

**(f) Refusal or willful neglect to keep books, penalty.**

Whenever any person engaged in the manufacture of tobacco or snuff refuses or willfully neglects to keep the accounts required in section 2018, he shall be fined not less than \$500 nor more than \$5,000, and

imprisoned not less than six months nor more than three years.

**(g) Refusal or willful neglect to furnish monthly abstract, penalty.**

Whenever any person engaged in the manufacture of tobacco or snuff refuses or willfully neglects to furnish the abstract required under section 2019, he shall be fined not less than \$500 nor more than \$5,000, and imprisoned not less than six months nor more than three years.

**(h) False or fraudulent entries of manufactures, sales or purchases, forfeiture.**

Every manufacturer of tobacco who makes false or fraudulent entries of manufactures or sales of tobacco or snuff, or makes false or fraudulent entries of the purchase or sales of leaf-tobacco, tobacco stems, or other material, shall in addition to the penalties provided by law for such offenses, forfeit to the United States all the raw material and manufactured or partly manufactured tobacco and snuff, and all machinery, tools, implements, apparatus, fixtures, boxes, and barrels, and all other materials which may be found in his possession, in his manufactory, or elsewhere.

**(i) Removal unlawfully or sale without proper stamps—(1) Forfeiture.**

Every manufacturer of tobacco who removes, otherwise than as provided by law, or sells, without the proper stamps denoting the tax thereon, any tobacco or snuff, shall, in addition to the penalties elsewhere provided by law for such offenses, forfeit to the United States all the raw material and manufactured or partly manufactured tobacco and snuff, and all machinery, tools, implements, apparatus, fixtures, boxes and barrels, and all other materials which may be found in his possession, in his manufactory, or elsewhere.

**(2) Penalty.**

For penalties for such offenses, see section 2160.

**(j) Affixing false or used stamps—(1) Forfeiture.**

Every manufacturer of tobacco who affixes any false, forged, fraudulent, spurious, or counterfeit stamp, or imitation of any stamp required by law, or any stamp required by law which has been previously used, to any box or package containing any tobacco or snuff, shall, in addition to the penalties elsewhere provided by law for such offenses, forfeit to the United States all the raw material and manufactured or partly manufactured tobacco and snuff, and all machinery, tools, implements, apparatus, fixtures, boxes, and barrels, and all other materials which may be found in his possession, in his manufactory, or elsewhere.

**(2) Penalty.**

For penalties for such offenses, see section 2160 (e).

**(k) Omission or removal of label, penalty.**

Every manufacturer of tobacco who neglects to print on or affix the label required under section 2100 (e) to any package containing tobacco or snuff manufactured by or for him, or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package, shall be

fined \$50 for each package in respect to which such offense shall be committed.

**(l) Collusion in case of manufacture on commission, shares, or contract.**

In case of fraud on the part of either of the persons referred to in section 2001 (b) (1) or of any collusion on their part with intent to defraud the revenue—

**(1) Forfeiture.**

Such material and manufactured articles shall be forfeited to the United States; and

**(2) Penalty.**

Each party to such fraud or collusion shall be deemed guilty of a misdemeanor, and be fined not less than \$100 nor more than \$5,000, and imprisoned for not less than six months nor more than three years.

**(m) Offenses not specifically covered.**

If any manufacturer of tobacco shall knowingly or willfully omit, neglect, or refuse to do or cause to be done any of the things required by law in the carrying on or conducting of his business, or shall do anything by this chapter prohibited, if there be no specific penalty or punishment imposed by any other section of this chapter for the neglecting, omitting, or refusing to do, or for the doing, or causing to be done the thing required or prohibited—

**(1) Penalty.**

He shall pay a penalty of \$1,000; and

**(2) Forfeiture.**

All tobacco found in his manufactory shall be forfeited to the United States. (53 Stat. 238.)

**DERIVATION**

Subsection (a) from R. S. § 3355, which was in nature of a revision of acts July 20, 1868, ch. 186, § 63, 15 Stat. 153; June 6, 1872, ch. 315, § 31, 17 Stat. 253, as amended by act Mar. 1, 1879, ch. 125, § 14, 20 Stat. 345.

Subsection (b) from R. S. § 3372, which was in nature of a revision of acts July 20, 1868, ch. 186, § 69, 15 Stat. 156; June 6, 1872, ch. 315, § 31, 17 Stat. 253.

Subsection (c) from R. S. § 3355, which was in nature of a revision of acts July 20, 1868, ch. 186, § 63, 15 Stat. 153; June 6, 1872, ch. 315, § 31, 17 Stat. 253, as amended by act Mar. 1, 1879, ch. 125, § 14, 20 Stat. 344.

Subsection (d) from R. S. § 3356, which was in nature of a revision of act July 20, 1868, ch. 186, § 64, 15 Stat. 154.

Subsections (e)–(g) from R. S. § 3358, which was in nature of a revision of acts July 20, 1868, ch. 186, § 66, 15 Stat. 155.

Subsections (h)–(j) from R. S. § 3358, which was in nature of a revision of acts July 20, 1868, ch. 186, § 69, 15 Stat. 156; June 6, 1872, ch. 315, § 31, 17 Stat. 253.

Subsection (k) from R. S. § 3364, which was in nature of a revision of act July 20, 1868, ch. 186, § 68, 15 Stat. 156; Mar. 3, 1883, ch. 121, § 5, 22 Stat. 489.

Subsection (l) from R. S. § 3370, which was in nature of a revision of act July 20, 1868, ch. 186, § 75, 15 Stat. 158.

Subsection (m) from R. S. § 3456, which was in nature of a revision of act July 20, 1868, ch. 186, § 96, 15 Stat. 164.

**§ 2162. Dealers in leaf tobacco, penalties.**

(a) Every dealer in leaf tobacco who neglects or refuses to—

**(1) Statement.**

Furnish the statement required under section 2052; or

**(2) Bond.**

Give the bond required under section 2053; or

**(3) Inventory.**

File the inventory required under section 2055; or

**(4) Records and invoices.**

Keep the records and render the invoices required under section 2056; or

**(5) Monthly reports.**

Render the returns or reports required under section 2057; or

**(6) Storage notice.**

Notify the collector of the district of additions to his places of storage as required under section 2052; shall be fined not less than \$100 or more than \$500, or imprisoned not more than one year, or both.

(b) Every dealer in leaf tobacco who—

**(1) Unlawful shipment or delivery.**

Ships or delivers leaf tobacco, except as provided in section 2059; or

**(2) Fraudulent omission to account.**

Fraudulently omits to account for tobacco purchased, received, sold or shipped, shall be fined not less than \$100 nor more than \$500 or imprisoned not more than one year, or both. (53 Stat. 240.)

**DERIVATION**

R. S. § 3360, which was in nature of a revision of act July 20, 1868, ch. 186, § 76, 15 Stat. 158, as amended by act Feb. 26, 1926, ch. 27, § 403, 44 Stat. 90.

**§ 2163. Customs officers.**

Every officer of customs who permits any manufactured tobacco or snuff imported from foreign countries to pass out of his custody or control without compliance by the owner or importer thereof with the provisions of section 2130 (a), shall be fined not less than \$1,000 nor more than \$5,000, and imprisoned not less than six months nor more than three years. (53 Stat. 240.)

**DERIVATION**

R. S. § 3377, which was in nature of a revision of act July 20, 1868, ch. 186, § 77, 15 Stat. 158; Mar. 4, 1909, ch. 321, § 335, 35 Stat. 1152, as amended by act Dec. 16, 1930, ch. 15, 46 Stat. 1029.

**PART III.—PENALTIES AND FORFEITURES OF SPECIAL APPLICATION TO CIGARS OR CIGARETTES**

**SUBPART A.—PERSONS IN GENERAL**

**§ 2170. Unlawful boxing, penalty and forfeiture—(a) Penalty.**

Every person who—

**(1) Packing incorrect number.**

Packs in any box any cigars or cigarettes in excess of or less than the number provided by law to be put in each box respectively; or

**(2) Sale or delivery in unauthorized boxes.**

Sells, or offers for sale, delivers or offers to deliver, any cigars or cigarettes in any other form than in new boxes as described in section 2111 (a), except at retail by retail dealers from boxes packed, stamped, and branded in the manner prescribed by law; or

**(3) False branding.**

Falsely brands any box; or

**(4) Stamps showing incorrect tax.**

Affixes a stamp on any box denoting a less amount of tax than that required by law; shall be fined for each offense not more than \$1,000 and be imprisoned not more than two years.

**(b) Forfeiture.**

Whenever any cigars or cigarettes are sold, or offered for sale, not properly boxed and stamped, they shall be forfeited to the United States: *Provided*, That cigars or cigarettes packed expressly for export, and which shall be exported to a foreign country under the restrictions and regulations prescribed by the Commissioner, and approved by the Secretary, shall be exempt from the provisions of this subsection. (53 Stat. 241.)

**DERIVATION**

Subsection (a) from R. S. §§ 3392, 3387, which were in nature of a revision of act July 20, 1868, ch. 186, §§ 86, 82, 15 Stat. 161, 160, as § 3392 was amended by act May 29, 1928, ch. 852, § 425, 45 Stat. 866.

Subsection (b) from R. S. §§ 3397, 3387, which were in nature of a revision of acts July 20, 1868, ch. 186, § 89, 15 Stat. 162; June 6, 1872, ch. 315, § 31, 17 Stat. 255; July 20, 1868, ch. 186, § 82, 15 Stat. 160, as § 3397 was amended by act Mar. 1, 1879, ch. 125, § 16, 20 Stat. 348.

**§ 2171. Unlawful removal from manufactory, forfeiture and penalty—(a) Forfeiture.**

Whenever any cigars or cigarettes are removed from any manufactory, or place where cigars or cigarettes are made, without—

**(1) Packing.**

Being packed in boxes as required by the provisions of this chapter; or

**(2) Stamping.**

The proper stamp thereon denoting the tax; or

**(3) Branding.**

Stamping, indenting, burning, or impressing, into each box, in a legible and durable manner, the number of the cigars or cigarettes contained therein, the number of the manufactory, and the number of the district and the State; or

**(4) Affixing and canceling stamp.**

Properly affixing to the box and canceling the stamp denoting the tax;

they shall be forfeited to the United States.

**(b) Penalty—(1) Boxing and stamping.**

Every person who removes from the place of manufacture any cigars or cigarettes not properly boxed and stamped as required by law, shall be deemed guilty of a felony, and shall be fined not less than \$100 nor more than \$1,000, and imprisoned not less than six months nor more than three years.

**(2) Other acts.**

Every person who commits any of the offenses described in subsection (a) of this section or subsection (b) of section 2170 shall be fined for each such offense not less than \$100 nor more than \$1,000, and imprisoned not less than six months nor more than two years.

**(c) Exemption in case of exportation.**

Cigars or cigarettes packed expressly for export and which shall be exported to a foreign country under the restrictions and regulations prescribed by the Commissioner, and approved by the Secretary, shall be exempt from the provisions of this section. (53 Stat. 241.)

**DERIVATION**

R. S. §§ 3397, 3387, which were in nature of a revision of acts July 20, 1868, ch. 186, § 89, 15 Stat. 162; June 6, 1872, ch. 315, § 31, 17 Stat. 255; July 20, 1868, ch. 186, § 82, 15 Stat. 160, as § 3397 was amended by act Mar. 1, 1879, ch. 125, § 16, 20 Stat. 348.

**§ 2172. Fraudulent use of stamps, penalty.**

Every person who—

**(a) Packing in boxes bearing false stamps.**

Packs cigars or cigarettes in any box bearing a false or fraudulent or counterfeited stamp; or

**(b) Affixing false stamps.**

Affixes to any box containing cigars or cigarettes a stamp in the similitude or likeness of any stamp required to be used by the laws of the United States, whether the same be a customs or internal revenue stamp; or

**(c) Removal of stamps.**

Removes, or causes to be removed, from any box any stamp denoting the tax on cigars, or cigarettes, with intent to use the same; or

**(d) Reuse of stamps.**

Uses or permits any other person to use any stamp so removed; or

**(e) Trafficking in used stamps.**

Receives, buys, sells, gives away, or has in his possession any stamp so removed; or

**(f) Other fraudulent uses.**

Makes any other fraudulent use of any stamp intended for cigars or cigarettes,

shall be deemed guilty of a felony, and shall be fined not less than \$100 nor more than \$1,000, and imprisoned not less than six months nor more than three years. (53 Stat. 242.)

**DERIVATION**

R. S. §§ 3397, 3387 which were in nature of a revision of acts July 20, 1868, ch. 186, § 89, 15 Stat. 162; June 6, 1872, ch. 315, § 31, 17 Stat. 255; July 20, 1868, ch. 186, § 82, 15 Stat. 160, as § 3397 was amended by act Mar. 1, 1879, ch. 125, § 16, 20 Stat. 348.

**§ 2173. Unlawful purchase, receipt, possession, or sale, penalties—(a) Cigars not tax-paid.**

Every person who buys, receives, or has in his possession any cigars or cigarettes on which the tax to which they are liable has not been paid, shall be deemed guilty of a felony and shall be fined not less than \$100 nor more than \$1,000, and imprisoned not less than six months nor more than three years.

**(b) Cigars not properly branded or stamped.**

Every person who purchases or receives for sale any cigars or cigarettes which have not been branded or stamped according to law, shall be liable to a penalty of \$50 for each such offense. (53 Stat. 242.)

**DERIVATION**

Subsection (a) from R. S. §§ 3397, 3387, which were in nature of a revision of acts July 20, 1868, ch. 186, § 89, 15 Stat. 162; June 6, 1872, ch. 315, § 31, 17 Stat. 255; July 20, 1868, ch. 186, § 82, 15 Stat. 160, as § 3397 was amended by act Mar. 1, 1879, ch. 125, § 16, 20 Stat. 348.

Subsection (b) from R. S. §§ 3404, 3387, which were in nature of a revision of acts July 13, 1868, ch. 184, § 9, 14 Stat. 126; July 20, 1868, ch. 186, § 82, 15 Stat. 160.

**§ 2174. Sale of imported cigars improperly packed and stamped, penalty.**

Every person who sells or offers for sale any imported cigars or cigarettes, or cigars or cigarettes purporting or claimed to have been imported, not put in packages and stamped as provided by this chapter, shall be fined not less than \$500 nor more than \$5,000, and be imprisoned not less than six months nor more than two years. (53 Stat. 242.)

**DERIVATION**

R. S. §§ 3403, 3387, which were in nature of a revision of act July 20, 1868, ch. 186, §§ 94, 82, 15 Stat. 164, 160.

**§ 2175. Absence of stamp, forfeiture.**

In case of the absence of the proper revenue stamp on any box of cigars or cigarettes sold, or offered for sale, or kept for sale, such cigars or cigarettes shall be forfeited to the United States. (53 Stat. 242.)

**DERIVATION**

R. S. §§ 3398, 3387, which were in nature of a revision of act July 20, 1868, ch. 186, §§ 90, 82, 15 Stat. 163, 160.

**§ 2176. Empty boxes—(a) Penalties—(1) Destruction of stamps.**

Any person who willfully neglects or refuses to destroy, as required in section 2112 (e), the stamps on any empty stamped box which contained cigars or cigarettes, shall, for each such offense, be fined not exceeding \$50 and imprisoned not less than ten days nor more than six months.

**(2) Trafficking.**

Any person who fraudulently gives away or accepts from another, or who sells or buys for packing cigars or cigarettes, any empty stamped box which contained cigars or cigarettes, shall, for each such offense, be fined not exceeding \$100 and be imprisoned not more than one year.

**(3) Refilling.**

Any person who uses for packing cigars or cigarettes any empty stamped box which contained cigars or cigarettes, shall, for each such offense, be fined not exceeding \$100 and be imprisoned not more than one year.

**(b) Destruction.**

Any revenue officer may destroy any emptied cigar or cigarette box upon which a cigar or cigarette stamp is found. (53 Stat. 242.)

**DERIVATION**

R. S. §§ 3406, 3387, which were in nature of a revision of acts Mar. 2, 1867, ch. 169, § 32, 14 Stat. 484; June 6, 1872, ch. 315, § 33, 17 Stat. 255; July 20, 1868, ch. 186, § 82, 15 Stat. 160.

**§ 2177. Fraudulent claim for drawback, penalty.**

For penalty imposed in the case of fraudulent claims for drawback, see section 3326.

(53 Stat. 243.)



**SUBPART B.—MANUFACTURERS AND CUSTOMS OFFICERS****§ 2180. Manufacturers—(a) Manufacturing without bond, penalty.**

Every person who manufactures cigars or cigarettes of any description without first giving bond as required in section 2033, shall be fined not less than \$100 nor more than \$5,000, and imprisoned not less than three months nor more than five years.

**(b) Selling or removing without bond, forfeiture.**

Every manufacturer of cigars or cigarettes who removes or sells any cigars or cigarettes without having given bond as such manufacturer, shall, in addition to the penalties elsewhere provided in this chapter for such offenses, forfeit to the United States all raw material and manufactured or partly manufactured tobacco, cigars, and cigarettes, and all machinery, tools, implements, apparatus, fixtures, boxes, barrels, and all other materials which shall be found in his possession, or in his manufactory, and used in his business as such manufacturer, together with his estate or interest in the building or factory, and the lot or tract of ground on which such building or factory is located, and all appurtenances thereunto belonging.

**(c) Neglect to put up sign, penalty.**

Any manufacturer of cigars or cigarettes neglecting to place and keep on the side or end of the building within which his business is carried on, so that it can be distinctly seen, the sign required under section 2034 shall, on conviction, be fined not less than \$100 nor more than \$500.

**(d) Refusal or willful neglect to deliver inventory, penalty.**

In case any person engaged in the manufacture of cigars or cigarettes refuses or willfully neglects to deliver the inventory required under section 2036, he shall be fined not less than \$500 nor more than \$5,000, and imprisoned not less than six months nor more than three years.

**(e) Refusal or willful neglect to keep books, penalty.**

In case any person engaged in the manufacture of cigars or cigarettes refuses or willfully neglects to keep the account required under section 2037, he shall be fined not less than \$500 nor more than \$5,000, and imprisoned not less than six months nor more than three years.

**(f) Refusal or willful neglect to furnish a monthly abstract, penalty.**

In case any person engaged in the manufacture of cigars or cigarettes refuses or willfully neglects to furnish the abstract required under section 2038, he shall be fined not less than \$500 nor more than \$5,000, and imprisoned not less than six months nor more than three years.

**(g) Sale or removal without proper stamps—(1) Forfeiture.**

Every manufacturer of cigars or cigarettes who removes or sells any cigars or cigarettes without the proper stamps denoting the tax thereon shall, in addition to the penalties elsewhere provided in this chapter for such offenses, forfeit to the United States all raw material and manufactured or partly manufactured tobacco, cigars and cigarettes, and

all machinery, tools, implements, apparatus, fixtures, boxes, barrels, and all other materials which shall be found in his possession or in his manufactory, and used in his business as such manufacturer, together with his estate or interest in the building or factory, and the lot or tract of ground on which such building or factory is located, and all appurtenances thereunto belonging.

**(2) Penalty.**

For penalties for such offenses, see section 2171 (b).

**(h) False entries, forfeiture.**

Every manufacturer of cigars or cigarettes who makes false or fraudulent entries of the manufacture or sale of any cigars or cigarettes, or makes false or fraudulent entries of the purchase or sale of leaf tobacco, tobacco stems, or other material used in the manufacture of cigars or cigarettes, shall, in addition to the penalties elsewhere provided in this title for such offenses, forfeit to the United States all raw material and manufactured or partly manufactured tobacco, cigars and cigarettes, and all machinery, tools, implements, apparatus, fixtures, boxes, barrels, and all other materials which shall be found in his possession, or in his manufactory, and used in his business as such manufacturer, together with his estate or interest in the building or factory, and the lot or tract of ground on which such building or factory is located, and all appurtenances thereunto belonging.

**(i) Affixing false or fraudulent stamps—(1) Forfeiture.**

Every manufacturer of cigars or cigarettes who affixes any false, forged, spurious, fraudulent, or counterfeit stamp, or imitation of any stamp, required by law to any box containing any cigars or cigarettes, shall, in addition to the penalties elsewhere provided for such offenses, forfeit to the United States all raw material and manufactured or partly manufactured tobacco, cigars, and cigarettes, and all machinery, tools, implements, apparatus, fixtures, boxes, barrels, and all other materials which shall be found in his possession, or in his manufactory, and used in his business as such manufacturer, together with his estate or interest in the building or factory, and the lot or tract of ground on which such building or factory is located, and all appurtenances thereunto belonging.

**(2) Penalty.**

For penalty for such offense, see section 2172 (b).

**(j) Omission or removal of label, penalty.**

Every manufacturer of cigars or cigarettes who neglects to affix the label required under section 2111 (d) (1) to any box containing cigars or cigarettes made by or for him, or sold or offered for sale by or for him, and every person who removes any such label, so affixed, from any such box, shall be fined \$50 for each box in respect to which such offense is committed.

**(k) Collusion in case of manufacture on commission, shares, or contract.**

In case of fraud on the part of either of the persons referred to in section 2001 (b) (2), or of any collusion on their part with intent to defraud the revenue—

**(1) Forfeiture.**

Such material, cigars, or cigarettes shall be forfeited to the United States; and

**(2) Penalty.**

Every person engaged in such fraud or collusion shall be fined not less than \$100 nor more than \$5,000, and imprisoned for not less than six months nor more than three years.

**(f) Offenses not specifically covered.**

If any manufacturer of cigars or cigarettes shall knowingly or willfully omit, neglect, or refuse to do or cause to be done any of the things required by law in the carrying on or conducting of his business, or shall do anything by this title prohibited, if there be no specific penalty or punishment imposed by any other section of this chapter for the neglecting, omitting, or refusing to do, or for the doing or causing to be done the thing required or prohibited—

**(1) Penalty.**

He shall pay a penalty of \$1,000; and

**(2) Forfeiture.**

All tobacco, cigars, or cigarettes found in his manufactory shall be forfeited to the United States. (53 Stat. 243.)

**DERIVATION**

Subsection (a) from R. S. § 3387, which was in nature of a revision of act July 20, 1868, ch. 186, § 82, 15 Stat. 160.

Subsection (b) from R. S. §§ 3387, 3400, which were in nature of a revision of acts July 20, 1868, ch. 186, §§ 92, 82, 15 Stat. 163, 160; Oct. 1, 1890, ch. 1244, § 26, 26 Stat. 618.

Subsection (c) from R. S. §§ 3387, 3388, which were in nature of a revision of act July 20, 1868, ch. 186, §§ 83, 82, 15 Stat. 160.

Subsections (d)–(f) from R. S. §§ 3387, 3390, which were in nature of a revision of act July 20, 1868, ch. 186, §§ 86, 82, 15 Stat. 161, 160.

Subsections (g)–(i) from R. S. §§ 3387, 3400, which were in nature of a revision of act July 20, 1868, ch. 186, §§ 92, 82, 15 Stat. 163, 160.

Subsection (j) from R. S. §§ 3387, 3393, which were in nature of a revision of acts July 20, 1868, ch. 186, § 88, 15 Stat. 162; Apr. 10, 1869, ch. 18, § 1, 16 Stat. 43; July 20, 1869, ch. 186, § 82, 15 Stat. 160, as § 3393 was amended by act Mar. 1, 1879, ch. 125, § 16, 20 Stat. 348.

Subsection (k) from R. S. §§ 3387, 3399, which were in nature of a revision of act July 20, 1868, ch. 186, §§ 91, 82, 15 Stat. 163, 160.

Subsection (l) from R. S. §§ 3387, 3456, which were in nature of a revision of act July 20, 1868, ch. 186, §§ 96, 82, 15 Stat. 164, 160.

**§ 2181. Customs officers.**

Every officer of customs who permits any cigars or cigarettes imported into the United States from foreign countries to pass out of his custody or control, without compliance by the owner or importer thereof with the provisions of section 2130 (b), shall be fined not less than \$1,000 nor more than \$5,000, and imprisoned not less than six months nor more than three years. (53 Stat. 245.)

**DERIVATION**

R. S. §§ 3402, 3387, which were in nature of a revision of act July 20, 1868, ch. 186, §§ 93, 82, 15 Stat. 163, 160; Mar. 4, 1909, ch. 321, § 335, 35 Stat. 1152, as amended by act Dec. 16, 1930, ch. 15, 46 Stat. 1029.

**SUBCHAPTER F.—MISCELLANEOUS PROVISIONS****§ 2190. Disposal of forfeited tobacco, snuff, cigars, and cigarettes.**

In case it shall appear that any abandoned, condemned, or forfeited tobacco, snuff, cigars, or cigarettes, when offered for sale, will not bring a price equal to the tax due and payable thereon, such goods shall not be sold for consumption in the United States; and upon application made to the Commissioner, he is authorized to order the destruction of such tobacco, snuff, cigars, or cigarettes by the officer in whose custody and control the same may be at the time, and in such manner and under such regulations as the Commissioner may prescribe, or he may, under such regulations, order delivery of such tobacco, snuff, cigars, or cigarettes, without payment of any tax, to any hospital maintained by the United States for the use of present or former members of the military or naval forces of the United States. (53 Stat. 245.)

**DERIVATION**

R. S. § 3369, which was in nature of a revision of acts July 20, 1868, ch. 186, § 67, 15 Stat. 155; June 6, 1872, ch. 315, § 31, 17 Stat. 253, as amended by act Oct. 14, 1921, ch. 107, 42 Stat. 205.

**§ 2191. Inspection of cigars and cigarettes.**

The Commissioner may prescribe such regulations for the inspection of cigars and cigarettes and the collection of the tax thereon, as he may deem most effective for the prevention of frauds in the payment of such tax. (53 Stat. 245.)

**DERIVATION**

R. S. § 3396, which was in nature of a revision of act July 20, 1868, ch. 186, § 81, 15 Stat. 160.

**§ 2192. Inspection of peddler's certificate.**

Any internal revenue agent may demand production of and inspect the collector's certificate for peddlers. (53 Stat. 245.)

**DERIVATION**

R. S. § 3383, which was in nature of a revision of acts June 6, 1872, ch. 315, § 31, 17 Stat. 252; Dec. 24, 1872, ch. 13, §§ 1, 6, 17 Stat. 401, 403, as amended by act Oct. 1, 1890, ch. 1244, § 29, 26 Stat. 619.

**§ 2193. Record of manufacturers—(a) Tobacco and snuff.**

Every collector shall keep a record, in a book or books provided for that purpose, to be open to the inspection of only the proper officers of internal revenue, including deputy collectors and internal revenue agents, of the name and residence of every person engaged in the manufacture of tobacco or snuff in his district, the place where such manufacture is carried on, and the number of the manufactory; and he shall enter in said record, under the name of each manufacturer, a copy of every inventory required by law to be made by such manufacturer, and an abstract of his monthly returns.

**(b) Cigars and cigarettes.**

Every collector shall keep a record, in a book provided for that purpose, to be open to the inspection of only the proper officers of internal revenue, in-

cluding deputy collectors and internal revenue agents, of the name and residence of every person engaged in the manufacture of cigars or cigarettes in his district, the place where such manufacture is carried on, and the number of the manufactory; and he shall enter in said record, under the name of each manufacturer an abstract of his inventory and monthly returns. (53 Stat. 245.)

## DERIVATION

Subsection (a) from R. S. § 3357, which was in nature of a revision of acts July 20, 1868, ch. 186, § 65, 15 Stat. 154; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401, as amended by act Oct. 1, 1890, ch. 1244, § 33, 26 Stat. 620.

Subsection (b) from R. S. §§ 3387, 3389, which were in nature of a revision of act July 20, 1868, ch. 186, §§ 84, 82, 15 Stat. 161, 160, as § 3389 was amended by act Oct. 1, 1890, ch. 1244, § 34, 26 Stat. 620. R. S. § 3389 was also amended by act Mar. 1, 1879, ch. 125, § 16, 20 Stat. 347.

## § 2194. Records, statements, and returns.

Every person liable to any tax imposed by this chapter, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner with the approval of the Secretary, may from time to time prescribe. (53 Stat. 245.)

## DERIVATION

Act Feb. 26, 1926, ch. 27, § 1102 (a), 44 Stat. 112.

## SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 1002 (a), 43 Stat. 339.

1921—Nov. 23, 1921, ch. 136, § 1300, 42 Stat. 308.

1919—Feb. 24, 1919, ch. 18, § 1305, 40 Stat. 1142.

## § 2195. Rules and regulations.

For authority of the Commissioner, with the approval of the Secretary, to prescribe and publish all needful rules and regulations for the enforcement of this chapter, see section 3791.

(53 Stat. 246.)

## § 2196. Other laws applicable.

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, shall be extended to and made a part of this chapter. (53 Stat. 246.)

## DERIVATION

Act Feb. 26, 1926, ch. 27, § 1100, 44 Stat. 111.

## § 2197. Territorial extent of law—(a) In general.

The internal revenue laws imposing taxes on tobacco, snuff, cigars, or cigarettes shall be held to extend to such articles produced anywhere within the exterior boundaries of the United States, whether the same be within a collection district or not.

## (b) Exportation free of internal revenue tax.

The shipment or delivery of manufactured tobacco, snuff, cigars, or cigarettes, for consumption beyond the jurisdiction of the internal revenue laws of the United States, as defined by subsection (a), shall be deemed exportation within the meaning of the internal revenue laws applicable to the exportation of such articles without payment of internal revenue tax. (53 Stat. 246.)

## DERIVATION

Subsection (a) from R. S. §§ 3448, 3387, which were in nature of a revision of act July 20, 1868, ch. 186, §§ 107, 82, 15 Stat. 167, 160.

Subsection (b) from act June 17, 1930, ch. 497, § 317, 46 Stat. 696.

## § 2198. Redemption of stamps on packages withdrawn from market.

Internal-revenue stamps affixed to packages of tobacco, snuff, cigars, or cigarettes which, after removal from factory or customhouse for consumption or sale, the manufacturer or importer withdraws from the market, may, under regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, be redeemed if issued after December 31, 1931, and if claim for their redemption is presented by the manufacturer or importer within three years after the year of issue as indicated by the number or symbol printed thereon by the Government, irrespective of the date of their purchase. Stamps of any issue shall not be sold until those of the previous year's issue have been disposed of or later than one year after the year of issue. (53 Stat. 246.)

## DERIVATION

Act Mar. 3, 1931, ch. 441, 46 Stat. 1510.

## § 2199. Cross references.

For general provisions relating to stamps, information and returns, assessment, collection, and refunds, see sections 3300 to 3313 and chapters 34 to 37, inclusive. (53 Stat. 246.)

## Chapter 16.—OLEOMARGARINE, ADULTERATED BUTTER, AND PROCESS OR RENOVATED BUTTER

## SUBCHAPTER A.—OLEOMARGARINE

## Sec.

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## SUBCHAPTER A.—OLEOMARGARINE

## § 2300. Oleomargarine defined.

For the purposes of this chapter, and of sections 3200 and 3201, certain manufactured substances,

certain extracts, and certain mixtures and compounds, including such mixtures and compounds with butter, shall be known and designated as "oleomargarine," namely: All substances known prior to August 2, 1886, as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all mixtures and compounds of oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all lard extracts and tallow extracts; and all mixtures and compounds of tallow, beef fat, suet, lard, lard oil, fish oil or fish fat, vegetable oil, annatto, and other coloring matter, intestinal fat, and offal fat;—if (1) made in imitation or semblance of butter, or (2) calculated or intended to be sold as butter or for butter, or (3) churned, emulsified, or mixed in cream, milk, water, or other liquid, and containing moisture in excess of 1 per centum or common salt. This section shall not apply to puff-pastry shortening not churned or emulsified in milk or cream, and having a melting point of one hundred and eighteen degrees Fahrenheit or more, nor to any of the following containing condiments and spices: salad dressings, mayonnaise dressings, or mayonnaise products nor to liquid emulsion, pharmaceutical preparations, oil meals, liquid preservatives, illuminating oils, cleansing compounds, or flavoring compounds. (53 Stat. 247.)

DERIVATION

Act Aug. 2, 1886, ch. 840, § 2, 24 Stat. 209, as amended by act July 10, 1930, ch. 882, § 1, 46 Stat. 1022.

§ 2301. Tax—(a) Rate.

(1) Upon oleomargarine which shall be manufactured and sold, or removed for consumption or use, there shall be assessed and collected a tax at the rate of one-fourth of 1 cent per pound; except that such tax shall be at the rate of 10 cents per pound in the case of oleomargarine which is yellow in color.

(2) For the purposes of paragraph (1), oleomargarine shall be held to be yellow in color when it has a tint or shade containing more than one and six-tenths degrees of yellow, or of yellow and red collectively, but with an excess of yellow over red, measured in the terms of the Lovibond tintometer scale or its equivalent. Such measurements shall be made under regulations prescribed by the Commissioner, with the approval of the Secretary, and such regulations shall provide that the measurements shall be applied in such manner and under such conditions as will, in the opinion of the Commissioner, insure as nearly as practicable that the result of the measurement will show the color of the oleomargarine under the conditions under which it is customarily offered for sale to the consumer.

(b) By whom paid.

The tax levied by subsection (a) shall be paid by the manufacturer.

(c) How paid—(1) Stamps.

The tax levied by subsection (a) shall be represented by coupon stamps.

(2) Assessment.

Whenever any manufacturer of oleomargarine sells, or removes for sale or consumption, any oleomargarine upon which the tax is required to be paid by

stamps, without the use of the proper stamps, it shall be the duty of the Commissioner, subject to the limitations prescribed in section 3312, upon satisfactory proof, to estimate the amount of tax which has been omitted to be paid, and to make an assessment therefor and certify the same to the collector. The tax so assessed shall be in addition to the penalties imposed by law for such sale or removal.

(d) Special tax.

For special tax on manufacturers, wholesale and retail dealers, see section 3200.

(e) Imported oleomargarine.

For tax on imported oleomargarine, see section 2306.

(53 Stat. 248.)

DERIVATION

Subsections (a)–(c) (1) from act Aug. 2, 1886, ch. 840, § 8, 24 Stat. 210, as amended by acts May 9, 1902, ch. 784, § 3, 32 Stat. 194, and Mar. 4, 1931, ch. 520, § 2, 46 Stat. 1549.

Subsection (c) (2) from acts Aug. 2, 1886, ch. 840, § 9, 24 Stat. 211; Feb. 26, 1926, ch. 27, § 1109 (a), 44 Stat. 114.

§ 2302. Manufacturers—(a) Definition.

Every person who manufactures oleomargarine for sale shall be deemed a manufacturer of oleomargarine. And any person that sells, vends, or furnishes oleomargarine for the use and consumption of others, except to his own family table without compensation, who shall add to or mix with such oleomargarine any substance which causes such oleomargarine to be yellow in color, determined as provided in paragraph 2 of section 2301 (a), shall also be held to be a manufacturer of oleomargarine within the meaning of this chapter or section 3200 or 3201 of chapter 27, and subject to the provisions thereof.

(b) Packing requirements—(1) Kind and weight of packages.

All oleomargarine shall be packed by the manufacturer thereof in firkins, tubs, or other wooden, tin-plate, or paper packages, not before used for that purpose, containing, or encased in a manufacturer's package made from any of such materials of, not less than ten pounds.

(2) Marks and stamps.

The packages described in paragraph (1) shall be marked, stamped, and branded as the Commissioner, with the approval of the Secretary, shall prescribe; and all sales made by manufacturers of oleomargarine shall be in original stamped packages.

(3) Caution label.

Every manufacturer of oleomargarine shall securely affix, by pasting, on each package containing oleomargarine manufactured by him, a label on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words: "NOTICE.—The manufacturer of the oleomargarine herein contained has complied with all the requirements of law. Every person is cautioned not to use either this package again or the stamp thereon again, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases."

**(c) Books and returns.**

Every manufacturer of oleomargarine shall file with the collector of the district in which his manufactory is located such notices, inventories, shall keep such books, and render such returns of materials and products, and conduct his business under such surveillance of officers and agents as the Commissioner, with the approval of the Secretary, may, by regulation, require.

**(d) Factory number and signs.**

Every manufacturer of oleomargarine shall put up such signs and affix such number to his factory as the Commissioner, with the approval of the Secretary, may, by regulation, require.

**(e) Bonds.**

Every manufacturer of oleomargarine shall file with the collector of the district in which his manufactory is located such bonds as the Commissioner, with the approval of the Secretary, may, by regulation, require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector, and in a penal sum of not less than \$5,000; and the sum of said bond may be increased from time to time, and additional sureties required at the discretion of the collector, or under instructions of the Commissioner. (53 Stat. 248.)

**DERIVATION**

Subsection (a) from acts Aug. 2, 1886, ch. 840, § 3, 24 Stat. 209, as amended by act May 9, 1902, ch. 784, § 2, 32 Stat. 194; Mar. 4, 1931, ch. 520, § 1, 46 Stat. 1549

Subsection (b) (1, 2) from acts Aug. 2, 1886, ch. 840, § 6, 24 Stat. 210, as amended by act Oct. 1, 1918, ch. 178, 40 Stat. 1008; Feb. 24, 1933, ch. 116, § 1, 47 Stat. 902.

Subsection (b) (3) from act Aug. 2, 1886, ch. 840, § 7, 24 Stat. 210.

Subsections (c)–(e) from act Aug. 2, 1886, ch. 840, § 5, 24 Stat. 210.

**§ 2303. Wholesale dealers—(a) Definition.**

Every person who sells or offers for sale oleomargarine in the original manufacturer's packages shall be deemed a wholesale dealer in oleomargarine.

**(b) Selling requirements.**

All sales made by wholesale dealers in oleomargarine shall be in original stamped packages.

**(c) Books and returns.**

Wholesale dealers in oleomargarine shall keep such books and render such returns in relation thereto as the Commissioner, with the approval of the Secretary, may, by regulation, require; and such books shall be open at all times to the inspection of any internal revenue officer or agent. (53 Stat. 249.)

**DERIVATION**

Subsection (a) from act Aug. 2, 1886, ch. 840, § 3, 24 Stat. 209.

Subsection (b) from act Aug. 2, 1886, ch. 840, § 6, 24 Stat. 210, as amended by act Oct. 1, 1918, ch. 178, 40 Stat. 1008; Feb. 24, 1933, ch. 116, § 1, 47 Stat. 902.

Subsection (c) from act May 9, 1902, ch. 784, § 6, 32 Stat. 197.

**§ 2304. Retail dealers—(a) Definition.**

Every person who sells oleomargarine in less quantities than ten pounds at one time shall be regarded as a retail dealer in oleomargarine.

**(b) Packing and selling requirements.**

Retail dealers in oleomargarine must sell only from original stamped packages, in quantities not exceeding ten pounds, and shall pack, or cause to be packed, the oleomargarine sold by them in suitable wooden, tinplate, or paper packages which shall be marked and branded as the Commissioner, with the approval of the Secretary, shall prescribe. (53 Stat. 249.)

**DERIVATION**

Subsection (a) from act Aug. 2, 1886, ch. 840, § 3, 24 Stat. 209.

Subsection (b) from act Aug. 2, 1886, ch. 840, § 6, 24 Stat. 210, as amended by acts Oct. 1, 1918, ch. 178, 40 Stat. 1008 and Feb. 24, 1933, ch. 116, § 1, 47 Stat. 902.

**§ 2305. Stamps on emptied packages.**

Whenever any stamped package containing oleomargarine is emptied, it shall be the duty of the person in whose hands the same is to destroy utterly the stamps thereon. Any revenue officer may destroy any emptied oleomargarine package upon which the tax-paid stamp is found. (53 Stat. 249.)

**DERIVATION**

Act Aug. 2, 1886, ch. 840, § 13, 24 Stat. 211.

**§ 2306. Importation.**

All oleomargarine imported from foreign countries shall, in addition to any import duty imposed on the same, pay an internal revenue tax of 15 cents per pound, such tax to be represented by coupon stamps as in the case of oleomargarine manufactured in the United States. The stamps shall be affixed and canceled by the owner or importer of the oleomargarine while it is in the custody of the proper customhouse officers; and the oleomargarine shall not pass out of the custody of said officers until the stamps have been so affixed and canceled, but shall be put up in wooden packages, each containing not less than ten pounds, as prescribed in this chapter for oleomargarine manufactured in the United States, before the stamps are affixed; and the owner or importer of such oleomargarine shall be liable to all the penal provisions of this chapter prescribed for manufacturers of oleomargarine manufactured in the United States. Whenever it is necessary to take any oleomargarine so imported to any place other than the public stores of the United States for the purpose of affixing and canceling such stamps, the collector of customs of the port where such oleomargarine is entered shall designate a bonded warehouse to which it shall be taken, under the control of such customs officer as such collector may direct. (53 Stat. 250.)

**DERIVATION**

Act Aug. 2, 1886, ch. 840, § 10, 24 Stat. 211.

**§ 2307. Exportation.**

Oleomargarine may be removed from the place of manufacture for export to a foreign country without payment of tax or affixing stamps thereto, under such regulations and the filing of such bonds and other security as the Commissioner, with the approval of the Secretary, may prescribe. Every person who shall export oleomargarine shall brand upon every tub, firkin, or other package containing such article the word "Oleomargarine," in plain Roman

letters not less than one-half inch square. (53 Stat. 250.)

#### DERIVATION

Act Aug. 2, 1886, ch. 840, § 16, 24 Stat. 212.

**§ 2308. Penalties—(a) False branding; selling, packing, or stamping in violation of law.**

Every person who knowingly sells or offers for sale, or delivers or offers to deliver, any oleomargarine in any other form than in new wooden, tin-plate, or paper packages as described in section 2302 (b) (1) and (2) or who packs in any package any oleomargarine in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law shall be fined for each offense not more than \$1,000, and be imprisoned not more than two years.

**(b) Omission or removal of label.**

Every manufacturer of oleomargarine who neglects to affix the label described in section 2302 (b) (3) to any package containing oleomargarine made by him, or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package, shall be fined \$50 for each package in respect to which such offense is committed.

**(c) Removal or defacement of stamps, marks, or brands.**

Any person who shall willfully remove or deface the stamps, marks, or brands on a package containing oleomargarine taxed as provided in this subchapter shall be guilty of a misdemeanor, and shall be punished by a fine of not less than \$100 nor more than \$2,000, and by imprisonment for not less than thirty days nor more than six months.

**(d) Fraud by manufacturers.**

Whenever any person engaged in carrying on the business of manufacturing oleomargarine defrauds, or attempts to defraud, the United States of the tax on the oleomargarine produced by him, or any part thereof, he shall be fined not less than \$500 nor more than \$5,000, and be imprisoned not less than six months, nor more than three years.

**(e) Purchasing when not properly branded or stamped.**

Every person who knowingly purchases or receives for sale any oleomargarine which has not been branded or stamped according to law shall be liable to a penalty of \$50 for each such offense.

**(f) Purchasing from manufacturer who has not paid special tax.**

Every person who knowingly purchases or receives for sale any oleomargarine from any manufacturer who has not paid the special tax required under subsection (a) of section 3200 of chapter 27 shall be liable for each offense to a penalty of \$100.

**(g) Empty packages—(1) Failure to destroy stamps.**

Any person who willfully neglects or refuses to destroy utterly the stamps on any empty package which contained oleomargarine shall for each such offense be fined not exceeding \$50, and imprisoned not less than ten days nor more than six months; and

**(2) Trafficking.**

Any person who fraudulently gives away or accepts from another, or who sells, buys, or uses for packing oleomargarine, any such stamped package, shall for each such offense be fined not exceeding \$100, and be imprisoned not more than one year.

**(h) Failure of wholesale dealers to keep or permit inspection of books, or to render returns.**

Any person who willfully violates any of the provisions of subsection (c) of section 2303 shall for each such offense be fined not less than \$50 and not exceeding \$500, and imprisoned not less than thirty days nor more than six months.

**(i) Imported oleomargarine—(1) Failure of customs officer to comply with law.**

Every officer of customs who permits any imported oleomargarine to pass out of his custody or control without compliance by the owner or importer thereof with the provisions of section 2306 relating thereto, shall be fined not less than \$1,000 nor more than \$5,000, and imprisoned not less than six months nor more than three years.

**(2) Sale when improperly packed or stamped.**

Every person who sells or offers for sale any imported oleomargarine, or oleomargarine purporting or claimed to have been imported, not put up in packages and stamped as provided by this subchapter, shall be fined not less than \$500 nor more than \$5,000, and be imprisoned not less than six months nor more than two years.

**(j) Offenses not specifically covered.**

If any manufacturer of oleomargarine, any dealer therein or any importer or exporter thereof shall knowingly or willfully omit, neglect, or refuse to do, or cause to be done, any of the things required by law in the carrying on or conducting of his business, or shall do anything by this subchapter or chapter 27 prohibited, if there be no specific penalty or punishment imposed by any other provision of this subchapter or chapter 27 for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the things required or prohibited, he shall pay a penalty of \$1,000. (53 Stat. 250.)

#### DERIVATION

Subsection (a) from act Aug. 2, 1886, ch. 840, § 6, 24 Stat. 210, as amended by act Feb. 24, 1933, ch. 116, § 1, 47 Stat. 902. Act Aug. 2, 1886, ch. 840, § 6, was also amended by act Oct. 1, 1918, ch. 178, 40 Stat. 1008.

Subsections (b)–(g) from act Aug. 2, 1886, ch. 840, §§ 7, 15, 17, 11, 12, 13, 24 Stat. 210, 212, 211.

Subsection (h) from act May 9, 1902, ch. 784, § 6, 32 Stat. 197.

Subsection (i) (1) from acts Aug. 2, 1886, ch. 840, § 10, 24 Stat. 211; Mar. 4, 1909, ch. 321, § 335, 35 Stat. 1152, as amended by act Dec. 16, 1930, ch. 15, 46 Stat. 1029.

Subsections (i) (2), (j) from act Aug. 2, 1886, ch. 840, §§ 10, 18, 24 Stat. 211, 212.

#### SIMILAR PROVISIONS

Provisions similar to subsection (h) were contained in act Oct. 1, 1890, ch. 1244, § 41, 26 Stat. 621.

**§ 2309. Forfeitures—(a) Special tax on manufacturer unpaid.**

Every person who knowingly purchases or receives for sale any oleomargarine from any manufacturer who has not paid the special tax required under sub-

section (a) of section 3200 shall be liable for each offense to a forfeiture of all articles so purchased or received, or of the full value thereof.

**(b) Packages unstamped, unmarked, or deleterious.**

All packages of oleomargarine subject to tax under this subchapter, that shall be found without stamps or marks as herein provided, and all oleomargarine intended for human consumption which contains ingredients adjudged, as provided in section 2311, to be deleterious to the public health, shall be forfeited to the United States.

**(c) Fraud by manufacturer.**

Whenever any person engaged in carrying on the business of manufacturing oleomargarine defrauds, or attempts to defraud, the United States of the tax on the oleomargarine produced by him, or any part thereof, he shall forfeit the factory and manufacturing apparatus used by him, and all oleomargarine and all raw material for the production of oleomargarine found in the factory and on the factory premises.

**(d) Offenses not specifically covered.**

If any manufacturer of or wholesale dealer in oleomargarine shall knowingly or wilfully omit, neglect, or refuse to do, or cause to be done, any of the things required by law in the carrying on or conducting of his business, or shall do anything by this subchapter or chapter 27 prohibited, all the oleomargarine owned by him, or in which he has any interest as owner, shall be forfeited to the United States. (53 Stat. 251.)

**DERIVATION**

Act Aug. 2, 1886, ch. 840, §§ 12, 15, 17, 18, 24 Stat. 211, 212.

**§ 2310. Recovery of penalties and forfeitures.**

All fines, penalties, and forfeitures imposed by this subchapter or section 3201 may be recovered in any court of competent jurisdiction. (53 Stat. 252.)

**DERIVATION**

Act Aug. 2, 1886, ch. 840, § 19, 24 Stat. 212.

**§ 2311. Commissioner's decisions—(a) Taxability.**

The Commissioner is authorized to decide what substances, extracts, mixtures, or compounds which may be submitted for his inspection in contested cases are to be taxed under this subchapter; and his decision in matters of taxation under this subchapter shall be final.

**(b) Deleterious ingredients.**

The Commissioner may also decide whether any substance made in imitation or semblance of butter, and intended for human consumption, contains ingredients deleterious to the public health.

**(c) Appeal.**

In case of doubt or contest the decisions of the Commissioner in the class of cases under subsection (b) may be appealed from to a board constituted for the purpose, and composed of the Surgeon General of the Army, the Surgeon General of the Navy, and the Secretary of Agriculture; and the decisions of this board shall be final in the premises. (53 Stat. 252.)

**DERIVATION**

Act Aug. 2, 1886, ch. 840, § 14, 24 Stat. 212, as amended by act Feb. 9, 1889, ch. 122, 25 Stat. 659.

**§ 2312. Chemists and microscopists.**

For the appointment and employment of chemists and microscopists, see subchapter E of chapter 39.

(53 Stat. 252.)

**§ 2313. Tobacco stamp laws applicable.**

The provisions of law governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, shall apply to stamps provided for by section 2301 (c) (1). (53 Stat. 252.)

**DERIVATION**

Act Aug. 2, 1886, ch. 840, § 8, 24 Stat. 210, as amended acts May 9, 1902, ch. 784, § 3, 32 Stat. 194, and Mar. 4, 1931, ch. 520, § 2, 46 Stat. 1550.

**§ 2314. Regulations.**

For authority of the Commissioner, with the approval of the Secretary, to make all needful regulations for the carrying into effect of this subchapter and sections 3200 and 3201, see section 3791.

(53 Stat. 252.)

**SUBCHAPTER B.—ADULTERATED AND PROCESS OR RENOVATED BUTTER**

**§ 2320. Definitions—(a) Butter.**

For the purpose of this chapter and sections 3206, and 3207, the word "butter" shall be understood to mean the food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter.

**(b) Adulterated butter.**

"Adulterated butter" is defined to mean a grade of butter produced by mixing, reworking, rechurning in milk or cream, refining, or in any way producing a uniform, purified, or improved product from different lots or parcels of melted or unmelted butter or butter fat, in which any acid, alkali, chemical, or any substance whatever is introduced or used for the purpose or with the effect of deodorizing or removing therefrom rancidity, or any butter or butter fat with which there is mixed any substance foreign to butter as defined in subsection (a), with intent or effect of cheapening in cost the product or any butter in the manufacture or manipulation of which any process or material is used with intent or effect of causing the absorption of abnormal quantities of water, milk, or cream.

**(c) Process or renovated butter.**

"Process butter" or "renovated butter" is defined to mean butter which has been subjected to any process by which it is melted, clarified or refined and made to resemble genuine butter, always excepting "adulterated butter" as defined by subsection (b). (53 Stat. 252.)

**DERIVATION**

Subsection (a) from acts Aug. 2, 1886, ch. 840, § 1, 24 Stat. 209; May 9, 1902, ch. 784, § 4, 32 Stat. 194.

Subsections (b), (c) from act May 9, 1902, ch. 784, § 4, 32 Stat. 194.

**§ 2321. Tax—(a) Rate—(1) Adulterated butter.**

Upon adulterated butter, when manufactured or sold or removed for consumption or use, there shall



be assessed and collected a tax of 10 cents per pound, and any fractional part of a pound shall be taxed as a pound.

(2) Process or renovated butter.

Upon process or renovated butter, when manufactured or sold or removed for consumption or use, there shall be assessed and collected a tax of one-fourth of 1 cent per pound, and any fractional part of a pound shall be taxed as a pound.

(b) By whom paid.

The tax to be levied by subsection (a) shall be paid by the manufacturer.

(c) How paid—(1) Stamps.

The tax to be levied by subsection (a) shall be represented by coupon stamps.

(2) Assessment.

For assessment in case of omitted taxes, see section 3311.

(d) Special tax—(1) Manufacturers of adulterated and process or renovated butter.

For special tax on manufacturers of adulterated and process or renovated butter, see subsection (a) of section 3206.

(2) Wholesale dealers and retail dealers in adulterated butter.

For special tax on wholesale dealers and retail dealers in adulterated butter, see subsections (b) and (c) of section 3206.

(53 Stat. 253.)

DERIVATION

Act May 9, 1902, ch. 784, § 4, 32 Stat. 196.

§ 2322. Manufacturers—(a) Definition.

Every person who engages in the production of process or renovated butter or adulterated butter as a business shall be considered to be a manufacturer thereof.

(b) Packing, stamping, and selling requirements—(1) Adulterated butter.

All adulterated butter shall be packed by the manufacturer thereof in firkins, tubs, or other wooden, tin-plate, or paper packages not before used for that purpose, containing, or encased in a manufacturer's package made from any of such materials of, not less than ten pounds, and marked, stamped, and branded as the Commissioner, with the approval of the Secretary, shall prescribe, and all sales made by manufacturers of adulterated butter shall be in original, stamped packages. Every manufacturer of adulterated butter shall securely affix, by pasting, on each package containing adulterated butter manufactured by him a label on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words: "NOTICE.—That the manufacturer of the adulterated butter herein contained has complied with all the requirements of law. Every person is cautioned not to use either this package again or the stamp thereon, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases."

(2) Process or renovated butter.

For marking process or renovated butter, see section 2325.

(c) Books and returns.

Every manufacturer of process or renovated butter or adulterated butter shall file with the collector of the district in which his manufactory is located such notices and inventories, shall keep such books and render such returns of material and products, and conduct his business under such surveillance of officers and agents as the Commissioner, with the approval of the Secretary, may by regulation require.

(d) Factory number and signs.

Every manufacturer of process or renovated butter or adulterated butter shall put up such signs and affix such number to his factory as the Commissioner, with the approval of the Secretary, may by regulation require.

(e) Bonds.

Every manufacturer of process or renovated butter or adulterated butter shall file with the collector of the district in which his manufactory is located such bonds as the Commissioner, with the approval of the Secretary, may by regulation require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector, and in a penal sum of not less than \$500; and the sum of said bond may be increased from time to time and additional sureties required at the discretion of the collector or under instructions of the Commissioner. (53 Stat. 253.)

DERIVATION

Act May 9, 1902, ch. 784, § 4, 32 Stat. 195, 196, as amended by act Feb. 24, 1933, ch. 116, § 2 (a), 47 Stat. 902.

§ 2323. Dealers in adulterated butter—(a) Dealer defined.

Every person who sells adulterated butter shall be regarded as a dealer in adulterated butter.

(b) Retail dealer defined.

Every person who sells adulterated butter in less quantities than ten pounds at one time shall be regarded as a retail dealer in adulterated butter.

(c) Selling requirements.

Dealers in adulterated butter must sell only original or from original stamped packages, and when such original stamped packages are broken the adulterated butter sold from same shall be placed in suitable wooden, tin-plate, or paper packages, which shall be marked and branded as the Commissioner, with the approval of the Secretary, shall prescribe. (53 Stat. 254.)

DERIVATION

Act May 9, 1902, ch. 784, § 4, 32 Stat. 195, as amended by act Feb. 24, 1933, ch. 116, § 2 (b), 47 Stat. 903.

§ 2324. Books and returns of wholesale dealers in adulterated and process or renovated butter.

Wholesale dealers in process, renovated, or adulterated butter shall keep such books and render such returns in relation thereto as the Commissioner, with the approval of the Secretary, may, by regulation, require; and such books shall be open at all times to the inspection of any internal revenue officer or agent. (53 Stat. 254.)

DERIVATION

Act May 9, 1902, ch. 784, § 6, 32 Stat. 197.

**§ 2325. Inspection, manufacture, storage, and marking of process or renovated butter.**

The Secretary of Agriculture is authorized and required to cause a rigid sanitary inspection to be made, at such times as he may deem proper or necessary, of all factories and storehouses where process or renovated butter is manufactured, packed, or prepared for market, and of the products thereof and materials going into the manufacture of the same. All process or renovated butter and the packages containing the same shall be marked with the words "Renovated Butter" or "Process Butter" and by such other marks, labels, or brands and in such manner as may be prescribed by the Secretary of Agriculture, and no process or renovated butter shall be shipped or transported from its place of manufacture into any other State or Territory or the District of Columbia, or to any foreign country, until it has been marked as provided in this section. The Secretary of Agriculture shall make all needful regulations for carrying this section and sections 2326 (c) and 2327 (b) into effect and shall cause to be ascertained and reported from time to time the quantity and quality of process or renovated butter manufactured, and the character and the condition of the material from which it is made. And he shall also have power to ascertain whether or not materials used in the manufacture of said process or renovated butter are deleterious to health or unwholesome in the finished product, and in case such deleterious or unwholesome materials are found to be used in product intended for exportation or shipment into other States or in course of exportation or shipment he shall have power to confiscate the same. (53 Stat. 254.)

**DERIVATION**

Act May 9, 1902, ch. 784, § 5, 32 Stat. 196.

**§ 2326. Penalties—(a) Adulterated butter—(1) False branding; sale, packing, or stamping in violation of law.**

Every person who knowingly sells or offers for sale, or delivers or offers to deliver, any adulterated butter in any other form than in new wooden, tinplate, or paper packages as described in subsection (c) of section 2323, or who packs in any package any adulterated butter in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall be fined for each offense not more than \$1,000 and be imprisoned not more than two years.

**(2) Omission or removal of label.**

Every manufacturer of adulterated butter who neglects to affix the label required under paragraph (1) of subsection (b) of section 2322 to any package containing adulterated butter made by him, or sold or offered for sale for or by him, and every person who removes any such label so affixed from any such package shall be fined \$50 for each package in respect to which such offense is committed.

**(b) Failure of wholesale dealers to keep or permit inspection of books, or to render returns.**

Any person who willfully violates any of the provisions of section 2324 shall for each such offense be

fined not less than \$50 and not exceeding \$500, and imprisoned not less than thirty days nor more than six months.

**(c) Failure to comply with provisions relating to the manufacture, storage, and marking of process or renovated butter.**

Any person, firm, or corporation violating any of the provisions of section 2325 shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than \$50 nor more than \$500 or by imprisonment not less than one month nor more than six months, or by both said punishments, in the discretion of the court. (53 Stat. 255.)

**DERIVATION**

Act May 9, 1902, ch. 784, §§ 4-6, 32 Stat. 196, 197, as amended by act Feb. 24, 1933, ch. 116, § 2 (b), 47 Stat. 903.

**§ 2327. Other laws applicable—(a) Oleomargarine.**

The provisions of sections 2301 (c) (2), 2305 to 2311 inclusive (except subsections (a), (b), and (h) of section 2308), and section 3791 (a) (1), shall apply to manufacturers of adulterated butter to an extent necessary to enforce the marking, branding, identification, and regulation of the exportation and importation of adulterated butter.

**(b) Inspection of live cattle and meat.**

All parts of an act providing for an inspection of meats for exportation, approved August 30, 1890, ch. 839, 26 Stat. 414, and of an Act to provide for the inspection of live cattle, hogs, and the carcasses and products thereof which are the subjects of interstate commerce, approved March 3, 1891, ch. 555, 26 Stat. 1089, and of amendment thereto approved March 2, 1895, ch. 169, § 1, 28 Stat. 732, which are applicable to the subjects and purposes described in section 2325 shall apply to process or renovated butter.

**(c) Slaughtering and meat canning.**

The sanitary provisions for slaughtering, meat canning, or similar establishments as set forth in the act of June 30, 1906, ch. 3913, 34 Stat. 676, shall be extended to cover renovated butter factories as defined in this subchapter, under such regulations as the Secretary of Agriculture may prescribe.

**(d) Tobacco and snuff.**

The provisions of law governing the engraving, issuing, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, shall apply to the stamps provided in section 2321 (c) (1). (53 Stat. 255.)

**DERIVATION**

Subsections (a), (b) from act May 9, 1902, ch. 784, §§ 4, 5, 32 Stat. 196.

Subsection (c) from act Aug. 10, 1912, ch. 284, 37 Stat. 273.

Subsection (d) from act May 9, 1902, ch. 784, § 4, 32 Stat. 194.

**Chapter 17.—FILLED CHEESE**

**Sec.**

2350. Definitions.

2351. Tax.

2352. Manufacturers.

2353. Wholesale dealers.

2354. Retail dealers.

2355. Stamps on emptied packages.

- Sec.  
 2356. Importation.  
 2357. Penalties.  
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 2359. Recovery of penalties and forfeitures.  
 2360. Commissioner's decisions.  
 2361. Tobacco stamp laws applicable.  
 2362. Regulations.

FEDERAL FOOD, DRUG, AND COSMETIC ACT

By virtue of Act June 25, 1938, ch. 675, § 902 (c), 52 Stat. 1059, nothing contained in chapter 9 of Title 21, Food and Drugs, shall be construed as in any way affecting, modifying, repealing, or superseding the original provisions of this chapter.

§ 2350. Definitions.

For the purpose of this chapter and sections 3210 and 3211—

(a) Cheese.

The word "cheese" shall be understood to mean the food product known as cheese, and which is made from milk or cream and without the addition of butter, or any animal, vegetable, or other oils or fats foreign to such milk or cream, with or without additional coloring matter.

(b) Filled cheese.

Certain substances and compounds shall be known and designated as "filled cheese," namely: All substances made of milk or skimmed milk, with the admixture of butter, animal oils or fats, vegetable or any other oils, or compounds foreign to such milk, and made in imitation or semblance of cheese. Substances and compounds, consisting principally of cheese with added edible oils, which are not sold as cheese or as substitutes for cheese but are primarily useful for imparting a natural cheese flavor to other foods shall not be considered "filled cheese" within the meaning of this chapter. (53 Stat. 256.)

DERIVATION

Subsection (a) from act June 6, 1896, ch. 337, § 1, 29 Stat. 253.

Subsection (b) from act June 6, 1896, ch. 337, § 2, 29 Stat. 253, as amended by act May 28, 1938, ch. 289, § 706, 52 Stat. 571.

§ 2351. Tax—(a) Rate.

Upon all filled cheese which shall be manufactured there shall be assessed and collected a tax of 1 cent per pound; and any fractional part of a pound in a package shall be taxed as a pound.

(b) By whom paid.

The tax levied by subsection (a) shall be paid by the manufacturer.

(c) How paid—(1) Stamps.

The tax levied by subsection (a) shall be represented by coupon stamps.

(2) Assessment.

Whenever any manufacturer of filled cheese sells or removes for sale or consumption any filled cheese upon which the tax is required to be paid by stamps, without paying such tax, it shall be the duty of the Commissioner, subject to the limitations prescribed in section 3312, upon satisfactory proof, to estimate the amount of tax which has been omitted to be paid and to make an assessment therefor and certify the same to the collector. The tax so assessed shall be

in addition to the penalties imposed by law for such sale or removal.

(d) Special tax.

For special tax on manufacturers and dealers, see section 3210.

(e) Imported filled cheese.

For tax on imported filled cheese, see section 2356.

(53 Stat. 256.)

DERIVATION

Subsections (a)–(c) (1) from act June 6, 1896, ch. 337, § 9, 29 Stat. 255.

Subsection (c) (2) from act June 6, 1896, ch. 337, § 10, 29 Stat. 255, as amended by act Feb. 26, 1926, ch. 27, § 1109 (a), 44 Stat. 114.

§ 2352. Manufacturers—(a) Definition.

Every person, firm, or corporation who manufactures filled cheese for sale shall be deemed a manufacturer of filled cheese.

(b) Packing requirements—(1) Marks, stamps, and packages.

Filled cheese shall be packed by the manufacturers in wooden packages only, not before used for that purpose, and marked, stamped, and branded with the words "filled cheese" in black-faced letters not less than two inches in length, in a circle in the center of the top and bottom of the cheese; and in black-faced letters of not less than two inches in length in line from the top to the bottom of the cheese, on the side in four places equidistant from each other; and the package containing such cheese shall be marked in the same manner, and in the same number of places, and in the same description of letters as above provided for the marking of the cheese; and all sales or consignments made by manufacturers of filled cheese to wholesale dealers in filled cheese or to exporters of filled cheese shall be in original stamped packages.

(2) Label.

Every manufacturer of filled cheese shall securely affix, by pasting on each package containing filled cheese manufactured by him, a label on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words: "Notice.—The manufacturer of the filled cheese herein contained has complied with all the requirements of the law. Every person is cautioned not to use either this package again or the stamp thereon again, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases."

(c) Books and returns.

Every manufacturer of filled cheese shall file with the collector of the district in which his manufactory is located such notices and inventories, shall keep such books and render such returns of materials and products, and conduct his business under such surveillance of officers and agents as the Commissioner, with the approval of the Secretary, may by regulation require.

(d) Factory number and signs.

Every manufacturer of filled cheese shall put up such signs and affix such number to his factory as

the Commissioner, with the approval of the Secretary, may by regulation require.

**(e) Bonds.**

Every manufacturer of filled cheese shall file with the collector of the district in which his manufactory is located such bonds as the Commissioner, with the approval of the Secretary, may by regulation require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector, and in a penal sum of not less than \$5,000; and the amount of said bond may be increased from time to time, and additional sureties required, at the discretion of the collector or under instructions of the Commissioner. (53 Stat. 257.)

**DERIVATION**

Act June 6, 1896, ch. 337, §§ 3, 6, 8, 5, 29 Stat. 253, 254, 255.

**§ 2353. Wholesale dealers—(a) Definition.**

Every person, firm, or corporation who sells or offers for sale filled cheese, in the original manufacturer's packages for resale, or to retail dealers as defined in section 2354 (a), shall be deemed a wholesale dealer in filled cheese.

**(b) Signs.**

All wholesale dealers in filled cheese shall display in a conspicuous place in his or their salesroom a sign bearing the words "Filled cheese sold here" in black-faced letters not less than six inches in length, upon a white ground, with the name and number of the revenue district in which his or their business is conducted. (53 Stat. 257.)

**DERIVATION**

Act June 6, 1896, ch. 337, §§ 3, 7, 29 Stat. 253, 255.

**§ 2354. Retail dealers—(a) Definition.**

Every person who sells filled cheese at retail, not for resale, and for actual consumption, shall be regarded as a retail dealer in filled cheese.

**(b) Selling requirements.**

Retail dealers in filled cheese shall sell only from original stamped packages, and shall pack the filled cheese when sold in suitable wooden or paper packages, which shall be marked and branded in accordance with rules and regulations to be prescribed by the Commissioner with the approval of the Secretary.

**(c) Signs.**

All retail dealers in filled cheese shall display in a conspicuous place in his or their salesroom, a sign bearing the words "Filled cheese sold here" in black-faced letters not less than 6 inches in length, upon a white ground, with the name and number of the revenue district in which his or their business is conducted. (53 Stat. 257.)

**DERIVATION**

Act June 6, 1896, ch. 337, §§ 3, 6, 7, 29 Stat. 253, 254, 255.

**§ 2355. Stamps on emptied packages.**

Whenever any stamped package containing filled cheese is emptied it shall be the duty of the person in whose hands the same is to destroy the stamps thereon. (53 Stat. 258.)

**DERIVATION**

Act June 6, 1896, ch. 337, § 14, 29 Stat. 256.

**§ 2356. Importation.**

All filled cheese as defined in section 2350 (b) imported from foreign countries shall, in addition to any import duty imposed on the same, pay an internal revenue tax of 8 cents per pound, such tax to be represented by coupon stamps; and such imported filled cheese and the packages containing the same shall be stamped, marked, and branded, as in the case of filled cheese manufactured in the United States. (53 Stat. 258.)

**DERIVATION**

Act June 6, 1896, ch. 337, § 11, 29 Stat. 255.

**§ 2357. Penalties—(a) Failure to comply with section 2352 (c) to (e).**

Any manufacturer of filled cheese who fails to comply with the provisions of subsections (c), (d), and (e) of section 2352, or with the regulations therein authorized, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$500 nor more than \$1,000.

**(b) False branding; sale, packing, or stamping in violation of law.**

Every person who knowingly sells or offers to sell, or delivers or offers to deliver, filled cheese in any other form than in new wooden or paper packages, marked and branded as provided for and described in subsection (b) of section 2354, or who packs in any package or packages filled cheese in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall upon conviction thereof be fined for each and every offense not less than \$50 and not more than \$500 or be imprisoned not less than 30 days nor more than one year.

**(c) Failure of wholesale and retail dealers to display signs.**

Any wholesale or retail dealer in filled cheese who fails or neglects to comply with the provisions of sections 2353 (b) and 2354 (c) shall be deemed guilty of a misdemeanor, and shall on conviction thereof be fined for each and every offense not less than \$50 and not more than \$200.

**(d) Omission or removal of label.**

Every manufacturer of filled cheese who neglects to affix the label provided for in paragraph (2) of section 2352 (b) to any package containing filled cheese made by him or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package, shall be fined \$50 for each package in respect to which such offense is committed.

**(e) Purchasing when special tax not paid.**

Every person who knowingly purchases or receives for sale any filled cheese from any manufacturer or importer who has not paid the special tax provided for in section 3210 of chapter 27 shall be liable, for each offense, to a penalty of \$100.

- Sec.  
2356. Importation.  
2357. Penalties.  
2358. Forfeitures.  
2359. Recovery of penalties and forfeitures.  
2360. Commissioner's decisions.  
2361. Tobacco stamp laws applicable.  
2362. Regulations.

FEDERAL FOOD, DRUG, AND COSMETIC ACT

By virtue of Act June 25, 1938, ch. 675, § 902 (c), 52 Stat. 1059, nothing contained in chapter 9 of Title 21, Food and Drugs, shall be construed as in any way affecting, modifying, repealing, or superseding the original provisions of this chapter.

§ 2350. Definitions.

For the purpose of this chapter and sections 3210 and 3211—

(a) Cheese.

The word "cheese" shall be understood to mean the food product known as cheese, and which is made from milk or cream and without the addition of butter, or any animal, vegetable, or other oils or fats foreign to such milk or cream, with or without additional coloring matter.

(b) Filled cheese.

Certain substances and compounds shall be known and designated as "filled cheese," namely: All substances made of milk or skimmed milk, with the admixture of butter, animal oils or fats, vegetable or any other oils, or compounds foreign to such milk, and made in imitation or semblance of cheese. Substances and compounds, consisting principally of cheese with added edible oils, which are not sold as cheese or as substitutes for cheese but are primarily useful for imparting a natural cheese flavor to other foods shall not be considered "filled cheese" within the meaning of this chapter. (53 Stat. 256.)

DERIVATION

Subsection (a) from act June 6, 1896, ch. 337, § 1, 29 Stat. 253.

Subsection (b) from act June 6, 1896, ch. 337, § 2, 29 Stat. 253, as amended by act May 28, 1938, ch. 289, § 706, 52 Stat. 571.

§ 2351. Tax—(a) Rate.

Upon all filled cheese which shall be manufactured there shall be assessed and collected a tax of 1 cent per pound; and any fractional part of a pound in a package shall be taxed as a pound.

(b) By whom paid.

The tax levied by subsection (a) shall be paid by the manufacturer.

(c) How paid—(1) Stamps.

The tax levied by subsection (a) shall be represented by coupon stamps.

(2) Assessment.

Whenever any manufacturer of filled cheese sells or removes for sale or consumption any filled cheese upon which the tax is required to be paid by stamps, without paying such tax, it shall be the duty of the Commissioner, subject to the limitations prescribed in section 3312, upon satisfactory proof, to estimate the amount of tax which has been omitted to be paid and to make an assessment therefor and certify the same to the collector. The tax so assessed shall be

in addition to the penalties imposed by law for such sale or removal.

(d) Special tax.

For special tax on manufacturers and dealers, see section 3210.

(e) Imported filled cheese.

For tax on imported filled cheese, see section 2356.

(53 Stat. 256.)

DERIVATION

Subsections (a)–(c) (1) from act June 6, 1896, ch. 337, § 9, 29 Stat. 255.

Subsection (c) (2) from act June 6, 1896, ch. 337, § 10, 29 Stat. 255, as amended by act Feb. 26, 1926, ch. 27, § 1109 (a), 44 Stat. 114.

§ 2352. Manufacturers—(a) Definition.

Every person, firm, or corporation who manufactures filled cheese for sale shall be deemed a manufacturer of filled cheese.

(b) Packing requirements—(1) Marks, stamps, and packages.

Filled cheese shall be packed by the manufacturers in wooden packages only, not before used for that purpose, and marked, stamped, and branded with the words "filled cheese" in black-faced letters not less than two inches in length, in a circle in the center of the top and bottom of the cheese; and in black-faced letters of not less than two inches in length in line from the top to the bottom of the cheese, on the side in four places equidistant from each other; and the package containing such cheese shall be marked in the same manner, and in the same number of places, and in the same description of letters as above provided for the marking of the cheese; and all sales or consignments made by manufacturers of filled cheese to wholesale dealers in filled cheese or to exporters of filled cheese shall be in original stamped packages.

(2) Label.

Every manufacturer of filled cheese shall securely affix, by pasting on each package containing filled cheese manufactured by him, a label on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words: "NOTICE.—The manufacturer of the filled cheese herein contained has complied with all the requirements of the law. Every person is cautioned not to use either this package again or the stamp thereon again, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases."

(c) Books and returns.

Every manufacturer of filled cheese shall file with the collector of the district in which his manufactory is located such notices and inventories, shall keep such books and render such returns of materials and products, and conduct his business under such surveillance of officers and agents as the Commissioner, with the approval of the Secretary, may by regulation require.

(d) Factory number and signs.

Every manufacturer of filled cheese shall put up such signs and affix such number to his factory as

the Commissioner, with the approval of the Secretary, may by regulation require.

**(e) Bonds.**

Every manufacturer of filled cheese shall file with the collector of the district in which his manufactory is located such bonds as the Commissioner, with the approval of the Secretary, may by regulation require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector, and in a penal sum of not less than \$5,000; and the amount of said bond may be increased from time to time, and additional sureties required, at the discretion of the collector or under instructions of the Commissioner. (53 Stat. 257.)

**DERIVATION**

Act June 6, 1896, ch. 337, §§ 3, 6, 8, 5, 29 Stat. 253, 254, 255.

**§ 2353. Wholesale dealers—(a) Definition.**

Every person, firm, or corporation who sells or offers for sale filled cheese, in the original manufacturer's packages for resale, or to retail dealers as defined in section 2354 (a), shall be deemed a wholesale dealer in filled cheese.

**(b) Signs.**

All wholesale dealers in filled cheese shall display in a conspicuous place in his or their salesroom a sign bearing the words "Filled cheese sold here" in black-faced letters not less than six inches in length, upon a white ground, with the name and number of the revenue district in which his or their business is conducted. (53 Stat. 257.)

**DERIVATION**

Act June 6, 1896, ch. 337, §§ 3, 7, 29 Stat. 253, 255.

**§ 2354. Retail dealers—(a) Definition.**

Every person who sells filled cheese at retail, not for resale, and for actual consumption, shall be regarded as a retail dealer in filled cheese.

**(b) Selling requirements.**

Retail dealers in filled cheese shall sell only from original stamped packages, and shall pack the filled cheese when sold in suitable wooden or paper packages, which shall be marked and branded in accordance with rules and regulations to be prescribed by the Commissioner with the approval of the Secretary.

**(c) Signs.**

All retail dealers in filled cheese shall display in a conspicuous place in his or their salesroom, a sign bearing the words "Filled cheese sold here" in black-faced letters not less than 6 inches in length, upon a white ground, with the name and number of the revenue district in which his or their business is conducted. (53 Stat. 257.)

**DERIVATION**

Act June 6, 1896, ch. 337, §§ 3, 6, 7, 29 Stat. 253, 254, 255.

**§ 2355. Stamps on emptied packages.**

Whenever any stamped package containing filled cheese is emptied it shall be the duty of the person in whose hands the same is to destroy the stamps thereon. (53 Stat. 258.)

**DERIVATION**

Act June 6, 1896, ch. 337, § 14, 29 Stat. 256.

**§ 2356. Importation.**

All filled cheese as defined in section 2350 (b) imported from foreign countries shall, in addition to any import duty imposed on the same, pay an internal revenue tax of 8 cents per pound, such tax to be represented by coupon stamps; and such imported filled cheese and the packages containing the same shall be stamped, marked, and branded, as in the case of filled cheese manufactured in the United States. (53 Stat. 258.)

**DERIVATION**

Act June 6, 1896, ch. 337, § 11, 29 Stat. 255.

**§ 2357. Penalties—(a) Failure to comply with section 2352 (c) to (e).**

Any manufacturer of filled cheese who fails to comply with the provisions of subsections (c), (d), and (e) of section 2352, or with the regulations therein authorized, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$500 nor more than \$1,000.

**(b) False branding; sale, packing, or stamping in violation of law.**

Every person who knowingly sells or offers to sell, or delivers or offers to deliver, filled cheese in any other form than in new wooden or paper packages, marked and branded as provided for and described in subsection (b) of section 2354, or who packs in any package or packages filled cheese in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall upon conviction thereof be fined for each and every offense not less than \$50 and not more than \$500 or be imprisoned not less than 30 days nor more than one year.

**(c) Failure of wholesale and retail dealers to display signs.**

Any wholesale or retail dealer in filled cheese who fails or neglects to comply with the provisions of sections 2353 (b) and 2354 (c) shall be deemed guilty of a misdemeanor, and shall on conviction thereof be fined for each and every offense not less than \$50 and not more than \$200.

**(d) Omission or removal of label.**

Every manufacturer of filled cheese who neglects to affix the label provided for in paragraph (2) of section 2352 (b) to any package containing filled cheese made by him or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package, shall be fined \$50 for each package in respect to which such offense is committed.

**(e) Purchasing when special tax not paid.**

Every person who knowingly purchases or receives for sale any filled cheese from any manufacturer or importer who has not paid the special tax provided for in section 3210 of chapter 27 shall be liable, for each offense, to a penalty of \$100.

**(f) Purchasing when not stamped, branded, or marked according to law.**

Any person who knowingly purchases or receives for sale any filled cheese which has not been branded or stamped according to law, or which is contained in packages not branded or marked according to law, shall be liable to a penalty of \$50 for each such offense.

**(g) Failure to destroy stamps on emptied packages.**

Any person who willfully neglects or refuses to destroy the stamps on any empty package which contained filled cheese shall, for each such offense, be fined not exceeding \$50 or imprisoned not less than ten days nor more than six months. (53 Stat. 258.)

## DERIVATION

Act June 6, 1896, ch. 337, §§ 5-8, 12-14, 29 Stat. 254, 255, 256.

**§ 2358. Forfeitures—(a) Purchasing when special tax not paid.**

Every person who knowingly purchases or receives for sale any filled cheese from any manufacturer or importer who has not paid the special tax provided for in section 3210 of chapter 27 shall be liable, for each offense, to a forfeiture of all articles so purchased or received, or of the full value thereof.

**(b) Packages unstamped, unmarked, or deleterious.**

All packages of filled cheese subject to tax under this chapter that shall be found without stamps or marks as herein provided, and all filled cheese intended for human consumption which contains ingredients adjudged as hereinafter provided to be deleterious to the public health, shall be forfeited to the United States. (53 Stat. 259.)

## DERIVATION

Act June 6, 1896, ch. 337, §§ 13, 17, 29 Stat. 256.

**§ 2359. Recovery of penalties and forfeitures.**

All fines, penalties, and forfeitures imposed by this chapter or section 3211 may be recovered in any court of competent jurisdiction. (53 Stat. 259.)

## DERIVATION

Act June 6, 1896, ch. 337, § 17, 29 Stat. 256.

**§ 2360. Commissioner's decisions—(a) Deleterious ingredients.**

The Commissioner is authorized to have applied scientific tests, and to decide whether any substances used in the manufacture of filled cheese contain ingredients deleterious to health.

**(b) Appeal.**

In case of doubt or contest the decision of the Commissioner in the class of cases referred to in subsection (a) may be appealed from to a board constituted for the purpose, and composed of the Surgeon General of the Army, the Surgeon General of the Navy, and the Secretary of Agriculture, and the decision of this board shall be final in the premises. (53 Stat. 259.)

## DERIVATION

Act June 6, 1896, ch. 337, § 15, 29 Stat. 256.

**§ 2361. Tobacco stamp laws applicable.**

The provisions of law governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, shall apply to stamps provided for by paragraph (1) of subsection (c) of section 2351. (53 Stat. 259.)

## DERIVATION

Act June 6, 1896, ch. 337, § 9, 29 Stat. 225.

**§ 2362. Regulations.**

For authority of the Commissioner, with the approval of the Secretary, to make all needful regulations for the carrying into effect of the provisions of this chapter and sections 3210 and 3211, see section 3791 (a) (1).

(53 Stat. 259.)

**Chapter 18.—MIXED FLOUR****Sec.**

2380. Mixed flour defined.

2381. Tax.

2382. Requirements on manufacturers or packers.

2383. Stamps on emptied packages.

2384. Importation.

2385. Exportation.

2386. Penalties.

2387. Recovery of penalties and forfeitures.

2388. Tobacco stamp laws applicable.

2389. Regulations.

2390. Contracts for stamps.

**§ 2380. Mixed flour defined.**

For the purposes of this chapter and section 3215, the words "mixed flour" shall be taken and construed to mean the food product resulting from the grinding or mixing together of wheat, or wheat flour, as the principal constituent in quantity, with any other grain, or the product of any other grain, or other material, except such material, and not the product of any grain, as is commonly used for baking purposes: *Provided*, That when the product resulting from the grinding or mixing together of wheat or wheat flour with any other grain, or the product of any other grain, of which wheat or wheat flour is not the principal constituent as specified in the foregoing definition, is intended for sale, or is sold, or offered for sale as wheat flour, such product shall be held to be mixed flour within the meaning of this chapter and section 3215. (53 Stat. 260.)

## DERIVATION

Act June 13, 1898, ch. 448, § 35, 30 Stat. 467, as amended by act Apr. 12, 1902, ch. 500, § 9, 32 Stat. 99.

**§ 2381. Tax—(a) Rate.**

Upon the manufacture and sale of mixed flour there shall be levied a tax of 4 cents per barrel or other package containing one hundred and ninety-six pounds or more than ninety-eight pounds; 2 cents on every half barrel or other package containing ninety-eight pounds or more than forty-nine pounds; 1 cent on every quarter barrel or other package containing forty-nine pounds or more than twenty-four and one-half pounds; and one-half cent on every one-eighth barrel or other package containing twenty-four and a half pounds or less.



**(b) By whom paid.**

The tax levied by subsection (a) shall be paid by the person, firm, or corporation making or packing mixed flour.

**(c) How paid—(1) Stamps.**

The tax levied by subsection (a) shall be represented by coupon stamps.

**(2) Assessment.**

Whenever any person, firm, or corporation sells, consigns, or removes for sale, consignment, or consumption any mixed flour upon which the tax required by this chapter has not been paid, it shall be the duty of the Commissioner, subject to the limitations prescribed in section 3312, upon satisfactory proof, to estimate the amount of tax which should have been paid, and to make an assessment therefor and certify the same to the collector of the proper district. The tax so assessed shall be in addition to the penalties imposed by this chapter for an unauthorized sale or removal.

**(d) Imported mixed flour.**

For tax on imported mixed flour, see section 2384.

**(e) Exemption, repacked flour.**

For exemption of repacked flour from tax, see section 2382 (b) (1).

**(f) Special tax.**

For special tax on manufacturers and packers, see section 3215.

(53 Stat. 260.)

**DERIVATION**

Subsections (a)–(c) (1) from act June 13, 1898, ch. 448, § 40, 30 Stat. 368.

Subsection (c) (2) from act June 13, 1898, ch. 448, § 41, 30 Stat. 469, as amended by act Feb. 26, 1926, ch. 27, § 1109 (a), 44 Stat. 114.

**§ 2382. Requirements on manufacturers or packers—****(a) Packages—(1) Weight.**

Barrels or other packages in which mixed flour may be packed shall contain not to exceed one hundred and ninety-six pounds.

**(2) Reuse.**

All sales and consignments of mixed flour shall be in packages not before used for that purpose.

**(3) Marks and brands.**

Every person, firm, or corporation making, packing, or repacking mixed flour shall plainly mark or brand each package containing the same with the words "mixed flour" in plain black letters not less than two inches in length, together with the true weight of such package, the names of the ingredients composing the same, the name of the maker or packer, and the place where made or packed.

**(4) Contents card.**

In addition to the requirements under paragraph (3), the maker or packer shall place in each package a card not smaller than two inches in width by three inches in length, upon which shall be printed the words "mixed flour," together with the names of the ingredients composing the same, and the name of the maker or packer, and the place where made or packed.

**(5) Label.**

In addition to the branding and marking of mixed flour as provided in this chapter, there shall be affixed to the packages containing the same a label in the following words: "NOTICE.—The (manufacturer or packer, as the case may be) of the mixed flour herein contained has complied with all the requirements of law. Every person is cautioned not to use this package or label again or to remove the contents without destroying the revenue stamp thereon, under the penalty prescribed by law in such cases."

**(b) Repacking—(1) Exemption from tax.**

When mixed flour, on the manufacture and sale of which the tax imposed by this chapter has been paid, is sold and then repacked without the addition of any other material, such repacked flour shall not be liable to any additional tax.

**(2) Marks, brands, and contents cards.**

The packages containing the repacked flour referred to in paragraph (1) of this subsection shall be branded and marked as required by paragraph (3) of subsection (a), and shall contain the card provided for in paragraph (4) of subsection (a).

**(3) Notice.**

In addition to the requirements under paragraphs (1) and (2), the person, firm, or corporation repacking mixed flour shall place on the packages containing the same a label in the following words: "NOTICE.—The contents of this package have been taken from a regular statutory package, upon which the tax has been duly paid." (53 Stat. 261.)

**DERIVATION**

Act June 13, 1898, ch. 448, §§ 37–40, 30 Stat. 467, 468.

**§ 2383. Stamps on emptied packages.**

Whenever any package containing mixed flour is emptied it shall be the duty of the person in whose possession it is to destroy the stamp thereon. (53 Stat. 261.)

**DERIVATION**

Act June 13, 1898, ch. 448, § 45, 30 Stat. 469.

**§ 2384. Importation.**

All mixed flours, imported from foreign countries, shall, in addition to any import duties imposed thereon, pay an internal revenue tax equal in amount to the tax imposed under subsection (a) of section 2381, such tax to be represented by coupon stamps, and the packages containing such imported mixed flour shall be marked, branded, labeled, and stamped as in the case of mixed flour made or packed in the United States. (23 Stat. 262.)

**DERIVATION**

Act July 13, 1898, ch. 448, § 42, 30 Stat. 469.

**§ 2385. Exportation.**

Mixed flour may be removed from the place of manufacture or from the place where packed for export to a foreign country without payment of tax or affixing stamps or label thereto, under such regulation and the filing of such bond and other security as the Commissioner, with the approval of the Secretary, may prescribe. Every person, firm, or corpora-

tion who shall export mixed flour shall plainly mark on each package containing the same the words "mixed flour," and the names of the ingredients composing the same, the name of the maker or packer, and the place where made or packed, in accordance with the provisions of this chapter. (53 Stat. 262.)

## DERIVATION

Act June 13, 1898, ch. 448, § 44, 30 Stat. 469.

**§ 2386. Penalties—(a) Omission of marks, brands, or contents cards.**

Any person, firm, or corporation making, packing, or repacking mixed flour, failing to comply with the provisions of paragraphs (3) and (4) of subsection (a) of section 2382, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$250 and not more than \$500, or be imprisoned not less than sixty days nor more than one year.

**(b) Omission or removal of labels.**

Every person, firm, or corporation failing or neglecting to affix the label required by paragraph (5) of subsection (a) of section 2382 to any package containing mixed flour made or packed by him or them, or who removes from any such package any label so affixed, shall, upon conviction thereof, be fined not less than \$50 for each label so removed.

**(c) Sale or packing in violation of law; falsification or unlawful removal of brands.**

Every person, firm, or corporation knowingly selling or offering for sale any mixed flour in other than marked and branded packages, as required by the provisions of this chapter, or who packs in any package or packages any mixed flour in any manner contrary to the provisions of this chapter, or who falsely marks or brands any package or packages containing mixed flour, or unlawfully removes such marks or brands, shall, for each such offense, be punished by a fine of not less than \$250 and not more than \$500, or by imprisonment not less than thirty days nor more than one year.

**(d) Failure to pay tax; excessive weight; improper marking or branding on repacking.**

Any person violating the provisions of section 2381 (b) and (c) (1) or section 2382 (a) (1) and (b), shall, upon conviction thereof, be punished by a fine of not less than \$250 and not more than \$500, or by imprisonment not to exceed one year.

**(e) Purchasing when tax not paid.**

Any person, firm, or corporation knowingly purchasing or receiving for sale or for repacking and resale any mixed flour from any maker, packer, or importer, who has not paid the tax provided in this chapter, or section 3215 (a), shall, for each offense, be fined not less than \$50, and forfeit to the United States all the articles so purchased or received, or the full value thereof.

**(f) Purchasing imported flour without brands, labels, or stamps.**

Any person, firm, or corporation purchasing or receiving for sale or repacking any mixed flour imported from foreign countries, which has not been

branded, labeled, or stamped, as required by this chapter, or which is contained in packages which have not been marked, branded, labeled, or stamped, as required by this chapter shall, upon conviction, be fined not less than \$50 nor more than \$500.

**(g) Failure to destroy stamps or marks on empty packages.**

Any person disposing of an empty package which contained mixed flour without first having destroyed the stamp or mark or marks thereon, shall, upon conviction, be punished by a fine not exceeding the sum of \$25.

**(h) Second offense.**

Any person, firm, or corporation found guilty of a second or any subsequent violation of any of the provisions of this chapter or of section 3215, shall, in addition to the penalties imposed by this chapter, be imprisoned not less than thirty days nor more than ninety days. (53 Stat. 262.)

## DERIVATION

Act June 13, 1898, ch. 448, §§ 37-40, 42, 43, 45, 48, 30 Stat. 468, 469, 470.

**§ 2387. Recovery of penalties and forfeitures.**

All fines, penalties, and forfeitures imposed by section 2386 or 3215 may be recovered in any court of competent jurisdiction. (53 Stat. 263.)

## DERIVATION

Act June 13, 1898, ch. 448, § 46, 30 Stat. 469.

**§ 2388. Tobacco stamp laws applicable.**

(a) The provisions of law governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff shall, so far as applicable, be made to apply to stamps provided in section 2381 (c) (1).

(b) All administrative, special, or stamp provisions of law, including the laws in relation to assessment of taxes, not specifically repealed, shall be applicable to this chapter and to section 3215. (53 Stat. 263.)

## DERIVATION

Act June 13, 1898, ch. 448, §§ 31, 40, 30 Stat. 466, 468.

**§ 2389. Regulations.**

For authority of the Commissioner, with the approval of the Secretary, to make all needful rules and regulations for carrying into effect the provisions of this chapter and of section 3215, see section 3791 (a) (1).

(53 Stat. 263.)

**§ 2390. Contracts for stamps.**

The Commissioner, with the approval of the Secretary, is authorized to procure any of the stamps provided in this chapter by contract whenever such stamps can not be speedily prepared by the Bureau of Engraving and Printing, and said contracts shall be awarded under such terms, restrictions, and regulations as may be prescribed by the Commissioner, with the approval of the Secretary. (53 Stat. 263.)

## DERIVATION

Act March 3, 1899, ch. 424, § 1, 30 Stat. 1090.

## Chapter 21.<sup>1</sup>—COCONUT AND OTHER VEGETABLE OILS

Sec.

- 2470. Tax.
- 2471. Returns.
- 2472. Payment of tax.
- 2473. Sales to States or political subdivisions.
- 2474. Exportation.
- 2475. Addition to the tax in case of nonpayment.
- 2476. Collections covered into the Philippine Treasury.
- 2477. First domestic processing defined.
- 2478. Contracts prior to January 26, 1934.
- 2479. Other laws applicable.
- 2480. Covering of collections in the Treasury.
- 2481. Effective date of chapter.
- 2482. Publicity of returns.

<sup>1</sup>So in original. There are no chapters numbered 19 and 20.

### § 2470. Tax—(a) Rate—(1) In general.

There shall be imposed upon the first domestic processing of coconut oil, palm oil, palm-kernel oil, fatty acids derived from any of the foregoing oils, salts of any of the foregoing (whether or not such oils, fatty acids, or salts have been refined, sulphonated, sulphated, hydrogenated, or otherwise processed), or any combination or mixture containing a substantial quantity of any one or more of such oils, fatty acids, or salts, a tax of 3 cents per pound to be paid by the processor.

### (2) Additional rate on coconut oil.

There shall be imposed (in addition to the tax imposed by the preceding paragraph) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing, except that the tax imposed by this sentence shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil (whether or not contained in such a combination or mixture), (A) is wholly the production of the Philippine Islands or any other possession of the United States, or (B) was produced wholly from materials the growth or production of the Philippine Islands or any other possession of the United States, or (C) was brought into the United States on or before June 9, 1934, or produced from materials brought into the United States on or before June 9, 1934, or (D) was purchased under a bona fide contract entered into prior to April 26, 1934, or produced from materials purchased under a bona fide contract entered into prior to April 26, 1934.

### (b) Exemption.

The tax under subsection (a) shall not apply (1) with respect to any fatty acid or salt resulting from a previous first domestic processing taxed under this section or upon which an import tax has been paid under chapter 22, or (2) with respect to any combination or mixture by reason of its containing an oil, fatty acid, or salt with respect to which there has been a previous first domestic processing or upon which an import tax has been paid under chapter 22.

### (c) Importations prior to August 21, 1936.

Notwithstanding the provisions of subsections (a) and (b) of this section, the first domestic processing of sunflower oil or sesame oil (or any combination or mixture containing a substantial quantity of sunflower oil or sesame oil), if such oil or such combination or mixture or such oil contained therein was imported prior to August 21, 1936, shall be taxed in accordance with the provisions of section 602½ of the Revenue Act of 1934, 48 Stat. 763, in force on June 22, 1936. (53 Stat. 264.)

#### DERIVATION

Act May 10, 1934, ch. 277, § 602½ (a), 48 Stat. 763, as amended by act June 22, 1936, ch. 690, § 702, 49 Stat. 1742.

#### CROSS REFERENCES

Continuance of taxes, see section 1248 (d) of Title 48, Territories and Insular Possessions.

Proceeds of excise taxes imposed by this section collected on or after Jan. 1, 1939, and accrued prior to July 4, 1946, payment into Treasury of the Philippines, see section 1248 (a) of Title 48, Territories and Insular Possessions.

### § 2471. Returns.

Each processor required to pay the tax imposed by section 2470 shall make monthly returns under oath in duplicate and pay the tax to the collector for the district in which is located his principal place of business, or if he has no principal place of business in the United States, then to the collector at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe. (53 Stat. 265.)

#### DERIVATION

Act May 10, 1934, ch. 277, § 602½ (b), 48 Stat. 763.

### § 2472. Payment of tax.

The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable by the processor to the collector for the district in which is located his principal place of business, or if he has no principal place of business in the United States, then to the collector at Baltimore, Maryland, at the time so fixed for filing the return. (53 Stat. 265.)

#### DERIVATION

Act May 10, 1934, ch. 277, § 602½ (b), 48 Stat. 763.

### § 2473. Sales to States or political subdivisions.

Subject to such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe, any person who has sold to a State, or a political subdivision thereof, for use in the exercise of an essential governmental function any article containing any such oil, combination, or mixture, upon the processing of which a tax has been paid under section 2470 shall be entitled to a credit or refund of the tax paid with respect to the quantity of such oil, combination, or mixture contained in such article. (53 Stat. 265.)

#### DERIVATION

Act May 10, 1934, ch. 277, § 602½ (c), 48 Stat. 764.

**§ 2474. Exportation.**

Upon the exportation to any foreign country or to a possession of the United States of any article wholly or in chief value of an article with respect to the processing of which a tax has been paid under this chapter, the exporter thereof shall be entitled to a refund of the amount of such tax. Upon the giving of bond satisfactory to the Secretary for faithful observance of the provisions of this chapter requiring the payment of taxes, any person shall be entitled, without payment of the tax, to process for such exportation any article with respect to which a tax is imposed by section 2470. (53 Stat. 265.)

**DERIVATION**

Act May 10, 1934, ch. 277, § 602½ (d), 48 Stat. 764.

**§ 2475. Addition to the tax in case of nonpayment.**

If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time the tax became due until paid. (53 Stat. 265.)

**DERIVATION**

Act May 10, 1934, ch. 277, § 602½ (b), 48 Stat. 763, as amended by act Aug. 30, 1935, ch. 829, § 404, 49 Stat. 1027.

**§ 2476. Collections covered into the Philippine Treasury.**

All taxes collected under this chapter with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this section. (53 Stat. 265.)

**DERIVATION**

Act May 10, 1934, ch. 277, § 602½ (a), 48 Stat. 763.

**CROSS REFERENCE**

Provision prohibiting further payment in event of subsidization not to apply to any moneys collected on or after January 1, 1939, and to that extent repealed, see section 1248 (c) of Title 48, Territories and Insular Possessions.

**§ 2477. First domestic processing defined.**

For the purposes of this chapter the term "first domestic processing" means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate or terne plate, or any subsequent use of palm oil residue resulting from the manufacture of tin plate or terne plate. (53 Stat. 266.)

**DERIVATION**

Act May 10, 1934, ch. 277, § 602½ (a), 48 Stat. 763, as amended by act May 28, 1938, ch. 289, § 703, 52 Stat. 570.

**§ 2478. Contracts prior to January 26, 1934.**

If (1) any person has, prior to January 26, 1934, made a bona fide contract for the sale on or after May 10, 1934, of any article wholly or in chief value of an article with respect to which a tax is imposed

by this chapter or of any article with respect to which a tax is imposed by this section, and if (2) such contract does not permit the addition to the amount to be paid thereunder of the whole of such tax, then (unless the contract expressly prohibits such addition) the vendee shall pay so much of the tax as is not permitted to be added to the contract price. Taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated and shall be returned and paid to the United States by the vendor in the same manner as other taxes under this chapter. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner, who shall cause collection of such taxes to be made from the vendee. (53 Stat. 266.)

**DERIVATION**

Act May 10, 1934, ch. 277, § 602½ (e), 48 Stat. 764.

**§ 2479. Other laws applicable.**

All provisions of law (including penalties) applicable in respect of taxes imposed by section 2700, shall, insofar as applicable and not inconsistent with this chapter, be applicable in respect of the taxes imposed by this chapter. (53 Stat. 266.)

**DERIVATION**

Act May 10, 1934, ch. 277, § 602½ (f), 48 Stat. 764.

**§ 2480. Covering of collections into the Treasury.**

All collections except as provided in section 2476 shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States. (53 Stat. 266.)

**DERIVATION**

Act May 10, 1934, ch. 277, § 602½ (g), 48 Stat. 764.

**§ 2481. Effective date of chapter.**

This chapter shall take effect on the first day of that calendar month occurring next after the enactment of this title. (53 Stat. 266.)

**§ 2482. Publicity of returns.**

For provisions with respect to publicity of returns under this chapter, see subsection (a) (2) of section 55. (53 Stat. 266.)

## Chapter 22.—FISH, ANIMAL, AND VEGETABLE OILS

**Sec.**

2490. Imposition of tax.

2491. Rate of tax.

2492. Construction of taxing provision.

2493. Assessment and payment.

2494. Regulations.

**§ 2490. Imposition of tax.**

In addition to any other tax or duty imposed by law, there shall be imposed upon the following articles imported into the United States, unless treaty provisions of the United States otherwise provide, a tax at the rates set forth in section 2491, to be paid by the importer. (53 Stat. 267.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 601 (a), (c), 47 Stat. 259.

**CROSS REFERENCES**

Continuance of taxes, see section 1248 (d) of Title 48, Territories and Insular Possessions.

Payment of proceeds of taxes into Treasury of the Philippines, see note under section 2491 of this title.

#### § 2491. Rate of tax.

(a) Whale oil (except sperm oil), fish oil (except cod oil, cod-liver oil, and halibut-liver oil), marine-animal oil, tallow, inedible animal oils, inedible animal fats, inedible animal greases, fatty acids derived from any of the foregoing, and salts of any of the foregoing; all the foregoing, whether or not refined, sulphonated, sulphated, hydrogenated, or otherwise processed, 3 cents per pound: *Provided*, That no whale oil (except sperm oil), fish oil, or marine animal oil of any kind (whether or not refined, sulphonated, sulphated, hydrogenated or otherwise processed), or fatty acids derived therefrom, shall be admitted to entry, after June 30, 1939, free from the tax herein provided unless such oil was produced on vessels of the United States or in the United States or its possessions, from whales, fish, or marine animals or parts thereof taken and captured by vessels of the United States;

(b) Sesame oil provided for in paragraph 1732 of the Tariff Act of 1930, sunflower oil, rapeseed oil, kapok oil, hempseed oil, perilla oil, fatty acids derived from any of the foregoing or from linseed oil, and salts of any of the foregoing; all the foregoing, whether or not refined, sulphonated, sulphated, hydrogenated, or otherwise processed, 4½ cents per pound;

(c) Any article, merchandise, or combination (except oils specified in section 2470), 10 per centum or more of the quantity by weight of which consists of, or is derived directly or indirectly from, one or more of the products specified above in this paragraph or of the oils, fatty acids, or salts specified in section 2470, a tax at the rate or rates per pound equal to that proportion of the rate or rates prescribed in this paragraph or such section 2470 in respect of such product or products which the quantity by weight of the imported article, merchandise, or combination, consisting of or derived from such product or products, bears to the total weight of the imported article, merchandise, or combination; but there shall not be taxable under this subparagraph any article, merchandise, or combination (other than an oil, fat, or grease, and other than products resulting from processing seeds without full commercial extraction of the oil content), by reason of the presence therein of an oil, fat, or grease which is a natural component of such article, merchandise, or combination and has never had a separate existence as an oil, fat, or grease;

(d) Hempseed, 1.24 cents per pound; perilla seed, 1.38 cents per pound; kapok seed, 2 cents per pound; rapeseed, 2 cents per pound; and sesame seed, 1.18 cents per pound;

(e) The tax on the articles described in this section shall apply only with respect to the importation of such articles after May 10, 1934.

(f) The tax imposed under subsection (b) shall not apply to rapeseed oil imported to be used in the manufacture of rubber substitutes or lubricating oil, and the Commissioner of Customs shall, with the

approval of the Secretary, prescribe methods and regulations to carry out this subsection.

(g) The taxes imposed by section 2490 shall not apply to any article, merchandise, or combination, by reason of the presence therein of any coconut oil produced in Guam or American Samoa, or any direct or indirect derivative of such oil. (53 Stat. 267.)

#### DERIVATION

Act June 6, 1932, ch. 209, § 601(c) (8), as added by act May 10, 1934, ch. 277, § 602, 48 Stat. 762, and amended by acts June 22, 1936, ch. 690, § 701, 49 Stat. 1742; May 28, 1938, ch. 289, § 702(a), 52 Stat. 568.

#### CROSS REFERENCES

Continuance of taxes, see section 1248 (d) of Title 48, Territories and Insular Possessions.

Proceeds of taxes imposed by this section collected on or after Jan. 1, 1939, and accrued prior to July 4, 1946, payment into Treasury of the Philippines, see section 1248 (a) of Title 48, Territories and Insular Possessions.

#### § 2492. Construction of taxing provision.

Nothing in section 2491 shall be construed as imposing a tax in contravention of an obligation undertaken in any trade agreement entered into prior to August 21, 1936, under the authority of section 350 of the Tariff Act of 1930, as amended, ch. 474, 48 Stat. 943 (U. S. C., Title 19, § 1351), or as imposing a tax on the importation of glycerin or stearine pitch or on the importation of any article by reason of any component of such article derived directly or indirectly from a waste not named in section 2491. (53 Stat. 268.)

#### DERIVATION

Act June 22, 1936, ch. 690, § 703, 49 Stat. 1743.

#### § 2493. Assessment and payment.

The tax imposed under section 2490 shall be levied, assessed, collected, and paid in the same manner as a duty imposed by the Tariff Act of 1930, and shall be treated for the purposes of all provisions of law relating to the customs revenue as a duty imposed by such Act, except that—

(1) the value on which such tax shall be based shall be the sum of (A) the dutiable value (under section 503 of such Act) of the article, plus (B) the customs duties, if any, imposed thereon under any provision of law;

(2) for the purposes of section 489 of such Act (relating to additional duties in certain cases of undervaluation) such tax shall not be considered an ad valorem rate of duty or a duty based upon or regulated in any manner by the value of the article, and for the purposes of section 336 of such Act (the so-called flexible tariff provision) such tax shall not be considered a duty;

(3) such tax (except as specifically provided in section 2491 (g) with reference to certain products of Guam and American Samoa) shall be imposed in full notwithstanding any provision of law granting exemption from or reduction of duties to products of any possession of the United States. (53 Stat. 268.)

#### DERIVATION

Act June 6, 1932, ch. 209, § 601 (b), 47 Stat. 259, as amended by act May 28, 1938, ch. 289, § 702 (b), 52 Stat. 569.

**§ 2494. Regulations.**

The Secretary shall prescribe and publish all needful rules and regulations for the enforcement of this chapter. (53 Stat. 268.)

**Chapter 23.—NARCOTICS****SUBCHAPTER A.—OPIUM AND COCA LEAVES**

- Sec.
- 2550. Tax.
- 2551. Exemptions.
- 2552. Stamps.
- 2553. Packages.
- 2554. Order forms.
- 2555. Records, statements, and returns.
- 2556. Inspection and copies of returns, duplicate order forms, and prescriptions.
- 2557. Penalties.
- 2558. Forfeitures.
- 2559. Regulations.
- 2560. Personnel.
- 2561. Laws unaffected.
- 2562. Other laws applicable.
- 2563. Territorial extent of law.
- 2564. Administration in insular possessions and Canal Zone.
- 2565. Definitions.

**SUBCHAPTER B.—OPIUM FOR SMOKING**

- 2567. Tax.
- 2568. Stamps.
- 2569. Manufacturers.
- 2570. Penalty.
- 2571. Forfeiture.

**SUBCHAPTER C.—MARIHUANA**

- 2590. Tax.
- 2591. Order forms.
- 2592. Stamps.
- 2593. Unlawful possession.
- 2594. Records, statements, and returns.
- 2595. Inspection of returns, order forms, and prescriptions.
- 2596. Penalties.
- 2597. Burden of proof.
- 2598. Forfeitures.
- 2599. Regulations.
- 2600. Delegation of powers.
- 2601. Other laws applicable.
- 2602. Territorial extent of law.
- 2603. Administration in insular possessions.
- 2604. Definitions.

**SUBCHAPTER D.—DELEGATION OF POWERS AND DUTIES BY THE SECRETARY**

- 2606. Authorization.

**SUBCHAPTER A.—OPIUM AND COCA LEAVES****§ 2550. Tax—(a) Rate.**

There shall be levied, assessed, collected, and paid upon opium, coca leaves, any compound, salt, derivative, or preparation thereof, produced in or imported into the United States, and sold, or removed for consumption or sale, an internal revenue tax at the rate of 1 cent per ounce, and any fraction of an ounce in a package shall be taxed as an ounce. The tax imposed by this subsection shall be in addition to any import duty imposed on the aforesaid drugs.

**(b) By whom paid.**

The tax imposed by subsection (a) shall be paid by the importer, manufacturer, producer, or compounder.

**(c) How paid—(1) Stamps.**

The tax imposed by subsection (a) shall be represented by appropriate stamps, to be provided by the Secretary.

**(2) Assessment.**

For assessment in case of omitted taxes payable by stamps, see section 3311 and section 3640.

**(3) Other methods.**

Whether or not the method of collecting any tax imposed by this section or by section 3220 is specifically provided therein, any such tax may, under regulations prescribed by the Secretary, be collected by stamp, coupon, serial-numbered ticket, or such other reasonable device or method as may be necessary or helpful in securing a complete and prompt collection of the tax. All administrative and penalty provisions of subchapters A, B and C of chapter 11, in so far as applicable, shall apply to the collection of any tax which the Secretary determines or prescribes shall be collected in such manner.

**(4) Cross reference.**

For authority of the Secretary to delegate such powers and duties, see subchapter D.

**(d) Registration and special tax.**

For requirements on importers, manufacturers, producers, dealers and practitioners to register and pay special tax, see part V of subchapter A of chapter 27.

(53 Stat. 269.)

**DERIVATION**

Subsections (a), (b) from act Dec. 17, 1914, ch. 1, § 1, 38 Stat. 785, as amended by act Feb. 26, 1926, ch. 27, § 703, 44 Stat. 97.

Subsection (c) (1) from act Dec. 17, 1914, ch. 1, § 1, 38 Stat. 785, as amended by acts Feb. 26, 1926, ch. 27, § 703, 44 Stat. 97, and Mar. 3, 1927, ch. 238, § 4 (a), 44 Stat. 1382. Act Dec. 17, 1914, ch. 1, § 1, was also amended by acts Feb. 24, 1919, ch. 18, § 1006, 40 Stat. 1130, Nov. 23, 1921, ch. 136, § 1005, 42 Stat. 298; June 2, 1924, ch. 234, § 705, 43 Stat. 328.

Subsection (c) (3) from act Feb. 26, 1926, ch. 27, § 1119, 44 Stat. 120, as amended by act Mar. 3, 1927, ch. 348, § 4 (a), 44 Stat. 1382.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 1022, 43 Stat. 347.  
1921—Nov. 23, 1921, ch. 136, § 1301, 42 Stat. 308.

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 2551. Exemptions—(a) Preparations of limited narcotic content.**

The provisions of this subchapter and part V of subchapter A of chapter 27 shall not be construed to apply to the manufacture, sale, distribution, giving away, dispensing, or possession of preparations and remedies which do not contain more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them in one fluid ounce, or, if a solid or semisolid preparation, in one avoirdupois ounce; or to liniments, ointments, or other preparations which are prepared for external use, only, except liniments, ointments, and other preparations which contain cocaine or any of its salts or alpha or beta eucaine or any of their salts or any synthetic substitute for them: *Provided*, That such

remedies and preparations are manufactured, sold, distributed, given away, dispensed, or possessed as medicines and not for the purpose of evading the intentions and provisions of this subchapter and said part V: *Provided further*, That any manufacturer, producer, compounder, or vendor (including dispensing physicians) of the preparations and remedies mentioned in this section lawfully entitled to manufacture, produce, compound, or vend such preparations and remedies, shall keep a record of all sales, exchanges, or gifts of such preparations and remedies in such manner as the Secretary shall direct. Such record shall be preserved for a period of two years in such a way as to be readily accessible to inspection by any officer, agent or employee of the Treasury Department duly authorized for that purpose, and the State, Territorial, District, municipal, and insular officers named in section 2556, and every such person so possessing or disposing of such preparations and remedies shall register as required in section 3221 and, if he is not paying a tax under section 3220, he shall pay a special tax of \$1 for each year, or fractional part thereof, in which he is engaged in such occupation, to the collector of the district in which he carries on such occupation as provided in part V of subchapter A of chapter 27.

(b) Decocainized coca leaves.

The provisions of this subchapter and part V of subchapter A of chapter 27 shall not apply to decocainized coca leaves or preparations made therefrom, or to other preparations of coca leaves which do not contain cocaine.

(c) Government and State officials—(1) Stamping drugs.

Officials of the United States, Territorial, District of Columbia, or insular possessions, State or municipal governments, who in the exercise of their official duties engage in any of the business described in part V of subchapter A of chapter 27, shall not be required to stamp the drugs mentioned in section 2550 (a), as hereinafter prescribed, but their right to this exemption shall be evidenced in such manner as the Secretary may by regulations prescribe.

(2) Registration and payment of tax.

For exemption of officials of the United States, Territorial, District of Columbia, or insular possessions, State or municipal governments from the requirements as to registration and the payment of special taxes, see subsection (b) of section 3222.

(3) Cross reference.

For authority of the Secretary to delegate such powers and duties, see subchapter D

(53 Stat. 270.)

DERIVATION

Subsection (a) from acts Dec. 17, 1914, ch. 1, § 6, 38 Stat. 789, as amended by acts Feb. 26, 1926, ch. 27, § 704, 44 Stat. 98, and Mar. 3, 1927, ch. 348, § 4 (a), 44 Stat. 1382; June 22, 1936, ch. 690, § 806 (b), 49 Stat. 1745.

Subsection (b) from acts Dec. 17, 1914, ch. 1, § 6, 38 Stat. 789, as amended by act Feb. 24, 1919, ch. 18, § 1007, 40 Stat. 1132; Feb. 26, 1926, ch. 27, § 704, 44 Stat. 98. Act Dec. 17, 1914, ch. 1, § 6, was also amended by acts Feb. 24, 1919, ch. 18, § 1007, 40 Stat. 1132; Nov. 23, 1921, ch. 136, § 1006, 42 Stat. 300; June 2, 1924, ch. 234, § 706, 43 Stat. 330.

Subsection (c) (1) from act Dec. 17, 1914, ch. 1, § 1, 38 Stat. 785, as amended by acts Feb. 26, 1926, ch. 27,

§ 703, 44 Stat. 97, and Mar. 3, 1927, ch. 348, § 4 (a), 44 Stat. 1382. Act Dec. 17, 1914, ch. 1, § 1, was also amended by acts Feb. 24, 1919, ch. 18, § 1006, 40 Stat. 1130; Nov. 23, 1921, ch. 136, § 1005, 42 Stat. 298; June 2, 1924, ch. 234, § 705, 43 Stat. 328.

CROSS REFERENCE

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

§ 2552. Stamps—(a) Affixing.

The stamps provided in subsection (c) (1) of section 2550 shall be so affixed to the bottle or other container as to securely seal the stopper, covering, or wrapper thereof.

(b) Other laws applicable.

All the provisions of law relating to the engraving, issuance, sale, accountability, cancellation, and destruction of tax-paid stamps provided for in the internal revenue laws shall, in so far as necessary, be extended and made to apply to the stamps provided in subsection (c) (1) of section 2550.

(c) Cross reference.

For general provisions relating to stamps, see part I of subchapter A of chapter 28.

(53 Stat. 271.)

DERIVATION

Act Dec. 17, 1914, ch. 1, § 1, 38 Stat. 785, as amended by act Feb. 26, 1926, ch. 27, § 703, 40 Stat. 97, 98

CROSS REFERENCE

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

§ 2553. Packages—(a) General requirement.

It shall be unlawful for any person to purchase, sell, dispense, or distribute any of the drugs mentioned in section 2550 (a) except in the original stamped package or from the original stamped package; and the absence of appropriate tax-paid stamps for any of the aforesaid drugs shall be prima facie evidence of a violation of this subsection by the person in whose possession same may be found; and the possession of any original stamped package containing any of the aforesaid drugs by any person who has not registered and paid special taxes as required by sections 3221 and 3220 shall be prima facie evidence of liability to such special tax.

(b) Exceptions in case of registered practitioners.

The provisions of subsection (a) shall not apply—

(1) Prescriptions.

To any person having in his or her possession any of the drugs mentioned in section 2550 (a) which have been obtained from a registered dealer in pursuance of a prescription, written for legitimate medical uses, issued by a physician, dentist, veterinary surgeon, or other practitioner registered under section 3221; and where the bottle or other container in which such drug may be put up by the dealer upon said prescription bears the name and registry number of the druggist, serial number of prescription, name and address of the patient, and name, address, and registry number of the person writing said prescription; or

(2) Dispensations direct to patients.

To the dispensing, or administration, or giving away of any of the aforesaid drugs to a patient by



a registered physician, dentist, veterinary surgeon, or other practitioner in the course of his professional practice, and where said drugs are dispensed or administered to the patient for legitimate medical purposes, and the record kept as required by this subchapter of the drugs so dispensed, administered, distributed, or given away. (53 Stat. 271.)

#### DERIVATION

Act Dec. 17, 1914, ch. 1, § 1, 38 Stat. 785, as amended by act Feb. 26, 1926, ch. 27, § 703, 44 Stat. 97. Act Dec. 17, 1914, ch. 1, § 1, was also amended by acts Feb. 24, 1919, ch. 18, § 1006, 40 Stat. 1130; Nov. 23, 1921, ch. 136, § 1005, 42 Stat. 298; June 2, 1924, ch. 234, § 705, 43 Stat. 328.

#### CROSS REFERENCE

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

### § 2554. Order forms—(a) General requirement.

It shall be unlawful for any person to sell, barter, exchange, or give away any of the drugs mentioned in section 2550 (a) except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Secretary.

#### (b) Exception in case of Virgin Islands.

The President is authorized and directed to issue such Executive orders as will permit those persons in the Virgin Islands of the United States lawfully entitled to sell, deal in, dispense, prescribe, and distribute the drugs mentioned in section 2550 (a), to obtain said drugs from persons registered under section 3221 within the continental United States for legitimate medical purposes, without regard to the order forms described in this section.

#### (c) Other exceptions.

Nothing contained in this section, section 2563, or section 2564 shall apply—

#### (1) Use of drugs in professional practice.

To the dispensing or distribution of any of the drugs mentioned in section 2550 (a) to a patient by a physician, dentist, or veterinary surgeon registered under section 3221 in the course of his professional practice only: *Provided*, That such physician, dentist, or veterinary surgeon shall keep a record of all such drugs dispensed or distributed, showing the amount dispensed or distributed, the date, and the name and address of the patient to whom such drugs are dispensed or distributed, except such as may be dispensed or distributed to a patient upon whom such physician, dentist, or veterinary surgeon shall personally attend; and such record shall be kept for a period of two years from the date of dispensing or distributing such drugs, subject to inspection, as provided in section 2556.

#### (2) Prescriptions.

To the sale, dispensing, or distribution of any of the drugs mentioned in section 2550 (a) by a dealer to a consumer under and in pursuance of a written prescription issued by a physician, dentist, or veterinary surgeon registered under section 3221: *Provided, however*, That such prescription shall be dated as of the day on which signed and shall be signed by the physician, dentist, or veterinary surgeon who shall have issued the same: *And provided further*,

That such dealer shall preserve such prescription for a period of two years from the day on which such prescription is filled in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials mentioned in section 2556.

#### (3) Exportation.

To the sale, exportation, shipment, or delivery of any of the drugs mentioned in section 2550 (a) by any person within the United States or any Territory or the District of Columbia or any of the insular possessions of the United States to any person in any foreign country, regulating their entry in accordance with such regulations for importation thereof into such foreign country as are prescribed by said country, such regulations to be promulgated from time to time by the Secretary of State of the United States.

#### (4) Government and State officials.

To the sale, barter, exchange, or giving away of any of the drugs mentioned in section 2550 (a) to any officer of the United States Government or of any State, Territorial, district, county, or municipal or insular government lawfully engaged in making purchases thereof for the various departments of the Army and Navy, the Public Health Service, and for Government, State, Territorial, district, county, or municipal or insular hospitals or prisons.

#### (d) Preservation.

Every person who shall accept any order required under subsection (a), and in pursuance thereof shall sell, barter, exchange, or give away any of the drugs mentioned in section 2550 (a), shall preserve such order for a period of two years in such a way as to be readily accessible to inspection by any officer, agent, or employee of the Treasury Department duly authorized for that purpose, and the State, Territorial, District, municipal, and insular officials named in section 2556.

#### (e) Duplicates.

Every person who shall give an order as provided in this section to any other person for any of the drugs mentioned in section 2550 (a) shall, at or before the time of giving such order, make or cause to be made a duplicate thereof on a form to be issued in blank for that purpose by the Secretary, and in case of the acceptance of such order, shall preserve such duplicate for said period of two years in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials mentioned in section 2556.

#### (f) Supply.

The Secretary shall cause suitable forms to be prepared for the purposes above mentioned, and shall cause the same to be distributed to collectors for sale by them to those persons who shall have registered and paid the special tax as required by sections 3221 and 3220 in their districts, respectively; and no collector shall sell any of such forms to any persons other than a person who has registered and paid the special tax as required by said sections in his district. The price at which such forms shall be sold by said collectors shall be fixed by the Secretary but shall not exceed the sum of \$1 per hundred. Every

collector shall keep an account of the number of such forms sold by him, the names of the purchasers, and the number of such forms sold to each of such purchasers. Whenever any collector shall sell any of such forms, he shall cause the name of the purchaser thereof to be plainly written or stamped thereon before delivering the same; and no person other than such purchaser shall use any of said forms bearing the name of such purchaser for the purpose of procuring any of the aforesaid drugs, or furnish any of the forms bearing the name of such purchaser to any person with intent thereby to procure the shipment or delivery of any of the aforesaid drugs.

**(g) Unlawful use.**

It shall be unlawful for any person to obtain by means of said order forms any of the aforesaid drugs for any purpose other than the use, sale, or distribution thereof by him in the conduct of a lawful business in said drugs or in the legitimate practice of his profession.

**(h) Cross references—(1) Issuance in Puerto Rico and the Philippine Islands.**

For issuance of order forms in Puerto Rico and the Philippine Islands, see subsection (a) of section 2564.

**(2) Transfer of duties.**

For the authority of the Secretary to delegate such powers and duties, see subchapter D.

(53 Stat. 272.)

**DERIVATION**

Act Dec. 17, 1914, ch. 1, § 2, 38 Stat. 786, as amended by acts Jan. 22, 1927, ch. 51, 44 Stat. 1023, and Mar. 3, 1927, ch. 348, § 4 (a), 44 Stat. 1382.

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 2555. Records, statements, and returns—(a) General requirement.**

Every person liable to any tax imposed by this subchapter or section 3220, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Secretary may from time to time prescribe.

**(b) Books and monthly returns of importers, manufacturers, and wholesale dealers.**

Importers, manufacturers, and wholesale dealers shall keep such books and records and render such monthly returns in relation to the transactions in the aforesaid drugs as the Secretary may by regulations require.

**(c) Returns by registrants of drugs received—(1) Requirement.**

Any person who shall be registered in any internal revenue district under the provisions of section 3221 shall, whenever required so to do by the collector of the district, render to the said collector a true and correct statement or return, verified by affidavit, setting forth the quantity of the aforesaid drugs received by him in said internal revenue district during such period immediately preceding the demand of the collector, not exceeding three months, as the said collector may fix and determine; the names of the persons from whom the said drugs were received; the

quantity in each instance received from each of such persons, and the date when received.

**(2) Cross reference.**

For authority of the Secretary to delegate such powers and duties, see subchapter D.

(53 Stat. 273.)

**DERIVATION**

Subsection (a) from act Feb. 26, 1926, ch. 27, § 1102 (a), 44 Stat. 112, as amended by act Mar. 3, 1927, ch. 348, § 4 (a), 44 Stat. 1382. Provisions similar to subsection (a) were contained in acts June 2, 1924, ch. 234, § 1002 (a), 43 Stat. 339; Nov. 23, 1921, ch. 136, § 1300, 42 Stat. 308; Feb. 24, 1919, ch. 18, § 1305, 40 Stat. 1142.

Subsection (b) from act Dec. 17, 1914, ch. 1, § 1, 38 Stat. 785, as amended by acts Feb. 26, 1926, ch. 27, § 703, 44 Stat. 98, and Mar. 3, 1927, ch. 348, § 4 (a), 44 Stat. 1382. Act Dec. 17, 1914, ch. 1, § 1, was also amended by acts Feb. 24, 1919, ch. 18, § 1006, 40 Stat. 1130; Nov. 23, 1921, ch. 136, § 1005, 42 Stat. 298; June 2, 1924, ch. 234, § 705, 43 Stat. 328.

Subsection (c) (1) from act Dec. 17, 1914, ch. 1, § 3, 38 Stat. 787.

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 2556. Inspection and copies of returns, duplicate order forms, and prescriptions—(a) Requirements.**

The duplicate order forms and the prescriptions required to be preserved under the provisions of section 2554 (c) (2) and (e), and the statements or returns filed in the office of the collector of the district, under the provisions of section 2555 (c), shall be open to inspection by officers, agents, and employees of the Treasury Department duly authorized for that purpose; and such officials of any State or Territory, or of any organized municipality therein, or of the District of Columbia, or any insular possession of the United States, as shall be charged with the enforcement of any law or municipal ordinance regulating the sale, prescribing, dispensing, dealing in, or distribution of the aforesaid drugs. Each collector is authorized to furnish, upon written request, certified copies of any of the said statements or returns filed in his office to any of such officials of any State or Territory or organized municipality therein, or the District of Columbia, or any insular possession of the United States, as shall be entitled to inspect the said statements or returns filed in the office of the said collector, upon the payment of a fee of \$1 for each one hundred words or fraction thereof in the copy or copies so requested.

**(b) Cross reference.**

For authority of the Secretary to delegate such powers and duties, see subchapter D.

(53 Stat. 274.)

**DERIVATION**

Act Dec. 17, 1914, ch. 1, § 5, 38 Stat. 788.

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 2557. Penalties—(a) Unlawful disclosure of information on returns or order forms.**

Any person who shall disclose the information contained in the statements or returns required under subsection (c) of section 2555 or in the duplicate order forms required in subsection (e) of section 2554, except as expressly provided in section 2556, and

except for the purpose of enforcing the provisions of this subchapter or part V of subchapter A of chapter 27, or for the purpose of enforcing any law of any State or Territory or the District of Columbia, or any insular possession of the United States, or ordinance of any organized municipality therein, regulating the sale, prescribing, dispensing, dealing in, or distribution of the drugs mentioned in section 2550 (a), shall, on conviction, be fined or imprisoned as provided by subsection (b) (1).

**(b) Violations in general.**

(1) Any person who violates or fails to comply with any of the requirements of this subchapter or part V of subchapter A of chapter 27, shall, on conviction, be fined not more than \$2,000 or be imprisoned not more than five years, or both, in the discretion of the court.

(2) Any person required under this subchapter or section 3220 to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this subchapter or section 3220, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(3) Any person required under this subchapter or section 3220 of chapter 27 to collect, account for and pay over any tax imposed by this subchapter or said section 3220, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this subchapter or section 3220 or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(4) Any person who willfully fails to pay, collect, or truthfully account for and pay over, any tax imposed by this subchapter or section 3220 or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this paragraph for any offense for which a penalty may be assessed under authority of section 3612.

(5) A person who, after having been convicted of selling, importing, or exporting, or conspiring to sell, import, or export, opium, coca leaves, cocaine, or any salt, derivative, or preparation of opium, coca leaves, or cocaine, again sells, imports, or exports, or conspires to sell, import, or export, any of the said narcotic drugs, in violation of the laws of the United States, shall, upon conviction of such second offense,

be fined not more than \$5,000 or imprisoned in a Federal penitentiary for not more than ten years, or both, in the discretion of the court, whenever the fact of such previous conviction is established in the manner prescribed in paragraph 7 of this subsection.

(6) A person who, after having been two times convicted of selling, importing, or exporting, or conspiring to sell, import, or export, opium, coca leaves, cocaine, or any salt, derivative, or preparation of opium, coca leaves, or cocaine, again sells, imports, or exports or conspires to sell, import, or export, any of the said narcotic drugs, in violation of the laws of the United States, shall, upon conviction of such third offense, or any offense subsequent thereto, be fined not more than \$10,000 or imprisoned in a Federal penitentiary for not more than twenty years, or both, in the discretion of the court, whenever the fact of such previous convictions is established in the manner prescribed in paragraph 7 of this subsection.

(7) Whenever it shall appear, after conviction and before or after sentence, that a person convicted of unlawfully selling, importing, or exporting, or conspiring unlawfully to sell, import, or export, any of the narcotic drugs enumerated in paragraph (5) has previously been convicted of unlawfully selling, importing, or exporting, or conspiring unlawfully to sell, import, or export, any of said narcotic drugs, in violation of the laws of the United States, it shall be the duty of the United States district attorney for the district in which such subsequent conviction was had to file an information alleging that the defendant has previously been so convicted, and further alleging the number of such previous convictions. The court in which the defendant was convicted shall cause the said defendant, whether confined in prison or otherwise, to appear before it and shall apprise him of the allegations of the information and of his right to a trial by jury as to the truth thereof. The court shall inquire of the defendant whether he is the person who has previously been convicted. If the defendant states he is not such person, or if he refuses to answer or remains silent, a plea of not guilty shall be entered by the court, and a jury shall be empaneled to determine whether the defendant is the person alleged in the information to have previously been convicted, and the number of such previous convictions. If after a trial on the sole issue of the truth of such allegations the jury determines that the defendant is in fact the person previously convicted as charged in the information, or if he acknowledges in open court, after being duly cautioned as to his rights, that he is such person, he shall be punished as prescribed in paragraphs 5 or 6 of this subsection, as the case may be, and the previous sentence of the court, if any, shall be vacated and there shall be deducted from the new sentence the amount of time actually served under the sentence so vacated.

(8) The term "person" as used in paragraphs (2) (3) and (4) includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

**(c) Cross references.**

For definition of "person" as used generally in this subchapter, see subsection (a) of section 3228.

For general penalty provisions, see part III of subchapter A of chapter 28 and section 3793 of chapter 38.

(53 Stat. 274.)

**DERIVATION**

Subsections (a), (b) (1) from act Dec. 17, 1914, ch. 1, §§ 5, 9, 38 Stat. 788, 789.

Subsection (b) (2)–(4) from act Feb. 26, 1926, ch. 27, § 1114 (a), (b), (d), 44 Stat. 116.

Subsection (b) (5)–(7) from act Aug. 12, 1937, ch. 598, §§ 1–3, 50 Stat. 627.

Subsection (b) (8) from act Feb. 26, 1926, ch. 27, § 1114 (f), 44 Stat. 117.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 1017, 43 Stat. 343.

1921—Nov. 23, 1921, ch. 136, § 253, 42 Stat. 268.

1919—Feb. 24, 1919, ch. 18, § 253, 40 Stat. 1085.

1916—Sept. 8, 1916, ch. 463, §§ 14, 18, 39 Stat. 772, 775, as section 18 was amended by act Oct. 3, 1917, ch. 63, § 1209, 40 Stat. 336.

1914—Oct. 22, 1914, ch. 331, § 23, 38 Stat. 764.

1913—Oct. 3, 1913, ch. 16, § II, F, G, 38 Stat. 171, 177.

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 2558. Forfeitures—(a) Unstamped packages.**

All unstamped packages of the drugs mentioned in section 2550 (a) found in the possession of any person, except as provided in this subchapter, shall be subject to seizure and forfeiture, and all the provisions of internal revenue laws relating to searches, seizures, and forfeiture of unstamped articles shall be extended to and made to apply to the articles taxed under this subchapter and the persons upon whom the taxes under this subchapter or part V of subchapter A of chapter 27 are imposed.

**(b) Seized opium—Confiscation and disposal—(1) Procedure.**

All opium, its salts, derivatives, and compounds, and coca leaves, salts, derivatives, and compounds thereof, seized by the United States Government from any person or persons charged with any violation of this chapter or part V of subchapter A of chapter 27, or the Act of February 9, 1909, ch. 100, 35 Stat. 614 as amended by the act of Jan. 17, 1914, ch. 9, 38 Stat. 275 (U. S. C., Title 21, §§ 171–184), shall upon conviction of the person or persons from whom seized be confiscated by and forfeited to the United States; and the Secretary is authorized to deliver for medical or scientific purposes to any department, bureau, or other agency of the United States Government, upon proper application therefor under such regulation as may be prescribed by the Secretary, any of the drugs so seized, confiscated, and forfeited to the United States. The provisions of this paragraph shall also apply to any of the aforesaid drugs seized or coming into the possession<sup>1</sup> of the United States in the enforcement of this chapter, part V of subchapter A of chapter 27, or any of the above mentioned acts where the owner or owners thereof are unknown. None of the aforesaid drugs coming into possession<sup>1</sup> of the United States under the operation of said chapter, part, or acts, or the provisions of this paragraph, shall be destroyed without certification by a committee appointed by the

Secretary that they are of no value for medical or scientific purposes.

**(2) Cross reference.**

For authority of the Secretary to delegate such powers and duties, see subchapter D.

**(c) Cross reference.**

For general forfeiture provisions, see part III of subchapter A of chapter 28 and section 3793 of chapter 38.

(53 Stat. 276.)

<sup>1</sup> So in original. Probably should read "possession."

**DERIVATION**

Subsection (a) from act Dec. 17, 1914, ch. 1, § 1, 38 Stat. 785, as amended by act Feb. 26, 1926, ch. 27, § 703, 44 Stat. 98. Act Dec. 17, 1914, ch. 1, § 1, was also amended by acts Feb. 24, 1919, ch. 18, § 1006, 40 Stat. 1130; Nov. 23, 1921, ch. 136, § 1005, 42 Stat. 298; June 2, 1924, ch. 234, § 705, 43 Stat. 328.

Subsection (b) (1) from act Feb. 26, 1926, ch. 27, § 705, 44 Stat. 99, as amended by act Mar. 3, 1927, ch. 348, § 4 (a), 44 Stat. 1382.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 707, 43 Stat. 331.

1921—Nov. 23, 1921, ch. 136, § 1007, 42 Stat. 301.

1919—Feb. 24, 1919, ch. 18, § 1008, 40 Stat. 1132.

**CROSS REFERENCES**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

Vessels, vehicles, and aircrafts forfeited, see section 781 et seq. of Title 49, Transportation.

**§ 2559. Regulations—(a) Making and publishing.**

The Secretary shall make, prescribe, and publish all needful rules and regulations for carrying the provisions of this subchapter and part V of subchapter A of chapter 27 into effect.

**(b) Cross reference.**

For authority of the Secretary to delegate such powers and duties, see subchapter D.

(53 Stat. 277.)

**DERIVATION**

Acts Dec. 17, 1914, ch. 1, § 1, 38 Stat. 785; Feb. 26, 1926, ch. 27, §§ 703, 1101, 44 Stat. 98, 111, as amended by act Mar. 3, 1927, ch. 348, § 4 (a), 44 Stat. 1382. Act Dec. 17, 1914, ch. 1, § 1, as amended by acts Feb. 24, 1919, ch. 18, § 1006, 40 Stat. 1130; Nov. 23, 1921, ch. 136, § 1005, 42 Stat. 298; June 2, 1924, ch. 234, § 705, 43 Stat. 328.

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 2560. Personnel—(a) Appointment.**

The Secretary is authorized to appoint such agents, deputy collectors, inspectors, chemists, assistant chemists, clerks, and messengers in the field and in the Bureau of Internal Revenue in the District of Columbia as may be necessary to enforce the provisions of this subchapter and part V of subchapter A of chapter 27.

**(b) Cross reference.**

For authority of the Secretary to delegate such powers and duties, see subchapter D.

(53 Stat. 277.)

**DERIVATION**

Act Dec. 17, 1914, ch. 1, § 10, 38 Stat. 789, as amended by act Mar. 3, 1927, ch. 348, § 4 (a), 44 Stat. 1382.

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 2561. Laws unaffected.**

Nothing contained in this subchapter or part V of subchapter A of chapter 27 shall be construed to impair, alter, amend, or repeal any of the provisions of the Act of Congress approved June thirtieth, nineteen hundred and six, entitled "An Act for preventing the manufacture, sale, or transportation of adulterated or misbranded, or poisonous, or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," ch. 3915, 34 Stat. 768 (U. S. C., Title 21, §§ 1-15), and any amendment thereof, or of the Act approved February ninth, nineteen hundred and nine, entitled "An Act to prohibit the importation and use of opium for other than medicinal purposes," ch. 100, 35 Stat. 614 (U. S. C., Title 21; §§ 171-185), and any amendment thereof. (53 Stat. 277.)

**DERIVATION**

Act Dec. 17, 1914, ch. 1, § 12, 38 Stat. 790.

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 2562. Other laws applicable—(a) General.**

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, shall be extended to and made a part of this subchapter and sections 3220, 3221, 3222, and subsection (a) of section 3224 of chapter 27.

**(b) Cross reference.**

For provisions making applicable the internal revenue laws relating to the engraving, issuance, sale, accountability, cancellation, and destruction of tax-paid stamps, see subsection (b) of section 2552.

(53 Stat. 277.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 1100, 44 Stat. 111.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 1000, 43 Stat. 339.

1921—Nov. 23, 1921, ch. 136, § 1300, 42 Stat. 308.

1919—Feb. 24, 1919, ch. 18, § 1305, 40 Stat. 1142.

**§ 2563. Territorial extent of law.**

The provisions of this subchapter and part V of subchapter A of chapter 27 shall apply to the United States, the District of Columbia, the Territory of Alaska, the Territory of Hawaii, the insular possessions of the United States, and the Canal Zone. (53 Stat. 277.)

**DERIVATION**

Act Dec. 17, 1914, ch. 1, § 2, 38 Stat. 787.

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 2564. Administration in insular possessions and Canal Zone—(a) Puerto Rico and the Philippine Islands.**

In Puerto Rico and the Philippine Islands the administration of this subchapter and part V of subchapter A of chapter 27, the collection of the special tax imposed by section 3220 of chapter 27, and the issuance of the order forms specified in section 2554 shall be performed by the appropriate internal revenue officers of those governments, and all

revenues collected thereunder in Puerto Rico and the Philippine Islands shall accrue intact to the general governments thereof, respectively. The courts of first instance in the Philippine Islands shall possess and exercise jurisdiction in all cases arising in said islands under this subchapter and said part V of chapter 27.

**(b) Canal Zone.**

The President is authorized and directed to issue such Executive orders as will carry into effect in the Canal Zone the intent and purpose of this subchapter and part V of subchapter A of chapter 27 by providing for the registration and the imposition of a special tax upon all persons in the Canal Zone who produce, import, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, or preparations.

**(c) Virgin Islands.**

For authority of the President to exempt persons in the Virgin Islands from the order form requirements, see subsection (b) of section 2554.

(53 Stat. 277.)

**DERIVATION**

Act Dec. 17, 1914, ch. 1, § 2, 38 Stat. 787, as amended by act May 17, 1932, ch. 190, 47 Stat. 158.

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 2565. Definitions.**

For definitions of the following, see the subsections of section 3228 indicated below:

**Person.**

Subsection (a).

**Importer, manufacturer, or producer.**

Subsection (b).

**Wholesale dealer.**

Subsection (c).

**Retail dealer.**

Subsection (d).

(53 Stat. 278.)

**SUBCHAPTER B.—OPIUM FOR SMOKING****§ 2567. Tax—(a) Rate.**

An internal revenue tax of \$300 per pound shall be levied and collected upon all opium manufactured in the United States for smoking purposes.

**(b) How paid—(1) Stamps.**

All opium prepared for smoking manufactured in the United States shall be duly stamped in such a permanent manner as to denote the payment of the internal revenue tax thereon.

**(2) Assessment.**

For assessment in case of omitted taxes payable by stamp, see section 3311 of chapter 28 and section 3640 of chapter 35.

(53 Stat. 278.)

**DERIVATION**

Act Jan. 17, 1914, ch. 10, §§ 1, 3, 38 Stat. 277, 278.

**SIMILAR PROVISIONS**

1890—Oct. 1, 1890, ch. 1244, §§ 36, 38, 26 Stat. 620, 621.

## § 2568. Stamps.

The provisions of law covering the engraving, issue, sale, accountability, effacement, cancellation, and the destruction of stamps relating to tobacco and snuff, as far as applicable, shall apply to stamps provided for by paragraph (1) of subsection (b) of the preceding section. (53 Stat. 278.)

## DERIVATION

Act Jan. 17, 1914, ch. 10, § 4, 38 Stat. 278.

## SIMILAR PROVISIONS

1890—Oct. 1, 1890, ch. 1244, § 39, 26 Stat. 621.

## § 2569. Manufacturers—(a) Definition.

Every person who prepares opium suitable for smoking purposes from crude gum opium, or from any preparation thereof, or from the residue of smoked or partially smoked opium, commonly known as yen shee, or from any mixture of the above, or any of them, shall be regarded as a manufacturer of smoking opium within the meaning of this subchapter.

## (b) Bond.

Every manufacturer of opium suitable for smoking purposes shall file with the collector of the district in which his manufactory is located such bonds as the Secretary may by regulation require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector, and in a penal sum of not less than \$100,000; and the sum of said bond may be increased from time to time and additional sureties required, at the discretion of the collector or under instructions of the Secretary. No person shall engage in such manufacture who has not given the bond required by the Secretary.

## (c) Citizenship.

No person shall engage in the manufacture of opium suitable for smoking purposes who is not a citizen of the United States.

## (d) Other requirements.

Every manufacturer of opium suitable for smoking purposes shall—

## (1) Notices and inventories.

File with the collector of the district in which his manufactory is located such notices and inventories,

## (2) Books and returns.

Keep such books and render such returns of material and products,

## (3) Signs and factory number.

Put up such signs and affix such number to his factory, and

## (4) Conduct of business.

Conduct his business under such surveillance of officers and agents as the Secretary may by regulation require.

## (5) Cross reference.

For authority of the Secretary to delegate such powers and duties, see subchapter D.

(53 Stat. 278.)

## DERIVATION

Act Jan. 17, 1914, ch. 10, § 1, 38 Stat. 277, as amended by act Mar. 3, 1927, ch. 348, § 4 (a), 44 Stat. 1382.

## SIMILAR PROVISIONS

1890—Oct. 1, 1890, ch. 1244, §§ 36, 37, 26 Stat. 620.

## § 2570. Penalty.

A penalty of not less than \$10,000 or imprisonment for not less than five years, or both, in the discretion of the court, shall be imposed for each and every violation of this subchapter relating to opium by any person or persons. (53 Stat. 279.)

## DERIVATION

Act Jan. 17, 1914, ch. 10, § 5, 38 Stat. 278.

## SIMILAR PROVISIONS

1890—Oct. 1, 1890, ch. 1244, § 40, 26 Stat. 621.

## § 2571. Forfeiture.

All opium prepared for smoking wherever found within the United States without the stamps required by this subchapter shall be forfeited and destroyed. (53 Stat. 279.)

## DERIVATION

Act Jan. 17, 1914, ch. 10, § 5, 38 Stat. 278.

## SIMILAR PROVISIONS

1897—Mar. 3, 1897, ch. 394, 29 Stat. 695.

## CROSS REFERENCE

Vessels, vehicles, and aircrafts forfeited, see section 781 et seq. of Title 49, Transportation.

## SUBCHAPTER C.—MARIHUANA

## § 2590. Tax—(a) Rate.

There shall be levied, collected, and paid upon all transfers of marihuana which are required by section 2591 to be carried out in pursuance of written order forms taxes at the following rates:

## (1) Transfers to special taxpayers.

Upon each transfer to any person who has paid the special tax and registered under sections 3230 and 3231, \$1 per ounce of marihuana or fraction thereof.

## (2) Transfers to others.

Upon each transfer to any person who has not paid the special tax and registered under sections 3230 and 3231, \$100 per ounce of marihuana or fraction thereof.

## (b) By whom paid.

Such tax shall be paid by the transferee at the time of securing each order form and shall be in addition to the price of such form. Such transferee shall be liable for the tax imposed by this section but in the event that the transfer is made in violation of section 2591 without an order form and without payment of the transfer tax imposed by this section, the transferor shall also be liable for such tax.

## (c) How paid.

## (1) Stamps.

Payment of the tax herein provided shall be represented by appropriate stamps to be provided by the Secretary.

## (2) Assessment.

For assessment in case of omitted taxes payable by stamp, see section 3311 and section 3640.

**(d) Registration and special tax.**

For requirements as to registration and special tax, see part VI of subchapter A of chapter 27.

(53 Stat. 279.)

**DERIVATION**

Act Aug. 2, 1937, ch. 553, § 7 (a), (b), (c), 50 Stat. 554.

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 2591. Order forms—(a) General requirement.**

It shall be unlawful for any person, whether or not required to pay a special tax and register under sections 3230 and 3231, to transfer marihuana, except in pursuance of a written order of the person to whom such marihuana is transferred, on a form to be issued in blank for that purpose by the Secretary.

**(b) Exceptions.**

Subject to such regulations as the Secretary may prescribe, nothing contained in this section shall apply—

**(1) Professional practice.**

To a transfer of marihuana to a patient by a physician, dentist, veterinary surgeon, or other practitioner registered under section 3231, in the course of his professional practice only: *Provided*, That such physician, dentist, veterinary surgeon, or other practitioner shall keep a record of all such marihuana transferred, showing the amount transferred and the name and address of the patient to whom such marihuana is transferred, and such record shall be kept for a period of two years from the date of the transfer of such marihuana, and subject to inspection as provided in section 2595.

**(2) Prescriptions.**

To a transfer of marihuana, made in good faith by a dealer to a consumer under and in pursuance of a written prescription issued by a physician, dentist, veterinary surgeon, or other practitioner registered under section 3231: *Provided*, That such prescription shall be dated as of the day on which signed and shall be signed by the physician, dentist, veterinary surgeon, or other practitioner who issues the same: *Provided further*, That such dealer shall preserve such prescription for a period of two years from the day on which such prescription is filled so as to be readily accessible for inspection by the officers, agents, employees, and officials mentioned in section 2595.

**(3) Exportation.**

To the sale, exportation, shipment, or delivery of marihuana by any person within the United States, any Territory, the District of Columbia, or any of the insular possessions of the United States, to any person in any foreign country regulating the entry of marihuana, if such sale, shipment, or delivery of marihuana is made in accordance with such regulations for importation into such foreign country as are prescribed by such foreign country, such regulations to be promulgated from time to time by the Secretary of State of the United States.

**(4) Government and State officials.**

To a transfer of marihuana to any officer or employee of the United States Government or of any State, Territorial, District, county, or municipal or insular government lawfully engaged in making purchases thereof for the various departments of the Army and Navy, the Public Health Service, and for Government, State, Territorial, District, county, or municipal or insular hospitals or prisons.

**(5) Certain seeds.**

To a transfer of any seeds of the plant *Cannabis sativa* L. to any person registered under section 3231.

**(c) Supply.**

The Secretary shall cause suitable forms to be prepared for the purposes before mentioned and shall cause them to be distributed to collectors for sale. The price at which such forms shall be sold by said collectors shall be fixed by the Secretary, but shall not exceed 2 cents each. Whenever any collector shall sell any of such forms he shall cause the date of sale, the name and address of the proposed vendor, the name and address of the purchaser, and the amount of marihuana ordered to be plainly written or stamped thereon before delivering the same.

**(d) Preservation.**

Each such order form sold by a collector shall be prepared by him and shall include an original and two copies, any one of which shall be admissible in evidence as an original. The original and one copy shall be given by the collector to the purchaser thereof. The original shall in turn be given by the purchaser thereof to any person who shall, in pursuance thereof, transfer marihuana to him and shall be preserved by such person for a period of two years so as to be readily accessible for inspection by any officer, agent, or employee mentioned in section 2595. The copy given to the purchaser by the collector shall be retained by the purchaser and preserved for a period of two years so as to be readily accessible to inspection by any officer, agent, or employee mentioned in section 2595. The second copy shall be preserved in the records of the collector. (53 Stat. 280.)

**DERIVATION**

Act Aug. 2, 1937, ch. 553, § 6, 50 Stat. 553, 554.

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 2592. Stamps—(a) Affixing.**

The stamps provided in section 2590 (c) (1) shall be affixed by the collector or his representative to the original order form.

**(b) Other laws applicable.**

All provisions of law relating to the engraving, issuance, sale, accountability, cancelation, and destruction of tax-paid stamps provided for in the internal-revenue laws shall, insofar as applicable and not inconsistent with this subchapter, be extended and made to apply to stamps provided for in section 2590 (c) (1).



**(c) Cross reference.**

For general provisions relating to stamps, see part I of subchapter A of chapter 28.

(53 Stat. 281.)

**DERIVATION**

Act Aug. 2, 1937, ch. 553, § 7 (c), (d), 50 Stat. 554.

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 2593. Unlawful possession—(a) Persons in general.**

It shall be unlawful for any person who is a transferee required to pay the transfer tax imposed by section 2590 (a) to acquire or otherwise obtain any marihuana without having paid such tax; and proof that any person shall have had in his possession any marihuana and shall have failed, after reasonable notice and demand by the collector, to produce the order form required by section 2591 to be retained by him, shall be presumptive evidence of guilt under this section and of liability for the tax imposed by section 2590 (a).

**(b) Government and State officials.**

No liability shall be imposed by virtue of this section upon any duly authorized officer of the Treasury Department engaged in the enforcement of this subchapter and part VI of subchapter A of chapter 27 or upon any duly authorized officer of any State, or Territory, or of any political subdivision thereof, or the District of Columbia, or of any insular possession of the United States, who shall be engaged in the enforcement of any law or municipal ordinance dealing with the production, sale, prescribing, dispensing, dealing in, or distributing of marihuana. (53 Stat. 281.)

**DERIVATION**

Act Aug. 2, 1937, ch. 553, § 8, 50 Stat. 555.

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 2594. Records, statements and returns—(a) General requirement.**

Every person liable to any tax imposed by this subchapter or part VI of subchapter A of chapter 27 shall keep such books and records, render under oath such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

**(b) Return by registrants of marihuana.**

For returns by registrants of marihuana, see section 3233 (a) of chapter 27.

(53 Stat. 281.)

**DERIVATION**

Act Aug. 2, 1937, ch. 553, § 10 (a), 50 Stat. 555.

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 2595. Inspection of returns, order forms and prescriptions.**

The order forms and copies thereof and the prescriptions and records required to be preserved under the provisions of section 2591, and the statements or returns filed in the office of the collector of the dis-

trict under the provisions of section 3233 shall be open to inspection by officers, agents, and employees of the Treasury Department duly authorized for that purpose, and such officers of any State, or Territory, or of any political subdivision thereof, or the District of Columbia, or of any insular possession of the United States as shall be charged with the enforcement of any law or municipal ordinance regulating the production, sale, prescribing, dispensing, dealing in, or distributing of marihuana. Each collector shall be authorized to furnish, upon written request, copies of any of the said statements or returns filed in his office to any of such officials of any State or Territory, or political subdivision thereof, or the District of Columbia, or any insular possession of the United States as shall be entitled to inspect the said statements or returns filed in the office of the said collector, upon the payment of a fee of \$1 for each 100 words or fraction thereof in the copy or copies so requested. (53 Stat. 281.)

**DERIVATION**

Act Aug. 2, 1937, ch. 553, § 11, 50 Stat. 555.

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 2596. Penalties.**

Any person who is convicted of a violation of any provision of this subchapter or part VI of subchapter A of chapter 27 shall be fined not more than \$2,000 or imprisoned not more than five years, or both, in the discretion of the court. (53 Stat. 282.)

**DERIVATION**

Act Aug. 2, 1937, ch. 553, § 12, 50 Stat. 556.

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 2597. Burden of proof.**

It shall not be necessary to negative any exemptions set forth in this subchapter or part VI of subchapter A of chapter 27 in any complaint, information, indictment, or other writ or proceeding laid or brought under this subchapter or part VI of subchapter A of chapter 27 and the burden of proof of any such exemption shall be upon the defendant. In the absence of the production of evidence by the defendant that he has complied with the provisions of section 3231 relating to registration or that he has complied with the provisions of section 2591 relating to order forms, he shall be presumed not to have complied with such provisions of such sections, as the case may be. (53 Stat. 282.)

**DERIVATION**

Act Aug. 2, 1937, ch. 553, § 13, 50 Stat. 556.

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 2598. Forfeitures—(a) Unlawful importation, manufacture, or transfer.**

Any marihuana which has been imported, manufactured, compounded, transferred, or produced in violation of any of the provisions of this subchapter or part VI of subchapter A of chapter 27 shall be

subject to seizure and forfeiture and, except as inconsistent with the provisions of such subchapter and part, all the provisions of internal-revenue laws relating to searches, seizures, and forfeitures are extended to include marihuana.

(b) Ownership by violators.

Any marihuana which may be seized by the United States Government from any person or persons charged with any violation of this subchapter or part VI of subchapter A of chapter 27 shall upon conviction of the person or persons from whom seized be confiscated by and forfeited to the United States.

(c) Unknown ownership.

Any marihuana seized or coming into the possession of the United States in the enforcement of this subchapter or part VI of subchapter A of chapter 27, the owner or owners of which are unknown, shall be confiscated by and forfeited to the United States.

(d) Disposal.

The Secretary is hereby directed to destroy any marihuana confiscated by and forfeited to the United States under this section or to deliver such marihuana to any department, bureau, or other agency of the United States Government, upon proper application therefor under such regulations as may be prescribed by the Secretary. (53 Stat. 282.)

DERIVATION

Act Aug. 2, 1937, ch. 553, § 9, 50 Stat. 555.

CROSS REFERENCES

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance. Vessels, vehicles, and aircrafts forfeited, see section 781 et seq. of Title 49, Transportation.

§ 2599. Regulations.

The Secretary is authorized to make, prescribe, and publish all necessary rules and regulations for carrying out the provisions of this subchapter and part VI of subchapter A of chapter 27. (53 Stat. 282.)

DERIVATION

Act Aug. 2, 1937, ch. 553, § 14, 50 Stat. 556.

CROSS REFERENCE

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

§ 2600. Delegation of powers.

The Secretary is authorized to confer or impose any of the rights, privileges, powers, and duties conferred or imposed upon him by this subchapter or part VI of subchapter A of chapter 27 upon such officers or employees of the Treasury Department as he shall designate or appoint. (53 Stat. 282.)

DERIVATION

Act Aug. 2, 1937, ch. 553, § 14, 50 Stat. 556.

CROSS REFERENCE

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

§ 2601. Other laws applicable.

All provisions of law (including penalties) applicable in respect of the taxes imposed by section 2550

of this chapter and section 3220 of chapter 27, shall, insofar as not inconsistent with this subchapter and part VI of subchapter A of chapter 27, be applicable in respect of the taxes imposed by such subchapter and part. (53 Stat. 283.)

DERIVATION

Act Aug. 2, 1937, ch. 553, § 7 (e), 50 Stat. 555.

CROSS REFERENCE

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

§ 2602. Territorial extent of law.

The provisions of this subchapter and part VI of subchapter A of chapter 27 shall apply to the several States, the District of Columbia, the Territory of Alaska, the Territory of Hawaii, and the insular possessions of the United States, except the Philippine Islands. (53 Stat. 283.)

DERIVATION

Act Aug. 2, 1937, ch. 553, § 15, 50 Stat. 556.

CROSS REFERENCE

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

§ 2603. Administration in insular possessions—(a) Puerto Rico.

In Puerto Rico the administration of this subchapter and part VI of subchapter A of chapter 27, the collection of the special taxes and transfer taxes, and the issuance of the order forms provided for in section 2591 shall be performed by the appropriate internal-revenue officers of that government, and all revenues collected under this subchapter and part VI of subchapter A of chapter 27 in Puerto Rico shall accrue intact to the general government thereof.

(b) Virgin Islands.

The President shall be authorized and directed to issue such Executive orders as will carry into effect in the Virgin Islands the intent and purpose of this subchapter and part VI of subchapter A of chapter 27 by providing for the registration with appropriate officers and the imposition of the special and transfer taxes upon all persons in the Virgin Islands who import, manufacture, produce, compound, sell, deal in, dispense, prescribe, administer, or give away marihuana. (53 Stat. 283.)

DERIVATION

Act Aug. 2, 1937, ch. 553, § 15, 50 Stat. 556.

CROSS REFERENCE

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

§ 2604. Definitions.

For definitions of the following, see the subsections of section 3238 indicated below:

Person.

Subsection (a).

Producer.

Subsection (c).

Marihuana.

Subsection (b).

Transfer or transferred.

Subsection (d).

(53 Stat. 283.)

## SUBCHAPTER D.—DELEGATION OF POWERS AND DUTIES BY THE SECRETARY

### § 2606. Authorization.

The Secretary is authorized to confer or impose any of the rights, privileges, powers, and duties in respect of narcotic drugs conferred upon him by subchapters A and B of this chapter and part V of subchapter A of chapter 27 upon the Commissioner of Narcotics, or any officer or employee of the Bureau of Narcotics, and to confer or impose upon the Commissioner of Internal Revenue, or any of the officers or employees of the Bureau of Internal Revenue, any of such rights, privileges, powers, and duties which, in the opinion of the Secretary, may be necessary in connection with internal revenue taxes. (53 Stat. 283.)

#### DERIVATION

Acts Mar. 3, 1927, ch. 348, § 4 (b), 44 Stat. 1382; June 14, 1930, ch. 488, § 3 (b), 46 Stat. 586.

## Chapter 24.—WHITE PHOSPHORUS MATCHES

Sec.

- 2650. White phosphorus defined.
- 2651. Tax.
- 2652. Stamps.
- 2653. Requirements on manufacturers.
- 2654. Importation.
- 2655. Exportation.
- 2656. Penalties.
- 2657. Forfeitures.
- 2658. Recovery of penalties and forfeitures.
- 2659. Other laws applicable.
- 2660. Regulations.

### § 2650. White phosphorus defined.

For the purposes of this chapter the words "white phosphorus" shall be understood to mean the common poisonous white or yellow phosphorus used in the manufacture of matches and not to include the nonpoisonous forms or the nonpoisonous compounds of white or yellow phosphorus. (53 Stat. 284.)

#### DERIVATION

Act Apr. 9, 1912, ch. 75, § 1, 37 Stat. 81.

### § 2651. Tax—(a) Rate.

Upon white phosphorus matches manufactured, sold, or removed there shall be levied and collected a tax at the rate of 2 cents per one hundred matches.

#### (b) By whom paid.

The tax imposed by subsection (a) shall be paid by the manufacturer.

#### (c) How paid—(1) Stamps.

The tax imposed by subsection (a) shall be represented by adhesive stamps.

#### (2) Assessment.

Whenever any manufacturer of white phosphorus matches sells or removes any such matches without the use of the stamps required by this chapter, it shall be the duty of the Commissioner, subject to the limitations prescribed in section 3312, upon satisfactory proof, to estimate the amount of tax which has been omitted to be paid, and to make an assessment therefor and certify the same to the collector, who shall collect the same according to law. The

tax so assessed shall be in addition to the penalties imposed by law for such sale or removal. (53 Stat. 284.)

#### DERIVATION

Subsections (a)–(c) (1) from act Apr. 9, 1912, ch. 75, § 3, 37 Stat. 81.

Subsection (c) (2) from acts Apr. 9, 1912, ch. 75, § 9, 37 Stat. 82; Feb. 26, 1926, ch. 27, § 1109 (a), 44 Stat. 114.

### § 2652. Stamps—(a) Prepared by Commissioner.

The Commissioner shall cause to be prepared suitable and special stamps for payment of the tax on white phosphorus matches provided for by this chapter.

#### (b) Furnished by collector.

Such stamps shall be furnished to collectors, who shall sell the same only to duly qualified manufacturers.

#### (c) Account kept by collector.

Every collector shall keep an account of the number and denominate values of the stamps sold by him to each manufacturer.

#### (d) Other laws applicable.

For provision making other laws relating to stamps apply to the stamps provided by this section, see section 2659. (53 Stat. 284.)

#### DERIVATION

Subsections (a)–(c) were derived from act Apr. 9, 1912, ch. 75, § 8, 37 Stat. 82.

### § 2653. Requirements on manufacturers—(a) Packing—(1) Number in packages.

All white phosphorus matches shall be packed by the manufacturer thereof in packages containing one hundred, two hundred, five hundred, one thousand, or one thousand five hundred matches each, which shall then be packed by the manufacturer in packages containing not less than fourteen thousand four hundred matches.

#### (2) Stamping.

The manufacturer shall affix to every package containing one hundred, two hundred, five hundred, one thousand, or one thousand five hundred matches an adhesive stamp of the required value and shall place thereon the initials of his name and the date on which such stamp is affixed, so that the same may not again be used.

#### (3) Factory number.

Every manufacturer of matches shall mark, brand, affix, stamp, or print, in such manner as the Commissioner shall prescribe, on every package of white phosphorus matches manufactured, sold, or removed by him, the factory number required under subsection (c).

#### (4) Label.

Every manufacturer of white phosphorus matches shall securely affix by pasting on each original package containing stamped packages of white phosphorus matches manufactured by him a label, on which shall be printed, besides the number of the manufactory and the district in which it is situated, these words: "NOTICE.—The manufacturer of the white phosphorus matches herein contained has complied with all the requirements of law. Every person

is cautioned not to use again the stamps on the packages herein contained under the penalty provided by law in such cases."

(b) Books and returns.

Every manufacturer of white phosphorus matches shall file with the collector of the district in which his manufactory is located such notices and inventories, keep such books and render such returns in relation to the business, and conduct his business under such surveillance of officers and agents as the Commissioner, with the approval of the Secretary, may, by regulation, require.

(c) Factory number and signs.

Every manufacturer of white phosphorus matches shall put up such signs and affix such number to his factory as the Commissioner, with the approval of the Secretary, may, by regulation, require.

(d) Bonds.

Every manufacturer of white phosphorus matches shall file with the collector of the district in which his manufactory is located such bonds as the Commissioner, with the approval of the Secretary, may, by regulation, require. The bond required of such manufacturer shall be with sureties satisfactory to the collector and in the penal sum of not less than \$1,000; and the sum of said bond may be increased from time to time and additional sureties required at the discretion of the collector or under instructions of the Commissioner.

(e) Registration.

Every manufacturer of white phosphorus matches shall register with the collector of the district his name or style, place of manufactory, and the place where such business is to be carried on. (53 Stat. 285.)

DERIVATION

Subsection (a) (1) (2) from act Apr. 9, 1912, ch. 75, § 3, 37 Stat. 81.

Subsection (a) (3) (4) from act Apr. 9, 1912, ch. 75, § 12, 37 Stat. 83.

Subsections (b)–(e) from act Apr. 9, 1912, ch. 75, § 2, 37 Stat. 81.

§ 2654. Importation.

White phosphorus matches, manufactured wholly or in part in any foreign country, shall not be entitled to entry at any of the ports of the United States, and the importation thereof is prohibited. All matches imported into the United States shall be accompanied by such certificate of official inspection by the government of the country in which such matches were manufactured as shall satisfy the Secretary that they are not white phosphorus matches. The Secretary is authorized and directed to prescribe such regulations as may be necessary for the enforcement of the provisions of this section. (53 Stat. 285.)

DERIVATION

Act Apr. 9, 1912, ch. 75, § 10, 37 Stat. 83.

§ 2655. Exportation.

It shall be unlawful to export from the United States any white phosphorus matches. The Secretary shall have power to issue such regulations to

customs officers as are necessary to the enforcement of this section. (53 Stat. 286.)

DERIVATION

Act Apr. 9, 1912, ch. 75, § 11, 37 Stat. 83.

§ 2656. Penalties—(a) Concealment.

Every manufacturer of matches who, to evade the tax chargeable thereon or any part thereof, hides or conceals, or causes to be hidden or concealed, or removes or conveys away, or deposits or causes to be removed or conveyed away from or deposited in any place any white phosphorus matches, shall for each offense be fined not more than \$1,000 and be imprisoned not more than two years, or both.

(b) Selling unstamped matches.

Every manufacturer of matches who manufactures, sells, removes, distributes, or offers to sell or distribute white phosphorus matches without there being affixed thereto an adhesive stamp, denoting the tax required by this chapter, effectually canceled as provided by subsection (a) (2) of section 2653, shall for each offense be fined not more than \$1,000 and be imprisoned not more than two years.

(c) Failure to cancel stamps.

Every person who fraudulently makes use of an adhesive stamp to denote any tax imposed by section 2651 (a) without effectually canceling such stamp as provided in section 2653 (a) (2) shall forfeit the sum of \$50 for every stamp in respect to which such offense is committed.

(d) Use of insufficient stamps.

Every person who affixes a stamp on any package of white phosphorus matches denoting a less amount of tax than that required by law shall for each offense be fined not more than \$1,000 or be imprisoned not more than two years, or both.

(e) Reusing stamps.

Every person who removes, defaces, or causes or permits or suffers the removal or defacement of any such stamp, or who uses any stamp or any package to which any stamp is affixed to cover any other white phosphorus matches than those originally contained in such package with such stamp when first used, to evade the tax imposed by this chapter, shall for every such package in respect to which any such offense is committed be fined \$50.

(f) Fraud.

Every manufacturer of white phosphorus matches who defrauds or attempts to defraud the United States of the tax imposed by this chapter, or any part thereof, shall be fined not more than \$5,000 or be imprisoned not more than three years, or both.

(g) Failure to register.

Every manufacturer of white phosphorus matches who fails to register as provided and required in subsection (e) of section 2653 shall be subject to a penalty of not more than \$500.

(h) Omission of factory number from packages.

Every manufacturer of white phosphorus matches who omits to mark, brand, affix, stamp, or print the factory number required under section 2653 (c) on every package of white phosphorus matches manu-

factured, sold, or removed by him shall be fined not more than \$50 for each package in respect of which such offense is committed.

(i) Omission of label from packages.

Every manufacturer of white phosphorus matches who neglects to affix the label required by section 2653 (a) (4) to any original package containing stamped packages of white phosphorus matches made by him or sold or removed by or for him, and every person who removes any such label so affixed from any such original package, shall be fined not more than \$50 for each package in respect of which such offense is committed.

(j) Exportation of matches.

Any person guilty of violation of section 2655 shall be fined not less than \$1,000 and not more than \$5,000.

(k) Offenses not specifically covered.

If any manufacturer of white phosphorus matches, or any importer or exporter of matches, shall omit, neglect, or refuse to do or cause to be done any of the things required by law in carrying on or conducting his business, or shall do anything by this chapter prohibited, if there be no specific penalty or punishment imposed by any other provision of this chapter for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the thing required or prohibited, he shall be fined \$1,000 for each offense.

(l) Counterfeiting and similar offenses.

For counterfeiting and similar offenses, see section 2659 (a).

(53 Stat. 286.)

DERIVATION

Act Apr. 9, 1912, ch. 75, §§ 2-7, 11-13, 37 Stat. 81, 82, 83.

§ 2657. Forfeitures—(a) Concealment.

If any manufacturer of matches, to evade the tax chargeable thereon or any part thereof, hides or conceals, or causes to be hidden or concealed, or removes or conveys away, or deposits or causes to be removed or conveyed away from or deposited in any place any white phosphorus matches, all such matches shall be forfeited.

(b) Removal or defacement of stamps.

If any person removes, defaces, or causes or permits or suffers the removal or defacement of any stamp affixed to any package of white phosphorus matches, or uses any stamp or any package to which any stamp is affixed to cover any other white phosphorus matches than those originally contained in such package with such stamp when first used, to evade the tax imposed by this chapter, all such matches shall be forfeited.

(c) Unstamped matches.

All packages of white phosphorus matches subject to tax under this chapter that shall be found without stamps as herein provided shall be forfeited to the United States.

(d) Matches exported.

Any white phosphorus matches exported or attempted to be exported shall be confiscated to the United States and destroyed in such manner as may

be prescribed by the Secretary, who shall have power to issue such regulations to customs officers as are necessary to the enforcement of this subsection.

(e) Fraud.

Every manufacturer of white phosphorus matches who defrauds or attempts to defraud the United States of the tax imposed by this chapter, or any part thereof, shall forfeit the factory and manufacturing apparatus used by him and all the white phosphorus matches and all raw material for the production of white phosphorus matches found in the factory and on the factory premises, or owned by him.

(f) Offenses not specifically covered.

If any manufacturer of white phosphorus matches, or any importer or exporter of matches, shall omit, neglect, or refuse to do or cause to be done any of the things required by law in carrying on or conducting his business, or shall do anything by this chapter prohibited, if there be no specific penalty or punishment imposed by any other provision of this chapter for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the thing required or prohibited, all the white phosphorus matches owned by him or in which he has any interest as owner shall be forfeited to the United States. (53 Stat. 287.)

DERIVATION

Act Apr. 9, 1912, ch. 75, §§ 4, 6, 7, 11, 13, 37 Stat. 82, 83.

§ 2658. Recovery of penalties and forfeitures.

All fines, penalties, and forfeitures imposed by this chapter may be recovered in any court of competent jurisdiction. (53 Stat. 287.)

DERIVATION

Act Apr. 9, 1912, ch. 75, § 14, 37 Stat. 83.

§ 2659. Other laws applicable.

(a) All the provisions and penalties of law governing the engraving, issuing, sale, affixing, cancellation, accountability, effacement, destruction, and forgery of stamps provided for internal revenue shall apply to stamps provided for by this chapter.

(b) All provisions and penalties of law relating to internal revenue so far as applicable, shall extend to and include and apply to the taxes imposed by this chapter and to the articles upon which and to the persons upon whom they are imposed. (53 Stat. 287.)

DERIVATION

Act Apr. 9, 1912, ch. 75, §§ 8, 16, 37 Stat. 82, 84.

§ 2660. Regulations.

For authority of the Commissioner, with the approval of the Secretary, to make all needful regulations for the carrying into effect of this chapter, see section 3791 (a) (1).

(53 Stat. 287.)

DERIVATION

Subsections (a) (b) (1) from act Feb. 26, 1926, ch. 27, § 600, 44 Stat. 93.

Subsection (b) (2) from act June 26, 1934, ch. 757, § 15, 48 Stat. 1240.

## Chapter 25.—FIREARMS

## SUBCHAPTER A.—PISTOLS AND REVOLVERS

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## SUBCHAPTER A.—PISTOLS AND REVOLVERS

## § 2700. Tax—(a) Rate.

There shall be levied, assessed, collected, and paid upon pistols and revolvers sold or leased by the manufacturer, producer, or importer, a tax equivalent to 10% of the price for which so sold or leased.

## (b) Exemptions—(1) Sales for use of Federal Government or States.

Pistols and revolvers sold for the use of the United States, any State, Territory, or possession of the United States, any political subdivision thereof, or the District of Columbia, shall be exempt from the tax imposed by subsection (a).

## (2) Taxable under subchapter B.

The tax imposed by subsection (a) shall not apply to any firearm on which the tax provided by section 2720 of this chapter has been paid.

## (3) Cross reference.

For exemption from tax in case of exportation, see section 2705.

## (c) Computation in special cases.

For computation of tax in case of retail sales by wholesalers and in case of colorable sales, see section 2704. (53 Stat. 288.)

## INCREASE OF RATE AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945

Rate of tax on pistols and revolvers under subsection (a) is increased from 10 percent. to 11 percent. by section 1650 of this title.

## DERIVATION

Subsections (a), (b) (1) were derived from act Feb. 26, 1926, ch. 27, § 600, 44 Stat. 93.

Subsection (b) (2) was derived from act June 26, 1934, ch. 757, § 15, 48 Stat. 1240.

## SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 600, 43 Stat. 322.

## § 2701. Returns.

Every person liable for the tax imposed by section 2700 (a) shall make monthly returns under oath in duplicate to the collector for the district in which is located the principal place of business. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe. (53 Stat. 289.)

## DERIVATION

Act Feb. 26, 1926, ch. 27, § 602, 44 Stat. 94.

## SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 603, 43 Stat. 324.

1921—Nov. 23, 1921, ch. 136, § 903, 42 Stat. 293.

1919—Feb. 24, 1919, ch. 18, § 903, 40 Stat. 1123.

1917—Oct. 3, 1917, ch. 63, § 601, 40 Stat. 317.

## § 2702. Payment of tax—(a) Date of payment.

The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector for the district in which is located the principal place of business, at the time fixed in section 2701 for filing the return.

## (b) Discretionary method of collection.

For discretionary method of collection, see section 2708. (53 Stat. 289.)

## DERIVATION

Act Feb. 26, 1926, ch. 27, § 602, 44 Stat. 94.

## SIMILAR PROVISIONS

See note to section 2701 of this title.

## § 2703. Erroneous payments—(a) In general.

In the case of any overpayment or overcollection of the tax imposed by section 2700, the person making such overpayment or overcollection may take credit therefor against taxes due upon any monthly return, and shall make refund of any excessive amount collected by him upon proper application by the person entitled thereto.

## (b) Exports.

For refund of tax on pistols and revolvers exported, see section 2705.

(53 Stat. 289.)

## DERIVATION

Act Feb. 26, 1926, ch. 27, § 1120, 44 Stat. 121.

## SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 1023, 43 Stat. 347.

1921—Nov. 23, 1921, ch. 136, § 1304, 42 Stat. 309.

1919—Feb. 24, 1919, ch. 18, § 1310, 40 Stat. 1143.

## § 2704. Computation of tax in special cases—(a) Retail sales by wholesalers.

If any manufacturer, producer, or importer of pistols or revolvers customarily sells such articles both at wholesale and at retail, the tax in the case of any articles sold by him at retail shall be computed on the price for which like articles are sold by him at wholesale.

## (b) Colorable sales and leases—(1) To affiliated corporations.

If any corporation, which manufactures, produces, or imports, pistols or revolvers, sells or leases such

articles to a corporation affiliated with it within the meaning of this paragraph, at less than the fair market price obtainable therefor, the tax thereon shall be computed on the basis of the price at which such articles are sold or leased by the corporation with which it is affiliated. For the purpose of this paragraph, two or more domestic corporations shall be deemed to be affiliated (1) if one corporation owns at least 95 per centum of the stock of the other or others, or (2) if at least 95 per centum of the stock of two or more corporations is owned by the same interests. As used in this paragraph, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

#### (2) To others.

If any person who manufactures, produces, or imports pistols or revolvers, sells or leases such articles whether through any agreement, arrangement, or understanding, or otherwise, at less than the fair market price obtainable therefor, either (1) in such manner as directly or indirectly to benefit such person or any person directly or indirectly interested in the business of such person, or (2) with intent to cause such benefit, the amount for which such articles are sold or leased shall be taken to be the amount which would have been received from the sale or lease of such articles if sold or leased at the fair market price. (53 Stat. 289.)

#### DERIVATION

Subsection (a) from act Feb. 26, 1926, ch. 27, § 600, 44 Stat. 83.

Subsection (b) (1) from act Feb. 26, 1926, ch. 27, § 240 (d), 601 (a), 44 Stat. 46, 94.

Subsection (b) (2) from act Feb. 26, 1926, ch. 27, § 601 (b), 44 Stat. 94.

#### SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 601, 43 Stat. 323.

1921—Nov. 23, 1921, ch. 136, § 901, 42 Stat. 292.

1919—Feb. 24, 1919, ch. 18, § 901, 40 Stat. 1123.

#### § 2705. Exportation.

Under such rules and regulations as the Commissioner with the approval of the Secretary may prescribe, the tax imposed under section 2700 (a) shall not apply in respect of articles sold or leased for export or for shipment to a possession of the United States and in due course so exported or shipped. Under such rules and regulations the amount of any internal revenue tax erroneously or illegally collected in respect of such articles so exported or shipped may be refunded to the exporter or shipper of the articles, instead of to the manufacturer, if the manufacturer waives any claim for the amount so to be refunded. (53 Stat. 289.)

#### DERIVATION

Act Feb. 26, 1926, ch. 27, § 1121, 44 Stat. 121.

#### SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 1024, 43 Stat. 348.

1921—Nov. 23, 1921, ch. 136, § 1305, 42 Stat. 310.

1919—Feb. 24, 1919, ch. 18, § 1310, 40 Stat. 1143.

#### § 2706. Addition to tax in case of nonpayment.

If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time when the tax became due until paid. (53 Stat. 290.)

#### DERIVATION

Act Feb. 26, 1926, ch. 27, § 602, 44 Stat. 94.

#### SIMILAR PROVISIONS

See note to section 2701 of this title.

#### § 2707. Penalties.

(a) Any person who willfully fails to pay, collect, or truthfully account for and pay over the tax imposed by section 2700 (a), or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subsection for any offense for which a penalty may be assessed under authority of section 3612.

(b) Any person required under this subchapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this subchapter who willfully fails to pay such tax, make such returns, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(c) Any person required under this subchapter to collect, account for and pay over any tax imposed by this subchapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this subchapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(d) The term "person" as used in this section includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. (53 Stat. 290.)

#### DERIVATION

Act Feb. 26, 1926, ch. 27, § 1114 (a), (b), (d), (f), 44 Stat. 116, 117.

#### SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 1017, 43 Stat. 343.

1921—Nov. 23, 1921, ch. 136, § 253, 42 Stat. 268.

1919—Feb. 24, 1919, ch. 18, § 253, 40 Stat. 1085.

1916—Sept. 8, 1916, ch. 463, §§ 14, 18, 39 Stat. 772, 775, as section 18 was amended by act Oct. 3, 1917, ch. 63, § 1209, 40 Stat. 336.

1914—Oct. 22, 1914, ch. 331, § 23, 38 Stat. 764.

1913—Oct. 3, 1913, ch. 16, § II, F, G, 38 Stat. 171, 177.

#### § 2708. Discretionary method allowed Commissioner for collecting tax.

Whether or not the method of collecting the tax imposed by section 2700 (a) is specifically provided in this subchapter, such tax may, under regulations



prescribed by the Commissioner, with the approval of the Secretary, be collected by stamp, coupon, serial-numbered ticket, or such other reasonable device or method as may be necessary or helpful in securing a complete and prompt collection of the tax. All administrative and penalty provisions of subchapters A, B, and C of chapter 11, insofar as applicable, shall apply to the collection of any tax which the Commissioner determines or prescribes shall be collected in such manner. (53 Stat. 290.)

## DERIVATION

Act Feb. 26, 1926, ch. 27, § 1119, 44 Stat. 120.

## SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 1022, 43 Stat. 347.  
1921—Nov. 23, 1921, ch. 136, § 1301, 42 Stat. 308.  
1919—Feb. 24, 1919, ch. 18, § 1307, 40 Stat. 1143.  
1917—Oct. 3, 1917, ch. 63, § 1006, 40 Stat. 326.

## § 2709. Records, statements, and returns.

Every person liable to any tax imposed by this subchapter, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe. (53 Stat. 290.)

## DERIVATION

Act Feb. 26, 1926, ch. 27, § 1102 (a), 44 Stat. 112.

## SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 1002 (a), 43 Stat. 339.  
1921—Nov. 23, 1921, ch. 136, § 1300, 42 Stat. 308.  
1919—Feb. 24, 1919, ch. 18, § 1305, 40 Stat. 1142.

## § 2710. Rules and regulations.

For authority of the Commissioner, with the approval of the Secretary, to prescribe and publish all needful rules and regulations for the enforcement of this chapter, see section 3791 (a) (1).

(53 Stat. 291.)

## § 2711. Other laws applicable.

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, shall be extended to and made a part of this subchapter. (53 Stat. 291.)

## DERIVATION

Act Feb. 26, 1926, ch. 27, § 1100, 44 Stat. 111.

## SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 1000, 43 Stat. 339.  
1921—Nov. 23, 1921, ch. 136, § 1300, 42 Stat. 308.  
1919—Feb. 24, 1919, ch. 18, § 1305, 40 Stat. 1142.  
1917—Oct. 3, 1917, ch. 63, § 1001, 40 Stat. 325.  
1916—Sept. 8, 1916, ch. 463, §§ 22, 211, 409, 39 Stat. 776, 780, 782.  
1913—Oct. 3, 1913, ch. 16, § II, L, 38 Stat. 179.  
1898—June 13, 1898, ch. 448, § 31, 30 Stat. 448.

## § 2712. Effective date of subchapter.

This subchapter shall take effect on the first day of that calendar month occurring next after the enactment of this title. (53 Stat. 291.)

## § 2713. Cross references.

For general provisions relating to stamps, information and returns, assessment, collection, and refund, see chapters 28 and 34 to 37, inclusive.

(53 Stat. 291.)

## SUBCHAPTER B.—MACHINE GUNS AND SHORT-BARRELLED FIREARMS

## § 2720. Tax—(a) Rate.

There shall be levied, collected, and paid upon firearms transferred in the continental United States a tax at the rate of \$200 for each firearm: *Provided*, That the transfer tax on any gun with two attached barrels, twelve inches or more in length, from which only a single discharge can be made from either barrel without manual reloading, shall be at the rate of \$1. The tax imposed by this section shall be in addition to any import duty imposed on such firearm.

## (b) By whom paid.

Such tax shall be paid by the transferor.

## (c) How paid—(1) Stamps.

Payment of the tax herein provided shall be represented by appropriate stamps to be provided by the Commissioner, with the approval of the Secretary.

## (2) Cross reference.

For assessment in case of omitted taxes payable by stamp, see sections 3311 and 3640.

## (d) Registration and special tax.

For requirements as to registration and special tax, see part VIII of subchapter A of chapter 27.

(53 Stat. 291.)

## DERIVATION

Act June 26, 1934, ch. 757, § 3 (a), 48 Stat. 1237, as amended by act June 16, 1938, ch. 471, § 2, 52 Stat. 756.

## § 2721. Exemptions—(a) Transfers exempt.

This subchapter and Part VIII of subchapter A of chapter 27 shall not apply to the transfer of firearms (1) to the United States Government, any State, Territory, or possession of the United States, or to any political subdivision thereof, or to the District of Columbia; (2) to any peace officer or any Federal officer designated by regulations of the Commissioner; (3) to the transfer of any firearm which is unserviceable and which is transferred as a curiosity or ornament.

## (b) Notice of exemption.

If the transfer of a firearm is exempted as provided in subsection (a), the person transferring such firearm shall notify the Commissioner of the name and address of the applicant, the number or other mark identifying such firearm, and the date of its transfer, and shall file with the Commissioner such documents in proof thereof as the Commissioner may by regulations prescribe.

## (c) Other taxes.

For exemption from the tax on pistols and revolvers, see section 2700 (b) (2), and for exemption from the manufacturer's sales tax on firearms, see section 3407 of chapter 29.

(53 Stat. 291.)

## DERIVATION

Act June 26, 1934, ch. 757, §§ 4 (e), 13, 48 Stat. 1238, 1240.

## § 2722. Stamps—(a) Affixing.

The stamps provided for in section 2720 (c) (1) shall be affixed to the order for such firearm, hereinafter provided for.

**(b) Other laws applicable.**

For provisions relating to the engraving, issuance, sale, accountability, cancellation, and distribution of tax-paid stamps, see section 2731.

(53 Stat. 292.)

**DERIVATION**

Act June 26, 1934, ch. 757, § 3 (a), 48 Stat. 1237.

**§ 2723. Order forms—(a) General requirements.**

It shall be unlawful for any person to transfer a firearm except in pursuance of a written order from the person seeking to obtain such article, on an application form issued in blank in duplicate for that purpose by the Commissioner. Such order shall identify the applicant by such means of identification as may be prescribed by regulations under this subchapter and Part VIII of subchapter A of chapter 27: *Provided*, That, if the applicant is an individual, such identification shall include fingerprints and a photograph thereof.

**(b) Contents of order form.**

Every person so transferring a firearm shall set forth in each copy of such order the manufacturer's number or other mark identifying such firearm, and shall forward a copy of such order to the Commissioner. The original thereof with stamps affixed, shall be returned to the applicant.

**(c) Prior transfers.**

No person shall transfer a firearm which has previously been transferred on or after July 26, 1934, unless such person, in addition to complying with subsection (b), transfers therewith the stamp-affixed order provided for in this section for each such prior transfer, in compliance with such regulations as may be prescribed under this subchapter for proof of payment of all taxes on such firearms.

**(d) Exemption in case of registered importers, manufacturers, and dealers.**

Importers, manufacturers, and dealers who have registered and paid the tax as provided for in Part VIII of subchapter A of chapter 27 shall not be required to conform to the provisions of this section with respect to transactions in firearms with dealers or manufacturers if such dealers or manufacturers have registered and have paid such tax, but shall keep such records and make such reports regarding such transactions as may be prescribed by regulations under this subchapter and Part VIII of subchapter A of chapter 27.

**(e) Supply.**

The Commissioner, with the approval of the Secretary, shall cause suitable forms to be prepared for the purposes of subsection (a), and shall cause the same to be distributed to collectors of internal revenue. (53 Stat. 292.)

**DERIVATION**

Act June 26, 1934, ch. 757, § 4 (a)–(d), (f), 48 Stat. 1238.

**§ 2724. Books, records, and returns.**

Importers, manufacturers, and dealers shall keep such books and records and render such returns in relation to the transactions in firearms specified in this subchapter and Part VIII of subchapter A of chapter 27 as the Commissioner, with the approval

of the Secretary, may by regulations require. (53 Stat. 292.)

**DERIVATION**

Act June 26, 1934, ch. 757, § 9, 48 Stat. 1239.

**§ 2725. Identification of firearms.**

Each manufacturer and importer of a firearm shall identify it with a number or other identification mark approved by the Commissioner, such number or mark to be stamped or otherwise placed thereon in a manner approved by the Commissioner. (53 Stat. 292.)

**DERIVATION**

Act June 26, 1934, ch. 757, § 8 (a), 48 Stat. 1239.

**§ 2726. Unlawful acts—(a) Possessing firearms unlawfully transferred.**

It shall be unlawful for any person to receive or possess any firearm which has at any time been transferred in violation of sections 2720, 2721 (b), 2722, 2723, 2727, and 2731 of this subchapter.

**(b) Removing or changing identification marks.**

It shall be unlawful for anyone to obliterate, remove, change, or alter the number or other identification mark required by section 2725. Whenever on trial for a violation of this subsection the defendant is shown to have or to have had possession of any firearm upon which such number or mark shall have been obliterated, removed, changed, or altered, such possession shall be deemed sufficient evidence to authorize conviction, unless the defendant explains such possession to the satisfaction of the jury.

**(c) Importing firearms illegally.**

It shall be unlawful (1) fraudulently or knowingly to import or bring any firearm into the United States or any territory under its control or jurisdiction (including the Philippine Islands), in violation of the provisions of this subchapter and Part VIII of subchapter A of chapter 27; or (2) knowingly to assist in so doing; or (3) to receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of any such firearm after being imported or brought in, knowing the same to have been imported or brought in contrary to law. Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of such firearm, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains such possession to the satisfaction of the jury. (53 Stat. 292.)

**DERIVATION**

Act June 26, 1934, ch. 757, §§ 6, 8 (b), 10 (b), 48 Stat. 1238, 1239.

**§ 2727. Exportation.**

Under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe, and upon proof of the exportation of any firearm to any foreign country (whether exported as part of another article or not with respect to which the transfer tax under section 2720 has been paid by the manufacturer, the Commissioner shall refund to the manufacturer the amount of the tax so paid, or, if the manufacturer waives all claim for the

amount to be refunded, the refund shall be made to the exporter. (53 Stat. 293.)

DERIVATION

Act June 26, 1934, ch. 757, § 3 (c), 48 Stat. 1237.

§ 2728. Importation.

No firearm shall be imported or brought into the United States or any territory under its control or jurisdiction (including the Philippine Islands), except that, under regulations prescribed by the Secretary, any firearm may be so imported or brought in when (1) the purpose thereof is shown to be lawful and (2) such firearm is unique or of a type which cannot be obtained within the United States or such territory. (53 Stat. 293.)

DERIVATION

Act June 26, 1934, ch. 757, § 10 (a), 48 Stat. 1239.

§ 2729. Penalties.

Any person who violates or fails to comply with any of the requirements of this subchapter and Part VIII of subchapter A of chapter 27 shall, upon conviction, be fined not more than \$2,000 or be imprisoned for not more than five years, or both, in the discretion of the court. (53 Stat. 293.)

DERIVATION

Act June 26, 1934, ch. 757, § 14, 48 Stat. 1240.

§ 2730. Forfeitures—(a) Laws applicable.

Any firearm which has at any time been transferred in violation of the provisions of this subchapter and Part VIII of subchapter A of chapter 27 shall be subject to seizure and forfeiture, and (except as provided in subsection (b)) all the provisions of internal-revenue laws relating to searches, seizures, and forfeiture of unstamped articles are extended to and made to apply to the articles taxed under this subchapter, and the persons to whom this subchapter and Part VIII of subchapter A of chapter 27 applies.

(b) Disposal.

In the case of the forfeiture of any firearm by reason of a violation of this subchapter and Part VIII of subchapter A of chapter 27: No notice of public sale shall be required; no such firearm shall be sold at public sale; if such firearm is in the possession of any officer of the United States except the Secretary, such officer shall deliver the firearm to the Secretary; and the Secretary may order such firearm destroyed or may sell such firearm to any State, Territory, or possession (including the Philippine Islands), or political subdivision thereof, or the District of Columbia, or retain it for the use of the Treasury Department or transfer it without charge to any Executive department or independent establishment of the Government for use by it. (53 Stat. 293.)

DERIVATION

Act June 26, 1934, ch. 757, § 7, 48 Stat. 1238.

CROSS REFERENCE

Vessels, vehicles, and aircrafts forfeited, see section 781 of Title 49, Transportation.

§ 2731. Other laws applicable.

All provisions of law (including those relating to special taxes, to the assessment, collection, remission, and refund of internal revenue taxes, to the engraving, issuance, sale, accountability, cancelation, and distribution of tax-paid stamps provided for in the internal-revenue laws, and to penalties) applicable with respect to the taxes imposed by sections 2550 of subchapter A of chapter 23 and 3220 of subchapter A of chapter 27, and all other provisions of the internal-revenue laws shall, insofar as not inconsistent with the provisions of this subchapter and Part VIII of subchapter A of chapter 27, be applicable with respect to the taxes imposed by section 2720 (a) of subchapter B of this chapter and section 3260 of subchapter A of chapter 27. (53 Stat. 294.)

DERIVATION

Act June 26, 1934, ch. 757, § 3 (b), 48 Stat. 1237.

§ 2732. Regulations.

The Commissioner, with the approval of the Secretary, shall prescribe such rules and regulations as may be necessary for carrying the provisions of this subchapter and Part VIII of subchapter A of chapter 27 into effect. (53 Stat. 294.)

DERIVATION

Act June 26, 1934, ch. 757, § 12, 48 Stat. 1240.

§ 2733. Definitions.

That for the purposes of this subchapter and Part VIII of subchapter A of chapter 27—

(a) Firearm.

The term "firearm" means a shotgun or rifle having a barrel of less than eighteen inches in length, or any other weapon, except a pistol or revolver, from which a shot is discharged by an explosive if such weapon is capable of being concealed on the person, or a machine gun, and includes a muffler or silencer for any firearm whether or not such firearm is included within the foregoing definition, but does not include any rifle which is within the foregoing provisions solely by reason of the length of its barrel if the caliber of such rifle is .22 or smaller and if its barrel is sixteen inches or more in length.

(b) Machine gun.

The term "machine gun" means any weapon which shoots, or is designed to shoot, automatically or semi-automatically, more than one shot, without manual reloading, by a single function of the trigger.

(c) Continental United States.

The term "continental United States" means the States of the United States and the District of Columbia.

(d) Importer.

The term "importer" means any person who imports or brings firearms into the continental United States for sale.

(e) Manufacturer.

The term "manufacturer" means any person who is engaged within the continental United States in the manufacture of firearms, or who otherwise produces therein any firearm for sale or disposition.

**(f) Dealer.**

The term "dealer" means any person not a manufacturer or importer engaged within the continental United States in the business of selling firearms. The term "dealer" shall include wholesalers, pawn-brokers, and dealers in used firearms.

**(g) Interstate commerce.**

The term "interstate commerce" means transportation from any State or Territory or District, or any insular possession of the United States (including the Philippine Islands), to any other State or to the District of Columbia.

**(h) To transfer or transferred.**

The term "to transfer" or "transferred" shall include to sell, assign, pledge, lease, loan, give away, or otherwise dispose of.

**(i) Person.**

The term "person" includes a partnership, company, association, or corporation, as well as a natural person. (53 Stat. 294.)

**DERIVATION**

Act June 26, 1934, ch. 757, § 1 (a)-(h), (k), 48 Stat. 1236.

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**SUBCHAPTER A.—DISTILLED SPIRITS**

**PART I.—PROVISIONS RELATING TO TAX**

§ 2800. Tax—(a) Rate—(1) Distilled spirits generally.

There shall be levied and collected on all distilled spirits (except brandy) in bond or produced in or imported into the United States an internal revenue tax at the rate of \$2.25 (and on brandy at the rate of \$2.00) on each proof gallon or wine gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon, to be paid by the distiller or importer when withdrawn from bond.

(2) Products of distillation containing distilled spirits.

All products of distillation, by whatever name known, which contain distilled spirits or alcohol, on which the tax imposed by law has not been paid, shall be considered and taxed as distilled spirits.

(3) Imported perfumes containing distilled spirits.

There shall be levied and collected upon all perfumes imported into the United States containing

distilled spirits, a tax of \$2.25 per wine gallon, and a proportionate tax at a like rate on all fractional parts of such wine gallon. Such tax shall be collected by the collector of customs and deposited as internal revenue collections, under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe.

**(4) Alcoholic compounds from Puerto Rico, Virgin Islands, and Philippines—(A) Puerto Rico.**

Except as provided in section 3123, upon bay rum, or any article containing alcohol, brought from Puerto Rico into the United States for consumption or sale there shall be paid a tax on the spirits contained therein at the rate imposed on distilled spirits produced in the United States, to be collected at the port of entry by the collector of internal revenue of the district in which the port is located. The Commissioner, with the approval of the Secretary, is authorized to make such rules and regulations as may be necessary to carry this paragraph into effect.

**(B) Virgin Islands and Philippines.**

For provisions relating to tax on alcoholic compounds from Virgin Islands and Philippines, see sections 3350 and 3340.

**(5) Rectified spirits and wines.**

In addition to the tax imposed by this chapter on distilled spirits and wines, there shall be levied, assessed, collected, and paid, a tax of 30 cents on each proof gallon and a proportionate tax at a like rate on all fractional parts of such proof gallon on all distilled spirits or wines rectified, purified, or refined in such manner, and on all mixtures produced in such manner, that the person so rectifying, purifying, refining, or mixing the same is a rectifier within the meaning of section 3254 (g): *Provided*, That this tax shall not apply to gin produced by the redistillation of a pure spirit over juniper berries and other aromatics.

**(6) Wines containing more than 24 percent of absolute alcohol.**

For taxation as distilled spirits of wines containing more than 24 per centum of absolute alcohol by volume, see section 3030 (a) (1).

**(7) Special taxes.**

For special taxes, see section 3250.

**(8) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

**(b) Time for payment—(1) Bonded distilled spirits.**

For time for payment of tax on bonded distilled spirits, see paragraph (1) of subsection (a).

**(2) Distilled spirits not bonded.**

The tax upon any distilled spirits, removed from the place where they were distilled and not deposited in bonded warehouse as required by law, shall, at any time within the period of limitation provided in section 3312, when knowledge of such fact is obtained by the Commissioner, be assessed by him upon the distiller of the same, and returned to the collector, who shall immediately demand payment of such tax, and, upon the neglect or refusal of payment by the distiller, shall proceed to collect the same by distraint. But this provision shall not exclude any other remedy or proceeding provided by law.

**(3) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

**(c) Time of attachment.**

The tax shall attach to distilled spirits, spirits, alcohol or alcoholic spirit, within the meaning of subsection (b) of section 2809 as soon as this substance is in existence as such, whether it be subsequently separated as pure or impure spirit, or be immediately, or at any subsequent time, transferred into any other substance, either in the process of original production or by any subsequent process.

**(d) Persons liable.**

Every proprietor or possessor of, and every person in any manner interested in the use of, any still, distillery, or distilling apparatus, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom.

**(e) Lien—(1) Property subject to.**

The tax shall be a first lien on the spirits distilled, the distillery used for distilling the same, the stills, vessels, fixtures, and tools therein, the lot or tract of land whereon the said distillery is situated, and on any building thereon from the time said spirits are in existence as such until (except as provided in paragraph (3)), the said tax is paid.

**(2) Exception during term of bonds.**

No lien shall attach to any lot or tract of land, distillery, building, or distilling apparatus, under the provisions of this subsection, by reason of distilling done during any period included within the term of any bond taken under the provisions of section 2815 (b)

**(1) (C).**

**(3) Extinguishment.**

Any lien under paragraph (1) on any land or any building thereon shall be held to be extinguished, if (1) such land and building are no longer used for distillery purposes, and (2) there is no outstanding liability for taxes or penalties imposed by law on the distilled spirits produced therein, and (3) no litigation is pending in respect of any such tax or penalty.

**(4) Certificate of discharge.**

Any person claiming any interest in any such land or building may apply to the collector for a duly acknowledged certificate to the effect that such lien is discharged and, if the Commissioner determines that any such lien is extinguished, the collector shall issue such certificate, and any such certificate may be recorded.

**(f) Collection of tax on imported distilled spirits.**

The internal revenue tax imposed by paragraphs (1) and (2) of subsection (a) upon distilled spirits imported into the United States shall, under regulations prescribed by the Commissioner, with the approval of the Secretary, be collected and deposited in the same manner as other internal revenue taxes, except that such collection and depositing shall be by the collector of customs instead of by the collector of internal revenue. Such tax shall be in addition to any customs duty imposed under the Tariff Act of 1930, 46 Stat. 590, or any subsequent Act. Distilled spirits smuggled or brought into the United States unlawfully shall, for the purpose of this sub-

section and paragraphs (1) and (2) of subsection (a), be held to be imported into the United States. Section 2805 shall be applicable to the disposition of imported spirits.

(g) Defense tax for five years.

In lieu of the rates of tax specified in such of the sections of this title as are set forth in the following table, the rates applicable with respect to the period after June 30, 1940, and before July 1, 1945, shall be the rates set forth under the heading "Defense-Tax Rate":

Section	Description of tax	Old rate	Defense-tax rate
2800 (a) (1)-----	Distilled spirits generally----	\$2.25	\$3.00
2800 (a) (1)-----	Brandy-----	2.00	2.75
2800 (a) (3)-----	Imported perfumes-----	2 25	3.00

(h) Floor stocks tax.

(1) Upon all distilled spirits produced in or imported into the United States upon which the internal-revenue tax imposed by law has been paid, and which on July 1, 1940, are held and intended for sale or for use in the manufacture or production of any article intended for sale, there shall be levied, assessed, collected, and paid a floor stocks tax of 75 cents on each proof-gallon, and a proportionate tax at a like rate on all fractional parts of such proof-gallon. The tax imposed by this subsection shall not apply to one hundred wine gallons of the retail stocks of distilled spirits held by a person on premises as to which such person has incurred occupational tax as a retail dealer in liquors for the period beginning on July 1, 1940, and as to which no other occupational tax with respect to dealing in distilled spirits has been incurred by such person for a period beginning on such date.

(2) Every person required by this subsection to pay any floor stocks tax shall, on or before August 1, 1940, under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe, make a return and pay such tax. Payment of the tax shown to be due may be extended to a date not later than February 1, 1941, upon the filing of a bond for payment thereof in such form and amount and with such surety or sureties as the Commissioner, with the approval of the Secretary, may prescribe. Every retail dealer in liquors (even though not liable to pay such tax) shall make the return required by this paragraph.

(3) All provisions of law, including penalties, applicable in respect of internal-revenue taxes on distilled spirits shall, insofar as applicable and not inconsistent with this subsection, be applicable in respect of the floor stocks tax imposed hereunder. (53 Stat. 298; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, § 213 (a), 54 Stat. 524.)

DERIVATION

Subsection (a) (1) from acts Feb. 24, 1919, ch. 18, § 600 (a) (4), as amended by act Feb. 26, 1926, ch. 27, § 900, 44 Stat. 104; Jan. 11, 1934, ch. 1, § 2, 48 Stat. 313, as amended by act May 28, 1938, ch. 289, § 710 (a), 52 Stat. 572.

Subsection (a) (2) from R. S. § 3254, which was in nature of a revision of act Feb. 5, 1867, Res. 11, § 1, 14 Stat. 565.

Subsection (a) (3) from act Feb. 24, 1919, ch. 18, § 600 (c), 40 Stat. 1106, as amended by act May 28, 1938, ch. 289, § 710 (b), 52 Stat. 572.

Subsection (a) (4), from acts Feb. 4, 1909, ch. 65, 35 Stat. 594; Apr. 12, 1900, ch. 191, § 3, 31 Stat. 77; Feb. 26, 1926, ch. 27, § 900, 44 Stat. 104; May 17, 1932, ch. 190, 47 Stat. 158; June 26, 1936, ch. 830, § 329 (c), 49 Stat. 1957.

Subsection (a) (5) from act Feb. 26, 1926, ch. 18, § 605, 40 Stat. 1108. Provisions similar to subsection (a) (5) were contained in act Oct. 3, 1917, ch. 63, § 304, 40 Stat. 310.

Subsection (b) (2) from R. S. § 3253, which was in nature of a revision of acts Mar. 2, 1867, ch. 169, § 14, 14 Stat. 481; Dec. 24, 1872, ch. 13, § 2, 17 Stat. 402.

Subsection (c) from R. S. § 3248, which was in nature of a revision of act July 20, 1868, ch. 186, § 4, 15 Stat. 126.

Subsections (d), (e) (1) from R. S. § 3251, which was in nature of a revision of acts July 20, 1868, ch. 186, §§ 1, 4, 15 Stat. 125, 126; June 6, 1872, ch. 315, § 12, 17 Stat. 238.

Subsection (e) (2) from R. S. § 3262 (e), as amended by act June 26, 1936, ch. 830, § 301, 49 Stat. 1943.

Subsection (e) (3, 4) from act Feb. 26, 1926, ch. 27, § 902, 44 Stat. 105.

Subsection (f) from acts Feb. 24, 1919, ch. 18, § 600 (a), (5), (6), 40 Stat. 1105, as amended by act Feb. 26, 1926, ch. 27, § 900, 44 Stat. 104; Aug. 29, 1935, ch. 814, § 9, 49 Stat. 987. Act Feb. 24, 1919, ch. 18, § 600 (a) was also amended by act Nov. 23, 1921, ch. 136, § 600, 42 Stat. 285.

1940 AMENDMENT

Subsections (g), (h) were added by act June 25, 1940, cited to text.

SIMILAR PROVISIONS

Provisions similar to subsection (a) (5) were contained in act Oct. 3, 1917, ch. 63, § 304, 40 Stat. 310.

CROSS REFERENCE

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain government obligations, see note under section 757b of Title 31, Money and Finance.

§ 2801. Rectified spirits—(a) Rate of tax

For rate of tax, see section 2800 (a) (5).

(b) Proof and volume.

When the process of rectification is completed and the taxes prescribed by section 2800 (a) (5) have been paid, it shall be unlawful for the rectifier or other dealer to reduce in proof or increase in volume such spirits or wine by the addition of water or other substance; nothing herein contained shall, however, prevent a rectifier from using again in the process of rectification spirits already rectified and upon which the taxes have theretofore been paid.

(c) Exemption from tax—(1) Cordials and liqueurs.

The taxes imposed by section 2800 (a) (5) shall not attach to cordials or liqueurs on which a tax is imposed and paid under paragraph (1) or (2) of section 3030 (a), nor to the mixing and blending of wines, where such blending is for the sole purpose of perfecting such wines according to commercial standards, nor to blends made exclusively of two or more pure straight whiskies aged in wood for a period not less than four years and without the addition of coloring or flavoring matter or any other substance than pure water and if not reduced below ninety proof; nor to blends made exclusively of two or more pure fruit brandies distilled from the same kind of fruit, aged in wood for a period not less than two years and without the addition of coloring or flavoring matter or any other substance than pure water and if not reduced below ninety proof: *Provided*, That such blended whiskies and blended fruit



brandies shall be exempt from tax under section 2800 (a) (5) only when compounded under the immediate supervision of a revenue officer, in such tanks and under such conditions and supervision as the Commissioner, with the approval of the Secretary, may prescribe.

(2) Absolute alcohol.

The process of extraction of water from high-proof spirits for the production of absolute alcohol shall not be deemed to be rectification within the meaning of section 3254 (g), and absolute alcohol shall not be subject to the tax imposed by section 2800 (a) (5), but the production of such absolute alcohol shall be under such regulations as the Commissioner, with the approval of the Secretary, may prescribe.

(d) Regulations—Use of distilled spirits or wines.

All distilled spirits or wines taxable under section 2800 (a) (5) shall be subject to uniform regulations concerning the use thereof in the manufacture, blending, compounding, mixing, marking, branding, and sale of whisky and rectified spirits, and no discrimination whatsoever shall be made by reason of a difference in the character of the material from which same may have been produced.

(e) Rectifying—(1) Regulations.

The business of a rectifier of spirits shall be carried on, and the tax on rectified spirits shall be paid, under such rules, regulations, and bonds as may be prescribed by the Commissioner, with the approval of the Secretary. The Commissioner, with the approval of the Secretary, shall prescribe such regulations under this section and paragraph (5) of section 2800 (a) as he deems necessary.

(2) Premises of rectifier.

The premises of a rectifier shall be as described in his notice and, whether they consist of an entire building or of rooms in a building, shall have means of ingress from and egress into a public street or yard, or into a public hall or elevator shaft leading into a public street or yard, and shall be used exclusively for the business of rectification and the bottling of liquors rectified by him thereon, and the bottling of wines and spirits without rectification. Any rectifier who uses his rectifying premises contrary to the provisions of this paragraph shall be fined not more than \$50 with respect to each day upon which any such use occurs, but shall not, on account of such use, be subject to the penalties otherwise prescribed in this section.

(3) Filtering and purifying wines.

The filtering, clarifying, or purifying of wines on bonded winery premises or bonded storeroom premises shall not be deemed to be rectification within the meaning of section 3254 (g).

(4) Vermouth manufactured with fortified wines.

The manufacture of vermouth with fortified sweet wine on bonded winery premises shall not be deemed to be rectification within the meaning of section 3254 (g), if distilled spirits other than necessary in the production of approved essences, used in the manufacture of vermouth, whether or not such essences

are produced on the bonded winery premises, are not added to the fortified sweet wine used in the manufacture thereof or to such vermouth during or after its manufacture. Such vermouth may be manufactured on bonded winery premises, but only in a separate department thereof having no interior communication with any other department or part of such premises, under such supervision and in accordance with such regulations as the Commissioner, with the approval of the Secretary, shall prescribe.

(f) Penalties.

Except as provided in subsection (e) (2), whoever violates any of the provisions of this section or section 2800 (a) (5) shall be deemed to be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000 or imprisoned not more than two years, and shall, in addition, be liable to double the tax evaded, together with the tax, to be collected by assessment or on any bond given. (53 Stat. 300.)

DERIVATION

Act Feb. 24, 1919, ch. 18, § 605, 40 Stat. 1108, as amended by acts Nov. 23, 1921, ch. 136, § 601, 42 Stat. 285, June 26, 1936, ch. 830, § 319 (a, b), 49 Stat. 1951, and June 15, 1938, ch. 439, §§ 6, 7, 52 Stat. 701.

SIMILAR PROVISIONS

1917—Oct. 3, 1917, ch. 63, § 304, 40 Stat. 310.

§ 2802. Stamps for distilled spirits—(a) Form, issue and use—(1) Stamps generally.

All stamps required for distilled spirits shall be engraved in their several kinds in book form, and shall be issued by the Commissioner to any collector, upon his requisition, in such numbers as may be necessary in the several districts. Each stamp shall have an engraved stub attached thereto, with a number thereon corresponding with an engraved number on the stamp, and the stub shall not be removed from the book. And there shall be entered on each stub such memoranda of the contents of its corresponding stamp as shall be necessary to preserve a perfect record of the use of such stamp when detached.

(2) Tax-paid stamps.

The Commissioner, with the approval of the Secretary, shall prescribe and furnish suitable stamps denoting the payment of the internal-revenue tax imposed on distilled spirits. On every stamp for the payment of tax on distilled spirits there shall be engraved words and figures representing a decimal number of gallons, and on the stub corresponding to such stamp there shall be engraved a similar number of gallons, and between the stamp and the stub, and connecting them, shall be engraved nine coupons, which, beginning next to the stamp, shall indicate in succession the several numbers of gallons between the number named in the stamp and the decimal number next above. And whenever any collector receives the tax on the distilled spirits contained in any cask, he shall detach from the book a stamp representing the denominate quantity nearest to the quantity of proof spirits in such cask, as shown by the storekeeper-gauger's return, with such number of the coupons attached thereto as shall be necessary to make up the whole number of proof gallons in said cask. All unused coupons shall re-

main attached to the marginal stub, and no coupon shall have any value or significance when detached from the stamp and stub. And the tax-paid stamps with the coupons may denote such number of gallons, not less than ten, as the Commissioner may deem advisable.

**(3) Transfer of duties:**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

**(b) Issue for restamping.**

The Commissioner may, under regulations prescribed by him with the approval of the Secretary, issue stamps for restamping packages of distilled spirits, which have been duly stamped but from which the stamps have been lost or destroyed by unavoidable accident.

**(c) Instruments for attaching, protecting, and canceling.**

The instruments or other means prescribed under section 3301 (a) for attaching, protecting, and canceling stamps for distilled spirits shall be furnished by the United States to the persons using the stamps to be affixed therewith, under such regulations as the Commissioner may prescribe.

**(d) Accountability—(1) Tax-paid stamps.**

The books of tax-paid stamps issued to any collector shall be charged to his account at the full value of the tax on the number of gallons represented on the stamps and coupons contained in said books; and every collector shall make a monthly return to the Commissioner of all tax-paid stamps issued by him to be affixed to any cask or package containing distilled spirits on which the tax has been paid, and account for the amount of the tax collected; and it shall be the duty of the said collector to return to the Commissioner any book of marginal stubs as soon as all the stamps contained in the book when issued to him have been used.

**(2) Other stamps.**

All stamps relating to distilled spirits, other than the tax-paid stamps, shall be charged to collectors; and the books containing such stamps may be intrusted by any collector to the storekeeper-gauger of the district, who shall make a daily report to the collector of all such stamps used by him and for whom used; and when all the stamps contained in any such book have been issued, the storekeeper-gauger of the district shall return the book to the collector, with all the marginal stubs therein. Except as provided in section 2878 (b), all export stamps issued to collectors shall be charged to them as representing the value of 10 cents for each stamp, and they shall collect the amount due for such stamps at the rate of 10 cents for each stamp issued in such manner and at such time as the Commissioner may prescribe, and the Commissioner may, in his discretion, make assessment therefor.

**(3) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

**(e) Exchange of wholesale liquor dealers' stamps for rectified spirits stamps.**

Collectors shall not furnish wholesale liquor dealers' stamps in lieu of and in exchange for stamps for

rectified spirits unless the package covered by stamp for rectified spirits is to be broken into smaller packages. (53 Stat. 301.)

**DERIVATION**

Subsection (a) (1) from R. S. § 3312, which was in nature of a revision of acts July 20, 1868, ch. 186, § 26, 15 Stat. 137; Dec. 24, 1872, ch. 13, § 3, 17 Stat. 402.

Subsection (a) (2) from R. S. § 3313, which was in nature of a revision of acts July 20, 1868, ch. 186, § 27, 15 Stat. 137; June 6, 1872, ch. 315, § 12, 17 Stat. 240; acts May 28, 1880, ch. 108, § 6, 21 Stat. 147; Aug. 27, 1894, ch. 349, § 48, 28 Stat. 563; Mar. 2, 1929, ch. 510, 45 Stat. 1496.

Subsection (b) from R. S. § 3315, which was in nature of a revision of act June 6, 1872, ch. 315, § 15, 17 Stat. 245; act Feb. 26, 1926, ch. 27, § 1124, 44 Stat. 122.

Subsection (c) from R. S. § 3445, which was in nature of a revision of act June 6, 1872, ch. 315, § 12, 17 Stat. 240.

Subsection (d) from R. S. § 3314, which was in nature of a revision of acts July 20, 1868, ch. 186, § 28, 15 Stat. 138; June 6, 1872, ch. 315, § 12, 17 Stat. 240; Dec. 24, 1872, ch. 13, § 6, 17 Stat. 403, as amended by act May 28, 1880, ch. 108, § 16, 21 Stat. 148; act Mar. 2, 1929, ch. 510, 45 Stat. 1496.

Subsection (e) from act Feb. 24, 1919, ch. 18, § 606, 40 Stat. 1108.

**SIMILAR PROVISIONS**

Provisions similar to subsection (e) were contained in act Oct. 3, 1917, ch. 63, § 305, 40 Stat. 310.

**§ 2803. Stamps for containers of distilled spirits—(a) Requirement.**

No person shall transport, possess, buy, sell, or transfer any distilled spirits, unless the immediate container thereof has affixed thereto a stamp denoting the quantity of distilled spirits contained therein and evidencing payment of all internal-revenue taxes imposed on such spirits. The provisions of this section shall not apply to—

(1) Distilled spirits placed in a container for immediate consumption on the premises or for preparation for such consumption;

(2) Distilled spirits in bond or in customs custody;

(3) Distilled spirits in immediate containers required to be stamped under existing law;

(4) Distilled spirits in actual process of rectification, blending, or bottling, or in actual use in processes of manufacture;

(5) Distilled spirits on which no internal-revenue tax is required to be paid;

(6) Distilled spirits not intended for sale or for use in the manufacture or production of any article intended for sale; or

(7) Any regularly established common carrier receiving, transporting, delivering, or holding for transportation or delivery distilled spirits in the ordinary course of its business as a common carrier.

**(b) Purchase and supply.**

Any person placing or intending to place any distilled spirits upon which all internal-revenue taxes have been paid into any container upon which a stamp is required by this section, or withdrawing or intending to withdraw any imported spirits in such containers from customs custody, shall be entitled to purchase sufficient stamps for stamping such containers. Such stamps shall be issued by the Commissioner to each Collector, upon his requisition, in such numbers as may be necessary in his district, and shall be sold by the Collectors to persons entitled thereto upon application therefor and com-

pliance with regulations under this section, at a price of 1 cent for each stamp, except that in the case of stamps for containers of less than one half pint the price shall be one quarter of 1 cent for each stamp. When in his judgment there is no danger to the revenue, and upon the giving of such bonds or other security as he may deem necessary, the Commissioner may authorize the sale of such stamps to importers for stamping containers in the country from which imported.

**(c) Unused stamps; exchange, refund, etc.**

The Commissioner of Internal Revenue, under regulations prescribed by him and approved by the Secretary of the Treasury, may redeem or make allowance for any unused stamps issued under section 203 of the Liquor Taxing Act of 1934<sup>1</sup> or subsection (b) of this section by exchanging them for other stamps of the same kind or by refunding moneys received therefor: *Provided*, That stamps may be exchanged or the value thereof refunded only in quantities of the value of \$5 or more: *And provided further*, That no claim for the exchange of strip stamps or refund therefor shall be allowed unless presented within two years after the date on which such stamps were lawfully issued. There are hereby authorized to be appropriated annually, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry out this provision.

**(d) Regulations for issuing, affixing, and canceling stamps.**

The Commissioner, with the approval of the Secretary, shall prescribe (a) regulations with respect to the time and manner of applying for, issuing, affixing, and destroying stamps required by this section, the form and denominations of such stamps, proof that applicants are entitled to such stamps, and the method of accounting for receipts from the sale of such stamps, and (b) such other regulations as he shall deem necessary for the enforcement of this section.

**(e) Destruction of stamps.**

Every person emptying any container stamped under the provisions of this section shall at the time of emptying such container destroy the stamp thereon.

**(f) Forfeiture of spirits.**

All distilled spirits found in any container required to bear a stamp by this section, which container is not stamped in compliance with this section and regulations issued thereunder, shall be forfeited to the United States.

**(g) Penalties.**

Any person who violates any provision of this section, or who, with intent to defraud, falsely makes, forges, alters, or counterfeits any stamp made or used under this section, or who uses, sells, or has in his possession any such forged, altered, or counterfeited stamp, or any plate or die used or which may be used in the manufacture thereof, or any stamp required to be destroyed by this section, or who makes, uses, sells, or has in his possession any paper in imitation of the paper used in the manufacture of

any such stamp, or who reuses any stamp required to be destroyed by this section, or who places any distilled spirits in any bottle which has been filled and stamped under this section without destroying the stamp previously affixed to such bottle, or who affixes any stamp issued under this section to any container of distilled spirits on which any tax due is unpaid, or who makes any false statement in any application for stamps under this section, or who has in his possession any such stamps obtained by him otherwise than as provided in subsection (b), shall on conviction be punished by a fine not exceeding \$1,000, or by imprisonment at hard labor not exceeding five years, or by both. Any officer authorized to enforce any provisions of law relating to internal revenue stamps is authorized to enforce the provisions of this section and the provisions of section 2909 relating to the bottling of distilled spirits in bond.

**(h) Transfer of duties.**

For transfer of duties and powers of the Commissioner and his agents, see section 3170.

(53 Stat. 303; June 24, 1940, ch. 416, § 1, 54 Stat. 512.)

<sup>1</sup> Act Jan. 11, 1934, ch. 1, § 203, 48 Stat. 816, from which subsec. (c) of this section was derived.

**DERIVATION**

Subsections (a), (b) from act Jan. 11, 1934, ch. 1, §§ 201, 203, 48 Stat. 816.

Subsection (c) from act Jan. 11, 1934, ch. 1, § 203, 48 Stat. 816, as amended by act June 26, 1936, ch. 830, title III, § 326, 49 Stat. 1956.

Subsection (d) from act Jan. 11, 1934, ch. 1, § 205, 48 Stat. 817.

Subsections (e), (f), (g) from act Jan. 11, 1934, ch. 1, §§ 204, 206, 207, 48 Stat. 817.

**1940 AMENDMENT**

Subsection (c) was amended by act June 24, 1940, cited to text.

**TIME FOR CLAIM FOR REFUND**

Sec. 3 of act June 24, 1940, cited to text, provided as follows: "Notwithstanding the limitations contained in sections 2803 (c) and 2903 (e), Internal Revenue Code, as amended and inserted, respectively, by this Act, as to the time within which claims under such sections must be presented, claims under such sections for the exchange of or refund for stamps lawfully issued prior to the date of enactment of this Act may be allowed if presented within two years from the date of enactment of this Act."

**§ 2804. Detention of casks or packages on suspicion—**  
**(a) Power of revenue officer.**

It shall be lawful for any internal revenue officer to detain any cask or package containing, or supposed to contain, distilled spirits, when he has reason to believe that the tax imposed by law upon the same has not been paid, or that the same is being removed in violation of law; and every such cask or package may be held by him at a safe place until it shall be determined whether the property so detained is liable by law to be proceeded against for forfeiture; but such summary detention shall not continue in any case longer than forty-eight hours without process of law or intervention of the officer to whom such detention is to be reported.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 304.)

DERIVATION

R. S. § 3298, which was in nature of a revision of act July 20, 1868, ch. 186, § 41, 15 Stat. 141.

§ 2805. Distilled spirits subject to forfeiture, distraint, or judicial process—(a) Forfeiture—(1) Delivery to the secretary.

All distilled spirits, wine, and malt beverages forfeited, summarily or by order of court, under any law of the United States, shall be delivered to the Secretary to be disposed of as hereinafter provided.

(2) Disposal by the Secretary.

The Secretary shall dispose of all distilled spirits, wine, and malt beverages which have been delivered to him pursuant to subsection (a)—

(A) By delivery to such Government agencies as, in his opinion, have a need for such distilled spirits, wine, or malt beverages for medicinal, scientific, or mechanical purposes; or

(B) By gift to such eleemosynary institutions as, in his opinion, have a need for such distilled spirits, wine, or malt beverages for medicinal purposes; or

(C) By destruction.

(3) Limitation on disposal.

No distilled spirits, wine, or malt beverages which have been seized under any law of the United States, may be disposed of in any manner whatsoever except after forfeiture and as provided in this section.

(4) Regulations.

The Secretary is authorized to make all rules and regulations necessary to carry out the provisions of this section.

(5) Remission, or mitigation of forfeitures.

Nothing in this section shall affect the authority of the Secretary, under the customs or internal-revenue laws, to remit or mitigate the forfeiture, or alleged forfeiture, of such distilled spirits, wines, or malt beverages, or the authority of the Commissioner, with the approval of the Secretary, to compromise any civil or criminal case in respect of such distilled spirits, wines, or malt beverages prior to commencement of suit thereon, or the authority of the Secretary to compromise any claim under the customs laws in respect of such distilled spirits, wines, or malt beverages.

(b) Distraint or judicial process.

Except as provided in section 3074, all distilled spirits sold by order of court, or under process of distraint, shall be sold subject to tax; and the purchaser shall immediately, and before he takes possession of said spirits, pay the tax thereon. If any tax-paid stamps are affixed to any such cask or package, such stamps shall be obliterated and destroyed by the collector or marshal before such sale: *Provided*, That in all cases wherein it shall appear that any distilled spirits offered for sale on distraint for taxes, where the taxes on such spirits have not been paid, or offered for sale for the benefit of the United States under order of court, will not, by reason of such spirits being below proof, bring a price equal to the tax due and payable thereon, but will bring a price equal to, or greater than, the tax on said spirits, computed only upon the proof gallons contained in the packages, without regard to

the greater number of wine gallons contained therein, then, and in such case, upon sale being so made, tax-paid stamps to the amount required to stamp such spirits as if the tax thereon were only on the proof gallons thereof, may, under such rules and regulations as the Commissioner shall prescribe, be used by the collector making such sale, or furnished by a collector to a United States marshal, or to any other government officer making such sale for the benefit of the United States, without making payment for said stamps so used or delivered. Any collector using or furnishing stamps in manner aforesaid, on presenting vouchers satisfactory to the Commissioner, shall be allowed credit for the same in settling his stamp account with the department. In such cases, the officer selling the distilled spirits shall affix, or cause to be affixed, to the same the tax-paid stamps so provided, and shall write across the face of such stamps the true number of proof and wine gallons contained in the package, the amount of tax actually paid thereon, and also the words "Affixed under provisions of Internal Revenue Code, section 2805 (b)."

(c) Cross references.

(1) MARKS, BRANDS, AND STAMPS

For other provisions relating to stamping, marking, and branding distilled spirits sold under distraint or judicial process, see section 3725.

(2) TRANSFER OF DUTIES

For transfer of power and duties of Commissioner and his agents, see section 3170.

(53 Stat. 304.)

DERIVATION

Subsection (a) from act Aug. 29, 1935, ch. 814, § 9, 49 Stat. 987, as amended by act June 26, 1936, ch. 830, § 507, 49 Stat. 1966.

Subsection (b) from R. S. § 3334, which was in nature of a revision of act July 20, 1868, ch. 186, § 58, 15 Stat. 150, as amended by act Mar. 1, 1879, ch. 125, § 5, 20 Stat. 340

§ 2806. Penalties and forfeitures—(a) Creation of fictitious proof—(1) Penalty.

Every person who adds or causes to be added any ingredient or substance to any distilled spirits before the tax is paid thereon, for the purpose of creating a fictitious proof, shall be fined not less than \$100 nor more than \$1,000 for each cask or package so adulterated, and imprisoned not less than three months nor more than two years; and

(2) Forfeiture.

Every such cask or package, with its contents, shall be forfeited to the United States.

(b) Unlawful affixing, canceling, or issue of stamps by officer—(1) Penalty.

Whenever any revenue officer affixes or cancels, or causes or permits to be affixed or canceled, any stamp relating to distilled spirits provided for by law, in any other manner or in any other place, or issues the same to any other person than as provided by law, or by regulation made in pursuance thereof, or knowingly affixes, or permits to be affixed, any such stamp to any cask or package of spirits of which the whole or any part has been distilled, rectified, compounded, removed, or sold, in violation of law, or which has in any manner escaped payment of tax due thereon, he shall, for every such offense, be fined

not less than \$500 nor more than \$3,000, and be imprisoned for not less than six months nor more than three years.

**(2) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

**(c) Forfeiture of tax-paid distilled spirits remaining on distillery premises.**

No distilled spirits on which the tax has been paid shall be stored or allowed to remain on any distillery premises, under the penalty of a forfeiture of all spirits so found.

**(d) Forfeiture of distilled spirits in unstamped casks or packages.**

All distilled spirits found in any cask or package containing five gallons or more, without having thereon each mark and stamp required therefor by law, shall be forfeited to the United States.

**(e) Evasion of tax, penalty.**

Whenever any person evades, or attempts to evade, the payment of the tax on any distilled spirits, in any manner whatever, he shall forfeit and pay double the amount of the tax so evaded or attempted to be evaded.

**(f) Tax fraud by distiller.**

Whenever any person engaged in carrying on the business of a distiller defrauds or attempts to defraud the United States of the tax on the spirits distilled by him, or of any part thereof, he—

**(1) Forfeiture.**

Shall forfeit the distillery and distilling apparatus used by him, and all distilled spirits and all raw materials for the production of distilled spirits found in the distillery and on the distillery premises, and—

**(2) Penalty.**

Shall be fined not less than \$500 nor more than \$5,000, and be imprisoned not less than six months nor more than three years.

No discontinuance or nolle prosequi of any prosecution under this subsection shall be allowed without the permission in writing of the Attorney General.

**(g) Offenses not specifically covered.**

If any distiller, rectifier, or wholesale liquor dealer, shall knowingly or willfully omit, neglect or refuse to do or cause to be done any of the things required by law in the carrying on or conducting of his business, or shall do anything by this title prohibited, if there be no specific penalty or punishment imposed by any other section of this title for the neglecting, omitting or refusing to do, or for the doing or causing to be done the thing required or prohibited, he shall pay a penalty of \$1,000; and all distilled spirits or liquors owned by him or in which he has any interest as owner, shall be forfeited to the United States.

**(h) Cross references.**

For penalties and forfeitures relating to the following offenses, see the sections enumerated below:

(1) Removal or transportation under improper brands, section 3173 (a).

(2) Possession with intent to sell in fraud of law or to evade tax, section 3320.

(3) Removal or concealment with intent to defraud the revenue, section 3321.

(4) Forfeiture of packages containing forfeited goods, section 3322.

(5) Provisions relating to emptied stamped packages, section 3323.

(6) Sales to evade tax, section 3324.

(7) False statements to purchasers regarding tax, section 3325.

(8) Fraudulently claiming drawback, section 3326.

(9) Fraudulent bonds, permits, and entries, section 3793 (a).

(10) Fraudulent returns, affidavits, and claims, section 3793 (b).

(11) Refusal to permit entry or examination, section 3601 (b).

(12) Forcibly obstructing officers, section 3601 (c) (1).

(13) Forcibly rescuing property, section 3601 (c) (2).

(14) Failure to file return, section 3612 (d) (1).

(15) False or fraudulent return, section 3612 (d) (2).

(16) Other offenses, section 3793 (c).

(53 Stat. 306.)

**DERIVATION**

Subsection (a) from R. S. § 3252, which was in nature of a revision of act July 20, 1868, ch. 186, § 38, 15 Stat. 141.

Subsection (b) (1) from R. S. § 3316, which was in nature of a revision of act July 20, 1868, ch. 186, § 29, 15 Stat. 138.

Subsection (c) from R. S. § 3288, which was in nature of a revision of act July 13, 1866, ch. 184, § 43, 14 Stat. 162.

Subsection (d) from R. S. § 3289, which was in nature of a revision of acts July 20, 1868, ch. 186, § 57, 15 Stat. 150; June 6, 1872, ch. 315, § 12, 17 Stat. 243.

Subsection (e) from R. S. § 3256, which was in nature of a revision of act July 20, 1868, ch. 186, § 39, 15 Stat. 141.

Subsection (f) from R. S. §§ 3257, 3230, which were in nature of a revision of act Mar. 31, 1868, ch. 41, §§ 5, 7, 15 Stat. 59, 60; act Mar. 8, 1933, ch. 212, § 16, 47 Stat. 1518; Ex. Ord. No. 6166, § 5.

Subsection (g) from R. S. § 3456, which was in nature of a revision of act July 20, 1868, ch. 186, § 96, 15 Stat. 164, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 249.

**§ 2807. Disposal of forfeited equipment and material for distilling.**

All boilers, stills, or other vessels, tools and implements, used in distilling or rectifying, and forfeited under any of the provisions of this chapter, and all condemned material, together with any engine or other machinery connected therewith, and all empty barrels, and all grain or other material suitable for distillation, shall, under the direction of the court in which the forfeiture is recovered, be sold at public auction, and the proceeds thereof, after deducting the expenses of sale, shall be disposed of according to law. (53 Stat. 307.)

**DERIVATION**

R. S. § 3450, which was in nature of a revision of act July 13, 1866, ch. 184, § 14, 14 Stat. 151.

**§ 2808. Instruments to prevent and detect fraud—(a) Power of the Commissioner.**

For the prevention and detection of frauds by distillers of spirits, the Commissioner may prescribe for use such hydrometers, saccharometers, weighing and gauging instruments, or other means for ascertaining the quantity, gravity, and producing capacity of any mash, wort, or beer used, or to be used, in the production of distilled spirits, and the strength and quantity of spirits subject to tax, as he may deem necessary; and he may prescribe rules and regulations to secure a uniform and correct system of inspection, weighing, marking, and gauging of spirits.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 307.)

**DERIVATION**

R. S. § 3249, which was in nature of a revision of acts July 20, 1868, ch. 186, § 2, 15 Stat. 125; June 6, 1872, ch. 315, § 12, 17 Stat. 239.

**§ 2809. Definitions—(a) Distiller.**

Every person who produces distilled spirits, or who brews or makes mash, wort, or wash, fit for distillation or for the production of spirits, or who, by any process of evaporation, separates alcoholic spirit from any fermented substance, or who, making or keeping mash, wort, or wash, has also in his possession or use a still, shall be regarded as a distiller.

**(b) Distilled spirits—(1) General definition.**

Distilled spirits, spirits, alcohol, and alcoholic spirits, within the true intent and meaning of this chapter, is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation of grain, starch, molasses, or sugar, including all dilutions and mixtures of this substance.

**(2) Products of rectification.**

As used in section 2803, the term "distilled spirits" includes products produced in such manner that the person producing them is a rectifier within the meaning of section 3254 (g).

**(c) Proof spirits.**

Proof spirits shall be held to be that alcoholic liquor which contains one-half its volume of alcohol of a specific gravity of seven thousand nine hundred and thirty-nine ten-thousandths (.7939) at sixty degrees Fahrenheit.

**(d) Gallon.**

In all sales of spirits a gallon shall be held to be a gallon of proof spirit, according to the standard prescribed in the preceding subsection, set forth and declared for the inspection and gauging of spirits throughout the United States.

**(e) Person.**

As used in section 2803, the term "person" includes an individual, a partnership, an association, and a corporation. (53 Stat. 307.)

**DERIVATION**

Subsection (a) from R. S. § 3247, which was in nature of a revision of act July 20, 1868, ch. 186, § 59, 15 Stat. 150.

Subsection (b) (1) from R. S. § 3248, which was in nature of a revision of act July 20, 1868, ch. 186, § 4, 15 Stat. 126.

Subsection (b) (2) from act Jan. 11, 1934, ch. 1, § 10 (e), 48 Stat. 315.

Subsection (c) from R. S. § 3249, which was in nature of a revision of acts July 20, 1868, ch. 186, § 2, 15 Stat. 125; June 6, 1872, ch. 315, § 12, 17 Stat. 239.

Subsection (d) from R. S. § 3250, which was in nature of a revision of act July 20, 1868, ch. 186, § 2, 15 Stat. 125.

Subsection (e) from act Jan. 11, 1934, ch. 1, § 10 (e), 48 Stat. 315.

**PART II.—DISTILLING AND RECTIFYING****§ 2810. Registry of stills—(a) Requirement.**

Every person having in his possession or custody, or under his control, any still or distilling apparatus

set up, shall register the same with the collector of the district in which it is, by subscribing and filing with him duplicate statements, in writing, setting forth the particular place where such still or distilling apparatus is set up, the kind of still and its cubic contents, the owner thereof, his place of residence, and the purpose for which said still or distilling apparatus has been or is intended to be used; one of which statements shall be retained and preserved by the collector, and the other transmitted by him to the Commissioner. Stills and distilling apparatus shall be registered immediately upon their being set up.

Every still or distilling apparatus not so registered, together with all personal property in the possession or custody, or under the control of such person, and found in the building, or in any yard or inclosure connected with the building in which the same may be set up, shall be forfeited.

And every person having in his possession or custody, or under his control, any still or distilling apparatus set up which is not so registered, shall pay a penalty of \$500, and shall be fined not less than \$100, nor more than \$1,000, and imprisoned for not less than one month, nor more than two years.

Stills and distilling apparatus set up at refineries for the refining of crude petroleum or the production of petroleum products and not used in the manufacture of distilled spirits are not required to be registered under this section.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 308; July 2, 1940, ch. 510, 54 Stat. 715.)

**DERIVATION**

R. S. § 3258, which was in nature of a revision of acts July 20, 1868, ch. 186, § 5, 15 Stat. 126; Dec. 24, 1872, ch. 13, §§ 1, 2, 17 Stat. 401, 402.

**1940 AMENDMENT**

Subsection (a) was amended by act July 2, 1940, cited to text, which added last paragraph.

**§ 2811. Return of materials used in the manufacture of distilled spirits.**

Every person disposing of any substance of the character used in the manufacture of distilled spirits shall, when required by the Commissioner, render a correct return in such form and manner as the Commissioner, with the approval of the Secretary, may by rules and regulations prescribe, showing the names and addresses of the persons to whom such disposition was made, with such details, as to the quantity so disposed of or other information which the Commissioner may require as to each such disposition, as will enable the Commissioner to determine whether all taxes due with respect to any distilled spirits manufactured from such substances have been paid. Any person who willfully violates any provision hereof, or of any such rules or regulations, and any officer, director, or agent of any such person who knowingly participates in such violation, shall upon conviction be fined not more than \$500 or be imprisoned for not more than one year, or both. As used in this section, (a) the term "distilled spirits" has the same meaning as that in which

it is used in section 2803; (b) the term "person" includes individuals, corporations, partnerships, associations, trusts, and other incorporated and unincorporated organizations; and (c) the term "substance of the character used in the manufacture of distilled spirits" includes, but not by way of limitation, molasses, corn sugar, cane sugar, and malt sugar. (53 Stat. 308.)

#### DERIVATION

Act June 18, 1934, ch. 611, 48 Stat. 1020.

### § 2812. Notice of business of distiller or rectifier—(a) Requirements.

Every person engaged in, or intending to be engaged in, the business of a distiller or rectifier, shall give notice in writing, subscribed by him, to the collector of the district wherein such business is to be carried on, stating his name and residence, and if a company or firm, the name and residence of each member thereof, the name and residence of every person interested or to be interested in the business, the precise place where said business is to be carried on, and whether of distilling or rectifying; and if such business is carried on in a city, the residence and place of business shall be indicated by the name of the street and number of the building. In case of a distiller, the notice shall also state the kind of stills and the cubic contents thereof, the number and kind of boilers, the number of mash tubs and fermenting tubs, the cubic contents of each tub, the number of receiving cisterns, the cubic contents of each cistern, the number of hours in which the distillery will ferment each tub of mash or beer, the estimated quantity of distilled spirits which the apparatus is capable of distilling every twenty-four hours, a particular description of the lot or tract of land on which the distillery is situated, and of the buildings thereon, including their size, material, and construction; and that said distillery premises are not within six hundred feet (or the distance permitted by the Secretary pursuant to law), in a direct line, of any premises authorized to be used for rectifying or refining distilled spirits by any process.

In case of a rectifier, the notice shall state the precise place where such business is to be carried on, the name and residence of every person interested or to be interested in the business, the process by which the applicant intends to rectify, purify, or refine distilled spirits, the kind and cubic contents of any still used or to be used for such purpose, the estimated quantity of spirits which can be rectified, purified, or refined every twenty-four hours in such establishment, and that said rectifying establishment is not within six hundred feet (or the distance permitted by the Secretary pursuant to law), in a direct line, of the premises of any distillery registered for the distillation of spirits.

In case of any change in the location, form, capacity, ownership, agency, superintendency, or in the persons interested in the business of such distillery or rectifying establishment, or in the time of fermenting the mash or beer, notice thereof, in writing, shall be given to the said collector or proper deputy collector, of the district within twenty-four hours after such change; and any deputy collector receiv-

ing such notice shall immediately transmit the same to the collector of the district. Every notice required by this section shall be in such form, and shall contain such additional particulars, as the Commissioner may, from time to time, prescribe.

Every person who fails or refuses to give such notice shall pay a penalty of \$1,000, and shall be fined not less than \$100 nor more than \$2,000; and every person who gives a false or fraudulent notice shall, in addition to such penalty or fine, be imprisoned not less than six months nor more than two years.

### (b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 8170.

(53 Stat. 309.)

#### DERIVATION

R. S. § 3259, which was in nature of a revision of acts July 20, 1868, ch. 186, § 6, 15 Stat. 126, 127; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401.

### § 2813. Notice of intention to rectify—(a) Requirements.

When any rectifier intends to rectify or compound any distilled spirits he shall, before emptying any package of distilled spirits for that purpose, give notice in duplicate to the collector for the district of his intention so to rectify, and, except as provided in section 2861, submit such package for the inspection of a storekeeper-gauger, who shall duly weigh or gauge such package and its contents and make due return thereof, and such spirits shall not be emptied for rectification, nor rectified or compounded in the package, until gauged or weighed as hereinabove provided. And such notice and return shall be made in such form and contain such particulars as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

### (b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 8170.

(53 Stat. 310.)

#### DERIVATION

Acts Mar. 1, 1879, ch. 125, § 8, 20 Stat. 341, as amended by act July 16, 1892, ch. 196, § 1, 27 Stat. 200; Mar. 2, 1929, ch. 510, 45 Stat. 1496.

### § 2814. Distiller's bond—(a) Form and approval—(1) In general.

Every person intending to commence or to continue the business of a distiller shall, on filing with the collector his notice of such intention, and before proceeding with such business, and on the 1st day of May of each succeeding year, execute a bond in the form prescribed by the Commissioner, conditioned that he shall faithfully comply with all the provisions of law relating to the duties and business of distillers, and shall pay all penalties incurred or fines imposed on him for a violation of any of the said provisions; and that he shall not suffer the lot or tract of land on which the distillery stands, or any part thereof, or any of the distilling apparatus, to be incumbered by mortgage, judgment, or other lien, during the time in which he shall carry on said business. Said bond shall be with at least two sureties, approved by the collector of the district, and for a penal sum not less



than the amount of tax on the spirits that can be distilled in his distillery during a period of fifteen days. But in no case shall the bond exceed the sum of \$100,000.

The collector may refuse to approve said bond when, in his judgment, the situation of the distillery is such as would enable the distiller to defraud the United States; and in case of such refusal the distiller may appeal to the Commissioner, whose decision in the matter shall be final. A new bond shall be required in case of the death, insolvency, or removal of either of the sureties, and may be required in any other contingency at the discretion of the collector or Commissioner.

Every person who fails or refuses to give the bond hereinbefore required, or to renew the same, or who gives any false, forged, or fraudulent bond, shall forfeit the distillery, distilling apparatus, and all real estate and premises connected therewith, and shall be fined not less than \$500 nor more than \$5,000, and imprisoned not less than six months nor more than two years.

(2) When exempt from survey requirements.

Whenever, under authority of law, the Secretary shall relieve a distiller from the survey requirements of section 2817, he may likewise by regulation fix the penal sum of the distiller's bond, but in no case shall the amount of the minimum bond be less than \$5,000 nor the amount of the maximum bond greater than \$100,000.

(b) Cross references—(1) Ethyl alcohol distillers exempt from certain requirements.

For bond of ethyl alcohol distillers exempted from certain requirements, see section 2848.

(2) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 310.)

DERIVATION

Subsection (a) (1) R. S. § 3260, which was in nature of a revision of acts July 20, 1868, ch. 186, § 7, 15 Stat. 127; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401, as amended by acts May 28, 1880, ch. 108, § 1, 21 Stat. 145; June 26, 1936, ch. 830, § 303, 49 Stat. 1943.

§ 2815. Conditions of approval of distiller's bond—(a) General.

No collector shall approve the bond of any distiller until all the requirements of the law and all regulations made by the Commissioner in relation to distilleries, in pursuance thereof, have been complied with.

Every collector who violates this provision shall forfeit and pay \$2,000, and be dismissed from office.

(b) Ownership of land or consent of owner—(1) Requirements.

No bond of a distiller shall be approved unless—

(A) The distiller is the owner in fee, unencumbered by any mortgage, judgment, or other lien, of the lot or tract of land on which the distillery is situated; or

(B) The distiller files with the officer designated for the purpose by the Commissioner, in connection with his notice, the written consent of the owner of the fee, and of any mortgagee, judgment-creditor, or

other person having a lien thereon, duly acknowledged, that the premises may be used for the purpose of distilling spirits, subject to the provisions of law, and expressly stipulating that the lien of the United States for taxes and penalties shall have priority of such mortgage, judgment, or other encumbrance, and that in the case of the forfeiture of the distillery premises, or any part thereof, the title to the same shall vest in the United States, discharged from such mortgage, judgment, or other encumbrance; or, if consent as required under this paragraph cannot be obtained.

(C) The distiller, with the approval of the Commissioner, files with the officer designated by the Commissioner a bond, approved by the Commissioner, in the penal sum equal to the appraised value of the lot or tract of land on which the distillery is situated, the distillery, the buildings, and the distilling apparatus. Such value shall be determined, and such bond shall be executed, in such form and with such sureties, and filed with the officer designated by the Commissioner, under such regulations as the Secretary shall prescribe.

(D) In case of any distillery sold at judicial or other sale in favor of the United States, a bond may be taken at the discretion of the Commissioner, in lieu of the written consent required by this section, and the person giving such bond may be allowed to operate such distillery during the existence of the right of redemption from such sale, on complying with all the other provisions of law.

(2) Cross references—(A) Distilleries erected prior to July 20, 1868.

For distilleries erected prior to July 20, 1868, see section 3180.

(B) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(c) Approval as condition to commencing business.

No individual, firm, partnership corporation, or association, intending to commence or to continue the business of a distiller, rectifier, brewer, or winemaker, shall commence or continue the business of a distiller, rectifier, brewer, or winemaker until all bonds in respect of such a business, required by any provision of law, have been approved by the Commissioner or such other officer of the Bureau of Internal Revenue as the Commissioner, with the approval of the Secretary, may designate.

(d) Disapproval.

The Commissioner or the designated officer may disapprove any such bond or bonds if the individual, firm, partnership, corporation, or association giving the same, or owning, controlling, or actively participating in the management of the business of the individual or firm, partnership, corporation, or association giving the same, shall have been previously convicted, in a court of competent jurisdiction, of (1) any fraudulent noncompliance with any provision of any law of the United States if such provision related to internal-revenue or customs taxation of distilled spirits, wines, or fermented malt liquors, or if such an offense shall have been compromised with the individual, firm, partnership, corporation, or

association upon payment of penalties or otherwise, or (2) any felony under a law of any State, Territory, or the District of Columbia, or the United States, prohibiting the manufacture, sale, importation, or transportation of distilled spirits, wine, fermented malt liquor, or other intoxicating liquor.

(e) Appeal from disapproval.

In case the disapproval is by any officer other than the Commissioner, the individual, firm, partnership, corporation, or association giving the bond may appeal from such disapproval to the Commissioner.

The disapproval of the Commissioner in any matter under this section shall be final.

(f) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 311.)

DERIVATION

Subsection (a) from R. S. § 3261, which was in nature of a revision of acts July 20, 1868, ch. 186, § 17, 15 Stat. 131; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401.

Subsection (b) from R. S. § 3262 (a), (d), as amended by act June 26, 1936, ch. 830, § 301, 49 Stat. 1941. Said R. S. § 3262 was in nature of a revision of acts July 20, 1868, ch. 186, § 8, 15 Stat. 127; Apr. 10, 1869, ch. 18, § 1, 16 Stat. 41; June 6, 1872, ch. 315, § 13, 17 Stat. 243; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401.

Subsections (c)–(e) from act Aug. 27, 1894, ch. 349, § 67, as amended by act June 26, 1936, ch. 830, § 305, 49 Stat. 1943.

§ 2816. Plan of distillery—(a) Requirements.

Except as provided in section 2824 (a), every distiller and person intending to engage in the business of a distiller shall, previous to the approval of his bond, cause to be made, under the direction of the collector of the district, an accurate plan and description, in triplicate, of the distillery and distilling apparatus, distinctly showing the location of every still, boiler, doubler, worm tub, and receiving cistern, the course and construction of all fixed pipes used or to be used in the distillery, and of every branch and every cock or joint thereof, and of every valve therein, together with every place, vessel, tub, or utensil from and to which any such pipe leads, or with which it communicates; also the number and location and cubic contents of every still, mash tub, and fermenting tub, the cubic contents of every receiving cistern, and the color of each fixed pipe, as required in this chapter. One copy of said plan and description shall be kept displayed in some conspicuous place in the distillery, and two copies shall be furnished to the collector of the district, one of which shall be kept by him, and the other transmitted to the Commissioner. The accuracy of every such plan and description shall be verified by the collector, the draftsman, and the distiller; and no alteration shall be made in such distillery without the consent, in writing, of the collector. Any alteration so made shall be shown on the original, or by a supplemental plan and description, and a reference thereto noted on the original, as the collector may direct; and any supplemental plan and description shall be executed and preserved in the same manner as the original.

(b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 312.)

DERIVATION

R. S. § 3263, which was in nature of a revision of acts July 20, 1868, ch. 186, § 9, 15 Stat. 128; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401.

§ 2817. Survey of distillery—(a) Requirements.

On receipt of notice that any person, firm, or corporation wishes to commence the business of distilling, the collector, or a deputy collector, to be designated by him, shall proceed in person, at the expense of the United States, with the aid of an assistant designated by the Commissioner for the purpose of making surveys of distilleries in that district, to make a survey of such distillery for the purpose of estimating and determining its true spirit producing capacity for a day of twenty-four hours.

In all surveys forty-five gallons of mash or beer brewed or fermented from grain shall represent not less than one bushel of grain, and seven gallons of mash or beer brewed or fermented from molasses shall represent not less than one gallon of molasses, except in distilleries operated on the sour-mash principle, in which distilleries sixty gallons of beer brewed or fermented from grain shall represent not less than one bushel of grain, and except that in distilleries where the filtration-aeration process is used, with the approval of the Commissioner; that is, where the mash after it leaves the mash tub is passed through a filtering machine before it is run into the fermenting tub, and only the filtered liquor passes into the fermenting tub, there shall be no limitation upon the number of gallons of water which may be used in the process of mashing or filtration for fermentation; but the Commissioner, with the approval of the Secretary, in order to protect the revenue, shall be authorized to prescribe by regulation, to be made by him, such character of survey as he may find suitable for distilleries using such filtration-aeration process. The provisions hereof relating to filtration-aeration process shall apply only to sweet-mash distilleries.

A written report of such survey shall be made in triplicate, of which one copy shall be delivered to the distiller, one copy shall be retained by the collector, and one copy shall be transmitted to the Commissioner, and the survey shall take effect upon the delivery of such copy to the distiller.

Whenever the Commissioner is satisfied that any report of the capacity of a distillery is incorrect or needs revision, he shall direct the collector to make in like manner another survey of said distillery, and the report thereof shall be made and deposited as hereinbefore required:

*Provided*, That the survey of any distillery estimated and stated by the distiller, in his notice of intention to distill, as capable of distilling not more than one hundred and fifty proof gallons of distilled spirits every twenty-four hours may be made by the collector or by a deputy collector without the aid of an assistant; and that all surveys made for the purpose of correcting clerical errors or errors of computation existing in the report of a previous survey, and all surveys made for the purpose of changing the

true spirit producing capacity of any distillery for a day of twenty-four hours as estimated and determined by a previous survey, but which surveys do not require the remeasuring of the fermenting tubs in a grain or molasses distillery, or the still or stills in a distillery of apples, peaches, or grapes exclusively, may be made without taking the measurements of the fermenting tubs or stills, as the case may be, and without revisiting the distillery:

*And provided further*, That the Commissioner may, whenever he shall deem it proper, designate an officer, agent, or person other than the collector or deputy collector, to make, with or without the aid of a designated assistant, the surveys and resurveys hereinabove provided for.

(b) Waiver of requirements.

The Secretary in the case of any distillery may, under regulations, waive such of the requirements of this section as he determines may be waived without danger to the revenue. Whenever the Secretary, by authority of this subsection, waives any or all of the requirements of this section, he may, by regulation, relieve the distiller from such requirements of sections 2840 (a), 2846 (a), 2847 (a), 2849, 2850 (a) and 2851 (a), and of such other provisions of law relating or incidental to survey requirements, as the Secretary determines may be waived without danger to the revenue.

(c) Cross references—(1) Exemption of ethyl alcohol distillers.

For exemption, in certain cases, of ethyl alcohol distillers from the provisions of this section, see section 2848.

(2) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 312.)

DERIVATION

R. S. § 3264, which was in nature of a revision of acts June 6, 1872, ch. 315, § 12, 17 Stat. 239; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401, as amended by acts Mar. 1, 1879, ch. 125, § 5, 20 Stat. 334; Feb. 24, 1919, ch. 18, § 623, 40 Stat. 1114; act June 26, 1936, ch. 830, title III, § 302, 49 Stat. 1943.

§ 2818. Notice of manufacture of and permit to set up still—(a) Requirement.

Any person who manufactures any still, boiler, or other vessel to be used for the purpose of distilling, shall, before the same is removed from the place of manufacture, notify in writing the collector of the district in which such still, boiler, or other vessel is to be used or set up, by whom it is to be used, its capacity, and the time when the same is to be removed from the place of manufacture; and no such still, boiler, or other vessel shall be set up without the permit in writing of the said collector for that purpose; and

(b) Penalty for setting up still without permit.

Any person who sets up any such still, boiler, or other vessel, without first obtaining a permit from the said collector of the district in which such still, boiler, or other vessel is intended to be used, or who fails to give such notice, shall pay in either case the sum of \$500, and shall forfeit the distilling apparatus thus removed or set up in violation of law.

(c) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 314.)

DERIVATION

R. S. § 3265, which was in nature of a revision of acts July 20, 1868, ch. 186, § 14, 15 Stat. 130; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401.

§ 2819. Premises prohibited for distilling.

No person shall use any still, boiler, or other vessel, for the purpose of distilling, in any dwelling house, or in any shed, yard, or inclosure connected with any dwelling house, or on board of any vessel or boat, or in any building, or on any premises where beer, lager beer, ale, porter, or other fermented liquors, vinegar, or ether, are manufactured or produced, or where sugars or sirups are refined, or where liquors of any description are retailed, or where any other business is carried on; or within six hundred feet in a direct line of any premises authorized to be used for rectifying, except that the Secretary is authorized to permit such use for distilling on premises at such lesser distance than six hundred feet as he prescribes, in any case in which he deems that such permission may be granted without danger to the revenue; and every person who does any of the acts prohibited by this section, or aids or assists therein, or causes or procures the same to be done, shall be fined \$1,000 and imprisoned for not less than six months nor more than two years, in the discretion of the court, for each such offense: *Provided*, That saleratus may be manufactured, or meal or flour ground from grain, in any building or on any premises where spirits are distilled; but such meal or flour shall be used only for distillation on the premises: *Provided further*, That any boiler used in generating steam or heating water to be used in any distillery, may be located in any other building or on any other premises to be connected with such still or boiling tubs, by suitable pipes or other apparatus, or the steam from such boiler in the distillery may be conveyed to other premises to be used for manufacturing or other purposes. (53 Stat. 314.)

DERIVATION

R. S. § 3266, which was in nature of a revision of acts July 13, 1866, ch. 184, § 25, 14 Stat. 154; July 20, 1868, ch. 186, § 12, 15 Stat. 130; June 6, 1872, ch. 315, § 12, 17 Stat. 239, as amended by act June 18, 1934, ch. 598, § 1, 48 Stat. 1013.

§ 2820. Receiving cisterns in distilleries—(a) Requirements.

Except as provided in section 2824, the owner, agent, or superintendent of any distillery established as hereinbefore provided, shall erect, in a room or building to be provided and used for that purpose, and for no other, and to be constructed in the manner to be prescribed by the Commissioner, two or more receiving cisterns, each to be at least of sufficient capacity to hold all the spirits distilled during the day of twenty-four hours, into which shall be conveyed all the spirits produced in said distillery; and each of said cisterns shall be so constructed as to leave an open space of at least three feet between the top thereof and the floor or roof

above, and of not less than eighteen inches between the bottom thereof and the floor below, and shall be so situated that the officer can pass around the same, and shall be connected with the outlet of the worm or condenser by suitable pipes or other apparatus, so constructed as always to be exposed to the view of the officer, and so connected and constructed as to prevent the abstraction of spirits while passing from the outlet of the worm or condenser back to the still or doubler, or forward to the receiving cistern. Such cisterns and the room in which they are contained shall be in charge and under the lock and seal of the storekeeper-gauger designated for that duty; and all locks and seals required by law shall be provided by the Commissioner, at the expense of the United States; and the keys shall be in charge of the collector or such storekeeper-gauger as he may designate. On the third day after the spirits are conveyed into such cistern they shall be drawn off into casks, under the supervision of such storekeeper-gauger and be removed directly to the distillery warehouse; but on special application to the collector by the owner, agent, or superintendent of any distillery, the spirits may be drawn off from said cisterns, under the supervision of the storekeeper-gauger, at any time previous to the third day.

Whenever, under authority of law, the Secretary shall relieve a distiller from the survey requirements, he may, by regulation, require the distiller to provide such receiving cisterns, tanks, or such other equipment as the Secretary shall deem proper in order to protect the revenue.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 314.)

**DERIVATION**

R. S. § 3267, which was in nature of a revision of acts July 20, 1868, ch. 186, § 16, 15 Stat. 131; June 6, 1872, ch. 315, § 12, 17 Stat. 239; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401, as amended by act June 26, 1936, ch. 830, title III, § 304, 49 Stat. 1943; act Mar. 2, 1929, ch. 510, 45 Stat. 1496.

**§ 2821. Penalty for breaking locks or gaining access to cistern room or building.**

Every person who destroys, breaks, injures, or tampers with any lock or seal which may be placed on any cistern room or building by the duly authorized officers of the revenue, or opens said lock or seal, or the door to said cistern room or building, or in any manner gains access to the contents therein, in the absence of the proper officer, shall be fined not less than \$500 nor more than \$5,000, and imprisoned not less than one year nor more than three years. (53 Stat. 315.)

**DERIVATION**

R. S. § 3268, which was in nature of a revision of act July 20, 1868, ch. 186, § 40, 15 Stat. 141.

**§ 2822. Requirements as to furnaces, tubs, doublers, worm tanks, and fixed pipes—(a) Requirements.**

The door of the furnace of every still or boiler used in any distillery shall be so constructed that it may be securely fastened and locked. The fermenting tubs shall be so placed as to be easily accessible to

any revenue officer, and each tub shall have distinctly painted thereon in oil colors its cubic contents in gallons and the number of the tub. There shall be a clear space of not less than one foot around every wood still, and not less than two feet around every doubler and worm tank. The doubler and worm tanks shall be elevated not less than one foot from the floor; and every fixed pipe to be used by the distiller, except for conveyance of water, or of spent mash or beer only, shall be so fixed and placed as to be capable of being examined by the officer for the whole of its length or course, and shall be painted, and kept painted, as follows, that is to say: every pipe for the conveyance of mash or beer shall be painted of a red color; every pipe for the conveyance of low-wines back into the still or doubler shall be painted blue; every pipe for the conveyance of spirits shall be painted black, and every pipe for the conveyance of water shall be painted white. Whenever any fixed pipe is used by any distiller which is not painted or kept painted as herein directed, or which is painted otherwise than as herein directed, he shall forfeit the sum of \$1,000.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 315.)

**DERIVATION**

R. S. § 3269, which was in nature of a revision of act July 20, 1868, ch. 186, § 17, 15 Stat. 131.

**§ 2823. Changes in apparatus and fastenings—(a) Power of Commissioner.**

The Commissioner is authorized to order and require such changes of or additions to distilling apparatus, connecting pipes, pumps, or cisterns, or any machinery connected with or used in or on the distillery premises, or may require to be put on any of the stills, tubs, cisterns, pipes, or other vessels, such fastenings, locks, or seals as he may deem necessary.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 316.)

**DERIVATION**

R. S. § 3270, which was in nature of a revision of act June 6, 1872, ch. 315, § 12, 17 Stat. 239.

**§ 2824. Exemptions of small distilleries from certain requirements—(a) Power of Commissioner.**

The Commissioner, with the approval of the Secretary, may exempt distillers whose distilleries have a daily spirit producing capacity of thirty gallons of proof spirits, or less, from such of the provisions of law in regard to grain distilleries which require the processes of distillation to be carried on through continuous closed vessels and pipes, or which require the cisterns to be connected with the outlet of the worm or condenser by suitable pipes or other apparatus or which require certain clear spaces about the cisterns and other vessels of the distillery, or which require the distillers to have or furnish a plan of the distillery, as he may deem proper.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 316.)

DERIVATION

Act Mar. 1, 1879, ch. 125, § 5, 20 Stat. 336.

**§ 2825. Exemption of distillers of fruit brandy from certain requirements.**

The Commissioner, with the approval of the Secretary, may exempt distillers of brandy made exclusively from apples, peaches, grapes, oranges, pears, pineapples, apricots, berries, plums, pawpaws, persimmons, prunes, figs, cherries, dates, or citrus fruits (except lemons and limes) from any provision of the internal-revenue laws relating to the manufacture of spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so: *Provided*, That where, in the manufacture of wine or citrus-fruit wine, peach wine, cherry wine, berry wine, apricot wine, prune wine, plum wine, pear wine, or apple wine, artificial sweetening has been used, the wine, or the fruit pomace residuum thereof, or the citrus-fruit wine, peach wine, cherry wine, berry wine, apricot wine, prune wine, plum wine, pear wine, or apple wine, may be used in the distillation of brandy or citrus-fruit brandy, peach brandy, cherry brandy, berry brandy, apricot brandy, prune brandy, plum brandy, pear brandy, or apple brandy, as the case may be, and such use shall not prevent the Commissioner, with the approval of the Secretary, from exempting such distiller from any provision of the internal-revenue laws relating to the manufacture of spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so: *And provided further*, That the distillers mentioned in this section may add to not less than five hundred gallons (ten barrels) of grape cheese not more than five hundred gallons of a sugar solution made from cane, beet, starch, or corn sugar, 95 per centum pure, such solution to have a saccharine strength of not to exceed 10 per centum, and may ferment the resultant mixture on a winery or distillery premises, and such fermented product shall be regarded as distilling material. (53 Stat. 316.)

DERIVATION

R. S. § 3255, which was in nature of a revision of act July 20, 1868, ch. 186, § 2, 15 Stat. 125, as amended by act Aug. 29, 1935, ch. 814, § 15, 49 Stat. 988; acts June 26, 1936, ch. 830, § 333, 49 Stat. 1959; June 15, 1938, ch. 439, § 8 (e), 52 Stat. 702. R. S. § 3255, was also amended by acts June 3, 1896, ch. 309, 29 Stat. 195; Feb. 8, 1901, ch. 195, 31 Stat. 759; Mar. 2, 1911, ch. 198, 36 Stat. 1014; Feb. 24, 1919, ch. 18, § 625, 40 Stat. 1114.

**§ 2826. Keeping distillery accessible—(a) Requirements.**

No fence or wall of a height greater than five feet shall be erected or maintained around the premises of any distillery, so as to prevent easy and immediate access to such distillery, but the Secretary may authorize the construction and maintenance of a fence or wall of such greater height than five feet as he shall prescribe in any case in which in his opinion such higher fence or wall is necessary to give adequate protection from trespassers. And every distiller shall furnish to the collector of the district as

many keys of the gates and doors of the distillery as may be required by the collector, from time to time, for any revenue officer or other person who may be authorized to make survey or inspection of the premises, or of the contents thereof; and said distillery shall be kept always accessible to any officer or other person having any such key. Every person who violates any of the provisions of this subsection by negligence or refusal, or otherwise, shall pay a penalty of \$500.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 316.)

DERIVATION

Subsection (a) from R. S. § 3275, which was in nature of a revision of acts July 20, 1868, ch. 186, § 18, 15 Stat. 132; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401, as amended by act June 18, 1934, ch. 598, § 4, 48 Stat. 1013.

**§ 2827. Entry and examination of distillery—(a) Power of revenue officers.**

It shall be lawful for any revenue officer at all times, as well by night as by day, to enter into any distillery or building or place used for the business of distilling, or used in connection therewith for storage or other purposes, and to examine, gauge, measure, and take an account of every still or other vessel or utensil of any kind, and of all low-wines, and of the quantity and gravity of all mash, wort, or beer, and of all yeast, or other compositions for exciting or producing fermentation in any mash or beer, of all spirits and of all materials for making or distilling spirits, which may be in any such distillery or premises, or in possession of the distiller.

And whenever any internal revenue officer, or any person called by him to his aid, is hindered, obstructed, or prevented by any distiller or by any workman, or other person acting for such distiller, or in his employ, from entering into any such distillery or building or place as aforesaid; or any such officer is by the distiller, or his workman, or any person in his employ, prevented or hindered from, or opposed, or obstructed, or molested in the performance of his duty under the internal revenue laws, in any respect, the distiller shall forfeit the sum of not exceeding \$1,000.

And whenever any officer, having demanded admittance into a distillery or distillery premises, and having declared his name and office, is not admitted into such distillery or premises by the distiller or other person having charge thereof, it shall be lawful for such officer at all times, as well by night as by day, to break open by force any of the doors or windows, or to break through any of the walls of such distillery or premises necessary to be broken open or through, to enable him to enter the said distillery or premises; and the distiller shall forfeit the sum of not exceeding \$1,000.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 317.)

## DERIVATION

R. S. § 3276, which was in nature of a revision of act July 20, 1868, ch. 186, § 32, 15 Stat. 139, as amended by act Mar. 1, 1879, ch. 125, § 5, 20 Stat. 335.

**§ 2828. Distillers and rectifiers to furnish facilities and give assistance for examination of premises—**  
**(a) Power of revenue officers.**

On the demand of any internal revenue officer or agent, every distiller or rectifier shall furnish strong, safe, and convenient ladders of sufficient length to enable the officer or agent to examine and gauge any vessel or utensil in such distillery or premises; and shall, at all times when required, supply all assistance, lights, ladders, tools, staging, or other things necessary for inspecting the premises, stock, tools, and apparatus belonging to such person, and shall open all doors, and open for examination all boxes, packages, and all casks, barrels, and other vessels not under the control of the revenue officer in charge, under a penalty of \$500 for every refusal or neglect so to do.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 317.)

## DERIVATION

R. S. §§ 3277, 3152, which were in nature of a revision of acts July 20, 1868, ch. 186, §§ 33, 50, 15 Stat. 139, 145; June 6, 1872, ch. 315, § 12, 17 Stat. 241, as § 3152 was amended by act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 329.

**§ 2829. Installation of meters, tanks, and other apparatus—(a) Power of the Commissioner.**

The Commissioner, with the approval of the Secretary, is authorized to require at distilleries, breweries, rectifying houses, and wherever else in his judgment such action may be deemed advisable, the installation of meters, tanks, pipes, or any other apparatus for the purpose of protecting the revenue, and such meters, tanks, and pipes and all necessary labor incident thereto shall be at the expense of the person on whose premises the installation is required. Any such person refusing or neglecting to install such apparatus when so required by the Commissioner shall not be permitted to conduct business on such premises.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 318.)

## DERIVATION

Act Feb. 24, 1919, ch. 18, § 607, 40 Stat. 1109.

## SIMILAR PROVISIONS

1917—Oct. 3, 1917, ch. 63, § 306, 40 Stat. 311.

**§ 2830. Officer's authority to break up grounds or walls—(a) Power of revenue agent.**

It shall be lawful for any revenue officer, and any person acting in his aid, to break up the ground on any part of a distillery, or premises of a distiller or rectifier, or any ground adjoining or near to such distillery or premises, or any wall or partition thereof, or belonging thereto, or other place, to search for any pipe, cock, private conveyance, or utensil; and, upon finding any such pipe or conveyance leading therefrom or thereto, to break up any ground, house,

wall, or other place through or into which such pipe or other conveyance leads, and to break or cut away such pipe or other conveyance, and turn any cock, or to examine whether such pipe or other conveyance conveys or conceals any mash, wort, or beer, or other liquor, which may be used for the distillation of low-wines or spirits, from the sight or view of the officer, so as to prevent or hinder him from taking a true account thereof.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 318.)

## DERIVATION

R. S. § 3278, which was in nature of a revision of act July 20, 1868, ch. 186, § 34, 15 Stat. 140.

**§ 2831. Signs of distillers, rectifiers, and wholesale liquor dealers.**

Every person engaged in distilling or rectifying spirits, and every wholesale liquor dealer, shall place and keep conspicuously on the outside of the place of such business a sign, exhibiting in plain and legible letters, not less than three inches in length, painted in oil colors or gilded, and of a proper and proportionate width, the name or firm of the distiller, rectifier, or wholesale dealer, with the words: "Registered distillery," "rectifier of spirits," or "wholesale liquor dealer," as the case may be. Every person who violates the foregoing provision by negligence or refusal, or otherwise, shall pay a penalty of \$500.

And every person, other than a rectifier or wholesale liquor dealer who has paid the special tax, or a distiller who has given bond as required by law, who puts up or keeps up the sign required by this section, or any sign indicating that he may lawfully carry on the business of a distiller, rectifier, or wholesale liquor dealer, shall forfeit and pay \$1,000, and shall be imprisoned not less than one month nor more than six months. And every person who works in any distillery, rectifying establishment, or wholesale liquor store, on which no sign is placed and kept, as hereinbefore provided; and every person who knowingly receives at, carries or conveys any distilled spirits to or from, any such distillery, rectifying establishment, warehouse, or store, or who knowingly carries and delivers any grain, molasses, or other raw material to any distillery on which such sign is not placed and kept, shall forfeit all horses, carts, drays, wagons, or other vehicle or animal used in carrying or conveying such property aforesaid, and shall be fined not less than \$100 nor more than \$1,000, or be imprisoned not less than one month nor more than six months. (53 Stat. 318.)

## DERIVATION

R. S. § 3279, which was in nature of a revision of act July 20, 1868, ch. 186, § 18, 15 Stat. 132.

**§ 2832. Conditions precedent to carrying on business of distilling.**

It shall not be lawful for any distiller to commence the business of distilling, until he has given the bond required by law, and complied with the provisions of law relating to the registration and survey of distilleries, and the arrangement and construction of

distilleries and the premises connected therewith; nor shall it be lawful for any person to engage in the business of distilling on any premises distant less than six hundred feet in a direct line from any premises used for rectifying; nor shall the processes of distillation and rectification both be carried on within the distance of six hundred feet in a direct line; except that the Secretary is authorized to permit such business of distilling or process of distillation to be carried on at such lesser distance than six hundred feet as he prescribes, in any case in which he deems that such permission may be granted without danger to the revenue. (53 Stat. 319.)

DERIVATION

R. S. § 3280, which was in nature of a revision of acts July 20, 1868, ch. 186, § 11, 15 Stat. 129; June 6, 1872, ch. 315, § 12, 17 Stat. 239, as amended by act June 18, 1934, ch. 598, § 2, 48 Stat. 1013.

§ 2833. Distilling without giving bond—(a) Penalty and forfeiture.

Any person who shall carry on the business of a distiller without having given bond as required by law, or who shall engage in or carry on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by him, or any part thereof, shall, for every such offense, be fined not less than \$100 nor more than \$5,000 and imprisoned for not less than thirty days nor more than two years. And all distilled spirits or wines, and all stills or other apparatus, fit or intended to be used for the distillation or rectification of spirits, or for the compounding of liquors, owned by such person, wherever found, and all distilled spirits or wines and personal property found in the distillery or in any building, room, yard, or inclosure connected therewith, and used with or constituting a part of the premises, and all the right, title, and interest of such person in the lot or tract of land on which such distillery is situated, and all right, title, and interest therein of every person, who knowingly has suffered or permitted the business of a distiller to be there carried on, or has connived at the same; and all personal property owned by or in possession of any person who has permitted or suffered any building, yard, or inclosure, or any part thereof, to be used for purposes of ingress or egress to or from such distillery, which shall be found in any such building, yard, or inclosure, and all the right, title, and interest of every person in any premises used for ingress or egress to or from such distillery, who has knowingly suffered or permitted such premises to be used for such ingress or egress, shall be forfeited to the United States.

(b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 319.)

DERIVATION

R. S. § 3281, which was in nature of a revision of act July 20, 1868, ch. 186, § 44, 15 Stat. 142, as amended by acts Feb. 8, 1875, ch. 36, § 16, 18 Stat. 310; June 26, 1936, ch. 830, § 314 (b), title III, 49 Stat. 1949.

§ 2834. Mash, wort, and vinegar; vinegar factories.

No mash, wort, or wash, fit for distillation or for the production of spirits or alcohol, shall be made or fermented in any building or on any premises other than

a distillery duly authorized according to law; and no mash, wort, or wash so made and fermented shall be sold or removed from any distillery before being distilled; and no person, other than an authorized distiller, shall, by distillation, or by any other process, separate the alcoholic spirits from any fermented mash, wort, or wash; and no person shall use spirits or alcohol in manufacturing vinegar or any other article, or in any process of manufacture whatever, unless the spirits or alcohol so used shall have been produced in an authorized distillery and (except in the case of vinegar) the tax thereon paid. Every person who violates any provision of this section shall be fined for each offense not less than \$500 nor more than \$5,000, and be imprisoned not less than six months nor more than two years. Nothing in this section shall be construed to apply to fermented liquors, or to fermented liquids used for the manufacture of vinegar exclusively. But no worm, goose-neck, pipe, conductor, or contrivance of any description whatsoever whereby vapor might in any manner be conveyed away and converted into distilled spirits, shall be used or employed or be fastened to or connected with any vaporizing apparatus used for the manufacture of vinegar; nor shall any worm be permitted on or near the premises where such vaporizing process is carried on.

Nor shall any vinegar factory, for the manufacture of vinegar as aforesaid, be permitted, except as provided in section 2835, within six hundred feet of any distillery or rectifying house. But it shall be lawful for manufacturers of vinegar to separate, by a vaporizing process, the alcoholic property from the mash produced by them, and condense the same by introducing it into the water or other liquid used in making vinegar.

No person, however, shall remove, or cause to be removed, from any vinegar factory or place where vinegar is made, any vinegar or other fluid or material containing a greater proportion than 2 per centum of proof spirits. Any violation of this provision shall incur a forfeiture of the vinegar, fluid, or material containing such proof spirits, and shall subject the person or persons guilty of removing the same to the punishment provided for any violation of this section.

And sections 2827, 2828, and 2830 shall apply to all premises whereon vinegar is manufactured, to all manufacturers of vinegar and their workmen or other persons employed by them. (53 Stat. 319.)

DERIVATION

R. S. § 3282, which was in nature of a revision of act July 20, 1868, ch. 186, § 4, 15 Stat. 126; Res. Mar. 3, 1871, No. 53, 16 Stat. 601, as amended by act Mar. 1, 1879, ch. 125, § 5, 20 Stat. 335; act Oct. 28, 1919, ch. 85, title III, § 10, 41 Stat. 320.

§ 2835. Vinegar factories operated prior to March 1, 1879—(a) Regulations.

Any vinegar factory for the manufacture of vinegar, established and operated as a vinegar factory prior to March 1, 1879, may be operated for the manufacture of vinegar by the use of alcoholic vapor within such distance less than six hundred feet of any distillery or rectifying house under such regula-



tions as the Commissioner may prescribe with the approval of the Secretary.

(b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 320.)

DERIVATION

Act June 14, 1879, ch. 23, 21 Stat. 30.

§ 2836. Prohibited hours for distilling.

Except as provided in section 2837, no malt, corn, grain, or other material shall be mashed, nor any mash, wort, or beer brewed or made, nor any still used by a distiller, at any time between the hour of eleven in the afternoon of any Saturday and the hour of one in the forenoon<sup>1</sup> of the next succeeding Monday; and every person who violates the provisions of this section shall be liable to a penalty of \$1,000. (53 Stat. 320.)

<sup>1</sup> So in original. Probably should read "between the hour of eleven in the forenoon of any Saturday and the hour of one in the afternoon."

DERIVATION

R. S. § 3283, which was in nature of a revision of act July 20, 1868, ch. 186, § 35, 15 Stat. 140.

§ 2837. Exemption of alcohol from restrictions of section 2836—(a) Power of Commissioner.

Under such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the manufacture, warehousing, withdrawal, and shipment of ethyl alcohol for other than (1) beverage purposes or (2) use in the manufacture or production of any article used or intended for use as a beverage, and denatured alcohol, may be exempted from the provisions of section 2836.

(b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 320.)

DERIVATION

Act Feb. 24, 1918, ch. 18, § 602, 40 Stat. 1107.

§ 2838. Penalty for using material or removing spirits in absence of storekeeper-gauger.

Every distiller or person employed in any distillery who, in the absence of the storekeeper-gauger, or person designated to act as storekeeper-gauger, uses, or causes or permits to be used, any material for the purpose of making mash, wort, or beer, or for the production of spirits, or removes any spirits, shall forfeit and pay double the amount of taxes on the spirits so produced, distilled, or removed, and in addition thereto be liable to a penalty of \$1,000. (53 Stat. 320.)

DERIVATION

R. S. § 3284, which was in nature of a revision of act July 20, 1868, ch. 186, § 21, 15 Stat. 134; act Mar. 2, 1929, ch. 510, 45 Stat. 1496.

§ 2839. Drawing off water and cleansing worm tubs—(a) Requirements.

Whenever any officer or internal revenue agent requires the water contained in any worm tub in a distillery, at any time when the still is not at work, to be drawn off, and the tub and worm cleansed,

the water shall forthwith be drawn off, and the tub and worm cleansed by the distiller, or his workmen, accordingly; and the water shall be kept and continued out of such worm tub for the period of two hours, or until the officer or agent has finished his examination thereof. For any refusal or neglect to comply with any provision of this section, the distiller shall forfeit the sum of not exceeding \$1,000; and it shall be lawful for the officer or agent to draw off such water, or any portion of it, and to keep the same drawn off for so long a time as he shall think necessary.

(b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 321.)

DERIVATION

R. S. § 3286, which was in nature of a revision of act July 20, 1868, ch. 186, § 31, 15 Stat. 139, as amended by act Mar. 1, 1879, ch. 125, § 5, 20 Stat. 335; R. S. § 3152, which was in nature of a revision of acts July 20, 1868, ch. 186, § 50, 15 Stat. 145; June 6, 1872, ch. 315, § 12, 17 Stat. 241, as amended by act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 329.

§ 2840. Fermenting tubs—(a) Requirements.

Every fermenting tub shall be emptied at or before the end of the fermenting period; no fermenting tub in a sweet-mash distillery shall be filled oftener than once in seventy-two hours, nor in a sour-mash distillery oftener than once in ninety-six hours, nor in a rum distillery oftener than once in one hundred and forty-four hours, nor in a distillery where the filtration-aeration process is employed, that is, where the mash after it leaves the mash tub is passed through a filtering machine, before it is run into the fermenting tub, and only the filtered liquor passes into the fermenting tub, and the approval of the Commissioner being secured, oftener than once in twenty-four hours. The provisions hereof relating to filtration-aeration process shall apply only to sweet-mash distilleries.

(b) Cross references—(1) Exemption of ethyl alcohol distillers.

For exemption, in certain cases, of ethyl alcohol distillers from the provisions of this section, see section 2848.

(2) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 321.)

DERIVATION

R. S. § 3285, which was in nature of a revision of act July 20, 1868, ch. 186, § 19, 15 Stat. 133, as amended by act June 22, 1910, ch. 329, § 2, 36 Stat. 590. R. S. § 3285 was also amended by act May 28, 1880, ch. 108, § 3, 21 Stat. 145.

§ 2841. Distiller's books—(a) Entries—(1) Requirements.

Every person who makes or distills spirits, or owns any still, boiler, or other vessel used for the purpose of distilling spirits, or who has such still, boiler, or other vessel so used under his superintendence, either as agent or owner, or who uses any such still, boiler, or other vessel, shall keep a record, in the form and manner prescribed by the Commissioner, of the receipt on the distillery premises, and the use thereon, of materials intended for use in the distillation of

spirits, and of the number of gallons of spirits distilled, the number of gallons placed in the warehouse, and the proof thereof, the number of gallons sold or removed, with the proof thereof, and the name, place of business, and residence of the person to whom sold.

**(2) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

**(b) Preservation and inspection.**

The books of every distiller hereinbefore required shall always be kept at the distillery and be always open to the inspection of any revenue officer, and, when filled up, shall be preserved by the distiller for a period of not less than two years thereafter, and whenever required shall be produced for the inspection of any revenue officer.

**(c) Penalty and forfeiture—(1) Omitting entries or making false entries.**

Whenever any false entry is made in, or any entry required to be made is omitted from, either of the said books mentioned in the two preceding subsections, with intent to defraud or to conceal from the revenue officers any fact or particular required to be stated and entered in either of said books, or to mislead in reference thereto; or any distiller as aforesaid omits or refuses to provide either of said books, or cancels, obliterates, or destroys any part of either of such books, or any entry therein, with intent to defraud, or permits the same to be done, or such books, or either of them, are not produced when required by any revenue officer, the distillery, distilling apparatus, and the lot or tract of land on which it stands, and all personal property on said premises used in the business there carried on, shall be forfeited to the United States. And every person who makes such false entry, or omits to make any entry hereinbefore required to be made, with intent aforesaid, or who causes or procures the same to be done, or fraudulently cancels, obliterates, or destroys any part of said books, or any entry therein, or willfully fails to produce such books, or either of them, shall be fined not less than \$500, nor more than \$5,000, and imprisoned not less than six months, nor more than two years.

**(2) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 321.)

**DERIVATION**

Subsection (a) from R. S. § 3303, which was in nature of a revision of act July 20, 1868, ch. 186, § 19, 15 Stat. 132, as amended by act June 26, 1936, ch. 830, § 311, title III, 49 Stat. 1948

Subsection (b) from R. S. § 3304, which was in nature of a revision of act July 20, 1868, ch. 186, § 19, 15 Stat. 133.

Subsection (c) from R. S. § 3305, which was in nature of a revision of acts July 20, 1868, ch. 186, § 19, 15 Stat. 133; June 6, 1872, ch. 315, § 12, 17 Stat. 240.

**§ 2842. Penalty for using false weights and measures.**

Every person who knowingly uses any false weights or measures in ascertaining, weighing, or measuring the quantities of grain, meal, or vegetable materials, molasses, beer, or other substances to be used for distillation, shall be fined not less than \$500 nor

more than \$5,000, and imprisoned not less than one year nor more than three years. (53 Stat. 322.)

**DERIVATION**

R. S. § 3306, which was in nature of a revision of act July 20, 1868, ch. 186, § 40, 15 Stat. 141.

**§ 2843. Penalty for using unregistered materials.**

Any person who uses any molasses, beer, or other substance, whether fermented on the premises or elsewhere, for the purpose of producing spirits, before an account of the same is registered in the proper book provided for that purpose, shall forfeit and pay the sum of \$1,000 for each offense so committed. (53 Stat. 322.)

**DERIVATION**

R. S. § 3306, which was in nature of a revision of act July 20, 1868, ch. 186, § 40, 15 Stat. 141.

**§ 2844. Monthly production return of distiller—(a) Requirement.**

On the 1st day of each month, or within five days thereafter, every distiller shall render to the collector of the district an account in duplicate, taken from his books, stating the quantity and kind of materials used for the production of spirits each day, and the number of wine gallons and of proof gallons of spirits produced and placed in warehouse. And the distiller or the principal manager of the distillery shall make and subscribe the following oath, to be attached to said return:

"I, ———, distiller (or principal manager, as the case may be) of the distillery at ———, do solemnly swear that, since the date of the last return of the business of said distillery, dated ——— day of ——— to ——— day of ———, both inclusive, there was produced in said distillery, and withdrawn and placed in warehouse, the number of wine gallons and proof gallons of spirits; and there were actually mashed and used in said distillery, and consumed in the production of spirits therein, the several quantities of grain, sugar, molasses, and other materials respectively hereinbefore specified, and no more."

One of the said duplicate returns shall be transmitted by the collector to the Commissioner.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 322.)

**DERIVATION**

R. S. § 3307, which was in nature of a revision of acts July 20, 1868, ch. 186, § 19, 15 Stat. 133; June 6, 1872, ch. 315, § 12, 17 Stat. 240; Dec. 24, 1872, ch. 13, § 6, 17 Stat. 403.

**§ 2845. Special returns of number of barrels distilled—(a) Requirement.**

Every distiller shall make a return of the number of barrels of spirits distilled by him, counting forty gallons of proof spirits to the barrel, whenever such return is demanded by the collector of the district.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 323.)

## DERIVATION

R. S. § 3308, which was in nature of a revision of acts July 20, 1868, ch. 186, § 59, 15 Stat. 150; June 6, 1872, ch. 315, § 13, 17 Stat. 244.

**§ 2846. Assessment for deficiencies in production and excess of material used—(a) Power of Commissioner.**

On the receipt of the distiller's return in each month, the Commissioner shall inquire and determine whether the distiller has accounted for all the grain or molasses used, and all the spirits produced by him in the preceding month. If he is satisfied that the distiller has reported all the spirits produced by him, and the quantity so reported is found to be less than 80 per centum of the producing capacity of the distillery as estimated according to law, he shall make an assessment for such deficiency at the rate of tax imposed by law for every proof gallon. In determining the quantity of grain used, fifty-six pounds shall be accounted as a bushel; and if the Commissioner finds that the distiller has used any grain or molasses in excess of the capacity of his distillery as estimated according to law, he shall make an assessment against the distiller at the rate imposed by law for every proof gallon of spirits that should have been produced from the grain or molasses so used in excess, which assessment shall be made whether the quantity of spirits reported is equal to or exceeds 80 per centum of the producing capacity of the distillery. If the Commissioner finds that the distiller has not accounted for all the spirits produced by him, he shall, from all the evidence he can obtain, determine what quantity of spirits was actually produced by such distiller, and an assessment shall be made for the difference between the quantity reported and the quantity shown to have been actually produced, at the rate of tax imposed by law for every proof gallon: *Provided*, That the actual product shall be assumed to be in no case less than 80 per centum of the producing capacity of the distillery as estimated according to law. All assessments made under this section shall be a lien on all distilled spirits on the distillery premises, the distillery used for distilling the same, the stills, vessels, fixtures, and tools therein, the tract of land whereon the said distillery is located, and any building thereon, from the time such assessment is made until the same shall have been paid.

**(b) Cross references—(1) Exemption of ethyl alcohol distillers.**

For exemption, in certain cases, of ethyl alcohol distillers from the provisions of this section, see section 2848.

**(2) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 323.)

## DERIVATION

R. S. § 3309, which was in nature of a revision of acts July 20, 1868, ch. 186, § 20, 15 Stat. 133; Apr. 10, 1869, ch. 18, § 1, 16 Stat. 42; June 6, 1872, ch. 315, § 13, 17 Stat. 243, as amended by act Jan. 11, 1934, ch. 1, § 5, 48 Stat. 313. R. S. § 3309 was also amended by acts Mar. 3, 1875, ch. 131, § 12, 18 Stat. 419; Aug. 27, 1894, ch. 349, § 60, 28 Stat. 566.

**§ 2847. Relief from assessments under section 2846—(a) Power of Commissioner.**

Whenever, under the provisions of section 2846, an assessment shall have been made against a distiller for a deficiency in not producing 80 per centum of the producing capacity of his distillery as established by law, or for the tax upon the spirits that should have been produced from the grain, or fruit, or molasses found to have been used in excess of the capacity of his distillery for any month, as estimated according to law, such excessive use of grain, or fruit, or molasses having arisen from a failure on the part of the distiller to maintain the capacity required by law to enable him to use such grain, or fruit, or molasses without incurring liability to such assessment, and it shall be made to appear to the satisfaction of the Commissioner that said deficiency, or that said failure, whereby such excessive use of grain, molasses, or fruit arose, was not occasioned by any want of diligence or by any fraudulent purpose on the part of the distiller, but from misunderstanding as to the requirements of the law and regulations in that respect or by reason of unavoidable accidents, then, and in such case, the Commissioner, subject to regulations prescribed by the Secretary is authorized, on appeal made to him, to remit or refund such tax, or such part thereof as shall appear to him to be equitable and just in the premises.

And the Commissioner upon the production to him of satisfactory proof of the actual destruction, by accidental fire or other casualty, and without any fraud, collusion, or negligence of the distiller of any spirits in process of manufacture or distillation, or before removal to the distillery warehouse, shall not assess the distiller for a deficiency in not producing 80 per centum of the producing capacity of his distillery as established by law when the deficiency is occasioned by such destruction, nor shall he, in such case, assess the tax on the spirits so destroyed:

*Provided*, That no assessment shall be charged against any distiller of fruit for any failure to maintain the required capacity, unless the Commissioner shall, within six months after his receipt of each monthly report notify such distiller of such failure so to maintain the required capacity.

**(b) Transfer of duties.**

For transfer of power and duties of Commissioner and his agents, see section 3170.

(53 Stat. 323.)

## DERIVATION

Act Mar. 1, 1879, ch. 125, § 6, 20 Stat. 340, as amended by act May 28, 1880, ch. 108, § 8, 21 Stat. 147.

**§ 2848. Exemption of distillers of ethyl alcohol from certain provisions—(a) Power of Commissioner.**

The Commissioner, with the approval of the Secretary, may by regulations exempt distillers of ethyl alcohol, for use in the production of munitions of war, or for other nonbeverage purposes, from so much of the provisions of sections 2817, 2840, or 2846, respecting the survey of distilleries, the period of fermentation, the filling and emptying of fermenting tubs, and assessments, as, in his judgment, may be expedient: *Provided*, That the bond prescribed in section 2814 shall, in the cases herein provided, be in such sum

and contain such further conditions as the Commissioner may require.

(b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 324.)

DERIVATION

Act Feb. 24, 1919, ch. 18, § 602, 40 Stat. 1107.

SIMILAR PROVISIONS

1917—Oct. 3, 1917, ch. 63, § 302, 40 Stat. 309.

§ 2849. First fermenting period.

The first fermenting period of every distiller shall be taken to begin on the day the distiller's bond is approved; and every distiller at the hour of twelve meridian on the last day of such first fermenting period, or at the same hour on any previous day of such fermenting period on which spirits are distilled, shall be deemed to have commenced, and thereafter to be continuously engaged in, the production of distilled spirits in his distillery, except in the intervals when he shall suspend work as provided in section 2850. (53 Stat. 324.)

DERIVATION

R. S. § 3310, which was in nature of a revision of acts July 20, 1868, ch. 186, § 22, 15 Stat. 134; June 6, 1872, ch. 315, § 12, 17 Stat. 240; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401, as amended by act May 28, 1880, ch. 108, § 7, 21 Stat. 147. R. S. § 3310, was also amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 248.

§ 2850. Suspension and resumption of distilling—(a) Requirements.

Any distiller desiring to suspend work in his distillery may give notice in writing to the collector of the district, stating when he will suspend work; and on the day mentioned in said notice said collector or one of his deputies shall, at the expense of the distiller, proceed to fasten securely the door of every furnace of every still or boiler in said distillery, by locks and otherwise, and shall adopt such other means as the Commissioner may prescribe to prevent the lighting of any fire in such furnace or under such stills or boilers. The locks and seals, and other materials required for such purpose, shall be furnished to the collector by the Commissioner, to be duly accounted for by said collector. Such notice by any distiller, and the action taken by the collector in pursuance thereof, shall be immediately transmitted to the Commissioner. No distiller, after having given such notice, shall, after the time stated therein, carry on the business of a distiller on said premises until he gives another notice in writing to said collector, stating the time when he will resume work; and at the time so stated for resuming work the collector or one of his deputies shall attend at the distillery to remove said locks and other fastenings; and thereupon, and not before, work may be resumed in said distillery, which fact shall be immediately reported to the collector of the district, and by him transmitted to the Commissioner.

Every distiller who, after the time fixed in said notice declaring his intention to suspend work, carries on the business of a distiller on said premises, or has mash, wort, or beer in his distillery, or on any premises connected therewith, or has in his posses-

sion or under his control any mash, wort, or beer, with intent to distill the same on said premises, shall incur the forfeitures and be subject to the same punishment as provided for persons who carry on the business of a distiller without having given the bonds required by law.

But nothing in this section shall be held to apply to suspensions caused by unavoidable accident; and the Commissioner shall prescribe regulations to govern such cases of involuntary suspension.

(b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 324.)

DERIVATION

R. S. § 3310, which was in nature of a revision of acts July 20, 1868, ch. 186, § 22, 15 Stat. 134; June 6, 1872, ch. 315, § 12, 17 Stat. 240; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401, as amended by act May 28, 1880, ch. 108, § 7, 21 Stat. 147.

§ 2851. Reduction of producing capacity of distillery—(a) Requirements.

Whenever any distiller desires to reduce the producing capacity of his distillery, he shall give notice of such intention, in writing, to the collector, stating the quantity of spirits which he desires thereafter to manufacture or produce every twenty-four hours, and thereupon said collector shall proceed, at the expense of the distiller, to reduce and limit the producing capacity of the distillery to the quantity stated in said notice, by placing upon a sufficient number of the fermenting tubs close-fitting covers, which shall be securely fastened by nails, seals, and otherwise, and in such manner as to prevent the use of such tubs without removing said covers or breaking said seals, and shall adopt such other precautions as may be prescribed by the Commissioner to reduce the capacity of said distillery.

And every person who breaks, injures, or in any manner tampers with any lock, seal, or other fastening applied to any furnace, still, or fermenting tub, or other vessel, in pursuance of the provisions of law, or who opens or attempts to open any door, tub, or other vessel, which is locked or sealed, or otherwise closed or fastened as herein provided, or who uses any furnace, still, or fermenting tub, or other vessel, which is so locked, sealed, or fastened, shall be deemed guilty of a felony, and shall be fined not less than \$1,000 nor more than \$5,000, and imprisoned for not less than one year nor more than three years.

(b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 325.)

DERIVATION

R. S. § 3311, which was in nature of a revision of acts July 20, 1868, ch. 186, § 30, 15 Stat. 138; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401.

§ 2852. Release of distillery before judgment.

Any distillery or distilling apparatus seized for any violation of law may, in the discretion of the court, be released before final judgment to a receiver appointed by the court to operate such distillery or apparatus. Such receiver shall give bond, which shall be approved in open court, with two or more

competent personal sureties, or one approved corporate surety, for the full appraised value of all the property seized, to be ascertained by three competent appraisers designated and appointed by the court. Funds obtained from such operation shall be impounded as the court shall direct pending such final judgment. (53 Stat. 325.)

#### DERIVATION

R. S. § 3331, which was in nature of a revision of act July 20, 1868, ch. 186, § 42, 15 Stat. 142, as amended by act June 26, 1936, ch. 830, § 312, title III, 49 Stat. 1948.

#### § 2853. Destruction of distilling apparatus in forfeiture proceedings—(a) Procedure.

When a judgment of forfeiture, in any case of seizure, is recovered against any distillery used or fit for use in the production of distilled spirits, because no bond has been given, or against any distillery used or fit for use in the production of spirits, having a registered producing capacity of less than one hundred and fifty gallons a day, for any violation of law, of whatever nature, every still, doubler, worm, worm tub, mash tub, and fermenting tub therein shall be so destroyed as to prevent the use of the same or of any part thereof for the purpose of distilling; and the materials shall be sold as in case of other forfeited property.

And in case of seizure of a still, doubler, worm, worm tub, mash tub, fermenting tub, or other distilling apparatus, having a less producing capacity than one hundred and fifty gallons per day, for any offense involving forfeiture of the same, where said apparatus shall be of less than \$500 value, and where it shall be impracticable to remove the same to a place of safe storage from the place where seized, the seizing officer is authorized to destroy the same only so far as to prevent the use thereof, or any part thereof, for the purpose of distilling. Such destruction shall be in the presence of at least one credible witness, and such witness shall unite with the said officer in a duly sworn report of said seizure and destruction, to be made to the Commissioner, in which report they shall set forth the grounds of the claim of forfeiture, the reasons for such seizure and destruction, their estimate of the fair cash value of the apparatus destroyed, and also of the materials remaining after such destruction, and a statement that, from facts within their own knowledge, they have no doubt whatever that said distilling apparatus was set up for use and not registered, or had been used in the unlawful distillation of spirits, and that it was impracticable to remove the same to a place of safe storage.

Within one year after such destruction the owner of the apparatus so destroyed may make application to the Secretary through the Commissioner, for reimbursement of the value of the same; and unless it shall be made to appear to the satisfaction of the Secretary and the Commissioner that said apparatus had been used in the unlawful distillation of spirits, the Secretary shall make an allowance to said owner, not exceeding the value of said apparatus, less the value of said materials as estimated in said report; and if the claimant shall thereupon satisfy said Secretary and Commissioner that said unlawful use of the apparatus had been without his consent or

knowledge, he shall still be entitled to such compensation, but not otherwise. And in case of a wrongful seizure and destruction of property under the foregoing provisions, the owner thereof shall have right of action on the official bond of the officer who occasioned the destruction for all damages caused thereby.

#### (b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 326.)

#### DERIVATION

R. S. § 3332, which was in nature of a revision of acts July 20, 1868, ch. 186, § 42, 15 Stat. 142; June 6, 1872, ch. 315, § 12, 17 Stat. 240, as amended by act Mar. 1, 1879, ch. 125, § 5, 20 Stat. 339.

#### § 2854. Burden of proof in cases of seizure of spirits.

Whenever seizure is made of any distilled spirits found elsewhere than in a distillery or distillery warehouse, or other warehouse for distilled spirits authorized by law, or than in the store or place of business of a rectifier, or of a wholesale liquor dealer, or than in transit from any one of said places; or of any distilled spirits found in any one of the places aforesaid, or in transit therefrom, which have not been received into or sent out therefrom in conformity to law, or in regard to which any of the entries required by law to be made in the books of the owner of such spirits, or of the storekeeper-gauger, wholesale dealer, or rectifier, have not been made at the time or in the manner required, or in respect to which the owner or person having possession, control, or charge of said spirits, has omitted to do any act required to be done, or has done or committed any act prohibited in regard to said spirits, the burden of proof shall be upon the claimant of said spirits to show that no fraud has been committed, and that all the requirements of the law in relation to the payment of the tax have been complied with. (53 Stat. 326.)

#### DERIVATION

R. S. § 3333, which was in nature of a revision of act July 20, 1868, ch. 186, § 36, 15 Stat. 140, as amended by act Mar. 2, 1929, ch. 510, 45 Stat. 1496.

#### § 2855. Monthly returns of rectifiers—(a) Requirement.

On or before the 10th day of each month every person engaged in rectifying or compounding distilled spirits shall make, in such form as may be prescribed by the Commissioner, a return to the collector of the district, showing the quantity of spirits received for rectification, and from whom received, the quantity dumped for rectification, the quantity rectified, the quantity removed after rectification during the preceding<sup>1</sup> month, and giving such other information as may be required by the Commissioner, such return to be made in duplicate and sworn to by the rectifier; and the collector shall forward one of such returns to the Commissioner.

#### (b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 327.)

<sup>1</sup> So in original. Probably should read "preceding."

## DERIVATION

Subsection (a) was derived from R. S. § 3317, which was in nature of a revision of acts July 20, 1868, ch. 186, § 59, 15 Stat. 151; June 6, 1872, ch. 315, § 13, 17 Stat. 244; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401, as amended by act Mar. 1, 1879, ch. 125, § 5, 20 Stat. 339.

## § 2856. Penalty for unlawful rectifying.

Every person who engages in, or carries on, the business of a rectifier with intent to defraud the United States of the tax on the spirits rectified by him, or any part thereof, or with intent to aid, abet, or assist any person or persons in defrauding the United States of the tax on any distilled spirits, or who shall purchase or receive or rectify any distilled spirits which have been removed from a distillery to a place other than the distillery warehouse provided by law, knowing or having reasonable grounds to believe that the tax on said spirits, required by law, has not been paid, shall, for every such offense, be fined not less than \$1,000 nor more than \$5,000, and imprisoned not less than six months nor more than two years. (53 Stat. 327.)

## DERIVATION

R. S. § 3317, which was in nature of a revision of acts July 20, 1868, ch. 186, § 59, 15 Stat. 151; June 6, 1872, ch. 315, § 13, 17 Stat. 244; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401, as amended by act Mar. 1, 1879, ch. 125, § 5, 20 Stat. 339.

## § 2857. Books of rectifiers and wholesale dealers—(a) Requirements.

Every rectifier and every wholesale liquor dealer who sells, or offers for sale, distilled spirits in quantities of five wine-gallons or more to the same person at the same time shall keep daily, at his place of business covered by his special tax stamp, a record of distilled spirits received and disposed of by him, and shall render under oath correct transcripts and summaries of such records: *Provided*, That the Commissioner may in his discretion require such record to be kept at the place where the spirits are actually received and sent out. The records shall be kept and the transcripts shall be rendered in such form, and under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe.

The records required to be kept under the provisions of this section and regulations issued pursuant thereto, shall be preserved for a period of four years, and during such period shall be available during business hours for inspection and the taking of abstracts therefrom by the Commissioner or any internal revenue officer.

Every rectifier and wholesale liquor dealer who refuses or neglects to keep such records in the form prescribed by the Commissioner, with the approval of the Secretary, or to make entries therein, or cancels, alters, or obliterates any entry therein (except for the purpose of correcting errors) or destroys any part of such records, or any entry therein, or makes any false entry therein, or hinders or obstructs any internal revenue officer from inspecting such records or taking any abstracts therefrom, or neglects or refuses to preserve or produce such records as required by this chapter or by regulations issued pursuant

thereto, shall pay a penalty of \$100 and, on conviction, shall be fined not less than \$100 nor more than \$5,000, and be imprisoned not less than three months nor more than three years.

Every rectifier and wholesale liquor dealer who refuses or neglects to render transcripts or summaries in the form required by the Commissioner, with the approval of the Secretary, shall, upon conviction, be fined not more than \$100 for each such neglect or refusal.

## (b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 327; Aug. 7, 1939, ch. 561, 53 Stat. 1260.)

## DERIVATION

R. S. § 3318, which was in nature of a revision of act July 20, 1868, ch. 186, § 45, 15 Stat. 143, as amended by act June 26, 1936, ch. 830, title IV, § 411, 49 Stat. 1962. R. S. § 3318 was also amended by acts Feb. 27, 1877, ch. 69, § 1, 19 Stat. 248; Mar. 1, 1879, ch. 125, § 2, 20 Stat. 329.

## 1939 AMENDMENT

First paragraph of subsection (a) was amended by act August 7, 1939, cited to text, which affected portion of first sentence preceding the proviso

## § 2858. Exemption of States from provisions of section 2857.

The provisions of section 2857 shall not apply to States and Commonwealths and liquor stores operated by such States and Commonwealths that maintain and make available to inspection by internal-revenue officers such records as will enable such officers to readily trace all distilled spirits received and disposed of by them: *Provided*, That such States and Commonwealths, and the liquor stores operated by them, shall, upon the request of the Commissioner, furnish to the Commissioner such transcripts, summaries, and copies of their records as he shall require. (53 Stat. 328.)

## DERIVATION

Act Aug. 20, 1937, ch. 721, 50 Stat. 737.

## § 2859. Books of distillers as wholesale dealers—(a) Requirement.

Every distiller shall keep daily a record of distilled spirits of his own production disposed of by him, and shall render under oath correct transcripts and summaries of such records. The records shall be kept and the transcripts shall be rendered in such form, and under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe.

The records required to be kept under the provisions of this section and regulations issued pursuant thereto, shall be preserved for a period of four years, and during such period shall at all times be available, during business hours, for inspection and the taking of abstracts therefrom by the Commissioner or any internal revenue officer.

Every distiller who refuses or neglects to keep such records in the form prescribed by the Commissioner, with the approval of the Secretary, or to make entries therein, or cancels, alters, or obliterates any entry therein (except for the purpose of correcting errors) or destroys any part of such records, or any entry therein, or makes any false entry therein, or hinders

or obstructs any internal revenue officer from inspecting such records or taking any abstracts therefrom, or neglects or refuses to preserve or produce such records as required by this chapter or by regulations issued pursuant thereto, shall pay a penalty of \$100 and, on conviction, shall be fined not less than \$100 nor more than \$5,000, and be imprisoned not less than three months nor more than three years.

Every distiller who refuses or neglects to render the transcripts or summaries in the form as required by the Commissioner, with the approval of the Secretary, shall, upon conviction, be fined not more than \$100 for each such neglect or refusal.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 328.)

**DERIVATION**

Act Aug. 27, 1894, ch. 349, § 62, 28 Stat. 567, as amended by act June 26, 1936, ch. 830, title IV, § 412, 49 Stat. 1963.

**§ 2860. Limitation on purchases by rectifiers and dealers.**

It shall not be lawful for any rectifier of distilled spirits, or wholesale or retail liquor dealer, to purchase or receive any distilled spirits in quantities greater than twenty gallons from any person other than an authorized rectifier of distilled spirits, distiller, or wholesale liquor dealer. Every person who violates this section shall forfeit and pay \$1,000: *Provided*, That this provision shall not be held to apply to judicial sales, or to sales at public auction made by an auctioneer, or to sales upon which no special tax accrues as enumerated and provided for in section 3251. This section shall not be held to prohibit a rectifier or liquor dealer from purchasing, in quantities greater than twenty wine-gallons, the distilled spirits sold in one parcel as provided in section 3251 (c). (53 Stat. 328.)

**DERIVATION**

R. S. § 3319, which was in nature of a revision of acts July 20, 1868, ch. 186, § 46, 15 Stat. 144; July 14, 1870, ch. 255, § 1, 16 Stat. 256; R. S. § 3244, Fifth (d), as amended by act June 26, 1936, ch. 830, § 324, title III, 49 Stat. 1955. R. S. § 3244, Fifth, was in nature of a revision of acts July 20, 1868, ch. 186, § 59, 15 Stat. 151; Apr. 10, 1869, ch. 18, § 2, 16 Stat. 42; June 6, 1872, ch. 315, §§ 13, 17, 17 Stat. 244, 245

**§ 2861. Gauging, branding, and stamping rectified spirits—(a) Requirement.**

Whenever any cask or package of distilled spirits containing five wine gallons or more is dumped by a rectifier for rectification or filed and received from rectification for sale, shipment, or delivery the same shall be gauged, marked, branded and stamped by a storekeeper-gauger, whose duty it shall be to mark and brand the same and place thereon an engraved stamp, which shall state the date when affixed and the number of proof gallons, and shall be in such form as shall be prescribed by the Commissioner with the approval of the Secretary; but the Commissioner may by regulations, approved by the Secretary, provide that the gauging, marking, stamping and branding of such packages so dumped for rectification, or received therefrom, be done by the rectifier instead of by a storekeeper-gauger.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 329.)

**DERIVATION**

R. S. § 3320, which was in nature of a revision of acts July 20, 1868, ch. 186, §§ 25, 57, 15 Stat. 136, 149; June 6, 1872, ch. 315, § 12, 17 Stat. 243, as amended by act Aug. 27, 1894, ch. 349, § 66, 28 Stat. 567; acts Mar. 4, 1915, ch. 141, § 1, 38 Stat. 1017; Mar. 2, 1929, ch. 510, 45 Stat. 1496.

**§ 2862. Stamping—(a) Requirements.**

All blanks in any of the forms prescribed in section 2861 shall be duly filled in accordance with the facts in each case. And the stamps therein designated shall in every case be affixed to a smooth surface of the cask or other package, which surface shall not have been previously painted or covered with any substance, and so as to fasten the same securely to the cask or package, and shall be duly canceled, and shall then be immediately covered with a coating of transparent varnish or other substance, so as to protect them from removal or damage by exposure; and such affixing, cancellation, and covering shall be done in such manner as the Commissioner may by regulation prescribe.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 329.)

**DERIVATION**

R. S. § 3322, which was in nature of a revision of act July 20, 1868, ch. 186, § 25, 15 Stat. 137.

**§ 2863. Marking and stamping packages filled on premises of wholesale dealers—(a) Requirements.**

Every package of distilled spirits containing five wine gallons or more, filled on the premises of a wholesale liquor dealer, who has paid the special tax required by law, shall be marked, branded, and stamped by such wholesale liquor dealer in such manner and under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 329.)

**DERIVATION**

R. S. § 3323, which was in nature of a revision of acts July 20, 1868, ch. 186, § 47, 15 Stat. 144; June 6, 1872, ch. 315, § 12, 17 Stat. 240, as amended by act July 16, 1892, ch. 196, § 1, 27 Stat. 200.

**§ 2864. Returns of wholesale dealers.**

For requirements as to rendering under oath correct transcripts and summaries of records in the case of wholesale liquor dealers, see section 2857 (a).

(53 Stat. 329.)

**§ 2865. Noncompliance by rectifiers and wholesale dealers with certain provisions, penalties—(a) Imposition.**

Every rectifier or wholesale liquor dealer who refuses or willfully neglects to comply with the requirements of sections 2813, 2861, and 2863 as to giving the said notice or the said return, and as to marking, branding, and stamping, in accordance with the law



and the regulations made in pursuance thereof, the packages of spirits filled on his premises as aforesaid, shall, for each such offense, be fined not less than \$200 nor more than \$1,000.

(b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 329.)

DERIVATION

R. S. § 3323, which was in nature of a revision of acts July 20, 1868, ch. 186, § 47, 15 Stat. 144; June 6, 1872, ch. 315, § 12, 17 Stat. 240, as amended by act July 16, 1892, ch. 196, § 1, 27 Stat. 201.

§ 2866. Effacement of stamps and brands on emptied packages.

Every person who empties or draws off, or causes to be emptied or drawn off, any distilled spirits from a cask or package bearing any mark, brand, or stamp, required by law, shall at the time of emptying such cask or package, efface and obliterate said mark, stamp, or brand. Every such cask or package from which said mark, brand, or stamp is not effaced and obliterated as herein required, shall be forfeited to the United States, and may be seized by any officer of internal revenue, wherever found. And every railroad company or other transportation company, or person who receives or transports, or has in possession with intent to transport, or with intent to cause or procure to be transported, any such empty cask or package, or any part thereof, having thereon any brand, mark, or stamp, required by law to be placed on any cask or package containing distilled spirits, shall forfeit \$300 for each such cask or package, or any part thereof, so received or transported, or had in possession with the intent aforesaid; and every boat, railroad car, cart, dray, wagon, or other vehicle, and all horses and other animals used in carrying or transporting the same, shall be forfeited to the United States. Every person who fails to efface and obliterate said mark, stamp, or brand, at the time of emptying such cask or package, or who receives any such cask or package, or any part thereof, with the intent aforesaid, or who transports the same, or knowingly aids or assists therein, or who removes any stamp provided by law from any cask or package containing, or which had contained, distilled spirits, without defacing and destroying the same at the time of such removal, or who aids or assists therein, or who has in his possession any such stamp so removed as aforesaid, or has in his possession any canceled stamp, or any stamp which has been used, or which purports to have been used, upon any cask or package of distilled spirits, shall be deemed guilty of a felony, and shall be fined not less than \$500 nor more than \$10,000, and imprisoned not less than one year nor more than five years. (53 Stat. 330.)

DERIVATION

R. S. § 3324, which was in nature of a revision of act July 20, 1868, ch. 186, § 43, 15 Stat. 142.

§ 2867. Buying or selling used casks bearing inspection marks.

Whenever any person knowingly purchases or sells, with inspection marks thereon, any cask or package,

after the same has been used for distilled spirits, he shall forfeit and pay the sum of \$200 for every such cask so purchased or sold. (53 Stat. 330.)

DERIVATION

R. S. § 3325, which was in nature of a revision of act July 13, 1866, ch. 184, § 38, 14 Stat. 160.

§ 2868. Changing stamps or shifting spirits.

Whenever any person changes or alters any stamp, mark, or brand on any cask or package containing distilled spirits, or puts into any cask or package spirits of greater strength than is indicated by the inspection-mark thereon, or fraudulently uses any cask or package having any inspection-mark or stamp thereon, for the purpose of selling other spirits, or spirits of quantity or quality different from the spirits previously inspected therein, he shall forfeit and pay the sum of \$200 for every cask or package on which the stamp or mark is so changed or altered, or which is so fraudulently used, and shall be fined for each such offense not less than \$100 nor more than \$1,000, and imprisoned not less than one month nor more than one year. (53 Stat. 330.)

DERIVATION

R. S. § 3326, which was in nature of a revision of act July 20, 1868, ch. 186, § 39, 15 Stat. 141.

§ 2869. Affixing imitation stamps on packages of distilled spirits.

If any person shall affix, or cause to be affixed, to or upon any cask or package containing, or intended to contain, distilled spirits, any imitation stamp or other engraved, printed, stamped, or photographed label, device, or token, whether the same be designed as a trade mark, caution notice, caution, or otherwise, and which shall be in the similitude or likeness of, or shall have the resemblance or general appearance of, any internal revenue stamp required by law to be affixed to or upon any cask or package containing distilled spirits, he shall, for each offense, be liable to a penalty of \$100, and, on conviction, shall be fined not more than \$1,000, and imprisoned not more than three years, and the cask or package with its contents shall be forfeited to the United States. (53 Stat. 330.)

DERIVATION

Act Feb. 8, 1875, ch. 36, § 17, 18 Stat. 311.

§ 2870. Prohibited hours for removal of spirits.

No person shall remove any distilled spirits at any other time than after sun-rising and before sun-setting in any cask or package containing more than ten gallons from any premises or building in which the same may have been distilled, redistilled, rectified, compounded, manufactured, or stored; and every person who violates this provision shall be liable to a penalty of \$100 for each cask, barrel, or package of spirits so removed; and said spirits, together with any vessel containing the same, and any horse, cart, boat, or other conveyance used in the removal thereof, shall be forfeited to the United States. (53 Stat. 331.)

DERIVATION

R. S. § 3327, which was in nature of a revision of act July 20, 1868, ch. 186, § 37, 15 Stat. 141.

**§ 2871. Regulation of traffic in containers of distilled spirits.**

Whenever in his judgment such action is necessary to protect the revenue, the Secretary is authorized, by the regulations prescribed by him, and permits issued thereunder if required by him (1) to regulate the size, branding, marking, sale, resale, possession, use, and re-use of containers (of a capacity of less than five wine-gallons) designed or intended for use for the sale at retail of distilled spirits (within the meaning of such term as it is used in section 2803) for other than industrial use, and (2) to require, of persons manufacturing, dealing in, or using any such containers, the submission to such inspection, the keeping of such records, and the filing of such reports as may be deemed by him reasonably necessary in connection therewith. Whoever willfully violates the provisions of any regulation prescribed, or the terms or conditions of any permit issued, pursuant to the authorization contained in this section, and any officer, director, or agent of any corporation who knowingly participates in such violation, shall, upon conviction, be fined not more than \$1,000 or be imprisoned for not more than two years, or both; and, notwithstanding any criminal conviction, the containers involved in such violation shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for forfeitures, seizures, and condemnations for violations of the internal-revenue laws, and any such containers so seized and condemned shall be destroyed and not sold. Any requirements imposed under this section shall be in addition to any other requirements imposed by, or pursuant to, law, and shall apply as well to persons not liable for tax under the internal-revenue laws as to persons so liable. (53 Stat. 331.)

**DERIVATION**

Act June 18, 1934, ch. 610, 48 Stat. 1020.

**PART III.—INTERNAL REVENUE BONDED WAREHOUSES****§ 2872. Establishment and control.**

The Commissioner is authorized, in his discretion, and upon the execution of such bonds as he may prescribe, to establish warehouses, to be known and designated as internal revenue bonded warehouses, to be used exclusively for the storage of spirits distilled at a registered distillery, each of which warehouses shall be in charge of a storekeeper-gauger. Every such warehouse shall be under the control of the District Supervisor of the Alcohol Tax Unit district in which such warehouse is located, and shall be in the joint custody of the storekeeper-gauger and proprietor thereof, and kept securely locked, and shall at no time be unlocked or opened or remain open except in the presence of such storekeeper-gauger or other person who may be designated to act for him. No dwelling house shall be used for such a warehouse, and no door, window, or other opening shall be made or permitted in the walls of such warehouse leading into a distillery. Such warehouses shall be under such further regulations as the Commissioner, with the approval of the Secretary, may prescribe. (53 Stat. 331.)

**DERIVATION**

Act Aug. 27, 1894, ch. 349, § 51, as amended by act June 26, 1936, ch. 830, title II, § 406 (a), 49 Stat. 1961.

**SIMILAR PROVISIONS**

1929—Mar. 2, 1929, ch. 510, 45 Stat. 1496.

R. S. § 3271.

1872—June 6, 1872, ch. 315, § 12, 17 Stat. 239.

1868—July 20, 1868, ch. 186, § 15, 15 Stat. 130.

**§ 2873. Regulations for establishment, maintenance, and supervision.**

The establishment, construction, maintenance, and supervision of internal revenue bonded warehouses shall be under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe. (53 Stat. 332.)

**DERIVATION**

Act June 26, 1936, ch. 830, title IV, § 407, 49 Stat. 1961.

**§ 2874. Discontinuance of warehouse and transfer of merchandise—(a) Authorization.**

Whenever, in the opinion of the Commissioner, any internal revenue bonded warehouse is unsafe or unfit for use, or the merchandise therein is liable to loss or great wastage, he may in either such case discontinue such warehouse and require the merchandise therein to be transferred to such other warehouse as he may designate, and within such time as he may prescribe. Such transfer shall be made under the supervision of the collector, or of such other officer as may be designated by the Commissioner, and the expense thereof shall be paid by the owner of the merchandise. Whenever the owner of such merchandise fails to make such transfer within the time prescribed, or to pay the just and proper expense of such transfer, as ascertained and determined by the Commissioner, such merchandise may be seized and sold by the collector in the same manner as goods are sold upon distraint for taxes, and the proceeds of such sale shall be applied to the payment of the taxes due thereon and the cost and expenses of such sale and removal, and the balance paid over to the owner of such merchandise.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 332.)

**DERIVATION**

R. S. § 3272, which was in nature of a revision of act July 20, 1868, ch. 186, § 56, 15 Stat. 149; acts Aug. 27, 1894, ch. 349, § 57, 28 Stat. 566; June 6, 1926, ch. 830, title IV, § 407, 49 Stat. 1961.

**§ 2875. Exemption from provisions of law distinguishing between classes of warehouses.**

Internal revenue bonded warehouses established under authority of law shall be exempt from the provisions of those sections of law which, prior to June 26, 1936, have made distinctions between distillery bonded warehouses, general bonded warehouses, and special bonded warehouses, as to (1) kind of spirits to be stored therein; (2) ownership or production of distilled spirits to be stored therein; (3) ownership or proprietorship of such warehouses; (4) location and construction of such bonded warehouses; (5) entry of distilled spirits therein; (6) withdrawal of distilled spirits therefrom; (7) transfers of distilled

spirits to or from one or more of such classes of bonded warehouses; or (8) any other matter; it being hereby declared to be the purpose to establish the internal revenue bonded warehouse as the sole type and kind of bonded warehouse under the internal revenue laws for the storage of spirits distilled at a registered distillery on which the tax has not been paid. (53 Stat. 332.)

#### DERIVATION

Act June 26, 1936, ch. 830, title IV, § 408, 49 Stat. 1961.

#### § 2876. Failure to comply with warehousing and removal requirements.

In case any distilled spirits removed from an internal revenue bonded warehouse for deposit in another internal revenue bonded warehouse shall fail to be so deposited or if any distilled spirits deposited in any internal revenue bonded warehouse shall be taken therefrom, for export or otherwise, without full compliance with the provisions of this part, and with the requirements of any regulations made thereunder, and with the terms of any bond given on such removal, or if any distilled spirits which have been deposited in an internal revenue bonded warehouse shall be found elsewhere, not having been removed therefrom according to law, any person who shall be guilty of such failure, or any person who shall in any manner violate any provision of this part shall be subject, on conviction, to a fine of not less than \$100 nor more than \$5,000, or to imprisonment for not less than three months nor more than three years for every such failure or violation; and the spirits as to which such failure or violation, or unlawful removal shall take place shall be forfeited to the United States. (53 Stat. 332.)

#### DERIVATION

Acts Aug. 27, 1894, ch. 349, § 59, 28 Stat. 566; June 26, 1936, ch. 830, title IV, § 407, 49 Stat. 1961.

#### § 2877. Storekeeper-gauger's records—(a) Requirement.

The storekeeper-gauger assigned to any distillery shall, in addition to all other duties required to be performed by him, keep records of the receipt and use of substances brought into said distillery, or on said premises, to be used for the purpose of producing spirits, and of all spirits drawn off from the receiving cistern, and the time when the same were drawn off, in such form as the Commissioner, with the approval of the Secretary, shall, by regulations, prescribe.

#### (b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 333.)

#### DERIVATION

R. S. § 3302, which was in nature of a revision of act July 20, 1868, ch. 186, § 21, 15 Stat. 134, as amended by act June 26, 1936, ch. 830, title III, § 310, 49 Stat. 1947.

#### § 2878. Drawing, gauging, and marking of distilled spirits—(a) General rule.

Except as provided in section 2883, all distilled spirits shall be drawn from receiving cisterns into casks or packages and thereupon shall be gauged, proved, and marked by a storekeeper-gauger, and

immediately removed into an internal revenue bonded warehouse. The Commissioner, with the approval of the Secretary, is hereby empowered to prescribe all necessary regulations relating to the drawing off, gauging, and packaging of distilled spirits; the marking, branding, numbering, and stamping of such packages; and the transfer and transportation to, and the storage of such spirits in, internal revenue bonded warehouses.

#### (b) In wooden packages containing metallic cans for export.

Upon the application of the distiller and under such regulations as the Commissioner, with the approval of the Secretary, may prescribe, distilled spirits may be drawn into wooden packages, each containing two or more metallic cans, which cans shall each have a capacity of not less than five gallons, wine measure. Such packages shall be filled and used only for exportation from the United States. And there shall be charged for each of said packages or cases for the expense of providing and affixing stamps, 5 cents.

#### (c) Standards of fill.

The Commissioner, with the approval of the Secretary, may, by regulations, prescribe the standards of fill of casks or packages of distilled spirits at each distillery.

#### (d) Marking and branding by distiller.

The Commissioner, with the approval of the Secretary, may, by regulations, from time to time, require a distiller, at his expense and under the immediate personal supervision of a storekeeper-gauger, to do such marking and branding and such mechanical labor pertaining to gauging required under this section as the Commissioner deems proper and determines may be done without danger to the revenue.

#### (e) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 333.)

#### DERIVATION

R. S. § 3287, which was in nature of a revision of act July 20, 1868, ch. 186, § 23, 15 Stat. 135, as amended by act June 26, 1936, ch. 830, title II, § 201, 49 Stat. 1940. R. S. § 3287 was also amended by act Feb. 21, 1899, ch. 177, 30 Stat. 843.

#### § 2879. Deposits of spirits in warehouses—(a) Entry for deposit.

The distillers of all spirits removed to an internal revenue bonded warehouse shall enter the same for deposit in such warehouse, under such regulations as the Commissioner may prescribe. Said entry shall be in such form as the Commissioner shall prescribe.

#### (b) Time for payment of the tax.

The tax on all distilled spirits hereafter entered for deposit in internal revenue bonded warehouses shall be due and payable before and at the time the same are withdrawn therefrom and within eight years from the date of the original entry for deposit therein; and warehousing bonds hereafter taken under the provisions of the internal revenue laws shall be conditioned for the payment of the tax

on the spirits as specified in the entry before withdrawal from the internal revenue bonded warehouse, and within eight years from the date of said entry.

**(c) Bond required.**

The Commissioner shall prescribe the form and penal sums of bonds covering distilled spirits in internal revenue bonded warehouses and in transit to and between such warehouses: *Provided*, That the penal sums of such bonds covering distilled spirits shall not exceed in the aggregate \$200,000 for each such warehouse.

**(d) Renewal of bond.**

A new bond shall be required in case of the death, insolvency, or removal of the surety or sureties, and may be required in any other contingency affecting its validity or impairing its efficiency, at the discretion of the Commissioner. And in case the warehouseman fails or refuses to give the bond required, or to renew the same, or neglects to immediately withdraw the spirits and pay the tax thereon, or if he neglects to withdraw any bonded spirits and pay the tax thereon before the expiration of the time limited in the bond, the collector shall proceed to collect the tax by distraint, issuing his warrant of distraint for the amount of tax found to be due, as ascertained by him from the report of the storekeeper-gauger if no bond was given, or from the terms of the bond if a bond was given. But this provision shall not exclude any other remedy or proceeding provided by law.

**(e) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 333.)

**DERIVATION**

R. S. § 3293, which was in nature of a revision of acts July 20, 1868, ch. 186, § 23, 15 Stat. 135; June 6, 1872, ch. 315, § 12, 17 Stat. 240, as amended by act June 26, 1936, ch. 830, title III, § 309 (a)-(c), 49 Stat. 1947.

**§ 2880. Withdrawal from warehouse and collection of tax on spirits subject to excessive leakage—(a) Power of the Commissioner.**

If it shall appear at any time that there has been a loss of distilled spirits from any cask or other package deposited in an internal revenue bonded warehouse, other than the loss provided for in section 2901 (b), which, in the opinion of the Commissioner, is excessive, he may instruct the District Supervisor of the district in which the loss has occurred to require the withdrawal from warehouse of such distilled spirits, and direct the collector to collect the tax accrued upon the original quantity of distilled spirits entered into the warehouse in such cask or package, notwithstanding that the time specified in any bond given for the withdrawal of the spirits entered into warehouse in such cask or package has not expired. If the said tax is not paid on demand, the collector shall report the amount due upon his next monthly list, and it shall be assessed and collected as other taxes are assessed and collected.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 334.)

**DERIVATION**

R. S. § 3293, which was in nature of a revision of acts July 20, 1868, ch. 186, § 23, 15 Stat. 135; June 6, 1872, ch. 315, § 12, 17 Stat. 240, as amended by act June 26, 1936, ch. 830, title III, § 309 (d), 49 Stat. 1947. R. S. § 3293, was also amended by act May 28, 1880, ch. 108, § 4, 21 Stat. 145.

**§ 2881. Withdrawal of spirits from warehouse on original gauge—(a) Regulations.**

Under such regulations as the Commissioner, with the approval of the Secretary, may prescribe, packages of distilled spirits drawn from receiving cisterns and deposited in internal revenue bonded warehouses may be withdrawn therefrom on the original gauge where the same have remained in such warehouse for a period not exceeding thirty days from the date of deposit.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 334.)

**DERIVATION**

Acts Feb. 24, 1919, ch. 18, § 602, 40 Stat. 1107, as amended by act June 26, 1936, ch. 830, title III, § 308, 49 Stat. 1948; June 26, 1936, ch. 830, title IV, § 407, 49 Stat. 1961.

**§ 2882. Entry for withdrawal from warehouse—(a) Authorization.**

Any distilled spirits may, on payment of the tax thereon, be withdrawn from warehouse on application to the collector of the district in charge of such warehouse, on making a withdrawal entry in duplicate and in the following form:

**ENTRY FOR WITHDRAWAL OF DISTILLED SPIRITS FROM WAREHOUSE TAX PAID**

Entry of distilled spirits to be withdrawn, on payment of the tax, from internal revenue bonded warehouse number \_\_\_\_\_, situated in the \_\_\_\_\_ district of \_\_\_\_\_, by \_\_\_\_\_, deposited on the \_\_\_\_\_ day of \_\_\_\_\_, anno Domini \_\_\_\_\_, by \_\_\_\_\_, in said warehouse.

And the entry shall specify the whole number of casks or packages, with the marks and serial numbers thereon, the number of gauge or wine gallons, and of proof gallons and taxable gallons, and the amount of the tax on the distilled spirits contained in them at the time they were deposited in the internal revenue bonded warehouse; and said entry shall also specify the number of gauge or wine gallons, and of proof gallons, and taxable gallons contained in said casks or packages at the time application shall be made for the withdrawal thereof; and on payment of the tax the collector shall issue his order to the storekeeper-gauger in charge of the warehouse for the delivery. One of said entries shall be filed in the office of the collector, and the other transmitted by him to the Commissioner.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 335.)

DERIVATION

R. S. § 3294, which was in nature of a revision of act July 20, 1868, ch. 186, § 24, 15 Stat. 136, as amended by acts Mar. 1, 1879, ch. 125, § 5, 20 Stat. 337; May 28, 1880, ch. 108, § 5, 21 Stat. 146; acts Mar. 2, 1929, ch. 510, 45 Stat. 1496; June 26, 1936, ch. 830, title IV, § 407, 49 Stat. 1961.

SIMILAR PROVISIONS

1891—Mar. 3, 1891, ch. 544, § 1, 26 Stat. 1050.

§ 2883. Transfer of spirits at registered distilleries—  
(a) Requirements.

Subject to the provisions of existing law, spirits produced at registered distilleries and reduced in the receiving cisterns in such distilleries to not more than one hundred and fifty-nine degrees of proof and not less than one hundred degrees of proof, may be transferred, by means of pipe lines, direct to storage tanks in the internal revenue bonded warehouse located on the bonded premises where produced and be warehoused in such storage tanks, or they may be drawn into approved containers and transferred to any internal revenue bonded warehouse for storage therein, or they may be taxpaid in such approved containers in such cistern rooms, without being entered into an internal revenue bonded warehouse. Such spirits may be drawn into approved containers from storage tanks in internal revenue bonded warehouse located on the bonded premises of the distillery either for storage in bond or tax payment. Such spirits, upon tax payment, may be transported in approved containers for use for beverage purposes only. The Commissioner, with the approval of the Secretary, is hereby empowered to prescribe all necessary regulations relating to the drawing off, transferring, gauging, storing, and transportation of such spirits; the records to be kept and returns to be made; the size and kind of containers to be used; the marking, branding, numbering, and stamping of such containers; the kind of stamps, if any, to be used; and the kind of bond and the penal sum thereof: *Provided*, That under the provisions of this section insofar as applicable, the Commissioner may, under rules and regulations to be by him prescribed, subject to the approval of the Secretary, permit the transfer of fortifying spirits containing more than one hundred and fifty-nine degrees proof up to and including one hundred and ninety-two degrees proof by pipe line from registered fruit distilleries and receiving cisterns in such distilleries to storage tanks in the internal-revenue bonded warehouse located on the distillery premises to be warehoused in such storage tanks and transferred by pipe line to the fortification rooms of contiguous wineries when required.

(b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 335.)

DERIVATION

Acts Feb. 24, 1919, ch. 18, § 602, 40 Stat. 1107; June 26, 1936, ch. 830, title III, § 308, 49 Stat. 1946, as amended by act June 15, 1938, ch. 439, § 4, 52 Stat. 700.

§ 2884. Gauging, stamping, and branding spirits removed from warehouse—(a) Requirement.

Whenever an application is received for the removal from any internal revenue bonded warehouse of any cask or package of distilled spirits on which the tax has been paid, the storekeeper-gauger shall gauge and inspect the same, and shall, before such cask or package has left the warehouse, place upon such package such marks, brands, and stamps as the Commissioner, with the approval of the Secretary, shall by regulations prescribe, which marks, brands, and stamps shall be erased when such cask or package is emptied.

The Commissioner, with the approval of the Secretary, may, by regulations, from time to time, require any distiller, at his expense and under the immediate personal supervision of a storekeeper-gauger, to do such marking and branding and such mechanical labor pertaining to gauging required under this section as the Commissioner deems proper and determines may be done without danger to the revenue.

(b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 336.)

DERIVATION

R. S. § 3295, which was in nature of a revision of act July 20, 1868, ch. 186, § 25, 15 Stat. 136, as amended by act June 26, 1936, ch. 830, title II, § 202, 49 Stat. 1941. R. S. § 3295 was also amended by act July 16, 1892, ch. 196, 27 Stat. 201.

§ 2885. Exportation of spirits withdrawn from warehouses—(a) Entries, bonds, and bills of lading.

Distilled spirits may be withdrawn from internal revenue bonded warehouses, at the instance of the owner of the spirits, for exportation in the original casks or packages, without the payment of tax, under such regulations, and after making such entries and executing and filing with the collector of the district from which the removal is to be made such bonds and bills of lading, and giving such other additional security as may be prescribed by the Commissioner, with the approval of the Secretary, and bonds given under this section shall be canceled under such regulations as the Secretary shall prescribe. The bonds required to be given for the exportation of distilled spirits shall be canceled upon the presentation of satisfactory proof and certificates that said distilled spirits have been landed at the port of destination named in the bill of lading, or upon satisfactory proof that after shipment the same were lost at sea without fault or neglect of the owner or shipper thereof.

(b) Marks, stamps, and permits.

All distilled spirits intended for export, as aforesaid, before being removed from the internal revenue bonded warehouse, shall be marked as the Commissioner may prescribe, and shall have affixed to each cask an engraved stamp indicative of such intention, to be provided and furnished by the several collectors as in the case of other stamps, and to be charged to them and accounted for in the same manner, and for the expense attending the providing and affixing such stamps 10 cents for each package so stamped shall be paid to the collector on making the entry for such transportation. When the owner of the

spirits shall have made the proper entries, filed the bonds, and otherwise complied with all the requirements of the law and regulations as herein provided, the collector shall issue to him a permit for the removal and transportation of said spirits to the collector of the port from which the same are to be exported, accurately describing the spirits to be shipped, the amount of tax thereon, the State and district from which the same is to be shipped, the name of the distiller by whom distilled, the port to which the same are to be transported, the name of the collector of the port to whom the spirits are to be consigned, and the routes over which they are to be sent to the port of shipment. Such shipments shall be made over bonded routes whenever practicable. The collector of the port shall receive such spirits, and permit the exportation thereof, under the same rules and regulations as are prescribed for the exportation of spirits upon which the tax has been paid.

(c) **Metallic cans in wooden packages.**

For authority of distiller to draw distilled spirits into wooden packages, each containing two or more metallic cans, for exportation only, see section 2878 (b).

(d) **Penalties and forfeitures—(1) Fraudulent claim for drawback.**

And every person who fraudulently claims, or seeks, or obtains an allowance of drawback on any distilled spirits, or fraudulently claims any greater allowance or drawback than the tax actually paid thereon, shall forfeit and pay to the Government of the United States triple the amount wrongfully and fraudulently sought to be obtained, and shall be imprisoned not more than ten years; and every owner, agent, or master of any vessel or other person who knowingly aids or abets in the fraudulent collection or fraudulent attempts to collect any drawback upon, or knowingly aids or permits any fraudulent change in the spirits so shipped, shall be fined not exceeding \$5,000 and imprisoned not more than one year, and the ship or vessel on board of which such shipment was made or pretended to be made shall be forfeited to the United States, whether a conviction of the master or owner be had or otherwise, and proceedings may be had in admiralty by libel for such forfeiture.

(2) **Unlawful relanding.**

Every person who intentionally relands within the jurisdiction of the United States any distilled spirits which have been shipped for exportation under the provisions of this chapter, or who receives such relanded distilled spirits, and every person who aids or abets in such relanding or receiving of such spirits, shall be fined not exceeding \$5,000 and imprisoned not more than three years; and all distilled spirits so relanded, together with the vessel from which the same were relanded within the jurisdiction of the United States, and all boats, vehicles, horses, or other animals used in relanding and removing such distilled spirits, shall be forfeited to the United States.

(e) **Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 336.)

**DERIVATION**

Subsections (a) (d) from R. S. § 3330 which was in nature of a revision of acts June 6, 1872, ch. 315, § 12, 17 Stat. 242; Mar. 3, 1873, ch. 232, § 5, 17 Stat. 559, 560, as amended by act May 28, 1880, ch. 108, § 11, 21 Stat. 148; June 26, 1936, ch. 830, title IV, § 407, 49 Stat. 1961. R. S. § 3330 was also amended by act June 9, 1874, ch. 259, § 2, 18 Stat. 64.

Subsection (b) from act June 9, 1874, ch. 259, § 2, 18 Stat. 64.

**§ 2886. Transportation bond on withdrawal of spirits for export—(a) Requirements.**

Whenever the owner or owners of distilled spirits shall desire to withdraw the same from any internal revenue bonded warehouse for exportation, such owner or owners may at their option, in lieu of executing an export bond as provided by law, give a transportation bond with sureties satisfactory to the collector of internal revenue and under such rules and regulations as the Secretary may prescribe, conditioned for the due delivery thereof on board ship at a port of exportation to be named therein, and for the due performance on the part of the exporter or owner at the port of export of all the requirements in regard to notice of export, entry, and the giving of bond hereinafter specified; and in such case, on arrival of the spirits at the port of export, the exporter or owner at that port shall immediately notify the collector of the port of the fact, setting forth his intention to export the same, and the name of the vessel upon which the same are to be laden, and the port to which they are intended to be exported. He shall, after the quantity of spirits has been determined by the gauger and inspector, file with the collector of the port an export-entry verified by his oath or affirmation. He shall also give bond to the United States, with at least two sureties, satisfactory to the collector of customs, conditioned that the principal named in said bond will export the spirits as specified in said entry to the port designated in said entry, or to some other port without the jurisdiction of the United States.

And upon the lading of such spirits, the collector of the port, after proper bonds for the exportation of the same have been completed by the exporter or owner at the port of shipment thereof, shall transmit to the collector of internal revenue of the district from which the said spirits were withdrawn for exportation, a clearance certificate and a detailed report of the gauger, which report shall show the capacity of each cask in wine gallons, and the contents thereof in wine gallons, proof gallons, and taxable gallons. Upon receipt of the certificate and report, and upon payment of tax on deficiency, if any, the collector of internal revenue shall cancel the transportation bond. The bond required to be given for the landing at a foreign port of distilled spirits shall be canceled upon the presentation of satisfactory proof and certificates that said distilled spirits have been landed at the port of destination named in the bill of lading or any other port without the jurisdiction of the United States or upon satisfactory proof that after shipment the same were lost at sea without fault or neglect of the owner or shipper thereof. And whenever a distiller of spirits in bond shall desire to change the packages in which the same is con-

tained, in order to export them, the Commissioner shall be authorized, under regulations to be prescribed by him, and upon the execution of proper bonds with sufficient sureties, to permit the withdrawal of so much spirits from bond and in new packages as the distiller shall desire to export as aforesaid.

(b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 337.)

DERIVATION

Act June 9, 1874, ch. 259, § 1, 18 Stat. 64, as amended by act Mar. 1, 1879, ch. 125, § 10, 20 Stat. 342; act June 26, 1936, ch. 830, title IV, § 407, 49 Stat. 1961.

§ 2887. Drawback on spirits.

Distilled spirits upon which all taxes have been paid may be exported, with the privilege of drawback, and in distillers' original casks or packages, containing not less than twenty wine gallons each, on application of the owner thereof to the collector of customs at any port of entry, and under such rules and regulations, and after making such entry as may be prescribed by law and by the Secretary. The entry for such exportation shall be in triplicate, and shall contain the name of the person applying to export, the name of the distiller, the name of the district in which the spirits were distilled, the name of the vessel by which, and the name of the port to which, they are to be exported; and the form of the entry shall be as follows:

EXPORT ENTRY OF DISTILLED SPIRITS ENTITLED TO DRAWBACK

Entry of spirits distilled by \_\_\_\_\_, in \_\_\_\_\_ district, State of \_\_\_\_\_, to be exported by \_\_\_\_\_, in the \_\_\_\_\_, whereof \_\_\_\_\_ is master, bound to \_\_\_\_\_

And the entry shall specify the whole number of casks or packages, the marks and serial numbers thereon, the quality or kind of spirits as known in commerce, the number of gauge or wine gallons and of proof gallons; and the amount of the tax on such spirits shall be verified by the oath of the owner of the spirits, and that the tax has been paid thereon, and that they are truly intended to be exported to the port of \_\_\_\_\_, and not to be relanded within the limits of the United States. One bill of lading, duly signed by the master of the vessel, shall be deposited with said collector, to be filed at his office with the entry retained by him. One of said entries shall be, when the shipment is completed, transmitted to the Secretary, to be recorded and filed in his office. The lading on board said vessel shall be only after the receipt of an order or permit signed by the collector of customs and directed to a customs gauger, and after each cask or package shall have been distinctly marked or branded by said gauger as follows: "For export from U. S. A.," and the tax-paid stamps thereon obliterated. The casks or packages shall be inspected and gauged alongside of or on the vessel by the gauger designated by said collector, under such rules and regulations as the Secretary may prescribe; and on application of the said collector it shall be the duty of the sur-

veyor of the port to designate and direct one of the customhouse inspectors to superintend such shipment. And the gauger aforesaid shall make a full return of such inspection and gauging in such form as may be prescribed by the Secretary, showing by whom each cask of such spirits was distilled, the serial number of the cask, and by the tax-paid stamp attached thereto, the proof and quantity of such spirits as per the original gauge-mark on each cask, and the quantity in proof and wine gallons as per the gauge then made by him. And said gauger shall certify on such return that the shipment has been made, in his presence, on board the vessel named in the entry for export, which return shall be indorsed by said customhouse inspector certifying that the casks or packages have been shipped under his supervision on board said vessel, and the tax-paid stamps obliterated; and the said inspector shall make a similar certificate to the surveyor of the port, indorsed on or to be attached to the entry in possession of the customhouse.

A drawback shall be allowed upon distilled spirits on which the tax has been paid and exported to foreign countries, under the provisions of this section, when exported as herein provided for. The drawback allowed shall include the taxes levied and paid upon the distilled spirits exported, and the rate of drawback shall be equal to the rate of the internal tax paid in respect of the distilled spirits exported, but shall not exceed a rate of \$3 (or, in the case of brandy, \$2.75) per proof gallon, as per last gauge of said spirits prior to exportation, and shall be due and payable only after the proper entries have been made and filed and all other conditions complied with as hereinbefore required, and on filing with the Secretary the proper claim, accompanied by the certificate of the collector of customs at the port of entry where the spirits are entered for export that such spirits have been received into his custody and the tax-paid stamps thereon obliterated; and the Secretary shall prescribe such rules and regulations in relation thereto as may be necessary to secure the Treasury of the United States against frauds. (53 Stat. 338; June 25, 1940, 11:45 a. m. E. S. T., ch. 419, title II, § 213 (b), 54 Stat. 525).

DERIVATION

R. S. § 3329, which was in nature of a revision of acts July 20, 1868, ch. 186, § 54, 15 Stat. 147; June 6, 1872, ch. 315, § 12, 17 Stat. 241, as amended by acts May 28, 1880, ch. 108, § 10, 21 Stat. 148; Jan. 11, 1934, ch. 1, § 4, 48 Stat. 313; May 28, 1938, ch. 289, § 710 (c), (d), 52 Stat. 572.

1940 AMENDMENT

Third paragraph was amended by act June 25, 1940, cited to text, which struck out "but shall not exceed a rate of \$2.25 (or, in the case of brandy, \$2)" and inserted in lieu thereof "but shall not exceed a rate of \$3 (or, in the case of brandy, \$2.75)."

CROSS REFERENCE

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain Government obligations, see note under section 757b of Title 31, Money and Finance.

§ 2888. Transfer of spirits into tank cars for export—(a) Requirement.

Under such regulations as the Commissioner, with the approval of the Secretary, may prescribe, alcohol



or other distilled spirits of a proof strength of not less than one hundred and eighty degrees intended for export free of tax may be drawn from receiving cisterns at any distillery, or from storage tanks in any internal revenue bonded warehouse, for transfer to tanks or tank cars for export from the United States, and all provisions of law relating to the exportation of distilled spirits not inconsistent herewith shall apply to spirits removed for export under the provisions of this section.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 339.)

**DERIVATION**

Acts Feb. 24, 1919, ch. 18, § 624, 40 Stat. 1114; June 26, 1936, ch. 830, title IV, § 407, 49 Stat. 1961.

**SIMILAR PROVISIONS**

1916—Sept 8, 1916, ch. 463, § 403, 39 Stat. 788.

§ 2889. Allowance for accidental loss or leakage during transportation from warehouse to port of export—(a) Power of Commissioner.

Where spirits are withdrawn from internal revenue bonded warehouses for exportation according to law, it shall be lawful, under such rules and regulations and limitations as shall be prescribed by the Commissioner, with the approval of the Secretary, for an allowance to be made for leakage or loss by an unavoidable accident, and without any fraud or negligence of the distiller, owner, exporter, carrier, or their agents or employees, occurring during transportation from an internal revenue bonded warehouse to the port of export, nor shall any assessment be collected for such loss or leakage.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 339.)

<sup>1</sup> So in original. Probably should read "occurring."

**DERIVATION**

Acts Dec. 20, 1879, ch. 1, § 1, 21 Stat. 59; June 26, 1936, ch. 830, title IV, § 407, 49 Stat. 1961.

§ 2890. Remission of tax on spirits accidentally lost.

Where the spirits provided for in the preceding section are covered by a valid claim of insurance in excess of the market value thereof, exclusive of the tax, the tax upon such spirits shall not be remitted to the extent of such excessive insurance. (53 Stat. 340.)

**DERIVATION**

Act Dec. 20, 1879, ch. 1, § 2, 21 Stat. 59.

§ 2891. Withdrawal of distilled spirits to manufacturing bonded warehouse—(a) Authorization.

Under such regulations and requirements as to stamps, bonds, and other security as shall be prescribed by the Commissioner, any manufacturer of medicines, preparations, compositions, perfumeries, cosmetics, cordials, and other liquors, for export. manufacturing the same in a duly constituted manufacturing warehouse, shall be authorized to withdraw, in original packages, from any internal revenue bonded warehouse, so much distilled spirits as he

may require for the said purpose, without the payment of the internal revenue tax thereon.

**(b) Allowance for loss or leakage.**

Where spirits are withdrawn from internal revenue bonded warehouses for transfer to manufacturing warehouses, under the provisions of this chapter, it shall be lawful, under such rules and regulations and limitations as shall be prescribed by the Commissioner, with the approval of the Secretary, for an allowance to be made for leakage or loss by any unavoidable accident, and without any fraud or negligence of the distiller, owner, exporter, carrier, or their agents or employees, occurring during transportation from an internal revenue bonded warehouse to a manufacturing warehouse.

**(c) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170

(53 Stat. 340.)

**DERIVATION**

Subsection (a) from act Mar. 1, 1879, ch. 125, § 20, 30 Stat. 351, as amended by act May 28, 1880, ch. 108, § 14, 21 Stat. 148; act June 26, 1936, ch. 830, title IV, § 407, 49 Stat. 1961.

Subsection (b) from acts May 28, 1880, ch. 108, § 15, 21 Stat. 148; June 26, 1936, ch. 830, title IV, § 407, 49 Stat. 1961.

**PART IV.—MISCELLANEOUS PROVISIONS RELATING TO DISTILLED SPIRITS**

§ 2900. Date of withdrawal—(a) General rule.

All distilled spirits entered prior to July 26, 1936, for deposit in a distillery, general, or special bonded warehouse, or after such date entered for deposit in an internal revenue bonded warehouse, shall be withdrawn therefrom within eight years from the date of original entry therein, except as provided in subsection (b) of this section.

**(b) Exception.**

Distilled spirits which on July 26, 1936, are eight years of age, or older, and which are in bonded warehouses, may remain therein after such date; but no allowance for loss by leakage or evaporation shall be made in the case of such spirits with respect to any period after such date: *Provided*, That loss allowances for such spirits for the period prior to July 26, 1936, shall be made pursuant to the provisions of the act of February 6, 1925, ch. 143, 43 Stat. 808. (53 Stat. 340.)

**DERIVATION**

Act June 26, 1936, ch. 830, title III, § 307 (a), (c), 49 Stat. 1945, 1946.

§ 2901. Loss allowances—(a) Leakage or evaporation.

Any distilled spirits deposited before June 26, 1936, in any distillery, general, or special bonded warehouse, or thereafter deposited in any internal revenue bonded warehouse, may, at the time of withdrawal of the spirits from such warehouse, upon the filing of an application for the regauge of such spirits, giving a description of the package containing the spirits, be regauged by a storekeeper-gauger who shall place upon each such package such marks and brands as the Commissioner, with the approval of the Secretary, shall by regulations prescribe. If

upon such regauging it shall appear that there has been a loss by leakage or evaporation of distilled spirits from any cask or package, without the fault or negligence of the distiller or warehouseman, taxes shall be collected only on the quantity of distilled spirits contained in such cask or package at the time of such withdrawal. The allowance which shall be made for such loss of spirits shall not exceed—

- 1 proof-gallon for 2 months or part thereof;
- 1½ gallons for more than 2 months and not more than 4 months;
- 2 gallons for more than 4 months and not more than 6 months;
- 2½ gallons for more than 6 months and not more than 8 months;
- 3 gallons for more than 8 months and not more than 10 months;
- 3½ gallons for more than 10 months and not more than 12 months;
- 4 gallons for more than 12 months and not more than 15 months;
- 4½ gallons for more than 15 months and not more than 18 months;
- 5 gallons for more than 18 months and not more than 21 months;
- 5½ gallons for more than 21 months and not more than 24 months;
- 6 gallons for more than 24 months and not more than 27 months;
- 6½ gallons for more than 27 months and not more than 30 months;
- 7 gallons for more than 30 months and not more than 33 months;
- 7½ gallons for more than 33 months and not more than 36 months;
- 8 gallons for more than 36 months and not more than 40 months;
- 8½ gallons for more than 40 months and not more than 44 months;
- 9 gallons for more than 44 months and not more than 48 months;
- 9½ gallons for more than 48 months and not more than 52 months;
- 10 gallons for more than 52 months and not more than 56 months;
- 10½ gallons for more than 56 months and not more than 60 months;
- 11 gallons for more than 60 months and not more than 64 months;
- 11½ gallons for more than 64 months and not more than 68 months;
- 12 gallons for more than 68 months and not more than 72 months;
- 12½ gallons for more than 72 months and not more than 76 months;
- 13 gallons for more than 76 months and not more than 80 months;
- 13½ gallons for more than 80 months from the date of original gauge as to fruit brandy, or original entry as to all other spirits; and no further allowances shall be made for loss by leakage or evaporation.

The foregoing allowance for loss shall apply only to casks or packages of a capacity of forty or more wine-gallons, and the allowance for loss on casks or packages of less capacity than forty gallons shall not

exceed one-half the amount allowed on said forty-gallon cask or package; but no allowance shall be made on casks or packages of less capacity than twenty gallons. The proof of such distilled spirits shall not in any case be computed at the time of withdrawal at less than 100 per centum.

(b) Accidental fire or other casualty.

The Secretary, upon the production to him of satisfactory proof of the actual destruction by accidental fire or other casualty, and without any fraud, collusion, or negligence of the owner thereof, of any distilled spirits, while the same remained in the custody of any officer of internal revenue in any internal revenue bonded warehouse or of any grape brandy withdrawn for use in the fortification of sweet wines and destroyed prior to such use while stored in the fortifying room on the winery premises, and before the tax thereon has been paid, may abate the amount of internal revenue taxes accruing thereon, and may cancel any warehouse bond, or enter satisfaction thereon, in whole or in part, as the case may be. And if such taxes have been collected since the destruction of said spirits or grape brandy, the said Secretary shall refund the same to the owners thereof out of any moneys in the Treasury not otherwise appropriated. And when any distilled spirits are destroyed by accidental fire or other casualty, without any fraud, collusion, or negligence of the owner thereof, after the time when the same should have been drawn off by the storekeeper-gauger and placed in the internal revenue bonded warehouse provided by law, no tax shall be collected on such spirits so destroyed, or, if collected, it shall be refunded upon the production of satisfactory proof that the spirits were destroyed as herein specified. When the owners of distilled spirits or grape brandy in the cases provided for by this section may be indemnified against such tax by a valid claim of insurance, for a sum greater than the actual value of the distilled spirits or grape brandy before and without the tax being paid, the tax shall not be remitted to the extent of such insurance.

(c) Spirits lost by theft.

If distilled spirits upon which the internal-revenue tax has not been paid are lost by theft, accidental fire, or other casualty while in possession of a common carrier subject to the Transportation Act of 1920, February 28, 1920, ch. 91, 41 Stat. 474 (U. S. C. Title 49, ch. 1), or the Merchant Marine Act, 1920, June 5, 1920, ch. 250, 41 Stat. 988 (U. S. C. Title 46, ch. 24), or if lost by theft from an internal revenue bonded warehouse, and it shall be made to appear to the Commissioner that such losses did not occur as the result of negligence, connivance, collusion, or fraud on the part of the owner or person legally accountable for such distilled spirits, no tax shall be assessed or collected upon the distilled spirits so lost, nor shall any tax penalty be imposed or collected by reason of such loss, but the exemption from the tax and penalty shall only be allowed to the extent that the claimant is not indemnified against or recompensed for such loss. This provision shall apply to any claim for taxes or tax penalties that may have accrued since October 28, 1919, or that may accrue hereafter.

Nothing in this section shall be construed as in any manner limiting or restricting the provisions of Part II of Subchapter C.

**(d) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 340.)

**DERIVATION**

Subsection (a) from act June 26, 1936, ch. 830, title III, § 307 (b), 49 Stat. 1945.

Subsection (b) from R. S. § 3221, which was in nature of a revision of act May 27, 1872, ch. 218, § 1, 17 Stat. 162, as amended by act Mar. 1, 1879, ch. 125, § 6, 20 Stat. 341; act June 26, 1936, ch. 830, title IV, § 407, 49 Stat. 1961; R. S. § 3223, which was in nature of a revision of act May 27, 1872, ch. 218, § 2, 17 Stat. 162, as amended by act Mar. 1, 1879, ch. 125, § 3, 20 Stat. 333; acts June 7, 1906, ch. 3046, § 5, 34 Stat. 216; Mar. 2, 1929, ch. 510, 45 Stat. 1496.

Subsection (c) from acts Aug. 27, 1935, ch. 740, § 16, 49 Stat. 876; June 26, 1936, ch. 830, title IV, § 407, 49 Stat. 1961.

**PACKAGES FILLED FROM STORAGE TANKS**

Act Aug. 4, 1939, ch. 427, 53 Stat. 1202, provided "that the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to make allowances for losses by leakage and evaporation in accordance with section 2901, Internal Revenue Code, upon withdrawal of packages of brandy or fruit spirits now deposited in internal-revenue bonded warehouses, which were filled from storage tanks in bonded warehouses prior to June 26, 1936."

**SIMILAR PROVISIONS**

1925—Feb. 6, 1925, ch. 143, 43 Stat. 808.

1919—Feb. 24, 1919, ch. 18, § 600, 40 Stat. 1105, as amended by act Feb. 26, 1926, ch. 27, § 900, 44 Stat. 104.

1903—Jan. 13, 1903, ch. 134, 32 Stat. 770.

1899—Mar. 3, 1899, ch. 435, § 1, 30 Stat. 1349.

1894—Aug. 27, 1894, ch. 349, § 50, 28 Stat. 564.

**§ 2902. Other loss allowances.**

For other loss allowances, see the following—

Spirits destroyed in process of manufacture, section 2847.

Spirits destroyed during transportation from a warehouse to a port of export, section 2889.

Spirits destroyed during transportation from a warehouse to a manufacturing warehouse, section 2891 (b)

(53 Stat. 342.)

**§ 2903. Bottling of distilled spirits in bond—(a) Requirements.**

Whenever any distilled spirits deposited in the internal revenue bonded warehouse have been duly entered for withdrawal, before or after tax-payment, or for export in bond, and have been duly gauged and the required marks, brands, and tax-paid stamps (if required) or export stamps, as the case may be, have been affixed to the package or packages containing the same, the distiller or owner of said distilled spirits, if he has declared his purpose so to do in the entry for withdrawal, which entry for bottling purposes may be made by the owner as well as the distiller, may remove such spirits to a separate portion of said warehouse which shall be set apart and used exclusively for that purpose, and there, under the supervision of a United States storekeeper-gauger in charge of such warehouse, may immediately draw off such spirits, bottle, pack, and case the same. For convenience in such process any number of packages of spirits of the same kind, differing only in proof, but produced at the same distillery by the

same distiller, may be mingled together in a cistern provided for that purpose, but nothing herein shall authorize or permit any mingling of different products, or of the same products of different distilling seasons, or the addition or subtraction of any substance or material or the application of any method or process to alter or change in any way the original condition or character of the product except as herein authorized; nor shall there be at the same time in the bottling room of any internal revenue bonded warehouse any spirits entered for withdrawal upon payment of the tax and any spirits entered for export.

**(b) Stamps for bottles.**

Every bottle when filled shall have affixed thereto and passing over the mouth of the same a stamp denoting the quantity of distilled spirits contained therein and evidencing the bottling in bond of such spirits under the provisions of this section and sections 2904 to 2909, inclusive, and of regulations prescribed hereunder.

**(c) Stamp regulations.**

The Commissioner, with the approval of the Secretary, shall prescribe (a) regulations with respect to the time and manner of applying for, issuing, affixing, and destroying stamps required by this section, the form and denominations of such stamps, applications for purchase of the stamps, proof that applicants are entitled to such stamps, and the method of accounting for receipts from the sale of such stamps, and (b) such other regulations as the Commissioner shall deem necessary for the enforcement of this section and sections 2904 to 2909, inclusive.

**(d) Stamp supply.**

Such stamps shall be issued by the Commissioner to each collector, upon his requisition in such numbers as may be necessary in his district, and, upon compliance with the provisions of this section and sections 2904 to 2909, inclusive, and regulations issued hereunder shall be sold by collectors to persons entitled thereto, at a price of 1 cent for each stamp, except that in the case of stamps for containers of less than one-half pint, the price shall be one-quarter of 1 cent for each stamp.

**(e) Unused stamps; exchange, refund, etc.**

The Commissioner of Internal Revenue, under regulations prescribed by him and approved by the Secretary of the Treasury, may redeem or make allowance for any unused case stamp, with all coupon strip stamps attached thereto, issued under section 1 of the Act entitled "An Act to allow the bottling of distilled spirits in bond", approved March 3, 1897 (29 Stat. 626),<sup>1</sup> or under said section 1, as variously amended, and may redeem or make allowance for unused strip stamps issued for bottles of distilled spirits bottled in bond under said section 1, as amended by the Act of July 9, 1937 (50 Stat. 487),<sup>2</sup> or under subsection (d) of this section, by exchanging them for strip stamps for bottled-in-bond spirits, or by refunding moneys received therefor: *Provided*, That stamps may be exchanged or the value thereof refunded only in quantities of the value of \$5 or more: *And provided further*, That no claim under this subsection for redemption or allowance in re-

spect of case or strip stamps shall be allowed unless presented within two years after the date on which such case or strip stamps were lawfully issued. There are hereby authorized to be appropriated annually, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry out this provision.

**(f) Marks, brands, and stamps for cases.**

And there shall be plainly burned, embossed, or printed on the side of each case, to be known as the Government side, such marks, brands, and stamps to denote the bottling in bond of the whisky packed therein as the Commissioner may by regulations prescribe.

**(g) Trade marks.**

And no trade-marks shall be put upon any bottle unless the real name of the actual bona fide distiller, or the name of the individual, firm, partnership, corporation, or association in whose name the spirits were produced and warehoused, shall also be placed conspicuously on said bottle.

**(h) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 342; June 24, 1940, ch. 416, § 2, 54 Stat. 512.)

<sup>1</sup> Act Mar. 3, 1897, ch. 379, § 1, 29 Stat. 626 from which subsections (a), (g) of this section were in part derived.

<sup>2</sup> July 9, 1937, ch. 472, 50 Stat. 487 from which subsections (b)–(d), (f) of this section were derived.

**DERIVATION**

Subsection (a) from act Mar. 3, 1897, ch. 379, § 1, as amended by act June 26, 1936, ch. 830, Title III, § 306 (a), 49 Stat. 1944.

Subsections (b)–(d), (f) from act July 9, 1937, ch. 472, 50 Stat. 487.

Subsection (g) from act Mar. 3, 1897, ch. 379, § 1, as amended by act June 26, 1936, ch. 830, title III, § 306 (a), 49 Stat. 1944.

**1940 AMENDMENT**

Subsection (e) was added and former subsection (e) relettered (f) by act June 24, 1940, cited to text.

Subsections (f) and (g) were relettered (g) and (h), respectively, by act June 24, 1940, cited to text.

**TIME FOR CLAIMS FOR REFUNDS**

Sec. 3 of act June 24, 1940, cited to text, provided as follows: "Notwithstanding the limitations contained in sections 2803 (c) and 2903 (e), Internal Revenue Code, as amended and inserted, respectively, by this Act, as to the time within which claims under such sections must be presented, claims under such sections for the exchange of or refund for stamps lawfully issued prior to the date of enactment of this Act may be allowed if presented within two years from the date of enactment of this Act."

**§ 2904. Regulations governing bottling in bond—(a) Requirements.**

The Commissioner, with the approval of the Secretary, may, by regulations, prescribe the mode of separating and securing the additional warehouse, or portion of the warehouse required in section 2903 to be set apart, the manner in which the business of bottling spirits in bond shall be carried on, the notices, bonds, and returns to be given and accounts and records to be kept by the persons conducting such business, the mode and time of inspection of such spirits, the accounts and records to be kept and

returns made by the Government officers, and all such other matters and things, as in his discretion, he may deem requisite for a secure and orderly supervision of said business; and he may also, with the approval of the Secretary, prescribe and issue the stamps required.

The distiller may, in the presence of the storekeeper-gauger, remove by straining through cloth, felt, or other like material any charcoal, sediment, or other like substance found therein, and may whenever necessary reduce such spirits as are withdrawn for bottling purposes by the addition of pure water only to 100 per centum proof for spirits for domestic use, or to not less than 80 per centum proof for spirits for export purposes, under such rules and regulations as may be prescribed by the Commissioner with the approval of the Secretary; but no spirits (except gin for export) shall be bottled in bond until they have remained in bond in wooden containers for at least four years from the date of original gauge as to fruit brandy, or original entry as to all other spirits: *Provided*, That nothing in this subchapter shall authorize the labeling of spirits in bottles contrary to the provisions of regulations issued pursuant to the Federal Alcohol Administration Act, 49 Stat. 977 (U. S. C., Title 27, ch. 8), or any amendment thereof.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 343.)

**DERIVATION**

Act Mar. 3, 1897, ch. 379, § 2, 29 Stat. 627, as amended by acts Mar. 2, 1929, ch. 510, 45 Stat. 1496; June 26, 1936, ch. 830, title III, § 306 (b), 49 Stat. 1945.

**§ 2905. Exportation of spirits bottled in bond.**

All distilled spirits intended for export under the provisions of sections 2903 to 2909, inclusive, shall be inspected, bottled, cased, weighed, marked, labeled, stamped, or sealed in such manner and at such time as the Commissioner may prescribe; and the said Commissioner, with the approval of the Secretary, may provide such regulations for the transportation, entry, reinspection, and lading of such spirits for export as may from time to time be deemed necessary; and all provisions of law relating to the exportation of distilled spirits in bond, so far as applicable, and all penalties therein imposed, are extended and made applicable to distilled spirits bottled for export under the provisions of said sections, but no drawbacks shall be allowed or paid upon any spirits bottled under the provisions of said sections. (53 Stat. 344.)

**DERIVATION**

Act Mar. 3, 1897, ch. 379, § 3, 29 Stat. 627.

**§ 2906. Payment of tax on deficiency in quantity for export—(a) Requirements.**

Where, upon inspection at the bonded warehouse in which the spirits are bottled as aforesaid, the quantity so bottled and cased for export is less than the quantity actually contained in the distiller's original casks or packages at the time of withdrawal for that purpose the tax on the loss or deficiency so ascertained shall be paid before the removal of

the spirits from such warehouse, and the tax so paid shall be receipted and accounted for by the collector in such manner as the Commissioner may prescribe.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 344.)

**DERIVATION**

Act Mar. 3, 1897, ch. 379, § 4, 29 Stat. 627.

**§ 2907. Collection of tax if export cases are tampered with.**

Where, upon reinspection at the port of entry, any case containing or purporting to contain distilled spirits for export is found to have been opened or tampered with, or where any mark, brand, stamp, label, or seal placed thereon or upon any bottle contained therein has been removed, changed, or willfully defaced, or where upon such reinspection any loss or discrepancy is found to exist as to the contents of any case so entered for export, the tax on the spirits contained in each such case at the time of its removal from warehouse shall be collected and paid. (53 Stat. 344.)

**DERIVATION**

Act Mar. 3, 1897, ch. 379, § 5, 29 Stat. 627.

**§ 2908. Reuse of stamps or bottles, tampering, and unlawful removal.**

Any person who shall reuse any stamp provided under sections 2903 to 2909, inclusive, after the same shall have been once affixed to a bottle as provided therein, or who shall reuse a bottle for the purpose of containing distilled spirits which has once been filled and stamped under the provisions of said sections without removing and destroying the stamp so previously affixed to such bottle, or who shall, contrary to the provisions of said sections or of the regulations issued thereunder remove or cause to be removed from any bonded warehouse any distilled spirits inspected or bottled under the provisions of said sections or who shall bottle or case any such spirits in violation of said sections or of any regulation issued thereunder, or who shall, during the transportation and before the exportation of any such spirits, open or cause to be opened any case or bottle containing such spirits, or who shall willfully remove, change, or deface any stamp, brand, label, or seal affixed to any such case or to any bottle contained therein, shall for each such offense be fined not less than \$100 nor more than \$1,000, and be imprisoned not more than two years, in the discretion of the court, and such spirits shall be forfeited to the United States. (53 Stat. 345.)

**DERIVATION**

Act Mar. 3, 1897, ch. 379, § 6, 29 Stat. 627.

**§ 2909. Punishment for counterfeiting stamps.**

Every person who, with intent to defraud, falsely makes, forges, alters, or counterfeits any stamp made or used under any provision of sections 2903 to 2909, inclusive, or who uses, sells, or has in his possession any such forged, altered, or counterfeited stamp, or any plate or die used or which may be used in the manufacture thereof, or who shall make, use, sell, or have in his possession any paper in imitation of the

paper used in the manufacture of any stamp required by said sections, shall on conviction be punished by a fine not exceeding \$1,000 and by imprisonment at hard labor not exceeding five years. (53 Stat. 345.)

**DERIVATION**

Act Mar. 3, 1897, ch. 379, § 7, 29 Stat. 628.

**§ 2910. Bottling gin in bond for export—(a) Requirement.**

Distilled spirits known commercially as gin of not less than 80 per centum proof may at any time within eight years after entry in bond at any distillery be bottled in bond at such distillery for export without the payment of tax, under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 345.)

**DERIVATION**

Act Feb. 24, 1919, ch. 18, § 626, 40 Stat. 1115.

**SIMILAR PROVISIONS**

1916—Sept. 8, 1916, ch. 463, § 405, 39 Stat. 788.

**§ 2911. Effect on State laws.**

Nothing in sections 2903 to 2909, inclusive, shall be construed to exempt spirits bottled under the provisions of said sections from the operation of chapter 728 of the Act of August 8, 1890, 26 Stat. 313, U. S. C., Title 27, § 121. (53 Stat. 345.)

**DERIVATION**

Act Mar. 3, 1897, ch. 379, § 8, 29 Stat. 628.

**§ 2912. Forfeiture of spirits unlawfully removed from distillery or warehouse.**

All distilled spirits found elsewhere than in a distillery or internal revenue bonded warehouse, not having been removed therefrom according to law, shall be forfeited to the United States. (53 Stat. 345.)

**DERIVATION**

R. S. § 3299, which was in nature of a revision of act July 20, 1868, ch. 186, § 36, 15 Stat. 140; act June 26, 1936, ch. 830, title III, § 407, 49 Stat. 1961. R. S. § 3299 was amended by act Feb. 18, 1875, ch. 80, § 1, 18 Stat. 319.

**§ 2913. Penalty for unlawful removal or concealment of spirits.**

Whenever any person removes, or aids or abets in the removal of, any distilled spirits on which the tax has not been paid, to a place other than the internal revenue bonded warehouse provided by law, or conceals or aids in the concealment of any spirits so removed, or removes, or aids or abets in the removal of, any distilled spirits from any such warehouse authorized by law, in any manner other than is provided by law, or conceals or aids in the concealment of any spirits so removed, he shall be liable to a penalty of double the tax imposed on such distilled spirits so removed or concealed, and shall be fined not less than \$200 nor more than \$5,000, and imprisoned not less than three months nor more than three years. (53 Stat. 345.)

DERIVATION

R. S. § 3296, which was in nature of a revision of act July 20, 1868, ch. 186, § 36, 15 Stat. 140, as amended by act June 26, 1936, ch. 830, title IV, § 409, 49 Stat. 1962.

§ 2914. Penalty on officer in charge of warehouse for unlawful removal of spirits—(a) Offense.

Whenever any storekeeper-gauger or other person in the employment of the United States, having charge of a bonded warehouse, removes or allows to be removed therefrom any cask or other package, or removes or allows to be removed any part of the contents of any cask or package deposited therein, otherwise than as provided by law, he shall be immediately dismissed from office or employment, and be fined not less than \$500 nor more than \$2,000, and imprisoned not less than three months nor more than two years.

(b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 346.)

DERIVATION

R. S. § 3300, which was in nature of a revision of act July 20, 1868, ch. 186, § 52, 15 Stat. 147; act Mar. 2, 1929, ch. 510, 45 Stat. 1496.

§ 2915. Storekeeper-gauger's warehouse book—(a) Requirements.

Every storekeeper-gauger shall keep a warehouse book, which shall at all times be open to the examination of any revenue officer, and shall enter therein an account of all articles deposited in the warehouse to which he is assigned, indicating in each case the date of deposit, by whom manufactured or produced, the number and description of the packages and contents, the quantities therein, the marks and serial numbers thereon, and by whom gauged, inspected, or weighed, and if distilled spirits, the number of gauge or wine gallons, of proof gallons, and of taxable gallons; and before delivering any article from the warehouse he shall enter in said book the date of the permit or order of the collector for the delivery of such articles, the number and description of the packages, the marks and serial numbers thereon, the date of delivery, to whom delivered, and for what purpose, which purpose shall be specified in the permit or order for delivery; and in case of delivery of any distilled spirits the number of gauge or wine gallons, or proof gallons, and of taxable gallons, shall also be stated; and such further particulars shall be entered in the warehouse books as may be prescribed or found necessary for the identification of the packages, to insure the correct delivery thereof and proper accountability therefor.

And every storekeeper-gauger shall furnish daily to the collector of the district a return of all articles received in and delivered from the warehouse during the day preceding that on which the return is made, and mail at the same time a copy thereof to the Commissioner, and shall, on the first Monday of every month, make a report in duplicate of the number of packages of all articles, with the respective descriptions thereof, as above provided, which remained in the warehouse at the date of his last report, of all articles received therein and delivered therefrom during the preceding month, and of articles remaining

therein at the end of said month. He shall deliver one of these reports to the collector having control of the warehouse, to be recorded and filed in his office, and transmit one to the Commissioner, to be recorded and filed in his office.

(b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 346.)

DERIVATION

R. S. § 3301, which was in nature of a revision of acts July 20, 1868, ch. 186, § 52, 15 Stat. 147; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401, as amended by act March 1, 1879, ch. 125, § 5, 20 Stat. 337; act Mar. 2, 1929, ch. 510, 45 Stat. 1496.

§ 2916. Removal for denaturation or destruction of distillates containing aldehydes or fusel oil—(a) Power of Commissioner.

Under rules and regulations to be prescribed by the Commissioner, with the approval of the Secretary, distillers may collect, in locked tanks, distillates containing one-half of 1 per centum or more of aldehydes or 1 per centum or more of fusel oil (heads and tails) removed in the course of distillation. The distillates so collected may, under regulations prescribed by the Commissioner, with the approval of the Secretary, be removed from such distillery for denaturation or be destroyed in the manner prescribed by the Commissioner, under the supervision of an internal revenue officer to be designated by the Commissioner, and when so denatured or destroyed shall not be subject to the tax imposed by law upon distilled spirits. Such distillates so collected in fruit brandy distilleries may, under regulations to be prescribed by the Commissioner, with the approval of the Secretary, be drawn into approved casks, barrels, or other containers and stored in the brandy deposit room of the fruit brandy distillery where produced pending removal for denaturation or destruction.

(b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 346.)

DERIVATION

Act June 26, 1936, ch. 830, title IV, § 410, 49 Stat. 1962, as amended by act June 15, 1938, ch. 439, § 2, 52 Stat. 700

SUBCHAPTER B.—WINES

§ 3030. Tax—(a) Rate—(1) Still wines.—(A) Imposition.

Upon all still wines, including vermouth, and all artificial or imitation wines or compounds sold as still wine produced in or imported into the United States after June 30, 1940, or which on July 1, 1940, were on any winery premises or other bonded premises or in transit thereto or at any customhouse, there shall be levied, collected, and paid taxes at rates as follows, when sold or removed for consumption or sale:

On wines containing not more than 14 per centum of absolute alcohol, 5 cents per wine-gallon, the per centum of alcohol under this section to be reckoned by volume and not by weight;

On wines containing more than 14 per centum and not exceeding 21 per centum of absolute alcohol, 15 cents per wine-gallon;

On wines containing more than 21 per centum and not exceeding 24 per centum of absolute alcohol, 25 cents per wine-gallon;

All such wines containing more than 24 per centum of absolute alcohol by volume shall be classed as distilled spirits and shall pay tax accordingly.

Any such wines may, under such regulations as the Commissioner may prescribe, with the approval of the Secretary, be sold or removed tax-free for the manufacture of vinegar, or for the production of dealcoholized wines containing less than one-half of 1 per centum of alcohol by volume.

The taxes imposed by this subparagraph (A) of this paragraph shall not apply to dealcoholized wines containing less than one-half of 1 per centum of alcohol by volume; nor, subject to regulations prescribed by the Commissioner, with the approval of the Secretary, to wines produced for the family use of the duly registered producer thereof and not sold or otherwise removed from the place of manufacture and not exceeding in any case two hundred gallons per year.

(B) Cross reference.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(2) Sparkling wines, liqueurs, and cordials.

Upon the following articles which are produced in or imported into the United States, after June 30, 1940, or which on July 1, 1940, are on any winery premises or other bonded premises or in transit thereto or at any customhouse, there shall be levied, collected, and paid, in lieu of the internal-revenue taxes imposed thereon by law prior to such date, taxes at rates as follows, when sold, or removed for consumption or sale:

On each bottle or other container of champagne or sparkling wine, 2½ cents on each one-half pint or fraction thereof;

On each bottle or other container of artificially carbonated wine, 1¼ cents on each one-half pint or fraction thereof;

On each bottle or other container of liqueurs, cordials, or similar compounds, by whatever name sold or offered for sale, containing sweet wine, citrus-fruit wine, peach wine, cherry wine, berry wine, apricot wine, prune wine, plum wine, pear wine, or apple wine, fortified, respectively, with grape brandy, citrus-fruit brandy, peach brandy, cherry brandy, berry brandy, apricot brandy, prune brandy, plum brandy, pear brandy, or apple brandy, 1¼ cents on each one-half pint or fraction thereof.

Any of the foregoing articles containing more than 24 per centum of absolute alcohol by volume (except vermouth, liqueurs, cordials, and similar compounds made in rectifying plants and containing tax-paid sweet wine, citrus-fruit wine, peach wine, cherry wine, berry wine, apricot wine, prune wine, plum wine, pear wine, or apple wine, fortified, respectively, with grape brandy, citrus-fruit brandy, peach brandy, cherry brandy, berry brandy, apricot brandy, prune brandy, plum brandy, pear brandy, or apple brandy) shall be classed as distilled spirits and shall be taxed accordingly.

The Commissioner, under regulations prescribed by him, with the approval of the Secretary, is author-

ized to remit, refund, and pay back the amount of all taxes on such liqueurs, cordials, and similar compounds paid by or assessed against rectifiers at the distilled spirits rate prior to June 26, 1936.

(3) Cross references.

For tax on the following see the sections enumerated below:

Rectified wines, section 2800 (a) (5);

Wine spirits or grape brandy used in fortifying, section 3031;

Withdrawal of wine spirits for fortification, section 3033.

(b) Payment—(1) Stamp.

The taxes imposed by paragraphs (1) and (2) of subsection (a) shall be paid by stamp on removal of the wines from the customhouse, winery, or other bonded place of storage for consumption or sale.

The Commissioner may, under regulations prescribed by him with the approval of the Secretary, issue stamps for restamping packages of wines which have been duly stamped but from which the stamps have been lost or destroyed by unavoidable accident.

(2) Assessment.

The collection of the tax on imported still wines, including vermouth, and sparkling wines, including champagne, and on imported liqueurs, cordials, and similar compounds, may be made within the discretion of the Commissioner, with the approval of the Secretary, by assessment instead of by stamps.

(3) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 347; June 24, 1940, ch. 417, §§ 1, 2, 54 Stat. 516, eff. July 1, 1940.)

INCREASE OF RATES AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945

Rates of tax on still wines under subsection (a) (1) (A) are increased from 5 cents to 6 cents, from 15 cents to 18 cents, and from 25 cents to 30 cents, respectively; rates of tax on sparkling wines under subsection (a) (2) are increased from 2½ cents to 3 cents and from 1¼ cents to 1½ cents, respectively; and rate of tax on liqueurs, cordials, etc., under subsection (a) (2) is increased from 1¼ cents to 1½ cents by section 3190 of this title.

DERIVATION

Subsection (a) (1) from act Feb. 24, 1919, ch. 18, § 611, 40 Stat. 1110, as amended by acts May 29, 1928, ch. 852, § 451 (b), 45 Stat. 868; June 26, 1936, ch. 830, title III, § 319 (c), 49 Stat. 1952; act Feb. 24, 1919, ch. 18, § 616, 40 Stat. 1111.

Subsection (a) (2) from act Feb. 24, 1919, ch. 18, § 613, 40 Stat. 1111, as amended by acts June 26, 1936, ch. 830, title III, § 319 (d), 49 Stat. 1952; June 15, 1938, ch. 439, § 8 (c), 52 Stat. 702.

Subsection (b) (1) from R. S. § 3315, which was in nature of a revision of act June 6, 1872, ch. 315, § 15, 17 Stat. 245; act Feb. 24, 1919, ch. 18, § 616, 40 Stat. 1111, as reenacted without change by act Feb. 26, 1926, ch. 27, § 1124, 44 Stat. 122.

Subsection (b) (2) from act Feb. 24, 1919, ch. 18, § 619, 40 Stat. 1113.

1940 AMENDMENT

Subsection (a) (1) (A) was amended by act June 24, 1940, cited to text, in effect July 1, 1940.

Subsection (a) (2) was amended by act June 24, 1940, cited to text, in effect July 1, 1940.

PROPRIETOR'S CLAIM TO CREDIT FOR CERTAIN WINES

Sections 4 and 5 of act June 24, 1940, cited to text, provided as follows:

"SEC. 4. Upon the filing of a claim therefor by the proprietor of any bonded winery or bonded storehouse in



which there was stored on June 30, 1940, or to which there was in transit on that date, wine lawfully fortified with brandy or wine spirits, and containing more than 14 per centum of absolute alcohol by volume, and not exceeding 24 per centum of absolute alcohol by volume, the Commissioner of Internal Revenue is authorized to issue to such proprietor suitable documents entitling such proprietor to a credit of 5 cents per gallon in respect of each gallon of such fortified wine which the Commissioner shall find was on such proprietor's bonded winery or bonded storeroom premises on June 30, 1940, or in transit thereto. The amount of such credit shall be allowed in whole or in part in the purchase of wine stamps. The claim shall be supported by an inventory, prepared, and filed by the proprietor in such form and manner as the Commissioner of Internal Revenue shall prescribe by regulations, approved by the Secretary of the Treasury, and by such other proof as the Commissioner may from time to time require. The aforesaid credit to the proprietor may be transferred by the proprietor to whom issued to the proprietor of any other bonded winery or bonded storeroom. All claims under this section must be filed on or before October 1, 1940.

"Sec. 5. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe and publish all needful rules and regulations for the enforcement of this act (sections 3030 (a), 3031 (a) of Internal Revenue Code)."

#### SIMILAR PROVISIONS

- 1934—Jan. 11, 1934, ch. 1, § 6, 48 Stat. 314.  
 1917—Oct. 3, 1917, ch. 63, § 309, 40 Stat. 311.  
 1916—Sept. 8, 1916, ch. 463, §§ 401, 402, 39 Stat. 783.  
 1914—Oct. 22, 1914, ch. 331, § 2, 38 Stat. 746.

#### § 3031. Tax on brandy or spirits used in fortification—(a) Withdrawal of spirits for fortification.

Under such regulations and official supervision and upon the giving of such notices and entries as the Commissioner, with the approval of the Secretary, may prescribe, any producer of wines defined under the provisions of this subchapter may withdraw from any fruit distillery or internal revenue bonded warehouse grape brandy (hereafter in this section included in the term "brandy"), or wine spirits, for the fortification of such wines on the premises where actually made, and any producer of citrus-fruit wines, peach wines, cherry wines, berry wines, apricot wines, prune wines, plum wines, pear wines, or apple wines (hereafter in this section included in the term "wines") may similarly withdraw citrus-fruit brandy, peach brandy, cherry brandy, berry brandy, apricot brandy, prune brandy, plum brandy, pear brand,<sup>1</sup> or apple brandy (hereafter in this section included in the term "brandy") for the fortification of wines as set forth in section 3032, Internal Revenue Code, on the premises where actually made. The amounts of tax at the rate imposed by law on such brandy or wine spirits shall be charged immediately upon withdrawal against the producer withdrawing the same: *Provided*, That whenever such brandy or wine spirits shall be lawfully used in the fortification of wines and accounted for in the manner provided by law and regulations, the producer shall be credited in the amount of the internal-revenue tax on so much of the brandy or wine spirits so withdrawn as was so used. Every producer of wines who withdraws such brandy or wine spirits shall give bond to fully cover at all times the payment of the internal-revenue tax at the rate imposed by law due on such brandy or wine spirits, which bond shall be in such form as the Commis-

sioner, with the approval of the Secretary, shall, by regulations, prescribe. On and after July 1, 1940, the internal-revenue tax on such brandy or wine spirits shall be assessed against the producer of such wines who has withdrawn brandy or wine spirits for use in the fortification of such wines when such brandy or wine spirits are not lawfully used in the fortification of wines, or when such brandy or wine spirits are not so accounted for in the manner provided by law and regulations as to warrant remission of the tax.

Nothing contained in this section shall be construed as exempting any wines, cordials, liqueurs, or similar compounds from the payment of any tax provided for in this subchapter.

Any such wines may, under such regulations as the Commissioner may prescribe, with the approval of the Secretary, be sold or removed tax-free for the manufacture of vinegar, or for the production of dealcoholized wines containing less than one-half of 1 per centum of alcohol by volume.

The taxes imposed by this subchapter shall not apply to dealcoholized wines containing less than one-half of 1 per centum of alcohol by volume.

#### (b) Loss allowances—(1) Leakage, evaporation, etc.

The Commissioner, under rules and regulations to be by him prescribed with the approval of the Secretary, upon the presentation of proof to his satisfaction of the loss by leakage, evaporation, theft, or otherwise of brandy or fruit spirits, intended for the fortification of wine, from storage tanks in bonded warehouses or from steel drums filled therefrom while such drums are in such warehouse, and in the fortification room of a bonded winery, not occurring as the result of any negligence, connivance, collusion, or fraud on the part of the winemaker or his agents, is hereby authorized to remit or refund the taxes assessed or paid upon such lost brandy or fruit spirits: *Provided, however*, That such remission or refund shall be allowed only to the extent that the distiller or winemaker is not indemnified or recompensed for such loss.

#### (2) Cross references.

For loss allowance in case of grape brandy withdrawn for use in the fortification of sweet wines, and which, prior to such use, is accidentally destroyed by fire or other casualty, while stored in the fortifying room on the winery premises, see section 2901 (b).

For loss allowance in case of spirits in possession of common carriers, see section 2901 (c).

(53 Stat. 348; June 24, 1940, ch. 417, § 3, 54 Stat. 514 eff. July 1, 1940.)

<sup>1</sup> So in original. Probably should read "brandy"

#### DERIVATION

Subsection (a) from act Feb. 24, 1919, ch. 18, § 612, as amended by acts June 26, 1936, ch. 830, title III, § 331, 49 Stat. 1957; June 15, 1938, ch. 439, § 8 (b), 52 Stat. 702; act Feb. 24, 1919, ch. 18, § 612, was also amended by acts May 29, 1928, ch. 852, § 452, 45 Stat. 868; Jan. 11, 1934, ch. 1, § 8, 48 Stat. 314.

Subsection (b) from act June 15, 1938, ch. 439, § 3, 52 Stat. 700.

#### 1940 AMENDMENT

Subsection (a) was amended by act June 24, 1940, cited to text, in effect July 1, 1940.

#### CROSS REFERENCE

Proprietor's claim to credit for certain wines, see note under section 3030.

**Fortification of wines—(a) Pure sweet wines.**

Any producer of pure sweet wines may use in the preparation of such sweet wines, under such regulations and after the filing of such notices and bonds, together with the keeping of such records and the rendition of such reports as to materials and products as the Commissioner, with the approval of the Secretary, may prescribe, wine spirits produced by any duly authorized distiller, and the Commissioner, in determining the liability of any distiller of wine spirits to assessment under section 2846, is authorized to allow such distiller credit in his computations for the wine spirits withdrawn to be used in fortifying sweet wines under this chapter.

**(b) Citrus-fruit wines.**

The provisions of this section shall apply to the use of citrus-fruit brandy in the preparation of fortified citrus-fruit wines in the same manner and to the same extent as such provisions apply to the use of wine spirits in the fortification of sweet wines, except that no brandy (other than a citrus-fruit brandy) may be used in the fortification of citrus-fruit wine and a citrus-fruit brandy prepared from one kind of citrus fruit may not be used for the fortification of a citrus-fruit wine prepared from another kind of citrus fruit or for the fortification of a wine prepared from any fruit other than citrus fruit.

**(c) Fruit wines.**

The provisions of this section shall apply to the use of peach brandy, cherry brandy, berry brandy, apricot brandy, prune brandy, plum brandy, pear brandy, and apple brandy, in the preparation, respectively, of fortified peach wines, cherry wines, berry wines, apricot wines, prune wines, plum wines, pear wines, and apple wines, in the same manner and to the same extent as such provisions apply to the use of wine spirits in the fortification of sweet wines; except that (1) no brandy other than peach brandy may be used in the fortification of peach wine and peach brandy may not be used for the fortification of any wine other than peach wine, (2) no brandy other than cherry brandy may be used in the fortification of cherry wine and cherry brandy may not be used for the fortification of any wine other than cherry wine, (3) no brandy other than berry brandy may be used in the fortification of berry wine and a berry brandy prepared from one kind of berry may not be used for the fortification of a berry wine prepared from another kind of berry or for the fortification of any wine other than berry wine, (4) no brandy other than apricot brandy may be used in the fortification of apricot wine and apricot brandy may not be used for the fortification of any wine other than apricot wine, (5) no brandy other than prune brandy may be used in the fortification of prune wine and prune brandy may not be used for the fortification of any wine other than prune wine, (6) no brandy other than pear brandy may be used in the fortification of pear wine and pear brandy may not be used for the fortification of any wine other than pear wine, and (7) no brandy other than plum brandy may be used in the fortification of plum wine and plum brandy may not be used for the

fortification of any wine other than plum wine and (8) no brandy other than apple brandy may be used in the fortification of apple wine and apple brandy may not be used for the fortification of any wine other than apple wine.

**(d) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 350.)

**DERIVATION**

Subsection (a) from act Oct. 1, 1890, ch. 1244, § 42, 26 Stat. 621, as amended by act Feb. 24, 1919, ch. 18, § 617, 40 Stat. 1111.

Subsection (b) from act Oct. 1, 1890, ch. 1244, § 42, as added by act Aug. 29, 1935, ch. 814, § 14, 49 Stat. 988.

Subsection (c) from act Oct. 1, 1890, ch. 1244, § 42, as added by act June 26, 1936, ch. 830, title III, § 332, 49 Stat. 1958, and amended by act June 15, 1938, ch. 439, § 8 (d), 52 Stat. 702. Act Oct. 1, 1890, ch. 1244, § 42, was also amended by acts Oct. 22, 1914, ch. 331, § 2, 38 Stat. 746; Sept. 8, 1916, ch. 463, § 402 (c), 39 Stat. 784.

**§ 3033. Withdrawal of wine spirits—(a) Regulations.**

Under such regulations and official supervision, and upon the execution of such entries and the giving of such bonds, bills of lading, and other security as the Commissioner, with the approval of the secretary, shall prescribe, any producer of pure sweet wines as defined by section 3036 (a) may withdraw wine spirits from any internal revenue bonded warehouse in original packages or from any registered distillery in any quantity not less than eighty wine gallons, and may use so much of the same as may be required by him under such regulations, and after the filing of such notices and bonds and the keeping of such records and the rendition of such reports as to materials and products and the disposition of the same as the Commissioner, with the approval of the Secretary, shall prescribe in fortifying the pure sweet wines made by him, and for no other purpose, in accordance with the limitations and provisions of this section; and the Commissioner, with the approval of the Secretary, is authorized whenever he shall deem it to be necessary for the prevention of violations of this law to prescribe that wine spirits withdrawn under this section shall not be used to fortify wines except at a certain distance prescribed by him from any distillery, rectifying house, winery, or other establishment used for producing or storing distilled spirits, or for making or storing wines other than wines which are so fortified, and that in the building in which such fortification of wines is practiced no wines or spirits other than those permitted by this regulation shall be stored in any room or part of the building in which fortification of wines is practiced.

**(b) Cross references.**

For loss allowance in case of grape brandy withdrawn for use and fortification of sweet wines and accidentally destroyed prior to such use, while stored in the fortifying room on the winery premises, see section 2901 (b).

For loss allowance in case of spirits in possession of common carriers, see section 2901 (c).

**(c) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 351.)

## DERIVATION

Act Oct. 1, 1890, ch. 1244, § 45, 26 Stat. 622, as amended by act Feb. 24, 1919, ch. 18, § 617, 40 Stat. 1112; act Feb. 26, 1936, ch. 830, title IV, § 407, 49 Stat. 1961; act Oct. 1, 1890, ch. 1244, § 45, was also amended by acts Oct. 22, 1914, ch. 331, § 2, 38 Stat. 747; Sept. 8, 1916, ch. 463, § 402 (c), 39 Stat. 784.

**§ 3034. Supervision of fortification of sweet wine—**  
(a) Use.

The use of wine spirits for the fortification of sweet wines under this subchapter shall be under the immediate supervision of an officer of internal revenue, who shall make returns describing the kinds and quantities of wine so fortified, and shall affix such stamps and seals to the packages containing such wines as may be prescribed by the Commissioner, with the approval of the Secretary; and the Commissioner, with the approval of the Secretary, shall provide by regulations the time within which wines so fortified with the wine spirits so withdrawn may be subject to inspection, and for final accounting for the use of such wine spirits and for rewarehousing or for payment of the tax on any portion of such wine spirits which remain not used in fortifying pure sweet wines.

(b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 351.)

## DERIVATION

Act Oct. 1, 1890, ch. 1244, § 45, 26 Stat. 622, as amended by act Feb. 24, 1919, ch. 18, § 617, 40 Stat. 1112. Act Oct. 1, 1890, ch. 1244, § 45, was also amended by acts Oct. 22, 1914, ch. 331, § 2, 38 Stat. 747; Sept. 8, 1916, ch. 463, § 402 (c), 39 Stat. 784.

**§ 3035. Power of Secretary to authorize amelioration and fortification of wine without supervision.**

The Secretary may, by regulations, authorize the amelioration of wine by the winemaker and the fortification of wine, without supervision by any officer of the United States, whenever he determines that such authorization may be made without danger to the revenue. (53 Stat. 351.)

## DERIVATION

Act June 26, 1936, ch. 830, title III, § 318, 49 Stat. 1951.

**§ 3036. Wine spirits and pure sweet wine—(a) Definitions.**

The wine spirits mentioned in section 3032 (a) is the product resulting from the distillation of fermented grape juice, to which water may have been added prior to, during, or after fermentation, for the sole purpose of facilitating the fermentation and economical distillation thereof, and shall be held to include the product from grapes or their residues commonly known as grape brandy, and shall include commercial grape brandy which may have been colored with burnt sugar or caramel; and the pure sweet wine which may be fortified with wine spirits under the provisions of this chapter is fermented or partially fermented grape juice only, with the usual cellar treatment, and shall contain no other substance whatever introduced before, at the time of, or after fermentation, except as herein expressly provided: *Provided*, That the addition of pure boiled or condensed grape must or pure crystallized cane or

beet sugar, or pure dextrose sugar containing, respectively, not less than 95 per centum of actual sugar, calculated on a dry basis, or water, or any or all of them, to the pure grape juice before fermentation, or to the fermented product of such grape juice, or to both, prior to the fortification herein provided for, either for the purpose of perfecting sweet wines according to commercial standards or for mechanical purposes, shall not be excluded by the definition of pure sweet wine aforesaid: *Provided, however*, That the cane or beet sugar, or pure dextrose sugar added for sweetening purposes shall not be in excess of 11 per centum of the weight of the wine to be fortified: *And provided further*, That the addition of water herein authorized shall be under such regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe: *Provided, however*, That records kept in accordance with such regulations as to the percentage of saccharine, acid, alcoholic, and added water content of the wine offered for fortification shall be open to inspection by any official of the Department of Agriculture thereto duly authorized by the Secretary of Agriculture; but in no case shall such wines to which water has been added be eligible for fortification under the provisions of this chapter, where the same, after fermentation and before fortification, have an alcoholic strength of less than 5 per centum of their volume.

(b) Application to citrus-fruit wines.

The provisions of this section shall apply to the use of citrus-fruit brandy in the preparation of fortified citrus-fruit wines in the same manner and to the same extent as such provisions apply to the use of wine spirits in the fortification of sweet wines, except that no brandy (other than a citrus-fruit brandy) may be used in the fortification of citrus-fruit wine and a citrus-fruit brandy prepared from one kind of citrus fruit may not be used for the fortification of a citrus-fruit wine prepared from another kind of citrus fruit or for the fortification of a wine prepared from any fruit other than citrus fruit.

(c) Application to fruit wines.

The provisions of this section shall apply to the use of peach brandy, cherry brandy, berry brandy, apricot brandy, prune brandy, plum brandy, pear brandy, and apple brandy, in the preparation, respectively, of fortified peach wines, cherry wines, berry wines, apricot wines, prune wines, plum wines, pear wines, and apple wines, in the same manner and to the same extent as such provisions apply to the use of wine spirits in the fortification of sweet wines; except that (1) no brandy other than peach brandy may be used in the fortification of peach wine and peach brandy may not be used for the fortification of any wine other than peach wine, (2) no brandy other than cherry brandy may be used in the fortification of cherry wine and cherry brandy may not be used for the fortification of any wine other than cherry wine, (3) no brandy other than berry brandy may be used in the fortification of berry wine and a berry brandy prepared from one kind of berry may not be used for the fortification of a berry wine prepared from another kind of berry or for the fortification of any wine other than berry wine, (4) no

brandy other than apricot brandy may be used in the fortification of apricot wine and apricot brandy may not be used for the fortification of any wine other than apricot wine, (5) no brandy other than prune brandy may be used in the fortification of prune wine and prune brandy may not be used for the fortification of any wine other than prune wine, (6) no brandy other than pear brandy may be used in the fortification of pear wine and pear brandy may not be used for the fortification of any wine other than pear wine, and (7) no brandy other than plum brandy may be used in the fortification of plum wine and plum brandy may not be used for the fortification of any wine other than plum wine, and (8) no brandy other than apple brandy may be used in the fortification of apple wine and apple brandy may not be used for the fortification of any wine other than apple wine. (53 Stat. 352.)

## DERIVATION

Subsection (a) from act Oct. 1, 1890, ch. 1244, § 43, 26 Stat. 621, as amended by act Feb. 24, 1919, ch. 18, § 617, 40 Stat. 1111. Act Oct. 1, 1890, ch. 1244, § 43, was also amended by acts Aug. 27, 1894, ch. 349, § 68, 28 Stat. 568; Oct. 22, 1914, ch. 331, § 2, 38 Stat. 747; Sept. 8, 1916, ch. 463, § 402 (c), 39 Stat. 784.

Subsection (b) from act Oct. 1, 1890, ch. 1244, § 42, as added by act Aug. 29, 1935, ch. 814, § 14, 49 Stat. 988.

Subsection (c) from act Oct. 1, 1890, ch. 1244, § 42, as added by act June 26, 1936, ch. 830, title III, § 332, 49 Stat. 1958, and amended by act July 15, 1938, ch. 439, § 8 (d), 52 Stat. 702.

### § 3037. Removal of domestic wines free of tax—(a) Regulations.

Under such regulations and upon the execution of such notices, entries, bonds, and other security as the Commissioner, with the approval of the Secretary, may prescribe, domestic wines subject to the taxes imposed by section 3030 (a), may be removed from the winery where produced, free of tax, for storage on other bonded winery or bonded storeroom premises, or from such premises to other such bonded premises, or for exportation from the United States or for use as distilling material at any regularly registered distillery or industrial alcohol plant: *Provided, however,* That the distiller using any such wine as distilling material shall, subject to the provisions of section 2846, be held to pay the tax on the product of such wines as will include both the alcoholic strength therein produced by fermentation and that obtained from the brandy or wine spirits added to such wines at the time of fortification: *Provided further,* That suitable samples of brandy or fruit spirits may be withdrawn under rules and regulations to be prescribed by the Commissioner, subject to the approval of the Secretary, which samples shall be tax-free if for laboratory analysis and tax-paid if for any other use: *Provided further,* That the Commissioner, under rules and regulations to be by him prescribed subject to the approval of the Secretary, shall remit or refund all fortification taxes assessed or paid upon the quantity of fortifying spirits contained in wines exported, or which have become unfit for use as wine and are used as distilling material.

### (b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 353.)

## DERIVATION

Acts Feb. 24, 1919, ch. 18, § 618 (a), 40 Stat. 1113; June 15, 1938, ch. 439, § 1, 52 Stat. 699.

## SIMILAR PROVISION

1916—Sept. 8, 1916, ch. 463, § 402, 39 Stat. 783.

### § 3038. Grape and like wines for industrial use—(a) Regulations.

Under regulations prescribed by the Commissioner with the approval of the Secretary, it shall be lawful to produce grape wines, citrus-fruit wines, peach wines, cherry wines, berry wines, apricot wines, prune wines, plum wines, pear wines, and apple wines on bonded winery premises by the usual method, and to transport and use the same, and like wines heretofore produced and now stored on bonded winery premises, as distilling material in any fruit-brandy distillery or industrial-alcohol plant.

### (b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 353.)

## DERIVATION

Act Feb. 24, 1919, ch. 18, § 618 (b), as amended by act June 26, 1936, ch. 830, title III, § 334, 49 Stat. 1959.

### § 3039. Allowance for loss during storage or cellar treatment—(a) Power of Commissioner.

The Commissioner, with the approval of the Secretary, is authorized to make such allowances for unavoidable loss of wines while on storage or during cellar treatment as in his judgment may be just and proper.

### (b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 353.)

## DERIVATION

Act Feb. 24, 1919, ch. 18, § 622, 40 Stat. 1114.

### § 3040. Requirements on producers—(a) Notice, bonds, and stamps.

Every person producing after February 24, 1919, or having in his possession or under his control on February 24, 1919, any wines subject to the tax imposed in paragraphs (1) and (2) of section 3030 (a) shall file such notice, describing the premises on which such wines are produced or stored; shall execute a bond in such form; shall make such inventories under oath; and shall, prior to sale or removal for consumption, affix to each cask, barrel, bottle, or other immediate container, and to each case or other shipping container, of such wine, such marks, labels, or stamps as the Commissioner, with the approval of the Secretary, may from time to time prescribe as to each; and the premises described in such notice shall, for the purpose of this chapter, be regarded as bonded premises.

### (b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 354.)

DERIVATION

Act Feb. 24, 1919, ch. 18, § 616, 40 Stat. 1111, as amended by act June 26, 1936, ch. 830, title III, § 338, 49 Stat. 1959.

§ 3041. Spirit meters, locks, and seals—(a) Regulations.

The Commissioner, by regulations to be approved by the Secretary, may require the use at each fruit distillery of such spirit meters, and such locks and seals to be affixed to fermenters, tanks, or other vessels and to such pipe connections as may in his judgment be necessary or expedient.

(b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 354.)

DERIVATION

Act Feb. 25, 1919, ch. 18, § 621, 40 Stat. 1114.

SIMILAR PROVISIONS

1916—Sept. 8, 1916, ch. 463, § 402, 39 Stat. 783.

§ 3042. Assignment of storekeeper-gaugers to fruit distilleries and wineries—(a) Power of Commissioner.

The Commissioner is authorized to assign to any fruit distillery and to each winery where wines are to be fortified such number of storekeeper-gaugers as may be necessary for the proper supervision of the manufacture of brandy or the making or fortifying of wines subject to tax imposed by this chapter.

(b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 354.)

DERIVATION

Acts Feb. 24, 1919, ch. 18, § 621, 40 Stat. 1114; Mar. 2, 1929, ch. 510, 45 Stat. 1496.

SIMILAR PROVISIONS

1916—Sept. 8, 1916, ch. 463, § 402, 39 Stat. 783.

1906—June 7, 1906, ch. 3046, § 3, 34 Stat. 316, as amended by act Oct. 22, 1914, ch. 331, § 2, 38 Stat. 750.

§ 3043. Penalties and forfeitures—(a) Offenses.

Whoever evades or attempts to evade any tax imposed by sections 3030 or 3031, or any requirement of this subchapter, or regulation issued pursuant thereto, or whoever, otherwise than as provided in this subchapter, recovers or attempts to recover any spirits from domestic or imported wine, shall, on conviction, be punished for each such offense by a fine of not exceeding \$5,000, or imprisonment for not more than five years, or both, and in addition thereto by a penalty of double the tax evaded, or attempted to be evaded, to be assessed and collected in the same manner as taxes are assessed and collected, and all wines, spirits, liqueurs, cordials, or similar compounds as to which such violation occurs shall be forfeited to the United States. But the provisions of this section and of section 3254 (g) relating to rectification, or other internal revenue laws of the United States, shall not be held to apply to or prohibit the mixing or blending of wines subject to tax under the provisions of sections 3030 or 3031, with each other or with other wines for the sole purpose of perfecting such wines according to commercial standards: *Provided*, That nothing herein contained shall be construed as prohibiting the use of tax-paid

grain or other ethyl alcohol in the fortification of sweet wines as defined in sections 3036 and 3044.

(b) Cross references.

For forfeiture of wines in case special tax has not been paid or business of distiller is carried on without bond or with intent to defraud the Government of tax, see sections 2833 and 3253.

For penalty and forfeiture imposed upon rectifiers and wholesale liquor dealers for committing offenses not specifically covered by law, see section 2806 (g).

For penalties and forfeitures for other violations, see section 3173.

(53 Stat. 354.)

DERIVATION

Act Feb. 24, 1919, ch. 18, § 620, 40 Stat. 1114.

SIMILAR PROVISIONS

1916—Sept. 8, 1916, ch. 463, § 402 (f), 39 Stat. 783.

1890—Oct. 1, 1890, ch. 1244, §§ 44, 48, 26 Stat. 622, 623.

§ 3044. Definitions—(a) Natural wine.

Natural wine within the meaning of this subchapter shall be deemed to be the product made from the normal alcoholic fermentation of the juice of sound, ripe grapes, without addition or abstraction, except such as may occur in the usual cellar treatment of clarifying and aging.

(b) Wine.

The product made from the juice of sound, ripe grapes by complete fermentation of the must under proper cellar treatment and corrected by the addition (under the supervision of a storekeeper-gauger) of a solution of water and pure cane, beet, or dextrose sugar (containing, respectively, not less than 95 per centum of actual sugar, calculated on a dry basis) to the must or to the wine, to correct natural deficiencies, when such addition shall not increase the volume of the resultant product more than 35 per centum, and the resultant product does not contain less than five parts per thousand of acid before fermentation and not more than 13 per centum of alcohol after complete fermentation, shall be deemed to be wine within the meaning of this subchapter, and may be labeled, transported, and sold as "wine," qualified by the name of the locality where produced, and may be further qualified by the name of its own particular type or variety.

(c) Sweet wine.

Wine as defined in this section may be sweetened with cane sugar or beet sugar or pure condensed grape must and fortified under the provisions of this subchapter, and wines so sweetened or fortified shall be considered sweet wine within the meaning of this subchapter.

(d) Pure sweet wine.

For definition of pure sweet wine, see section 3036 (a). (53 Stat. 355.)

DERIVATION

Act Feb. 24, 1919, ch. 18, § 610, 40 Stat. 1109; Mar. 2, 1929, ch. 510, 45 Stat. 1496.

SIMILAR PROVISIONS

1916—Sept. 8, 1916, ch. 463, § 401, 39 Stat. 783.

§ 3045. Application of natural wine provisions to citrus-fruit wines and other like wines.

The provisions of the internal revenue laws applicable to natural wine shall apply in the same man-

ner and to the same extent to citrus-fruit wines, peach wines, cherry wines, berry wines, apricot wines, prune wines, plum wines, pear wines, and apple wines, which are the products, respectively, of normal alcoholic fermentation of the juice of sound ripe (1) citrus-fruit (except lemons and limes), (2) peaches, (3) cherries, (4) berries, (5) apricots, (6) prunes, (7) plums, (8) pears, (9) apples, with or without the addition of dry cane, beet, or dextrose sugar (containing, respectively, not less than 95 per centum of actual sugar, calculated on a dry basis) for the purpose of perfecting the product according to standards, but without the addition or abstraction of other substances, except as may occur in the usual cellar treatment of clarifying or aging. (53 Stat. 355.)

#### DERIVATION

Act Feb. 24, 1919, ch. 18, § 610, 40 Stat. 1109, as amended by act June 26, 1936, ch. 830, title III, § 330, 49 Stat. 1957, act June 15, 1938, ch. 439, § 8 (a), 52 Stat. 702.

### SUBCHAPTER C.—INDUSTRIAL ALCOHOL

#### PART I.—DENATURATION

#### § 3070. Withdrawal from bond tax free—(a) For industrial use.

Domestic alcohol of such degree of proof as may be prescribed by the Commissioner, and approved by the Secretary, may be withdrawn from bond without the payment of internal revenue tax, for use in the arts and industries, and for fuel, light, and power, provided said alcohol shall have been mixed in the presence and under the direction of an authorized Government officer, after withdrawal from the distillery warehouse, with methyl alcohol or other denaturing material or materials, or admixture of the same, suitable to the use for which the alcohol is withdrawn, but which destroys its character as a beverage and renders it unfit for liquid medicinal purposes; such denaturing to be done upon the application of any registered distillery in denaturing bonded warehouses specially designated or set apart for denaturing purposes only, and under conditions prescribed by the Commissioner with the approval of the Secretary.

The character and quantity of the said denaturing material and the conditions upon which said alcohol may be withdrawn free of tax shall be prescribed by the Commissioner, who shall, with the approval of the Secretary, make all necessary regulations for carrying into effect the provisions of this subsection.

Distillers, manufacturers, dealers and all other persons furnishing, handling or using alcohol withdrawn from bond under the provisions of this section shall keep such books and records, execute such bonds and render such returns as the Commissioner, with the approval of the Secretary, may by regulation require. Such books and records shall be open at all times to the inspection of any internal revenue officer or agent.

#### (b) For use in manufacture of chemicals.

Notwithstanding anything contained in subsection (a), domestic alcohol when suitably denatured may be withdrawn from bond without the payment of internal revenue tax and used in the manufacture of

ether and chloroform and other definite chemical substances where said alcohol is changed into some other chemical substance and does not appear in the finished product as alcohol. Rum of not less than one hundred and fifty degrees proof may be withdrawn, for denaturation only, in accordance with the provisions of subsection (a).

#### (c) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 355.)

#### DERIVATION

Subsection (a) from act June 7, 1906, ch. 3047, § 1, 34 Stat. 217.

Subsection (b) from act Mar. 2, 1907, ch. 2571, § 1, 34 Stat. 1250.

#### § 3071. Drawing off and transfer of alcohol for denaturation.

For provisions relating to the drawing off and transfer of alcohol for denaturation, see section 3108 (a).

(53 Stat. 356.)

#### § 3072. Unlawful use or concealment of denatured alcohol.

Any person who withdraws alcohol free of tax under the provisions of section 3070 (a) and regulations made in pursuance thereof, and who removes or conceals same, or is concerned in removing, depositing or concealing same for the purpose of preventing the same from being denatured under governmental supervision, and any person who uses alcohol withdrawn from bond under the provisions of said section for manufacturing any beverage or liquid medicinal preparation, or knowingly sells any beverage or liquid medicinal preparation made in whole or in part from such alcohol, or knowingly violates any of the provisions of section 3070 (a) or 3073, or (except as provided in section 3073) who shall recover or attempt to recover by redistillation or by any other process or means, any alcohol rendered unfit for beverage or liquid medicinal purposes under the provisions of section 3070 (a), or who knowingly uses, sells, conceals, or otherwise disposes of alcohol so recovered or redistilled, shall on conviction of each offense be fined not more than \$5,000, or be imprisoned not more than five years, or both, and shall, in addition, forfeit to the United States all personal property used in connection with his business, together with the buildings and lots or parcels of ground constituting the premises on which said unlawful acts are performed or permitted to be performed. (53 Stat. 357.)

#### DERIVATION

Act June 7, 1906, ch. 3047, § 2, 34 Stat. 217.

#### § 3073. Recovery of spirits for reuse in manufacture—(a) Regulations.

Manufacturers employing processes in which alcohol, used free of tax under the provisions of section 3070 (a), is expressed or evaporated from the articles manufactured, shall be permitted to recover such alcohol and to have such alcohol restored to a condition suitable solely for reuse in manufacturing processes under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 357.)

**DERIVATION**

Act June 7, 1906, ch. 3047, § 2, 34 Stat. 217.

**§ 3074. Sale of abandoned spirits for denaturation without collection of tax—(a) Regulations.**

Notwithstanding the provisions of section 2805 (b) of this chapter, any distilled spirits abandoned to the United States may be sold, in such cases as the Commissioner may by regulation provide, to the proprietor of any industrial alcohol plant for denaturation, or redistillation and denaturation, without the payment of the internal-revenue tax thereon.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 357.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 901, 44 Stat. 105.

**PART II.—INDUSTRIAL ALCOHOL PLANTS****§ 3100. Establishment of industrial alcohol plants—(a) Requirements.**

Any person establishing a plant for the production of industrial alcohol shall, before operation, make application to the Commissioner for registration of his plant, file bond, and receive permit for the operation of such plant.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 357.)

**DERIVATION**

Act Oct. 28, 1919, ch. 85, title III, § 2, 41 Stat. 319.

**§ 3101. Establishment of industrial alcohol warehouses—(a) Requirements.**

Warehouses for the storage and distribution of alcohol may be established upon filing of application and bond, and issuance of permit at such places, either in connection with the manufacturing plant or elsewhere, as the Commissioner may determine; and the entry and storage of alcohol therein, and the withdrawals of alcohol therefrom shall be made in such containers and by such means as the Commissioner by regulation may prescribe. Permanent tanks and other structures located on the industrial alcohol plant premises and approved by the Commissioner, shall be deemed to be warehouses within the meaning of this section.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 357.)

**DERIVATION**

Act Oct. 28, 1919, ch. 85, title III, § 3, as amended by acts Aug. 27, 1935, ch. 740, § 17, 49 Stat. 876; June 26, 1936, ch. 830, title III, § 329 (a), 49 Stat. 1957.

**§ 3102. Establishment of denaturing plants.**

Upon the filing of application and bond and issuance of permit denaturing plants may be established upon the premises of any industrial alcohol plant,

or elsewhere, and shall be used exclusively for the denaturation of alcohol by the admixture of such denaturing materials as shall render the alcohol, or any compound in which it is authorized to be used, unfit for use as an intoxicating beverage. (53 Stat. 357.)

**DERIVATION**

Act Oct. 28, 1919, ch. 85, title III, § 10, 41 Stat. 320.

**§ 3103. Exemption of industrial alcohol plants and warehouses from certain laws.**

Industrial alcohol plants and bonded warehouses established under the provisions of this part shall be exempt from the provisions of sections 3154, 3244, 3258, 3259, 3260, 3263, 3264, 3266, 3267, 3268, 3269, 3271, 3273, 3274, 3275, 3279, 3280, 3283, 3284, 3285, 3286, 3287, 3288, 3289, 3290, 3291, 3292, 3293, 3294, 3295, 3302, 3303, 3307, 3308, 3309, 3310, 3311, 3312, 3313, 3314, and 3327 of the Revised Statutes; sections 48 to 60, inclusive, and sections 62 and 67 of the act of August 27, 1894 (Twenty-eighth Statutes, pages 563 to 568), as such sections existed on October 28, 1919, and from such other provisions of laws existing on October 28, 1919, relating to distilleries and bonded warehouses as may, by regulations, be declared inapplicable to industrial alcohol plants and bonded warehouses established under this subchapter.

Regulations may be made embodying any provision of the sections above enumerated. (53 Stat. 357.)

**DERIVATION**

Act Oct. 28, 1919, ch. 85, title III, § 9, 41 Stat. 320.

**§ 3104. Withdrawal of fermented liquors to industrial alcohol plants—(a) Requirements.**

Fermented liquors may be conveyed without payment of tax from the brewery premises where produced to a contiguous industrial alcohol plant, to be used as distilling material, and the residue from such distillation, containing less than one-half of 1 per centum of alcohol by volume, which is to be used in making beverages, may be manipulated by cooling, flavoring, carbonating, settling, and filtering on the distillery premises or elsewhere.

The removal of the taxable fermented liquor from the brewery to the distillery and the operation of the distillery and removal of the residue therefrom shall be under the supervision of such officer or officers as the Commissioner shall deem proper, and the Commissioner, with the approval of the Secretary, is hereby authorized to make such regulations from time to time as may be necessary to give force and effect to this section and to safeguard the revenue.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 358.)

**DERIVATION**

Act Feb. 24, 1919, ch. 18, § 609, 40 Stat. 1109, as amended by act June 26, 1936, ch. 830, title III, § 320, 49 Stat. 1953.

**§ 3105. Regulations for establishing, bonding, and operation of plants and warehouses—(a) Requirements.**

The Commissioner shall from time to time issue regulations respecting the establishment, bonding,



and operation of industrial alcohol plants, denaturing plants, and bonded warehouses authorized herein, and the distribution, sale, export, and use of alcohol which may be necessary, advisable, or proper, to secure the revenue, to prevent diversion of the alcohol to illegal uses, and to place the nonbeverage alcohol industry and other industries using such alcohol as a chemical raw material or for other lawful purpose upon the highest possible plane of scientific and commercial efficiency consistent with the interests of the Government, and which shall insure an ample supply of such alcohol and promote its use in scientific research and the development of fuels, dyes, and other lawful products.

(b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 358.)

DERIVATION

Act Oct. 28, 1919, ch. 85, title III, § 13, 41 Stat. 321.

§ 3106. Production, use, or sale of alcohol—(a) Requirements.

Alcohol may be produced at any industrial alcohol plant established under the provisions of this part, from any raw materials or by any processes suitable for the production of alcohol, and, under regulations, may be used at any industrial alcohol plant or bonded warehouse or sold or disposed of for any lawful purpose, as in this part provided.

(b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 358.)

DERIVATION

Act Oct. 28, 1919, ch. 85, title III, § 8, 41 Stat. 320.

§ 3107. Transfer of alcohol to other plants or warehouses.

Alcohol produced at any registered industrial alcohol plant or stored in any bonded warehouse may be transferred under regulations to any other registered industrial alcohol plant or bonded warehouse for any lawful purpose. (53 Stat. 359.)

DERIVATION

Act Oct. 28, 1919, ch. 85, title III, § 4, 41 Stat. 320.

§ 3108. Withdrawal of alcohol tax-free—(a) For denaturation.

Alcohol produced at any industrial alcohol plant or stored in any bonded warehouse may, under regulations, be withdrawn tax free as provided by existing law from such plant or warehouse for transfer to any denaturing plant for denaturation, or may, under regulations, before or after denaturation, be removed from any such plant or warehouse for any lawful tax-free purpose.

(b) For use by Federal or State agencies.

Alcohol may be withdrawn, under regulations, from any industrial plant or bonded warehouse tax free by the United States or any governmental agency thereof, or by the several States and Territories or any municipal subdivision thereof or by the District of Columbia.

(c) For use in research, hospitals, or charitable clinics.

Alcohol may be withdrawn, under regulations, from any industrial plant or bonded warehouse tax free for the use of any scientific university or college of learning, any laboratory for use exclusively in scientific research, or for use in any hospital or sanitarium, or for the use of any clinic operated for charity and not for profit, including use in the compounding of bona fide medicines for treatment outside of such clinics of patients thereof, but not for sale.

(d) Conditions of exemptions.

But any person permitted to obtain alcohol tax free, except the United States and the several States and Territories and subdivisions thereof, and the District of Columbia, shall first apply for and secure a permit to purchase the same and give the bonds prescribed under section 3114, but alcohol withdrawn for nonbeverage purposes for use of the United States and the several States, Territories and subdivisions thereof, and the District of Columbia may be purchased and withdrawn subject only to such regulations as may be prescribed.

(e) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 359.)

DERIVATION

Act Oct. 28, 1919, ch. 85, § 11, 51 Stat. 321, as amended by acts Aug. 27, 1935, ch. 740, § 18, 49 Stat. 876; June 26, 1936, ch. 830, title III, § 329 (b), 49 Stat. 1957.

§ 3109. Sale of denatured alcohol tax-free.

Alcohol lawfully denatured may, under regulations, be sold free of tax either for domestic use or for export. (53 Stat. 359.)

DERIVATION

Act Oct. 28, 1919, ch. 85, title III, § 10, 41 Stat. 321.

§ 3110. Distilled vinegar.

Nothing in this part shall be construed to require manufacturers of distilled vinegar to raise the proof of any alcohol used in such manufacture or to denature the same. (53 Stat. 359.)

DERIVATION

Act Oct. 28, 1919, ch. 85, title III, § 10, 41 Stat. 321.

§ 3111. Taxability of denatured alcohol or articles produced, transferred, used, or sold in violation of law or regulations.

Any person who shall produce, withdraw, sell, transport, or use denatured alcohol, denatured rum, or articles in violation of laws or regulations now or hereafter in force pertaining thereto, and all such denatured alcohol, denatured rum, or articles shall be subject to all provisions of law pertaining to alcohol that is not denatured, including those requiring the payment of tax thereon; and the person so producing, withdrawing, selling, transporting, or using the denatured alcohol, denatured rum, or articles shall be required to pay such tax. (53 Stat. 359.)

DERIVATION

Act Aug. 27, 1935, ch. 740, § 4, 49 Stat. 873.

**§ 3112. Tax on alcohol—(a) Time of attachment and lien.**

Any tax imposed by law upon alcohol shall attach to such alcohol as soon as it is in existence as such, and all proprietors of industrial alcohol plants and bonded warehouses shall be jointly and severally liable for any and all taxes on any and all alcohol produced thereat or stored therein. Such taxes shall be a first lien on such alcohol and the premises and plant in which such alcohol is produced or stored, together with all improvements and appurtenances thereunto belonging or in any wise appertaining.

**(b) Collection.**

Any tax payable upon alcohol under existing law may be collected either by assessment or by stamp as regulations shall provide; and if by stamp, regulations shall issue prescribing the kind of stamp to be used and the manner of affixing and canceling the same. (53 Stat. 360.)

**DERIVATION**

Act Oct. 28, 1919, ch. 85, title III, §§ 5, 16, 41 Stat. 320, 322.

**§ 3113. Refund of tax on alcohol for loss or leakage—(a) Requirements.**

Whenever any alcohol is lost by evaporation or other shrinkage, leakage, casualty, or unavoidable cause during distillation, redistillation, denaturation, withdrawal, piping, shipment, warehousing, storage, packing, transfer, or recovery, of any such alcohol the Commissioner may remit or refund any tax incurred under existing law upon such alcohol, provided he is satisfied that the alcohol has not been diverted to any illegal use: *Provided, also*, That such allowance shall not be granted if the person claiming same is indemnified against such loss by a valid claim of insurance.

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 360.)

**DERIVATION**

Act Oct. 28, 1919, ch. 85, title III, § 14, 41 Stat. 321

**§ 3114. Alcohol permits—(a) Requirements.**

No one shall manufacture alcohol, procure it tax free, denature it, deal in or use specially denatured alcohol, recover completely or specially denatured alcohol, or transport specially denatured or tax-free alcohol, without first obtaining a permit from the Commissioner so to do. All such permits may be issued for one year, and shall expire on the 31st day of December next succeeding the issuance thereof: *Provided*, That the Commissioner may without formal application or new bond extend any permit granted under this part after August 31 in any year to December 31 of the succeeding year.

Permits to purchase or procure specially denatured alcohol and tax-free alcohol shall be issued in such terms and under such conditions as the Commissioner shall by regulation prescribe.

No permit shall be issued to any person who, within one year prior to the application therefor or issuance thereof, shall not in good faith have conformed to the provisions of this part, or shall have violated

the terms of any permit issued under this part, or made any false statement in the application therefor, or willfully failed to disclose any information required by regulation to be furnished, or violated any law of the United States relating to intoxicating liquor, or willfully violated any law of any State, Territory, or possession of the United States or of the District of Columbia relating to intoxicating liquor.

Every permit shall be in writing, dated when issued, and signed by the Commissioner or his authorized agent. It shall give the name and address of the person to whom it is issued and shall designate and limit the acts that are permitted and the time when and place where such acts may be performed. No permit shall be issued until a verified, written application shall have been made therefor, setting forth the qualification of the applicant and the purpose for which the alcohol or denatured alcohol is to be used.

The Commissioner may prescribe the form of all permits and applications and the facts to be set forth therein. Before any permit is granted, the Commissioner may require a bond in such form and amount as he may prescribe to insure compliance with the terms of the permit and the provisions of this part. In the event of the refusal by the Commissioner of any application for a permit, the applicant may have a review of his decision before a court of equity in the manner provided in subsection (c).

**(b) Violation.**

If at any time there shall be filed with the Commissioner a complaint under oath setting forth facts showing, or if the Commissioner has reason to believe, that any person who has a permit is not in good faith conforming to the provisions of this part, or has violated the terms of such permit, or has made any false statement in the application therefor, or has willfully failed to disclose any information required by regulation to be furnished, or has violated any law of the United States or of any State, Territory, or possession of the United States or of the District of Columbia relating to intoxicating liquor, the Commissioner or his agent shall immediately issue an order citing such person to appear before him on a day named not more than thirty and not less than fifteen days from the date of service upon such permittee of a copy of the citation, which citation shall be accompanied by a copy of such complaint, or in the event that the proceedings be initiated by the Commissioner, with a statement of the facts constituting the violation charged, at which time a hearing shall be had unless continued for cause. Such hearings shall be held within the judicial district and within fifty miles of the place where the offense is alleged to have occurred, unless the parties agree on another place. If it be found that such person is not in good faith conforming to the provisions of this part or has violated the terms of his permit, or made any false statement in the application therefor, or willfully failed to disclose any information required by regulation to be furnished, or violated any law of the United States relating to intoxicating liquor, or willfully violated any law of any State, Territory, or possession of the

United States or of the District of Columbia relating to intoxicating liquor, such permit shall be revoked, and no permit shall be granted to such person within one year thereafter. Should the permit be revoked by the Commissioner, the permittee may have a review of his decision before a court of equity in the manner provided in subsection (c). During the pendency of such action such permit shall be temporarily revoked.

**(c) Inaccurate description of denatured articles.**

Whenever the Commissioner has reason to believe that denatured alcohol, denatured rum, or articles do not correspond with the descriptions and limitations as to such alcohol, rum, or articles provided by law and regulations, he shall cause an analysis of said alcohol, rum, or articles to be made, and if upon such analysis the Commissioner shall find that said alcohol, rum, or articles do not so correspond, he shall give not less than fifteen days' notice in writing to the person who is the manufacturer thereof to show cause why said alcohol, rum, or articles should not be dealt with as other distilled spirits, such notice to be served personally or by registered mail, as the Commissioner may determine, and shall specify the time when, the place where, and the name of the agent or official before whom such person is required to appear.

If the manufacturer of said alcohol, rum, or articles fails to show to the satisfaction of the Commissioner that the alcohol, rum, or articles manufactured by him correspond to the descriptions and limitations as to such alcohol, rum, or articles provided by law and regulations, his permit to manufacture and sell the same shall be revoked. The manufacturer may by appropriate proceeding in a court of equity have the action of the Commissioner reviewed, and the court may affirm, modify, or reverse the finding of the Commissioner as the facts and law of the case may warrant, and during the pendency of such proceedings may restrain the manufacture, sale, or other disposition of such alcohol, rum, or articles.

**(d) Delivery to agent in case of prosecution or revocation.**

In case of a sale of liquor or denatured alcohol or denatured rum where the delivery thereof was made by a common or other carrier the sale and delivery for purposes of prosecution or revocation of any permit shall be deemed to be made in the county or district wherein the delivery was made by such carrier to the consignee, his agent or employee, or in the county or district wherein the sale was made, or from which the shipment was made, and prosecution for such sale or delivery may be had in any such county or district.

**(e) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 360.)

**DERIVATION**

Act Aug. 27, 1935, ch. 740, §§ 5-7, 12, 49 Stat. 873, 874, 875.

**§ 3115. Penalties—(a) Violations as to operation of plants or unlawful withdrawal of taxable alcohol.**

Whoever operates an industrial alcohol plant or a denaturing plant without complying with the provisions of this part and lawful regulations made thereunder, or whoever withdraws or attempts to withdraw or secure tax free any alcohol subject to tax, or whoever otherwise violates any of the provisions of this part or of regulations lawfully made thereunder shall be liable, for the first offense, to a penalty of not exceeding \$1,000, or imprisonment not exceeding thirty days, or both, and for a second or cognate offense to a penalty of not less than \$100 nor more than \$10,000, and to imprisonment of not less than thirty days nor more than one year. It shall be lawful for the Commissioner in all cases of second or cognate offense to refuse to issue for a period of one year a permit for the manufacture or use of alcohol upon the premises of any person responsible in any degree for the violation.

**(b) Violations in general.**

Any person violating the provisions of this part or of any regulations issued thereunder, for which offense a special penalty is not prescribed, shall be liable to the penalty or penalties prescribed in subsection (a). It shall be the duty of the prosecuting officer to ascertain, in the case of every violation of this part or the regulations made thereunder, for which offense a special penalty is not prescribed, whether the defendant has been previously convicted and to plead the prior conviction in the affidavit, information, or indictment.

**(c) Previous conviction.**

If any act or offense is a violation of this part, and also of any other law in regard to the manufacture or taxation of, or traffic in, intoxicating liquor, a conviction for such act or offense under the one shall be a bar to prosecution therefor under the other. (53 Stat. 362.)

**DERIVATION**

Subsection (a) from act Oct. 28, 1919, ch. 85, title III, § 15, 41 Stat. 321.

Subsections (b) and (c) from act Aug. 27, 1935, ch. 740, §§ 10, 15, 49 Stat. 875, 876.

**§ 3116. Forfeitures and seizures.**

It shall be unlawful to have or possess any liquor or property intended for use in violating the provisions of this part, or the internal-revenue laws, or regulations prescribed under such part or laws, or which has been so used, and no property rights shall exist in any such liquor or property. A search warrant may issue as provided in Title XI of the act of June 15, 1917, 40 Stat. 228 (U. S. C., Title 18, §§ 611-633), for the seizure of such liquor or property. Nothing in this section shall in any manner limit or affect any criminal or forfeiture provision of the internal-revenue laws, or of any other law. The seizure and forfeiture of any liquor or property under the provisions of this part, and the disposition of such liquor or property subsequent to seizure and forfeiture, or the disposition of the proceeds from the sale of such liquor or property, shall be in accordance with existing laws or those hereafter in existence relating to seizures, forfeitures, and disposition of

property or proceeds, for violation of the internal-revenue laws. (53 Stat. 362.)

## DERIVATION

Act Aug. 27, 1935, ch. 740, § 8, 49 Stat. 874.

**§ 3117. Officers and agents authorized to investigate, issue search warrants, and prosecute for violations—(a) Duties.**

The Commissioner, his assistants, agents, and inspectors, shall investigate and report violations of this part to the United States attorney for the district in which committed, who is hereby charged with the duty of prosecuting the offenders, subject to the direction of the Attorney General, as in the case of other offenses against the laws of the United States; and the Commissioner, his assistants, agents, and inspectors, may swear out warrants before United States commissioners or other officers or courts authorized to issue the same for the apprehension of such offenders, and may, subject to the control of the said United States attorney, conduct the prosecution at the committing trial for the purpose of having the offenders held for the action of a grand jury. Section 1014 of the Revised Statutes (U. S. C., Title 18, § 591) is hereby made applicable in the enforcement of this part. Officers mentioned in said section 1014 are authorized to issue search warrants under the limitations provided in Title XI of the act of June 15, 1917, 40 Stat. 228 (U. S. C., Title 18, §§ 611–633).

**(b) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 363.)

## DERIVATION

Act Aug. 27, 1935, ch. 740, § 3, 49 Stat. 872.

**§ 3118. Release of seized property upon execution of bond.**

When any property is seized for violation of this part it may be released to the claimant or to any intervening party, in the discretion of the Commissioner, on a bond given and approved. (53 Stat. 363.)

## DERIVATION

Act Oct. 28, 1919, ch. 85, title III, § 17, 41 Stat. 322.

**§ 3119. Compliance with court subpoena as to testifying or producing records.**

No person shall be excused, on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents, and other evidence in obedience to a subpoena of any court in any suit or proceeding based upon or growing out of any alleged violation of this part; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, he may so testify or produce evidence, but no person shall be exempt from prosecution and punishment for perjury committed in so testifying. (53 Stat. 363.)

## DERIVATION

Act Aug. 27, 1935, ch. 740, § 11, 49 Stat. 875.

**§ 3120. Form of affidavit, information, or indictment.**

In any affidavit, information, or indictment for the violation of this subchapter, separate offenses may be united in separate counts and the defendant may be tried on all at one trial and the penalty for all offenses may be imposed. It shall not be necessary in any affidavit, information, or indictment to give the name of the purchaser or to include any defensive negative averments, but it shall be sufficient to state that the act complained of was then and there prohibited and unlawful, but this provision shall not be construed to preclude the trial court from directing the furnishing the defendant a bill of particulars when it deems it proper to do so. (53 Stat. 363.)

## DERIVATION

Act Aug. 27, 1935, ch. 740, § 13, 49 Stat. 875.

**§ 3121. Powers and duties of persons enforcing this part—(a) Commissioner and other persons.**

The Commissioner, his assistants, agents, and inspectors, and all other officers, employees, or agents of the United States, whose duty it is to enforce criminal laws, shall have all the rights, privileges, powers, and protection in the enforcement of the provisions of this part which are conferred by law for the enforcement of any laws in respect of the taxation, importation, exportation, transportation, manufacture, possession, or use of, or traffic in, intoxicating liquors.

**(b) Delegation of duties to assistants.**

Any Act authorized by this subchapter to be done by the Commissioner may be performed by any assistant or agents designated by him for that purpose. Records, reports, or returns required to be filed with the Commissioner may be filed with an Assistant Commissioner or other person designated by the Commissioner to receive such records, reports, or returns.

**(c) Power to secure records.**

All records and reports kept or filed under the provisions of this part, and all liquor or property to which such records or reports relate, shall be subject to inspection at any reasonable hour by the Commissioner or any of his agents or by any public prosecutor or by any person designated by him, or by any peace officer in the State where the records or reports are kept, and copies of such records and reports duly certified by the person with whom kept or filed may be introduced in evidence with like effect as the originals thereof, and verified copies of such records shall be furnished to the Commissioner when called for.

**(d) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 363.)

## DERIVATION

Act Aug. 27, 1935, ch. 740, §§ 2, 9, 14, 49 Stat. 872, 875, 876.

**§ 3122. Other laws applicable.**

All administrative provisions of internal-revenue law, including those relating to assessment, collection, abatement, and refund of taxes and penalties,

and the seizure and forfeiture of property, are made applicable to this part in so far as they are not inconsistent with the provisions thereof. (53 Stat. 364.)

#### DERIVATION

Act Oct. 28, 1919, ch. 85, title III, § 18, 41 Stat. 322.

### § 3123. Application of part to Puerto Rico and Virgin Islands.

This part, and all provisions of the internal revenue laws relating to the enforcement thereof, are hereby extended to and made applicable to Puerto Rico and the Virgin Islands, from and after August 27, 1935. The respective Insular Governments shall advance to the Treasury of the United States such funds as may be required from time to time by the Secretary of the Treasury for the purpose of defraying all expenses incurred by the Treasury Department in connection with the enforcement in Puerto Rico and the Virgin Islands of this part and regulations promulgated thereunder. The funds so advanced shall be deposited in a separate trust fund in the Treasury of the United States and shall be available to the Treasury Department for the purposes of this subsection. (53 Stat. 364.)

#### DERIVATION

Act June 26, 1936, ch. 830, title III, § 329 (c), 49 Stat. 1957.

### § 3124. Definitions—(a) When used in this part.

(1) The term "alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, from whatever source or whatever processes produced.

Spirits of less proof than one hundred and sixty degrees may, under regulations, be deemed to be alcohol for the purpose of denaturation, under the provisions of this title.

(2) The term "container" includes any receptacle, vessel, or form of package, tank, or conduit used or capable of use for holding, storing, transferring, or shipment of alcohol.

(3) The term "application" shall mean a formal written request supported by a verified statement of facts showing that the Commissioner may grant the request;

(4) The term "permit" shall mean a formal written authorization by the Commissioner setting forth specifically therein the things that are authorized;

(5) The term "bond" shall mean an obligation authorized or required by or under this part, Title I of the Liquor Law Repeal and Enforcement Act, 49 Stat. 872, or Title III of the National Prohibition Act, 41 Stat. 319, or any regulation thereunder, executed in such form and for such penal sum as may be required by the Commissioner or prescribed by regulation;

(6) The term "regulation" shall mean any regulation prescribed by the Commissioner with the approval of the Secretary of the Treasury for carrying out the provisions of this part, and the Commissioner is authorized to make such regulations.

(7) The term "articles" shall mean any substance or preparation in the manufacture of which denatured alcohol or denatured rum is used.

(8) The term "person" shall mean and include natural persons, firms, partnerships, corporations, and associations.

### (b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 364.)

#### DERIVATION

Subsection (a) (1) from act Oct. 28, 1919, ch. 85, title III, § 1, 41 Stat. 319; act Oct. 28, 1919, ch. 85, title III, § 11, as amended by act Aug. 27, 1935, ch. 740, § 18, 49 Stat. 877.

Subsection (a) (2) from act Oct. 28, 1919, ch. 85, title III, § 1, 41 Stat. 319.

Subsection (a) (3-8) from act Aug. 27, 1935, ch. 740, § 2, 49 Stat. 872.

## SUBCHAPTER D.—FERMENTED LIQUORS

### § 3150. Tax—(a) Rate.

There shall be levied and collected on all beer, lager beer, ale, porter, and other similar fermented liquor, containing one-half of 1 per centum, or more, of alcohol, brewed or manufactured and sold, or removed for consumption or sale, within the United States, by whatever name such liquors may be called, a tax of \$5 for every barrel containing not more than thirty-one gallons, and at a like rate for any other quantity or for the fractional parts of a barrel authorized and defined by law. In estimating and computing such tax, the fractional parts of a barrel shall be halves, thirds, quarters, sixths, and eighths; and any fractional part of a barrel, containing less than one-eighth, shall be accounted one-eighth; more than one-eighth, and not more than one-sixth, shall be accounted one-sixth; more than one-sixth, and not more than one-fourth, shall be accounted one-fourth; more than one-fourth, and not more than one-third, shall be accounted one-third; more than one-third, and not more than one-half, shall be accounted one-half; more than one-half, and not more than one barrel, shall be accounted one barrel; and more than one barrel, and not more than sixty-three gallons, shall be accounted two barrels, or a hogshead.

The provisions of this section requiring the accounting of hogsheads, barrels, and fractional parts of barrels at the next higher quantity shall not apply where the contents of such hogsheads, barrels, or fractional parts of barrels are within the limits of tolerance established by the Commissioner by regulations which he is hereby authorized to prescribe with the approval of the Secretary; and no assessment shall be made and no tax shall be collected for any excess in any case where the contents of the hogsheads, barrels, or fractional parts of barrels heretofore or hereafter used are within the limits of the tolerance so prescribed.

### (b) Payment—(1) In general.

The said tax shall be paid by the owner, agent, or superintendent of the brewery or premises in which such fermented liquors are made, and in the manner and at the time hereinafter specified.

### (2) Unfermented worts sold by one brewer to another.

When malt liquor or tun liquor, in the first stages of fermentation, known as unfermented worts, of whatever kind, is sold by one brewer to another for

the purpose of producing fermentation or enlivening old or stale ale, porter, lager beer, or other fermented liquors, it shall not be liable to a tax to be paid by the seller thereof, but the tax on the same shall be paid by the purchaser thereof, when the same, having been mixed with the old or stale beer, is sold by him as provided by law, and such sale or transfer shall be subject to such restrictions and regulations as the Commissioner may prescribe.

(c) **Exemption of materials used in producing fermented or malt liquors.**

Nothing contained in section 3155 (c) shall be so construed as to authorize an assessment upon the quantity of materials used in producing or purchased for the purpose of producing, fermented or malt liquors, nor shall the quantity of materials so used or purchased be evidence, for the purpose of taxation, of the quantity of liquor produced; but the tax on all beer, lager beer, ale, porter, or other similar fermented liquor, brewed or manufactured, and sold or removed for consumption or sale, shall be paid as provided in paragraph (1) of subsection (b), and not otherwise: *Provided*, That this subsection shall not apply to cases of fraud: *And provided further*, That nothing in this subsection shall have the effect to change the rules of law respecting evidence in any prosecution or suit.

(d) **Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 365.)

**INCREASE OF RATE AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945**

Rate of tax on fermented malt liquors under subsection (a) is increased from \$5 to \$6 by section 3190 of this title

**DERIVATION**

Subsection (a) from R. S. § 3339, which was in nature of a revision of acts July 13, 1866, ch. 184, § 48, 14 Stat. 164; Mar. 2, 1867, ch. 169, § 10, 14 Stat. 475; June 6, 1872, ch. 315, § 18, 17 Stat. 245; Mar. 3, 1873, ch. 254, 17 Stat. 586; act Feb. 24, 1919, ch. 18, § 608, 40 Stat. 1109, as amended by acts June 26, 1926, ch. 830, title III, § 313 (a), 49 Stat. 1948; Jan. 11, 1934, ch. 1, § 9 (a), 48 Stat. 314.

Subsection (b) (1) from R. S. § 3339.

Subsection (b) (2) from R. S. § 3351, which was in nature of a revision of act June 6, 1872, ch. 315, § 27, 17 Stat. 249.

Subsection (c) from act May 13, 1876, ch. 95, 19 Stat. 53.

**SIMILAR PROVISIONS**

Provisions similar to subsection (a) were contained in act June 13, 1898, ch. 448, § 1, 30 Stat. 448, as amended by acts Mar. 2, 1901, ch. 806, § 1, 31 Stat. 938; April 12, 1902, ch. 500, § 1, 32 Stat. 96; acts Oct. 22, 1914, ch. 831, § 1, 38 Stat. 745; Sept. 8, 1916, ch. 468, § 400, 39 Stat. 783.

**CROSS REFERENCE**

Provisions of law, including penalties, applicable in respect of taxes imposed by subsection (a) of this section to be applicable, insofar as not inconsistent, with respect to floor stock tax imposed by section 3191 (a), see section 3191 (c) of this title.

**§ 3151. Tax-paid stamps and permits—(a) Supply.**

The Commissioner shall cause to be prepared, for the payment of such tax, suitable stamps denoting the amount of tax required to be paid on the hogsheads, barrels, and halves, thirds, quarters, sixths, and eighths of a barrel of such fermented liquors (and shall also cause to be prepared suitable permits for the purpose hereinafter mentioned), and shall

furnish the same to the collectors, who shall each be required to keep on hand at all times a sufficient supply of permits and a supply of stamps equal in amount to two months' sales thereof, if there be any brewery or brewery warehouse in his district; and such stamps shall be sold, and permits granted and delivered by such collectors, only to the brewers of their district, respectively.

(b) **Collector's account.**

Such collectors shall keep an account of the number of permits delivered and of the number and value of the stamps sold by them to each brewer.

(c) **Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 366.)

**DERIVATION**

R. S. § 3341, which was in nature of a revision of acts July 13, 1866, ch. 184, § 52, 14 Stat. 165; June 6, 1872, ch. 315, § 22, 17 Stat. 246, as amended by act July 24, 1897, ch. 11, § 9, 30 Stat. 206.

**§ 3152. Other provisions relating to stamps—(a) Procurement by brewer.**

Every brewer shall obtain, from the collector of the district in which his brewery or brewery-warehouse is situated, and not otherwise unless such collector shall fail to furnish the same upon application to him, the proper stamps.

(b) **Affixing and canceling tax-paid stamps.**

Every brewer shall affix, upon the spigot-hole in the head of every hogshead, barrel, or keg in which any fermented liquor is contained, when sold or removed from such brewery or warehouse (except in case of removal under permit, as hereinafter provided), a stamp denoting the amount of the tax required upon such fermented liquor, which stamp shall be destroyed by driving through the same the faucet through which the liquor is to be withdrawn, or an air-faucet of equal size, at the time the hogshead, barrel, or keg is tapped, in case it is tapped through the other spigot-hole (of which there shall be but two, one in the head and one in the side), and shall also, at the time of affixing such stamp, cancel the same by writing or imprinting thereon the name of the person, firm, or corporation by whom such liquor was made, or the initial<sup>1</sup> letters thereof, and the date when canceled: *Provided, however*, That the Commissioner may, in his discretion, authorize the use of such other tapping devices or faucets as will permit the affixing and destruction of stamps in a manner consistent with the protection of the revenue.

(c) **Instruments for attaching, protecting, and canceling stamps.**

The instruments or other means prescribed under section 3301 (a) for attaching, protecting, and canceling stamps for fermented liquors shall be furnished by the United States to the persons using the stamps to be affixed therewith, under such regulations as the Commissioner may prescribe.

(d) **Issue for restamping.**

The Commissioner may, under regulations prescribed by him with the approval of the Secretary, issue stamps for restamping packages of fermented

liquors which have been duly stamped but from which the stamps have been lost or destroyed by unavoidable accident.

(e) Authority to discontinue export stamps.

The Commissioner, with the approval of the Secretary, is authorized to discontinue the use of export fermented-liquor stamps whenever in his judgment the interests of the Government will be subserved thereby.

(f) General stamp provisions.

For general provisions relating to stamps, see subchapter A of chapter 28.

(g) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 366.)

<sup>1</sup> So in original.

DERIVATION

Subsections (a), (b), from R. S. § 3342, which was in nature of a revision of acts July 13, 1866, ch. 184, § 53, 14 Stat. 166; June 6, 1872, ch. 315, § 23, 17 Stat. 247, as amended by act June 26, 1936, ch. 830, title III, § 313 (b), 49 Stat. 1948. R. S. § 3342 was also amended by act Mar. 3, 1875, ch. 154, 18 Stat. 484.

Subsection (c) from R. S. § 3445, which was in nature of a revision of acts July 20, 1868, ch. 186, § 43, 15 Stat. 142; June 6, 1872, ch. 315, § 12, 17 Stat. 240.

Subsection (d) from R. S. § 3315, which was in nature of a revision of act June 6, 1872, ch. 315, § 15, 17 Stat. 245, as amended by act Feb. 24, 1919, ch. 18, § 1315, 40 Stat. 1145; act Feb. 26, 1926, ch. 27, § 1124, 44 Stat. 122. R. S. § 3315 was also amended by act Mar. 1, 1879, ch. 125, § 5, 20 Stat. 338, and reenacted without change by acts Nov. 23, 1921, ch. 136, § 1330, 42 Stat. 319; June 2, 1924, ch. 234, § 1027, 43 Stat. 349.

Subsection (e) from act Feb. 24, 1919, ch. 18, § 606, 40 Stat. 1109.

§ 3153. Removals free of tax—(a) From brewery to warehouse under permit.

Any brewer may remove or transport, or cause to be removed or transported, from his brewery or other place of manufacture to a depot, warehouse, or other place used exclusively for storage or sale in bulk, and occupied by him, in another part of the same collection district, or in another collection district, but to no other place, malt liquor of his own manufacture, known as lager beer, in quantities of not less than six barrels, and malt liquor of his own manufacture, known as ale or porter, or any other malt liquor of his own manufacture not heretofore mentioned, in quantities not less than fifty barrels at a time, without affixing the proper stamps on said vessels of lager beer, ale, porter, or other malt liquor, at the brewery or place of manufacture, under a permit, which shall be granted, upon application, by the collector of the district in which said malt liquor is manufactured, and under such regulations as the Commissioner may prescribe; and thereafter the manufacturer of said malt liquor shall stamp the same, when it leaves such depot or warehouse, in the same manner and under the same penalties and liabilities as when stamped at the brewery as provided in section 3152 (b).

And the collector of the district in which such depot or warehouse is situated shall furnish the manufacturer with the stamps for stamping the same, as if the said malt liquor had been manufactured in his district. And said permit must be

affixed to every such vessel or cask so removed, and canceled or destroyed in such manner as the Commissioner may prescribe, and under the same penalties and liabilities as provided in section 3159 (d).

(b) From brewery or warehouse for export.

Fermented liquor may be removed from the place of manufacture, or storage, for export to a foreign country, without payment of tax, in such packages and under such regulations, and upon the giving of such notices, entries, bonds, and other security, as the Commissioner, with the approval of the Secretary, may from time to time prescribe; and no drawback of tax shall be allowed on fermented liquor exported.

(c) For manufacturing purposes when unfit for beverage use.

When fermented liquor has become sour or damaged, so as to be incapable of use as such, brewers may sell the same for manufacturing purposes, and may remove the same to places where it may be used for such purposes, in casks, or other vessels, unlike those ordinarily used for fermented liquors, containing respectively not less than one barrel each, and having the nature of their contents marked upon them, without affixing thereon the permit, stamp or stamps required.

(d) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 367.)

DERIVATION

Subsection (a) from R. S. § 3345, which was in nature of a revision of acts July 13, 1866, ch. 184, § 54, 14 Stat. 166; June 6, 1872, ch. 315, § 24, 17 Stat. 248, as amended by act June 26, 1936, ch. 830, title III, § 313 (c), 49 Stat. 1949.

Subsection (b) from act June 18, 1890, ch. 432, 26 Stat. 162.

Subsection (c) from R. S. § 3347, which was in nature of a revision of acts July 13, 1866, ch. 184, § 54, 14 Stat. 167; June 6, 1872, ch. 315, § 24, 17 Stat. 247.

§ 3154. Refunds and credits—(a) Allowance.

The Commissioner shall make refund or in lieu thereof, if he so elects, allow credit to a brewer in the amount of tax paid by such brewer on any beer, lager beer, ale, porter, or other similar fermented malt liquor manufactured by such brewer which has become unsalable by reason of its condition, upon the filing of a claim therefor by the brewer and proof by him to the satisfaction of the Commissioner that such beer, lager beer, ale, porter, or other similar fermented malt liquor (1) was fully tax-paid, (2) was lawfully removed from his brewery to his bottling house on or after March 22, 1933, (3) never was removed from such bottling house, except in the process of destruction or for return to the brewery, (4) had become unsalable without fraud, connivance, or collusion on his part, and (5) was destroyed by him in such bottling house in the presence of a representative of the Bureau of Internal Revenue, or was returned from such bottling house to the brewery in which made for use therein as brewing material.



**(b) Time for filing claim.**

No such claim shall be allowed unless filed within ninety days after such destruction or return to the brewery for use as brewing material, or, in the case of any beer, lager beer, ale, porter, or other similar fermented malt liquor so destroyed or returned before June 26, 1936, within ninety days after such date.

**(c) Credit by stamp.**

The Commissioner is authorized to issue to the brewer to whom a credit is allowed pursuant to this section stamps in an amount equal to such credit, for use by him in the payment of the tax upon beer, lager beer, ale, porter, or other similar fermented malt liquor manufactured by him.

**(d) Rules and regulations.**

The Commissioner, with the approval of the Secretary, is authorized to make such rules and regulations as may be necessary to carry out the provisions of this section.

**(e) Transfer of duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 368.)

**DERIVATION**

Act June 26, 1936, ch. 830, title III, § 827, 49 Stat. 1956.

**§ 3155. Requirements on brewers—(a) Notice of business.**

Every brewer shall, before commencing or continuing business, file with the officer designated for that purpose by the Commissioner a notice in writing and in the form prescribed by the Commissioner, with the approval of the Secretary. Such notice shall set forth (a) the name and residence of the brewer, and the names and residences of all such persons interested or to be interested in the business, directly or indirectly, as the Commissioner shall prescribe, (b) the precise place where the business is to be carried on, including a description of the premises on which the brewery is situated, the title of the brewer to the premises, and the name of the owner thereof, and (c) such additional particulars as the Commissioner shall prescribe as necessary for the protection of the revenue.

**(b) Bonds.**

Every brewer, on filing notice as provided by law of his intention to commence or continue business, shall execute a bond to the United States in a penal sum equal to the amount of the tax on fermented malt liquor which, in the opinion of the Commissioner, said brewer will be liable to pay during any one month: *Provided*, That the penal sum of any such bond shall not exceed \$100,000 nor be less than \$1,000. The bond shall be conditioned that the brewer shall pay, or cause to be paid, as herein provided, the tax required by law on all beer, lager beer, ale, porter, and other fermented liquors made by or for him, before the same is sold or removed for consumption or sale, except as hereinafter provided; and that he shall keep, or cause to be kept, in the manner required by law, a book which shall be open to inspection by the proper officers, as by

law required; and that he shall in all respects faithfully comply, without fraud or evasion, with all requirements of law relating to the manufacture and sale of any malt liquors aforesaid. Once in every four years, or whenever required so to do by the Commissioner, or such officer as may be designated by the Commissioner, the brewer shall execute a new bond in the penal sum prescribed in pursuance of this section, and conditioned as above provided, which bond shall be in lieu of any former bond or bonds of such brewer in respect to all liabilities accruing after its approval.

**(c) Books and monthly statement.**

Every person who owns or occupies any brewery, or premises used or intended to be used for the purpose of brewing or making such fermented liquors, or who has such premises under his control or superintendence, as agent for the owner or occupant, or has in his possession or custody any brewing materials, utensils, or apparatus, used or intended to be used on said premises in the manufacture of beer, lager beer, ale, porter, or other similar fermented liquors, either as owner, agent, or superintendent, shall, from day to day, enter, or cause to be entered, in a book to be kept by him for that purpose, the kind of such malt liquors, the estimated quantity produced in barrels, and the actual quantity sold or removed for consumption or sale in barrels or fractional parts of barrels. He shall also, from day to day, enter, or cause to be entered, in a separate book to be kept by him for that purpose, an account of all materials by him purchased for the purpose of producing such fermented liquors, including grain and malt.

And he shall render to the collector, or the proper deputy collector, on or before the 10th day of each month, a true statement, in writing, in duplicate, taken from his books, of the estimated quantity in barrels of such malt liquors brewed, and the actual quantity sold or removed for consumption or sale during the preceding month; and shall verify, or cause to be verified, the said statement, and the facts therein set forth, by oath, to be taken before the collector of the district, or proper deputy collector, according to the form required by law.

Said books shall be open at all times for the inspection of any collector, deputy collector, inspector, or revenue agent, who may take memorandums and transcripts therefrom.

**(d) Monthly verification of entries in books.**

The entries made in such books shall, on or before the 10th day of each month, be verified by the oath of the person by whom they are made. The said oath shall be written in the book at the end of such entries, and be certified by the officer administering the same, and shall be in form as follows:

"I do swear (or affirm) that the foregoing entries were made by me; and that they state truly, according to the best of my knowledge and belief, the estimated quantity of the whole amount of such malt liquors brewed, and the actual quantity sold, and the actual quantity removed, from the brewery owned by —, in the county of —; and, further, that I have no knowledge of any matter or thing required

by law to be stated in said entries which has been omitted therefrom."

And the owner, agent, or superintendent aforesaid shall also, in case the original entries made in his book were not made by himself, subjoin thereto the following oath, to be taken in manner as aforesaid:

"I do swear (or affirm) that, to the best of my knowledge and belief, the foregoing entries fully set forth all the matters therein required by law; and that the same are just and true; and that I have taken all the means in my power to make them so."

(e) Stamping and monthly report of retail sales.

Every brewer who sells fermented liquor at retail at the brewery or other place where the same is made, shall affix and cancel the proper stamps upon the hogsheads, barrels, or kegs in which the same is contained, and shall keep an account of the quantity so sold by him, and of the number and size of the hogsheads, barrels, or kegs in which the same has been contained, and shall make a report thereof, verified by oath, monthly to the collector.

(f) Branding name of manufacturer and place of manufacture on containers.

Every brewer shall, by branding, mark or cause to be marked upon every hogshead, barrel, or keg containing the fermented liquor made by him, before it is sold or removed from the brewery or brewery warehouse, or other place of manufacture, the name of the person, firm, or corporation by whom such liquor was manufactured, and the place of manufacture; and every person other than the owner thereof, or his agent authorized so to do, who intentionally removes or defaces such marks therefrom, shall be liable to a penalty of \$50 for each cask or other vessel from which the mark is so removed or defaced: *Provided*, That when a brewer purchases fermented liquor finished and ready for sale from another brewer, in order to supply the customers of such purchaser, the purchaser may, upon written notice to the collector of his intention so to do, and under such regulations as the Commissioner may prescribe, furnish his own vessels, branded with his name and the place where his brewery is situated, to be filled with the fermented liquor so purchased, and to be so removed; the proper stamps to be affixed and canceled, as aforesaid, by the manufacturer before removal.

(g) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 368.)

DERIVATION

Subsection (a) from R. S. § 3335, which was in nature of a revision of acts July 13, 1866, ch. 184, § 46, 14 Stat. 163; June 6, 1872, ch. 315, § 16, 17 Stat. 245, as amended by act June 26, 1936, ch. 830, title III, § 315, 49 Stat. 1949.

Subsection (b) from R. S. § 3336, which was in nature of a revision of acts July 13, 1866, ch. 184, § 47, 14 Stat. 164; June 6, 1872, ch. 315, § 17, 17 Stat. 245, as amended by acts June 26, 1936, ch. 830, title III, § 316, 49 Stat. 1950; June 15, 1938, ch. 393, 52 Stat. 689. R. S. § 3336 was also amended by act Apr. 29, 1886, ch. 64, 24 Stat. 15.

Subsection (c) from R. S. § 3337, which was in nature of a revision of acts July 13, 1866, ch. 184, § 49, 14 Stat. 164, June 6, 1872, ch. 315, § 19, 17 Stat. 245.

Subsection (d) from R. S. § 3338, which was in nature of a revision of acts July 13, 1866, ch. 184, § 50, 14 Stat. 165; June 6, 1872, ch. 315, § 20, 17 Stat. 246.

Subsection (e) from R. S. § 3348, which was in nature of a revision of acts July 13, 1866, ch. 184, § 54, 14 Stat. 166; June 6, 1872, ch. 315, § 24, 17 Stat. 248, as amended by act June 26, 1936, ch. 830, title III, § 313 (d), 49 Stat. 1949.

Subsection (f) from R. S. § 3349, which was in nature of a revision of acts July 13, 1866, ch. 184, § 55, 14 Stat. 167; June 6, 1872, ch. 315, § 25, 17 Stat. 248, as amended by act June 26, 1936, ch. 830, title III, § 313 (e), 49 Stat. 1949.

§ 3156. Permit to operate brewery temporarily at another place—(a) Requirements.

Whenever, in the opinion of the collector of any district, it becomes requisite or proper, by reason of an accident to any brewery therein by fire or flood, or of such brewery undergoing repairs, or of other circumstances, that the brewer carrying on the same shall be permitted to conduct his business wholly or in part at some other place within such district or an adjoining district for a temporary period, it shall be lawful for such collector, under such regulations and subject to such limitation of time as the Commissioner may prescribe, to issue a permit to such brewer, authorizing him to conduct his business wholly or in part, according to the circumstances, at such other place, for a period to be stated in such permit; and such brewer shall not be required to pay another special tax for the purpose.

(b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 370.)

DERIVATION

R. S. § 3350, which was in nature of a revision of act June 6, 1872, ch. 315, § 26, 17 Stat. 249.

§ 3157. Bottling fermented liquors—(a) Requirements.

Every person who withdraws any fermented liquor from any hogshead, barrel, or keg upon which the proper stamp has not been affixed for the purpose of bottling the same, or who carries on or attempts to carry on the business of bottling fermented liquor in any brewery or other place in which fermented liquor is made, or upon any premises having communication with such brewery, or any warehouse, shall be liable to a fine of \$500, and the property used in such bottling or business shall be liable to forfeiture: *Provided, however*, That this section shall not be construed to prevent the withdrawal and transfer of unfermented, partially fermented, or fermented liquors from any of the vats in any brewery by way of a pipe line or other conduit to another building or place for the sole purpose of bottling the same, such pipe line or conduit to be constructed and operated in such manner and with such cisterns, vats, tanks, valves, cocks, faucets, and gauges, or other utensils or apparatus, either on the premises of the brewery or the bottling house, and with such changes of or additions thereto, and such locks, seals, or other fastenings, and under such rules and regulations as shall be from time to time prescribed by the Commissioner, subject to the approval of the Secretary, and all locks and seals prescribed shall be provided by the Commissioner at the expense of the United States: *Provided further*, That the tax imposed by law on fermented liquor shall be paid on all fermented liquor removed from a brewery to a bottling

house by means of a pipe or conduit, at the time of such removal by the cancelation and defacement, by the officer designated by the Commissioner, in the presence of the brewer, of the number of stamps denoting the tax on the fermented liquor thus removed, or in such other manner as may be prescribed by regulations issued by the Commissioner with the approval of the Secretary. The stamps thus canceled and defaced shall be disposed of and accounted for in the manner directed by the Commissioner, with the approval of the Secretary. And any violation of the rules and regulations prescribed by the Commissioner, with the approval of the Secretary, in pursuance of these provisions, shall be subject to the penalties above provided by this section. Every owner, agent, or superintendent of any brewery or bottling house who removes, or connives at the removal of, any fermented liquor through a pipe line or conduit, without payment of the tax thereon, or who attempts in any manner to defraud the revenue as above, shall forfeit all the liquors made by and for him, and all the vessels, utensils, and apparatus used in making the same.

(b) Rules and regulations.

The Commissioner is hereby authorized, with the approval of the Secretary, to make all rules and regulations necessary to carry out the provisions of this section.

(c) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 370.)

DERIVATION

Subsection (a) from R. S. § 3354, which was in nature of a revision of acts July 13, 1866, ch. 184, § 58, 14 Stat. 167; June 6, 1872, ch. 315, § 30, 17 Stat. 249, as amended by act Feb. 24, 1919, ch. 18, § 627, 40 Stat. 1115; act June 26, 1936, ch. 830, title IV, § 401 (a), (b), 49 Stat. 1960. R. S. § 3354 was also amended by acts June 18, 1890, ch. 431, 26 Stat. 161; Sept. 8, 1916, ch. 463, § 406, 39 Stat. 789.

Subsection (b) from act June 26, 1936, ch. 830, title IV, § 401 (c), 49 Stat. 1960.

§ 3158. Brewery premises.

The brewery premises shall consist of the land and buildings described in the brewer's notice and shall be used solely for the purposes of manufacturing beer, lager beer, ale, porter, and similar fermented malt liquors, cereal beverages containing less than one-half of 1 per centum of alcohol by volume, vitamins, ice, malt, and malt syrup; of drying spent grain from the brewery; of recovering carbon dioxide and yeast; and of storing bottles, packages, and supplies necessary or incidental to all such manufacture. The brewery bottling house shall be used solely for the purposes of bottling beer, lager beer, ale, porter, and similar fermented malt liquors, and cereal beverages containing less than one-half of 1 per centum of alcohol by volume. Notwithstanding the foregoing provisions, where any such brewery premises or brewery bottling house is, on June 26, 1936, being used by any brewer for purposes other than those herein described, or the brewery bottling house is, on such date, being used for the bottling of soft drinks, the use of the brewery and bottling house premises for such purposes may be continued by such

brewer. The brewery bottling house of any brewery shall not be used for the bottling of the product of any other brewery. Any brewer who uses his brewery or bottling house contrary to the provisions of this subsection shall be fined not more than \$50 with respect to each day upon which any such use occurs. (53 Stat. 371.)

DERIVATION

R. S. § 3340, which was in nature of a revision of acts July 13, 1866, ch. 184, § 51, 14 Stat. 165; June 6, 1872, ch. 315, § 21, 17 Stat. 246, as amended by act June 20, 1936, ch. 830, title III, § 317, 49 Stat. 1950.

§ 3159. Penalties and forfeitures—(a) Evasion of tax or noncompliance with requirements on brewers.

Every owner, agent, or superintendent of any brewery, vessels, or utensils used in making fermented liquors, who evades or attempts to evade the payment of the tax thereon, or fraudulently neglects or refuses to make true and exact entry and report of the same in the manner required by law, or to do, or cause to be done, any of the things by law required to be done by him, or who intentionally makes false entry in said book or in said statement, or knowingly allows or procures the same to be done, shall—

(1) Forfeitures.

Forfeit, for every such offense, all the liquors made by him or for him, and all the vessels, utensils, and apparatus used in making the same, and

(2) Penalties.

Be liable to a penalty of not less than \$500 nor more than \$1,000, to be recovered with costs of suit, and shall be deemed guilty of a misdemeanor, and be imprisoned for a term not exceeding one year.

(b) Neglect to keep books or furnish accounts.

Every brewer who neglects to keep books or refuses to furnish the account and duplicate thereof as provided by law, or refuses to permit the proper officer to examine the books in the manner provided, shall, for every such refusal or neglect, forfeit and pay the sum of \$300.

(c) Flagrant and willful removal of malt liquors without tax payment.

For flagrant and willful removal of taxable malt liquors for consumption or sale, without payment of tax thereon, all the right, title, and interest of each person, who has knowingly suffered or permitted such removal or has connived at the same, in the lands and buildings constituting the brewery premises and bottling house shall be forfeited by a proceeding in rem in the District Court of the United States having jurisdiction thereof.

(d) Fraud or neglect in affixing or canceling stamps.

Every brewer who refuses or neglects to affix and cancel, in the manner provided under section 3152 (b), the stamps required by law, or who affixes a false or fraudulent stamp, or knowingly permits the same to be done, shall pay a penalty of \$100 for each hog-head, barrel, or keg on which such omission or fraud occurs, and be imprisoned not more than one year.

**(e) Sale, removal, or receipt without proper stamp or permit.**

Whenever any brewer, cartman, agent for transportation, or other person, sells, removes, receives, or purchases, or in any way aids in the sale, removal, receipt, or purchase, of any fermented liquor contained in any hogshead, barrel, keg, or other vessel from any brewery or brewery warehouse, upon which the stamp, or permit, in case of removal, required by law, has not been affixed, or on which a false or fraudulent stamp, or permit, in case of removal, is affixed, with knowledge that it is such, or on which a stamp, or permit, in case of removal, once canceled, is used a second time, he shall be fined \$100 and imprisoned for not more than one year.

**(f) Withdrawal from improperly stamped containers or without destroying stamps, penalty.**

Whenever any retail dealer, or other person, withdraws or aids in the withdrawal of any fermented liquor from any hogshead, barrel, keg, or other vessel containing the same, without destroying or defacing the stamp affixed thereon, or withdraws or aids in the withdrawal of any fermented liquor from any hogshead, barrel, keg, or other vessel, upon which the proper stamp has not been affixed or on which a false or fraudulent stamp is affixed, he shall be fined \$100 and imprisoned not more than one year.

**(g) Counterfeiting stamps and permits and trafficking in used stamps, penalty.**

Every person who makes, sells, or uses any false or counterfeit stamp or permit, or die for printing or making stamps or permits, which is in imitation of or purports to be a lawful stamp, permit, or die of the kind before mentioned in this chapter, or who procures the same to be done, and every person who shall remove, or cause to be removed, from any cask or package of fermented liquors, any stamp denoting the tax thereon, with intent to reuse such stamp, or who, with intent to defraud the revenue, knowingly uses, or permits to be used, any stamp removed from another cask or package, or receives, buys, sells, gives away, or has in his possession, any stamp so removed, or makes any fraudulent use of any stamp for fermented liquors, shall be fined not less than \$100 nor more than \$1,000, and imprisoned not less than six months nor more than three years.

**(h) Possession with tax not paid, forfeiture.**

The ownership or possession by any person of any fermented liquor after its sale or removal from the brewery or warehouse, or other place where it was made, upon which the tax required has not been paid, shall render such liquor liable to seizure wherever found, and to forfeiture, removal under said permits excepted.

And the absence of the proper stamps from any hogshead, barrel, keg, or other vessel containing fermented liquor, after its sale or removal from the brewery where it was made, or warehouse as aforesaid, shall be notice to all persons that the tax has not been paid thereon, and shall be prima facie evidence of the nonpayment thereof.

**(i) Removal or defacement of stamps by others than the owner.**

Every person, other than the purchaser or owner of any fermented liquor, or person acting on his behalf, or as his agent, who intentionally removes or defaces the stamp or permit affixed upon the hogshead, barrel, keg, or other vessel, in which the same is contained, shall be liable to a fine of \$50 for each such vessel from which the stamp or permit is so removed or defaced, and to render compensation to such purchaser or owner for all damages sustained by him therefrom.

**(j) Intentional removal or defacement of manufacturer's marks on containers.**

For penalty imposed for intentional removal or defacement of manufacturer's marks required upon a hogshead, barrel, keg, or other vessel containing fermented liquor, see section 3155 (f).

**(k) Violations of provisions relating to bottling.**

For penalties and forfeitures imposed for violating provisions relating to bottling of fermented liquors, see section 3157.

**(l) Other violations.**

For penalty and forfeiture imposed upon wholesale liquor dealers for committing offenses not specifically covered by law, see section 2806 (g).

(53 Stat. 371.)

**DERIVATION**

Subsections (a)–(c) from R. S. § 3340 which was in nature of a revision of acts July 13, 1866, ch. 184, § 51, 14 Stat. 165; June 6, 1872, ch. 315, § 21, 17 Stat. 246, as amended by act June 26, 1936, ch. 830, title III, § 317, 49 Stat. 1950.

Subsection (d) from R. S. § 3342, which was in nature of a revision of acts July 13, 1866, ch. 184, § 53, 14 Stat. 166; June 6, 1872, ch. 315, § 23, 17 Stat. 247, as amended by act June 26, 1936, ch. 830, title III, § 313 (b), 49 Stat. 1949. R. S. § 3342 was also amended by act Mar. 3, 1875, ch. 154, 18 Stat. 484.

Subsection (e) from R. S. § 3343, which was in nature of a revision of acts July 13, 1866, ch. 184, § 54, 14 Stat. 166; June 6, 1872, ch. 315, § 24, 17 Stat. 247.

Subsection (f) from R. S. § 3344, which was in nature of a revision of acts July 13, 1866, ch. 184, § 54, 14 Stat. 166; June 6, 1872, ch. 314, § 24, 17 Stat. 247.

Subsection (g) from R. S. § 3346, which was in nature of a revision of acts July 13, 1866, ch. 184, § 54, 14 Stat. 166; June 6, 1872, ch. 315, § 24, 17 Stat. 247, as amended by act Mar. 1, 1879, ch. 125, § 5, 20 Stat. 340.

Subsection (h) from R. S. § 3352, which was in nature of a revision of acts July 13, 1866, ch. 184, § 57, 14 Stat. 167; June 6, 1872, ch. 315, § 28, 17 Stat. 249.

Subsection (i) from R. S. § 3353, which was in nature of a revision of acts July 13, 1866, ch. 184, § 56, 14 Stat. 167; June 6, 1872, ch. 315, § 29, 17 Stat. 249.

**§ 3160. Gallon defined.**

The word "gallon," wherever used in the internal revenue law, relating to beer, lager beer, ale, porter, and other similar fermented liquors, shall be held and taken to mean a wine gallon, the liquid measure containing two hundred and thirty-one cubic inches. (53 Stat. 373.)

**DERIVATION**

Act Mar. 1, 1879, ch. 125, § 21, 20 Stat. 351.

**SUBCHAPTER E.—MISCELLANEOUS GENERAL PROVISIONS****§ 3170. Transfer and delegation of powers.**

The Secretary is authorized to confer and impose upon the Commissioner and any of his assistants, agents, or employees, and upon any other officer,

employee, or agent of the Treasury Department, any of the rights, privileges, powers, duties, and protection conferred or imposed upon the Secretary, or any officer or employee of the Treasury Department, or by any law now or hereafter in force relating to the taxation, exportation, transportation, manufacture, possession, or use of, or traffic in, distilled spirits, wine, fermented liquors, or denatured alcohol. (53 Stat. 373.)

## DERIVATION

Act June 25, 1936, ch. 815, § 5, 49 Stat. 1929.

### § 3171. Records, statements, and returns—(a) Requirements.

Every person liable to any tax imposed by this chapter, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

#### (b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 373.)

## DERIVATION

Acts Feb. 24, 1919, ch. 18, § 1305, 40 Stat. 1142; Nov. 23, 1921, ch. 136, § 1300, 42 Stat. 308; Feb. 26, 1926, ch. 27, § 1102 (a), 44 Stat. 112.

## SIMILAR PROVISIONS

1917—Oct. 3, 1917, ch. 63, § 1001, 40 Stat. 325.  
1916—Sept. 8, 1916, ch. 463, § 409, 39 Stat. 792.  
1914—Oct. 22, 1914, ch. 331, § 23, 38 Stat. 764.

### § 3172. Discretionary method for collecting tax—(a) Power of Commissioner.

Whether or not the method of collecting any tax imposed by this chapter is specifically provided herein, any such tax may, under regulations prescribed by the Commissioner with the approval of the Secretary, be collected by stamp, coupon, serial-numbered ticket, or such other reasonable device or method as may be necessary or helpful in securing a complete and prompt collection of the tax. All administrative and penalty provisions of subchapters A, B, and C of chapter 11, in so far as applicable, shall apply to the collection of any tax which the Commissioner determines or prescribes shall be collected in such manner.

#### (b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 374.)

## DERIVATION

Acts Feb. 24, 1919, ch. 18, § 1307, 40 Stat. 1143; Feb. 26, 1926, ch. 27, § 1119, 44 Stat. 120.

## SIMILAR PROVISIONS

1917—Oct. 3, 1917, ch. 63, § 1006, 40 Stat. 326.

### § 3173. Penalties and forfeitures—(a) Removal or transportation of liquors or wines under improper brands.

Whenever any person ships, transports, or removes any spirituous or fermented liquors or wines, under any other than the proper name or brand known to the trade as designating the kind and quality of the contents of the casks or packages containing the same, or causes such act to be done, he shall forfeit

said liquors or wines, and casks or packages, and be subject to pay a fine of \$500.

#### (b) Other violations.

(1) Any person required to pay, or to collect, account for and pay over any tax on distilled spirits, wines, or fermented malt liquors, or required by law or regulations made under authority thereof to make a return or supply any information for the purposes of the computation, assessment or collection of any such tax, who fails to pay, collect, or truly account for and pay over any such tax, make any such return or supply any such information at the time or times required by law or regulation shall in addition to other penalties provided by law be subject to a penalty of not more than \$1,000.

(2) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax, make such return or supply such information at the time or times required by law or regulation, or who willfully attempts in any manner to evade such tax shall be guilty of a misdemeanor and in addition to other penalties provided by law shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

(3) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax shall in addition to other penalties provided by law be liable to a penalty of the amount of the tax evaded, or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected: *Provided, however,* That no penalty shall be assessed under this paragraph for any offense for which a penalty may be assessed under authority of section 3612, or of section 2801 (f) or 3043, or for any offense for which a penalty has been recovered under section 2806 (e).

(4) The term "person" as used in this subsection includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

#### (c) Possession of devices for emitting gas, smoke, etc.; explosives and firearms.

(1) Whoever, when violating any law of the United States, or of any Territory or possession of the United States, or of the District of Columbia, in regard to the manufacture, taxation, or transportation of or traffic in distilled spirits, wines, or fermented malt liquors, or when aiding in any such violation, has in his possession or in his control any device capable of causing emission of smoke, gas, or fumes, and which may be used for the purpose of hindering, delaying, or preventing pursuit or capture, any explosive, or any firearm (as defined in section 2733), except a machine gun, or a shotgun or rifle having a barrel of less than eighteen inches in length, shall be fined not more than \$5,000 or be imprisoned for not more than ten years, or both, and all persons engaged in any such violation or in aiding in any such violation shall be held to be in possession or control of such device, firearm, or explosive.

(2) Whoever, when violating any such law, has in his possession or in his control a machine gun, or any shotgun or rifle having a barrel of less than eighteen inches in length, shall be punished by imprisonment for not more than twenty years; and all persons engaged in any such violation or in aiding in any such violation shall be held to be in possession and control of such machine gun, shotgun, or rifle.

(3) Every such firearm or device for emitting gas, smoke, or fumes, and every such explosive, machine gun, shotgun, or rifle, in the possession or control of any person when violating any such law, shall be seized and shall be forfeited and disposed of in the manner provided by section 2730.

(4) As used in this subsection the term "machine gun" means any weapon which shoots, or is designed to shoot, automatically or semi-automatically, more than one shot, without manual reloading, by a single function of the trigger.

(d) Return on bond of vessel or vehicle seized for violation; discretion of court; definitions.

Notwithstanding any provisions of law relating to the return on bond of any vessel or vehicle seized for the violation of any law of the United States, the court having jurisdiction of the subject matter, may, in its discretion and upon good cause shown by the United States, refuse to order such return of any such vessel or vehicle to the claimant thereof.

As used in this subsection the word "vessel" includes every description of watercraft used, or capable of being used, as a means of transportation in water or in water and air; and the word "vehicle" includes every animal and description of carriage or other contrivance used, or capable of being used, as a means of transportation on land or through the air. (53 Stat. 374.)

#### DERIVATION

Subsection (a) from R. S. § 3449, which was in nature of a revision of act July 13, 1866, ch. 184, § 29, 14 Stat. 156.

Subsection (b) from act Feb. 24, 1919, ch. 18, § 1308, 40 Stat. 1143. Provisions similar to subsection (b) were contained in act Nov. 23, 1921, ch. 136, § 1302, 42 Stat. 309.

Subsections (c) and (d) from act June 26, 1936, ch. 830, title I, §§ 2, 4, 5, 49 Stat. 1939, 1940.

#### § 3174. Territorial extent of law.

The internal revenue laws imposing taxes on distilled spirits and fermented liquors shall be held to extend to such articles produced anywhere within the exterior boundaries of the United States, whether the same be within a collection district or not. (53 Stat. 375.)

#### DERIVATION

R. S. § 3448, which was in nature of a revision of act July 20, 1868, ch. 186, § 107, 15 Stat. 167.

#### § 3175. Other laws applicable.

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, shall be extended to and made a part of this chapter. (53 Stat. 375.)

#### DERIVATION

Acts Feb. 24, 1919, ch. 18, § 1305, 40 Stat. 1142; Nov. 23, 1921, ch. 136, § 1300, 42 Stat. 308; Feb. 26, 1926, ch. 27, § 1100, 44 Stat. 111.

#### SIMILAR PROVISIONS

1917—Oct. 3, 1917, ch. 63, § 1001, 40 Stat. 325.

1916—Sept. 8, 1916, ch. 463, §§ 22, 211, 409, 39 Stat. 776, 780, 792.

1914—Oct. 22, 1914, ch. 331, § 23, 38 Stat. 764.

1913—Oct. 3, 1913, ch. 16, § II, L, 38 Stat. 179.

1898—June 13, 1898, ch. 448, § 31, 30 Stat. 448.

#### § 3176. Rules and regulations—(a) Power of Commissioner.

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter.

#### (b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agent, see section 3170.

(53 Stat. 375.)

#### DERIVATION

Subsection (a) from acts Feb. 24, 1919, ch. 18, § 1309, 40 Stat. 1143; Nov. 21, 1921, ch. 136, § 1303, 42 Stat. 309; Feb. 26, 1926, ch. 27, § 1101, 44 Stat. 111.

#### § 3177. Manufacturing bonded warehouses—(a) Establishment and use.

All medicines, preparations, compositions, perfumery, cosmetics, cordials, and other liquors manufactured wholly or in part of domestic spirits, intended for exportation, as provided by law, in order to be manufactured and sold or removed, without being charged with duty and without having a stamp affixed thereto, shall, under such regulations as the Secretary may prescribe, be made and manufactured in warehouses similarly constructed to those known and designated in Treasury regulations as bonded warehouses, class six: *Provided*, That such manufacturer shall first give satisfactory bonds to the collector for the faithful observance of all the provisions of law and the regulations as aforesaid, in amount not less than half of that required by the regulations of the Secretary from persons allowed bonded warehouses.

#### (b) Materials for manufacture—(1) Materials exportable free of tax.

Any manufacturer of the articles aforesaid, or of any of them, having such bonded warehouse as aforesaid, shall be at liberty, under such regulations as the Secretary may prescribe, to convey therein any materials to be used in such manufacture which are allowed by the provisions of law to be exported free from tax or duty, as well as the necessary materials, implements, packages, vessels, brands, and labels for the preparation, putting up, and export of the said manufactured articles; and every article so used shall be exempt from the payment of stamp and excise duty by such manufacturer. Articles and materials so to be used may be transferred from any bonded warehouse in which the same may be, under such regulations as the Secretary may prescribe, into any bonded warehouse in which such manufacture may be conducted, and may be used in such manufacture, and when so used shall be exempt from stamp and excise duty; and the receipt of the officer in charge as aforesaid shall be received as a voucher for the manufacture of such articles.

#### (2) Imported materials.

Any materials imported into the United States may, under such rules as the Secretary may pre-

scribe, and under the direction of the proper officer, be removed in original packages from on shipboard, or from the bonded warehouse in which the same may be, into the bonded warehouse in which such manufacture may be carried on, for the purpose of being used in such manufacture, without payment of duties thereon, and may there be used in such manufacture. No article so removed, nor any article manufactured in said bonded warehouse, shall be taken therefrom except for exportation, under the direction of the proper officer having charge thereof as aforesaid, whose certificate, describing the articles by their mark or otherwise, the quantity, the date of importation, and name of vessel, with such additional particulars as may from time to time be required, shall be received by the collector of customs in cancellation of the bond, or return of the amount of foreign import duties.

(c) Supervision.

All labor performed and services rendered under these regulations shall be under the supervision of an officer of the customs, and at the expense of the manufacturer.

(d) Removal—(1) In general.

Such goods, when manufactured in such warehouses, may be removed for exportation under the direction of the proper officer having charge thereof, who shall be designated by the Secretary, without being charged with duty, and without having a stamp affixed thereto.

(2) To Pacific coast.

Any article manufactured in a bonded warehouse established under subsection (a), and situated in any of the Atlantic States, may be removed therefrom for transportation to a customs bonded warehouse at any port on the Pacific coast of the United States, for the purpose only of being exported therefrom, under such regulations and upon the execution of such bonds or other security as the Secretary may prescribe.

(3) Cross references.

For special provisions relating to removal of manufactures of imported materials, see paragraph (2) of subsection (b).

For provisions relating specifically to withdrawal of distilled spirits from distillery warehouses for use in manufacturing bonded warehouses, see section 2891.

(53 Stat. 375.)

DERIVATION

Subsections (a)–(d) (1) from act Oct. 1, 1890, ch. 1244, § 10, 26 Stat. 614.

Subsection (d) (2) from R. S. § 3434, which was in nature of a revision of act July 13, 1866, ch. 184, § 28, 14 Stat. 155.

SIMILAR PROVISIONS

R. S. § 3433.

1865—Mar. 3, 1865, ch. 78, § 8, 13 Stat. 482, as amended by acts June 30 1864, ch. 173, § 161, 13 Stat. 296; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 248; Mar. 1, 1879, ch. 125, § 20, 20 Stat. 351; May 28, 1880, ch. 108, § 14, 21 Stat. 148.

§ 3178. Special provisions relating to distilled spirits and wines rectified in bonded manufacturing warehouses.

Distilled spirits and wines which are rectified in bonded manufacturing warehouses, class six, and distilled spirits which are reduced in proof and bot-

tled in such warehouses, shall be deemed to have been manufactured within the meaning of section 311 of the Tariff Act of 1930, 46 Stat. 692 (U. S. C., Title 19, sec. 1311), and may be withdrawn as provided in such section, and likewise for shipment in bond to Puerto Rico, subject to the provisions of such section, and under such regulations as the Secretary may prescribe, there to be withdrawn for consumption or be rewarehoused and subsequently withdrawn for consumption: *Provided*, That no internal-revenue tax shall be imposed on distilled spirits and wines rectified in class six warehouses if such distilled spirits and wines are exported or shipped in accordance with the provisions of such section, and that no person rectifying distilled spirits or wines in such warehouses shall be subject by reason of such rectification to the payment of special tax as a rectifier. (53 Stat. 377.)

DERIVATION

Act June 17, 1930, ch. 497, § 311, as amended by act June 26, 1936, ch. 830, title IV, § 404, 49 Stat. 1960.

§ 3179. Exemption and drawback in case of exportation—(a) Exemption.

Under such rules and regulations as the Commissioner with the approval of the Secretary may prescribe, the amount of any internal revenue tax erroneously or illegally collected in respect to exported articles may be refunded to the exporter of the article, instead of to the manufacturer, if the manufacturer waives any claim for the amount so to be refunded.

(b) Drawback.

Upon the exportation of bottled distilled spirits and wines manufactured or produced in the United States on which an internal-revenue tax has been paid, there shall be allowed, under regulations to be prescribed by the Commissioner, with the approval of the Secretary, a drawback equal in amount to the tax found to have been paid on such bottled distilled spirits and wines: *Provided*, That such distilled spirits and wines have been bottled especially for export, under regulations prescribed by the Commissioner, with the approval of the Secretary. The Secretary is authorized to prescribe regulations governing the determination and payment of drawback of internal-revenue tax on domestic distilled spirits and wines, including the requirement of such notices, bonds, bills of lading, and other evidence of payment of tax and exportation as the Secretary deems necessary.

(c) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 377.)

DERIVATION

Subsection (a) from act Feb. 24, 1919, ch. 18, § 1310 (c), 40 Stat. 1144.

Subsection (b) from act June 17, 1930, ch. 497, § 313 (d), (1) (3), as amended by act June 26, 1936, ch. 830, title IV, §§ 402, 403, 49 Stat. 1960.

§ 3180. Distilleries erected prior to July 20, 1868—(a) Requirements.

In any case where the owner of a distillery or distilling apparatus, erected prior to July 20, 1868,



has only an estate for a term of years or other estate less than fee-simple in the lot or tract of land on which the distillery is situated, the evidence of title to which shall have been duly recorded prior to that date; or in like case, where the lease or other evidence of title is held but was not required by the laws of the State to be recorded in order to be valid at the time of its execution; or in any case of such prior erection where the title was then, and has continued to be, in litigation; or in any case of such prior erection where such owner is possessed of the fee, but encumbered with a mortgage executed and duly recorded prior to July 20, 1868, and not due, or in any case of such prior erection where the fee is held by a femme-covert, minor, person of unsound mind, or other person incapable of giving consent, as required in section 2815 (b) (1) (B), the value of such lot or tract of land, together with the building and distilling apparatus, shall be appraised in the manner to be prescribed by the Commissioner pursuant to section 2815 (b) (1) (C); and the officer designated by the Commissioner may, at the discretion of the Commissioner, be authorized to accept, in lieu of the said written consent, the bond of such distiller, in such form as the Commissioner may prescribe, with not less than two personal sureties or one corporate surety, conditioned that in case the distillery, distilling apparatus, or any part thereof, shall by final judgment be forfeited for the violation of any of the provisions of law, the obligors shall pay the amount stated in said bond. Said sureties shall be residents of the collection district or county, or of an adjoining county in the same State in which the distillery is situated, and owners of unencumbered real estate in said district or county, or adjoining county, equal to such appraised value, and the penal sum of said bond shall be equal to the appraised value of said lot or tract of land together with the buildings and distilling apparatus.

#### (b) Bond.

The officer designated by the Commissioner may at any time, at the discretion of the Commissioner, accept such bond as is authorized to be given by the distiller in lieu of the written consent of the owner of the fee in the case of a distillery erected prior to July 20, 1868, notwithstanding such distillery has since then been increased by the addition of land or buildings adjacent or contiguous thereto, not owned by the distiller himself in fee; such bond to be for and in respect of such addition only, if the distillery be one which the distiller owns in fee or in respect to which he has procured the written consent of the owner of the fee or other encumbrance, otherwise to be for and in respect of the entire distillery as increased by such addition.

#### (c) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 377.)

#### DERIVATION

R. S. § 3262 (b), (c), as amended by act June 26, 1936, ch. 830, title III, § 301, 49 Stat. 1942. R. S. § 3262, was in nature of a revision of acts July 20, 1868, ch. 186, § 8, 15 Stat. 127; Apr. 10, 1869, ch. 18, § 1, 16 Stat. 41; June 6, 1872, ch. 315, § 13, 17 Stat. 243; Dec. 24, 1872, ch.

13, § 1, 17 Stat. 401. It was also amended by act May 28, 1880, ch. 108, § 2, 21 Stat. 145.

#### § 3181. Cross references.

For provision authorizing and directing officers of internal revenue to withhold release of distilled spirits from bottling plants unless a certificate of label approval has been obtained or the application of the bottler for exemption has been granted, see section 5 (e) of the Federal Alcohol Administration Act, as amended by section 505 of the Liquor Tax Administration Act, ch. 830, 49 Stat. 1966 (U. S. C., Title 27, Sup. II, § 205 (e)).

For power of marshals or deputy marshals to arrest persons operating illicit distilleries, see section 9 of the act of March 1, 1879, ch. 125, 20 Stat. 341 (U. S. C., Title 18, § 593).

For authority to issue warrants of arrest for violation of internal revenue laws upon the sworn complaint of district attorneys, collectors, deputy collectors, revenue agents, or private citizens, see the act of March 2, 1901, ch. 814, 31 Stat. 956 (U. S. C., Title 18, § 594).

(53 Stat. 378.)

### SUBCHAPTER F.—DEFENSE TAX FOR FIVE YEARS

Subchapter F was added by act June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, § 214, 54 Stat. 525.

#### § 3190. Defense tax for five years.

In lieu of the rates of tax specified in such of the sections of this title as are set forth in the following table, the rates applicable with respect to the period after June 30, 1940, and before July 1, 1945, shall be the rates set forth under the heading "Defense-tax Rate":

Section	Description of tax	Old rate	Defense-tax rate
3030 (a) (1) (A).	Still wines.....	5 cents.....	6 cents.
3030 (a) (1) (A).	Still wines.....	15 cents.....	18 cents.
3030 (a) (1) (A).	Still wines.....	25 cents.....	30 cents.
3030 (a) (2).....	Sparkling wines.....	2½ cents.....	3 cents.
3030 (a) (2).....	Sparkling wines.....	1¼ cents.....	1½ cents.
3030 (a) (2).....	Liqueurs, cordials, etc.....	1¼ cents.....	1½ cents.
3150 (a).....	Fermented malt liquors...	\$5.....	\$5

(Added June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, § 214, 54 Stat. 525.)

#### CROSS REFERENCE

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain government obligations, see note under section 757b of Title 31, Money and Finance.

#### § 3191. Floor stocks tax on fermented malt liquors— (a) Floor stocks tax.

Upon all fermented malt liquors upon which the internal-revenue tax imposed by law has been paid, and which on July 1, 1940, are held by any person and intended for sale there shall be levied, assessed, collected, and paid a floor stocks tax at a rate equal to the increase in rate of tax made applicable to such articles by section 3190. The tax imposed by this subsection shall not apply to the retail stocks of fermented malt liquors held by a person on premises as to which such person has incurred occupational tax as a retail dealer in liquors or a retail dealer in malt liquors for the period beginning on July 1, 1940, and as to which no other occupational tax with respect

to dealing in distilled spirits, wines, or malt liquors, has been incurred by such person for a period beginning on such date.

**(b) Returns.**

Every person required by subsection (a) to pay any floor stocks tax shall, on or before August 1, 1940, under such regulations as the Commissioner with the approval of the Secretary shall prescribe, make a return and pay such tax. Payment of the tax shown to be due may be extended to a date not later than February 1, 1941, upon the filing of a bond for payment thereof in such form and amount and with such surety or sureties as the Commissioner, with the approval of the Secretary, may prescribe.

**(c) Laws applicable.**

All provisions of law, including penalties, applicable in respect of the taxes imposed by section 3150 (a) shall, insofar as applicable and not inconsistent with this subsection, be applicable with respect to the floor stocks tax imposed by subsection (a). (Added June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, § 214, 54 Stat. 525.)

**CROSS REFERENCE**

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain government obligations, see note under section 757b of Title 31, Money and Finance.

**Chapter 27.—OCCUPATIONAL TAXES**

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- Sec.
- 3200. Tax.
- 3201. Penalties.
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**PART II.—ADULTERATED AND PROCESS OF RENOVATED BUTTER**

- 3206. Tax.
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**SUBCHAPTER A.—SPECIAL PROVISIONS**

**PART I.—OLEOMARGARINE**

**§ 3200. Tax—(a) Manufacturers.**

Manufacturers of oleomargarine shall pay a special tax of \$600.

**(b) Wholesale dealers—(1) In general.**

Wholesale dealers in oleomargarine shall pay a special tax of \$480: *Provided*, That wholesale dealers who vend no other oleomargarine or butterine except that upon which a tax of one-fourth of 1 cent per pound is imposed by section 2301 (a) shall pay \$200.

**(2) Manufacturers selling at wholesale.**

Any manufacturer of oleomargarine who has given the required bond and paid the required special tax, and who sells only oleomargarine of his own production, at the place of manufacture, in the original packages to which the tax-paid stamps are affixed, shall not be required to pay the special tax of a wholesale dealer in oleomargarine on account of such sales.

**(c) Retail dealers.**

Retail dealers in oleomargarine shall pay a special tax of \$48: *Provided*, That such retail dealers as vend no other oleomargarine or butterine except that upon which is imposed by section 2301 (a) a tax of one-fourth of 1 cent per pound, shall pay \$6. (53 Stat. 380.)

**DERIVATION**

Act Aug. 2, 1886, ch. 840, § 3, 24 Stat. 209, as amended by act May 9, 1902, ch. 784, § 2, 32 Stat. 194.

**1. Penalties—(a) Manufacturers.**

Every person who carries on the business of a manufacturer of oleomargarine without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than \$1,000 and not more than \$5,000; and

**(b) Wholesale dealers.**

Every person who carries on the business of a wholesale dealer in oleomargarine without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than \$500 nor more than \$2,000; and

**(c) Retail dealers.**

Every person who carries on the business of a retail dealer in oleomargarine without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than \$50 nor more than \$500 for each and every offense. (53 Stat. 380.)

**DERIVATION**

Act Aug. 2, 1886, ch. 840, § 4, 24 Stat. 209.

**§ 3202. Definitions.**

For definitions of the following, see the sections enumerated below: Oleomargarine, section 2300; Manufacturers, section 2302 (a); Wholesale dealers, section 2303 (a); Retail dealers, section 2304 (a).

(53 Stat. 380.)

**PART II.—ADULTERATED AND PROCESS OR RENOVATED BUTTER****§ 3206. Tax—(a) Manufacturers—(1) Process or renovated butter.**

Manufacturers of process or renovated butter shall pay a special tax of \$50 a year; and

**(2) Adulterated butter.**

Manufacturers of adulterated butter shall pay a special tax of \$600 a year.

**(b) Wholesale dealers in adulterated butter.**

Wholesale dealers in adulterated butter shall pay a special tax of \$480 a year.

**(c) Retail dealers in adulterated butter.**

Retail dealers in adulterated butter shall pay a special tax of \$48 a year. (53 Stat. 381.)

**DERIVATION**

Act May 9, 1902, ch. 784, § 4, 32 Stat. 194.

**§ 3207. Penalties—(a) Manufacturers of process, renovated, or adulterated butter.**

Every person who carries on the business of a manufacturer of process or renovated butter or adulterated butter without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than \$1,000 and not more than \$5,000; and

**(b) Dealers in adulterated butter.**

Every person who carries on the business of a dealer in adulterated butter without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined

not less than \$50 nor more than \$500 for each offense. (53 Stat. 381.)

**DERIVATION**

Act May 9, 1903, ch. 784, § 4, 32 Stat. 194.

**§ 3208. Definitions.**

For definitions of the following, see the sections enumerated below: Butter, section 2320 (a); Adulterated butter, section 2320 (b); Process or renovated butter, section 2320 (c); Manufacturers of process, or renovated, or adulterated butter, section 2322 (a); Dealers in adulterated butter, section 2323 (a); Retail dealers in adulterated butter, section 2323 (b).

(53 Stat. 381.)

**PART III.—FILLED CHEESE****§ 3210. Tax—(a) Manufacturers.**

Manufacturers of filled cheese shall pay a special tax of \$400 a year for each and every factory.

**(b) Wholesale dealers—(1) In general.**

Wholesale dealers in filled cheese shall pay a special tax of \$250 a year.

**(2) Manufacturers selling at wholesale.**

Any manufacturer of filled cheese who has given the required bond and paid the required special tax, and who sells only filled cheese of his own production, at the place of manufacture, in the original packages, to which the tax-paid stamps are affixed shall not be required to pay the special tax of a wholesale dealer in filled cheese on account of such sales.

**(c) Retail dealers.**

Retail dealers in filled cheese shall pay a special tax of \$12 a year. (53 Stat. 381.)

**DERIVATION**

Act June 6, 1896, ch. 337, § 3, 29 Stat. 253, 254.

**§ 3211. Penalties—(a) Manufacturers.**

Every person, firm, or corporation who carries on the business of a manufacturer of filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than \$400 and not more than \$3,000; and

**(b) Wholesale dealers.**

Every person, firm, or corporation who carries on the business of a wholesale dealer in filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than \$250 nor more than \$1,000; and

**(c) Retail dealers.**

Every person, firm, or corporation who carries on the business of a retail dealer in filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable for the payment of the tax, be fined not less than \$40 nor more than \$500 for each and every offense. (53 Stat. 381.)

**DERIVATION**

Act June 6, 1896, ch. 337, § 4, 29 Stat. 254.

**§ 3212. Definitions.**

For definitions of the following, see the sections enumerated below: Cheese, section 2350 (a); Filled cheese, section 2350 (b); Manufacturers, section 2352 (a); Whole-

sale dealers, section 2353 (a); Retail dealers, section 2354 (a).

(53 Stat. 382.)

#### PART IV.—MIXED FLOUR

##### § 3215. Tax—(a) Rate.

Every person, firm, or corporation, before engaging in the business of making, packing, or repacking mixed flour, shall pay a special tax at the rate of \$12 a year.

##### (b) Payment and posting.

The tax imposed by subsection (a) shall be paid and posted in accordance with the provisions of section 3273 (b), and subject to the fines and penalties imposed by section 3274 for any violation thereof. (53 Stat. 382.)

#### DERIVATION

Act June 13, 1898, ch. 448, § 36, 30 Stat. 467.

##### § 3216. Penalties—(a) Posting and payment of tax.

For penalties imposed for violation of provisions relating to the posting and payment of the tax, see section 3215 (b).

##### (b) Second offenses.

For penalties imposed for second offenses, see section 2386 (h).

##### (c) Recovery.

For recovery of penalties, see section 2387.

(53 Stat. 382.)

##### § 3217. Definition.

For definition of mixed flour, see section 2380.

(53 Stat. 382.)

#### PART V.—NARCOTICS

##### § 3220. Tax.

On or before July 1 of each year every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, or gives away opium or coca leaves, or any compound, manufacture, salt, derivative, or preparation thereof, shall pay the special taxes hereinafter provided. Every person upon first engaging in any of such activities shall immediately pay the proportionate part of the tax for the period ending on the following June 30.

##### (a) Importers, manufacturers, or producers.

Importers, manufacturers, producers, or compounders, lawfully entitled to import, manufacture, produce, or compound any of the aforesaid drugs, \$24 per annum;

##### (b) Wholesale dealers.

Wholesale dealers, lawfully entitled to sell and deal in any of the aforesaid drugs, \$12 per annum;

##### (c) Retail dealers.

Retail dealers, lawfully entitled to sell and deal in any of the aforesaid drugs, \$3 per annum;

##### (d) Physicians, dentists, veterinary surgeons, and other practitioners.

Physicians, dentists, veterinary surgeons, and other practitioners, lawfully entitled to distribute, dispense, give away, or administer any of the aforesaid drugs to patients upon whom they in the course of their professional practice are in attendance, \$1

per annum or fraction thereof during which they engage in any of such activities;

##### (e) Persons engaged in research, instruction, or analysis.

Persons not registered as an importer, manufacturer, producer, or compounder and lawfully entitled to obtain and use in a laboratory any of the aforesaid drugs for the purpose of research, instruction, or analysis shall pay \$1 per annum, but such persons shall keep such special records relating to receipt, disposal, and stocks on hand of the aforesaid drugs as the Commissioner of Narcotics, with the approval of the Secretary, may by regulation require. Such special records shall be open at all times to the inspection of any duly authorized officer, employee, or agent of the Treasury Department.

##### (f) Persons not otherwise taxed.

For a tax of \$1 a year on persons not otherwise taxed, dispensing preparations and remedies of limited narcotic content, see section 2551 (a).

##### (g) Persons in Canal Zone.

For authority of the President to issue Executive orders providing for the imposition of a special tax upon all persons in the Canal Zone who produce, import, compound, deal in, dispense, distribute, sell, or give away opium or coca leaves, their salts, derivatives, or preparations, see section 2564 (b).

(53 Stat. 382.)

#### DERIVATION

Act Dec. 17, 1914, ch. 1, § 1, 38 Stat. 785, as amended by acts Feb. 26, 1926, ch. 27, § 703, 44 Stat. 96; June 22, 1936, ch. 690, § 806 (a), 49 Stat. 1745. Act Dec. 17, 1914, ch. 1, § 1, was also amended by acts Feb. 24, 1919, ch. 18, § 1006, 40 Stat. 1130; Nov. 23, 1921, ch. 136, § 1005, 42 Stat. 298; June 2, 1924, ch. 234, § 705, 43 Stat. 328; May 28, 1928, ch. 852, § 432, 45 Stat. 867.

See also derivation note to section 2550 of this title.

#### CROSS REFERENCE

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

##### § 3221. Registration—(a) Requirements.

On or before July 1 of each year every person who engages in any of the activities enumerated in section 3220 shall register with the collector of the district his name or style, place of business and place or places where such business is to be carried on, and every person upon first engaging in any such activities shall immediately make like registration.

##### (b) Transfer of duties.

For authority of the Secretary to delegate such powers and duties, see subchapter D.

(53 Stat. 383.)

#### DERIVATION

Act Dec. 17, 1914, ch. 1, § 1, as amended by act Feb. 26, 1926, ch. 27, § 703, 44 Stat. 96.

See also derivation note to section 3220 of this title.

#### CROSS REFERENCE

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

##### § 3222. Exemption from tax and registration—(a) Employees.

No employee of any person who has registered and paid special tax as required in this part acting within the scope of his employment, shall be required to register and pay special tax provided by sections 3220 and 3221.

**(b) Government and State officials.**

Officials of the United States, Territorial, District of Columbia, or insular possessions, State or municipal governments, who in the exercise of their official duties engage in any of the business herein described, shall not be required to register, nor pay special tax, but their right to this exemption shall be evidenced in such manner as the Secretary may by regulations prescribe.

**(c) Cross references—(1) Canal Zone.**

For authority of the President to issue Executive orders providing for the registration of all persons in the Canal Zone who produce, import, compound, deal in, dispense, distribute, sell, or give away opium or coca leaves, their salts, derivatives, or preparations, see section 2564.

**(2) Transfer of duties.**

For authority of the Secretary to delegate such powers and duties, see subchapter D.

(53 Stat. 383.)

**DERIVATION**

Act Dec. 17, 1914, ch. 1, § 1, as amended by act Feb. 26, 1926, ch. 27, § 703, 44 Stat. 97.

See also derivation note to section 3220 of this title.

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 3223. Possession of stamped packages as evidence of tax liability.**

For possession of original stamped packages as prima facie evidence of liability to special tax, see section 2553 (a).

(53 Stat. 383.)

**§ 3224. Unlawful acts in case of failure to register and pay special tax—(a) Trafficking.**

It shall be unlawful for any person required to register under the provisions of this part or section 2551 (a) to import, manufacture, produce, compound, sell, deal in, dispense, distribute, administer, or give away any of the aforesaid drugs without having registered and paid the special tax as imposed by this part, or section 2551 (a).

**(b) Transportation.**

It shall be unlawful for any person who shall not have registered and paid the special tax as required by sections 3220 and 3221 to send, ship, carry, or deliver any of the aforesaid drugs from any State or Territory or the District of Columbia, or any insular possession of the United States, to any person in any other State or Territory or the District of Columbia or any insular possession of the United States: *Provided*, That nothing contained in this subsection shall apply to common carriers engaged in transporting the aforesaid drugs, or to any employee acting within the scope of his employment, of any person who shall have registered and paid the special tax as required by sections 3220 and 3221, or to any person who shall deliver any such drug which has been prescribed or dispensed by a physician, dentist, or veterinarian required to register under the terms of this part or section 2551 (a), who has been employed to prescribe for the particular patient receiving such drug, or to any United States, State, county, municipal, district, Territorial, or insular of-

ficer or official acting within the scope of his official duties.

**(c) Possession.**

It shall be unlawful for any person who has not registered and paid the special tax as provided for by this part or section 2551 (a), to have in his possession or under his control any of the aforesaid drugs; and such possession or control shall be presumptive evidence of a violation of this subsection and subsection (a), and also a violation of the provisions of sections 3220 and 3221: *Provided*, That this subsection shall not apply to any employee of a registered person, or to a nurse under the supervision of a physician, dentist, or veterinary surgeon registered under this part or section 2551 (a), having such possession or control by virtue of his employment or occupation and not on his own account; or to the possession of any of the aforesaid drugs which has or have been prescribed in good faith by a physician, dentist, or veterinary surgeon registered under this part or section 2551 (a); or to any United States, State, county, municipal, District, Territorial, or insular officer or official who has possession of any said drugs, by reason of his official duties, or to a warehouseman holding possession for a person registered and who has paid the taxes under this part and subchapter A of chapter 23; or to common carriers engaged in transporting such drugs: *Provided further*, That it shall not be necessary to negative any of the aforesaid exemptions in any complaint, information, indictment, or other writ or proceeding laid or brought under this part or subchapter A of chapter 23; and the burden of proof of any such exemption shall be upon the defendant. (53 Stat. 383.)

**DERIVATION**

Subsection (a) was derived from act Dec. 17, 1914, ch. 1, § 1, as amended by act Feb. 26, 1926, ch. 27, § 703, 44 Stat. 97. See also Historical Note to section 3220 of this title.

Subsection (b) was derived from act Dec. 17, 1914, ch. 1, § 4, 38 Stat. 788.

Subsection (c) was derived from act Dec. 17, 1914, ch. 1, § 8, 38 Stat. 789.

See also derivation note to section 3220 of this title.

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance

**§ 3225. Penalties.**

For penalties for violating or failing to comply with any of the provisions of this part, see section 2557 (b) (1).

(53 Stat. 384.)

**§ 3226. List of special taxpayers—(a) Supply.**

Collectors are authorized to furnish upon written request, to any person, a certified copy of the names of any or all persons who may be listed in their respective collection districts as special taxpayers under the provisions of this part or section 2551 (a), upon payment of a fee of \$1 for each 100 names or fraction thereof in the copy so requested.

**(b) Transfer of duties.**

For authority of the Secretary to delegate such powers and duties, see subchapter D.

(53 Stat. 384.)

**DERIVATION**

Act Dec. 17, 1914, ch. 1, § 5, 38 Stat. 788.

## CROSS REFERENCE

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

## § 3227. Other laws applicable.

(a) All provisions of law relating to special taxes, as far as necessary shall be extended and made applicable to the special tax imposed by this part.

(b) All laws relating to the assessment, collection, remission, and refund of internal revenue taxes, including section 3761, so far as applicable to and not inconsistent with the provisions of this part and subchapter A of chapter 23, shall be extended and made applicable to the special taxes imposed by this part and section 2551 (a). (53 Stat. 384.)

## DERIVATION

Subsection (a) was derived from act Dec. 17, 1914, ch. 1, § 1, as amended by act Feb. 26, 1926, ch. 27, § 703, 44 Stat. 97. See also Historical Note to section 3220 of this title.

Subsection (b) was derived from act Dec. 17, 1914, ch. 1, § 7, 38 Stat. 789.

See also derivation note to section 3220 of this title.

## CROSS REFERENCE

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

## § 3228. Definitions—(a) Person.

The word "person" as used in this part and subchapter A of chapter 23 shall be construed to mean and include a partnership, association, company, or corporation, as well as a natural person.

## (b) Importer, manufacturer, or producer.

Every person who imports, manufactures, compounds, or otherwise produces for sale or distribution any of the drugs mentioned in section 3220 shall be deemed to be an importer, manufacturer, or producer.

## (c) Wholesale dealer.

Every person who sells, or offers for sale, any of said drugs in the original stamped packages as provided in section 2553 (a) shall be deemed a wholesale dealer.

## (d) Retail dealer.

Every person who sells or dispenses from original stamped packages as provided in section 2553 (a) shall be deemed a retail dealer: *Provided*, That the office, or if none, the residence, of any person shall be considered for the purposes of this part and subchapter A of chapter 23 his place of business. (53 Stat. 384.)

## DERIVATION

Act Dec. 17, 1914, ch. 1, § 1, as amended by act Feb. 26, 1926, ch. 27, § 703, 44 Stat. 96, 97.

See also derivation note to sections 2550 and 3220 of this title.

## CROSS REFERENCE

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

## PART VI.—MARIHUANA

## § 3230. Tax—(a) Liability and time for payment of tax.

Every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, prescribes, administers, or gives away marihuana shall (1) before engaging in any of the above-mentioned

activities, and (2) thereafter, on or before July 1 of each year, pay the following special taxes respectively:

## (1) Importers, manufacturers, and compounders.

Importers, manufacturers, and compounders of marihuana, \$24 per year.

## (2) Producers.

Producers of marihuana (except those included within subdivision (4) of this subsection), \$1 per year, or fraction thereof, during which they engage in such activity.

## (3) Physicians, dentists, veterinary surgeons, and other practitioners.

Physicians, dentists, veterinary surgeons, and other practitioners who distribute, dispense, give away, administer, or prescribe marihuana to patients upon whom they in the course of their professional practice are in attendance, \$1 per year or fraction thereof during which they engage in any of such activities.

## (4) Persons engaged in research, instruction, or analysis.

Any person not registered as an importer, manufacturer, producer, or compounder who obtains and uses marihuana in a laboratory for the purpose of research, instruction, or analysis, or who produces marihuana for any such purpose, \$1 per year, or fraction thereof, during which he engages in such activities.

## (5) Persons not otherwise taxed.

Any person who is not a physician, dentist, veterinary surgeon, or other practitioner and who deals in, dispenses, or gives away marihuana, \$3 per year: *Provided*, That any person who has registered and paid the special tax as an importer, manufacturer, compounder, or producer, as required by subdivisions (1) and (2) of this subsection, may deal in, dispense, or give away marihuana imported, manufactured, compounded, or produced by him without further payment of the tax imposed by this section.

## (b) Computation of tax.

Where a tax under subdivision (1) or (5) of subsection (a) is payable on July 1 of any year it shall be computed for one year; where any such tax is payable on any other day it shall be computed proportionately from the first day of the month in which the liability for the tax accrued to the following July 1.

## (c) Liability in case of activities in more than one place.

In the event that any person subject to a tax imposed by this section engages in any of the activities enumerated in subsection (a) of this section at more than one place, such person shall pay the tax with respect to each such place.

## (d) Liability in case of more than one activity by same person at same time.

Except as otherwise provided, whenever more than one of the activities enumerated in subsection (a) of this section is carried on by the same person at the same time, such person shall pay the tax for each such activity, according to the respective rates prescribed. (53 Stat. 385.)

## DERIVATION

Act Aug. 2, 1937, ch. 553, § 2 (a)-(d), 50 Stat. 551, 552.

## CROSS REFERENCE

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

## § 3231. Registration.

Any person subject to the tax imposed by section 3230 shall, upon payment of such tax, register his name or style and his place or places of business with the collector of the district in which such place or places of business are located. (53 Stat. 386.)

## DERIVATION

Act Aug. 2, 1937, ch. 553, § 2 (e), 50 Stat. 552.

## CROSS REFERENCE

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

## § 3232. Exemption from tax and registration—(a) Employees.

No employee of any person who has paid the special tax and registered, as required by sections 3230 and 3231, acting within the scope of his employment, shall be required to register and pay such special tax.

## (b) Government and State officials—(1) In general.

An officer or employee of the United States, any State, Territory, the District of Columbia, or insular possession, or political subdivision, who, in the exercise of his official duties, engages in any of the activities enumerated in section 3230 shall not be required to register or pay the special tax, but his right to this exemption shall be evidenced in such manner as the Secretary may by regulations prescribe.

## (2) Cross reference.

For authority of the President to issue executive orders providing for the registration and the imposition of special taxes upon persons in the Virgin Islands, see section 2603 (b).

(53 Stat. 386.)

## DERIVATION

Act Aug. 2, 1937, ch. 553, § 3 (a), (b), 50 Stat. 552.

## CROSS REFERENCE

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

## § 3233. Returns—(a) Registrants.

Any person who shall be registered under the provisions of section 3231 in any internal-revenue district shall, whenever required so to do by the collector of the district, render to the collector a true and correct statement or return, verified by affidavits, setting forth the quantity of marihuana received or harvested by him during such period immediately preceding the demand of the collector, not exceeding three months, as the said collector may fix and determine. If such person is not solely a producer, he shall set forth in such statement or return the names of the persons from whom said marihuana was received, the quantity in each instance received from such persons, and the date when received.

## (b) Persons liable for tax.

For general requirement as to records, statements and returns in the case of persons liable for tax, see section 2594.

(53 Stat. 386.)

## DERIVATION

Act Aug. 2, 1937, ch. 553, § 10 (b), 50 Stat. 555.

## CROSS REFERENCE

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

## § 3234. Unlawful acts in case of failure to register and pay special tax—(a) Trafficking—(1) Liability.

It shall be unlawful for any person required to register and pay the special tax under the provisions of sections 3230 and 3231 to import, manufacture, produce, compound, sell, deal in, dispense, distribute, prescribe, administer, or give away marihuana without having so registered and paid such tax.

## (2) Enforcement of liability.

In any suit or proceeding to enforce the liability imposed by this section or sections 3230 and 3231, if proof is made that marihuana was at any time growing upon land under the control of the defendant, such proof shall be presumptive evidence that at such time the defendant was a producer and liable under this section as well as under sections 3230 and 3231.

## (b) Transportation.

It shall be unlawful for any person who shall not have paid the special tax and registered, as required by sections 3230 and 3231, to send, ship, carry, transport, or deliver any marihuana within any Territory, the District of Columbia, or any insular possession, or from any State, Territory, the District of Columbia, any insular possession of the United States, or the Canal Zone, into any other State, Territory, the District of Columbia, or insular possession of the United States: *Provided*, That nothing contained in this section shall apply to any common carrier engaged in transporting marihuana; or to any employee of any person who shall have registered and paid the special tax as required by sections 3230 and 3231 while acting within the scope of his employment; or to any person who shall deliver marihuana which has been prescribed or dispensed by a physician, dentist, veterinary surgeon, or other practitioner registered under section 3231, who has been employed to prescribe for the particular patient receiving such marihuana; or to any United States, State, county, municipal, District, Territorial, or insular officer or official acting within the scope of his official duties. (53 Stat. 386.)

## DERIVATION

Act Aug. 2, 1937, ch. 553, §§ 4 (a), (b), 5, 50 Stat. 553.

## CROSS REFERENCE

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

## § 3235. Penalties.

For penalties for violating or failing to comply with any of the provisions of this part, see section 2596.

(53 Stat. 387.)



**§ 3236. List of special taxpayers.**

Collectors are authorized to furnish, upon written request, to any person a certified copy of the names of any or all persons who may be listed in their respective collection districts as special taxpayers under section 3230, upon payment of a fee of \$1 for each one hundred of such names or fraction thereof upon such copy so requested. (53 Stat. 387.)

**DERIVATION**

Act Aug. 2, 1937, ch. 553, § 2 (f), 50 Stat. 552.

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 3237. Other laws applicable.**

All provisions of law (including penalties) applicable in respect of the taxes imposed by sections 2550 and 3220 shall, insofar as not inconsistent with this part, be applicable in respect of the taxes imposed by this part. (53 Stat. 387.)

**DERIVATION**

Act Aug. 2, 1937, ch. 553, § 7 (e), 50 Stat. 555.

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 3238. Definitions.**

When used in this part and subchapter C of chapter 23.

**(a) Person.**

The term "person" means an individual, a partnership, trust, association, company, or corporation and includes an officer or employee of a trust, association, company, or corporation, or a member or employee of a partnership, who, as such officer, employee, or member, is under a duty to perform any act in respect of which any violation of this part or subchapter C of chapter 23 occurs.

**(b) Marihuana.**

The term "marihuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

**(c) Producer.**

The term "producer" means any person who (1) plants, cultivates, or in any way facilitates the natural growth of marihuana; or (2) harvests and transfers or makes use of marihuana.

**(d) Transfer or transferred.**

The term "transfer" or "transferred" means any type of disposition resulting in a change of possession but shall not include a transfer to a common carrier for the purpose of transporting marihuana (53 Stat. 387.)

**DERIVATION**

Act Aug. 2, 1937, ch. 553, § 1, 50 Stat. 551.

**CROSS REFERENCE**

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

**§ 3239. Cross references.**

For provisions authorizing seizure and confiscation of marihuana for persons violating this part, see section 2598 of chapter 23.

For provisions giving the Secretary authority to prescribe rules and regulations to enforce this part, see section 2599 of chapter 23.

For authority of the Secretary to delegate the powers conferred on him by this part to officers and employees of the Treasury Department, see section 2600 of chapter 23.

For the territorial extent of this part, see section 2602 of chapter 23.

For administration of the special taxes in Puerto Rico, see section 2603 (a) of chapter 23.

For burden of proof in the case of exemptions in this part, see section 2597 of chapter 23.

(53 Stat. 387.)

**PART VII.—LIQUOR****§ 3250. Tax—(a) Wholesale dealers in liquors—(1) In general.**

Wholesale dealers in liquors shall pay a special tax of \$100.

**(2) Wholesale dealers in liquors dealing in wines or wines and malt liquors.**

For the designation of wholesale dealers in liquors as wholesale dealers in wines or wholesale dealers in wines and malt liquors, and the issuance of the appropriate special tax stamps, see section 3254 (b).

**(3) Retailers selling at wholesale.**

Except as provided in section 3254 (c) (2), a qualified retail dealer in liquors may not sell distilled spirits, wines, or malt liquors in quantities of five wine-gallons or more to the same person at the same time without incurring liability to special tax as a wholesale dealer in liquors.

**(4) Distillers selling at wholesale.**

No distiller who has given the required bond and who sells only distilled spirits of his own production at the place of manufacture, or at the place of storage in bond, in the original packages to which the tax-paid stamps are affixed, shall be required to pay the special tax of a wholesale dealer in liquors on account of such sales.

**(5) Retail dealers in liquidation.**

For exemption of retailers liquidating entire stock from payment of special tax as wholesalers, see section 3251 (c).

**(6) Creditors, fiduciaries, officers of court, and partners.**

For exemption of creditors, fiduciaries, officers of court, and partners from the payment of any special tax by reason of casual sales, see section 3251 (a) and (b).

**(b) Retail dealers in liquors—(1) In general.**

Except as provided in paragraph (3) of subsection (e), retail dealers in liquors shall pay a special tax of \$25.

**(2) Retail drug stores or pharmacies.**

The tax required to be paid by paragraph (1) shall, in the case of a retail drug store or pharmacy making sales of liquors through a duly licensed pharmacist, be designated as a "medicinal spirits stamp tax."

**(3) Retail dealers in liquors dealing in wines or wines and malt liquors.**

For the designation of retail dealers in liquors as retail dealers in wines and malt liquors, and the issuance of appropriate special tax stamps, see section 3254 (c) (1).

**(4) Wholesalers selling at retail.**

A qualified wholesale dealer in liquors may not sell distilled spirits, wines, or malt liquors in quantities of less than five wine gallons without incurring liability to special tax as a retail dealer in liquors.

**(5) Creditors, fiduciaries, officers of court, and partners.**

For exemption of creditors, fiduciaries, officers of court, and partners from the payment of any special tax by reason of casual sales, see section 3251 (a) and (b).

**(c) Brewers—(1) In general.**

Brewers shall pay \$100 in respect of each brewery: *Provided*, That any brewer of less than 500 barrels a year shall pay the sum of \$50.

**(2) Cross reference.**

For effect upon special tax of purchases or sales of malt liquors by brewers, see paragraph (3) of subsection (d).

**(d) Wholesale dealers in malt liquors—(1) In general.**

Wholesale dealers in malt liquors shall pay a special tax of \$50.

**(2) Retailers selling at wholesale.**

A qualified retail dealer in malt liquors may not sell such liquors in quantities of five gallons or more to the same person at the same time without incurring liability to special tax as a wholesale dealer in malt liquors. No retail dealer in malt liquors shall be held to be a wholesale dealer in malt liquors solely by reason of sales of five gallons or more to the same person at the same time if such sales are for immediate consumption on the premises where sold.

**(3) Brewers selling at wholesale.**

No brewer shall be obliged to pay special tax as a dealer by reason of selling in the original stamped hogsheads, barrels, or kegs, whether at the place of manufacture or elsewhere, malt liquors manufactured by him, or purchased and procured by him in his own hogsheads, barrels, or kegs, under provisions of section 3155 (f), but the quantity of malt liquors so purchased shall be included in calculating the liability to brewers' special tax of both the brewer who manufactures and sells the same and the brewer who purchases the same.

**(4) Retail dealers in liquidation.**

For exemption of retailers liquidating entire stock from payment of special tax as wholesalers, see section 3251 (c).

**(e) Retail dealers in malt liquors—(1) In general.**

Retail dealers in malt liquors shall pay a special tax of \$20.

**(2) Wholesalers selling at retail.**

A qualified wholesale dealer in malt liquors may not sell such liquors in quantities of less than five gallons without incurring liability to special tax as a retail dealer in malt liquors.

**(3) Persons selling to entertainments and outings.**

Notwithstanding the provisions of this part, each person making sales of fermented malt liquor or wine to the members, guests, or patrons of bona-fide

fairs, reunions, picnics, carnivals, or other similar outings, and each fraternal, civic, church, labor, charitable, benevolent, or ex-service men's organization making sales of fermented malt liquor or wine on the occasion<sup>1</sup> of any kind of entertainment, dance, picnic, bazaar, or festival held by it, if such person or organization is not otherwise engaged in business as a wholesale or retail liquor dealer or as a wholesale or retail malt liquor dealer, shall pay, before any such sales are made and in lieu of the special taxes imposed by paragraph (1) of this subsection and of subsection (b) a special tax of \$2 as a retail dealer in malt liquors, if fermented malt liquor only is sold, or a special tax of \$2 as a retail dealer in liquors if wine only, or wine and fermented malt liquor only, are sold for each calendar month in which any such sales are made.

**(4) Brewers selling at retail.**

No collection of special tax as a retail dealer in malt liquors shall be made from brewers for selling malt liquors of their own manufacture in the original stamped eighth-barrel packages.

**(5) Other provisions.**

For other provisions relating to brewers as dealers, see paragraph (3) of subsection (d).

**(6) Transfer of duties.**

For transfer of the powers and duties of the Commissioner and his agents, see section 3170.

**(f) Rectifiers—(1) Rate of tax.**

Rectifiers of distilled spirits shall pay a special tax of \$200: *Provided*, That any rectifier of less than 500 barrels a year, counting 40 gallons of proof spirits to the barrel, shall pay \$100.

**(2) Prohibited premises.**

No officer shall collect any special tax for rectifying distilled spirits on any premises distant less than six hundred feet (or less than the distance permitted by the Secretary of the Treasury in the particular case) in a direct line from any distillery. And every officer who collects any special tax in violation of this section shall be liable to a penalty of \$5,000 for each offense.

**(g) Winemakers.**

Nothing in this chapter or chapter 26 shall be construed to impose a special tax upon winemakers who have qualified as such under the internal-revenue laws and regulations, and who sell wines of their own production where the same are made or at the general business office of such winemaker: *Provided*, That no winemaker shall have more than one place of business for the sale of such wine that shall be exempt from the special tax.

**(h) Apothecaries.**

No special tax shall be imposed upon apothecaries as to wines or spirituous liquors which they use exclusively in the preparation or making up of medicines unfit for use for beverage purposes.

**(i) Manufacturers of chemicals and flavoring extracts.**

No special tax shall be imposed upon manufacturing chemists or flavoring-extract manufacturers for recovering tax-paid alcohol or spirituous liquors from dregs or marc of percolation, or extraction, if

such recovered alcohol or spirituous liquors be again used in the manufacture of medicines or flavoring extracts of the kind in the production of which originally used.

(j) **Manufacturers of stills—(1) In general.**

Manufacturers of stills shall each pay a special tax of \$50, and \$20 for each still or worm for distilling made by him.

(2) **Distillers manufacturing own stills.**

Paragraph (1) of this subsection and section 3254 (h) shall not apply to distillers in registered distilleries who manufacture for their own use wooden stills, but each of said distillers shall give notice to the collector of the district in which his distillery is located of each still manufactured before the same is used.

(3) **Drawback.**

Upon all stills manufactured for export, and actually exported, there shall be allowed a drawback, where the tax thereon has been paid, under such rules and regulations as the Commissioner, with the approval of the Secretary, shall prescribe.

(k) **Cross reference.**

For transfer of the powers and duties of the Commissioner and his agents, see section 3170.

(53 Stat. 388.)

<sup>1</sup> So in original. Probably should read "occasion."

**INCREASE OF RATES AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945**

Rates of tax on the items enumerated below are increased, by section 1650 of this title, as follows:

- Wholesalers in liquor, under subsection (a) (1), from \$100 to \$110;
- Retailers in liquor, under subsection (b), from \$25 to \$27.50;
- Brewers, under subsection (c), from \$100 to \$110, and from \$50 to \$55, respectively;
- Wholesalers in malt liquors, under subsection (d), from \$50 to \$55;
- Retailers, under subsection (e), from \$20 to \$22;
- Special cases, under subsection (e) (3), from \$2 to \$2.20;
- Rectifiers, under subsection (f) (1), from \$200 to \$220, and from \$100 to \$110, respectively;
- Stills, under subsection (j), from \$50 to \$55, and from \$20 to \$22, respectively.

**DERIVATION**

Subsections (a) (1), (a) (3), (a) (4), were derived from R. S. § 3244, Fourth (b), as amended by act June 26, 1936, ch. 830, title III, § 323, 49 Stat. 1954. R. S. § 3244, Fourth, which was in nature of a revision of acts July 20, 1868, ch. 186, § 1, 2, 59, 15 Stat. 125, 150; June 6, 1872, ch. 315, § 13, 17 Stat. 239, was also amended by act Mar. 1, 1879, ch. 125, § 10, 20 Stat. 342. Provisions similar to subsection (a) (4) were also contained in act Aug. 27, 1894, ch. 349, § 62, 28 Stat. 567, as amended by act June 26, 1936, ch. 830, § 412, 49 Stat. 1963.

Subsection (b) (1), (2) was derived from R. S. § 3244, Fourth (a), as amended by acts June 15, 1934, ch. 542, 48 Stat. 967; June 26, 1936, ch. 830, title III, § 323, 49 Stat. 1953.

Subsection (b) (4) was derived from R. S. § 3244, Fourth (c), as amended by act June 26, 1936, ch. 830, title III, § 323, 49 Stat. 1954.

Subsection (c) (1) was derived from R. S. § 3244, First, which was in nature of a revision of acts July 13, 1866, ch. 184, § 9, 14 Stat. 117; July 14, 1870, ch. 255, § 1, 16 Stat. 256, as amended by act Jan. 11, 1934, ch. 1, § 9 (c), 48 Stat. 315.

Subsection (d) (1) was derived from R. S. § 3244, Fifth (b), as amended by act June 26, 1936, ch. 830, title

III, § 324, 49 Stat. 1954. R. S. § 3244, Fifth, was in nature of a revision, acts July 20, 1868, ch. 186, § 59, 15 Stat. 151; Apr. 10, 1869, ch. 18, § 2, 16 Stat. 42; June 6, 1872, ch. 315, §§ 13, 17, 17 Stat. 244, 245. It was also amended by act Mar. 1, 1879, ch. 125, § 4, 20 Stat. 334.

Subsection (d) (2) was derived from R. S. § 3244, Fifth (b), (e), as amended by act June 26, 1936, ch. 830, title III, § 324, 49 Stat. 1954, 1955.

Subsection (d) (3) was derived from R. S. § 3244, Fifth (b), as amended by act June 26, 1936, ch. 830, title III, § 324, 49 Stat. 1954.

Subsection (e) (1) was derived from R. S. § 3244, Fifth (a), as amended by act June 26, 1936, ch. 830, title III, § 324, 49 Stat. 1954.

Subsection (e) (2) was derived from R. S. § 3244, Fifth (b), as amended by act June 26, 1936, ch. 830, title III, § 324, 49 Stat. 1954.

Subsection (e) (3) was derived from R. S. § 3244, Fifth (g), as amended by acts June 26, 1936, ch. 830, title III, § 324, 49 Stat. 1955; June 15, 1938, ch. 439, § 5, 52 Stat. 701.

Subsection (e) (4) was derived from R. S. § 3244, Fifth (c), as amended by act June 26, 1936, ch. 830, title III, § 324, 49 Stat. 1955.

Subsection (f) (1) was derived from R. S. § 3244, Third, which was in nature of a revision of acts July 20, 1868, ch. 186, §§ 11, 59, 15 Stat. 130, 150, 151; Apr. 10, 1869, ch. 18, § 1, 16 Stat. 42; June 6, 1872, ch. 315, §§ 12, 13, 17 Stat. 239, 244; Dec. 24, 1872, ch. 13, 17 Stat. 401-403, as amended by act Mar. 1, 1879, ch. 125, § 4, 20 Stat. 333.

Subsection (f) (2) was derived from R. S. § 3244, Third, as amended by act June 8, 1934, ch. 598, § 3, 48 Stat. 1013.

Subsection (g) was derived from R. S. § 3246 (a) as amended by act June 26, 1936, ch. 830, title III, § 328, 49 Stat. 1956. R. S. § 3246, was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 122. It was also amended by acts Mar. 1, 1879, ch. 125, § 5, 20 Stat. 334; Mar. 3, 1915, ch. 78, 38 Stat. 893.

Subsection (h) was derived from R. S. § 3246 (b), as amended by act June 26, 1936, ch. 830, title III, § 328, 49 Stat. 1957.

Subsection (i) was derived from R. S. § 3246 (c), as amended by act June 26, 1936, ch. 830, title III, § 328, 49 Stat. 1957.

Subsection (j) (1) was derived from R. S. § 3244, Second, which was in nature of a revision of act July 20, 1868, ch. 186, § 59, 15 Stat. 151. It was amended by acts Feb. 18, 1875, ch. 80, § 1, 18 Stat. 319; Mar. 1, 1879, ch. 125, § 10, 20 Stat. 342.

Subsection (j) (2) was derived from act May 28, 1880, ch. 108, § 18, 21 Stat. 149.

Subsection (j) (3) was derived from R. S. § 3244, Second, as amended by act Mar. 1, 1879, ch. 125, § 10, 20 Stat. 342.

**§ 3251. Casual sales—(a) By creditors, fiduciaries, and officers of court.**

No special tax shall be held to accrue on a sale of distilled spirits, wines, or malt liquors made by a person who is not otherwise a dealer in liquors, where such spirits, wines, or liquors have been received by the person so selling as security for or in payment of a debt, or as executor, administrator, or other fiduciary, or have been levied on by any officer, under order or process of any court or magistrate, and where such spirits are sold by such person in one parcel only, or at public auction in parcels not less than twenty wine-gallons.

**(b) By retiring or deceased partners to incoming or remaining partners.**

No special tax shall be held to accrue on a sale of distilled spirits, wines, or malt liquors made by a retiring partner, or the representatives of a deceased partner to the incoming, remaining, or surviving partner or partners of a firm.

**(c) By retail dealers in liquidation.**

The special tax of a wholesale dealer in liquors or wholesale dealer in malt liquors shall not be held to apply to a retail dealer in liquors or a retail dealer in malt liquors, because of such retail dealer selling out his entire stock of liquors in one parcel, or in parcels embracing not less than his entire stock of distilled spirits, of wines, or of malt liquors. Section 2860 shall not be held to prohibit a rectifier or liquor dealer from purchasing, in quantities greater than twenty wine-gallons, the distilled spirits sold in one parcel as aforesaid. (53 Stat. 390.)

**DERIVATION**

R. S. § 3244, Fifth (d), and act Mar. 1, 1879, ch. 125, § 4, 20 Stat. 333, as amended by act June 26, 1936, ch. 830, title III, § 324, 49 Stat. 1955. R. S. § 3244, Fifth was in nature of a revision of acts July 20, 1868, ch. 186, § 59, 15 Stat. 151; Apr. 10, 1869, ch. 18, § 1, 16 Stat. 42; June 6, 1872, ch. 315, §§ 13, 17, 17 Stat. 244, 245.

**§ 3252. Retail liquor dealers' records—(a) Requirement.**

Each retail liquor dealer shall provide at his own expense, and keep in his place of business, a record in book form, or shall keep all invoices of, and bills for, all distilled spirits, wines, and fermented malt liquors received, the quantity thereof, and from whom and the date when received.

**(b) Inspection.**

Such records, invoices, and bills shall be open to inspection during the usual business hours of the retailer by Government officers upon identification and request.

**(c) Preservation.**

Such records, invoices, and bills shall be kept for a period of two years after the time of the transactions to which they relate.

**(d) Penalty.**

For each willful violation of the provisions hereof the retailer shall be subject to a fine of \$25. (53 Stat. 391.)

**DERIVATION**

Act June 26, 1936, ch. 830, title III, § 321, 49 Stat. 1953.

**§ 3253. Penalties and forfeitures for nonpayment of special tax.**

Any person who shall carry on the business of a brewer, rectifier, wholesale liquor dealer, retail liquor dealer, wholesale dealer in malt liquors, retail dealer in malt liquors, or manufacturer of stills, and willfully fails to pay the special tax as required by law, shall, for every such offense, be fined not less than \$100 nor more than \$5,000 and be imprisoned for not less than thirty days nor more than two years. And all distilled spirits or wines, and all stills or other apparatus, fit or intended to be used for the distillation or rectification of spirits, or for the compounding of liquors, owned by such person, wherever found, and all distilled spirits or wines and personal property found in the distillery or rectifying establishment, or in any building, room, yard, or enclosure connected therewith and used with or constituting a part of the premises, shall be forfeited to the United States. (53 Stat. 391.)

**DERIVATION**

R. S. § 3281, which was in nature of a revision of act July 20, 1868, ch. 186, § 44, 15 Stat. 142, as amended by acts Feb. 8, 1875, ch. 36, § 16, 18 Stat. 310; June 26, 1936, ch. 830, title III, § 314 (b), 49 Stat. 1949.

**§ 3254. Definitions—(a) Distiller.**

For definition of distiller, see section 2809 (a).

**(b) Wholesale dealer in liquors.**

Except as otherwise provided, every person who sells, or offers for sale, foreign or domestic distilled spirits, wines, or malt liquors in quantities of five wine-gallons or more to the same person at the same time, shall be regarded as a wholesale dealer in liquors: *Provided*, That the Commissioner may, by regulations, with the approval of the Secretary, provide for the issuance of a stamp denoting payment of such special tax as a "wholesale dealer in wines" or a "wholesale dealer in wines and malt liquors" if, as the case may be, wines only, or wines and malt liquors only, are sold by a wholesale dealer in liquors.

**(c) Retail dealer in liquors.**

Except as otherwise provided, (1) every person who sells, or offers for sale, foreign or domestic distilled spirits, wines, or malt liquors in less quantities than five wine-gallons to the same person at the same time, shall be regarded as a retail dealer in liquors: *Provided*, That the Commissioner may, by regulations, with the approval of the Secretary, provide for the issuance of a stamp denoting payment of such special tax as a "retail dealer in wines" or a "retail dealer in wines and malt liquors" if, as the case may be, wines only, or wines and malt liquors only, are sold by a retail dealer in liquors.

(2) No retail dealer in liquors shall be held to be a wholesale dealer in liquors solely by reason of sales of five wine-gallons or more to the same person at the same time if such sales are for immediate consumption on the premises where sold.

**(d) Brewer.**

Every person who manufactures fermented liquors of any name or description, for sale, from malt, wholly or in part, or from any substitute therefor, shall be deemed a brewer.

**(e) Wholesale dealer in malt liquors.**

Except as otherwise provided, every person who sells, or offers for sale, malt liquors in quantities of five gallons or more, to the same person at the same time, and who does not deal in distilled spirits or wines at wholesale, shall be regarded as a wholesale dealer in malt liquors.

**(f) Retail dealer in malt liquors.**

Except as otherwise provided, every person who sells, or offers for sale, malt liquors in less quantities than five gallons to the same person at the same time, and does not deal in distilled spirits or wines, shall be regarded as a retail dealer in malt liquors.

**(g) Rectifier.**

Every person who rectifies, purifies, or refines distilled spirits or wines by any process other than by original and continuous distillation from mash, wort, or wash, through continuous closed vessels and pipes, until the manufacture thereof is com-

plete, and every wholesale or retail liquor dealer who has in his possession any still or leach tub, or who keeps any other apparatus for the purpose of refining in any manner distilled spirits, and every person who, without rectifying, purifying, or refining distilled spirits, shall, by mixing such spirits, wine, or other liquor with any material, manufacture any spurious, imitation, or compound liquors for sale, under the name of whisky, brandy, gin, rum, wine, spirits, cordials, or wine bitters, or any other name, shall be regarded as a rectifier, and as being engaged in the business of rectifying: *Provided*, That nothing in this subsection or section 3250 (f) (1) shall be held to prohibit the purifying or refining of spirits in the course of original and continuous distillation through any material which will not remain incorporated with such spirits when the manufacture thereof is complete.

(h) **Manufacturer of stills.**

Any person who manufactures any still or worm to be used in distilling shall be deemed a manufacturer of stills. (53 Stat. 391.)

**DERIVATION**

Subsection (b) was derived from R. S. § 3244, Fourth (b), as amended by act June 26, 1936, ch. 830, title III, § 323, 49 Stat. 1954. R. S. § 3244, Fourth, was in nature of a revision of acts Apr. 10, 1869, ch. 18, § 1, 16 Stat. 42; July 20, 1868, ch. 186, § 59, 15 Stat. 151; June 6, 1872, ch. 315, § 13, 17 Stat. 239. It was also amended by act Mar. 1, 1879, ch. 125, § 4, 20 Stat. 334.

Subsection (c) was derived from R. S. § 3244, Fourth (a), (c), as amended by act June 26, 1936, ch. 830, title III, § 323, 49 Stat. 1953, 1954.

Subsection (d) was derived from R. S. § 3244, First, which was in nature of a revision of acts July 13, 1866, ch. 184, § 9, 14 Stat. 117; July 14, 1870, ch. 255, § 1, 16 Stat. 256, as amended by acts Jan. 11, 1934, ch. 1, § 9 (c), 48 Stat. 315. R. S. § 3244, First, was also amended by act Mar. 22, 1933, ch. 4, § 1 (b), 48 Stat. 16.

Subsection (e) was derived from R. S. § 3244, Fifth (b), as amended by act June 26, 1936, ch. 830, title III, § 324, 49 Stat. 1954. R. S. § 3244, Fifth, was in nature of a revision of acts July 20, 1868, ch. 186, § 59, 15 Stat. 151; Apr. 10, 1869, ch. 18, § 2, 16 Stat. 42; June 6, 1872, ch. 315, § 13, 17, 17 Stat. 244, 245. It was also amended by act Mar. 1, 1879, ch. 125, § 4, 20 Stat. 334.

Subsection (f) was derived from R. S. § 3244, Fifth (a), as amended by act June 26, 1936, ch. 830, title III, § 324, 49 Stat. 1954.

Subsection (g) was derived from R. S. § 3244, Third, which was in nature of a revision of acts July 20, 1868, ch. 186, §§ 11, 59, 15 Stat. 130, 150, 151; Apr. 10, 1869, ch. 18, § 1, 16 Stat. 42; June 6, 1872, ch. 315, §§ 12, 13, 17 Stat. 239, 244; Dec. 24, 1872, ch. 13, 17 Stat. 401-403.

Subsection (h) was derived from R. S. § 3244, Second, which was in nature of a revision of act July 20, 1868, ch. 186, § 59, 15 Stat. 151.

**§ 3255. Liability in case of business in more than one location—(a) Retail dealers in liquors or malt liquors.**

Any retail dealer in liquors or retail dealer in malt liquors whose business is such as to require him to travel from place to place in different States of the United States may, under regulations prescribed by the Commissioner, with the approval of the Secretary, procure a special-tax stamp "At Large" covering his activities throughout the United States with the payment of but one special tax as a retail dealer in liquors or as a retail dealer in malt liquors, as the case may be.

(b) **Dealers in liquors or malt liquors.**

Nothing contained in this chapter shall prevent the issue, under such regulations as the Commissioner may prescribe, of special tax stamps to persons carrying on the business of retail dealers in liquors, or retail dealers in malt liquors, upon passenger railroad trains or upon steamboats or other vessels engaged in the business of carrying passengers.

(c) **Dealers in liquors or malt liquors making sales on purchaser dealers' premises.**

No wholesale or retail dealer in liquors or wholesale or retail dealer in malt liquors who has paid the special tax as such a dealer shall again be required to pay special tax as such dealer on account of sales of beer, lager beer, ale, porter, or other similar fermented malt liquor to wholesale or retail dealers in liquors or wholesale or retail dealers in malt liquors consummated at the purchaser's place of business covered by the stamp issued to him to denote the payment of the special tax imposed upon such dealers. (53 Stat. 392.)

**DERIVATION**

Subsection (a) was derived from R. S. § 3244, Fourth (a), as amended by act June 26, 1936, ch. 830, title III, § 323, 49 Stat. 1953. R. S. § 3244, Fourth, was in nature of a revision of acts Apr. 10, 1869, ch. 18, § 1, 16 Stat. 42; July 20, 1868, ch. 186, § 59, 15 Stat. 151; June 6, 1872, ch. 315, § 13, 17 Stat. 239.

Subsection (b) was derived from act May 8, 1876, Res. 10, 19 Stat. 213.

Subsection (c) was derived from R. S. § 3244, Fourth (d), Fifth (f), as amended by act June 26, 1936, ch. 830, title III, §§ 323, 324, 49 Stat. 1954, 1955. R. S. § 3244, Fifth, was in nature of a revision of acts July 20, 1868, ch. 186, § 59, 15 Stat. 151; Apr. 10, 1869, ch. 18, § 2, 16 Stat. 42; June 6, 1872, ch. 315, §§ 13, 17, 17 Stat. 244, 245.

**PART VIII.—FIREARMS**

**§ 3260. Tax—(a) Rate.**

Upon first engaging in business, and thereafter on or before the 1st day of July of each year, every importer, manufacturer, and dealer in firearms shall pay a special tax at the following rates:

(1) **Importers or manufacturers.**

Importers or manufacturers, \$500 a year;

(2) **Dealers other than pawnbrokers.**

Dealers, other than pawnbrokers, \$200 a year;

(3) **Pawnbrokers.**

Pawnbrokers, \$300 a year:

*Provided*, That manufacturers and dealers in guns with two attached barrels from which only a single discharge can be made from either barrel without manual reloading shall pay the following taxes: Manufacturers, \$25 per year; dealers, \$1 per year.

(b) **Computation of tax.**

Where the tax is payable on the 1st day of July in any year it shall be computed for one year; where the tax is payable on any other day it shall be computed proportionately from the 1st day of the month in which the liability to the tax accrued to the 1st day of July following. (53 Stat. 392.)

**DERIVATION**

Act June 26, 1934, ch. 757, § 2 (a), 48 Stat. 1237, as amended by act June 16, 1938, ch. 471, § 1, 52 Stat. 756.

**§ 3261. Registration—(a) Importers, manufacturers, and dealers.**

Upon first engaging in business, and thereafter on or before the 1st day of July of each year, every importer, manufacturer, and dealer in firearms shall register with the collector of internal revenue for each district in which such business is to be carried on his name or style, principal place of business, and places of business in such district.

**(b) Persons in general.**

Every person possessing a firearm shall register, with the collector of the district in which he resides, the number or other mark identifying such firearm, together with his name, address, place where such firearm is usually kept, and place of business or employment, and, if such person is other than a natural person, the name and home address of an executive officer thereof: *Provided*, That no person shall be required to register under this subsection with respect to any firearm acquired after July 26, 1934, and in conformity with the provisions of this part and subchapter B of chapter 25.

**(c) Presumption of possession.**

Whenever on trial for a violation of section 2726 (a) hereof the defendant is shown to have or to have had possession of such firearm at any time after September 24, 1934, without having registered as required by subsection (b), such possession shall create a presumption that such firearm came into the possession of the defendant subsequent to July 26, 1934, but this presumption shall not be conclusive. (53 Stat. 393.)

**DERIVATION**

Act June 26, 1934, ch. 757, §§ 2a, 5a, 5b, 48 Stat. 1237, 1238.

**§ 3262. Exemptions.**

For provisions exempting certain transfers, see section 2721. (53 Stat. 393.)

**§ 3263. Unlawful acts in case of failure to register and pay special tax—(a) Importation, manufacture or dealing in firearms.**

It shall be unlawful for any person required to register under the provisions of section 3261 to import, manufacture, or deal in firearms without having registered and paid the tax imposed by section 3260.

**(b) Transportation in interstate commerce.**

It shall be unlawful for any person who is required to register as provided in section 3261 (b) and who shall not have so registered, or any other person who has not in his possession a stamp-affixed order as provided in section 2723, to ship, carry, or deliver any firearm in interstate commerce. (53 Stat. 393.)

**DERIVATION**

Act June 26, 1934, ch. 757, §§ 2 (b), 11, 48 Stat. 1237, 1239.

**§ 3264. Other laws applicable.**

For provisions relating to special taxes, and other provisions relating to the tax on narcotics made applicable to the taxes imposed by this part, see section 2731.

(53 Stat. 393.)

**§ 3265. Definitions.**

For definitions of firearm, machine gun, importer, manufacturer, dealer, and other terms used in this part, see section 2733.

(53 Stat. 393.)

**§ 3266. Transactions between registered persons.**

For provisions exempting dealings between registered persons in certain respects, see section 2733 (d).

(53 Stat. 394.)

**SUBCHAPTER B.—GENERAL PROVISIONS**

**§ 3270. Registration—(a) Requirements.**

Every person engaged in any trade or business on which a special tax is imposed by law shall register with the collector of the district his name or style, place of residence, trade or business, and the place where such trade or business is to be carried on. In case of a firm or company, the names of the several persons constituting the same, and the places of residence, shall be so registered.

**(b) Cross references.**

For registration in case of narcotics, marihuana, and firearms, see sections 3221, 3231, and 3261, respectively.

For transfer of powers and duties of Commissioner and his agents in case of liquor, see section 3170.

(53 Stat. 394.)

**DERIVATION**

R. S. § 3233, which was in nature of a revision of acts July 13, 1866, ch. 184, § 9, 14 Stat. 113; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401.

**§ 3271. Payment of tax—(a) Condition precedent to doing business.**

No person shall be engaged in or carry on any trade or business mentioned in this chapter until he has paid a special tax therefor in the manner provided in this chapter.

**(b) Due date.**

All special taxes shall become due on the 1st day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for one year, and in the latter case it shall be reckoned proportionately, from the 1st day of the month in which the liability to a special tax commenced, to and including the 30th day of June following.

**(c) How paid—(1) Stamp.**

All special taxes imposed by law, including the tax on stills or worms, shall be paid by stamps denoting the tax.

**(2) Assessment.**

For authority of Commissioner to make assessments where the special taxes have not been duly paid by stamp, at the time and in the manner provided by law, see section 3640.

(53 Stat. 394.)

**DERIVATION**

Subsection (a) was derived from R. S. § 3232, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 113.

Subsection (b) was derived from R. S. § 3237 (a), as amended by act June 26, 1936, ch. 830, title III, § 322, 49 Stat. 1953. R. S. § 3237, was in nature of a revision of acts July 13, 1866, ch. 184, § 9, 14 Stat. 113; June 6, 1872, ch. 315, § 31, 17 Stat. 252.

Subsection (c) (1) was derived from R. S. § 3238, which was in nature of a revision of acts July 20, 1868,

ch. 186, §§ 26, 101, 15 Stat. 137, 165; Dec. 24, 1872, ch. 13, § 3, 17 Stat. 402.

Provisions on same subject as subsection (b) were contained in acts Oct. 1, 1890, ch. 1244, § 53, 26 Stat. 624; June 6, 1896, ch. 337, § 3, 29 Stat. 253.

#### § 3272. Returns—(a) Time for filing.

It shall be the duty of the special taxpayers to render their returns with remittances to the collector at such times within the calendar month in which the special tax liability commenced as shall enable him to receive such returns, duly signed and verified, together with the remittances, not later than the last day of the month, except in cases of sickness or absence, as provided for in section 3634.

#### (b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents in case of narcotics and liquor, see subchapter D of chapter 23 and section 3170.

#### (c) Penalties.

For penalties imposed for failure to file returns or for making false or fraudulent returns, see section 3612.

(53 Stat. 394.)

#### DERIVATION

R. S. § 3237 (b), as amended by act June 26, 1936, ch. 830, title III, § 322, 49 Stat. 1953. R. S. § 3237, was in nature of a revision of acts July 13, 1866, ch. 184, § 9, 14 Stat. 113; June 6, 1872, ch. 315, § 31, 17 Stat. 252.

#### SIMILAR PROVISIONS

1890—Oct. 1, 1890, ch. 1244, § 53, 26 Stat. 624.

#### § 3273. Stamps—(a) Supply.

The Commissioner is required to procure appropriate stamps for the payment of all special taxes imposed by law, including the tax on stills or worms; and the provisions of section 2802 (a) and of sections 3300, 3301, and 3302, and all other provisions of law relating to the preparation and issue of stamps for distilled spirits, fermented liquors, tobacco, and cigars, shall, so far as applicable, extend to and include such stamps for special taxes; and the Commissioner shall have authority to make all needful regulations relative thereto.

#### (b) Posting.

Every person engaged in any business, avocation, or employment, who is thereby made liable to a special tax, shall place and keep conspicuously in his establishment or place of business all stamps denoting the payment of said special tax.

#### (c) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, see subchapter D of chapter 23 and section 3170.

(53 Stat. 394.)

#### DERIVATION

Subsection (a) was derived from R. S. § 3238, which was in nature of a revision of acts July 20, 1868, ch. 186, §§ 26, 101, 15 Stat. 137, 165; Dec. 24, 1872, ch. 13, § 3, 17 Stat. 402, as amended by act Feb. 18, 1875, ch. 80, § 1, 18 Stat. 319.

Subsection (b) was derived from R. S. § 3239, which was in nature of a revision of act Dec. 24, 1872, ch. 13, § 3, 17 Stat. 402, as amended by act Oct. 1, 1890, ch. 1244, § 26, 26 Stat. 618.

#### § 3274. Penalties relating to posting of special tax stamp.

Any person who shall, through negligence, fail to place and keep stamps denoting the payment of

the special tax as provided in section 3273 (b) shall be liable to a penalty equal to the special tax for which his business rendered him liable, and the costs of prosecution; but in no case shall said penalty be less than \$10. And where the failure to comply with the provisions of section 3273 (b) shall be through willful neglect or refusal, then the penalty shall be double the amount above prescribed: *Provided*, That nothing in this section shall in any way affect the liability of any person for exercising or carrying on any trade, business, or profession, or doing any act for the exercising, carrying on, or doing of which a special tax is imposed by law, without the payment thereof. (53 Stat. 395.)

#### DERIVATION

R. S. § 3239, which was in nature of a revision of act Dec. 24, 1872, ch. 13, § 3, 17 Stat. 402, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 248.

#### § 3275. List of special taxpayers for public inspection—(a) In collector's office.

Each collector shall, under regulations of the Commissioner, place and keep conspicuously in his office, for public inspection, an alphabetical list of the names of all persons who shall have paid special taxes within his district, and shall state thereon the time, place, and business for which such special taxes have been paid, and upon application of any prosecuting officer of any State, county, or municipality, he shall furnish a certified copy thereof, as of a public record, for which a fee of \$1 for each one hundred words or fraction thereof in the copy or copies so requested, may be charged.

#### (b) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents in case of narcotics and liquor, see subchapter D of chapter 23 and section 3170.

(53 Stat. 395.)

#### DERIVATION

R. S. § 3240, which was in nature of a revision of act Dec. 24, 1872, ch. 13, § 4, 17 Stat. 403, as amended by act June 21, 1906, ch. 3509, 34 Stat. 387.

#### § 3276. Application of State laws.

The payment of any tax imposed by the internal revenue laws for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on the same within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes. (53 Stat. 395.)

#### DERIVATION

R. S. § 3243, which was in nature of a revision of acts July 13, 1866, ch. 184, § 9, 14 Stat. 122; July 20, 1868, ch. 186, § 59, 15 Stat. 151.

#### § 3277. Liability of partners.

Any number of persons doing business in copartnership at any one place shall be required to pay but one special tax. (53 Stat. 395.)



## DERIVATION

R. S. § 3234, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 115.

### § 3278. Liability in case of business in more than one location.

The payment of the special tax imposed shall not exempt from an additional special tax the person carrying on a trade or business in any other place than that stated in the collector's register; but nothing herein contained shall require a special tax for the storage of goods, wares, or merchandise in other places than the place of business, nor, except as provided in this chapter for the sale by manufacturers or producers of their own goods, wares, and merchandise, at the place of production or manufacture, and at their principal office or place of business, provided no goods, wares, or merchandise shall be kept except as samples at said office or place of business. (53 Stat. 395.)

## DERIVATION

R. S. § 3235, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 113.

### § 3279. Liability in case of different businesses of same ownership and location.

Whenever more than one of the pursuits or occupations described in this chapter are carried on in the same place by the same person at the same time, except as otherwise provided in this chapter the tax shall be paid for each according to the rates severally prescribed. (53 Stat. 396.)

## DERIVATION

R. S. § 3236, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 114.

### § 3280. Liability in case of death or change of location—(a) Requirements.

When any person who has paid the special tax for any trade or business dies, his wife or child, or executors or administrators or other legal representatives, may occupy the house or premises, and in like manner carry on, for the residue of the term for which the tax is paid, the same trade or business as the deceased before carried on, in the same house and upon the same premises, without the payment of any additional tax. And when any person removes from the house or premises for which any trade or business was taxed to any other place, he may carry on the trade or business specified in the collector's register at the place to which he removes, without the payment of any additional tax: *Provided*, That all cases of death, change, or removal, as aforesaid, with the name of the successor to any person deceased, or of the person making such change or removal, shall be registered with the collector, under regulations to be prescribed by the Commissioner.

#### (b) Registration.

For registration in case of narcotics, marihuana, and firearms, see sections 3221, 3231, and 3261, respectively.

#### (c) Transfer of duties.

For transfer of powers and duties of Commissioner and his agents, in case of liquor, see section 3170.

(53 Stat. 396.)

## DERIVATION

R. S. § 3241, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 114.

### § 3281. Discretionary method allowed Commissioner for collecting tax.

Whether or not the method of collecting any tax imposed by section 3220 is specifically provided in this chapter, any such tax may, under regulations prescribed by the Commissioner with the approval of the Secretary, be collected by stamp, coupon, serial-numbered ticket, or such other reasonable device or method as may be necessary or helpful in securing a complete and prompt collection of the tax. All administrative and penalty provisions of subchapters A, B, and C of chapter 11, in so far as applicable, shall apply to the collection of any tax which the Commissioner determines or prescribes shall be collected in such manner. (53 Stat. 396.)

## DERIVATION

Act Feb. 26, 1926, ch. 27, § 1119, 44 Stat. 120.

## SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 1022, 43 Stat. 347.

1921—Nov. 23, 1921, ch. 136, § 1301, 42 Stat. 308.

### § 3282. Application of subchapter.

The provisions of this subchapter, so far as applicable, shall extend to and include and apply to the special taxes imposed under subchapter A, and to the persons upon whom they are imposed. (53 Stat. 396.)

## DERIVATION

Acts Aug. 2, 1866, ch. 840, § 3, 24 Stat. 209; June 6, 1896, ch. 337, § 3, 29 Stat. 253; June 13, 1898, ch. 448, § 31, 30 Stat. 466; May 9, 1902, ch. 784, § 4, 32 Stat. 195; Feb. 26, 1926, ch. 27, §§ 703, 1100, 44 Stat. 97, 111; R. S. title XXXV, ch. 3.

## Chapter 28.—PROVISIONS COMMON TO MISCELLANEOUS TAXES

### SUBCHAPTER A.—GENERAL PROVISIONS

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## PART III.—PUERTO RICO

3360. Shipments to the United States.  
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## SUBCHAPTER A.—GENERAL PROVISIONS

## PART I.—STAMPS, MARKS, AND BRANDS

## § 3300. Establishment and alteration—(a) Authorization.

The Commissioner, with the approval of the Secretary, may establish and, from time to time, alter or change the form, style, character, material, and device of any stamp, mark, or label used under any provision of the laws relating to internal revenue.

## (b) Application of penalty and forfeiture provisions.

All pains, penalties, fines, and forfeitures provided by law relating to internal revenue stamps shall apply to and have full force and effect in relation to any and all stamps so established by the Commissioner.

## (c) Cross references.

For other provisions giving the Commissioner general authority to establish, alter, and renew stamps, see section 3901 (a) (2).

For special authority to provide suitable stamps in case of—

- Tobacco, snuff, cigars, and cigarettes, see section 2002  
 Documents, other instruments, and playing cards, see section 1809 (b) (1).  
 Oleomargarine, see sections 2301 (c) (1) and 2313.  
 Adulterated and process or renovated butter, see sections 2321 (c) (1) and 2327 (d).  
 Filled cheese, see sections 2351 (c) and 2361.  
 Mixed flour, see sections 2381 (c) and 2388.  
 Narcotics and marihuana, see sections 2550 (c) (1), 2552, 2590 (c), and 2592 (b).  
 White phosphorus matches, see sections 2651 (c), 2652, and 2659 (a).  
 Cotton futures, see section 1920 (c).  
 Distilled spirits, see sections 2802 and 2803.  
 Fermented liquors, see sections 3151 and 3152.  
 Occupational taxes, see section 3273.  
 Shotguns, rifles, and machine guns, see section 2720 (c).

(53 Stat. 398.)

## DERIVATION

R. S. § 3446, which was in nature of a revision of act July 20, 1868, ch. 186, § 101, 15 Stat. 165, as amended by act Mar. 1, 1879, ch. 125, § 18, 20 Stat. 351.

## SIMILAR PROVISIONS

- 1912—Aug. 24, 1912, ch. 355, § 1, 37 Stat. 430.  
 1899—Mar. 3, 1899, ch. 424, § 1, 30 Stat. 1082.

## § 3301. Attachment and cancellation—(a) General authority to prescribe methods and instruments.

The stamps referred to in the preceding section shall be attached, protected, removed, canceled, obliterated, and destroyed, in such manner and by such instruments or other means as the Commissioner, with the approval of the Secretary, may prescribe; and he is authorized and empowered to make, with the approval of the Secretary, all needful regulations relating thereto.

## (b) Cross references.

For authority of the Commissioner to prescribe cancellation of stamps by perforation, see section 3303.

For special provisions relating to the attachment, protection, cancellation, and special issue of stamps in the case of—

- Tobacco and snuff, see section 2103.  
 Cigars and cigarettes, see section 2112.  
 Documents, other instruments, and playing cards, see sections 1815 and 1816.  
 Oleomargarine, see section 2313.  
 Adulterated and process or renovated butter, see section 2327 (d).  
 Filled cheese, see section 2361.  
 Mixed flour, see section 2388 (a).  
 Narcotics and marihuana, see sections 2552, 2568, and 2592.  
 White phosphorus matches, see section 2659 (a).  
 Distilled spirits, see sections 2802 and 2803.  
 Fermented liquors, see section 3152.  
 Shotguns, rifles, and machine guns, see section 2731.

(53 Stat. 398.)

## DERIVATION

R. S. § 3446 which was in nature of a revision of act July 20, 1868, ch. 186, § 101, 15 Stat. 165, as amended by act Mar. 1, 1879, ch. 125, § 18, 20 Stat. 351.

## § 3302. Expense.

The stamps or device or instrument or means of removal or obliteration referred to in sections 3300 and 3301 shall entail no additional expense upon the persons required to affix or use the same. (53 Stat. 398.)

## DERIVATION

R. S. § 3446, which was in nature of a revision of act July 20, 1868, ch. 186, § 101, 15 Stat. 165, as amended by act Mar. 1, 1879, ch. 125, § 18, 20 Stat. 351.

## § 3303. Cancellation of stamps by perforation.

In lieu of or in addition to other requirements of law in that respect, all stamps used for denoting internal revenue taxes may, in the discretion of the Commissioner, be canceled by perforations to be made in such manner and form as the Commissioner may, by regulation, prescribe. (53 Stat. 399.)

## DERIVATION

Act June 13, 1898, ch. 448, § 1, 30 Stat. 448, as amended by act Mar. 2, 1901, ch. 806, § 1, 31 Stat. 938; act Apr. 12, 1902, ch. 500, § 1, 32 Stat. 96

## § 3304. Redemption of stamps—(a) Authorization.

The Commissioner, subject to regulations prescribed by the Secretary, may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of law, to denote the payment of any internal

revenue tax, as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, or which through mistake may have been improperly or unnecessarily used, or where the rates or duties represented thereby have been excessive in amount, paid in error, or in any manner wrongfully collected.

**(b) Method and conditions of allowance.**

Such allowance or redemption may be made, either by giving other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, deducting therefrom, in case of repayment, the percentage, if any, allowed to the purchaser thereof; but no allowance or redemption shall be made in any case until the stamps so spoiled or rendered useless shall have been returned to the Commissioner, or until satisfactory proof has been made showing the reason why the same can not be returned; or, if so required by the said Commissioner, when the person presenting the same can not satisfactorily trace the history of said stamps from their issuance to the presentation of his claim as aforesaid.

**(c) Time for filing claims.**

No claim for the redemption of or allowance for stamps shall be allowed unless presented within four years after the purchase of such stamps from the Government.

**(d) Finality of Commissioner's decisions.**

The finding of facts in and the decision of the Commissioner upon the merits of any claim presented under or authorized by this section shall, in the absence of fraud or mistake in mathematical calculation, be final and not subject to revision by any accounting officer.

**(e) Tobacco and cigars.**

For special provisions relating to redemption of spoiled stamps, in the case of tobacco, snuff, cigars, or cigarettes, see section 2198.

(53 Stat. 399.)

**DERIVATION**

Subsections (a), (b) were from act May 12, 1900, ch. 393, § 1, 31 Stat. 177.

Subsection (c) was from act May 12, 1900, ch. 393, § 1, 31 Stat. 178, as amended by act June 2, 1924, ch. 234, § 1013 (a), 43 Stat. 343.

Subsection (d) was from act May 12, 1900, ch. 393, § 2, 31 Stat. 78.

**SIMILAR PROVISIONS**

1898—June 13, 1898, ch. 448, 30 Stat. 448, which was repealed by act April 12, 1902, ch. 500, §§ 5, 7, 32 Stat. 97; R. S. § 3426.

1864—June 30, 1864, ch. 173, § 161, 13 Stat. 294, as amended by act Mar. 1, 1879, ch. 125, § 17, 20 Stat. 349.

Provisions concerning the redemption of stamps issued under act Oct. 22, 1914, ch. 331, 38 Stat. 747, and joint resolution, Dec. 17, 1915, were contained in acts Apr. 17, 1917, ch. 3, 40 Stat. 6; Sept. 8, 1916, ch. 463, § 411, 39 Stat. 793, which was repealed by act Feb. 24, 1919, ch. 18, § 1400, 40 Stat. 1149.

**§ 3305. Transmission of stamps to internal revenue officers.**

The transmission of internal revenue stamps to the officers of the internal revenue service shall be

made through the mails of the United States in registered packages. (53 Stat. 399.)

**DERIVATION**

Act Aug. 15, 1876, ch. 287, § 1, 19 Stat. 152.

**PART II.—ASSESSMENT, COLLECTION, AND REFUND**

**§ 3310. Returns and payment of tax—(a) Monthly returns.**

All returns required to be made monthly by any person liable to tax shall be made on or before the 10th day of each month, and the tax assessed or due thereon shall be returned by the Commissioner to the collector on or before the last day of each month.

**(b) Other returns.**

All returns for which no provision is otherwise made shall be made on or before the 10th day of the month succeeding the time when the tax is due and liable to be assessed, and the tax thereon shall be returned as herein provided for monthly returns, and shall be due and payable on or before the last day of the month in which the assessment is so made.

**(c) Addition to tax in case of nonpayment.**

When the said tax is not paid on or before the last day of the month, as aforesaid, the collector shall add a penalty of 5 per centum, together with interest at the rate of 6 per centum per annum, upon such tax from the time the same became due; but no interest for a fraction of a month shall be demanded: *Provided*, That notice of the time when such tax becomes due and payable is given in such manner as may be prescribed by the Commissioner.

**(d) Demand for tax, penalty, and interest.**

It shall then be the duty of the collector, in case of the nonpayment of said tax on or before the last day of the month, as aforesaid, to demand payment thereof, with 5 per centum added thereto, and interest at the rate of 6 per centum per annum, as aforesaid, in the manner prescribed by law; and

**(e) Distraint.**

If said tax, penalty, and interest, are not paid within ten days after such demand, it shall be lawful for the collector or his deputy to make distraint therefor, as provided by law. (53 Stat. 399.)

**DERIVATION**

R. S. § 3185, as amended by act Aug. 30, 1935, ch. 829, § 404, 49 Stat. 1027. Said R. S. § 3185 was in nature of a revision of acts July 13, 1866, ch. 184, § 11, 14 Stat. 150; Mar. 2, 1867, ch. 169, § 8, 14 Stat. 473; Dec. 24, 1872, ch. 13, §§ 1, 2, 17 Stat. 401, 402.

**§ 3311. Assessment of unpaid taxes payable by stamp.**

Whenever any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale by the manufacturer thereof, without the use of the proper stamp, in addition to the penalties imposed by law for such sale or removal, it shall be the duty of the Commissioner, within a period of not more than four years (except as provided in section 3312) after such removal or sale, upon such information as he can obtain, to estimate the amount of the tax which has been omitted to be paid, and to make an assessment therefor upon the

manufacturer or producer of such article. He shall certify such assessment to the collector, who shall immediately demand payment of such tax, and upon the neglect or refusal of payment by such manufacturer or producer, shall proceed to collect the same in the manner provided for the collection of other assessed taxes. (53 Stat. 400.)

#### DERIVATION

R. S. § 3437, which was in nature of a revision of acts Mar. 2, 1867, ch. 169, § 5, 14 Stat. 472; June 6, 1872, ch. 315, § 31, 17 Stat. 251; Dec. 24, 1873, ch. 13, § 7, 17 Stat. 403; acts Aug. 27, 1894, ch. 349, § 47, 28 Stat. 562; Feb. 26, 1926, ch. 27, § 1109 (a), 44 Stat. 114.

#### § 3312. Period of limitation upon assessment and collection.

Except in the case of income, war-profits, excess-profits, estate, and gift taxes—

##### (a) General rule.

All internal revenue taxes shall (except as provided in subsections (b), (c), and (d)) be assessed within four years after such taxes became due, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of five years after such taxes became due.

##### (b) False return or no return.

In case of a false or fraudulent return with intent to evade tax, or of a failure to file a return within the time required by law, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

##### (c) Willful attempt to evade tax.

In case of a willful attempt in any manner to defeat or evade tax, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

##### (d) Collection after assessment.

Where the assessment of any tax imposed by this title has been made within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun—

(1) Within six years after the assessment of the tax, or

(2) Prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer. (53 Stat. 400; Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title V, § 508 (a), 54 Stat. 1008.)

#### DERIVATION

Act Feb. 26, 1926, ch. 27, § 1109 (a) (1-3), 44 Stat. 114, as amended by act May 29, 1928, ch. 852, § 619 (a), 45 Stat. 878.

#### 1940 AMENDMENT

Opening phrase was amended by act Oct. 8, 1940, cited to text, by inserting "war-profits, excess-profits," therein.

#### SIMILAR PROVISIONS

Provisions somewhat similar to subsection (a) were contained in act June 2, 1924, ch. 234, § 1009 (a), 43 Stat. 341, which was repealed by act Feb. 26, 1926, ch. 27, § 1200, 44 Stat. 125; act Nov. 23, 1921, ch. 136, §§ 1320, 1322, 42 Stat. 315.

#### CROSS REFERENCE

Beginning of period of limitations in certain cases under Title IX of Social Security Act, see note under section 1102 of Title 42, The Public Health and Welfare.

#### § 3313. Period of limitation upon refunds and credits.

All claims for the refunding or crediting of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes, be presented to the Commissioner within four years next after the payment of such tax, penalty, or sum. The amount of the refund (in the case of taxes other than income, war-profits, excess-profits, estate, and gift taxes) shall not exceed the portion of the tax, penalty, or sum paid during the four years immediately preceding the filing of the claim, or if no claim was filed, then during the four years immediately preceding the allowance of the refund. (53 Stat. 400.)

#### DERIVATION

R. S. § 3228 (a), as amended by act Feb. 26, 1926, ch. 27, § 1112, 44 Stat. 115; acts May 29, 1928, ch. 852, § 619 (c), 45 Stat. 878; June 6, 1932, ch. 209, § 1106 (a), 47 Stat. 287. R. S. § 3228 was in nature of a revision of act June 6, 1872, ch. 315, § 44, 17 Stat. 257.

#### § 3314. Cross reference.

For other provisions relating to assessment, collection, and refund, see subtitle D.

(53 Stat. 401.)

### PART III.—PENALTIES AND FORFEITURES

#### § 3320. Possession with intent to sell in fraud of law or to evade tax—(a) Penalty.

Every person who shall have in his custody or possession any goods, wares, merchandise, articles, or objects on which taxes are imposed by law, for the purpose of selling the same in fraud of the internal revenue laws, or with design to avoid payment of the taxes imposed thereon, shall be liable to a penalty of \$500 or not less than double the amount of taxes fraudulently attempted to be evaded.

##### (b) Forfeiture.

For the forfeiture provision relating to such offenses, see section 3720 (a).

(53 Stat. 401.)

#### DERIVATION

R. S. § 3452, which was in nature of a revision of acts June 30, 1864, ch. 173, § 48, 13 Stat. 240; July 13, 1866, ch. 184, § 9, 14 Stat. 112.

#### § 3321. Removal or concealment with intent to defraud the revenue—(a) Penalty.

Every person who removes, deposits, or conceals, or is concerned in removing, depositing, or concealing any goods or commodities for or in respect whereof any tax is or shall be imposed, with intent to defraud the United States of such tax or any part thereof, shall be liable to a fine of not more than \$5,000 or be imprisoned for not more than 3 years, or both.

##### (b) Forfeiture—(1) Goods.

Whenever any goods or commodities for or in respect whereof any tax is or shall be imposed, or any materials, utensils, or vessels proper or intended

to be made use of for or in the making of such goods or commodities are removed, or are deposited or concealed in any place, with intent to defraud the United States of such tax, or any part thereof, all such goods and commodities, and all such materials, utensils, and vessels, respectively, shall be forfeited.

**(2) Packages.**

In every such case all the casks, vessels, cases, or other packages whatsoever, containing, or which shall have contained, such goods or commodities, respectively, shall be forfeited.

**(3) Conveyances.**

Every vessel, boat, cart, carriage, or other conveyance whatsoever, and all horses or other animals, and all things used in the removal or for the deposit or concealment thereof, respectively, shall be forfeited.

**(c) Cross reference.**

For provisions relating to distilled spirits and equipment subject to forfeiture, distraint, or judicial process, see sections 2805 and 2807.

(53 Stat. 401.)

**DERIVATION**

R. S. § 3450, which was in nature of a revision of act July 13, 1866, ch. 184, § 14, 14 Stat. 151, as amended by act June 26, 1936, ch. 830, title III, § 325, 49 Stat. 1955.

**§ 3322. Forfeiture of packages containing forfeited goods.**

In every case where any goods or commodities are forfeited under any internal revenue law, all casks, vessels, cases, or other packages whatsoever, containing, or which shall have contained such goods or commodities, respectively, shall be forfeited. (53 Stat. 401.)

**DERIVATION**

R. S. § 3457, which was in nature of a revision of act July 13, 1866, ch. 184, § 14, 14 Stat. 151.

**§ 3323. Provisions relating to emptied stamped packages—(a) Penalties—(1) Disposal and receipt.**

Whenever any person sells, gives, purchases, or receives any box, barrel, bag, vessel, package, wrapper, cover, or envelope of any kind, stamped, branded, or marked in any way so as to show that the contents or intended contents thereof have been duly inspected, or that the tax thereon has been paid, or that any provision of the internal revenue laws has been complied with, whether such stamping, branding, or marking may have been a duly authorized act or may be false and counterfeit, or otherwise without authority of law, said box, barrel, bag, vessel, package, wrapper, cover, or envelope being empty, or containing anything else than the contents which were therein when said articles had been so lawfully stamped, branded, or marked by an officer of the revenue, he shall be liable to a penalty of not less than \$50 nor more than \$500.

**(2) Manufacturing, stamping, or branding.**

Every person who makes, manufactures, or produces any box, barrel, bag, vessel, package, wrapper, cover, or envelope, stamped, branded, or marked, as above described, or stamps, brands, or marks the same, as hereinbefore recited, shall be liable to penalty as before provided in this section.

**(3) Fraud.**

Every person who violates the foregoing provisions of this section, with intent to defraud the revenue, or to defraud any person, shall be liable to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for not less than six months nor more than five years, or to both, at the discretion of the court.

**(b) Forfeiture.**

All articles sold, given, purchased, received, made, manufactured, produced, branded, stamped, or marked in violation of the provisions of this section, and all their contents, shall be forfeited to the United States. (53 Stat. 401.)

**DERIVATION**

R. S. § 3455, which was in nature of a revision of act July 13, 1866, ch. 184, § 16, 14 Stat. 152.

**§ 3324. Penalty for sales to evade tax—(a) Nonenforceability of contract.**

Whenever any person who is liable to pay any tax upon any goods, wares, or merchandise, sells or causes or allows the same to be sold before the tax is paid to which said property is liable, with intent to avoid such tax, or in fraud of the internal revenue laws, any debt contracted in such sale, and any security given therefor, unless the same shall have been bona fide transferred to an innocent holder, shall be void, and the collection thereof shall not be enforced in any court.

**(b) Forfeiture of sum paid on contract.**

If such goods, wares, or merchandise have been paid for, in whole or in part, the sum so paid shall be deemed forfeited.

**(c) Moiety.**

Any person who shall sue for the same in an action of debt shall recover from the seller the amount so paid, one-half to his own use and the other half to the use of the United States. (53 Stat. 402.)

**DERIVATION**

R. S. § 3454, which was in nature of a revision of act June 30, 1864, ch. 173, § 180, 13 Stat. 305, 306.

**§ 3325. Penalties for false statements to purchasers regarding tax.**

Whoever in connection with the sale or lease, or offer for sale or lease, of any article, or for the purpose of making such sale or lease, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any part of the price at which such article is sold or leased, or offered for sale or lease, consists of a tax imposed under the authority of the United States, or (2) ascribing a particular part of such price to a tax imposed under the authority of the United States, knowing that such statement is false or that the tax is not so great as the portion of such price ascribed to such tax, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000 or by imprisonment not exceeding one year, or both. (53 Stat. 402.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 1123, 44 Stat. 121.

**§ 3326. Penalty for fraudulently claiming drawback.**

Whenever any person fraudulently claims or seeks to obtain an allowance of drawback on goods, wares, or merchandise on which no internal tax shall have been paid, or fraudulently claims any greater allowance of drawback than the tax actually paid, he shall forfeit triple the amount wrongfully or fraudulently claimed or sought to be obtained, or the sum of \$500, at the election of the Secretary. (53 Stat. 402.)

**DERIVATION**

R. S. § 3443, which was in nature of a revision of act June 30, 1864, ch. 173, § 172, 13 Stat. 303.

**PART IV.—MISCELLANEOUS PROVISIONS****§ 3330. Witnessing of returns in lieu of oath.**

The Commissioner, with the approval of the Secretary, may by regulation prescribe that any return required by any internal revenue law (except returns required under income or estate tax laws) to be under oath may, if the amount of the tax covered thereby is not in excess of \$10, be signed or acknowledged before two witnesses instead of under oath. (53 Stat. 403.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 1102 (c), 44 Stat. 112.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 1002 (c), 43 Stat. 339.

1921—Nov. 23, 1921, ch. 136, § 1303, 42 Stat. 309.

1919—Feb. 24, 1919, ch. 18, § 1309, 40 Stat. 1143.

**§ 3331. Exemption from tax of domestic goods purchased for the United States.**

The privilege existing by provision of law on December 1, 1873 or thereafter of purchasing supplies of goods imported from foreign countries for the use of the United States, duty free, shall be extended, under such regulations as the Secretary may prescribe, to all articles of domestic production which are subject to tax by the provisions of this subtitle. (53 Stat. 403.)

**DERIVATION**

R. S. § 3464, which was in nature of a revision of acts Mar. 3, 1865, ch. 78, § 17, 13 Stat. 241.

**§ 3332. Exemption from tax of exports to foreign countries.**

For exemption from tax in case of—

Tobacco, snuff, cigars, and cigarettes, see section 2135.

Playing cards, see section 1830.

Oleomargarine, see section 2307.

Adulterated butter, see section 2327.

Mixed flour, see section 2385.

Firearms, see sections 2705 and 2727.

Distilled spirits, see sections 2885, 2905, and 3179.

Wines, see section 3037 (a).

Fermented liquors, see section 3153 (c).

(53 Stat. 403.)

**§ 3333. Drawback in case of exports to foreign countries.**

For drawback on exports to foreign countries in case of—

Tobacco, snuff, cigars, and cigarettes, see section 2136.

Distilled spirits, see sections 2887 and 3179.

Still, see section 3250 (j) (3).

For allowance of drawbacks on shipments to Puerto Rico or the Philippine Islands, see sections 3361 (c) and 3341 (c).

(53 Stat. 403.)

**§ 3334. Extension of time for filing returns.**

For authority of collectors to grant extensions of time for the filing of returns (except in the case of income tax), see section 3634.

(53 Stat. 403.)

**§ 3335. Cross reference.**

For other administrative provisions, see subtitle D.

(53 Stat. 403.)

**SUBCHAPTER B.—PROVISIONS OF SPECIAL APPLICATION TO THE PHILIPPINES, VIRGIN ISLANDS, AND PUERTO RICO****PART I.—PHILIPPINE ISLANDS****§ 3340. Shipments to the United States—(a) Tax imposed in United States—(1) Amount.**

There shall be levied, collected, and paid, in the United States, upon articles, goods, wares, or merchandise coming into the United States from the Philippine Islands a tax equal to the internal-revenue tax imposed in the United States upon the like articles, goods, wares, or merchandise of domestic manufacture.

**(2) Payment.**

Such tax shall be paid by internal revenue stamp or stamps, to be provided by the Commissioner, and to be affixed in such manner and under such regulations as he, with the approval of the Secretary, shall prescribe.

**(b) Exemption from tax imposed in the Philippine Islands.**

Such articles, goods, wares, or merchandise shipped from said islands to the United States shall be exempt from the payment of any tax imposed by the internal revenue laws of the Philippine Islands. (53 Stat. 403.)

**DERIVATION**

Act June 17, 1930, ch. 497, § 301, 46 Stat. 686.

**SIMILAR PROVISIONS**

Act Sept. 21, 1922, ch. 356, title III, § 301, 42 Stat. 394, which was repealed by act June 17, 1930, ch. 497, § 651 (a) (1), 46 Stat. 762.

**§ 3341. Shipments from the United States—(a) Tax imposed in Philippine Islands—(1) Amount.**

There shall be levied, collected, and paid in the Philippine Islands, upon articles, goods, wares, or merchandise going into the Philippine Islands from the United States, a tax equal to the internal revenue tax imposed in the Philippine Islands upon the like articles, goods, wares, or merchandise of Philippine Islands manufacture.

**(2) Payment.**

Such tax shall be paid by internal revenue stamps or otherwise, as provided by the laws of the Philippine Islands.

**(b) Exemption from tax imposed in United States.**

Such articles, goods, wares, or merchandise going into the Philippine Islands from the United States shall be exempt from the payment of any tax imposed by the internal revenue laws of the United States.

**(c) Drawback of tax paid in the United States.**

All provisions of law existing on March 4, 1915, for the allowance of drawback of internal revenue tax on articles exported from the United States are, so far as applicable, extended to like articles upon which an internal revenue tax has been paid when shipped from the United States to the Philippine Islands. (53 Stat. 404.)

**DERIVATION**

Subsections (a), (b) were from act June 17, 1930, ch. 497, § 301, 46 Stat. 686.

Subsection (c) was from act Mar. 4, 1915, ch. 164, 38 Stat. 1189.

See derivation note to section 3340 of this title.

**§ 3342. Imports from countries other than the United States.**

In addition to the customs taxes imposed in the Philippine Islands, there shall be levied, collected, and paid therein upon articles, goods, wares, or merchandise imported into the Philippine Islands from countries other than the United States the internal revenue tax imposed by the Philippine Government on like articles manufactured and consumed in the Philippine Islands or shipped thereto for consumption therein from the United States. (53 Stat. 404.)

**DERIVATION**

Act June 17, 1930, ch. 497, § 301, 46 Stat. 686.

See derivation note to section 3340 of this title.

**§ 3343. Deposit of internal revenue collections—(a) Payment into the Philippine treasury.**

All internal revenues collected in or for account of the Philippine Islands shall accrue intact to the general government thereof and be paid into the insular treasury.

**(b) Philippine trust fund.**

The duties and taxes collected in the Philippine Archipelago in pursuance of the act of March 8, 1902, ch. 140, 32 Stat. 54, and all duties and taxes collected in the United States upon articles coming from the Philippine Archipelago and upon foreign vessels coming therefrom, shall not be covered into the general fund of the Treasury of the United States, but shall be held as a separate fund and paid into the treasury of the Philippine Islands, to be used and expended for the government and benefit of said islands.

**(c) Cross reference.**

For special provisions relating to taxes collected in the case of coconut oil, see section 2476.

(53 Stat. 404.)

**DERIVATION**

Subsection (a) was from act June 17, 1930, ch. 497, § 301, 46 Stat. 686.

Subsection (b) was from act Mar. 8, 1902, ch. 140, § 4, 32 Stat. 54.

See derivation note to section 3340 of this title.

**PART II.—VIRGIN ISLANDS****§ 3350. Shipments to the United States—(a) Taxes imposed in the United States.**

Except as provided in section 3123, there shall be levied, collected, and paid in the United States, upon articles coming into the United States from the Virgin Islands, a tax equal to the internal revenue tax imposed in the United States upon like articles of domestic manufacture.

**(b) Exemption from tax imposed in the Virgin Islands.**

Such articles shipped from such islands to the United States shall be exempt from the payment of any tax imposed by the internal revenue laws of such islands. (53 Stat. 404.)

**DERIVATION**

Act Feb. 24, 1919, ch. 18, § 1304, 40 Stat. 1142.

**SIMILAR PROVISIONS**

1917—Oct. 3, 1917, ch. 63, § 1000, 40 Stat. 325.

**§ 3351. Shipments from the United States—(a) Tax imposed in Virgin Islands.**

There shall be levied, collected, and paid in the Virgin Islands upon articles imported from the United States, a tax equal to the internal revenue tax imposed in such islands upon like articles there manufactured.

**(b) Exemption from tax imposed in the United States.**

Such articles going into such islands from the United States shall be exempt from payment of any tax imposed by the internal revenue laws of the United States. (53 Stat. 405.)

**DERIVATION**

Act Feb. 24, 1919, ch. 18, § 1304, 40 Stat. 1142.

**SIMILAR PROVISIONS**

1917—Oct. 3, 1917, ch. 63, § 1000, 40 Stat. 325.

**PART III.—PUERTO RICO****§ 3360. Shipments to the United States—(a) Rate of tax.**

Except as provided in section 3123, articles of merchandise of Puerto Rican manufacture coming into the United States and withdrawn for consumption or sale shall be subject to a tax equal to the internal revenue tax imposed in the United States upon the like articles of merchandise of domestic manufacture.

**(b) Payment of tax—(1) Upon entry into United States.**

Such tax shall be paid by internal revenue stamp or stamps to be purchased and provided by the Commissioner and to be procured from the collector of internal revenue at or most convenient to the port of entry of said merchandise in the United States, and to be affixed under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe.

**(2) Before shipment from Puerto Rico.**

All United States internal revenue taxes imposed by law on articles of Puerto Rican manufacture coming into the United States for consumption or sale may be paid by affixing to such articles before



shipment thereof a proper United States internal revenue stamp denoting such payment.

**(A) Appointment of deputy collector at San Juan.**

For the purpose of carrying into effect the provisions of paragraph (2) of this subsection, the Secretary is authorized to grant to such collector of internal revenue as may be recommended by the Commissioner, and approved by the Secretary, an allowance for the salary and expenses of a deputy collector to be stationed at San Juan, Puerto Rico, the appointment of this deputy to be approved by the Secretary.

**(B) Bond of deputy collector at San Juan.**

Before entering upon the duties of his office such deputy collector shall execute a bond, payable to the collector appointing him, in such amount and with such sureties as he may determine.

**(C) Duties of deputy collector at San Juan.**

The collector will place in the hands of such deputy all stamps necessary for the payment of the proper tax on articles produced in Puerto Rico and shipped to the United States, and the said deputy, upon proper payment made for said stamps, shall issue them to manufacturers in Puerto Rico. All such stamps so issued or transferred to said deputy shall be charged to the collector and be accounted for by him as in the case of other tax-paid stamps. The deputy collector assigned to this duty shall perform such other work in connection with the inspection and stamping of such articles, and shall make such returns as the Commissioner may, by regulations approved by the Secretary, direct.

**(D) General laws applicable.**

All provisions of law relative to the appointment, duties, and compensation of deputy collectors, including office rent and other necessary expenses, shall, so far as applicable, apply to the deputy assigned to duty under the provisions of paragraph (2) of this subsection.

**(c) Deposit of internal revenue collections.**

All taxes collected under the internal revenue laws of the United States on articles produced in Puerto Rico and transported to the United States, or consumed in the island, shall be covered into the treasury of Puerto Rico. (53 Stat. 405.)

**DERIVATION**

Subsection (a) was from acts April 12, 1900, ch. 191, § 3, 31 Stat. 77; May 17, 1932, ch. 190, 47 Stat. 158.

Subsection (b) (1) was from act April 12, 1900, ch. 191, § 3, 31 Stat. 77.

Subsection (b) (2) was from acts June 29, 1906, ch. 3613, §§ 1, 2, 34 Stat. 620, 621; May 17, 1932, ch. 190, 47 Stat. 158.

Subsection (c) was from act Mar. 2, 1917, ch. 145, § 9, 39 Stat. 954; May 17, 1932, ch. 190, 47 Stat. 158. See also section 734 of Title 48, Territories and Insular Possessions.

**§ 3361. Shipments from the United States—(a) Tax imposed in Puerto Rico.**

All articles of merchandise of United States manufacture coming into Puerto Rico shall be entered at the port of entry upon payment of a tax equal in rate and amount to the internal revenue tax imposed in Puerto Rico upon the like articles of Puerto Rican manufacture.

**(b) Exemption from tax imposed in the United States.**

Articles, goods, wares, or merchandise going into Puerto Rico, Guam, and American Samoa from the United States shall be exempted from the payment of any tax imposed by the internal revenue laws of the United States.

**(c) Drawback of tax paid in the United States.**

All provisions of law in effect on March 4, 1915, for the allowance of drawback of internal revenue tax on articles exported from the United States are, so far as applicable, extended to like articles upon which an internal revenue tax has been paid when shipped from the United States to the island of Puerto Rico. (53 Stat. 406; June 29, 1939, 10 p. m., E. S. T., ch. 247, title IV, § 408, 53 Stat. 885.)

**DERIVATION**

Subsection (a) was from acts April 12, 1900, ch. 191, § 3, 31 Stat. 78; May 17, 1932, ch. 190, 47 Stat. 158. See historical note to section 3360 of this title.

Subsection (b) was from acts June 17, 1930, ch. 497, § 302, 46 Stat. 686; May 17, 1932, ch. 190, 47 Stat. 158.

Subsection (c) was from acts Mar. 4, 1915, ch. 164, 38 Stat. 1189; May 17, 1932, ch. 190, 47 Stat. 158.

**SIMILAR PROVISIONS**

Provisions similar to subsection (b) were contained in act Sept. 21, 1922, ch. 356, title III, § 302, 42 Stat. 935, which was repealed by act June 17, 1930, ch. 497, § 651 (a) (1), 46 Stat. 762; act Oct. 3, 1913, ch. 16, § IV, D, 38 Stat. 193, which was repealed by act Sept. 21, 1922, ch. 356, title III, § 321, 42 Stat. 947.

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### Chapter 29.—MANUFACTURERS' EXCISE AND IMPORT TAXES

#### SUBCHAPTER A.—MANUFACTURERS' EXCISE TAXES

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3400. Tax on tires and inner tubes.
3401. Tax on toilet preparations, etc.
3403. Tax on automobiles, etc.
3404. Tax on radio receiving sets, etc.
3405. Tax on mechanical refrigerators.
3407. Tax on firearms, shells, and cartridges.
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#### SUBCHAPTER B.—IMPORT TAXES

##### PART I.—SPECIAL PROVISIONS

3420. Imposition of tax.
3422. Petroleum and derivatives.
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3451. Exemption from tax of certain supplies for vessels
3452. Expiration date.

Sections 3402, 3406, 3408, 3410, 3421 were not used by Congress in enacting the Internal Revenue Code.

#### SUBCHAPTER A.—MANUFACTURERS' EXCISE TAXES

##### § 3400. Tax on tires and inner tubes.

There shall be imposed upon the following articles sold by the manufacturer, producer, or importer, a tax at the following rates:

(1) Tires wholly or in part of rubber,  $2\frac{1}{4}$  cents a pound on total weight (exclusive of metal rims or rim bases), to be determined under regulations prescribed by the Commissioner with the approval of the Secretary.

(2) Inner tubes (for tires) wholly or in part of rubber, 4 cents a pound on total weight, to be determined under regulations prescribed by the Commissioner with the approval of the Secretary. (53 Stat. 409.)

##### INCREASE OF RATE AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945

Rate of tax on tires under subsection (1) is increased from  $2\frac{1}{4}$  cents to  $2\frac{1}{2}$  cents, and rate of tax on tubes under subsection (2) is increased from 4 cents to  $4\frac{1}{2}$  cents by section 1650 of this title.

##### DERIVATION

Act June 6, 1932, ch. 209, § 602, 47 Stat. 261.

##### § 3401. Tax on toilet preparations, etc.

There shall be imposed upon the following articles, sold by the manufacturer, producer, or importer, a tax equivalent to 10 per centum of the price for which so sold: Perfumes, essences, extracts, toilet waters, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, aromatic cachous, toilet powders, and any similar substance, article, or preparation, by whatsoever name known or distinguished; any of the above which are used or applied or intended to be used or applied for toilet purposes.

In the case of a sale by a manufacturer to a selling corporation of an article to which the tax under this section applies, the transaction shall be prima facie presumed to be otherwise than at arm's length if either the manufacturer or the selling corporation owns more than 75 per centum of the outstanding stock of the other, or if more than 75 per centum of the outstanding stock of both corporations is owned by the same persons in substantially the same proportions. Sales by a manufacturer to a selling corporation shall in all other cases be prima facie presumed to be at arm's length.

Notwithstanding section 3441 (a), in determining, for the purpose of this section, the price for which an article is sold, whether at arm's length or not, there shall be included any charge for coverings and containers of whatever nature, only if furnished by the actual manufacturer of the article, and any charge incident to placing the article in condition packed ready for shipment, only if performed by the actual manufacturer of the article, but there shall be excluded the amount of the tax imposed by this section, whether or not stated as a separate charge. Whether sold at arm's length or not, a transportation, delivery, insurance, or other charge, and the wholesaler's salesman's commissions and costs and expenses of advertising and selling (not

required by the foregoing sentence to be included), shall be excluded from the price only if the amount thereof is established to the satisfaction of the Commissioner, in accordance with the regulations. (53 Stat. 410; June 29, 1939, 10 p. m. E. S. T., ch. 247, title I, § 3, 53 Stat. 863.)

**INCREASE OF RATE AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945**

Rate of tax on toilet preparations is increased from 10 percent to 11 percent by section 1650 of this title.

**DERIVATION**

June 6, 1932, ch. 209, § 603, 47 Stat. 261; May 28, 1938, ch. 289, § 701 (a), 52 Stat. 568.

**1939 AMENDMENT**

Last two paragraphs added by act June 29, 1939, cited to text, and "made effective only with respect to sales made after the date of the enactment of this act" by § 3 (b) of said act.

Section number 3402 was not used by Congress in enacting the Internal Revenue Code.

**§ 3403. Tax on automobiles, etc.**

There shall be imposed upon the following articles sold by the manufacturer, producer, or importer, a tax equivalent to the following percentages of the price for which so sold:

(a) Automobile truck chassis, automobile truck bodies, tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer (including in each of the above cases parts or accessories therefor sold on or in connection therewith or with the sale thereof), 2 per centum. A sale of an automobile truck shall, for the purposes of this subsection, be considered to be a sale of the chassis and of the body.

(b) Other automobile chassis and bodies and motor cycles (including in each case parts or accessories therefor sold on or in connection therewith or with the sale thereof), except tractors, 3 per centum. A sale of an automobile shall, for the purposes of this subsection, be considered to be a sale of the chassis and of the body.

(c) Parts or accessories (other than tires and inner tubes) for any of the articles enumerated in subsection (a) or (b), 2 per centum. For the purposes of this subsection and subsections (a) and (b), spark plugs, storage batteries, leaf springs, coils, timers, and tire chains, which are suitable for use on or in connection with, or as component parts of, any of the articles enumerated in subsection (a) or (b), shall be considered parts or accessories for such articles, whether or not primarily adapted for such use. This subsection shall not apply to chassis or bodies for automobile trucks or other automobiles. Under regulations prescribed by the Commissioner, with the approval of the Secretary, the tax under this subsection shall not apply in the case of sales of parts or accessories by the manufacturer, producer, or importer to a manufacturer or producer of any of the articles enumerated in subsection (a) or (b). If any such parts or accessories are resold by such vendee otherwise than on or in connection with, or with the sale of, an article enumerated in subsection (a) or (b) and manufactured or produced by such vendee, then for the purposes of this section the vendee shall be considered the manufacturer or producer of the parts or accessories so resold.

(d) Under regulations prescribed by the Commissioner, with the approval of the Secretary, the tax under subsection (a) or (b) shall not apply in the case of sales of bodies by the manufacturer, producer, or importer to a manufacturer or producer of automobile trucks or other automobiles to be sold by such vendee. For the purposes of subsection (a) or (b) such vendee shall be considered the manufacturer or producer of such bodies.

(e) If tires or inner tubes on which tax has been imposed under this chapter are sold on or in connection with, or with the sale of, a chassis, body, or motor cycle, there shall (under regulations prescribed by the Commissioner, with the approval of the Secretary) be credited against the tax under this section an amount equal to, in the case of an automobile truck chassis or body, 2 per centum, and in the case of any other automobile chassis or body or motor cycle, 3 per centum—

(1) of the purchase price (less, in the case of tires, the part of such price attributable to the metal rim or rim base) if such tires or inner tubes were taxable under section 3400 (relating to tax on tires and inner tubes); or

(2) if such tires or inner tubes were taxable under section 3444 (relating to use by manufacturer, producer, or importer) then of the price (less, in the case of tires, the part of such price attributable to the metal rim or rim base) at which such or similar tires or inner tubes are sold, in the ordinary course of trade, by manufacturers, producers, or importers thereof, as determined by the Commissioner.

With respect to the period after June 30, 1940, and before July 1, 1945, the rates of the credits above provided shall, in lieu of 2 per centum and 3 per centum, be  $2\frac{1}{2}$  per centum and  $3\frac{1}{2}$  per centum, respectively.

(f) (1) Where prior to August 1, 1945, any article subject to the tax imposed by this section or section 3400, relating to tax on tires and inner tubes, has been sold by the manufacturer, producer, or importer, and is on such date held by a dealer and intended for sale, there shall be refunded to the manufacturer, producer, or importer the amount of the tax, or if the tax has not been paid, the tax shall be abated.

(2) As used in this subsection the term "dealer" includes a wholesaler, jobber, or distributor. For the purposes of this subsection, an article shall be considered as "held by a dealer" if title thereto has passed to such dealer (whether or not delivery to him has been made), and if for purposes of consumption title to such article or possession thereof has not at any time been transferred to any person other than a dealer.

(3) Under regulations prescribed by the Commissioner, with the approval of the Secretary, the refund provided by this subsection—(A) may be applied as a credit against the tax shown by subsequent returns of the manufacturer, producer, or importer, and (B) may be made to the dealer instead of to the manufacturer, producer, or importer, if the manufacturer, producer, or importer waives any claim for the amount so to be refunded.

(4) When the refund, credit, or abatement provided for in this subsection has been allowed to the

manufacturer, producer, or importer, he shall remit to the dealer to whom was sold the article in respect of which the refund, credit, or abatement was allowed, so much of that amount of the tax corresponding to the refund, credit, or abatement, as was included in or added to the price paid or agreed to be paid by the dealer. Upon the failure of the manufacturer, producer, or importer to make such remission he shall be liable to the dealer for damages in the amount of three times the amount thereof, and the court shall include in any judgment in favor of the dealer in any suit for the recovery of such damages, costs of the suit and a reasonable attorney's fee to be fixed by the court. (53 Stat. 410; June 29, 1939, 10 p. m., E. S. T., ch. 247, title I, § 1, 53 Stat. 862; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, §§ 209, 216, 54 Stat. 522, 526.

**INCREASE OF RATES AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945**

Rate of tax on automobile truck chassis, etc., under subsection (a) is increased from 2 percent to 2½ percent; rate of tax on automobiles, etc., under subsection (b) is increased from 3 percent to 3½ percent; and rate of tax on parts under subsection (c) is increased from 2 percent to 2½ percent by section 1650 of this title.

**DERIVATION**

Acts June 6, 1932, ch. 209, § 606, 47 Stat. 261; June 16, 1933, ch. 90, § 212, 48 Stat. 206; June 28, 1935, ch. 333, 49 Stat. 431; June 29, 1937, ch. 402, 50 Stat. 358; May 28, 1938, ch. 289, § 709, 52 Stat. 571.

**1940 AMENDMENT**

Subsection (e) was amended by act June 25, 1940, § 216, cited to text, which added last paragraph

Subsection (f) (1) was amended by act June 25, 1940, § 209, cited to text, which struck out "1941" and inserted in lieu thereof "1945."

**1939 AMENDMENT**

Subsection (f), par. (1) was amended by act June 29, 1939, cited to text.

**CROSS REFERENCE**

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain government obligations, see note under section 757b of Title 31, Money and Finance.

**§ 3404. Tax on radio receiving sets, etc.**

There shall be imposed upon the following articles, sold by the manufacturer, producer, or importer, a tax equivalent to 5 per centum of the price for which so sold: Chassis, cabinets, tubes, reproducing units, power packs, and phonograph mechanisms, suitable for use in connection with or as part of radio receiving sets or combination radio and phonograph sets (including in each case parts or accessories therefor sold on or in connection therewith or with the sale thereof). A sale of any two or more of the above articles shall, for the purpose of this section, be considered a sale of each separately. (53 Stat. 411.)

**INCREASE OF RATE AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945**

Rate of tax on radios is increased from 5 percent to 5½ percent by section 1650 of this title.

**DERIVATION**

Acts June 6, 1932, ch. 209, § 607, 47 Stat. 263; May 28, 1938, ch. 289, § 701 (c), 52 Stat. 568.

**§ 3405. Tax on mechanical refrigerators.**

There shall be imposed upon the following articles, sold by the manufacturer, producer, or importer, a tax equivalent to 5 per centum of the price for which so sold:

(a) Household type refrigerators (for single or multiple cabinet installations) operated with electricity, gas, kerosene, or other means (including parts or accessories therefor sold on or in connection therewith or with the sale thereof).

(b) Cabinets, compressors, condensers, expansion units, absorbers, and controls (hereinafter referred to as "refrigerator components") for, or suitable for use as part of or with, any of the articles enumerated in subsection (a) (including in each case parts or accessories for such refrigerator components sold on or in connection therewith or with the sale thereof) except when sold as component parts of complete refrigerators or refrigerating or cooling apparatus. Under regulations prescribed by the Commissioner, with the approval of the Secretary, the tax under this subsection shall not apply in the case of sales of any such refrigerator components by the manufacturer, producer, or importer to a manufacturer or producer of refrigerators or refrigerating or cooling apparatus. If any such refrigerator components are resold by such vendee otherwise than on or in connection with, or with the sale of, complete refrigerators or refrigerating or cooling apparatus, manufactured or produced by such vendee, then for the purposes of this section the vendee shall be considered the manufacturer or producer of the refrigerator components so resold. (53 Stat. 412.)

**INCREASE OF RATE AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945**

Rate of tax on mechanical refrigerators is increased from 5 percent to 5½ percent by section 1650 of this title.

**DERIVATION**

Act June 6, 1932, ch. 209, § 608, 47 Stat. 263

Section number 3406 was not used by Congress in enacting the Internal Revenue Code.

**§ 3407. Tax on firearms, shells, and cartridges.**

There shall be imposed upon firearms, shells, and cartridges, sold by the manufacturer, producer, or importer, a tax equivalent to 10 per centum of the price for which so sold. The tax imposed by this section shall not apply (1) to articles sold for the use of the United States, any State, Territory, or possession of the United States, any political subdivision thereof, or the District of Columbia, or (2) to pistols and revolvers.

The taxes imposed by this section shall not apply to any firearm on which the tax provided by section 2720 has been paid.

The provisions of section 3452 (relating to expiration of taxes) shall not apply to the tax imposed by this section. (53 Stat. 412; June 29, 1939, 10 p. m., E. S. T., ch. 247, title I, § 2, 53 Stat. 863.)

**INCREASE OF RATE AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945**

Rate of tax on firearms is increased from 10 percent to 11 percent by section 1650 of this title.

**DERIVATION**

Act June 6, 1932, ch. 209, § 610, 47 Stat. 264; June 26, 1934, ch. 757, § 15, 48 Stat. 1240.

## 1939 AMENDMENT

Last paragraph added by act June 29, 1939, cited to text.

Section number 3408 was not used by Congress in enacting the Internal Revenue Code.

## § 3409. Tax on matches.

There shall be imposed on fancy wooden matches and wooden matches having a stained, dyed, or colored stick or stem, packed in boxes or in bulk, sold by the manufacturer, producer, or importer, a tax of 5 cents per one thousand matches. (53 Stat. 412.)

## INCREASE OF RATE AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945

Rate of tax on matches is increased from 5 cents to 5½ cents by section 1650 of this title.

## DERIVATION

Act June 6, 1932, ch. 209, § 612, 47 Stat. 264, as amended by act May 28, 1938, ch. 289, § 707, 52 Stat. 571.

Section number 3410 was not used by Congress in enacting the Internal Revenue Code.

## § 3411. Tax on electrical energy for domestic or commercial consumption.

(a) There shall be imposed upon electrical energy sold for domestic or commercial consumption and not for resale a tax equivalent to 3 per centum of the price for which so sold, to be paid by the vendor under such rules and regulations as the Commissioner, with the approval of the Secretary, shall prescribe. The sale of electrical energy to an owner or lessee of a building, who purchases such electrical energy for resale to the tenants therein, shall for the purposes of this section be considered as a sale for consumption and not for resale, but the resale to the tenant shall not be considered a sale for consumption.

(b) The provisions of sections 3441, 3444, and 3447 shall not be applicable with respect to the tax imposed by this section.

(c) No tax shall be imposed under this section upon electrical energy sold to the United States or to any State or Territory, or political subdivision thereof, or the District of Columbia. None of the provisions of this section shall apply to publicly owned electric and power plants, or to electric and power plants or systems owned and operated by cooperative or nonprofit corporations engaged in rural electrification. The right to exemption under this subsection shall be evidenced in such manner as the Commissioner, with the approval of the Secretary, may, by regulation, prescribe. (53 Stat. 412.)

## INCREASE OF RATE AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945

Rate of tax on electrical energy is increased from 3 percent to 3½ percent by section 1650 of this title.

## DERIVATION

Act June 6, 1932, ch. 209, § 616, as amended by acts June 16, 1933, ch. 96, § 6 (a), 48 Stat. 256; May 28, 1938, ch. 289, § 713, 52 Stat. 573.

## § 3412. Tax on gasoline.

(a) There shall be imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax of 1 cent a gallon, except that under regulations prescribed by the Commissioner with the approval of the Secretary the tax shall not apply in the case of sales to a producer of gasoline.

(b) If a producer or importer uses (otherwise than in the production of gasoline) gasoline sold to him free of tax, or produced or imported by him, such use shall for the purposes of this chapter be considered a sale. Any person to whom gasoline is sold tax-free under this section shall be considered the producer of such gasoline.

(c) As used in this section—

(1) the term "producer" includes a refiner, compounder, or blender, and a dealer selling gasoline exclusively to producers of gasoline, as well as a producer.

(2) the term gasoline means (A) all products commonly or commercially known or sold as gasoline (including casinghead and natural gasoline), benzol, benzene, or naphtha, regardless of their classifications or uses; and (B) any other liquid of a kind prepared, advertised, offered for sale or sold for use as, or used as, a fuel for the propulsion of motor vehicles, motor boats, or airplanes; except that it does not include any of the foregoing (other than products commonly or commercially known or sold as gasoline) sold for use otherwise than as a fuel for the propulsion of motor vehicles, motor boats, or airplanes, and otherwise than in the manufacture or production of such fuel, and does not include kerosene, gas oil, or fuel oil.

(d) Every person subject to tax under this section or section 3413 shall, before incurring any liability for tax under such sections register with the collector for the district in which is located his principal place of business (or, if he has no principal place of business in the United States, with the collector at Baltimore, Maryland) and shall give a bond, to be approved by such collector, conditioned that he shall not engage in any attempt, by himself or by collusion with others, to defraud the United States of any tax under such sections; that he shall render truly and completely all returns, statements, and inventories required by law or regulations in pursuance thereof and shall pay all taxes due under such sections; and that he shall comply with all requirements of law and regulations in pursuance thereof with respect to tax under such sections. Such bond shall be in such sum as the collector may require in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, but not less than \$2,000. The collector may from time to time require new or additional bond in accordance with this subsection. Every person who fails to register or give bond as required by this subsection, or who in connection with any purchase of gasoline or lubricating oil falsely represents himself to be registered and bonded as provided by this subsection, or who willfully makes any false statement in an application for registration under this subsection, shall upon conviction thereof be fined not more than \$5,000 or imprisoned not more than five years, or both, together with the costs of prosecution. If the Commissioner finds that any manufacturer or producer has at any time evaded any Federal tax on gasoline or lubricating oil, he may revoke the registration of such manufacturer or producer, and no sale to, or for resale to, such manufacturer or producer thereafter shall be tax-free

under section 3413, this section, or section 3442, but such manufacturer or producer shall not be relieved of the requirement of giving bond under this subsection.

(e) Under regulations prescribed by the Commissioner with the approval of the Secretary, records required to be kept with respect to taxes under section 3413, or this section, and returns, reports, and statements with respect to such taxes filed with the Commissioner or a collector, shall be open to inspection by such officers of any State or Territory or political subdivision thereof or the District of Columbia as shall be charged with the enforcement or collection of any tax on gasoline or lubricating oils. The Commissioner and each collector shall furnish to any of such officers, upon written request, certified copies of any such statements, reports, or returns filed in his office upon the payment of a fee of \$1 for each one hundred words or fraction thereof in the copy or copies requested. (53 Stat. 413.)

**INCREASE OF RATE AFTER JUNE 30, 1940, AND BEFORE  
JULY 1, 1945**

Rate of tax on gasoline is increased from 1 cent to 1½ cents by section 1650 of this title.

**DERIVATION**

Act June 6, 1932, ch. 209, § 617, 47 Stat. 266, as amended by act May 10, 1934, ch. 277, § 603 (b-d), 48 Stat. 764, 765.

**§ 3413. Tax on lubricating oils.**

There shall be imposed upon lubricating oils sold in the United States by the manufacturer or producer a tax at the rate of 4 cents a gallon, to be paid by the manufacturer or producer. Every person liable for tax under this section shall register and file bond as provided in section 3412 (d). Under regulations prescribed by the Commissioner with the approval of the Secretary, no tax shall be imposed under this section upon lubricating oils sold to a manufacturer or producer of lubricating oils for resale by him, but for the purposes of this chapter such vendee shall be considered the manufacturer or producer of such lubricating oils. (53 Stat. 414.)

**INCREASE OF RATE AFTER JUNE 30, 1940, AND BEFORE  
JULY 1, 1945**

Rate of tax on lubricating oils is increased from 4 cents to 4½ cents by section 1650 of this title.

**DERIVATION**

Act June 6, 1932, ch. 209, § 601 (c) (1), 47 Stat. 259, as amended by acts June 16, 1933, ch. 96, § 4 (b), 48 Stat. 265; May 10, 1934, ch. 277, § 603 (a), 48 Stat. 764.

**§ 3414. Publicity of returns.**

For provisions with respect to publicity of returns under this subchapter, see subsection (a) (2) of section 55. (53 Stat. 414.)

**§ 3415. Effective date of subchapter.**

This subchapter shall take effect on the first day of that calendar month occurring next after the enactment of this title. (53 Stat. 414.)

**SUBCHAPTER B.—IMPORT TAXES**

**PART I.—SPECIAL PROVISIONS**

**§ 3420. Imposition of tax.**

In addition to any other tax or duty imposed by law, there shall be imposed upon the following articles imported into the United States unless treaty provisions of the United States otherwise provide a tax at the rates specified in sections 3422 to 3425, inclusive. (53 Stat. 414.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 601 (a), (c), 47 Stat. 259.

Section number 3421 was not used by Congress in enacting the Internal Revenue Code.

**§ 3422. Petroleum and derivatives.**

Crude petroleum, ½ cent per gallon; fuel oil derived from petroleum, gas oil derived from petroleum, and all liquid derivatives of crude petroleum, except lubricating oil and gasoline or other motor fuel, ½ cent per gallon; gasoline or other motor fuel, 2½ cents per gallon; lubricating oil, 4 cents per gallon; paraffin and other petroleum wax products, 1 cent per pound. The tax on the articles described in this section shall apply only with respect to the importation of such articles. (53 Stat. 414.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 601 (c) (4), 47 Stat. 260.

**§ 3423. Coal.**

Coal of all sizes, grades, and classifications (except culm and duff), coke manufactured therefrom; and coal or coke briquettes, 10 cents per 100 pounds. The tax on the articles described in this section shall apply only with respect to the importation of such articles, and shall not be imposed upon any such article if during the preceding calendar year the exports of the articles described in this section from the United States to the country from which such article is imported have been greater in quantity than the imports into the United States from such country of the articles described in this section. (53 Stat. 414.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 601 (c) (5), 47 Stat. 260.

**§ 3424. Lumber.**

(a) Lumber, rough, or planed or dressed on one or more sides, except flooring made of maple (except Japanese maple), birch, and beech, \$3 per thousand feet, board measure; but the tax on the articles described in this section shall apply only with respect to the importation of such articles. The tax imposed by this subsection shall not apply to lumber of Northern white pine (*pinus strobus*), Norway pine (*pinus resinosa*), and Western white spruce.

(b) In determining board measure for the purposes of this section no deduction shall be made on account of planing, tonguing, and grooving. As used in this section, the term "lumber" includes sawed timber. This subsection shall apply (1) unless in conflict with any international obligation of

the United States or (2) if so in conflict, then on the termination of such obligation otherwise than in connection with the undertaking by the United States of a new obligation which continues such conflict. (53 Stat. 415.)

## DERIVATION

Act June 6, 1932, ch. 209, § 601 (c) (6), 47 Stat. 260, as amended by act May 28, 1938, ch. 289, § 704, 52 Stat. 570.

## § 3425. Copper.

Copper-bearing ores and concentrates and articles provided for in paragraph 316, 380, 381, 387, 1620, 1634, 1657, 1658, or 1659 of the Tariff Act of 1930, 4 cents per pound on the copper contained therein: *Provided*, That no tax under this section shall be imposed on copper in any of the foregoing which is lost in metallurgical processes: *Provided further*, That ores or concentrates usable as a flux or sulphur reagent in copper smelting and/or converting and having a copper content of not more than 15 per centum, when imported for fluxing purposes, shall be admitted free of said tax in an aggregate amount of not to exceed in any one year 15,000 tons of copper content. All articles dutiable under the Tariff Act of 1930, not provided for heretofore in this section, in which copper (including copper in alloys) is the component material of chief value, 3 cents per pound. All articles dutiable under the Tariff Act of 1930, not provided for heretofore in this section, containing 4 per centum or more of copper by weight, 3 per centum ad valorem or  $\frac{3}{4}$  of 1 cent per pound, whichever is the lower. The tax on the articles described in this section shall apply only with respect to the importation of such articles. The Secretary is authorized to prescribe all necessary regulations for the enforcement of the provisions of this section. (53 Stat. 415.)

## DERIVATION

Act June 6, 1932, ch. 209, § 601 (c) (7), 47 Stat. 260.

## PART II.—SPECIAL ADMINISTRATIVE PROVISIONS

## § 3430. Applicability of tariff provisions.

The tax imposed by section 3420 shall be levied, assessed, collected, and paid in the same manner as a duty imposed by the Tariff Act of 1930, 48 Stat. 590, 672 (U. S. C., Title 19, ch. 4) and shall be treated for the purposes of all provisions of law relating to the customs revenue as a duty imposed by such Act, except that—

(a) the value on which such tax shall be based shall be the sum of (1) the dutiable value (under section 503 of such Act) of the article, plus (2) the customs duties, if any, imposed thereon under any provision of law;

(b) for the purposes of section 489 of such Act (relating to additional duties in certain cases of undervaluation) such tax shall not be considered an ad valorem rate of duty or a duty based upon or regulated in any manner by the value of the article, and for the purposes of section 336 of such Act (the so-called flexible tariff provision) such tax shall not be considered a duty;

(c) no drawback of such tax (except tax paid upon the importation of an article described in sec-

tions 3422, 3423, 3424, and 3425) shall be allowed under section 313 (a), (b), or (f) of the Tariff Act of 1930 or any provision of law allowing a drawback of customs duties on articles manufactured or produced with the use of duty-paid materials;

(d) Such tax (except tax under sections 3422 to 3425, inclusive) shall be imposed in full notwithstanding any provision of law granting exemption from or reduction of duties to products of any possession of the United States; and for the purposes of taxes under section 3422 to 3425, inclusive, the term "United States" includes Puerto Rico. (53 Stat. 415.)

## DERIVATION

Act June 6, 1932, ch. 209, § 601 (b) (1, 2, 4, 5), 47 Stat. 259, as amended by act May 28, 1938, ch. 289, § 702 (b), 52 Stat. 569.

## § 3431. Rules and regulations.

The Secretary shall prescribe and publish all needful rules and regulations for the enforcement of this subchapter. (53 Stat. 416.)

## DERIVATION

Act June 6, 1932, ch. 209, § 628, 47 Stat. 289.

## § 3432. Cross reference.

For tax on importation of sugar, see section 3500. (53 Stat. 416.)

## SUBCHAPTER C.—GENERAL ADMINISTRATIVE PROVISIONS

## § 3440. Definition of sale.

For the purposes of this chapter, the lease of an article shall be considered the sale of such article. (53 Stat. 416.)

## DERIVATION

Act June 6, 1932, ch. 209, § 618, 47 Stat. 267.

## § 3441. Sale price.

(a) In determining, for the purposes of this chapter, the price for which an article is sold, there shall be included any charge for coverings and containers of whatever nature, and any charge incident to placing the article in condition packed ready for shipment, but there shall be excluded the amount of tax imposed by this chapter, whether or not stated as a separate charge. A transportation, delivery, insurance, installation, or other charge (not required by the foregoing sentence to be included) shall be excluded from the price only if the amount thereof is established to the satisfaction of the Commissioner, in accordance with the regulations.

(b) If an article is—

(1) sold at retail;

(2) sold on consignment; or

(3) sold (otherwise than through an arm's length transaction) at less than the fair market price;

the tax under this chapter shall (if based on the price for which the article is sold) be computed on the price for which such articles are sold, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Commissioner.

(c) In the case of (1) a lease, (2) a contract for the sale of an article wherein it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date not-



withstanding partial payment by installments, or (3) a conditional sale, there shall be paid upon each payment with respect to the article that portion of the total tax which is proportionate to the portion of the total amount to be paid represented by such payment.

(d) The provisions of this section shall not be applicable with respect to the tax imposed by section 3411. (53 Stat. 416.)

#### INCREASE OF TAX

Increase of tax by section 1650 (a) not to apply where lease, contract of sale, or conditional sale, and delivery thereunder to which subsec. (c) of this section applies was made before June 1, 1940, see section 1650 (b) of this title.

#### DERIVATION

Subsections (a)-(c) were from act June 6, 1932, ch. 209, § 619 (a)-(c), 47 Stat. 267.

Subsection (d) was from act June 16, 1933, ch. 96, § 6 (a), 48 Stat. 256.

#### § 3442. Tax-free sales.

Under regulations prescribed by the Commissioner with the approval of the Secretary, no tax under this chapter shall be imposed with respect to the sale of any article—

(1) for use by the vendee as material in the manufacture or production of, or as a component part of, an article enumerated in this chapter;

(2) for resale by the vendee for such use by his vendee, if such article is in due course so resold;

(3) for the exclusive use of the United States, any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia.

For the purposes of this chapter the manufacturer or producer to whom an article is sold under paragraph (1) or resold under paragraph (2) shall be considered the manufacturer or producer of such article. The provisions of paragraphs (1) and (2) shall not apply with respect to tires or inner tubes. (53 Stat. 416.)

#### DERIVATION

Act June 6, 1932, ch. 209, § 620, as amended by acts June 16, 1933, ch. 96, § 4 (a), 48 Stat. 255; Aug. 30, 1935, ch. 829, § 401 (a), 49 Stat. 1025.

#### § 3443. Credits and refunds.

(a) A credit against tax under this chapter, or a refund, may be allowed or made—

(1) to a manufacturer or producer, in the amount of any tax under this chapter which has been paid with respect to the sale of any article (other than a tire or inner tube) purchased by him and used by him as material in the manufacture or production of, or as a component part of, an article with respect to which tax under this chapter has been paid, or which has been sold free of tax by virtue of section 3442, relating to tax-free sales.

(2) to any person who has paid tax under this chapter with respect to an article, when the price on which the tax was based is readjusted by reason of return or repossession of the article or a covering or container, or by a bona fide discount, rebate, or allowance; in the amount of that part of the tax proportionate to the part of the price which is refunded or credited.

(3) to a manufacturer, producer, or importer, in the amount of tax paid by him under this chapter with respect to the sale of any article to any vendee, if the manufacturer, producer, or importer has in his possession such evidence as the regulations may prescribe that—

(A) such article was, by any person—

(i) resold for the exclusive use of the United States, any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia;

(ii) used or resold for use as fuel supplies, ship's stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions;

(iii) in the case of products embraced in paragraph (2) of section 3412 (c) used or resold for use otherwise than as fuel for the propulsion of motor vehicles, motor boats, or airplanes, and otherwise than in the production of such fuel: *Provided, however*, That no credit or refund shall be allowed or made under this paragraph in the case of sales or uses of products commonly or commercially known or sold as gasoline, including casinghead and natural gasoline;

(iv) in the case of lubricating oils, used or resold for nonlubricating purposes.

(B) The manufacturer, producer, or importer has repaid or agreed to repay the amount of such tax to the ultimate vendor or has obtained the consent of the ultimate vendor to the allowance of the credit or refund.

(b) Credit or refund under subsection (a) shall be allowed or made only upon compliance with regulations prescribed by the Commissioner with the approval of the Secretary.

(c) Interest shall be allowed at the rate of 6 per centum per annum with respect to any amount of tax under this chapter credited or refunded, except that no interest shall be allowed with respect to any amount of tax credited or refunded under the provisions of subsection (a) hereof.

(d) No overpayment of tax under this chapter shall be credited or refunded (otherwise than under subsection (a)), in pursuance of a court decision or otherwise, unless the person who paid the tax establishes, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.

(1) that he has not included the tax in the price of the article with respect to which it was imposed, or collected the amount of tax from the vendee, or (2) that he has repaid the amount of the tax to the ultimate purchaser of the article, or unless he files with the Commissioner written consent of such ultimate purchaser to the allowance of the credit or refund. (53 Stat. 417.)

#### DERIVATION

Act June 6, 1932, ch. 209, § 621, 47 Stat. 267, as amended by act Aug. 30, 1935, ch. 829, § 401 (b), (c), 49 Stat. 1025, 1026

**§ 3444. Use by manufacturer, producer, or importer.****(a) If—**

(1) any person manufactures, produces, or imports an article (other than a tire or inner tube) and uses it (otherwise than as material in the manufacture or production of, or as a component part of, another article to be manufactured or produced by him which will be taxable under this chapter or sold free of tax by virtue of section 3442, relating to tax-free sales); or

(2) any person manufactures, produces, or imports a tire or inner tube and sells it on or in connection with, or with the sale of, an article taxable under section 3403 (a) or (b), relating to the tax on automobiles, or uses it;

he shall be liable for tax under this chapter in the same manner as if such article was sold by him, and the tax (if based on the price for which the article is sold) shall be computed on the price at which such or similar articles are sold, in the ordinary course of trade, by manufacturers, producers, or importers thereof, as determined by the Commissioner.

(b) The provisions of this section shall not be applicable with respect to the tax imposed by section 3411. (53 Stat. 418.)

**DERIVATION**

Subsection (a) was from act June 6, 1932, ch. 209, § 622, 47 Stat. 268.

Subsection (b) was from act June 16, 1933, ch. 96, § 6 (a), 48 Stat. 256.

**§ 3445. Sales by others than manufacturer, producer, or importer.**

In case any person acquires from the manufacturer, producer, or importer of an article, by operation of law or as a result of any transaction not taxable under this chapter, the right to sell such article, the sale of such article by such person shall be taxable under this chapter as if made by the manufacturer, producer, or importer, and such person shall be liable for the tax. (53 Stat. 418.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 623, 47 Stat. 268.

**§ 3446. Exemption of articles manufactured or produced by Indians.**

No tax shall be imposed under this chapter on any article of native Indian handicraft manufactured or produced by Indians on Indian reservations, or in Indian schools, or by Indians under the jurisdiction of the United States Government in Alaska. (53 Stat. 418.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 624, 47 Stat. 269.

**§ 3447. Contracts prior to May 1, 1932.**

(a) If (1) any person has, prior to May 1, 1932, made a bona fide contract for the sale, after the tax takes effect, of any article in respect of the sale of which a tax is imposed under this chapter, or in respect of which a tax is imposed under this subsection, and (2) such contract does not permit the adding to the amount to be paid under such contract, of the whole of such tax, then (unless the contract prohibits such addition) the vendee shall, in lieu of the vendor, pay so much of the tax as is not so permitted to be

added to the contract price. If a contract of the character above described was made with the United States, no tax shall be collected under this chapter. If any article has, under a contract of the character above described, been delivered, prior to June 21, 1932, to any person (other than a dealer or other than a person intending to use the article as material in the manufacture or production of another article, or to sell it on or in connection with, or with the sale of, another article), no tax shall be collected under this chapter.

(b) The taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated, and shall be collected, returned, and paid to the United States by such vendor in the same manner as provided in section 3467. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner, who shall cause collection of such taxes to be made from the vendee.

(c) The provisions of this section shall not be applicable with respect to the tax imposed by section 3411. (53 Stat. 418.)

**DERIVATION**

Subsection (a) was from act June 6, 1932, ch. 209, § 625 (a), 47 Stat. 269, as amended by act June 13, 1932, ch. 246, 47 Stat. 302.

Subsection (b) was from act June 6, 1932, ch. 209, § 625 (b), 47 Stat. 269.

Subsection (c) was from act June 16, 1933, ch. 96, § 6 (a), 48 Stat. 256.

**§ 3448. Return and payment of manufacturers' taxes.**

(a) Every person liable for any tax imposed by this chapter other than taxes on importation shall make monthly returns under oath in duplicate and pay the taxes imposed by this chapter to the collector for the district in which is located his principal place of business or, if he has no principal place of business in the United States, then to the collector at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

(b) The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time when the tax became due until paid. (53 Stat. 419.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 626, 47 Stat. 269, as amended by act Aug. 30, 1935, ch. 829, § 404, 49 Stat. 1027.

**§ 3449. Applicability of administrative provisions.**

All provisions of law (including penalties) applicable in respect of the taxes imposed by section 2700 shall, in so far as applicable and not inconsistent with this chapter, be applicable in respect of the taxes imposed by this chapter. (53 Stat. 419.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 627, 47 Stat. 269.

**§ 3450. Rules and regulations.**

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules

and regulations for the enforcement of this chapter in so far as it relates to the taxes on articles sold by the manufacturer, producer, or importer. (53 Stat. 419.)

## DERIVATION

Act June 6, 1932, ch. 209, § 628, 47 Stat. 269.

### § 3451. Exemption from tax of certain supplies for vessels.

Under regulations prescribed by the Commissioner, with the approval of the Secretary, no tax under this chapter shall be imposed upon any article sold for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. Articles manufactured or produced with the use of articles upon the importation of which tax has been paid under this chapter, if laden for use as supplies on such vessels, shall be held to be exported for the purposes of section 3430. The term "vessels" as used in this section includes civil aircraft employed in foreign trade or trade between the United States and any of its possessions, and the term "vessels of war of the United States or of any foreign nation" includes aircraft owned by the United States or by any foreign nation and constituting a part of the armed forces thereof. The privileges granted under this section in respect of civil aircraft employed in foreign trade or trade between the United States and any of its possessions, in respect of aircraft registered in a foreign country, shall be allowed only if the Secretary of the Treasury has been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of the Treasury is advised by the Secretary of Commerce that he has found that a foreign country has discontinued or will discontinue the allowance of such privileges, the privileges granted under this section shall not apply thereafter in respect of civil aircraft registered in that foreign country and employed in foreign trade or trade between the United States and any of its possessions. (53 Stat. 419.)

## DERIVATION

Act June 6, 1932, ch. 209, § 630, as added by act June 16, 1933, ch. 96, § 5, 48 Stat. 255, and amended by act May 28, 1938, ch. 289, § 705, 52 Stat. 570.

### § 3452. Expiration date.

No sale or importation after June 30, 1945 (or after July 31, 1945, in the case of articles taxable under section 3403, relating to the tax on automobiles, etc., or section 3400, relating to the tax on tires and inner tubes), shall be taxable under this chapter. (53 Stat. 420; June 29, 1939, 10 p. m., E. S. T., ch. 247, title I, § 1, 53 Stat. 862; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, § 209, 54 Stat. 522.)

## DERIVATION

Act June 6, 1932, ch. 209, § 629, 47 Stat. 270, as amended by acts June 16, 1933, ch. 90, § 212, 48 Stat. 206; June 16,

1933, ch. 96, § 1, 48 Stat. 254; June 28, 1935, ch. 333, 49 Stat. 431; June 29, 1937, ch. 402, 50 Stat. 358.

## 1940 AMENDMENT

Act June 25, 1940, cited to text, struck out "1941" and inserted in lieu thereof "1945."

## 1939 AMENDMENT

Date "1941" was substituted for "1939" by act June 29, 1939, cited to text.

## CROSS REFERENCE

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain government obligations, see note under section 757b of Title 31, Money and Finance.

## Chapter 30.—TRANSPORTATION AND COMMUNICATION

### SUBCHAPTER A.—TRANSPORTATION OF OIL BY PIPE LINE

Sec.

3460. Tax.

3461. Returns.

3462. Publicity of returns.

### SUBCHAPTER B.—TELEGRAPH, TELEPHONE, RADIO, AND CABLE FACILITIES

3465. Imposition and rate of tax.

3466. Exemption from tax.

3467. Returns and payment.

3468. Cross reference.

### SUBCHAPTER C.—ADMINISTRATIVE PROVISIONS

3470. Payment of taxes.

3471. Refunds and credits.

3472. Regulations.

3473. Applicability of administrative provisions.

3474. Effective date of chapter.

### SUBCHAPTER A.—TRANSPORTATION OF OIL BY PIPE LINE

#### § 3460. Tax—(a) Computation and payment.

There shall be imposed upon all transportation of crude petroleum and liquid products thereof by pipe line originating before July 1, 1945—

(1) A tax equivalent to 4 per centum of the amount paid for such transportation, to be paid by the person furnishing such transportation.

(2) In case no charge for transportation is made, either by reason of ownership of the commodity transported or for any other reason, a tax equivalent to 4 per centum of the fair charge for such transportation, to be paid by the person furnishing such transportation.

(3) If (other than in the case of an arm's length transaction) the payment for transportation is less than the fair charge therefor, a tax equivalent to 4 per centum of such fair charge, to be paid by the person furnishing such transportation.

#### (b) Fair charge defined.

For the purposes of this section, the fair charge for transportation shall be computed—

(1) from actual bona fide rates or tariffs, or

(2) if no such rates or tariffs exist, then on the basis of the actual bona fide rates or tariffs of other pipe lines for like services, as determined by the Commissioner, or

(3) if no such rates or tariffs exist, then on the basis of a reasonable charge for such transportation, as determined by the Commissioner. (53 Stat. 421;

**§ 3444. Use by manufacturer, producer, or importer.****(a) If—**

(1) any person manufactures, produces, or imports an article (other than a tire or inner tube) and uses it (otherwise than as material in the manufacture or production of, or as a component part of, another article to be manufactured or produced by him which will be taxable under this chapter or sold free of tax by virtue of section 3442, relating to tax-free sales); or

(2) any person manufactures, produces, or imports a tire or inner tube and sells it on or in connection with, or with the sale of, an article taxable under section 3403 (a) or (b), relating to the tax on automobiles, or uses it;

he shall be liable for tax under this chapter in the same manner as if such article was sold by him, and the tax (if based on the price for which the article is sold) shall be computed on the price at which such or similar articles are sold, in the ordinary course of trade, by manufacturers, producers, or importers thereof, as determined by the Commissioner.

(b) The provisions of this section shall not be applicable with respect to the tax imposed by section 3411. (53 Stat. 418.)

**DERIVATION**

Subsection (a) was from act June 6, 1932, ch. 209, § 622, 47 Stat. 268.

Subsection (b) was from act June 16, 1933, ch. 96, § 6 (a), 48 Stat. 256.

**§ 3445. Sales by others than manufacturer, producer, or importer.**

In case any person acquires from the manufacturer, producer, or importer of an article, by operation of law or as a result of any transaction not taxable under this chapter, the right to sell such article, the sale of such article by such person shall be taxable under this chapter as if made by the manufacturer, producer, or importer, and such person shall be liable for the tax. (53 Stat. 418.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 623, 47 Stat. 268.

**§ 3446. Exemption of articles manufactured or produced by Indians.**

No tax shall be imposed under this chapter on any article of native Indian handicraft manufactured or produced by Indians on Indian reservations, or in Indian schools, or by Indians under the jurisdiction of the United States Government in Alaska. (53 Stat. 418.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 624, 47 Stat. 269.

**§ 3447. Contracts prior to May 1, 1932.**

(a) If (1) any person has, prior to May 1, 1932, made a bona fide contract for the sale, after the tax takes effect, of any article in respect of the sale of which a tax is imposed under this chapter, or in respect of which a tax is imposed under this subsection, and (2) such contract does not permit the adding to the amount to be paid under such contract, of the whole of such tax, then (unless the contract prohibits such addition) the vendee shall, in lieu of the vendor, pay so much of the tax as is not so permitted to be

added to the contract price. If a contract of the character above described was made with the United States, no tax shall be collected under this chapter. If any article has, under a contract of the character above described, been delivered, prior to June 21, 1932, to any person (other than a dealer or other than a person intending to use the article as material in the manufacture or production of another article, or to sell it on or in connection with, or with the sale of, another article), no tax shall be collected under this chapter.

(b) The taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated, and shall be collected, returned, and paid to the United States by such vendor in the same manner as provided in section 3467. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner, who shall cause collection of such taxes to be made from the vendee.

(c) The provisions of this section shall not be applicable with respect to the tax imposed by section 3411. (53 Stat. 418.)

**DERIVATION**

Subsection (a) was from act June 6, 1932, ch. 209, § 625 (a), 47 Stat. 269, as amended by act June 13, 1932, ch. 246, 47 Stat. 302.

Subsection (b) was from act June 6, 1932, ch. 209, § 625 (b), 47 Stat. 269.

Subsection (c) was from act June 16, 1933, ch. 96, § 6 (a), 48 Stat. 256.

**§ 3448. Return and payment of manufacturers' taxes.**

(a) Every person liable for any tax imposed by this chapter other than taxes on importation shall make monthly returns under oath in duplicate and pay the taxes imposed by this chapter to the collector for the district in which is located his principal place of business or, if he has no principal place of business in the United States, then to the collector at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

(b) The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time when the tax became due until paid. (53 Stat. 419.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 626, 47 Stat. 269, as amended by act Aug. 30, 1935, ch. 829, § 404, 49 Stat. 1027.

**§ 3449. Applicability of administrative provisions.**

All provisions of law (including penalties) applicable in respect of the taxes imposed by section 2700 shall, in so far as applicable and not inconsistent with this chapter, be applicable in respect of the taxes imposed by this chapter. (53 Stat. 419.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 627, 47 Stat. 269.

**§ 3450. Rules and regulations.**

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules

and regulations for the enforcement of this chapter in so far as it relates to the taxes on articles sold by the manufacturer, producer, or importer. (53 Stat. 419.)

#### DERIVATION

Act June 6, 1932, ch. 209, § 628, 47 Stat. 269.

### § 3451. Exemption from tax of certain supplies for vessels.

Under regulations prescribed by the Commissioner, with the approval of the Secretary, no tax under this chapter shall be imposed upon any article sold for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. Articles manufactured or produced with the use of articles upon the importation of which tax has been paid under this chapter, if laden for use as supplies on such vessels, shall be held to be exported for the purposes of section 3430. The term "vessels" as used in this section includes civil aircraft employed in foreign trade or trade between the United States and any of its possessions, and the term "vessels of war of the United States or of any foreign nation" includes aircraft owned by the United States or by any foreign nation and constituting a part of the armed forces thereof. The privileges granted under this section in respect of civil aircraft employed in foreign trade or trade between the United States and any of its possessions, in respect of aircraft registered in a foreign country, shall be allowed only if the Secretary of the Treasury has been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of the Treasury is advised by the Secretary of Commerce that he has found that a foreign country has discontinued or will discontinue the allowance of such privileges, the privileges granted under this section shall not apply thereafter in respect of civil aircraft registered in that foreign country and employed in foreign trade or trade between the United States and any of its possessions. (53 Stat. 419.)

#### DERIVATION

Act June 6, 1932, ch. 209, § 630, as added by act June 16, 1933, ch. 96, § 5, 48 Stat. 255, and amended by act May 28, 1938, ch. 289, § 705, 52 Stat. 570.

### § 3452. Expiration date.

No sale or importation after June 30, 1945 (or after July 31, 1945, in the case of articles taxable under section 3403, relating to the tax on automobiles, etc., or section 3400, relating to the tax on tires and inner tubes), shall be taxable under this chapter. (53 Stat. 420; June 29, 1939, 10 p. m., E. S. T., ch. 247, title I, § 1, 53 Stat. 862; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, § 209, 54 Stat. 522.)

#### DERIVATION

Act June 6, 1932, ch. 209, § 629, 47 Stat. 270, as amended by acts June 16, 1933, ch. 90, § 212, 48 Stat. 206; June 16,

1933, ch. 96, § 1, 48 Stat. 254; June 28, 1935, ch. 333, 49 Stat. 431; June 29, 1937, ch. 402, 50 Stat. 358.

#### 1940 AMENDMENT

Act June 25, 1940, cited to text, struck out "1941" and inserted in lieu thereof "1945."

#### 1939 AMENDMENT

Date "1941" was substituted for "1939" by act June 29, 1939, cited to text.

#### CROSS REFERENCE

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain government obligations, see note under section 757b of Title 31, Money and Finance.

## Chapter 30.—TRANSPORTATION AND COMMUNICATION

### SUBCHAPTER A.—TRANSPORTATION OF OIL BY PIPE LINE

Sec.

3460. Tax.

3461. Returns.

3462. Publicity of returns.

### SUBCHAPTER B.—TELEGRAPH, TELEPHONE, RADIO, AND CABLE FACILITIES

3465. Imposition and rate of tax.

3466. Exemption from tax.

3467. Returns and payment.

3468. Cross reference.

### SUBCHAPTER C.—ADMINISTRATIVE PROVISIONS

3470. Payment of taxes.

3471. Refunds and credits.

3472. Regulations.

3473. Applicability of administrative provisions.

3474. Effective date of chapter.

### SUBCHAPTER A.—TRANSPORTATION OF OIL BY PIPE LINE

#### § 3460. Tax.—(a) Computation and payment.

There shall be imposed upon all transportation of crude petroleum and liquid products thereof by pipe line originating before July 1, 1945—

(1) A tax equivalent to 4 per centum of the amount paid for such transportation, to be paid by the person furnishing such transportation.

(2) In case no charge for transportation is made, either by reason of ownership of the commodity transported or for any other reason, a tax equivalent to 4 per centum of the fair charge for such transportation, to be paid by the person furnishing such transportation.

(3) If (other than in the case of an arm's length transaction) the payment for transportation is less than the fair charge therefor, a tax equivalent to 4 per centum of such fair charge, to be paid by the person furnishing such transportation.

#### (b) Fair charge defined.

For the purposes of this section, the fair charge for transportation shall be computed—

(1) from actual bona fide rates or tariffs, or

(2) if no such rates or tariffs exist, then on the basis of the actual bona fide rates or tariffs of other pipe lines for like services, as determined by the Commissioner, or

(3) if no such rates or tariffs exist, then on the basis of a reasonable charge for such transportation, as determined by the Commissioner. (53 Stat. 421;

June 29, 1939, 10 p. m., E. S. T., ch. 247, title I, § 1, 53 Stat. 862; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, § 209, 54 Stat. 522.)

**INCREASE OF RATE AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945**

Rate of tax on transportation of oil under subsections (a) (1), (2), and (3) is increased from 4 percent to 4½ percent by section 1650 of this title.

**DERIVATION**

Act June 6, 1932, ch. 209, § 731 (a), 47 Stat. 275, as amended by acts June 16, 1933, ch. 90, § 212, 48 Stat. 206; June 28, 1935, ch. 333, 49 Stat. 431; June 29, 1937, ch. 402, 50 Stat. 358.

**1940 AMENDMENT**

Subsection (a) was amended by act June 25, 1940, cited to text, which struck out "1941" and inserted in lieu thereof "1945."

**1939 AMENDMENT**

Subsection (a) was amended by act June 29, 1939, cited to text, by substituting "1941" for "1939."

**CROSS REFERENCE**

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain Government obligations, see note under section 757b of Title 31, Money and Finance.

**§ 3461. Returns.**

Every person liable for the tax imposed under section 3460 shall make monthly returns under oath in duplicate and pay such taxes to the collector for the district in which is located his principal place of business or, if he has no principal place of business in the United States, then to the collector at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe. (53 Stat. 422.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 731 (c), 47 Stat. 276.

**§ 3462. Publicity of returns.**

For provisions with respect to publicity of returns under this subchapter, see subsection (a) (2) of section 55. (53 Stat. 422.)

**SUBCHAPTER B.—TELEGRAPH, TELEPHONE, RADIO, AND CABLE FACILITIES**

**§ 3465. Imposition and rate of tax.**

There shall be imposed—

(a) in the case of each telegraph, telephone, cable, or radio dispatch, message, or conversation, which originates before July 1, 1945, within the United States, a tax at the following rates:

(1) Telephone conversations for which the charge is 50 cents or more and less than \$1, 10 cents; for which the charge is \$1 or more and less than \$2, 15 cents; for which the charge is \$2 or more, 20 cents;

(2) telegraph dispatches and messages, 5 per centum of the amount charged therefor; and

(3) cable and radio dispatches and messages, 10 cents; but only one payment of such tax shall be required, notwithstanding the lines or stations of one or more persons are used for the transmission of such dispatch, message, or conversation; and

(b) a tax equivalent to 5 per centum of the amount paid to any telegraph or telephone company for any leased wire or talking circuit special service fur-

nished before July 1, 1945. This subsection shall not apply to the amount paid for so much of such service as is utilized in the conduct, by a common carrier or telephone or telegraph company or radio broadcasting station or net work, of its business as such. (53 Stat. 422; June 29, 1939, 10 p. m., E. S. T., ch. 247, title I, § 1, 53 Stat. 862; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, § 209, 54 Stat. 522.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 701 (a), 47 Stat. 270, as amended by acts June 16, 1933, ch. 90, § 212, 48 Stat. 206; June 28, 1935, ch. 333, 49 Stat. 431; June 29, 1937, ch. 402, 50 Stat. 358.

**1940 AMENDMENT**

Act June 25, 1940, cited to text, struck out "1941" and inserted in lieu thereof "1945."

**1939 AMENDMENT**

Date "1941" was substituted for "1939" by act June 29, 1939, cited to text.

**CROSS REFERENCE**

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain government obligations, see note under section 757b of Title 31, Money and Finance.

**§ 3466. Exemption from tax.**

No tax shall be imposed under section 3465 upon any payment received for services or facilities furnished to the United States or to any State or Territory, or political subdivision thereof, or the District of Columbia, nor upon any payment received from any person for services or facilities utilized in the collection of news for the public press or radio broadcasting, or in the dissemination of news through the public press or by means of radio broadcasting, if the charge for such services or facilities is billed in writing to such person. The right to exemption under this section shall be evidenced in such manner as the Commissioner with the approval of the Secretary may by regulation prescribe. (53 Stat. 422.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 701 (b), 47 Stat. 270, as amended by act May 28, 1938, ch. 289, § 708, 52 Stat. 571.

**§ 3467. Returns and payment.**

(a) The taxes imposed by section 3465 shall be paid by the person paying for the services or facilities.

(b) Each person receiving any payments specified in section 3465 shall collect the amount of the tax imposed by such section from the person making such payments, and shall on or before the last day of each month make a return, under oath, for the preceding month, and pay the taxes so collected, to the collector of the district in which his principal place of business is located, or if he has no principal place of business in the United States, to the collector at Baltimore, Maryland. Such returns shall contain such information and be made in such manner as the Commissioner with the approval of the Secretary may by regulation prescribe. The Commissioner may extend the time for making returns and paying the taxes collected, under such rules and regulations as he shall prescribe with the approval of the Secretary, but no such extension shall be for more than 90 days. (53 Stat. 422.)

## DERIVATION

Act June 6, 1932, ch. 209, § 702, 47 Stat. 270.

## § 3468. Cross reference.

For enforcement of liability for taxes collected, see section 3661.

(53 Stat. 423.)

## SUBCHAPTER C.—ADMINISTRATIVE PROVISIONS

## § 3470. Payment of taxes.

The taxes imposed by this chapter shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time the tax became due until paid. (53 Stat. 423.)

## DERIVATION

Acts June 6, 1932, ch. 209, § 771, 47 Stat. 277; Aug. 30, 1935, ch. 829, § 404, 49 Stat. 1027.

## § 3471. Refunds and credits.

(a) Credit or refund of any overpayment of tax imposed by subchapter B may be allowed to the person who collected the tax and paid it to the United States if such person establishes, to the satisfaction of the Commissioner, under such regulations as the Commissioner with the approval of the Secretary may prescribe, that he has repaid the amount of such tax to the person from whom he collected it, or obtained the consent of such person to the allowance of such credit or refund.

(b) Any person entitled to refund of tax under this chapter paid, or collected and paid, to the United States by him may take credit therefor against taxes due upon any monthly return.

(c) Any person making a refund of any payment on which tax under subchapter B has been collected, may repay therewith the amount of tax collected on such payment, and the amount of tax so repaid may be credited against the tax under any subsequent return. (53 Stat. 423.)

## DERIVATION

Act June 6, 1932, ch. 209, § 772, 47 Stat. 277.

## § 3472. Regulations.

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of subchapters A and B of this chapter. (53 Stat. 423.)

## DERIVATION

Act June 6, 1932, ch. 209, § 773, 47 Stat. 278.

## § 3473. Applicability of administrative provisions.

All provisions of law (including penalties) applicable in respect of the taxes imposed by section 1700, shall, in so far as applicable and not inconsistent with this chapter, be applicable in respect of the taxes imposed by this chapter. (53 Stat. 423.)

## DERIVATION

Act June 6, 1932, ch. 209, § 774, 47 Stat. 278.

## § 3474. Effective date of chapter.

This chapter shall take effect on the first day of that calendar month occurring next after the enactment of this title. (53 Stat. 423.)

## Chapter 31.—DOCUMENTS AND OTHER INSTRUMENTS

## Sec.

- 3480. Imposition of tax.
- 3481. Transfer of bonds.
- 3482. Conveyances.
- 3483. Administrative provisions.

## § 3480. Imposition of tax.

There shall be levied, collected, and paid, for and in respect of the several bonds and other documents, instruments, matters, and things mentioned and described in sections 3481 and 3482, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, are written or printed, the several taxes specified in such sections. (53 Stat. 424.)

## DERIVATION

Act Feb. 26, 1926, ch. 27, § 800, 44 Stat. 99.

## SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 800, 43 Stat. 331.

## § 3481. Transfer of bonds—(a) Imposition of tax.

On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to any of the instruments mentioned or described in section 1801 and of a kind the issue of which is taxable thereunder, whether made by any assignment in blank or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale (whether entitling the holder in any manner to the benefit of such instrument or not), on each \$100 of face value or fraction thereof, 4 cents: *Provided*, That it is not intended by this chapter to impose a tax upon an agreement evidencing a deposit of instruments as collateral security for money loaned thereon, which instruments are not actually sold, nor upon the delivery or transfer for such purpose of instruments so deposited: *Provided further*, That the tax shall not be imposed on deliveries or transfers of bonds in connection with a reorganization (as defined in section 112 of the Revenue Act of 1932, 47 Stat. 196) if any of the gain or loss from the exchange or distribution involved in the delivery or transfer is not recognized under the income tax law applicable to the year in which the delivery or transfer is made: *Provided further*, That the tax shall not be imposed upon deliveries or transfers to a broker for sale, nor upon deliveries or transfers by a broker to a customer for whom and upon whose order he has purchased same, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: *Provided further*, That the tax shall not be imposed upon deliveries or transfers from a fiduciary to a nominee of such fiduciary, or from one nominee of such fiduciary to another, if such instruments continue



to be held by such nominee for the same purpose for which they would be held if retained by such fiduciary, or from the nominee to such fiduciary, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: *Provided further*, That where the change of ownership is by transfer of the instrument the stamp shall be placed upon the instrument; and in cases of an agreement to sell or where the transfer is by delivery of the instrument assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. Any person liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person, who makes any such sale, or who in pursuance of any such sale delivers any certificate or evidence of the sale of any such instrument, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding \$1,000, or be imprisoned not more than six months, or both.

The tax shall not be imposed upon deliveries or transfers made after June 30, 1938, of instruments—

(1) From the owner to a custodian if under a written agreement between the parties the instruments are to be held or disposed of by such custodian for, and subject at all times to the instructions of, the owner; or from such custodian to such owner;

(2) From such custodian to a registered nominee of such custodian, or from one such nominee to another such nominee, if in either case the instruments continue to be held by such nominee for the same purpose for which they would be held if retained by such custodian; or from such nominee to such custodian.

No exemption shall be granted under this paragraph unless the deliveries or transfers are accompanied by a certificate setting forth such facts as the Commissioner, with the approval of the Secretary, may by regulation prescribe as necessary for the evidencing of the right to such exemption. No delivery or transfer to a nominee shall be exempt under this paragraph unless such nominee, in accordance with regulations prescribed by the Commissioner, with the approval of the Secretary, is registered with the Commissioner.

Any person who, with intent to evade the tax provided in this subdivision, falsely makes a certificate accompanying any delivery or transfer shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$1,000, or imprisoned not more than six months, or both.

(b) Expiration of tax.

Subsection (a) is repealed effective July 1, 1945. (53 Stat. 424; June 29, 1939, 10 p. m., E. S. T., ch. 247,

title I, § 1, 53 Stat. 862; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, § 209, 54 Stat. 522.)

#### INCREASE OF RATE AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945

Rate of tax on transfer of bonds under subsection (a) is increased from 4 cents to 5 cents by section 1650 of this title.

#### DERIVATION

Subsection (a) was from act Feb. 26, 1926, ch. 27, schedule (A) (9), as added by act June 6, 1932, ch. 209, § 724 (a), 47 Stat. 274, and amended by act May 28, 1938, ch. 289, § 711 (b), (c), 52 Stat. 572.

Subsection (b) was from act June 6, 1932, ch. 209, § 724 (c), 47 Stat. 274, as amended by acts June 16, 1933, ch. 90, § 212, 48 Stat. 206; June 28, 1935, ch. 333, 49 Stat. 431; June 29, 1937, ch. 402, 50 Stat. 358.

See derivation note to section 3480 of this title.

#### 1940 AMENDMENT

Subsection (b) was amended by act June 25, 1940, cited to text, which struck out "1941" and inserted in lieu thereof "1945."

#### CROSS REFERENCES

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain Government obligations, see note under section 757b of Title 31, Money and Finance.

#### § 3482. Conveyances.

Deed, instrument, or writing, delivered before July 1, 1945 (unless deposited in escrow before April 1, 1932), whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds \$100 and does not exceed \$500, 50 cents; and for each additional \$500 or fractional part thereof, 50 cents. This section shall not apply to any instrument or writing given to secure a debt. (53 Stat. 425; June 29, 1939, 10 p. m., E. S. T., ch. 247, title I, § 1, 53 Stat. 862; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title II, § 209, 54 Stat. 522.)

#### INCREASE OF RATE AFTER JUNE 30, 1940, AND BEFORE JULY 1, 1945

Rate of tax on conveyances is increased from 50 cents to 55 cents by section 1650 of this title.

#### DERIVATION

Act Feb. 26, 1926, ch. 27, schedule (A) (8), as added by act June 6, 1932, ch. 209, § 725, 47 Stat. 275, and amended by acts June 16, 1933, ch. 90, § 1, 48 Stat. 254; June 28, 1935, ch. 333, 49 Stat. 431; June 29, 1937, ch. 402, 50 Stat. 358.

See derivation note to section 3480 of this title.

#### 1940 AMENDMENT

Act June 25, 1940, cited to text, struck out "1941" and inserted in lieu thereof "1945."

#### 1939 AMENDMENT

Date "1941" was substituted for "1939" by act June 29, 1939, cited to text.

#### CROSS REFERENCE

Extra taxes realized from increase in rate by act June 25, 1940, cited to text, as special fund for retirement of certain Government obligations, see note under section 757b of Title 31, Money and Finance.

**§ 3483. Administrative provisions.**

Sections 1808 and 1809 of subchapter A of chapter 11 and subchapters B, C, and E of such chapter shall, insofar as applicable and not inconsistent with this chapter, be applicable in respect of the taxes imposed by this chapter. (53 Stat. 425.)

**DERIVATION**

Acts Feb. 26, 1926, ch. 27, title VIII, 44 Stat. 99; June 6, 1932, ch. 209, §§ 724, 725, 47 Stat. 274, 275.

**Chapter 32.—SUGAR****SUBCHAPTER A.—MANUFACTURE****Sec.**

- 3490. Tax.
- 3491. Returns and payment of tax.
- 3492. Persons classed as manufacturers.
- 3493. Exportation.
- 3494. Use as livestock feed or for distillation of alcohol.
- 3495. Addition to tax in case of nonpayment.
- 3496. Other laws applicable.
- 3497. Regulations.
- 3498. Effective date of subchapter.

**SUBCHAPTER B.—IMPORTATION**

- 3500. Rate of tax.
- 3501. Assessment and payment.

**SUBCHAPTER C.—GENERAL PROVISIONS**

- 3506. Penalty for officials investing or speculating in sugar.
- 3507. Definitions.
- 3508. Termination of taxes.

**SUBCHAPTER A.—MANUFACTURE****§ 3490. Tax—(a) Rate.**

Upon manufactured sugar manufactured in the United States, there shall be levied, collected and paid a tax, to be paid by the manufacturer at the following rates:

(1) On all manufactured sugar testing by the polariscope ninety-two sugar degrees, 0.465 cent per pound, and for each additional sugar degree shown by the polariscopic test, 0.00875 cent per pound additional, and fractions of a degree in proportion;

(2) On all manufactured sugar testing by the polariscope less than ninety-two sugar degrees, 0.5144 cent per pound of the total sugars therein.

**(b) Exemption.**

No tax shall be required to be paid upon the manufacture of manufactured sugar by, or for, the producer of the sugar beets or sugarcane from which such manufactured sugar was derived, for consumption by the producer's own family, employees, or household. (53 Stat. 426.)

**DERIVATION**

Act Sept. 1, 1937, ch. 898, title IV, § 402 (a), (d), 50 Stat. 913.

**CROSS REFERENCE**

Continuance of taxes, see section 1248 (d) of Title 48, Territories and Insular Possessions.

**§ 3491. Returns and payment of tax—(a) Returns.**

The manufacturer shall file on the last day of each month a return and pay the tax with respect to manufactured sugar, (1) which has been sold, or used in the production of other articles, by the manufacturer during the preceding month (if the tax has not already been paid) and (2) which has not been so sold

or used within twelve months ending during the preceding calendar month, after it was manufactured (if the tax has not already been paid).

For the purpose of determining whether sugar has been sold or used within twelve months after it was manufactured sugar shall be considered to have been sold or used in the order in which it was manufactured.

**(b) Payment of tax.**

Except as otherwise provided, the taxes imposed by this chapter shall be collected by the Bureau of Internal Revenue under the direction of the Secretary. Such taxes shall be paid into the Treasury of the United States.

**(c) Place for filing return and payment of tax.**

Any person required, pursuant to the provisions of this section and section 3492, to file a return may be required to file such return with and pay the tax shown to be due thereon to the collector for the district in which the manufacturing was done or the liability incurred. (53 Stat. 426.)

**DERIVATION**

Act Sept. 1, 1937, ch. 898, title IV, §§ 402 (c), 405 (a), (d), 50 Stat. 913, 914.

**§ 3492. Persons classed as manufacturers.**

Any person who acquires any sugar which is to be manufactured into manufactured sugar but who, without further refining or otherwise improving it in quality, sells such sugar as manufactured sugar or uses such sugar as manufactured sugar in the production of other articles for sale shall be considered for the purposes of sections 3490 and 3491 the manufacturer of manufactured sugar and, as such, liable for the tax under section 3490 with respect thereto. (53 Stat. 427.)

**DERIVATION**

Act Sept. 1, 1937, ch. 898, title IV, § 402 (b), 50 Stat. 913.

**§ 3493. Exportation—(a) Refund of tax paid.**

Upon the exportation from the United States to a foreign country, or the shipment from the United States to any possession of the United States except Puerto Rico, of any manufactured sugar, or any article manufactured wholly or partly from manufactured sugar, with respect to which tax under the provisions of section 3490 has been paid, the amount of such tax shall be paid by the Commissioner of Internal Revenue to the consignor named in the bill of lading under which the article was exported or shipped to a possession, or to the shipper, or to the manufacturer of the manufactured sugar or of the articles exported, if the consignor waives any claim thereto in favor of such shipper or manufacturer: *Provided*, That no such payment shall be allowed with respect to any manufactured sugar, or article, upon which, through substitution or otherwise, a drawback of any tax paid under section 3500 has been or is to be claimed under any provisions of law made applicable by section 3501.

**(b) Period for filing refund claim.**

No payment shall be allowed under this section unless within two years after the right to such pay-

ment has accrued a claim therefor is filed by the person entitled thereto. (53 Stat. 427; Oct. 8, 1940, ch. 764, 54 Stat. 1022.)

#### DERIVATION

Act Sept. 1, 1937, ch. 898, title IV, § 404 (a), (c), 50 Stat. 914.

#### § 3494. Use as livestock feed or for distillation of alcohol—(a) Refund of tax paid.

Upon the use of any manufactured sugar, or article manufactured therefrom, as livestock feed, or in the production of livestock feed, or for the distillation of alcohol, there shall be paid by the Commissioner to the person so using such manufactured sugar, or article manufactured therefrom, the amount of any tax paid under section 3490 with respect thereto.

#### (b) Period for filing refund claim.

No payment shall be allowed under this section unless within one year after the right to such payment has accrued a claim therefor is filed by the person entitled thereto. (53 Stat. 427.)

#### DERIVATION

Act Sept. 1, 1937, ch. 898, title IV, § 404 (b), (c), 50 Stat. 914.

#### § 3495. Addition to tax in case of nonpayment.

If the tax is not paid when due there shall be added as part of the tax interest at 6 per centum per annum from the date the tax became due until the date of payment. (53 Stat. 427.)

#### DERIVATION

Act Sept. 1, 1937, ch. 898, title IV, § 405 (b), 50 Stat. 914.

#### § 3496. Other laws applicable.

All provisions of law, including penalties, applicable with respect to the taxes imposed under Subchapter A of chapter 29, shall, insofar as applicable and not inconsistent with the provisions of this chapter, be applicable in respect to the tax imposed by section 3490. (53 Stat. 427.)

#### DERIVATION

Act Sept. 1, 1937, ch. 898, title IV, § 405 (b), 50 Stat. 914.

#### § 3497. Regulations.

The Commissioner, with the approval of the Secretary, shall prescribe such rules and regulations as may be necessary to carry out all provisions of this chapter, except Subchapter B. (53 Stat. 428.)

#### DERIVATION

Act Sept. 1, 1937, ch. 898, title IV, § 405 (c), 50 Stat. 914.

#### § 3498. Effective date of subchapter.

This subchapter shall take effect on the first day of that calendar month occurring next after the enactment of this title. (53 Stat. 428.)

### SUBCHAPTER B.—IMPORTATION

#### § 3500. Rate of tax.

In addition to any other tax or duty imposed by law, there shall be imposed, under such regulations as the Commissioner of Customs shall prescribe, with the approval of the Secretary, a tax upon articles imported or brought into the United States as follows:

(1) On all manufactured sugar testing by the polariscope ninety-two sugar degrees, 0.465 cent per pound, and for each additional sugar degree shown by the polariscopic test, 0.00875 cent per pound additional, and fractions of a degree in proportion;

(2) On all manufactured sugar testing by the polariscope less than ninety-two sugar degrees 0.5144 cent per pound of the total sugars therein;

(3) On all articles composed in chief value of manufactured sugar 0.5144 cent per pound of the total sugars therein. (53 Stat. 428.)

#### DERIVATION

Act Sept. 1, 1937, ch. 898, title IV, § 403 (a), 50 Stat. 913.

#### CROSS REFERENCE

Continuance of taxes, see section 1248 (d) of Title 48, Territories and Insular Possessions.

#### § 3501. Assessment and payment.

Such tax shall be levied, assessed, collected, and paid in the same manner as a duty imposed by the Tariff Act of 1930, 46 Stat. 590, 672 (U. S. C., Title 19, ch. 4) and shall be treated for the purposes of all provisions of law relating to the customs revenue as a duty imposed by such Act, except that for the purposes of sections 336 and 350 of such Act (the so-called flexible-tariff and trade-agreements provisions) such tax shall not be considered a duty or import restriction, and except that no preference with respect to such tax shall be accorded any articles imported or brought into the United States. (53 Stat. 428.)

#### DERIVATION

Act Sept. 1, 1937, ch. 898, title IV, § 403 (b), 50 Stat. 913.

#### CROSS REFERENCE

Continuance of taxes, see section 1248 (d) of Title 48, Territories and Insular Possessions.

### SUBCHAPTER C.—GENERAL PROVISIONS

#### § 3506. Penalty for officials investing or speculating in sugar.

No person shall, while acting in any official capacity in the administration of this chapter, invest or speculate in sugar or liquid sugar, contracts relating thereto, or the stock or membership interests of any association or corporation engaged in the production or manufacturing of sugar or liquid sugar. Any person violating this section shall upon conviction thereof be fined not more than \$10,000 or imprisoned not more than two years, or both. (53 Stat. 428.)

#### DERIVATION

Act Sept. 1, 1937, ch. 898, title V, § 508, 50 Stat. 916.

#### § 3507. Definitions.

For the purposes of this chapter—

##### (a) Person.

The term "person" means an individual, partnership, corporation, or association.

##### (b) Manufactured sugar.

The term "manufactured sugar" means any sugar derived from sugar beets or sugarcane, which is not to be, and which shall not be, further refined or otherwise improved in quality; except sugar in liquid form which contains nonsugar solids (excluding any

foreign substance that may have been added) equal to more than 6 per centum of the total soluble solids, and except also sirup of cane juice produced from sugar cane grown in continental United States.

The grades or types of sugar within the meaning of this definition shall include, but shall not be limited to, granulated sugar, lump sugar, cube sugar, powdered sugar, sugar in the form of blocks, cones, or molded shapes, confectioners' sugar, washed sugar, centrifugal sugar, clarified sugar, turbinado sugar, plantation white sugar, muscovado sugar, refiners' soft sugar, invert sugar mush, raw sugar, sirups, molasses, and sugar mixtures.

(c) Total sugars.

The term "total sugars" means the total amount of the sucrose (Clerget) and of the reducing or invert sugars. The total sugars contained in any grade or type of manufactured sugar shall be ascertained in the manner prescribed in paragraphs 758, 759, 762, and 763 of the United States Customs Regulations (1931 edition).

(d) United States.

The term "United States" shall be deemed to include the States, the Territories of Hawaii and Alaska, the District of Columbia, and Puerto Rico. (53 Stat. 428.)

DERIVATION

Act Sept. 1, 1937, ch. 898, title IV, § 401, 50 Stat. 912.

§ 3508. Termination of taxes.

No tax shall be imposed on the manufacture, use, or importation of sugar after June 30, 1942. (53 Stat. 429; Oct. 15, 1940, ch. 887, § 2, 54 Stat. 1178.)

DERIVATION

Act Sept. 1, 1937, ch. 898, title V, § 613, 50 Stat. 916.

1940 AMENDMENT

Date extended from June 30, 1941 to June 30, 1942 by act Oct. 15, 1940, cited to text.

Chapter 33.—BITUMINOUS COAL

Sec.

- 3520. Tax.
- 3521. Payment of tax.
- 3522. Resale for governmental use.
- 3523. Market value.
- 3524. Other laws applicable.
- 3525. Constitutionality.
- 3526. Definitions.
- 3527. Termination of tax.
- 3528. Effective date of chapter.

§ 3520. Tax—(a) Basic tax—(1) Rate.

There shall be imposed upon the sale or other disposal of bituminous coal produced within the United States when sold or otherwise disposed of by the producer thereof an excise tax of 1 cent per ton of two thousand pounds.

The term "disposal" as used in this section includes consumption or use (whether in the production of coke or fuel, or otherwise) by a producer, and any transfer of title by the producer other than by sale.

(2) Exemption.

The tax imposed by paragraph (1) of this subsection shall not apply in the case of a sale of coal for the exclusive use of the United States or of any

State or Territory of the United States or the District of Columbia, or any political subdivision of any of them, for use in the performance of governmental functions.

(b) Additional tax—(1) Rate.

In addition to the tax imposed by subsection (a) of this section, there shall be imposed upon the sale or other disposal of bituminous coal produced within the United States, when sold or otherwise disposed of by the producer thereof, which would be subject to the application of the conditions and provisions of the code provided for in section 4 of the Act of April 26, 1937, ch. 127, 50 Stat. 76, or of the provisions of section 4-A of such Act, an excise tax in an amount equal to 19½ per centum of the sale price at the mine in the case of coal disposed of by sale at the mine, or in the case of coal disposed of otherwise than by sale at the mine, and coal sold otherwise than through an arms' length transaction, 19½ per centum of the fair market value of such coal at the time of such disposal or sale.

(2) Exemption.

In the case of any producer who is a code member as provided in section 4 of the Act of April 26, 1937, ch. 127, 50 Stat. 76, and is so certified to the Commissioner of Internal Revenue by the Commission, the sale or disposal by such producer during the continuance of his membership in the code of coal produced by him shall be exempt from the tax imposed by this subsection.

(3) Cross reference.

For revocation of code membership and right to tax exemption, see section 5 (b) of such act of April 26, 1937. (53 Stat. 430.)

DERIVATION

Act Apr. 26, 1937, ch. 127, § 3 (a), (b), (e), 50 Stat. 75.

§ 3521. Payment of tax.

The taxes imposed by section 3520 shall be paid to the United States by the producer, and shall be payable monthly for each calendar month on or before the first business day of the second succeeding month, under such regulations and in such manner as shall be prescribed by the Commissioner, with the approval of the Secretary. (53 Stat. 431.)

DERIVATION

Act Apr. 26, 1937, ch. 127, § 3 (c), 50 Stat. 75.

§ 3522. Resale for governmental use.

Under regulations prescribed by the Commissioner with the approval of the Secretary, a credit against the tax imposed by subsection (a) of section 3520 or a refund may be allowed or made to any producer of coal in the amount of such tax paid with respect to the sale of coal to any vendee, if the producer has in his possession such evidence as the regulations may prescribe that such coal was resold by any person for the exclusive use of the United States or of any State, Territory of the United States, or the District of Columbia, or any political subdivision of any of them, for use in the performance of governmental functions. (53 Stat. 431.)

DERIVATION

Act Apr. 26, 1937, ch. 127, § 3 (e), 50 Stat. 75.

§ 3523. Market value.

In the case of coal disposed of otherwise than by sale at the mine, and coal sold otherwise than through an arms' length transaction, the Commissioner shall determine the market value thereof. Such market value shall equal the current market price at the mine of coal of a comparable kind, quality, and size produced for market in the locality where the coal so disposed of is produced. (53 Stat. 431.)

DERIVATION

Act Apr. 26, 1937, ch. 127, § 3 (d), 50 Stat. 75.

§ 3524. Other laws applicable.

All provisions of law, including penalties and refunds, applicable in respect of the taxes imposed by Subchapter A of chapter 29, shall, insofar as applicable and not inconsistent with the provisions of this chapter, be applicable with respect to taxes imposed under this chapter. (53 Stat. 431.)

DERIVATION

Act Apr. 26, 1937, ch. 127, § 7, 50 Stat. 86.

§ 3525. Constitutionality.

No producer shall, by reason of his acceptance of the code provided for in section 4 of the Act of April 26, 1937, ch. 127, 50 Stat. 76, or of the exemption from the tax provided in subsection (b) of section 3520, be held to be precluded or estopped from contesting the constitutionality of any provision of this chapter or of the code, or the validity or application of either to him or to any part of the coal produced by him. (53 Stat. 431.)

DERIVATION

Act Apr. 26, 1937, ch. 127, § 3 (f), 50 Stat. 76.

§ 3526. Definitions.

As used in this chapter—

(a) Coal.

The term "coal" means bituminous coal.

(b) Bituminous coal.

The term "bituminous coal" includes all bituminous, semibituminous, and subbituminous coal and shall exclude lignite, which is defined as a lignitic coal having calorific value in British thermal units of less than seven thousand six hundred per pound and having a natural moisture content in place in the mine of 30 per centum or more.

(c) Producer.

The term "producer" includes all individuals, firms, associations, corporations, trustees, and receivers engaged in the business of mining coal.

(d) Interstate commerce.

The term "interstate commerce" means commerce among the several States and Territories, with foreign nations, and with the District of Columbia.

(e) United States.

The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia. (53 Stat. 431.)

DERIVATION

Act Apr. 26, 1937, ch. 127, § 17, 50 Stat. 90.

§ 3527. Termination of tax.

This chapter shall cease to be in effect, except as provided in section 13 of the Revised Statutes (U. S. C. Title I, § 29), and any agencies and offices established thereunder shall cease to exist on and after April 26, 1941. (53 Stat. 432.)

DERIVATION

Act Apr. 26, 1937, ch. 127, § 19, 50 Stat. 90.

§ 3528. Effective date of chapter.

This chapter shall take effect on the first day of that calendar month occurring next after the enactment of this title. (53 Stat. 432.)

## SUBTITLE D.—GENERAL ADMINISTRATIVE PROVISIONS

Chap.	Sec.
34. Information and returns.....	3600
35. Assessment.....	3640
36. Collection.....	3650
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### Chapter 34.—INFORMATION AND RETURNS

#### SUBCHAPTER A.—DISCOVERY OF TAX LIABILITY

Sec.
3600. Canvass of districts for taxable persons and objects.
3601. Entry of premises for examination of taxable objects.
3602. Search warrants.
3603. Notice requiring records, statements, and special returns.
3604. Returns as to formation, etc., of foreign corporations.

#### SUBCHAPTER B.—DETERMINATION OF TAX LIABILITY

3611. Returns executed by taxpayer.
3612. Returns executed by Commissioner or collector.
3613. Listing by collector of taxable objects owned by nonresidents of collection district.
3614. Examination of books and witnesses.
3615. Summons from collector to produce books and give testimony.
3616. Penalties.
3617. Penalties and awards to informers with respect to illegally produced petroleum.

#### SUBCHAPTER C.—MISCELLANEOUS PROVISIONS

3630. Classification of and time for taking lists or returns.
3631. Restrictions on examination of taxpayers.
3632. Authority to administer oaths, take testimony, and certify.
3633. Jurisdiction of district courts.
3634. Extension of time for filing returns.

#### SUBCHAPTER A.—DISCOVERY OF TAX LIABILITY

##### § 3600. Canvass of districts for taxable persons and objects.

Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects. (53 Stat. 435.)

##### DERIVATION

R. S. § 3172, which was in nature of a revision of acts June 30, 1864, ch. 173, § 12, 13 Stat. 225; Mar. 2, 1867, ch. 169, § 1, 14 Stat. 471; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401; as amended by act Aug. 27, 1894, ch. 349, § 34, 28 Stat. 558, and reenacted without change by act Feb. 26, 1926, ch. 27, § 1115, 44 Stat. 118, R. S. § 3172 was also reenacted without change by acts Nov. 23, 1921, ch. 136, § 1311, 42 Stat. 311; June 2, 1924, ch. 234, § 1018, 43 Stat. 345; Feb. 24, 1919, ch. 18, § 1317, 40 Stat. 1146; Sept. 8, 1916, ch. 463, § 16, 39 Stat. 773; Oct. 3, 1913, ch. 16, § II, I, 38 Stat. 178.

##### § 3601. Entry of premises for examination of taxable objects—(a) Authority—(1) Entry during day.

Any collector, deputy collector, internal revenue agent, or inspector may enter, in the daytime, any building or place where any articles or objects subject to tax are made, produced, or kept, within his district, so far as it may be necessary for the purpose of examining said articles or objects.

##### (2) Entry at night.

When such premises are open at night, such officers may enter them while so open, in the performance of their official duties.

##### (b) Penalty for refusal to permit entry or examination.

Any owner of such building or place, or person having the agency or superintendence of the same, who refuses to admit such officer, or to suffer him to examine such article or articles, shall, for every such refusal, forfeit \$500.

##### (c) Other penalties.

If any person shall—

##### (1) Forcible obstruction or hindrance to officers.

Forcibly obstruct or hinder any collector, deputy collector, internal revenue agent, or inspector, in the execution of any power and authority vested in him by law, or

##### (2) Forcible rescue of seized property.

Forcibly rescue or cause to be rescued any property, articles, or objects after the same shall have been seized by him, or shall attempt or endeavor so to do, the person so offending, excepting in cases otherwise provided for, shall, for every such offense, forfeit and pay the sum of \$500, or double the value of the property so rescued, or be imprisoned for a term not exceeding two years, at the discretion of the court. (53 Stat. 435.)

##### DERIVATION

R. S. § 3152, which was in nature of a revision of acts July 20, 1868, ch. 186, § 50, 15 Stat. 145; June 6, 1872, ch. 315, § 12, 17 Stat. 241; as amended by act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 329; R. S. § 3177, which was in nature of a revision of act June 30, 1864, ch. 173, §§ 37, 38, 13 Stat. 238.

##### § 3602. Search warrants.

The several judges of the district courts of the United States, and the United States commissioners, may, within their respective jurisdictions, issue a search warrant, authorizing any internal revenue officer to search any premises within the same, if such officer makes oath in writing that he has reason to believe, and does believe, that a fraud upon the revenue has been or is being committed upon or by the use of the said premises.

(But see sections 3116 and 3117.)

(53 Stat. 436.)

DERIVATION

R. S. § 3462, which was in nature of a revision of act July 13, 1866, ch. 184, § 15, 14 Stat. 152; act May 28, 1896, ch. 252, § 19, 29 Stat. 184, as amended by act Mar. 2, 1901, ch. 814, § 1 Stat. 956; act Mar. 3, 1911, ch. 231, § 289, 36 Stat. 1167.

§ 3603. Returns requiring records, statements, and special returns.

Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records as the Commissioner deems sufficient to show whether or not such person is liable to tax. (53 Stat. 436.)

DERIVATION

Act Feb. 26, 1926, ch. 27, § 1102 (b), 44 Stat. 112.

SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 1002 (b), 43 Stat. 339.  
1921—Nov. 23, 1921, ch. 136, § 1307, 42 Stat. 310.  
1919—Feb. 24, 1919, ch. 18, § 1305, 40 Stat. 1142.

§ 3604. Returns as to formation, etc., of foreign corporations—(a) Requirement.

Under regulations prescribed by the Commissioner with the approval of the Secretary, any attorney, accountant, fiduciary, bank, trust company, financial institution, or other person, who aids, assists, counsels, or advises in, or with respect to, the formation, organization, or reorganization of any foreign corporation, shall, within 30 days thereafter, file with the Commissioner a return.

(b) Form and contents of return.

Such return shall be in such form, and shall set forth, under oath, in respect of each such corporation, to the full extent of the information within the possession or knowledge or under the control of the person required to file the return, such information as the Commissioner with the approval of the Secretary prescribes by regulations as necessary for carrying out the provisions of the income tax laws. Nothing in this section shall be construed to require the filing by an attorney-at-law of a return with respect to any advice given or information obtained through the relationship of attorney and client.

(c) Penalty.

Any person required under subsection (a) to file a return, or to supply any information, who willfully fails to file such return, or supply such information, at the time or times required by law or regulations, shall, in lieu of other penalties provided by law for such offense, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$2,000, or imprisoned for not more than one year, or both. (53 Stat. 436; June 29, 1939, 10 p. m. E. S. T., ch. 247, title IV, § 404, 53 Stat. 883.)

DERIVATION

Act May 28, 1938, ch. 269, § 803, 53 Stat. 573.

1939 AMENDMENT

Subsection (b), last sentence, amended by act June 29, 1939, cited to text, effective date of enactment of Internal Revenue Code; namely, February 10, 1939.

SUBCHAPTER B.—DETERMINATION OF TAX LIABILITY

§ 3611. Returns executed by taxpayer.

When not otherwise provided for—

(a) Preparation—(1) By taxpayer.

It shall be the duty of any person made liable to any special tax or other tax imposed by law, to make a list or return, verified by oath, to the collector or a deputy collector of the district where located, of the articles or objects, including the quantity of goods, wares, and merchandise, made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner, with the approval of the Secretary, for which such person is liable.

(2) By collector or deputy collector.

If any person liable to pay any tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any tax shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person.

(b) Time for filing.

The list or return required under subsection (a) shall be made—

(1) Special taxes.

In the case of a special tax, on or before the 31st day of July in each year, and

(2) Other taxes.

In other cases before the day on which the taxes accrue.

(c) Delinquency.

In case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath. (53 Stat. 437.)

DERIVATION

R. S. § 3173, which was in nature of a revision of acts June 30, 1864, ch. 173, §§ 11, 13, 13 Stat. 225, 226; July 13, 1866, ch. 184, § 9, 14 Stat. 101; Mar. 2, 1867, ch. 169, § 1, 14 Stat. 471; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401; as re-enacted without change by act Feb. 26, 1926, ch. 27,



§ 1115, 44 Stat. 118. R. S. § 3173 was amended by acts Mar. 1, 1879, ch. 125, § 3, 20 Stat. 330; Aug. 27, 1894, ch. 349, § 34, 28 Stat. 557; Oct. 3, 1913, ch. 16, § II, I, 38 Stat. 178; Sept. 8, 1916, ch. 463, § 16, 39 Stat. 773; Feb. 24, 1919, ch. 18, § 1317, 40 Stat. 1146; and was also reenacted without change by acts Oct. 3, 1921, ch. 136, § 1311, 42 Stat. 312; June 2, 1924, ch. 234, § 1018, 43 Stat. 345.

R. S. § 3178 required the returns or lists of objects charged with an internal tax to show whether the several rates and amounts were stated according to their values in legal tender currency or according to their values in coined money.

Act Oct. 3, 1917, ch. 63, §§ 1002, 1004, 40 Stat. 325, made provision for returns where additional taxes were imposed by that act on articles on which the tax imposed by existing law had been paid. They were repealed by section 1400 of the Revenue Act of 1918.

#### § 3612. Returns executed by Commissioner or collector—(a) Authority of collector.

If any person fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise.

##### (b) Authority of Commissioner.

In any such case the Commissioner may, from his own knowledge and from such information as he can obtain through testimony or otherwise—

##### (1) To make return.

Make a return, or

##### (2) To amend collector's return.

Amend any return made by a collector or deputy collector.

##### (c) Legal status of returns.

Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be prima facie good and sufficient for all legal purposes.

##### (d) Additions to tax—(1) Failure to file return.

In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner or the collector in pursuance of law, the Commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax: *Provided*, That in the case of a failure to make and file a return required by law, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, if the last date so prescribed for filing the return is after August 30, 1935, then there shall be added to the tax, in lieu of such 25 per centum: 5 per centum if the failure is for not more than 30 days, with an additional 5 per centum for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per centum in the aggregate.

##### (2) Fraud.

In case a false or fraudulent return or list is willfully made, the Commissioner shall add to the tax 50 per centum of its amount.

##### (3) Cross reference.

For additions to tax in the case of income tax, see sections 291 and 293, and in the case of a deficiency in gift tax, see section 1019.

##### (e) Collection of additions to tax.

The amount added to any tax under paragraphs (1) and (2) of subsection (d) shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

##### (f) Determination and assessment.

The Commissioner shall determine and assess all taxes, other than stamp taxes, as to which returns or lists are so made under the provisions of this section. (53 Stat. 437.)

#### DERIVATION

R. S. § 3176, as amended by acts Mar. 1, 1879, ch. 125, § 3, 20 Stat. 331; Aug. 27, 1894, ch. 349, § 34, 28 Stat. 559; Oct. 3, 1913, ch. 16, § II, I, 38 Stat. 179; Sept. 8, 1916, ch. 463, § 16, 39 Stat. 773; Feb. 24, 1919, ch. 18, § 1317, 40 Stat. 1147; Nov. 23, 1921, ch. 136, § 1311, 42 Stat. 313; June 2, 1924, ch. 234, § 1003, 43 Stat. 339; Feb. 26, 1926, ch. 27, § 1103, 44 Stat. 112; Aug. 30, 1936, ch. 829, § 406, 49 Stat. 1027.

Said R. S. § 3176 was in nature of a revision of acts June 30, 1864, ch. 173, § 14, 13 Stat. 226; July 13, 1866, ch. 184, § 9, 14 Stat. 101; Dec. 24, 1872, ch. 13, § 2, 17 Stat. 402.

#### SIMILAR PROVISIONS

Act Feb. 24, 1919, ch. 18, § 250, 40 Stat. 1082, which was repealed by act Nov. 23, 1921, ch. 136, § 1400, 42 Stat. 320.

#### § 3613. Listing by collector of taxable objects owned by nonresidents of collection district.

Whenever there are in any district any articles not owned or possessed by or under the care or control of any person within such district, and liable to be taxed, and of which no list has been transmitted to the collector, as required by law, the collector or one of his deputies shall enter the premises where such articles are situated and shall take such view thereof as may be necessary, and make lists of the same, according to the form prescribed. Said lists, being subscribed by such collector or deputy, shall be taken as sufficient lists of such articles for all purposes. (53 Stat. 438.)

#### DERIVATION

R. S. § 3180, which was in nature of a revision of acts June 30, 1864, ch. 173, § 16, 13 Stat. 227; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401.

#### § 3614. Examination of books and witnesses—(a) To determine liability of the taxpayer.

The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and

may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

**(b) To determine liability of a transferee.**

The Commissioner, for the purpose of determining the liability at law or in equity of a transferee of the property of any person with respect to any Federal taxes imposed upon such person, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon such liability, and may require the attendance of the transferor or transferee, or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter, with power to administer oaths to such person or persons. (53 Stat. 438.)

**DERIVATION**

Subsection (a) was from act Feb. 26, 1926, ch. 27, § 1104, 44 Stat. 113, as amended by act May 29, 1928, ch. 852, § 618, 45 Stat. 878.

Subsection (b) was from act May 10, 1934, ch. 277, § 507, 48 Stat. 757.

**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 1004, 43 Stat. 340.

1921—Nov. 23, 1921, ch. 136, § 1308, 42 Stat. 310.

1919—Feb. 24, 1919, ch. 18, § 1305, 40 Stat. 1142.

**§ 3615. Summons from collector to produce books and give testimony—(a) General authority.**

It shall be lawful for the collector, subject to the provisions of this section to summon any person to appear before him and produce books at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects or income liable to tax or the returns thereof. The collector may summon any person residing or found within the State or Territory in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State or Territory, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.

**(b) Acts creating liability.**

Such summons may be issued—

**(1) Refusal or neglect to comply with notice requiring return.**

If any person, on being notified or required as provided in section 3611, shall refuse or neglect to render such list or return within the time required, or

**(2) Failure to render return on time.**

Whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or

**(3) Erroneous, false, or fraudulent return.**

Whenever any person who is required to deliver a monthly or other return of objects subject to tax delivers any return which, in the opinion of the collector, is erroneous, false, or fraudulent, or contains any undervaluation or understatement, or

**(4) Refusal to permit examination of books.**

Whenever any person who is required to deliver a monthly or other return of objects subject to tax refuses to allow any regularly authorized Government officer to examine his books.

**(c) Persons liable.**

Such summons may be issued to—

**(1) Persons mentioned in subsection (b).**

Any person mentioned in subsection (b), or

**(2) Persons having books.**

Any other person having possession, custody, or care of books of account containing entries relating to the business of any person mentioned in subsection (b), or

**(3) Other persons.**

Any other person the collector may deem proper.

**(d) Service.**

Such summons shall in all cases be served by a deputy collector of the district where the person to whom it is directed may be found, by an attested copy delivered to such person in hand, or left at his last and usual place of abode, allowing such person one day for each twenty-five miles he may be required to travel, computed from the place of service to the place of examination; and the certificate of service signed by such deputy shall be evidence of the facts it states on the hearing of an application for an attachment. When the summons requires the production of books, it shall be sufficient if such books are described with reasonable certainty.

**(e) Enforcement.**

Whenever any person summoned under this section neglects or refuses to obey such summons, or to give testimony, or to answer interrogatories as required, the collector may apply to the judge of the district court or to a United States commissioner for the district within which the person so summoned resides for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the United States commissioner shall have power to make such order as he shall deem proper not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience. (53 Stat. 439.)

**DERIVATION**

Subsections (a)–(c) were from R. S. § 3173, which was in nature of a revision of acts June 30, 1864, ch. 173, §§ 11, 13, 13 Stat. 225, 226; July 13, 1866, ch. 184, § 9, 14 Stat. 101; Mar. 2, 1867, ch. 169, § 1, 14 Stat. 471; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401; as reenacted without change by act Feb. 26, 1926, ch. 27, § 1115, 44 Stat. 118, 119. See also Historical Note to section 3611 of this title.

Subsection (d) was from R. S. § 3174, which was in nature of a revision of acts June 30, 1864, ch. 173, § 14, 13 Stat. 226; July 13, 1866, ch. 184, § 9, 14 Stat. 101; Dec. 24, 1872, ch. 13, 17 Stat. 401.

Subsection (e) was from R. S. § 3175, which was in nature of a revision of acts June 30, 1864, ch. 173, § 14, 13 Stat. 226; July 13, 1866, ch. 184, § 9, 14 Stat. 101; Dec.

24, 1872, ch. 13, § 1, 17 Stat. 401; act Mar. 2, 1901, ch. 814, 31 Stat. 956.

See also derivation note to section 3611 of this title.

#### § 3616. Penalties.

Whenever any person—

##### (a) False returns.

Delivers or discloses to the collector or deputy any false or fraudulent list, return, account, or statement, with intent to defeat or evade the valuation, enumeration, or assessment intended to be made; or,

##### (b) Neglect to obey summons.

Being duly summoned to appear to testify, or to appear and produce books as required under section 3615, neglects to appear or to produce said books—he shall be fined not exceeding \$1,000, or be imprisoned not exceeding one year, or both, at the discretion of the court, with costs of prosecution.

##### (c) Cross reference.

For additions to tax in case of fraud or of failure to file returns, see section 3612 (d).

(53 Stat. 440.)

#### DERIVATION

R. S. § 3179, which was in nature of a revision of act June 30, 1864, ch. 173, § 15, 13 Stat. 226.

#### § 3617. Penalties and awards to informers with respect to illegally produced petroleum—(a) Failure to file return.

Any person liable for tax on any income from illegally produced petroleum, who willfully fails to make return showing such income within the time prescribed by law shall, in addition to all other penalties prescribed by law, be liable to a civil penalty of \$500 plus \$50 for each day during which such failure continues.

##### (b) Reward for information.

Any person not an officer or employee of the United States who furnishes to the Commissioner or any collector original information leading to the recovery from any other person of any penalty under this section may be awarded and paid by the Commissioner a compensation of one-half the penalty so recovered, as determined by the Commissioner.

##### (c) Income defined.

As used in this section, the term "income from illegally produced petroleum" means any income (not shown on a return made within the time prescribed by law) arising out of any sale or purchase of crude petroleum withdrawn from the ground subsequent to January 1, 1932, in violation of any State or Federal law (not including illegal withdrawal the penalties for which have been mitigated or satisfied in pursuance of law prior to May 10, 1934), or arising out of any fee derived from acting as agent for any seller or purchaser in connection with a sale or purchase of such petroleum or products thereof, or any amount illegally received by any person charged with the enforcement of law with respect to such petroleum or products thereof. (53 Stat. 440.)

#### DERIVATION

Act May 10, 1934, ch. 277, § 514, 48 Stat. 759.

### SUBCHAPTER C.—MISCELLANEOUS PROVISIONS

#### § 3630. Classification of and time for taking lists or returns.

Lists or returns shall, where not otherwise specially provided for, be taken with reference to the day fixed for that purpose by this title; and where taxes accrue at other and different times, the list shall be taken with reference to the time when said taxes become due, and shall be denominated annual, monthly, and special lists or returns. (53 Stat. 440.)

#### DERIVATION

R. S. § 3181, which was in nature of a revision of act June 30, 1864, ch. 173, § 18, 13 Stat. 228; as amended by act Feb. 18, 1875, ch. 80, § 1, 18 Stat. 319.

#### § 3631. Restrictions on examination of taxpayers.

No taxpayer shall be subjected to unnecessary examinations or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the Commissioner, after investigation, notifies the taxpayer in writing that an additional inspection is necessary. (53 Stat. 441.)

#### DERIVATION

Act Feb. 26, 1926, ch. 27, § 1105, 44 Stat. 113.

#### SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 1005, 43 Stat. 340.

1921—Nov. 23, 1921, ch. 136, § 1309, 42 Stat. 310.

#### § 3632. Authority to administer oaths, take testimony, and certify—(a) Internal revenue personnel—(1) Persons in charge of administration of internal revenue laws generally.

Every collector, deputy collector, internal revenue agent, and internal revenue officer assigned to duty under an internal revenue agent, is authorized to administer oaths and to take evidence touching any part of the administration of the internal revenue laws with which he is charged, or where such oaths and evidence are authorized by law or regulation authorized by law to be taken.

##### (2) Persons in charge of exports and drawbacks.

Every collector of internal revenue and every superintendent of exports and drawbacks is authorized to administer such oaths and to certify to such papers as may be necessary under any regulation prescribed under the authority of the internal revenue laws.

##### (b) Others.

Any oath or affirmation required or authorized by any internal revenue law or by any regulations made under authority thereof may be administered by any person authorized to administer oaths for general purposes by the law of the United States, or of any State, Territory, or possession of the United States, or of the District of Columbia, wherein such oath or affirmation is administered, or by any consular officer of the United States. This subsection shall not be construed as an exclusive enumeration of the persons who may administer such oaths or affirmations. (53 Stat. 441.)

## DERIVATION

Subsection (a) (1) was from R. S. § 3165, which was in nature of a revision of acts June 30, 1864, ch. 173, § 52, 13 Stat. 242; Mar. 3, 1865, ch. 78, § 1, 13 Stat. 471; as reenacted by act Feb. 26, 1926, ch. 27, § 1115, 44 Stat. 117.

Subsection (a) (2) was from R. S. § 3162, which was in nature of a revision of acts Mar. 3, 1865, ch. 78, § 15, 13 Stat. 486; July 13, 1866, ch. 184, § 20, 14 Stat. 153.

Subsection (b) was from acts Feb. 26, 1926, ch. 27, § 1102 (d), 44 Stat. 112; May 28, 1938, ch. 289, § 806, 52 Stat. 574. Provisions similar to subsection (b) were contained in act June 2, 1924, ch. 234, § 1002, 43 Stat. 339.

### § 3633. Jurisdiction of district courts—(a) To enforce summons.

If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

#### (b) To issue orders, processes, and judgments.

For authority of district courts to issue orders, processes, and judgments for enforcement of internal revenue laws, see section 3799.

(53 Stat. 441.)

## DERIVATION

Act May 29, 1928, ch. 852, § 617 (a), 45 Stat. 877.

## SIMILAR PROVISIONS

1926—Feb. 26, 1926, ch. 27, § 1122a, 44 Stat. 121.

1924—June 2, 1924, ch. 234, § 1025 (a), 43 Stat. 348.

1921—Nov. 23, 1921, ch. 136, § 1310, 42 Stat. 310.

1919—Feb. 24, 1919, ch. 18, § 1318, 40 Stat. 1148.

1916—Sept. 8, 1916, ch. 463, § 20, 39 Stat. 776.

1913—Oct. 3, 1913, ch. 16, § II, K, 38 Stat. 179.

## FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see Rule 45, following section 723c of Title 28, Judicial Code and Judiciary.

### § 3634. Extension of time for filing returns.

If the failure to file a return (other than a return of income tax) or list at the time prescribed by law or by regulation made under authority of law is due to sickness or absence, the collector may allow such further time, not exceeding thirty days, for making and filing the return or list as he deems proper. (53 Stat. 441.)

## DERIVATION

R. S. § 3176, which was in nature of a revision of acts June 30, 1864, ch. 173, § 14, 13 Stat. 226; July 13, 1866, ch. 184, § 9, 14 Stat. 101; Dec. 24, 1872, ch. 13, § 2, 17 Stat. 402; as amended by acts Feb. 26, 1926, ch. 27, § 1103, 44 Stat. 112; May 29, 1928, ch. 852, § 619 (d), 45 Stat. 878.

## Chapter 35.—ASSESSMENT

Sec.

3640. Assessment authority.

3641. Certification of assessment lists to collectors.

3642. Supplemental assessment lists.

3643. Other laws applicable.

3644. Establishment by regulation of mode or time of assessment.

3645. Periods of limitation upon assessment.

3646. Cross references.

### § 3640. Assessment authority.

The Commissioner is authorized and required to make the inquiries, determinations, and assessments of all taxes and penalties imposed by this title, or

accruing under any former internal revenue law, where such taxes have not been duly paid by stamp at the time and in the manner provided by law. (53 Stat. 442.)

## DERIVATION

R. S. § 3182, which was in nature of a revision of acts June 30, 1864, ch. 173, § 20, 13 Stat. 229; July 13, 1866, ch. 184, § 9, 14 Stat. 103; Dec. 24, 1872, ch. 13, § 2, 17 Stat. 402.

### § 3641. Certification of assessment lists to collectors.

The Commissioner shall certify a list of such assessments when made to the proper collectors, respectively, who shall proceed to collect and account for the taxes and penalties so certified. (53 Stat. 442.)

## DERIVATION

R. S. § 3182, which was in nature of a revision of acts July 30, 1864, ch. 173, § 20, 13 Stat. 229; July 13, 1866, ch. 184, § 9, 14 Stat. 103; Dec. 24, 1872, ch. 13, § 2, 17 Stat. 402.

### § 3642. Supplemental assessment lists—(a) Authorization.

Whenever it is ascertained that any list delivered to any collector is imperfect or incomplete in consequence of the omission of the name of any person liable to tax, or in consequence of any omission, or understatement, or undervaluation, or false or fraudulent statement contained in any return made by any person liable to tax, the Commissioner may, at any time within the period prescribed for assessment, enter on any monthly or special list:

#### (1) Original assessments.

The name of such person so omitted, together with the amount of tax for which he may be liable, and also

#### (2) Additional assessments.

The name of any such person in respect to whose return, as aforesaid, there has been any omission, undervaluation, understatement, or false or fraudulent statement, together with the amount for which such person may be liable, above the amount for which he may have been assessed upon any return made as aforesaid.

#### (b) Certification to collector.

The Commissioner shall certify and return such list to the collector as required by law. (53 Stat. 442.)

## DERIVATION

R. S. § 3182, which was in nature of a revision of acts June 30, 1864, ch. 173, § 20, 13 Stat. 229; July 13, 1866, ch. 184, § 9, 14 Stat. 103; Dec. 24, 1872, ch. 13, § 2, 17 Stat. 402.

### § 3643. Other laws applicable.

All provisions of law for the ascertainment of liability to any tax, or the assessment or collection thereof, shall be held to apply, so far as may be necessary, to the proceedings authorized and directed under this chapter. (53 Stat. 442.)

## DERIVATION

R. S. § 3182, which was in nature of a revision of acts June 30, 1864, ch. 173, § 20, 13 Stat. 229; July 13, 1866, ch. 184, § 9, 14 Stat. 103; Dec. 24, 1872, ch. 13, § 2, 17 Stat. 402.

**§ 3644. Establishment by regulation of mode or time of assessment.**

Whenever the mode or time of assessing any tax which is imposed is not provided for, the Commissioner may establish the same by regulation. (53 Stat. 442.)

**DERIVATION**

R. S. § 3447, which was in nature of a revision of act July 20, 1868, ch. 186, § 103, 15 Stat. 166.

**CROSS REFERENCES**

Prescribing rules and regulations for enforcement of income tax provisions, see section 62 of this title.

Rules and regulations for collection of taxes, see section 3652 of this title.

**§ 3645. Periods of limitation upon assessment.**

For the periods of limitation prescribed for making assessments, see the following:

Income tax—Taxpayer, sections 275 and 276; Transferee and fiduciary, section 311.

Additional income tax on personal holding companies, section 507.

Excess profits tax, section 603.

Excess profits on Navy contracts, section 651.

Unjust enrichment, section 702 (a).

Estate tax—Decedent, sections 874 and 875; Transferee and fiduciary, section 900.

Gift tax—Donor, sections 1016 and 1017; Transferee and fiduciary, section 1025.

Capital stock tax, section 3312.

Transfers to avoid income tax, section 3312.

Employment taxes, section 3312.

Safe deposit boxes, section 3312.

Firearms, section 3312.

Tobacco, snuff, cigars, and cigarettes, sections 2002 (b) and 3312.

Documents, other instruments, and playing cards, section 3312.

Admissions and dues, section 3312.

Oleomargarine, sections 3311 and 3312.

Adulterated and process or renovated butter, sections 3311 and 3312.

Filled cheese, sections 3311 and 3312.

Mixed flour, sections 3311 and 3312.

Narcotics, section 3312.

White phosphorus matches, section 3312.

Cotton futures, section 3312.

Pistols and revolvers, section 3312.

Circulation other than of national banks, section 3312.

Liquor—Distilled spirits, section 3312; Wines, section 3312; Fermented liquors, section 3312; Occupational taxes, section 3312.

(53 Stat. 443.)

**§ 3646. Cross references.**

For prohibition of suits to restrain assessment of any tax, see section 3653.

For prohibition upon assessment of taxes against insolvent banks, see section 3798.

(53 Stat. 443.)

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# SUBCHAPTER A.—GENERAL PROVISIONS

## § 3650. Collection districts—(a) Establishment and alteration.

For the purpose of assessing, levying, and collecting the taxes provided by the internal revenue laws, the President may establish convenient collection districts, and may from time to time alter said districts.

### (b) Number.

The whole number of collection districts for the collection of internal revenue shall not exceed 65.

### (c) Boundaries—(1) Hawaii.

The Territory of Hawaii shall constitute a district for the collection of the internal revenue of the United States, with a collector, whose office shall be at Honolulu, and deputy collectors at such other places in the several islands as the Secretary shall direct.

### (2) Elsewhere.

For the purpose mentioned in subsection (a), the President may subdivide any State, Territory, or the District of Columbia, or may unite two or more States or Territories into one district. (53 Stat. 445.)

#### DERIVATION

Subsection (a) was from R. S. § 3141, which was in nature of a revision of acts July 1, 1862, ch. 119, § 2, 12 Stat. 433; June 30, 1864, ch. 173, § 7, 13 Stat. 224; July 12, 1870, ch. 251, § 1, 16 Stat. 239. R. S. § 3141 was amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 248.

Subsection (b) was from R. S. § 3142, which was in nature of a revision of acts July 1, 1862, ch. 119, § 2, 12 Stat. 433; June 30, 1864, ch. 173, § 7, 13 Stat. 224; July 14, 1870, ch. 255, § 18, 16 Stat. 261; as amended by act Mar. 4, 1923, ch. 244, 42 Stat. 1444.

Subsection (c) (1) was from R. S. § 3141. For acts from which said R. S. § 3141 was revised, see derivation note for subsection (a).

Subsection (c) (2) was from R. S. § 3183, which was in nature of a revision of acts July 30, 1864, ch. 173, § 36, 13 Stat. 238; July 13, 1866, ch. 184, § 9, 14 Stat. 111.

Provisions similar to subsection (b). R. S. § 3141, as amended by acts Aug. 15, 1876, ch. 287, 19 Stat. 152; Mar. 3, 1877, ch. 102, § 1, 19 Stat. 303; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 381; July 16, 1914, ch. 141, § 1, 38 Stat. 475. For acts from which said R. S. § 3141 was revised, see derivation note for subsection (a).

## § 3651. Collection authority—(a) In general—(1) Within district.

It shall be the duty of the collectors or their deputies, in their respective districts, and they are authorized, to collect all the taxes imposed by law, however the same may be designated.

### (2) Outside district.

For authority of collector or deputy to collect taxes by distraint outside his own collection district, but within the State, see section 3713.

### (b) Transferred assessments.

Whenever a collector has on any list duly returned to him the name of any person not within his collection district who is liable to tax, or of any person

so liable who has, in the collection district in which he resides, no sufficient property subject to seizure or distraint, from which the money due for tax can be collected, such collector shall transmit a statement containing the name of the person liable to such tax, with the amount and nature thereof, duly certified under his hand, to the collector of any district to which said person shall have removed, or in which he shall have property, real or personal, liable to be seized and sold for tax. And the collector to whom the said certified statement is transmitted shall proceed to collect the said tax in the same way as if the name of the person and objects of tax contained in the said certified statement were on any list of his own collection district; and he shall, upon receiving said certified statement as aforesaid, transmit his receipt for it to the collector sending the same to him. (53 Stat. 445.)

#### DERIVATION

Subsection (a) was from R. S. § 3183, which was in nature of a revision of acts June 30, 1864, ch. 173, § 36, 13 Stat. 238; July 13, 1866, ch. 184, § 9, 14 Stat. 111. R. S. § 3183 was amended by act Mar. 1, 1879, ch. 125, § 3, 20 Stat. 331.

Subsection (b) was from R. S. § 3209, which was in nature of a revision of act June 30, 1864, ch. 173, § 32, 13 Stat. 236.

## § 3652. Establishment by regulation of mode or time of collection.

Whenever the mode or time of collecting any tax which is imposed is not provided for, the Commissioner may establish the same by regulation. (53 Stat. 446.)

#### DERIVATION

R. S. § 3447, which was in nature of a revision of act July 20, 1868, ch. 186, § 103, 15 Stat. 166.

#### CROSS REFERENCES

Prescribing rules and regulations regarding enforcement of other provisions see sections 62, 3644 of this title.

## § 3653. Prohibition of suits to restrain assessment or collection—(a) Tax.

Except as provided in sections 272 (a), 871 (a) and 1012 (a), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

### (b) Liability of transferee or fiduciary.

No suit shall be maintained in any court for the purpose of restraining the assessment or collection of (1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any income, war-profits, excess-profits, or estate tax, (2) the amount of the liability, at law or in equity, of a transferee of property of a donor in respect of any gift tax, or (3) the amount of the liability of a fiduciary under section 3467 of the Revised Statutes (U. S. C., Title 31, § 192) in respect of any such tax. (53 Stat. 446.)

#### DERIVATION

Subsection (a) was from R. S. § 3224, which was in nature of a revision of act Mar. 2, 1867, ch. 169, § 10, 14 Stat. 475.

Subsection (b) was from acts May 29, 1928, ch. 852, § 604, 45 Stat. 873; June 6, 1932, ch. 209, § 526 (e), 47 Stat. 257.

**§ 3654. General powers and duties relating to collection—(a) Collectors.**

Every collector within his collection district shall see that all laws and regulations relating to the collection of internal revenue taxes are faithfully executed and complied with, and shall aid in the prevention, detection, and punishment of any frauds in relation thereto. For such purposes, he shall have power to examine all persons, books, papers, accounts, and premises, to administer oaths, and to summon any person to produce books and papers, or to appear and testify under oath before him, and to compel compliance with such summons in the same manner as provided in section 3615.

**(b) Deputy collectors.**

Every deputy collector shall have the like authority in every respect to collect the taxes levied or assessed within the portion of the district assigned to him which is by law vested in the collector himself; but each collector shall, in every respect, be responsible, both to the United States and to individuals, as the case may be, for all moneys collected, and for every act done or neglected to be done, by any of his deputies while acting as such.

**(c) Internal revenue agents.**

Every internal revenue agent shall see that all laws and regulations relating to the collection of internal revenue taxes are faithfully executed and complied with, and shall aid in the prevention, detection, and punishment of any frauds in relation thereto. (53 Stat. 446.)

**DERIVATION**

Subsections (a) and (c) were from R. S. § 3163, which was in nature of a revision of act July 20, 1868, ch. 186, §§ 49, 51, 15 Stat. 144, 145; acts Aug 15, 1876, ch. 287, § 1, 19 Stat. 152; Mar. 1, 1879, ch. 125, § 2, 20 Stat. 328.

Subsection (b) was from act Feb. 8, 1875, ch. 36, § 12, 18 Stat. 307, as amended by act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 329.

**§ 3655. Notice and demand for tax—(a) Delivery.**

Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof.

**(b) Addition to tax for nonpayment.**

If such person does not pay the taxes, within ten days after the service or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes with a penalty of 5 per centum additional upon the amount of taxes, and interest at the rate of 6 per centum per annum from the date of such notice to the date of payment; except that in the case of income, estate or gift taxes, such penalties shall not apply and the interest for nonpayment of tax shall be such as is specifically provided by law with respect to such taxes.

**(c) Cross references.**

For additions to tax for nonpayment after notice and demand in case of—

Income taxes, see sections 294 (b) and 297.

Estate taxes, see section 893.

Gift taxes, see section 1018.

(53 Stat. 446.)

**DERIVATION**

Subsection (a) was from R. S. § 3184, which was in nature of a revision of acts July 13, 1866, ch. 184, § 9, 14 Stat. 106; Mar. 2, 1867, ch. 169, § 8, 14 Stat. 473; Dec. 24, 1872, ch. 13, § 2, 17 Stat. 402.

Subsection (b) was from R. S. § 3184; acts Feb. 26, 1926, ch. 27, §§ 308 (i), 309, 312 (j), 44 Stat. 76, 78; June 6, 1932, ch. 209, §§ 524; 808 (b), 47 Stat. 255, 282; Aug. 30, 1935, ch. 829, § 404, 49 Stat. 1027; May 28, 1938, ch. 289, §§ 294, 297, 805, 52 Stat. 541, 542, 574. For acts from which said R. S. § 3184 was revised, see derivation note for subsection (a).

**§ 3656. Payment by check—(a) Certified checks—(1) Authority to receive.**

It shall be lawful for collectors to receive for internal revenue taxes certified checks drawn on national and state banks and trust companies during such time and under such regulations as the Secretary may prescribe.

**(2) Discharge of liability—(A) Check duly paid.**

No person who may be indebted to the United States on account of internal revenue taxes who shall have tendered a certified check or checks as provisional payment for such taxes, in accordance with the terms of this subsection, shall be released from the obligation to make ultimate payment thereof until such certified check so received has been duly paid.

**(B) Check unpaid.**

If any such check so received is not duly paid by the bank on which it is drawn, and so certifying, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for the amount of such check upon all the assets of such bank; and such amount shall be paid out of its assets in preference to any or all other claims whatsoever against said bank, except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank.

**(b) Uncertified checks—(1) Authority to receive.**

Collectors may receive uncertified checks in payment of income, war profits, and excess profits taxes, and any other taxes payable other than by stamp, during such time and under such rules and regulations as the Commissioner, with the approval of the Secretary, shall prescribe.

**(2) Ultimate liability.**

If a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions to the same extent as if such check had not been tendered. (53 Stat. 447.)

**DERIVATION**

Subsection (a) from act Mar. 2, 1911, ch. 191, § 1, 36 Stat. 965, as amended by act Mar. 3, 1913, ch. 119, 37 Stat. 733.

Subsection (b) from act Feb. 26, 1926, ch. 27, § 1118 (a), 44 Stat. 120.



**SIMILAR PROVISIONS**

1924—June 2, 1924, ch. 234, § 1021 (a), 43 Stat. 847.  
 1921—Nov. 23, 1921, ch. 136, § 1325, 42 Stat. 316.  
 1919—Feb. 24, 1919, ch. 18, § 1314, 40 Stat. 1145.  
 1917—Oct. 3, 1917, ch. 63, § 1010, 40 Stat. 327.

**§ 3657. Payment by United States notes and certificates of indebtedness.**

Collectors may receive, at par with an adjustment for accrued interest, notes or certificates of indebtedness issued by the United States in payment of income, war profits, and excess profits taxes, and any other taxes payable other than by stamp, during such time and under such rules and regulations as the Commissioner, with the approval of the Secretary, shall prescribe. (53 Stat. 447.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 1118 (a), 44 Stat. 120. See Historical Note to section 3656 of this title.  
 See derivation note to section 3656 of this title.

**§ 3658. Fractional parts of a cent.**

In the payment of any tax under this title not payable by stamp a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. (53 Stat. 448.)

**DERIVATION**

Acts Feb. 24, 1919, ch. 18, § 1313, 40 Stat. 1145; Feb. 26, 1926, ch. 27, § 1118 (c), 44 Stat. 120.

**SIMILAR PROVISIONS**

Act Oct. 3, 1917, ch. 63, § 1008, 40 Stat. 326, which was repealed by act Feb. 24, 1919, ch. 18, § 1400, 40 Stat. 1149. See also note to section 3656 of this title.

**§ 3659. Receipts for taxes—(a) In general.**

Every collector and deputy collector shall give receipts for all sums collected by him, excepting only when the same are in payment for stamps sold and delivered; but no collector or deputy collector shall issue a receipt in lieu of a stamp representing a tax.

**(b) Cross references.**

For receipts in case of—  
 Estate tax, see section 823.  
 Gift tax, see section 1008 (e).  
 Income tax, see section 56 (h).

(53 Stat. 448.)

**DERIVATION**

R. S. § 3183, which was in nature of a revision of acts June 30, 1864, ch. 173, § 36, 13 Stat. 238; July 18, 1866, ch. 184, § 9, 14 Stat. 111; as amended by act Mar. 1, 1879, ch. 125, § 3, 20 Stat. 331.

**§ 3660. Jeopardy assessment.**

(a) If the Commissioner believes that the collection of any tax (other than income tax, estate tax, and gift tax) under any provision of the internal-revenue laws will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest and penalties the assessment of which is provided for by law). Such tax, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the collector for the payment thereof. Upon failure or refusal to pay such tax, penalty, and interest, collection thereof

by distraint shall be lawful without regard to the period prescribed in section 3690.

(b) The collection of the whole or any part of the amount of such assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of the amount collection of which is stayed, at the time at which, but for this section, such amount would be due. (53 Stat. 448.)

**DERIVATION**

Act June 6, 1932, ch. 209, § 1105, as amended by act May 10, 1934, ch. 277, § 510, 48 Stat. 758.

**§ 3661. Enforcement of liability for taxes collected.**

Whenever any person is required to collect or withhold any internal-revenue tax from any other person and to pay such tax over to the United States, the amount of tax so collected or withheld shall be held to be a special fund in trust for the United States. The amount of such fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose. (53 Stat. 448.)

**DERIVATION**

Act May 10, 1934, ch. 277, § 607, 48 Stat. 768.

**§ 3662. Prohibition of suits to replevy property taken under internal revenue laws.**

For statute prohibiting suits to replevy property taken under revenue laws, see section 934 R. S. (U. S. C., Title 28, section 747).

(53 Stat. 448.)

**§ 3663. Cross references.**

For provisions relating to collection accounts, see subchapter B of chapter 41.

For prohibition upon collection of any tax from insolvent banks, see section 3798 of this title.

(53 Stat. 448.)

**SUBCHAPTER B.—LIEN FOR TAXES**

**§ 3670. Property subject to lien.**

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. (53 Stat. 448.)

**DERIVATION**

R. S. § 3186 (a), as amended by act May 29, 1928, ch. 852, § 613, 45 Stat. 875. R. S. § 3186 was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 107. It was also amended by acts Mar. 1, 1879, ch. 125, § 3, 20 Stat. 331; Mar. 4, 1913, ch. 166, 37 Stat. 1016; Feb. 26, 1925, ch. 344, 43 Stat. 994.

**§ 3671. Period of lien.**

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes un-

enforceable by reason of lapse of time. (53 Stat. 449.)

#### DERIVATION

R. S. § 3186 (a), as amended by act May 29, 1928, ch. 852, § 613, 45 Stat. 875.

See also note to section 3670 of this title.

**§ 3672. Validity against mortgagees, pledgees, purchasers, and judgment creditors—(a) Invalidity of lien without notice.**

Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

#### (1) Under State or Territorial laws.

In accordance with the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice; or

#### (2) With clerk of district court.

In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; or

#### (3) With clerk of District Court of the United States for the District of Columbia.

In the office of the clerk of the District Court of the United States for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

#### (b) (1) Exception in case of securities.

Even though notice of a lien provided in section 3670 has been filed in the manner prescribed in subsection (a) of this section, or notice of a lien provided in section 3186 of the Revised Statutes,<sup>1</sup> as amended, has been filed in the manner prescribed in such section or subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser, of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

#### (2) Definition of security.

As used in this subsection the term "security" means any bond, debenture, note, or certificate, or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

#### (3) Applicability of subsection.

Except where the lien has been enforced by a proceeding, suit, or civil action which has become final before the date of enactment of the Revenue Act of 1939,<sup>2</sup> this subsection shall apply regardless of the time when the mortgage, pledge, or purchase was

made or the lien arose. (53 Stat. 449; June 29, 1939, 10 p. m. E. S. T., ch. 247, title IV, § 401, 53 Stat. 882.)

<sup>1</sup> Distributed sections 3670, 3671, this section, and sections 3673–3677 of this title.

<sup>2</sup> Revenue Act of 1939 enacted June 29, 1939, 10 p. m. E. S. T.

#### DERIVATION

R. S. § 3186 (b), as amended by acts May 29, 1928, ch. 852, § 613, 45 Stat. 875; June 25, 1936, ch. 804, 49 Stat. 1921. See also derivation note to section 3670 of this title.

#### § 3673. Release of lien.

Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax, may issue a certificate of release of the lien if—

#### (a) Liability satisfied or unenforceable.

The collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable by reason of lapse of time; or

#### (b) Bond accepted.

There is furnished to the collector and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified in the regulations. (53 Stat. 449.)

#### DERIVATION

R. S. § 3186 (c), as amended by act May 29, 1928, ch. 852, § 613, 45 Stat. 876.

See also derivation note to section 3670 of this title.

**§ 3674. Partial discharge of property—(a) Property double the amount of the liability.**

Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of partial discharge of any part of the property subject to the lien if the collector finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon such property.

#### (b) Part payment.

Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the collector in part satisfaction of the liability in respect of such tax an amount determined by the Commissioner, which shall not be less than the value, as determined by him, of the interest of the United States in the part to be so discharged. In determining such value the Commissioner shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the United States. (53 Stat. 449.)

## DERIVATION

R. S. § 3186 (c), as amended by acts May 29, 1928, ch. 852, § 613, 45 Stat. 876; May 10, 1934, ch. 277, § 509, 48 Stat. 757.

See also derivation note to section 3670 of this title.

### § 3675. Effect of certificates of release or partial discharge.

A certificate of release or of partial discharge issued under this subchapter shall be held conclusive that the lien upon the property covered by the certificate is extinguished. (53 Stat. 450.)

## DERIVATION

R. S. § 3186 (d), as amended by act May 29, 1928, ch. 852, § 613, 45 Stat. 876.

See also derivation note to section 3670 of this title.

### § 3676. Single bond covering release of lien and payment of income tax deficiency.

The Commissioner, with the approval of the Secretary, may by regulation provide for the acceptance of a single bond complying both with the requirements of section 272 (j) (relating to the extension of time for the payment of a deficiency) and the requirements of subsection (b) of section 3673. (53 Stat. 450.)

## DERIVATION

R. S. § 3186 (e), as amended by act May 29, 1928, ch. 852, § 613, 45 Stat. 876.

### § 3677. Extended application of provisions relating to release or partial discharge.

Sections 3673, 3674, 3675, and 3676 shall apply to a lien in respect of any internal revenue tax, whether or not the lien is imposed by this subchapter. (53 Stat. 450.)

## DERIVATION

R. S. § 3186 (f), as amended by act May 29, 1928, ch. 852, § 613, 45 Stat. 876.

See also derivation note to section 3670 of this title.

### § 3678. Civil action to enforce lien on property—(a) Filing.

In any case where there has been a refusal or neglect to pay any tax, and it has become necessary to seize and sell property and rights to property, whether real or personal, to satisfy the same, whether distraint proceedings have been commenced or not, the Attorney General at the request of the Commissioner may direct a civil action to be filed, in a district court of the United States, to enforce the lien of the United States for tax upon any property and rights to property, whether real or personal, or to subject any such property and rights to property owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax.

#### (b) Parties to proceedings.

All persons having liens upon or claiming any interest in the property or rights to property sought to be subjected as aforesaid shall be made parties to such proceedings and be brought into court.

#### (c) Adjudication and decree.

The said court shall, at the term next after the parties have been duly notified of the proceedings, unless otherwise ordered by the court, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon

the property and rights to property in question, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property and rights to property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States.

#### (d) Receivership.

In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Commissioner during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity. (53 Stat. 450.)

## DERIVATION

R. S. § 3207 (a), as amended by acts June 19, 1934, ch. 651, 48 Stat. 1064; June 22, 1936, ch. 690, § 802 (a), 49 Stat. 1743; rule 2, District Courts. R. S. § 3207 was in nature of a revision of act July 20, 1868, ch. 186, § 106, 15 Stat. 167. It was also amended by act June 2, 1924, ch. 234, § 1030, 43 Stat. 350 and reenacted without change by act Feb. 26, 1926, ch. 27, § 1127, 44 Stat. 123.

### § 3679. Civil action to clear title to realty—(a) Obtaining leave to file—(1) Request for institution of proceedings by United States.

Any person having a lien upon or any interest in the real estate referred to in section 3678, notice of which has been duly filed of record in the jurisdiction in which the real estate is located, prior to the filing of notice of the lien of the United States as provided in section 3672, or any person purchasing the real estate at a sale to satisfy such prior lien or interest, may make written request to the Commissioner to authorize the filing of a civil action as provided in section 3678.

#### (2) Petition to court.

If the Commissioner fails to authorize the filing of such civil action within six months after receipt of such written request, such person or purchaser may, after giving notice to the Commissioner, file a petition in the district court of the United States for the district in which the real estate is located, praying leave to file a civil action for a final determination of all claims to or liens upon the real estate in question.

#### (3) Court order.

After a full hearing in open court, the district court may in its discretion enter an order granting leave to file such civil action, in which the United States and all persons having liens upon or claiming any interest in the real estate shall be made parties.

#### (b) Service on United States.

Service on the United States shall be had in the manner provided by sections 5 and 6 of the Act of March 3, 1887, entitled "An Act to provide for the bringing of suits against the Government of the United States", ch. 359, 24 Stat. 506 (U. S. C., Title 28, §§ 762, 763), as amended.

#### (c) Adjudication.

Upon the filing of such civil action the district court shall proceed to adjudicate the matters involved therein, in the same manner as in the case of

civil actions filed under section 3678. For the purpose of such adjudication, the assessment of the tax upon which the lien of the United States is based shall be conclusively presumed to be valid.

(d) Costs.

All costs of the proceedings on the petition and the civil action shall be borne by the person filing the civil action. (53 Stat. 450.)

DERIVATION

R. S. § 3207 (b), as amended by act Feb. 26, 1926, ch. 27, § 1127, 44 Stat. 124; act Mar. 3, 1933, ch. 212, § 16, 47 Stat. 1518; Ex. Ord. No. 6166, § 5; act June 19, 1934, ch. 651, 48 Stat. 1064; rule 2, District Courts.

See also derivation note to section 3678 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Process and costs, see Rules 4, 54, following section 723c of Title 28, Judicial Code and Judiciary.

§ 3680. Cross references.

For lien in case of—

Estate tax, see section 827.

Tax on distilled spirits, see section 2800 (e).

For provisions permitting the United States to be made party defendant in a proceeding in a State court for the foreclosure of a lien upon real estate where the United States may have a claim upon the premises involved, see act of March 4, 1931, ch. 515, 46 Stat. 1528 (U. S. C., Title 28, §§ 901-906).

(53 Stat. 451.)

SUBCHAPTER C.—DISTRAINT

PART I.—DISTRAINT ON PERSONAL PROPERTY

§ 3690. Authority to distrain.

If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with such interest and other additional amounts as are required by law, by distraint and sale, in the manner provided in this subchapter, of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid. (53 Stat. 451.)

DERIVATION

R. S. § 3187, which was in nature of a revision of acts July 13, 1866, ch. 184, § 9, 14 Stat. 106, 107, 108; Mar. 2, 1867, ch. 169, § 8, 14 Stat. 473; as amended by act June 2, 1924, ch. 234, § 1016, 43 Stat. 343.

§ 3691. Property exempt from distraint—(a) Enumeration.

There shall be exempt from distraint and sale, if belonging to the head of a family—

(1) School books and wearing apparel.

The school books and wearing apparel necessary for such family; also

(2) Arms.

Arms for personal use;

(3) Livestock.

One cow, 2 hogs, 5 sheep and the wool thereof, provided the aggregate market value of said sheep shall not exceed \$50;

(4) Fodder.

The necessary food for such cow, hogs, and sheep, for a period not exceeding thirty days;

(5) Fuel.

Fuel to an amount not greater in value than \$25;

(6) Provisions.

Provisions to an amount not greater than \$50;

(7) Household furniture.

Household furniture kept for use to an amount not greater than \$300; and

(8) Books and tools of trade or profession.

The books, tools, or implements, of a trade or profession, to an amount not greater than \$100.

(b) Appraisal.

The officer making the distraint shall summon three disinterested householders of the vicinity, who shall appraise and set apart to the owner the amount of property herein declared to be exempt. (53 Stat. 451.)

DERIVATION

R. S. § 3187, which was in nature of a revision of acts July 13, 1866, ch. 184, § 9, 14 Stat. 106, 107, 108; Mar. 2, 1867, ch. 169, § 8, 14 Stat. 473.

§ 3692. Levy.

In case of neglect or refusal under section 3690, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property and rights to property, except such as are exempt by the preceding section, belonging to such person, or on which the lien provided in section 3670 exists, for the payment of the sum due, with interest and penalty for nonpayment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy. (53 Stat. 452.)

DERIVATION

R. S. § 3188, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 107.

§ 3693. Proceedings on distraint.

When distraint is made, as provided in section 3690—

(a) Account and notice to owner.

The officer charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the officer making such distraint, shall be left with the owner or possessor of such goods or effects, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded and the time and place of sale; and

(b) Public notice.

Forthwith cause a notification to be published in some newspaper within the county wherein said distraint is made, if a newspaper is published in said county, or to be publicly posted at the post office, if there be one within five miles nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Such notice shall specify the articles distrained, and the time and place for the sale thereof.

(c) Time and place of sale.

The time of sale shall not be less than ten nor more than twenty days from the date of such notification to the owner or possessor of the property

## DERIVATION

R. S. § 3186 (c), as amended by acts May 29, 1928, ch. 852, § 613, 45 Stat. 876; May 10, 1934, ch. 277, § 509, 48 Stat. 757.

See also derivation note to section 3670 of this title.

**§ 3675. Effect of certificates of release or partial discharge.**

A certificate of release or of partial discharge issued under this subchapter shall be held conclusive that the lien upon the property covered by the certificate is extinguished. (53 Stat. 450.)

## DERIVATION

R. S. § 3186 (d), as amended by act May 29, 1928, ch. 852, § 613, 45 Stat. 876.

See also derivation note to section 3670 of this title.

**§ 3676. Single bond covering release of lien and payment of income tax deficiency.**

The Commissioner, with the approval of the Secretary, may by regulation provide for the acceptance of a single bond complying both with the requirements of section 272 (j) (relating to the extension of time for the payment of a deficiency) and the requirements of subsection (b) of section 3673. (53 Stat. 450.)

## DERIVATION

R. S. § 3186 (e), as amended by act May 29, 1928, ch. 852, § 613, 45 Stat. 876.

**§ 3677. Extended application of provisions relating to release or partial discharge.**

Sections 3673, 3674, 3675, and 3676 shall apply to a lien in respect of any internal revenue tax, whether or not the lien is imposed by this subchapter. (53 Stat. 450.)

## DERIVATION

R. S. § 3186 (f), as amended by act May 29, 1928, ch. 852, § 613, 45 Stat. 876.

See also derivation note to section 3670 of this title.

**§ 3678. Civil action to enforce lien on property—(a) Filing.**

In any case where there has been a refusal or neglect to pay any tax, and it has become necessary to seize and sell property and rights to property, whether real or personal, to satisfy the same, whether distraint proceedings have been commenced or not, the Attorney General at the request of the Commissioner may direct a civil action to be filed, in a district court of the United States, to enforce the lien of the United States for tax upon any property and rights to property, whether real or personal, or to subject any such property and rights to property owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax.

**(b) Parties to proceedings.**

All persons having liens upon or claiming any interest in the property or rights to property sought to be subjected as aforesaid shall be made parties to such proceedings and be brought into court.

**(c) Adjudication and decree.**

The said court shall, at the term next after the parties have been duly notified of the proceedings, unless otherwise ordered by the court, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon

the property and rights to property in question, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property and rights to property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States.

**(d) Receivership.**

In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Commissioner during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity. (53 Stat. 450.)

## DERIVATION

R. S. § 3207 (a), as amended by acts June 19, 1934, ch. 651, 48 Stat. 1064; June 22, 1936, ch. 690, § 802 (a), 49 Stat. 1743; rule 2, District Courts. R. S. § 3207 was in nature of a revision of act July 20, 1868, ch. 186, § 106, 15 Stat. 167. It was also amended by act June 2, 1924, ch. 234, § 1030, 43 Stat. 350 and reenacted without change by act Feb. 26, 1926, ch. 27, § 1127, 44 Stat. 123.

**§ 3679. Civil action to clear title to realty—(a) Obtaining leave to file—(1) Request for institution of proceedings by United States.**

Any person having a lien upon or any interest in the real estate referred to in section 3678, notice of which has been duly filed of record in the jurisdiction in which the real estate is located, prior to the filing of notice of the lien of the United States as provided in section 3672, or any person purchasing the real estate at a sale to satisfy such prior lien or interest, may make written request to the Commissioner to authorize the filing of a civil action as provided in section 3678.

**(2) Petition to court.**

If the Commissioner fails to authorize the filing of such civil action within six months after receipt of such written request, such person or purchaser may, after giving notice to the Commissioner, file a petition in the district court of the United States for the district in which the real estate is located, praying leave to file a civil action for a final determination of all claims to or liens upon the real estate in question.

**(3) Court order.**

After a full hearing in open court, the district court may in its discretion enter an order granting leave to file such civil action, in which the United States and all persons having liens upon or claiming any interest in the real estate shall be made parties.

**(b) Service on United States.**

Service on the United States shall be had in the manner provided by sections 5 and 6 of the Act of March 3, 1887, entitled "An Act to provide for the bringing of suits against the Government of the United States", ch. 359, 24 Stat. 506 (U. S. C., Title 28, §§ 762, 763), as amended.

**(c) Adjudication.**

Upon the filing of such civil action the district court shall proceed to adjudicate the matters involved therein, in the same manner as in the case of

civil actions filed under section 3678. For the purpose of such adjudication, the assessment of the tax upon which the lien of the United States is based shall be conclusively presumed to be valid.

(d) Costs.

All costs of the proceedings on the petition and the civil action shall be borne by the person filing the civil action. (53 Stat. 450.)

DERIVATION

R. S. § 3207 (b), as amended by act Feb. 26, 1926, ch. 27, § 1127, 44 Stat. 124; act Mar. 3, 1933, ch. 212, § 16, 47 Stat. 1518; Ex. Ord. No. 6166, § 5; act June 19, 1934, ch. 651, 48 Stat. 1064; rule 2, District Courts.

See also derivation note to section 3678 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Process and costs, see Rules 4, 54, following section 723c of Title 28, Judicial Code and Judiciary.

§ 3680. Cross references.

For lien in case of—

Estate tax, see section 827.

Tax on distilled spirits, see section 2800 (e).

For provisions permitting the United States to be made party defendant in a proceeding in a State court for the foreclosure of a lien upon real estate where the United States may have a claim upon the premises involved, see act of March 4, 1931, ch. 515, 46 Stat. 1528 (U. S. C., Title 28, §§ 901-906).

(53 Stat. 451.)

SUBCHAPTER C.—DISTRAINT

PART I.—DISTRAINT ON PERSONAL PROPERTY

§ 3690. Authority to distrain.

If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with such interest and other additional amounts as are required by law, by distraint and sale, in the manner provided in this subchapter, of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid. (53 Stat. 451.)

DERIVATION

R. S. § 3187, which was in nature of a revision of acts July 13, 1866, ch. 184, § 9, 14 Stat. 106, 107, 108; Mar. 2, 1867, ch. 169, § 8, 14 Stat. 473; as amended by act June 2, 1924, ch. 234, § 1016, 43 Stat. 343.

§ 3691. Property exempt from distraint—(a) Enumeration.

There shall be exempt from distraint and sale, if belonging to the head of a family—

(1) School books and wearing apparel.

The school books and wearing apparel necessary for such family; also

(2) Arms.

Arms for personal use;

(3) Livestock.

One cow, 2 hogs, 5 sheep and the wool thereof, provided the aggregate market value of said sheep shall not exceed \$50;

(4) Fodder.

The necessary food for such cow, hogs, and sheep, for a period not exceeding thirty days;

(5) Fuel.

Fuel to an amount not greater in value than \$25;

(6) Provisions.

Provisions to an amount not greater than \$50;

(7) Household furniture.

Household furniture kept for use to an amount not greater than \$300; and

(8) Books and tools of trade or profession.

The books, tools, or implements, of a trade or profession, to an amount not greater than \$100.

(b) Appraisal.

The officer making the distraint shall summon three disinterested householders of the vicinity, who shall appraise and set apart to the owner the amount of property herein declared to be exempt. (53 Stat. 451.)

DERIVATION

R. S. § 3187, which was in nature of a revision of acts July 13, 1866, ch. 184, § 9, 14 Stat. 106, 107, 108; Mar. 2, 1867, ch. 169, § 8, 14 Stat. 473.

§ 3692. Levy.

In case of neglect or refusal under section 3690, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property and rights to property, except such as are exempt by the preceding section, belonging to such person, or on which the lien provided in section 3670 exists, for the payment of the sum due, with interest and penalty for nonpayment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy. (53 Stat. 452.)

DERIVATION

R. S. § 3188, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 107.

§ 3693. Proceedings on distraint.

When distraint is made, as provided in section 3690—

(a) Account and notice to owner.

The officer charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the officer making such distraint, shall be left with the owner or possessor of such goods or effects, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded and the time and place of sale; and

(b) Public notice.

Fortwith cause a notification to be published in some newspaper within the county wherein said distraint is made, if a newspaper is published in said county, or to be publicly posted at the post office, if there be one within five miles nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Such notice shall specify the articles distrained, and the time and place for the sale thereof.

(c) Time and place of sale.

The time of sale shall not be less than ten nor more than twenty days from the date of such notification to the owner or possessor of the property

and the publication or posting of such notice as provided in subsection (b) and the place proposed for the sale shall not be more than five miles distant from the place of making such distraint.

(d) Adjournment of sale.

Said sale may be adjourned from time to time by said officer, if he deems it advisable, but not for a time to exceed in all thirty days. (53 Stat. 452.)

DERIVATION

R. S. § 3690, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 107.

§ 3694. Priority of specific tax liability on distrained property.

When property subject to tax, but upon which the tax has not been paid, is seized upon distraint and sold, the amount of such tax shall, after deducting the expenses of such sale, be first appropriated out of the proceeds thereof to the payment of the tax. And if no assessment of such tax has been made upon such property, the collector shall make a return thereof in the form required by law, and the Commissioner shall assess the tax thereon. (53 Stat. 452.)

DERIVATION

R. S. § 3191, which was in nature of a revision of acts July 13, 1866, ch. 184, § 9, 14 Stat. 108; Dec. 24, 1872, ch. 13, § 2, 17 Stat. 402.

§ 3695. Property for account of the United States—  
(a) Purchase.

When any personal property is advertised for sale under distraint as aforesaid, the officer making the seizure shall proceed to sell such property at a public auction, offering the same at a minimum price, including the expenses of making the levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the officer conducting the sale may declare the same to be purchased by him for the United States.

(b) Sale.

The property so purchased may be sold by the collector within whose district the sale was made under such regulations as may be prescribed by the Commissioner, with the approval of the Secretary.

(c) Accounting.

The collector shall render to the Commissioner a distinct account of all charges incurred in such sales, and, in case of resale, shall pay into the Treasury the proceeds as provided in section 3971. (53 Stat. 452.)

DERIVATION

R. S. § 3192, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 108, as amended by act May 10, 1934, ch. 277, § 508, 48 Stat. 757.

§ 3696. Redemption of property.

In any case of distraint for the payment of taxes, the goods, chattels, or effects so distrained shall be restored to the owner or possessor, if, prior to the sale, payment of the amount due is made to the proper officer charged with the collection, together with the fees and other charges; but in case of non-payment, the said officer shall proceed to sell the said

goods, chattels, or effects at public auction. (53 Stat. 453.)

DERIVATION

R. S. § 3193, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 106.

7. Certificates of sale.

In all cases of sale, as aforesaid, the certificate of such sale—

(a) As evidence.

Shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale; and

(b) As conveyances.

Shall transfer to the purchaser all right, title, and interest of such delinquent in and to the property sold; and

(c) As authority for transfer of corporate stock.

Where such property consists of stocks, shall be notice, when received, to any corporation, company, or association of said transfer, and shall be authority to such corporation, company, or association to record the transfer on their books and records in the same manner as if the stocks were transferred or assigned by the party holding the same, in lieu of any original or prior certificates, which shall be void, whether canceled or not; and

(d) As receipts.

Where the subject of sale is securities or other evidences of debt, shall be a good and valid receipt to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt. (53 Stat. 453.)

DERIVATION

R. S. § 3194, which was in nature of a revision of acts July 13, 1866, ch. 184, § 9, 14 Stat. 107; June 30, 1864, ch. 173, § 45, 13 Stat. 240.

§ 3698. Cross references.

For provisions relating to—

Production of books, see section 3711.

Sale of indivisible property, see section 3712.

Stamps, marks, and brands, see section 3725.

(53 Stat. 453.)

PART II.—DISTRAINT ON REAL ESTATE

§ 3700. Authority to distraint.

When goods, chattels, or effects sufficient to satisfy the taxes imposed upon any person are not found by the collector or deputy collector, he is authorized to collect the same by seizure and sale of real estate. (53 Stat. 453.)

DERIVATION

R. S. § 3196, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 108.

§ 3701. Proceedings on distraint—(a) Notice to owner.

The officer making the seizure mentioned in the preceding section shall give notice to the person whose estate it is proposed to sell by giving him in hand, or leaving at his last or usual place of abode, if he has any such within the collection district where said estate is situated, a notice, in writing, stating what particular estate is to be sold, describing



the same with reasonable certainty, and the time when and place where said officer proposes to sell the same.

**(b) Public notice.**

The said officer shall also cause a notification to the same effect to be published in some newspaper within the county where such seizure is made, if any such there be, and shall also cause a like notice to be posted at the post office nearest to the estate seized, and in two other public places within the county.

**(c) Time and place of sale.**

The time of sale shall not be less than twenty nor more than forty days from the time of giving said notice. The place of said sale shall not be more than five miles distant from the estate seized, except by special order of the Commissioner.

**(d) Manner of sale.**

At the time and place appointed, the officer making such seizure shall proceed to sell the said estate at public auction, offering the same at a minimum price, including the expense of making such levy, and all charges for advertising. When the real estate so seized consists of several distinct tracts or parcels, the officer making sale thereof shall offer each tract or parcel for sale separately, and shall, if he deem it advisable, apportion the expenses and charges aforesaid to such several tracts or parcels, or to any of them, in estimating the minimum price.

**(e) Purchasers.**

If no person offers for said estate the amount of said minimum price, the officer shall declare the same to be purchased by him for the United States; otherwise the same shall be declared to be sold to the highest bidder.

**(f) Adjournment of sale.**

The said sale may be adjourned from time to time by said officer for not exceeding thirty days in all, if he shall think it advisable so to do. If the amount bid shall not be then and there paid, the officer shall forthwith proceed to again sell said estate in the same manner. (53 Stat. 453.)

**DERIVATION**

R. S. § 3197, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 109, as amended by act Mar. 1, 1879, ch. 125, § 3, 20 Stat. 332. R. S. § 3197 was also amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 248.

**§ 3702. Redemption of real estate—(a) Before sale.**

Any person whose estate may be proceeded against as aforesaid shall have the right to pay the amount due, together with the costs and charges thereon, to the collector or deputy collector at any time prior to the sale thereof, and all further proceedings shall cease from the time of such payment.

**(b) After sale—(1) Period.**

The owners of any real estate sold as aforesaid, their heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the land sold, or any particular tract

thereof, at any time within one year after the sale thereof.

**(2) Price.**

The land or tract aforesaid shall be permitted to be redeemed upon payment to the purchaser, or in case he can not be found in the county in which the land to be redeemed is situated, then to the collector of the district in which the land is situated, for the use of the purchaser, his heirs, or assigns, the amount paid by the said purchaser and interest thereon at the rate of 20 per centum per annum.

**(c) Record.**

When any lands sold are redeemed as provided in this section, the collector shall make entry of the fact upon the record mentioned in section 3708, and the said entry shall be evidence of such redemption. (53 Stat. 454.)

**DERIVATION**

Subsection (a) from R. S. § 3201, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 109.

Subsection (b) from R. S. § 3202, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 109.

Subsection (c) from R. S. § 3204, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 108.

**§ 3703. Certificates of purchase—(a) Real estate purchased by the United States.**

In case the real estate sold under section 3701 shall be declared to be purchased for the United States, the officer shall immediately transmit a certificate of the purchase to the Commissioner.

**(b) Real estate purchased by others.**

Upon any sale of real estate, as provided in section 3701, and the payment of the purchase money, the officer making the seizure and sale shall give to the purchaser a certificate of purchase, which shall set forth the real estate purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor. (53 Stat. 454.)

**DERIVATION**

Subsection (a) from R. S. § 3197, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 109, as amended by act Mar. 1, 1879, ch. 125, § 3, 20 Stat. 332. See also Historical Note to section 3701 of this title.

Subsection (b) from R. S. § 3198, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 109.

**§ 3704. Deeds of sale—(a) Real estate purchased by the United States.**

In case real estate shall be declared under section 3701 (e) to be purchased for the United States, the officer shall—

**(1) Execution.**

At the proper time, as provided in subsection (b), execute a deed therefor after its preparation and the endorsement of approval as to its form by the United States district attorney for the district in which the property is situate, and

**(2) Record and transmission.**

Without delay cause the same to be duly recorded in the proper registry of deeds, and immediately thereafter transmit such deed to the Commissioner.

**(b) Real estate purchased by others.**

If the said real estate be not redeemed in the manner and within the time provided in section 3702, the said collector or deputy collector shall execute to the said purchaser, upon his surrender of said certificate, a deed of the real estate purchased by him as aforesaid, reciting the facts set forth in said certificate, and in accordance with the laws of the State in which such real estate is situate upon the subject of sales of real estate under execution.

**(c) Legal effect—(1) As evidence.**

The deed of sale given in pursuance of this section shall be prima facie evidence of the facts therein stated; and

**(2) As conveyance of title.**

If the proceedings of the officer as set forth have been substantially in accordance with the provisions of law, such deed shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real estate thus sold at the time the lien of the United States attached thereto. (53 Stat. 454.)

**DERIVATION**

Subsection (a) from R. S. § 3197, as amended by act Mar. 1, 1879, ch. 125, § 3, 20 Stat. 332. See also Historical Note to section 3701 of this title.

Subsection (b) from R. S. § 3198, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 109.

Subsection (c) from R. S. § 3199, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 109.

**§ 3705. Transmission of certificates and deeds to Commissioner.**

All certificates of purchase, and deeds of property purchased by the United States under the internal revenue laws, on sales for taxes, or under executions issued from United States courts, which may be found in the office of any collector, shall be immediately transmitted by such officer to the Commissioner. (53 Stat. 455.)

**DERIVATION**

R. S. § 3197, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 109, as amended by act Mar. 1, 1879, ch. 125, § 3, 20 Stat. 332; act Mar. 3, 1933, ch. 212, § 16, 47 Stat. 1518; Ex. Ord. No. 6166, § 5. See also Historical Note to section 3701 of this title.

**§ 3706. Records of sale—(a) Requirement.**

It shall be the duty of every collector to keep a record of all sales of land made in his collection district, whether by himself or his deputies, or by another collector. And it shall be the duty of every deputy making sale, as aforesaid, to return a statement of all his proceedings to the collector, and to certify the record thereof.

**(b) Contents.**

The record shall set forth the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making said sale, the amount of fees and expenses, the name of the purchaser, and the date of the deed.

**(c) Certification.**

The said record shall be certified by the officer making the sale.

**(d) Copy to Commissioner.**

On or before the 5th day of each succeeding month, the collector shall transmit a copy of such record of the preceding month to the Commissioner.

**(e) Delivery by collector to successor.**

In case of the death or removal of the collector, or the expiration of his term of office from any other cause, said record shall be delivered to his successor in office.

**(f) Copy as evidence.**

A copy of every such record, certified by the collector, shall be evidence in any court of the truth of the facts therein stated. (53 Stat. 455.)

**DERIVATION**

R. S. § 3203 which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 110, as amended by act Mar. 1, 1879, ch. 125, § 3, 20 Stat. 332.

**§ 3707. Cross references.**

For provisions relating to—

Administration of real estate acquired by the United States, see section 3795.

Levy, see section 3692.

Production of books, see section 3711.

Sale of indivisible property, see section 3712.

(53 Stat. 455.)

**PART III.—GENERAL PROVISIONS**

**§ 3710. Surrender of property subject to distraint—(a) Requirement.**

Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process.

**(b) Penalty for violation.**

Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

**(c) Person defined.**

The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. (53 Stat. 456.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 1114 (e), (f), 44 Stat. 117.

Provisions similar to subsection (c) were contained in act June 2, 1924, ch. 234, § 1017 (e), 43 Stat. 343.

**FEDERAL RULES OF CIVIL PROCEDURE**

Execution, see Rule 69 following section 723c of Title 28, Judicial Code and Judiciary.

**§ 3711. Production of books.**

All persons, and officers of companies or corporations, are required, on demand of a collector or deputy collector about to distrain or having distrained on any property, or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the tax due. (53 Stat. 456.)

**DERIVATION**

R. S. § 3189, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 107.

**§ 3712. Sale of indivisible property.**

When any property liable to distraint for taxes is not divisible, so as to enable the collector by sale of a part thereof to raise the whole amount of the tax, with all costs and charges, the whole of such property shall be sold, and the surplus of the proceeds of the sale, after making allowance for the amount of the tax, interest, penalties, and additions thereto, and for the costs and charges of the distraint and sale, shall be deposited with the Treasurer of the United States as provided in section 3971. (53 Stat. 456.)

**DERIVATION**

R. S. § 3195, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 108, as amended by act June 2, 1924, ch. 234, § 1031 (a), 43 Stat. 351; act Feb. 26, 1926, ch. 27, § 1128 (a), 44 Stat. 124.

**§ 3713. Distraint by collector outside his district.**

Any collector or deputy collector may, for the collection of taxes imposed upon any person, and committed to him for collection, seize and sell any of the property, real or personal (except property exempt from distraint and sale under section 3691), or any right or interest therein, of such person situated in any other collection district within the State in which such officer resides, notwithstanding the provisions of subsection (b) of section 3651; and his proceedings in relation thereto shall have the same effect as if the same were had in his proper collection district. (53 Stat. 456.)

**DERIVATION**

R. S. § 3200, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 110, as amended by act Feb. 26, 1926, ch. 27, § 1129, 44 Stat. 125.

**§ 3714. Period of limitation upon distraint—(a) Length of period.**

For period within which distraint may be begun in case of—

Estate tax, see sections 874 (b) (2) and 875.

Income tax, see sections 276 (c) and 277.

Miscellaneous taxes, see section 3312 (d).

**(b) Date of beginning distraint.**

In determining the running of any period of limitation in respect of distraint, the distraint shall be held to have been begun—

**(1) Personal property.**

In the case of personal property, on the date on which the levy upon such property is made; or

**(2) Real property.**

In the case of real property, on the date on which notice of the time and place of sale is given to the

person whose estate it is proposed to sell. (53 Stat. 456.)

**DERIVATION**

Act Feb. 26, 1926, ch. 27, § 1130, 44 Stat. 125.

**§ 3715. Successive seizures.**

Whenever any property, personal or real, which is seized and sold by virtue of the foregoing provisions, is not sufficient to satisfy the claim of the United States for which distraint or seizure is made, the collector may, thereafter, and as often as the same may be necessary, proceed to seize and sell in like manner, any other property liable to seizure of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid. (53 Stat. 457.)

**DERIVATION**

R. S. § 3205, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 108.

**§ 3716. Fees and charges in distraint and seizure cases.**

The Commissioner shall by regulation determine the fees and charges to be allowed in all cases of distraint and other seizures; and shall have power to determine whether any expense incurred in making any distraint or seizure was necessary. (53 Stat. 457.)

**DERIVATION**

R. S. § 3206, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 108.

**§ 3717. Cross reference.**

For distraint proceedings against delinquent collectors, see sections 3975 to 3978.

(53 Stat. 457.)

**SUBCHAPTER D.—FORFEITURES****§ 3720. Seizure of forfeitable property—(a) Property subject to seizure and forfeiture—(1) Manufactured articles.**

All goods, wares, merchandise, articles, or objects, on which taxes are imposed, which shall be found in the possession, or custody, or within the control of any person, for the purpose of being sold or removed by him in fraud of the internal revenue laws, or with design to avoid payment of said taxes, may be seized, and shall be forfeited to the United States.

**(2) Raw materials.**

All raw materials found in the possession of any person intending to manufacture the same into articles of a kind subject to tax for the purpose of fraudulently selling such manufactured articles, or with design to evade the payment of said tax, may also be seized, and shall be forfeited as aforesaid.

**(3) Equipment.**

All tools, implements, instruments, and personal property whatsoever, in the place or building, or within any yard or inclosure where such articles or raw materials are found, may also be seized, and shall be forfeited as aforesaid.

**(b) Authority to make seizures—(1) Collectors and deputy collectors.**

Such property may be seized by the collector or deputy collector of the proper district, or by such

other collector or deputy collector as may be specially authorized by the Commissioner for that purpose.

**(2) Other internal revenue officers.**

Any officer of internal revenue may be specially authorized by the Commissioner to seize any property which may by law be subject to seizure, and for that purpose such officer shall have all the power conferred by law upon collectors; and such special authority shall be limited in respect of time, place, and kind and class of property, as the Commissioner may specify.

**(c) Responsibility.**

For the issuance of certificates of probable cause relieving officers making seizures of responsibility for damages, see R. S. § 970 (U. S. C., Title 28, § 818).

(53 Stat. 457.)

**DERIVATION**

R. S. § 3453, which was in nature of a revision of acts June 30, 1864, ch. 173, § 48, 13 Stat. 240; July 13, 1866, ch. 184, § 9, 14 Stat. 111.

R. S. § 3166, which was in nature of a revision of acts Mar. 2, 1867, ch. 169, § 19, 14 Stat. 482; July 20, 1868, ch. 186, § 51, 15 Stat. 145. Part of R. S. § 3166 is section 3967 of this title.

**§ 3721. Custody of seized goods prior to judicial proceedings.**

Any goods, wares, merchandise, articles, or objects which may be seized, under the provisions of section 3720, by any collector or deputy collector, may, at the option of the collector, be delivered to the marshal of the district, and remain in the care and custody and under the control of said marshal, until he shall obtain possession by process of law. (53 Stat. 457.)

**DERIVATION**

R. S. § 3458, which was in nature of a revision of acts June 30, 1864, ch. 173, § 48, 13 Stat. 241; July 13, 1866, ch. 184, § 9, 14 Stat. 112. Part of R. S. § 3458 is section 3725 of this title.

**§ 3722. Special disposition of perishable goods.**

When any property which is seized under the provisions of section 3720 is liable to perish or become greatly reduced in price or value by keeping, or when it can not be kept without great expense—

**(a) Application for examination.**

The owner thereof, or the marshal of the district, may apply to the collector of the district to examine it; and

**(b) Appraisal.**

If, in the opinion of said collector, it shall be necessary that the said property should be sold to prevent such waste or expense, he shall appraise the same; and thereupon

**(c) Return to owner under bond.**

The owner shall have said property returned to him upon giving bond in such form as may be prescribed by the Commissioner, and in an amount equal to the appraised value, with such sureties as the collector shall deem good and sufficient, to abide the final order, decree, or judgment of the court having cognizance of the case, and to pay the amount of said appraised value to the collector, marshal, or otherwise, as he may be ordered and

directed by the court, which bond shall be filed by said collector with the United States district attorney for the district in which the proceedings in rem authorized in section 3723 may be commenced.

**(d) Sale in absence of bond—(1) Order to sell.**

If said owner shall neglect or refuse to give said bond, the collector shall issue to a deputy collector or to the marshal aforesaid an order to sell the same.

**(2) Manner of sale.**

The deputy collector or marshal shall thereupon advertise and sell the said property at public auction in the same manner as goods may be sold on final execution in said district.

**(3) Disposition of proceeds.**

The proceeds of the sale, after deducting the reasonable costs of the seizure and sale, shall be paid to the court aforesaid, to abide its final order, decree, or judgment. (53 Stat. 458.)

**DERIVATION**

R. S. § 3459, which was in nature of a revision of acts June 30, 1864, ch. 173, § 48, 13 Stat. 241; July 13, 1866, ch. 184, § 9, 14 Stat. 112.

**§ 3723. Judicial proceedings to enforce forfeiture—(a) Nature and venue.**

The proceedings to enforce such forfeitures shall be in the nature of a proceeding in rem in the district court of the United States for the district where such seizure is made.

**(b) Service of process when property has been returned under bond.**

In case bond as provided in section 3722 (c) shall have been executed and the property returned before seizure thereof by virtue of process in the proceedings in rem authorized in subsection (a) of this section, the marshal shall give notice of pendency of proceedings in court to the parties executing said bond, by personal service or publication, and in such manner and form as the court may direct, and the court shall thereupon have jurisdiction of said matter and parties in the same manner as if such property had been seized by virtue of the process aforesaid.

**(c) Cost of seizure taxable.**

The cost of seizure made before process issues shall be taxable by the court.

**(d) Consolidation.**

For consolidation of seizures in one suit, see R. S. § 920 U. S. C., Title 28, § 733).

(53 Stat. 458.)

**DERIVATION**

Subsection (a) from R. S. § 3453, which was in nature of a revision of acts June 30, 1864, ch. 173, § 48, 13 Stat. 240; July 13, 1866, ch. 184, § 9, 14 Stat. 111; Mar. 8, 1911, ch. 231, § 289, 36 Stat. 1167.

Subsection (b) from R. S. § 3459, which was in nature of a revision of acts June 30, 1864, ch. 173, § 48, 13 Stat. 241; July 13, 1866, ch. 184, § 9, 14 Stat. 112.

Subsection (c) from R. S. § 3458, which was in nature of a revision of acts June 30, 1864, ch. 173, § 48, 13 Stat. 241; July 13, 1866, ch. 184, § 9, 14 Stat. 112.

**§ 3724. Goods valued at \$500 or less.**

In all cases of seizure of any goods, wares, or merchandise as being subject to forfeiture under any provision of the internal revenue laws which,

in the opinion of the collector or deputy collector making the seizure, are of the appraised value of \$500 or less, the said collector or deputy collector shall, except in cases otherwise provided, proceed as follows:

**(a) List and appraisalment.**

He shall cause a list containing a particular description of the goods, wares, or merchandise seized to be prepared in duplicate, and an appraisalment thereof to be made by three sworn appraisers, to be selected by him, who shall be respectable and disinterested citizens of the United States residing within the collection district wherein the seizure was made. Said list and appraisalment shall be properly attested by the said collector or deputy collector and the said appraisers, for which service each of the said appraisers shall be allowed the sum of \$1.50 a day, to be paid in the manner provided by law for other necessary charges of collectors.

**(b) Notice of seizure.**

If the said goods are found by the said appraisers to be of the value of \$500 or less, the said collector or deputy collector shall publish a notice, for three weeks, in some newspaper of the district where the seizure was made, describing the articles, and stating the time, place, and cause of their seizure, and requiring any person claiming them to appear and make such claim within thirty days from the date of the first publication of such notice.

**(c) Execution of bond by claimant.**

Any person claiming the goods, wares, or merchandise so seized, within the time specified in the notice, may file with the said collector or deputy collector a claim, stating his interest in the articles seized, and may execute a bond to the United States in the penal sum of \$250, with sureties to be approved by the said collector or deputy collector, conditioned that, in case of condemnation of the articles so seized, the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation; and upon the delivery of such bond to the collector or deputy collector, he shall transmit the same, with the duplicate list or description of the goods seized, to the United States district attorney for the district, and said attorney shall proceed thereon in the ordinary manner prescribed by law.

**(d) Sale in absence of bond.**

If no claim is interposed and no bond is given within the time above specified, the collector or deputy collector, as the case may be, shall give ten days' notice of the sale of the goods, wares, or merchandise by publication, and, at the time and place specified in the notice, shall sell the articles so seized at public auction.

**(e) Deposit of proceeds of sale.**

After deducting the expenses of appraisalment and sale, the collector or deputy collector, as the case may be, shall deposit the proceeds to the credit of the Secretary.

**(f) Remission of forfeiture—(1) Claim.**

Within one year after the sale of any goods, wares, or merchandise, as provided in the preceding subsections,

any person claiming to be interested in the property sold, may apply to the Secretary for a remission of the forfeiture thereof, or of any part thereof, and a restoration of the proceeds of the sale.

**(2) Allowance.**

The Secretary may grant the same upon satisfactory proof, to be furnished in such manner as he shall prescribe: *Provided*, That it shall be satisfactorily shown—

(A) That the applicant, at the time of the seizure and sale of the said property, and during the intervening time, was absent, out of the United States, or in such circumstances as prevented him from knowing of the seizure, and that he did not know of the same; and also

(B) That the said forfeiture was incurred without willful negligence or any intention of fraud on the part of the owner of said property.

**(g) Distribution of proceeds of sale.**

If no application for restoration of the proceeds is made within one year, as prescribed in the foregoing subsection, the Secretary shall, at the expiration of the said time, cause the proceeds of the sale of the said property to be distributed according to law, as in the case of goods, wares, or merchandise condemned and sold pursuant to the decree of a competent court. (53 Stat. 458.)

**DERIVATION**

Opening paragraph and subsections (a)–(e) from R. S. § 3460, which was in nature of a revision of acts July 13, 1866, ch. 184, § 63, 14 Stat. 169; June 2, 1872, ch. 315, § 40, 17 Stat. 257.

Subsections (f) and (g) from R. S. § 3461, which was in nature of a revision of act July 13, 1866, ch. 184, § 63, 14 Stat. 169.

**§ 3725. Stamping, marking, and branding seized goods.**

Where any whisky or tobacco, or other article of manufacture or produce, requiring brands, stamps, or marks of whatever kind to be placed thereon shall be sold upon distraint, forfeiture (except as provided in section 2805 with respect to distilled spirits), or other process provided by law, the same not having been branded, stamped, or marked, as required by law, the officer selling the same shall, upon sale thereof, fix or cause to be affixed the brands, stamps, or marks, so required. (53 Stat. 460.)

**DERIVATION**

R. S. § 3458, which was in nature of a revision of acts June 30, 1864, ch. 173, § 48, 13 Stat. 241; July 13, 1866, ch. 184, § 9, 14 Stat. 112. Part of R. S. § 3458 is section 3721 of this title.

**§ 3726. Customs laws applicable.**

The provisions of law applicable to the remission or mitigation by the Secretary of forfeitures under the customs laws shall apply to forfeitures incurred or alleged to have been incurred under the internal revenue laws. (53 Stat. 460.)

**DERIVATION**

Act May 29, 1928, ch. 852, § 709, 45 Stat. 882.

**§ 3727. Cross references.**

For provisions relating to—

Destruction of stills and distilling apparatus after judgment of forfeiture, see section 2853.

Release of seized distillery or distilling apparatus before judgment, see section 2852.

Disposal of forfeited distilled spirits and equipment and material for distilling, see section 2807.

(53 Stat. 460.)

## SUBCHAPTER E.—SUITS BY UNITED STATES

### § 3740. Authorization to commence suit.

No suit for the recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Commissioner authorizes or sanctions the proceedings and the Attorney General directs that the suit be commenced. (53 Stat. 460.)

#### DERIVATION

R. S. § 3214, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 111; act Mar. 3, 1933, ch. 212, § 16, 47 Stat. 1518; Ex. Ord. No. 6166, § 5.

### § 3741. Continuance.

It shall be lawful for any court in which any suit or criminal proceeding arising under the internal revenue laws may be pending to continue the same at any stage thereof for good cause shown on motion by the district attorney. (53 Stat. 460.)

#### DERIVATION

R. S. § 3231, which was in nature of a revision of act July 20, 1868, ch. 186, § 102, 15 Stat. 166.

### § 3742. Discontinuance or nolle prosequi.

For discontinuance or nolle prosequi of prosecutions against distillers for defrauding or attempting to defraud the United States of tax on distilled spirits, see section 2806 (f).

(53 Stat. 460.)

### § 3743. Regulations.

It shall be the duty of the Commissioner, with the approval of the Secretary, to establish such regulations, not inconsistent with law, for the observance of revenue officers, respecting suits arising under the internal revenue laws in which the United States is a party, as may be deemed necessary for the just responsibility of those officers and the prompt collection of all revenues and debts due and accruing to the United States under such laws. (53 Stat. 460.)

#### DERIVATION

R. S. § 3215, which was in nature of a revision of act Mar. 2, 1867, ch. 169, § 3, 14 Stat. 472; act Mar. 3, 1933, ch. 212, § 16, 47 Stat. 1518; Ex. Ord. No. 6166, § 5.

### § 3744. Suits for taxes.

Taxes may be sued for and recovered in the name of the United States in any proper form of action, before any district court of the United States, for the district within which the liability to such tax is incurred, or where the party from whom such tax is due resides at the time of the commencement of the said action. (53 Stat. 460.)

#### DERIVATION

R. S. § 3213, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 110; act Mar. 3, 1911, ch. 231, § 289, 36 Stat. 1167.

### § 3745. Suits for fines, penalties, and forfeitures—(a) Collector's report to district attorney.

It shall be the duty of every collector of internal revenue having knowledge of any willful violation

of any law of the United States relating to the revenue, within thirty days after coming into possession of such knowledge, to file with the district attorney of the district in which any fine, penalty, or forfeiture may be incurred, a statement of all the facts and circumstances of the case within his knowledge, together with the names of the witnesses, setting forth the provisions of law believed to be so violated on which reliance may be had for condemnation or conviction.

### (b) Prosecutions by district attorney.

For the duty of every district attorney to whom the collector reports the cases in which such fines, penalties, or forfeitures have been incurred in the district of such attorney to cause proper proceedings to be commenced and prosecuted, when authorized or sanctioned by the Commissioner and directed by the Attorney General, see R. S. § 838 as amended by act Feb. 27, 1877, ch. 69, s. 1, 19 Stat. 241 (U. S. C., Title 28, § 486).

### (c) Plaintiff, proceedings, and venue.

All suits for fines, penalties, and forfeitures, where not otherwise provided for, shall be brought in the name of the United States, in any proper form of action, or by any appropriate form of proceeding, *qui tam* or otherwise, before any district court of the United States for the district within which said fine, penalty, or forfeiture may have been incurred, or before any other court of competent jurisdiction.

### (d) Costs.

In case of any suit for penalties or forfeitures brought upon information received from any person, other than a collector, deputy collector, revenue agent, or inspector, the United States shall not be subject to any costs of suit. (53 Stat. 460.)

#### DERIVATION

Subsection (a) from R. S. § 3164, which was in nature of a revision of act Mar. 3, 1873, ch. 244, 17 Stat. 580, as amended by act Feb. 24, 1919, ch. 18, § 1317, 40 Stat. 1146; act Feb. 26, 1926, ch. 27, § 1115, 44 Stat. 117. R. S. § 3164, as amended, was reenacted without change by acts Nov. 23, 1921, ch. 136, § 1311, 42 Stat. 311; June 2, 1924, ch. 234, § 1018, 43 Stat. 344.

Subsection (c) from R. S. § 3213, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 110; Mar. 3, 1911, ch. 231, § 289, 36 Stat. 1167.

Subsection (d) from R. S. § 969, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 111; R. S. § 3214, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 111.

#### FEDERAL RULES OF CIVIL PROCEDURE

Parties and costs, see Rules 17, 54, following section 723c of Title 28, Judicial Code and Judiciary.

### § 3746. Suits for recovery of erroneous refunds—(a) Refunds after limitation period.

Any portion of an internal revenue tax (or any interest, penalty, additional amount, or addition to such tax) refund of which is erroneously made, within the meaning of section 3774, may be recovered by suit brought in the name of the United States, but only if such suit is begun within two years after the making of such refund.

### (b) Refunds otherwise erroneous.

Any portion of an internal revenue tax (or any interest, penalty, additional amount, or addition to such tax) which has been erroneously refunded (if such refund would not be considered as erroneous under section 3774) may be recovered by suit

brought in the name of the United States, but only if such suit is begun before the expiration of two years after the making of such refund.

**(c) Refunds based on fraud or misrepresentation.**

Despite the provisions of subsections (a) and (b) such suit may be brought at any time within five years from the making of the refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact.

**(d) Interest.**

Erroneous refunds recoverable by suit under this section shall bear interest at the rate of 6 per centum per annum from the date of the payment of the refund. (53 Stat. 461.)

**DERIVATION**

Act May 29, 1928, ch. 852, § 610, 45 Stat. 875, as amended by acts May 10, 1934, ch. 277, § 502 (a), 48 Stat. 756; June 22, 1936, ch. 690, § 803, 49 Stat. 1744.

**§ 3747. Disposition of judgments and moneys recovered.**

All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties, shall be paid to collectors as internal revenue taxes are required to be paid. (53 Stat. 461.)

**DERIVATION**

R. S. § 3216, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 111.

**§ 3748. Periods of limitation—(a) Criminal prosecutions.**

No person shall be prosecuted, tried, or punished, for any of the various offenses arising under the internal revenue laws of the United States unless the indictment is found or the information instituted within three years next after the commission of the offense, except that the period of limitation shall be six years—

(1) for offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner,

(2) for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof, and

(3) for the offense of willfully aiding or assisting in, or procuring, counseling, or advising, the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document).

For offenses arising under section 37 of the Criminal Code, March 4, 1909, 35 Stat. 1096 (U. S. C., Title 18, § 88), where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof, the period of limitation shall also be six years. The time during which the person committing any of the offenses above mentioned is absent from the district wherein the same is committed shall not be taken as any part of the time limited by law for the commencement of such proceedings. Where a complaint is instituted before

a commissioner of the United States within the period above limited, the time shall be extended until the discharge of the grand jury at its next session within the district.

**(b) Scope of limitations.**

Subsection (a) of this section shall apply to offenses whenever committed; except that it shall not apply to offenses the prosecution of which was barred before June 6, 1932.

**(c) Civil suits.**

For period of limitation in respect of—

Suits for fines, penalties, and forfeitures, see section 1047 of the Revised Statutes (U. S. C., Title 28, § 791).

Suits for erroneous refunds, see section 3746.

(53 Stat. 461.)

**DERIVATION**

Act July 5, 1884, ch. 225, 23 Stat. 122, as amended by acts Nov. 23, 1921, ch. 136, § 1321 (a), 42 Stat. 315; June 2, 1924, ch. 234, § 1010 (a), 43 Stat. 341; Feb. 26, 1926, ch. 27, § 1110, 44 Stat. 114; June 6, 1932, ch. 209, § 1108, 47 Stat.

**SUBCHAPTER F.—CLOSING AGREEMENTS AND COMPROMISES**

**§ 3760. Closing agreements—(a) Authorization.**

The Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, authorized in writing by the Commissioner) is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any taxable period.

**(b) Finality.**

If such agreement is approved by the Secretary, the Under Secretary, or an Assistant Secretary, within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) The case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the United States, and

(2) In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded. (53 Stat. 462.)

**DERIVATION**

Act May 29, 1928, ch. 852, § 606, 45 Stat. 874, as amended by act May 28, 1938, ch. 289, §§ 801, 802, 52 Stat. 573.

**§ 3761. Compromises—(a) Authorization.**

The Commissioner, with the approval of the Secretary, or of the Under Secretary of the Treasury, or of an Assistant Secretary of the Treasury, may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense; and the Attorney General may compromise any such case after reference to the Department of Justice for prosecution or defense.



**(b) Record.**

Whenever a compromise is made by the Commissioner in any case there shall be placed on file in the office of the Commissioner the opinion of the General Counsel for the Department of the Treasury, or of the officer acting as such, with his reasons therefor, with a statement of—

- (1) The amount of tax assessed,
- (2) The amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and
- (3) The amount actually paid in accordance with the terms of the compromise.

**(c) Cross reference.**

For compromises after judgment, see R. S. § 3469 (U. S. C., Title 31, § 194).

(53 Stat. 462.)

**DERIVATION**

R. S. § 3229 which was in nature of a revision of act July 20, 1868, ch. 186, § 102, 15 Stat. 166; act Mar. 3, 1933, ch. 212, § 16, 47 Stat. 1518; act May 10, 1934, ch. 277, § 512 (b), 48 Stat. 769; Ex. Ord. No. 6166, § 5; act May 28, 1938, ch. 289, § 815, 52 Stat. 578.

**§ 3762. Penalties.**

Any person who, in connection with any compromise under section 3761, or offer of such compromise, or in connection with any closing agreement under section 3760, or offer to enter into any such agreement, willfully—

**(a) Concealment of property.**

Conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or

**(b) Withholding, falsifying, and destroying records.**

Receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax—

Shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned for not more than one year, or both. (53 Stat. 463.)

**DERIVATION**

Act May 29, 1928, ch. 852, § 616, 45 Stat. 877.

**Chapter 37.—ABATEMENTS, CREDITS, AND REFUNDS****Sec.**

- 3770. Authority to make abatements, credits, and refunds
- 3771. Interest on overpayments.
- 3772. Suits for refund.
- 3773. Interest on judgments.
- 3774. Refunds after periods of limitation.
- 3775. Credits after periods of limitation.
- 3776. Reports to Congress of refunds in excess of \$500.
- 3777. Reports of refunds and credits in excess of \$75,000.
- 3778. Cross reference.

**§ 3770. Authority to make abatements, credits, and refunds—(a) To taxpayers—(1) Assessments and collections generally.**

Except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes, the Commissioner, subject to regulations prescribed by the Secretary, is authorized to remit,

refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected.

**(2) Assessments and collections after limitation period.**

Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim.

**(3) Date of allowance.**

Where the Commissioner has signed a schedule of overassessments in respect of any internal revenue tax imposed by this title, the Revenue Act of 1932, or any prior revenue Act, the date on which he first signed such schedule (if after May 28, 1928) shall be considered as the date of allowance of refund or credit in respect of such tax.

**(4) Cross references.**

For limitations on refunds and credits in case of—

Estate tax, see sections 910, 911, and 912.

Gift tax, see section 1027.

Income tax, see section 322.

Miscellaneous taxes, see section 3313.

**(b) To collectors and officers.**

The Commissioner, subject to regulations prescribed by the Secretary, is authorized to repay—

**(1) Collections recovered.**

To any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expense of suit; also

**(2) Damages and costs.**

All damages and costs recovered against any collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty. (53 Stat. 464; Oct. 8, 1940, 11 p. m., E. S. T., ch. 757, title V, § 508 (b), 54 Stat. 1008.)

**DERIVATION**

Subsection (a) (1) from R. S. § 3220, which was in nature of a revision of acts July 13, 1866, ch. 184, § 9, 14 Stat. 111; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401; as amended by acts May 29, 1928, ch. 852, § 619 (b), 45 Stat. 878; May 29, 1928, ch. 901, § 3, 45 Stat. 996.

Subsection (a) (2) from act May 29, 1928, ch. 852, § 607, 45 Stat. 874.

Subsection (a) (3) from act June 6, 1932, ch. 209, § 1104, 47 Stat. 287.

Subsection (b) from R. S. § 3220, as amended by act May 29, 1928, ch. 901, § 3, 45 Stat. 996.

R. S. § 3220 was also amended by act Feb. 24, 1919, ch. 18, § 1316 (a), 40 Stat. 1145; reenacted without change by acts Nov. 23, 1921, ch. 136, § 1315, 42 Stat. 314; June 2, 1924, ch. 234, § 1011, 43 Stat. 342; and amended by act Feb. 26, 1926, ch. 27, § 1111, 44 Stat. 115.

**1940 AMENDMENT**

Subsection (a) (1) was amended by act October 8, 1940, cited to text, by inserting words "war-profits, excess-profits," therein.

**REFUND OR CREDIT OF TAX PAID ON LIQUORS LOST OR RENDERED UNMARKETABLE BY FLOODS OF 1936 AND 1937**

Act Aug. 11, 1939, ch. 719, § 1, 53 Stat. 1420, provided as follows: "(a) The Commissioner of Internal Revenue is authorized and directed to make refund, or in lieu thereof, if he so elects, allow credit in the amount of the internal-revenue tax paid on spirits previously withdrawn and lost or rendered unmarketable or useless by reason of the floods of 1936 and 1937 while such spirits were in the possession of the person originally paying the said tax on such spirits, or while such spirits were in the possession of a rectifier for rectification or for bottling, or which have been used in the process of rectification, under Government supervision as provided by law and regulations. A claim for such tax shall be filed with the Commissioner of Internal Revenue within thirty days from the effective date of this act [Aug. 11, 1939] in which proof shall be furnished to his satisfaction that (1) the internal-revenue tax on such spirits was fully paid; (2) that the same were in the possession of the claimant as above set forth at the time of such loss; (3) that such spirits were lost or rendered unmarketable or useless by reason of damage sustained as the result of the aforesaid flood conditions; (4) that such spirits so rendered unmarketable or useless have been destroyed; and (5) that claimant was not indemnified against such loss by any valid claim of insurance or otherwise.

"(b) Where credit is allowed for the internal-revenue tax previously paid as aforesaid, the Commissioner of Internal Revenue is authorized and directed to provide for the issuance of stamps to cover the spirits subsequently withdrawn to the extent of the credit so allowed by the Commissioner of Internal Revenue.

"(c) The Commissioner of Internal Revenue, with the approval of the Secretary, is authorized to make such rules and regulations as may be necessary to carry out the provisions of this act."

**FEDERAL RULES OF CIVIL PROCEDURE**

Costs, see Rule 54, following section 723c of Title 28, Judicial Code and Judiciary.

**§ 3771. Interest on overpayments—(a) Rate.**

Interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the rate of 6 per centum per annum.

**(b) Period.**

Such interest shall be allowed and paid as follows:

**(1) Credits.**

In the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment of a tax imposed by the Revenue Act of 1921, 42 Stat. 227, or any subsequent Revenue Act, then to the date of the assessment of that amount.

**(2) Refunds.**

In the case of a refund, from the date of the overpayment to a date preceding the date of the refund check by not more than thirty days, such date to be determined by the Commissioner, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

**(c) Additional assessment defined.**

As used in this section the term "additional assessment" means a further assessment for a tax of the same character previously paid in part, and includes the assessment of a deficiency of any income or es-

tate tax imposed by the Revenue Act of 1924, 43 Stat. 253, or by any subsequent Revenue Act. (53 Stat. 465.)

**DERIVATION**

Act May 29, 1928, ch. 852, § 614 (a, b), 45 Stat. 876, 877, as amended by act June 22, 1936, ch. 690, § 804, 49 Stat. 1744.

**SIMILAR PROVISIONS**

1932—June 30, 1932, ch. 314, § 319, contained in act June 30, 1932, ch. 314, § 319, 47 Stat. 412, which was repealed by act Mar. 3, 1933, ch. 212, title II, § 14, 47 Stat. 1517.

1926—Feb. 26, 1926, ch. 27, § 1116, 44 Stat. 119, which was repealed by act May 29, 1928, ch. 852, § 614 (c), 45 Stat. 876, 877.

1924—June 2, 1924, ch. 234, § 1019, 43 Stat. 346, which was repealed by act Feb. 26, 1926, ch. 27, § 1200, 44 Stat. 125.

1921—Nov. 23, 1921, ch. 136, § 1324, 42 Stat. 316.

**§ 3772. Suits for refund—(a) Limitations—(1) Claim.**

No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

**(2) Time.**

No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which such suit or proceeding relates.

**(3) Reconsideration after mailing of notice.**

Any consideration, reconsideration, or action by the Commissioner with respect to such claim following the mailing of a notice by registered mail of disallowance shall not operate to extend the period within which suit may be begun. This paragraph shall not operate (A) to bar a suit or proceeding in respect of a claim reopened prior to June 22, 1936, if such suit or proceeding was not barred under the law in effect prior to that date, or (B) to prevent the suspension of the statute of limitations for filing suit under section 3774 (b) (2).

**(b) Protest or duress.**

Such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

**(c) Cross references.**

For provisions relating to claims for refund or credit filed with the Commissioner in respect of—

Estate tax, see sections 910, 911, and 912.

Gift tax, see section 1027.

Income tax, see section 322.

Miscellaneous taxes, see section 3313.

(53 Stat. 465.)

**DERIVATION**

R. S. § 3226, as amended by acts June 6, 1932, ch. 209, § 1103 (a), 47 Stat. 286; June 22, 1936, ch. 690, § 807, 49 Stat. 1745. Said R. S. § 3226 was in nature of a revision

of acts July 13, 1866, ch. 184, § 19, 14 Stat. 152; June 6, 1872, ch. 315, § 44, 17 Stat. 257; as amended by act June 6, 1932, ch. 209, § 1103 (a), 47 Stat. 286.

#### SIMILAR PROVISIONS

R. S. § 3227, which was repealed by act Nov. 23, 1921, ch. 136, § 1319, 42 Stat. 315.

1926—Feb. 26, 1926, ch. 27, § 1106, 44 Stat. 113, which was repealed by act May 29, 1928, ch. 852, §§ 606, 612, 45 Stat. 874, 875; act Feb. 26, 1926, ch. 27, § 1113, 44 Stat. 116.

1924—June 2, 1924, ch. 234, § 1006, 43 Stat. 340, which was repealed by act Feb. 26, 1926, ch. 27, § 1200, 44 Stat. 125.

1921—Nov. 23, 1921, ch. 136, § 1312, 42 Stat. 313, which was repealed by act June 2, 1924, ch. 234, § 1100, 43 Stat. 352.

#### FEDERAL RULES OF CIVIL PROCEDURE

Counterclaim and cross-claim, see Rule 13, following section 723c of Title 28, Judicial Code and Judiciary.

#### § 3773. Interest on judgments.

For interest on judgments, see section 177 of the Judicial Code as amended by act of May 29, 1928, ch. 852, § 615, 45 Stat. 877 (U. S. C., Title 28, § 284).

(53 Stat. 466.)

#### § 3774. Refunds after periods of limitation.

A refund of any portion of an internal revenue tax (or any interest, penalty, additional amount, or addition to such tax) shall be considered erroneous—

##### (a) Expiration of period for filing claim.

If made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed; or

##### (b) Disallowance of claim and expiration of period for filing suit.

In the case of a claim filed within the proper time and disallowed by the Commissioner if the refund was made after the expiration of the period of limitation for filing suit, unless—

(1) within such period suit was begun by the taxpayer, or

(2) within such period, the taxpayer and the Commissioner agreed in writing to suspend the running of the statute of limitations for filing suit from the date of the agreement to the date of final decision in one or more named cases then pending before the Board of Tax Appeals or the courts. If such agreement has been entered into, the running of such statute of limitations shall be suspended in accordance with the terms of the agreement.

##### (c) Cross reference.

For procedure by the United States to recover erroneous refunds, see section 3746.

(53 Stat. 466.)

#### DERIVATION

Act May 29, 1928, ch. 852, § 608, 45 Stat. 874, as amended by act May 10, 1934, ch. 277, § 503, 48 Stat. 756.

#### § 3775. Credits after periods of limitation—(a) Period against United States.

Any credit against a liability in respect of any taxable year shall be void if any payment in respect of such liability would be considered an overpayment under section 3770 (a) (2).

##### (b) Period against taxpayer.

A credit of an overpayment in respect of any tax shall be void if a refund of such overpayment would

be considered erroneous under section 3774. (53 Stat. 466.)

#### DERIVATION

Act May 29, 1928, ch. 852, § 609, 45 Stat. 875.

#### § 3776. Reports to Congress of refunds in excess of \$500.

The Commissioner shall make report to Congress, at the beginning of each regular session by internal revenue districts and alphabetically arranged, of all disbursements in excess of \$500 under section 3770 (a) (1) and (b). (53 Stat. 466.)

#### DERIVATION

R. S. § 3220, which was in nature of a revision of acts July 13, 1866, ch. 184, § 9, 14 Stat. 111; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401; as amended by act May 28, 1928, ch. 901, § 3, 45 Stat. 996.

See also derivation note to section 3770 of this title.

#### § 3777. Reports of refunds and credits in excess of \$75,000—(a) By Commissioner to Joint Committee.

No refund or credit of any income, war-profits, excess-profits, estate, or gift tax in excess of \$75,000 shall be made until after the expiration of thirty days from the date upon which a report giving the name of the person to whom the refund or credit is to be made, the amount of such refund or credit, and a summary of the facts and the decision of the Commissioner is submitted to the Joint Committee on Internal Revenue Taxation.

##### (b) By Joint Committee to Congress.

A report to Congress shall be made annually by such committee of such refunds and credits, including the names of all persons and corporations to whom amounts are credited or payments are made, together with the amounts credited or paid to each. (53 Stat. 466.)

#### DERIVATION

Act May 29, 1928, ch. 852, § 710, 45 Stat. 882.

#### § 3778. Cross reference.

For remission of tax against insolvent banks, see section 3798.

(53 Stat. 466.)

### Chapter 38.—MISCELLANEOUS PROVISIONS

#### Sec.

3790. Prohibition of administrative review of Commissioner's decisions.

3791. Rules and regulations.

3792. Expenses of detection and punishment of frauds.

3793. Penalties and forfeitures.

3794. Interest on delinquent taxes.

3795. Administration of real estate acquired by the United States.

3796. Purchase of stationery.

3797. Definitions.

3798. Exemption of insolvent banks from tax.

3799. Income from obligations and mortgages issued by joint-stock land banks.

3800. Jurisdiction of district courts to issue orders, processes, and judgments.

3801. Mitigation of effect of limitation and other provisions in income tax cases.

3802. Separability clause.

#### § 3790. Prohibition of administrative review of Commissioner's decisions.

In the absence of fraud or mistake in mathematical calculation, the findings of facts in and the deci-

sion of the Commissioner upon (or in case the Secretary is authorized to approve the same, then after such approval) the merits of any claim presented under or authorized by the internal revenue laws shall not, except as provided in chapter 5, be subject to review by any other administrative or accounting officer, employee, or agent of the United States. (53 Stat. 467.)

## DERIVATION

Act Feb. 26, 1926, ch. 27, § 1107, 44 Stat. 113.

## SIMILAR PROVISIONS

1924—June 2, 1924, ch. 234, § 1007, 43 Stat. 340.

1921—Nov. 23, 1921, ch. 136, § 1313, 42 Stat. 313.

### § 3791. Rules and regulations—(a) Authorization—(1) In general.

Except as provided in section 1928 (a), Cotton Futures, section 2599, Marihuana, section 2559, Narcotics, section 3176, Liquor, and section 1805, Silver, the Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this title.

#### (2) In case of change in law.

The Commissioner may make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue.

#### (b) Retroactivity of regulations or rulings.

The Secretary, or the Commissioner with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to the internal revenue laws, shall be applied without retroactive effect. (53 Stat. 467.)

## DERIVATION

Subsection (a) (1) from R. S. § 321, which was in nature of a revision of acts June 30, 1864, ch. 173, § 1, 13 Stat. 223; Mar. 3, 1869, ch. 121, § 1, 15 Stat. 290; Aug. 2, 1886, ch. 840, § 20, 24 Stat. 212; June 6, 1896, ch. 337, § 18, 29 Stat. 256; June 13, 1898, ch. 448, § 47, 30 Stat. 469; May 9, 1902, ch. 784, § 4, 32 Stat. 194; Apr. 9, 1912, ch. 75, § 15, 37 Stat. 83; Feb. 26, 1926, ch. 27, § 1101, 44 Stat. 111; June 26, 1934, ch. 757, § 12, 48 Stat. 1240.

Subsection (a) (2) from R. S. § 3447, which was in nature of a revision of act July 20, 1868, ch. 186, § 103, 15 Stat. 166.

Subsection (b) from R. S. § 3447; act Feb. 26, 1926, ch. 27, § 1108 (a), as amended by act May 10, 1934, ch. 277, § 506, 48 Stat. 757. Act Feb. 26, 1926, ch. 27, § 1108 (a), was also amended by act May 29, 1928, ch. 852, § 605, 45 Stat. 874.

## SIMILAR PROVISIONS

1921—Nov. 23, 1921, ch. 136, § 1314, 42 Stat. 314.

### § 3792. Expenses of detection and punishment of frauds.

The Commissioner, with the approval of the Secretary, is authorized to pay such sums, not exceeding in the aggregate the sum appropriated therefor, as he may deem necessary for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws, or conniving at the same, in cases where such expenses are not otherwise provided for by law. (53 Stat. 467.)

## DERIVATION

R. S. § 3463, which was in nature of a revision of act Mar. 2, 1867, ch. 169, § 7, 14 Stat. 473.

### § 3793. Penalties and forfeitures—(a) Fraudulent bonds, permits, and entries—(1) Penalty.

Every person who—

#### (A) Simulation or execution.

Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal revenue laws, or by any regulation made in pursuance thereof, or

#### (B) Procuring execution.

Procures the same to be falsely or fraudulently executed, or

#### (C) Aiding in execution.

Advises, aids in, or connives at such execution thereof—

shall be imprisoned for a term not less than one year nor more than five years, and

#### (2) Forfeiture.

The property to which such false or fraudulent instrument relates shall be forfeited.

#### (b) Fraudulent returns, affidavits, and claims—(1) Assistance in preparation or presentation.

Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony, and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

#### (2) Person defined.

The term "person" as used in this subsection includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

#### (c) Cross references—(1) Penalties.

For other penalties under this subtitle, see the following sections:

Refusal to permit entry or examination, 3601 (b);  
Forcibly obstructing officers, 3601 (c);  
Forcibly rescuing property, 3601 (c);  
Failure to file return, 3612 (d) (1);  
False or fraudulent return, 3612 (d) (2);  
Nonpayment of tax, 3655 (b);  
Failure to surrender property subject to distraint, 3710 (b);  
Fraud in connection with closing agreements and compromises, 3763.

#### (2) Forfeitures.

For other forfeitures under this subtitle, see the following:  
Sales or removals in fraud of internal revenue laws, section 3720 (a);  
Sales or removals with design to avoid payment of taxes, section 3720 (a).

(53 Stat. 468.)

## DERIVATION

Subsection (a) from R. S. § 3451, which was in nature of a revision of act July 20, 1868, ch. 186, § 99, 15 Stat. 165,  
Subsection (b) from act Feb. 26, 1926, ch. 27, § 1114 (c), (f), 44 Stat. 116, 117.

Provisions similar to subsection (b) were contained in act June 2, 1924, ch. 234, § 1017 (c), (e), 43 Stat. 343.

#### § 3794. Interest on delinquent taxes.

Notwithstanding any provision of law to the contrary, interest accruing during any period of time after August 30, 1935, upon any internal-revenue tax (including amounts assessed or collected as a part thereof) not paid when due, shall be at the rate of 6 per centum per annum. (53 Stat. 468.)

##### DERIVATION

Act Aug. 30, 1935, ch. 829, § 404, 49 Stat. 1027.

##### INTEREST ACCRUING AFTER OCT. 24, 1933

Act May 28, 1938, ch. 289, § 821, 52 Stat. 583, provided as follows:

"Interest accruing after October 24, 1933, and prior to August 30, 1935, on delinquent income, estate, and gift taxes shall be computed at the rate of 6 per centum per annum. Any such interest accruing during such period which has been collected prior to the date of the enactment of this act in excess of such rate shall be credited or refunded to the taxpayer, if claim therefor is filed within six months after the date of the enactment of this act. No interest shall be allowed or paid on any such credit or refund."

#### § 3795. Administration of real estate acquired by the United States—(a) Person charged with.

The Commissioner shall have charge of all real estate which is or shall become the property of the United States by judgment of forfeiture under the internal revenue laws, or which has been or shall be assigned, set off, or conveyed by purchase or otherwise to the United States in payment of debts or penalties arising under the laws relating to internal revenue, or which has been or shall be vested in the United States by mortgage or other security for the payment of such debts, and of all trusts created for the use of the United States in payment of such debts due them.

##### (b) Sale.

The Commissioner, with the approval of the Secretary, may, at public vendue, and upon not less than twenty days' notice, sell and dispose of all real estate owned or held by the United States as aforesaid.

##### (c) Lease.

Until such sale the Commissioner, with the approval of the Secretary, may lease such real estate owned as aforesaid on such terms and for such period as they shall deem expedient.

##### (d) Release to debtor.

In cases where real estate has or may become the property of the United States by conveyance or otherwise, in payment of or as security for a debt arising under the laws relating to internal revenue, and such debt shall have been paid, together with the interest thereon, at the rate of 1 per centum per month, to the United States, within two years from the date of the acquisition of such real estate, it shall be lawful for the Commissioner, with the approval of the Secretary, to release by deed, or otherwise convey such real estate to the debtor from whom it was taken, or to his heirs or other legal representatives. (53 Stat. 468.)

##### DERIVATION

R. S. § 3208, which was in nature of a revision of act Mar. 2, 1867, ch. 169, § 4, 14 Stat. 472, as amended by act Mar. 1, 1879, ch. 125, § 3, 20 Stat. 332.

##### CROSS REFERENCE

Administration, sale, lease, etc., of real estate which has been acquired by the United States in payment of debts other than those arising under the internal revenue laws, see sections 301 and 302 of Title 40, Public Buildings, Property and Works.

#### § 3796. Purchase of stationery.

The purchase of stationery for the internal revenue service shall be made under the direction of the Secretary as in the case of other branches of the public service under the Treasury Department. (53 Stat. 469.)

##### DERIVATION

Act Mar. 4, 1911, ch. 237, § 1, 36 Stat. 1195.

#### § 3797. Definitions.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

##### (1) Person.

The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, company, or corporation.

##### (2) Partnership and partner.

The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

##### (3) Corporation.

The term "corporation" includes associations, joint-stock companies, and insurance companies.

##### (4) Domestic.

The term "domestic" when applied to a corporation or a partnership means created or organized in the United States or under the law of the United States or of any State or Territory.

##### (5) Foreign.

The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

##### (6) Fiduciary.

The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

##### (7) Stock.

The term "stock" includes the share in an association, joint-stock company, or insurance company.

##### (8) Shareholder.

The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

## (9) United States.

The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

## (10) State.

The word "State" shall be construed to include the Territories and the District of Columbia, where such construction is necessary to carry out provisions of this title.

## (11) Secretary.

The term "Secretary" means the Secretary of the Treasury.

## (12) Commissioner.

The term "Commissioner" means the Commissioner of Internal Revenue.

## (13) Collector.

The term "collector" means collector of internal revenue.

## (14) Taxpayer.

The term "taxpayer" means any person subject to a tax imposed by this title.

## (15) Military or naval forces of the United States.

The term "military or naval forces of the United States" includes the Marine Corps, the Coast Guard, the Army Nurse Corps, Female, and the Navy Nurse Corps, Female.

## (16) Withholding agent.

The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section 143 or 144.

## (b) Includes and including.

The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

## (c) Cross references.

For other definitions, see the following:

Singular as including plural, R. S. § 1 (U. S. C., Title 1, § 1).

Plural as including singular, R. S. § 1 (U. S. C., Title 1, § 1).

Masculine as including feminine, R. S. § 1 (U. S. C., Title 1, § 1).

Officer, R. S. § 1 (U. S. C., Title 1, § 1).

Oath as including affirmation, R. S. § 1 (U. S. C., Title 1, § 1).

Company or association as including successors and assigns, R. S. § 5 (U. S. C., Title 1, § 5).

County as including parish, R. S. § 2 (U. S. C., Title 1, § 2).

Vessel as including all means of water transportation, R. S. § 3 (U. S. C., Title 1, § 3).

Vehicle as including all means of land transportation, R. S. § 4 (U. S. C., Title 1, § 4).

## (53 Stat. 469.)

## DERIVATION

Subsection (a) (1) from R. S. §§ 1, 3140, which were in nature of a revision of act July 20, 1868, ch. 186, § 104, 15 Stat. 166; R. S. § 3173, which was in nature of a revision of acts June 30, 1864, ch. 173, §§ 11, 13, 13 Stat. 225, 226; July 13, 1866, ch. 184, § 9, 14 Stat. 101; Mar. 2, 1867, ch. 169, § 1, 14 Stat. 471; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401; as amended by act Feb. 27, 1877, ch. 69, 19 Stat. 248; acts Dec. 17, 1914, ch. 1, § 1, 38 Stat. 785; Aug. 11, 1916, ch. 313, § 2, 39 Stat. 476; Feb. 24, 1919, ch. 18, § 1, 40 Stat. 1057; Nov. 23, 1921, ch. 136, § 2, 42 Stat. 227, as

amended by act Feb. 26, 1926, ch. 27, § 703, 44 Stat. 97; act Feb. 26, 1926, ch. 27, § 2 (a) (1), 44 Stat. 9, as re-enacted by act Feb. 26, 1926, ch. 27, § 1115, 44 Stat. 119; acts May 29, 1928, ch. 852, § 701 (a) (1), 45 Stat. 878; June 6, 1932, ch. 209, § 1111 (a) (1), 47 Stat. 289; May 10, 1934, ch. 277, § 801, 48 Stat. 771; June 22, 1936, ch. 690, § 1001, 49 Stat. 1756; May 28, 1938, ch. 289, § 901 (a) (1), 52 Stat. 583.

Subsection (a) (2) from acts June 6, 1932, ch. 209, § 1111 (a) (3), 47 Stat. 289; May 10, 1934, ch. 277, § 801 (a) (3), 48 Stat. 771; June 22, 1936, ch. 690, § 1001 (a) (3), 49 Stat. 1756; May 28, 1938, ch. 289, § 901 (a) (3), 52 Stat. 583.

Subsection (a) (3-5) from acts Feb. 24, 1919, ch. 18, § 1, 40 Stat. 1058; Nov. 23, 1921, ch. 136, § 2 (2)-(4), 42 Stat. 227; Feb. 26, 1926, ch. 27, § 2 (a) (2)-(4), 44 Stat. 9; May 29, 1928, ch. 852, § 701 (a) (2)-(4), 45 Stat. 878; June 6, 1932, ch. 209, § 1111 (a) (2), (4), (5), 47 Stat. 289; May 10, 1934, ch. 277, § 801 (a) (2), (4), (5), 48 Stat. 771; June 22, 1936, ch. 690, § 1001 (a) (2), (4), (5), 49 Stat. 1756; May 28, 1938, ch. 289, § 901 (a) (2), (4), (5), 52 Stat. 583.

Subsection (a) (6) from acts Feb. 26, 1926, ch. 27, § 200 (b), 44 Stat. 10; May 29, 1928, ch. 852, § 701 (a) (5), 45 Stat. 879; June 6, 1932, ch. 209, § 1111 (a) (6), 47 Stat. 289; May 10, 1934, ch. 277, § 801 (a) (6), 48 Stat. 771; June 22, 1936, ch. 690, § 1001 (a) (6), 49 Stat. 1756; May 28, 1938, ch. 289, § 901 (a) (6), 52 Stat. 584.

Subsection (a) (7, 8) from act May 29, 1928, ch. 852, § 701 (a) (7), (8), 45 Stat. 879; June 6, 1932, ch. 209, § 1111 (a) (8), (9), 47 Stat. 289; May 10, 1934, ch. 277, § 801 (a) (8), (9), 48 Stat. 771; June 22, 1936, ch. 690, § 1001 (a) (8), (9), 49 Stat. 1756; May 28, 1938, ch. 289, § 901 (a) (8), (9), 52 Stat. 584.

Subsection (a) (9) from acts Feb. 24, 1919, ch. 18, § 1, 40 Stat. 1057; Nov. 23, 1921, ch. 136, § 2 (5), 42 Stat. 227; Feb. 26, 1926, ch. 27, § 2 (a) (5), 44 Stat. 9; May 29, 1928, ch. 852, § 701 (a) (9), 45 Stat. 879; June 6, 1932, ch. 209, § 1111 (a) (10), 47 Stat. 289; May 10, 1934, ch. 277, § 801 (a) (10), 48 Stat. 771; June 22, 1936, ch. 690, § 1001 (a) (1), 49 Stat. 1756; May 28, 1938, ch. 289, § 901 (a) (10), 52 Stat. 584.

Subsection (a) (10) from R. S. § 3140, which was in nature of a revision of act July 20, 1868, ch. 186, § 104, 15 Stat. 166.

Subsection (a) (11-14) from acts Feb. 24, 1919, ch. 18, § 1, 40 Stat. 1057; Nov. 23, 1921, ch. 136, § 2 (6), (7), (8), (9), 42 Stat. 227; Feb. 26, 1926, ch. 27, § 2 (a) (6), (7), (8), (9), 44 Stat. 9; May 29, 1928, ch. 852, § 701 (a) (10), (11), (12), (13), 45 Stat. 879; June 6, 1932, ch. 209, § 1111 (a) (11), (12), (13), (14), 47 Stat. 289; May 10, 1934, ch. 277, § 801 (a) (11), (12), (13), (14), 48 Stat. 771; June 22, 1936, ch. 690, § 1001 (a) (11), (12), (13), (14), 49 Stat. 1756; May 28, 1938, ch. 289, § 901 (a) (11), (12), (13), (14), 52 Stat. 584.

Subsection (a) (15) from acts Feb. 24, 1919, ch. 18, § 1, 40 Stat. 1057; Nov. 23, 1921, ch. 136, § 2 (10), 42 Stat. 227; Feb. 26, 1926, ch. 27, § 2 (a) (10), 44 Stat. 10; May 29, 1928, ch. 852, § 701 (a) (14), 45 Stat. 879.

Subsection (a) (16) from acts June 22, 1936, ch. 690, § 1001 (a) (7), 49 Stat. 1756; May 28, 1938, ch. 289, § 901 (a) (7), 52 Stat. 584.

Subsection (b) from acts Feb. 26, 1926, ch. 27, § 2 (b), 44 Stat. 10; May 29, 1928, ch. 852, § 701 (b), 45 Stat. 879; June 6, 1932, ch. 209, § 1111 (b), 47 Stat. 289; May 10, 1934, ch. 277, § 801 (b), 48 Stat. 772; June 22, 1936, ch. 690, § 1001 (b), 49 Stat. 1756; May 28, 1938, ch. 289, § 901 (b), 52 Stat. 584.

## SIMILAR PROVISIONS

Provisions identical with subsection (a) (16) were contained in acts June 6, 1932, ch. 209, § 1111 (a) (7), 47 Stat. 289; May 10, 1934, ch. 277, § 801 (a) (7), 48 Stat. 771.

## CROSS REFERENCE

Advance of funds in connection with enforcement of section, see section 529a of Title 31, Money and Finance.

## § 3798. Exemption of insolvent banks from tax.

(a) Whenever and after any bank or trust company, a substantial portion of the business of which

consists of receiving deposits and making loans and discounts, has ceased to do business by reason of insolvency or bankruptcy, no tax shall be assessed or collected, or paid into the Treasury of the United States on account of such bank, or trust company, which shall diminish the assets thereof necessary for the full payment of all its depositors; and such tax shall be abated from such national banks as are found by the Comptroller of the Currency to be insolvent; and the Commissioner of Internal Revenue, when the facts shall appear to him, is authorized to remit so much of the said tax against any such insolvent banks and trust companies organized under State law as shall be found to affect the claims of their depositors.

(b) Whenever any bank or trust company, a substantial portion of the business of which consists of receiving deposits and making loans and discounts, has been released or discharged from its liability to its depositors for any part of their claims against it, and such depositors have accepted, in lieu thereof, a lien upon subsequent earnings of such bank or trust company, or claims against assets segregated by such bank or trust company or against assets transferred from it to an individual or corporate trustee or agent, no tax shall be assessed or collected, or paid into the Treasury of the United States on account of such bank, or trust company, such individual or corporate trustee or such agent, which shall diminish the assets thereof which are available for the payment of such depositor claims and which are necessary for the full payment thereof.

(c) (1) Any such tax collected, whether collected before, on, or after the date of enactment of the Revenue Act of 1938,<sup>1</sup> shall be deemed to be erroneously collected, and shall be refunded subject to all provisions and limitations of law, so far as applicable, relating to the refunding of taxes.

(2) Any tax, the assessment, collection, or payment of which is barred under subsection (a) of this section, or any such tax which has been abated or remitted after May 28, 1938, shall be assessed or reassessed whenever it shall appear that payment of the tax will not diminish the assets as aforesaid.

(3) Any tax, the assessment, collection, or payment of which is barred under subsection (b) of this section or any such tax which has been refunded after May 28, 1938, shall be assessed or reassessed after full payment of such claims of depositors to the extent of the remaining assets segregated or transferred as described in subsection (b).

(4) The running of the statute of limitations on the making of assessment and collection shall be suspended, during, and for ninety days beyond, the period for which, pursuant to this section, assessment or collection may not be made, and a tax may be reassessed as provided in paragraphs (2) and (3) of this subsection, and collected, during the time within which, had there been no abatement, collection might have been made.

(d) This section shall not apply to any tax imposed by subchapter A or subchapter C of chapter 9. (53 Stat. 470; June 29, 1939, 10 p. m. E. S. T., ch. 247, title IV, § 406, 53 Stat. 884.)

<sup>1</sup> May 28, 1938.

#### DERIVATION

Act Mar. 1, 1879, ch. 125, § 22, 20 Stat. 351, as amended by act May 28, 1938, ch. 289, § 818, 52 Stat. 579.

#### 1939 AMENDMENT

Subsection (c) was amended by act June 29, 1939, cited to text, and made effective as of date of enactment of Revenue Act of 1938; namely, May 28, 1938, by subsection (c) of said § 406.

Term "agent" as used in subsection (b) was made to include a corporation as a liquidating agent by § 406 (b) of act June 29, 1939, cited to text, and was made effective as of date of enactment of Revenue Act of 1938; namely, May 28, 1938, by subsection (c) of said § 406.

#### § 3799. Income from obligations and mortgages issued by <sup>1</sup> joint-stock land banks.

Notwithstanding the provisions of section 26 of the Federal Farm Loan Act, 39 Stat. 380 (U. S. C., Title 12, § 931-3), as amended, in the case of mortgages made or obligations issued by any joint-stock land bank after May 28, 1938, all income, except interest, derived therefrom shall be included in gross income and shall not be exempt from Federal income taxation. (53 Stat. 471.)

<sup>1</sup> So in original.

#### DERIVATION

Act May 28, 1938, ch. 289, § 817, 52 Stat. 578.

#### § 3800. Jurisdiction of district courts to issue orders, processes, and judgments.

The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of injunction, and of ne exeat republica, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws. (53 Stat. 471.)

#### DERIVATION

Act May 29, 1928, ch. 852, § 617 (b), 45 Stat. 877.

#### SIMILAR PROVISIONS

1926—Feb. 26, 1926, ch. 27, § 1122 (b), 44 Stat. 121.  
1924—June 2, 1924, ch. 234, § 1025 (b), 43 Stat. 848.  
1921—Nov. 23, 1921, ch. 136, § 1310 (b), 42 Stat. 310.  
1919—Feb. 24, 1919, ch. 18, § 1318, 40 Stat. 1148.

#### § 3801. Mitigation of effect of limitation and other provisions in income tax cases—(a) Definitions.

For the purpose of this section—

##### (1) Determination.

The term "determination under the income tax laws" means—

(A) A closing agreement made under section 3760;

(B) A decision by the Board of Tax Appeals or a judgment, decree, or other order by any court of competent jurisdiction, which has become final; or

(C) A final disposition by the Commissioner of a claim for refund. For the purposes of this section a claim for refund shall be deemed finally disposed of by the Commissioner—

(i) as to items with respect to which the claim was allowed, upon the date of allowance of refund or credit or upon the date of mailing notice of dis-



allowance (by reason of offsetting items) of the claim for refund, and

(1) as to items with respect to which the claim was disallowed, in whole or in part, or as to items applied by the Commissioner in reduction of the refund or credit, upon expiration of the time for instituting suit with respect thereto (unless suit is instituted prior to the expiration of such time).

Such term shall not include any such agreement made, or decision, judgment, decree, or order which became final, or claim for refund finally disposed of, prior to August 27, 1938.

**(2) Taxpayer.**

Notwithstanding the provisions of section 3797 the term "taxpayer" means any person subject to a tax under the applicable Revenue Act.

**(3) Related taxpayer.**

The term "related taxpayer" means a taxpayer who, with the taxpayer with respect to whom a determination specified in subsection (b) (1), (2), (3), or (4) is made, stood, in the taxable year with respect to which the erroneous inclusion, exclusion, omission, allowance, or disallowance therein referred to was made, in one of the following relationships: (A) husband and wife; (B) grantor and fiduciary; (C) grantor and beneficiary; (D) fiduciary and beneficiary, legatee, or heir; (E) decedent and decedent's estate; or (F) partner.

**(b) Circumstances of adjustment.**

When a determination under the income tax laws—

(1) Requires the inclusion in gross income of an item which was erroneously included in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer; or

(2) Allows a deduction or credit which was erroneously allowed to the taxpayer for another taxable year or to a related taxpayer; or

(3) Requires the exclusion from gross income of an item with respect to which tax was paid and which was erroneously excluded or omitted from the gross income of the taxpayer for another taxable year or from the gross income of a related taxpayer; or

(4) Allows or disallows any of the additional deductions allowable in computing the net income of estates or trusts, or requires or denies any of the inclusions in the computation of net income of beneficiaries, heirs, or legatees, specified in section 162 (b) and (c) of chapter 1, and corresponding sections of prior revenue Acts, and the correlative inclusion or deduction, as the case may be, has been erroneously excluded, omitted, or included, or disallowed, omitted, or allowed, as the case may be, in respect of the related taxpayer; or

(5) Determines the basis of property for depletion, exhaustion, wear and tear, or obsolescence, or for gain or loss on a sale or exchange, and in respect of any transaction upon which such basis depends there was an erroneous inclusion in or omission from the gross income of, or an erroneous recognition or nonrecognition of gain or loss to, the taxpayer or any person who acquired title to such property in such transaction and from whom mediately or im-

mediately the taxpayer derived title subsequent to such transaction—

and, on the date the determination becomes final, correction of the effect of the error is prevented by the operation (whether before, on, or after May 28, 1938) of any provision of the internal-revenue laws other than this section and other than section 3761 (relating to compromises), then the effect of the error shall be corrected by an adjustment made under this section. Such adjustment shall be made only if there is adopted in the determination a position maintained by the Commissioner (in case the amount of the adjustment would be refunded or credited in the same manner as an overpayment under subsection (c)) or by the taxpayer with respect to whom the determination is made (in case the amount of the adjustment would be assessed and collected in the same manner as a deficiency under subsection (c)), which position is inconsistent with the erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be. In case the amount of the adjustment would be assessed and collected in the same manner as a deficiency, the adjustment shall not be made with respect to a related taxpayer unless he stands in such relationship to the taxpayer at the time the latter first maintains the inconsistent position in a return, claim for refund, or petition (or amended petition) to the Board of Tax Appeals for the taxable year with respect to which the determination is made, or if such position is not so maintained, then at the time of the determination.

**(c) Method of adjustment.**

The adjustment authorized in subsection (b) shall be made by assessing and collecting, or refunding or crediting, the amount thereof, to be ascertained as provided in subsection (d), in the same manner as if it were a deficiency determined by the Commissioner with respect to the taxpayer as to whom the error was made or an overpayment claimed by such taxpayer, as the case may be, for the taxable year with respect to which the error was made, and as if on the date of the determination specified in subsection (b) one year remained before the expiration of the periods of limitation upon assessment or filing claim for refund for such taxable year.

**(d) Ascertainment of amount of adjustment.**

In computing the amount of an adjustment under this section there shall first be ascertained the tax previously determined for the taxable year with respect to which the error was made. The amount of the tax previously determined shall be (1) the tax shown by the taxpayer, with respect to whom the error was made, upon his return for such taxable year, increased by the amounts previously assessed (or collected without assessment) as deficiencies, and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or (2) if no amount was shown as the tax by such taxpayer upon his return, or if no return was made by such taxpayer, then the amounts previously assessed (or collected without assessment) as deficiencies, but such amounts previously assessed,

or collected without assessment, shall be decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax. There shall then be ascertained the increase or decrease in the tax previously determined which results solely from the correct exclusion, inclusion, allowance, disallowance, recognition, or nonrecognition, of the item, inclusion, deduction, credit, gain, or loss, which was the subject of the error. The amount so ascertained (together with any amounts wrongfully collected, as additions to the tax or interest, as a result of such error) shall be the amount of the adjustment under this section.

(e) Adjustment unaffected by other items, etc.

The amount to be assessed and collected in the same manner as a deficiency, or to be refunded or credited in the same manner as an overpayment, under this section, shall not be diminished by any credit or set-off based upon any item, inclusion, deduction, credit, exemption, gain, or loss other than the one which was the subject of the error. Such amount, if paid, shall not be recovered by a claim or suit for refund or suit for erroneous refund based upon any item, inclusion, deduction, credit, exemption, gain, or loss other than the one which was the subject of the error.

(f) No adjustment for years prior to 1932.

No adjustment shall be made under this section in respect of any taxable year beginning prior to January 1, 1932. (53 Stat. 471.)

DERIVATION

Act May 28, 1938, ch. 289, § 820, 52 Stat. 581.

§ 3802. Separability clause.

If any provision of this title, or the application thereof to any person or circumstances, is held invalid, the remainder of the title, and the application of such provisions to other persons or circumstances, shall not be affected thereby. (53 Stat. 473.)

DERIVATION

Acts Aug. 11, 1916, ch. 313, § 22, 39 Stat. 482; Feb. 24, 1919, ch. 18, § 1402, 40 Stat. 1150; Nov. 23, 1921, ch. 136, § 1403, 42 Stat. 321; June 2, 1924, ch. 234, § 1103, 43 Stat. 353; Feb. 26, 1926, ch. 27, § 1213, 44 Stat. 130; June 6, 1932, ch. 209, § 1112, 47 Stat. 289; May 10, 1934, ch. 277, § 802, 48 Stat. 772; June 19, 1934, ch. 674, § 13, 48 Stat. 1181; June 26, 1934, ch. 757, § 16, 48 Stat. 1240; Aug. 14, 1935, ch. 531, § 1103, 49 Stat. 648; Aug. 30, 1935, ch. 829, § 502, 49 Stat. 1028; June 22, 1936, ch. 690, § 1002, 49 Stat. 1756; Apr. 26, 1937, ch. 127, § 13, 50 Stat. 89; June 29, 1937, ch. 405, § 10, 50 Stat. 440; Aug. 2, 1937, ch. 553, § 16, 50 Stat. 556; May 28, 1938, ch. 289, § 902, 52 Stat. 584.

SIMILAR PROVISIONS

1930—June 17, 1930, ch. 497, title IV, § 652, 46 Stat. 763.  
1922—Sept. 21, 1922, ch. 356, title IV, § 645, 42 Stat. 990, which was repealed by act June 17, 1930, ch. 497, title IV, § 651 (a) (1), 46 Stat. 762.

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### Chapter 39.—THE OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE

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3901. Powers and duties.

#### SUBCHAPTER B.—THE ASSISTANT TO THE COMMISSIONER

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#### SUBCHAPTER A.—THE COMMISSIONER

##### § 3900. Appointment and salary.

There shall be in the Department of the Treasury a Commissioner of Internal Revenue, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to a salary of \$10,000 a year. (53 Stat. 477.)

##### DERIVATION

R. S. § 319, which was in nature of a revision of acts July 1, 1862, ch. 119, § 1, 12 Stat. 432 and July 13, 1866, ch. 184, § 64, 14 Stat. 170; act Feb. 24, 1919, ch. 18, § 1300, 40 Stat. 1140.

##### SIMILAR PROVISIONS

1914—July 16, 1914, ch. 141, 38 Stat. 475.  
 1913—Oct. 3, 1913, ch. 16, § II, N, 38 Stat. 180; R. S. §§ 3159, 3160, which were repealed by act Aug. 15, 1876, ch. 287, § 1, 19 Stat. 152.  
 1875—Mar. 3, 1875, ch. 130, § 2, 18 Stat. 398.

##### § 3901. Powers and duties—(a) Assessment and collection.

The Commissioner, under the direction of the Secretary—

##### (1) General superintendence.

Shall have general superintendence of the assessment and collection of all taxes imposed by any law providing internal revenue; and

##### (2) Regulations, forms, stamps, and dies.

Shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue; and shall provide hydrometers, and proper and sufficient adhesive stamps and stamps or dies for expressing and denoting the several stamp taxes, or, in the case of percentage taxes, the amount thereof; and alter and renew or replace such stamps from time to time, as occasion may require.

##### (3) Estimate of expense.

The Commissioner shall estimate in detail by collection districts the expense of assessing and the expense of the collection of internal revenue.

##### (b) Detail of personnel from field service—(1) In general.

The Commissioner may order any officer or employee of the internal revenue service engaged in field work to duty with the Bureau of Internal Revenue in the District of Columbia, for such periods as the Secretary may prescribe, and to any designated post of duty outside the District of Columbia, upon the completion of such duty.

##### (2) Revenue agents.

Nothing in section 6 of the act of June 22, 1906, ch. 3514, 34 Stat. 449 (U. S. C., Title 5, § 39) shall be construed to prevent the Commissioner from detailing one revenue agent for duty in his office. (53 Stat. 477.)

##### DERIVATION

Subsection (a) from R. S. § 321, which was in nature of a revision of acts June 30, 1864, ch. 173, § 1, 13 Stat. 223; Mar. 3, 1869, ch. 121, § 1, 15 Stat. 290.

Subsection (b) (1) from act May 29, 1928, ch. 852, § 712, 45 Stat. 882.

Subsection (b) (2) from acts Aug. 5, 1882, ch. 389, § 1, 22 Stat. 229; June 22, 1906, ch. 3514, § 6, 34 Stat. 449.

#### SUBCHAPTER B.—THE ASSISTANT TO THE COMMISSIONER

##### § 3905. Appointment.

There shall be in the Bureau of Internal Revenue one Assistant to the Commissioner, who shall be ap-

pointed by the President, by and with the advice and consent of the Senate. (53 Stat. 478.)

## DERIVATION

Act Feb. 26, 1926, ch. 27, § 1201 (b), 44 Stat. 126.

## SIMILAR PROVISION

1919—Feb. 24, 1919, ch. 18, § 130 (a), 40 Stat. 1140.

## § 3906. Duties.

The Assistant to the Commissioner shall perform such duties as may be prescribed by the Commissioner or required by law. (53 Stat. 478.)

## DERIVATION

Act Feb. 26, 1926, ch. 27, § 1201 (b), 44 Stat. 126.  
See also derivation note to section 3905 of this title.

### SUBCHAPTER C.—SPECIAL DEPUTY COMMISSIONER

## § 3910. Appointment.

There shall be in the Bureau of Internal Revenue one Special Deputy Commissioner, who shall be appointed by the President, by and with the advice and consent of the Senate. (53 Stat. 478.)

## DERIVATION

Act Feb. 26, 1926, ch. 27, § 1201 (b), 44 Stat. 126.  
See also derivation note to section 3905 of this title.

## § 3911. Duties.

The Special Deputy Commissioner shall perform such duties as may be prescribed by the Commissioner or required by law. (53 Stat. 478.)

## DERIVATION

Act Feb. 26, 1926, ch. 27, § 1201 (b), 44 Stat. 126.  
See also derivation note to section 3905 of this title.

### SUBCHAPTER D.—DEPUTY COMMISSIONERS

## § 3915. Employment.

There may be employed in the Bureau of Internal Revenue five deputy commissioners. (53 Stat. 478.)

## DERIVATION

Act Feb. 24, 1919, ch. 18, § 1301 (a), 40 Stat. 1140.

## SIMILAR PROVISIONS

1913—Oct. 3, 1913, ch. 16, § II, N, 38 Stat. 180.  
1875—Mar. 3, 1875, ch. 130, § 2, 18 Stat. 398  
1874—Jan. 29, 1874, ch. 18, 18 Stat. 6.  
1866—July 13, 1866, ch. 184, § 64, 14 Stat. 170.  
1863—Mar. 3, 1863, ch. 74, § 19, 12 Stat. 725;  
R. S. §§ 235, 322

## § 3916. Duties—(a) In general.

The Commissioner is authorized to assign to deputy commissioners such duties as he may prescribe.

## (b) To act as Commissioner.

The Secretary may designate any deputy commissioner to act as Commissioner during the Commissioner's absence. (53 Stat. 478.)

## DERIVATION

Act Oct. 6, 1917, ch. 79, § 1, 40 Stat. 348.

## SIMILAR PROVISIONS

1863—Mar. 3, 1863, ch. 74, § 19, 12 Stat. 725.  
R. S. § 323.

### SUBCHAPTER E.—CHEMISTS AND MICROSCOPISTS

## § 3920. Appointment of analytical chemist and microscopist.

There shall be in the office of the Commissioner an analytical chemist and a microscopist, who shall each be appointed by the Secretary. (53 Stat. 478.)

## DERIVATION

Act Aug. 2, 1886, ch. 840, § 14, 24 Stat. 212.

## § 3921. Employment of additional chemists and microscopists.

The Commissioner may, whenever in his judgment the necessities of the service so require, employ chemists and microscopists. (53 Stat. 478.)

## DERIVATION

Act Aug. 2, 1886, ch. 840, § 14, 24 Stat. 212.

### Chapter 40.—THE OFFICES OF GENERAL COUNSEL FOR THE DEPARTMENT OF THE TREASURY AND ASSISTANT GENERAL COUNSEL FOR THE BUREAU OF INTERNAL REVENUE

## Sec.

3930. General Counsel—Appointment, salary, and duties.

3931. Assistant General Counsel—Appointment, salaries, and duties.

3932. Functions of Department of Justice unaffected.

## § 3930. General counsel—Appointment, salary, and duties.

(a) There shall be in the Department of the Treasury the office of General Counsel for the Department of the Treasury (hereinafter in this chapter referred to as the "General Counsel"). The General Counsel shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of \$10,000 per annum. The General Counsel shall be the chief law officer of the Department, and shall perform such duties in respect of the legal activities thereof as may be prescribed by the Secretary or required by law.

(b) The General Counsel shall have such powers, duties, and functions as were formerly vested in and exercised by the offices of General Counsel for the Bureau of Internal Revenue, Assistant General Counsel for the Bureau of Internal Revenue, Solicitor of the Treasury, and Assistant Solicitor of the Treasury. (53 Stat. 479.)

## DERIVATION

Act May 10, 1934, ch. 277, § 512 (a), (b), 48 Stat. 758, 759.

## SIMILAR PROVISIONS

1926—Feb. 26, 1926, ch. 27, § 1201 (a), 44 Stat. 126.

Provisions regarding the Solicitor of the Bureau of Internal Revenue were contained in R. S. § 349, which was in nature of a revision of acts June 22, 1870, ch. 150, §§ 3, 9, 10, 16 Stat. 162, 163; July 13, 1866, ch. 184, § 64, 14 Stat. 170.

## § 3931. Assistant General Counsel—Appointment, salaries, and duties.

(a) The President is authorized to appoint, by and with the advice and consent of the Senate, an Assistant General Counsel for the Bureau of Internal Revenue and to fix his compensation at a rate not in excess of \$10,000 per annum. The Secretary

may appoint and fix the duties of such other Assistant General Counsel (not to exceed five) and such other officers and employees as he may deem necessary to assist the General Counsel in the performance of his duties.

(b) The Secretary may designate one of the Assistant General Counsel to act as the General Counsel during the absence of the General Counsel. The General Counsel, with the approval of the Secretary, is authorized to delegate to any Assistant General Counsel any authority, duty, or function which the General Counsel is authorized or required to exercise or perform.

(c) The Assistant General Counsel appointed by the Secretary may be appointed and compensated without regard to the provisions of the Classification Act of 1923, as amended, and the Civil Service laws and shall receive compensation at such rate (not in excess of \$10,000 per annum) as may be fixed by the Secretary. (53 Stat. 479.)

#### DERIVATION

Act May 10, 1934, ch. 277, § 512 (a), 48 Stat. 758. See also Historical Note to section 3930 of this title.

#### CROSS REFERENCE

General Counsel solicitors abolished, see section 297a of Title 5, Executive Departments and Government Officers and Employees.

#### § 3932. Functions of Department of Justice unaffected.

Nothing in this chapter shall be construed to affect the duties, powers, or functions imposed upon, or vested in the Department of Justice, or any officer thereof, by law existing on May 10, 1934. (53 Stat. 479.)

#### DERIVATION

Act May 10, 1934, ch. 277, § 512 (c), 48 Stat. 759.

### Chapter 41.—COLLECTORS OF INTERNAL REVENUE

#### SUBCHAPTER A.—APPOINTMENT, COMPENSATION, AND BOND

##### Sec.

- 3940. Number.
- 3941. Appointment.
- 3942. Suspension.
- 3943. Bonds.
- 3944. Salaries and office expenses allowed.
- 3945. Payment of advertising, stationery, and postage expenses.

#### SUBCHAPTER B.—ACCOUNTS, RECORDS, AND REPORTS

- 3950. Charges and credits.
- 3951. Quarterly revenue account.
- 3952. Monthly collection statement.
- 3953. Monthly account of goods in bond.
- 3954. Other accounts.
- 3955. Reports concerning misconduct of officers and agents.

#### SUBCHAPTER C.—POWERS AND DUTIES

- 3960. Superintendence of exports and drawbacks.
- 3961. Collection.
- 3962. Completion of collections.
- 3963. Stamp supply.
- 3964. Information and returns.
- 3965. Administration of oaths and taking of testimony.
- 3966. Tobacco, snuff, cigars, and cigarettes.
- 3967. Prohibition upon discharge of another collector's duties.

#### SUBCHAPTER D.—COVERING OF COLLECTIONS INTO THE TREASURY

##### Sec.

- 3970. Depositories for collections.
- 3971. Deposit of collections.

#### SUBCHAPTER E.—DISTRAINT AGAINST DELINQUENT COLLECTOR

- 3975. Warrant of distress.
- 3976. Sale of personal property.
- 3977. Sale of real property.
- 3978. Disposition of proceeds of sale.

#### SUBCHAPTER A.—APPOINTMENT, COMPENSATION, AND BOND

##### § 3940. Number.

The whole number of collectors of internal revenue shall not exceed sixty-five. (53 Stat. 480.)

#### DERIVATION

R. S. § 3142, which was in nature of a revision of acts July 1, 1862, ch. 119, § 2, 12 Stat. 433; June 30, 1864, ch. 173, § 7, 13 Stat. 224; July 14, 1870, ch. 255, § 18, 16 Stat. 261; as amended by act Mar. 4, 1923, ch. 244, 42 Stat. 1444.

##### § 3941. Appointment—(a) In general.

The President, by and with the advice and consent of the Senate, shall appoint for each collection district a collector, who shall be a resident of the same.

##### (b) Consolidation of collection districts.

When two or more collection districts are united by the President, he may designate from among the existing officers of such districts one collector for the new district, or, at his discretion, he may make a new appointment of such officer for said district.

##### (c) Recess of Senate.

For commissions to fill vacancies occurring during recess of Senate, see section 3944 (c) (1).

##### (d) Cross reference.

For establishment, alteration, and number of collection districts, see section 3650.

(53 Stat. 480.)

#### DERIVATION

R. S. § 3142. See Historical Note to section 3940 of this title.

##### § 3942. Suspension—(a) Authority.

Collectors may be suspended by the Commissioner for fraud, or gross neglect of duty, or abuse of power.

##### (b) Procedure.

In case of the suspension of a collector, under the power conferred in subsection (a), the Commissioner shall, as soon thereafter as practicable, report the case to the President through the Secretary for such action as he may deem proper. (53 Stat. 481.)

#### DERIVATION

R. S. § 3163, which was in nature of a revision of act July 20, 1868, ch. 186, §§ 49, 51, 15 Stat. 144, 145; act Aug. 15, 1876, ch. 287, § 2, 19 Stat. 152.

##### § 3943. Bonds—(a) Original execution.

Every collector, before entering upon the duties of his office, shall execute a bond for such amount as may be prescribed by the Commissioner, under the direction of the Secretary, with not less than five sureties, to be approved by the General Counsel for the Department of the Treasury, conditioned that

said collector shall faithfully perform the duties of his office according to law, and shall justly and faithfully account for and pay over to the United States, in compliance with the order or regulations of the Secretary, all public moneys which may come into his hands or possession.

**(b) Renewal.**

Every collector shall, from time to time, renew, strengthen, and increase his official bond, as the Secretary may direct, with such further conditions as the said Commissioner shall prescribe.

**(c) Substitution.**

Every collector shall execute a new bond whenever required so to do by the Secretary, with such conditions as may be required by law or prescribed by the Commissioner, with not less than five sureties; which new bond shall be in lieu of any former bond or bonds of such collector in respect to all liabilities accruing after the date of its approval by the General Counsel for the Department of the Treasury.

**(d) Filing.**

Said bonds shall be transmitted to the Secretary and filed as he may direct. (53 Stat. 481.)

**DERIVATION**

R. S. § 3143, which was in nature of a revision of act June 30, 1864, ch. 173, § 9, 13 Stat. 225; acts Mar. 1, 1879, ch. 125, § 2, 20 Stat. 327; Mar. 2, 1895, ch. 177, § 5, 28 Stat. 807; May 10, 1934, ch. 277, § 512 (b), 48 Stat. 769.

**§ 3944. Salaries and office expenses allowed—(a) Allowance.**

Allowances shall be made by the Secretary, upon the recommendation of the Commissioner, for salary and office expenses of collectors: *Provided*, That the Secretary, on the recommendation of the Commissioner, be authorized to make such further allowances, from time to time, as may be reasonable, in cases in which, from the territorial extent of the district, or from the amount of internal revenue taxes collected, it may seem just to make such allowances; but no such allowance shall be made if more than one year has elapsed since the close of the fiscal year in which the services were rendered.

**(b) Adjustment and limit of salaries.**

The salaries of collectors may be readjusted and increased under such regulations as may be prescribed by the Commissioner, subject to the approval of the Secretary, but no collector shall receive a salary in excess of \$7,500 per year.

**(c) Prerequisites to payment—(1) Confirmation by Senate.**

No collector shall be entitled to any portion of the salary pertaining to the office unless he shall have been confirmed by the Senate, except in cases of commissions to fill vacancies occurring during the recess of the Senate.

**(2) Certificate of Commissioner.**

No payment shall be made to collectors on account of salaries or office expenses, without the certificate of the Commissioner that all reports required by law or regulation have been received, or that a satisfactory explanation has been rendered to him of the cause of delay.

**(d) Observance of fiscal year.**

In adjusting the accounts of collectors, and in the payment of their compensation for services, the fiscal year of the Treasury shall be observed. (53 Stat. 481.)

**DERIVATION**

Subsection (a) from act Feb. 8, 1875, ch. 36, §§ 12, 13, 18 Stat. 309, as amended by act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 329, 330.

Subsection (b) from act Feb. 24, 1919, ch. 18, § 1301 (b), as amended by act May 29, 1928, ch. 852, § 713, 45 Stat. 882.

Subsection (c) (1) from act Feb. 8, 1875, ch. 36, § 13, 18 Stat. 310, as amended by act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 330.

Subsection (c) (2) from R. S. § 3147, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 106; act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 329.

Subsection (d) from R. S. § 3146, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 106.

**SIMILAR PROVISIONS**

1877—Mar. 3, 1877, ch. 102, § 1, 19 Stat. 303.

**§ 3945. Payment of advertising, stationery, and postage expenses.**

There shall be paid, after the account thereof has been rendered to and approved by the General Accounting Office, to each collector, his necessary and reasonable charges for advertising, stationery, and blank books used in the performance of his official duties, and for postage actually paid on letters and documents received or sent and exclusively relating to official business, but no such account shall be approved or allowed unless it states the date and the particular items of every such expenditure, and shall be verified by the oath of the collector. (53 Stat. 482.)

**DERIVATION**

Act Feb. 8, 1875, ch. 36, § 13, 18 Stat. 309, as amended by act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 330; act June 10, 1921, ch. 18, § 304, 42 Stat. 24.

**SUBCHAPTER B.—ACCOUNTS, RECORDS, AND REPORTS**

**§ 3950. Charges and credits—(a) Charges.**

Every collector shall be charged with—

**(1) Taxes.**

The whole amount of taxes, whether contained in lists transmitted to him by the Commissioner, or by other collectors, or delivered to him by his predecessor in office, and the additions thereto;

**(2) Stamps.**

The par value of all stamps deposited with him; and

**(3) Moneys.**

All moneys collected for penalties, forfeitures, fees, or costs.

**(b) Credits.**

Every collector shall be credited with—

**(1) Payments into Treasury.**

All payments into the Treasury made as provided by law;

**(2) Returned stamps.**

All stamps returned by him uncanceled to the Treasury;

**(3) Taxes transmitted to other collectors.**

The amount of taxes contained in the lists transmitted in the manner provided in section 3651 (b)

to other collectors, and by them receipted as therein provided;

**(4) Taxes of insolvent or absconded persons.**

The amount of the taxes of such persons as may have absconded or become insolvent, prior to the day when the tax ought, according to the provisions of law, to have been collected;

**(5) Uncollected taxes transferred to successor.**

All uncollected taxes transferred by him or by his deputy acting as collector to his successor in office: *Provided*, That it shall be proved to the satisfaction of the Commissioner, who shall certify the facts to the General Accounting Office, that due diligence was used by the collector; and

**(6) Property purchased for United States.**

The amount of all property purchased by him for the use of the United States, provided he faithfully account for and pay over the proceeds thereof upon a resale of the same as required by law. (53 Stat. 482.)

**DERIVATION**

R. S. § 3218, which was in nature of a revision of acts July 13, 1866, ch. 184, § 9, 14 Stat. 110; Dec. 24, 1872, ch. 13, § 2, 17 Stat. 402; act June 10, 1921, ch. 18, § 304, 42 Stat. 24.

**§ 3951. Quarterly revenue account.**

Collectors shall render their revenue accounts quarterly. (53 Stat. 482.)

**DERIVATION**

Act May 27, 1908, ch. 200, § 1, 35 Stat. 325.

**§ 3952. Monthly collection statement.**

Every collector shall, at the expiration of each month after he commences his collections, transmit to the Commissioner a statement of the collections made by him within the month. (53 Stat. 482.)

**DERIVATION**

R. S. § 3212, which was in nature of a revision of act June 30, 1864, ch. 173, § 33, 13 Stat. 236.

**§ 3953. Monthly account of goods in bond—(a) Goods stored in bond.**

Every collector who has charge of any warehouse in which distilled spirits or articles are stored in bond shall render a monthly account of all such articles to the Commissioner, by whom such account shall be examined and adjusted monthly, so as to exhibit a true statement of the responsibility of such collector thereon. In adjusting such account, the collector shall be charged with all the articles which may have been deposited or received under the provisions of law, in any warehouse in his district and under his control, and shall be credited with all such articles shown to have been removed therefrom according to law, including transfers to other collectors and to his successor in office, and also whatever allowances may have been made in accordance with law to any owner of such goods or articles for leakage or other losses.

**(b) Distilled spirits, tobacco, snuff, and cigars shipped in bond.**

Every collector from whose district any distilled spirits, tobacco, snuff, or cigars are shipped in bond,

under the provisions of this title, shall render a monthly account of the same to the Commissioner, showing the amount of each article produced and shipped in bond, the amounts of which the exportation is completed according to law, and the amount remaining unaccounted for at the end of each month; also any excesses or deficiencies on the amount originally reported as shipped.

**(c) Transfer of powers and duties.**

For transfer of powers and duties of Commissioner and his agents in respect to distilled spirits, see section 3170. (53 Stat. 483.)

**DERIVATION**

R. S. § 3444, which was in nature of a revision of acts July 20, 1868, ch. 186, § 100, 15 Stat. 165; June 6, 1872, ch. 315, § 31, 17 Stat. 255.

**§ 3954. Other accounts.**

For provisions relating to—

Accounts in general—Monthly rendition, see R. S. § 3622 as amended by act of July 31, 1894, ch. 174, § 12, 28 Stat. 209 and June 10, 1921, ch. 18, § 304, 42 Stat. 24 (U. S. C., Title 31, § 496); period for transmission to Washington, see act of July 31, 1894, ch. 174, § 12, 28 Stat. 209 as amended by act of March 2, 1895, ch. 177, § 4, 28 Stat. 807 and June 10, 1921, ch. 18, § 304, 42 Stat. 24 (U. S. C., Title 31, § 78); entry of each receipt and payment, see R. S. § 3643 (U. S. C., Title 31, § 525); allocation to appropriation, see R. S. § 3623 (U. S. C., Title 31, § 498); delinquency in rendition, see section 3975.

Account of taxes and penalties assessed, see section 3641. (53 Stat. 483.)

**§ 3955. Reports concerning misconduct of officers and agents.**

It shall be the duty of every collector to report to the Commissioner in writing any neglect of duty, incompetency, delinquency, or malfeasance in office of any internal revenue officer or agent of which he may obtain knowledge, with a statement of all the facts in each case, and any evidence sustaining the same. (53 Stat. 483.)

**DERIVATION**

R. S. § 3163, which was in nature of a revision of act July 20, 1868, ch. 186, §§ 49, 51, 15 Stat. 144, 145; act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 328.

**SUBCHAPTER C.—POWERS AND DUTIES**

**§ 3960. Superintendence of exports and drawbacks.**

In any port of the United States where there is more than one collector of internal revenue, the Secretary may designate one of them to have charge of all matters relating to the exportation of articles subject to tax under internal revenue laws; and at any port where he may deem it necessary, there shall be appointed by him an officer to superintend all matters of exportation and drawback, under the direction of the collector. The compensation of the officer last named shall be prescribed by the Secretary. At any port where there is no superintendent of exports, all the duties and services required of such officers shall be performed by the collector of internal revenue designated to have charge of exportation. All the books, papers, and documents in the bureau of drawbacks in the respective ports, relating to the drawback of taxes paid under the internal revenue law, shall be delivered to the collector in charge of exportation. (53 Stat. 483.)



said collector shall faithfully perform the duties of his office according to law, and shall justly and faithfully account for and pay over to the United States, in compliance with the order or regulations of the Secretary, all public moneys which may come into his hands or possession.

**(b) Renewal.**

Every collector shall, from time to time, renew, strengthen, and increase his official bond, as the Secretary may direct, with such further conditions as the said Commissioner shall prescribe.

**(c) Substitution.**

Every collector shall execute a new bond whenever required so to do by the Secretary, with such conditions as may be required by law or prescribed by the Commissioner, with not less than five sureties; which new bond shall be in lieu of any former bond or bonds of such collector in respect to all liabilities accruing after the date of its approval by the General Counsel for the Department of the Treasury.

**(d) Filing.**

Said bonds shall be transmitted to the Secretary and filed as he may direct. (53 Stat. 481.)

**DERIVATION**

R. S. § 3143, which was in nature of a revision of act June 30, 1864, ch. 173, § 9, 13 Stat. 225; acts Mar. 1, 1879, ch. 125, § 2, 20 Stat. 327; Mar. 2, 1895, ch. 177, § 5, 28 Stat. 807; May 10, 1934, ch. 277, § 512 (b), 48 Stat. 769.

**§ 3944. Salaries and office expenses allowed—(a) Allowance.**

Allowances shall be made by the Secretary, upon the recommendation of the Commissioner, for salary and office expenses of collectors: *Provided*, That the Secretary, on the recommendation of the Commissioner, be authorized to make such further allowances, from time to time, as may be reasonable, in cases in which, from the territorial extent of the district, or from the amount of internal revenue taxes collected, it may seem just to make such allowances; but no such allowance shall be made if more than one year has elapsed since the close of the fiscal year in which the services were rendered.

**(b) Adjustment and limit of salaries.**

The salaries of collectors may be readjusted and increased under such regulations as may be prescribed by the Commissioner, subject to the approval of the Secretary, but no collector shall receive a salary in excess of \$7,500 per year.

**(c) Prerequisites to payment—(1) Confirmation by Senate.**

No collector shall be entitled to any portion of the salary pertaining to the office unless he shall have been confirmed by the Senate, except in cases of commissions to fill vacancies occurring during the recess of the Senate.

**(2) Certificate of Commissioner.**

No payment shall be made to collectors on account of salaries or office expenses, without the certificate of the Commissioner that all reports required by law or regulation have been received, or that a satisfactory explanation has been rendered to him of the cause of delay.

**(d) Observance of fiscal year.**

In adjusting the accounts of collectors, and in the payment of their compensation for services, the fiscal year of the Treasury shall be observed. (53 Stat. 481.)

**DERIVATION**

Subsection (a) from act Feb. 8, 1875, ch. 36, §§ 12, 13, 18 Stat. 309, as amended by act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 329, 330.

Subsection (b) from act Feb. 24, 1919, ch. 18, § 1301 (b), as amended by act May 29, 1928, ch. 852, § 713, 45 Stat. 882.

Subsection (c) (1) from act Feb. 8, 1875, ch. 36, § 13, 18 Stat. 310, as amended by act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 330.

Subsection (c) (2) from R. S. § 3147, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 106; act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 329.

Subsection (d) from R. S. § 3146, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 106.

**SIMILAR PROVISIONS**

1877—Mar. 3, 1877, ch. 102, § 1, 19 Stat. 303.

**§ 3945. Payment of advertising, stationery, and postage expenses.**

There shall be paid, after the account thereof has been rendered to and approved by the General Accounting Office, to each collector, his necessary and reasonable charges for advertising, stationery, and blank books used in the performance of his official duties, and for postage actually paid on letters and documents received or sent and exclusively relating to official business, but no such account shall be approved or allowed unless it states the date and the particular items of every such expenditure, and shall be verified by the oath of the collector. (53 Stat. 482.)

**DERIVATION**

Act Feb. 8, 1875, ch. 36, § 13, 18 Stat. 309, as amended by act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 330; act June 10, 1921, ch. 18, § 304, 42 Stat. 24.

**SUBCHAPTER B.—ACCOUNTS, RECORDS, AND REPORTS**

**§ 3950. Charges and credits—(a) Charges.**

Every collector shall be charged with—

**(1) Taxes.**

The whole amount of taxes, whether contained in lists transmitted to him by the Commissioner, or by other collectors, or delivered to him by his predecessor in office, and the additions thereto;

**(2) Stamps.**

The par value of all stamps deposited with him; and

**(3) Moneys.**

All moneys collected for penalties, forfeitures, fees, or costs.

**(b) Credits.**

Every collector shall be credited with—

**(1) Payments into Treasury.**

All payments into the Treasury made as provided by law;

**(2) Returned stamps.**

All stamps returned by him uncanceled to the Treasury;

**(3) Taxes transmitted to other collectors.**

The amount of taxes contained in the lists transmitted in the manner provided in section 3651 (b)

to other collectors, and by them receipted as therein provided;

**(4) Taxes of insolvent or absconded persons.**

The amount of the taxes of such persons as may have absconded or become insolvent, prior to the day when the tax ought, according to the provisions of law, to have been collected;

**(5) Uncollected taxes transferred to successor.**

All uncollected taxes transferred by him or by his deputy acting as collector to his successor in office: *Provided*, That it shall be proved to the satisfaction of the Commissioner, who shall certify the facts to the General Accounting Office, that due diligence was used by the collector; and

**(6) Property purchased for United States.**

The amount of all property purchased by him for the use of the United States, provided he faithfully account for and pay over the proceeds thereof upon a resale of the same as required by law. (53 Stat. 482.)

**DERIVATION**

R. S. § 3218, which was in nature of a revision of acts July 13, 1866, ch. 184, § 9, 14 Stat. 110; Dec. 24, 1872, ch. 13, § 2, 17 Stat. 402; act June 10, 1921, ch. 18, § 304, 42 Stat. 24.

**§ 3951. Quarterly revenue account.**

Collectors shall render their revenue accounts quarterly. (53 Stat. 482.)

**DERIVATION**

Act May 27, 1908, ch. 200, § 1, 35 Stat. 325.

**§ 3952. Monthly collection statement.**

Every collector shall, at the expiration of each month after he commences his collections, transmit to the Commissioner a statement of the collections made by him within the month. (53 Stat. 482.)

**DERIVATION**

R. S. § 3212, which was in nature of a revision of act June 30, 1864, ch. 173, § 33, 13 Stat. 236.

**§ 3953. Monthly account of goods in bond—(a) Goods stored in bond.**

Every collector who has charge of any warehouse in which distilled spirits or articles are stored in bond shall render a monthly account of all such articles to the Commissioner, by whom such account shall be examined and adjusted monthly, so as to exhibit a true statement of the responsibility of such collector thereon. In adjusting such account, the collector shall be charged with all the articles which may have been deposited or received under the provisions of law, in any warehouse in his district and under his control, and shall be credited with all such articles shown to have been removed therefrom according to law, including transfers to other collectors and to his successor in office, and also whatever allowances may have been made in accordance with law to any owner of such goods or articles for leakage or other losses.

**(b) Distilled spirits, tobacco, snuff, and cigars shipped in bond.**

Every collector from whose district any distilled spirits, tobacco, snuff, or cigars are shipped in bond,

under the provisions of this title, shall render a monthly account of the same to the Commissioner, showing the amount of each article produced and shipped in bond, the amounts of which the exportation is completed according to law, and the amount remaining unaccounted for at the end of each month; also any excesses or deficiencies on the amount originally reported as shipped.

**(c) Transfer of powers and duties.**

For transfer of powers and duties of Commissioner and his agents in respect to distilled spirits, see section 3170. (53 Stat. 483.)

**DERIVATION**

R. S. § 3444, which was in nature of a revision of acts July 20, 1868, ch. 186, § 100, 15 Stat. 165; June 6, 1872, ch. 315, § 31, 17 Stat. 255.

**§ 3954. Other accounts.**

For provisions relating to—

Accounts in general—Monthly rendition, see R. S. § 3622 as amended by act of July 31, 1894, ch. 174, § 12, 28 Stat. 209 and June 10, 1921, ch. 18, § 304, 42 Stat. 24 (U. S. C., Title 31, § 496); period for transmission to Washington, see act of July 31, 1894, ch. 174, § 12, 28 Stat. 209 as amended by act of March 2, 1895, ch. 177, § 4, 28 Stat. 807 and June 10, 1921, ch. 18, § 304, 42 Stat. 24 (U. S. C., Title 31, § 78); entry of each receipt and payment, see R. S. § 3643 (U. S. C., Title 31, § 525); allocation to appropriation, see R. S. § 3623 (U. S. C., Title 31, § 498); delinquency in rendition, see section 3975.

Account of taxes and penalties assessed, see section 3641. (53 Stat. 483.)

**§ 3955. Reports concerning misconduct of officers and agents.**

It shall be the duty of every collector to report to the Commissioner in writing any neglect of duty, incompetency, delinquency, or malfeasance in office of any internal revenue officer or agent of which he may obtain knowledge, with a statement of all the facts in each case, and any evidence sustaining the same. (53 Stat. 483.)

**DERIVATION**

R. S. § 3163, which was in nature of a revision of act July 20, 1868, ch. 186, §§ 49, 51, 15 Stat. 144, 145; act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 328.

**SUBCHAPTER C.—POWERS AND DUTIES**

**§ 3960. Superintendence of exports and drawbacks.**

In any port of the United States where there is more than one collector of internal revenue, the Secretary may designate one of them to have charge of all matters relating to the exportation of articles subject to tax under internal revenue laws; and at any port where he may deem it necessary, there shall be appointed by him an officer to superintend all matters of exportation and drawback, under the direction of the collector. The compensation of the officer last named shall be prescribed by the Secretary. At any port where there is no superintendent of exports, all the duties and services required of such officers shall be performed by the collector of internal revenue designated to have charge of exportation. All the books, papers, and documents in the bureau of drawbacks in the respective ports, relating to the drawback of taxes paid under the internal revenue law, shall be delivered to the collector in charge of exportation. (53 Stat. 483.)

## DERIVATION

R. S. § 3161, which was in nature of a revision of act July 13, 1866, ch. 184, § 60, 14 Stat. 168.

## § 3961. Collection.

For provisions relating to—

Authority to collect—Taxes generally, see section 3651 (a) (1); taxes certified by Commissioner, see section 3641; taxes certified by another collector, see section 3651 (b). Enforcement of law and regulations, see section 3654 (a). Distraint, see subchapter C of chapter 36. Seizure and forfeiture, see subchapter D of chapter 36. Responsibility for acts or omissions of deputy collectors, see section 3654 (b). (53 Stat. 484.)

## § 3962. Completion of collections—(a) Accounts generally.

Every collector shall complete the collection of all sums assigned to him for collection and shall pay over the same into the Treasury.

## (b) Predecessor collector's accounts.

In case of the death, resignation, or removal of any collector, all lists and accounts of taxes uncollected shall be transferred to his successor in office as soon as such successor is appointed and qualified, and it shall be the duty of such successor to collect the same. (53 Stat. 484.)

## DERIVATION

Subsection (a) from R. S. § 3212, which was in nature of a revision of act June 30, 1864, ch. 173, § 33, 13 Stat. 236.

Subsection (b) from R. S. § 3219, which was in nature of a revision of act July 13, 1866, ch. 184, § 9, 14 Stat. 110.

## § 3963. Stamp supply.

For provisions relating to—

Cigars and cigarettes, see section 2112 (c).  
Playing cards, see section 1832.  
Tobacco and snuff, see section 2103.

(53 Stat. 484.)

## § 3964. Information and returns.

For provisions relating to—

Convass<sup>1</sup> of districts for taxable persons and objects, see section 3600.

Entry of premises for examination of taxable objects, see section 3601 (a).

Preparation and execution of lists or returns for taxpayer, see sections 3611 (a) (2), 3612, and 3613.

Notice requiring list or return, see section 3611 (c).

Extension of time for filing miscellaneous tax returns, see section 3634.

(53 Stat. 484.)

<sup>1</sup> So in original. Probably should read "canvass."

## § 3965. Administration of oaths and taking of testimony—(a) In general.

See section 3632.

## (b) Oaths to expense accounts.

Collectors are required, empowered, and authorized, when requested, to administer oaths, required by law or otherwise, to accounts for travel or other expenses against the United States, with like force and effect as officers having a seal; for such services when so rendered no charge shall be made; and no fee or money paid for the services herein described shall be paid or reimbursed by the United States. (53 Stat. 484.)

## DERIVATION

Act Aug. 24, 1912, ch. 355, § 8, 37 Stat. 487.

## § 3966. Tobacco, snuff, cigars, and cigarettes.

For provisions relating to—

Approval of bonds—Tobacco and snuff manufacturers, see section 2013; cigar and cigarette manufacturers, see section 2033; leaf tobacco dealers, see section 2053; peddlers, see section 2073.

Issuance of certificates—Tobacco and snuff manufacturers, see section 2014; leaf tobacco dealers, see section 2054; peddlers, see section 2074.

Assignment of factory or trade number—Tobacco and snuff manufacturers, see section 2016; cigar and cigarette manufacturers, see section 2035; leaf tobacco dealers, see section 2054.

Examination of inventory—Tobacco and snuff manufacturers, see section 2017; cigar and cigarette manufacturers, see section 2036.

Examination of sales statements of dealers, see section 2058.

(53 Stat. 484.)

## § 3967. Prohibition upon discharge of another collector's duties.

No collector shall be detailed or authorized to discharge any duty imposed by law upon any other collector. (53 Stat. 484.)

## DERIVATION

R. S. § 3166, which was in nature of a revision of acts Mar. 2, 1867, ch. 169, § 19, 14 Stat. 482; July 20, 1863, ch. 186, § 51, 51 Stat. 145.

## SUBCHAPTER D.—COVERING OF COLLECTIONS INTO THE TREASURY

## § 3970. Depositories for collections.

The Secretary is authorized to designate one or more depositories in each State, for the deposit and safe-keeping of the money collected by virtue of the internal revenue laws; and the receipt of the proper officer of such depository to a collector for the money deposited by him shall be a sufficient voucher for such collector in the settlement of his accounts at the Treasury Department. (53 Stat. 485.)

## DERIVATION

R. S. § 3211, which was in nature of a revision of act June 30, 1864, ch. 173, § 33, 13 Stat. 236.

## § 3971. Deposit of collections—(a) General rule.

Except as provided in subsection (b), the gross amount of all taxes and revenues received under the provisions of this title, and collections of whatever nature received or collected by authority of any internal revenue law, shall be paid daily into the Treasury of the United States under instructions of the Secretary as internal revenue collections, by the officer receiving or collecting the same, without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any description. A certificate of such payment, stating the name of the depositor and the specific account on which the deposit was made, signed by the Treasurer, designated depository, or proper officer of a deposit bank, shall be transmitted to the Commissioner.

## (b) Exceptions—(1) Sums offered in compromise.

Sums offered in compromise under the provisions of section 3761;

## (2) Sums offered for purchase of real estate.

Sums offered for the purchase of real estate under the provisions of section 3795; and

## (3) Surplus proceeds in distraint sales.

Surplus proceeds in any distraint sale, after making allowance for the amount of the tax, interest, penalties, and additions thereto, and for costs and charges of the distraint and sale—shall be deposited with the Treasurer of the United States in a special deposit account in the name of the collector making the deposit. Upon acceptance of such offer in compromise or offer for the purchase of such real estate, the amount so accepted shall be withdrawn by the collector from his special deposit account with the Treasurer of the United States and deposited in the Treasury of the United States as internal revenue collections. Upon the rejection of any such offer, the Commissioner shall authorize the collector, through whom the amount of such offer was submitted, to refund to the maker of such offer the amount thereof. In the case of surplus proceeds from distraint sales the Commissioner shall, upon application and satisfactory proof in support thereof, authorize the collector through whom the amount was received to refund the same to the person or persons legally entitled thereto. (53 Stat. 485.)

## DERIVATION

R. S. § 3210, which was in nature of a revision of act Mar. 3, 1865, ch. 78, § 3, 13 Stat. 483, as amended by act June 2, 1924, ch. 234, § 1031 (b), 43 Stat. 351; act Feb. 26, 1926, ch. 27, § 1128 (b), 44 Stat. 124.

## SIMILAR PROVISIONS

1916—May 10, 1916, ch. 117, § 1, 39 Stat. 85.  
1908—May 27, 1908, ch. 200, § 1, 35 Stat. 325.

SUBCHAPTER E.—DISTRRAINT AGAINST  
DELINQUENT COLLECTOR

## § 3975. Warrant of distress.

When any collector falls either to collect or to render his account, or to pay over in the manner or within the times provided by law, the General Accounting Office shall, immediately after evidence of such delinquency, report the same to the General Counsel for the Treasury Department, who shall issue a warrant of distress against such delinquent collector, directed to the marshal of the district, expressing therein the amount with which the said collector is chargeable, and the sums, if any, which have been paid over by him, so far as the same are ascertainable. (53 Stat. 485.)

## DERIVATION

R. S. § 3217, which was in nature of a revision of act June 30, 1864, ch. 173, § 35, 13 Stat. 237; acts June 10, 1921, ch. 18, § 304, 42 Stat. 24; May 10, 1934, ch. 277, § 512, 48 Stat. 758.

## SIMILAR PROVISIONS

R. S. § 3625, which was in nature of a revision of acts May 15, 1820, ch. 107, § 2, 3 Stat. 592; May 29, 1830, ch. 153, § 1, 4 Stat. 414.

## § 3976. Sale of personal property—(a) Authorization and procedure.

The said marshal shall, himself, or by his deputy, immediately proceed to levy and collect the sum which may remain due, with 5 per centum thereon, and all the expenses and charges of collection, by

distress and sale of the goods and chattels, or any personal effects of the delinquent collector, giving at least five days' notice of the time and place of sale, in the manner provided by law for advertising sales of personal property on execution in the State wherein such collector resides.

## (b) Bill of sale.

The bill of sale of the officer of any goods, chattels, or other personal property, distrained and sold as aforesaid, shall be conclusive evidence of title to the purchaser, and prima facie evidence of the right of the officer to make such sale, and of the correctness of his proceedings in selling the same. (53 Stat. 486.)

## DERIVATION

R. S. § 3217. See Historical Note to section 3975 of this title.

## § 3977. Sale of real property—(a) Authorization and procedure.

For want of goods and chattels, or other personal effects of such collector, sufficient to satisfy any warrant of distress, issued as aforesaid, the real estate of such collector, or so much thereof as may be necessary for satisfying the said warrant, after being advertised for at least three weeks next before the time of sale, in not less than three public places in the collection district, and in one newspaper printed in the county or district, if any there be, shall be sold at public auction by the marshal or his deputy.

## (b) Deed of conveyance.

Upon such sale, the marshal shall make and deliver to the purchaser of the premises sold a deed of conveyance thereof, to be executed and acknowledged in the manner and form prescribed by the laws of the State in which said lands are situated, and said deed so made shall invest the purchaser with all the title and interest of the defendant named in said warrant, existing at the time of the seizure thereof. (53 Stat. 486.)

## DERIVATION

R. S. § 3217. See Historical Note to section 3975 of this title.

## § 3978. Disposition of proceeds of sale.

All moneys that may remain of the proceeds of such sale of personal or real property, after satisfying the said warrant of distress, and paying the reasonable costs and charges of sale, shall be returned to the proprietor of the property sold as aforesaid. (53 Stat. 486.)

## DERIVATION

R. S. § 3217. See Historical Note to section 3975 of this title.

Chapter 42.—DEPUTY COLLECTORS OF  
INTERNAL REVENUE

## Sec.

3990. Number, appointment, and compensation.

3991. Revocation of appointment.

3992. Bonds.

3993. Collection authority.

3994. Detail to other collection districts.

3995. Deputy as acting collector.

3996. Retention of deputies pending appointment of successor collector.

3997. Administration of oaths.

**§ 3990. Number, appointment, and compensation.**

Each collector shall be authorized to appoint, by an instrument in writing under his hand, as many deputies as he may think proper, to be compensated for their services by such allowances as shall be made by the Secretary, upon the recommendation of the Commissioner: *Provided*, That the Secretary, on the recommendation of the Commissioner, be authorized to make such further allowances, from time to time, as may be reasonable, in cases in which, from the territorial extent of the district, or from the amount of internal revenue taxes collected, it may seem just to make such allowances; but no such allowance shall be made if more than one year elapsed since the close of the fiscal year in which the services were rendered. (53 Stat. 487.)

**DERIVATION**

Act Feb. 8, 1875, ch. 36, §§ 12, 13, 18 Stat. 309, as amended by act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 329, 330.

**SIMILAR PROVISIONS**

1864—June 30, 1864, ch. 173, § 10, 13 Stat. 225.  
R. S. § 3148.

**§ 3991. Revocation of appointment.**

Each collector shall have power to revoke the appointment of any deputy, giving such notice thereof as the Commissioner may prescribe. (53 Stat. 487.)

**DERIVATION**

Act Feb. 8, 1875, ch. 36, § 12, 18 Stat. 309, as amended by act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 329. See also Historical Note to section 3990 of this title.

**§ 3992. Bonds.**

Each collector shall have power to require and accept bonds or other securities from any deputy; and actions upon such bonds may be brought in any appropriate district court of the United States; which courts shall have jurisdiction of such actions concurrently with the courts of the several States. (53 Stat. 487.)

**DERIVATION**

Act Feb. 8, 1875, ch. 36, § 12, 18 Stat. 309, as amended by acts Mar. 1, 1879, ch. 125, § 2, 20 Stat. 329; Mar. 11, 1911, ch. 231, § 289, 36 Stat. 1167. See also Historical Note to section 3990 of this title.

**§ 3993. Collection authority.**

For authority of deputy collector to collect the taxes levied or assessed within the portion of the district assigned to him, see section 3654 (b).  
(53 Stat. 487.)

**§ 3994. Detail to other collection districts—(a) Authorization.**

The Commissioner is authorized to detail deputy collectors in one district for special duty in other districts.

**(b) Payment of compensation.**

The deputy collectors so detailed shall be paid with respect to the district for which they are appointed and for which the allowance for their salary and expenses is made, the same as if all their services had been performed and expenses incurred in that district. (53 Stat. 487.)

**DERIVATION**

Act Apr. 17, 1900, ch. 192, § 1, 31 Stat. 107.

**5. Deputy as acting collector—(a) Sickness, absence, or temporary disability of collector.**

In case of the sickness or absence of a collector, or in case of his temporary disability to discharge his duties, they shall devolve upon his senior deputy, unless he shall have devolved them upon another of his deputies; and for the official acts or defaults of such deputies the collector and his sureties shall be held responsible to the United States.

**(b) Vacancy in the office of collector.**

In case of a vacancy occurring in the office of collector, and until a successor is appointed, the deputy of such collector senior in service shall discharge all the duties of collector; and of two or more deputies appointed on the same day, the one residing nearest the residence of the collector when the vacancy occurred shall discharge the said duties until another collector is appointed. When it appears to the Secretary that the interest of the Government so requires, he may, by his order, direct the said duties to be performed by such other one of the said deputies as he may designate.

**(c) Liability on bonds—(1) Collector's bonds.**

For the official acts and defaults of the deputy upon whom said duties are devolved, remedy shall be had on the official bond of the collector, as in other cases.

**(2) Deputy collector's bond.**

Any bond or security taken from a deputy by a collector, pursuant to section 3992 of this chapter, shall be available to his legal representatives and sureties to indemnify them for loss or damage accruing from any act or omission of duty by the deputy so continuing or succeeding to the duties of such collector.

**(d) Salary in case of vacancy in collector's office.**

Any deputy collector who has performed or may perform, under authority of law, the duties of any collector in consequence of a vacancy in the office of said collector, shall be entitled to receive the salary and office expenses allowed by the Secretary to such collector. And such deputy shall not be debarred from receiving such salary and office expenses by reason of the holding of another Federal office by said collector during the time for which such deputy acts as collector. But all payments to such deputy collector shall be upon duly audited vouchers. (53 Stat. 487.)

**DERIVATION**

Subsections (a)–(c) from R. S. § 3149, which was in nature of a revision of acts June 30, 1864, ch. 173, §§ 39, 40, 13 Stat. 238; Mar. 3, 1865, ch. 78, § 1, 13 Stat. 471; Mar. 2, 1867, ch. 169, § 9, 14 Stat. 473; as amended by act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 328.

Subsection (d) from R. S. § 3150, which was in nature of a revision of acts Mar. 1, 1869, ch. 57, § 1, 15 Stat. 282; July 1, 1870, ch. 187, 16 Stat. 179; as amended by acts Feb. 8, 1875, ch. 36, §§ 12, 13, 18 Stat. 309; Mar. 1, 1879, ch. 125, § 2, 20 Stat. 329.

**§ 3996. Retention of deputies pending appointment of successor collector.**

In the case of a vacancy occurring in the office of collector, the deputies of such collector shall continue to act until his successor is appointed. (53 Stat. 488.)

**DERIVATION**

R. S. § 3149, which was in nature of a revision of acts June 30, 1864, ch. 178, §§ 39, 40, 13 Stat. 238; Mar. 3, 1866, ch. 78, § 1, 13 Stat. 471; Mar. 2, 1867, ch. 169, § 9, 14 Stat. 473; as amended by act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 328.

**§ 3997. Administration of oaths.**

For authority of deputy collectors to administer oaths, see section 3632.

(53 Stat. 488.)

**Chapter 43.—INTERNAL REVENUE AGENTS**

Sec.

- 4000. Appointment.
- 4001. Assignment to duty.
- 4002. Post of duty.
- 4003. Powers and duties.

**§ 4000. Appointment.**

The Commissioner may, whenever in his judgment the necessities of the service so require, employ competent agents, who shall be known and designated as internal revenue agents, and, except as provided for in this title, no general or special agent or inspector of the Treasury Department in connection with internal revenue, by whatever designation he may be known, shall be appointed, commissioned, or employed. (53 Stat. 489.)

**DERIVATION**

R. S. § 3152, which was in nature of a revision of acts July 20, 1868, ch. 186, § 50, 15 Stat. 145; June 6, 1872, ch. 315, § 12, 17 Stat. 241; as amended by act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 329.

**§ 4001. Assignment to duty.**

The Commissioner may, at his discretion, assign any agent whose employment is authorized by the preceding section to duty under the direction of any officer of internal revenue, or to such other special duty as he may deem necessary. (53 Stat. 489.)

**DERIVATION**

R. S. § 3152, as amended by act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 329. See also Historical Note to section 4000 of this section.

**§ 4002. Post of duty—(a) In general.**

For authority of Commissioner to determine and designate the posts of duty of employees of the internal revenue service engaged in field work or traveling, see section 4040.

**(b) Duty in Washington.**

For authority of Commissioner to assign internal-revenue agents to duty in Washington, see section 3901 (b).

(53 Stat. 489.)

**§ 4003. Powers and duties—(a) Entry of premises for examination of taxable objects.**

The agents whose employment is authorized by this chapter shall have all the powers of entry and examination conferred upon any officer of internal revenue by section 3601 and sections 2828, 2839, and

2857, and all the provisions of said sections, including those imposing fines, forfeitures, penalties, or other punishments for the enforcement thereof, shall be applicable to the action of internal-revenue agents, in the same manner as if such agents were specially named in each of said sections.

**(b) Report of delinquency or malfeasance of officers or agents.**

It shall be the duty of every internal revenue agent to report to the Commissioner in writing any neglect of duty, incompetency, delinquency, or malfeasance in office of any internal revenue officer or agent of which he may obtain knowledge, with a statement of all the facts in each case, and any evidence sustaining the same.

**(c) Enforcement of law and regulations.**

For provisions requiring internal-revenue agents to see that all laws and regulations relating to the collection of internal-revenue taxes are complied with, see section 3654 (c).

**(d) Administration of oaths.**

For authority of internal-revenue agents to administer oaths, see section 3632 (a) (1).

**(e) Inspection of certificate of peddler of tobacco.**

For authority of internal-revenue agents to demand production of and inspect the collector's certificate for peddlers of tobacco, see section 2192.

(53 Stat. 489.)

**DERIVATION**

Subsection (a) from R. S. § 3152, which was in nature of a revision of acts July 20, 1868, ch. 186, § 50, 15 Stat. 145; June 6, 1872, ch. 315, § 12, 17 Stat. 241; as amended by act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 329.

Subsection (b) from R. S. § 3163, which was in nature of a revision of act July 20, 1868, ch. 186, §§ 49, 51, 15 Stat. 144, 145.

**Chapter 44.—STOREKEEPER-GAUGERS**

Sec.

- 4010. Appointment and bond.
- 4011. Compensation.
- 4012. Post of duty.
- 4013. Assignment.
- 4014. Transfer.
- 4015. Detail to other districts.
- 4016. Suspension.
- 4017. Daily gauging return.
- 4018. Engagement in other business.
- 4019. Leave of absence.
- 4020. Temporary charge of warehouses.
- 4021. Penalties.
- 4022. Rules and regulations.

**§ 4010. Appointment and bond—(a) Requirement.**

There shall be appointed by the Secretary such number of storekeeper-gaugers as may be necessary, who shall each take an oath faithfully to perform his duties, and shall give bond, with one or more sureties, satisfactory to the Commissioner, for the faithful discharge of the duties assigned to him by law or regulations; and the penal sum of said bond shall not be less than \$5,000, and said bond shall be renewed or strengthened as the Commissioner may require.

**(b) Transfer of powers and duties.**

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 491.)

**DERIVATION**

R. S. § 3153, which was in nature of a revision of acts July 20, 1868, ch. 186, § 52, 15 Stat. 145; June 6, 1872, ch.

315, § 14, 17 Stat. 244; R. S. § 3156, which was in nature of a revision of act July 20, 1868, ch. 186, § 53, 15 Stat. 147; acts Aug. 15, 1876, ch. 287, § 1, 19 Stat. 152; Mar. 2, 1929, ch. 510, § 1, 45 Stat. 1496.

§ 4011. Compensation—(a) Salary.

All storekeeper-gaugers shall be full-time employees, paid upon a per annum basis. No person who was employed as a storekeeper-gauger on April 1, 1929, shall be paid at a rate less than the rate upon which his per diem compensation was based at such time; and no person entering upon such employment after such time shall be paid at a rate less than the minimum rate upon which per diem compensation of storekeeper-gaugers was based on April 1, 1929.

(b) Traveling expenses.

Storekeeper-gaugers, when traveling to or from assignments, or when transferred from one assignment to another, either in the same district or in different districts, shall receive actual and necessary traveling expenses.

(c) Subsistence.

For subsistence allowed, see section 4012.

(53 Stat. 491.)

DERIVATION

Subsection (a) from act Mar. 2, 1929, ch. 510, § 1, 45 Stat. 1496.

Subsection (b) from act Aug. 27, 1894, ch. 349, § 63, 28 Stat. 567, as amended by act May 13, 1910, ch. 236, 36 Stat. 369.

SIMILAR PROVISIONS

1876—Aug. 15, 1876, ch. 287, § 1, 19 Stat. 152.  
1872—June 6, 1872, ch. 315, § 14, 17 Stat. 244.  
R. S. § 3157.

§ 4012. Post of duty—(a) Principal station.

The Commissioner shall designate for each storekeeper-gauger a principal station, which shall be held to be the designated post of duty of such employee for the purposes of the Subsistence Expense Act of 1926, ch. 457, 44 Stat. 688 (U. S. C., Title 5, ch. 16) as amended, and which shall, wherever practicable, be at or near the place of bona fide residence of such employee. Such principal station may be changed from time to time by the Commissioner as circumstances may require. A storekeeper-gauger, when on detail in emergency cases or assignments in the administrative district wherein he is regularly commissioned, shall be allowed subsistence, as well as when detailed for special duty in any other or outside district.

(b) Transfer of powers and duties.

For transfer of powers and duties of Commissioner and his agents, see section 3170.

(53 Stat. 491.)

DERIVATION

Acts Mar. 2, 1929, ch. 510, § 3, 45 Stat. 1496; May 27, 1930, ch. 342, § 8, 46 Stat. 430.

SIMILAR PROVISIONS

1894—Aug. 27, 1894, ch. 349, § 65, 28 Stat. 567.

§ 4013. Assignment—(a) To bonded warehouses.

One or more storekeeper-gaugers shall be assigned by the Commissioner to every internal revenue bonded warehouse established by law.

(b) To fruit distilleries and wineries.

For authority to assign a storekeeper-gauger to a fruit distillery or winery, see section 3042.

(c) To special duty.

Storekeeper-gaugers, when not employed upon their regular duties, may be assigned to such duties as the Commissioner shall designate.

(d) Transfer of powers and duties.

For transfer of powers and duties of Commissioner and his agents, in respect to liquor, see section 3170.

(53 Stat. 492.)

DERIVATION

Subsection (a) from R. S. § 3154, which was in nature of a revision of act July 20, 1868, ch. 186, § 52, 15 Stat. 146; acts Mar. 2, 1929, ch. 510, § 1, 45 Stat. 1496; Mar. 3, 1933, ch. 212, § 16, 47 Stat. 1518; Ex. Ord. No. 6339, § 1 (a), act June 26, 1936, ch. 830, § 407, 49 Stat. 1961.

Subsection (c) from acts Mar. 2, 1929, ch. 510, § 1, 45 Stat. 1496; May 27, 1930, ch. 342, § 8, 46 Stat. 430.

§ 4014. Transfer—(a) Authorization.

The Commissioner may transfer any storekeeper-gauger from one distillery, warehouse, or other place of duty, or from one collection district to another.

(b) Transfer of powers and duties.

For transfer of powers and duties of Commissioner and his agents, in respect to liquor, see section 3170.

(53 Stat. 492.)

DERIVATION

R. S. § 3154, which was in nature of a revision of act July 20, 1868, ch. 186, § 52, 15 Stat. 146; act Aug. 15, 1876, ch. 287, § 1, 19 Stat. 152; R. S. § 3163, which was in nature of a revision of act July 20, 1868, ch. 186, §§ 49, 51, 15 Stat. 144, 145, as amended by act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 328; act Mar. 2, 1929, ch. 510, § 1, 45 Stat. 1496.

SIMILAR PROVISIONS

1894—Aug. 27, 1894, ch. 349, § 65, 28 Stat. 567.

§ 4015. Detail to other districts—(a) Authorization.

The Commissioner is authorized to detail storekeeper-gaugers appointed in one district for special or regular duty in other districts.

(b) Accounts.

The accounts of storekeeper-gaugers so detailed shall be adjusted and paid in the district where they are appointed the same as if assigned to regular duty, without regard to the number of districts in which they may have been employed in any one month, the same as if all their services had been performed and expenses incurred in the district in which appointed, and the order of the Commissioner transferring storekeeper-gaugers to special work shall be accepted by the General Accounting Office as full authority for proper expenses incurred by said storekeeper-gaugers while so assigned.

(c) Transfer of powers and duties.

For transfer of powers and duties of Commissioner and his agents, in respect to liquor, see section 3170.

(53 Stat. 492.)

DERIVATION

Acts Apr. 17, 1900, ch. 192, § 1, 31 Stat. 107; June 10, 1921, ch. 18, § 304, 42 Stat. 24.

§ 4016. Suspension—(a) Authorization.

The Commissioner may, by notice in writing, suspend from duty any storekeeper-gauger.



**(b) Transfer of powers and duties.**

For transfer of powers and duties of Commissioner and his agents, in respect to liquor, see section 3170.

(53 Stat. 492.)

**DERIVATION**

R. S. § 3163, which was in nature of a revision of act July 20, 1868, ch. 186, § 49, 15 Stat. 144, 145; acts Aug. 15, 1876, ch. 287, § 1, 19 Stat. 152; Mar. 2, 1929, ch. 510, § 1, 45 Stat. 1496.

**§ 4017. Daily gauging return—(a) Requirement.**

Every storekeeper-gauger shall, under such regulations as may be prescribed by the Commissioner, make a daily return to the collector of his district giving a true account in detail of all articles gauged and proved or inspected by him, and for whom, and the number and kind of stamps used by him.

**(b) Transfer of powers and duties.**

For transfer of powers and duties of Commissioner and his agents, in respect to liquor, see section 3170.

(53 Stat. 492.)

**DERIVATION**

R. S. § 3291, which was in nature of a revision of acts July 20, 1868, ch. 186, § 53, 15 Stat. 147; Dec. 24, 1872, ch. 13, § 1, 17 Stat. 401; act Mar. 2, 1929, ch. 510, § 1, 45 Stat. 1496.

**§ 4018. Engagement in other business.**

No storekeeper-gauger shall be engaged in any other business while in the service of the United States, without the written permission of the Commissioner. (53 Stat. 493.)

**DERIVATION**

R. S. § 3153, which was in nature of a revision of acts July 20, 1868, ch. 186, § 52, 15 Stat. 145; June 6, 1872, ch. 315, § 14, 17 Stat. 244.

**§ 4019. Leave of absence.**

The general provisions of law relating to annual leave of absence and sick leave of employees in the executive departments shall apply to storekeeper-gaugers. (53 Stat. 493.)

**DERIVATION**

Act Mar. 2, 1929, ch. 510, § 2, 45 Stat. 1496.

**SIMILAR PROVISIONS**

1910—June 23, 1910, ch. 356, 36 Stat. 592.

**§ 4020. Temporary charge of warehouses—(a) Authorization.**

In case of the absence by reason of sickness or other cause of any storekeeper-gauger assigned to an internal revenue bonded warehouse under subsection (a) of section 4013, the collector having control of the warehouse may designate a person to have temporary charge thereof, who shall, during such absence, perform the duties and receive the pay of the storekeeper-gauger for the time he may be so employed, and shall for any violation of the law be subject to the same punishment as storekeeper-gaugers.

**(b) Transfer of powers and duties.**

For transfer of powers and duties of Commissioner and his agents, in respect to liquor, see section 3170.

(53 Stat. 493.)

**DERIVATION**

R. S. § 3155, which was in nature of a revision of act July 20, 1868, ch. 186, § 52, 15 Stat. 146; act Mar. 2, 1929, ch. 510, § 1, 45 Stat. 1496.

**§ 4021. Penalties—(a) Delegation of duties.**

Whenever any storekeeper-gauger employs any owner, agent, or superintendent of any distillery or internal revenue bonded warehouse, or any person in the service of such owner, agent, or superintendent, or any rectifier or wholesale liquor dealer, or any person in the service of such rectifier or wholesale liquor dealer, to use his brands or to discharge any of the duties imposed upon him by law, he shall, for each offense so committed, be subject to a fine of not more than \$1,000. This subsection shall not apply in any case in which the use of the storekeeper-gauger's brand or the discharge of his duties by another has been directed by the Commissioner with the approval of the Secretary under authority of law.

**(b) Fraudulent inspection, gauging, or proof.**

Every storekeeper-gauger who makes any false or fraudulent inspection, gauging, or proof, shall pay a penalty of \$1,000, and be fined not less than \$500 nor more than \$5,000, and imprisoned not less than three months nor more than three years.

**(c) Unlawful removal of distilled spirits from bonded warehouse.**

For penalty imposed for unlawfully removing or permitting to be removed distilled spirits from a bonded warehouse, see section 2913.

(53 Stat. 493.)

**DERIVATION**

Subsection (a) from R. S. § 3290, which was in nature of a revision of act July 13, 1866, ch. 184, § 38, 14 Stat. 160, as amended by act June 26, 1936, ch. 830, title II, § 203, 49 Stat. 1941.

Subsection (b) from R. S. § 3292, which was in nature of a revision of act July 20, 1868, ch. 186, § 53, 15 Stat. 147; act Mar. 2, 1929, ch. 510, § 1, 45 Stat. 1496.

**§ 4022. Rules and regulations.**

The Commissioner, with the approval of the Secretary, may prescribe such rules and regulations as may be necessary or proper to carry out the provisions of sections 4011, 4012, 4013 (c), and 4019. (53 Stat. 493.)

**DERIVATION**

Acts Mar. 2, 1929, ch. 510, § 4, 45 Stat. 1496; May 27, 1930, ch. 342, § 8, 46 Stat. 430.

**Chapter 45.—INTERNAL REVENUE INSPECTORS****Sec.**

4030. Limitation on appointment.

4031. Transfer.

4032. Suspension.

4033. Entry of premises for examination of taxable objects.

**§ 4030. Limitation on appointment.**

For limitation on appointment of inspectors, see section 4000.

(53 Stat. 494.)

**§ 4031. Transfer—(a) Authorization.**

The Commissioner may transfer any inspector from one distillery or other place of duty, or from one collection district, to another.

**(b) Transfer of powers and duties.**

For transfer of powers and duties of Commissioner and his agents, in respect to liquor, see section 3170.

(53 Stat. 494.)

DERIVATION

R. S. § 3163, which was in nature of a revision of act July 20, 1868, ch. 186, §§ 49, 51, 15 Stat. 144, 145, as amended by act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 328.

§ 4032. Suspension.

The Commissioner may, by notice in writing, suspend from duty any inspector. (53 Stat. 494.)

DERIVATION

R. S. § 3163, which was in nature of a revision of act July 20, 1868, ch. 186, §§ 49, 51, 15 Stat. 144, 145; act Aug. 15, 1876, ch. 287, § 1, 19 Stat. 152.

§ 4033. Entry of premises for examination of taxable objects.

For authority of inspectors to enter premises for the examination of taxable objects, see section 3601.

(53 Stat. 494.)

Chapter 46.—MISCELLANEOUS PROVISIONS

Sec.

4040. Posts of duty of employees in field service or traveling.

4041. Issue of instructions, regulations, and forms.

4042. Suits for damages by internal revenue officers or agents.

4043. Actions against revenue officers.

4044. Administration of oaths and taking of testimony.

4045. Special authorizations to make seizures.

4046. Statement of fees, charges, and allowances.

4047. Penalties.

4048. Extended application of penalties relating to internal revenue officers.

§ 4040. Posts of duty of employees in field service or traveling.

The Commissioner shall determine and designate the posts of duty of all employees of the internal revenue service engaged in field work or traveling on official business outside of the District of Columbia. (53 Stat. 495.)

DERIVATION

Act May 10, 1916, ch. 117, § 1, 39 Stat. 87.

SIMILAR PROVISIONS

1905—Feb. 3, 1905, ch. 297, § 1, 33 Stat. 652.

1900—Apr. 17, 1900, ch. 192, § 1, 31 Stat. 107.

1885—Mar. 3, 1885, ch. 343, 23 Stat. 404.

§ 4041. Issue of instructions, regulations, and forms—  
(a) In general.

The Secretary shall prescribe forms of entries, oaths, bonds, and other papers, and rules and regulations, not inconsistent with law, to be used under and in the execution and enforcement of the various provisions of the internal revenue laws; and he shall give such directions to collectors and prescribe such rules and forms to be observed by them as may be necessary for the proper execution of the law.

(b) Receipt of United States securities.

For authority of the Secretary to issue instructions and regulations governing the receipt by collectors and others of United States securities, see R. S. § 251 (U. S. C., Title 81, § 427).

(53 Stat. 495.)

DERIVATION

R. S. § 251, which was in nature of a revision of act July 14, 1870, ch. 255, § 34, 16 Stat. 271.

SIMILAR PROVISIONS

1864—June 30, 1864, ch. 172, § 8, 13 Stat. 221.

1856—May 14, 1856, Res. 9, 11 Stat. 144.

1846—Aug. 6, 1846, ch. 84, § 5, 9 Stat. 55.

1820—Feb. 10, 1820, ch. 11, §§ 14, 15, 3 Stat. 543.

§ 4042. Suits for damages by internal revenue officers or agents.

If any officer appointed under and by virtue of any act to provide internal revenue, or any person acting under or by authority of any such officer, shall receive any injury to his person or property, in the discharge of his duty, under any law of the United States for the collection of taxes, he shall be entitled to maintain suit for damage therefor, in the district court of the United States, in the district wherein the party doing the injury may reside or shall be found. The provisions of this section shall apply to internal revenue agents as fully as to internal revenue officers. (53 Stat. 495.)

DERIVATION

R. S. § 3152, which was in nature of a revision of acts July 20, 1868, ch. 186, § 50, 15 Stat. 145; June 6, 1872, ch. 315, § 12, 17 Stat. 241; R. S. § 3171, which was in nature of a revision of act July 13, 1866, ch. 184, § 67, 14 Stat. 172; as both were amended by act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 329; act Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.

§ 4043. Actions against revenue officers.

For authority of revenue officers to have civil suits or criminal prosecutions commenced against them in a State court transferred to a district court, see section 33 of the Judicial Code as amended by the act of Aug. 23, 1916, ch. 399, 39 Stat. 532 (U. S. C., Title 28, § 76).

(53 Stat. 495.)

§ 4044. Administration of oaths and taking of testimony.

For authority of collectors, deputy collectors, internal revenue officers, and internal revenue agents to administer oaths and take testimony, see section 3632.

(53 Stat. 495.)

§ 4045. Special authorizations to make seizures.

For special authorization by the Commissioner to internal revenue officers to make seizures, see section 3720 (b).

(53 Stat. 495.)

§ 4046. Statement of fees, charges, and allowances.

Every internal revenue officer, whose payment, charges, salary, or compensation are composed, wholly or in part, of fees, commissions, allowances, or rewards, from whatever source derived, shall be required to render to the Commissioner, under regulations to be approved by the Secretary, a statement under oath setting forth the entire amount of such fees, commissions, emoluments, or rewards of whatever nature, or from whatever source received, during the time for which said statement is rendered; and any false statement knowingly and willfully rendered under the requirements of this section, or regulations established in accordance therewith, shall be deemed willful perjury and punished in the manner provided by law for the crime of perjury. And any neglect or omission to render such statement when required shall be punished by a fine of not less than \$200, nor more than \$500, in the discretion of the court. (53 Stat. 496.)

DERIVATION

R. S. § 3158, which was in nature of a revision of act July 13, 1866, ch. 184, § 60, 14 Stat. 168, as amended by act Feb. 18, 1875, ch. 80, § 1, 18 Stat. 319.

**§ 4047. Penalties—(a) Disclosure of information by officers and employees of the United States—(1) Operations of manufacturer or producer.**

It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and the offender shall be dismissed from office or discharged from employment. The provisions of this paragraph shall apply to internal revenue agents as fully as to internal revenue officers.

**(2) Income tax data.**

For penalty for disclosing income tax data, see section 55 (f) (1).

**(b) Interest of internal revenue officer or agent in tobacco or liquor production.**

Any internal revenue officer or internal revenue agent interested, directly or indirectly, in the manufacture of tobacco, snuff, or cigars, or in the production, rectification, or redistillation of distilled spirits, shall be dismissed from office; and every officer or agent so interested in any such manufacture or production, rectification, or redistillation, or in the production of fermented liquors, shall be fined not less than \$500 nor more than \$5,000.

**(c) Issue of stamps by collector before payment.**

Any collector, or any deputy collector or other employee of, or person acting for such collector, who shall issue any stamp or stamps indicating the payment of any internal-revenue tax before payment in full therefor has been made to the officer or person issuing the same, shall be deemed guilty of a misdemeanor and shall be fined for each stamp thus issued an amount equal to the face value thereof, in addition to the liability of the collector on his official bond on account of such stamp; and such collector, deputy collector, or employee shall be dismissed from office.

**(d) Demand or acceptance of bribes by district attorneys or marshals.**

Every district attorney or marshal who demands, or accepts, or attempts to collect, directly or indirectly, as payment or gift or otherwise, any sum of money or other property of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of any provision of the internal revenue laws, except as expressly authorized by law to do so, shall be held to be guilty of a misdemeanor, and shall be fined in double the sum or value of the money or property received or demanded, and be imprisoned for not less than one nor more than ten years.

**(e) Other unlawful acts of revenue officers or agents.**

Every officer or agent appointed and acting under the authority of any revenue law of the United States—

(1) Who is guilty of any extortion or willful oppression under color of law; or

(2) Who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or

(3) Who willfully neglects to perform any of the duties enjoined on him by law; or

(4) Who conspires or colludes with any other person to defraud the United States; or

(5) Who makes opportunity for any person to defraud the United States; or

(6) Who does or omits to do any act with intent to enable any other person to defraud the United States; or

(7) Who negligently or designedly permits any violation of the law by any other person; or

(8) Who makes or signs any false entry in any book, or makes or signs any false certificate or return, in any case where he is by law or regulation required to make any entry, certificate, or return; or

(9) Who, having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, fails to report, in writing, such knowledge or information to his next superior officer and to the Commissioner; or

(10) Who demands, or accepts, or attempts to collect, directly or indirectly, as payment or gift, or otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of law, except as expressly authorized by law so to do—

shall be dismissed from office, shall be fined not less than \$1,000 nor more than \$5,000, and be imprisoned not less than six months nor more than three years. The court shall also render judgment against the said officer or agent for the amount of damages sustained in favor of the party injured, to be collected by execution. One half of the fine so imposed shall be for the use of the United States, and the other half for the use of the informer, who shall be ascertained by the judgment of the court. The provisions of this subsection shall apply to internal revenue agents as fully as to internal revenue officers.

**(f) Cross references.**

For penalties relating to statements of fees, charges, and allowances, see section 4048.

For penalty imposed for collecting special tax from persons rectifying on prohibited premises, see section 3250 (f) (2).

(53 Stat. 496.)

**DERIVATION**

Subsection (a) from R. S. § 3167, which was in nature of a revision of act June 30, 1864, ch. 173, § 38, 13 Stat. 238, as amended by acts Mar. 1, 1879, ch. 125, § 2, 20 Stat. 329; Feb. 24, 1919, ch. 18, § 1317, 40 Stat. 1146; act Feb. 26, 1926, ch. 27, § 1115, 44 Stat. 117. Said R. S. § 3167 was reenacted without change by acts Nov. 23, 1921, ch. 136, § 1311, 42 Stat. 311; June 2, 1924, ch. 234, § 1018, 43 Stat. 345, which was repealed by act Feb. 26, 1926, ch. 27, § 1200, 44 Stat. 125.

Subsection (b) from R. S. § 3168, which was in nature of a revision of act July 13, 1866, ch. 184, § 59, 14 Stat. 167, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 248; R. S. § 3152, which was in nature of a revision of

acts July 20, 1868, ch. 186, § 50, 15 Stat. 145; June 6, 1872, ch. 315, § 12, 17 Stat. 241, as amended by act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 329.

Subsection (c) from act Mar. 1, 1879, ch. 125, § 1, 20 Stat. 327.

Subsection (d) from R. S. § 3170, which was in nature of a revision of act Mar. 2, 1867, ch. 169, § 26, 14 Stat. 483.

Subsection (e) from R. S. § 3152, which was in nature of a revision of acts July 20, 1868 ch. 186, § 50, 15 Stat. 145; June 6, 1872, ch. 315, § 12, 17 Stat. 241; R. S. § 3169, which was in nature of a revision of act July 20, 1868, ch. 186, § 98, 15 Stat. 165; as both were amended by act Mar. 1, 1879, ch. 125, § 2, 20 Stat. 329; acts Mar. 4, 1909, ch. 321, § 335, 35 Stat. 1152; Dec. 16, 1930, ch. 15, 46 Stat. 1029.

Provisions similar to subsection (a) (1) were contained in acts Sept. 8, 1916, ch. 463, § 16, 39 Stat. 773; Oct. 3, 1913, ch. 16, § II, I, 38 Stat. 177; Aug. 27, 1894, ch. 349, § 34, 28 Stat. 557.

**§ 4048. Extended application of penalties relating to internal revenue officers.**

All provisions of law imposing fines, penalties, or other punishment for offenses committed by an internal revenue officer or other officer of the Department of the Treasury, or under any bureau thereof, shall apply to all persons whomsoever, employed, appointed, or acting under the authority of any internal revenue law, or any revenue provision of any law of the United States, when such persons are designated or acting as officers or deputies, or persons having the custody or disposition of any public money. (53 Stat. 497.)

**DERIVATION**

Act Feb. 8, 1875, ch. 36, § 23, 18 Stat. 312.

## SUBTITLE F.—THE JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

Chap.	Sec.
47. Organization and membership of the joint committee .....	5000
48. Powers and duties of the joint committee ..	5010

### Chapter 47.—ORGANIZATION AND MEMBERSHIP OF THE JOINT COMMITTEE

Sec.
5000. Authorization.
5001. Membership.
5002. Election of chairman and vice chairman.
5003. Appointment and compensation of staff.
5004. Payment of expenses.

#### § 5000. Authorization.

There shall be a joint congressional committee known as the Joint Committee on Internal Revenue Taxation (hereinafter in this subtitle referred to as the "Joint Committee"). (53 Stat. 501.)

#### DERIVATION

Act Feb. 26, 1926, ch. 27, § 1203 (a), 44 Stat. 127.

#### § 5001. Membership—(a) Number and selection.

The Joint Committee shall be composed of ten members as follows:

##### (1) From Committee on Finance.

Five members who are members of the Committee on Finance of the Senate, three from the majority and two from the minority party, to be chosen by such Committee; and

##### (2) From Committee on Ways and Means.

Five members who are members of the Committee on Ways and Means of the House of Representatives, three from the majority and two from the minority party, to be chosen by such Committee.

##### (b) Tenure of office—(1) General limitation.

No person shall continue to serve as a member of the Joint Committee after he has ceased to be a member of the Committee by which he was chosen, except that—

##### (2) Exception.

The members chosen by the Committee on Ways and Means who have been reelected to the House of Representatives may continue to serve as members of the Joint Committee notwithstanding the expiration of the Congress.

##### (c) Vacancies.

A vacancy in the Joint Committee—

##### (1) Effect.

Shall not affect the power of the remaining members to execute the functions of the Joint Committee; and

##### (2) Manner of filling.

Shall be filled in the same manner as the original selection, except that—

##### (A) Adjournment or recess of Congress.

In case of a vacancy during an adjournment or recess of Congress for a period of more than two weeks, the members of the Joint Committee who are members of the Committee entitled to fill such vacancy may designate a member of such Committee to serve until his successor is chosen by such Committee; and

##### (B) Expiration of Congress.

In the case of a vacancy after the expiration of a Congress which would be filled by the Committee on Ways and Means, the members of such Committee who are continuing to serve as members of the Joint Committee may designate a person who, immediately prior to such expiration, was a member of such Committee and who is re-elected to the House of Representatives, to serve until his successor is chosen by such Committee.

##### (d) Allowances.

The members shall serve without compensation in addition to that received for their services as members of Congress; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Joint Committee, other than expenses in connection with meetings of the Joint Committee held in the District of Columbia during such times as the Congress is in session. (53 Stat. 501.)

#### DERIVATION

Act Feb. 26, 1926, ch. 27, § 1203 (a, b, g), 44 Stat. 127, 128.

#### § 5002. Election of chairman and vice-chairman.

The Joint Committee shall elect a chairman and vice-chairman from among its members. (53 Stat. 502.)

#### DERIVATION

Act Feb. 26, 1926, ch. 27, § 1203 (e), 44 Stat. 128.

#### § 5003. Appointment and compensation of staff.

The Joint Committee shall have power to appoint and fix the compensation of a clerk and such experts and clerical, stenographic, and other assistants as it deems advisable. (53 Stat. 502.)

#### DERIVATION

Act Feb. 26, 1926, ch. 27, § 1203 (e), 44 Stat. 128.

#### § 5004. Payment of expenses.

The expenses of the Joint Committee shall be paid one-half from the contingent fund of the Senate and one-half from the contingent fund of the House of Representatives, upon vouchers signed by the chairman or the vice-chairman. (53 Stat. 502.)

#### DERIVATION

Act Feb. 26, 1926, ch. 27, § 1203 (b), 44 Stat. 128.

# Chapter 48.—POWERS AND DUTIES OF THE JOINT COMMITTEE

## DERIVATION

### Sec.

5010. Powers.  
5011. Duties.

Subsection (b) from act Feb. 26, 1926, ch. 27, § 1203 (f), 44 Stat. 128.

## § 5010. Powers—(a) To obtain data and inspect income returns.

For powers of the Joint Committee to obtain and inspect income returns, see section 55 (d).

## (b) Relating to hearings and sessions.

The Joint Committee, or any subcommittee thereof, is authorized—

### (1) To hold.

To hold hearings and to sit and act at such places and times;

### (2) To require attendance of witnesses and production of books.

To require by subpoena (to be issued under the signature of the chairman or vice-chairman) or otherwise, the attendance of such witnesses and the production of such books, papers, and documents;

### (3) To administer oaths.

To administer such oaths; and

### (4) To take testimony.

To take such testimony; as it deems advisable.

### (c) To procure printing and binding.

The Joint Committee, or any subcommittee thereof, is authorized to have such printing and binding done as it deems advisable.

### (d) To make expenditures—(1) General authority.

The Joint Committee, or any subcommittee thereof, is authorized to make such expenditures as it deems advisable.

### (2) Limitation.

The cost of stenographic services in reporting such hearings as the Joint Committee may hold shall not be in excess of 25 cents per hundred words. (53 Stat. 503.)

## § 5011. Duties.

It shall be the duty of the Joint Committee—

### (a) Investigation—(1) Operation and effects of law.

To investigate the operation and effects of the Federal system of internal revenue taxes;

### (2) Administration.

To investigate the administration of such taxes by the Bureau of Internal Revenue or any executive department, establishment, or agency, charged with their administration; and

### (3) Other investigations.

To make such other investigations in respect of such system of taxes as the Joint Committee may deem necessary.

### (b) Simplification of law—(1) Investigation of methods.

To investigate measures and methods for the simplification of such taxes, particularly the income tax; and

### (2) Publication of proposals.

To publish, from time to time, for public examination and analysis, proposed measures and methods for the simplification of such taxes.

### (c) Reports.

To report, from time to time, to the Committee on Finance and the Committee on Ways and Means, and, in its discretion, to the Senate or the House of Representatives, or both, the results of its investigations, together with such recommendations as it may deem advisable.

### (d) Cross reference.

For duties of the Joint Committee relating to refunds of income and estate taxes, see section 3777.

(53 Stat. 503.)

## DERIVATION

Act Feb. 26, 1926, ch. 27, § 1203 (c), 44 Stat. 127.

## TITLE 27.—INTOXICATING LIQUORS

Chap.	Sec.
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### Chapter 1.—GENERAL PROVISIONS

§§ 1-5. Repealed. Aug. 27, 1935, ch. 740, § 1, 49 Stat. 872.

These sections, acts Oct. 28, 1919, ch. 85, § 1, 41 Stat. 305, 307, and Nov. 23, 1921, ch. 134, §§ 1, 3, 5, 42 Stat. 223, were part of the National Prohibition Act.

Insofar as sections 2-5 were in force in the District of Columbia, Puerto Rico, and the Virgin Islands, Hawaii and Alaska, they had been previously repealed by acts Jan. 24, 1934, ch. 4, § 1, 48 Stat. 319; Mar. 2, 1934, ch. 37, §§ 2, 3, 48 Stat. 361; Mar. 26, 1934, ch. 88, §§ 2, 3, 48 Stat. 467; and Apr. 13, 1934, ch. 119, §§ 1, 5, 48 Stat. 583, 584.

### Chapter 2.—PROHIBITION OF INTOXICATING BEVERAGES

Sec.
11-40. Repealed.
40a. Remission or mitigation of forfeiture of vehicle or aircraft; possession pending trial.
41-43. Repealed.
43a. Use of confiscated motor vehicles.
43b. Same; confiscations under Liquor Law Repeal and Enforcement Act.
44-63. Repealed.
63a-63d. Intoxicating liquors in Canal Zone.
64. Repealed.

§§ 11-40. Repealed. Aug. 27, 1935, ch. 740, § 1, 49 Stat. 872.

These sections, acts Oct. 28, 1919, ch. 85, §§ 2-26, 41 Stat. 308-315; Nov. 23, 1921, ch. 134, § 2, 42 Stat. 222; and Mar. 31, 1933, ch. 18, §§ 1-3, 48 Stat. 23, 24, were part of the National Prohibition Act.

Insofar as sections 11-40 were in force in the District of Columbia, Puerto Rico, and the Virgin Islands, Hawaii, and Alaska, they had been previously repealed by acts Jan. 24, 1934, ch. 4, § 1, 48 Stat. 319; Mar. 2, 1934, ch. 37, §§ 2, 3, 48 Stat. 361; Mar. 26, 1934, ch. 88, §§ 2, 3, 48 Stat. 467; and Apr. 13, 1934, ch. 119, §§ 1, 5, 48 Stat. 583, 584.

§ 40a. Remission or mitigation of forfeiture of vehicle or aircraft; possession pending trial.

This section, act Aug. 27, 1935, ch. 740, § 204, 49 Stat. 878, has become section 646 of Title 18, Criminal Code and Criminal Procedure.

§§ 41-43. Repealed. Aug. 27, 1935, ch. 740, § 308 (a), 49 Stat. 880.

These sections, acts Mar. 3, 1925, ch. 438, §§ 1-3, 43 Stat. 1116, and May 27, 1930, ch. 342, §§ 9, 10, 46 Stat. 430, related to disposition of vessels or vehicles forfeited to the United States. For present provisions on this subject, see section 647 of Title 18, Criminal Code and Criminal Procedure.

§ 43a. Use of confiscated motor vehicles.

This section, acts May 14, 1937, ch. 180, § 1, 50 Stat. 145, and Mar. 28, 1938, ch. 55, § 1, 52 Stat. 128, related to use by narcotic agents of motor vehicles confiscated under former section 43 of this title.

§ 43b. Same; confiscations under Liquor Law Repeal and Enforcement Act.

This section, acts May 6, 1939, ch. 115, § 1, title I, 53 Stat. 663, and Mar. 25, 1940, ch. 71, title I, 54 Stat. 63, has become section 647 of Title 18, Criminal Code and Criminal Procedure.

§§ 44-63. Repealed. Mar. 22, 1933, ch. 4, § 2, 48 Stat. 17; June 19, 1934, ch. 657, § 3, 48 Stat. 1116; Aug. 27, 1935, ch. 740, § 1, 49 Stat. 872.

These sections, acts Oct. 28, 1919, ch. 85, §§ 20, 27-35, 37, 38, 41 Stat. 316-319, and Nov. 23, 1921, ch. 134, §§ 2, 5, 42 Stat. 222, 223, were part of the National Prohibition Act.

Sections 44-57, 61, and 62 were repealed by act Aug. 27, 1935, ch. 740, § 1, 49 Stat. 872; sections 58, 59, and 60 were repealed by act Mar. 22, 1933, ch. 4, § 2, 48 Stat. 17; and section 63 was repealed by act June 19, 1934, ch. 657, § 3, 48 Stat. 1116.

Insofar as sections 44-57, 61, 62 were in force in the District of Columbia, Puerto Rico, and the Virgin Islands, Hawaii, and Alaska, they had been previously repealed by acts Jan. 24, 1934, ch. 4, § 1, 48 Stat. 319; Mar. 2, 1934, ch. 37, §§ 2, 3, 48 Stat. 361; Mar. 26, 1934, ch. 88, §§ 2, 3, 48 Stat. 467; and Apr. 13, 1934, ch. 119, §§ 1, 5, 48 Stat. 583, 584.

§§ 63a-63d. Intoxicating liquors in Canal Zone.

These sections, act June 19, 1934, ch. 657, §§ 1-4, 48 Stat. 1116, have become sections 1314b-1314e of Title 48, Territories and Insular Possessions.

§ 64. Repealed. Aug. 27, 1935, ch. 740, § 1, 49 Stat. 872.

This section, act Oct. 28, 1919, ch. 85, § 36, 41 Stat. 318, was part of the National Prohibition Act.

Insofar as section 64 was in force in the District of Columbia, Puerto Rico and the Virgin Islands, Hawaii, and Alaska, they had been previously repealed by acts Jan. 24, 1934, ch. 4, § 1, 48 Stat. 319; Mar. 2, 1934, ch. 37, §§ 2, 3, 48 Stat. 361; Mar. 26, 1934, ch. 88, §§ 2, 3, 48 Stat. 467; Apr. 13, 1934, ch. 119, §§ 1, 5, 48 Stat. 583, 584.

### Chapter 2A.—BEER, ALE, PORTER, AND SIMILAR FERMENTED LIQUOR

Sec.
64a-64o. Repealed.
64p. Legalizing manufacture and sale of 3.2 per centum beer in Oklahoma.

§§ 64a-64o. Repealed. Aug. 27, 1935, ch. 740, § 202 (a), 49 Stat. 877.

These sections, act Mar. 22, 1933, ch. 4, 48 Stat. 16 authorized and taxed the manufacture of beer, ale, and wines, the alcoholic content of which was less than 3.2 percent by weight.

Insofar as sections 64a-64o were in force in Puerto Rico and the Virgin Islands, Hawaii, and Alaska, they had been previously repealed by acts Mar. 2, 1934, ch. 37, §§ 2, 3, 48 Stat. 361; Mar. 26, 1934, ch. 88, §§ 2, 3, 48 Stat. 467; Apr. 13, 1934, ch. 119, §§ 1, 5, 48 Stat. 583, 584.



**§ 64p. Legalizing manufacture and sale of 3.2 per centum beer in Oklahoma.**

This section, act June 16, 1933, ch. 105, 48 Stat. 311, was rendered inoperative by adoption of the 21st Amendment to the Federal Constitution.

**Chapter 3.—INDUSTRIAL ALCOHOL**

**§§ 71-90a. Industrial alcohol.**

These sections, acts Oct. 28, 1919, ch. 85, title III, §§ 1-19, 41 Stat. 319-322; Feb. 24, 1919, ch. 18, §§ 802, 809, 40 Stat. 1109; Aug. 27, 1935, ch. 740, §§ 17, 18, 49 Stat. 876; June 26, 1936, ch. 830, §§ 308, 320, 329 (a), (b), (c), and 414, 49 Stat. 1946, 1953, 1957, 1964; and June 15, 1938, ch. 439, § 4, 52 Stat. 700, are accounted for as follows:

Sections 71-75, 78-81, 83-88, and 90 have become sections 3124 (a) (1) (2), 3100, 3101, 3107, 3104, 2883, 3112 (a), 3106 (a), 3103, 3102, 3109, 3110, 3108, 3124 (a) (1), 3105, 3113, 3115 (a), 3112 (b), 3118, 3122, and 3123 of Title 26, Internal Revenue Code; sections 76, 77 related to 18th Amendment and were omitted; section 89 repealed prior laws relating to alcohol and was omitted; and sections 82 and 90a were omitted because the provisions to which they related are now incorporated in the sections of Title 26 set out above.

**Chapter 4.—PENALTIES**

**§§ 91, 92. Repealed.** Aug. 27, 1935, ch. 740, § 1, 49 Stat. 872.

These sections, act Mar. 2, 1929, ch. 473, §§ 1, 2, 45 Stat. 1446, as amended by act Jan. 15, 1931, ch. 29, 46 Stat. 1036, were part of the National Prohibition Act.

**Chapter 5.—PROHIBITION REORGANIZATION ACT OF 1930**

**§§ 101-108. Repealed.** Aug. 27, 1935, ch. 740, § 1, 49 Stat. 872.

These sections, act May 27, 1930, ch. 342, §§ 1-8, 46 Stat. 427-430 were part of the Prohibition Reorganization Act of 1930.

Prior to their repeal, sections 104 and 106 of this title had been transferred to section 1342 of former Title 26, Internal Revenue, which was not incorporated in Title 26, Internal Revenue Code.

**Chapter 6.—TRANSPORTATION IN INTERSTATE COMMERCE**

Sec.

- 121. State statutes as operative on termination of transportation; original packages.
- 122. Shipments into States having dry laws; prohibition.
- 123. Repealed.

**§ 121. State statutes as operative on termination of transportation; original packages.**

All fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale, or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise. (Aug. 8, 1890, ch. 728, 26 Stat. 313.)

**§ 122. Shipments into States having dry laws; prohibition.**

The shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented, or other intoxicating

liquor of any kind from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is hereby prohibited. (Mar. 1, 1913, ch. 90, 37 Stat. 699; Aug. 27, 1935, ch. 740, § 202 (b), 49 Stat. 877.)

**§ 123. Repealed.** June 25, 1936, ch. 815, § 9, 49 Stat. 1930.

This section, acts Mar. 3, 1917, ch. 162, § 5, 39 Stat. 1069; Mar. 4, 1917, ch. 192, 39 Stat. 1202; Feb. 24, 1919, ch. 18, § 1407, 40 Stat. 1151; Jan. 11, 1934, ch. 1, title I, § 12, 48 Stat. 316, prescribed punishment for violation of section 122 of this title.

**Chapter 7.—LIQUOR LAW REPEAL AND ENFORCEMENT ACT**

**§§ 151-167.**

These sections, act Aug. 27, 1935, ch. 740, §§ 2-16, 49 Stat. 872-876, have become sections 3124 (a) (3-8), 3117, 3111, 3114, 3116, 3121 (a), 3115 (b) (c), 3119, 3120, and 3121 (b) (c) of Title 26, Internal Revenue Code.

**Chapter 8.—FEDERAL ALCOHOL ADMINISTRATION ACT**

Sec.

- 201. Citation of chapter.
- 202. General provisions.
  - (a) Expenditures.
  - (b) Utilization of other governmental agencies.
  - (c) Applicability of other laws.
  - (d) Reports to Secretary.
  - (e) Report to Congress.
- 202a. Federal Alcohol Administration; employees; appointment and compensation; civil service laws.
- 202b. Members of Administration; appointment and qualifications; compensation; seal; free use of mails; rules and regulations.
- 202c. Repeal of former laws; continuation of proceedings.
- 203. Unlawful businesses without permit; application to State agency.
- 204. Permits.
  - (a) Who entitled thereto.
  - (b) Refusal of permit; hearing.
  - (c) Form of application.
  - (d) Conditions.
  - (e) Revocation, suspension, and annulment.
  - (f) Service of orders.
  - (g) Duration.
  - (h) Appeal; procedure.
  - (i) Limitation.
- 205. Unfair competition and unlawful practices.
  - (a) Exclusive outlet.
  - (b) "Tied house."
  - (c) Commercial bribery.
  - (d) Consignment sales.
  - (e) Labeling.
  - (f) Advertising.
- 206. Bulk sales and bottling.
  - (a) Offenses.
  - (b) Penalty.
  - (c) "In bulk".

- Sec.  
 207. Penalties; jurisdiction; compromise of liability.  
 208. Interlocking directorates.  
     (a) Offenses.  
     (b) Conditions of lawfully taking office.  
     (c) "Company".  
     (d) Penalty.  
 209. Disposal of forfeited alcoholic beverages; remission of forfeiture; compromise of cases and claims.  
 210. Abolition of Federal Alcohol Control Administration; transfer of records.  
 211. Definitions; amendment or repeal of chapter; separability clause.  
 212. Appropriations; transfer to administration.

#### § 201. Citation of chapter.

This chapter may be cited as the "Federal Alcohol Administration Act." (Aug. 29, 1935, ch. 814, § 1, 49 Stat. 977.)

#### § 202. General provisions.

##### (a) Expenditures.

Appropriations to carry out powers and duties of the Secretary of the Treasury under this chapter shall be available for expenditure, among other purposes, for personal services and rent in the District of Columbia and elsewhere, expenses for travel and subsistence, for law books, books of reference, magazines, periodicals, and newspapers, for contract stenographic reporting services, for subscriptions for library services, for purchase of samples for analysis or use as evidence, and for holding conferences of State and Federal liquor control officials.

##### (b) Utilization of other governmental agencies.

The Secretary of the Treasury may, with the consent of the department or agency affected, utilize the services of any department or other agency of the Government to the extent necessary to carry out his powers and duties under this chapter and authorize officers and employees thereof to act as his agents.

##### (c) Applicability of other laws.

The provisions including penalties, of sections 49 and 50 of Title 15, shall be applicable to the jurisdiction, powers, and duties of the Secretary of the Treasury under this chapter, and to any person (whether or not a corporation) subject to the provisions of laws administered by the Secretary of the Treasury under this chapter.

##### (d) Reports to Secretary.

The Secretary of the Treasury is authorized to require, in such manner and form as he shall prescribe, such reports as are necessary to carry out his powers and duties under this chapter.

##### (e) Report to Congress.

The Secretary of the Treasury shall make a report to Congress, at the beginning of each regular session, of the administration of the functions with which he is charged under this chapter, and shall include in such report the names and compensation of all persons employed under this chapter. (Aug. 29, 1935, ch. 814, § 2 (e)-(1), 49 Stat. 977; Reorg. Plan No. III, § 2, eff. June 30, 1940, 5 Fed. Reg. 2108, 54 Stat. 1232.)

#### OMISSIONS FROM TEXT; TRANSFER OF FUNCTIONS

As originally enacted this section contained four additional subsections lettered (a)-(d) which provided for the creation of a Federal Alcohol Administration as a divi-

sion of the Treasury Department. By act June 26, 1936, ch. 830, title V, 49 Stat. 1964, however, said subdivisions were repealed and a new Administration created as an independent agency. Said repealing act was to be effective when the new administrators authorized thereby were appointed. While the officers so authorized were never appointed and the repeal therefore never became effective, subsections (a)-(d) have been omitted, and original subsections (e)-(1) renumbered, in view of Reorganization Plan No. III, cited to text, which abolished the Administration and transferred its functions to the Secretary of the Treasury to be administered through the Bureau of Internal Revenue.

#### § 202a. Federal Alcohol Administration; employees; appointment and compensation; civil service laws.

This section, act June 26, 1936, ch. 830, title V, § 501, 49 Stat. 1964, was to have taken effect when a majority of the members authorized to be appointed under former section 202b took office. Said members, however, were never appointed.

By Reorganization Plan No. III, §§ 2, 8, 9, eff. June 30, 1940, 5 Fed. Reg. 2108, 54 Stat. 1232, the Federal Alcohol Administration was abolished and its functions, records, property, personnel, and funds transferred to the Secretary of the Treasury to be administered through the Bureau of Internal Revenue. See also note under section 202 of this title.

#### § 202b. Members of Administration; appointment and qualifications; compensation; seal; free use of mails; rules and regulations.

This section, act June 26, 1936, ch. 830, § 502, 49 Stat. 1964, related to the establishment of the Federal Alcohol Administration. By Reorganization Plan No. III, §§ 2, 8, 9, eff. June 30, 1940, 5 Fed. Reg. 2108, 54 Stat. 1232, said Administration was abolished and its functions, records, property, personnel, and funds transferred to the Secretary of the Treasury to be administered through the Bureau of Internal Revenue.

#### § 202c. Repeal of former laws; continuation of proceedings.

This section, act June 26, 1936, ch. 830, title V, § 503, 49 Stat. 1965, was to have taken effect when a majority of the members authorized to be appointed under former section 202b took office. Said members, however, were never appointed.

#### § 203. Unlawful businesses without permit; application to State agency.

In order effectively to regulate interstate and foreign commerce in distilled spirits, wine, and malt beverages, to enforce the twenty-first amendment, and to protect the revenue and enforce the postal laws with respect to distilled spirits, wine, and malt beverages:

(a) It shall be unlawful, except pursuant to a basic permit issued under this chapter by the Secretary of the Treasury—

(1) to engage in the business of importing into the United States distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported.

(b) It shall be unlawful, except pursuant to a basic permit issued under this chapter by the Secretary of the Treasury—

(1) to engage in the business of distilling distilled spirits, producing wine, rectifying or blending dis-

tilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits or wine so distilled, produced, rectified, blended, or bottled, or warehoused and bottled.

(c) It shall be unlawful, except pursuant to a basic permit issued under this chapter by the Secretary of the Treasury—

(1) to engage in the business of purchasing for resale at wholesale distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to receive or to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so purchased.

This subsection shall take effect July 1, 1936.

This section shall not apply to any agency of a State or political subdivision thereof or any officer or employee of any such agency, and no such agency or officer or employee shall be required to obtain a basic permit under this chapter. (Aug. 29, 1935, ch. 814, § 3, 49 Stat. 978; Feb. 29, 1936, ch. 105, § 1, 49 Stat. 1152; Reorg. Plan No. III, § 2, eff. June 30, 1940, 5 Fed. Reg. 2108, 54 Stat. 1232.)

#### EFFECTIVE DATE

In the original subsections (a) and (b) of this section contained a final paragraph which provided as follows: "This subsection shall take effect sixty days after the date upon which the Administrator first appointed under this act takes office."

#### TRANSFERS OF FUNCTIONS

Reorganization Plan No. III, § 2, cited to text, abolished the Federal Alcohol Administration and transferred its functions, funds, property, and personnel to the Secretary of the Treasury to be administered through the Bureau of Internal Revenue.

#### § 204. Permits—(a) Who entitled thereto.

The following persons shall, on application therefor, be entitled to a basic permit:

(1) Any person who, on May 25, 1935, held a basic permit as distiller, rectifier, wine producer, or importer issued by an agency of the Federal Government.

(2) Any other person unless the Secretary of the Treasury finds (A) that such person (or in case of a corporation, any of its officers, directors, or principal stockholders) has, within five years prior to the date of application, been convicted of a felony under Federal or State law or has, within three years prior to date of application, been convicted of a misdemeanor under any Federal law relating to liquor, including the taxation thereof; or (B) that such person is, by reason of his business experience, financial standing, or trade connections, not likely to commence operations within a reasonable period or to maintain such operations in conformity with Federal law; or (C) that the operations proposed to be conducted by such person are in violation of the law of the State in which they are to be conducted.

#### (b) Refusal of permit; hearing.

If upon examination of any application for a basic permit the Secretary of the Treasury has reason to believe that the applicant is not entitled to such permit, he shall notify the applicant thereof and, upon request by the applicant, afford him due notice and opportunity for hearing on the application. If the Secretary of the Treasury, after affording such notice and opportunity for hearing, finds that the applicant is not entitled to a basic permit hereunder, he shall by order deny the application stating the findings which are the basis for his order.

#### (c) Form of application.

The Secretary of the Treasury shall prescribe the manner and form of all applications for basic permits (including the facts to be set forth therein) and the form of all basic permits, and shall specify in any basic permit the authority conferred by the permit and the conditions thereof in accordance with the provisions of this chapter. To the extent deemed necessary by the Secretary of the Treasury for the efficient administration of this chapter, separate applications and permits shall be required by the Secretary of the Treasury with respect to distilled spirits, wine, and malt beverages, and the various classes thereof, and with respect to the various classes of persons entitled to permits hereunder. The issuance of a basic permit under this chapter shall not operate to deprive the United States of its remedy for any violation of law.

#### (d) Conditions.

A basic permit shall be conditioned upon compliance with the requirements of section 205 of this title (relating to unfair competition and unlawful practices) and of section 206 of this title (relating to bulk sales and bottling), with the twenty-first amendment and laws relating to the enforcement thereof, and with all other Federal laws relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto.

#### (e) Revocation, suspension, and annulment.

A basic permit shall by order of the Secretary of the Treasury, after due notice and opportunity for hearing to the permittee, (1) be revoked, or suspended for such period as the Secretary of the Treasury deems appropriate, if the Secretary finds that the permittee has wilfully violated any of the conditions thereof, provided that for a first violation of the conditions thereof the permit shall be subject to suspension only; or (2) be revoked if the Secretary finds that the permittee has not engaged in the operations authorized by the permit for a period of more than two years; or (3) be annulled if the Secretary finds that the permit was procured through fraud, or misrepresentation, or concealment of material fact. The order shall state the findings which are the basis for the order.

#### (f) Service of orders.

Orders of the Secretary with respect to any denial of application, suspension, revocation, annulment, or other proceedings, shall be served (1) in person by any officer or employee of the Secretary designated by him or any internal revenue or customs officer authorized by the Secretary for the purpose, or (2)

by mailing the order by registered mail, addressed to the applicant or respondent at his last known address in the records of the Secretary.

(g) Duration.

A basic permit shall continue in effect until suspended, revoked, or annulled as provided herein, or voluntarily surrendered; except that (1) if leased, sold, or otherwise voluntarily transferred, the permit shall be automatically terminated thereupon, and (2) if transferred by operation of law or if actual or legal control of the permittee is acquired, directly or indirectly, whether by stock-ownership or in any other manner, by any person, then such permit shall be automatically terminated at the expiration of thirty days thereafter: *Provided*, That if within such thirty-day period application for a new basic permit is made by the transferee or permittee, respectively, then the outstanding basic permit shall continue in effect until such application is finally acted on by the Secretary of the Treasury.

(h) Appeal; procedure.

An appeal may be taken by the permittee or applicant for a permit from any order of the Secretary of the Treasury denying an application for, or suspending, revoking, or annulling, a basic permit. Such appeal shall be taken by filing, in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, within sixty days after the entry of such order, a written petition praying that the order of the Secretary be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon the Secretary, or upon any officer designated by him for that purpose, and thereupon the Secretary shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Secretary shall be considered by the court unless such objection shall have been urged before the Secretary or unless there were reasonable grounds for failure so to do. The finding of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings as to the facts by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole

or in part, any such order of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 346 and 347 of Title 28. The commencement of proceedings under this subsection shall, unless specifically ordered by the court to the contrary, operate as a stay of the Secretary's order.

(i) Limitation.

No proceeding for the suspension or revocation of a basic permit for violation of any condition thereof relating to compliance with Federal law shall be instituted by the Secretary more than eighteen months after conviction of the violation of Federal law, or, if no conviction has been had, more than three years after the violation occurred; and no basic permit shall be suspended or revoked for a violation of any such condition thereof if the alleged violation of Federal law has been compromised by any officer of the Government authorized to compromise such violation. (Aug. 29, 1935, ch. 814, § 4, 49 Stat. 978; Reorg. Plan No. III, § 2, eff. June 30, 1940, 5 Fed. Reg. 2108, 54 Stat. 1232.)

TRANSFER OF FUNCTIONS

By Reorganization Plan No. III, §§ 2, 8, 9, cited to text, the Federal Alcohol Administration was abolished and its functions, records, property, personnel, and funds transferred to the Secretary of the Treasury to be administered through the Bureau of Internal Revenue.

§ 205. Unfair competition and unlawful practices.

It shall be unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate:

(a) Exclusive outlet.

To require, by agreement or otherwise, that any retailer engaged in the sale of distilled spirits, wine, or malt beverages, purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons in interstate or foreign commerce, if such requirement is made in the course of interstate or foreign commerce, or if such person engages in such practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such requirement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce; or

(b) "Tied house."

To induce through any of the following means, any retailer, engaged in the sale of distilled spirits, wine, or malt beverages, to purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons in interstate or foreign commerce, if such inducement is made in the course of interstate or foreign commerce, or if such person engages in the practice of using such means, or any of them, to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct

effect of such inducement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce: (1) By acquiring or holding (after the expiration of any existing license) any interest in any license with respect to the premises of the retailer; or (2) by acquiring any interest in real or personal property owned, occupied, or used by the retailer in the conduct of his business; or (3) by furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs, supplies, money, services, or other thing of value, subject to such exceptions as the Secretary of the Treasury shall by regulation prescribe, having due regard for public health, the quantity and value of articles involved, established trade customs not contrary to the public interest and the purposes of this subsection; or (4) by paying or crediting the retailer for any advertising, display, or distribution service; or (5) by guaranteeing any loan or the repayment of any financial obligation of the retailer; or (6) by extending to the retailer credit for a period in excess of the credit period usual and customary to the industry for the particular class of transactions, as ascertained by the Secretary of the Treasury and prescribed by regulations by him; or (7) by requiring the retailer to take and dispose of a certain quota of any of such products; or

(c) Commercial bribery.

To induce through any of the following means, any trade buyer engaged in the sale of distilled spirits, wine, or malt beverages, to purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons in interstate or foreign commerce, if such inducement is made in the course of interstate or foreign commerce, or if such person engages in the practice of using such means, or any of them, to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such inducement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such trade buyer in interstate or foreign commerce: (1) By commercial bribery; or (2) by offering or giving any bonus, premium, or compensation to any officer, or employee, or representative of the trade buyer; or

(d) Consignment sales.

To sell, offer for sale, or contract to sell to any trade buyer engaged in the sale of distilled spirits, wine, or malt beverages, or for any such trade buyer to purchase, offer to purchase, or contract to purchase, any such products on consignment or under conditional sale or with the privilege of return or on any basis otherwise than a bona fide sale, or where any part of such transaction involves, directly or indirectly, the acquisition by such person from the trade buyer or his agreement to acquire from the trade buyer other distilled spirits, wine, or malt beverages—if such sale, purchase, offer, or contract is made in the course of interstate or foreign commerce, or if such person or trade buyer engages in such practice to such an extent as substantially to restrain

or prevent transactions in interstate or foreign commerce in any such products or if the direct effect of such sale, purchase, offer, or contract is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such trade buyer in interstate or foreign commerce: *Provided*, That this subsection shall not apply to transactions involving solely the bona fide return of merchandise for ordinary and usual commercial reasons arising after the merchandise has been sold; or

(e) Labeling.

To sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any distilled spirits, wine, or malt beverages in bottles, unless such products are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Secretary of the Treasury, with respect to packaging, marking, branding, and labeling and size and fill of container (1) as will prohibit deception of the consumer with respect to such products or the quantity thereof and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Secretary of the Treasury finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are hereby prohibited unless required by State law and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), the net contents of the package, and the manufacturer or bottler or importer of the product; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements on the label that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; and (5) as will prevent deception of the consumer by use of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, and as will prevent the use of a graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been indorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided*, That this clause shall not apply to the use of the

name of any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, wine, or malt beverages, nor to the use by any person of a trade or brand name used by him or his predecessor in interest prior to August 19, 1935; including regulations requiring, at time of release from customs custody, certificates issued by foreign governments covering origin, age, and identity of imported products: *Provided further*, That nothing herein nor any decision, ruling, or regulation of any Department of the Government shall deny the right of any person to use any trade name or brand of foreign origin not presently effectively registered in the United States Patent Office which has been used by such person or predecessors in the United States for a period of at least five years last past, if the use of such name or brand is qualified by the name of the locality in the United States in which the product is produced, and, in the case of the use of such name or brand on any label or in any advertisement, if such qualification is as conspicuous as such name or brand.

It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law or except pursuant to regulations of the Administrator authorizing relabeling for purposes of compliance with the requirements of this subsection or of State law.

In order to prevent the sale or shipment or other introduction of distilled spirits, wine, or malt beverages in interstate or foreign commerce, if bottled, packaged, or labeled in violation of the requirements of this subsection, (1) no bottler of distilled spirits, no producer, blender, or wholesaler of wine, or proprietor of a bonded wine storeroom, and no brewer or wholesaler of malt beverages shall bottle, and (2) no person shall remove from customs custody, in bottles, for sale or any other commercial purpose, distilled spirits, wine, or malt beverages, respectively, after such date as the Secretary of the Treasury fixes as the earliest practicable date for the application of the provisions of this subsection to any class of such persons (but not later than August 15, 1936, in the case of distilled spirits, and December 15, 1936, in the case of wine and malt beverages, and only after thirty days' public notice), unless, upon application to the Secretary of the Treasury, he has obtained and has in his possession a certificate of label approval covering the distilled spirits, wine, or malt beverages, issued by the Secretary in such manner and form as he shall by regulations prescribe: *Provided*, That any such bottler of distilled spirits, or producer, blender, or wholesaler of wine, or proprietor of a bonded wine storeroom, or brewer or wholesaler of malt beverages shall be exempt from the requirements of this subsection if, upon application to the Secretary, he shows to the satisfaction of the Secretary that the distilled spirits, wine, or malt beverages to be bottled by the applicant are not to be sold, or offered for sale, or shipped or

delivered for shipment, or otherwise introduced, in interstate or foreign commerce. Officers of internal revenue are authorized and directed to withhold the release of distilled spirits from the bottling plant unless such certificates have been obtained, or unless the application of the bottler for exemption has been granted by the Secretary; and customs officers are authorized and directed to withhold the release from customs custody of distilled spirits, wine, and malt beverages, unless such certificates have been obtained. The District Courts of the United States, the district court of the United States for the District of Columbia, and the United States court for any Territory shall have jurisdiction of suits to enjoin, annul, or suspend in whole or in part any final action by the Secretary upon any application under this subsection; or

(f) Advertising.

To publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical or other publication or by any sign or outdoor advertisement or any other printed or graphic matter, any advertisement of distilled spirits, wine, or malt beverages, if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with such regulations, to be prescribed by the Secretary of the Treasury, (1) as will prevent deception of the consumer with respect to the products advertised and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guaranties, and scientific or irrelevant matters as the Secretary of the Treasury finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products advertised, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are prohibited and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), and the person responsible for the advertisement; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; (5) as will prevent statements inconsistent with any statement on the labeling of the products advertised. This subsection shall not apply to outdoor advertising in place on June 18, 1935, but shall apply upon replacement, restoration, or renovation of any such advertising. The prohibitions of this subsection and regulations thereunder shall not apply to the publisher of any newspaper, periodical, or other publication, or radio broadcaster.

unless such publisher or radio broadcaster is engaged in business as a distiller, brewer, rectifier, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate.

The provisions of subsections (a), (b), and (c) shall not apply to any act done by an agency of a State or political subdivision thereof, or by any officer or employee of such agency.

In the case of malt beverages, the provisions of subsections (a), (b), (c), and (d) shall apply to transactions between a retailer or trade buyer in any State and a brewer, importer, or wholesaler of malt beverages outside such State only to the extent that the law of such State imposes similar requirements with respect to similar transactions between a retailer or trade buyer in such State and a brewer, importer, or wholesaler of malt beverages in such State, as the case may be. In the case of malt beverages, the provisions of subsections (e) and (f) shall apply to the labeling of malt beverages sold or shipped or delivered for shipment or otherwise introduced into or received in any State from any place outside thereof, or the advertising of malt beverages intended to be sold or shipped or delivered for shipment or otherwise introduced into or received in any State from any place outside thereof, only to the extent that the law of such State imposes similar requirements with respect to the labeling or advertising, as the case may be, of malt beverages not sold or shipped or delivered for shipment or otherwise introduced into or received in such State from any place outside thereof.

The Secretary of the Treasury shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing regulations to carry out the provisions of this section. (Aug. 29, 1935, ch. 814, § 5, 49 Stat. 981; Feb. 29, 1936, ch. 105, § 2, 49 Stat. 1152; June 25, 1936, ch. 804, 49 Stat. 1921; June 26, 1936, ch. 830, title V, §§ 505, 506, 49 Stat. 1965, 1966; Reorg. Plan No. III, § 2, eff. June 30, 1940, 5 Fed. Reg. 2108, 54 Stat. 1232.)

#### AMENDMENTS

An amendment to the second proviso of subsection (e) was contained in act June 26, 1936, § 506, cited to text, which was to have taken effect when a majority of the members of the Federal Alcohol Administration authorized to be appointed under former section 202b took office. Said members, however, were never appointed.

#### TRANSFER OF FUNCTIONS

By Reorganization Plan No. III, §§ 2, 8, 9, cited to text, the Federal Alcohol Administration was abolished and its functions, records, property, personnel, and funds transferred to the Secretary of the Treasury to be administered through the Bureau of Internal Revenue.

#### § 206. Bulk sales and bottling—(a) Offenses.

It shall be unlawful for any person—

(1) To sell or offer to sell, contract to sell, or otherwise dispose of distilled spirits in bulk except, under regulations of the Secretary of the Treasury, for export or to the following, or to import distilled spirits in bulk except, under such regulations, for sale to or for use by the following: A distiller, rectifier of distilled spirits, person operating a bonded warehouse qualified under the internal-revenue laws

or a class 8 bonded warehouse qualified under the customs laws, a winemaker for the fortification of wines, a proprietor of an industrial alcohol plant, or an agency of the United States or any State or political subdivision thereof.

(2) To sell or offer to sell, contract to sell, or otherwise dispose of warehouse receipts for distilled spirits in bulk unless such warehouse receipts require that the warehouseman shall package such distilled spirits, before delivery, in bottles labeled and marked in accordance with law, or deliver such distilled spirits in bulk only to persons to whom it is lawful to sell or otherwise dispose of distilled spirits in bulk.

(3) To bottle distilled spirits unless the bottler is a person to whom it is lawful to sell or otherwise dispose of distilled spirits in bulk.

#### (b) Penalty.

Any person who violates the requirements of this section shall, upon conviction thereof, be fined not more than \$5,000 or imprisoned for not more than one year or both, and shall forfeit to the United States all distilled spirits with respect to which the violation occurs and the containers thereof.

#### (c) "In bulk."

The terms "in bulk" mean in containers having a capacity in excess of one wine gallon. (Aug. 29, 1935, ch. 814, § 6, 49 Stat. 985; Reorg. Plan No. III, § 2, eff. June 30, 1940, 5 Fed. Reg. 2108, 54 Stat. 1232.)

#### TRANSFER OF FUNCTIONS

By Reorganization Plan No. III, §§ 2, 8, 9, cited to text, the Federal Alcohol Administration was abolished and its functions, records, property, personnel, and funds transferred to the Secretary of the Treasury to be administered through the Bureau of Internal Revenue.

#### § 207. Penalties; jurisdiction; compromise of liability.

The District Courts of the United States, the district court of the United States for the District of Columbia; and the United States court for any Territory, of the District where the offense is committed or threatened or of which the offender is an inhabitant or has his principal place of business, are hereby vested with jurisdiction of any suit brought by the Attorney General in the name of the United States, to prevent and restrain violations of any of the provisions of this chapter. Any person violating any of the provisions of section 203 or section 205 of this title shall be guilty of a misdemeanor and upon conviction thereof be fined not more than \$1,000 for each offense. The Secretary of the Treasury is authorized, with respect to any violation of this chapter, to compromise the liability arising with respect to such violation (1) upon payment of a sum not in excess of \$500 for each offense, to be collected by the Secretary and to be paid into the Treasury as miscellaneous receipts, and (2) in case of repetitious violations and in order to avoid multiplicity of criminal proceedings, upon agreement to a stipulation, that the United States may, on its own motion upon five days' notice to the violator, cause a consent decree to be entered by any court of competent jurisdiction enjoining the repetition of such violation. (Aug. 29, 1935, ch. 814, § 7, 49 Stat. 985; June 25, 1936, ch. 804, 49 Stat. 1921; Reorg. Plan No. III, § 2, eff. June 30,



1940, 5 Fed. Reg. 2108, 54 Stat. 1232; Reorg. Plan No. IV, § 2, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1234.)

#### TRANSFER OF FUNCTIONS

The function of approving compromises made in accordance with this section was transferred from the Attorney General to the Secretary of the Treasury, to be exercised by him or under his direction and supervision by officer in the Department of the Treasury designated by him, by Reorg. Plan No. IV, § 2, cited to text. Said reorganization plan, in addition, contained following proviso: "Provided, That exclusive jurisdiction to compromise cases arising under the Federal Alcohol Administration Act which are pending before the courts or which have been or may hereafter be referred to the Department of Justice for action shall be vested in the Attorney General, and may be exercised by him or by any officer in the Department of Justice designated by him."

By Reorganization Plan No. III, §§ 2, 8, 9, cited to text, the Federal Alcohol Administration was abolished and its functions, records, property, personnel, and funds transferred to the Secretary of the Treasury to be administered through the Bureau of Internal Revenue.

#### § 208. Interlocking directorates—(a) Offenses.

Except as provided in subsection (b), it shall be unlawful for any individual to take office, after the date of the enactment of this chapter, as an officer or director of any company, if his doing so would make him an officer or director of more than one company engaged in business as a distiller, rectifier, or blender of distilled spirits, or of any such company and of a company which is an affiliate of any company engaged in business as a distiller, rectifier, or blender of distilled spirits, or of more than one company which is an affiliate of any company engaged in business as a distiller, rectifier, or blender of distilled spirits, unless, prior to taking such office, application made by such individual to the Secretary of the Treasury has been granted and after due showing has been made to him that service by such individual as officer or director of all the foregoing companies of which he is an officer or director together with service in the company with respect to which application is made will not substantially restrain or prevent competition in interstate or foreign commerce in distilled spirits. The Secretary of the Treasury shall, by order, grant or deny such application on the basis of the proof submitted to him and his finding thereon. The District Courts of the United States, the district court of the United States for the District of Columbia, and the United States court for any Territory shall have jurisdiction of suits to enjoin, annul, or suspend in whole or in part any final action by the Secretary upon any application under this subsection.

#### (b) Conditions of lawfully taking office.

An individual may, without regard to the provisions of subsection (a), take office as an officer or director of a company described in subsection (a) while holding the position of officer or director of any other such company if such companies are affiliates at the time of his taking office and if—

(1) Such companies are affiliates on the date of the enactment of this chapter; or

(2) Each of such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing

business in such State, such company must be organized under the law of such State; or

(3) One or more such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing business in such State, such company must be organized under the laws of such State, and the other one or more of such companies not so organized, is in existence on the date of the enactment of this chapter; or

(4) One or more of such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing business in such State, such company must be organized under the law of such State, and not more than one of such companies is a company which has not been so organized and which has been organized after August 29, 1935.

#### (c) "Company."

As used in this section, the term "company" means a corporation, joint stock company, business trust, or association, but does not include any agency of a State or political subdivision thereof or any officer or employee of any such agency.

#### (d) Penalty.

Any individual taking office in violation of this section shall be punished by a fine of not exceeding \$1,000. (Aug. 29, 1935, ch. 814, § 8, 49 Stat. 986; June 25, 1936, ch. 804, 49 Stat. 1921; Reorg. Plan No. III, § 2, eff. June 30, 1940, 5 Fed. Reg. 2108, 54 Stat. 1232.)

#### TRANSFER OF FUNCTIONS

Reorganization Plan No. III, § 2, cited to text, abolished the Federal Alcohol Administration and provided that its functions, funds, personnel, and property should be transferred to the Secretary of the Treasury to be administered through the Bureau of Internal Revenue.

#### § 209. Disposal of forfeited alcoholic beverages; remission of forfeiture; compromise of cases and claims.

This section, act Aug. 29, 1935, ch. 814, § 9, 49 Stat. 987 as amended by act June 26, 1936, ch. 830, title V, § 507, 49 Stat. 1966, has become section 2805a of Title 26, Internal Revenue Code.

#### § 210. Abolition of Federal Alcohol Control Administration; transfer of records.

This section, act Aug. 29, 1935, ch. 814, § 10, 49 Stat. 987, abolished the Federal Alcohol Control Administration established by Ex. Ord. Nos. 6474, Dec. 4, 1933; 6576, Jan. 25, 1934; 6683, Apr. 19, 1934; 6778, 6788, June 30, 1934; 6829, Aug. 21, 1934, issued under provisions of former section 702 of Title 15, Commerce and Trade.

#### § 211. Definitions; amendment or repeal of chapter; separability clause.

##### (a) As used in this chapter—

(1) The term "United States" means the several States and Territories and the District of Columbia; the term "State" includes a Territory and the District of Columbia; and the term "Territory" means Alaska, Hawaii, and Puerto Rico.

(2) The term "interstate or foreign commerce" means commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

(3) The term "person" means individual, partnership, joint stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision thereof; and the term "trade buyer" means any person who is a wholesaler or retailer.

(4) The term "affiliate" means any one of two or more persons if one of such persons has actual or legal control, directly or indirectly, whether by stock ownership or otherwise, of the other or others of such persons; and any one of two or more persons subject to common control, actual or legal, directly or indirectly, whether by stock ownership or otherwise.

(5) The term "distilled spirits" means ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for non-industrial use.

(6) The term "wine" means (1) wine as defined in section 610 and section 617 of the Revenue Act of 1918 as now in force or hereafter amended, and (2) other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry and sake; in each instance only if containing not less than 7 per centum and not more than 24 per centum of alcohol by volume, and if for non-industrial use.

(7) The term "malt beverage" means a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.

(8) The term "bottle" means any container, irrespective of the material from which made, for use for the sale of distilled spirits, wine, or malt beverages at retail.

(b) The right to amend or repeal the provisions of this chapter is expressly reserved.

(c) If any provision of this chapter, or the application of such provision to any person or circumstance, is held invalid, the remainder of the chapter and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. (Aug. 29, 1935, ch. 814, § 17, 49 Stat. 989; Reorg. Plan No. III, § 2, eff. June 30, 1940, 5 Fed. Reg. 2108, 54 Stat. 1232.)

#### TRANSFER OF FUNCTIONS

As originally enacted subsection (1) of this section defined the term "Administrator" whose appointment was authorized under section 202 of this title. This definition is no longer effective since Reorganization Plan No. III, § 2, cited to text, abolished the Federal Alcohol Administration and provided that its functions, funds, personnel, and property should be transferred to the Secretary of the Treasury to be administered through the Bureau of Internal Revenue.

#### § 212. Appropriations; transfer to Administration.

This section, act June 26, 1936, ch. 830, title V, § 504, 49 Stat. 1965, proposed a transfer of the appropriations authorized for the Federal Alcohol Administration created by section 202 of this title to the Administration created by section 202b. It was to have taken effect when a majority of the members authorized to be appointed under former section 202b took office. Said members, however, were never appointed.

#### Chapter 9.—LIQUOR ENFORCEMENT ACT OF 1936

Sec.

221. Citation of chapter.

222. Definitions.

223. Transporting into State where sale prohibited; penalty; State definition of intoxicating liquor adopted.

224. Seizure and forfeiture.

225. Enforcement; conferring powers and duties; regulations.

226. Effect on other laws; Canal Zone.

227. Separability provision.

228. Effective date.

#### § 221. Citation of chapter.

This chapter and sections 388–390 of Title 18 may be cited as the "Liquor Enforcement Act of 1936." (June 25, 1936, ch. 815, § 1, 49 Stat. 1928.)

#### § 222. Definitions.

(a) Wherever used in this chapter and sections 388–390 of Title 18, the word "State" shall mean and include every State, Territory, and possession of the United States, unless otherwise specifically provided.

(b) As used in this chapter and sections 388–390 of Title 18, the word "vessel" includes every description of water craft used, or capable of being used, as a means of transportation in water or in water and air; and the word "vehicle" includes animals and every description of carriage or other contrivance used, or capable of being used, as a means of transportation on land or through the air. (June 25, 1936, ch. 815, § 2, 49 Stat. 1928.)

#### § 223. Transporting into State where sale prohibited; penalty; State definition of intoxicating liquor adopted.

(a) Whoever shall import, bring, or transport any intoxicating liquor into any State in which all sales (except for scientific, sacramental, medicinal, or mechanical purposes) of intoxicating liquor containing more than 4 per centum of alcohol by volume are prohibited, otherwise than in the course of continuous interstate transportation through such State, or attempt so to do, or assist in so doing, shall: (1) If such liquor is not accompanied by such permit or permits, license or licenses therefor as are now or hereafter required by the laws of such State; or (2) if all importation, bringing, or transportation of intoxicating liquor into such State is prohibited by the laws thereof; be guilty of a misdemeanor and shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(b) In order to determine whether anyone importing, bringing, or transporting intoxicating liquor into any State, or anyone attempting so to do, or assisting in so doing, is acting in violation of the provisions of this chapter and sections 388–390 of Title 18, the definition of intoxicating liquor con-

tained in the laws of such State shall be applied, but only to the extent that sales of such intoxicating liquor (except for scientific, sacramental, medicinal, and mechanical purposes) are prohibited in such State. (June 25, 1936, ch. 815, § 3, 49 Stat. 1928.)

**§ 224. Seizure and forfeiture.**

All intoxicating liquor involved in any violation of this chapter and sections 388–390 of Title 18, the containers of such intoxicating liquor, and every vehicle or vessel used in the transportation thereof, shall be seized and forfeited. Such seizure and forfeiture, and the disposition of such property subsequent to seizure and forfeiture, or the disposition of the proceeds from the sale of such property, shall be in accordance with existing laws or those hereafter in existence relating to seizures, forfeitures, and dispositions of property or proceeds, for violation of the internal-revenue laws. (June 25, 1936, ch. 815, § 4, 49 Stat. 1928.)

**§ 225. Enforcement; conferring powers and duties; regulations.**

The Secretary of the Treasury shall enforce the provisions of this chapter and of sections 388–390 of Title 18.

Regulations to carry out the provisions of this chapter and sections 388–390 of Title 18 shall be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. (June 25, 1936, ch. 815, § 5, 49 Stat. 1929.)

**REPEAL**

Second paragraph of this section as originally enacted was repealed by section 4 (a) of enacting sections of Internal Revenue Code. Substantially similar provisions are contained in section 3170 of Title 26, Internal Revenue Code.

**§ 226. Effect on other laws; Canal Zone.**

Nothing contained in this chapter or sections 388–390 of Title 18 shall repeal any other provisions of existing laws except such provisions of such laws as are directly in conflict with said chapter and sections and nothing in this said chapter and sections shall apply to the Canal Zone. (June 25, 1936, ch. 815, § 10, 49 Stat. 1930.)

**§ 227. Separability provision.**

If any provision of this chapter and sections 388–390 of Title 18, or the application thereof to any person or circumstances, be held invalid, the remainder of chapter and sections 388–390 of Title 18, and the application of such provision to other persons or circumstance, shall not be affected thereby. (June 25, 1936, ch. 815, § 11, 49 Stat. 1930.)

**§ 228. Effective date.**

This chapter and sections 388–390 of Title 18 shall be effective as of the thirtieth day following June 25, 1936. (June 25, 1936, ch. 815, § 12, 49 Stat. 1930.)



# TITLE 28.—JUDICIAL CODE AND JUDICIARY

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## Part I.—JUDICIAL CODE

### Chapter 1.—DISTRICT COURTS; ORGANIZATION

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### § 1. (Judicial Code, section 1.) District Courts; judges; appointments and residence.

In each of the districts described in chapter five of this title there shall be a court called a district court, for which there shall be appointed one judge, to be called a district judge, except that in the District of Arizona, the District of Connecticut, the Southern District of Illinois, the Eastern District of Illinois, the Eastern District of Louisiana, the Western District of Louisiana, the District of Maryland, the Eastern District of Missouri, the Western District of Missouri, the District of Montana, the District of Nebraska, the Northern District of New York, the Western District of New York, the District of Oregon, the Middle District of Pennsylvania, the Eastern District of Tennessee, the Southern District of Texas, the Western District of Texas, the Eastern District of Virginia, the Western District of Virginia, and the Western District of Washington there shall be an additional district judge in each; in the Southern District of Florida, the District of Massachusetts, the Northern District of Ohio, the Southern District of Ohio, the Western District of Pennsylvania and the Northern District of Texas, there shall be two additional judges in each; in the Northern District of California, the District of Minnesota, the District of New Jersey, and the Eastern District of Pennsylvania, there shall be three additional judges in each; in the Eastern District of Michigan there shall be four additional judges; in the Northern District of Illinois and the Eastern District of New York there shall be five additional judges in each; in the Southern District of California there shall be seven additional judges; and in the Southern District of New York there shall be eleven additional judges. In addition to those enumerated there shall be one district judge for the Eastern and Western Districts of Arkansas, one district judge for the Eastern and Western Districts of Kentucky, one district judge for the Eastern and Western Districts of Missouri, one district judge for the Northern, Eastern and Western Districts of Oklahoma, one district judge for the Eastern and Western Districts of South Carolina, and one district judge for the Eastern and Western Districts of Washington.

Every district judge shall reside in the district or one of the districts for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor. (Mar. 3, 1911, ch. 231, § 1, 36 Stat. 1087 as amended July 30, 1914, ch. 216, 38 Stat. 580 and supplemented Mar. 3, 1915, ch. 100, § 1, 38 Stat. 961; Apr. 11, 1916, ch. 64, § 1, 39

Stat. 48; Feb. 26, 1917, ch. 938, 39 Stat. 938; Feb. 26, 1919, ch. 50, §§ 1, 2, 40 Stat. 1183; Sept. 14, 1922, ch. 306, 42 Stat. 837, 838; Jan. 16, 1925, ch. 83, § 3, 43 Stat. 752; Feb. 16, 1925, ch. 233, §§ 2, 3, 43 Stat. 946; Mar. 2, 1925, ch. 397, §§ 1-3, 43 Stat. 1098; Mar. 3, 1927, ch. 297, 44 Stat. 1346; Mar. 3, 1927, ch. 298, 44 Stat. 1347; Mar. 3, 1927, ch. 300, 44 Stat. 1348; Mar. 3, 1927, ch. 332, 44 Stat. 1370; Mar. 3, 1927, ch. 336, §§ 1, 2, 44 Stat. 1372; Mar. 3, 1927, ch. 338, 44 Stat. 1374; Mar. 3, 1927, ch. 344, 44 Stat. 1380; Apr. 21, 1928, ch. 393, § 5, 45 Stat. 439; May 29, 1928, ch. 882, 45 Stat. 974; Jan. 17, 1929, ch. 72, 45 Stat. 1081; Feb. 26, 1929, ch. 334, 45 Stat. 1317; Feb. 26, 1929, ch. 337, 45 Stat. 1319; Feb. 28, 1929, ch. 358, 45 Stat. 1344; Feb. 28, 1929, ch. 380, 45 Stat. 1409; May 28, 1930, ch. 346, 46 Stat. 431; June 27, 1930, ch. 633, 46 Stat. 819; June 27, 1930, ch. 635, 46 Stat. 820; July 3, 1930, ch. 852, 46 Stat. 1006; Feb. 20, 1931, ch. 244, 46 Stat. 1196; Feb. 20, 1931, ch. 245, 46 Stat. 1197; Feb. 25, 1931, ch. 296, 46 Stat. 1417; May 20, 1932, ch. 196, 47 Stat. 161; Aug. 2, 1935, ch. 425, §§ 1, 2, 3, 49 Stat. 508; Aug. 19, 1935, ch. 558, §§ 1, 2, 49 Stat. 659; Aug. 28, 1935, ch. 793, 49 Stat. 945; June 5, 1936, ch. 515, §§ 1-3, 49 Stat. 1476, 1477; June 15, 1936, ch. 544, 49 Stat. 1491; June 16, 1936, ch. 585, § 1, 49 Stat. 1523; June 22, 1936, ch. 693, 49 Stat. 1804; June 22, 1936, ch. 694, 49 Stat. 1804; June 22, 1936, ch. 696, 49 Stat. 1806; Aug. 25, 1937, ch. 771, § 1, 50 Stat. 805; Mar. 18, 1938, ch. 47, 52 Stat. 110; May 31, 1938, ch. 290, §§ 4, 6, 52 Stat. 585; June 20, 1938, ch. 528, 52 Stat. 780; Jan. 20, 1940, ch. 11, 54 Stat. 16; May 24, 1940, ch. 209, § 2 (c), 54 Stat. 220; June 8, 1940, ch. 282, 54 Stat. 253; Nov. 27, 1940, ch. 920, § 1, 54 Stat. 1216.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code, provisions relating to District Judgeships were contained in R. S. §§ 551, 552; and acts Aug. 2, 1886, ch. 842, 24 Stat. 213; Dec. 19, 1900, ch. 3, 31 Stat. 726; Feb. 4, 1903, ch. 402, 32 Stat. 795; Feb. 9, 1903, ch. 527, 32 Stat. 805; Apr. 1, 1904, ch. 857, 33 Stat. 155; Mar. 3, 1905, ch. 1418, 33 Stat. 987; Mar. 3, 1905, ch. 1427, § 2, 33 Stat. 993; May 26, 1906, ch. 2557, 34 Stat. 202; Feb. 25, 1907, ch. 1189, 34 Stat. 928; Feb. 25, 1907, ch. 1198, 34 Stat. 931; Feb. 27, 1907, ch. 2073, 34 Stat. 997; Mar. 2, 1907, ch. 2575, 34 Stat. 1253; Feb. 26, 1909, ch. 215, 35 Stat. 686; Mar. 2, 1909, ch. 242, 35 Stat. 685; Mar. 2, 1909, ch. 243, 35 Stat. 686; Feb. 24, 1910, ch. 56, 36 Stat. 201; Feb. 24, 1910, ch. 57, 36 Stat. 202; June 25, 1910, ch. 410, 36 Stat. 838. Said provisions were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168, 1169.

#### AMENDATORY AND SUPPLEMENTARY ACTS

Since the enactment of the Judicial Code, act Mar. 3, 1911, cited to text, and its amendment by act July 30, 1914, cited to text, Congress has enacted various independent statutes, which, though not specifically amending section 1 of the Judicial Code, relate to District Judgeships. In the text of this section these independent enactments have been consolidated to reflect the present number of judges permanently authorized for the various districts.

The text of this section does not take into account those judges for whom no successor is authorized, but a list of such judgeships is set out immediately following this note under the heading "Temporary Judgeships."

The changes made in the text of section 1 of the Judicial Code upon the authority of the various independent acts incorporated are recorded below.

#### ALABAMA

The Judicial Code provided that the judge for the Middle District of Alabama should continue to be a judge of the Northern District thereof. By act of June 5, 1936, ch. 515, §§ 1-3, 49 Stat. 1476, 1477, the jurisdiction of said judge was confined to the Middle district of Alabama. See Temporary Judgeships, post.

#### ARIZONA

An additional temporary judgeship for the District of Arizona, authorized by act Sept. 14, 1922, ch. 306, 42 Stat. 837 was made permanent by act Aug. 19, 1935, ch. 558, § 1, 49 Stat. 659.

#### ARKANSAS

One additional judge for the Eastern and Western Districts of Arkansas was authorized by act May 31, 1938, ch. 290, § 4, 52 Stat. 585.

#### CALIFORNIA

*Northern District.* The Judicial Code authorized only one additional judge for the Northern District of California. A second additional judgeship, authorized as temporary by act Sept. 24, 1922, ch. 306, 42 Stat. 837, is considered by the Department of Justice to have been made permanent by act Mar. 3, 1927, ch. 336, 44 Stat. 1572. A third additional judge was authorized by act May 31, 1938, ch. 290, § 4, 52 Stat. 585.

*Southern District.* The Judicial Code authorized one additional judge for this district. Further additional judges were authorized as follows: Two judges by act Aug. 2, 1935, ch. 425, § 1, 49 Stat. 508; one judge, authorized as temporary by act Sept. 14, 1922, ch. 306, 42 Stat. 837, was made permanent by act Aug. 2, 1935, ch. 425, § 2, 49 Stat. 508 and act Aug. 19, 1935, ch. 558, § 1, 49 Stat. 659; one judge by act June 27, 1930, ch. 633, 46 Stat. 819; one judge by act May 31, 1938, ch. 290, § 4, 52 Stat. 585; and one judge by act May 24, 1940, ch. 209, § 2c, 54 Stat. 220.

#### CONNECTICUT

One additional judge for the District of Connecticut was authorized by act March 3, 1927, ch. 300, 44 Stat. 1348.

*Southern District.* One additional judge was authorized for the Southern District of Florida by act Jan. 17, 1929, ch. 72, 45 Stat. 1081 and a second additional judge for the same district was authorized by act June 27, 1930, ch. 635, 46 Stat. 820. See also Temporary Judgeships, post.

#### ILLINOIS

*Northern District.* The Judicial Code authorized one additional judge for the Northern District of Illinois. Further additional judges were authorized as follows: Two additional judges by act Feb. 25, 1931, ch. 296, 46 Stat. 1417; one additional judge, authorized as temporary by act Sept. 14, 1922, ch. 306, 42 Stat. 838, was made permanent by act May 29, 1928, ch. 882, 45 Stat. 974; one additional judge by act May 31, 1938, ch. 290, § 4, 52 Stat. 585. See also Temporary Judgeships, post.

*Southern District.* One additional judge for the Southern District of Illinois was authorized by act Feb. 20, 1931, ch. 244, 46 Stat. 1196.

*Eastern District.* One additional judge for the Eastern District of Illinois, authorized as temporary by act Sept. 14, 1922, ch. 306, 42 Stat. 837, was made permanent by act July 3, 1930, ch. 852, 46 Stat. 1006.

#### INDIANA

Act of Jan. 16, 1925, ch. 83, § 3, 43 Stat. 752, authorizing the appointment of an additional judge for the District of Indiana, was repealed by act Apr. 21, 1928, ch. 393, § 5, 45 Stat. 439, upon the division of the State into two judicial districts, which division automatically authorized the appointment of an additional judge.

#### IOWA

See Temporary Judgeships, post.

One additional judge for the Eastern and Western Districts of Kentucky was authorized by act June 22, 1936, ch. 696, 49 Stat. 1806.

## LOUISIANA

*Eastern District.* One additional judge for the Eastern District of Louisiana was authorized by act Mar. 18, 1938, ch. 47, 52 Stat. 110.

*Western District.* One additional judge for the Western District of Louisiana was authorized by act May 31, 1938, ch. 290, § 4, 52 Stat. 585.

## MARYLAND

One additional judge for the District of Maryland was authorized by act Mar. 3, 1927, ch. 297, 44 Stat. 1346.

## MASSACHUSETTS

Two additional judges for the District of Massachusetts, authorized as temporary by act Sept. 14, 1922, ch. 306, 42 Stat. 837, were made permanent by act Aug. 19, 1935, ch. 558, § 1, 49 Stat. 659. See also Temporary Judgeships, post.

## MICHIGAN

*Eastern District.* Additional judges for the Eastern District of Michigan were authorized as follows: One judge, authorized as temporary by act Sept. 14, 1922, ch. 306, 42 Stat. 837, was made permanent by act Aug. 19, 1935, ch. 558, § 1, 49 Stat. 659; one judge by act March 3, 1927, ch. 344, 44 Stat. 1380; one judge by act Feb. 20, 1931, ch. 245, 46 Stat. 1197; and one judge by act May 31, 1938, ch. 290, § 4, 52 Stat. 585.

*Western District.* See Temporary Judgeships, post.

## MINNESOTA

One additional judge for the District of Minnesota was authorized by the Judicial Code. A second additional judge was authorized as temporary by act Sept. 14, 1922, ch. 306, 42 Stat. 837, and a successor was authorized to be appointed to said temporary judgeship by act Mar. 2, 1925, ch. 397, §§ 1-3, 43 Stat. 1098. By act Aug. 19, 1935, ch. 558, § 1, 49 Stat. 659, said temporary judgeship was made permanent. A third additional judge was authorized by act May 28, 1930, ch. 346, 46 Stat. 431.

## MISSISSIPPI

The Judicial Code provided that there should be one judge for the Northern and Southern Districts of Mississippi. Act Mar. 1, 1929, ch. 418, §§ 1, 2, 45 Stat. 1422 confined the jurisdiction of said judge to the Southern District and appointed a judge for the Northern District.

## MISSOURI

One additional judge for the Eastern District of Missouri and one additional judge for the Western District of Missouri, were authorized as temporary by act Sept. 14, 1922, ch. 306, 42 Stat. 837, were made permanent by act Aug. 19, 1935, ch. 558, § 1, 49 Stat. 659. One additional judge for both the Eastern and Western Districts was authorized by act June 22, 1936, ch. 693, 49 Stat. 1804.

## MONTANA

One additional judgeship for the District of Montana, authorized as temporary by act Sept. 14, 1922, ch. 306, 42 Stat. 837, was made permanent by act May 31, 1938, ch. 290, § 6, 52 Stat. 585.

## NEW JERSEY

One additional judge for the District of New Jersey was authorized by the Judicial Code. A second additional judge was authorized by act Apr. 11, 1916, ch. 64, § 1, 39 Stat. 48, and a third additional judgeship, authorized as temporary by act Sept. 14, 1922, ch. 306, 42 Stat. 837, was made permanent by act May 20, 1932, ch. 196, 47 Stat. 161. See also Temporary Judgeships, post.

## NEW MEXICO

See Temporary Judgeships, post.

*Eastern District.* One additional judge for the Eastern District of New York was authorized by the Judicial Code. Further additions were authorized as follows: One additional judgeship, authorized as temporary by act Sept. 14, 1922, ch. 306, 42 Stat. 837, was made permanent by act Aug. 19, 1935, ch. 558, § 1, 49 Stat. 659; two additional judges by act Feb. 28, 1929, ch. 380, 45 Stat. 1409; and one additional judge by act Aug. 28, 1935, ch. 793, 49 Stat. 945.

*Southern District.* Three additional judges for the Southern District of New York were authorized by the Judicial Code. Further additional judges were authorized as follows: Two additional judgeships, authorized as temporary by act Sept. 14, 1922, ch. 306, 42 Stat. 837 were made permanent by act Aug. 19, 1935, ch. 558, § 1, 49 Stat. 659; three additional judges by act Feb. 26, 1929, ch. 334, 45 Stat. 1317; two additional judges by act June 15, 1936, ch. 544, 49 Stat. 1491; one additional judgeship, authorized as temporary by act May 31, 1938, ch. 290, § 4, 52 Stat. 585 was made permanent by act June 8, 1940, ch. 282, 54 Stat. 253. See also Temporary Judgeships, post.

*Western District.* One additional judge for the Western District of New York was authorized by act Mar. 3, 1927, ch. 333, 44 Stat. 1370.

*Northern District.* One additional judge for the Northern District of New York was authorized by act Mar. 3, 1927, ch. 338, 44 Stat. 1374.

## NORTH DAKOTA

See Temporary Judgeships, post.

## OHIO

*Northern District.* One additional judge for the Northern District of Ohio was authorized by the Judicial Code. A further additional judgeship, authorized as temporary by act Sept. 14, 1922, ch. 306, 42 Stat. 837, was made permanent by act Aug. 19, 1935, ch. 558, § 1, 49 Stat. 659.

*Southern District.* One additional judge for the Southern District of Ohio was authorized by the Judicial Code and a second additional judge was authorized by act Aug. 25, 1937, ch. 771, § 1, 50 Stat. 805.

## OKLAHOMA

One additional judgeship, temporarily authorized for the Eastern District of Oklahoma by act Sept. 14, 1922, ch. 306, 42 Stat. 837, was transferred to the Northern District and made permanent upon the creation of said district by act Feb. 16, 1925, ch. 233, §§ 2, 3, 43 Stat. 946. One additional judge for the Northern, Eastern, and Western Districts of Oklahoma was authorized by act June 22, 1936, ch. 694, 49 Stat. 1804. See also Temporary Judgeships, post.

## PENNSYLVANIA

*Eastern District.* One additional judge for the Eastern District of Pennsylvania was authorized by the Judicial Code; a second by act Mar. 3, 1927, ch. 298, 44 Stat. 1347; and a third additional judgeship for the same district, authorized as temporary by act June 16, 1936, ch. 585, § 1, 49 Stat. 1523, was made permanent by act June 20, 1938, ch. 528, 52 Stat. 780. See also Temporary Judgeships, post.

*Western District.* One additional judge for the Western District of Pennsylvania was authorized by the Judicial Code and a second, authorized as temporary by act Sept. 14, 1922, ch. 306, 42 Stat. 837, was made permanent by act Aug. 19, 1935, ch. 558, § 1, 49 Stat. 659.

*Middle District.* One additional judge for the Middle District of Pennsylvania was authorized by act Feb. 28, 1929, ch. 338, 45 Stat. 1344.

## SOUTH CAROLINA

The Judicial Code provided that there should be only one judge for the Eastern and Western Districts of South Carolina. Act Mar. 3, 1915, ch. 100, § 1, 38 Stat. 961 confined the jurisdiction of said judge to the Eastern District of South Carolina and authorized the appointment of a judge for the Western District thereof. Act of Feb. 26, 1929, ch. 337, 45 Stat. 1319 authorized the appointment of one additional judge for the Eastern and Western Districts of South Carolina.

## SOUTH DAKOTA

See Temporary Judgeships, post.

## TENNESSEE

The Judicial Code originally provided for only two Judges for the State of Tennessee, one for the Western District, and one whose jurisdiction should embrace both the Eastern and Middle Districts. The jurisdiction of the latter, however, is considered by the Office of the Attorney General to have been confined to the Eastern District by act Sept. 14, 1922, ch. 306, 42 Stat. 837 which



authorized a Judge for the Middle District. A second Judgeship for the Eastern District, authorized as temporary by act May 31, 1938, ch. 290, § 4, 52 Stat. 585, was made permanent by act Nov. 27, 1940, ch. 920, § 1, 54 Stat. 1216, which amended Judicial Code, section 107 (section 188 of this title).

#### TEXAS

*Western District.* One additional judge for the Western District of Texas was authorized by act Feb. 26, 1917, ch. 120, 39 Stat. 938.

*Northern District.* One additional judgeship for the Northern District of Texas authorized as temporary by act Feb. 26, 1919, ch. 50, §§ 1, 2, 40 Stat. 1183, was made permanent by act Aug. 19, 1935, ch. 558, § 2, 49 Stat. 659. A second Temporary Judgeship, authorized by act Sept. 14, 1922, ch. 306, 42 Stat. 837, was made permanent by act Aug. 19, 1935, ch. 558, § 1, 49 Stat. 659.

*Southern District.* One additional judge for the Southern District of Texas was authorized by act May 31, 1938, ch. 290, § 4, 52 Stat. 585.

#### VIRGINIA

One additional judge for the Eastern District of Virginia was authorized by act Aug. 2, 1935, ch. 425, § 3, 49 Stat. 508, and one additional judge for the Western District of Virginia was authorized by act May 31, 1938, ch. 290, § 4, 52 Stat. 585.

#### WASHINGTON

One additional judge for the Western District of Washington was authorized by the Judicial Code. The jurisdiction of a second additional judge authorized for the same district by act May 31, 1938, ch. 290, § 4, 52 Stat. 585, was extended to include both the Eastern and Western Districts of Washington by act Jan. 20, 1940, ch. 11, 54 Stat. 16.

#### WEST VIRGINIA

See Temporary Judgeships, post.

#### TEMPORARY JUDGESHIPS

Since the enactment of the Judicial Code, Congress has created temporary judgeships in the various States as follows:

#### ALABAMA

Act Mar. 26, 1938, ch. 53, §§ 1, 2, 52 Stat. 120, provided for the appointment of an additional district judge for the Northern District of Alabama, provided that a vacancy in the office of the judge then senior in commission in said district should not be filled.

#### ARIZONA

A temporary judgeship authorized for the District of Arizona by act of Sept. 14, 1922, ch. 306, 42 Stat. 837, was made permanent by act Aug. 19, 1935, ch. 558, § 1, 49 Stat. 659.

#### FLORIDA

*Southern District.* Act Sept. 14, 1922, ch. 306, 42 Stat. 837, authorized the appointment of one additional judge for the Southern District of Florida, provided that any vacancy occurring in such judgeship more than two years after Sept. 14, 1922 should not be filled.

*Northern and Southern Districts.* Act May 24, 1940, ch. 209, § 2 (b), 54 Stat. 220, authorized the appointment of one additional judge for the Northern and Southern Districts of Florida, provided that the next vacancy occurring in either of said Districts should be filled by said appointee whose judgeship then should not be filled.

#### GEORGIA

*Northern District.* Act May 24, 1940, ch. 209, § 2a, 54 Stat. 219, authorized the appointment of one additional judge for the Northern District of Georgia, provided that the next ensuing vacancy in said District should not be filled.

#### ILLINOIS

*Northern District.* Act May 24, 1940, ch. 209, § 2a, 54 Stat. 219, authorized the appointment of one additional judge for the Northern District of Illinois, provided that the next ensuing vacancy in said District should not be filled.

#### IOWA

*Southern District.* Act Jan. 19, 1928, ch. 10, §§ 1, 2, 45 Stat. 52, authorized the appointment of one additional judge for the Southern District of Iowa, provided that a vacancy occurring in the existing judgeship should not be filled.

#### MASSACHUSETTS

Act May 31, 1938, ch. 290, § 4, 52 Stat. 585, authorized the appointment of one additional judge for the District of Massachusetts, provided that the next ensuing vacancy among the judges of said District in office on May 31, 1938 should not be filled.

#### MICHIGAN

*Western District.* Act Feb. 17, 1925, ch. 254, 43 Stat. 949, authorized the appointment of one additional judge for the Western District of Michigan said judge to be senior in commission, provided that a vacancy in the office of the judge of said District in office on Feb. 17, 1925 should not be filled.

#### NEW JERSEY

Act May 24, 1940, ch. 209, § 2a, 54 Stat. 219, authorized the appointment of one additional judge for the District of New Jersey, provided that the next ensuing vacancy in such District should not be filled.

#### NEW MEXICO

Act Sept. 14, 1922, ch. 306, 42 Stat. 837, authorized the appointment of one additional judge for the District of New Mexico, provided that a vacancy occurring more than two years after Sept. 14, 1922 in such judgeship should not be filled.

#### NEW YORK

*Southern District.* Act May 24, 1940, ch. 209, § 2a, 54 Stat. 219, authorized the appointment of one additional judge for the Southern District of New York, provided that the next ensuing vacancy in said District should not be filled.

#### NORTH DAKOTA

Act June 25, 1921, ch. 29, 42 Stat. 66, authorized the appointment of one additional judge for the District of North Dakota, to be treated as senior judge, provided that a vacancy in the office of the judge senior in commission should not be filled, and that thereafter there should be only one judge for said District.

#### OKLAHOMA

*Western District.* Act May 24, 1940, ch. 209, § 2a, 54 Stat. 219, authorized the appointment of one additional judge for the Western District of Oklahoma, provided that the next ensuing vacancy in such District should not be filled.

#### PENNSYLVANIA

*Eastern District.* Act Sept. 14, 1922, ch. 306, 42 Stat. 837, authorized the appointment of one additional judge for the Eastern District of Pennsylvania, provided that a vacancy occurring in said judgeship more than two years after Sept. 14, 1922 should not be filled.

Act May 24, 1940, ch. 209, § 2a, 54 Stat. 219, authorized the appointment of one additional judge for the Eastern District of Pennsylvania, provided that the next ensuing vacancy in such District should not be filled.

#### SOUTH DAKOTA

Act Feb. 26, 1929, ch. 333, §§ 1, 2, 45 Stat. 1317, authorized the appointment of one additional judge for the District of South Dakota, provided that a vacancy occurring in the office of the judge for said District serving on February 26, 1929 should not be filled.

#### WEST VIRGINIA

*Northern and Southern Districts.* Act June 22, 1936, ch. 695, 49 Stat. 1805, authorized the appointment of one additional judge for the Northern and Southern Districts of West Virginia, said appointee to become judge for the Northern District of West Virginia upon a vacancy occurring and the vacancy in the judgeship created by said act to remain unfilled.

### §§ 1a-4y. Same; additional district judges for certain districts.

Subject matter of these sections is now contained in section 1 of this title. They were based upon the following acts:

Section 1a from act June 5, 1936, ch. 515, §§ 1-3, 49 Stat. 1476, 1477.

Section 2 from acts Feb. 26, 1919, ch. 50, §§ 1, 2, 40 Stat. 1183; June 25, 1921, ch. 29, §§ 1, 2, 42 Stat. 66, 67; Feb. 17, 1925, ch. 254, §§ 1, 2, 43 Stat. 949, and repealed in part by act Aug. 19, 1935, ch. 558, § 2, 49 Stat. 659.

Section 3 from acts Sept. 14, 1922, ch. 306, § 1, 42 Stat. 837; Mar. 2, 1925, ch. 397, §§ 1-3, 43 Stat. 1098; May 29, 1928, ch. 882, 45 Stat. 974; July 8, 1930, ch. 852, 46 Stat. 1006; May 20, 1932, ch. 196, 47 Stat. 161.

Section 3a from act May 31, 1938, ch. 290, § 6, 52 Stat. 585.

Section 4 from act Mar. 2, 1925, ch. 397, §§ 1-3, 43 Stat. 1098.

Section 4a from act Mar. 3, 1927, ch. 336, §§ 1, 2, 44 Stat. 1372.

Section 4a-1 from act May 31, 1938, ch. 290, § 4, 52 Stat. 585.

Section 4b from act Jan. 19, 1928, ch. 10, §§ 1, 2, 45 Stat. 52.

Section 4c from act Feb. 26, 1929, ch. 333, §§ 1, 2, 45 Stat. 1317.

Section 4d from act Feb. 26, 1929, ch. 337, 45 Stat. 1319

Section 4e from act Aug. 2, 1935, ch. 425, § 1, 49 Stat. 508

Section 4f from act Aug. 2, 1935, ch. 425, § 2, 49 Stat. 508

Section 4f-1 from act May 31, 1938, ch. 290, § 4, 52 Stat. 585.

Section 4g from act Aug. 2, 1935, ch. 425, § 3, 49 Stat. 508.

Section 4h from act Aug. 19, 1935, ch. 558, § 1, 49 Stat. 659

Section 4i from act Aug. 28, 1935, ch. 793, 49 Stat. 945.

Section 4j from act June 15, 1936, ch. 544, 49 Stat. 1491.

Section 4j-1 from act May 31, 1938, ch. 290, § 4, 52 Stat. 585.

Section 4k from acts June 16, 1936, ch. 585, § 1, 49 Stat. 1523; June 20, 1938, ch. 528, 52 Stat. 780.

Section 4l from act June 22, 1936, ch. 695, 49 Stat. 1805.

Section 4m from act June 22, 1936, ch. 696, 49 Stat. 1806.

Section 4n from act June 22, 1936, ch. 693, 49 Stat. 1804

Section 4o from act June 22, 1936, ch. 694, 49 Stat. 1804

Section 4p from act Mar. 18, 1938, ch. 47, 52 Stat. 110.

Section 4p-1 from act May 31, 1938, ch. 290, § 4, 52 Stat. 585.

Section 4q from act Mar. 26, 1938, ch. 53, §§ 1, 2, 52 Stat. 120.

Sections 4q-1 to 4w from act May 31, 1938, ch. 290, § 4, 52 Stat. 585.

Section 4x from act Aug. 25, 1937, ch. 771, § 1, 50 Stat. 805.

Section 4y from act May 31, 1938, ch. 290, § 4, 52 Stat. 585.

### § 5. (Judicial Code, section 2.) District judges; salaries.

Each of the district judges, including the judges in Puerto Rico, Hawaii, and Alaska exercising Federal jurisdiction, shall receive a salary of \$10,000 a year, to be paid in monthly installments. (Mar. 3, 1911, ch. 231, § 2, 36 Stat. 1087; Feb. 25, 1919, ch. 29, § 1, 40 Stat. 1156; Dec. 13, 1926, ch. 6, § 1, 44 Stat. 919; May 17, 1932, ch. 190, 47 Stat. 158.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was covered by R. S. § 554 and act Feb. 12, 1903, ch. 547, 32 Stat. 825. R. S. § 554 was derived from act Mar. 2, 1867, ch. 168, § 9, 14 Stat. 470, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### CROSS REFERENCE

Traveling expenses of judges, see section 374 of this title.

### § 5a. District judge of the Virgin Islands; salary.

After May 24, 1940, the salary of the judge of the District Court of the Virgin Islands of the United States shall be at the rate of \$10,000 a year. (May 24, 1940, ch. 209, § 3, 54 Stat. 220.)

### § 5b. Law clerks for district judges; number.

Not to exceed two law clerks to district judges shall be appointed in any one circuit. (May 14, 1940, ch. 189, title IV, 54 Stat. 210.)

#### CROSS REFERENCE

Salaries of law clerks, stenographers, or secretaries to district judges, see sections 374a and 374b of this title.

### § 6. (Judicial Code, section 3.) Clerks of certain courts; appointment.

Except in cases otherwise provided for by law, a clerk shall be appointed for each United States district court including Hawaii and Puerto Rico by the judge for the district, or the senior judge if there be more than one judge in the district. (Mar. 3, 1911, ch. 231, § 3, 36 Stat. 1087; Feb. 26, 1919, ch. 49, § 1, 40 Stat. 1182; Feb. 11, 1921, ch. 46, 41 Stat. 1099; May 17, 1932, ch. 190, 47 Stat. 158.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was covered by R. S. § 555, which was derived from acts Sept. 24, 1879, ch. 20, § 7, 1 Stat. 76; Apr. 10, 1869, ch. 22, § 2, 16 Stat. 45, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

### § 7. (Judicial Code, section 4.) Deputies and clerical assistants.

Except as otherwise provided by law, when, in the opinion of the Attorney General, the public interest requires it, he may, on the recommendation of the clerk of a district court, including the clerks of the district courts of Hawaii and Puerto Rico, which recommendation shall state facts (as distinguished from conclusions) showing necessity for the same, allow such clerk to employ necessary deputies and clerical assistants. Deputy clerks may be designated to reside and maintain offices at such places of holding court as the judge may determine. (Mar. 3, 1911, ch. 231, § 4, 36 Stat. 1087; Feb. 26, 1919, ch. 49, § 4, 40 Stat. 1182; May 17, 1932, ch. 190, 47 Stat. 158.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was covered by R. S. § 558, which was derived from act June 8, 1872, ch. 336, 17 Stat. 330, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

### § 8. (Judicial Code, section 4.) Deputy clerks; removal; death of clerk; liability for defaults of deputies.

Deputy clerks may be removed at the pleasure of the clerk appointing them, with the concurrence of the district judge. In case of the death of the clerk, his deputy or deputies shall, unless removed, continue in office and perform the duties of the clerk, in his name, until a clerk is appointed and qualified; and for the default or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk and his estate and the sureties on his official bond shall be liable; and his executor or administrator shall have such remedy for any such default or misfeasances committed

after his death as the clerk would be entitled to if the same had occurred in his lifetime. (Mar. 3, 1911, ch. 231, § 4, 36 Stat. 1087.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 558 which was derived from act June 8, 1872, ch. 336, 17 Stat. 330 and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 9. (Judicial Code, section 5.) Criers and bailiffs.

The district court for each district may appoint a crier for the court; and the marshal may appoint such number of persons, not exceeding five, as the judge may determine, to wait upon the grand and other juries, and for other necessary purposes. (Mar. 3, 1911, ch. 231, § 5, 36 Stat. 1088.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 715 which was derived from acts Feb. 26, 1853, ch. 80, § 1, 10 Stat. 165; Mar. 2, 1867, ch. 156, § 2, 14 Stat. 433.

#### § 10. (Judicial Code, section 6.) Records; where kept.

The records of a district court shall be kept at the place where the court is held. When it is held at more than one place in any district and the place of keeping the records is not specially provided by law, they shall be kept at either of the places of holding the court which may be designated by the district judge. (Mar. 3, 1911, ch. 231, § 6, 36 Stat. 1088.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 562 which was derived from act Sept. 24, 1789, ch. 20, § 3, 1 Stat. 73 and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 11. (Judicial Code, section 7.) Altering terms.

No action, suit, proceeding, or process in any district court shall abate or be rendered invalid by reason of any Act changing the time of holding such court, but the same shall be deemed to be returnable to, pending, and triable in the terms established next after the return day thereof. (Mar. 3, 1911, ch. 231, § 7, 36 Stat. 1088.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 573 which was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 12. (Judicial Code, section 8.) Trials not discontinued by new term.

When the trial or hearing of any cause, civil or criminal, in a district court has been commenced and is in progress before a jury or the court, it shall not be stayed or discontinued by the arrival of the time fixed by law for another session of said court; but the court may proceed therein and bring it to a conclusion in the same manner and with the same effect as if another stated term of the court had not intervened. (Mar. 3, 1911, ch. 231, § 8, 36 Stat. 1088.)

#### SIMILAR PR

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 748, which

was derived from act Mar. 2, 1855, ch. 140, § 1, 10 Stat. 620, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### FEDERAL RULES OF CIVIL PROCEDURE

Expiration of term of court, see Rule 6, following section 723c of this title.

Effect of Rule 6 on this section, see note by Advisory Committee under said Rule 6.

#### § 13. (Judicial Code, section 9.) Courts open as courts of admiralty and equity.

The district courts, as courts of admiralty and as courts of equity, shall be deemed always open for the purpose of filing any pleading, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, rules, and other proceedings preparatory to the hearing, upon their merits, of all causes pending therein. Any district judge may, upon reasonable notice to the parties, make, direct, and award, at chambers or in the clerk's office, and in vacation as well as in term, all such process, commissions, orders, rules, and other proceedings, whenever the same are not grantable of course, according to the rules and practice of the court. (Mar. 3, 1911, ch. 231, § 9, 36 Stat. 1088.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 574, which was derived from act Aug. 23, 1842, ch. 188, § 5, 5 Stat. 517, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### FEDERAL RULES OF CIVIL PROCEDURE

Courts always open, see Rule 77, following section 723c of this title.

#### § 14. (Judicial Code, section 10.) Monthly adjournments for trial of criminal causes.

District courts shall hold monthly adjournments of their regular terms, for the trial of criminal causes, when their business requires it to be done, in order to prevent undue expenses and delays in such cases. (Mar. 3, 1911, ch. 231, § 10, 36 Stat. 1088.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 578, which was derived from act Aug. 23, 1842, ch. 188, § 3, 5 Stat. 517, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 15. (Judicial Code, section 11.) Special terms.

A special term of any district court may be held at the same place where any regular term is held, or at such other place in the district as the nature of the business may require, and at such time and upon such notice as may be ordered by the district judge. Any business may be transacted at such special term which might be transacted at a regular term. (Mar. 3, 1911, ch. 231, § 11, 36 Stat. 1088.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 581, which was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 16. (Judicial Code, section 12.) Adjournment for nonattendance of judge.

If the judge of any district court is unable to attend at the commencement of any regular, ad-

journed, or special term, or any time during such term, the court may be adjourned by the marshal, or clerk, by virtue of a written order directed to him by the judge, to the next regular term, or to any earlier day, as the order may direct. (Mar. 3, 1911, ch. 231, § 12, 36 Stat. 1088.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 583, 671, and 672, which were derived from acts Sept. 24, 1789, ch. 20, § 6, 1 Stat. 76; Mar. 26, 1804, ch. 44, 2 Stat. 291; acts Sept. 24, 1789, ch. 20, 1 Stat. 76; May 19, 1794, ch. 32, 1 Stat. 369; Apr. 10, 1869, ch. 22, 16 Stat. 44; acts July 4, 1840, ch. 43, 5 Stat. 392; Jan. 18, 1839, ch. 3, 5 Stat. 314, respectively, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**§ 17. (Judicial Code, section 13.) Disability of judge; accumulation of business; designation of another judge.**

Whenever any district judge by reason of any disability or absence from his district or the accumulation or urgency of business is unable to perform speedily the work of his district, the senior circuit judge of that circuit, or, in his absence, the circuit justice thereof, shall designate and assign any district judge of any district court within the same judicial circuit to act as district judge in such district and to discharge all the judicial duties of a judge thereof for such time as the business of the said district court may require. Whenever it is found impracticable to designate and assign another district judge within the same judicial circuit as above provided and a certificate of the needs of any such district is presented by said senior circuit judge or said circuit justice to the Chief Justice of the United States, he, or in his absence the senior associate justice, shall designate and assign a district judge of an adjoining judicial circuit if practicable, or if not practicable, then of any judicial circuit, to perform the duties of district judge and hold a district court in any such district as above provided: *Provided, however,* That before any such designation or assignment is made the senior circuit judge of the circuit from which the designated or assigned judge is to be taken shall consent thereto. All designations and assignments made hereunder shall be filed in the office of the clerk and entered on the minutes of both the court from and to which a judge is designated and assigned, as well as on the minutes of the Supreme Court of the United States, to the clerk of which both of such other clerks shall immediately report the fact and period of assignment. (Mar. 3, 1911, ch. 231, § 13, 36 Stat. 1089; Sept. 14, 1922, ch. 306, § 3, 42 Stat. 839; Aug. 24, 1937, ch. 754, § 4, 50 Stat. 753.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 591, as amended by act Mar. 4, 1907, ch. 2940, 34 Stat. 1417 and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. Said R. S. § 591 was from acts July 29, 1850, ch. 30, § 1, 9 Stat. 442; Apr. 10, 1869, ch. 22, § 2, 16 Stat. 44.

**§ 18. (Judicial Code, section 14.) Power of designated judge.**

Each district judge designated and assigned under the provisions of section 17 of this chapter may

hold separately and at the same time a district court in the district or territory to which such judge is designated and assigned and discharge all the judicial duties of the district or territorial judge therein. (Mar. 3, 1911, ch. 231, § 14, 36 Stat. 1089; Sept. 14, 1922, ch. 306, § 4, 42 Stat. 839.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 592 which was derived from acts Apr. 2, 1852, ch. 20, 10 Stat. 5; Apr. 10, 1869, ch. 22, § 2, 16 Stat. 44. Said R. S. § 592 was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**§ 19. (Judicial Code, section 15.) Designation by Chief Justice.**

If all the circuit judges and the circuit justice are absent from the circuit, or are unable to execute the provisions of section 17 of this title, or if the district judge so designated is disabled or neglects to hold the court and transact the business for which he is designated, the clerk of the district court shall certify the fact to the Chief Justice of the United States, who may thereupon designate and appoint in the manner aforesaid the judge of any district within such circuit or within any other circuit; and said appointment shall be transmitted to the clerk and be acted upon by him as directed in section 17 of this title. (Mar. 3, 1911, ch. 231, § 15, 36 Stat. 1089.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 593 which was derived from acts July 29, 1850, ch. 30, § 2, 9 Stat. 443; Apr. 2, 1852, ch. 20, 10 Stat. 5; Apr. 10, 1869, ch. 22, § 2, 16 Stat. 44. Said R. S. § 593 was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**§ 20. (Judicial Code, section 16.) New appointment and revocation.**

Any such circuit judge, or circuit justice, or the Chief Justice, as the case may be, may, from time to time, if in his judgment the public interests so require, make a new designation and appointment of any other district judge, in the manner, for the duties, and with the powers mentioned in sections 17, 18, and 19 of this title, and revoke any previous designation and appointment. (Mar. 3, 1911, ch. 231, § 16, 36 Stat. 1089.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 594 which was derived from acts July 29, 1850, ch. 30, § 4, 9 Stat. 443; Apr. 2, 1852, ch. 20, 10 Stat. 5; Apr. 10, 1869, ch. 22, § 2, 16 Stat. 44. Said R. S. § 594 was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

## CROSS REFERENCE

Designation of another judge whenever any district judge by reason of any disability or necessary absence from his district is unable to speedily perform the work of his district, see section 17 of this title.

**§ 21. (Judicial Code, section 17.) Designation to aid another judge.**

It shall be the duty of the senior circuit judge then present in the circuit, whenever in his judgment the public interest so requires, to designate and appoint, in the manner and with the powers provided in sections 17 and 18 of this title, the district judge of any judicial district within his circuit to hold a district

court in the place or in aid of any other district judge within the same circuit. (Mar. 3, 1911, ch. 231, § 17, 36 Stat. 1089.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 596 and act Mar. 3, 1881, ch. 133, § 1, 21 Stat. 454. R. S. § 596 was derived from acts Mar. 3, 1871, ch. 113, § 3, 16 Stat. 494; July 29, 1850, ch. 30, § 1, 9 Stat. 442 and repealed by acts Mar. 3, 1881, ch. 133, 21 Stat. 454; Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### CROSS REFERENCE

Designation of another judge whenever any district judge by reason of any disability or necessary absence from his district is unable to speedily perform the work of his district, see section 17 of this title.

#### § 22. (Judicial Code, section 18.) Circuit judge designated to hold district court; powers.

The Chief Justice of the United States, or the circuit justice of any judicial circuit, or the senior circuit judge thereof, may, if the public interest requires, designate and assign any circuit judge of a judicial circuit to hold a district court within such circuit. The judges of the United States Court of Customs and Patent Appeals, or any of them, whenever the business of that court will permit, may, if in the judgment of the Chief Justice of the United States the public interest requires, be designated and assigned by him for service from time to time, and until he shall otherwise direct, in the District Court of the United States for the District of Columbia or the United States Court of Appeals for the District of Columbia, when requested by the Chief Justice of either of said courts.

During the period of service of any judge designated and assigned under this chapter, he shall have all the powers, and rights, and perform all the duties, of a judge of the district, or a justice of the court, to which he has been assigned (excepting the power of appointment to a statutory position or of permanent designation of newspaper or depository of funds). In case a trial has been entered upon before such period of service has expired and has not been concluded, the period of service shall be deemed to be extended until the trial has been concluded.

Any designated and assigned judge who has held court in another district than his own shall have power, notwithstanding his absence from such district and the expiration of the time limit in his designation, to decide all matters which have been submitted to him within such district, to decide motions for new trials, settle bills of exceptions, certify or authenticate narratives of testimony, or perform any other act required by law or the rules to be performed in order to prepare any case so tried by him for review in an appellate court; and his action thereon in writing filed with the clerk of the court where the trial or hearing was had shall be as valid as if such action had been taken by him within that district and within the period of his designation. (Mar. 3, 1911, ch. 231, § 18, 36 Stat. 1089; Oct. 3, 1913, ch. 18, 38 Stat. 203; Sept. 14, 1922, ch. 306, § 5, 42 Stat. 839; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1936, ch. 804, 49 Stat. 1921.)

#### § 23. (Judicial Code, section 19.) Same; duty of district or circuit judge.

It shall be the duty of the district or circuit judge who is designated and appointed under either of sections 17–22 of this title, to discharge all the judicial duties for which he is so appointed, during the time for which he is so appointed; and all the acts and proceedings in the courts held by him, or by or before him, in pursuance of said provisions, shall have the same effect and validity as if done by or before the district judge of the said district. (Mar. 3, 1911, ch. 231, § 19, 36 Stat. 1090.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 595, which was derived from acts July 29, 1850, ch. 30, § 3, 9 Stat. 443; Apr. 2, 1852, ch. 20, 10 Stat. 5, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 24. (Judicial Code, section 20.) Interest or relationship of district judge.

Whenever it appears that the judge of any district court is in any way concerned in interest in any suit pending therein, or has been of counsel or is a material witness for either party, or is so related to or connected with either party as to render it improper, in his opinion, for him to sit on the trial, it shall be his duty, on application by either party, to cause the fact to be entered on the records of the court; and also an order that an authenticated copy thereof shall be forthwith certified to the senior circuit judge for said circuit then present in the circuit; and thereupon such proceedings shall be had as are provided in sections 17 and 18 of this title. (Mar. 3, 1911, ch. 231, § 20, 36 Stat. 1090.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 601 which was derived from acts Mar. 3, 1821, ch. 51, 3 Stat. 643; May 8, 1792, ch. 36, § 11, 1 Stat. 278, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 25. (Judicial Code, section 21.) Affidavit of personal bias or prejudice of judge.

Whenever a party to any action or proceeding, civil or criminal, shall make and file an affidavit that the judge before whom the action or proceeding is to be tried or heard has a personal bias or prejudice either against him or in favor of any opposite party to the suit, such judge shall proceed no further therein, but another judge shall be designated in the manner prescribed in section 24 of this title, or chosen in the manner prescribed in section 27 of this title, to hear such matter. Every such affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term of the court, or good cause shall be shown for the failure to file it within such time. No party shall be entitled in any case to file more than one such affidavit; and no such affidavit shall be filed unless accompanied by a certificate of counsel of record that such affidavit and application are made in good faith. The same proceedings shall be had when the presiding judge shall file with the clerk of the court a certificate that he deems himself unable for any reason to preside with absolute im-

partiality in the pending suit or action. (Mar. 3, 1911, ch. 231, § 21, 36 Stat. 1090.)

#### CROSS REFERENCE

Designation of another judge whenever any district judge by reason of any disability or necessary absence from his district is unable to speedily perform the work of his district, see section 17 of this title.

#### § 26. (Judicial Code, section 22.) Continuance in case of vacancy in office.

When the office of judge of any district court becomes vacant, all process, pleadings, and proceedings pending before such court shall, if necessary, be continued by the clerk thereof until such times as a judge shall be appointed, or designated to hold such court; and the judge so designated, while holding such court, shall possess the powers conferred by, and be subject to the provisions contained in, section 23 of this title. (Mar. 3, 1911, ch. 231, § 22, 36 Stat. 1090.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 602, 603, which were derived from acts Sept. 24, 1789, ch. 20, § 6, 1 Stat. 76; Aug. 6, 1861, ch. 59, 12 Stat. 318, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 27. (Judicial Code, section 23.) Districts with more than one judge; division of business.

In districts having more than one district judge, the judges may agree upon the division of business and assignment of cases for trial in said district; but in case they do not so agree, the senior circuit judge of the circuit in which the district lies, shall make all necessary orders for the division of business and the assignment of cases for trial in said district. (Mar. 3, 1911, ch. 231, § 23, 36 Stat. 1090.)

### Chapter 2.—DISTRICT COURTS; JURISDICTION

#### Sec.

#### 41. Original jurisdiction.

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10. Suits on debentures.
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12. Suits concerning civil rights.
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16. Suits against national banking associations.
17. Suits by aliens for torts.
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19. Suits and proceedings in bankruptcy.
20. Suits against United States.
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22. Suits under immigration and contract labor laws.
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#### 41. Original jurisdiction—Continued.

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51. Jurisdiction of crimes on Indian reservations in South Dakota.
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#### § 41. (Judicial Code, section 24.) Original jurisdiction.

The district courts shall have original jurisdiction as follows:

#### (1) United States as plaintiff; civil suits at common law or in equity.

First. Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue, or between citizens of the same State claiming lands under grants from different States; or, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of \$3,000, and (a) arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or (b) Is<sup>1</sup> between citizens of different States, or citizens of the District of Columbia, the Territory of Hawaii, or Alaska, and any State or Territory, or (c) is between citizens of a State and foreign States, citizens, or subjects. No district court shall have cognizance of any suit (except upon foreign bills of exchange) to recover upon any promissory note or other chose in action in favor of any assignee, or of any subsequent holder if such instrument be payable to bearer and be not made by any corporation, unless such suit might have been prosecuted in such court to recover upon said note or other chose in action if no assignment had been made. The foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section. Not-

withstanding the foregoing provisions of this paragraph, no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the enforcement, operation, or execution of any order of an administrative board or commission of a State, or any rate-making body of any political subdivision thereof, or to enjoin, suspend, or restrain any action in compliance with any such order, where jurisdiction is based solely upon the ground of diversity of citizenship, or the repugnance of such order to the Constitution of the United States, where such order (1) affects rates chargeable by a public utility, (2) does not interfere with interstate commerce, and (3) has been made after reasonable notice and hearing, and where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State. Notwithstanding the foregoing provisions of this paragraph, no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the assessment, levy, or collection of any tax imposed by or pursuant to the laws of any State where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State. (Mar. 3, 1911, ch. 231, § 24, par. 1, 36 Stat. 1091; May 14, 1934, ch. 283, § 1, 48 Stat. 775; Aug. 21, 1937, ch. 726, § 1, 50 Stat. 738; Apr. 20, 1940, ch. 117, 54 Stat. 143.)

<sup>1</sup> So in original. Probably should read "is".

#### (2) Crimes and offenses.

Second. Of all crimes and offenses cognizable under the authority of the United States. (Mar. 3, 1911, ch. 231, § 24, par. 2, 36 Stat. 1091.)

#### (3) Admiralty causes, seizures, and prizes.

Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it, and to claimants for compensation for injuries to or death of persons other than the master or members of the crew of a vessel, their rights and remedies under the workmen's compensation law of any State, District, Territory, or possession of the United States, which rights and remedies when conferred by such law shall be exclusive; of all seizures on land or water not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize. The jurisdiction of the district courts shall not extend to causes arising out of injuries to or death of persons other than the master or members of the crew, for which compensation is provided by the workmen's compensation law of any State, District, Territory, or possession of the United States. (Mar. 3, 1911, ch. 231, § 24, par. 3, 36 Stat. 1091; Oct. 6, 1917, ch. 97, § 1, 40 Stat. 395; June 10, 1922, ch. 216, § 1, 42 Stat. 634.)

#### (4) Suits under laws relating to slave trade.

Fourth. Of all suits arising under any law relating to the slave trade. (Mar. 3, 1911, ch. 231, § 24, par. 4, 36 Stat. 1092.)

#### (5) Cases under internal revenue, customs, and tonnage laws.

Fifth. Of all cases arising under any law providing for internal revenue, or from revenue from im-

ports or tonnage, except those cases arising under any law providing revenue from imports, jurisdiction of which has been conferred upon the Court of Customs and Patent Appeals. (Mar. 3, 1911, ch. 231, § 24, par. 5, 36 Stat. 1092; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475.)

#### (6) Suits under postal laws.

Sixth. Of all cases arising under the postal laws. (Mar. 3, 1911, ch. 231, § 24, par. 6, 36 Stat. 1092.)

#### (7) Suits under patent, copyright, and trade-mark laws.

Seventh. Of all suits at law or in equity arising under the patent, the copyright, and the trade-mark laws. (Mar. 3, 1911, ch. 231, § 24, par. 7, 36 Stat. 1092.)

#### (8) Suits under interstate commerce laws.

Eighth. Of all suits and proceedings arising under any law regulating commerce. (Mar. 3, 1911, ch. 231, § 24, par. 8, 36 Stat. 1092; Oct. 22, 1913, ch. 32, 38 Stat. 219.)

#### (9) Penalties and forfeitures.

Ninth. Of all suits and proceedings for the enforcement of penalties and forfeitures incurred under any law of the United States. (Mar. 3, 1911, ch. 231, § 24, par. 9, 36 Stat. 1092.)

#### (10) Suits on debentures.

Tenth. Of all suits by the assignee of any debenture for drawback of duties, issued under any law for the collection of duties, against the person to whom such debenture was originally granted, or against any indorser thereof, to recover the amount of such debenture. (Mar. 3, 1911, ch. 231, § 24, par. 10, 36 Stat. 1092.)

#### (11) Suits for injuries on account of acts done under laws of United States.

Eleventh. Of all suits brought by any person to recover damages for any injury to his person or property on account of any act done by him, under any law of the United States, for the protection or collection of any of the revenues thereof, or to enforce the right of citizens of the United States to vote in the several States. (Mar. 3, 1911, ch. 231, § 24, par. 11, 36 Stat. 1092.)

#### (12) Suits concerning civil rights.

Twelfth. Of all suits authorized by law to be brought by any person for the recovery of damages on account of any injury to his person or property, or of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 47 of Title 8. (Mar. 3, 1911, ch. 231, § 24, par. 12, 36 Stat. 1092.)

#### (13) Suits against persons having knowledge of conspiracy.

Thirteenth. Of all suits authorized by law to be brought against any person who, having knowledge that any of the wrongs mentioned in section 47 of Title 8, are about to be done, and, having power to prevent or aid in preventing the same, neglects or refuses so to do, to recover damages for any such wrongful act. (Mar. 3, 1911, ch. 231, § 24, par. 13, 36 Stat. 1092.)



(14) Suits to redress deprivation of civil rights.

Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States. (Mar. 3, 1911, ch. 231, § 24, par. 14, 36 Stat. 1092.)

(15) Suits to recover certain offices.

Fifteenth. Of all suits to recover possession of any office, except that of elector of President or Vice President, Representative in or Delegate to Congress, or member of a State legislature, authorized by law to be brought, wherein it appears that the sole question touching the title to such office arises out of the denial of the right to vote to any citizen offering to vote, on account of race color, or previous condition of servitude. Such jurisdiction shall extend only so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the Constitution of the United States, and secured by any law, to enforce the right of citizens of the United States to vote in all the States. (Mar. 3, 1911, ch. 231, § 24, par. 15, 36 Stat. 1092.)

(16) Suits against national banking associations.

Sixteenth. Of all cases commenced by the United States, or by direction of any officer thereof, against any national banking association, and cases for winding up the affairs of any such bank; and of all suits brought by any banking association established in the district for which the court is held, under the provisions of chapter 2 of Title 12, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said chapter. And all national banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located. (Mar. 3, 1911, ch. 231, § 24, par. 16, 36 Stat. 1092.)

(17) Suits by aliens for torts.

Seventeenth. Of all suits brought by any alien for a tort only, in violation of the laws of nations or of a treaty of the United States. (Mar. 3, 1911, ch. 231, § 24, par. 17, 36 Stat. 1093.)

(18) Suits against consuls and vice consuls.

Eighteenth. Of all suits against consuls and vice consuls. (Mar. 3, 1911, ch. 231, § 24 par. 18, 36 Stat. 1093.)

(19) Suits and proceedings in bankruptcy.

Nineteenth. Of all matters and proceedings in bankruptcy. (Mar. 3, 1911, ch. 231, § 24, par. 19, 36 Stat. 1093.)

(20) Suits against United States.

Twentieth. Concurrent with the Court of Claims, of all claims not exceeding \$10,000 founded upon the Constitution of the United States or any law of

Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect to which claims the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable, and of all set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court; and of any suit or proceeding commenced after the passage of the Revenue Act of 1921, for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws even if the claim exceeds \$10,000, if the collector of internal revenue by whom such tax, penalty, or sum was collected is dead or is not in office as collector of internal revenue at the time such suit or proceeding is commenced. Nothing in this paragraph shall be construed as giving to either the district courts or the Court of Claims jurisdiction to hear and determine claims growing out of the Civil War, and commonly known as "war claims", or to hear and determine other claims which had been rejected or reported on adversely prior to the 3d day of March 1887 by any court, department, or commission authorized to hear and determine the same, or to hear and determine claims for pensions; or as giving to the district courts jurisdiction of cases brought to recover fees, salary, or compensation for official services of officers of the United States or brought for such purpose by persons claiming as such officers or as assignees or legal representatives thereof; but no suit pending on the 27th day of June 1898 shall abate or be affected by this provision. No suit against the Government of the United States shall be allowed under this paragraph unless the same shall have been brought within six years after the right accrued for which the claim is made. The claims of married women, first accrued during marriage, of persons under the age of twenty-one years, first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the suit be brought within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively. All suits brought and tried under the provisions of this paragraph shall be tried by the court without a jury. (Mar. 3, 1911, ch. 231, § 24, par. 20, 36 Stat. 1093; Nov. 23, 1921, ch. 136, § 1310 (c), 42 Stat. 311; June 2, 1924, 4:01 p. m., ch. 234, § 1025 (c), 43 Stat. 348; Feb. 24, 1925, ch. 309, 43 Stat. 972; Feb. 26, 1926, ch. 27, §§ 1122 (c), 1200, 44 Stat. 121, 125.)

**(21) Suits for unlawful inclosure of public lands.**

Twenty-first. Of proceedings in equity, by writ of injunction, to restrain violations of the provisions of laws of the United States to prevent the unlawful inclosure of public lands; and it shall be sufficient to give the court jurisdiction if service of original process be had in any civil proceeding on any agent or employee having charge or control of the inclosure. (Mar. 3, 1911, ch. 231, § 24, par. 21, 36 Stat. 1093.)

**(22) Suits under immigration and contract labor laws.**

Twenty-second. Of all suits and proceedings arising under any law regulating the immigration of aliens, or under the contract labor laws. (Mar. 3, 1911, ch. 231, § 24, par. 22, 36 Stat. 1093.)

**(23) Suits against trusts, monopolies, and unlawful combinations.**

Twenty-third. Of all suits and proceedings arising under any law to protect trade and commerce against restraints and monopolies. (Mar. 3, 1911, ch. 231, § 24, par. 23, 36 Stat. 1093.)

**(24) Suits concerning allotments of land to Indians; decrees; appeal.**

Twenty-fourth. Of all actions, suits, or proceedings involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty.

And the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him; but this provision shall not apply to any lands held on or before December 21, 1911, by either of the Five Civilized Tribes, the Osage Nation of Indians, nor to any of the lands within the Quapaw Indian Agency. The right of appeal shall be allowed to either party as in other cases. (Mar. 3, 1911, ch. 231, § 24, par. 24, 36 Stat. 1094; Dec. 21, 1911, ch. 5, 37 Stat. 46.)

**(25) Partition suits where United States is joint tenant.**

Twenty-fifth. Of suits in equity brought by any tenant in common or joint tenant for the partition of lands in cases where the United States is one of such tenants in common or joint tenants, such suits to be brought in the district in which such land is situate. (Mar. 3, 1911, ch. 231, § 24, par. 25, 36 Stat. 1094.)

**(26) Original jurisdiction of bills of interpleader, and of bills in the nature of interpleader.**

(a) Of suits in equity begun by bills of interpleader or bills in the nature of bills of interpleader duly verified, filed by any person, firm, corporation, association, or society having in his or its custody or possession money or property of the value of \$500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of the value or amount of \$500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of \$500 or more, if—

(i) Two or more adverse claimants, citizens of different States, are claiming to be entitled to such

money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy, or other instrument, or arising by virtue of any such obligation; and

(ii) The complainant (a) has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court; or (b) has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.

Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

(b) Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.

(c) Notwithstanding any provision of Part I of this title to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such money or property or on such instrument or obligation until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.

(d) Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be necessary or convenient to carry out and enforce the same.

(e) In any action at law in a United States District Court against any person, firm, corporation, association, or society, such defendant may set up by way of equitable defense, in accordance with section 398 of this title, any matter which would entitle such person, firm, corporation, association, or society to file an original or ancillary bill of interpleader or bill in the nature of interpleader in the same court or in any other United States District Court against the plaintiff in such action at law and one or more other adverse claimants, under the provisions of paragraph (a) of this subsection or any other provision of Part I of this title and the rules of court made pursuant thereto. The defendant may join as parties to such equitable defense any claimant or claimants who are not already parties to such action at law. The district court in which such equitable defense is interposed shall thereby possess the powers conferred upon district courts by paragraphs (c) and (d) of this subsection and by section 398 of this title. (May 8, 1926, ch. 273, §§ 1-3, 44 Stat. 416; Jan. 20, 1936, ch. 13, § 1, 49 Stat. 1096.)

**(27) Enforcement of orders of Interstate Commerce Commission.**

Twenty-seventh. Of all cases for the enforcement of any order of the Interstate Commerce Commission. (Mar. 3, 1911, ch. 231, § 207, 36 Stat. 1148; Oct. 22, 1913, ch. 32, 38 Stat. 219.)

**(28) Setting aside order of Interstate Commerce Commission.**

Twenty-eighth. Of cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission. (Mar. 3, 1911, ch. 231, § 24, pars. 1–25, 36 Stat. 1091–1094; Mar. 3, 1911, ch. 231, § 207, 36 Stat. 1148; Dec. 21, 1911, ch. 5, 37 Stat. 46; Oct. 22, 1913, ch. 32, 38 Stat. 219; Oct. 6, 1917, ch. 97, § 1, 40 Stat. 395; Nov. 23, 1921, ch. 136, § 1310 (c), 42 Stat. 311; June 10, 1922, ch. 216, § 1, 42 Stat. 634; June 2, 1924, 4:01 p. m., ch. 234, § 1025 (c), 43 Stat. 348; Feb. 24, 1925, ch. 309, 43 Stat. 972; Feb. 26, 1926, ch. 27, §§ 1122 (c), 1200, 44 Stat. 121, 125; May 8, 1926, ch. 273, §§ 1–3, 44 Stat. 416; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475; May 14, 1934, ch. 283, § 1, 48 Stat. 775; Jan. 20, 1936, ch. 113, § 1, 49 Stat. 1096; Aug. 21, 1937, ch. 726, § 1, 50 Stat. 738; Apr. 20, 1940, ch. 117, 54 Stat. 143.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was covered by R. S. §§ 563, 629, 1069, and acts Mar. 3, 1875, ch. 137, § 1, 18 Stat. 470; July 12, 1882, ch. 290, § 4, 22 Stat. 163; Feb. 25, 1885, ch. 149, § 2, 23 Stat. 321; Mar. 3, 1887, ch. 373, § 1, 24 Stat. 552; Mar. 3, 1887, ch. 359, §§ 1, 2, 24 Stat. 505; Aug. 13, 1888, ch. 866, §§ 1, 4, 25 Stat. 433, 436; May 17, 1898, ch. 339, § 1, 30 Stat. 416; June 27, 1898, ch. 503, § 1, 30 Stat. 494; July 1, 1898, ch. 541, §§ 2, 23, 30 Stat. 545, 552; July 1, 1898, ch. 546, § 3, 30 Stat. 649; Feb. 26, 1900, ch. 25, 31 Stat. 33; June 18, 1910, ch. 309, § 1, 36 Stat. 539.

The following of the similar provisions set out in the preceding paragraph were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168; R. S. §§ 563, 629, 1069 Acts Mar. 3, 1875, ch. 137, § 1, 18 Stat. 470; Mar. 3, 1887, ch. 373, § 1, 24 Stat. 552; Mar. 3, 1887, ch. 359, §§ 1, 2, 24 Stat. 505; Aug. 13, 1888, ch. 866, §§ 1, 4, 25 Stat. 433, 436; June 27, 1898, ch. 503, § 1, 30 Stat. 494; July 1, 1898, ch. 546, § 3, 30 Stat. 649; June 18, 1910, ch. 309, § 1, 36 Stat. 539.

R. S. § 563 was derived from acts Sept. 24, 1789, ch. 20, § 9, 1 Stat. 76; Mar. 3, 1815, ch. 101, § 4, 3 Stat. 245; Aug. 23, 1842, ch. 188, § 3, 5 Stat. 517; Feb. 28, 1871, ch. 100, § 57, 16 Stat. 456.

R. S. § 629 was derived from act Sept. 24, 1789, ch. 20, § 11, 1 Stat. 78.

R. S. § 1069 was derived from act Mar. 3, 1863, ch. 92, § 10, 12 Stat. 767.

**REPEAL; SAVING CLAUSES**

Act May 8, 1926, ch. 273, §§ 1–3, 44 Stat. 416, constituting a former par. (26) of this section, was repealed by act Jan. 20, 1936, ch. 13, § 2, 49 Stat. 1097, which further provided that such repeal "shall not affect any act done or any right, accruing or accrued in any suit or proceeding had or commenced under said act hereby repealed, prior to the passage of this act, but all such acts or rights, suits or proceedings shall continue and be valid and may be prosecuted and enforced in the same manner as if said act had not been repealed hereby."

Section 2 of act May 14, 1934, cited to text, provided as follows: "Sec. 2. The provisions of this act [the fourth sentence of paragraph (1) of this section] shall not affect suits commenced in the district courts, either originally or by removal, prior to its passage; and all such suits shall be continued, proceedings therein had, appeals therein taken, and judgments therein rendered, in the same manner and with the same effect as if this act had not been passed."

Section 2 of act Aug. 21, 1937, cited to text, provided as follows: "Sec. 2. The provisions of this act [the fifth sentence of paragraph (1) of this section] shall not affect suits commenced in the district courts, either originally or by removal, prior to its passage; and all such suits shall be continued, proceedings therein had, appeals therein taken, and judgments therein rendered, in the same manner and with the same effect as if it had not been passed."

**NATIONAL BANK ACT**

Paragraph (16) of this section which was derived, through R. S. § 563, from act June 3, 1864, ch. 106, 13 Stat. 99, is part of the National Bank Act. See section 38 of Title 12, Banks and Banking.

**CROSS REFERENCES**

Jurisdiction in suits to recover share of expenses assessed against handlers of agricultural commodities regardless of amount in controversy, see section 610 of Title 7, Agriculture.

Jurisdiction of actions by or against Federal reserve banks, see section 632 of Title 12, Banks and Banking.

Proceedings in suits against United States, see sections 761–765 of this title.

**FEDERAL RULES OF CIVIL PROCEDURE**

Counterclaim and cross-claim, see Rule 13, following section 723c of this title.

Effect of Rule 13 on this section, see note by Advisory Committee under said Rule 6.

Interpleader, injunctions, and deposit in court, see Rules 22, 65, 67, following section 723c of this title.

**§ 42. Original jurisdiction of action by or against corporation incorporated under Act of Congress.**

No district court shall have jurisdiction of any action or suit by or against any corporation upon the ground that it was incorporated by or under an Act of Congress. This section shall not apply to any suit, action, or proceeding brought by or against a corporation incorporated by or under an Act of Congress wherein the Government of the United States is the owner of more than one-half of its capital stock. (Feb. 13, 1925, ch. 229, § 12, 43 Stat. 941.)

**§ 43. Venue of suits relating to orders of Interstate Commerce Commission.**

The venue of any suit brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation or is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment the term "destination" shall be construed as meaning final destination of such shipment. (Oct. 22, 1913, ch. 32, 38 Stat. 219.)

**§ 44. Procedure in certain cases under interstate commerce laws; service of processes of court.**

The procedure in the district courts (a) in respect to cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty

**(21) Suits for unlawful inclosure of public lands.**

Twenty-first. Of proceedings in equity, by writ of injunction, to restrain violations of the provisions of laws of the United States to prevent the unlawful inclosure of public lands; and it shall be sufficient to give the court jurisdiction if service of original process be had in any civil proceeding on any agent or employee having charge or control of the inclosure. (Mar. 3, 1911, ch. 231, § 24, par. 21, 36 Stat. 1093.)

**(22) Suits under immigration and contract labor laws.**

Twenty-second. Of all suits and proceedings arising under any law regulating the immigration of aliens, or under the contract labor laws. (Mar. 3, 1911, ch. 231, § 24, par. 22, 36 Stat. 1093.)

**(23) Suits against trusts, monopolies, and unlawful combinations.**

Twenty-third. Of all suits and proceedings arising under any law to protect trade and commerce against restraints and monopolies. (Mar. 3, 1911, ch. 231, § 24, par. 23, 36 Stat. 1093.)

**(24) Suits concerning allotments of land to Indians; decrees; appeal.**

Twenty-fourth. Of all actions, suits, or proceedings involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty.

And the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him; but this provision shall not apply to any lands held on or before December 21, 1911, by either of the Five Civilized Tribes, the Osage Nation of Indians, nor to any of the lands within the Quapaw Indian Agency. The right of appeal shall be allowed to either party as in other cases. (Mar. 3, 1911, ch. 231, § 24, par. 24, 36 Stat. 1094; Dec. 21, 1911, ch. 5, 37 Stat. 46.)

**(25) Partition suits where United States is joint tenant.**

Twenty-fifth. Of suits in equity brought by any tenant in common or joint tenant for the partition of lands in cases where the United States is one of such tenants in common or joint tenants, such suits to be brought in the district in which such land is situate. (Mar. 3, 1911, ch. 231, § 24, par. 25, 36 Stat. 1094.)

**(26) Original jurisdiction of bills of interpleader, and of bills in the nature of interpleader.**

(a) Of suits in equity begun by bills of interpleader or bills in the nature of bills of interpleader duly verified, filed by any person, firm, corporation, association, or society having in his or its custody or possession money or property of the value of \$500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of the value or amount of \$500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of \$500 or more, if—

(1) Two or more adverse claimants, citizens of different States, are claiming to be entitled to such

money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy, or other instrument, or arising by virtue of any such obligation; and

(ii) The complainant (a) has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court; or (b) has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.

Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

(b) Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.

(c) Notwithstanding any provision of Part I of this title to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such money or property or on such instrument or obligation until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.

(d) Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be necessary or convenient to carry out and enforce the same.

(e) In any action at law in a United States District Court against any person, firm, corporation, association, or society, such defendant may set up by way of equitable defense, in accordance with section 398 of this title, any matter which would entitle such person, firm, corporation, association, or society to file an original or ancillary bill of interpleader or bill in the nature of interpleader in the same court or in any other United States District Court against the plaintiff in such action at law and one or more other adverse claimants, under the provisions of paragraph (a) of this subsection or any other provision of Part I of this title and the rules of court made pursuant thereto. The defendant may join as parties to such equitable defense any claimant or claimants who are not already parties to such action at law. The district court in which such equitable defense is interposed shall thereby possess the powers conferred upon district courts by paragraphs (c) and (d) of this subsection and by section 398 of this title. (May 8, 1926, ch. 273, §§ 1-3, 44 Stat. 416; Jan. 20, 1936, ch. 13, § 1, 49 Stat. 1096.)

**(27) Enforcement of orders of Interstate Commerce Commission.**

Twenty-seventh. Of all cases for the enforcement of any order of the Interstate Commerce Commission. (Mar. 3, 1911, ch. 231, § 207, 36 Stat. 1148; Oct. 22, 1913, ch. 32, 38 Stat. 219.)

**(28) Setting aside order of Interstate Commerce Commission.**

Twenty-eighth. Of cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission. (Mar. 3, 1911, ch. 231, § 24, pars. 1-25, 36 Stat. 1091-1094; Mar. 3, 1911, ch. 231, § 207, 36 Stat. 1148; Dec. 21, 1911, ch. 5, 37 Stat. 46; Oct. 22, 1913, ch. 32, 38 Stat. 219; Oct. 6, 1917, ch. 97, § 1, 40 Stat. 395; Nov. 23, 1921, ch. 136, § 1310 (c), 42 Stat. 311; June 10, 1922, ch. 216, § 1, 42 Stat. 634; June 2, 1924, 4:01 p. m., ch. 234, § 1025 (c), 43 Stat. 348; Feb. 24, 1925, ch. 309, 43 Stat. 972; Feb. 26, 1926, ch. 27, §§ 1122 (c), 1200, 44 Stat. 121, 125; May 8, 1926, ch. 273, §§ 1-3, 44 Stat. 416; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475; May 14, 1934, ch. 283, § 1, 48 Stat. 775; Jan. 20, 1936, ch. 113, § 1, 49 Stat. 1096; Aug. 21, 1937, ch. 726, § 1, 50 Stat. 738; Apr. 20, 1940, ch. 117, 54 Stat. 143.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was covered by R. S. §§ 563, 629, 1069, and acts Mar. 3, 1875, ch. 137, § 1, 18 Stat. 470; July 12, 1882, ch. 290, § 4, 22 Stat. 163; Feb. 25, 1885, ch. 149, § 2, 23 Stat. 321; Mar. 3, 1887, ch. 373, § 1, 24 Stat. 552; Mar. 3, 1887, ch. 359, §§ 1, 2, 24 Stat. 505; Aug. 13, 1888, ch. 866, §§ 1, 4, 25 Stat. 433, 436; May 17, 1898, ch. 339, § 1, 30 Stat. 416; June 27, 1898, ch. 503, § 1, 30 Stat. 494; July 1, 1898, ch. 541, §§ 2, 23, 30 Stat. 545, 552; July 1, 1898, ch. 546, § 3, 30 Stat. 649; Feb. 26, 1900, ch. 25, 31 Stat. 33; June 18, 1910, ch. 309, § 1, 36 Stat. 539.

The following of the similar provisions set out in the preceding paragraph were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168; R. S. §§ 563, 629, 1069. Acts Mar. 3, 1875, ch. 137, § 1, 18 Stat. 470; Mar. 3, 1887, ch. 373, § 1, 24 Stat. 552; Mar. 3, 1887, ch. 359, §§ 1, 2, 24 Stat. 505; Aug. 13, 1888, ch. 866, §§ 1, 4, 25 Stat. 433, 436; June 27, 1898, ch. 503, § 1, 30 Stat. 494; July 1, 1898, ch. 546, § 3, 30 Stat. 649; June 18, 1910, ch. 309, § 1, 36 Stat. 539.

R. S. § 563 was derived from acts Sept. 24, 1789, ch. 20, § 9, 1 Stat. 76; Mar. 3, 1815, ch. 101, § 4, 3 Stat. 245; Aug. 23, 1842, ch. 188, § 3, 5 Stat. 517; Feb. 28, 1871, ch. 100, § 57, 16 Stat. 456.

R. S. § 629 was derived from act Sept. 24, 1789, ch. 20, § 11, 1 Stat. 78.

R. S. § 1069 was derived from act Mar. 3, 1863, ch. 92, § 10, 12 Stat. 767.

**REPEAL; SAVING CLAUSES**

Act May 8, 1926, ch. 273, §§ 1-3, 44 Stat. 416, constituting a former par. (26) of this section, was repealed by act Jan. 20, 1936, ch. 13, § 2, 49 Stat. 1097, which further provided that such repeal "shall not affect any act done or any right, accruing or accrued in any suit or proceeding had or commenced under said act hereby repealed, prior to the passage of this act, but all such acts or rights, suits or proceedings shall continue and be valid and may be prosecuted and enforced in the same manner as if said act had not been repealed hereby."

Section 2 of act May 14, 1934, cited to text, provided as follows: "Sec. 2. The provisions of this act [the fourth sentence of paragraph (1) of this section] shall not affect suits commenced in the district courts, either originally or by removal, prior to its passage; and all such suits shall be continued, proceedings therein had, appeals therein taken, and judgments therein rendered, in the same manner and with the same effect as if this act had not been passed."

Section 2 of act Aug. 21, 1937, cited to text, provided as follows: "Sec. 2. The provisions of this act [the fifth sentence of paragraph (1) of this section] shall not affect suits commenced in the district courts, either originally or by removal, prior to its passage; and all such suits shall be continued, proceedings therein had, appeals therein taken, and judgments therein rendered, in the same manner and with the same effect as if it had not been passed."

**NATIONAL BANK ACT**

Paragraph (16) of this section which was derived, through R. S. § 563, from act June 3, 1864, ch. 106, 13 Stat. 99, is part of the National Bank Act. See section 38 of Title 12, Banks and Banking.

**CROSS REFERENCES**

Jurisdiction in suits to recover share of expenses assessed against handlers of agricultural commodities regardless of amount in controversy, see section 610 of Title 7, Agriculture.

Jurisdiction of actions by or against Federal reserve banks, see section 632 of Title 12, Banks and Banking.

Proceedings in suits against United States, see sections 761-765 of this title.

**FEDERAL RULES OF CIVIL PROCEDURE**

Counterclaim and cross-claim, see Rule 13, following section 723c of this title.

Effect of Rule 13 on this section, see note by Advisory Committee under said Rule 6.

Interpleader, injunctions, and deposit in court, see Rules 22, 65, 67, following section 723c of this title.

**§ 42. Original jurisdiction of action by or against corporation incorporated under Act of Congress.**

No district court shall have jurisdiction of any action or suit by or against any corporation upon the ground that it was incorporated by or under an Act of Congress. This section shall not apply to any suit, action, or proceeding brought by or against a corporation incorporated by or under an Act of Congress wherein the Government of the United States is the owner of more than one-half of its capital stock. (Feb. 13, 1925, ch. 229, § 12, 43 Stat. 941.)

**§ 43. Venue of suits relating to orders of Interstate Commerce Commission.**

The venue of any suit brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation or is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment the term "destination" shall be construed as meaning final destination of such shipment. (Oct. 22, 1913, ch. 32, 38 Stat. 219.)

**§ 44. Procedure in certain cases under interstate commerce laws; service of processes of court.**

The procedure in the district courts (a) in respect to cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty

or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money shall be as provided in sections 45, 45a, 47a, and 48 of this title and (b) in respect to cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission shall be as provided in sections 45, 45a, 47, 47a, and 48 of this title. The orders, writs, and processes of the district courts may in the cases specified in this section and in the cases and proceedings under sections 20, 43, and 49 of Title 49, run, be served, and be returnable anywhere in the United States. (Oct. 22, 1913, ch. 32, 38 Stat. 220.)

#### REFERENCES IN TEXT

In the original this section read: "The procedure in the district courts in respect to cases of which jurisdiction is conferred upon them by this act [act Oct. 22, 1913, cited to text] shall be the same as that heretofore prevailing in the Commerce Court. The orders, writs and processes of the district courts may in these cases run, be served, and be returnable anywhere in the United States."

As set out in text the section enumerates the cases of which jurisdiction is conferred by act Oct. 22, 1913, and defines such jurisdiction.

#### FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under Rule 4, see note by Advisory Committee under said Rule 4.

Process, see Rule 4, following section 723c of this title.

#### § 45. (Judicial Code, section 209.) District courts; practice and procedure in certain cases.

The jurisdiction of the district courts of the cases specified in section 44 of this title, and of the cases and proceedings under sections 20, 43, and 49 of Title 49, shall be invoked by filing in the office of the clerk of the court a written petition setting forth briefly and succinctly the facts constituting the petitioner's cause of action, and specifying the relief sought. A copy of such petition shall be forthwith served by the marshal or a deputy marshal of the district court or by the proper United States marshal or deputy marshal upon every defendant therein named, and when the United States is a party defendant, the service shall be made by filing a copy of said petition in the office of the Secretary of the Interstate Commerce Commission and in the Department of Justice. Within thirty days after the petition is served, unless that time is extended by order of the court or a judge thereof, an answer to the petition shall be filed in the clerk's office and a copy thereof mailed to the petitioner's attorney, which answer shall briefly and categorically respond to the allegations of the petition. No replication need be filed to the answer, and objections to the sufficiency of the petition or answer as not setting forth a cause of action or defense must be taken at the final hearing or by motion to dismiss the petition based on said grounds, which motion may be made at any time before answer is filed. In case no answer shall be filed as provided herein the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in the petition. The court may, by rule, prescribe the method of taking evidence in cases pending in said court. (Mar. 3, 1911, ch. 231, § 209, 36 Stat. 1149; Oct. 22, 1913, ch. 32, 38 Stat. 219.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act June 18, 1910, ch. 309, § 1, 36 Stat. 539, which was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### FEDERAL RULES OF CIVIL PROCEDURE

Practice and procedure, see Rules 3, 4, 7, 12, 55, following section 723c of this title.

#### § 45a. (Judicial Code, sections 212, 213.) Special attorneys; participation by Interstate Commerce Commission; intervention.

The Attorney General shall have charge and control of the interests of the Government in the cases specified in section 44 of this title and in the cases and proceedings under sections 20, 43, and 49 of Title 49, in the district courts, and in the Supreme Court of the United States upon appeal from the district courts. If in his opinion the public interest requires it, he may retain and employ in the name of the United States, within the appropriations from time to time made by the Congress for such purposes, such special attorneys and counselors at law as he may think necessary to assist in the discharge of any of the duties incumbent upon him and his subordinate attorneys; and the Attorney General shall stipulate with such special attorneys and counsel the amount of their compensation, which shall not be in excess of the sums appropriated therefor by Congress for such purposes, and shall have supervision of their action: *Provided*, That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement or any part thereof, and the interest of such party; and the court wherein is pending such suit may make all such rules and orders as to such appearances and representations, the number of counsel, and all matters of procedure, and otherwise, as to subserve the ends of justice, and speed the determination of such suits: *Provided further*, That communities, associations, corporations, firms, and individuals who are interested in the controversy or question before the Interstate Commerce Commission, or in any suit which may be brought by anyone under the provisions of the aforesaid sections relating to action of the Interstate Commerce Commission, may intervene in said suit or proceedings at any time after the institution thereof; and the Attorney General shall not dispose of or discontinue said suit or proceeding over the objection of such party or intervenor aforesaid, but said intervenor or intervenors may prosecute, defend, or continue said suit or proceeding unaffected by the action or nonaction of the Attorney General therein.

Complainants before the Interstate Commerce Commission interested in a case shall have the right to appear and be made parties to the case and be represented before the courts by counsel, under such regulations as are now permitted in similar circumstances under the rules and practice of equity courts of the United States. (Mar. 3, 1911,

ch. 231, §§ 212, 213, 36 Stat. 1150, 1151; Oct. 22, 1913, ch. 32, 38 Stat. 220.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was covered by act June 18, 1910, ch. 309, § 5, 36 Stat. 543, which was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### FEDERAL RULES OF CIVIL PROCEDURE

Intervention, see Rule 24, following section 723c of this title.

### § 46. (Judicial Code, section 208.) Suits to enjoin orders of Interstate Commerce Commission to be against United States.

Suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the district court against the United States. The pendency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Commerce Commission; but the court, in its discretion, may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of the suit. (Mar. 3, 1911, ch. 231, § 208, 36 Stat. 1149; Oct. 22, 1913, ch. 32, 38 Stat. 219.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was covered by act June 18, 1910, ch. 309, § 3, 36 Stat. 542, which was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under Rule 65, see note by Advisory Committee under said Rule 65.

Injunctions, see Rule 65, following section 723c of this title.

### § 47. Injunctions as to orders of Interstate Commerce Commission; appeal to Supreme Court; time for taking.

No interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless a majority of said three judges shall concur in granting such application. When such application as aforesaid is presented to a judge, he shall immediately call to his assistance to hear and determine the application two other judges. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the Interstate Commerce Commission, to the Attorney General of the United States, and to such other persons as may be defendants in the suit: *Provided*, That in cases where irreparable damage would otherwise ensue to the petitioner, a majority of said three judges concurring, may, on hearing, after not less than three days' notice to the Interstate Commerce Commission and the Attorney General, allow a temporary stay or suspension, in whole or in part, of the operation of the order of the Interstate Commerce

Commission for not more than sixty days from the date of the order of said judges pending the application for the order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judges making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The said judges may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until decision upon the application. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply. (Oct. 22, 1913, ch. 32, 38 Stat. 220.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Assignment of cases for trial, stay of proceedings to enforce judgment and injunctions, see Rules 40, 62, 65, following section 723c of this title.

### § 47a. (Judicial Code, section 210.) Appeal to Supreme Court from final decree; time for taking; priority.

A final judgment or decree of the district court in the cases specified in section 44 of this title may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. And in such cases the notice required shall be served upon the defendants in the case and upon the attorney general of the State. The district court may direct the original record instead of a transcript thereof to be transmitted on appeal. The Supreme Court may affirm, reverse, or modify as the case may require the final judgment or decree of the district court in the cases specified in section 44 of this title. Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the district court appealed from, unless the Supreme Court or a justice thereof shall so direct, and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of that court allowing the stay, may require. Appeals to the Supreme Court under this section and section 47 of this title shall have priority in hearing and determination over all other causes except criminal causes in that court. (Mar. 3, 1911, ch. 231, § 210, 36 Stat. 1150; Oct. 22, 1913, ch. 32, 38 Stat. 220.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Stay of proceedings to enforce judgment, see Rule 62, following section 723c of this title.



§ 48. (Judicial Code, section 211.) Suits to be against United States; intervention by United States.

All cases and proceedings specified in section 44 of this title shall be brought by or against the United States, and the United States may intervene in any case or proceeding whenever, though it has not been made a party, public interests are involved. (Mar. 3, 1911, ch. 231, § 211, 36 Stat. 1150; Oct. 22, 1913, ch. 32, 38 Stat. 219.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was covered by act June 18, 1910, ch. 309, § 4, 36 Stat. 542, which was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### CROSS REFERENCE

Suits to enjoin orders of Interstate Commerce Commission to be against United States, see also section 46 of this title.

#### FEDERAL RULES OF CIVIL PROCEDURE

Intervention, see Rule 24, following section 723c of this title.

§ 49. (Judicial Code, section 25.) Appellate jurisdiction; Chinese exclusion laws.

The district courts shall have appellate jurisdiction of the judgments and orders of United States commissioners in cases arising under the Chinese exclusion laws. (Mar. 3, 1911, ch. 231, § 25, 36 Stat. 1094.)

#### REFERENCES IN TEXT

The Chinese exclusion laws, to which reference is made in this section, are set out as sections 261-299, and 363 of Title 8, Aliens and Nationality.

§ 50. (Judicial Code, section 26.) Same; felonies within Yellowstone National Park.

The district court for the district of Wyoming shall have jurisdiction of all felonies committed within the Yellowstone National Park and appellate jurisdiction of judgments in cases of conviction before the commissioner authorized to be appointed under section 27 of Title 16. (Mar. 3, 1911, ch. 231, § 26, 36 Stat. 1094.)

§ 51. (Judicial Code, section 27.) Jurisdiction of crimes on Indian reservations in South Dakota.

The District Court of the United States for the District of South Dakota shall have jurisdiction to hear, try, and determine all actions and proceedings in which any person shall be charged with the crime of murder, manslaughter, rape, assault with intent to kill, arson, burglary, larceny, or assault with a dangerous weapon, committed within the limits of any Indian reservation in the State of South Dakota. (Mar. 3, 1911, ch. 231, § 27, 36 Stat. 1094.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was covered by acts Feb. 2, 1903, ch. 351, 32 Stat. 793; Mar. 4, 1909, ch. 321, § 329, 35 Stat. 1151.

#### CROSS REFERENCES

Crimes committed on Indian Reservations in South Dakota, see also section 549 of Title 18, Criminal Code and Criminal Procedure.

Jurisdiction of offenses committed by or against Indians on Indian reservations within State of Kansas conferred on State of Kansas as affecting jurisdiction of courts of the United States, see section 217a of Title 25, Indians

§ 52. Claims resulting from seizure of vessels for unlawful sealing in Bering Sea; claims which may be submitted; limitations.

Section, act June 7, 1924, ch. 308, §§ 1, 2, 3, 43 Stat. 595, conferred jurisdiction on the United States District Court for the Northern District of California to hear claims resulting from seizure of vessels for unlawful sealing in certain waters during the years 1886-1896.

§ 53. Jurisdiction of suits by or against China Trade Act corporation.

The Federal district courts shall have exclusive original jurisdiction of all suits (except as provided by sections 191-197, 199, 200, and 202 of Title 22, as amended) to which a China Trade Act corporation, or a stockholder, director, or officer thereof in his capacity as such, is a party. Suit against the corporation may be brought in the United States Court for China, or in the district court of the United States for the District of Columbia or in the Federal district court for any district in which the corporation has an agent and is engaged in doing business. (Sept. 19, 1922, ch. 346, § 20, 42 Stat. 855; Feb. 26, 1925, ch. 345, § 10, 43 Stat. 996; June 25, 1936, ch. 804, 49 Stat. 1921.)

#### REFERENCES IN TEXT

Provisions relating to China Trade Act corporation, to which reference is made in this section, are set out in sections 141 et seq. of Title 15, Commerce and Trade.

### Chapter 3.—DISTRICT COURTS; REMOVAL OF CAUSES

#### Sec

71. Removal of suits from State courts.
72. Same; procedure.
73. Same; suits under grants of land from different States.
74. Same; causes against persons denied civil rights.
75. Same; petitioner in actual custody of State court.
76. Same; suits and prosecutions against revenue officers.
77. Same; suits by aliens
78. Same; copies of records refused by clerk of State court.
79. Same; previous attachment bonds or orders.
80. Same; dismissal or remand.
81. Same; proceedings in suits removed.
82. Same; record; filing and return.
83. Service of process after removal.

§ 71. (Judicial Code, section 28.) Removal of suits from State courts.

Any suit of a civil nature, at law or in equity, arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, of which the district courts of the United States are given original jurisdiction by Part I of this title, in any State court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district. Any other suit of a civil nature, at law or in equity, of which the district courts of the United States are given jurisdiction, by Part I of this title, in any State court, may be removed into the district court of the United States for the proper district by the defendant or defendants therein, being nonresidents of that State. And when in any suit mentioned in this section there shall be a controversy which is wholly between citizens of different States, and which can be fully determined as between them, then either one or more of the de-

defendants actually interested in such controversy may remove said suit into the district court of the United States for the proper district. And where a suit is brought in any State court, in which there is a controversy between a citizen of the State in which the suit is brought and a citizen of another State, any defendant, being such citizen of another State, may remove such suit into the district court of the United States for the proper district, at any time before the trial thereof, when it shall be made to appear to said district court that from prejudice or local influence he will not be able to obtain justice in such State court, or in any other State court to which the said defendant may, under the laws of the State, have the right, on account of such prejudice or local influence, to remove said cause. If it further appear that said suit can be fully and justly determined as to the other defendants in the State court, without being affected by such prejudice or local influence, and that no party to the suit will be prejudiced by a separation of the parties, said district court may direct the suit to be remanded, so far as relates to such other defendants, to the State court, to be proceeded with therein. At any time before the trial of any suit in any district court, which has been removed to said court from a State court on the affidavit of any party plaintiff that he had reason to believe and did believe that, from prejudice or local influence, he was unable to obtain justice in said State court, the district court shall, on application of the other party, examine into the truth of said affidavit and the grounds thereof, and, unless it shall appear to the satisfaction of said court that said party will not be able to obtain justice in said State court, it shall cause the same to be remanded thereto. Whenever any cause shall be removed from any State court into any district court of the United States, and the district court shall decide that the cause was improperly removed, and order the same to be remanded to the State court from whence it came, such remand shall be immediately carried into execution, and no appeal from the decision of the district court so remanding such cause shall be allowed. No case arising under sections 51-59 of Title 45, and brought in any State court of competent jurisdiction shall be removed to any court of the United States. No suit brought in any State court of competent jurisdiction against a railroad company, or other corporation, or person, engaged in and carrying on the business of a common carrier, to recover damages for delay, loss of, or injury to property received for transportation by such common carrier under section 20 of Title 49, shall be removed to any court of the United States where the matter in controversy does not exceed, exclusive of interest and costs, the sum or value of \$3,000. (Mar. 3, 1911, ch. 231, § 28, 36 Stat. 1094; Jan. 20, 1914, ch. 11, 38 Stat. 278; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts Sept. 24, 1789, ch. 20, § 12, 1 Stat. 73; July 27, 1866, ch. 288, 14 Stat. 306; Mar. 2, 1867, ch. 196, 14 Stat. 558; R. S. § 639

and Mar. 3, 1875, ch. 137, §§ 2, 3, 7, 18 Stat. 470; Mar. 3, 1887, ch. 373, § 1, 24 Stat. 552; Aug. 13, 1888, ch. 866, § 1, 25 Stat. 433; Apr. 22, 1908, ch. 149, § 6, 35 Stat. 66; Apr. 5, 1910, ch. 143, § 1, 36 Stat. 291. R. S. § 639 and acts of Mar. 3, 1875, Mar. 3, 1887, and Aug. 13, 1888, were repealed by act Mar. 3, 1911, ch. 231 § 297, 36 Stat. 1168. For repeal of acts enacted prior to the Revised Statutes and incorporated therein, see R. S. § 5596.

#### FEDERAL RULES OF CIVIL PROCEDURE

Application of, see Rule 81, following section 723c of this title.

Continuation of section under Rule 81, see note by Advisory Committee under said Rule 81.

#### § 72. (Judicial Code, section 29.) Same; procedure.

Whenever any party entitled to remove any suit mentioned in section 71 of this title, except suits removable on the ground of prejudice or local influence, may desire to remove such suit from a State court to the district court of the United States, he may make and file a petition, duly verified, in such suit in such State court at the time, or any time before the defendant is required by the laws of the State or the rule of the State court in which such suit is brought to answer or plead to the declaration or complaint of the plaintiff, for the removal of such suit into the district court to be held in the district where such suit is pending, and shall make and file therewith a bond, with good and sufficient surety, for his or their entering in such district court, within thirty days from the date of filing said petition, a certified copy of the record in such suit, and for paying all costs that may be awarded by the said district court if said district court shall hold that such suit was wrongfully or improperly removed thereto, and also for their appearing and entering special bail in such suit if special bail was originally requisite therein. It shall then be the duty of the State court to accept said petition and bond and proceed no further in such suit. Written notice of said petition and bond for removal shall be given the adverse party or parties prior to filing the same. The said copy being entered within said thirty days as aforesaid in said district court of the United States, the parties so removing the said cause shall, within thirty days thereafter, plead, answer, or demur to the declaration or complaint in said cause, and the cause shall then proceed in the same manner as if it had been originally commenced in the said district court. (Mar. 3, 1911, ch. 231, § 29, 36 Stat. 1095.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts Mar. 3, 1875, ch. 137, § 3, 18 Stat. 470; Mar. 3, 1887, ch. 373, § 1, 24 Stat. 552; Aug. 13, 1888, ch. 866, § 1, 25 Stat. 434, which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### FEDERAL RULES OF CIVIL PROCEDURE

Application of, see Rule 81, following section 723c of this title.

Continuation of section under Rule 81, see note by Advisory Committee under said Rule 81.

#### § 73. (Judicial Code, section 30.) Same; suits under grants of land from different States.

If in any action commenced in a State court the title of land be concerned, and the parties are citizens of the same State and the matter in dispute

exceeds the sum or value of \$3,000, exclusive of interest and costs, the sum or value being made to appear, one or more of the plaintiffs or defendants, before the trial, may state to the court, and make affidavit if the court require it, that he or they claim, and shall rely upon, a right or title to the land under a grant from a State, and produce the original grant, or an exemplification of it, except where the loss of public records shall put it out of his or their power, and shall move that any one or more of the adverse party inform the court whether he or they claim a right or title to the land under a grant from some other State, the party or parties so required shall give such information, or otherwise not be allowed to plead such grant or give it in evidence upon the trial. If he or they inform the court that he or they do claim under such grant, any one or more of the party moving for such information may then, on petition and bond, as hereinbefore mentioned in this chapter, remove the cause for trial to the district court of the United States next to be holden in such district; and any one of either party removing the cause shall not be allowed to plead or give evidence of any other title than that by him or them stated as aforesaid as the ground of his or their claim. (Mar. 3, 1911, ch. 231, § 30, 36 Stat. 1096.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 647 and acts Mar. 3, 1875, ch. 137, § 3, 18 Stat. 471; Mar. 3, 1887, ch. 373, § 1, 24 Stat. 552, and Aug. 13, 1888, ch. 866, § 1, 25 Stat. 435, which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. R. S. § 647 was derived from act Sept. 24, 1789, ch. 20, § 12, 1 Stat. 79.

#### FEDERAL RULES OF CIVIL PROCEDURE

Application of, see Rule 81, following section 723c of this title.

Continuation of section under Rule 81, see note by Advisory Committee under said Rule 81.

§ 74. (Judicial Code, section 31.) Same; causes against persons denied civil rights.

When any civil suit or criminal prosecution is commenced in any State court, for any cause whatsoever, against any person who is denied or cannot enforce in the judicial tribunals of the State, or in the part of the State where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction of the United States, or against any officer, civil or military, or other person, for any arrest or imprisonment or other trespasses or wrongs made or committed by virtue of or under color of authority derived from any law providing for equal rights as aforesaid, or for refusing to do any act on the ground that it would be inconsistent with such law, such suit or prosecution may, upon the petition of such defendant, filed in said State court at any time before the trial or final hearing of the cause, stating the facts and verified by oath, be removed for trial into the next district court to be held in the district where it is pending. Upon the filing of such petition all further proceedings in the State courts shall cease, and shall not be resumed except as herein-after provided. But all bail and other security given in such suit or prosecution shall continue in like

force and effect as if the same had proceeded to final judgment and execution in the State court. It shall be the duty of the clerk of the State court to furnish such defendant, petitioning for a removal, copies of said process against him, and of all pleadings, depositions, testimony, and other proceedings in the case. If such copies are filed by said petitioner in the district court on the first day of its session, the cause shall proceed therein in the same manner as if it had been brought there by original process; and if the said clerk refuses or neglects to furnish such copies, the petitioner may thereupon docket the case in the district court, and the said court shall then have jurisdiction therein, and may, upon proof of such refusal or neglect of said clerk, and upon reasonable notice to the plaintiff, require the plaintiff to file a declaration, petition, or complaint in the cause; and, in case of his default, may order a nonsuit, and dismiss the case at the costs of the plaintiff, and such dismissal shall be a bar to any further suit touching the matter in controversy. But if, without such refusal or neglect of said clerk to furnish such copies and proof thereof, the petitioner for removal fails to file copies in the district court, as herein provided, a certificate, under the seal of the district court, stating such failure, shall be given, and upon the production thereof in said State court the cause shall proceed therein as if no petition for removal had been filed. (Mar. 3, 1911, ch. 231, § 31, 36 Stat. 1096.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 641 which was derived from act Mar. 3, 1863, ch. 81, § 5, 12 Stat. 756; act Apr. 9, 1866, ch. 31, § 3, 14 Stat. 27; act May 11, 1866, ch. 80, §§ 3, 5, 14 Stat. 46; and act May 31, 1870, ch. 114, §§ 16, 18, 16 Stat. 144, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### FEDERAL RULES OF CIVIL PROCEDURE

Application of, see Rule 81, following section 723c of this title.

Continuation of section under Rule 81, see note by Advisory Committee under said Rule 81.

§ 75. (Judicial Code, section 32.) Same; petitioner in actual custody of State court.

When all the acts necessary for the removal of any suit or prosecution, as provided in section 74 of this title, have been performed and the defendant petitioning for such removal is in actual custody on process issued by said State court, it shall be the duty of the clerk of said district court to issue a writ of habeas corpus cum causa, and of the marshal, by virtue of said writ, to take the body of the defendant into his custody, to be dealt with in said district court according to law and the orders of said court, or, in vacation, of any judge thereof; and the marshal shall file with or deliver to the clerk of said State court a duplicate copy of said writ. (Mar. 3, 1911, ch. 231, § 32, 36 Stat. 1097.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 642 which was derived from act Mar. 3, 1863, ch. 81, § 5, 12 Stat. 756; act Apr. 9, 1866, ch. 31, § 3, 14 Stat. 27; act May 11, 1866, ch. 80, §§ 3, 5, 14 Stat. 46; and act Feb. 5, 1867, ch. 27, 14 Stat. 385, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

## FEDERAL RULES OF CIVIL PROCEDURE

Application of, see Rule 81, following section 723c of this title.

Continuation of section under Rule 81, see note by Advisory Committee under said Rule 81.

**§ 76. (Judicial Code, section 33.) Same; suits and prosecutions against revenue officers.**

When any civil suit or criminal prosecution is commenced in any court of a State against any officer appointed under or acting by authority of any revenue law of the United States, or against any person acting under or by authority of any such officer, on account of any act done under color of his office or of any such law, or on account of any right, title, or authority claimed by such officer or other person under any such law, or is commenced against any person holding property or estate by title derived from any such officer and affects the validity of any such revenue law, or against any officer of the courts of the United States for or on account of any act done under color of his office or in the performance of his duties as such officer, or when any civil suit or criminal prosecution is commenced against any person for or on account of anything done by him while an officer of either House of Congress in the discharge of his official duty in executing any order of such House, the said suit or prosecution may at any time before the trial or final hearing thereof be removed for trial into the district court next to be holden in the district where the same is pending upon the petition of such defendant to said district court and in the following manner: Said petition shall set forth the nature of the suit or prosecution and be verified by affidavit and, together with a certificate signed by an attorney or counselor at law of some court of record of the State where such suit or prosecution is commenced or of the United States stating that, as counsel for the petitioner, he has examined the proceedings against him and carefully inquired into all the matters set forth in the petition, and that he believes them to be true, shall be presented to the said district court, if in session, or if it be not, to the clerk thereof at his office, and shall be filed in said office. The cause shall thereupon be entered on the docket of the district court and shall proceed as a cause originally commenced in that court; but all bail and other security given upon such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the State court. When the suit is commenced in the State court by summons, subpoena, petition, or any other process except *capias*, the clerk of the district court shall issue a writ of *certiorari* to the State court requiring it to send to the district court the record and the proceedings in the cause. When it is commenced by *capias* or by any other similar form of proceeding by which a personal arrest is ordered, he shall issue a writ of *habeas corpus cum causa*, a duplicate of which shall be delivered to the clerk of the State court or left at his office by the marshal of the district or his deputy or by some other person duly authorized thereto; and thereupon it shall be the duty of the State court to stay all further proceedings in the cause, and the suit or prosecution,

upon delivery of such process, or leaving the same as aforesaid, shall be held to be removed to the district court, and any further proceedings, trial, or judgment therein in the State court shall be void. If the defendant in the suit or prosecution be in actual custody on mesne process therein, it shall be the duty of the marshal, by virtue of the writ of *habeas corpus cum causa*, to take the body of the defendant into his custody, to be dealt with in the cause according to law and the order of the district court, or, in vacation, of any judge thereof; and if, upon the removal of such suit or prosecution, it is made to appear to the district court that no copy of the record and proceedings therein in the State court can be obtained, the district court may allow and require the plaintiff to proceed *de novo* and to file a declaration of his cause of action, and the parties may thereupon proceed as in actions originally brought in said district court. On failure of the plaintiff so to proceed, judgment of non *prosequitur* may be rendered against him, with costs for the defendant. (Mar. 3, 1911, ch. 231, § 33, 36 Stat. 1097; Aug. 23, 1916, ch. 399, 39 Stat. 532.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 643; acts Mar. 3, 1875, ch. 130, § 8, 18 Stat. 401, and Feb. 8, 1894, ch. 25, § 1, 28 Stat. 36.

R. S. § 643, which was derived from acts Mar. 2, 1833, ch. 57, § 3, 4 Stat. 633; July 13, 1866, ch. 184, § 67, 14 Stat. 171; Feb. 28, 1871, ch. 99, § 16, 16 Stat. 438, was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168

## FEDERAL RULES OF CIVIL PROCEDURE

Application of, see Rule 81, following section 723c of this title.

Continuation of section under Rule 81, see note by Advisory Committee under said Rule 81.

**§ 77. (Judicial Code, section 34.) Same; suits by aliens.**

Whenever a personal action has been or shall be brought in any State court by an alien against any citizen of a State who is, or at the time the alleged action accrued was, a civil officer of the United States, being a nonresident of that State wherein jurisdiction is obtained by the State court, by personal service of process, such action may be removed into the district court of the United States in and for the district in which the defendant shall have been served with the process, in the same manner as provided for the removal of an action brought in a State court by the provisions of section 76 of this title. (Mar. 3, 1911, ch. 231, § 34, 36 Stat. 1098.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code, the subject matter of this section was contained in R. S. § 644, which was derived from act Mar. 30, 1872, ch. 72, 17 Stat. 44, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168

## FEDERAL RULES OF CIVIL PROCEDURE

Application of, see Rule 81, following section 723c of this title.

Continuation of section under Rule 81, see note by Advisory Committee under said Rule 81.

**§ 78. (Judicial Code, section 35.) Same; copies of records refused by clerk of State court.**

In any case where a party is entitled to copies of the records and proceedings in any suit or prosecu-

tion in a State court, to be used in any court of the United States, if the clerk of said State court, upon demand, and the payment or tender of the legal fees, refuses or neglects to deliver to him certified copies of such records and proceedings, the court of the United States in which such records and proceedings are needed may, on proof by affidavit that the clerk of said State court has refused or neglected to deliver copies thereof, on demand as aforesaid, direct such record to be supplied by affidavit or otherwise, as the circumstances of the case may require and allow, and thereupon such proceeding, trial, and judgment may be had in the said court of the United States, and all such processes awarded, as if certified copies of such records and proceedings had been regularly before the said court. (Mar. 3, 1911, ch. 231, § 35, 36 Stat. 1098.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 645, which was derived from acts Mar. 2, 1833, ch. 57, § 4, 4 Stat. 634; Feb. 28, 1871, ch. 99, § 17, 16 Stat. 439, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### FEDERAL RULES OF CIVIL PROCEDURE

Application of, see Rule 81, following section 723c of this title.

Continuation of section under Rule 81, see note by Advisory Committee under said Rule 81.

§ 79. (Judicial Code, section 36.) Same; previous attachment bonds or orders.

When any suit shall be removed from a State court to a district court of the United States, any attachment or sequestration of the goods or estate of the defendant had in such suit in the State court shall hold the goods or estate so attached or sequestered to answer the final judgment or decree in the same manner as by law they would have been held to answer final judgment or decree had it been rendered by the court in which said suit was commenced. All bonds, undertakings, or security given by either party in such suit prior to its removal shall remain valid and effectual notwithstanding said removal; and all injunctions, orders, and other proceedings had in such suit prior to its removal shall remain in full force and effect until dissolved or modified by the court to which such suit shall be removed. (Mar. 3, 1911, ch. 231, § 36, 36 Stat. 1098.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 646 and act Mar. 3, 1875, ch. 137, § 4, 18 Stat. 471, which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. R. S. § 646 was derived from acts Sept. 24, 1789, ch. 20, 1 Stat. 79; Mar. 2, 1833, ch. 57, § 4 Stat. 633; Mar. 3, 1863, ch. 81, 12 Stat. 756; Apr. 9, 1866, ch. 31, 14 Stat. 27; May 11, 1866, ch. 80, 14 Stat. 46; July 13, 1866, ch. 184, 14 Stat. 171; July 27, 1866, ch. 288, 14 Stat. 306; Feb. 5, 1867, ch. 27, 14 Stat. 385; Mar. 2, 1867, ch. 196, 14 Stat. 558; July 27, 1868, ch. 255, 15 Stat. 227; and Feb. 28, 1871, ch. 99, 16 Stat. 438, 439.

#### FEDERAL RULES OF CIVIL PROCEDURE

Application of, see Rules 12, 81, following section 723c of this title.

Continuation of section under Rule 81, see note by Advisory Committee under said Rule 81.

§ 80. (Judicial Code, section 37.) Same; dismissal or remand.

If in any suit commenced in a district court, or removed from a State court to a district court of the United States, it shall appear to the satisfaction of the said district court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said district court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this chapter, the said district court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed, as justice may require, and shall make such order as to costs as shall be just. (Mar. 3, 1911, ch. 231, § 37, 36 Stat. 1098.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts Mar. 3, 1875, ch. 137, § 5, 18 Stat. 472; Mar. 3, 1887, ch. 373, § 6, 24 Stat. 555; and Aug. 13, 1888, ch. 866, § 6, 25 Stat. 436, which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### FEDERAL RULES OF CIVIL PROCEDURE

Application of, see Rule 81, following section 723c of this title.

Continuation of section under Rule 81, see note by Advisory Committee under said Rule 81.

§ 81. (Judicial Code, section 38.) Same; proceedings in suits removed.

The district court of the United States shall, in all suits removed under the provisions of this chapter, proceed therein as if the suit had been originally commenced in said district court, and the same proceedings had been taken in such suit in said district court as shall have been had therein in said State court prior to its removal. (Mar. 3, 1911, ch. 231, § 38, 36 Stat. 1098.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Mar. 3, 1875, ch. 137, § 6, 18 Stat. 472 which was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### FEDERAL RULES OF CIVIL PROCEDURE

Application of, see Rule 81, following section 723c of this title.

Continuation of section under Rule 81, see note by Advisory Committee under said Rule 81.

§ 82. (Judicial Code, section 39.) Same; record; filing and return.

In all causes removable under this chapter, if the clerk of the State court in which any such cause shall be pending shall refuse to any one or more of the parties or persons applying to remove the same, a copy of the record therein, after tender of legal fees for such copy, said clerk so offending shall, on conviction thereof in the district court of the United States to which said action or proceeding was removed, be fined not more than \$1,000, or imprisoned not more than one year, or both. The district court to which any cause shall be removable under this chapter shall have power to issue a writ of certiorari to said State court commanding said State court to

make return of the record in any such cause removed as aforesaid, or in which any one or more of the plaintiffs or defendants have complied with the provisions of this chapter for the removal of the same, and enforce said writ according to law. If it shall be impossible for the parties or persons removing any cause under this chapter, or complying with the provisions for the removal thereof, to obtain such copy, for the reason that the clerk of said State court refuses to furnish a copy, on payment of legal fees, or for any other reason, the district court shall make an order requiring the prosecutor in any such action or proceeding to enforce forfeiture or recover penalty, as aforesaid, to file a copy of the paper or proceeding by which the same was commenced, within such time as the court may determine; and in default thereof the court shall dismiss the said action or proceeding; but if said order shall be complied with, then said district court shall require the other party to plead, and said action or proceeding shall proceed to final judgment. The said district court may make an order requiring the parties thereto to plead de novo; and the bond given, conditioned as aforesaid, shall be discharged so far as it requires copy of the record to be filed as aforesaid. (Mar. 3, 1911 ch 231, § 39, 36 Stat. 1099.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Mar. 3, 1875, ch. 137, § 7, 18 Stat. 472, which was repealed by act Mar. 3, 1911, ch. 231, § 297, 28 Stat. 1168.

#### FEDERAL RULES OF CIVIL PROCEDURE

Application of, see Rule 81, following section 723c of this title.

Continuation of section under Rule 81, see note by Advisory Committee under said Rule 81.

#### § 83. Service of process after removal.

In all cases removed from any State court to any United States court for trial in which any one or more of the defendants has not been served with process or in which the same has not been perfected prior to such removal, or in which the process served upon the defendant or defendants, or any of them, proves to be defective, such process may be completed by the United States court through its officers, or new process as to defendants upon whom process has not been completed may be issued out of such United States court, or service may be perfected in such court in the same manner as in cases which are originally filed in such United States court. Nothing in this section shall be construed to deprive any defendant upon whom process is so served after removal, of his right to move to remand the cause to the State court, the same as if process had been served upon him prior to such removal. (Apr. 16, 1920, ch. 146, 41 Stat. 554.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Application of, see Rule 81, following section 723c of this title.

Continuation of section under Rule 81, see note by Advisory Committee under said Rule 81.

### Chapter 4.—DISTRICT COURTS; MISCELLANEOUS PROVISIONS

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#### § 101. (Judicial Code, section 40.) Capital cases.

The trial of offenses punishable with death shall be had in the county where the offense was committed, where that can be done without great inconvenience. (Mar. 3, 1911, ch. 231, § 40, 36 Stat. 1100.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 729, which was derived from acts Sept. 24, 1789, ch. 20, § 29, 1 Stat. 88; July 16, 1862, ch. 189, § 2, 12 Stat. 589, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 102. (Judicial Code, section 41.) Offenses on the high seas.

The trial of all offenses committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district where the offender is found, or into which he is first brought. (Mar. 3, 1911, ch. 231, § 41, 36 Stat. 1100.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 730, which was derived from acts Apr. 30, 1790, ch. 9, § 8, 1 Stat. 113; Apr. 20, 1818, ch. 88, § 4, 3 Stat. 448; May 15, 1820, ch. 113, §§ 3, 4, 5, 3 Stat. 600; Mar. 3, 1825, ch. 65, §§ 5, 14, 4 Stat. 115, 118; Mar. 3, 1847, ch. 51, 9 Stat. 175, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 103. (Judicial Code, section 42.) Offenses begun in one district and completed in another.

When any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried,

determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein. (Mar. 3, 1911, ch. 231, § 42, 36 Stat. 1100.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 731, which was derived from act Mar. 2, 1867, ch. 169, § 30, 14 Stat. 484, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 104. (Judicial Code, section 43.) Suits for penalties and forfeitures.

All pecuniary penalties and forfeitures may be sued for and recovered either in the district where they accrue or in the district where the offender is found. (Mar. 3, 1911, ch. 231, § 43, 36 Stat. 1100.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 732, which was derived from acts Feb. 28, 1839, ch. 36, § 3, 5 Stat. 322; June 30, 1864, ch. 173, §§ 41, 179, 13 Stat. 239, 305; July 13, 1866, ch. 184, § 9, 14 Stat. 111, 145, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 105. (Judicial Code, section 44.) Suits for internal revenue taxes.

Taxes accruing under any law providing internal revenue may be sued for and recovered either in the district where the liability for such tax occurs or in the district where the delinquent resides. (Mar. 3, 1911, ch. 231, § 44, 36 Stat. 1100.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 733, which was derived from act July 13, 1866, ch. 184, § 9, 14 Stat. 111, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 106. (Judicial Code, section 45.) Seizures made on high seas.

Proceedings on seizures made on the high seas, for forfeiture under any law of the United States, may be prosecuted in any district into which the property so seized is brought and proceedings instituted. Proceedings on such seizures made within any district shall be prosecuted in the district where the seizure is made, except in cases where it is otherwise provided. (Mar. 3, 1911, ch. 231, § 45, 36 Stat. 1100.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 734, which was derived from acts Sept. 24, 1789, ch. 20, § 9, 1 Stat. 76; July 13, 1861, ch. 3, §§ 4, 5, 9, 12 Stat. 256, 257, 258; Aug. 6, 1861, ch. 60, § 2, 12 Stat. 319; June 30, 1864, ch. 173, § 48, 13 Stat. 240; July 13, 1866, ch. 184, § 9, 14 Stat. 111; Mar. 2, 1867, ch. 169, § 25, 14 Stat. 483, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 107. (Judicial Code, section 46.) Capture of property used in insurrection.

Proceedings for the condemnation of any property captured, whether on the high seas or elsewhere out of the limits of any judicial district, or within any district, on account of its being purchased or acquired, sold or given, with intent to use or employ the same, or to suffer it to be used or employed, in aiding, abetting, or promoting any insurrection against the Government of the United States, or

knowingly so used or employed by the owner thereof, or with his consent, may be prosecuted in any district where the same may be seized, or into which it may be taken and proceedings first instituted. (Mar. 3, 1911, ch. 231, § 46, 36 Stat. 1100.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 735, which was derived from act Aug. 6, 1861, ch. 60, § 2, 12 Stat. 319, and repealed by act Mar. 3, 1911.

#### § 108. (Judicial Code, section 47.) Seizures under various circumstances.

Proceedings on seizures for forfeiture of any vessel or cargo entering any port of entry which has been closed by the President in pursuance of law, or of goods and chattels coming from a State or section declared by proclamation of the President to be in insurrection into other parts of the United States, or of any vessel or vehicle conveying such property, or conveying persons to or from such State or section, or of any vessel belonging, in whole or in part, to any inhabitant of such State or section, may be prosecuted in any district into which the property so seized may be taken and proceedings instituted; and the district court thereof shall have as full jurisdiction over such proceedings as if the seizure was made in that district. (Mar. 3, 1911, ch. 231, § 47, 36 Stat. 1100.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 564, which was derived from act July 13, 1861, ch. 3, §§ 4, 5, 9, 12 Stat. 256, 257, 258, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 109. (Judicial Code, section 48.) Patent cases.

In suits brought for the infringement of letters patent the district courts of the United States shall have jurisdiction, in law or in equity, in the district of which the defendant is an inhabitant, or in any district in which the defendant, whether a person, partnership, or corporation, shall have committed acts of infringement and have a regular and established place of business. If such suit is brought in a district of which the defendant is not an inhabitant, but in which such defendant has a regular and established place of business, service of process, summons, or subpoena upon the defendant may be made by service upon the agent or agents engaged in conducting such business in the district in which suit is brought. (Mar. 3, 1911, ch. 231, § 48, 36 Stat. 1100.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Mar. 3, 1897, ch. 395, 29 Stat. 695.

#### FEDERAL RULES OF CIVIL PROCEDURE

Process, see Rule 4, following section 723c of this title.

#### CROSS REFERENCE

District Court of United States for District of Columbia to have jurisdiction of patent suits where there are several defendants residing in different districts and writs to be issued against all parties with force and effect and in the manner set forth in this section, see section 72a of Title 35, Patents.



**§ 110. (Judicial Code, section 49.)** Proceedings to enjoin Comptroller of Currency.

All proceedings by any national banking association to enjoin the Comptroller of the Currency, under the provisions of any law relating to national banking associations, shall be had in the district where such association is located. (Mar. 3, 1911, ch. 231, § 49, 36 Stat. 1100.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 736, which was derived from act June 3, 1864, ch. 106, §§ 50, 57, 13 Stat. 115, 116, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

Said act June 3, 1864, is a part of the National Bank Act. See section 38 of Title 12, Banks and Banking.

**§ 111. (Judicial Code, section 50.)** When part of several defendants can not be served.

When there are several defendants in any suit at law or in equity, and one or more of them are neither inhabitants of nor found within the district in which the suit is brought, and do not voluntarily appear, the court may entertain jurisdiction, and proceed to the trial and adjudication of the suit between the parties who are properly before it; but the judgment or decree rendered therein shall not conclude or prejudice other parties not regularly served with process nor voluntarily appearing to answer; and nonjoinder of parties who are not inhabitants of nor found within the district, as aforesaid, shall not constitute matter of abatement or objection to the suit (Mar. 3 1911, ch. 231, § 50, 36 Stat. 1101.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 737, which was derived from act Feb. 28, 1839, ch. 36, § 1, 5 Stat. 321, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**FEDERAL RULES OF CIVIL PROCEDURE**

Necessary joinder of parties, see Rule 19, following section 723c of this title.

**§ 112. (Judicial Code, section 51.)** Civil suits; arrests in; district where brought; suits by corporate stockholders.

Except as provided in sections 113–117 of this title, no person shall be arrested in one district for trial in another, in any civil action before a district court; and, except as provided in sections 113–118 of this title, no civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant; but where the jurisdiction is founded only on the fact that the action is between citizens of different States, suits shall be brought only in the district of the residence of either the plaintiff or the defendant; except that suit by a stockholder on behalf of a corporation may be brought in any district in which suit against the defendant or defendants in said stockholders' action, other than said corporation, might have been brought by such corporation and process in such cases may be served upon such corporation in any district wherein such corporation resides or may be found. (Mar. 3, 1911, ch. 231, § 51, 36 Stat. 1101;

Sept. 19, 1922, ch. 345, 42 Stat. 849; Mar. 4, 1925, ch. 526, § 1, 43 Stat. 1264; Apr. 16, 1936, ch. 230, 49 Stat. 1213.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 739 and acts Mar. 3, 1875, ch. 137, § 1, 18 Stat. 470; Mar. 3, 1887, ch. 373, § 1, 24 Stat. 552; Aug. 13, 1888, ch. 866, § 1, 25 Stat. 433, which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

R. S. § 739 was derived from acts Sept. 24, 1789, ch. 20, § 11, 1 Stat. 79; May 4, 1858, ch. 27, §§ 1, 2, 11 Stat. 272; June 1, 1872, ch. 255, § 13, 17 Stat. 198.

**§ 113. (Judicial Code, section 52.)** Suits in States containing more than one district.

When a State contains more than one district, every suit not of a local nature, in the district court thereof, against a single defendant, inhabitant of such State, must be brought in the district where he resides; but if there are two or more defendants, residing in different districts of the State, it may be brought in either district, and a duplicate writ may be issued against the defendants, directed to the marshal of any other district in which any defendant resides. The clerk issuing the duplicate writ shall indorse thereon that it is a true copy of a writ sued out of the court of the proper district; and such original and duplicate writs, when executed and returned into the office from which they issue, shall constitute and be proceeded on as one suit; and upon any judgment or decree rendered therein, execution may be issued, directed to the marshal of any district in the same State. (Mar. 3, 1911, ch. 231, § 52, 36 Stat. 1101.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 740, and act Mar. 3, 1881, ch. 144, § 2, 21 Stat. 507.

R. S. § 740, which was derived from acts May 4, 1858, ch. 27, § 1, 11 Stat. 272; Feb. 24, 1863, ch. 54, § 9, 12 Stat. 662, was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**CROSS REFERENCE**

District Court of United States for District of Columbia to have jurisdiction of patent suits where there are several defendants residing in different districts and writs to be issued against all parties with force and effect and in the manner set forth in this section, see section 72a of Title 35, Patents.

**FEDERAL RULES OF CIVIL PROCEDURE**

Continuation of section under Rule 4, see note by Advisory Committee under said Rule 4.

Process, see Rule 4, following section 723c of this title.

**§ 114. (Judicial Code, section 53.)** Districts containing more than one division; transfer of criminal cases.

When a district contains more than one division, every suit not of a local nature against a single defendant must be brought in the division where he resides; but if there are two or more defendants residing in different divisions of the district it may be brought in either division. All mesne and final process subject to the provisions of this section may be served and executed in any or all of the divisions of the district, or if the State contains more than one district, then in any of such districts, as provided in section 113 of this title. All prosecutions for crimes or offenses shall be had within the divi-

sion of such districts where the same were committed, unless the court, or the judge thereof, upon the application of the defendant, shall order the cause to be transferred for prosecution to another division of the district. When a transfer is ordered by the court or judge, all the papers in the case, or certified copies thereof, shall be transmitted by the clerk, under the seal of the court, to the division to which the cause is so ordered transferred; and thereupon the cause shall be proceeded with in said division in the same manner as if the offense had been committed therein. In all cases of the removal of suits from the courts of a State to the district court of the United States such removal shall be to the United States district court in the division in which the county is situated from which the removal is made; and the time within which the removal shall be perfected, in so far as it refers to or is regulated by the terms of United States courts, shall be deemed to refer to the terms of the United States district court in such division. (Mar. 3, 1911, ch. 231, § 53, 36 Stat. 1101.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts June 2, 1906, ch. 2569, § 2, 34 Stat. 207; Mar. 5, 1910, ch. 82, 36 Stat. 233.

#### CROSS REFERENCE

Criminal cases in South Carolina to be tried in division in which offense was committed unless upon proper showing the venue would be changed by the judge from one division to another, see section 186 of this title.

#### § 115. (Judicial Code, section 54.) Suits of local nature.

In suits of a local nature, where the defendant resides in a different district, in the same State, from that in which the suit is brought, the plaintiff may have original and final process against him, directed to the marshal of the district in which he resides. (Mar. 3, 1911, ch. 231, § 54, 36 Stat. 1102.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 741 which was derived from act May 4, 1858, ch. 27, § 1, 11 Stat. 272 and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under Rule 4, see note by Advisory Committee under said Rule 4.

Process, see Rule 4, following section 723c of this title.

#### § 116. (Judicial Code, section 55.) Property in different districts in same State.

Any suit of a local nature, at law or in equity, where the land or other subject matter of a fixed character lies partly in one district and partly in another, within the same State, may be brought in the district court of either district; and the court in which it is brought shall have jurisdiction to hear and decide it, and to cause mesne or final process to be issued and executed, as fully as if the said subject matter were wholly within the district for which such court is constituted. (Mar. 3, 1911, ch. 231, § 55, 36 Stat. 1102.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S.

§ 742 which was derived from act May 4, 1858, ch. 27, § 2, 11 Stat. 272 and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under Rule 4, see note by Advisory Committee under said Rule 4.

Process, see Rule 4, following section 723c of this title.

#### § 117. (Judicial Code, section 56.) Property in different States in same circuit; jurisdiction of receiver.

Where in any suit in which a receiver shall be appointed the land or other property of a fixed character, the subject of the suit, lies within different States in the same judicial circuit, the receiver so appointed shall, upon giving bond as required by the court, immediately be vested with full jurisdiction and control over all the property, the subject of the suit, lying or being within such circuit; subject, however, to the disapproval of such order, within thirty days thereafter, by the circuit court of appeals for such circuit, or by a circuit judge thereof, after reasonable notice to adverse parties and an opportunity to be heard upon the motion for such disapproval; and subject, also, to the filing and entering in the district court for each district of the circuit in which any portion of the property may lie or be, within ten days thereafter, of a duly certified copy of the bill and of the order of appointment. The disapproval of such appointment within such thirty days, or the failure to file such certified copy of the bill and order of appointment within ten days, as herein required, shall divest such receiver of jurisdiction over all such property except that portion thereof lying or being within the State in which the suit is brought. In any case coming within the provisions of this section, in which a receiver shall be appointed, process may issue and be executed within any district of the circuit in the same manner and to the same extent as if the property were wholly within the same district; but orders affecting such property shall be entered of record in each district in which the property affected may lie or be. (Mar. 3, 1911, ch. 231, § 56, 36 Stat. 1102.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under Rule 4, see note by Advisory Committee under said Rule 4.

Process, see Rule 4, following section 723c of this title.

#### § 118. (Judicial Code, section 57.) Absent defendants in suits to enforce liens.

When in any suit commenced in any district court of the United States to enforce any legal or equitable lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of or found within the said district, or shall not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant or defendants to appear, plead, answer, or demur by a day certain to be designated, which order shall be served on such absent defendant or defendants, if practicable, wherever found, and also upon the person or persons in possession or charge of said property, if any there be; or where such personal service upon such absent

defendant or defendants is not practicable, such order shall be published in such manner as the court may direct, not less than once a week for six consecutive weeks. In case such absent defendant shall not appear, plead, answer, or demur within the time so limited, or within some further time, to be allowed by the court, in its discretion, and upon proof of the service or publication of said order and of the performance of the directions contained in the same, it shall be lawful for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but said adjudication shall, as regards said absent defendant or defendants without appearance, affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein, within such district; and when a part of the said real or personal property against which such proceedings shall be taken shall be within another district, but within the same State, such suit may be brought in either district in said State. Any defendant or defendants not actually personally notified as above provided may, at any time within one year after final judgment in any suit mentioned in this section, enter his appearance in said suit in said district court, and thereupon the said court shall make an order setting aside the judgment therein and permitting said defendant or defendants to plead therein on payment by him or them of such costs as the court shall deem just; and thereupon said suit shall be proceeded with to final judgment according to law. (Mar. 3, 1911, ch. 231, § 57, 36 Stat. 1102.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 738, 742 and act Mar. 3, 1875, ch. 137, § 8, 18 Stat. 472, which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

R. S. § 738 was derived from act June 1, 1872, ch. 255, § 13, 17 Stat. 198 and R. S. § 742 was derived from act May 4, 1858, ch. 27, § 2, 11 Stat. 272.

## FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under Rule 4, see note by Advisory Committee under said Rule 4.

Process and relief from judgment or order, see Rules 4, 60, following section 723c of this title.

## § 119. (Judicial Code, section 58.) Transfer of civil causes to another division of district.

Any civil cause, at law or in equity, may, on written stipulation of the parties or of their attorneys of record signed and filed with the papers in the case, in vacation or in term, and on the written order of the judge signed and filed in the case in vacation or on the order of the court duly entered of record in term, be transferred to the court of any other division of the same district without regard to the residence of the defendants, for trial. When a cause shall be ordered to be transferred to a court in any other division, it shall be the duty of the clerk of the court from which the transfer is made to carefully transmit to the clerk of the court to which the transfer is made the entire file of papers in the cause and all documents and deposits in his

court pertaining thereto, together with a certified transcript of the records of all orders, interlocutory decrees, or other entries in the cause; and he shall certify, under the seal of the court, that the papers sent are all which are on file in said court belonging to the cause; for the performance of which duties said clerk so transmitting and certifying shall receive the same fees as were allowed on March 3, 1911, by law for similar services, to be taxed in the bill of costs, and regularly collected with the other costs in the cause; and such transcript, when so certified and received, shall henceforth constitute a part of the record of the cause in the court to which the transfer shall be made. The clerk receiving such transcript and original papers shall file the same and the case shall then proceed to final disposition as other cases of a like nature. (Mar. 3, 1911, ch. 231, § 58, 36 Stat. 1103.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts Feb. 28, 1887, ch. 271, § 4, 24 Stat. 425; June 2, 1906, ch. 2569, § 1, 34 Stat. 206.

## CROSS REFERENCE

Fees authorized to be collected by clerks of district courts, see section 548 of this title

## § 120. Repealed. Apr. 21, 1928, ch. 393, 45 Stat. 439.

Section, act Jan. 16, 1925, ch. 83, § 6, 43 Stat. 752, related to change of venue between divisions in Indiana.

## § 121. (Judicial Code, section 59.) Creation of new district or division.

Whenever any new district or division has been or shall be established, or any county or territory has been or shall be transferred from one district or division to another district or division, prosecutions for crimes and offenses committed within such district, division, county, or territory prior to such transfer, shall be commenced and proceeded with the same as if such new district or division had not been created, or such county or territory had not been transferred, unless the court, upon the application of the defendant, shall order the cause to be removed to the new district or division for trial. Civil actions pending at the time of the creation of any such district or division, or the transfer of any such county or territory, and arising within the district or division so created or the county or territory so transferred, shall be tried in the district or division as it existed at the time of the institution of the action, or in the district or division so created, or to which the county or territory is or shall be so transferred, as may be agreed upon by the parties, or as the court shall direct. The transfer of such prosecutions and actions shall be made in the manner provided in section 119 of this title. (Mar. 3, 1911, ch. 231, § 59, 36 Stat. 1103.)

## NOTE BY JUDICIAL CODE COMMITTEE

In connection with this section a note by the Committee on Revision of the Judicial Code, 1911, provided as follows: "This section is based upon provisions contained in a large number of acts creating new districts or divisions, or transferring counties from one district or division to another. The purpose of the section is to obviate the necessity for repeating, in similar acts in the future, provisions of this character."

**§ 122. (Judicial Code, section 60.) Creation of new district or transfer of territory; lien.**

The creation of a new district or division, or the transfer of any county or territory from one district or division to another district or division, shall not affect or divest any lien theretofore acquired in the circuit or district court by virtue of a decree, judgment, execution, attachment, seizure, or otherwise, upon property situated or being within the district or division so created, or the county or territory so transferred. To enforce any such lien, the clerk of the court in which the same is acquired, upon the request and at the cost of the party desiring the same, shall make a true and certified copy of the record thereof, which, when so made and certified, and filed in the proper court of the district or division in which such property is situated or shall be, after such transfer, shall constitute the record of such lien in such court, and shall be evidence in all courts and places equally with the original thereof; and, thereafter like proceedings shall be had thereon, and with the same effect, as though the cause or proceeding had been originally instituted in such court. The provisions of this section shall apply not only in all cases where a district or division is created, or a county or any territory is transferred, but also in all cases where a district or division has been created, or a county or any territory has been transferred by any law enacted before March 3, 1911. (Mar. 3, 1911, ch. 231, § 60, 36 Stat. 1103.)

**FEDERAL RULES OF CIVIL PROCEDURE**

Effect of Rule 69 on this section, see note by Advisory Committee under said Rule 69.

Execution, see Rule 69, following section 723c of this title.

**§ 123. (Judicial Code, section 61.) Commissioners; oaths to appraisers.**

Any district judge may appoint commissioners, before whom appraisers of vessels or goods and merchandise seized for breaches of any law of the United States, may be sworn; and such oaths, so taken, shall be as effectual as if taken before the judge in open court. (Mar. 3, 1911, ch. 231, § 61, 36 Stat. 1104.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 570, which was derived from act June 9, 1794, ch. 64, § 1, 1 Stat. 395, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**§ 124. (Judicial Code, section 65.) Management of property by receivers.**

Whenever in any cause pending in any court of the United States there shall be a receiver or manager in possession of any property, such receiver or manager shall manage and operate such property according to the requirements of the valid laws of the State in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof. Any receiver or manager who shall willfully violate any provision of this section shall be fined not more than \$3,000, or imprisoned not more than one year, or both. (Mar. 3, 1911, ch. 231, § 65, 36 Stat. 1104.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts Mar. 3, 1887, ch. 373, § 2, 24 Stat. 554, and Aug. 13, 1888, ch. 866, § 2, 25 Stat. 436, which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**§ 124a. State taxation; business conducted by receivers, trustees, or other court officers subject to.**

Any receiver, liquidator, referee, trustee, or other officers or agents appointed by any United States court who is authorized by said court to conduct any business, or who does conduct any business, shall, from and after June 18, 1934, be subject to all State and local taxes applicable to such business the same as if such business were conducted by an individual or corporation: *Provided, however,* That nothing in this section contained shall be construed to prohibit or prejudice the collection of any such taxes which accrued prior to June 18, 1934, in the event that the United States court having final jurisdiction of the subject matter under existing law should adjudge and decide that the imposition of such taxes was a valid exercise of the taxing power by the State or States, or by the civil subdivisions of the State or States imposing the same. (June 18, 1934, ch. 585, 48 Stat. 993.)

**§ 125. (Judicial Code, section 66.) Suits against receiver.**

Every receiver or manager of any property appointed by any court of the United States may be sued in respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver or manager was appointed; but such suit shall be subject to the general equity jurisdiction of the court in which such manager or receiver was appointed so far as the same may be necessary to the ends of justice. (Mar. 3, 1911, ch. 231, § 66, 36 Stat. 1104.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts Mar. 3, 1887, ch. 373, § 3, 24 Stat. 554 and Aug. 13, 1888, ch. 866, § 3, 25 Stat. 436, which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**§ 126. (Judicial Code, section 67.) Officers of courts.**

No person shall be appointed to or employed in any office or duty in any court who is related by affinity or consanguinity within the degree of first cousin to the judge of such court. No such person holding a position or employment in a circuit court on December 21, 1911, shall be debarred from similar appointment or employment in the district court succeeding to such circuit-court jurisdiction. (Mar. 3, 1911, ch. 231, § 67, 36 Stat. 1105; Dec. 21, 1911, ch. 4, 37 Stat. 46.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts Mar. 3, 1887, ch. 373, § 7, 24 Stat. 555, and Aug. 13, 1888, ch. 866, § 7, 25 Stat. 437, which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**§ 127. (Judicial Code, section 68.) Masters or receivers.**

No clerk of a district court of the United States or his deputy shall be appointed a receiver or master in any case, except where the judge of said court shall determine that special reasons exist therefor, to be assigned in the order of appointment. (Mar. 3, 1911, ch. 231, § 68, 36 Stat. 1105.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Mar. 3, 1879, ch. 183, 20 Stat. 415.

**§ 128. (Judicial Code, section 118b.) Law clerks for district judges; appointment; number; salary.**

Each United States District Court judge is authorized to appoint a law clerk when he deems the same to be necessary, and the senior judge of the circuit court of appeals having jurisdiction over the district where the clerk is needed shall certify to the necessity of the appointment, but there shall not be appointed more than thirty-five of such law clerks during the first fiscal year of the enactment of this section. Thereafter such number in excess of thirty-five per year shall be limited by the necessity of each case as hereinbefore provided. The salary of such appointed law clerk shall be at a rate not in excess of \$2,750 per annum; and the appropriation of such amount as is or may be necessary to pay the salaries and travel expenses of such law clerks is hereby authorized (Mar. 3, 1911, ch. 231, § 118b, as added Feb. 17, 1936, ch. 75, 49 Stat. 1140.)

**Chapter 5.—DISTRICT COURTS; DISTRICTS AND PROVISIONS APPLICABLE TO PARTICULAR STATES**

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**§ 141. (Judicial Code, section 69.) Judicial districts.**

The United States are divided into judicial districts as follows: (Mar. 3, 1911, ch. 231, § 69, 36 Stat. 1105.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 530, which was derived from act Sept. 24, 1789, ch. 20, § 1, 1 Stat. 73, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1186.

**§ 142. (Judicial Code, section 70.) Alabama.**

The State of Alabama is divided into three judicial districts, to be known as the northern, middle, and southern districts of Alabama. The northern district shall include the territory embraced on the 1st day of July 1910, in the counties of Cullman, Jackson, Lawrence, Limestone, Madison, and Morgan, which shall constitute the northeastern division of said district; also the territory embraced on the date last mentioned in the counties of Colbert, Franklin, and Lauderdale, which shall constitute the northwestern division of said district; also the territory embraced on the date last mentioned in the counties of Cherokee, Dekalb, Etowah, Marshall, and Saint Clair, which shall constitute the middle division of said district; also the territory embraced on the date last mentioned in the counties of Blount, Jefferson, and Shelby, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Walker, Winston, Marion, Fayette, and Lamar, which shall constitute the Jasper division of said district; also the territory embraced on the date last mentioned in the counties of Calhoun, Clay,

Cleburne, and Talladega, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Bibb, Greene, Pickens, Sumter, and Tuscaloosa, which shall constitute the western division of said district. Terms of the district court for the north-eastern division shall be held at Huntsville on the first Tuesday in April and the second Tuesday in October; for the northwestern division, at Florence on the second Tuesday in February and the third Tuesday in October: *Provided*, That suitable rooms and accommodations for holding court at Florence shall be furnished free of expense to the Government; for the middle division, at Gadsden on the first Tuesdays in February and August: *Provided*, That suitable rooms and accommodations for holding court at Gadsden shall be furnished free of expense to the Government; for the southern division, at Birmingham on the first Mondays in March and September, which courts shall remain in session for the transaction of business at least six months in each calendar year; for the Jasper division, at Jasper on the second Tuesdays in January and June: *Provided*, That suitable rooms and accommodations for holding court at Jasper shall be furnished free of expense to the Government; for the eastern division, at Anniston on the first Mondays in May and November; and for the western division, at Tuscaloosa on the first Tuesdays in January and June. The clerk of the court for the northern district shall maintain an office, in charge of himself or a deputy, at Anniston, at Florence, at Jasper, and at Gadsden, which shall be kept open at all times for the transaction of the business of said court. The district judge for the northern district shall reside at Birmingham. The middle district shall include the territory embraced on the 1st day of July 1910, in the counties of Autauga, Barbour, Bullock, Butler, Chilton, Coosa, Covington, Crenshaw, Elmore, Lowndes, Montgomery, and Pike, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Coffee, Dale, Geneva, Henry, and Houston, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Chambers, Lee, Macon, Randolph, Russell, and Tallapoosa, which shall constitute the eastern division of said middle judicial district. Terms of the district court for the northern division shall be held at Montgomery on the first Tuesdays in May and December; for the southern division, at Dothan on the first Mondays in June and December; and for the eastern division, at Opelika on the first Mondays in April and November. Suitable rooms and accommodations for holding court at Opelika shall be furnished free of expense to the Government. The clerk of the court for the middle district shall maintain an office in charge of himself or a deputy at Dothan, and shall maintain an office in charge of himself or a deputy at Opelika, which said offices at Dothan and Opelika shall be kept open at all times for the transaction of the business of said divisions. The southern district shall include the territory embraced on the 1st day of July 1910,

in the counties of Baldwin, Choctaw, Clarke, Conecuh, Escambia, Mobile, Monroe, and Washington, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Dallas, Hale, Marengo, Perry, and Wilcox, which shall constitute the northern division of said district. Terms of the district court for the southern division shall be held at Mobile on the fourth Mondays in May and November; and for the northern division, at Selma on the second Mondays in January and July. (Mar. 3, 1911, ch. 231, § 70, 36 Stat. 1105; Feb. 28, 1913, ch. 89, 37 Stat. 698; June 27, 1922, ch. 247, 42 Stat. 667.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 532, which was derived from acts Aug. 7, 1848, ch. 143, § 1, 9 Stat. 274; May 4, 1862, ch. 25, § 2, 10 Stat. 5.

#### REPEAL OF PRIOR LAWS

Subsequent to the Revised Statutes and prior to the enactment of the Judicial Code various independent acts were passed by Congress fixing and affecting the territorial extent of judicial districts and the times and places of holding court therein. With respect to these enactments the first and twelfth paragraphs of section 297 of the Judicial Code (act Mar. 3, 1911, ch. 231, 36 Stat. 1168) provided in part as follows: "All acts and parts of acts . . . creating or changing judicial circuits, or judicial districts or divisions thereof, or fixing or changing the times or places of holding court therein, enacted prior to February first, nineteen hundred and eleven, . . . are hereby repealed."

#### § 143. Arizona.

The State of Arizona shall constitute one judicial district, to be known as the district of Arizona. Terms of the district court shall be held in Tucson on the first Mondays in May and November; at Phoenix on the first Mondays in April and October; at Prescott on the first Mondays in March and September; and at Globe on the first Mondays in June and December. Causes, civil and criminal, may be transferred by the court or judge thereof from any of the aforesaid places where court shall be held in said district to any of the places herein above mentioned in said district when the convenience of the parties or the ends of justice would be promoted by the transfer; and any interlocutory order may be made by the court or judge thereof in any of the herein above mentioned places. The clerk shall keep his office at the capital of the State. (June 20, 1910, ch. 310, § 31, 36 Stat. 576; Oct. 3, 1913, ch. 17, §§ 1, 2, 38 Stat. 203.)

#### REPEAL

Act June 20, 1910, cited to text, was probably repealed by section 297 of the Judicial Code. See repeal note under section 142 of this title.

#### § 144. (Judicial Code, section 71.) Arkansas.

(a) The State of Arkansas is divided into two districts, to be known as the western and eastern districts of Arkansas.

(b) The western district shall include six divisions constituted as follows: The Texarkana division, which shall include the territory embraced on July 1, 1920, in the counties of Sevier, Howard, Little River, Hempstead, Miller, Lafayette, and Nevada; the El Dorado division, which shall include the terri-

tory embraced on such date in the counties of Columbia, Ouachita, Union, Ashley, Bradley, and Calhoun; the Fort Smith division, which shall include the territory embraced on such date in the counties of Polk, Scott, Logan, Sebastian, Franklin, Crawford, and Johnson; the Harrison division, which shall include the territory embraced on such date in the counties of Baxter, Boone, Carroll, Marion, Newton, and Searcy; the Fayetteville division, which shall include the territory embraced on such date in the counties of Benton, Madison, and Washington; and the Hot Springs division, which shall include the territory embraced on such date in the counties of Pike, Clark, Garland, Hot Spring, and Montgomery.

(c) Terms of the district court for the Texarkana division shall be held at Texarkana on the second Mondays in May and November; for the El Dorado division, at El Dorado on the third Mondays in April and October; for the Fort Smith division, at Fort Smith on the second Mondays in January and June; for the Harrison division, at Harrison on the first Mondays in April and October; for the Fayetteville division at Fayetteville on the second Mondays in March and October and for the Hot Springs division at Hot Springs on the third Mondays in March and September: *Provided*, That suitable rooms and accommodations for holding court at Fayetteville and Hot Springs are furnished without expense to the United States: *Provided further*, That nothing in this section shall be construed to prevent the provision of quarters for the officers of said court and appropriate courtrooms for the holding of the sessions of said court in any new Federal building or addition or annex thereto which may be constructed in Fayetteville or Hot Springs: *Provided further*, That the referee in bankruptcy of the western division of the eastern district may be appointed by the judge of the western district as referee in bankruptcy for the division herein created at Hot Springs.

(d) The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Texarkana, Fort Smith, El Dorado, Harrison, and Hot Springs. Such offices shall be kept open at all times for the transaction of the business of the court.

(e) The eastern district shall include four divisions constituted as follows: The eastern division, which shall include the territory embraced on July 1, 1920, in the counties of Desha, Lee, Phillips, Saint Francis, Cross, Monroe, and Woodruff; the northern division, which shall include the territory embraced on such date in the counties of Fulton, Independence, Cleburne, Stone, Izard, Sharp, and Jackson; the Jonesboro division, which shall include the territory embraced on such date in the counties of Crittenden, Clay, Craighead, Greene, Mississippi, Poinsett, Randolph, and Lawrence; the western division, which shall include the territory embraced on such date in the counties of Arkansas, Chicot, Cleveland, Conway, Dallas, Drew, Faulkner, Grant, Jefferson, Lincoln, Lonoke, Perry, Pope, Prairie, Pulaski, Saline, Van Buren, White, and Yell.

(f) Terms of the district court for the eastern division shall be held at Helena on the second Monday in March and the first Monday in October; for the

northern division, at Batesville on the fourth Monday in May and the second Monday in December; for the Jonesboro division, at Jonesboro on the first Monday in May and the fourth Monday in November; and for the western division, at Little Rock on the first Monday in April and the third Monday in October.

(g) The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Helena, Batesville, Jonesboro, and Little Rock. Such offices shall be kept open at all times for the transaction of the business of the court. (Mar. 3, 1911, ch. 231, § 71, 36 Stat. 1106; Apr. 12, 1924, ch. 87, § 1, 43 Stat. 90; Feb. 17, 1925, ch. 252, 43 Stat. 948; Apr. 16, 1926, ch. 147, § 1, 44 Stat. 296; Apr. 21, 1926, ch. 168, 44 Stat. 304; Feb. 7, 1928, ch. 29, § 1, 45 Stat. 58; Apr. 17, 1940, ch. 100, 54 Stat. 109; June 11, 1940, ch. 321, § 1, 54 Stat. 302.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 533, which was derived from acts June 30, 1834, ch. 161, § 24, 4 Stat. 733; June 15, 1836, ch. 100, § 4, 5 Stat. 51; June 17, 1844, ch. 103, § 1, 5 Stat. 680; Mar. 3, 1851, ch. 24, § 1, 9 Stat. 594; Mar. 27, 1854, ch. 26, § 1, 10 Stat. 269; Mar. 3, 1871, ch. 106, § 5, 16 Stat. 472; June 31, 1877, ch. 41, 19 Stat. 230, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

#### REPEAL

Act Apr. 21, 1926, ch. 168, 44 Stat. 304, which detached Fulton county from the Jonesboro division and attached it to the Batesville division, was repealed by section 2 of act June 11, 1940, ch. 321, 54 Stat. 303.

#### § 145. (Judicial Code, section 72.) California.

The State of California is divided into two districts, to be known as the northern and southern districts of California. The southern district shall include the territory embraced on the 1st day of July, 1910, in the counties of Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, and Tulare, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura, which shall constitute the central division of said district; also, the territory embraced on the date last mentioned in the counties of San Diego and Imperial, which shall constitute the southern division of said district. Terms of the district court for the northern division shall be held at Fresno on the first Monday in April and the second Monday in October; and for the central division, at Los Angeles on the first Monday in February and the second Monday in September; and for the southern division, at San Diego on the second Monday in July and the second Monday in January. The northern district shall include the territory embraced on the 1st day of July, 1910, in the counties of Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Tehama, Plumas, Mendocino, Lake, Colusa, Glenn, Butte, Sierra, Sutter, Yuba, Nevada, Sonoma, Napa, Yolo, Placer, Solano, Sacramento, El Dorado, San Joaquin, Amador, Calaveras, Stanislaus, Tuolumne, Alpine, and Mono, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of San Francisco, Marin, Contra Costa, Alameda, San Mateo,



Santa Clara, Santa Cruz, Monterey, and San Benito, which shall constitute the southern division of said district. Terms of the district court for the northern division of the northern district shall be held at Sacramento on the second Monday in April and the first Monday in October, and at Eureka on the third Monday in July; and for the southern division of the northern district, at San Francisco on the first Monday in March, the second Monday in July, and the first Monday in November. The clerk of the district court for the northern district shall maintain an office at Sacramento, in charge of himself or a deputy, which shall be kept open at all times for the transaction of the business of the court. (Mar. 3, 1911, ch. 231, § 72, 36 Stat. 1107; May 16, 1916, ch. 122, 39 Stat. 122; Mar. 1, 1929, ch. 421, 45 Stat. 1424.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 531, 572, 586 and act Aug. 5, 1886, ch. 928, 24 Stat. 308. R. S. §§ 531, 572, and 586 were derived from acts July 27, 1866, ch. 280, 14 Stat. 300; Feb. 19, 1864, ch. 11, 13 Stat. 5; Sept. 28, 1850, ch. 86, 9 Stat. 522, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. Repeal of provisions prior to the Judicial Code relating to judicial districts, see note under section 142 of this title.

#### § 146. (Judicial Code, section 73.) Colorado; adjournment of terms; deputy marshals and clerks.

The State of Colorado shall constitute one judicial district, to be known as the district of Colorado. Terms of the district court shall be held at Denver on the first Tuesday in May and November, at Pueblo on the first Tuesday in April, at Grand Junction on the second Tuesday in September, at Montrose on the third Tuesday in September, at Durango on the fourth Tuesday in September, and at Sterling on the second Tuesday in June. If at the time of the holding of a term of said court in any year in either of said cities of Grand Junction, Durango, and Sterling, Colorado, there is no business to be transacted by said court, the term may be adjourned or continued by order of the judge of said court in chambers at Denver, Colorado. The marshal and clerk of said court shall each, respectively, appoint at least one deputy to reside at and who shall maintain an office at each of the five said places where said court is to be held by the terms of this section: *Provided*, That suitable rooms and accommodations for holding court at Sterling are furnished free of expense to the United States. (Mar. 3, 1911, ch. 231, § 73, 36 Stat. 1108; June 12, 1916, ch. 143, 39 Stat. 225; May 29, 1924, ch. 209, 43 Stat. 243.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts June 26, 1876, ch. 147, 19 Stat. 61; Apr. 20, 1880, ch. 58, 21 Stat. 76; Aug. 8, 1886, ch. 848, 24 Stat. 214; and Feb. 16, 1903, ch. 555, 32 Stat. 833, which were repealed by section 297 of the Judicial Code. See note under section 142 of this title.

#### § 147. (Judicial Code, section 74.) Connecticut.

The State of Connecticut shall constitute one judicial district to be known as the "district of Connecticut." Terms of the district court shall be held at New Haven on the second Tuesday in February and the third Tuesday in September; at Hartford

on the second Tuesday in May and the first Tuesday in December; at Norwalk on the third Tuesday in April; and at Columbia on the first Tuesday in September: *Provided*, That suitable rooms and accommodations shall be furnished for the holdings of said court and for the use of the officers of said court at Norwalk and Columbia free of expense to the Government of the United States. (Mar. 3, 1911, ch. 231, § 74, 36 Stat. 1108; Feb. 27, 1921, ch. 74, 41 Stat. 1146; June 15, 1933, ch. 80, 48 Stat. 148.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 531, 572 and act June 30, 1879, ch. 49, 21 Stat. 41, which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See note under section 142 of this title. R. S. §§ 531 and 572 were derived from acts Sept. 24, 1789, ch. 20, § 2, 1 Stat. 73; Feb. 6, 1812, ch. 20, 2 Stat. 676.

#### § 148. (Judicial Code, section 75.) Delaware.

The State of Delaware shall constitute one judicial district, to be known as the "district of Delaware." Terms of the district court shall be held at Wilmington on the second Tuesdays in March, June, September, and December. (Mar. 3, 1911, ch. 231, § 75, 36 Stat. 1108.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 531, 572 and act June 11, 1910, ch. 286, 36 Stat. 466, which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See note under section 142 of this title. R. S. §§ 531 and 572 were derived from acts Sept. 24, 1789, ch. 20, § 2, 1 Stat. 73 and May 10, 1852, ch. 33, 10 Stat. 5.

#### § 149. (Judicial Code, section 76.) Florida—(a) Division into districts.

The State of Florida is divided into two districts, to be known as the northern and southern districts of Florida.

##### (b) Territory in southern district.

The southern district shall include the territory embraced on the 1st day of July 1937 in the counties of Baker, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Columbia, Dade, De Soto, Duval, Flagler, Glades, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Saint Johns, Saint Lucie, Sarasota, Seminole, Sumter, Suwannee, Union, and Volusia.

##### (c) Terms of southern district.

Terms of the district court for the southern district shall be held at Ocala on the third Monday in January; at Tampa on the second Monday in February; at Key West on the first Mondays in May and November; at Jacksonville on the first Monday in December; at Fernandina on the first Monday in April; at Miami on the fourth Monday in April; at Orlando on the first Monday in October; and at Fort Pierce on the first Monday in February: *Provided*, That suitable rooms and accommodations for holding court at Fort Pierce are furnished without expense to the United States: *Provided further*, That suitable rooms and accommodations for holding court at Orlando are furnished without expense to the

United States: *And provided further*, That nothing in this section shall be construed to prevent the provision of quarters for the officers of said court and appropriate courtrooms for the holding of the sessions of said court in any new Federal building which may be constructed in Orlando, Florida. No deputy clerk or deputy marshal of the court shall be appointed for Fort Pierce. The district court for the southern district shall be open at all times for the purpose of hearing and deciding causes of admiralty and maritime jurisdiction.

(d) Territory in northern district.

The northern district shall include the territory embraced on the 1st day of July 1937 in the counties of Alachua, Bay, Calhoun, Dixie, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and Washington.

(e) Terms of northern district.

Terms of the district court for the northern district shall be held at Tallahassee on the second Monday in February and on the Tuesday next after the first Monday in September; at Pensacola on the first Mondays in May and November; at Marianna on the first Monday in April; at Gainesville on the second Mondays in June and December; and at Panama City on the first Monday in October: *Provided*, That suitable rooms and accommodations for holding court at Panama City are furnished without expense to the United States. (Mar. 3, 1911, ch. 231, § 76, 36 Stat. 1108; June 15, 1933, ch. 77, 48 Stat. 147; Aug. 25, 1937, ch. 763, § 1, 50 Stat. 800.)

SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 534, 572, 575, and 598, which were derived from acts Mar. 3, 1845, ch. 75, § 3, 5 Stat. 788; Feb. 23, 1847, ch. 20, §§ 1, 8, 9 Stat. 131, 132; July 27, 1868, ch. 270, 15 Stat. 239; Feb. 24, 1855, ch. 125, 10 Stat. 615 and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also note under section 142 of this title.

REPEAL

Act June 15, 1933, ch. 77, 48 Stat. 147, as amended by act Apr. 27, 1937, ch. 142, 50 Stat. 119, which established a term of the District Court of the United States for the Southern District of Florida at Orlando, Florida, was repealed by section 2 of act Aug. 25, 1937, cited to text.

§ 149a. Repealed. Aug. 25, 1937, ch. 763, § 2, 50 Stat. 801.

Section, act Aug. 22, 1935, ch. 606, 49 Stat. 683, provided for an additional term for the Southern District of Florida.

§ 149b. Repealed. Aug. 25, 1937, ch. 763, § 2, 50 Stat. 801.

Section, act May 6, 1936, ch. 327, 49 Stat. 1261, provided for an additional term for the Northern District of Florida.

§ 150. (Judicial Code, section 77.) Georgia.

(a) The State of Georgia is divided in three judicial districts, to be known as the northern, middle, and southern districts of Georgia.

(b) The northern district shall include four divisions, constituted as follows: The Gainesville division, which shall include the territory embraced on January 1, 1925, in the counties of Banks, Barrow,

Dawson, Forsyth, Habersham, Hall, Jackson, Lumpkin, Rabun, Stephens, Towns, Union, and White; the Atlanta division which shall include the territory embraced on such date in the counties of Campbell, Cherokee, Clayton, Cobb, De Kalb, Douglas, Fannin, Fulton, Gilmer, Gwinnett, Henry, Milton, Newton, Pickens, and Rockdale; the Rome division which shall include the territory embraced on such date in the counties of Bartow, Catoosa, Chattooga, Dade, Floyd, Gordon, Murray, Paulding, Polk, Walker, and Whitfield; and the Newnan division, which shall include the territory embraced on such date in the counties of Carroll, Coweta, Fayette, Haralson, Heard, Pike, Spalding, and Troup.

(c) Terms of the district court for the Gainesville division shall be held at Gainesville on the fourth Mondays in April and November; for the Atlanta division at Atlanta on the second Monday in March and the first Monday in October; for the Rome division at Rome on the third Mondays in May and November; and for the Newnan division if suitable rooms and accommodations are furnished for holding court thereat free of cost to the Government at Newnan on the first Mondays in April and November.

(d) The middle district shall include seven divisions, constituted as follows: The Athens division, which shall include the territory embraced on January 1, 1925, in the counties of Clarke, Elbert, Franklin, Greene, Hart, Madison, Morgan, Oconee, Oglethorpe, and Walton; the Macon division, which shall include the territory embraced on such date in the counties of Baldwin, Bibb, Bleckley, Butts, Crawford, Hancock, Houston, Jasper, Jones, Lamar, Monroe, Peach, Pulaski, Putnam, Twiggs, Upson, Washington, and Wilkinson; the Columbus division, which shall include the territory embraced on such date in the counties of Chatahoochee, Clay, Harris, Marion, Meriwether, Muscogee, Quitman, Randolph, Stewart, Talbot, and Taylor; the Americus division, which shall include the territory embraced on such date in the counties of Crisp, Dooly, Lee, Macon, Schley, Sumter, Terrell, Webster, and Wilcox; the Albany division, which shall include the territory embraced on such date in the counties of Baker, Calhoun, Dougherty, Early, Miller, Mitchell, Turner, and Worth; the Valdosta division, which shall include the territory embraced on such date in the counties of Berrien, Clinch, Cook, Echols, Irwin, Lanier, Lowndes, and Tift; and the Thomasville division, which shall include the territory embraced on such date in the counties of Thomas, Brooks, Colquitt, Grady, Decatur, and Seminole.

(e) The terms of the district court for the Athens division shall be held at Athens on the first Mondays in June and December; for the Macon division at Macon on the first Mondays in May and November; for the Columbus division at Columbus on the first Mondays in March and September; for the Americus division at Americus on the second Mondays in February and June: *Provided*, That suitable rooms and accommodations are furnished for holding court at Americus free of cost to the Government until a public building shall have been erected or put into proper condition for such purpose in said city; for the Albany division at Albany on the first Mondays

in April and October; for the Valdosta division at Valdosta on the third Mondays in March and September; and for the Thomasville division on the third Mondays in May and November: *Provided*, That suitable rooms and accommodations are furnished for holding court thereat free of cost to the Government at Thomasville.

(f) The southern district shall include five divisions, to be constituted as follows: The Augusta division, which shall include the territory embraced on January 1, 1925, in the counties of Burke, Columbia, Glascock, Jefferson, Lincoln, McDuffie, Richmond, Taliaferro, Warren, and Wilkes; the Dublin division, which shall include the territory embraced on such date in the counties of Dodge, Emanuel, Johnson, Laurens, Montgomery, Telfair, Toombs, Treutlen, and Wheeler; the Savannah division, which shall include the territory embraced on such date in the counties of Bryan, Bulloch, Candler, Chatham, Effingham, Evans, Jenkins, Liberty, Screven, and Tattnall; the Waycross division which shall include the territory embraced on such date in the counties of Atkinson, Bacon, Ben Hill, Brantley, Charlton, Coffee, Pierce, and Ware; and the Brunswick division, which shall include the territory embraced on such date in the counties of Appling, Camden, Glynn, Jeff Davis, Long, McIntosh, and Wayne.

(g) The terms of the district court for the Augusta division shall be held at Augusta on the first Monday in April and the third Monday in November; for the Dublin division at Dublin on the third Mondays in January and June: *Provided*, That suitable rooms and accommodations are furnished for holding court at Dublin, free of cost to the Government, until a public building shall have been erected or put into proper condition for such purpose in said city; for the Savannah division at Savannah on the second Tuesdays in February, May, August, and November; for the Waycross division at Waycross on the second Mondays in June and December; for the Brunswick division at Brunswick on the second Mondays in March and October: *Provided*, That no cost shall be incurred by the Government in furnishing quarters for holding court at Brunswick. (Mar. 3, 1911, ch. 231, § 77, 36 Stat. 1108; May 28, 1926, ch. 414, §§ 1, 2, 44 Stat. 670; Aug. 22, 1935, ch. 603, §§ 1-3, 49 Stat. 680, 681; June 20, 1936, ch. 639, 49 Stat. 1561; Aug. 21, 1937, ch. 728, §§ 1, 2, 50 Stat. 739, 740.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 535 and 572, which were derived from acts June 9, 1794, ch. 64, 1 Stat. 396; Apr. 29, 1802, ch. 31, 2 Stat. 165; Aug. 11, 1848, ch. 151, § 1, 9 Stat. 280; June 4, 1872, ch. 284, 17 Stat. 218, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also note under section 142 of this title.

#### § 150a. Same; office of clerk.

The clerk of the court for each of said districts shall maintain an office, in charge of himself or a deputy, in the respective divisions of the district, and the offices for such court shall be kept open at all times for transaction of business of the court. (May 28, 1926, ch. 414, § 2 (c), 44 Stat. 672.)

#### § 151. (Judicial Code, section 78.) Idaho.

The State of Idaho shall constitute one judicial district to be known as the district of Idaho. It is divided into four divisions, to be known as the northern, central, southern, and eastern divisions. The territory embraced on the 1st day of February 1938, in the counties of Benewah, Bonner, Boundary, Kootenai, and Shoshone, shall constitute the northern division of said district; and the territory embraced on the date last mentioned in the counties of Clearwater, Idaho, Latah, Lewis, and Nez Perce shall constitute the central division of said district; and the territory embraced on the date last mentioned in the counties of Ada, Adams, Blaine, Boise, Camas, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Lincoln, Minidoka, Owyhee, Payette, Twin Falls, Valley, and Washington shall constitute the southern division of said district; and the territory embraced on the date last mentioned in the counties of Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Clark, Custer, Franklin, Fremont, Jefferson, Lemhi, Madison, Oneida, Power, and Teton shall constitute the eastern division of said district. Terms of the district court for the northern division of said district shall be held at Coeur d'Alene City on the fourth Monday in May and the third Monday in November; for the central division, at Moscow on the second Monday in May and the first Monday in November; for the southern division, at Boise City on the first Monday in February and the first Tuesday in September; and for the eastern division at Pocatello on the second Mondays in March and October. The clerk of the court shall maintain an office in charge of himself or a deputy at Coeur d'Alene City, at Moscow, at Boise City, and at Pocatello, which shall be open at all times for the transaction of the business of the court. (Mar. 3, 1911, ch. 231, § 78, 36 Stat. 1109; May 11, 1939, ch. 121, 53 Stat. 738.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts July 3, 1890, ch. 656, § 16, 26 Stat. 217; July 5, 1892, ch. 145, 27 Stat. 72; Nov. 3, 1893, ch. 9, 28 Stat. 5; June 1, 1898, ch. 369, 30 Stat. 423, and Feb. 23, 1911, ch. 148, 36 Stat. 927. See repeal note under section 142 of this title and last paragraph of section 297 of act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168, which provided that all acts and parts of acts insofar as embraced within and superseded by the Judicial Code were thereby repealed.

#### RENAMING OF COUNTIES, EFFECT

Act May 11, 1939, cited to text, provided in section 2: "That in the event the Legislature of the State of Idaho should hereafter at any time change the description or name of any of the counties embraced in the divisions hereinbefore referred to, then the District Court of the United States for the District of Idaho may by rule or order make such changes in the description or names of the counties in the said divisions to conform with any Act of the Legislature of the State of Idaho."

#### § 152. (Judicial Code, section 79.) Illinois.

The State of Illinois is divided into three districts, to be known as the northern, southern, and eastern districts of Illinois. The northern district shall include the territory embraced on the 1st day of July 1910 in the counties of Cook, De Kalb, Du Page, Grundy, Kane, Kendall, Lake, La Salle, McHenry, and Will, which shall constitute the eastern division;

also the territory embraced on the date last mentioned in the counties of Boone, Carroll, Jo Daviess, Lee, Ogle, Stephenson, Whiteside, and Winnebago, which shall constitute the western division. Terms of the district court for the eastern division shall be held at Chicago on the first Mondays in February, March, April, May, June, July, September, October, and November, and the third Monday in December; and for the western division, at Freeport on the third Mondays in April and October. The clerk of the court for the northern district shall maintain an office in charge of himself or a deputy at Chicago and at Freeport, which shall be kept open at all times for the transaction of the business of the court. The marshal for the northern district shall maintain an office in the division in which he himself does not reside and shall appoint at least one deputy who shall reside therein. The southern district shall include the territory embraced on the 1st day of July 1910 in the counties of Bureau, Fulton, Henderson, Henry, Knox, Livingston, McDonough, Marshall, Mercer, Putnam, Peoria, Rock Island, Stark, Tazewell, Warren, and Woodford, which shall constitute the northern division; also the territory embraced on the date last mentioned in the counties of Adams, Bond, Brown, Calhoun, Cass, Christian, De Witt, Greene, Hancock, Jersey, Logan, McLean, Macon, Macoupin, Madison, Mason, Menard, Montgomery, Morgan, Pike, Sangamon, Schuyler, and Scott, which shall constitute the southern division. Terms of the district court for the northern division shall be held at Peoria on the third Mondays in April and October; for the southern division, at Springfield on the first Mondays in January and June, and at Quincy the first Mondays in March and September. The clerk of the court for the southern district shall maintain an office in charge of himself or a deputy at Peoria, at Springfield, and at Quincy, which shall be kept open at all times for the transaction of the business of the court. The marshal for said southern district shall appoint at least one deputy residing in the said northern division, who shall maintain an office at Peoria. The eastern district shall include the territory embraced on the 1st day of July 1910 in the counties of Alexander, Campaign, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Gallatin, Hamilton, Hardin, Iroquois, Jackson, Jasper, Jefferson, Johnson, Kankakee, Lawrence, Marion, Massac, Monroe, Moultrie, Perry, Piatt, Pope, Pulaski, Randolph, Richland, Saint Clair, Saline, Shelby, Union, Vermillion, Wabash, Washington, Wayne, White, and Williamson. Terms of the district court for the eastern district shall be held at Danville on the first Mondays in March and September; at Cairo, on the first Mondays in April and October; at East Saint Louis, on the first Mondays in May and November; and at Benton on the first Mondays in June and December. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Danville, at Cairo, at East Saint Louis, and at Benton, which shall be kept open at all times for the transaction of the business of the court, and shall there keep the records, files, and documents pertain-

ing to the court at that place. (Mar. 3, 1911, ch. 231, § 79, 36 Stat. 1110; Aug. 12, 1937, ch. 594, 50 Stat. 624; June 6, 1940, ch. 247, 54 Stat. 237.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 536 and 572 which were derived from acts Feb. 13, 1855, ch. 96, 10 Stat. 606; Apr. 23, 1856, ch. 18, 11 Stat. 4; July 11, 1862, ch. 145, 12 Stat. 536; and July 3, 1868, ch. 118, 15 Stat. 82, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

#### AMENDMENTS

Proviso stipulating court facilities were to be furnished at the expense of the United States was omitted in amendment by act June 6, 1940, cited to text.

§ 153. (Judicial Code, section 80.) Indiana; divisions; terms; venue; officers.

The State of Indiana shall constitute two judicial districts, to be known as the northern and southern districts of Indiana.

A. For the purpose of holding terms of court the southern district of Indiana shall be divided into four divisions, constituted as follows: The Indianapolis division, which shall include the territory embraced within the counties of Bartholomew, Boone, Brown, Clinton, Decatur, Delaware, Fayette, Fountain, Franklin, Hamilton, Hancock, Hendricks, Henry, Howard, Johnson, Madison, Marion, Monroe, Montgomery, Morgan, Randolph, Vermillion, and Vigo; the Evansville division, which shall include the territory embraced within the counties of Davies, Dubois, Rush, Shelby, Tipton, Union, and Wayne; the Terre Haute division, which shall include the territory embraced within the counties of Clay, Greene, Knox, Owen, Parke, Putnam, Sullivan, Gibson, Martin, Perry, Pike, Posey, Spencer, Vanderburg, and Warrick; and the New Albany division, which shall include the territory embraced within the counties of Clark, Crawford, Dearborn, Floyd, Harrison, Jackson, Jefferson, Jennings, Lawrence, Ohio, Orange, Ripley, Scott, Switzerland, and Washington.

B. For the purpose of holding terms of court the northern district shall be divided into three divisions, constituted as follows: The Fort Wayne division, which shall include the territory embraced within the counties of Adams, Allen, Blackford, Dekalb, Grant, Huntington, Jay, Lagrange, Noble, Steuben, Wells, and Whitley; the South Bend division, which shall include the territory embraced within the counties of Cass, Elkhart, Fulton, Kosciusko, Laporte, Marshall, Miami, Pulaski, Saint Joseph, Starke, and Wabash; the Hammond division, which shall include the territory embraced within the counties of Benton, Carroll, Jasper, Lake, Newton, Porter, Tippecanoe, Warren, and White.

2. Except as hereinafter in this section provided, terms of the District Court for the Southern District shall be held for the Indianapolis division at Indianapolis on the first Mondays of May and November of each year; for the Terre Haute division at Terre Haute on the first Mondays of April and October of each year; for the Evansville division at Evansville on the second Mondays of April and October of each year; for the New Albany division at New Albany on the third Mondays of April and October of each year. The terms of the District Court for the Northern Dis-

trict of Indiana shall be held for the Fort Wayne division at Fort Wayne on the first Mondays of April and December of each year; for the South Bend division at South Bend on the first Mondays of October and February of each year; for the Hammond division at Hammond on the first Mondays of March and November of each year. When the time fixed as above for the sitting of a court shall fall on a legal holiday the terms shall begin upon the next day following. Terms of the district court shall not be limited to any particular number of days nor shall it be necessary for any term to adjourn by reason of the intervention of the term of court elsewhere; but the term about to commence in another division may be postponed or adjourned over until the business of the court in session is concluded. A grand jury summoned to attend a term of court held in any division of either of the districts as above provided may investigate and find an indictment or make a presentment for any crime or offense committed in the district, whether or not the crime or offense was committed within the division in which the jury is in session.

3. A. The senior district judge for the district of Indiana in office immediately prior to April 21, 1928, shall be the district judge for the southern district as constituted by this section; the junior district judge for the district of Indiana immediately prior to April 21, 1928, shall be the district judge for the northern district as constituted by this section; and the district attorney and marshal for the district of Indiana in office immediately prior to April 21, 1928, shall be during the remainder of their present terms of office the district attorney and marshal for the southern district as constituted by this section.

B. The President is authorized and directed to appoint, by and with the advice and consent of the Senate, a district attorney and a marshal for the United States District Court for the Northern District of Indiana.

4. A. The clerk of the court for the southern district shall maintain an office in charge of himself or a deputy at Indianapolis, Terre Haute, Evansville, and New Albany, and the clerk of the court for the northern district shall maintain an office in charge of himself or a deputy at Fort Wayne, South Bend, and Hammond. Such offices shall be kept open at all times for the transaction of the business of the court. Each deputy clerk shall keep in his office full records of all transactions and proceedings of the district court held at that place in which the office is located. (Mar. 3, 1911, ch. 231, § 80, 36 Stat. 1110; Apr. 21, 1928, ch. 393, 45 Stat. 437.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 531, 559, 572, 625, 743, and 815, which were derived from acts Mar. 3, 1817, ch. 100, 3 Stat. 390; Mar. 10, 1838, ch. 33, 5 Stat. 215; Feb. 20, 1863, ch. 47, 12 Stat. 657; June 30, 1870, ch. 180, 16 Stat. 175; and Mar. 3, 1871, ch. 108, 16 Stat. 473, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

§§ 154, 155. Repealed. Apr. 21, 1928, ch. 393, 45 Stat. 439.

These sections, act Jan. 16, 1925, ch. 83, §§ 2, 4, 43 Stat. 751, related to court clerks and terms of court in

the District Courts of the United States for the State of Indiana.

§ 156. (Judicial Code, section 81.) Iowa.

The State of Iowa is divided into two judicial districts, to be known as the northern and southern districts of Iowa.

The northern district shall include the territory embraced on the 1st day of July 1910, in the counties of Allamakee, Dubuque, Buchanan, Clayton, Delaware, Fayette, Winneshiek, Howard, Chickasaw, Bremer, Black Hawk, Floyd, Mitchell, and Jackson, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Jones, Cedar, Linn, Iowa, Benton, Tama, Grundy, and Hardin, which shall constitute the Cedar Rapids division; also the territory embraced on the date last mentioned in the counties of Emmet, Palo Alto, Pocahontas, Calhoun, Carroll, Kossuth, Humboldt, Webster, Winnebago, Hancock, Wright, Hamilton, Worth, Cerro Gordo, Franklin, and Butler, which shall constitute the central division; also the territory embraced on the date last mentioned in the counties of Dickinson, Clay, Buena Vista, Sac, Osceola, O'Brien, Cherokee, Ida, Lyon, Sioux, Plymouth, Woodbury, and Monona, which shall constitute the western division.

Terms of the district court for the eastern division shall be held at Dubuque on the fourth Tuesday in April and the first Tuesday in December, and at Waterloo on the second Tuesdays in May and September; for the Cedar Rapids division, at Cedar Rapids on the first Tuesday in April and the fourth Tuesday in September; for the central division, at Fort Dodge on the second Tuesdays in June and November, and at Mason City on the fourth Tuesdays in June and November; and for the western division, at Sioux City on the fourth Tuesday in May and the third Tuesday in October.

The southern district shall include the territory embraced on the 1st day of July 1910 in the counties of Louisa, Henry, Des Moines, Lee, and Van Buren, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Marshall, Story, Boone, Greene, Guthrie, Dallas, Polk, Jasper, Poweshiek, Marion, Warren, and Madison, which shall constitute the central division of said district; also the territory embraced on the date last mentioned in the counties of Crawford, Harrison, Shelby, Audubon, Cass, Pottawattamie, Mills, and Montgomery, which shall constitute the western division of said district; also the territory embraced on the date last mentioned in the counties of Adair, Adams, Clarke, Decatur, Fremont, Lucas, Page, Ringgold, Taylor, Union, and Wayne, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Scott, Muscatine, Washington, Johnson, and Clinton, which shall constitute the Davenport division of said district; also the territory embraced on the date last mentioned in the counties of Davis, Appanoose, Mahaska, Keokuk, Jefferson, Monroe, and Wapello, which shall constitute the Ottumwa division of said district.

Terms of the district court for the eastern division shall be held at Keokuk on the fourteenth Tuesday after the second Tuesday in January and the eighth Tuesday after the third Tuesday in September; for the central division, at Des Moines on the fifteenth Tuesday after the second Tuesday in January and the tenth Tuesday after the third Tuesday in September; for the western division, at Council Bluffs on the second Tuesday after the second Tuesday in January and the second Tuesday after the third Tuesday in September; for the southern division, at Creston on the fourth Tuesday after the third Tuesday in September and the second Tuesday in January; for the Davenport division, at Davenport on the twelfth Tuesday after the second Tuesday in January and the sixth Tuesday after the third Tuesday in September; and for the Ottumwa division, at Ottumwa on the first Tuesday after the second Tuesday in January and the third Tuesday in September.

The clerk of the court for said district shall maintain an office in charge of himself or a deputy at Davenport and at Ottumwa for the transaction of the business of said divisions. (Mar. 3, 1911, ch. 231, § 81, 36 Stat. 1111; Mar. 3, 1913, ch. 122, 37 Stat. 734; Feb. 23, 1916, ch. 32, 39 Stat. 12; Apr. 27, 1916, ch. 90, 39 Stat. 55; Mar. 4, 1923, ch. 256, 42 Stat. 1483; Jan. 28, 1925, ch. 104, 43 Stat. 794.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 537 and 572 which were derived from acts Mar. 3, 1859, ch. 85, §§ 5, 6, 7, 11 Stat. 437, 438; June 30, 1870, ch. 178, § 1, 16 Stat. 174; July 15, 1862, ch. 178, 12 Stat. 576; Mar. 3, 1863, ch. 69, 12 Stat. 699, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

§ 156a. Same; Crawford County made part of western division of northern judicial district.

Crawford County, Iowa, of the western division of the southern judicial district of Iowa is hereby detached from said judicial district and attached to the western division of the northern judicial district of Iowa. (July 5, 1937, ch. 428, 50 Stat. 474.)

§ 157. (Judicial Code, section 82.) Kansas.

The State of Kansas shall constitute one judicial district, to be known as the district of Kansas. It is divided into three divisions, to be known as the first, second, and third divisions of the district of Kansas. The first division shall include the territory embraced on the 1st day of July 1910 in the counties of Atchison, Brown, Chase, Cheyenne, Clay, Cloud, Decatur, Dickinson, Doniphan, Douglas, Ellis, Franklin, Geary, Gove, Graham, Jackson, Jefferson, Jewell, Johnson, Leavenworth, Lincoln, Logan, Lyon, Marion, Marshall, Mitchell, Morris, Nemaha, Norton, Osage, Osborne, Ottawa, Phillips, Pottawatomie, Rawlins, Republic, Riley, Rooks, Russell, Saline, Shawnee, Sheridan, Sherman, Smith, Thomas, Trego, Wabaunsee, Wallace, Washington, and Wyandotte. The second division shall include the territory embraced on the date last mentioned in the counties of Barber, Barton, Butler, Clark, Comanche, Cowley, Edwards, Ellsworth, Finney, Ford, Grant, Gray, Greeley, Hamilton, Harper, Harvey, Hodgeman, Has-

kell, Kingman, Kiowa, Kearney, Lane, McPherson, Morton, Meade, Ness, Pratt, Pawnee, Reno, Rice, Rush, Scott, Sedgwick, Stafford, Stevens, Seward, Sumner, Stanton, and Wichita. The third division shall include the territory embraced on the said date last mentioned in the counties of Allen, Anderson, Bourbon, Cherokee, Coffey, Chautauqua, Crawford, Elk, Greenwood, Labette, Linn, Miami, Montgomery, Neosho, Wilson, and Woodson. Terms of the district court for the first division shall be held at Leavenworth on the second Monday in October; at Topeka on the second Monday in April; at Kansas City on the first Monday in October and the first Monday in December; and at Salina on the second Monday in May; terms of the district court for the second division shall be held at Wichita on the second Mondays in March and September, and at Hutchinson on the second Monday in June and the first Monday in November, when suitable rooms and accommodations for holding terms of the court shall be provided at Hutchinson free of cost to the United States or until, subject to the recommendation of the Attorney General of the United States with respect to providing such rooms and accommodations for holding court at Hutchinson, a public building containing such suitable rooms and accommodations shall be erected at such place; and for the third division at Fort Scott on the first Monday in May and the second Monday in November. The clerk of the district court shall appoint three deputies, one of whom shall reside and keep his office at Fort Scott, one at Wichita, and the other at Salina, and the marshal shall appoint a deputy who shall reside and keep his office at Fort Scott and the marshal shall also appoint a deputy, who shall reside and keep his office at Kansas City. (Mar. 3, 1911, ch. 231, § 82, 36 Stat. 1112; Sept. 6, 1916, ch. 447, 39 Stat. 725; June 7, 1924, ch. 319, 43 Stat. 607; June 13, 1938, ch. 349, 52 Stat. 673.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 531, 572, and 658, which were derived from acts Jan. 29, 1861, ch. 20, § 4, 12 Stat. 128; May 21, 1872, ch. 176, 17 Stat. 135; June 8, 1872, ch. 341, 17 Stat. 334; Jan. 13, 1863, ch. 9, 12 Stat. 634, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

§ 158. (Judicial Code, section 83.) Kentucky.

The State of Kentucky is divided into two districts, to be known as the eastern and western districts of Kentucky. The eastern district shall include the territory embraced on the 1st day of July, 1910, in the counties of Carroll, Trimble, Henry, Shelby, Anderson, Mercer, Boyle, Gallatin, Boone, Kenton, Campbell, Pendleton, Grant, Owen, Franklin, Bourbon, Scott, Woodford, Fayette, Jessamine, Garrard, Madison, Lincoln, Rockcastle, Pulaski, Wayne, Whitley, Bell, Knox, Harlan, Laurel, Clay, Leslie, Letcher, Perry, Owsley, Jackson, Estill, Lee, Breathitt, Knott, Pike, Floyd, Magoffin, Martin, Johnson, Lawrence, Boyd, Greenup, Carter, Elliott, Morgan, Wolfe, Powell, Menifee, Clark, Montgomery, Bath, Rowan, Lewis, Fleming, Mason, Bracken, Robertson, Nicholas, and Harrison, with the waters thereof. Regular terms of the District Court of the United States for



the Eastern District of Kentucky shall be held at the following times and places, namely:

At Jackson: Beginning on the first Monday in March and the third Monday in September in each year.

At Frankfort: Beginning on the second Monday in March and the fourth Monday in September in each year.

At Covington: Beginning on the first Monday in April and the third Monday in October in each year.

At Richmond: Beginning on the fourth Monday in April and the second Monday in November in each year.

At London: Beginning on the second Monday in May and the fourth Monday in November in each year.

At Catlettsburg: Beginning on the fourth Monday in May and the second Monday in December in each year.

At Lexington: Beginning on the second Monday in January and the second Monday in June in each year: *Provided*, That suitable rooms and accommodations for holding court at Lexington shall be furnished without expense to the United States.

At Pikeville: Two regular sessions of said court each year beginning on the fourth Monday in March and the second Monday in October: *Provided*, That suitable rooms and accommodations for holding said sessions of court shall be furnished without expense to the United States until such time as the United States shall provide such rooms and accommodations.

And at such other times and places as may hereafter be provided by law.

The clerk of the court for the eastern district of Kentucky shall maintain an office in charge of himself, a deputy, or a clerical assistant, at each of the places of holding court within said district.

The clerk of the court for said eastern district shall maintain an office in charge of himself, a deputy, or a clerical assistant at Pikeville, and said office shall be kept open at all times for the transaction of business of said court.

The western district shall include the territory embraced on the 1st day of July, 1910, in the counties of Oldham, Jefferson, Spencer, Bullitt, Nelson, Washington, Marion, Larue, Taylor, Casey, Green, Adair, Russell, Clinton, Cumberland, Monroe, Metcalfe, Allen, Barren, Simpson, Logan, Warren, Butler, Hart, Edmonson, Grayson, Hardin, Meade, Breckinridge, Hancock, Daviess, Ohio, McLean, Muhlenberg, Todd, Christian, Trigg, Lyon, Caldwell, Livingston, Crittenden, Hopkins, Webster, Henderson, Union, Marshall, Calloway, McCracken, Graves, Ballard, Carlisle, Hickman, and Fulton, with the waters thereof.

Terms of the district court for the western district shall be held at Louisville on the second Mondays in March and October; at Owensboro on the first Monday in May and the fourth Monday in November; at Paducah on the third Mondays in April and November; and at Bowling Green on the third Monday in May and the second Monday in December.

The clerk for the western district shall maintain an office in charge of himself or a deputy at Louisville, at Owensboro, at Paducah, and at Bowling

Green, each of which offices shall be kept open at all times for the transaction of the business of said court.

The clerks of the courts for the eastern and western districts, upon issuing original process in a civil action, shall make it returnable to the court nearest to the county of the residence of the defendant, or of that defendant whose county is nearest to a court, and shall, immediately upon payment by the plaintiff of his fees accrued, send the papers filed to the clerk of the court to which the process is made returnable; and whenever the process is not thus made returnable, any defendant may, upon motion, on or before the calling of the cause, have it transferred to the court to which it should have been sent had the clerk known the residence of the defendant when the action was brought. (Mar. 3, 1911, ch. 231, § 83, 36 Stat. 1112; Jan. 29, 1920, ch. 57, 41 Stat. 400; June 22, 1936, ch. 707, 49 Stat. 1822.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 557, 745, 815, and act Feb. 12, 1901, ch. 355, § 2, 31 Stat. 781, which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See repeal note under section 142 of this title.

#### § 159. (Judicial Code, section 84.) Louisiana.

The State of Louisiana is divided into two judicial districts, to be known as the eastern and western districts of Louisiana. The eastern district shall include the territory embraced on the 1st day of July 1910, in the parishes of Assumption, Iberia, Jefferson, Lafourche, Orleans, Plaquemines, Saint Bernard, Saint Charles, Saint James, Saint John the Baptist, Saint Mary, Saint Tammany, Tangipahoa, Terrebonne, and Washington, which shall constitute the New Orleans division; also the territory embraced on the date last mentioned in the parishes of Ascension, East Baton Rouge, East Feliciana, Livingston, Pointe Coupee, Saint Helena, West Baton Rouge, Iberville, and West Feliciana, which shall constitute the Baton Rouge division of said district. Terms of the district court for the New Orleans division shall be held at New Orleans on the third Mondays in February, May, and November; and for the Baton Rouge division, at Baton Rouge on the second Mondays in April and November. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at New Orleans and at Baton Rouge which shall be kept open at all times for the transaction of the business of the court. The western district shall include the territory embraced on the 1st day of July 1910 in the parishes of Saint Landry, Evangeline, Saint Martin, Lafayette, and Vermilion, which shall constitute the Opelousas division of said district; also the territory embraced on the date last mentioned in the parishes of Rapides, Avoyelles, Catahoula, La Salle, Grant, and Winn, which shall constitute the Alexandria division of said district; also the territory embraced on the said date last mentioned in the parishes of Caddo, De Soto, Bossier, Webster, Claiborne, Bienville, Natchitoches, Sabine, and Red River, which shall constitute the Shreveport division of said district; also the territory embraced on the date last men-



tioned in the parishes of Ouachita, Franklin, Richland, Morehouse, East Carroll, West Carroll, Madison, Tensas, Concordia, Union, Caldwell, Jackson, and Lincoln, which shall constitute the Monroe division of said district; also the territory embraced on the date last mentioned in the parishes of Acadia, Calcasieu, Cameron, and Vernon, which shall constitute the Lake Charles division of said district. Terms of the district court for the Opelousas division shall be held at Opelousas on the first Mondays in January and June; for the Alexandria division, at Alexandria on the fourth Mondays in January and June; for the Shreveport division, at Shreveport on the third Mondays in February and October; for the Monroe division, at Monroe on the first Mondays in April and October; and for the Lake Charles division, at Lake Charles on the third Mondays in May and December. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Opelousas, at Alexandria, at Shreveport, at Monroe, and at Lake Charles, which shall be kept open at all times for the transaction of the business of the court. (Mar. 3, 1911, ch. 231, § 84, 36 Stat. 1113.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 531, 572 and act Mar. 3, 1881, ch. 144, 21 Stat. 507 which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See repeal note under section 142 of this title.

#### § 160. (Judicial Code, section 85.) Maine; divisions; sessions.

The State of Maine shall constitute one judicial district, to be known as the district of Maine. Said district shall be divided into two divisions, to be known, respectively, as the northern and southern divisions. The counties of Aroostook, Penobscot, Piscataquis, Washington, Hancock, Waldo, and Somerset shall be known as the northern division, the court for which shall be held in the city of Bangor. The remaining counties in said State and district of Maine shall constitute the southern division, the court for which shall be held in the city of Portland. Two sessions shall be held in each and every year in the city of Bangor, beginning, respectively, on the first Tuesday of November and the first Tuesday of June, and three sessions shall be held in each and every year in the city of Portland, beginning, respectively, on the first Tuesday of April, on the third Tuesday of September, and on the second Tuesday in December. (Mar. 3, 1911, ch. 231, § 85, 36 Stat. 1114; Dec. 22, 1911, ch. 7, 37 Stat. 51; Sept. 8, 1916, ch. 475, §§ 1, 3, 39 Stat. 850; Mar. 4, 1923, ch. 279, 42 Stat. 1506.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 531 which was derived from act Sept. 24, 1789, ch. 20, § 2, 1 Stat. 73 and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 161. Same; office of clerk and marshal; deputy clerk; marshal's field deputy.

The clerk of the district court for the district of Maine and the marshal of said district shall each at all times maintain by himself or by deputy an

office in charge of himself or deputy, both at the city of Bangor and at the city of Portland. The deputy clerk in charge of the office in the division in which the clerk does not reside himself shall reside in the city where the office of which he has charge is located. The marshal shall appoint a field deputy, who shall have charge of the office in the division in which the marshal does not reside himself, who shall reside in the city where the office of which he has charge is located, and who, within and for said division, in the absence of the marshal, shall have all the powers of the marshal, and who shall also, throughout said district of Maine, have all the powers of other deputy marshals. And such field deputy, before he enters on the duties of his office, shall give bond before the judge of said district of like tenor, effect, and amount and of similar form and condition, with like sureties, and to be approved in like manner, as may be required by law of the marshal of said district. (Sept. 8, 1916, ch. 475, § 2, 39 Stat. 850.)

#### § 162. Same; divisions considered separate districts for purposes of jurisdiction and venue; United States commissioners.

For the purpose of determining the jurisdiction and venue of all causes, suits, actions, bills, petitions, matters, libels, proceedings, prosecutions, indictments, complaints, informations, and other judicial business, whether civil or criminal, or whether in equity, in admiralty, in prize, in forfeiture, or in condemnation, in rem, in personam, or mixed, whatsoever, cognizable in the United States district court, each of said divisions shall be as if it were a separate and distinct judicial district of the United States. There shall be but one judge, one clerk, one marshal, and one district attorney for said district of Maine. United States commissioners in either of said divisions, until otherwise provided by law, shall be appointed and have jurisdiction and cognizance through said district of Maine in the same manner and to the same extent and effect that they have under existing law. (Sept. 8, 1916, ch. 475, § 4, 39 Stat. 851.)

#### § 163. Same; transfer of civil and criminal causes.

Any cause, suit, action, bill, petition, matter, libel, proceeding, prosecution, indictment, complaint, information, or other judicial business, whether civil or criminal, or whether in equity, in admiralty, in prize, in forfeiture, or in condemnation, in rem, in personam, or mixed, whatsoever, pending in either of said divisions, when all the parties thereto so stipulate in writing, and where the ends of justice or the convenience of the parties will be promoted thereby, may, at the discretion of the court or judge, be transferred wholly or specially for the hearing, trial, or determination of any single proceeding, matter, step, or motion therein from one of said divisions to the other. On request of all accused in any criminal prosecution and of all claimants in any cause, proceeding, libel, information, or other matter in rem, the same may be transferred, at the discretion of the court or judge from one of said divisions to the division in which a term of said court is next to be held, without the joinder in such request of the United

States when the Government is the only other party thereto not joining in such request. (Sept. 8, 1916, ch. 475, § 5, 39 Stat. 851.)

**§ 164. Same; ex parte proceedings heard in either division.**

All ex parte, of course, default and pro confesso, proceedings and matters, and all interlocutory matters in which all interested parties are present and consenting that such hearing may be had, in whichever of said divisions the same may be cognizable or pending, may be heard and determined by the court or judge and all findings, orders, judgments, and decrees be made, and all mesne and final process therein be tested, sealed, issued, and renewed in either of said divisions, in term time, vacation, or chambers. (Sept. 8, 1916, ch. 475, § 6, 39 Stat. 851.)

**§ 165. Same; change of venue or continuance.**

Nothing in sections 160–165 of this title shall be construed to deprive the court or judge of the power to grant a change of venue or continuance in any cause, proceeding, or matter whatsoever according to law and the requirements of justice. (Sept. 8, 1916, ch. 475, § 7, 39 Stat. 851.)

**§ 166. (Judicial Code, section 86.) Maryland.**

The State of Maryland shall constitute one judicial district, to be known as the district of Maryland. Terms of the district court shall be held at Baltimore on the first Tuesdays in March, June, September, and December, at Cumberland on the second Monday in May and the last Monday in September, and at Denton on the third Monday in January and the first Monday in July: *Provided*, That suitable accommodations for holding court at Denton are furnished free of expense to the United States. The clerk of the court shall appoint a deputy who shall reside and maintain an office at Cumberland, unless the clerk shall himself reside there; and the marshal shall also appoint a deputy, who shall reside and maintain an office at Cumberland, unless he shall himself reside there. (Mar. 3, 1911, ch. 231, § 86, 36 Stat. 1114; Mar. 3, 1925, ch. 422, 43 Stat. 1106.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 531 and 572, which were derived from acts Sept. 24, 1789, ch. 20, § 2, 1 Stat. 73; Apr. 29, 1802, ch. 31, 2 Stat. 165, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**§ 167. (Judicial Code, section 87.) Massachusetts.**

The State of Massachusetts shall constitute one judicial district, to be known as the district of Massachusetts.

Terms of the district court shall be held at Boston on the third Tuesday in March, the fourth Tuesday in June, the second Tuesday in September, and the first Tuesday in December; at Springfield on the second Tuesday in May and December; at New Bedford on the first Tuesday in August; and at Worcester on the first Tuesday in March and the third Tuesday in September: *Provided*, That suitable rooms and accommodations for holding court at Springfield, New Bedford, and Worcester shall be

furnished free of expense to the United States: *And provided further*, That all writs, precepts, and processes shall be returnable to the terms at Boston, and all court papers shall be kept in the clerk's office at Boston, unless otherwise specially ordered by the court, and the terms at Boston shall not be terminated or affected by the terms at Springfield, New Bedford, or Worcester.

The marshal and the clerk for said district shall each appoint at least one deputy to reside in Springfield and to maintain an office at that place. (Mar. 3, 1911, ch. 231, § 87, 36 Stat. 1114; May 1, 1922, ch. 173, 42 Stat. 503; May 17, 1926, ch. 306, 44 Stat. 559.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 531 and 572, which were derived from acts Sept. 24, 1789, ch. 20, § 2, 1 Stat. 73; June 9, 1794, ch. 64, 1 Stat. 396; Mar. 3, 1813, ch. 45, 2 Stat. 815, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See repeal note under section 142 of this title.

**§ 168. (Judicial Code, section 88.) Michigan.**

The State of Michigan is divided into two judicial districts to be known as the eastern and western districts of Michigan. The eastern district shall include the territory embraced on the 1st day of July 1910 in the counties of Alcona, Alpena, Arenac, Bay, Cheboygan, Clare, Crawford, Genesee, Gladwin, Gratiot, Huron, Iosco, Isabella, Midland, Montmorency, Ogemaw, Oscoda, Otsego, Presque Isle, Roscommon, Saginaw, Shiawassee, and Tuscola, which shall constitute the northern division; also the territory embraced on the date last mentioned in the counties of Branch, Calhoun, Clinton, Hillsdale, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, Saint Clair, Sanilac, Washtenaw, and Wayne, which shall constitute the southern division of said district. Terms of the district court for the southern division shall be held at Detroit on the first Tuesdays in March, June, and November; for the northern division, at Bay City on the first Tuesdays in May and October, and at Port Huron in the discretion of the judge of said court and at such times as he shall appoint therefor. There shall also be held a special or adjourned term of the district court at Bay City for the hearing of admiralty causes, beginning in the month of February in each year. The western district shall include the territory embraced on the 1st day of July 1910 in the counties of Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft, which shall constitute the northern division; also the territory embraced on the said date last mentioned in the counties of Allegan, Antrim, Barry, Benzie, Berrien, Cass, Charlevoix, Eaton, Emmet, Grand Traverse, Ionia, Kalamazoo, Kalkaska, Kent, Lake, Leelanau, Manistee, Mason, Mecosta, Missaukee, Montcalm, Muskegon, Newaygo, Oceana, Osceola, Ottawa, Saint Joseph, Van Buren, and Wexford, which shall constitute the southern division of said district. Terms of the district court for the southern division shall be held at Grand Rapids on the first Tuesdays in March, May, September, and November; and for

the northern division, at Marquette on the first Tuesdays in April and October and at Sault Sainte Marie on the first Tuesdays in January and June. All issues of fact shall be tried at the terms held in the division where such suit shall be commenced. Actions in rem and admiralty may be brought in whichever division of the eastern district service can be had upon the res. Nothing herein contained shall prevent the district court of the western division from regulating by general rule the venue of transitory actions either at law or in equity, or from changing the same for cause. The clerk of the court for the western district shall reside and keep his office at Grand Rapids, and shall also appoint a deputy clerk for said court held at Marquette, who shall reside and keep his office at that place. The marshal for said western district shall keep an office and a deputy marshal at Marquette. The clerk of the court for the eastern district shall keep his office at the city of Detroit, and shall appoint a deputy for the court held at Bay City, who shall reside and keep his office at that place. The marshal for said district shall keep an office and a deputy marshal at Bay City, and mileage on service of process in said northern division shall be computed from Bay City. (Mar. 3, 1911, ch. 231, § 88, 36 Stat. 1114; July 9, 1912, ch. 222, 37 Stat. 190; Mar. 31, 1930, ch. 101, 46 Stat. 138.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 538, 572, and 579 which were derived from acts Feb. 24, 1863, ch. 54, § 1, 12 Stat. 660, 661; June 20, 1864, ch. 143, § 1, 13 Stat. 143, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See repeal note under section 142 of this title.

#### § 169. (Judicial Code, section 89.) Minnesota.

The State of Minnesota shall constitute one judicial district, to be known as the district of Minnesota. It is divided into six divisions, to be known as the first, second, third, fourth, fifth, and sixth divisions. The first division shall include the territory embraced on the 1st day of July 1910 in the counties of Winona, Wabasha, Olmsted, Dodge, Steele, Mower, Fillmore, and Houston. The second division shall include the territory embraced on the date last mentioned in the counties of Freeborn, Faribault, Martin, Jackson, Nobles, Rock, Pipestone, Murray, Cottonwood, Watonwan, Blue Earth, Waseca, Le Sueur, Nicollet, Brown, Redwood, Lyon, Lincoln, Yellow Medicine, Sibley, and Lac qui Parle. The third division shall include the territory embraced on the date last mentioned in the counties of Chisago, Washington, Ramsey, Dakota, Goodhue, Rice, and Scott. The fourth division shall include the territory embraced on the date last mentioned in the counties of Hennepin, Wright, Meeker, Kandiyohi, Swift, Chippewa, Renville, McLeod, Carver, Anoka, Sherburne, and Isanti. The fifth division shall include the territory embraced on the date last mentioned in the counties of Cook, Lake, St. Louis, Itasca, Koochiching, Cass, Crow Wing, Aitkin, Carlton, Pine, Kanabec, Mille Lacs, Morrison, and Benton. The sixth division shall include the territory embraced on the date last mentioned in the coun-

ties of Stearns, Pope, Stevens, Big Stone, Traverse, Grant, Douglas, Todd, Otter Tail, Roseau, Wilkin, Clay, Becker, Wadena, Norman, Polk, Red Lake, Marshall, Kittson, Beltrami, Clearwater, Mahanomen, and Hubbard. Terms of the district court for the first division shall be held at Winona on the fourth Tuesday in January and the third Tuesday in June; for the second division, at Mankato on the third Tuesday in January, and the second Tuesday in June; for the third division, at Saint Paul on the first Tuesday in April and the first Tuesday in November; for the fourth division, at Minneapolis on the first Tuesday in March and the fourth Tuesday in September; for the fifth division, at Duluth on the first Tuesday in May and the first Tuesday in December; and for the sixth division, at Fergus Falls on the first Tuesday in January and the fourth Tuesday in May. The clerk of the district court shall appoint a deputy clerk at each place where the court was required on March 3, 1911, to be held, at which the clerk shall not himself reside, who shall keep his office and reside at the place appointed for the holding of said court. (Mar. 3, 1911, ch. 231, § 89, 36 Stat. 1115; Apr. 10, 1926, ch. 113, 44 Stat. 238.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 531 and 572, which were derived from acts May 11, 1858, ch. 31, § 3, 11 Stat. 285; Mar. 3, 1859, ch. 74, 11 Stat. 402; Apr. 5, 1866, ch. 26, 14 Stat. 14, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

#### § 170. (Judicial Code, section 90.) Mississippi.

The State of Mississippi is divided into two judicial districts to be known as the northern and southern districts of Mississippi. The northern district shall include the territory embraced on the 1st day of December 1923 in the counties of Alcorn, Attala, Chickasaw, Choctaw, Clay, Itawamba, Lee, Lowndes, Monroe, Oktibbeha, Pontotoc, Prentiss, Tishomingo, and Winston, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Benton, Calhoun, Carroll, De Soto, Grenada, Lafayette, Marshall, Montgomery, Panola, Tate, Tippah, Union, Webster, and Yalabusha, which shall constitute the western division of said district; also the territory embraced on the date last mentioned in the counties of Bolivar, Coahoma, Leflore, Quitman, Sunflower, Tallahatchie, and Tunica, which shall constitute the Delta division of said district. The terms of the district court for the eastern division shall be held at Aberdeen on the first Mondays in April and October; for the western division, at Oxford on the first Mondays in June and December; and for the Delta division, at Clarksdale on the first Mondays in May and November. The southern district shall include the territory embraced on the 1st day of December 1923 in the counties of Amite, Copiah, Franklin, Hinds, Holmes, Leake, Lincoln, Madison, Pike, Rankin, Simpson, Smith, Scott, Wilkinson, and Yazoo, which shall constitute the Jackson division; also the territory embraced on the date last mentioned in the counties of Adams, Claiborne, Humphreys, Issaquena, Jefferson, Sharkey,

Warren, and Washington, which shall constitute the western division; also the territory embraced on the date last mentioned in the counties of Clarke, Jasper, Kemper, Lauderdale, Neshoba, Newton, Noxubee, and Wayne, which shall constitute the eastern division; also the territory embraced on the date last mentioned in the counties of George, Hancock, Harrison, Jackson, Pearl River, and Stone, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Covington, Forrest, Greene, Jefferson Davis, Jones, Lamar, Lawrence, Marion, Perry, and Walthall, which shall constitute the Hattiesburg division. Terms of the district court for the Jackson division shall be held at Jackson on the first Mondays in May and November; for the western division, at Vicksburg on the third Mondays in May and November; for the eastern division, at Meridian on the third Mondays in March and September; for the southern division, at Biloxi on the third Monday in February and the first Monday in June; and for the Hattiesburg division at Hattiesburg on the second Mondays in April and October. The clerk of the court for each district shall maintain an office in charge of himself or a deputy at each place in his district at which court is now required to be held, at which he shall not himself reside, which shall be kept open at all times for the transaction of the business of the court. The marshal for each of said districts shall maintain an office in charge of himself or a deputy at each place of holding court in his district. (Mar. 3, 1911, ch. 231, § 90, 36 Stat. 1116; Feb. 5, 1912, ch. 28, 37 Stat. 59; May 27, 1912, ch. 136, 37 Stat. 118; Feb. 12, 1925, ch. 212, 43 Stat. 882; May 19, 1936, ch. 428, 49 Stat. 1362; May 8, 1939, ch. 116, § 1, 53 Stat. 684.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 539, 552, 572, and 658, and act Feb. 24, 1911, ch. 160, 36 Stat. 932, which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See repeal note under section 142 of this title and last paragraph of section 297 of act Mar. 3, 1911, ch. 231, 36 Stat. 1168, which provided that all acts and parts of acts embraced within and superseded by the Judicial Code were thereby repealed.

R. S. §§ 539, 552, 572, and 658 were derived from acts Apr. 3, 1818, ch. 29, 3 Stat. 413; Feb. 21, 1823, ch. 11, 3 Stat. 726; May 5, 1830, ch. 89, 4 Stat. 399; Mar. 3, 1835, ch. 34, 4 Stat. 773; Mar. 3, 1837, ch. 34, 5 Stat. 177; June 18, 1838, ch. 115, § 1, 5 Stat. 247; Feb. 16, 1839, ch. 27, 5 Stat. 317; and May 16, 1866, ch. 83, 14 Stat. 48.

#### § 171. (Judicial Code, section 91.) Missouri.

The State of Missouri is divided into two judicial districts, to be known as the eastern and western districts of Missouri. The eastern district shall include the territory embraced on the 1st day of July, 1910, in the city of Saint Louis and the counties of Audrain, Crawford, Dent, Franklin, Gasconade, Iron, Jefferson, Lincoln, Maries, Montgomery, Phelps, Saint Charles, Saint Francois, Sainte Genevieve, Saint Louis, Warren, and Washington, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Adair, Chariton, Clark, Knox, Lewis, Linn, Macon, Marion, Monroe, Pike, Ralls, Randolph, Schuyler, Scotland, and Shelby, which shall consti-

tute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Madison, Mississippi, New Madrid, Pemiscot, Perry, Reynolds, Ripley, Scott, Shannon, Stoddard, and Wayne, which shall constitute the southeastern division of said district. Terms of the district court for the eastern division shall be held at Saint Louis on the third Mondays in March and September and at Rolla on the second Mondays in January and June: *Provided*, That suitable rooms and accommodations for holding court at Rolla are furnished free of expense to the United States; for the northern division at Hannibal on the fourth Monday in May and the first Monday in December; and for the southeastern division at Cape Girardeau on the second Mondays in April and October.

The western district shall include the territory embraced on the 1st day of July, 1910, in the counties of Bates, Caldwell, Carroll, Cass, Clay, Grundy, Henry, Jackson, Johnson, Lafayette, Livingston, Mercer, Putnam, Ray, Saint Clair, Saline, and Sullivan, which shall constitute the western division; also the territory embraced on the date last mentioned in the counties of Barton, Barry, Jasper, Lawrence, McDonald, Newton, Stone, and Vernon, which shall constitute the southwestern division; also the territory embraced on the date last mentioned in the counties of Andrew, Atchison, Buchanan, Clinton, Daviess, Kekalb, Gentry, Holt, Harrison, Nodaway, Platte, and Worth, which shall constitute the Saint Joseph division; also the territory embraced on the date last mentioned in the counties of Benton, Boone, Callaway, Cooper, Camden, Cole, Hickory, Howard, Miller, Moniteau, Morgan, Osage, and Pettis, which shall constitute the central division; also the territory embraced on the date last mentioned in the counties of Christian, Cedar, Dade, Dallas, Douglas, Greene, Howell, Laclede, Oregon, Ozark, Polk, Pulaski, Taney, Texas, Webster, and Wright, which shall constitute the southern division.

Terms of the district court for the western division shall be held at Kansas City on the fourth Monday in April and the first Monday in November, and at Chillicothe on the fourth Monday in May and the first Monday in December: *Provided*, That suitable rooms and accommodations for holding court at Chillicothe are furnished free of expense to the United States; for the southwestern division, at Joplin on the second Mondays in June and January; for the Saint Joseph division, at Saint Joseph on the first Monday in March and the third Monday in September; for the central division, at Jefferson City on the third Mondays in March and October; and for the southern division, at Springfield on the first Mondays in April and October.

The clerk of the court at Saint Louis, in the eastern district, shall maintain an office in charge of himself or a deputy at Saint Louis and Hannibal and at such other places of holding court in said district as may be deemed necessary by the judge, which shall be kept open at all times for the transaction of the business of the court.

The clerk of the court for the western district shall maintain an office in charge of himself or a deputy

at Kansas City, at Jefferson City, at Saint Joseph, at Chillicothe, at Joplin, and at Springfield, which shall be kept open at all times for the transaction of the business of the court.

The marshal for each district shall also maintain an office in charge of himself or a deputy at each place at which court was held on March 3, 1911, in his district. (Mar. 3, 1911, ch. 231, § 91, 36 Stat. 1117; Dec. 22, 1911, ch. 8, 37 Stat. 51.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 540 and 572 which were derived from acts Mar. 3, 1857, ch. 100, § 1, 11 Stat. 197; Feb. 25, 1873, ch. 200, 17 Stat. 477, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

§ 172. (Judicial Code, section 92.) Montana.

The State of Montana shall constitute one judicial district, to be known as the district of Montana. Terms of the district court shall be held at Helena, Butte, Great Falls, Lewistown, Billings, Missoula, Glasgow, Havre, Miles City, Livingston, and Kalispell at such times as may be fixed by rule of such court. Causes, civil and criminal, may be transferred by the court or a judge thereof from any sitting place designated above to any other sitting place thus designated, when the convenience of the parties or the ends of justice would be promoted by the transfer; and any interlocutory order may be made by the court or judge thereof in either place: *Provided*, That suitable rooms and accommodations for holding court at Lewistown and Havre are furnished without expense to the United States: *And provided further*, That suitable rooms and accommodations for holding court at Livingston and Kalispell are furnished without expense to the United States until, subject to the recommendation of the Attorney General of the United States with reference to providing such rooms and accommodations for holding court at Livingston and Kalispell, public buildings shall have been erected or other Federal space provided for court purposes in said cities. (Mar. 3, 1911, ch. 231, § 92, 36 Stat. 1118; July 3, 1926, ch. 748, 44 Stat. 825; July 5, 1937, ch. 430, 50 Stat. 474; Aug. 26, 1937, ch. 819, § 2, 50 Stat. 837; Aug. 7, 1939, ch. 506, 53 Stat. 1236.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts Feb. 22, 1889, ch. 180, § 21, 25 Stat. 682; July 17, 1898, ch. 571, 30 Stat. 685; act Apr. 27, 1904, ch. 1610, 33 Stat. 313. See repeal note under section 142 of this title.

§ 173. (Judicial Code, section 93.) Nebraska.

The State of Nebraska shall constitute one judicial district, to be known as the district of Nebraska. Said district is divided into eight divisions. The territory embraced on the 1st day of July 1910 in the counties of Douglas, Sarpy, Washington, Dodge, Colfax, Platte, Nance, Boone, Wheeler, Burt, Thurston, Dakota, Cuming, Cedar, and Dixon shall constitute the Omaha division; the territory embraced on the date last mentioned in the counties of Madison, Antelope, Knox, Pierce, Stanton, Wayne, Holt, Boyd, Rock, Brown, and Keya Paha shall constitute the Norfolk division; the territory embraced on the date

last mentioned in the counties of Cherry, Sheridan, Dawes, Box Butte, and Sioux shall constitute the Chadron division; the territory embraced on the date last mentioned in the counties of Hall, Merrick, Howard, Greeley, Garfield, Valley, Sherman, Buffalo, Custer, Loup, Blaine, Thomas, Hooker, and Grant shall constitute the Grand Island division; the territory embraced on the date last mentioned in the counties of Lincoln, Dawson, Logan, McPherson, Keith, Deuel, Garden, Morrill, Cheyenne, Kimball, Banner, and Scott's Bluff shall constitute the North Platte division; the territory embraced on the date last mentioned in the counties of Cass, Otoe, Johnson, Nemaha, Pawnee, Richardson, Gage, Lancaster, Saunders, Butler, Seward, Saline, Jefferson, Thayer, Fillmore, York, Polk, and Hamilton shall constitute the Lincoln division; the territory embraced on the date last mentioned in the counties of Clay, Nuckolls, Webster, Adams, Kearney, Franklin, Harlan, and Phelps shall constitute the Hastings division; and the territory embraced on the date last mentioned in the counties of Gosper, Furnas, Red Willow, Frontier, Hayes, Hitchcock, Dundy, Chase, and Perkins shall constitute the McCook division. Terms of the district court for the Omaha division shall be held at Omaha on the first Monday in April and the fourth Monday in September; for the Norfolk division, at Norfolk on the third Monday in September; for the Chadron division, at Chadron on the second Monday in September; for the Grand Island division, at Grand Island on the second Monday in January; for the North Platte division, at North Platte on the second Monday in June; for the Lincoln division, at Lincoln on the second Monday in May and the first Monday in October; for the Hastings division, at Hastings on the second Monday in March; and for the McCook division, at McCook on the first Monday in March: *Provided*, That where provision is made herein for holding court at places where there are no Federal buildings, a suitable room in which to hold court, together with light and heat, shall be provided by the city or county where such court is held, without any expense to the United States. The clerk of the court shall appoint a deputy for each division of the district in which he does not himself reside, who shall keep his office and reside at the place of holding court in the division for which he is appointed. (Mar. 3, 1911, ch. 231, § 93, 36 Stat. 1118.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 531 and 572 which were derived from acts Mar. 25, 1867, ch. 7, § 1, 15 Stat. 5; Mar. 3, 1873, ch. 263, 17 Stat. 601, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also note under section 142 of this title.

§ 174. (Judicial Code, section 94.) Nevada.

The State of Nevada shall constitute one judicial district, to be known as the district of Nevada. Terms of the district court shall be held at Carson City on the first Mondays in February, May, and October, and at Las Vegas on the first Monday in March. (Mar. 3, 1911, ch. 231, § 94, 36 Stat. 1118; June 24, 1930, ch. 595, 46 Stat. 806.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 531 and 572 which were derived from act Feb. 27, 1865, ch. 64, § 1, 13 Stat. 440, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

## § 175. (Judicial Code, section 95.) New Hampshire.

The State of New Hampshire shall constitute one judicial district, to be known as the district of New Hampshire. Terms of the district court shall be held at Concord on the last Tuesday in April, the first Tuesday in September, and the second Tuesday in December; and at Littleton on the second Tuesday in October. (Mar. 3, 1911, ch. 231, § 95, 36 Stat. 1119; Aug. 23, 1912, ch. 344, 37 Stat. 357; Feb. 20, 1926, ch. 23, 44 Stat. 8.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 531 and 572, which were derived from act Sept. 24, 1789, ch. 20, § 2, 1 Stat. 73, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

## § 176. (Judicial Code, section 96.) New Jersey.

The State of New Jersey shall constitute one judicial district, to be known as the district of New Jersey. Terms of the district court shall be held at Newark on the first Tuesday in April and the first Tuesday in November, at Trenton on the third Tuesday in January and the second Tuesday in September, of each year, and at Camden on the first Tuesday in December. The clerk of the court for the district of New Jersey shall maintain an office, in charge of himself or a deputy, at Newark and at Trenton, each of which offices shall be kept open at all times for the transaction of the business of the court, and shall maintain an office at Camden, in charge of himself or a deputy, which office shall be kept open for the transaction of the business of the court for such times as the court may, by rule, direct, and the marshal shall also maintain an office, in charge of himself or a deputy, at Newark and at Trenton, each of which offices shall be kept open at all times for the transaction of the business of the court, and shall also maintain an office, in charge of himself or a deputy, at Camden, for such times as the court may, by rule, direct. (Mar. 3, 1911, ch. 231, § 96, 36 Stat. 1119; Aug. 9, 1912, ch. 277, 37 Stat. 265; Feb. 14, 1913, ch. 53, 37 Stat. 674; May 17, 1926, ch. 311, 44 Stat. 561.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 531 and 572 which were derived from acts Sept. 24, 1789, ch. 20, § 2, 1 Stat. 73; June 4, 1844, ch. 38, 5 Stat. 660; Aug. 12, 1848, ch. 169, 9 Stat. 303, and repealed by act Mar. 3, 1911, ch. 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

## § 177. New Mexico.

The State of New Mexico shall constitute one judicial district to be known as the district of New Mexico.

Terms of the district court shall be held at Santa Fe on the first Monday in March and September, at

Albuquerque on the first Monday in June and December, at Roswell on the first Monday in May and October, at Las Cruces on the first Monday in November, at Silver City on the first Monday in January, at Las Vegas on the first Monday in February, and at Raton on the first Monday in April. If at the time of the holding of the terms of said court in any year in the cities or towns of Las Vegas, Las Cruces, Silver City, or Raton there is insufficient business to justify the holding of any such term the same may be adjourned or continued by order of the judge of said court made at any place in the district. Terms of court at Silver City, town of Las Vegas, and Raton shall not be held unless facilities therefor are furnished by the county of Grant at Silver City, the county of San Miguel at town of Las Vegas, and the county of Colfax at Raton, without cost and expense to the United States, until such time as court rooms and other necessary facilities have been constructed by the United States.

Causes, civil and criminal, may be transferred by the court or either judge thereof from any of the aforesaid places where court shall be held in said district to any of the places hereinabove mentioned in said district whenever in the opinion of the court or judge the convenience of the parties or the ends of justice would be promoted by the transfer.

That the marshal and clerk of said court shall each, respectively, appoint at least one deputy to reside at and who shall maintain an office at each of the cities of Albuquerque and Roswell, and the marshal and the clerk of said court may each, respectively, with the approval of the Attorney General, appoint one deputy at each of the cities of Las Cruces, Silver City, Raton, and the town of Las Vegas. Upon completion of the Federal building in the city of Las Vegas, the court shall be transferred to and held in the city of Las Vegas instead of the town of Las Vegas and court at the latter place discontinued. (June 20, 1910, ch. 310, § 13, 36 Stat. 565; Mar. 4, 1921, ch. 149, 41 Stat. 1361; June 7, 1924, ch. 332, 43 Stat. 642.)

## REPEAL

Section 13 of act June 20, 1910, cited to text, would seem to have been repealed by section 297 of the Judicial Code. See repeal note under section 142 of this title.

## § 178. (Judicial Code, section 97.) New York.

The State of New York is divided into four judicial districts, to be known as the northern, eastern, southern, and western districts of New York. The northern district shall include the territory embraced on the 1st day of July 1910 in the counties of Albany, Broome, Cayuga, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, Rensselaer, Saint Lawrence, Saratoga, Schenectady, Schoharie, Tioga, Tompkins, Warren, and Washington, with the waters thereof. Terms of the district court for said district shall be held at Albany on the second Tuesday in February; at Utica on the first Tuesday in December; at Binghamton on the second Tuesday in June; at Auburn on the first Tuesday in October; at Syracuse on the first Tuesday in April; and, in the discretion



of the judge of the court, one term annually at such time and place within the counties of Schenectady, Rensselaer, Saratoga, Onondaga, Saint Lawrence, Clinton, Jefferson, Oswego, and Franklin, as he may from time to time appoint: *Provided*, That suitable accommodations for holding court at such appointed place be furnished free of expense to the United States. Such appointment shall be made by notice of at least twenty days, published in a newspaper published at the place where said court is to be held. The eastern district shall include the territory embraced on the 1st day of July 1910 in the counties of Richmond, Kings, Queens, Nassau, and Suffolk, with the waters thereof. Terms of the district court for said district shall be held at Brooklyn on the first Wednesday in every month. The southern district shall include the territory embraced on the 1st day of July 1910 in the counties of Columbia, Dutchess, Greene, New York, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester, with the waters thereof. Terms of the district court for said district shall be held at New York City on the first Tuesday in each month. The district courts of the southern and eastern districts shall have concurrent jurisdiction over the waters within the counties of New York, Kings, Queens, Nassau, Richmond, and Suffolk, and over all seizures made and all matters done in such waters; all processes or orders issued within either of said courts or by any judge thereof shall run and be executed in any part of said waters. The western district shall include the territory embraced on the 1st day of July 1910 in the counties of Allegany, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates, with the waters thereof. Terms of the district court for said district shall be held at Elmira on the second Tuesday in January; at Buffalo on the second Tuesdays in March and November; at Rochester on the second Tuesday in May; at Jamestown on the second Tuesday in July; at Lockport on the second Tuesday in October; and at Canandaigua on the second Tuesday in September. The regular sessions of the district court for the western district for the hearing of motions, and for proceedings in bankruptcy and the trial of causes in admiralty, shall be held at Buffalo at least two weeks in each month of the year, except August, unless the business is sooner disposed of. The times for holding the same and such other special sessions as the court shall deem necessary shall be fixed by rules of the court. All process in admiralty causes and proceedings shall be made returnable at Buffalo. The judge of any district in the State of New York may perform the duties of the judge of any other district in such State upon the request of any resident judge entered in the minutes of his court; and in such cases such judge shall have the same powers as are vested in the resident judge. (Mar. 3, 1911, ch. 231, § 97, 36 Stat. 1119; Jan. 21, 1920, ch. 50, 41 Stat. 394; July 1, 1922, ch. 260, 42 Stat. 812.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 541, 542, 572, and 597 which were derived from acts Apr. 9, 1814, ch. 49, § 1, 3 Stat. 120; Apr. 3, 1818, ch. 32, § 3, 3 Stat. 414;

May 29, 1830, ch. 213, 4 Stat. 422; July 4, 1864, ch. 245, 13 Stat. 385; Feb. 25, 1865, ch. 54, § 1, 13 Stat. 438; Mar. 5, 1872, ch. 35, 17 Stat. 36; Feb. 18, 1874, ch. 80, 18 Stat. 317, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

#### § 178a. Same; additional term for Northern District.

A term of the District Court of the United States for the Northern District of New York shall be held annually at Malone, New York, on the second Tuesday in July: *Provided*, That suitable rooms and accommodations for holding court at Malone, New York, are furnished without expense to the United States until, upon the recommendation of the Attorney General, such accommodations are furnished by the United States. (Aug. 12, 1937, ch. 591, 50 Stat. 623.)

#### § 179. (Judicial Code, section 98.) North Carolina.

The State of North Carolina is divided into three districts to be known as the eastern, the middle, and the western districts of North Carolina.

The eastern district shall include the territory embraced on the 1st day of January 1926 in the counties of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Harnett, Hertford, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Tyrrell, Vance, Wake, Washington, Warren, Wayne, and Wilson.

The terms of the District Court for the eastern District of North Carolina shall be held at Raleigh, a one-week civil term, on the second Mondays in September and March, and at the following places on each succeeding Monday thereafter: Fayetteville, Elizabeth City, Washington, New Bern, Wilson, Wilmington, and Raleigh, the term at Raleigh being a criminal term only. The clerk of the court for the eastern district shall maintain an office in charge of himself or deputy at Raleigh, at Wilmington, at New Bern, at Elizabeth City, at Washington, at Fayetteville, and at Wilson which shall be kept open at all times for the transaction of the business of the court.

The middle district shall include the territory embraced on the 1st day of January 1926 in the counties of Alamance, Alleghany, Ashe, Cabarrus, Caswell, Chatham, Davidson, Davie, Durham, Forsyth, Guilford, Lee, Hoke, Montgomery, Moore, Orange, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Stokes, Surry, Watauga, Wilkes, and Yadkin.

The terms of the district court for the middle district shall be held at Rockingham on the first Mondays in March and September, at Salisbury on the third Mondays in April and October, at Winston-Salem on the first Mondays in May and November, at Greensboro on the first Mondays in June and December, at Wilkesboro on the third Mondays in May and November; and at Durham on the first Monday in February and the fourth Monday in September: *Provided*, That the cities of Winston-Salem, Rockingham, and Durham shall each pro-



vide and furnish at its own expense a suitable and convenient place for holding the district court until Federal buildings containing quarters for the court are erected at such places.

The western district shall include the territory embraced on the 1st day of January 1926 in the counties of Alexander, Anson, Avery, Buncombe, Burke, Caldwell, Catawba, Cherokee, Clay, Cleveland, Gaston, Graham, Haywood, Henderson, Iredell, Jackson, Lincoln, Madison, Macon, McDowell, Mecklenburg, Mitchell, Polk, Rutherford, Swain, Transylvania, Union, and Yancey.

Terms of the district court for the western district shall be held in Charlotte on the first Mondays in April and October, at Shelby on the fourth Monday in September and the third Monday in March, at Statesville on the fourth Mondays in April and October, at Asheville on the second Mondays in May and November, and at Bryson City on the fourth Mondays in May and November: *Provided*, That the cities of Shelby and Bryson City shall each provide and furnish at their own expense suitable and convenient places for holding the court at Shelby and Bryson City. The clerk of the court for the western district shall maintain an office, in charge of himself or a deputy, at Charlotte, at Asheville, at Statesville, at Shelby, and at Bryson City, which shall be kept open at all times for the transaction of the business of the court.

There shall be a judge appointed for the said middle district in the manner now provided by law who shall receive the salary provided by law for the judges of the eastern and western districts, and a district attorney, marshal, clerk, and other officers in the manner and at the salary now provided by law.

All causes in the said middle district in equity, bankruptcy, or admiralty, in which orders and decrees have already been made and which are now in process of trial, shall continue and remain subject to the jurisdiction of the judge of that district by whom the same shall have been made and before whom the same shall have been partially tried and determined. (Mar. 3, 1911, ch. 231, § 98, 36 Stat. 1120; Oct. 7, 1914, ch. 318, 38 Stat. 728; Mar. 17, 1920, ch. 101, § 1, 41 Stat. 531; June 7, 1924, ch. 359, § 1, 43 Stat. 661; Dec. 24, 1924, ch. 18, 43 Stat. 721; June 12, 1926, ch. 566, 44 Stat. 734; June 22, 1926, ch. 645, 44 Stat. 758; June 22, 1926, ch. 646, 44 Stat. 758; Mar. 2, 1927, ch. 276, 44 Stat. 1339; Apr. 25, 1928, ch. 432, 45 Stat. 457; May 10, 1928, ch. 516, 45 Stat. 495; Feb. 20, 1933, ch. 107, 47 Stat. 859; Feb. 28, 1933, ch. 133, 47 Stat. 1350; June 28, 1935, ch. 330, §§ 1, 2, 49 Stat. 429; June 24, 1936, ch. 744, 49 Stat. 1898; June 24, 1936, ch. 759, 49 Stat. 1910; Aug. 17, 1937, ch. 688, 50 Stat. 671.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 543, 572, and 621 which were derived from acts June 4, 1872, ch. 282, 17 Stat. 215; Mar. 10, 1878, ch. 16, 4 Stat. 254; July 1, 1870, ch. 188, 16 Stat. 180, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

#### § 180. (Judicial Code, section 99.) North Dakota.

The State of North Dakota shall constitute one judicial district to be known as the district of North Dakota. The territory embraced on the 1st day of January 1932, in the counties of Adams, Billings, Bowman, Burleigh, Dunn, Emmons, Golden Valley, Grant, Hettinger, Kidder, Logan, McIntosh, McLean, Mercer, Morton, Oliver, Sioux, Slope, and Stark shall constitute the southwestern division of said district; and the territory embraced on the date last mentioned in the counties of Barnes, Cass, Dickey, Eddy, Foster, Griggs, LaMoure, Ransom, Richland, Sargent, Sheridan, Steele, Stutsman, and Wells shall constitute the southeastern division; and the territory embraced on the date last mentioned in the counties of Benson, Bottineau, Cavalier, Grand Forks, Nelson, McHenry, Pembina, Pierce, Ramsey, Rolette, Traill, Towner, and Walsh shall constitute the northeastern division; and the territory embraced on the date last mentioned in the counties of Burke, Divide, McKenzie, Mountrail, Renville, Ward, and Williams shall constitute the northwestern division. The several Indian reservations and parts thereof within said State shall constitute a part of the several divisions within which they are respectively situated. Terms of the district court for the southwestern division shall be held at Bismarck on the second Tuesday in March; for the southeastern division, at Fargo on the second Tuesday in December, and at Jamestown on the second Tuesday in October; for the northeastern division, at Devils Lake on the second Tuesday in May and at Grand Forks on the second Tuesday in November; and for the northwestern division, at Minot on the second Tuesday in April. The clerk of the court shall maintain an office in charge of himself or a deputy at each place at which court is held in his district. (Mar. 3, 1911, ch. 231, § 99, 36 Stat. 1121; Feb. 5, 1912, ch. 28, 37 Stat. 60; July 17, 1916, ch. 248, 39 Stat. 386; Apr. 10, 1926, ch. 112, 44 Stat. 237; June 3, 1930, ch. 394, 46 Stat. 495; June 29, 1932, ch. 305, 47 Stat. 341; June 19, 1934, ch. 664, 48 Stat. 1120.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts Apr. 26, 1890, ch. 161, 26 Stat. 67; Feb. 4, 1895, ch. 55, § 1, 28 Stat. 642, which were repealed by section 297 of act Mar. 3, 1911, cited to text. See note under section 142 of this title.

#### § 181. (Judicial Code, section 100.) Ohio.

The State of Ohio is divided into two judicial districts, to be known as the northern and southern districts of Ohio. The northern district shall include the territory embraced on the 1st day of July 1910, in the counties of Ashland, Ashtabula, Cuyahoga, Carroll, Columbiana, Crawford, Geauga, Holmes, Lake, Lorain, Medina, Mahoning, Portage, Richland, Summit, Stark, Tuscarawas, Trumbull, and Wayne, which shall constitute the eastern division; also the territory embraced on the date last mentioned in the counties of Auglaize, Allen, Defiance, Erie, Fulton, Henry, Hancock, Hardin, Huron, Lucas, Mercer, Marion, Ottawa, Paulding, Putnam, Seneca, Sandusky, Van Wert, Williams, Wood, and Wyandot,

which shall constitute the western division of said district. Terms of the district court for the eastern division shall be held at Cleveland on the first Tuesdays in February, April, and October, and at Youngstown on the first Tuesday after the first Monday in March. Terms of the district court for the western division shall be held at Toledo on the last Tuesdays in April and October, and at Lima, if in the opinion of the court the public convenience so requires, on the first Tuesday after the first Monday in September: *Provided*, That suitable accommodations for holding court at Lima be furnished free of expense to the United States.

Grand and petit jurors summoned for service at a term of court to be held at Cleveland may, if in the opinion of the court the public convenience so requires, be directed to serve also at the term then being held or authorized to be held at Youngstown. Grand and petit jurors summoned for service at a term of court to be held at Toledo may, if in the opinion of the court the public convenience so requires, be directed to serve also at the term then being held or authorized to be held at Lima.

Crimes and offenses committed in the eastern division shall be cognizable at the terms held at Cleveland or at Youngstown, as the court may direct. Crimes and offenses committed in the western division shall be cognizable at the terms held at Toledo or at Lima, as the court may direct.

Any suit brought in the eastern division may, in the discretion of the court, be tried at the term held at Youngstown. Any suit brought in the western division may, in the discretion of the court, be tried at the term held at Lima.

The southern district shall include the territory embraced on the 1st day of July 1910, in the counties of Adams, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Greene, Hamilton, Highland, Lawrence, Miami, Montgomery, Preble, Scioto, Shelby, and Warren, which shall constitute the western division; also the territory embraced on the date last mentioned in the counties of Athens, Belmont, Coshocton, Delaware, Fairfield, Fayette, Franklin, Gallia, Guernsey, Harrison, Hocking, Jackson, Jefferson, Knox, Licking, Logan, Madison, Meigs, Monroe, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Ross, Union, Vinton, and Washington, which shall constitute the eastern division of said district.

Terms of the district court for the western division shall be held at Cincinnati on the first Tuesdays in February, April, and October; and for the eastern division at Columbus on the first Tuesdays in June and December, and at Steubenville on the first Tuesdays of March and September. Grand and petit jurors summoned for service at a term of court being held at Columbus may, if in the opinion of the court the public convenience so requires, be directed to serve also at the term being held or authorized to be held at Steubenville. Crimes and offenses committed in the eastern division shall be cognizable at the terms held at Columbus, or at Steubenville, as the court may direct. Any suit brought in the eastern division may, in the discretion of the court, be tried at the term held at Steubenville. Terms of the dis-

trict court for the southern district shall be held at Dayton on the first Mondays in May and November. Prosecutions for crimes and offenses committed in any part of said district shall also be cognizable at the terms held at Dayton. All suits which may be brought within the southern district, or either division thereof, may be instituted, tried, and determined at the terms held at Dayton. (Mar. 3, 1911, ch. 231, § 100, 36 Stat. 1121; Mar. 4, 1915, ch. 159, 38 Stat. 1187; Feb. 14, 1923, ch. 78, 42 Stat. 1246.)

#### SIMILAR PROVISIONS

R. S. §§ 544 and 572, which were derived from acts Feb. 10, 1855, ch. 73, § 1, 10 Stat. 604; Feb. 21, 1863, ch. 49, 12 Stat. 657; July 7, 1870, ch. 214, 16 Stat. 192; May 23, 1872, ch. 201, 17 Stat. 157, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

#### § 182. (Judicial Code, section 101.) Oklahoma.

The State of Oklahoma is divided into three judicial districts, to be known as the northern, the eastern, and the western districts of Oklahoma. The territory embraced on January 1, 1925, in the counties of Craig, Creek, Delaware, Mayes, Nowata, Osage, Ottawa, Pawnee, Rogers, Tulsa, and Washington, as they existed on said date, shall constitute the northern district of Oklahoma. Terms of the United States District Court for the Northern District of Oklahoma shall be held at Tulsa on the first Monday in January, at Vinita on the first Monday in March, at Pawhuska on the first Monday in May, at Miami on the first Monday in November, and at Bartlesville on the first Monday in June in each year: *Provided*, That suitable rooms and accommodations for holding court at Pawhuska, Miami, and Bartlesville are furnished free of expense to the United States.

The eastern district of Oklahoma shall include the territory embraced on the 1st day of January, 1925, in the counties of Adair, Atoka, Bryan, Cherokee, Choctaw, Coal, Carter, Garvin, Grady, Haskell, Hughes, Johnston, Jefferson, Latimer, Le Flore, Love, McClain, Muskogee, McIntosh, McCurtain, Murray, Marshall, Okfuskee, Okmulgee, Pittsburg, Pushmataha, Pontotoc, Seminole, Stephens, Sequoyah, and Wagoner. Terms of the district court of the eastern district shall be held at Muskogee on the first Monday in January, at Ada on the first Monday in March, at Okmulgee on the first Monday in April, at Hugo on the first Monday in May, at South McAlester on the first Monday in June, at Ardmore on the first Monday in October, at Chickasha on the first Monday in November, at Poteau on the first Monday in December in each year, and annually at Pauls Valley and Durant at such times as may be fixed by the judge of the eastern district: *Provided*, That suitable rooms and accommodations for holding said court at Hugo, Poteau, Ada, Okmulgee, Pauls Valley, and Durant are furnished free of expense to the United States. A term of the District Court of the United States for the Western District of Oklahoma shall be held annually at Shawnee, Oklahoma, on the first Monday in October: *Provided*, That suitable rooms and accommodations for holding court at Shawnee are furnished without expense to the United States until, subject

to the recommendation of the Attorney General of the United States with reference to providing such rooms and accommodations for holding court at Shawnee, a public building shall have been erected or other Federal space provided for court purposes in said city.

The western district of Oklahoma shall include the territory embraced on the 1st day of January, 1925, in the counties of Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods, and Woodward. The terms of the district court for the western district shall be held at Oklahoma City on the first Monday in January, at Enid on the first Monday in March, at Guthrie on the first Monday in May, at Mangum on the first Monday in September, at Lawton on the first Monday in October, at Woodward on the first Monday in November, and at Ponca City on the first Monday in December or at such time as the district judge of such district may deem advisable: *Provided*, That suitable rooms and accommodations for holding court at Ponca City and Mangum are furnished free of expense to the United States: *And provided further*, That the district judge of said district, or in his absence a district judge or a circuit judge assigned to hold court in said district, may postpone or adjourn to a day certain any of said terms by order made in chambers at any other place designated as aforesaid for holding court in said district.

The clerk of the district court for the northern district shall keep his office at Tulsa; the clerk of the district court for the eastern district shall keep his office at Muskogee and shall maintain an office in charge of a deputy at Ardmore; the clerk for the western district shall keep his office at Oklahoma City and shall maintain an office in charge of a deputy at Guthrie. (Mar. 3, 1911, ch. 231, § 101, 36 Stat. 1122; Feb. 20, 1917, ch. 102, 39 Stat. 927; June 13, 1918, ch. 98, 40 Stat. 604; Feb. 26, 1919, ch. 54, 40 Stat. 1184; June 5, 1924, ch. 259, 43 Stat. 387; Jan. 10, 1925, chs. 68, 69, 43 Stat. 730, 731; Feb. 16, 1925, ch. 233, § 1, 43 Stat. 945; May 7, 1926, ch. 255, 44 Stat. 408; Mar. 2, 1929, ch. 539, 45 Stat. 1518; Apr. 21, 1928, ch. 395, 45 Stat. 440; June 28, 1930, ch. 714, 46 Stat. 829; May 13, 1936, ch. 386, 49 Stat. 1271; Aug. 12, 1937, ch. 595, 50 Stat. 625.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts June 16, 1906, ch. 3335, §§ 13, 14, 34 Stat. 276; June 25, 1910, ch. 394, 36 Stat. 825. See repeal note under section 142 of this title.

#### § 183. (Judicial Code, section 102.) Oregon.

The State of Oregon shall constitute one judicial district, to be known as the district of Oregon. Terms of the district court shall be held at Portland on the first Mondays in March, July, and November; at Pendleton on the first Tuesday in April; and at Medford on the first Tuesday in October. The marshal and the clerk for said district shall each

appoint, in the manner provided by law, at least one deputy at Pendleton and one at Medford, who shall reside and maintain an office at each of said places. (Mar. 3, 1911, ch. 231, § 102, 36 Stat. 1122.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 531 and 572 which were derived from acts Mar. 3, 1856, ch. 85, § 2, 11 Stat. 437; Feb. 19, 1864, ch. 11, 13 Stat. 5, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

#### § 184. (Judicial Code, section 103.) Pennsylvania.

The State of Pennsylvania is divided into three judicial districts, to be known as the eastern, middle, and western districts of Pennsylvania. The eastern district shall include the territory embraced on the 1st day of July, 1910, in the counties of Berks, Bucks, Chester, Delaware, Lancaster, Lehigh, Montgomery, Northampton, Philadelphia, and Schuylkill. Terms of the district court shall be held at Philadelphia on the second Mondays in March and June, the third Monday in September, and the second Monday in December, each term to continue until the succeeding term begins. Terms of the district court shall be held at Easton, Pennsylvania, on the first Tuesdays in June and November of each year: *Provided, however*, That all writs, precepts, and processes shall be returnable to the terms at Philadelphia and all court papers shall be kept in the clerk's office at Philadelphia unless otherwise specially ordered by the court, and the terms at Philadelphia shall not be terminated or affected by the terms provided for at Easton. The middle district shall include the territory embraced on the 1st day of July, 1910, in the counties of Adams, Bradford, Cameron, Carbon, Centre, Clinton, Columbia, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lebanon, Luzerne, Lycoming, Mifflin, Monroe, Montour, Northumberland, Perry, Pike, Potter, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York. Terms of the district court shall be held at Scranton on the second Monday in March and the third Monday in October; at Harrisburg on the first Mondays in May and December; at Lewisburg on the third Monday in January; and at Williamsport on the first Monday in June. Terms of the United States District Court for the Middle District of Pennsylvania shall be held at Wilkes-Barre, Pennsylvania, on the second Monday of April and second Monday of September of each year: *Provided, however*, That all writs, precepts, and processes shall be returnable to the terms at Scranton and all court papers shall be kept in the clerk's office at Scranton unless otherwise specially ordered by the court, and the terms at Scranton shall not be terminated or affected by the terms herein provided for at Wilkes-Barre. The clerk of the court for the middle district shall maintain an office, in charge of himself or a deputy, at Lewisburg; the civil suits instituted at that place shall be tried there, if either party resides nearest that place of holding court, unless by consent of parties they are removed to another place for trial. The western district shall include the territory embraced on the 1st day of July, 1910, in the counties of Alle-

gheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, and Westmoreland. Terms of the district court shall be held at Pittsburgh on the first Monday of May and the second Monday of November, and terms of the court shall be held at Erie on the third Monday of March and the third Monday of September. The clerk and marshal of said district shall have their principal offices at Pittsburgh, and shall maintain, by themselves or by their deputies, offices at Erie.

The clerk shall place all cases in which the defendants reside in the counties of said district nearest Erie upon the trial list for trial at Erie, where the same shall be tried, unless the parties thereto stipulate that the same may be tried at Pittsburgh. (Mar. 3, 1911, ch. 231, § 103, 36 Stat. 1123; Mar. 3, 1913, ch. 113, 37 Stat. 730; June 6, 1914, ch. 104, 38 Stat. 385; Sept. 9, 1914, ch. 296, 38 Stat. 713; Apr. 26, 1926, ch. 185, 44 Stat. 324; June 27, 1930, ch. 634, 46 Stat. 820; Aug. 3, 1935, ch. 433, 49 Stat. 514; May 13, 1936, ch. 385, 49 Stat. 1271; June 13, 1938, ch. 351, 52 Stat. 674.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 545 and 572 which were derived from acts June 9, 1794, ch. 64, 1 Stat. 396; Apr. 20, 1818, ch. 108, § 1, 3 Stat. 462; May 15, 1820, ch. 111, 3 Stat. 598; May 26, 1824, ch. 170, § 1, 4 Stat. 50; Apr. 5, 1826, ch. 23, 4 Stat. 153; May 8, 1840, ch. 23, 5 Stat. 380; July 27, 1842, ch. 68, 5 Stat. 496; July 28, 1866, ch. 304, 14 Stat. 342; Feb. 21, 1871, ch. 63, 16 Stat. 429. Said R. S. §§ 545, 572 were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

#### § 185. (Judicial Code, section 104.) Rhode Island.

The State of Rhode Island shall constitute one judicial district, to be known as the district of Rhode Island; terms of the district court shall be held at Providence on the fourth Tuesday in May and the third Tuesday in November. (Mar. 3, 1911, ch. 231, § 104, 36 Stat. 1123; Feb. 1, 1912, ch. 27, 37 Stat. 59.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 531 and 572 which were derived from acts June 23, 1790, ch. 21, § 2, 1 Stat. 128; Mar. 23, 1804, ch. 31, 2 Stat. 273, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

#### § 186. (Judicial Code, section 105.) South Carolina.

The State of South Carolina is divided into two districts to be known as the eastern and western districts of South Carolina.

The western district shall include the territory embraced on the 1st day of July 1910 in the counties of Abbeville, Anderson, Cherokee, Chester, Edgefield, Fairfield, Greenville, Greenwood, Lancaster, Laurens, Newberry, Oconee, Pickens, Saluda, Spartanburg, Union, and York.

The western district of South Carolina is divided into five divisions, to be known as the Anderson, Greenville, Greenwood, Rock Hill, and Spartanburg divisions. The Anderson division shall include the territory embraced in the counties of Anderson,

Oconee, and Pickens. The Greenville division shall include the territory embraced in the counties of Greenville and Laurens. The Greenwood division shall include the territory embraced in the counties of Abbeville, Edgefield, Greenwood, McCormick, Newberry, and Saluda. The Rock Hill division shall include the territory embraced in the counties of Chester, Fairfield, Lancaster, and York. The Spartanburg division shall include the territory embraced in the counties of Cherokee, Spartanburg, and Union. The terms of the district court for the Anderson division shall be held at Anderson, for the Greenville division at Greenville, for the Greenwood division at Greenwood, for the Rock Hill division at Rock Hill, and for the Spartanburg division at Spartanburg. Terms of the district court for the western district shall be held at Greenville on the first Mondays in April and October; at Rock Hill the second Monday in March and the first Monday in September; at Greenwood the first Mondays in February and November; at Anderson the fourth Mondays in May and November; and at Spartanburg on the third Monday in February and the second Monday in September.

The eastern district shall include the territory embraced on the 1st day of July 1910 in the counties of Aiken, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Florence, Georgetown, Hampton, Horry, Kershaw, Lee, Lexington, Marion, Marlboro, Orangeburg, Richland, Sumter, and Williamsburg.

The eastern district of South Carolina is divided into five divisions, to be known as the Aiken, Charleston, Columbia, Florence, and Orangeburg divisions. The Aiken division shall include the territory embraced in the counties of Aiken, Allendale, Barnwell, and Hampton. The Charleston division shall include the territory embraced in the counties of Beaufort, Berkeley, Charleston, Clarendon, Colleton, Dorchester, and Jasper. The Columbia division shall include the territory embraced in the counties of Kershaw, Lee, Lexington, Richland, and Sumter. The Florence division shall include the territory embraced in the counties of Chesterfield, Darlington, Dillon, Florence, Georgetown, Horry, Marion, Marlboro, and Williamsburg. The Orangeburg division shall include the territory embraced in the counties of Calhoun, Bamberg, and Orangeburg. The terms of the district court for the Aiken division shall be held at Aiken, for the Charleston division at Charleston, for the Columbia division at Columbia, for the Florence division at Florence, and the Orangeburg division at Orangeburg.

Terms of the district court for the eastern district shall be held at Charleston on the second Monday in October, the third Monday in January, and the fourth Monday in May; at Columbia on the first Monday in November and the third Monday in March; at Florence on the first Monday in December and the fourth Monday in April; at Aiken on the fourth Monday in September and the second Monday in February; and at Orangeburg on the third Monday in November and the second Monday in April: *Provided*, That facilities for holding court

at Orangeburg are furnished free of expense to the United States. The office of the clerk of the district court for the western district shall be at Greenville and the office of the clerk of the district court for the eastern district shall be at Charleston.

All criminal cases shall be tried in the division in which the offense was committed, unless upon proper showing the venue would be changed by the judge from one division to another, and this change be made only upon affidavits and motion made in open court after four days' notice to the adverse party. (Mar. 3, 1911, ch. 231, § 105, 36 Stat. 1123; Feb. 5, 1912, ch. 28, 37 Stat. 60; Mar. 3, 1915, ch. 100, § 5, 38 Stat. 961; Sept. 1, 1916, ch. 434, 39 Stat. 721; Mar. 4, 1923, ch. 261, 42 Stat. 1486; Jan. 30, 1925, ch. 118, 43 Stat. 800; June 26, 1926, ch. 696, §§ 1-3, 44 Stat. 773; June 20, 1936, ch. 637, §§ 1-3, 49 Stat. 1558, 1559; June 12, 1940, ch. 335, 54 Stat. 344.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 546, 552, and 576, which were derived from acts Sept. 24, 1789, ch. 20, 1 Stat. 87; Feb. 21, 1823, ch. 11, § 1, 3 Stat. 726; and May 25, 1824, ch. 145, 4 Stat. 35, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

#### § 187. (Judicial Code, section 106.) South Dakota.

The State of South Dakota shall constitute one judicial district, to be known as the district of South Dakota. The territory embraced on the 1st day of January 1932 in the counties of Aurora, Beadle, Bon Homme, Brookings, Brule, Charles Mix, Clay, Davison, Douglas, Gregory, Hanson, Hutchinson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union, and Yankton, and in the Yankton Indian Reservation, shall constitute the southern division of said district; the territory embraced on the date last mentioned in the counties of Brown, Campbell, Clark, Codington, Corson, Day, Deuel, Edmunds, Grant, Hamlin, McPherson, Marshall, Roberts, Spink, and Walworth, and in the particular territory set apart and reserved for the use and benefit of the Sisseton and Wahpeton Bands of the Sioux Tribe of Indians, and known as the Lake Traverse Reservation, and in that portion of the Standing Rock Indian Reservation lying in South Dakota, shall constitute the northern division; the territory embraced on the date last mentioned in the counties of Armstrong, Buffalo, Dewey, Faulk, Haakon, Hand, Hughes, Hyde, Jackson, Jerauld, Jones, Lyman, Potter, Stanley, Sully, and Ziebach, and in the Cheyenne River, Lower Brule, and Crow Creek Indian Reservations, shall constitute the central division; and the territory embraced on the date last mentioned in the counties of Bennett, Butte, Custer, Fall River, Harding, Lawrence, Meade, Mellette, Pennington, Perkins, Shannon, Todd, Tripp, Washabaugh, and Washington, and in the Rosebud and Pine Ridge Indian Reservations, shall constitute the western division. Terms of the district court for the southern division shall be held at Sioux Falls on the third Tuesday in March and the third Tuesday in October; for the northern division, at Aberdeen on the third Tuesday in April and the second Tuesday in November; for the central division, at

Pierre on the second Tuesday in May and the first Tuesday in October; and for the western division, at Deadwood on the first Tuesday in June and the first Tuesday in September. The clerk of the district court shall maintain an office in charge of himself or a deputy at Sioux Falls, at Pierre, at Aberdeen, and at Deadwood, which shall be kept open for the transaction of the business of the court. (Mar. 3, 1911, ch. 231, § 106, 36 Stat. 1123; June 11, 1932, ch. 242, 47 Stat. 300.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts Feb. 22, 1889, ch. 180, 25 Stat. 682; Feb. 27, 1890, ch. 21, 26 Stat. 14. See repeal note under section 142 of this title.

#### § 188. (Judicial Code, section 107.) Tennessee.

(a) The State of Tennessee is divided into three districts, to be known as the eastern, middle, and western districts of Tennessee.

(b) The eastern district shall include the territory embraced on the 1st day of January 1940 in the counties of Bedford, Franklin, Lincoln, Warren, Grundy, Coffee, Van Buren, and Moore, which shall constitute the Winchester division of said district; also the territory embraced on the date last mentioned in the counties of Bledsoe, Bradley, Hamilton, Marion, McMinn, Meigs, Polk, Rhea, and Sequatchie, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Anderson, Blount, Campbell, Claiborne, Grainger, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Sevier, Scott, and Union, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Carter, Cocke, Greene, Hamblen, Hancock, Hawkins, Johnson, Sullivan, Unicoi, and Washington, which shall constitute the northeastern division of said district. Terms of the district court for the Winchester division shall be held at Winchester on the third Mondays in May and October; for the southern division at Chattanooga on the fourth Monday in April and the second Monday in November; for the northern division at Knoxville on the fourth Monday in May and the first Monday in December; for the northeastern division at Greeneville on the first Monday in March and the third Monday in September: *Provided*, That suitable accommodations for holding court at Winchester shall be provided by the local authorities but only until such time as such accommodations shall be provided upon the recommendation of the Director of the Administrative Office of the United States Courts in a public building or other quarters provided by the Federal Government for such purpose.

(c) The middle district shall include the territory embraced on the 1st day of January 1940 in the counties of Cannon, Cheatham, Davidson, Dickson, Humphreys, Houston, Montgomery, Robertson, Rutherford, Stewart, Sumner, Trousdale, Williamson, and Wilson, which shall constitute the Nashville division of said district; also the territory on the date last mentioned in the counties of Hickman, Giles, Lawrence, Lewis, Marshall, Wayne, and Maury, which shall constitute the Columbia divi-

sion of said district; also the territory embraced on the date last mentioned in the counties of Clay, Cumberland, De Kalb, Fentress, Jackson, Macon, Overton, Pickett, Putnam, Smith, and White, which shall constitute the northeastern division of said district. Terms of the district court for the Nashville division of said district shall be held at Nashville on the second Monday in March and the fourth Monday in September; for the Columbia division at Columbia on the third Monday in June and the fourth Monday in November; and for the northeastern division at Cookeville on the third Monday in April and the first Monday in November: *Provided*, That suitable accommodations for holding court at Columbia shall be provided by the local authorities but only until such time as such accommodations shall be provided upon the recommendation of the Director of the Administrative Office of the United States Courts in a public building or other quarters provided by the Federal Government for such purpose.

(d) The western district shall include the territory embraced on the 1st day of January 1940 in the counties of Dyer, Fayette, Haywood, Lauderdale, Shelby, and Tipton, which shall constitute the western division of said district; also the territory embraced on the date last mentioned in the counties of Benton, Carroll, Chester, Crockett, Decatur, Gibson, Hardeman, Hardin, Henderson, Henry, Lake, McNairy, Madison, Obion, Perry, and Weakley, including the waters of the Tennessee River to low-water mark on the eastern shore thereof wherever such river forms the boundary line between the western and middle districts of Tennessee, from the north line of the State of Alabama, north to the point, Henry County, Tennessee, where the south boundary line of the State of Kentucky strikes the east bank of the river, which shall constitute the eastern division of said district. Terms of the district court for the western division of said district shall be held at Memphis on the first Mondays in April and October; and for the eastern division at Jackson on the fourth Mondays in March and September. An office of the clerk, in charge of the clerk or a deputy, shall be maintained at Memphis and Jackson. The marshal for the western district shall appoint a deputy who shall reside at Jackson. The marshal for the eastern district shall appoint a deputy who shall reside at Chattanooga. An office of the clerk of the court for the eastern district shall be maintained, in charge of the clerk or a deputy, at Knoxville, at Chattanooga, and at Greeneville.

(e) The district judge for the eastern district of Tennessee in office on November 27, 1940, shall hold regular and special terms of court at Knoxville and Greeneville. The said district judge shall have the power of appointment and removal of all officers and employees of the court in said district, except as herein otherwise provided, whose appointment is vested by law in a district judge or senior district judge.

(f) The other district judge for the eastern district of Tennessee, whose official residence shall be at Chattanooga, shall hold regular and special terms

of court at Winchester and Chattanooga. The said judge shall possess the same powers, perform the same duties, and receive the same compensation as other district judges. The said district judge shall have the power of appointment and removal of all those officers and employees of the court for the eastern district of Tennessee whose official headquarters are located in the Winchester division and in the southern division of the eastern district of Tennessee and whose appointment is vested by law in a district judge or a senior district judge. The President is authorized to appoint, by and with the consent of the Senate, a successor or successors to said judge as vacancies may occur. Nothing herein contained shall be construed to prevent said judge or his successors from becoming the senior district judge by succession, or from exercising the powers and rights of senior district judge of said district. The judge designated herein to hold regular and special terms of court at Winchester and Chattanooga shall make all necessary orders for the disposition of business and assignment of cases for trial in said divisions. The district attorneys and marshals for the eastern, middle, and western districts of Tennessee in office immediately prior to November 27, 1940, shall be during the remainder of their present terms of office the district attorneys and marshals for such districts as constituted by this section.

(g) The district judge for the middle district of Tennessee shall be the district judge for the middle district of Tennessee as constituted by this section and shall hold regular and special terms of court at Nashville, Columbia, and Cookeville.

(h) The district judge for the western district of Tennessee shall hold regular and special terms of court at Memphis and Jackson. (Mar. 3, 1911, ch. 231, § 107, 36 Stat. 1124; Aug. 20, 1912, ch. 306, 37 Stat. 314; June 22, 1916, ch. 161, 39 Stat. 232; Mar. 4, 1923, ch. 289, 42 Stat. 1520; May 17, 1926, ch. 310, 44 Stat. 561; Mar. 1, 1927, ch. 244, 44 Stat. 1262; May 13, 1932, ch. 179, 47 Stat. 153; June 16, 1933, ch. 94, 48 Stat. 253; July 30, 1937, ch. 539, 50 Stat. 546; June 12, 1940, ch. 341, 54 Stat. 348; Nov. 27, 1940, ch. 920, 54 Stat. 1216.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 547, 552, 572, and 586, which were derived from acts Jan. 31, 1797, ch. 2, 1 Stat. 496; June 18, 1838, ch. 118, § 1, 5 Stat. 249; Jan. 18, 1839, ch. 3, § 1, 5 Stat. 313; Feb. 19, 1856, ch. 8, § 1, 11 Stat. 1; Mar. 10, 1856, ch. 8, 11 Stat. 1; June 25, 1868, ch. 79, 15 Stat. 80; Mar. 3, 1875, ch. 148, 18 Stat. 480, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

#### APPOINTMENT OF DISTRICT JUDGES

A provision of Judicial Code section 107 as amended by act Nov. 27, 1940, ch. 920, cited to text, creating a new Judgeship for the Eastern District of Tennessee is incorporated in section 1 of this title. See that section and note thereunder.

#### REPEAL OF INCONSISTENT PROVISIONS

Section was amended in toto by act Nov. 27, 1940, cited to text, section 2 of which provided as follows: "Sec. 2. All provisions of law inconsistent with the provisions of this act are hereby repealed."



at Orangeburg are furnished free of expense to the United States. The office of the clerk of the district court for the western district shall be at Greenville and the office of the clerk of the district court for the eastern district shall be at Charleston.

All criminal cases shall be tried in the division in which the offense was committed, unless upon proper showing the venue would be changed by the judge from one division to another, and this change be made only upon affidavits and motion made in open court after four days' notice to the adverse party. (Mar. 3, 1911, ch. 231, § 105, 36 Stat. 1123; Feb. 5, 1912, ch. 28, 37 Stat. 60; Mar. 3, 1915, ch. 100, § 5, 38 Stat. 961; Sept. 1, 1916, ch. 434, 39 Stat. 721; Mar. 4, 1923, ch. 261, 42 Stat. 1486; Jan. 30, 1925, ch. 118, 43 Stat. 800; June 26, 1926, ch. 696, §§ 1-3, 44 Stat. 773; June 20, 1936, ch. 637, §§ 1-3, 49 Stat. 1558, 1559; June 12, 1940, ch. 335, 54 Stat. 344.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 546, 552, and 576, which were derived from acts Sept. 24, 1789, ch. 20, 1 Stat. 87; Feb. 21, 1823, ch. 11, § 1, 3 Stat. 726; and May 25, 1824, ch. 145, 4 Stat. 35, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

#### § 187. (Judicial Code, section 106.) South Dakota.

The State of South Dakota shall constitute one judicial district, to be known as the district of South Dakota. The territory embraced on the 1st day of January 1932 in the counties of Aurora, Beadle, Bon Homme, Brookings, Brule, Charles Mix, Clay, Davison, Douglas, Gregory, Hanson, Hutchinson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union, and Yankton, and in the Yankton Indian Reservation, shall constitute the southern division of said district; the territory embraced on the date last mentioned in the counties of Brown, Campbell, Clark, Codington, Corson, Day, Deuel, Edmunds, Grant, Hamlin, McPherson, Marshall, Roberts, Spink, and Walworth, and in the particular territory set apart and reserved for the use and benefit of the Sisseton and Wahpeton Bands of the Sioux Tribe of Indians, and known as the Lake Traverse Reservation, and in that portion of the Standing Rock Indian Reservation lying in South Dakota, shall constitute the northern division; the territory embraced on the date last mentioned in the counties of Armstrong, Buffalo, Dewey, Faulk, Haakon, Hand, Hughes, Hyde, Jackson, Jerauld, Jones, Lyman, Potter, Stanley, Sully, and Ziebach, and in the Cheyenne River, Lower Brule, and Crow Creek Indian Reservations, shall constitute the central division; and the territory embraced on the date last mentioned in the counties of Bennett, Butte, Custer, Fall River, Harding, Lawrence, Meade, Mellette, Pennington, Perkins, Shannon, Todd, Tripp, Washabaugh, and Washington, and in the Rosebud and Pine Ridge Indian Reservations, shall constitute the western division. Terms of the district court for the southern division shall be held at Sioux Falls on the third Tuesday in March and the third Tuesday in October; for the northern division, at Aberdeen on the third Tuesday in April and the second Tuesday in November; for the central division, at

Pierre on the second Tuesday in May and the first Tuesday in October; and for the western division, at Deadwood on the first Tuesday in June and the first Tuesday in September. The clerk of the district court shall maintain an office in charge of himself or a deputy at Sioux Falls, at Pierre, at Aberdeen, and at Deadwood, which shall be kept open for the transaction of the business of the court. (Mar. 3, 1911, ch. 231, § 106, 36 Stat. 1123; June 11, 1932, ch. 242, 47 Stat. 300.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts Feb. 22, 1889, ch. 180, 25 Stat. 682; Feb. 27, 1890, ch. 21, 26 Stat. 14. See repeal note under section 142 of this title.

#### § 188. (Judicial Code, section 107.) Tennessee.

(a) The State of Tennessee is divided into three districts, to be known as the eastern, middle, and western districts of Tennessee.

(b) The eastern district shall include the territory embraced on the 1st day of January 1940 in the counties of Bedford, Franklin, Lincoln, Warren, Grundy, Coffee, Van Buren, and Moore, which shall constitute the Winchester division of said district; also the territory embraced on the date last mentioned in the counties of Bledsoe, Bradley, Hamilton, Marion, McMinn, Meigs, Polk, Rhea, and Sequatchie, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Anderson, Blount, Campbell, Claiborne, Grainger, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Sevier, Scott, and Union, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Carter, Cocke, Greene, Hamblen, Hancock, Hawkins, Johnson, Sullivan, Unicoi, and Washington, which shall constitute the northeastern division of said district. Terms of the district court for the Winchester division shall be held at Winchester on the third Mondays in May and October; for the southern division at Chattanooga on the fourth Monday in April and the second Monday in November; for the northern division at Knoxville on the fourth Monday in May and the first Monday in December; for the northeastern division at Greeneville on the first Monday in March and the third Monday in September: *Provided*, That suitable accommodations for holding court at Winchester shall be provided by the local authorities but only until such time as such accommodations shall be provided upon the recommendation of the Director of the Administrative Office of the United States Courts in a public building or other quarters provided by the Federal Government for such purpose.

(c) The middle district shall include the territory embraced on the 1st day of January 1940 in the counties of Cannon, Cheatham, Davidson, Dickson, Humphreys, Houston, Montgomery, Robertson, Rutherford, Stewart, Sumner, Trousdale, Williamson, and Wilson, which shall constitute the Nashville division of said district; also the territory on the date last mentioned in the counties of Hickman, Giles, Lawrence, Lewis, Marshall, Wayne, and Maury, which shall constitute the Columbia divi-



sion of said district; also the territory embraced on the date last mentioned in the counties of Clay, Cumberland, De Kalb, Fentress, Jackson, Macon, Overton, Pickett, Putnam, Smith, and White, which shall constitute the northeastern division of said district. Terms of the district court for the Nashville division of said district shall be held at Nashville on the second Monday in March and the fourth Monday in September; for the Columbia division at Columbia on the third Monday in June and the fourth Monday in November; and for the northeastern division at Cookeville on the third Monday in April and the first Monday in November: *Provided*, That suitable accommodations for holding court at Columbia shall be provided by the local authorities but only until such time as such accommodations shall be provided upon the recommendation of the Director of the Administrative Office of the United States Courts in a public building or other quarters provided by the Federal Government for such purpose.

(d) The western district shall include the territory embraced on the 1st day of January 1940 in the counties of Dyer, Fayette, Haywood, Lauderdale, Shelby, and Tipton, which shall constitute the western division of said district; also the territory embraced on the date last mentioned in the counties of Benton, Carroll, Chester, Crockett, Decatur, Gibson, Hardeman, Hardin, Henderson, Henry, Lake, McNairy, Madison, Obion, Perry, and Weakley, including the waters of the Tennessee River to low-water mark on the eastern shore thereof wherever such river forms the boundary line between the western and middle districts of Tennessee, from the north line of the State of Alabama, north to the point, Henry County, Tennessee, where the south boundary line of the State of Kentucky strikes the east bank of the river, which shall constitute the eastern division of said district. Terms of the district court for the western division of said district shall be held at Memphis on the first Mondays in April and October; and for the eastern division at Jackson on the fourth Mondays in March and September. An office of the clerk, in charge of the clerk or a deputy, shall be maintained at Memphis and Jackson. The marshal for the western district shall appoint a deputy who shall reside at Jackson. The marshal for the eastern district shall appoint a deputy who shall reside at Chattanooga. An office of the clerk of the court for the eastern district shall be maintained, in charge of the clerk or a deputy, at Knoxville, at Chattanooga, and at Greeneville.

(e) The district judge for the eastern district of Tennessee in office on November 27, 1940, shall hold regular and special terms of court at Knoxville and Greeneville. The said district judge shall have the power of appointment and removal of all officers and employees of the court in said district, except as herein otherwise provided, whose appointment is vested by law in a district judge or senior district judge.

(f) The other district judge for the eastern district of Tennessee, whose official residence shall be at Chattanooga, shall hold regular and special terms

of court at Winchester and Chattanooga. The said judge shall possess the same powers, perform the same duties, and receive the same compensation as other district judges. The said district judge shall have the power of appointment and removal of all those officers and employees of the court for the eastern district of Tennessee whose official headquarters are located in the Winchester division and in the southern division of the eastern district of Tennessee and whose appointment is vested by law in a district judge or a senior district judge. The President is authorized to appoint, by and with the consent of the Senate, a successor or successors to said judge as vacancies may occur. Nothing herein contained shall be construed to prevent said judge or his successors from becoming the senior district judge by succession, or from exercising the powers and rights of senior district judge of said district. The judge designated herein to hold regular and special terms of court at Winchester and Chattanooga shall make all necessary orders for the disposition of business and assignment of cases for trial in said divisions. The district attorneys and marshals for the eastern, middle, and western districts of Tennessee in office immediately prior to November 27, 1940, shall be during the remainder of their present terms of office the district attorneys and marshals for such districts as constituted by this section.

(g) The district judge for the middle district of Tennessee shall be the district judge for the middle district of Tennessee as constituted by this section and shall hold regular and special terms of court at Nashville, Columbia, and Cookeville.

(h) The district judge for the western district of Tennessee shall hold regular and special terms of court at Memphis and Jackson. (Mar. 3, 1911, ch. 231, § 107, 36 Stat. 1124; Aug. 20, 1912, ch. 306, 37 Stat. 314; June 22, 1916, ch. 161, 39 Stat. 232; Mar. 4, 1923, ch. 289, 42 Stat. 1520; May 17, 1926, ch. 310, 44 Stat. 561; Mar. 1, 1927, ch. 244, 44 Stat. 1262; May 13, 1932, ch. 179, 47 Stat. 153; June 16, 1933, ch. 94, 48 Stat. 253; July 30, 1937, ch. 539, 50 Stat. 546; June 12, 1940, ch. 341, 54 Stat. 348; Nov. 27, 1940, ch. 920, 54 Stat. 1216.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 547, 552, 572, and 586, which were derived from acts Jan. 31, 1797, ch. 2, 1 Stat. 496; June 18, 1838, ch. 118, § 1, 5 Stat. 249; Jan. 18, 1839, ch. 3, § 1, 5 Stat. 313; Feb. 19, 1856, ch. 8, § 1, 11 Stat. 1; Mar. 10, 1856, ch. 8, 11 Stat. 1; June 25, 1868, ch. 79, 15 Stat. 80; Mar. 3, 1875, ch. 148, 18 Stat. 480, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

#### APPOINTMENT OF DISTRICT JUDGES

A provision of Judicial Code section 107 as amended by act Nov. 27, 1940, ch. 920, cited to text, creating a new Judgeship for the Eastern District of Tennessee is incorporated in section 1 of this title. See that section and note thereunder.

#### REPEAL OF INCONSISTENT PROVISIONS

Section was amended in toto by act Nov. 27, 1940, cited to text, section 2 of which provided as follows: "Sec. 2. All provisions of law inconsistent with the provisions of this act are hereby repealed."

§ 189. (Judicial Code, section 108.) Texas.

The State of Texas is divided into four districts, to be known as the northern, eastern, western, and southern districts of Texas.

The northern district shall include the territory embraced on the 1st day of July 1910 in the counties of Dallas, Ellis, Hunt, Johnson, Kaufman, Navarro, and Rockwall, which shall constitute the Dallas division; also the territory embraced on February 26, 1917, in the counties of Comanche, Erata, Hood, Jack, Palo Pinto, Parker, Tarrant, and Wise, which shall constitute the Fort Worth division; also the territory embraced on the date last mentioned in the counties of Armstrong, Briscoe, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler, which shall constitute the Amarillo division; also the territory embraced on February 5, 1913, in the counties of Callahan, Eastland, Fisher, Haskell, Howard, Jones, Mitchell, Nolan, Shackelford, Stephens, Stonewall, Taylor, and Throckmorton, which shall constitute the Abilene division; also the territory embraced on July 1, 1910, in the counties of Brown, Coke, Coleman, Concho, Crockett, Glasscock, Irion, Menard, Mills, Reagan, Runnels, Schleicher, Sterling, Sutton, and Tom Green, which shall constitute the San Angelo division; also the territory embraced on February 26, 1917, in the counties of Archer, Baylor, Clay, Cottle, Foard, Hardeman, Montague, King, Knox, Wichita, Wilbarger, and Young, which shall constitute the Wichita Falls division of the said district; also the territory now embraced in the counties of Bailey, Borden, Lamb, Floyd, Kent, Motley, Hale, Dickens, Crosby, Lubbock, Scurry, Hockley, Cochran, Yoakum, Terry, Lynn, Garza, Dawson, and Gaines, which shall constitute the Lubbock division of said district. Terms of the district court for the Lubbock division shall be held at Lubbock on the third Monday in May and the fourth Monday in November.

The clerk of the court for the northern district shall maintain an office in charge of himself or a deputy, in addition to the places now provided, at Lubbock, which shall be kept open at all times for the transaction of the business of the court. Terms of the district court for the Dallas division shall be held at Dallas on the second Monday in January and the first Monday in May; for the Fort Worth division, at Fort Worth on the first Monday in November and the second Monday in March; for the Amarillo division, at Amarillo on the third Monday in April and the second Monday in September; for the Abilene division, at Abilene on the first Monday in October and the second Monday in April; for the San Angelo division, at San Angelo on the third Monday in October and the fourth Monday in April; and for the Wichita Falls division, at Wichita Falls on the fourth Monday in March and the third Monday in November. The clerk of the court for the northern district shall maintain an office in charge of himself or a deputy at Dallas, at Fort Worth, at Amarillo, at Abilene, at San Angelo, and at Wichita Falls, which shall be kept open at all times for the

transaction of the business of the court: *Provided*, That suitable accommodations for holding court at Wichita Falls shall be provided by the county or municipal authorities without expense to the United States. All processes against persons resident in the county of Reagan and cognizable before the United States district court shall be issued out of and made returnable to the court at San Angelo, and all prosecutions against persons for offenses committed in the county of Reagan shall be tried in the court at San Angelo: *Provided*, That no civil or criminal cause begun and pending prior to May 29, 1924, shall be in any way affected.

The eastern district shall include the territory embraced on the 1st day of July 1910 in the counties of Anderson, Angelina, Cherokee, Gregg, Henderson, Houston, Nacogdoches, Panola, Rains, Rusk, Smith, Van Zandt, and Wood, which shall constitute the Tyler division; also the territory embraced on the date last mentioned in the counties of Hardin, Jasper, Jefferson, Liberty, Newton, Orange, Sabine, San Augustine, Shelby, and Tyler, which shall constitute the Beaumont division; also the territory embraced on the date last mentioned in the counties of Collin, Cook, Denton, and Grayson, which shall constitute the Sherman division; also the territory embraced on the date last mentioned in the counties of Camp, Cass, Harrison, Hopkins, Marion, Morris, and Upshur, which shall constitute the Jefferson division; also the territory embraced on the date last mentioned in the counties of Delta, Fannin, Red River, and Lamar, which shall constitute the Paris division; also the territory embraced on the date last mentioned in the counties of Bowie, Franklin, and Titus, which shall constitute the Texarkana division. Terms of the district court of the Tyler division shall be held at Tyler on the first Monday in October and the second Monday in February; for the Beaumont division, at Beaumont on the fourth Monday in October and first Monday in March; for the Sherman division, at Sherman on the fourth Monday in November and first Monday in April; for the Paris division, at Paris on the second Monday in December and third Monday in April; for the Jefferson division at Jefferson on the first Mondays in January and May; and for the Texarkana division, at Texarkana on the third Mondays in January and May. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Sherman, at Beaumont, at Texarkana, and at Tyler, which shall be kept open at all times for the transaction of the business of said court.

The western district shall include the territory embraced on the 1st day of July 1910 in the counties of Bastrop, Blanco, Burleson, Burnet, Caldwell, Gillespie, Hays, Kimble, Lampasas, Lee, Llano, Mason, McCulloch, San Saba, Travis, Washington, and Williamson, which shall constitute the Austin division; also the territory embraced on the date last mentioned in the counties of Atascosa, Bandera, Bexar, Comal, Dimmit, Edwards, Frio, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Medina, and Wilson, which shall constitute the San Antonio division; also the territory embraced on July 1, 1910, in the counties of Brewster, El Paso, Pecos, and Presidio, which shall

constitute the El Paso division; also the territory embraced on July 1, 1910, in the counties of Bell, Bosque, Coryell, Falls, Freestone, Hamilton, Hill, Leon, Limestone, McLennan, Milam, Robertson, and Somervell, which shall constitute the Waco division; also the territory embraced on the date last mentioned in the counties of Kinney, Maverick, Terrell, Uvalde, Valverde, and Zavalla, which shall constitute the Del Rio division; also the territory embraced on February 5, 1913, in the counties of Andrews, Crane, Ector, Jeff Davis, Loving, Martin, Midland, Reeves, Upton, Ward, and Winkler, which shall constitute the Pecos division. Terms of the district court for the Austin division shall be held at Austin on the fourth Monday in January and the second Monday in June; for the Waco division, at Waco on the fourth Monday in February and the second Monday in November; for the San Antonio division, at San Antonio on the first Monday in May and the third Monday in December; for the El Paso division, at El Paso on the first Monday in April and the first Monday in October; for the Del Rio division, at Del Rio on the third Monday in March and the fourth Monday in October; and for the Pecos division terms of the district court shall be held twice each year at the city of Pecos, and, until otherwise provided by law, the judge of said court shall fix the times at which said court shall be held at Pecos, of which he shall make proclamation and give due notice: *Provided, however*, That suitable rooms and accommodations shall be furnished for the holding of said court and for the use of the officers of said court at Pecos, free of expense to the Government of the United States. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Austin, at El Paso, and at Del Rio, which shall be kept open at all times for the transaction of business. All processes against persons resident in the county of Pecos and cognizable before the United States district court shall be issued out of and made returnable to said court at Pecos City, and all prosecutions against persons for offenses committed in the county of Pecos shall be tried in the district court at El Paso, or Pecos City: *Provided*, That no civil or criminal cause begun and pending prior to March 2, 1923, shall be in any way affected.

The southern district shall include the territory embraced on April 3, 1924, in the counties of Jim Hogg, La Salle, McMullen, Webb, and Zapata, which shall constitute the Laredo division; also the territory embraced on July 1, 1910, in the counties of Cameron, Hidalgo, and Starr, and on May 29, 1912, in the county of Willacy, which shall constitute the Brownsville division: *Provided*, That no civil or criminal cause commenced prior to June 24, 1930, shall be in any way affected; also the territory embraced on the date last mentioned in the counties of Austin, Brazoria, Chambers, Galveston, Fort Bend, Matagorda, and Wharton, which shall constitute the Galveston division; also the territory embraced on the date last mentioned in the counties of Brazos, Colorado, Fayette, Grimes, Harris, Madison, Montgomery, Polk, San Jacinto, Trinity, Walker, and Waller, which shall constitute the Houston division; also the territory embraced on May 29, 1912, in the counties

of Calhoun, De Witt, Goliad, Jackson, Refugio, and Victoria, and on July 1, 1910, in the county of Lavaca, which shall constitute the Victoria division; also the territory embraced on the date last mentioned in the counties of Aransas, Bee, Brooks, Duval, Jim Wells, Live Oak, Nueces, San Patricio, which shall constitute the Corpus Christi division. Terms of the district court for the Galveston division shall be held at Galveston on the second Monday in January and the first Monday in June; for the Houston division, at Houston on the fourth Mondays in February and September; for the Laredo division, at Laredo on the third Monday in April and second Monday in November; for the Brownsville division, at Brownsville on the second Monday in May and the first Monday in December; for the Victoria division, at Victoria on the first Monday in May and the fourth Monday in November; and for the Corpus Christi division, terms of the district court shall be held twice in each year at the city of Corpus Christi and, until otherwise provided by law, the judge of said court shall fix the times at which said court shall be held at Corpus Christi, of which he shall make publication and give due notice. The clerk of the court for the southern district shall maintain an office in charge of himself or a deputy at each of the places designated on March 3, 1911, for holding court in said district. (Mar. 3, 1911, ch. 231, § 108, 36 Stat. 1125; May 29, 1912, ch. 144, §§ 1, 2, 37 Stat. 120; Feb. 5, 1913, ch. 28, §§ 1, 2, 37 Stat. 663; Feb. 26, 1917, ch. 122, §§ 1, 2, 39 Stat. 939; Mar. 1, 1919, ch. 87, 40 Stat. 1270; Mar. 2, 1923, ch. 172, §§ 1, 2, 42 Stat. 1373; Apr. 3, 1924, ch. 82, 43 Stat. 64; May 29, 1924, ch. 211, §§ 1, 2, 43 Stat. 244; May 26, 1928, ch. 752, § 1, 45 Stat. 747; June 6, 1930, ch. 408, 46 Stat. 521; June 24, 1930, ch. 596, 46 Stat. 807; Feb. 20, 1932, ch. 51, 47 Stat. 52; July 25, 1939, ch. 356, § 1, 53 Stat. 1082; June 6, 1940, ch. 252, 54 Stat. 241.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 548, 572, and act Mar. 11, 1902, ch. 183, 32 Stat. 64 which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See repeal note under section 142 of this title.

R. S. §§ 548 and 572 were derived from act Feb. 21, 1857, ch. 57, 11 Stat. 164 and act June 11, 1858, ch. 147, 11 Stat. 314.

#### § 190. (Judicial Code, section 109.) Utah.

The State of Utah shall constitute one judicial district, to be known as the district of Utah. It is divided into two divisions, to be known as the northern and central divisions. The northern division shall include the territory embraced on the 1st day of July 1910 in the counties of Boxelder, Cache, Davis, Morgan, Rich, and Weber. The central division shall include the territory embraced on the date last mentioned in the counties of Beaver, Carbon, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Piute, Salt Lake, San Juan, San Pete, Sevier, Summit, Tooele, Uinta, Utah, Wasatch, Washington, and Wayne. Terms of the district court for the northern division shall be held at Ogden on the second Mondays in March and September; and for the central division, at Salt Lake City on the second Mondays in April and November. The clerk of the court

for said district shall maintain an office in charge of himself or a deputy at each of the places where the court was required on March 3, 1911, to be held in the district. (Mar. 3, 1911, ch. 231, § 109, 36 Stat. 1127.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts July 16, 1894, ch. 138, 28 Stat. 110; Mar. 2, 1897, ch. 366, 29 Stat. 620; Feb. 19, 1903, ch. 706, 32 Stat. 841, which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See repeal note under section 142 of this title.

#### § 191. (Judicial Code, section 110.) Vermont.

The State of Vermont shall constitute one judicial district to be known as the district of Vermont. Terms of the district court shall be held at Burlington on the second Tuesday in February, at Windsor on the second Tuesday in May, at Rutland on the second Tuesday in October, and at Brattleboro on the second Tuesday in December. Any stated term may, when adjourned, be adjourned to meet at any of the other stated places or at Montpelier or Newport. (Mar. 3, 1911, ch. 231, § 110, 36 Stat. 1127; Feb. 1, 1912, ch. 26, 37 Stat. 58; Feb. 28, 1929, ch. 360, 45 Stat. 1345.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 531, 572, and 807 which were derived from acts Mar. 2, 1791, ch. 12, § 2, 1 Stat. 197; Apr. 29, 1802, ch. 31, 2 Stat. 166; Mar. 22, 1816, ch. 31, 3 Stat. 258; Mar. 3, 1823, ch. 45, 3 Stat. 776; May 4, 1858, ch. 28, 11 Stat. 272; Feb. 23, 1869, ch. 43, 15 Stat. 274, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

#### § 192. (Judicial Code, section 111.) Virginia.

The State of Virginia is divided into two districts, to be known as the eastern and western districts of Virginia.

The eastern district shall include the territory embraced on the 1st day of July 1910 in the counties of Accomac, Alexandria, Amelia, Brunswick, Caroline, Charles City, Chesterfield, Culpeper, Dinwiddie, Elizabeth City, Essex, Fairfax, Fauquier, Gloucester, Goochland, Greenville, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Mathews, Mecklenburg, Middlesex, Nansemond, New Kent, Norfolk, Northampton, Northumberland, Nottoway, Orange, Powhatan, Prince Edward, Prince George, Prince William, Princess Anne, Richmond, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warwick, Westmoreland, and York.

Terms of the district court shall be held at Richmond on the first Mondays in April and October; at Norfolk on the first Mondays in May and November; and at Alexandria on the first Mondays in June and December.

The western district shall include the territory embraced on the 1st day of July 1910 in the counties of Alleghany, Albemarle, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Buckingham, Campbell, Carroll, Charlotte, Clarke, Craig, Cumberland, Dickenson, Floyd, Fluvanna, Franklin, Frederick, Giles, Grayson, Greene, Halifax, Henry, Highland, Lee, Madison, Montgomery, Nel-

son, Page, Patrick, Pulaski, Pittsylvania, Rapahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Tazewell, Warren, Washington, Wise, and Wythe.

Terms of the district court shall be held at Abingdon on the second Mondays in April and November; at Big Stone Gap on the first Mondays in May and October; at Charlottesville on the first Monday in February and on the Wednesday next after the first Monday in August; at Danville on the fourth Monday in February and on the Wednesday next after the first Monday in September; at Harrisonburg on the third Monday in March and on the fourth Monday in October; at Lynchburg on the first Mondays in June and December; and at Roanoke on the first Mondays in January and July.

The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Lynchburg, Roanoke, Danville, Charlottesville, Harrisonburg, Big Stone Gap, and Abingdon, which shall be kept open at all times for the transaction of the business of the court. (Mar. 3, 1911, ch. 231, § 111, 36 Stat. 1127; June 13, 1918, ch. 100, 40 Stat. 605; Apr. 30, 1924, ch. 144, 43 Stat. 114; Feb. 21, 1925, ch. 290, 43 Stat. 962; Jan. 20, 1930, ch. 20, § 1, 46 Stat. 56.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 549, 572, and 622 which were derived from acts Feb. 3, 1871, ch. 35, §§ 1, 3, 16 Stat. 403; Feb. 1, 1872, ch. 10, 17 Stat. 27; Apr. 13, 1872, ch. 99, 17 Stat. 52, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

#### § 192a. Same; additional term for Eastern District.

Terms of the District Court of the United States for the Eastern District of Virginia shall be held at Newport News, Virginia, on the first Monday in February and the second Monday in July. (June 13, 1938, ch. 350, 52 Stat. 674.)

#### § 193. (Judicial Code, section 112.) Washington.

The State of Washington is divided into two districts, to be known as the eastern and western districts of Washington. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Spokane, Stevens, Ferry, Okanogan, Chelan, Grant, Douglas, Lincoln, Adams, and Whitman, with the waters thereof, including all Indian reservations within said counties, which shall constitute the northern division; also the territory embraced on the date last mentioned in the counties of Asotin, Garfield, Columbia, Franklin, Walla Walla, Benton, Kllickitat, Kittitas, and Yakima with the waters thereof, including all Indian reservations within said counties, which shall constitute the southern division of said district. Terms of the district court for the northern division shall be held at Spokane on the first Tuesdays in April and September; for the southern division, at Walla Walla on the first Tuesdays in June and December, and at North Yakima on the first Tuesdays in May and October. The western district shall include the territory embraced on the 1st day of July, 1910, in the counties of What-

com, Skagit, Snohomish, King, San Juan, Island, Kitsap, Clallam, and Jefferson, with the waters thereof, including all Indian reservations within said counties, which shall constitute the northern division; also the territory embraced on the date last mentioned in the counties of Pierce, Mason, Thurston, Chehalis, Pacific, Lewis, Wahkiakum, Cowlitz, Clarke, and Skamania, with the waters thereof, including all Indian reservations within said counties, which shall constitute the southern division of said district. Terms of the district court for the northern division shall be held at Bellingham on the first Tuesdays in April and October; at Seattle on the first Tuesdays in May and November; and for the southern division, at Tacoma on the first Tuesdays in February and July. The clerks of the courts for the eastern and western districts shall maintain an office in charge of himself or a deputy at each place in their respective districts where terms of court were required on March 3, 1911, to be held. (Mar. 3, 1911, ch. 231, § 112, 36 Stat. 1128; June 15, 1937, ch. 351, 50 Stat. 260.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts Feb. 22, 1889, ch. 180, 25 Stat. 682; Apr. 5, 1890, ch. 65, 26 Stat. 45; Mar. 2, 1905, ch. 1305, 33 Stat. 824; Feb. 20, 1907, ch. 1139, 34 Stat. 913; Mar. 2, 1909, ch. 243, 35 Stat. 686, which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See repeal note under section 142 of this title.

#### § 194. (Judicial Code, section 113.) West Virginia.

The State of West Virginia is divided into two districts, to be known as the northern and southern districts of West Virginia. The northern district shall include the territory embraced on the 1st day of July 1910 in the counties of Hancock, Brooke, Ohio, Marshall, Tyler, Pleasants, Wood, Wirt, Ritchie, Doddridge, Wetzel, Monongalia, Marion, Harrison, Lewis, Gilmer, Calhoun, Upshur, Barbour, Taylor, Preston, Tucker, Randolph, Pendleton, Hardy, Grant, Mineral, Hampshire, Morgan, Berkeley, and Jefferson, with the waters thereof.

The district judge for the northern district of West Virginia shall hold regular terms of court in said northern district at the following places and times, that is to say:

(a) At the city of Martinsburg on the first Tuesday in April and the fourth Tuesday in September in each year;

(b) At the city of Wheeling on the third Tuesdays in April and October in each year;

(c) At the city of Elkins on the first Tuesday in June and the third Tuesday in November in each year;

(d) Said judge shall also hold such special terms as may be necessary for the orderly dispatch of the business of said court; the same to be held at said places and at such times as he shall appoint.

The southern district shall include the territory embraced on the 1st day of July 1910 in the counties of Jackson, Roane, Clay, Braxton, Webster, Nicholas, Pocahontas, Greenbrier, Fayette, Boone, Kanawha, Putnam, Mason, Cabell, Wayne, Lincoln, Logan, Mingo, Raleigh, Wyoming, McDowell, Mercer, Summers, and Monroe with the waters thereof.

The district judge for the southern district of West Virginia shall hold regular terms of court in said southern district at the following times and places, that is to say:

(a) At the city of Bluefield on the third Tuesdays in January and June in each year;

(b) At the city of Lewisburg on the first Tuesdays in March and September in each year; when suitable rooms and accommodations for holding terms of the court shall be provided at Lewisburg free of cost to the United States or until, subject to the recommendation of the Attorney General of the United States with respect to providing such rooms and accommodations for holding court at Lewisburg, a public building shall have been erected or other Federal space provided for court purposes in said city;

(c) At the city of Charleston on the second Tuesday in April and on the third Tuesday in November in each year;

(d) At the city of Beckley at least once in each calendar year, at such times as may be fixed by rules of the court, when suitable rooms and accommodations for holding terms of the court shall be provided at Beckley free of cost to the United States or until, subject to the recommendation of the Attorney General of the United States with respect to providing such rooms and accommodations for holding court at Beckley, a Federal building containing such suitable rooms and accommodations for holding court shall be erected at such place.

(e) Said judge shall also hold such special terms as may be necessary for the orderly dispatch of the business of said court, the same to be held at said places and at such times as he shall appoint.

The district judge for the northern and southern districts of West Virginia shall hold regular terms of court in said northern and southern districts at the following places and times, that is to say:

(a) At the city of Clarksburg in said northern district on the first Tuesday in January and on the fourth Tuesday in August in each year;

(b) At the city of Parkersburg in said northern district on the third Tuesday in March and on the first Tuesday in October in each year;

(c) At the city of Huntington in said southern district on the second Tuesday in May and on the third Tuesday in October in each year;

(d) At the city of Fairmont at least once in each calendar year, at such times as may be fixed by rules of the court, when suitable rooms and accommodations for holding terms of the court shall be provided at Fairmont free of cost to the United States or until, subject to the recommendation of the Attorney General of the United States with respect to providing such rooms and accommodations for holding court at Fairmont, a Federal building containing such suitable rooms and accommodations for holding court shall be erected at such place;

(e) Said judge shall also hold such special terms as may be necessary for the orderly dispatch of the business of said courts; the same to be held at said places and at such times as he shall appoint. (Mar. 3, 1911, ch. 231, § 113, 36 Stat. 1129; Mar. 23, 1912, ch. 63, 37 Stat. 76; Aug. 22, 1914, ch. 265, 38 Stat.

for said district shall maintain an office in charge of himself or a deputy at each of the places where the court was required on March 3, 1911, to be held in the district. (Mar. 3, 1911, ch. 231, § 109, 36 Stat. 1127.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts July 16, 1894, ch. 138, 28 Stat. 110; Mar. 2, 1897, ch. 366, 29 Stat. 620; Feb. 19, 1903, ch. 706, 32 Stat. 841, which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See repeal note under section 142 of this title.

#### § 191. (Judicial Code, section 110.) Vermont.

The State of Vermont shall constitute one judicial district to be known as the district of Vermont. Terms of the district court shall be held at Burlington on the second Tuesday in February, at Windsor on the second Tuesday in May, at Rutland on the second Tuesday in October, and at Brattleboro on the second Tuesday in December. Any stated term may, when adjourned, be adjourned to meet at any of the other stated places or at Montpelier or Newport. (Mar. 3, 1911, ch. 231, § 110, 36 Stat. 1127; Feb. 1, 1912, ch. 26, 37 Stat. 58; Feb. 28, 1929, ch. 360, 45 Stat. 1345.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 531, 572, and 807 which were derived from acts Mar. 2, 1791, ch. 12, § 2, 1 Stat. 197; Apr. 29, 1802, ch. 31, 2 Stat. 166; Mar. 22, 1816, ch. 31, 3 Stat. 258; Mar. 3, 1823, ch. 45, 3 Stat. 776; May 4, 1858, ch. 28, 11 Stat. 272; Feb. 23, 1869, ch. 43, 15 Stat. 274, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

#### § 192. (Judicial Code, section 111.) Virginia.

The State of Virginia is divided into two districts, to be known as the eastern and western districts of Virginia.

The eastern district shall include the territory embraced on the 1st day of July 1910 in the counties of Accomac, Alexandria, Amelia, Brunswick, Caroline, Charles City, Chesterfield, Culpeper, Dinwiddie, Elizabeth City, Essex, Fairfax, Fauquier, Gloucester, Goochland, Greenville, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Mathews, Mecklenburg, Middlesex, Nansemond, New Kent, Norfolk, Northampton, Northumberland, Nottoway, Orange, Powhatan, Prince Edward, Prince George, Prince William, Princess Anne, Richmond, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warwick, Westmoreland, and York.

Terms of the district court shall be held at Richmond on the first Mondays in April and October; at Norfolk on the first Mondays in May and November; and at Alexandria on the first Mondays in June and December.

The western district shall include the territory embraced on the 1st day of July 1910 in the counties of Alleghany, Albemarle, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Buckingham, Campbell, Carroll, Charlotte, Clarke, Craig, Cumberland, Dickenson, Floyd, Fluvanna, Franklin, Frederick, Giles, Grayson, Greene, Halifax, Henry, Highland, Lee, Madison, Montgomery, Nel-

son, Page, Patrick, Pulaski, Pittsylvania, Rapahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Tazewell, Warren, Washington, Wise, and Wythe.

Terms of the district court shall be held at Abingdon on the second Mondays in April and November; at Big Stone Gap on the first Mondays in May and October; at Charlottesville on the first Monday in February and on the Wednesday next after the first Monday in August; at Danville on the fourth Monday in February and on the Wednesday next after the first Monday in September; at Harrisonburg on the third Monday in March and on the fourth Monday in October; at Lynchburg on the first Mondays in June and December; and at Roanoke on the first Mondays in January and July.

The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Lynchburg, Roanoke, Danville, Charlottesville, Harrisonburg, Big Stone Gap, and Abingdon, which shall be kept open at all times for the transaction of the business of the court. (Mar. 3, 1911, ch. 231, § 111, 36 Stat. 1127; June 13, 1918, ch. 100, 40 Stat. 605; Apr. 30, 1924, ch. 144, 43 Stat. 114; Feb. 21, 1925, ch. 290, 43 Stat. 962; Jan. 20, 1930, ch. 20, § 1, 46 Stat. 56.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 549, 572, and 622 which were derived from acts Feb. 3, 1871, ch. 35, §§ 1, 3, 16 Stat. 403; Feb. 1, 1872, ch. 10, 17 Stat. 27; Apr. 13, 1872, ch. 99, 17 Stat. 52, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

#### § 192a. Same; additional term for Eastern District.

Terms of the District Court of the United States for the Eastern District of Virginia shall be held at Newport News, Virginia, on the first Monday in February and the second Monday in July. (June 13, 1938, ch. 350, 52 Stat. 674.)

#### § 193. (Judicial Code, section 112.) Washington.

The State of Washington is divided into two districts, to be known as the eastern and western districts of Washington. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Spokane, Stevens, Ferry, Okanogan, Chelan, Grant, Douglas, Lincoln, Adams, and Whitman, with the waters thereof, including all Indian reservations within said counties, which shall constitute the northern division; also the territory embraced on the date last mentioned in the counties of Asotin, Garfield, Columbia, Franklin, Walla Walla, Benton, Klickitat, Kittitas, and Yakima with the waters thereof, including all Indian reservations within said counties, which shall constitute the southern division of said district. Terms of the district court for the northern division shall be held at Spokane on the first Tuesdays in April and September; for the southern division, at Walla Walla on the first Tuesdays in June and December, and at North Yakima on the first Tuesdays in May and October. The western district shall include the territory embraced on the 1st day of July, 1910, in the counties of What-



com, Skagit, Snohomish, King, San Juan, Island, Kitsap, Clallam, and Jefferson, with the waters thereof, including all Indian reservations within said counties, which shall constitute the northern division; also the territory embraced on the date last mentioned in the counties of Pierce, Mason, Thurston, Chehalis, Pacific, Lewis, Wahkiakum, Cowlitz, Clarke, and Skamania, with the waters thereof, including all Indian reservations within said counties, which shall constitute the southern division of said district. Terms of the district court for the northern division shall be held at Bellingham on the first Tuesdays in April and October; at Seattle on the first Tuesdays in May and November; and for the southern division, at Tacoma on the first Tuesdays in February and July. The clerks of the courts for the eastern and western districts shall maintain an office in charge of himself or a deputy at each place in their respective districts where terms of court were required on March 3, 1911, to be held. (Mar. 3, 1911, ch. 231, § 112, 36 Stat. 1128; June 15, 1937, ch. 351, 50 Stat. 260.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts Feb. 22, 1889, ch. 180, 25 Stat. 682; Apr. 5, 1890, ch. 65, 26 Stat. 45; Mar. 2, 1905, ch. 1305, 33 Stat. 824; Feb. 20, 1907, ch. 1139, 34 Stat. 913; Mar. 2, 1909, ch. 243, 35 Stat. 686, which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See repeal note under section 142 of this title.

#### § 194. (Judicial Code, section 113.) West Virginia.

The State of West Virginia is divided into two districts, to be known as the northern and southern districts of West Virginia. The northern district shall include the territory embraced on the 1st day of July 1910 in the counties of Hancock, Brooke, Ohio, Marshall, Tyler, Pleasants, Wood, Wirt, Ritchie, Doddridge, Wetzel, Monongalia, Marion, Harrison, Lewis, Gilmer, Calhoun, Upshur, Barbour, Taylor, Preston, Tucker, Randolph, Pendleton, Hardy, Grant, Mineral, Hampshire, Morgan, Berkeley, and Jefferson, with the waters thereof.

The district judge for the northern district of West Virginia shall hold regular terms of court in said northern district at the following places and times, that is to say:

(a) At the city of Martinsburg on the first Tuesday in April and the fourth Tuesday in September in each year;

(b) At the city of Wheeling on the third Tuesdays in April and October in each year;

(c) At the city of Elkins on the first Tuesday in June and the third Tuesday in November in each year;

(d) Said judge shall also hold such special terms as may be necessary for the orderly dispatch of the business of said court; the same to be held at said places and at such times as he shall appoint.

The southern district shall include the territory embraced on the 1st day of July 1910 in the counties of Jackson, Roane, Clay, Braxton, Webster, Nicholas, Pocahontas, Greenbrier, Fayette, Boone, Kanawha, Putnam, Mason, Cabell, Wayne, Lincoln, Logan, Mingo, Raleigh, Wyoming, McDowell, Mercer, Summers, and Monroe with the waters thereof.

The district judge for the southern district of West Virginia shall hold regular terms of court in said southern district at the following times and places, that is to say:

(a) At the city of Bluefield on the third Tuesdays in January and June in each year;

(b) At the city of Lewisburg on the first Tuesdays in March and September in each year; when suitable rooms and accommodations for holding terms of the court shall be provided at Lewisburg free of cost to the United States or until, subject to the recommendation of the Attorney General of the United States with respect to providing such rooms and accommodations for holding court at Lewisburg, a public building shall have been erected or other Federal space provided for court purposes in said city;

(c) At the city of Charleston on the second Tuesday in April and on the third Tuesday in November in each year;

(d) At the city of Beckley at least once in each calendar year, at such times as may be fixed by rules of the court, when suitable rooms and accommodations for holding terms of the court shall be provided at Beckley free of cost to the United States or until, subject to the recommendation of the Attorney General of the United States with respect to providing such rooms and accommodations for holding court at Beckley, a Federal building containing such suitable rooms and accommodations for holding court shall be erected at such place.

(e) Said judge shall also hold such special terms as may be necessary for the orderly dispatch of the business of said court, the same to be held at said places and at such times as he shall appoint.

The district judge for the northern and southern districts of West Virginia shall hold regular terms of court in said northern and southern districts at the following places and times, that is to say:

(a) At the city of Clarksburg in said northern district on the first Tuesday in January and on the fourth Tuesday in August in each year;

(b) At the city of Parkersburg in said northern district on the third Tuesday in March and on the first Tuesday in October in each year;

(c) At the city of Huntington in said southern district on the second Tuesday in May and on the third Tuesday in October in each year;

(d) At the city of Fairmont at least once in each calendar year, at such times as may be fixed by rules of the court, when suitable rooms and accommodations for holding terms of the court shall be provided at Fairmont free of cost to the United States or until, subject to the recommendation of the Attorney General of the United States with respect to providing such rooms and accommodations for holding court at Fairmont, a Federal building containing such suitable rooms and accommodations for holding court shall be erected at such place;

(e) Said judge shall also hold such special terms as may be necessary for the orderly dispatch of the business of said courts; the same to be held at said places and at such times as he shall appoint. (Mar. 3, 1911, ch. 231, § 113, 36 Stat. 1129; Mar. 23, 1912, ch. 63, 37 Stat. 76; Aug. 22, 1914, ch. 265, 38 Stat.



702; Feb. 27, 1922, ch. 83, 42 Stat. 398; June 22, 1936, ch. 695, 49 Stat. 1805; Aug. 23, 1937, ch. 737, 50 Stat. 744; June 29, 1938, ch. 817, 52 Stat. 1245.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 531 and 572 and act Jan. 22, 1901, ch. 105, 31 Stat. 736, which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See repeal note under section 142 of this title.

R. S. §§ 531 and 572 were derived from acts June 11, 1864, ch. 120, 13 Stat. 124, and Res. No. 12 of Mar. 10, 1866, 14 Stat. 350.

#### § 195. (Judicial Code, section 114.) Wisconsin.

The State of Wisconsin is divided into two districts, to be known as the eastern and western districts of Wisconsin. The eastern district shall include the territory embraced on the 1st day of July 1910 in the counties of Brown, Calumet, Dodge, Door, Florence, Fond du Lac, Forest, Green Lake, Kenosha, Kewaunee, Langlade, Manitowoc, Marinette, Marquette, Milwaukee, Oconto, Outagamie, Ozaukee, Racine, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago. Terms of the district court for said district shall be held in Milwaukee on the first Mondays in January and October, at Oshkosh on the second Tuesday in June, and at Green Bay on the first Tuesday in April. The western district shall include the territory embraced on the 1st day of July 1910 in the counties of Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Columbia, Crawford, Dane, Douglas, Dunn, Eau Claire, Grant, Green, Iowa, Iron, Jackson, Jefferson, Juneau, La Crosse, Lafayette, Lincoln, Marathon, Monroe, Oneida, Pepin, Pierce, Polk, Portage, Price, Richland, Rock, Rusk, Saint Croix, Sauk, Sawyer, Taylor, Trempealeau, Vernon, Vilas, Washburn, and Wood. Terms of the district court for said district shall be held at Madison on the first Tuesday in December, at Eau Claire on the first Tuesday in June, at La Crosse on the third Tuesday in September, at Wausau on the second Tuesday in April, and at Superior on the fourth Tuesday in January and the second Tuesday in July. The district court for each of said districts shall be open at all times for the purpose of hearing and deciding causes of admiralty and maritime jurisdiction so far as the same can be done without a jury. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Madison, at La Crosse, at Wausau, and at Superior, which shall be kept open at all times for the transactions of the business of the court. The marshal for the western district shall appoint a deputy marshal who shall reside and keep his office at Superior. All writs and other process, except criminal warrants, issued at Superior, may be made returnable at Superior; and the clerk at that place shall keep in his office the original records of all actions, prosecutions, and special proceedings so commenced and pending therein. Criminal warrants may be returned at any place within the district where court is held. Whenever warrants issued at Superior shall be returned at any other place the clerk of the court wherein the warrant is returned shall certify the same under the seal of the court,

together with the plea and other proceedings had thereon and the determination of the court upon such plea or proceedings, with all papers and orders filed in reference thereto, to the clerk of the court at Superior; and the clerk at Superior shall enter upon his records a minute of the proceedings had upon the return of said warrant, certified as aforesaid. All causes and proceedings instituted in the court at Superior shall be tried therein, unless by consent of the parties, or upon the order of the court, they are transferred to another place for trial. (Mar. 3, 1911, ch. 231, § 114, 36 Stat. 1129; July 24, 1935, ch. 413, 49 Stat. 495.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 550, 572, and 576, which were derived from acts Feb. 26, 1845, ch. 20, 5 Stat. 726; May 29, 1848, ch. 50, 9 Stat. 234; June 29, 1870, ch. 175, §§ 1, 3, 16 Stat. 171, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See also repeal note under section 142 of this title.

#### § 196. (Judicial Code, section 115.) Wyoming.

The State of Wyoming shall constitute one judicial district, to be known as the district of Wyoming. Terms of the district court for said district shall be held at Cheyenne on the second Mondays in May and November, at Casper on the first Monday in February, at Evanston on the second Tuesday in July, and at Lander on the first Monday in October; and the said court shall hold one session annually at Sheridan, on such date as the court may order. The marshal and clerk of the said court shall each, respectively, appoint at least one deputy to reside at Casper, and one to reside at Evanston, and one to reside at Lander, and shall also maintain an office at each of those places: *Provided*, That, until a public building is provided at Casper, suitable accommodations for holding court in said town shall be furnished free of expense to the United States. The marshal of the United States for the said district may appoint among others one or more deputy marshals, who shall reside in the Yellowstone National Park. (Mar. 3, 1911, ch. 231, § 115, 36 Stat. 1130; June 5, 1924, ch. 260, 43 Stat. 388.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts July 10, 1890, ch. 664, 26 Stat. 225; May 23, 1892, ch. 77, 27 Stat. 39; May 7, 1894, ch. 72, 28 Stat. 73; Apr. 13, 1906, ch. 1619, 34 Stat. 111; Mar. 6, 1908, ch. 56, 35 Stat. 37, which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See repeal note under section 142 of this title.

### Chapter 6.—CIRCUIT COURTS OF APPEALS

#### Sec.

- 211. Circuits.
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- 214. Judges of Commerce Court, assignment as circuit judges.
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- 218. Conference of circuit judges; reports to circuit judges by district judges; expenses of judges attending.
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- 227. Appeals in proceedings for injunctions; receivers; and admiralty.
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- 228. Allowance of appeals.
- 228a. Provisions relating to appellate procedure continued in force for circuit court of appeals.
- 229. Appeals from Alaska.
- 230. Time for making application for appeal.
- 231. Review dependent upon amount in controversy; proof of such amount.

## § 211. (Judicial Code, section 116.) Circuits.

There shall be ten judicial circuits of the United States, constituted as follows:

First. The first circuit shall include the districts of Rhode Island, Massachusetts, New Hampshire, Maine, and Puerto Rico.

Second. The second circuit shall include the districts of Vermont, Connecticut, and New York.

Third. The third circuit shall include the districts of Pennsylvania, New Jersey, and Delaware.

Fourth. The fourth circuit shall include the districts of Maryland, Virginia, West Virginia, North Carolina, and South Carolina.

Fifth. The fifth circuit shall include the districts of Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas.

Sixth. The sixth circuit shall include the districts of Ohio, Michigan, Kentucky, and Tennessee.

Seventh. The seventh circuit shall include the districts of Indiana, Illinois, and Wisconsin.

Eighth. The eighth circuit shall include the districts of Minnesota, North Dakota, South Dakota, Iowa, Nebraska, Missouri, and Arkansas.

Ninth. The ninth circuit shall include the districts of California, Oregon, Nevada, Washington, Idaho, Montana, Hawaii, and Arizona.

Tenth. The tenth circuit shall include the districts of Colorado, Wyoming, Utah, Kansas, Oklahoma, and New Mexico. (Mar. 3, 1911, ch. 231, § 116, 36 Stat. 1131; Jan. 28, 1915, ch. 22, § 1, 38 Stat. 803; Feb. 28, 1929, ch. 363, § 1, 45 Stat. 1346; May 17, 1932, ch. 190, 47 Stat. 158.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 604 and act June 20, 1910, ch. 310, §§ 13, 31, 36 Stat. 565, 576, which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. See repeal note under section 142 of this title.

R. S. § 604 was derived from acts Sept. 24, 1789, ch. 20, § 4, 1 Stat. 74; Mar. 30, 1820, ch. 27, § 1, 3 Stat. 554; July 23, 1866, ch. 210, § 2, 14 Stat. 209; Mar. 25, 1867, ch. 7, § 2, 15 Stat. 5; June 26, 1876, ch. 147, 19 Stat. 61.

## § 211a. Assignment of judges to new circuits.

Any circuit judge of the eighth circuit as constituted before March 30, 1929, who resides within the eighth circuit as constituted by section 211 of this title, is assigned as a circuit judge to such part of the former eighth circuit as is constituted by section 211 the eighth circuit, and shall be a circuit judge thereof; and any circuit judge of the eighth circuit as constituted before March 30, 1929, who resides within the tenth circuit as constituted by section 211, is assigned as a circuit judge of such part of the former eighth circuit as is constituted by section 211 the tenth circuit, and shall be a circuit judge thereof. (Feb. 28, 1929, ch. 363, § 4, 45 Stat. 1348.)

## § 212. (Judicial Code, section 117.) Circuit courts of appeals.

There shall be in each circuit a circuit court of appeals, which shall consist of three judges, of whom two shall constitute a quorum, which shall be a court of record, with appellate jurisdiction, as hereinafter limited and established. (Mar. 3, 1911, ch. 231, § 117, 36 Stat. 1131.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in section 2 of the Circuit Court of Appeals act of Mar. 3, 1891, ch. 517, 26 Stat. 826. See repeal note under section 142 of this title.

## § 213. (Judicial Code, section 118.) Circuit judges.

There shall be in the first and fourth circuits, respectively, three circuit judges; in the tenth circuit, four circuit judges; in the third, fifth, and seventh circuits, respectively, five circuit judges; in the second and sixth circuits, respectively, six circuit judges; and in the eighth and ninth circuits, respectively, seven circuit judges, to be appointed by the President, by and with the advice and consent of the Senate. Each circuit judge shall receive a salary of \$12,500 a year, payable monthly. Each circuit judge shall reside within his circuit, and when appointed shall be a resident of the circuit for which he is appointed. The circuit judges in each circuit shall be judges of the circuit court of appeals in that circuit, and it shall be the duty of each circuit judge in each circuit to sit as one of the judges of the circuit court of appeals in that circuit from time to time according to law. Nothing in this section shall be construed to prevent any circuit judge holding district court or otherwise, as provided by other sections of the Judicial Code. (Mar. 3, 1911, ch. 231, § 118, 36 Stat. 1131; Jan. 13, 1912, ch. 9, 37 Stat. 52; Feb. 25, 1919, ch. 29, § 2, 40 Stat. 1156; Sept. 14, 1922, ch. 306, § 6, 42 Stat. 840; Mar. 3, 1925, ch. 437, 43 Stat. 1116; Dec. 13, 1926, ch. 6, § 1, 44 Stat. 919;

Feb. 28, 1929, ch. 363, § 2, 45 Stat. 1347; Mar. 1, 1929, ch. 413, §§ 1, 2, 45 Stat. 1414; June 10, 1930, ch. 437, 46 Stat. 538; June 10, 1930, ch. 438, 46 Stat. 538; June 16, 1933, ch. 102, 48 Stat. 310; Aug. 2, 1935, ch. 425, § 1, 49 Stat. 508; June 24, 1936, ch. 753, §§ 1, 3, 49 Stat. 1903; Apr. 14, 1937, ch. 80, 50 Stat. 64; May 31, 1938, ch. 290, §§ 1, 3, 52 Stat. 584, 585; May 24, 1940, ch. 209, § 1, 54 Stat. 219.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in section 1 of the Circuit Court of Appeals Act of Mar. 3, 1891, ch. 517, 26 Stat. 826. See repeal note under section 142 of this title.

#### AMENDATORY AND SUPPLEMENTARY ACTS

Since the amendment of section 118 of the Judicial Code by act Feb. 28, 1929, cited to text, Congress has enacted various independent acts, which, though not specifically amending the Judicial Code, authorize the appointment of additional circuit judges. In this section these independent acts have been consolidated to reflect the number of circuit judges permanently authorized for the various circuits.

The changes effected in section 118 upon the authority of these acts are as follows:

#### SECOND CIRCUIT

One additional judge for the second circuit was authorized by act May 31, 1938, ch. 290, § 1, 52 Stat. 584.

#### THIRD CIRCUIT

One additional judge for the third circuit was authorized by act June 10, 1930, ch. 438, 46 Stat. 538; and a temporary judgeship, authorized by act June 24, 1936, ch. 753, §§ 1-3, 49 Stat. 1903, was made permanent by act May 31, 1938, ch. 290, § 3, 52 Stat. 585.

#### FIFTH CIRCUIT

One additional judge for the fifth circuit was authorized by act June 10, 1930, ch. 437, 46 Stat. 538, and a second by act May 31, 1938, ch. 290, § 1, 52 Stat. 584.

#### SIXTH CIRCUIT

One additional judge for the sixth circuit was authorized by act May 31, 1938, ch. 290, § 1, 52 Stat. 584; and a second by act May 24, 1940, ch. 209, § 1, 54 Stat. 219.

#### SEVENTH CIRCUIT

One additional judge for the seventh circuit was authorized by act May 31, 1938, ch. 290, § 1, 52 Stat. 584.

#### EIGHTH CIRCUIT

Two additional judges were authorized for the eighth circuit by act May 24, 1940, ch. 209, § 1, 54 Stat. 219.

#### NINTH CIRCUIT

One additional judgeship for the ninth circuit, authorized as temporary by act Mar. 1, 1929, ch. 413, §§ 1, 2, 45 Stat. 1414, was made permanent by act June 16, 1933, ch. 102, 48 Stat. 310. A second additional judge was authorized by act Aug. 2, 1935, ch. 425, § 1, 49 Stat. 508, and two further additional judges were authorized by act April 14, 1937, ch. 80, 50 Stat. 64.

#### §§ 213a-213h. Same; additional judges for certain circuits.

These sections have been incorporated into section 213. See that section and notes thereunder.

They were derived as follows:

- § 213a from act Mar. 1, 1929, ch. 413, §§ 1, 2, 45 Stat. 1414.
- § 213b from act June 16, 1933, ch. 102, 48 Stat. 310.
- § 213c from act June 10, 1930, ch. 437, 46 Stat. 538.
- § 213d from act June 10, 1930, ch. 438, 46 Stat. 538.
- § 213d-1, from act June 24, 1936, ch. 753, §§ 1, 3, 49 Stat. 1903, as amended May 31, 1938, ch. 290, § 3, 52 Stat. 585.
- § 213e from act Aug. 2, 1935, ch. 425, § 1, 49 Stat. 508.
- § 213f from act Apr. 14, 1937, ch. 80, 50 Stat. 64.
- § 213g from act May 31, 1938, ch. 290, § 1, 52 Stat. 584.
- § 213h from act May 24, 1940, ch. 209, § 1, 54 Stat. 219.

#### § 214. Judges of Commerce Court, assignment as circuit judges.

The judges who served, prior to its repeal, under the act entitled "An Act to create a Commerce Court and to amend the Act entitled 'An Act to regulate commerce', approved February 4, 1887, as heretofore amended, and for other purposes", approved June 18, 1910, shall hold office during good behavior, and from time to time shall be designated and assigned by the Chief Justice of the United States for service in the district court of any district, or the circuit court of appeals for any circuit; and in the event of and on the death, resignation, or removal from office of any of such judges, his office is abolished and no successor to him shall be appointed. (Mar. 3, 1911, ch. 231, § 201, 36 Stat. 1147; Oct. 22, 1913, ch. 32, 38 Stat. 219.)

#### § 215. (Judicial Code, section 119.) Allotment of justices to circuits.

The Chief Justice and associate justices of the Supreme Court shall be allotted among the circuits by an order of the court, and a new allotment shall be made whenever it becomes necessary or convenient by reason of the alteration of any circuit, or of the new appointment of a Chief Justice or associate justice, or otherwise. If a new allotment becomes necessary at any other time than during a term, it shall be made by the Chief Justice, and shall be binding until the next term and until a new allotment by the court. Whenever, by reason of death or resignation, no justice is allotted to a circuit, the Chief Justice may, until a justice is regularly allotted thereto, temporarily assign a justice of another circuit to such circuit. (Mar. 3, 1911, ch. 231, § 119, 36 Stat. 1131.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 606 and 618 which were derived from acts Mar. 2, 1867, ch. 156, § 1, 14 Stat. 433, and Mar. 3, 1863, ch. 93, §§ 2, 3, 12 Stat. 768, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 216. (Judicial Code, section 120.) Judges who may sit in circuit court of appeals.

The Chief Justice and the associate justices of the Supreme Court assigned to each circuit, and the several district judges within each circuit, shall be competent to sit as judges of the circuit court of appeals within their respective circuits. In case the Chief Justice or an associate justice of the Supreme Court shall attend at any session of the circuit court of appeals, he shall preside. In the absence of such Chief Justice, or associate justice, the circuit judges in attendance upon the court shall preside in the order of the seniority of their respective commissions. In case the full court at any time shall not be made up by the attendance of the Chief Justice or the associate justice, and the circuit judges, one or more district judges within the circuit shall sit in the court according to such order or provision among the district judges as either by general or particular assignments shall be designated by the court. No judge before whom a cause or question may have been tried or heard in a district court, or existing circuit court, shall sit on the

trial or hearing of such cause or question in the circuit court of appeals. (Mar. 3, 1911, ch. 231, § 120, 36 Stat. 1132.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in section 3 of the Circuit Court of Appeals act of Mar. 3, 1891, ch. 517, 26 Stat. 827. See repeal note under section 142 of this title.

#### § 216a. Inability of senior circuit judge to act; devolution of duties.

In case the senior circuit judge of any circuit is unable because of illness or other cause to exercise any power given or to perform any duty imposed by law, such power or duty shall be exercised or performed by the other judges of that circuit in the order of the seniority of their respective commissions. (May 23, 1934, ch. 339, 48 Stat. 796.)

#### § 217. (Judicial Code, section 121.) Designation of justices allotted to circuits.

The words "circuit justice" and "justice of a circuit" shall be understood to designate the justice of the Supreme Court who is allotted to any circuit; but the word "judge", when applied generally to any circuit, shall be understood to include such justice. (Mar. 3, 1911, ch. 231, § 121, 36 Stat. 1132.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 605, which was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 218. Conference of circuit judges; reports to circuit judges by district judges; expenses of judges attending.

It shall be the duty of the Chief Justice of the United States, or in case of his disability, of one of the other Justices of the Supreme Court, in order of their seniority, as soon as may be after the passage of this Act, and annually thereafter, to summon to a conference on the last Monday in September, at Washington, District of Columbia, or at such other time and place in the United States as the Chief Justice, or, in case of his disability, any of said Justices in order of their seniority, may designate, the senior circuit judge of each judicial circuit and the chief justice of the United States Court of Appeals for the District of Columbia. If any senior circuit judge is unable to attend, the Chief Justice, or in case of his disability, the Justice of the Supreme Court calling said conference, may summon any other circuit or district judge in the judicial circuit whose senior circuit judge is unable to attend, and, if the chief justice of the United States Court of Appeals for the District of Columbia is unable to attend, any other justice of that court may be summoned in like manner, that each circuit may be adequately represented at said conference. It shall be the duty of every judge or justice thus summoned to attend said conference, and to remain throughout its proceedings, unless excused by the Chief Justice, and to advise as to the needs of his circuit and as to any matters in respect of which the administration of justice in the courts of the United States may be improved.

The senior district judge of each United States district court, on or before the 1st day of August in each year, shall prepare and submit to the senior circuit judge of the judicial circuit in which said district is situated, a report setting forth the condition of business in said district court, including the number and character of cases on the docket, the business in arrears, and cases disposed of, and such other facts pertinent to the business dispatched and pending as said district judge may deem proper, together with recommendations as to the need of additional judicial assistance for the disposal of business for the year ensuing. Said reports shall be laid before the conference herein provided by said senior circuit judge, or, in his absence, by the judge representing the circuit at the conference, together with such recommendations as he may deem proper.

The Chief Justice, or, in his absence, the senior associate justice, shall be the presiding officer of the conference. Said conference shall make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for assignment and transfer of judges to or from circuits or districts where the state of the docket or condition of business indicates the need therefor, and shall submit such suggestions to the various courts as may seem in the interest of uniformity and expedition of business.

The Attorney General shall, upon request of the Chief Justice, report to said conference on matters relating to the business of the several courts of the United States, with particular reference to causes or proceedings in which the United States may be a party.

The Chief Justice and each justice or judge summoned and attending said conference shall be allowed his actual expenses of travel and his necessary expenses for subsistence, not to exceed \$10 per day, which payments shall be made by the marshal of the Supreme Court of the United States upon the written certificate of the judge incurring such expenses, approved by the Chief Justice. (Sept. 14, 1922, ch. 306, § 2, 42 Stat. 838; July 5, 1937, ch. 427, 50 Stat. 473.)

#### TRANSFERS OF FUNCTIONS

Disbursement functions of United States marshals which would otherwise have devolved upon the Treasury Department on July 1, 1940, by virtue of Ex. Ord. No. 6166, June 10, 1933, as amended, set out in note under section 132 of Title 5, were transferred to and vested in Department of Justice to be exercised by United States marshals under supervision of Attorney General in accordance with existing statutes pertaining to such functions, by Reorg. Plan No. IV, § 3, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1234, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See, also, sections 13-15 of said plan for provisions relating to transfer of functions of department heads, records, property, personnel, and funds.

#### § 219. (Judicial Code, section 122.) Seals, forms of process, and rules.

Each circuit court of appeals shall prescribe the form and style of its seal and the form of writs and other process and procedure as may be conformable to the exercise of its jurisdiction; and shall have power to establish all rules and regulations

for the conduct of the business of the court within its jurisdiction as conferred by law. (Mar. 3, 1911, ch. 231, § 122, 36 Stat. 1132.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in section 2 of the Circuit Court of Appeals, act of Mar. 3, 1891, ch. 517, 26 Stat. 826. See repeal note under section 142 of this title.

#### § 220. (Judicial Code, section 123.) Marshals.

The United States marshals in and for the several districts of said courts shall be the marshals of said circuit courts of appeals, and shall exercise the same powers and perform the same duties, under the regulations of the court, as are exercised and performed by the marshal of the Supreme Court of the United States, so far as the same may be applicable. (Mar. 3, 1911, ch. 231, § 123, 36 Stat. 1132.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in section 2 of the Circuit Court of Appeals, act of Mar. 3, 1891, ch. 517, 26 Stat. 826, and act July 16, 1892, ch. 196, § 1, 27 Stat. 222. See repeal note under section 142 of this title.

#### TRANSFER OF FUNCTIONS

See note under section 218 of this title.

#### CROSS REFERENCE

Powers and duties of marshal of the Supreme Court of the United States, see section 331 of this title.

#### § 221. (Judicial Code, section 124.) Clerks.

Each court shall appoint a clerk, who shall exercise the same powers and perform the same duties in regard to all matters within its jurisdiction, as are exercised and performed by the clerk of the Supreme Court, so far as the same may be applicable. (Mar. 3, 1911, ch. 231, § 124, 36 Stat. 1132.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in section 2 of the Circuit Court of Appeals, act of Mar. 3, 1891, ch. 517, 26 Stat. 826. See repeal note under section 142 of this title.

#### § 222. (Judicial Code, section 125.) Deputy clerks.

The clerk of the circuit court of appeals for each circuit may, with the approval of the court, appoint such number of deputy clerks as the court may deem necessary. Such deputies may be removed at the pleasure of the clerk appointing them, with the approval of the court. In the case of the death of the clerk his deputy or deputies shall, unless removed by the court, continue in office and perform the duties of the clerk in his name until a clerk is appointed and has qualified; and for the defaults or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk and his estate and the sureties on his official bond shall be liable, and his executor or administrator shall have such remedy for such defaults or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his lifetime. (Mar. 3, 1911, ch. 231, § 125, 36 Stat. 1132.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Feb. 3, 1911, ch. 33, 36 Stat. 895, which was probably repealed by the last paragraph of section 297 of act Mar. 3, 1911, ch. 231, 36 Stat. 1168.

#### § 222a. (Judicial Code, section 118a.) Law clerks for circuit judges; appointment; salary; travel expenses.

Each United States circuit judge is hereby authorized, with the approval of the Attorney General, to appoint a law clerk, whose salary shall be at a rate not in excess of \$3,000 per annum; and the appropriation of such amount as is or may be necessary to pay the salaries and travel expenses of such law clerks is hereby authorized. (Mar. 3, 1911, ch. 231, § 118a, as added June 17, 1930, ch. 509, 46 Stat. 774.)

#### CROSS REFERENCE

Salaries of law clerks and stenographers to district and circuit judges, see section 374a of this title.

#### § 223. (Judicial Code, section 126.) Terms.

A term shall be held annually by the circuit courts of appeals in the several judicial circuits at the following places, and at such times as may be fixed by said courts, respectively: In the first circuit, in Boston, and when in its judgment the public interests require in San Juan, Puerto Rico; in the second circuit, in New York; in the third circuit, in Philadelphia; in the fourth circuit, in Richmond and in Asheville, North Carolina; in the fifth circuit, in New Orleans, Atlanta, Fort Worth, and Montgomery; in the sixth circuit, in Cincinnati; in the seventh circuit, in Chicago; in the eighth circuit, in Saint Louis, Kansas City, Omaha, and Saint Paul; in the ninth circuit, in San Francisco, and each year in two other places in said circuit to be designated by the judges of said court; in the tenth circuit, in Denver, Wichita, and Oklahoma City, provided that suitable rooms and accommodations for holding court at Oklahoma City are furnished free of expense to the United States; and in each of the above circuits terms may be held at such other times and in such other places as said courts, respectively, may from time to time designate, except that terms shall be held in Atlanta on the first Monday in October, in Fort Worth on the first Monday in November, and in Montgomery on the third Monday in October. All appeals and other appellate proceedings which may be taken or prosecuted from the district courts of the United States in the State of Georgia, in the State of Texas, and in the State of Alabama, to the circuit court of appeals for the fifth judicial circuit shall be heard and disposed of, respectively, by said court at the terms held in Atlanta, in Fort Worth, and in Montgomery, except that appeals in cases of injunctions and in all other cases which, under the statutes and rules, or in the opinion of the court, are entitled to be brought to a speedy hearing, may be heard and disposed of wherever said court may be sitting. All appeals and other appellate proceedings which may be taken or prosecuted from the district court of the United States at Beaumont, Texas, to the circuit court of appeals for the fifth circuit, shall be

heard and disposed of by the said circuit court of appeals at the terms of court held at New Orleans, except that appeals in cases of injunctions and in all other cases which, under the statutes and rules, or in the opinion of the court, are entitled to be brought to a speedy hearing, may be heard and disposed of wherever said court may be sitting. (Mar. 3, 1911, ch. 231, § 126, 36 Stat. 1132; July 17, 1916, ch. 246, 39 Stat. 385; Jan. 8, 1925, ch. 57, 43 Stat. 729; July 3, 1926, ch. 735, 44 Stat. 809; Feb. 28, 1929, ch. 363, § 3, 45 Stat. 1347; May 17, 1932, ch. 190, 47 Stat. 158.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in section 3 of the Circuit Court of Appeals, act of Mar. 3, 1891, ch. 517, 26 Stat. 827, and acts June 9, 1902, ch. 1071, 32 Stat. 329; June 30, 1902, ch. 1333, 32 Stat. 548; Dec. 18, 1902, ch. 4, 32 Stat. 756; Jan. 30, 1903, ch. 835, 32 Stat. 784; Mar. 4, 1904, ch. 395, 33 Stat. 59; and Apr. 22, 1904, ch. 1420, 33 Stat. 249. See repeal note under section 142 of this title.

#### § 224. (Judicial Code, section 127.) Rooms for court.

The marshals for the several districts in which said circuit courts of appeals may be held shall, under the direction of the Attorney General, and with his approval, provide such rooms in the public buildings of the United States as may be necessary for the business of said courts, and pay all incidental expenses of said court, including criers, bailiffs, and messengers. In case proper rooms cannot be provided in such buildings, then the marshals, with the approval of the Attorney General, may, from time to time, lease such rooms as may be necessary for such courts. (Mar. 3, 1911, ch. 231, § 127, 36 Stat. 1133.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in section 9 of the Circuit Court of Appeals, act of Mar. 3, 1891, ch. 517, 26 Stat. 829. See repeal note under section 142 of this title.

#### TRANSFER OF FUNCTIONS

See note under section 218 of this title.

#### § 225. (Judicial Code, section 128.) Appellate jurisdiction—(a) Review of final decisions.

The circuit courts of appeal shall have appellate jurisdiction to review by appeal final decisions—

First. In the district courts, in all cases save where a direct review of the decision may be had in the Supreme Court under section 345 of this title.

Second. In the United States District Courts for Hawaii and for Puerto Rico, in all cases.

Third. In the District Court for the District of Alaska, or any division thereof, and in the District Court of the Virgin Islands, in all cases; and in the United States District Court for the District of the Canal Zone in the cases and modes prescribed in sections 61 and 62, Title 7, Canal Zone Code (48 Stat. 1122).

Fourth. In the Supreme Courts of the Territory of Hawaii and of Puerto Rico, in all cases, civil or criminal, wherein the Constitution or a statute or treaty of the United States or any authority exercised thereunder is involved; in all other civil cases wherein the value in controversy, exclusive of inter-

ests and costs, exceeds \$5,000, and in all habeas corpus proceedings.

Fifth. In the United States Court for China, in all cases.

#### (b) Review of interlocutory orders or decrees of district courts.

The circuit court of appeals shall also have appellate jurisdiction—

First. To review the interlocutory orders or decrees of the district courts, including the District Courts of Alaska, Hawaii, Virgin Islands, and Canal Zone, which are specified in section 227 of this title.

Second. To review decisions of the district courts, under section 159 of Title 45.

#### (c) Appellate and supervisory jurisdiction in bankruptcy proceedings.

The circuit courts of appeals shall also have an appellate and supervisory jurisdiction under sections 47 and 48 of Title 11, over all proceedings, controversies, and cases had or brought in the district courts under Title 11, relating to bankruptcy, or any of its amendments, and shall exercise the same in the manner prescribed in those sections; and the jurisdiction of the Circuit Court of Appeals for the Ninth Circuit in this regard shall cover the courts of bankruptcy in Alaska and Hawaii, and that of the Circuit Court of Appeals for the First Circuit shall cover the court of bankruptcy in Puerto Rico.

#### (d) Circuits in which reviews shall be had.

The review under this section shall be in the following circuit courts of appeals: The decisions of a district court of the United States within a State in the circuit court of appeals for the circuit embracing such State; those of the District Court of Alaska or any division thereof, the United States district court, and the Supreme Court of Hawaii, and the United States Court for China, in the Circuit Court of Appeals for the Ninth Circuit; those of the United States district court and the Supreme Court of Puerto Rico in the Circuit Court of Appeals for the First Circuit; those of the District Court of the Virgin Islands in the Circuit Court of Appeals for the Third Circuit; and those of the District Court of the Canal Zone in the Circuit Court of Appeals for the Fifth Circuit.

#### (e) Jurisdiction over Federal Trade Commission, Interstate Commerce Commission, and Federal Reserve Board.

The circuit courts of appeal are further empowered to enforce, set aside, or modify orders of the Federal Trade Commission, as provided in section 45 of Title 15; and orders of the Interstate Commerce Commission, the Board of Governors of the Federal Reserve System, and the Federal Trade Commission, as provided in section 21 of Title 15. (Mar. 3, 1911, ch. 231, § 128, 36 Stat. 1133; Jan. 28, 1915, ch. 22, § 2, 38 Stat. 803; Feb. 7, 1925, ch. 150, 43 Stat. 813; Feb. 13, 1925, ch. 229, § 1, 43 Stat. 936; May 20, 1926, ch. 347, § 13 (a), 44 Stat. 587; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54; Apr. 11, 1928, ch. 354, § 1, 45 Stat. 422; May 17, 1932, ch. 190, 47 Stat. 158; May 31, 1935, ch. 160, 49 Stat. 313; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704; June 20, 1938, ch. 526, 52 Stat. 779.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in section 6 of the Circuit Court of Appeals act of Mar. 3, 1891, ch. 517, 26 Stat. 828. See repeal note under section 142 of this title.

**FEDERAL RULES OF CIVIL PROCEDURE**

Appeal to Circuit Court of Appeals, see Rule 73, following section 723c of this title.

Effect of Rule 73 on this section, see note by Advisory Committee under said Rule 73.

**§ 226. Review of judgments of district courts exercising concurrent jurisdiction with Court of Claims or adjudicating claims against United States.**

In cases in the district courts wherein they exercise concurrent jurisdiction with the Court of Claims or adjudicate claims against the United States the judgments shall be subject to review in the circuit courts of appeals like other judgments of the district courts; and sections 346 and 347 of this title shall apply to such cases in the circuit courts of appeals as to other cases therein. (Feb. 13, 1925, ch. 229, § 4, 43 Stat. 939.)

**FEDERAL RULES OF CIVIL PROCEDURE**

Appeal to Circuit Court of Appeals, see Rule 73, following section 723c of this title.

Effect of Rule 73 on this section, see note by Advisory Committee under said Rule 73.

**§ 227. (Judicial Code, section 129.) Appeals in proceedings for injunctions; receivers; and admiralty.**

Where, upon a hearing in a district court, or by a judge thereof, in vacation, an injunction is granted, continued, modified, refused, or dissolved by an interlocutory order or decree, or an application to dissolve or modify an injunction is refused, or an interlocutory order or decree is made appointing a receiver, or refusing an order to wind up a pending receivership or to take the appropriate steps to accomplish the purposes thereof, such as directing a sale or other disposal of property held thereunder, an appeal may be taken from such interlocutory order or decree to the circuit court of appeals; and sections 346 and 347 of this title shall apply to such cases in the circuit courts of appeals as to other cases therein. The appeal to the circuit court of appeals must be applied for within thirty days from the entry of such order or decree, and shall take precedence in the appellate court; and the proceedings in other respects in the district court shall not be stayed during the pendency of such appeal unless otherwise ordered by the court, or the appellate court, or a judge thereof. The district court may, in its discretion, require an additional bond as a condition of the appeal. In all cases where an appeal from a final decree in admiralty to the circuit court of appeals is allowed, an appeal may also be taken to said court from an interlocutory decree in admiralty determining the rights and liabilities of the parties: *Provided*, That the same is taken within fifteen days after the entry of the decree: *And provided further*, That within twenty days after such entry the appellant shall give notice of the appeal to the appellee or appellees; but the taking of such appeal shall not stay proceedings under the interlocutory decree unless otherwise ordered by the dis-

trict court upon such terms as shall seem just. (Mar. 3, 1911, ch. 231, § 129, 36 Stat. 1134; Feb. 13, 1925, ch. 229, § 1, 43 Stat. 937; Apr. 3, 1926, ch. 102, 44 Stat. 233.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in section 7 of the Circuit Court of Appeals act of Mar. 3, 1891, ch. 517, 26 Stat. 828, and acts Feb. 18, 1895, ch. 96, 28 Stat. 666; June 6, 1900, ch. 803, 31 Stat. 660; and Apr. 14, 1906, ch. 1627, 34 Stat. 116. See repeal note under section 142 of this title.

**FEDERAL RULES OF CIVIL PROCEDURE**

Effect of Rule 73 on this section, see note by Advisory Committee under said Rule 73.

Stay of proceedings and appeal to Circuit Court of Appeals, see Rules 62, 73, following section 723c of this title.

**§ 227a. Appeals in suits in equity for infringement of letters patent for inventions; stay of proceedings for accounting.**

When in any suit in equity for the infringement of letters patent for inventions a decree is rendered which is final except for the ordering of an accounting, an appeal may be taken from such decree to the circuit court of appeals: *Provided*, That such appeal be taken within thirty days from the entry of such decree or from February 28, 1927; and the proceedings upon the accounting in the court below shall not be stayed, unless so ordered by that court, during the pendency of such appeal. (Mar. 3, 1911, ch. 231, § 129, 43 Stat. 937; Feb. 28, 1927, ch. 228, 44 Stat. 1261.)

**FEDERAL RULES OF CIVIL PROCEDURE**

Effect of Rule 73 on this section, see note by Advisory Committee under said Rule 73.

Stay of proceedings and appeal to Circuit Court of Appeals, see Rules 62, 73, following section 723c of this title.

**§ 228. (Judicial Code, section 132.) Allowance of appeals.**

Any judge of a circuit court of appeals, in respect of cases brought or to be brought before that court, shall have the same powers and duties as to allowances of appeals and the conditions of such allowances as by law belong to the justices or judges in respect of other courts of the United States, respectively. (Mar. 3, 1911, ch. 231, § 132, 36 Stat. 1134; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in section 11 of the Circuit Court of Appeals act of Mar. 3, 1891, ch. 517, 26 Stat. 829. See repeal note under section 142 of this title.

**FEDERAL RULES OF CIVIL PROCEDURE**

Appeal to Circuit Court of Appeals, see Rule 73, following section 723c of this title.

Superseding of section by Rule 73, see note by Advisory Committee under said Rule 73.

**§ 228a. Provisions relating to appellate procedure continued in force for circuit court of appeals.**

This section was from act Mar. 3, 1891, ch. 517, § 11, 26 Stat. 829. Present provisions relating to the same subject are contained in Rule 73 of the Federal Rules of Civil Procedure following section 723c of this title. See notes of Advisory Committee under said Rule.



### § 229. (Judicial Code, section 135.) Appeals from Alaska.

All appeals and other cases, coming from the district court for the district of Alaska to the Circuit Court of Appeals for the Ninth Circuit, shall be entered upon the docket and heard at San Francisco, California, or at Portland, Oregon, or at Seattle, Washington, as the trial court before whom the case was tried below shall fix and determine. At any time before the hearing of any appeal or other case, the parties thereto, through their respective attorneys, may stipulate at which of the above-named places the same shall be heard, in which case the case shall be remitted to and entered upon the docket at the place so stipulated and shall be heard there. (Mar. 3, 1911, ch. 231, § 135, 36 Stat. 1135; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Jan. 11, 1909, ch. 15, 35 Stat. 585.

### § 230. Time for making application for appeal.

No appeal intended to bring any judgment or decree before a circuit court of appeals for review shall be allowed unless application therefor be duly made within three months after the entry of such judgment or decree. (Mar. 3, 1891, ch. 517, § 11, 26 Stat. 829; Feb. 13, 1925, ch. 229, § 8 [c], 43 Stat. 940; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Appeal to Circuit Court of Appeals, see Rule 73, following section 723c of this title.

Continuation of section under Rule 73, see note by Advisory Committee under said Rule 73.

#### CROSS REFERENCE

Supreme Court to have power to make rules prescribing the times for and manner of taking appeals and applying for writs of certiorari and preparing records and bills of exceptions in criminal cases, see section 723a of this title.

### § 231. Review dependent upon amount in controversy; proof of such amount.

In any case where the power to review, whether in the circuit courts of appeals or in the Supreme Court, depends upon the amount or value in controversy, such amount or value, if not otherwise satisfactorily disclosed upon the record, may be shown and ascertained by the oath of a party to the cause or by other competent evidence. (Feb. 13, 1925, ch. 229, § 9, 43 Stat. 941.)

## Chapter 7.—THE COURT OF CLAIMS

- Sec. 241. Judges.
- 242. Seal.
- 243. Session; quorum.
- 244. Officers of court.
- 245. Salary of clerk, assistant clerk, bailiff, and chief messenger.
- 246. Clerk's bond.
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- 248. Reports to Congress.
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- 2. Set-offs.
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- Sec. 250a. Same; claims arising out of dredging operations; limitation.
- 250b. Same; claims arising out of construction of dams and locks on Mississippi River; presumptions; review.
- 251. Jurisdiction not to extend to certain claims.
- 252. Judgments for set-off or counterclaims.
- 253. Decree on accounts of disbursing officers.
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- 281. New trial; motion of claimant.
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- 284. No interest on claims; exceptions.
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- 288. Certification to Supreme Court of questions of law; certiorari by Supreme Court to Court of Claims; no other review allowed.
- 289. Attorney General's report to Congress.
- 290. Loyalty jurisdictional fact.
- 291. Appearance by Attorney General for defense.
- 292. Exclusion as witnesses because of color or because of interest.
- 293. Reports to Congress.

### § 241. (Judicial Code, section 136.) Judges.

The Court of Claims shall consist of a Chief Justice and four judges, who shall be appointed by the President by and with the advice and consent of the Senate, and hold their offices during good behavior. Each of them shall take an oath to support the Constitution of the United States and to discharge faithfully the duties of his office. The Chief Justice and each of the other judges shall be entitled to receive an annual salary of \$12,500, payable monthly from the Treasury. (Mar. 3, 1911, ch. 231, § 136, 36 Stat. 1135; Feb. 25, 1919, ch. 29, § 4, 40 Stat. 1157; Dec. 13, 1926, ch. 6, § 1, 44 Stat. 919.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1049 and act Feb. 12, 1903, ch. 547, 32 Stat. 825.

R. S. § 1049 was derived from acts Feb. 24, 1855, ch. 122, § 1, 10 Stat. 612; Mar. 3, 1863, ch. 92, § 1, 12 Stat. 765; May 8, 1872, ch. 140, § 13, 17 Stat. 85, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 242. (Judicial Code, section 137.) Seal.

The Court of Claims shall have a seal, with such device as it may order. (Mar. 3, 1911, ch. 231, § 137, 36 Stat. 1136.)

##### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1050 which was derived from act Mar. 3, 1863, ch. 92, § 4, 12 Stat. 766, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 243. (Judicial Code, section 138.) Session; quorum.

The Court of Claims shall hold one annual session at the city of Washington, beginning on the first Monday in December and continuing as long as may be necessary for the prompt disposition of the business of the court. Any three of the judges of said court shall constitute a quorum, and may hold a court for the transaction of business: *Provided*, That the concurrence of three judges shall be necessary to the decision of any case. (Mar. 3, 1911, ch. 231, § 138, 36 Stat. 1136.)

##### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1052 as amended by act June 23, 1874, ch. 468, 18 Stat. 252. R. S. § 1052 was derived from acts Feb. 24, 1855, ch. 122, § 10, 10 Stat. 614; Aug. 6, 1856, ch. 81, § 1, 11 Stat. 30; Mar. 3, 1863, ch. 92, § 13, 12 Stat. 768; Mar. 17, 1866, ch. 19, § 2, 14 Stat. 9, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 244. (Judicial Code, section 139.) Officers of court.

The said court shall appoint a chief clerk, an assistant clerk, if deemed necessary, a bailiff, and a chief messenger. The clerks shall take an oath for the faithful discharge of their duties, and shall be under the direction of the court in the performance thereof; and for misconduct or incapacity they may be removed by it from office; but the court shall report such removals, with the cause thereof, to Congress, if in session, or if not, at the next session. The bailiff shall hold his office for a term of four years, unless sooner removed by the court for cause. (Mar. 3, 1911, ch. 231, § 139, 36 Stat. 1136.)

##### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1053 which was derived from acts Feb. 24, 1855, ch. 122, § 11, 10 Stat. 614; Mar. 3, 1863, ch. 92, § 4, 12 Stat. 765, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 245. (Judicial Code, section 140.) Salary of clerk, assistant clerk, bailiff, and chief messenger.

The salary of the chief clerk shall be three thousand five hundred dollars a year; of the assistant clerk two thousand five hundred dollars a year; of the bailiff one thousand five hundred dollars a year, and of the chief messenger one thousand dollars a year, payable monthly from the Treasury. (Mar. 3, 1911, ch. 231, § 140, 36 Stat. 1136.)

##### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1054

which was derived from acts Feb. 24, 1855, ch. 122, § 11, 10 Stat. 614; Mar. 3, 1863, ch. 92, § 4, 12 Stat. 765; June 7, 1870, ch. 124, 16 Stat. 148; July 12, 1870, ch. 251, § 3, 16 Stat. 250; May 8, 1872, ch. 140, § 1, 17 Stat. 82, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 246. (Judicial Code, section 141.) Clerk's bond.

The chief clerk shall give bond to the United States in such amount, in such form, and with such security as shall be approved by the Secretary of the Treasury. (Mar. 3, 1911, ch. 231, § 141, 36 Stat. 1136.)

##### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1055 which was derived from act Aug. 6, 1856, ch. 81, § 3, 11 Stat. 30, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 247. (Judicial Code, section 142.) Contingent fund.

The said clerk shall have authority when he has given bond as provided in the preceding section, to disburse, under the direction of the court, the contingent fund which may from time to time be appropriated for its use; and his accounts shall be settled by the General Accounting Office in the same way as the accounts of other disbursing agents of the Government are settled. (Mar. 3, 1911, ch. 231, § 142, 36 Stat. 1136; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

##### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1056 which was derived from act Aug. 6, 1856, ch. 81, § 3, 11 Stat. 30 and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

##### TRANSFER OF FUNCTIONS

The function of disbursing moneys of the United States exercised by any agency except War Department, Navy Department, and Panama Canal was transferred to the Treasury Department and together with the office of Disbursing Clerk of that Department, was consolidated in a Division of Disbursement at the head of which is a Chief Disbursing Officer. See Ex. Ord. No. 6166, § 4, June 10, 1933, and Ex. Ord. No. 6728, May 29, 1934, set out in note to section 132 of Title 5, Executive Departments and Government Officers and Employees.

Division of Disbursement and certain other offices and agencies and their functions were consolidated into Fiscal Service of Treasury Department by Reorg. Plan No. III, § 1 (a), eff. June 30, 1940, 5 Fed. Reg. 2107, 54 Stat. 1231, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

#### § 248. (Judicial Code, section 143.) Reports to Congress.

On the first day of every regular session of Congress, the clerk of the Court of Claims shall transmit to Congress a full and complete statement of all the judgments rendered by the court during the previous year, stating the amounts thereof and the parties in whose favor they were rendered, together with a brief synopsis of the nature of the claims upon which they were rendered. At the end of every term of the court he shall transmit a copy of its decisions to the heads of departments; to the General Counsel for the Department of the Treasury; to the Comptroller General of the United States; to the Commissioner of the General Land Office and of Indian Affairs; to the chiefs of bureaus, and to other officers charged with the adjustment of claims

against the United States. (Mar. 3, 1911, ch. 231, § 143, 36 Stat. 1136; June 10, 1921, ch. 18, §§ 301, 302, 310, 42 Stat. 23, 25; May 10, 1934, ch. 277, § 512 (b), 48 Stat. 759.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1057 which was derived from acts June 25, 1868, ch. 71, § 9, 15 Stat. 77; Mar. 17, 1868, ch. 19, § 3, 14 Stat. 9, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 249. (Judicial Code, section 144.) Members of Congress not to practice in.

Whoever, being elected or appointed a Senator, Member of, or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment, and either before or after he has qualified, and during his continuance in office, practice in the Court of Claims, shall be fined not more than \$10,000 and imprisoned not more than two years; and shall, moreover, thereafter be incapable of holding any office of honor, trust, or profit under the Government of the United States. (Mar. 3, 1911, ch. 231, § 144, 36 Stat. 1136.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1058 which was derived from act Mar. 3, 1863, ch. 92, § 4, 12 Stat. 765, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 250. (Judicial Code, section 145.) Jurisdiction.

The Court of Claims shall have jurisdiction to hear and determine the following matters:

#### (1) Claims against United States.

First. All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an executive department, upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable: *Provided, however*, That nothing in this section shall be construed as giving to the said court jurisdiction to hear and determine claims growing out of the late civil war, and commonly known as "war claims", or to hear and determine other claims which, prior to March 3, 1887, had been rejected or reported on adversely by any court, department, or commission authorized to hear and determine the same.

#### (2) Set-offs.

Second. All set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court: *Provided*, That no suit against the Government of the United States, brought by any officer of the United States to recover fees for services alleged to have been performed for the United States, shall be allowed under this chapter until an account for said fees shall have been rendered and finally acted upon as required by law, unless the General Accounting Office fails to act

finally thereon within six months after the account is received in said office.

#### (3) Disbursing officers.

Third. The claim of any paymaster, quartermaster, commissary of subsistence, or other disbursing officer of the United States, or of his administrators or executors, for relief from responsibility on account of loss by capture or otherwise, while in the line of his duty, of Government funds, vouchers, records, or papers in his charge, and for which such officer was and is held responsible. (Mar. 3, 1911, ch. 231, § 145, 36 Stat. 1136; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1059 and acts Mar. 3, 1887, ch. 359, § 1, 24 Stat. 505; June 27, 1898, ch. 503, § 1, 30 Stat. 494; and July 1, 1898, ch. 546, § 3, 30 Stat. 649. R. S. § 1059 was derived from acts Feb. 24, 1855, ch. 122, § 1, 10 Stat. 612; Mar. 3, 1863, ch. 92, § 3, 12 Stat. 765; Mar. 12, 1863, ch. 120, § 3, 12 Stat. 820; July 2, 1864, ch. 225, §§ 2, 3, 13 Stat. 375, 376; May 9, 1866, ch. 75, § 1, 14 Stat. 44; July 27, 1868, ch. 276, § 3, 15 Stat. 243, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### TRANSFER OF FUNCTIONS

See note under section 247 of this title.

§ 250a. Same; claims arising out of dredging operations; limitation.

The Court of Claims shall have jurisdiction to hear and determine claims for damages to oyster growers upon private or leased lands or bottoms arising from dredging operations and use of other machinery and equipment in making such improvements: *Provided*, That suits shall be instituted within one year after such operations shall have terminated. (Aug. 30, 1935, ch. 831, § 13, 49 Stat. 1049.)

§ 250b. Same; claims arising out of construction of dams and locks on Mississippi River; presumptions; review.

Jurisdiction is conferred upon the Court of Claims to hear, determine, and enter judgments against the United States upon the claims of the several contractors for alleged excess costs incurred in the execution of their respective contracts, entered into since June 16, 1933, for the construction of locks and dams for the improvement of navigation on the Mississippi River and its tributaries, by reason of the Government having promulgated and enforced, as alleged, due, as alleged, to the national emergency and subsequent to the dates of the several contracts, rules and regulations referred to in the several contracts and misinterpreted and wrongfully enforced or disregarded, as alleged, and rules and regulations not referred to in and inconsistent with the respective contracts, as alleged, which rules and regulations, the enforcement or disregard thereof, deprived the contractors of normal control of their personnel, as alleged, and further by reason of the Government having failed, as alleged, to supply qualified labor under the labor clauses of the respective contracts, resulting in excess costs, including general overhead and depreciation, to the said several contractors on their

respective contracts, as alleged; the said judgment or decrees, if any, to be allowed notwithstanding the bars or defenses of any alleged settlement or adjustment made prior to July 23, 1937, *res judicata*, laches, or any provision of law to the contrary.

This section shall not be interpreted as raising any presumption or conclusion of fact or law but shall be held solely to provide for trial upon facts as may be alleged.

Review of such judgment may be had by either party in the same manner as is provided by law in other cases in such court. (July 23, 1937, ch. 520, 50 Stat. 533.)

#### § 251. Jurisdiction not to extend to certain claims.

The jurisdiction of the Court of Claims shall not extend to or include any claim against the United States based upon or growing out of the destruction of any property or damage done to any property by the military or naval forces of the United States during the war for the suppression of the rebellion; nor to any claim for stores and supplies taken by or furnished to or for the use of the military or naval forces of the United States, nor to any claim for the value of any use and occupation of any real estate by the military or naval forces of the United States during said war; nor shall said Court of Claims have jurisdiction of any claim which on March 4, 1915, was barred by the provisions of any law of the United States. (Mar. 4, 1915, ch. 140, § 5, 38 Stat. 996.)

##### SIMILAR PROVISIONS

Prior provisions covering the subject matter of this section were contained in act Mar. 3, 1883, ch. 116, § 3, 22 Stat. 485, which was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 252. (Judicial Code, section 146.) Judgments for set-off or counterclaims.

Upon the trial of any cause in which any set-off, counterclaim, claim for damages, or other demand is set up on the part of the Government against any person making claim against the Government in said court, the court shall hear and determine such claim or demand both for and against the Government and claimant; and if upon the whole case it finds that the claimant is indebted to the Government it shall render judgment to that effect, and such judgment shall be final, with the right of appeal, as in other cases provided for by law. Any transcript of such judgment, filed in the clerk's office of any district court, shall be entered upon the records thereof, and shall thereby become and be a judgment of such court and be enforced as other judgments in such court are enforced. (Mar. 3, 1911, ch. 231, § 146, 36 Stat. 1137.)

##### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1061 which was derived from act Mar. 3, 1863, ch. 92, § 3, 12 Stat. 765 and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 253. (Judicial Code, section 147.) Decree on accounts of disbursing officers.

Whenever the Court of Claims ascertains the facts of any loss by any paymaster, quartermaster, com-

missary of subsistence, or other disbursing officer, in the cases hereinbefore provided, to have been without fault or negligence on the part of such officer, it shall make a decree setting forth the amount thereof, and upon such decree the General Accounting Office shall allow to such officer the amount so decreed as a credit in the settlement of his accounts. (Mar. 3, 1911, ch. 231, § 147, 36 Stat. 1137; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

##### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1062 which was derived from act May 9, 1866, ch. 75, § 2, 14 Stat. 44, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

##### TRANSFERS OF FUNCTIONS

Office establishments of Quartermaster General, Commissary General and Paymaster General of the Army consolidated and constituted a single bureau of War Department to be known as the Quartermaster Corps, see act Aug. 24, 1912, ch. 391, § 3, 37 Stat. 591.

#### § 254. (Judicial Code, section 148.) Claims referred by departments.

When any claim or matter is pending in any of the executive departments which involves controverted questions of fact or law, the head of such department may transmit the same, with the vouchers, papers, documents, and proofs pertaining thereto, to the Court of Claims and the same shall be there proceeded in under such rules as the court may adopt. When the facts and conclusions of law shall have been found, the court shall report its findings to the department by which it was transmitted for its guidance and action. If it shall have been transmitted with the consent of the claimant, or if it shall appear to the satisfaction of the court upon the facts established, that under existing laws or the provisions of this chapter it has jurisdiction to render judgment or decree thereon, it shall proceed to do so, in the latter case giving to either party such further opportunity for hearing as in its judgment justice shall require, and shall report its findings therein to the department by which the same was referred to said court. The Secretary of the Treasury may, upon the certificate of the Comptroller General of the United States, direct any claim or matter, of which, by reason of the subject matter or character, the said court might under existing laws, take jurisdiction on the voluntary action of the claimant, to be transmitted, with all the vouchers, papers, documents, and proofs pertaining thereto, to the said court for trial and adjudication. (Mar. 3, 1911, ch. 231, § 148, 36 Stat. 1137; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

##### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1063; act Mar. 3, 1883, ch. 116, § 2, 22 Stat. 485; and act Mar. 3, 1887, ch. 359, §§ 12, 13, 24 Stat. 507, which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

R. S. § 1063 was derived from act June 25, 1868, ch. 71, § 7, 15 Stat. 76.

#### § 255. (Judicial Code, section 149.) Procedure in cases transmitted by departments.

All cases transmitted by the head of any department, or upon the certificate of the Comptroller

General of the United States, according to the provisions of section 254 of this title, shall be proceeded in as other cases pending in the Court of Claims, and shall, in all respects, be subject to the same rules and regulations. (Mar. 3, 1911, ch. 231, § 149, 36 Stat. 1138; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1064 which was derived from act June 25, 1868, ch. 71, § 7, 15 Stat. 76, and repealed by act Mar. 3, 1911, ch. 251, § 297, 36 Stat. 1168.

#### § 256. (Judicial Code, section 150.) Judgments in cases transmitted by departments.

The amount of any final judgment or decree rendered in favor of the claimant, in any case transmitted to the Court of Claims under sections 254 and 255 of this title, shall be paid out of any specific appropriation applicable to the case, if any such there be; and where no such appropriation exists, the judgment or decree shall be paid in the same manner as other judgments of the said court. (Mar. 3, 1911, ch. 231, § 150, 36 Stat. 1138.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1065 which was derived from act June 25, 1868, ch. 71, § 7, 15 Stat. 76, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 257. (Judicial Code, section 151.) Reference of claims by Congress.

Whenever any bill, except for a pension, is pending in either House of Congress providing for the payment of a claim against the United States, legal or equitable, or for a grant, gift, or bounty to any person, the House in which such bill is pending may, for the investigation and determination of facts, refer the same to the Court of Claims, which shall proceed with the same in accordance with such rules as it may adopt and report to such House the facts in the case and the amount, where the same can be liquidated, including any facts bearing upon the question whether there has been delay or laches in presenting such claim or applying for such grant, gift, or bounty, and any facts bearing upon the question whether the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy, together with such conclusions as shall be sufficient to inform Congress of the nature and character of the demand, either as a claim, legal or equitable, or as a gratuity against the United States, and the amount, if any, legally or equitably due from the United States to the claimant. If it shall appear to the satisfaction of the court upon the facts established, that under existing laws or the provisions of this chapter, the subject matter of the bill is such that it has jurisdiction to render judgment or decree thereon, it shall proceed to do so, giving to either party such further opportunity for hearing as in its judgment justice shall require, and it shall report its proceedings therein to the House of Congress by which the same was referred to said court. (Mar. 3, 1911, ch. 231, § 151, 36 Stat. 1138.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts Mar. 3, 1887, ch. 359, § 14, 24 Stat. 507, and June 25, 1910, ch. 409, 36 Stat. 837, which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 258. (Judicial Code, section 152.) Costs to prevailing party.

If the Government of the United States shall put in issue the right of the plaintiff to recover, the court may, in its discretion, allow costs to the prevailing party from the time of joining such issue. Such costs, however, shall include only what is actually incurred for witnesses, and for summoning the same, and fees paid to the clerk of the court. (Mar. 3, 1911, ch. 231, § 152, 36 Stat. 1138.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Mar. 3, 1887, ch. 359, § 15, 24 Stat. 508, which was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### CROSS REFERENCE

Cost of printing record in Court of Claims to be taxed against losing party, see section 283 of this title.

#### § 259. (Judicial Code, section 153.) Claims growing out of treaties.

The jurisdiction of the said court shall not extend to any claim against the Government not pending therein on December 1, 1862, growing out of or dependent on any treaty stipulation entered into with foreign nations or with the Indian tribes. (Mar. 3, 1911, ch. 231, § 153, 36 Stat. 1138.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1066 which was derived from act Mar. 3, 1863, ch. 92, § 9, 12 Stat. 767, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 260. (Judicial Code, section 154.) Claims pending in other courts.

No person shall file or prosecute in the Court of Claims, or in the Supreme Court on appeal therefrom, any claim for or in respect to which he or any assignee of his has pending in any other court any suit or process against any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately, under the authority of the United States. (Mar. 3, 1911, ch. 231, § 154, 36 Stat. 1138.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1067 which was derived from act June 25, 1868, ch. 71, § 8, 15 Stat. 77, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 261. (Judicial Code, section 155.) Aliens.

Aliens who are citizens or subjects of any Government which accords to citizens of the United States the right to prosecute claims against such Government in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of its subject matter and character, might take jurisdiction. (Mar. 3, 1911, ch. 231, § 155, 36 Stat. 1139.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1068 which was derived from act July 27, 1868, ch. 276, § 2, 15 Stat. 243, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 262. (Judicial Code, section 156.) Claims to be filed within 6 years.

Every claim against the United States cognizable by the Court of Claims shall be forever barred unless the petition setting forth a statement thereof is filed in the court, or transmitted to it by the Secretary of the Senate or the Clerk of the House of Representatives, as provided by law, within six years after the claim first accrues. The claims of married women first accrued during marriage, of persons under the age of twenty-one years first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court or transmitted, as aforesaid, within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively. (Mar. 3, 1911, ch. 231, § 156, 36 Stat. 1139.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1069 which was derived from act Mar. 3, 1863, ch. 92, § 10, 12 Stat. 767, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 263. (Judicial Code, section 157.) Rules of practice.

The said court shall have power to establish rules for its government and for the regulation of practice therein, and it may punish for contempt in the manner prescribed by the common law, may appoint commissioners, and may exercise such powers as are necessary to carry into effect the powers granted to it by law. (Mar. 3, 1911, ch. 231, § 157, 36 Stat. 1139.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1070 which was derived from acts Feb. 24, 1855, ch. 122, § 3, 10 Stat. 613; Mar. 3, 1863, ch. 92, § 4, 12 Stat. 765, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 264. (Judicial Code, section 158.) Oaths and acknowledgments.

The judges and clerks of said court may administer oaths and affirmations, take acknowledgments of instruments in writing, and give certificates of the same. (Mar. 3, 1911, ch. 231, § 158, 36 Stat. 1139.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1071 which was derived from act Mar. 3, 1863, ch. 92, § 4, 12 Stat. 765, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 265. (Judicial Code, section 159.) Petitions and verification.

The claimant shall in all cases fully set forth in his petition the claim, the action thereon in Congress or by any of the departments, if such action has been had, what persons are owners thereof or interested therein, when and upon what consideration such

persons became so interested; that no assignment or transfer of said claim or of any part thereof or interest therein has been made, except as stated in the petition; that said claimant is justly entitled to the amount therein claimed from the United States after allowing all just credits and offsets; that the claimant and, where the claim has been assigned, the original and every prior owner thereof, if a citizen, has at all times borne true allegiance to the Government of the United States, and, whether a citizen or not, has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and that he believes the facts as stated in the said petition to be true. The said petition shall be verified by the affidavit of the claimant, his agent or attorney. (Mar. 3, 1911, ch. 231, § 159, 36 Stat. 1139.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1072 which was derived from acts Feb. 24, 1855, ch. 122, § 1, 10 Stat. 612; Mar. 3, 1863, ch. 92, § 12, 12 Stat. 767, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 266. (Judicial Code, section 160.) Petition dismissed, when.

The said allegations as to true allegiance and voluntary aiding, abetting, or giving encouragement to rebellion against the Government may be traversed by the Government, and if on the trial such issues shall be decided against the claimant, his petition shall be dismissed. (Mar. 3, 1911, ch. 231, § 160, 36 Stat. 1139.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1073 which was derived from act Mar. 3, 1863, ch. 92, § 12, 12 Stat. 767, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 267. (Judicial Code, section 161.) Burden of proof and evidence as to loyalty.

Whenever it is material in any claim to ascertain whether any person did or did not give any aid or comfort to forces or Government of the late Confederate States during the Civil War, the claimant asserting the loyalty of any such person to the United States during such Civil War shall be required to prove affirmatively that such person did, during said Civil War, consistently adhere to the United States and did give no aid or comfort to persons engaged in said Confederate service in said Civil War. (Mar. 3, 1911, ch. 231, § 161, 36 Stat. 1139.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1074 which was derived from act June 25, 1868, ch. 71, § 3, 15 Stat. 75, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 268. (Judicial Code, section 162.) Claims for proceeds arising from sales of abandoned property.

The Court of Claims shall have jurisdiction to hear and determine the claims of those whose property was taken subsequent to June 1, 1865, under the provisions of the Act of Congress approved March 12, 1863 (Twelfth Statutes, page 820); [authorizing

the Secretary of the Treasury to receive and collect all abandoned or captured property except war materials, in any area designated as in insurrection against the lawful Government of the United States during the late "Civil War", and to sell the same at public auction, and to pay the proceeds thereof into the Treasury of the United States, and authorizing the owner at any time within two years after the suppression of the rebellion, to prefer his claim to the proceeds in the court of claims and acts amendatory thereof where the property so taken was sold and the net proceeds thereof were placed in the Treasury of the United States; and the Secretary of the Treasury shall return said net proceeds to the owners thereof, on the judgment of said court, and full jurisdiction is given to said court to adjudge said claims, any statutes of limitations to the contrary notwithstanding. (Mar. 3, 1911, ch. 231, § 162, 36 Stat. 1139.)

#### CROSS REFERENCE

Jurisdiction of Court of Claims not to extend to claims against United States growing out of the Civil War, see section 251 of this title.

§ 269. Commissioners of Court of Claims; appointment; powers; procedure.

To afford the Court of Claims needed facilities for the disposition of suits brought therein said court is authorized and empowered to appoint seven competent persons, to be known as "commissioners", who shall attend the taking of or take evidence in cases that may be assigned to them severally by the court and make report of the facts in the case to the court. Any commissioner shall proceed under such rules and regulations as may be promulgated by the court and such orders as the court may make in the particular case, and may have and perform the general duties that pertain to special masters in suits in equity. He may fix the times for hearings, administer oaths, examine witnesses, and receive evidence. Parties to the suit may appear before the commissioner in person or by attorney, produce evidence, and examine witnesses. Subpoenas for witnesses or for the production of testimony before the commissioner may issue out of the court by the clerk thereof and shall be served by a United States marshal in any judicial district to whom they are directed. The rules of the court shall provide for a finding and report of facts by a commissioner, to be filed in court with the testimony upon which the same is based, and for exceptions thereto, in whole or in part, by the parties to the suit, and a hearing thereon within such reasonable time as the court's rules or order may prescribe. Nothing in this section shall be so construed as to prevent the court from passing upon all questions and findings without regard to whether exceptions were or were not taken at the hearings before the commissioner. Any person appointed as commissioner may be removed at the pleasure of the court. (Feb. 24, 1925, ch. 301, § 1, 43 Stat. 964; June 23, 1930, ch. 573, § 2, 46 Stat. 799.)

§ 270. Same; salaries; expenses.

Each of the said commissioners shall devote all of his time to the duties of his office and shall

receive a salary of \$7,500 per annum, payable monthly out of the Treasury. The Chief Justice, and any judge of the court, the commissioners and stenographers authorized by the court, shall also receive their necessary traveling expenses and their actual expenses incurred for subsistence while traveling on duty and away from Washington in an amount not to exceed \$10 per day in the case of the Chief Justice or any judge of the court and the commissioners, and \$7 a day in the case of stenographers. The expenses of travel and subsistence herein authorized shall be paid upon order of the court. (Feb. 24, 1925, ch. 301, § 2, 43 Stat. 965; May 29, 1928, 8:00 a. m., ch. 852, § 711, 45 Stat. 882; June 23, 1930, ch. 573, § 1, 46 Stat. 799.)

#### CROSS REFERENCE

Per diem in lieu of expenses to be paid government employees traveling on official business and repeal of inconsistent laws, see sections 823, 829 note of Title 5, Executive Departments and Government Officers and Employees.

§ 271. Repealed. June 23, 1930, ch. 573, § 2, 46 Stat. 799.

Section, act Feb. 24, 1925, ch. 301, § 3, 43 Stat. 965, limited the time during which appointments under sections 269-271 might be made.

§ 272. (Judicial Code, section 164.) Calling departments for information.

The said court shall have power to call upon any of the departments for any information or papers it may deem necessary, and shall have the use of all recorded and printed reports made by the committees of each House of Congress, when deemed necessary in the prosecution of its business. But the head of any department may refuse and omit to comply with any call for information or papers when, in his opinion, such compliance would be injurious to the public interest. (Mar. 3, 1911, ch. 231, § 164, 36 Stat. 1140.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1076, which was derived from act Feb. 24, 1855, ch. 122, § 11, 10 Stat. 614, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 273. (Judicial Code, section 165.) When testimony not to be taken.

When it appears to the court in any case that the facts set forth in the petition of the claimant do not furnish any ground for relief, it shall not authorize the taking of any testimony therein. (Mar. 3, 1911, ch. 231, § 165, 36 Stat. 1140.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1077, which was derived from act Feb. 24, 1855, ch. 122, § 4, 10 Stat. 613, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 274. (Judicial Code, section 166.) Examination of claimant.

The court may, at the instance of the attorney or solicitor appearing in behalf of the United States, make an order in any case pending therein, directing any claimant in such case to appear, upon reasonable notice, before any commissioner of the court



and be examined on oath touching any or all matters pertaining to said claim. Such examination shall be reduced to writing by the said commissioner, and be returned to and filed in the court, and may, at the discretion of the attorney or solicitor of the United States appearing in the case, be read and used as evidence on the trial thereof. And if any claimant, after such order is made and due and reasonable notice thereof is given to him, fails to appear, or refuses to testify or answer fully as to all matters within his knowledge material to the issue, the court may, in its discretion, order that the said cause shall not be brought forward for trial until he shall have fully complied with the order of the court in the premises. (Mar. 3, 1911, ch. 231, § 166, 36 Stat. 1140.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1080, which was derived from acts Mar. 3, 1863, ch. 92, § 8, 12 Stat. 766; June 25, 1868, ch. 71, § 4, 15 Stat. 75, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**§ 275. (Judicial Code, section 167.) Testimony; where taken.**

The testimony in cases pending before the Court of Claims shall be taken in the county where the witness resides, when the same can be conveniently done. (Mar. 3, 1911, ch. 231, § 167, 36 Stat. 1140.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1081 which was derived from act Feb. 24, 1855, ch. 122, § 3, 10 Stat. 613, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**§ 275a. Taking of evidence at any place within United States.**

The Chief Justice, or any judge of the Court of Claims, may sit at any place within the United States to take evidence in any case instituted in said court. (Feb. 24, 1925, ch. 301, § 2, 43 Stat. 965; June 23, 1930, ch. 573, § 1, 46 Stat. 799.)

**§ 276. (Judicial Code, section 168.) Witnesses before Commissioners.**

The Court of Claims may issue subpoenas to require the attendance of witnesses in order to be examined before any person commissioned to take testimony therein. Such subpoenas shall have the same force as if issued from a district court, and compliance therewith shall be compelled under such rules and orders as the court shall establish. (Mar. 3, 1911, ch. 231, § 168, 36 Stat. 1140.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1082 which was derived from act Feb. 24, 1855, ch. 122, § 3, 10 Stat. 613, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**§ 277. (Judicial Code, section 169.) Cross-examinations.**

In taking testimony to be used in support of any claim, opportunity shall be given to the United States to file interrogatories, or by attorney to examine witnesses, under such regulations as said court shall prescribe; and like opportunity shall be afforded the

claimant, in cases where testimony is taken on behalf of the United States, under like regulations. (Mar. 3, 1911, ch. 231, § 169, 36 Stat. 1140.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1083 which was derived from act Feb. 24, 1855, ch. 122, § 5, 10 Stat. 613, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**§ 278. (Judicial Code, section 170.) Witnesses; how sworn.**

The commissioner taking testimony to be used in the Court of Claims shall administer an oath or affirmation to the witnesses brought before him for examination. (Mar. 3, 1911, ch. 231, § 170, 36 Stat. 1140.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1084 which was derived from act Feb. 24, 1855, ch. 122, § 3, 10 Stat. 613, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**§ 279. (Judicial Code, section 172.) Claims forfeited for fraud.**

Any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance of any claim or of any part of any claim against the United States shall, ipso facto, forfeit the same to the Government; and it shall be the duty of the Court of Claims, in such cases, to find specifically that such fraud was practiced or attempted to be practiced, and thereupon to give judgment that such claim is forfeited to the Government, and that the claimant be forever barred from prosecuting the same. (Mar. 3, 1911, ch. 231, § 172, 36 Stat. 1141.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1086 which was derived from act Mar. 3, 1863, ch. 92, § 11, 12 Stat. 767, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**§ 280. (Judicial Code, section 173.) Excessive and fraudulent claims for stores and supplies.**

No claims shall be allowed by the accounting officers under the provisions of the Act of Congress approved June 16, 1874 (18 Stat. 75), or by the Court of Claims, or by Congress, to any person where such claimant, or those under whom he claims, shall willfully, knowingly, and with intent to defraud the United States, have claimed more than was justly due in respect of such claim, or presented any false evidence to Congress, or to any department or court, in support thereof. (Mar. 3, 1911, ch. 231, § 173, 36 Stat. 1141.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Apr 30, 1878, ch. 77, § 2, 20 Stat. 524.

**§ 281. (Judicial Code, section 174.) New trial; motion of claimant.**

When judgment is rendered against any claimant, the court may grant a new trial for any reason which, by the rules of common law or chancery in suits between individuals, would furnish sufficient

ground for granting a new trial. (Mar. 3, 1911, ch. 231, § 174, 36 Stat. 1141.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1087 which was derived from act Feb. 24, 1855, ch. 122, § 9, 10 Stat. 614 and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168

§ 282. (Judicial Code, section 175.) Same; motion of United States.

The Court of Claims, at any time while any claim is pending before it, or on appeal from it, or within two years next after the final disposition of such claim, may, on motion, on behalf of the United States, grant a new trial and stay the payment of any judgment therein, upon such evidence, cumulative or otherwise, as shall satisfy the court that any fraud, wrong, or injustice in the premises has been done to the United States; but until an order is made staying the payment of a judgment, the same shall be payable and paid as on March 3, 1911, was provided by law. (Mar. 3, 1911, ch. 231, § 175, 36 Stat. 1141.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1088 which was derived from act June 25, 1868, ch. 71, § 2, 15 Stat. 75 and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 283. (Judicial Code, section 176.) Cost of printing record.

There shall be taxed against the losing party in each and every cause pending in the Court of Claims the cost of printing the record in such case, which shall be collected, except when the judgment is against the United States, by the clerk of said court and paid into the Treasury of the United States. (Mar. 3, 1911, ch. 231, § 176, 36 Stat. 1141.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Mar. 3, 1877, ch. 105, 19 Stat. 344.

#### CROSS REFERENCE

Award of costs to prevailing party, see section 258 of this title.

§ 283a. Fee for filing petition, certifying record, findings of fact and opinions; accounting.

(a) The Court of Claims of the United States is authorized and directed, under such rules as it may prescribe, to impose a fee in an amount not in excess of \$10 to be fixed by the court for the filing of any petition in any case instituted after March 3, 1933, and for the hearing of any case before the court, a judge, or a commissioner thereof, pending on March 3, 1933.

(b) The court is authorized and directed to charge and collect a fee of 10 cents a folio for preparing and certifying a transcript of the record for the purpose of a writ of certiorari sought by the plaintiff and for furnishing certified copies of judgments or other documents in cases in said court: *Provided*, That not less than \$5 shall be charged for each certified copy of findings of fact and opinion of the court to be filed in the Supreme Court of the United States.

(c) The court is also authorized and directed to charge and collect for each certified copy of its findings of fact and opinion a fee of 25 cents for five pages or less, 35 cents for those over five and not more than ten pages, 45 cents for those over ten and not more than twenty pages, and 50 cents for those of more than twenty pages.

(d) The clerk of the Court of Claims shall account to the Attorney General for all such fees and shall deposit such fees to the credit of the Treasurer of the United States in the same manner as is provided in the case of collections by clerks of district courts as provided by section 567 of this title. (Mar. 3, 1933, ch. 212, title II, § 19, 47 Stat. 1519.)

#### TRANSFER OF FUNCTIONS

Transfer of administrative powers and duties of Department of Justice or Attorney General to Administrative Office of the United States Courts respecting various employees of the courts, see note under section 446 of this title.

§ 284. (Judicial Code, section 177.) No interest on claims; exceptions.

(a) No interest shall be allowed on any claim up to the time of the rendition of judgment by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest, except as provided in subdivision (b).

(b) In any judgment of any court rendered (whether against the United States, a collector or deputy collector of internal revenue, a former collector or deputy collector, or the personal representative in case of death) for any overpayment in respect of any internal-revenue tax, interest shall be allowed at the rate of 6 per centum per annum upon the amount of the overpayment, from the date of the payment or collection thereof to a date preceding the date of the refund check by not more than thirty days, such date to be determined by the Commissioner of Internal Revenue. The Commissioner is hereby authorized to tender by check payment of any such judgment, with interest as herein provided, at any time after such judgment becomes final, whether or not a claim for such payment has been duly filed, and such tender shall stop the running of interest, whether or not such refund check is accepted by the judgment creditor. (Mar. 3, 1911, ch. 231, § 177, 36 Stat. 1141; Nov. 23, 1921, ch. 136, § 1324 (b), 42 Stat. 316; June 2, 1924, 4:01 p. m., ch. 234, § 1020, 43 Stat. 346; Feb. 26, 1926, ch. 27, §§ 1117, 1200, 44 Stat. 119, 125; May 29, 1928, 8:00 a. m., ch. 852, § 615 (a), 45 Stat. 877; June 22, 1936, 9:00 p. m., ch. 690, § 808, 49 Stat. 1746.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1091 which was derived from act Mar. 3, 1863, ch. 92, § 7, 12 Stat. 106, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 285. (Judicial Code, section 178.) Payment of judgment.

The payment of the amount due by any judgment of the Court of Claims, and of any interest thereon allowed by law, as provided by law, shall be a full discharge to the United States of all claim and demand touching any of the matters involved in the

controversy. (Mar. 3, 1911, ch. 231, § 178, 36 Stat. 1141.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1092 which was derived from act Mar. 3, 1863, ch. 92, § 7, 12 Stat. 766, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 286. (Judicial Code, section 179.) Final judgments a bar.

Any final judgment against the claimant on any claim prosecuted as provided in this chapter shall forever bar any further claim or demand against the United States arising out of the matters involved in the controversy. (Mar. 3, 1911, ch. 231, § 179, 36 Stat. 1141.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1093 which was derived from act Mar. 3, 1863, ch. 92, § 7, 12 Stat. 766, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 287. (Judicial Code, section 180.) Ascertainment of amounts due United States by debtors.

Whenever any person shall present his petition to the Court of Claims alleging that he is or has been indebted to the United States as an officer or agent thereof, or by virtue of any contract therewith, or that he is the guarantor, or surety, or personal representative of any officer or agent or contractor so indebted, or that he or the person for whom he is such surety, guarantor, or personal representative has held any office or agency under the United States, or entered into any contract therewith, under which it may be or has been claimed that an indebtedness to the United States had arisen and exists, and that he or the person he represents has applied to the proper department of the Government requesting that the account of such office, agency, or indebtedness may be adjusted and settled, and that three years have elapsed from the date of such application, and said account still remains unsettled and unadjusted, and that no suit upon the same has been brought by the United States, said court shall, due notice first being given to the head of said department and to the Attorney General of the United States, proceed to hear the parties and to ascertain the amount, if any, due the United States on said account. The Attorney General shall represent the United States at the hearing of said cause. The court may postpone the same from time to time whenever justice shall require. The judgment of said court or of the Supreme Court of the United States, upon review of the decision of the Court of Claims as provided in section 288 of this title as to the amount due, shall be binding and conclusive upon the parties. The payment of such amount so found due by the court shall discharge such obligation. An action shall accrue to the United States against such principal, or surety, or representative to recover the amount so found due, which may be brought at any time within three years after the final judgment of said court; and unless suit shall be brought within said time, such claim and the claim on the original indebtedness shall be forever barred. The

provisions of section 274 of this title shall apply to cases under this section. (Mar. 3, 1911, ch. 231, § 180, 36 Stat. 1141; Feb. 13, 1925, ch. 229, § 3, 43 Stat. 939.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Mar. 3, 1887, ch. 359, §§ 3, 8, 24 Stat. 505, 506, which was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 288. Certification to Supreme Court of questions of law; certiorari by Supreme Court to Court of Claims; no other review allowed.

(a) In any case in the Court of Claims, including those begun under section 287 of this title, that court at any time may certify to the Supreme Court any definite and distinct questions of law concerning which instructions are desired for the proper disposition of the cause; and thereupon the Supreme Court may give appropriate instructions on the questions certified and transmit the same to the Court of Claims for its guidance in the further progress of the cause.

(b) In any case in the Court of Claims, including those begun under section 287 of this title, it shall be competent for the Supreme Court, upon the petition of either party, whether Government or claimant, to require, by certiorari, that the cause be certified to it for review and determination of all errors assigned, with the same power and authority, and with like effect, as if the cause had been brought there by appeal. In such event, the Court of Claims shall include in the papers certified by it the findings of fact, the conclusions of law, and the judgment or decree, as well as such other parts of the record as are material to the errors assigned, to be settled by the Court.

The Court of Claims shall promulgate rules to govern the preparation of such record in accordance with the provisions of this section.

In such cases the Supreme Court shall have authority to review, in addition to other questions of law, errors assigned to the effect that there is a lack of substantial evidence to sustain a finding of fact; that an ultimate finding or findings are not sustained by the findings of evidentiary or primary facts; or that there is a failure to make any finding of fact on a material issue.

(c) All judgments and decrees of the Court of Claims shall be subject to review by the Supreme Court as provided in this section, and not otherwise. (Feb. 13, 1925, ch. 229, § 3, 43 Stat. 939; May 22, 1939, ch. 140, 53 Stat. 752.)

§ 289. (Judicial Code, section 183.) Attorney General's report to Congress.

The Attorney General shall report to Congress, at the beginning of each regular session, the suits under section 287 of this title, in which a final judgment or decree has been rendered, giving the date of each and a statement of the costs taxed in each case. (Mar. 3, 1911, ch. 231, § 183, 36 Stat. 1142.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Mar. 3, 1887, ch. 359, § 11, 24 Stat. 507, which was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**§ 290. (Judicial Code, section 184.) Loyalty jurisdictional fact.**

In any case of a claim for supplies or stores taken by or furnished to any part of the military or naval forces of the United States for their use during the late Civil War, the petition shall aver that the person who furnished such supplies or stores, or from whom such supplies or stores were taken, did not give any aid or comfort to said rebellion, but was throughout that war loyal to the Government of the United States, and the fact of such loyalty shall be a jurisdictional fact; and unless the said court shall, on a preliminary inquiry, find that the person who furnished such supplies or stores, or from whom the same were taken as aforesaid, was loyal to the Government of the United States throughout said war, the court shall not have jurisdiction of such cause, and the same shall, without further proceedings, be dismissed. (Mar. 3, 1911, ch. 231, § 184, 36 Stat. 1142.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Mar. 3, 1883, ch. 116, § 4, 22 Stat. 485, which was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**CROSS REFERENCE**

Jurisdiction of Court of Claims not to extend to claims against United States growing out of the Civil War, see section 251 of this title.

**§ 291. (Judicial Code, section 185.) Appearance by Attorney General for defense.**

The Attorney General, or his assistants under his direction, shall appear for the defense and protection of the interests of the United States in all cases which may be transmitted to the Court of Claims under the provisions of this chapter, with the same power to interpose counterclaims, offsets, defenses for fraud practiced or attempted to be practiced by claimants, and other defenses, in like manner as he is required to defend the United States in said court. (Mar. 3, 1911, ch. 231, § 185, 36 Stat. 1142.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Mar. 3, 1883, ch. 116, § 6, 22 Stat. 486, which was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**CROSS REFERENCE**

Attorney General to render legal services required by governmental departments, see section 306 of Title 5, Executive Departments and Government Officers and Employees.

**§ 292. (Judicial Code, section 186.) Exclusion as witnesses because of color or because of interest.**

No person shall be excluded as a witness in the Court of Claims on account of color or because he or she is a party to or interested in the cause or proceeding; and any plaintiff or party in interest may be examined as a witness on the part of the Government. (Mar. 3, 1911, ch. 231, § 186, 36 Stat. 1143; Feb. 5, 1912, ch. 28, 37 Stat. 61.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 1078 and acts June 25, 1868, ch. 71, 15 Stat. 75; Mar. 3, 1883, ch. 116, § 6, 22 Stat. 486; and Mar. 3, 1897, ch. 359, § 8, 24 Stat.

506, all of which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

R. S. § 1078 was derived from acts July 2, 1864, ch. 210, § 3, 13 Stat. 351; Mar. 2, 1867, ch. 166, § 2, 14 Stat. 457; and act June 25, 1868, ch. 71, § 4, 15 Stat. 75.

**§ 293. (Judicial Code, section 187.) Reports to Congress.**

Reports of the Court of Claims to Congress, under sections 254 and 257 of this title, if not finally acted upon during the session at which they are reported, shall be continued from session to session and from Congress to Congress until the same shall be finally acted upon. (Mar. 3, 1911, ch. 231, § 187, 36 Stat. 1143.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Mar. 3, 1883, ch. 116, § 7, 22 Stat. 486, which was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**Chapter 7A.—THE CUSTOMS COURT**

**Sec.**

296. United States Customs Court.

297. Judge forbidden to sit on appeal of decision previously participated in.

**§ 296. (Judicial Code, section 187 (a).) United States Customs Court.**

The United States Customs Court shall continue as now constituted, except that the chief justice and the associate justices of such court now in office and their successors shall hereafter be known as the judges of such court. All vacancies in such court shall be filled by appointment by the President, by and with the advice and consent of the Senate. Not more than five of the judges of such court shall be appointed from the same political party and each of such judges shall receive a salary of \$10,000 a year. They shall not engage in any other business, vocation, or employment, and shall hold their office during good behavior. The offices of such court shall be at the port of New York. The court and each judge thereof shall have and possess all the powers of a district court of the United States for preserving order, compelling the attendance of witnesses and the production of evidence, and in punishing for contempt. The court shall have power to establish from time to time such rules of evidence, practice, and procedure, not inconsistent with law, as may be deemed necessary for the conduct of its proceedings, in securing uniformity in its decisions and in the proceedings and decisions of the judges thereof, and for the production, care, and custody of samples and of the records of such court. Under such rules as the United States Customs Court may prescribe, and in its discretion, the court may permit the amendment of a protest, appeal, or application for review. One of the judges of such court, designated for that purpose by the President of the United States, shall act as presiding judge, and in his absence the judge then present who is senior as to the date of his commission shall act as presiding judge; and until any such designation is made the chief justice of the United States Customs Court now in office shall act as presiding judge. The presiding judge, or the acting presiding judge in his absence, shall have control of the fiscal affairs and of the clerical force of the

court, making all recommendations for appointment, promotions, or otherwise affecting such clerical force; he may at any time before trial, under the rules of the court, assign or reassign any case for hearing or determination, or both, and shall designate a judge or division of three judges and such clerical assistants as may be necessary to proceed to any port within the jurisdiction of the United States for the purpose of hearing or of hearing and determining cases assigned for hearing at such port, and shall cause to be prepared and promulgated dockets therefor. Judges of the court shall each be allowed and paid his necessary expenses of travel and his reasonable expenses, not to exceed \$10 per day actually incurred for maintenance while absent from New York on official business. The judges of said court shall be divided into three divisions of three judges each for the purpose of hearing and deciding appeals for the review of reappraisements of merchandise, and of hearing and deciding protests against decisions of collectors. A division of three judges or a single judge shall have power to order an analysis of imported merchandise and reports thereon by laboratories or bureaus of the United States. The presiding judge shall assign three judges to each of said divisions and shall designate one of such three judges to preside. The presiding judge of the court shall be competent to sit as a judge of any division or to assign one or two other judges to any of such divisions in the absence or disability of any one or two judges of such division. A majority of the judges of any division shall have full power to hear and decide all cases and questions arising therein or assigned thereto. A division of the court deciding a case or a single judge deciding an appeal for a reappraisalment may, upon the motion of either party made within thirty days next after such decision, grant a rehearing or retrial of such case when in the opinion of such division or single judge the ends of justice so require.

The judges of the United States Customs Court are hereby exempted from so much of section 1790 of the Revised Statutes<sup>1</sup> as relates to their salaries.

When any judge of the United States Customs Court resigns his office after having held a commission as judge or justice of such court or member of the Board of General Appraisers at least ten years continuously, or otherwise, and having attained the age of seventy years, he shall, during the residue of his natural life, receive the salary which is payable to a judge of such court at the time of his resignation. Any such judge, who is qualified to resign under the foregoing provisions, may retire, upon the salary of which he is then in receipt, from regular active service as a judge of such court and upon such retirement the President may appoint a successor; but such retired judge may, with his consent, be assigned by the presiding judge of such court to serve upon such court and while so serving shall have all the powers of a judge of such court. (Mar. 3, 1911, ch. 231, § 187 (a), as added Oct. 10, 1940, ch. 843, § 1, 54 Stat. 1101.)

<sup>1</sup> R. S. § 1790 was repealed by act Aug. 26, 1935, ch. 689, § 1, 49 Stat. 884. It imposed restriction on payment of salaries to persons employed in connection with customs or internal revenue service.

#### CODIFICATION

Section was added to Judicial Code as a "new section \* \* \* to be known as section 187 (a), to follow immediately after section 187 [section 293 of Title 28], to read in the exact language of section 518, title IV, of the Tariff Act of 1930 (former section 1518 of title 19) as follows: \* \* \*." The language of this section differed, however, from that of Tariff Act of 1930, § 518, in the following particulars: First, the omission from the first paragraph of provisions allowing travel and maintenance expenses to stenographic clerks and Government counsel while absent from New York on official business; Second, the omission of the last paragraph of said section 518, providing for transfer to the Attorney General of functions relating to the court formerly imposed upon the Secretary of the Treasury.

#### REPEALS; EFFECTIVE DATE

Sections 2 and 3 of act Oct. 10, 1940, cited to text, provided:

"Sec. 2. That all Acts or parts of Acts inconsistent with the provisions of this Act be, and the same are hereby, repealed to the extent of such 'inconsistency.

"Sec. 3. That this Act \* \* \* shall take effect from the date of its passage."

#### SIMILAR PROVISIONS

Similar provisions were contained in Tariff Act of June 17, 1930, ch. 497, title IV, § 518, 46 Stat. 737; Tariff Act of Sept. 21, 1922, ch. 356, title IV, § 518, 42 Stat. 972, as amended May 28, 1926, ch. 411, § 1, 44 Stat. 669; Act June 10, 1890, ch. 407, §§ 12, 31, 26 Stat. 136, as amended May 27, 1908, ch. 205, § 3, 35 Stat. 406, and Aug 5, 1909, ch. 6, § 28, 36 Stat. 98. Earlier provisions on the subject of appraisers were contained in R. S. §§ 2608-2610, 2725-2727, and 2945.

§ 297. Judge forbidden to sit on appeal of decision previously participated in.

No judge of the United States Customs Court shall sit to hear or decide any case on appeal in the decision of which he may have previously participated. (June 10, 1890, ch. 407, § 12, 26 Stat. 136; Aug. 5, 1909, ch. 6, § 28, 36 Stat. 98; May 28, 1926, ch. 411, § 1, 44 Stat. 669.)

#### CODIFICATION

Section is from a sentence contained in the amendment by act Aug 5, 1909, of act June 10, 1890, both cited to text. Act May 28, 1926, also cited, redesignated the Board of General Appraisers to be the "United States Customs Court" and the members of the Board to be the "chief justice" and "associate justices" of the court.

#### REPEALS

Repeal of acts inconsistent with the Tariff Act of 1930 and section 296 of this title, see section 1651 of Title 19, Customs Duties, and note under section 296 of this title, respectively.

Section 12 of act June 10, 1890, cited to text, was expressly excepted from repeal by the Tariff Act of Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989, and prior acts.

### Chapter 8.—THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

- Sec. 301. Court; judges; salaries; quorum; circuit and district judges may act.
- 301a. Tenure and retirement of judges.
302. Court always open; terms; expenses of judges.
303. Marshal; appointment, salary, and duties.
304. Clerk; appointment, salary, and duties.
305. Assistant clerk, stenographic clerks, and reporter; other employees; duties of reporter.
306. Rooms for holding court; bailiffs and messengers.
307. Court of record; seal; rules; decisions.
308. Review of decisions of United States Customs Court.
309. Jurisdiction in customs cases.
- 309a. Jurisdiction in patent cases.

- Sec.  
 310. Appeals from United States Customs Court.  
 311. Records placed on calendar; call of calendar.  
 312. Opinions of Court; writing; filing; recording copy in Patent Office.

§ 301. (Judicial Code, section 188.) Court; judges; salaries; quorum; circuit and district judges may act.

There shall be a United States Court of Customs and Patent Appeals, which shall consist of a presiding judge and four associate judges, each of whom shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive a salary of \$12,500 a year, payable monthly from the Treasury. The presiding judge shall be so designated in the order of appointment and in the commission issued to him by the President; and the associate judges shall have precedence according to the date of their commissions. Any three members of said court shall constitute a quorum, and the concurrence of three members shall be necessary to any decision thereof. In case of a vacancy or of the temporary inability or disqualification, for any reason, of one or two of the judges of said court, the President may, upon the request of the presiding judge of said court, designate any qualified United States circuit or district judge or judges to act in his or their place; and such circuit or district judges shall be duly qualified to so act. (Mar. 3, 1911, ch. 231, § 188, 36 Stat. 1143; Feb. 25, 1919, ch. 29, §§ 2, 5, 40 Stat. 1156, 1157; Dec. 13, 1926, ch. 6, § 1, 44 Stat. 919, Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts Aug. 5, 1909, ch. 6, § 28, 36 Stat. 91-108; Feb. 25, 1910, ch. 62, § 1, 36 Stat. 214.

§ 301a. Tenure and retirement of judges.

The judges of the United States Court of Customs and Patent Appeals shall hold office during good behavior. For the purposes of section 375 of this title (relating to the resignation and retirement of judges of courts of the United States) any service heretofore rendered by any present or former judge of such court, including service rendered prior to March 2, 1929, shall be considered as having been rendered under an appointment to hold office during good behavior. (June 17, 1930, ch. 497, title IV, § 646, 46 Stat. 762.)

§ 302. (Judicial Code, section 189.) Court always open; terms; expenses of judges.

The said Court of Customs and Patent Appeals shall always be open for the transaction of business, and sessions thereof may, in the discretion of the court, be held in the several judicial circuits, and at such places as said court may from time to time designate. Any judge who, in pursuance of the provisions of this chapter, shall attend a session of said court at any place other than the city of Washington, shall be paid, upon his written and itemized certificate, by the marshal of the district in which the court shall be held, his actual and necessary expenses incurred for travel and attendance, and the actual and necessary expenses of one stenographic clerk

who may accompany him; and such payments shall be allowed the marshal in the settlement of his accounts with the United States. (Mar. 3, 1911, ch. 231, § 189, 36 Stat. 1143; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Aug. 5, 1909, ch. 6, § 28, 36 Stat. 91-108.

#### TRANSFER OF FUNCTIONS

Disbursement functions of United States marshals which would otherwise have devolved upon the Treasury Department on July 1, 1940, by virtue of Ex. Ord. No. 6166, as amended, set out in note under section 132 of Title 5, were transferred to and vested in Department of Justice to be exercised by United States marshals under supervision of Attorney General in accordance with existing statutes pertaining to such functions, by Reorg. Plan No. IV, § 3, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1234, set out in note under section 133t, of Title 5, Executive Departments and Government Officers and Employees. See, also, sections 13-15 of said plan for provisions relating to transfer of functions of department heads, records, property, personnel, and funds.

§ 303. (Judicial Code, section 190.) Marshal; appointment, salary, and duties.

Said court shall have the services of a marshal, with the same duties and powers, under the regulations of the court, as were provided on March 3, 1911, for the marshal of the Supreme Court of the United States, so far as the same may be applicable. Said services within the District of Columbia shall be performed by a marshal to be appointed by and to hold office during the pleasure of the court, who shall receive a salary of \$3,000 per annum. Said services outside of the District of Columbia shall be performed by the United States marshals in and for the districts where sessions of said court may be held; and to this end said marshals shall be the marshals of said court. The marshal of said court, for the District of Columbia, is authorized to purchase, under the direction of the presiding judge, such books, periodicals, and stationery as may be necessary for the use of said court; and such expenditures shall be allowed and paid by the Secretary of the Treasury upon claim duly made and approved by said presiding judge. (Mar. 3, 1911, ch. 231, § 190, 36 Stat. 1144.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts Aug. 5, 1909, ch. 6, § 28, 36 Stat. 91-108; Feb. 25, 1910, ch. 62, § 1, 36 Stat. 214.

#### CROSS REFERENCE

Duties of Supreme Court Marshal, see section 331 of this title.

§ 304. (Judicial Code, section 191.) Clerk; appointment, salary, and duties.

The court shall appoint a clerk, whose office shall be in the city of Washington, District of Columbia, and who shall perform and exercise the same duties and powers in regard to all matters within the jurisdiction of said court as were exercised and performed on March 3, 1911, by the clerk of the Supreme Court of the United States, so far as the same may be applicable. The salary of the clerk shall be three thousand five hundred dollars per annum which sum shall be in full payment for all service

rendered by such clerk; and all fees of any kind whatever, and all costs shall be by him turned into the United States Treasury. Said clerks shall not be appointed by the court or any judge thereof as a commissioner, master, receiver, or referee. The costs and fees in the said court shall be fixed and established by said court in a table of fees to be adopted and approved by the Supreme Court of the United States: *Provided*, That the costs and fees so fixed shall not, with respect to any item, exceed the costs and fees charged in the Supreme Court of the United States; and the same shall be expended, accounted for, and paid over to the Treasury of the United States. (Mar. 3, 1911, ch. 231, § 191, 36 Stat. 1144.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts Aug. 5, 1909, ch. 6, § 28, 36 Stat. 91-108; Feb. 25, 1910, ch. 62, § 1, 36 Stat. 214.

§ 305. (Judicial Code, section 192.) Assistant clerk, stenographic clerks, and reporter; other employees; duties of reporter.

In addition to the clerk, the court may appoint an assistant clerk at a salary of two thousand dollars per annum, five stenographic clerks at a salary of one thousand six hundred dollars per annum each, one stenographic reporter at a salary of two thousand five hundred dollars per annum, and a messenger at a salary of eight hundred and forty dollars per annum, all payable in equal monthly installments, and all of whom, including the clerk, shall hold office during the pleasure of and perform such duties as are assigned them by the court.

The reporter of the Court of Customs and Patent Appeals shall prepare and transmit—

(1) To the Secretary of the Treasury, once a week, in time for printing in the publication entitled "Treasury Decisions", copies of all opinions relating to customs rendered by the court to that date;

(2) To the Commissioner of Patents, once a week, in time for printing in the publication entitled "Official Gazette", copies of all opinions relating to patent and trade-mark appeals rendered to that date by said court.

The reporter shall cause to be compiled and published, at least once a year, in such manner as the court shall direct, all of the opinions rendered by said court to that date, together with such digests and indexes as the court may deem necessary. (Mar. 3, 1911, ch. 231, § 192, 36 Stat. 1144; June 16, 1930, ch. 494, 46 Stat. 589.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts Aug. 5, 1909, ch. 6, § 28, 36 Stat. 91-108; Feb. 25, 1910, ch. 62, § 1, 36 Stat. 214.

§ 306. (Judicial Code, section 193.) Rooms for holding court; bailiffs and messengers.

The marshal of said court for the District of Columbia and the marshals of the several districts in which said Court of Customs and Patent Appeals may be held shall under the direction of the Attorney General, and with his approval, provide such rooms in the public buildings of the United States

as may be necessary for said court. In case proper rooms cannot be provided in such buildings, then the said marshals, with the approval of the Attorney General, may, from time to time, lease such rooms as may be necessary for said court. The bailiffs and messengers of said court shall be allowed the same compensation for their respective services as are allowed for similar services in the district courts existing March 3, 1911. In no case shall said marshals secure other rooms than those regularly occupied by the district courts existing March 3, 1911, or other public officers, except where such cannot, by reason of actual occupancy or use, be occupied or used by said Court of Customs and Patent Appeals. (Mar. 3, 1911, ch. 231, § 193, 36 Stat. 1144; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Aug. 5, 1909, ch. 6, § 28, 36 Stat. 91-108.

§ 307. (Judicial Code, section 194.) Court of record; seal; rules; decisions.

The said Court of Customs and Patent Appeals shall be a court of record, with jurisdiction as in this chapter established and limited. It shall prescribe the form and style of its seal, and the form of its writs and other process and procedure, and exercise such powers conferred by law as may be conformable and necessary to the exercise of its jurisdiction. It shall have power to establish all rules and regulations for the conduct of the business of the court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law. It shall have power to review any decision or matter within its jurisdiction, and may affirm, modify, or reverse the same and remand the case with such orders as may seem to it proper in the premises, which shall be executed accordingly. (Mar. 3, 1911, ch. 231, § 194, 36 Stat. 1145; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Aug. 5, 1909, ch. 6, § 28, 36 Stat. 91-108.

§ 308. (Judicial Code, section 195.) Review of decisions of United States Customs Court.

The Court of Customs and Patent Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided, final decisions by the United States Customs Court in all cases as to the construction of the law and the facts respecting the classification of merchandise and the rate of duty imposed thereon under such classifications, and the fees and charges connected therewith, and all appealable questions as to the jurisdiction of said board, and all appealable questions as to the laws and regulations governing the collection of the customs revenues; and the judgments and decrees of said Court of Customs and Patent Appeals shall be final in all such cases: *Provided, however*, That in any case in which the judgment or decree of the Court of Customs and Patent Appeals is made final by the provisions of this title, it shall be competent for the Supreme Court, upon the ap-



plication of either party, duly made as required by section 350 of this title, to require, by certiorari or otherwise, such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal to the Supreme Court. (Mar. 3, 1911, ch. 231, § 195, 36 Stat. 1145; Aug. 22, 1914, ch. 287, 38 Stat. 703; Sept. 6, 1916, ch. 448, § 6, 39 Stat. 727; Feb. 13, 1925, ch. 229, § 8, 43 Stat. 940; May 28, 1926, ch. 411, § 1, 44 Stat. 669; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475; June 17, 1930, ch. 497, § 647, 46 Stat. 762.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Aug. 5, 1909, ch. 6, § 29, 36 Stat. 106.

#### § 309. (Judicial Code, section 196.) Jurisdiction in customs cases.

No appeal shall be taken or allowed from any United States Customs Court to any court other than the Court of Customs and Patent Appeals, and no appellate jurisdiction shall be exercised or allowed by any other courts in cases decided by said United States Customs Court; but all appeals allowed by law from such United States Customs Court shall be subject to review only in the Court of Customs and Patent Appeals, according to the provisions of this chapter. (Mar. 3, 1911, ch. 231, § 196, 36 Stat. 1145; May 28, 1926, ch. 411, § 1, 44 Stat. 669; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Aug. 5, 1909, ch. 6, § 28, 36 Stat. 91-108.

#### § 309a. Jurisdiction in patent cases.

(a) The jurisdiction vested prior to April 1, 1929, in the United States Court of Appeals for the District of Columbia in respect of appeals from the Patent Office in patent and trade-mark cases is vested in the United States Court of Customs and Patent Appeals.

(d) Nothing contained in this section shall be construed as affecting in any way the jurisdiction of the United States Court of Appeals for the District of Columbia in equity cases. (Mar. 2, 1929, ch. 488, § 2 (a), (d), 45 Stat. 1476; June 7, 1934, ch. 426, 48 Stat. 926.)

#### § 310. (Judicial Code, section 198.) Appeals from United States Customs Court.

If the importer, owner, consignee, or agent of any imported merchandise, or the collector or Secretary of the Treasury, shall be dissatisfied with the decision of the United States Customs Court as to the construction of the law and the facts respecting the classification of such merchandise and the rate of duty imposed thereon under such classification, or with any other appealable decision of said Court, they, or either of them, may, within sixty days next after the entry of such decree or judgment, and not afterwards, apply to the Court of Customs and Patent Appeals for a review of the questions of law and fact involved in such decision. In Alaska and in the insu-

lar and other outside possessions of the United States ninety days shall be allowed for making such application to the Court of Customs and Patent Appeals. Such application shall be made by filing in the office of the clerk of said court a concise statement of errors of law and fact complained of; and a copy of such statement shall be served on the collector, or on the importer, owner, consignee, or agent, as the case may be. Thereupon the court shall immediately order the United States Customs Court to transmit to said court the record and evidence taken by them, together with the certified statement of the facts involved in the case and their decision thereon; and all the evidence taken by and before said United States Customs Court shall be competent evidence before said Court of Customs and Patent Appeals. The decision of said Court of Customs and Patent Appeals shall be final, and such cause shall be remanded to said United States Customs Court for further proceedings to be taken in pursuance of such determination. (Mar. 3, 1911, ch. 231, § 198, 36 Stat. 1146; May 28, 1926, ch. 411, § 1, 44 Stat. 669; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Aug. 5, 1909, ch. 6, § 28, 36 Stat. 91-108.

#### CROSS REFERENCE

Review of decisions of United States Customs Courts, see section 308 of this title.

#### § 311. (Judicial Code, section 199.) Records placed on calendar; call of calendar.

Immediately upon receipt of any record transmitted to the Court of Customs and Patent Appeals for determination, the clerk thereof shall place the same upon the calendar for hearing and submission; and such calendar shall be called and all cases thereupon submitted, except for good cause shown, at least once every sixty days. Such calendar need not be called during the months of July and August of any year. (Mar. 3, 1911, ch. 231, § 199, 36 Stat. 1146; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Aug. 5, 1909, ch. 6, § 28, 36 Stat. 91-108.

#### § 312. Opinions of Court; writing; filing; recording copy in Patent Office.

The opinion of the Court of Customs and Patent Appeals in every case on appeal from the decision of the Patent Office shall be rendered in writing, and shall be filed in such case as part of the record thereof, and a certified copy of said opinion shall be sent to the Commissioner of Patents and shall be entered of record in the Patent Office. (Mar. 2, 1929, ch. 488, § 3, 45 Stat. 1476.)

### Chapter 9.—THE SUPREME COURT

- Sec. 321. Number of justices.
- 322. Precedence of Associate Justices.
- 323. Vacancy in office of Chief Justice.
- 324. Salaries of justices.
- 325. Clerk, Marshal, and Reporter.
- 326. Clerk; bond.

- Sec.  
 327. Same; deputies; liability of clerk for deputy's misfeasance.  
 328. Law clerks; salaries.  
 329. Records of old court of appeals.  
 330. Tables of fees.  
 331. Marshal; salary; duties.  
 332. Reporter; duties; printing and binding of decisions.  
 333. Reporter; salary and allowances.  
 334. Printing, binding, and distribution of reports and digests.  
 335. Cost of bound volumes and pamphlets charged to Department of Justice; reprints  
 336. Appropriations for printing, binding, and so forth, of reports authorized.  
 337. Distribution of Federal Reporter and digests.  
 338. Terms  
 339. Adjournment for want of quorum.  
 340. Orders by less than quorum.  
 341. Original jurisdiction.  
 342. Prohibition and mandamus.  
 343. Issues of fact.  
 344. Appellate jurisdiction of decrees of State courts; certiorari.  
 345. Appellate jurisdiction from decrees of United States district courts  
 346. Certificates of questions by circuit courts of appeals and United States Court of Appeals for District of Columbia.  
 347. Certiorari to circuit courts of appeals and United States Court of Appeals for District of Columbia; appeal to Supreme Court from circuit courts of appeals in certain cases; other reviews not allowed  
 348. Certification of questions to Supreme Court by circuit courts of appeals, and certiorari thereto, and appeal to Supreme Court from circuit courts of appeals in certain other cases.  
 349. Certiorari to review decisions of Supreme Court of Philippine Islands.  
 349a. Direct appeal to Supreme Court; constitutionality of Federal statutes; time; precedence.  
 350. Time for making application for appeal or certiorari; stay pending application for certiorari.  
 351. Precedence of appeals from State courts.  
 352. Cost of printing records.  
 353. Women may be admitted to practice.  
 354. Printing for Supreme Court.

**§ 321. (Judicial Code, section 215.) Number of justices.**

The Supreme Court of the United States shall consist of a Chief Justice of the United States and eight Associate Justices, any six of whom shall constitute a quorum. (Mar. 3, 1911, ch. 231, § 215, 36 Stat. 1152.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 673 which was derived from act Apr. 10, 1869, ch. 22, § 1, 16 Stat. 44, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**§ 322. (Judicial Code, section 216.) Precedence of Associate Justices.**

The Associate Justices shall have precedence according to the dates of their commissions, or, when the commissions of two or more of them bear the same date, according to their ages. (Mar. 3, 1911, ch. 231, § 216, 36 Stat. 1152.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 674 which was derived from act Sept. 24, 1789, ch. 20, § 1, 1 Stat. 73, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**§ 323. (Judicial Code, section 217.) Vacancy in office of Chief Justice.**

In case of a vacancy in the office of Chief Justice, or of his inability to perform the duties and powers of his office, they shall devolve upon the Associate Justice who is first in precedence, until such disability is removed, or another Chief Justice is appointed and duly qualified. This provision shall apply to every Associate Justice who succeeds to the office of Chief Justice. (Mar. 3, 1911, ch. 231, § 217, 36 Stat. 1152.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 675 which was derived from acts Sept. 24, 1789, ch. 20, § 1, 1 Stat. 73; June 25, 1868, ch. 81, § 1, 15 Stat. 80, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**§ 324. (Judicial Code, section 218.) Salaries of justices.**

The Chief Justice of the Supreme Court of the United States shall receive the sum of \$20,500 a year, and the justices thereof shall receive the sum of \$20,000 a year each, to be paid monthly (Mar. 3, 1911, ch. 231, § 218, 36 Stat. 1152; Dec. 13, 1926, ch. 6, § 1, 44 Stat. 919.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 676 and act Feb. 12, 1903, ch. 547, 32 Stat. 825. R. S. § 676 was derived from act Mar. 3, 1873, ch. 226, § 1, 17 Stat. 486, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**§ 325. (Judicial Code, section 219.) Clerk, Marshal, and Reporter.**

The Supreme Court shall have power to appoint a clerk and a marshal for said court, and a reporter of its decisions. (Mar. 3, 1911, ch. 231, § 219, 36 Stat. 1152.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 677 which was derived from acts Sept. 24, 1789, ch. 20, § 7, 1 Stat. 76; Aug. 26, 1842, ch. 202, § 2, 5 Stat. 524; Aug. 29, 1842, ch. 264, § 1, 5 Stat. 545; Mar. 2, 1867, ch. 156, § 2, 14 Stat. 433, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**§ 326. (Judicial Code, section 220.) Clerk; bond.**

The clerk of the Supreme Court shall, before he enters upon the execution of his office, give bond, with sufficient sureties, to be approved by the court, to the United States, in the sum of not less than \$5,000 and not more than \$20,000, to be determined and regulated by the Attorney General, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments, and determinations of the court. The Supreme Court may at any time, upon the motion of the Attorney General, to be made upon thirty days' notice, require a new bond, or a bond for an increased amount within the limits above prescribed; and the failure of the clerk to execute the same shall vacate his office. All bonds given by the clerk shall, after approval, be recorded in his office, and copies thereof from the records, certified by the clerk under seal of the court, shall be competent evidence in any court. The original bonds shall be filed in the Department of Justice. (Mar. 3, 1911, ch. 231, § 220, 36 Stat. 1152.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Feb. 22, 1875, ch. 95, §§ 2, 3, 18 Stat. 333.

§ 327. (Judicial Code, section 221.) Same; deputies; liability of clerk for deputy's misfeasance.

One or more deputies of the clerk of the Supreme Court may be appointed by the court on the application of the clerk, and may be removed at the pleasure of the court. In case of the death of the clerk, his deputy or deputies shall, unless removed, continue in office and perform the duties of the clerk in his name until a clerk is appointed and qualified; and for the defaults or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk, and his estate, and the sureties on his official bond shall be liable; and his executor or administrator shall have such remedy for any such defaults or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his lifetime. (Mar. 3, 1911, ch. 231, § 221, 36 Stat. 1153.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 678 which was derived from act June 8, 1872, ch. 336, 17 Stat. 330 and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 328. Law clerks; salaries.

Section, acts June 1, 1922, ch. 204, title II, 42 Stat. 614; Jan. 3, 1923, ch. 21, title II, 42 Stat. 1081; May 28, 1924, ch. 204, title II, 43 Stat. 218; Feb. 27, 1925, ch. 364, title II, 43 Stat. 1028, provided for law clerks for the Justices. It expired with the appropriation acts of which it was a part.

§ 329. (Judicial Code, section 222.) Records of old court of appeals.

The records and proceedings of the court of appeals, appointed previous to the adoption of the present Constitution, shall be kept in the office of the clerk of the Supreme Court, who shall give copies thereof to any person requiring and paying for them, in the manner provided by law for giving copies of the records and proceedings of the Supreme Court; and such copies shall have like faith and credit with all other proceedings of said court. (Mar. 3, 1911, ch. 231, § 222, 36 Stat. 1153.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 679 which was derived from act May 8, 1792, ch. 36, § 12, 1 Stat. 279 and repealed by act Mar. 3, 1911, ch. 251, § 297, 36 Stat. 1168.

§ 330. (Judicial Code, section 223.) Tables of fees.

The Supreme Court is authorized and empowered to prepare the tables of fees to be charged by the clerk thereof. (Mar. 3, 1911, ch. 231, § 223, 36 Stat. 1153.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Mar. 3, 1863, ch. 143, § 1, 22 Stat. 631.

§ 331. (Judicial Code, section 224.) Marshal; salary; duties.

The marshal is entitled to receive a salary of not to exceed \$5,500 per annum, payable monthly, the same to be fixed by the court. He shall attend the court at its sessions; shall serve and execute all process and orders issuing from it, or made by the chief justice or an associate justice in pursuance of law; and shall take charge of all property of the United States used by the court or its members. With the approval of the chief justice he may appoint assistants and messengers to attend the court. (Mar. 3, 1911, ch. 231, § 224, 36 Stat. 1153; Apr. 11, 1928, ch. 358, 45 Stat. 424.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 680 which was derived from acts Sept. 24, 1789, ch. 20, § 27, 1 Stat. 87; Feb. 27, 1801, ch. 15, § 7, 2 Stat. 106; Mar. 2, 1867, ch. 156, § 2, 14 Stat. 443 and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 332. (Judicial Code, section 225.) Reporter; duties; printing and binding of decisions.

It shall be the duty of the reporter to prepare the decisions of the Supreme Court for printing and publication in bound volumes, as and when directed by the court or the Chief Justice; and when so directed to cause to be printed and published advance copies of said decisions in pamphlet installments.

The reporter, by requisition upon the Public Printer, shall have the printing and binding herein required done at the Government Printing Office.

The quality and size of the paper, type, format, proofs, and binding shall be determined by the reporter subject to approval of the court or the Chief Justice.

Authority is conferred upon the Public Printer for doing the printing and binding specified herein. (Mar. 3, 1911, ch. 231, § 225, 36 Stat. 1153; July 1, 1922, ch. 267, § 1, 42 Stat. 816.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 681 which was derived from acts Aug. 29, 1842, ch. 264, § 1, 5 Stat. 545; May 21, 1866, ch. 88, § 1, 14 Stat. 51; July 23, 1866, ch. 208, § 1, 14 Stat. 191 (205); Mar. 2, 1867, ch. 168, § 10, 14 Stat. 471, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 333. (Judicial Code, section 226.) Reporter; salary and allowances.

The salary of the reporter shall be \$8,000 per annum, payable out of the Treasury in monthly installments, which shall be in full compensation for the services required by law. He shall also be allowed stationery, supplies, equipment, office rent, and necessary professional and clerical assistance, in the discretion of the court or the Chief Justice. The expenses in connection with the maintenance of his office shall be paid from the appropriations of the Supreme Court of the United States. (Mar. 3, 1911, ch. 231, § 226, 36 Stat. 1153; July 1, 1922, ch. 267, § 2, 42 Stat. 816; May 29, 1926, ch. 425, § 1, 44 Stat. 677.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 682 as amended by act Aug. 5, 1862, ch. 389, § 1, 22 Stat. 254,

which was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. R. S. § 682 was derived from acts Aug. 29, 1842, ch. 464, 5 Stat. 545; May 21, 1866, ch. 88, 14 Stat. 51; July 23, 1866, ch. 208, 14 Stat. 205; and act Mar. 2, 1867, ch. 168, 14 Stat. 471.

**§ 334. (Judicial Code, section 227.) Printing, binding, and distribution of reports and digests.**

The reports provided for in section 332 of this title shall be printed, bound, and issued within eight months after said decisions have been rendered by the Supreme Court, and within said period the Attorney General shall distribute copies of said Supreme Court reports as follows: To the President, the Justices of the Supreme Court, the judges of the Court of Customs and Patent Appeals, the judges of the Circuit Court of Appeals, the judges of the district courts, the judges of the Court of Claims, the justices of the Customs Court, and judges of the United States Court of Appeals, and of the district court of the United States for the District of Columbia, the judges of the several Territorial courts, the United States Court for China, the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, the Secretary of the Interior, the Postmaster General, the Attorney General, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Solicitor General, the Assistant to the Attorney General, each Assistant Attorney General, each United States district attorney, each Assistant Secretary of each of the executive departments, the Assistant Postmaster General, the Secretary of the Senate for use of the Senate, the Clerk of the House of Representatives for the use of the House of Representatives; the office of the Legislative Counsel, Senate branch; the office of the Legislative Counsel, House branch; the governors of the Territories, the Legal Advisor for the Department of State, the Treasurer of the United States, the General Counsel for the Department of the Treasury, the Comptroller General of the United States, the Assistant Comptroller General, the Comptroller of the Currency, the Director of the Budget, the Assistant Director of the Budget, the Commissioner of Internal Revenue, the Director of the Mint, the Solicitor of the General Accounting Office, each of the chiefs of divisions in the General Accounting Office, the counsel of the Bureau of the Budget, the Judge Advocate General of the Army; the Chief of Finance, War Department; the Judge Advocate General, Navy Department; the Paymaster General, Navy Department; the Commissioner of Indian Affairs, the Commissioner of the General Land Office, the Administrator of Veterans' Affairs, the Commissioner of Patents, the Commissioner of Education, the chief of the Bureau of Marine Inspection and Navigation, the Commissioner of Immigration and Naturalization, the Director of the Geological Survey, the Director of the Census, the Forester and Chief of Forest Service, Department of Agriculture; the purchasing agent, Post Office Department; the Federal Trade Commission, the clerk of the Supreme Court of the United States, the marshal of the Supreme Court of the United States, the United States attorney for the District of Columbia; the Naval Academy at Annapolis, Maryland; the Military Academy at West Point, New York; and the

heads of such other executive offices as may be provided by law of equal grade with any of said offices, each one copy; to the Interstate Commerce Commission, sixteen copies; to the library of the Supreme Court, ten copies; to the Library of Congress for the use of the law library and for international exchange, as provided in section 139a of this title, not to exceed one hundred and fifty copies each of the bound and advance editions; to the law library of the Department of the Interior, two copies; to the law library of the Department of Justice, five copies; to the law library of the Judge Advocate General of the Army, two copies; to the Secretary of the Senate for the use of committees of the Senate, thirty copies; to the Clerk of the House of Representatives for the use of the committees of the House, thirty-five copies; to the marshal of the Supreme Court as custodian of the public property used by the court for the use of the justices thereof in the conference room, robing room, and court room, six copies; to the Secretary of War for the use of the proper courts and officers of the Philippine Islands, seven copies; to the Secretary of War for military headquarters which now exercise or may hereafter exercise general court-martial jurisdiction, such number, not to exceed in time of peace twenty-five copies, as the Secretary of War may from time to time specify; and to each of the places where district courts of the United States are now holden, including Hawaii and Puerto Rico, one copy.

The Attorney General shall distribute one complete set of said reports and one set of the digests thereof to such executive officers as are entitled to receive said reports under this section and have not already received them; to each United States judge and to each United States district attorney who has not received a set; to each of the places where district courts are now held to which reports have not been distributed, and to each of the places at which a district court may hereafter be held, the edition of said reports and digests to be selected by the judge or officer receiving them: *Provided*, That this section shall not be construed so as to require that reports and digests printed prior to June 12, 1926, shall be furnished to the Secretary of War for military headquarters.

No distribution of reports and digests under this section shall be made to any place where the court is held in a building not owned by the United States unless there be at such place a United States officer to whose responsible custody they can be committed.

The clerks of courts (except the Supreme Court) shall in all cases keep the said reports and digests for the use of the courts and of the officers thereof. Said reports and digests shall remain the property of the United States and shall be preserved by the officers above named and by them turned over to their successors in office.

The Public Printer shall turn over to the Attorney General, upon request, such reports as he may require in order to make the distribution authorized to be made by the Attorney General hereunder. (Mar. 3, 1911, ch. 231, § 227, 36 Stat. 1154; Mar. 4, 1911, ch. 285, § 1, 36 Stat. 1419; July 1, 1922, ch. 267, § 3, 42 Stat. 816; June 12, 1926, ch. 568,

44 Stat. 736; Jan. 29, 1929, ch. 113, 45 Stat. 1143; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475; July 3, 1930, ch. 863, § 1, 46 Stat. 1016; Feb. 23, 1931, ch. 276, § 30, 46 Stat. 1214; May 17, 1932, ch. 190, 47 Stat. 158; June 30, 1932, ch. 314, § 501, 47 Stat. 415; May 10, 1934, ch. 277, § 512, 48 Stat. 758; Ex. Ord. No. 6166, §§ 12, 14, June 10, 1933; June 7, 1934, ch. 426, 48 Stat. 926; May 27, 1936, ch. 463, § 1, 49 Stat. 1380; June 20, 1936, ch. 630, § 5, 49 Stat. 1549; June 25, 1936, ch. 804, 49 Stat. 1921.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. 683 and acts Feb. 12, 1889, ch. 135, 25 Stat. 661, and July 1, 1902, ch. 1355, 32 Stat. 630.

R. S. § 683, which was derived from acts Aug. 29, 1842, ch. 264, § 1, 5 Stat. 545; Mar. 2, 1861, ch. 87, § 6, 12 Stat. 245; July 23, 1866, ch. 208, § 1, 15 Stat. 191 (205); July 15, 1870, ch. 292, § 1, 16 Stat. 291 (307), was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 335. (Judicial Code, section 228.) Cost of bound volumes and pamphlets charged to Department of Justice; reprints.

The cost of furnishing the bound volumes and pamphlets under the requisition provided for in section 332 of this title, and required for official distribution under section 334, shall be charged to the proper appropriation of the Department of Justice. The Public Printer shall print such additional bound volumes and pamphlet copies of the United States Supreme Court reports as may be required for sale to the public by the Superintendent of Documents at the cost of printing and binding, plus 10 per centum, without limit as to the use, number of copies to any one applicant, or resale at a reasonable profit. (Mar. 3, 1911, ch. 231, § 228, 36 Stat. 1155; July 1, 1922, ch. 267, § 4, 42 Stat. 818; May 29, 1926, ch. 425, § 2, 44 Stat. 677.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in acts Feb. 12, 1889, ch. 135, 25 Stat. 661, and July 1, 1902, ch. 1355, 32 Stat. 630.

§ 336. Appropriations for printing, binding, and so forth, of reports authorized.

Such sums as may be necessary to carry into effect the provisions of sections 332–335 of this title are authorized to be appropriated annually out of any money in the Treasury not otherwise appropriated. (July 1, 1922, ch. 267, § 5, 42 Stat. 818; May 29, 1926, ch. 425, 44 Stat. 678.)

§ 337. (Judicial Code, section 229.) Distribution of Federal Reporter and digests.

The Attorney General is authorized to procure complete sets of the Federal Reporter or, in his discretion, other publication containing the decisions of the circuit courts of appeals, circuit courts, and district courts, and digests thereof, and also future volumes of the same as issued, and distribute a copy of each such reports and digests to each place where a circuit court of appeals, or a district court, is regularly held, and to the Supreme Court of the United States, the Court of Claims, the Court of Customs and Patent Appeals, the United States Court of Appeals for the District of Columbia and

the district court of the United States for the District of Columbia, the Attorney General, the Solicitor General, the General Counsel for the Department of the Treasury, the Assistant Attorney General for the Department of the Interior, the Commissioner of Patents, and the Interstate Commerce Commission; and to the Secretary of the Senate, for the use of the Senate, and to the Clerk of the House of Representatives, for the use of the House of Representatives, not more than three sets each. Whenever any such court room, office, or officer shall have a partial or complete set of any such reports, or digests, already purchased or owned by the United States, the Attorney General shall distribute to such court room, office, or officer, only sufficient volumes to make a complete set thereof. No distribution of reports or digests under this section shall be made to any place where the court is held in a building not owned by the United States, unless there be at such place a United States officer to whose responsible custody they can be committed. The clerks of the courts (except the Supreme Court) to which the reports and digests are distributed under this section, shall keep such reports and digests for the use of the courts and the officers thereof. All reports and digests distributed under the provisions of this section shall be and remain the property of the United States and, before distribution, shall be plainly marked on their covers with the words "The property of the United States," and shall be transmitted by the officers receiving them to their successors in office. Not to exceed \$2 per volume shall be paid for the back and current volumes of the Federal Reporter or other publication purchased under the provisions of this section, and not to exceed \$5 per volume for the digest, the said money to be disbursed under the direction of the Attorney General; and the Attorney General shall include in his annual estimates to be submitted to Congress, an estimate for the back and current volumes of such reports and digests, the distribution of which is provided for in this section. (Mar. 3, 1911, ch. 231, § 229, 36 Stat. 1155; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475; May 10, 1934, ch. 277, § 512, 48 Stat. 758; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1936, ch. 804, 49 Stat. 1921.)

§ 338. (Judicial Code, section 230.) Terms.

The Supreme Court shall hold at the seat of government one term annually, commencing on the first Monday in October, and such adjourned or special terms as it may find necessary for the dispatch of business. (Mar. 3, 1911, ch. 231, § 230, 36 Stat. 1156; Sept. 6, 1916, ch. 448, § 1, 39 Stat. 726.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 684 which was derived from acts July 23, 1866, ch. 210, § 1, 14 Stat. 209; Jan. 24, 1873, ch. 64, 17 Stat. 419 and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 339. (Judicial Code, section 231.) Adjournment for want of quorum.

If, at any session of the Supreme Court, a quorum does not attend on the day appointed for holding

it, the justices who do attend may adjourn the court from day to day for twenty days after said appointed time, unless there be sooner a quorum. If a quorum does not attend within said twenty days, the business of the court shall be continued over till the next appointed session; and if, during a term, after a quorum has assembled, less than that number attend on any day, the justices attending may adjourn the court from day to day until there is a quorum, or may adjourn without day. (Mar. 3, 1911, ch. 231, § 231, 36 Stat. 1156.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 685 which was derived from act Apr. 29, 1802, ch. 31, 2 Stat. 156 and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 340. (Judicial Code, section 232.) Orders by less than quorum.

The justices attending at any term, when less than a quorum is present, may, within the twenty days mentioned in section 339 of this title, make all necessary orders touching any suit, proceeding, or process, depending in or returned to the court, preparatory to the hearing, trial, or decision thereof. (Mar. 3, 1911, ch. 231, § 232, 36 Stat. 1156.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 686 which was derived from acts Apr. 29, 1802, ch. 31, § 1, 2 Stat. 156; Jan. 21, 1829, ch. 12, § 1, 4 Stat. 323; July 23, 1866, ch. 210, § 1, 14 Stat. 209 and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 341. (Judicial Code, section 233.) Original jurisdiction.

The Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens, in which latter cases it shall have original, but not exclusive, jurisdiction. And it shall have exclusively all such jurisdiction of suits or proceedings against ambassadors or other public ministers, or their domestics or domestic servants, as a court of law can have consistently with the law of nations; and original, but not exclusive, jurisdiction, of all suits brought by ambassadors, or other public ministers, or in which a consul or vice consul is a party. (Mar. 3, 1911, ch. 231, § 233, 36 Stat. 1156.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 687 which was derived from act Sept. 24, 1789, ch. 20, § 13, 1 Stat. 80 and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 342. (Judicial Code, section 234.) Prohibition and mandamus.

The Supreme Court shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction; and writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed under the authority of the United States, or to persons holding office under the authority of

the United States, where a State, or an ambassador, or other public minister, or a consul, or vice consul is a party. (Mar. 3, 1911, ch. 231, § 234, 36 Stat. 1156.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 688 which was derived from act Sept. 24, 1789, ch. 20, § 13, 1 Stat. 80 and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 343. (Judicial Code, section 235.) Issues of fact.

The trial of issues of fact in the Supreme Court, in all actions at law against citizens of the United States, shall be by jury. (Mar. 3, 1911, ch. 231, § 235, 36 Stat. 1156.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 689 which was derived from act Sept. 24, 1789, ch. 20, § 13, 1 Stat. 80 and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 344. (Judicial Code, section 237.) Appellate jurisdiction of decrees of State courts; certiorari.

(a) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon appeal. The appeal shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the appeal.

(b) It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by appeal, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on appeal in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on appeal might be obtained under the preceding paragraph be an obstacle to granting a review on certiorari under this paragraph.

(c) If an appeal be improvidently sought and allowed under this section in a case where the proper mode of invoking a review is by a petition for certiorari, this alone shall not be a ground for dismissal; but the papers whereon the appeal was allowed shall be regarded and acted on as a petition for certiorari and as if duly presented to the Supreme Court at the time they were presented to the court or judge by whom the appeal was allowed: *Provided*, That where in such a case there appears to be no reasonable ground for granting a petition for certiorari it shall be competent for the Supreme Court to adjudge to the respondent reasonable damages for his delay, and single or double costs, as provided in section 878 of this title. (Mar. 3, 1911, ch. 231, §§ 236, 237, 36 Stat. 1156; Dec. 23, 1914, ch. 2, 38 Stat. 790; Sept. 6, 1916, ch. 448, § 2, 39 Stat. 726; Feb. 17, 1922, ch. 54, 42 Stat. 366; Feb. 13, 1925, ch. 229, § 1, 43 Stat. 937; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 690 and 709 which were derived from act Sept. 24, 1789, ch. 20, §§ 13, 25, 1 Stat. 80, 85 and act Feb. 5, 1867, ch. 28, § 2, 14 Stat. 386, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 345. (Judicial Code, section 238.) Appellate jurisdiction from decrees of United States district courts.

A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following sections or parts of sections, and not otherwise:

(1) Section 29 of Title 15, and section 45 of Title 49.

(2) Section 682 of Title 18, where the decision of the district court is adverse to the United States.

(3) Section 380 of this title.

(4) So much of sections 47 and 47a of this title as relate to the review of interlocutory and final judgments and decrees in suits to enforce, suspend, or set aside orders of the Interstate Commerce Commission other than for the payment of money.

(5) Section 217 of Title 7. (Mar. 3, 1911, ch. 231, § 238, 36 Stat. 1157; Jan. 28, 1915, ch. 22, § 2, 38 Stat. 804; Feb. 13, 1925, ch. 229, § 1, 43 Stat. 938.)

## FEDERAL RULES OF CIVIL PROCEDURE

Appeal from district court to Supreme Court, see Rule 72, following section 723c of this title.

§ 346. (Judicial Code, section 239.) Certificates of questions by circuit courts of appeals and United States Court of Appeals for District of Columbia.

In any case, civil or criminal, in a circuit court of appeals, or in the United States Court of Appeals for the District of Columbia, the court at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which instructions are desired for the proper decision of the cause; and thereupon the Supreme Court may either give binding instructions on the questions and propositions certified or may require that the entire record in the cause be sent up for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had

been brought there by appeal. (Mar. 3, 1911, ch. 231, § 239, 36 Stat. 1157; Feb. 13, 1925, ch. 229, § 1, 43 Stat. 938; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54; June 7, 1934, ch. 426, 48 Stat. 926.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in section 6 of the Circuit Court of Appeals act of Mar. 3, 1891, ch. 517, 26 Stat. 828. See repeal note under section 142 of this title.

§ 347. (Judicial Code, section 240.) Certiorari to circuit courts of appeals and United States Court of Appeals for District of Columbia; appeal to Supreme Court from circuit courts of appeals in certain cases; other reviews not allowed.

(a) In any case, civil or criminal, in a circuit court of appeals, or in the United States Court of Appeals for the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted appeal.

(b) Any case in a circuit court of appeals where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is against its validity, may, at the election of the party relying on such State statute, be taken to the Supreme Court for review on appeal; but in that event a review on certiorari shall not be allowed at the instance of such party, and the review on such appeal shall be restricted to an examination and decision of the Federal questions presented in the case.

(c) No judgment or decree of a circuit court of appeals or of the United States Court of Appeals for the District of Columbia shall be subject to review by the Supreme Court otherwise than as provided in this section. (Mar. 3, 1911, ch. 231, § 240, 36 Stat. 1157; Feb. 13, 1925, ch. 229, § 1, 43 Stat. 938; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54; June 7, 1934, ch. 426, 48 Stat. 926.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in section 6 of the Circuit Court of Appeals act of Mar. 3, 1891, ch. 517, § 6, 26 Stat. 828. See repeal note under section 142 of this title.

§ 348. Certification of questions to Supreme Court by circuit courts of appeals, and certiorari thereto, and appeal to Supreme Court from circuit courts of appeals in certain other cases.

Cases in a circuit court of appeals under section 159 of Title 45; under section 45 of Title 15; and under section 21 of Title 15, are included among the cases to which sections 346 and 347 of this title shall apply. (Feb. 13, 1925, ch. 229, § 2, 43 Stat. 939; May 20, 1926, ch. 347, § 13 (b), 44 Stat. 587.)

§ 349. Certiorari to review decisions of Supreme Court of Philippine Islands.

In any case in the Supreme Court of the Philippine Islands wherein the Constitution or any statute or



treaty of the United States is involved, or wherein the value in controversy exceeds \$25,000, or wherein the title or possession of real estate exceeding in value the sum of \$25,000 is involved or brought in question, it shall be competent for the Supreme Court of the United States, upon the petition of a party aggrieved by the final judgment or decree, to require, by certiorari, that the cause be certified to it for review and determination with the same power and authority, and with like effect, as if the cause had been brought before it on appeal; and, except as provided in this section, the judgments and decrees of the Supreme Court of the Philippine Islands shall not be subject to appellate review. (Feb. 13, 1925, ch. 229, § 7, 43 Stat. 940; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

#### CROSS REFERENCE

Review by Supreme Court of United States of cases involving Philippine constitution, see section 1237 (6) of Title 48, Territories and Insular Possessions.

#### § 349a. Direct appeal to Supreme Court; constitutionality of Federal statutes; time; precedence.

In any suit or proceeding in any court of the United States to which the United States, or any agency thereof, or any officer or employee thereof, as such officer or employee, is a party, or in which the United States has intervened and become a party, and in which the decision is against the constitutionality of any Act of Congress, an appeal may be taken directly to the Supreme Court of the United States by the United States or any other party to such suit or proceeding upon application therefor or notice thereof within thirty days after the entry of a final or interlocutory judgment, decree, or order; and in the event that any such appeal is taken, any appeal or cross-appeal by any party to the suit or proceeding taken previously, or taken within sixty days after notice of an appeal under this section, shall also be or be treated as taken directly to the Supreme Court of the United States. In the event that an appeal is taken under this section, the record shall be made up and the case docketed in the Supreme Court of the United States within sixty days from the time such appeal is allowed, under such rules as may be prescribed by the proper courts. Appeals under this section shall be heard by the Supreme Court of the United States at the earliest possible time and shall take precedence over all other matters not of a like character. This section shall not be construed to be in derogation of any right of direct appeal to the Supreme Court of the United States under existing provisions of law. (Aug. 24, 1937, ch. 754, § 2, 50 Stat. 752.)

#### COURTS OF UNITED STATES

Act August 24, 1937, § 5, cited to text, defined the term "court of the United States" as meaning the courts of record of Alaska, Hawaii, and Puerto Rico, the United States Customs Court, the United States Court of Customs and Patent Appeals, the Court of Claims, any district court of the United States, any circuit court of appeals, and the Supreme Court of the United States.

#### FEDERAL RULES OF CIVIL PROCEDURE

Appeal from district court to Supreme Court, see Rule 72, following section 723c of this title.

#### § 350. Time for making application for appeal or certiorari; stay pending application for certiorari.

No appeal, or writ of certiorari, intended to bring any judgment or decree before the Supreme Court for review shall be allowed or entertained unless application therefor be duly made within three months after the entry of such judgment or decree, excepting that writs of certiorari to the Supreme Court of the Philippine Islands may be granted where application therefor is made within six months. For good cause shown either of such periods for applying for a writ of certiorari may be extended not exceeding sixty days by a justice of the Supreme Court.

Where an application for a writ of certiorari is made with the purpose of securing a removal of the case to the Supreme Court from a circuit court of appeals or the United States Court of Appeals for the District of Columbia before the court wherein the same is pending has given a judgment or decree the application may be made at any time prior to the hearing and submission in that court.

In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to apply for and to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of good and sufficient security, to be approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay. (Sept. 6, 1916, ch. 448, § 6, 39 Stat. 727; Feb. 13, 1925, ch. 229, § 8 [a, b, d], 43 Stat. 940; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54; June 7, 1934, ch. 426, 48 Stat. 926.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Execution, see Rule 69, following section 723c of this title.

#### § 351. (Judicial Code, section 253.) Precedence of appeals from State courts.

Cases on appeal to revise the judgment of a State court in any criminal case shall have precedence on the docket of the Supreme Court, of all cases to which the Government of the United States is not a party, excepting only such cases as the court, in its discretion, may decide to be of public importance. (Mar. 3, 1911, ch. 231, § 253, 36 Stat. 1160; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 710 which was derived from acts Sept. 24, 1789, ch. 20, § 25, 1 Stat. 85; July 13, 1866, ch. 184, § 69, 14 Stat. 172; Feb. 5, 1867, ch. 28, § 2, 14 Stat. 386, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**§ 352. (Judicial Code, section 254.) Cost of printing records.**

There shall be taxed against the losing party in each and every cause pending in the Supreme Court the cost of printing the record in such case, except when the judgment is against the United States. (Mar. 3, 1911, ch. 231, § 254, 36 Stat. 1160.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Mar. 3, 1877, ch. 105, 19 Stat. 344

**§ 353. (Judicial Code, section 255.) Women may be admitted to practice.**

Any woman who shall have been a member of the bar of the highest court of any State or Territory, or of the United States Court of Appeals for the District of Columbia, for the space of three years, and shall have maintained a good standing before such court, and who shall be a person of good moral character, shall, on motion, and the production of such record, be admitted to practice before the Supreme Court of the United States. (Mar. 3, 1911, ch. 231, § 255, 36 Stat. 1160; June 7, 1934, ch. 426, 48 Stat. 926.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Feb. 15, 1879, ch. 81, 20 Stat. 292.

**§ 354. Printing for Supreme Court.**

The printing for the Supreme Court shall be done by the printer it may employ, unless it shall otherwise order. (Feb. 27, 1925, ch. 384, title II, 43 Stat. 1028; Apr. 29, 1926, ch. 195, title II, 44 Stat. 344; Feb. 24, 1927, ch. 189, title II, 44 Stat. 1194; Feb. 15, 1928, ch. 57, title II, 45 Stat. 79; Jan. 25, 1929, ch. 102, title II, 45 Stat. 1109; Apr. 18, 1930, ch. 184, title II, 46 Stat. 188; Feb. 23, 1931, ch. 280, title II, 46 Stat. 1323; July 1, 1932, ch. 361, title II, 47 Stat. 490; Mar. 1, 1933, ch. 144, title II, 47 Stat. 1382; Apr. 7, 1934, ch. 104, title II, 48 Stat. 539.)

**Chapter 10.—PROVISIONS COMMON TO MORE THAN ONE COURT**

- Sec.
- 371. Exclusive jurisdiction of United States courts
- 372. Oath of United States judges.
- 373. Practice of law by United States judges.
- 374. Traveling expenses of circuit justices and circuit and district judges.
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- 402. Residence requirements for retired judges.

**§ 371. (Judicial Code, section 256.) Exclusive jurisdiction of United States courts.**

The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States:

First. Of all crimes and offenses cognizable under the authority of the United States.

Second. Of all suits for penalties and forfeitures incurred under the laws of the United States.

Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it and to claimants for compensation for injuries to or death of persons other than the master or members of the crew of a vessel, their rights and remedies under the workmen's compensation law of any State, District, Territory, or possession of the United States.

Fourth. Of all seizures under the laws of the United States, on land or on waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize.

Fifth. Of all cases arising under the patent-right, or copyright laws of the United States.

Sixth. Of all matters and proceedings in bankruptcy.

Seventh. Of all controversies of a civil nature, where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens.

Eighth. Of all suits and proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, or against consuls or vice consuls. (Mar. 3, 1911, ch. 231, § 256, 36 Stat. 1160; Oct. 6, 1917, ch. 97, § 2, 40 Stat. 395; June 10, 1922, ch. 216, § 2, 42 Stat. 635.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 563, 629, and 711, which were repealed by acts Feb. 18, 1875, ch. 80, 18 Stat. 318, and Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

They were derived as follows:

R. S. § 563 from acts Sept. 24, 1789, ch. 20, § 9, 1 Stat. 76; Mar. 3, 1815, ch. 101, § 4, 3 Stat. 245; Aug. 23, 1842, ch. 188, § 3, 5 Stat. 517; Feb. 28, 1871, ch. 100, § 57, 16 Stat. 456; Mar. 3, 1875, ch. 137, §§ 1, 9, 18 Stat. 470, 473

R. S. § 629 from act Aug. 6, 1861, ch. 60, 12 Stat. 319.

R. S. § 711 from acts Sept. 24, 1789, ch. 20, § 9, 11, 1 Stat. 76, 78; Aug. 6, 1861, ch. 60, 12 Stat. 319; July 13, 1866, ch. 184, 14 Stat. 111; Mar. 2, 1867, ch. 169, 14 Stat. 483; Mar. 2, 1867, ch. 176, 14 Stat. 517; July 8, 1870, ch. 230, 16 Stat. 206, 207, 215.

### § 372. (Judicial Code, section 257.) Oath of United States judges.

The justices of the Supreme Court, the circuit judges, and the district judges appointed shall take the following oath before they proceed to perform the duties of their respective offices: "I, ———, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ——— according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States: So help me God." (Mar. 3, 1911, ch. 231, § 257, 36 Stat. 1161.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 712 which was derived from act Sept. 24, 1789, ch. 20, § 8, 1 Stat. 76, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

### § 373. (Judicial Code, section 258.) Practice of law by United States judges.

It shall not be lawful for any judge appointed under the authority of the United States to exercise the profession or employment of counsel or attorney, or to be engaged in the practice of the law. Any person offending against the prohibition of this section shall be deemed guilty of a high misdemeanor. (Mar. 3, 1911, ch. 231, § 258, 36 Stat. 1161.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 713 which was derived from act Dec. 18, 1812, ch. 5, 2 Stat. 788, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

### § 374. (Judicial Code, section 259.) Traveling expenses of circuit justices and circuit and district judges.

The circuit justices, the circuit and district judges of the United States, and the judges of the district courts of the United States in Alaska, Hawaii, and Puerto Rico, shall each be allowed and paid his necessary expenses of travel, and his reasonable expenses (not to exceed \$10 per day) actually incurred for maintenance, consequent upon his attending court or transacting other official business in pursuance of law at any place other than his official place of residence, said expenses to be paid by the marshal of the district in which such court is held or official business transacted, upon the written certificate of the justice or judge. The official place of

residence of each circuit and district judge, and of each judge of the district courts of the United States in Alaska, Hawaii, and Puerto Rico, shall be at that place nearest his actual residence at which either a circuit court of appeals or a district court is regularly held. Every such judge shall, upon his appointment, and from time to time thereafter whenever he may change his official residence, in writing notify the Department of Justice of his official place of residence. (Mar. 3, 1911, ch. 231, § 259, 36 Stat. 1161; May 17, 1932, ch. 190, 47 Stat. 158; Apr. 22, 1940, ch. 126, 54 Stat. 149.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 554, 596, and 597 and act Mar. 3, 1891, ch. 517, § 8, 26 Stat. 828, all of which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

R. S. § 596 was derived from acts July 29, 1850, ch. 30, § 1, 9 Stat. 442; Mar. 3, 1871, ch. 113, § 3, 16 Stat. 494.

R. S. § 597 was derived from act Mar. 5, 1872, ch. 35, 17 Stat. 36.

## EFFECTIVE DATE

Section 2 of act Apr. 22, 1940, cited to text, provided that the amendment by said act should take effect as of July 1, 1939.

## TRANSFERS OF FUNCTIONS

Disbursement functions of United States marshals which would otherwise have devolved upon the Treasury Department on July 1, 1940, by virtue of Ex. Ord. No. 6166, June 10, 1933, as amended, set out in note under section 132 of Title 5, were transferred to and vested in Department of Justice to be exercised by United States marshals under supervision of Attorney General in accordance with existing statutes pertaining to such functions, by Reorg. Plan No. IV, § 3, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1234, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See, also, sections 13-15 of said plan for provisions relating to transfer of functions of department heads, records, property, personnel, and funds.

## CROSS REFERENCES

Per diem in lieu of expenses to be paid government employees travelling on official business and repeal of inconsistent laws, see sections 823, 829 note, of Title 5, Executive Departments and Government Officers and Employees.

Residence requirements for retired judges, see section 402 of this title

### § 374a. Salaries of stenographers and law clerks to district or circuit judges.

Section, act June 29, 1939, ch. 248, title II, 53 Stat. 906, was limited to the appropriation act of which it was a part. Similar subject matter is now contained in section 374b.

### § 374b. Salaries of secretaries or law clerks to district or circuit judges.

The maximum salary paid to any secretary or law clerk to any circuit or district judge shall not exceed \$2,500 per annum: *Provided*, That this limitation shall not operate to reduce the compensation of any secretary now employed. (May 14, 1940, ch. 189, title IV, 54 Stat. 209.)

## SIMILAR PROVISIONS

Similar provisions were contained in act June 29, 1939, ch. 248, title II, 53 Stat. 906, and prior Department of Justice appropriation acts.

## CROSS REFERENCE

Law clerks for circuit judges, see section 222a of this title.

**§ 375. (Judicial Code, section 260.)** Salary of United States judges after resignation or retirement; procedure where judge is mentally or physically disabled.

When any judge of any court of the United States, appointed to hold his office during good behavior, resigns his office after having held a commission or commissions as judge of any such court or courts at least ten years, continuously or otherwise, and having attained the age of seventy years, he shall, during the residue of his natural life, receive the salary which is payable at the time of his resignation for the office that he held at the time of his resignation. But, instead of resigning, any judge other than a justice of the Supreme Court, who is qualified to resign under the foregoing provisions, may retire, upon the salary of which he is then in receipt, from regular active service on the bench, and the President shall thereupon be authorized to appoint a successor; but a judge so retiring may nevertheless be called upon by the senior circuit judge of that circuit and be by him authorized to perform such judicial duties in such circuit as such retired judge may be willing to undertake, or he may be called upon by the Chief Justice and be by him authorized to perform such judicial duties in any other circuit as such retired judge may be willing to undertake or he may be called upon either by the presiding judge or senior judge of any other such court and be by him authorized to perform such judicial duties in such court as such retired judge may be willing to undertake.

In the event any circuit judge, or district judge, having so held a commission or commissions at least ten years, continuously or otherwise, and having attained the age of seventy years as aforesaid, shall nevertheless remain in office, and not resign or retire as aforesaid, the President, if he finds any such judge is unable to discharge efficiently all the duties of his office by reason of mental or physical disability of permanent character, may, when necessary for the efficient dispatch of business, appoint, by and with the advice and consent of the Senate, an additional circuit judge of the circuit or district judge of the district to which such disabled judge belongs. And the judge so retiring voluntarily, or whose mental or physical condition caused the President to appoint an additional judge, shall be held and treated as if junior in commission to the remaining judges of said court, who shall, in the order of the seniority of their respective commissions, exercise such powers and perform such duties as by law may be incident to seniority. In districts where there may be more than one district judge, if the judges or a majority of them cannot agree upon the appointment of officials of the court to be appointed by such judges, then the senior judge shall have the power to make such appointments.

Upon the death, resignation, or retirement of any circuit or district judge, so entitled to resign, following the appointment of any additional judge as provided in this section, the vacancy caused by such death, resignation, or retirement of the said judge so entitled to resign shall not be filled. (Mar. 3, 1911, ch. 231, § 260, 36 Stat. 1161; Feb. 25, 1919, ch. 29, § 6, 40 Stat. 1157; Mar. 1, 1929, ch. 419, 45 Stat. 1422.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 714 as amended by act Feb. 15, 1909, ch. 127, 35 Stat. 619, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168. R. S. § 714 was derived from act Apr. 10, 1869, ch. 22, § 5, 16 Stat. 45.

**§ 375a. Supreme Court Justices; retirement; rights and privileges; appointment of successor.**

Justices of the Supreme Court are hereby granted the same rights and privileges with regard to retiring, instead of resigning, granted to judges other than Justices of the Supreme Court by section 375 of this title, and the President shall be authorized to appoint a successor to any such Justice of the Supreme Court so retiring from regular active service on the bench, but such Justice of the Supreme Court so retired may nevertheless be called upon by the Chief Justice and be by him authorized to perform such judicial duties, in any judicial circuit, including those of a circuit justice in such circuit, as such retired Justice may be willing to undertake. The term "judicial circuit" as used in this section includes the District of Columbia. (Mar. 1, 1937, ch. 21, §§ 1, 2, 50 Stat. 24; Feb. 11, 1938, ch. 25, § 1, 52 Stat. 28.)

**§ 375b. Retirement of United States judges for disability; appointment of successor.**

Any judge or justice of any court of the United States, appointed to hold office during good behavior, who becomes unable because of permanent disability to perform the duties of his office, may retire from regular active service on the bench and the President shall thereupon be authorized to appoint a successor. (Aug. 5, 1939, ch. 433, § 1, 53 Stat. 1204.)

#### CROSS REFERENCE

Retirement of United States judges generally, see sections 375 and 375a of this title.

**§ 375c. Same; certificate of disability.**

Any district or circuit judge, other than a senior circuit judge, who desires to retire under the provisions of sections 375b-375e of this title shall certify his disability in writing and shall furnish a like certificate made by the senior circuit judge of the judicial circuit in which the court of which he is a member is situated. Any Justice of the Supreme Court of the United States, other than the Chief Justice of the United States, who desires to retire under the provisions of said sections shall certify his disability in writing and shall furnish a like certificate made by the Chief Justice of the United States. If the Chief Justice of the United States retires under the provisions of said sections he need not furnish any certificate in addition to his own. Any judge of the Court of Claims, other than the chief justice, any judge of the United States Customs Court, or any judge of the United States Court of Customs and Patent Appeals, other than the presiding judge of the United States Court of Customs and Patent Appeals, who desires to retire under the provisions of said sections shall certify his disability in writing and shall furnish a like certificate made by the chief justice of the Court of Claims, if he be a judge of the Court of Claims, or by the presiding judge of the United States Court of Customs and Patent Appeals,

if he be a judge of the United States Customs Court or the United States Court of Customs and Patent Appeals. Any other judge or justice who desires to retire under the provisions of said sections shall certify his disability in writing and shall furnish a like certificate made by the Chief Justice of the United States. (Aug. 5, 1939, ch. 433, § 2, 53 Stat. 1204.)

**§ 375d. Same; salary upon retirement.**

Any judge or justice who retires under the provisions of sections 375b–375e of this title, after he has served less than ten years, shall receive annually, in equal monthly installments, during the remainder of his life, a sum equal to one-half of the annual salary he is receiving at the date of retirement; and any judge or justice who retires under the provisions of said sections, after he has served ten years or more, shall receive in like manner during the remainder of his life the salary he is receiving at the date of retirement. (Aug. 5, 1939, ch. 433, § 3, 53 Stat. 1205.)

**§ 375e. Same; definitions.**

The term “senior circuit judge”, as used in sections 375b–375e of this title, includes the chief justice of the United States Court of Appeals for the District of Columbia. The term “judicial circuit”, as used in said sections, includes the District of Columbia. (Aug. 5, 1939, ch. 433, § 4, 53 Stat. 1205.)

**§ 376. (Judicial Code, section 261.) Writs of ne exeat.**

Writs of ne exeat may be granted by any justice of the Supreme Court, in cases where they might be granted by the Supreme Court; and by any district judge, in cases where they might be granted by the district court of which he is a judge. But no writ of ne exeat shall be granted unless a suit in equity is commenced, and satisfactory proof is made to the court or judge granting the same that the defendant designs quickly to depart from the United States. (Mar. 3, 1911, ch. 231, § 261, 36 Stat. 1162.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 717 which was derived from acts Mar. 2, 1793, ch. 22, § 5, 1 Stat. 334; Apr. 10, 1869, ch. 22, § 2, 16 Stat. 44, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

**FEDERAL RULES OF CIVIL PROCEDURE**

Seizure of persons, see Rule 64, following section 723c of this title.

Superseding of section by Rule 64, see note by Advisory Committee under said Rule 64.

**§ 377. (Judicial Code, section 262.) Power to issue writs.**

The Supreme Court and the district courts shall have power to issue writs of scire facias. The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law. (Mar. 3, 1911, ch. 231, § 262, 36 Stat. 1162.)

**SIMILAR PROVISIONS**

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 716,

which was derived from acts Sept. 24, 1789, ch. 20, § 14, 1 Stat. 81; Mar. 2, 1793, ch. 22, § 5, 1 Stat. 334, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168

**FEDERAL RULES OF CIVIL PROCEDURE**

Application of, see Rule 81, following section 723c of this title.

Preservation of section under Rule 81, see note by Advisory Committee under said Rule 81.

**§ 377a. Quo warranto; against whom issued.**

A quo warranto may be issued from the district court of the United States for the District of Columbia in the name of the United States—

First. Against a person who usurps, intrudes into, or unlawfully holds or exercises within the District a franchise or public office, civil or military, or an office in any domestic corporation.

Second. Against any one or more persons who act as a corporation within the District without being duly authorized, or exercise within the District any corporate rights, privileges, or franchises not granted them by the laws in force in said District.

And said proceedings shall be deemed a civil action. (Mar. 3, 1901, ch. 854, § 1538, 31 Stat. 1419; June 25, 1936, ch. 804, 49 Stat. 1921.)

**CHANGES IN NAMES**

Act June 25, 1936, cited to text, changed the name of the “Supreme Court of the District of Columbia” to “district court of the United States for the District of Columbia.”

**§ 377b. Same; who may institute.**

The Attorney General or the district attorney may institute a quo warranto proceeding on his own motion, or on the relation of a third person. But such writ shall not be issued on the relation of a third person except by leave of the court, to be applied for by the relator, by a petition duly verified, setting forth the grounds of the application, or until the relator shall file a bond with sufficient surety, to be approved by the clerk of the court, in such penalty as the court may prescribe, conditioned for the payment by him of all costs incurred in the prosecution of the writ in case the same shall not be recovered from and paid by the defendant. (Mar. 3, 1901, ch. 854, § 1539, 31 Stat. 1420.)

**FEDERAL RULES OF CIVIL PROCEDURE**

Application of, see Rule 81, following section 723c of this title.

Preservation of section under Rule 81, see note by Advisory Committee under said Rule 81.

**§ 377c. Same; institution on refusal of Attorney General and district attorney.**

If the Attorney General and district attorney shall refuse to institute a quo warranto proceeding on the request of a person interested, such person may apply to the court by verified petition for leave to have said writ issued; and if in the opinion of the court the reasons set forth in said petition are sufficient in law, the said writ shall be allowed to be issued by any attorney, in the name of the United States, on the relation of said interested person, on his compliance with the condition prescribed in section 232 of this title as to security for costs. (Mar. 3, 1901, ch. 854, § 1540, 31 Stat. 1420.)

## FEDERAL RULES OF CIVIL PROCEDURE

Application of, see Rule 81, following section 723c of this title.

Preservation of section under Rule 81, see note by Advisory Committee under said Rule 81.

**§ 378. (Judicial Code, section 264.) Injunctions; when granted.**

Writs of injunction may be granted by any justice of the Supreme Court in cases where they might be granted by the Supreme Court; and by any judge of a district court in cases where they might be granted by such court. But no justice of the Supreme Court shall hear or allow any application for an injunction or restraining order in any cause pending in the circuit to which he is allotted, elsewhere than within such circuit, or at such place outside of the same as the parties may stipulate in writing, except when it cannot be heard by the district judge of the district. In case of the absence from the district of the district judge, or of his disability, any circuit judge of the circuit in which the district is situated may grant an injunction or restraining order in any case pending in the district court, where the same might be granted by the district judge. (Mar. 3, 1911, ch. 231, § 264, 36 Stat. 1162.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 719, which was derived from acts Mar. 2, 1793, ch. 22, § 5, 1 Stat. 334; Feb. 13, 1807, ch. 13, 2 Stat. 418; Apr. 10, 1869, ch. 22, § 1, 16 Stat. 44; June 1, 1872, ch. 255, § 7, 17 Stat. 197, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

## FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under Rule 65, see note by Advisory Committee under said Rule 65.

Injunctions, see Rule 65, following section 723c of this title

**§ 379. (Judicial Code, section 265.) Same; stay in State courts.**

The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy. (Mar. 3, 1911, ch. 231, § 265, 36 Stat. 1162.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 720 which was derived from act Mar. 2, 1793, ch. 22, § 5, 1 Stat. 334, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

## FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under Rule 65, see note by Advisory Committee under said Rule 65.

Injunctions, see Rule 65, following section 723c of this title.

**§ 380. (Judicial Code, section 266.) Same; alleged unconstitutionality of State statutes; appeal to Supreme Court.**

No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative

board or commission acting under and pursuant to the statutes of such State, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: *Provided, however*, That one of such three judges shall be a justice of the Supreme Court or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the State, and to such other persons as may be defendants in the suit: *Provided*, That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case. It is further provided that if before the final hearing of such application a suit shall have been brought in a court of the State having jurisdiction thereof under the laws of such State, to enforce such statute or order, accompanied by a stay in such State court of proceedings under such statute or order pending the determination of such suit by such State court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State. Such stay may be vacated upon proof made after hearing, and notice of ten days served upon the attorney general of the State, that the suit in the State courts is not being prosecuted with diligence and good faith. The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit. (Mar. 3,

1911, ch. 231, § 266, 36 Stat. 1162; Mar. 4, 1913, ch. 160, 37 Stat. 1013; Feb. 13, 1925, ch. 229, § 1, 43 Stat. 938.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act June 18, 1910, ch. 309, § 17, 36 Stat. 557.

#### FEDERAL RULES OF CIVIL PROCEDURE

Assignment of cases for trial, stay of proceedings and injunctions, see Rules 40, 62, 65, following section 723c of this title.

Continuation of provisions on injunctions under Rule 65, see note by Advisory Committee under said Rule 65.

§ 380a. Same; constitutionality of Federal statute; application for hearing; appeal to Supreme Court.

No interlocutory or permanent injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any Act of Congress upon the ground that such Act or any part thereof is repugnant to the Constitution of the United States shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge. When any such application is presented to a judge, he shall immediately request the senior circuit judge (or in his absence, the presiding circuit judge) of the circuit in which such district court is located to designate two other judges to participate in hearing and determining such application. It shall be the duty of the senior circuit judge or the presiding circuit judge, as the case may be, to designate immediately two other judges from such circuit for such purpose, and it shall be the duty of the judges so designated to participate in such hearing and determination. Such application shall not be heard or determined before at least five days' notice of the hearing has been given to the Attorney General and to such other persons as may be defendants in the suit: *Provided*, That if of opinion that irreparable loss or damage would result to the petitioner unless a temporary restraining order is granted, the judge to whom the application is made may grant such temporary restraining order at any time before the hearing and determination of the application, but such temporary restraining order shall remain in force only until such hearing and determination upon notice as aforesaid, and such temporary restraining order shall contain a specific finding, based upon evidence submitted to the court making the order and identified by reference thereto, that such irreparable loss or damage would result to the petitioner and specifying the nature of the loss or damage. The said court may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension, in whole or in part, until decision upon the application. The hearing upon any such application for an interlocutory or permanent injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day. An appeal may be taken directly to the Supreme Court of the United States upon application therefor or notice thereof within thirty days after the entry of the

order, decree, or judgment granting or denying, after notice and hearing, an interlocutory or permanent injunction in such case. In the event that an appeal is taken under this section, the record shall be made up and the case docketed in the Supreme Court of the United States within sixty days from the time such appeal is allowed, under such rules as may be prescribed by the proper courts. Appeals under this section shall be heard by the Supreme Court of the United States at the earliest possible time and shall take precedence over all other matters not of a like character. This section shall not be construed to be in derogation of any right of direct appeal to the Supreme Court of the United States under existing provisions of law. (Aug. 24, 1937, ch. 754, § 3, 50 Stat. 752.)

#### DEFINITIONS

Act August 24, 1937, § 5, cited to text, provided that the term "district court of the United States" should include the District Court of the United States for the District of Columbia, the term "judge" should include justice, the term "senior circuit judge" should include the Chief Justice of the United States Court of Appeals for the District of Columbia, and the term "circuit" should include the District of Columbia.

#### FEDERAL RULES OF CIVIL PROCEDURE

Generally, see Rules 40, 62, 65, 72, following section 723c of this title.

Continuation of provisions on injunctions under Rule 65, see note by Advisory Committee under said Rule 65.

§ 381. Same; preliminary injunctions and temporary restraining orders.

No preliminary injunction shall be issued without notice to the opposite party.

No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be indorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice



may require. Nothing in this section contained shall be deemed to alter, repeal, or amend section 380 of this title. (Oct. 15, 1914, ch. 323, § 17, 38 Stat. 737.)

#### SIMILAR PROVISIONS

Prior provisions on this subject were contained in R. S. § 718 and section 263 of the Judicial Code, act Mar. 3, 1911, ch. 231, 36 Stat. 1162. R. S. § 718, which was derived from act June 1, 1872, ch. 255, 17 Stat. 197, was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168, and section 263 of the Judicial Code was repealed by act Oct. 15, 1914, cited to text.

#### FEDERAL RULES OF CIVIL PROCEDURE

Injunctions and signing of pleadings, see Rules 11, 65, following section 723c of this title.

#### CROSS REFERENCES

District Courts given jurisdiction to issue writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain violations or compel obedience to orders of Interstate Commerce Commission, see section 5 (13) of Title 49, Transportation.

Issuance of injunctions in labor disputes, see sections 107-109 of Title 29, Labor.

#### § 382. Same; security on issuance of.

Except as otherwise provided in section 26 of Title 15, no restraining order or interlocutory order of injunction shall issue, except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby. (Oct. 15, 1914, ch. 323, § 18, 38 Stat. 738.)

#### SIMILAR PROVISIONS

Prior provisions relating to temporary restraining orders, see note under section 381 of this title.

#### FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see Rule 65, following section 723c of this title.

#### CROSS REFERENCE

District Courts given jurisdiction to issue writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain violations or compel obedience to orders of Interstate Commerce Commission, see section 5 (13) of Title 49, Transportation.

#### § 383. Same; requisites of order; binding effect.

Every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, and shall be binding only upon the parties to the suit, their officers, agents, servants, employees, and attorneys, or those in active concert or participating with them, and who shall, by personal service or otherwise, have received actual notice of the same. (Oct. 15, 1914, ch. 323, § 19, 38 Stat. 738.)

#### SIMILAR PROVISIONS

Prior provisions relating to temporary restraining orders, see note under section 381 of this title.

#### FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see Rule 65, following section 723c of this title.

#### CROSS REFERENCE

District Courts given jurisdiction to issue writs of injunction or other proper process, mandatory or otherwise,

as may be necessary to restrain violations or compel obedience to orders of Interstate Commerce Commission, see section 5 (13) of Title 49, Transportation.

#### § 384. (Judicial Code, section 267.) Suits in equity, when not sustainable.

Suits in equity shall not be sustained in any court of the United States in any case where a plain, adequate, and complete remedy may be had at law. (Mar. 3, 1911, ch. 231, § 267, 36 Stat. 1163.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 723 which was derived from act Sept. 24, 1789, ch. 20, § 16, 1 Stat. 82, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### FEDERAL RULES OF CIVIL PROCEDURE

Modification of section by Rule 2, see note by Advisory Committee under said Rule 2.

One form of action, see Rule 2, following section 723c of this title.

#### § 385. (Judicial Code, section 268.) Administration of oaths; contempts.

The courts of the United States shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority. Such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts. (Mar. 3, 1911, ch. 231, § 268, 36 Stat. 1163.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 725 which was derived from acts Sept. 24, 1789, ch. 20, § 17, 1 Stat. 83; Mar. 2, 1831, ch. 99, § 1, 4 Stat. 487, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 386. Contempts; when constituting also criminal offense.

Any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States or under the laws of any State in which the act was committed shall be proceeded against for his said contempt as provided in sections 387-390 of this title. (Oct. 15, 1914, ch. 323, § 21, 38 Stat. 738.)

#### CROSS REFERENCES

Definition of persons as used in this section, see section 390a of this title.

District Courts given jurisdiction to issue writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain violations or compel obedience to orders of Interstate Commerce Commission, see section 5 (13) of Title 49, Transportation.

1911, ch. 231, § 266, 36 Stat. 1162; Mar. 4, 1913, ch. 160, 37 Stat. 1013; Feb. 13, 1925, ch. 229, § 1, 43 Stat. 938.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act June 18, 1910, ch. 309, § 17, 36 Stat. 557.

#### FEDERAL RULES OF CIVIL PROCEDURE

Assignment of cases for trial, stay of proceedings and injunctions, see Rules 40, 62, 65, following section 723c of this title.

Continuation of provisions on injunctions under Rule 65, see note by Advisory Committee under said Rule 65.

**§ 380a. Same; constitutionality of Federal statute; application for hearing; appeal to Supreme Court.**

No interlocutory or permanent injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any Act of Congress upon the ground that such Act or any part thereof is repugnant to the Constitution of the United States shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge. When any such application is presented to a judge, he shall immediately request the senior circuit judge (or in his absence, the presiding circuit judge) of the circuit in which such district court is located to designate two other judges to participate in hearing and determining such application. It shall be the duty of the senior circuit judge or the presiding circuit judge, as the case may be, to designate immediately two other judges from such circuit for such purpose, and it shall be the duty of the judges so designated to participate in such hearing and determination. Such application shall not be heard or determined before at least five days' notice of the hearing has been given to the Attorney General and to such other persons as may be defendants in the suit: *Provided*, That if of opinion that irreparable loss or damage would result to the petitioner unless a temporary restraining order is granted, the judge to whom the application is made may grant such temporary restraining order at any time before the hearing and determination of the application, but such temporary restraining order shall remain in force only until such hearing and determination upon notice as aforesaid, and such temporary restraining order shall contain a specific finding, based upon evidence submitted to the court making the order and identified by reference thereto, that such irreparable loss or damage would result to the petitioner and specifying the nature of the loss or damage. The said court may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension, in whole or in part, until decision upon the application. The hearing upon any such application for an interlocutory or permanent injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day. An appeal may be taken directly to the Supreme Court of the United States upon application therefor or notice thereof within thirty days after the entry of the

order, decree, or judgment granting or denying, after notice and hearing, an interlocutory or permanent injunction in such case. In the event that an appeal is taken under this section, the record shall be made up and the case docketed in the Supreme Court of the United States within sixty days from the time such appeal is allowed, under such rules as may be prescribed by the proper courts. Appeals under this section shall be heard by the Supreme Court of the United States at the earliest possible time and shall take precedence over all other matters not of a like character. This section shall not be construed to be in derogation of any right of direct appeal to the Supreme Court of the United States under existing provisions of law. (Aug. 24, 1937, ch. 754, § 3, 50 Stat. 752.)

#### DEFINITIONS

Act August 24, 1937, § 5, cited to text, provided that the term "district court of the United States" should include the District Court of the United States for the District of Columbia, the term "judge" should include justice, the term "senior circuit judge" should include the Chief Justice of the United States Court of Appeals for the District of Columbia, and the term "circuit" should include the District of Columbia.

#### FEDERAL RULES OF CIVIL PROCEDURE

Generally, see Rules 40, 62, 65, 72, following section 723c of this title.

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**§ 381. Same; preliminary injunctions and temporary restraining orders.**

No preliminary injunction shall be issued without notice to the opposite party.

No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be indorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice

may require. Nothing in this section contained shall be deemed to alter, repeal, or amend section 380 of this title. (Oct. 15, 1914, ch. 323, § 17, 38 Stat. 737.)

#### SIMILAR PROVISIONS

Prior provisions on this subject were contained in R. S. § 718 and section 263 of the Judicial Code, act Mar. 3, 1911, ch. 231, 36 Stat. 1162. R. S. § 718, which was derived from act June 1, 1872, ch. 255, 17 Stat. 197, was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168, and section 263 of the Judicial Code was repealed by act Oct. 15, 1914, cited to text.

#### FEDERAL RULES OF CIVIL PROCEDURE

Injunctions and signing of pleadings, see Rules 11, 65, following section 723c of this title.

#### CROSS REFERENCES

District Courts given jurisdiction to issue writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain violations or compel obedience to orders of Interstate Commerce Commission, see section 5 (13) of Title 49, Transportation.

Issuance of injunctions in labor disputes, see sections 107-109 of Title 29, Labor.

#### § 382. Same; security on issuance of.

Except as otherwise provided in section 26 of Title 15, no restraining order or interlocutory order of injunction shall issue, except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby. (Oct. 15, 1914, ch. 323, § 18, 38 Stat. 738.)

#### SIMILAR PROVISIONS

Prior provisions relating to temporary restraining orders, see note under section 381 of this title.

#### FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see Rule 65, following section 723c of this title.

#### CROSS REFERENCE

District Courts given jurisdiction to issue writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain violations or compel obedience to orders of Interstate Commerce Commission, see section 5 (13) of Title 49, Transportation.

#### § 383. Same; requisites of order; binding effect.

Every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, and shall be binding only upon the parties to the suit, their officers, agents, servants, employees, and attorneys, or those in active concert or participating with them, and who shall, by personal service or otherwise, have received actual notice of the same. (Oct. 15, 1914, ch. 323, § 19, 38 Stat. 738.)

#### SIMILAR PROVISIONS

Prior provisions relating to temporary restraining orders, see note under section 381 of this title.

#### FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see Rule 65, following section 723c of this title.

#### CROSS REFERENCE

District Courts given jurisdiction to issue writs of injunction or other proper process, mandatory or otherwise,

as may be necessary to restrain violations or compel obedience to orders of Interstate Commerce Commission, see section 5 (13) of Title 49, Transportation.

#### § 384. (Judicial Code, section 267.) Suits in equity, when not sustainable.

Suits in equity shall not be sustained in any court of the United States in any case where a plain, adequate, and complete remedy may be had at law. (Mar. 3, 1911, ch. 231, § 267, 36 Stat. 1163.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 723 which was derived from act Sept. 24, 1789, ch. 20, § 16, 1 Stat. 82, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### FEDERAL RULES OF CIVIL PROCEDURE

Modification of section by Rule 2, see note by Advisory Committee under said Rule 2.

One form of action, see Rule 2, following section 723c of this title.

#### § 385. (Judicial Code, section 268.) Administration of oaths; contempts.

The courts of the United States shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority. Such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts. (Mar. 3, 1911, ch. 231, § 268, 36 Stat. 1163.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 725 which was derived from acts Sept. 24, 1789, ch. 20, § 17, 1 Stat. 83; Mar. 2, 1831, ch. 99, § 1, 4 Stat. 487, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 386. Contempts; when constituting also criminal offense.

Any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States or under the laws of any State in which the act was committed shall be proceeded against for his said contempt as provided in sections 387-390 of this title. (Oct. 15, 1914, ch. 323, § 21, 38 Stat. 738.)

#### CROSS REFERENCES

Definition of persons as used in this section, see section 390a of this title.

District Courts given jurisdiction to issue writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain violations or compel obedience to orders of Interstate Commerce Commission, see section 5 (13) of Title 49, Transportation.

**§ 387. Same; procedure; bail; attachment; trial; punishment.**

Whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney, that there is reasonable ground to believe that any person has been guilty of criminal contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court. If the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

In all cases within the purview of sections 381-383, 386-390 of this title, section 412 of Title 18, section 52 of Title 29, sections 12, 13, and 14-27 of Title 15, such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of \$1,000, nor shall such imprisonment exceed the term of six months. In any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall

be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance. (Oct. 15, 1914, ch. 323, § 22, 38 Stat. 738.)

**CROSS REFERENCES**

Definition of person or persons as used in this section, see section 390a of this title.

District Courts given jurisdiction to issue writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain violations or compel obedience to orders of Interstate Commerce Commission, see section 5 (13) of Title 49, Transportation.

Failure of witness to appear before foreign court to answer interrogatories of United States courts made contempt punishable by fine not exceeding \$100,000, see section 717 of this title.

**§ 388. Same; review of conviction.**

The evidence taken upon the trial of any persons accused of criminal contempt may be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon appeal in all respects as provided on October 15, 1914, by law in criminal cases, and may be affirmed, reversed, or modified as justice may require. Upon the granting of such appeal, execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment shall be admitted to bail in such reasonable sum as may be required by the court, or by any justice, or any judge of any district court of the United States or any court of the District of Columbia. (Oct. 15, 1914, ch. 323, § 23, 38 Stat. 739; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

**CROSS REFERENCES**

Definition of person and persons as used in this title, see section 390a of this title.

District Courts given jurisdiction to issue writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain violations or compel obedience to orders of Interstate Commerce Commission, see section 5 (13) of Title 49, Transportation.

**§ 389. Same; not specifically enumerated.**

Nothing contained in sections 386-388 and 390 of this title shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section 386 of this title, may be punished in conformity to the usages at law and in equity prevailing on October 15, 1914. (Oct. 15, 1914, ch. 323, § 24, 38 Stat. 739.)

**CROSS REFERENCE**

District Courts given jurisdiction to issue writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain violations or compel obedience to orders of Interstate Commerce Commission, see section 5 (13) of Title 49, Transportation.

**§ 390. Same; limitations.**

No proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall

any such proceeding be a bar to any criminal prosecution for the same act or acts. (Oct. 15, 1914, ch. 323, § 25, 38 Stat. 740.)

#### CROSS REFERENCES

Definition of person and persons as used in this section, see section 390a of this title.

District courts given jurisdiction to issue writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain violations or compel obedience to orders of Interstate Commerce Commission, see section 5 (13) of Title 49, Transportation.

#### § 390a. "Person" or "persons" defined.

The word "person" or "persons" wherever used in sections 381–383, 386–390a of this title, sections 12, 13, 14–19, 20, 21, 22–27 and 44 of Title 15, and section 412 of Title 18 shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country. (Oct. 15, 1914, ch. 323, § 1, 38 Stat. 730.)

#### § 391. (Judicial Code, section 269.) New trials; harmless error.

All United States courts shall have power to grant new trials, in cases where there has been a trial by jury, for reasons for which new trials have usually been granted in the courts of law. On the hearing of any appeal, certiorari, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties. (Mar. 3, 1911, ch. 231, § 269, 36 Stat. 1163; Feb. 26, 1919, ch. 48, 40 Stat. 1181; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 726, which was derived from act Sept. 24, 1789, ch. 20, § 17, 1 Stat. 83, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under Rule 59, see note by Advisory Committee under said Rule 59.

New trials and harmless error, see Rules 59, 61, following section 723c of this title.

#### § 392. (Judicial Code, section 270.) Security for the peace and good behavior.

The judges of the Supreme Court and of the circuit courts of appeals and district courts, United States commissioners, and the judges and other magistrates of the several States, who are or may be authorized by law to make arrests for offenses against the United States, shall have the like authority to hold to security of the peace and for good behavior, in cases arising under the Constitution and laws of the United States, as may be lawfully exercised by any judge or justice of the peace of the respective States, in cases cognizable before them. (Mar. 3, 1911, ch. 231, § 270, 36 Stat. 1163.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 727, which was derived from acts Sept. 24, 1789, ch. 20, § 33, 1 Stat.

91; Mar. 2, 1793, ch. 22, § 4, 1 Stat. 334; July 16, 1798, ch. 83, 1 Stat. 609; Aug. 23, 1842, ch. 188, § 1, 5 Stat. 516; May 15, 1862, ch. 71, § 8, 12 Stat. 387; Apr. 10, 1869, ch. 22, § 2, 16 Stat. 44, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 393. (Judicial Code, section 271.) Enforcement of awards of foreign consuls.

The district courts and the United States commissioners shall have power to carry into effect, according to the true intent and meaning thereof, the award or arbitration or decree of any consul, vice consul, or commercial agent of any foreign nation, made or rendered by virtue of authority conferred on him as such consul, vice consul, or commercial agent, to sit as judge or arbitrator in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to his charge, application for the exercise of such power being first made to such court or commissioner, by petition of such consul, vice consul, or commercial agent. And said courts and commissioners may issue all proper remedial process, mesne and final, to carry into full effect such award, arbitration, or decree, and to enforce obedience thereto by imprisonment in the jail or other place of confinement in the district in which the United States may lawfully imprison any person arrested under the authority of the United States, until such award, arbitration, or decree is complied with, or the parties are otherwise discharged therefrom, by the consent in writing of such consul, vice consul, or commercial agent, or his successor in office, or by the authority of the foreign government appointing such consul, vice consul, or commercial agent. The expenses of the said imprisonment and maintenance of the prisoners, and the cost of the proceedings, shall be borne by such foreign government, or by its consul, vice consul, or commercial agent requiring such imprisonment. The marshals of the United States shall serve all such process, and do all other acts necessary and proper to carry into effect the premises, under the authority of the said courts and commissioners. (Mar. 3, 1911, ch. 231, § 271, 36 Stat. 1163.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 728 which was derived from act Aug. 8, 1846, ch. 105, 9 Stat. 78, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 394. (Judicial Code, section 272.) Appearance personally or by counsel.

In all the courts of the United States the parties may plead and manage their own causes personally, or by the assistance of such counsel or attorneys at law as, by the rules of the said courts, respectively, are permitted to manage and conduct causes therein. (Mar. 3, 1911, ch. 231, § 272, 36 Stat. 1164.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 747 which was derived from act Sept. 24, 1789, ch. 20, § 35, 1 Stat. 92, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 395. (Judicial Code, section 273.) Officers forbidden to act as attorneys.

No clerk, or assistant or deputy clerk, of any Territorial, district, or circuit court of appeals, or of the

Court of Claims, or of the Supreme Court of the United States, or marshal or deputy marshal of the United States within the district for which he is appointed, shall act as a solicitor, proctor, attorney, or counsel in any cause depending in any of said courts, or in any district for which he is acting as such officer. (Mar. 3, 1911, ch. 231, § 273, 36 Stat. 1164.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 748 which was derived from act Jan. 16, 1873, ch. 36, § 1, 17 Stat. 411, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 396. (Judicial Code, section 274.) Same; penalty.

Whoever shall violate the provisions of section 395 of this title shall be stricken from the roll of attorneys by the court upon complaint, upon which the respondent shall have due notice and be heard in his defense; and in the case of a marshal or deputy marshal so acting, he shall be recommended by the court for dismissal from office. (Mar. 3, 1911, ch. 231, § 274, 36 Stat. 1164.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 749 which was derived from act Jan. 16, 1873, ch. 36, § 2, 17 Stat. 411, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 397. (Judicial Code, section 274a.) Amendments to pleadings.

Section, act Mar. 3, 1911, ch. 231, § 274a, as added by act Mar. 3, 1915, ch. 90, 38 Stat. 956, related to amendments to pleadings to obviate objection that suit was brought on wrong side of court. Rule 2 of the Rules of Civil Procedure abolished the distinctions between law and equity. See note by Advisory Committee under said Rule 2, set out following section 723c of this title.

#### § 398. (Judicial Code, section 274b.) Equitable defenses and equitable relief in actions at law.

Section was from section 274b of act Mar. 3, 1911, ch. 231, as added by act Mar. 3, 1915, ch. 90, 38 Stat. 956. Rule 2 of the Federal Rules of Civil Procedure, set out following section 723c of this title, abolished the distinctions between actions at law and bills in equity and provided there should be one form of action to be known as a civil action. See notes of Advisory Committee under said Rule.

#### § 399. (Judicial Code, section 274c.) Amendments to show diverse citizenship.

Where, in any suit brought in or removed from any State court to any district of the United States, the jurisdiction of the district court is based upon the diverse citizenship of the parties, and such diverse citizenship in fact existed at the time the suit was brought or removed, though defectively alleged, either party may amend at any stage of the proceedings and in the appellate court upon such terms as the court may impose, so as to show on the record such diverse citizenship and jurisdiction, and thereupon such suit shall be proceeded with the same as though the diverse citizenship had been fully and correctly pleaded at the inception of the suit, or, if it be a removed case, in the petition for removal. (Mar. 3, 1911, ch. 231, § 274c, as added Mar. 3, 1915, ch. 90, 38 Stat. 956.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Amended and supplemental pleadings, see Rules 12, 15, following section 723c of this title.

Continuation of section by Rules, see note by Advisory Committee under Rule 13.

#### § 400. (Judicial Code, section 274d.) Declaratory judgments authorized; procedure.

(1) In cases of actual controversy except with respect to Federal taxes the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

(2) Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.

(3) When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict be required or not. (Mar. 3, 1911, ch. 90, § 274d, as added Mar. 3, 1915, ch. 90, § 274d, and amended June 14, 1934, ch. 512, 48 Stat. 955; Aug. 30, 1935, ch. 829, § 405, 49 Stat. 1027.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Declaratory judgments, see Rule 57, following section 723c of this title.

Form of complaint, see Form 18, appendix of forms following section 723c of this title.

Special verdicts and interrogatories, see Rule 49, following section 723c of this title.

#### § 401. Intervention by United States; constitutionality of Federal statute.

Whenever the constitutionality of any Act of Congress affecting the public interest is drawn in question in any court of the United States in any suit or proceeding to which the United States, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, the court having jurisdiction of the suit or proceeding shall certify such fact to the Attorney General. In any such case the court shall permit the United States to intervene and become a party for presentation of evidence (if evidence is otherwise receivable in such suit or proceeding) and argument upon the question of the constitutionality of such Act. In any such suit or proceeding the United States shall, subject to the applicable provisions of law, have all the rights of a party and the liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the constitutionality of such Act. (Aug. 24, 1937, ch. 754, § 1, 50 Stat. 751.)

## COURTS OF THE UNITED STATES

Act Aug. 24, 1887, § 5, cited to text, defined the term "court of the United States" as meaning the courts of record of Alaska, Hawaii, and Puerto Rico, the United States Customs Court, the United States Court of Customs and Patent Appeals, the Court of Claims, any district court of the United States, any circuit court of appeals, and the Supreme Court of the United States.

## FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 24 on this section, see note by Advisory Committee under said Rule 24.

Intervention, see Rule 24, following section 723c of this title.

## § 402. Residence requirements for retired judges.

No provision of law requiring any judge of any court of the United States to reside in any district or circuit shall be held or considered to apply to any such judge after he shall have retired. (Feb. 11, 1938, ch. 23, 52 Stat. 28.)

## Chapter 11.—JURIES

- Sec  
 411. Jurors; qualifications and exemptions.  
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## § 411. (Judicial Code, section 275.) Jurors; qualifications and exemptions.

Jurors to serve in the courts of the United States, in each State respectively, shall have the same qualifications, subject to the provisions hereinafter contained, and be entitled to the same exemptions, as jurors of the highest court of law in such State may have and be entitled to at the time when such jurors for service in the courts of the United States are summoned. (Mar. 3, 1911, ch. 231, § 275, 36 Stat. 1164.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 800 which was derived from acts July 20, 1840, ch. 47, 5 Stat. 394; Mar. 3, 1849, ch. 118, 9 Stat. 403; June 17, 1862, ch. 103, § 1, 12 Stat. 430; Apr. 20, 1871, ch. 22, § 5, 17 Stat. 15; July 15, 1870, ch. 298, § 3, 16 Stat. 368; Res. Dec. 22, 1870, No. 2, 16 Stat. 589, and was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

## FEDERAL RULES OF CIVIL PROCEDURE

Jurors, see Rule 47, following section 723c of this title.

## § 412. (Judicial Code, section 276.) Same; manner of drawing.

All such jurors, grand and petit, including those summoned during the session of the court, shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications pre-

scribed in the section last preceding, which names shall have been placed therein by the clerk of such court, or a duly qualified deputy clerk, and a commissioner, to be appointed by the judge thereof, or by the judge senior in commission in districts having more than one judge, which commissioner shall be a citizen of good standing, residing in the district in which such court is held, and a well-known member of the principal political party in the district in which the court is held opposing that to which the clerk, or a duly qualified deputy clerk then acting, may belong, the clerk, or a duly qualified deputy clerk, and said commissioner each to place one name in said box alternately, without reference to party affiliations until the whole number required shall be placed therein. (Mar. 3, 1911, ch. 231, § 276, 36 Stat. 1164; Feb. 3, 1917, ch. 27, 39 Stat. 873.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act June 30, 1879, ch. 52, § 2, 21 Stat. 43.

## FEDERAL RULES OF CIVIL PROCEDURE

Jurors, see Rule 47, following section 723c of this title.

## § 413. (Judicial Code, section 277.) Same; apportioned in district.

Jurors shall be returned from such parts of the district, from time to time, as the court shall direct, so as to be most favorable to an impartial trial, and so as not to incur an unnecessary expense, or unduly burden the citizens of any part of the district with such service. (Mar. 3, 1911, ch. 231, § 277, 36 Stat. 1164.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 802 which was derived from act Sept. 24, 1789, ch. 20, § 29, 1 Stat. 88 and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

## FEDERAL RULES OF CIVIL PROCEDURE

Jurors, see Rule 47, following section 723c of this title.

## § 414. Repealed. Apr. 21, 1928, ch. 393, 45 Stat. 439.

Section, act Jan. 16, 1925, ch. 83, § 5, 43 Stat. 752, related to grand and petit juries in Indiana.

## § 415. (Judicial Code, section 278.) Jurors not disqualified because of race or color.

No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States on account of race, color, or previous condition of servitude. (Mar. 3, 1911, ch. 231, § 278, 36 Stat. 1165.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act June 30, 1879, ch. 52, § 2, 21 Stat. 43.

## FEDERAL RULES OF CIVIL PROCEDURE

Jurors, see Rule 47, following section 723c of this title.

## § 416. (Judicial Code, section 279.) Jurors; venire; service and return.

Writs of venire facias, when directed by the court shall issue from the clerk's office, and shall be served and returned by the marshal or by his deputy; or, in case the marshal or his deputy is not an indifferent person, or is interested in the event of the cause, by



such fit person as may be specially appointed for that purpose by the court, who shall administer to him an oath that he will truly and impartially serve and return the writ. Any person named in such writ by direction of the court may be served by the marshal mailing a copy thereof to such person commanding him or her to attend as a juror at a time and place designated therein, which copy shall be registered and deposited in the post office addressed to such person at his or her usual post-office address. And the receipt of the person so addressed for such registered copy shall be regarded as personal service of such writ upon such person, and no mileage shall be allowed for the service of such person. The postage and registry fee shall be paid by the marshal and allowed him in the settlement of his accounts. (Mar. 3, 1911, ch. 231, § 279, 36 Stat. 1165; Jan. 31, 1929, ch. 126, 45 Stat. 1145.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 803, which was derived from act Sept. 24, 1789, ch. 20, § 29, 1 Stat. 88, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### FEDERAL RULES OF CIVIL PROCEDURE

Jurors, see Rule 47, following section 723c of this title.

#### § 417. (Judicial Code, section 280.) Talesmen for petit juries.

When, from challenges or otherwise, there is not a petit jury to determine any civil or criminal cause, the marshal or his deputy shall, by order of the court in which such defect of jurors happens, return jurymen from the bystanders sufficient to complete the panel; and when the marshal or his deputy is disqualified as aforesaid, jurors may be so returned by such disinterested person as the court may appoint, and such person shall be sworn, as provided in section 416 of this title. (Mar. 3, 1911, ch. 231, § 280, 36 Stat. 1165.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 804, which was derived from acts Sept. 24, 1789, ch. 20, § 29, 1 Stat. 88; Mar. 3, 1865, ch. 86, § 1, 13 Stat. 500, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### FEDERAL RULES OF CIVIL PROCEDURE

Jurors, see Rule 47, following section 723c of this title.

#### § 417a. Alternate jurors.

Whenever, in the opinion of a judge of a court of the United States about to try a defendant against whom has been filed any indictment, the trial is likely to be a protracted one, the court may cause an entry to that effect to be made in the minutes of the court, and thereupon, immediately after the jury is impaneled and sworn, the court may direct the calling of one or two additional jurors, in its discretion, to be known as alternate jurors. Such jurors must be drawn from the same source, and in the same manner, and have the same qualifications as the jurors already sworn, and be subject to the same examination and challenges: *Provided*, That the prosecution shall be entitled to one, and the defendant to two, peremptory challenges to such alternate jurors. Such alternate jurors shall be seated near, with equal power and facilities for seeing and hear-

ing the proceedings in the case, and shall take the same oath as the jurors already selected and must attend at all times upon the trial of the cause in company with the other jurors. They shall obey the orders of and be bound by the admonition of the court upon each adjournment of the court; but if the regular jurors are ordered to be kept in custody during the trial of the cause, such alternate jurors shall also be kept in confinement with the other jurors, and, except as hereinafter provided, shall be discharged upon the final submission of the case to the jury. If, before the final submission of the case, a juror die, or become ill, so as to be unable to perform his duty, the court may order him to be discharged and draw the name of an alternate, who shall then take his place in the jury box, and be subject to the same rules and regulations as though he had been selected as one of the original jurors. (June 29, 1932, ch. 309, 47 Stat. 380.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Jurors, see Rule 47, following section 723c of this title.

#### § 418. (Judicial Code, section 281.) Special juries.

When special juries are ordered in any district court, they shall be returned by the marshal in the same manner and form as is required in such cases by the laws of the several States. (Mar. 3, 1911, ch. 231, § 281, 36 Stat. 1165.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 805, which was derived from act Apr. 29, 1802, ch. 31, § 30, 2 Stat. 167, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### FEDERAL RULES OF CIVIL PROCEDURE

Jurors, see Rule 47, following section 723c of this title.

#### § 419. (Judicial Code, section 282.) Grand jurors; number when less than required number.

Every grand jury impaneled before any district court shall consist of not less than sixteen nor more than twenty-three persons. If of the persons summoned less than sixteen attend, they shall be placed on the grand jury, and the court shall order the marshal to summon, either immediately or for a day fixed, from the body of the district, and not from the bystanders, a sufficient number of persons to complete the grand jury. And whenever a challenge to a grand juror is allowed, and there are not in attendance other jurors sufficient to complete the grand jury, the court shall make a like order to the marshal to summon a sufficient number of persons for that purpose. (Mar. 3, 1911, ch. 231, § 282, 36 Stat. 1165.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 808, which was derived from act Mar. 3, 1865, ch. 86, § 1, 13 Stat. 500, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

#### § 420. (Judicial Code, section 283.) Same; foreman.

From the persons summoned and accepted as grand jurors, the court shall appoint the foreman, who shall have power to administer oaths and affirmations to witnesses appearing before the grand jury. (Mar. 3, 1911, ch. 231, § 283, 36 Stat. 1165.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 809, which was derived from act Mar. 3, 1865, ch. 86, § 1, 13 Stat. 500, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 421. (Judicial Code, section 284.) Same; when, how and by whom summoned; length of service.

No grand jury shall be summoned to attend any district court unless the judge thereof, in his own discretion or upon a notification by the district attorney that such jury will be needed, orders a venire to issue therefor. If the United States attorney for any district which has a city or borough containing at least three hundred thousand inhabitants shall certify in writing to a district judge of the district that the exigencies of the public service require it, the judge may, in his discretion, also order a venire to issue for a second grand jury. If the United States attorney for the southern district of New York shall certify in writing to the senior district judge of said district that the exigencies of the public service require it, said judge may, in his discretion, also order a venire to issue for a third grand jury. The district court may in term order a grand jury to be summoned at such time, and to serve such time as it may direct, whenever, in its judgment, it may be proper to do so. A district judge may, upon request of the district attorney or of the grand jury or on his own motion, by order authorize any grand jury to continue to sit during the term succeeding the term at which such request is made, solely to finish investigations begun but not finished by such grand jury, but no grand jury shall be permitted to sit in all during more than eighteen months: *Provided*, That, for good cause shown, the court may, at any time after the end of the term for which the grand jury was originally summoned, excuse any member of the grand jury and summon and impanel another person in his place. Nothing herein shall operate to extend beyond the time permitted by law the imprisonment before indictment found of a person accused of crime or offense, or the time during which a person so accused may be held under recognizance before indictment found. (Mar. 3, 1911, ch. 231, § 284, 36 Stat. 1165; Feb. 25, 1931, ch. 297, 46 Stat. 1417; Aug. 24, 1937, ch. 746, 50 Stat. 748; Apr. 17, 1940, ch. 101, 54 Stat. 110.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 810, as amended by act Mar. 28, 1910, ch. 134, 36 Stat. 267, which was derived from acts Sept. 24, 1789, ch. 20, § 29, 1 Stat. 88; May 20, 1826, ch. 136, 4 Stat. 188; Aug. 8, 1846, ch. 98, § 3, 9 Stat. 72; Aug. 16, 1856, ch. 124, § 7, 11 Stat. 50, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 422. (Judicial Code, section 285.) Same; discharge.

The district courts, the district courts of the Territories, and the district court of the United States for the District of Columbia may discharge their grand juries whenever they deem a continuance of the sessions of such juries unnecessary. (Mar. 3, 1911, ch. 231, § 285, 36 Stat. 1166; June 25, 1936, ch. 804, 49 Stat. 1921.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 811 which was derived from act Aug. 16, 1856, ch. 124, § 7, 11 Stat. 50, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 423. (Judicial Code, section 286.) Jurors not to serve more than once a year.

No person shall serve as a petit juror in any district court more than one term in a year; and it shall be sufficient cause of challenge to any juror called to be sworn in any cause that he has been summoned and attended said court as a juror at any term of said court held within one year prior to the time of such challenge. (Mar. 3, 1911, ch. 231, § 286, 36 Stat. 1166.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 812 which was derived from act July 15, 1870, ch. 298, § 2, 16 Stat. 363, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

## FEDERAL RULES OF CIVIL PROCEDURE

Jurors, see Rule 47, following section 723c of this title.

§ 424. (Judicial Code, section 287.) Challenges.

When the offense charged is treason or a capital offense, the defendant shall be entitled to twenty and the United States to six peremptory challenges. On the trial of any other felony, the defendant shall be entitled to ten and the United States to six peremptory challenges; and in all other cases, civil and criminal, each party shall be entitled to three peremptory challenges; and in all cases where there are several defendants or several plaintiffs, the parties on each side shall be deemed a single party for the purposes of all challenges under this section. All challenges, whether to the array or panel, or to individual jurors for cause or favor, shall be tried by the court without the aid of triers. (Mar. 3, 1911, ch. 231, § 287, 36 Stat. 1166.)

## SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 819 and 4303 which were derived from acts June 8, 1872, ch. 333, § 2, 17 Stat. 282, and June 11, 1864, ch. 121, 13 Stat. 125, respectively. R. S. § 819 was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

## FEDERAL RULES OF CIVIL PROCEDURE

Jurors, see Rule 47, following section 723c of this title.

§ 425. Peremptory challenges exceeding number allowed.

If, in the trial of a capital offense, the party indicted peremptorily challenges jurors above the number allowed him by law, such excess of challenges shall be disallowed by the court, and the cause shall proceed for trial in the same manner as if they had not been made. (R. S. § 1031.)

## DERIVATION

Acts Mar. 3, 1835, ch. 40, § 4, 4 Stat. 777; Mar. 3, 1865, ch. 86, § 2, 13 Stat. 500.

§ 426. (Judicial Code, section 288.) Disqualification for service in prosecutions for bigamy, polygamy, or unlawful cohabitation.

In any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, it shall be sufficient cause of challenge to any

person drawn or summoned as a juror or talesman—

First, that he is or has been living in the practice of bigamy, polygamy, or unlawful cohabitation with more than one woman, or that he is or has been guilty of an offense punishable by sections 513 and 514 of Title 18; or

Second, that he believes it right for a man to have more than one living and undivorced wife at the same time, or to live in the practice of cohabiting with more than one woman.

Any person appearing or offered as a juror or talesman, and challenged on either of the foregoing grounds, may be questioned on his oath as to the existence of any such cause of challenge; and other evidence may be introduced bearing upon the question raised by such challenge; and this question shall be tried by the court.

But as to the first ground of challenge before mentioned, the person challenged shall not be bound to answer if he shall say upon his oath that he declines on the ground that his answer may tend to criminate himself; and if he shall answer as to said first ground, his answer shall not be given in evidence in any criminal prosecution against him for any offense above named; but if he declines to answer on any ground, he shall be rejected as incompetent. (Mar. 3, 1911, ch. 231, § 288, 36 Stat. 1166.)

#### SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act Mar. 22, 1882, ch. 47, § 5, 22 Stat. 31, which was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

### Chapter 12.—GENERAL PROVISIONS

#### Sec.

430. Circuit courts abolished; records.

430a. Transfer of powers and duties to district courts.

431. References to laws revised refer to sections of Judicial Code.

432. Sections 1-5 of Title 1 govern construction of the Judicial Code.

432a. Judicial Code as continuation of existing laws.

433. Inference of legislative construction.

434. Designation as "The Judicial Code."

§ 430. (Judicial Code, section 289.) Circuit courts abolished; records.

The circuit courts of the United States, on and after January 1, 1912, are abolished; and thereupon, on said date, the clerks of said courts shall deliver to the clerks of the district courts of the United States for their respective districts all the journals, dockets, books, files, records, and other books and papers of or belonging to or in any manner connected with said circuit courts; and shall also on said date deliver to the clerks of said district courts all moneys, from whatever source received, then remaining in their hands or under their control as clerks of said circuit courts, or received by them by virtue of their said offices. The journals, dockets, books, files, records, and other books and papers so delivered to the clerks of the several district courts shall be and remain a part of the official records of said district courts, and copies thereof, when certified under the hand and seal of the clerk of the district court, shall be received as evidence equally with the originals thereof; and the clerks

of the several district courts shall have the same authority to exercise all the powers and to perform all the duties with respect thereto as the clerks of the several circuit courts had prior to January 1, 1912. (Mar. 3, 1911, ch. 231, § 289, 36 Stat. 1167.)

§ 430a. (Judicial Code, section 291.) Transfer of powers and duties to district courts.

Wherever, in any law not embraced within this title, any reference is made to, or any power or duty is conferred or imposed upon, the circuit courts, such reference shall, on and after January 1, 1912, be deemed and held to refer to, and to confer such power and impose such duty upon, the district courts. (Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

#### REFERENCES IN TEXT

As used in this section "this title" means the Judicial Code.

§ 431. (Judicial Code, section 292.) References to laws revised refer to sections of Judicial Code.

Wherever, in any law not contained within the Judicial Code, a reference is made to any law revised or embraced in such Code, such reference shall be construed to refer to the section of the Judicial Code into which has been carried or revised the provision of law to which reference is so made. (Mar. 3, 1911, ch. 231, §§ 292, 301, 36 Stat. 1167, 1169.)

§ 432. (Judicial Code, section 293.) Sections 1-5 of Title 1 govern construction of the Judicial Code.

The provisions of sections 1-5 of Title 1, both inclusive, shall apply to and govern the construction of the provisions of the Judicial Code. (Mar. 3, 1911, ch. 231, § 293, 36 Stat. 1167.)

§ 432a. (Judicial Code, section 294.) Judicial Code as continuation of existing laws.

The provisions of this title, so far as they are substantially the same as existing statutes, shall be construed as continuations thereof, and not as new enactments, and there shall be no implication of a change of intent by reason of a change of words in such statute, unless such change of intent shall be clearly manifest. (Mar. 3, 1911, ch. 231, § 294, 36 Stat. 1167.)

§ 433. (Judicial Code, section 295.) Inference of legislative construction.

The arrangement and classification of the several sections of the Judicial Code have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the chapter under which any particular section of the Judicial Code is placed. (Mar. 3, 1911, ch. 231, § 295, 36 Stat. 1167.)

§ 434. (Judicial Code, section 296.) Designation as "The Judicial Code."

The Act of March 3, 1911, chapter 231 (36 Stat. 1087), may be designated and cited as "The Judicial Code." (Mar. 3, 1911, ch. 231, § 296, 36 Stat. 1168.)

## Chapter 13.—REPEALING PROVISIONS

Sec.

441. Effect of repeal; terms of judges; salaries.  
 442. Same; rights not affected.  
 443. Offenses committed, how prosecuted and enforced.

§ 441. (Judicial Code, section 298.) Effect of repeal; terms of judges; salaries.

The repeal by the Judicial Code of laws existing prior to March 3, 1911, providing for the appointment of judges and other officers mentioned in the Judicial Code, or affecting the organization of the courts, shall not be construed to affect the tenure of office of the incumbents (except the office be abolished), but they shall continue to hold their respective offices during the terms for which appointed, unless removed as provided by law; nor (except the office be abolished) shall such repeal affect the salary or fees or compensation of any officer or person holding office or position by virtue of any law. (Mar. 3, 1911, ch. 231, § 298, 36 Stat. 1169.)

§ 442. (Judicial Code, section 299.) Same; rights not affected.

The repeal by the Judicial Code of laws existing prior to March 3, 1911, or the amendments thereof, embraced in the Judicial Code, shall not affect any act done, or any right accruing or accrued, or any suit or proceeding, including those pending on writ of error, appeal, certificate, or writ of certiorari, in any appellate court referred to or included within, the provisions of the Judicial Code pending on March 3, 1911, but all such suits and proceedings, and suits and proceedings for causes arising or acts done prior to such date, may be commenced and prosecuted within the same time, and with the same effect, as if said repeal or amendments had not been made. (Mar. 3, 1911, ch. 231, § 299, 36 Stat. 1169.)

§ 443. (Judicial Code, section 300.) Offenses committed, how prosecuted and enforced.

All offenses committed, and all penalties, forfeitures, or liabilities incurred prior to March 3, 1911, under any law embraced in, amended, or repealed by the Judicial Code, may be prosecuted and punished, or sued for and recovered, in the district courts, in the same manner and with the same effect as if such Code had not been passed. (Mar. 3, 1911, ch. 231, § 300, 36 Stat. 1169.)

## Chapter 13A.—THE ADMINISTRATION OF THE UNITED STATES COURTS

Sec.

444. Administrative Office of the United States Courts; director; assistant director.  
 445. Employees; appointment; compensation; prohibiting practice in Federal courts.  
 446. Director; duties.  
 447. Annual estimates of expenditures; annual report of activities.  
 448. Council of circuit judges; directions to district judges.  
 449. Circuit conference for improving administration of justice; expenses of judges.  
 450. Courts affected; definitions.

Act Aug. 7, 1939, ch. 501, § 1, 53 Stat. 1223, added this chapter as Chapter XV of the Judicial Code.

§ 444. (Judicial Code, section 302.) Administrative Office of the United States Courts; director; assistant director.

There shall be at the seat of government an establishment to be known as the Administrative Office of the United States Courts, with a Director at the head thereof who shall be appointed by the Supreme Court of the United States and hold office at the pleasure of and be subject to removal by the aforesaid Court. There shall be in said establishment an Assistant Director, to be appointed and hold office in like manner, who shall perform such duties as may be assigned to him by the Director and, during the absence or incapacity of the Director or during a vacancy in that office, shall act as Director. The Director and Assistant Director shall receive annual salaries of \$10,000 and \$7,500, respectively. The Director shall cause a seal of office to be made for the said establishment of such design as the Supreme Court of the United States shall approve, and judicial notice shall be taken of the said seal. (Mar. 3, 1911, ch. 231, § 302, as added Aug. 7, 1939, ch. 501, § 1, 53 Stat. 1223.)

## EFFECTIVE DATE

Section 7 of act Aug. 7, 1939, cited to text, provided as follows: "Sec. 7. This Act shall take effect ninety days after its approval."

§ 445. (Judicial Code, section 303.) Employees; appointment; compensation; prohibiting practice in Federal courts.

The Director, with the approval of the Supreme Court, shall have authority, subject to the civil-service laws, to appoint such employees as are deemed necessary to perform the functions and duties vested in said establishment by this chapter, and the Director shall fix their compensation according to sections 661-673 and 674 of Title 5. During his term of office or employment, no officer or employee of said establishment shall engage directly or indirectly in the practice of law in any of the courts of the United States. (Mar. 3, 1911, ch. 231, § 303, as added Aug. 7, 1939, ch. 501, § 1, 53 Stat. 1223.)

## EFFECTIVE DATE

Section 7 of act Aug. 7, 1939, cited to text, provides that such act should take effect ninety days after its approval.

§ 446. (Judicial Code, section 304.) Director; duties.

The Director shall be the administrative officer of the United States courts and shall have charge, under the supervision and direction of the conference of senior circuit judges, of—

(1) All administrative matters relating to the offices of the clerks and other clerical and administrative personnel of the courts, but nothing contained in this chapter shall be construed as affecting the authority of the courts to appoint their administrative or clerical personnel, or the authority of the Attorney General respecting United States marshals and their deputies, United States attorneys and their assistants;

(2) Examining the state of the dockets of the various courts and securing information as to their needs for assistance, if any, and the preparation of statistical data and reports of the business transacted by the courts, and promptly transmitting the

information so obtained quarterly to the senior circuit judges of the respective circuits, to the end that proper action may be taken with respect thereto, but inspections of the dockets of the courts outside the continental United States shall be made through officials of the United States Government residing within the jurisdiction, respectively, of the said courts;

(3) The disbursement, directly and through the several United States marshals as now provided by law, of the moneys appropriated for the maintenance, support, and operation of the courts;

(4) The purchase, exchange, transfer, and distribution of equipment and supplies;

(5) The examination and audit of vouchers and accounts of the officials and employees covered by this chapter;

(6) The providing of accommodations for the use of the courts and the various officials and employees covered by this chapter; and

(7) Such other matters as may be assigned to him by the Supreme Court and the conference of the senior circuit judges. The clerks of the district courts, their deputies and assistants, and all other employees of said courts shall comply with any and all requests made by the Director or one of his assistants for information and statistical data bearing on the state of the dockets of such courts. (Mar. 3, 1911, ch. 231, § 304, as added Aug. 7, 1939, ch. 501, § 1, 53 Stat. 1223.)

#### TRANSFER OF EMPLOYEES, FUNCTIONS AND FUNDS

Sections 3-6 of act Aug. 7, 1939, cited to text, provided as follows:

"Sec. 3. Those employees of the Department of Justice engaged in the audit of accounts and vouchers referred to in section 304 of the Judicial Code [this section] shall, as far as practicable, be transferred to the Administrative Office of the United States Courts. In such event, the appropriations available for the current fiscal year, from which such employees are paid, shall be apportioned between the Department of Justice and the Administrative Office of the United States Courts, on the basis of duties transferred to the latter office. All records, documents, and papers relating to the audit of accounts referred to in section 304 of the Judicial Code [this section] shall be transferred from the Department of Justice to the Administrative Office of the United States Courts.

"Sec. 4. All unexpended appropriations for the support, maintenance, and operation of the courts specified in section 306 of the Judicial Code [section 448 of this title] for the current fiscal year, and all unexpended appropriations covering judicial personnel as specified in section 304 (1) of the Judicial Code [this section] including appropriations for the salaries of justices and judges who have retired or who have resigned under the provisions of section 260 of the Judicial Code (U. S. C., Title 28, Sec. 375), are hereby transferred to the control of the Administrative Office of the United States Courts.

"Sec. 5. All powers and duties now conferred or imposed by law upon the Department of Justice or the Attorney General, relating to the administrative audit of the accounts and vouchers referred to in section 304 of the Judicial Code [this section], are hereby transferred to and vested in the Administrative Office of the United States Courts.

"Sec. 6. All administrative powers and duties now conferred or imposed by law upon the Department of Justice or the Attorney General, respecting clerks of courts, deputy clerks of courts and clerical assistants, law clerks, secretaries, and stenographers to the judges, and librarians in charge of libraries of the courts, and such other employees of the courts not excluded by section 304 of chapter XV as hereinbefore set forth, are hereby vested

in the Administrative Office of the United States Courts."

Section 7 of act Aug. 7, 1939, cited to text, provides that such act should take effect ninety days after its approval.

§ 447. (Judicial Code, section 305.) Annual estimates of expenditures; annual report of activities.

The Director, under the supervision of the conference of senior circuit judges, shall prepare and submit annually to the Bureau of the Budget estimates of the expenditures and appropriations necessary for the maintenance and operation of the United States courts and the administrative office of the United States courts, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, in accordance with the provisions of act June 10, 1921, ch. 18, 42 Stat. 20. Such estimates in respect of the circuit courts of appeals, the district courts of the United States, and the courts hereinafter referred to in the Territories and possessions, and of the administrative office shall be approved by the conference of senior circuit judges before their presentation to the Bureau of the Budget. Such estimates in respect to the United States Court of Customs and Patent Appeals, the Court of Claims, and the United States Customs Court shall be approved by the judges of such courts, respectively, before submission to the Bureau of the Budget. All estimates so submitted shall be included in the Budget without revision (but subject to the recommendations of the Bureau of the Budget thereon), in the same manner as is provided for the estimates of the Supreme Court by section 11 of Title 31. The Director shall submit annually to the conference of senior circuit judges a report of the activities of the administrative office and of the state of business of the courts, together with the statistical data compiled and submitted by him to the senior circuit judges as provided by clause 2 of section 446, with his recommendations. Such report shall be filed at least two weeks prior to the annual meeting of the conference, and a copy thereof shall also be filed with the Congress and with the Attorney General. Such report shall be a public document. (Mar. 3, 1911, ch. 231, § 305, as added Aug. 7, 1939, ch. 501, § 1, 53 Stat. 1223.)

#### REFERENCES IN TEXT

Act June 10, 1921, to which reference is made in this section, was incorporated into the Code as section 510 of this title and sections 1, 2, 11, 13-24, 41-47, 49-55, 71, 471, 581 of Title 31, Money and Finance.

#### EFFECTIVE DATE

Section 7 of act Aug. 7, 1939, cited to text, provides that such act should take effect ninety days after its approval.

§ 448. (Judicial Code, section 306.) Council of circuit judges; directions to district judges.

To the end that the work of the district courts shall be effectively and expeditiously transacted, it shall be the duty of the senior circuit judge of each circuit to call at such time and place as he shall designate, but at least twice in each year, a council composed of the circuit judges for such circuit, who are hereby designated a council for that purpose, at which council the senior circuit judge shall preside. The senior judge shall submit to the council

the quarterly reports of the Director required to be filed by the provisions of section 446, clause (2), and such action shall be taken thereon by the council as may be necessary. It shall be the duty of the district judges promptly to carry out the directions of the council as to the administration of the business of their respective courts. Nothing contained in this section shall affect the provisions of existing law relating to the assignment of district judges to serve outside of the districts for which they, respectively, were appointed. (Mar. 3, 1911, ch. 231, § 306, as added Aug. 7, 1939, ch. 501, § 1, 53 Stat. 1223.)

#### EFFECTIVE DATE

Section 7 of act Aug. 7, 1939, cited to text, provides that such act should take effect ninety days after its approval.

#### § 449. (Judicial Code, section 307.) Circuit conference for improving administration of justice; expenses of judges.

A conference shall be held annually in each judicial circuit, at such time and place, as shall be designated by the senior circuit judge thereof, which conference shall be composed of circuit and district judges in such circuit who reside within the continental United States, with participation in such conference on the part of members of the bar under rules to be prescribed by the circuit courts of appeals, for the purpose of considering the state of the business of the courts and advising ways and means of improving the administration of justice within the circuit. The senior circuit judge and each judge summoned and attending such conferences shall be allowed his actual expenses of travel and his necessary expenses for subsistence, not to exceed \$10 per day, which payments shall be made by the United States marshal for the district in which the conference is held, upon the written certificate of the judge incurring such expenses. (Mar. 3, 1911, ch. 231, § 307, as added Aug. 7, 1939, ch. 501, § 1, 53 Stat. 1223.)

#### EFFECTIVE DATE

Section 7 of act Aug. 7, 1939, cited to text, provides that such act should take effect ninety days after its approval.

#### TRANSFERS OF FUNCTIONS

Disbursement functions of United States marshals which would otherwise have devolved upon the Treasury Department on July 1, 1940, by virtue of Ex. Ord. No. 6166, June 10, 1933, as amended, set out in note under section 132 of Title 5, were transferred to and vested in Department of Justice to be exercised by United States marshals under supervision of Attorney General in accordance with existing statutes pertaining to such functions, by Reorg. Plan No. IV, § 8, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1234, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See, also, sections 13-15 of said plan for provisions relating to transfer of functions of department heads, records, property, personnel, and funds.

#### § 450. (Judicial Code, section 308.) Courts affected; definitions.

The provisions of this chapter shall apply to the several United States circuit courts of appeals, the United States Court of Appeals for the District of Columbia, the several district courts of the United States in the continental United States, the Court of Claims, the United States Court of Customs and Patent Appeals, the United States Customs Court,

the District Court for the District of Alaska, the District Court for the District of Hawaii, the District Court of the United States for Puerto Rico, the United States District Court for the District of the Canal Zone, the District Court of the Virgin Islands, and the United States Court for China. The term "courts" as used in this chapter means the courts specified in this section. The term "continental United States" as used in this chapter means the States of the Union and the District of Columbia. For the purposes of this chapter, the District of Columbia shall be deemed to be a judicial circuit. The chief justice of the United States Court of Appeals for the District of Columbia shall have the duties, powers, and authority of the senior circuit judge for such circuit, and the associate justices of the United States Court of Appeals for the District of Columbia shall have the duties, powers, and authority of circuit judges for such circuit. (Mar. 3, 1911, ch. 231, § 308, as added Aug. 7, 1939, ch. 501, § 1, 53 Stat. 1223.)

#### EFFECTIVE DATE

Section 7 of act Aug. 7, 1939, cited to text, provides that such act should take effect ninety days after its approval.

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#### FEDERAL RULES OF CIVIL PROCEDURE

Application of, see Rule 81, following section 723c of this title.

Continuation of chapter under Rule 81, see note by Advisory Committee under said Rule 81.

#### § 451. Power of courts.

The Supreme Court and the district courts shall have power to issue writs of habeas corpus. (R. S. § 751; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

## DERIVATION

Acts Sept. 24, 1789, ch. 20, § 14, 1 Stat. 81; Mar. 2, 1833, ch. 57, § 7, 4 Stat. 634; Aug. 29, 1842, ch. 257, § 1, 5 Stat. 539; Feb. 5, 1867, ch. 28, § 1, 14 Stat. 385; Apr. 10, 1869, ch. 22, § 2, 16 Stat. 44.

### § 452. Power of judges; place of entering order of circuit judge.

The several justices of the Supreme Court and the several judges of the circuit courts of appeal and of the district courts, within their respective jurisdictions, shall have power to grant writs of habeas corpus for the purpose of an inquiry into the cause of restraint of liberty. A circuit judge shall have the same power to grant writs of habeas corpus within his circuit, that a district judge has within his district; and the order of the circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had. (R. S. § 752; Feb. 13, 1925, ch. 229, § 6, 43 Stat. 940.)

## DERIVATION

Acts Sept. 24, 1789, ch. 20, § 14, 1 Stat. 81; Mar. 2, 1833, ch. 57, § 7, 4 Stat. 634; Aug. 29, 1842, ch. 257, § 1, 5 Stat. 539; Feb. 5, 1867, ch. 28, § 1, 14 Stat. 385; Apr. 10, 1869, ch. 22, § 2, 16 Stat. 44.

## CROSS REFERENCE

Circuit judge's power to grant habeas corpus as same as district judge's power in his district, see also section 463 (a) of this title.

### § 453. When prisoner is in jail.

The writ of habeas corpus shall in no case extend to a prisoner in jail unless where he is in custody under or by color of the authority of the United States, or is committed for trial before some court thereof; or is in custody for an act done or omitted in pursuance of a law of the United States, or of an order, process, or decree of a court or judge thereof; or is in custody in violation of the Constitution or of a law or treaty of the United States; or, being a subject or citizen of a foreign State, and domiciled therein, is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, or order, or sanction of any foreign State, or under color thereof, the validity and effect whereof depend upon the law of nations; or unless it is necessary to bring the prisoner into court to testify. (R. S. § 753.)

## DERIVATION

Acts Sept. 24, 1789, ch. 20, § 14, 1 Stat. 81; Mar. 2, 1833, ch. 57, § 7, 4 Stat. 634; Aug. 29, 1842, ch. 257, § 1, 5 Stat. 539; Feb. 5, 1867, ch. 28, § 1, 14 Stat. 385.

### § 454. Application for; complaint in writing.

Application for writ of habeas corpus shall be made to the court, or justice, or judge authorized to issue the same, by complaint in writing, signed by the person for whose relief it is intended, setting forth the facts concerning the detention of the party restrained, in whose custody he is detained, and by virtue of what claim or authority, if known. The facts set forth in the complaint shall be verified by the oath of the person making the application. (R. S. § 754.)

## DERIVATION

Act Feb. 5, 1867, ch. 28, § 1, 14 Stat. 385.

### § 455. Allowance and direction.

The court, or justice, or judge to whom such application is made shall forthwith award a writ of habeas corpus, unless it appears from the petition itself that the party is not entitled thereto. The writ shall be directed to the person in whose custody the party is detained. (R. S. § 755.)

## DERIVATION

Act Feb. 5, 1867, ch. 28, § 1, 14 Stat. 385.

### § 456. Time of return.

Any person to whom such writ is directed shall make due return thereof within three days thereafter, unless the party be detained beyond the distance of twenty miles; and if beyond that distance and not beyond a distance of a hundred miles, within ten days; and if beyond the distance of a hundred miles, within twenty days. (R. S. § 756.)

## DERIVATION

Act Feb. 5, 1867, ch. 28, § 1, 14 Stat. 385.

### § 457. Form of return.

The person to whom the writ is directed shall certify to the court, or justice, or judge before whom it is returnable the true cause of the detention of such party. (R. S. § 757.)

## DERIVATION

Act Feb. 5, 1867, ch. 28, § 1, 14 Stat. 385.

### § 458. Body to be produced.

The person making the return shall at the same time bring the body of the party before the judge who granted the writ. (R. S. § 758.)

## DERIVATION

Act Feb. 5, 1867, ch. 28, § 1, 14 Stat. 385.

### § 459. Day for hearing.

When the writ is returned, a day shall be set for the hearing of the cause, not exceeding five days thereafter, unless the party petitioning requests a longer time. (R. S. § 759.)

## DERIVATION

Act Feb. 5, 1867, ch. 28, § 1, 14 Stat. 385.

### § 460. Denial of return; counter allegations; amendments.

The petitioner or the party imprisoned or restrained may deny any of the facts set forth in the return, or may allege any other facts that may be material in the case. Said denials or allegations shall be under oath. The return and all suggestions made against it may be amended, by leave of the court, or justice, or judge, before or after the same are filed, so that thereby the material facts may be ascertained. (R. S. § 760.)

## DERIVATION

Act Feb. 5, 1867, ch. 28, § 1, 14 Stat. 385.

### § 461. Summary hearing; disposition of party.

The court, or justice, or judge shall proceed in a summary way to determine the facts of the case, by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice require. (R. S. § 761.)

## DERIVATION

Act Feb. 5, 1867, ch. 28, § 1, 14 Stat. 385.



**§ 462. Cases involving law of nations; notice of service.**

When a writ of habeas corpus is issued in the case of any prisoner who, being a subject or citizen of a foreign State and domiciled therein, is committed, or confined, or in custody, by or under the authority or law of any one of the United States, or process founded thereon, on account of any act done or omitted under an alleged right, title, authority, privilege, protection, or exemption, claimed under the commission or order or sanction of any foreign State, or under color thereof, the validity and effect whereof depend upon the law of nations, notice of the said proceeding, to be prescribed by the court, or justice, or judge at the time of granting said writ, shall be served on the attorney general or other officer prosecuting the pleas of said State, and due proof of such service shall be made to the court, or justice, or judge before the hearing. (R. S. § 762.)

**DERIVATION**

Act Aug. 29, 1842, ch. 257, § 5 Stat. 539.

**§ 463. Review—(a) By circuit courts of appeals; jurisdiction of circuit judge to issue writ.**

In a proceeding in habeas corpus in a district court, or before a district judge or a circuit judge, the final order shall be subject to review, on appeal, by the circuit court of appeals of the circuit wherein the proceeding is had: *Provided, however,* That there shall be no right of appeal from such order in any habeas corpus proceeding to test the validity of a warrant of removal issued pursuant to the provisions of section 591 of Title 18 or the detention pending removal proceedings. A circuit judge shall have the same power to grant writs of habeas corpus within his circuit that a district judge has within his district. The order of the circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

**(b) Review by United States Court of Appeals for the District of Columbia.**

In such a proceeding in the District Court of the United States for the District of Columbia, or before a justice thereof, the final order shall be subject to review on appeal, by the United States Court of Appeals for the District of Columbia: *Provided, however,* That there shall be no right of appeal from such order in any habeas corpus proceeding to test the validity of a warrant of removal issued pursuant to the provisions of section 591 of Title 18 or the detention pending removal proceedings.

**(c) Sections 346 and 347 of this title applicable.**

Sections 346 and 347 of this title shall apply to habeas corpus cases in the circuit courts of appeals and in the United States Court of Appeals for the District of Columbia as to other cases therein.

**(d) Certain sections applicable.**

The provisions of sections 464 to 466 of this title shall apply to appellate proceedings under this section as they have applied prior to February 13, 1925, to direct appeals to the Supreme Court. (Feb. 13, 1925, ch. 229, § 6, 43 Stat. 940; June 7, 1934, ch.

426, 48 Stat. 926; June 25, 1936, ch. 804, 49 Stat. 1921; June 29, 1938, ch. 806, 52 Stat. 1232.)

**CROSS REFERENCE**

Power of judges to issue writs of habeas corpus and place of entry of writs, see section 452 of this title.

**§ 464. Appeals, how taken.**

The appeals allowed by section 463 of this title shall be taken on such terms, and under such regulations and orders, as well for the custody and appearance of the person alleged to be in prison or confined or restrained of his liberty, as for sending up to the appellate tribunal a transcript of the petition, writ of habeas corpus, return thereto, and other proceedings, as may be prescribed by the Supreme Court, or, in default thereof, by the court or judge hearing the cause. (R. S. § 765; Feb. 13, 1925, ch. 229, §§ 8, 13, 43 Stat. 940, 941.)

**DERIVATION**

Acts Aug. 29, 1842, ch. 257, § 5 Stat. 539; Feb. 5, 1867, ch. 28, § 1, 14 Stat. 385.

**§ 465. Pending proceedings in certain cases; limitation of appeals.**

Pending the proceedings or appeal in the cases mentioned in sections 463 and 464 of this title, and until final judgment therein, and after final judgment of discharge, any proceeding against the person so imprisoned and confined or restrained of his liberty, in any State court, or by or under the authority of any State, for any matter so heard and determined, or in process of being heard and determined, under such writ of habeas corpus, may be stayed by a judge of any court of the United States in which are pending any such proceedings or appeal. After the granting of such a stay any such proceeding in any State court, or by or under the authority of any State, subsequent thereto pending the final adjudication of such habeas corpus proceedings in the court of the United States shall be deemed null and void. If no such stay is granted, any such proceeding in any State court, or by or under the authority of any State, shall be as valid and of as full force and effect as if no proceedings or appeal in the cases mentioned in sections 462-464 of this title were pending in any court of the United States. No such appeal shall be had or allowed unless taken within three months after the date of the judgment or order complained of. Any proceeding, except final judgment or execution thereof, heretofore taken in any State court, or by or under the authority of any State, for any matter heard and determined, or in process of being heard and determined, in any proceeding or appeal in the cases mentioned in sections 463 and 464 of this title now pending in any court of the United States, shall be as valid and of as full force and effect as if no such proceedings or appeal had been pending in any court of the United States at the time such proceeding was taken. (R. S. § 766; Mar. 3, 1893, ch. 226, 27 Stat. 751; Feb. 13, 1925, ch. 229, § 8 (c), 43 Stat. 940; June 19, 1934, ch. 673, 48 Stat. 1177.)

**DERIVATION**

Acts Aug. 29, 1842, ch. 257, § 5 Stat. 539; Feb. 5, 1867, ch. 28, § 1, 14 Stat. 385.

**§ 466. Appeal to circuit court of appeals; certificate of probable cause.**

From a final decision by a court of the United States in a proceeding in habeas corpus where the detention complained of is by virtue of process issued out of a State court no appeal to the circuit court of appeals shall be allowed unless the United States court by which the final decision was rendered or a judge of the circuit court of appeals shall be of opinion that there exists probable cause for an appeal, in which event, on allowing the same, the said court or judge shall certify that there is probable cause for such allowance. (Mar. 10, 1908, ch. 76, 35 Stat. 40; Feb. 13, 1925, ch. 229, §§ 6, 13, 43 Stat. 940, 942.)

**Chapter 15.—DISTRICT ATTORNEYS, MARSHALS, CLERKS, AND OTHER COURT OFFICERS, AND COMMISSIONERS**

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**§ 481. District attorneys.**

There shall be appointed in each district, including the District of Columbia, a person learned in the law, to act as attorney for the United States in such district. (R. S. § 767; June 26, 1876, ch. 147, §§ 1, 4, 19 Stat. 61, 62; Feb. 24, 1879, ch. 97, § 8, 20 Stat. 320; Mar. 3, 1881, ch. 144, § 7, 21 Stat. 507; Apr. 25, 1882, ch. 87, §§ 1, 3, 22 Stat. 47; July 20, 1882, ch. 312, § 3, 22 Stat. 172; Aug. 5, 1886, ch. 928, § 7, 24 Stat. 309; Feb. 22, 1889, ch. 180, § 21, 25 Stat. 682; July 3, 1890, ch. 656, § 16, 26 Stat. 217; July 10, 1890, ch. 664, § 16, 26 Stat. 225; Mar. 3, 1893, ch. 220, 27 Stat. 745; July 16, 1894, ch. 138, §§ 14, 16, 28 Stat. 110, 111; June 24, 1898, ch. 495, § 1, 30 Stat. 487; May 12, 1900, ch. 391, § 9, 31 Stat. 176; Jan. 22, 1901, ch. 105, §§ 4, 7, 31 Stat. 736, 737; Feb. 12, 1901, ch. 355, §§ 5, 7, 31 Stat. 782; Mar. 2, 1901, ch. 801, §§ 3, 5, 31 Stat. 881; Mar. 11, 1902, ch. 183, §§ 5, 6, 32 Stat. 66; Mar. 2, 1905, ch. 1305, §§ 4, 6, 33 Stat. 824; Mar. 3, 1905, ch. 1427, §§ 13, 15, 19, 33 Stat. 995, 996; June 16, 1906, ch. 3335, § 13, 34 Stat. 275; Mar. 3, 1915, ch. 100, §§ 3, 4, 38 Stat. 961; May 28, 1926, ch. 414, § 2 (b), 44 Stat. 672; Apr. 21, 1928, ch. 393, 45 Stat. 437.)

**§ 482. Same; term and oath.**

District attorneys of the United States, including the District of Columbia and the Territories, shall be appointed and commissioned for a term of four years, and shall continue to discharge the duties of their respective offices, unless sooner removed by the President, until their successors shall be appointed and qualify in their stead. Every district attorney, before entering upon his office shall be sworn to a faithful execution thereof. (R. S. § 769; June 24, 1898, ch. 495, § 1, 30 Stat. 487.)

**DERIVATION**

Acts Sept. 24, 1789, ch. 20, § 35, 1 Stat. 92; May 15, 1820, ch. 102, §§ 1, 2, 3 Stat. 582.

**CROSS REFERENCE**

District attorney and marshal for district of Hawaii to be appointed by President for term of six years unless sooner removed, see section 643 of Title 48, Territories and Insular Possessions.

**§ 483. Assistant district attorneys.**

Except as provided in section 591 of this title, whenever, in the opinion of the district judge of any district including the District of Columbia, or the chief justice of any territory and the district attorney, evidenced by writing, the public interest requires it, one or more assistant district attorneys may be appointed, by the Attorney General; but such opinion shall state to the Attorney General the facts as distinguished from conclusions, showing the necessity therefor. (May 28, 1896, ch. 252, § 8, 29 Stat. 181; July 19, 1919, ch. 24, § 1, 41 Stat. 209.)

**§ 484. Clerical assistance; salaries.**

Except as provided by section 591 of this title, the district attorney of any judicial district, including the district attorney for the District of Columbia, when the facts showing the necessity therefor are certified by the district judge to the Attorney General, may, with the approval of the Attorney General, and no longer than such approval lasts, employ necessary clerical assistance at such salary or salaries as shall be from time to time fixed by the Attorney General. (May 28, 1896, ch. 252, § 15, 29 Stat. 183; July 19, 1919, ch. 24, § 1, 41 Stat. 209.)

**§ 485. District attorneys; duties.**

It shall be the duty of every district attorney to prosecute, in his district, all delinquents for crimes and offenses cognizable under the authority of the United States, and all civil actions in which the United States are concerned, and, unless otherwise instructed by the Secretary of the Treasury, to appear in behalf of the defendants in all suits or proceedings pending in his district against collectors, or other officers of the revenue, for any act done by them or for the recovery of any money exacted by or paid to such officers, and by them paid into the Treasury. (R. S. § 771.)

**DERIVATION**

Acts Sept 24, 1789, ch. 20, § 35, 1 Stat. 92; Mar. 3, 1863, ch. 76, § 13, 12 Stat. 741.

**§ 486. Same; prosecution of violations of revenue laws.**

It shall be the duty of every district attorney to whom any collector of customs, or of internal revenue, shall report, according to law, any case in which any fine, penalty, or forfeiture has been incurred in the district of such attorney for the violation of any law of the United States relating to the revenue, to cause the proper proceedings to be commenced and prosecuted without delay, for the fines, penalties, and forfeitures in such case provided, unless, upon inquiry and examination, he shall decide that such proceedings cannot probably be sustained, or that the ends of public justice do not require that such proceedings should be instituted; in which case he shall report the facts in customs cases to the Secretary of the Treasury, and in internal revenue cases to the Commissioner of Internal Revenue for their direction. (R. S. § 838; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 241.)

**DERIVATION**

Act Mar. 3, 1873, ch. 244, 17 Stat. 581.

**§ 487. Same; reports of suits to General Counsel for the Department of the Treasury.**

It shall be the duty of the United States district attorneys to make and forward to the General Counsel for the Department of the Treasury for his information and the purposes of a permanent record, such reports relating to suits in which the United States is a party as may be required by the General Counsel for the Department of the Treasury with the approval of the Attorney General, and on instituting any suit for the recovery of any fine, penalty, or forfeiture, shall immediately transmit a statement thereof to the General Counsel for the Department

of the Treasury. (R. S. §§ 772, 773; Apr. 9, 1910, ch. 152, 36 Stat. 294; May 10, 1934, ch. 277, § 512, 48 Stat. 758.)

**DERIVATION**

R. S. § 772 from act May 29, 1830, ch. 153, § 4, 4 Stat. 415.

R. S. § 773 from acts May 29, 1830, ch. 153, § 3, 4 Stat. 414; Mar. 3, 1863, ch. 76, § 13, 12 Stat. 741; Mar. 2, 1867, ch. 169, § 3, 14 Stat. 471, 472.

**§ 488. Same; returns to Commissioner of Internal Revenue in suits under revenue laws.**

When any suit or proceeding arising under the internal revenue laws, to which the United States are party, or any suit or proceeding against a collector or other officer of the internal revenue, wherein a district attorney appears, is commenced, the attorney for the district in which it is brought shall immediately report to the Commissioner of Internal Revenue the full particulars relating to the same; and he shall, immediately after the end of each term of the court in which such suit or proceeding is pending, forward to the said commissioner a full and particular statement of its condition. (R. S. § 774.)

**DERIVATION**

Act Mar. 2, 1867, ch. 169, § 3, 14 Stat. 471, 472.

**§ 489. Same; reports to Department of Justice.**

Each district attorney shall, immediately after the end of every term in which any suit for moneys due on account of the Post Office Department has been pending in his district, forward to the Department of Justice a statement of any judgment or order made, or step taken in the same, during such term, accompanied by a certificate of the clerk, showing the parties to and amount of every such judgment, with such other information as the Department of Justice may require. And the said attorney shall direct speedy and effectual execution upon said judgment, and the United States marshal to whom the same is directed shall make returns of the proceedings thereon to the Department of Justice, at such times as it may direct. (R. S. § 775.)

**DERIVATION**

Acts July 2, 1836, ch. 170, § 16, 5 Stat. 83; June 8, 1872, ch. 335, § 309, 17 Stat. 324.

**FEDERAL RULES OF CIVIL PROCEDURE**

Execution, see Rule 69, following section 723c of this title.

**§ 490. Marshals.**

A marshal shall be appointed in each district, including the District of Columbia. (R. S. § 776; June 26, 1876, ch. 147, §§ 1, 4, 19 Stat. 61, 62; Feb. 24, 1879, ch. 97, § 8, 20 Stat. 320; Mar. 3, 1881, ch. 144, § 7, 21 Stat. 507; Apr. 25, 1882, ch. 87, §§ 1, 3, 22 Stat. 47; July 20, 1882, ch. 312, § 3, 22 Stat. 172; Aug. 5, 1886, ch. 928, § 7, 24 Stat. 309; Feb. 22, 1889, ch. 180, § 21, 25 Stat. 682; July 3, 1890, ch. 656, § 16, 26 Stat. 217; July 10, 1890, ch. 664, § 16, 26 Stat. 225; Mar. 3, 1893, ch. 220, 27 Stat. 745; July 16, 1894, ch. 138, §§ 14, 16, 28 Stat. 110, 111; June 24, 1898, ch. 495, § 1, 30 Stat. 487; May 12, 1900, ch. 391, § 9, 31 Stat. 176; Jan. 22, 1901, ch. 105,

§§ 4, 7, 31 Stat. 736, 737; Feb. 12, 1901, ch. 355, §§ 5, 7, 31 Stat. 782; Mar. 2, 1901, ch. 801, §§ 3, 5, 31 Stat. 881; Mar. 11, 1902, ch. 183, §§ 4, 5, 6, 32 Stat. 66; Mar. 2, 1905, ch. 1305, §§ 4, 6, 33 Stat. 824; Mar. 3, 1905, ch. 1427, §§ 13, 15, 19, 33 Stat. 995, 996; June 16, 1906, ch. 3335, § 13, 34 Stat. 275; Mar. 3, 1915, ch. 100, §§ 3, 4, 38 Stat. 961; May 28, 1926, ch. 414, § 2 (b), 44 Stat. 672; Apr. 21, 1928, ch. 393, 45 Stat. 437.)

## DERIVATION

Acts Aug. 29, 1842, ch. 257, 5 Stat. 539; Feb. 5, 1867, ch. 28, § 1, 14 Stat. 385.

## § 491. Same; term.

Marshals of the United States, including the District of Columbia and the Territories, shall be appointed and commissioned for a term of four years and shall continue to discharge the duties of their respective offices, unless sooner removed by the President, until their successors shall be appointed and qualify in their stead. (R. S. § 779; June 24, 1898, ch. 495, § 1, 30 Stat. 487.)

## DERIVATION

Act Sept. 24, 1789, ch. 20, § 27, 1 Stat. 87.

## CROSS REFERENCE

District attorney and marshal for district of Hawaii to be appointed by President for term of 6 years unless sooner removed, see section 643 of Title 48, Territories and Insular Possessions.

## § 492. Same; field deputies; removal.

Except as provided by section 591 of this title, and as otherwise provided by law, at any time when, in the opinion of the marshal of any district, the public interest will thereby be promoted, he may appoint one or more deputy marshals for such district, who shall be known as field deputies, and who, unless sooner removed by the district court as provided in section 493 of this chapter, shall hold office during the pleasure of the marshal, except as provided in the next paragraph of this section.

The marshal, immediately after making any appointment or appointments under this section, shall report the same to the Attorney General, stating the facts as distinguished from conclusions constituting the reason for such appointment, and the Attorney General may at any time cancel any such appointment as the public interest may require. (May 28, 1896, ch. 252, § 11, 29 Stat. 182; Mar. 4, 1911, ch. 269, 36 Stat. 1355.)

## § 493. Same; office deputies and clerks; removal.

Except as provided by section 591 of this title and as otherwise provided by law, when in the opinion of the Attorney General the public interest requires it, he may, on the recommendation of the marshal, which recommendation shall state the facts as distinguished from conclusions, showing necessity for the same, allow the marshals to employ necessary office deputies and clerical assistance. Deputies shall be removable from office by the judge of the district court, at his pleasure. (R. S. § 780; Aug. 8, 1888, ch. 792, § 4, 25 Stat. 390; June 1, 1900, ch. 601, § 4, 31 Stat. 250; May 28, 1896, ch. 252, § 10, 29 Stat. 182;

Feb. 19, 1909, ch. 161, 35 Stat. 640; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

## DERIVATION

Act Sept. 24, 1789, ch. 20, § 27, 1 Stat. 87.

## § 494. Marshals and deputy marshals; oaths.

Every marshal and deputy marshal shall, before he enters upon the duties of his appointment, take, before any officer of the United States or of any State authorized by law to administer oaths, an oath or affirmation in the following form: "I, A. B., do solemnly swear (or affirm) that I will faithfully execute all lawful precepts directed to the marshal of the district of —, under the authority of the United States, and true returns make, and in all things well and truly, and without malice or partiality, perform the duties of the office of marshal (or marshal's deputy, as the case may be) of the district of —, during my continuance in said office, and take only my lawful fees. So help me God." The words "so help me God" shall be omitted in all cases where an affirmation is admitted instead of an oath. (R. S. § 782; Dec. 22, 1896, ch. 3, 29 Stat. 481.)

## DERIVATION

Acts Sept. 24, 1789, ch. 20, §§ 7, 27, 1 Stat. 76, 87; Feb. 28, 1790, ch. 19, § 2, 1 Stat. 625; Sept. 16, 1850, ch. 52, §§ 1, 2, 9 Stat. 458.

## § 495. Marshals; authority to administer oaths.

Each United States marshal and each chief deputy United States marshal is authorized and empowered to administer oaths to the marshal's deputies and other persons presenting to the marshal claims and accounts for payment; but they shall not be entitled to any fee for administering such oaths. (Feb. 21, 1911, ch. 144, 36 Stat. 927.)

## § 496. Marshal's bond.

Every marshal, before he enters on the duties of his office, shall give bond before the district judge of the district, jointly and severally with two good and sufficient sureties, inhabitants and freeholders of such district, to be approved by said judge, in the sum of \$20,000, for the faithful performance of said duties by himself and his deputies. (R. S. § 783.)

## DERIVATION

Acts Sept. 24, 1789, ch. 20, § 27, 1 Stat. 87; Apr. 10, 1806, ch. 21, § 1, 2 Stat. 372.

## CROSS REFERENCE

Larger bonds to be given by marshal where business of court makes it necessary, see sections 497, 498 of this title.

## § 497. Same; augmented bond.

Whenever the business of the courts in any judicial district shall make it necessary, in the opinion of the Attorney General, for the marshal to furnish greater security than the official bond theretofore given, a bond in a sum not to exceed \$40,000 shall be given when required by the Attorney General, who shall fix the amount thereof. (Feb. 22, 1875, ch. 95, § 2, 18 Stat. 333.)

## § 498. Same; augmented bond for southern district of New York.

Whenever the business of the United States district court in the southern judicial district of the

State of New York shall make it necessary, in the opinion of the Attorney General, for the United States marshal to furnish greater security than the official bond required by law on February 26, 1923, a bond in an amount not to exceed \$75,000 shall be given when required by the Attorney General, who shall fix the amount thereof. (Feb. 26, 1923, ch. 112, 42 Stat. 1287.)

#### § 499. Same; filing and recording.

The marshal's bond shall be filed and recorded in the office of the clerk of the district court sitting within the district, and copies thereof, certified by the clerk, under the seal of the said court, shall be competent evidence in any court of justice. (R. S. § 783; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

##### DERIVATION

Acts Sept. 24, 1789, ch. 20, § 27, 1 Stat. 87; Apr. 10, 1806, ch. 21, § 1, 2 Stat. 372.

#### § 500. Same; suits; costs on breach of bond.

In case of a breach of the condition of a marshal's bond, any person thereby injured may institute in his own name and for his sole use a suit on said bond, and thereupon recover such damages as shall be legally assessed, with costs of suit, for which execution may issue for him in due form. If such party fails to recover in the suit, judgment shall be rendered and execution may issue against him for costs in favor of the defendant; and the United States shall in no case be liable for the same. (R. S. § 784.)

##### DERIVATION

Act Apr. 10, 1806, ch. 21, § 2, 2 Stat. 373.

#### § 501. Same; further security after judgment.

The said bond shall remain, after any judgment rendered thereon, as a security for the benefit of any person injured by breach of the condition of the same, until the whole penalty has been recovered; and the proceedings shall always be as directed in section 500 of this title. (R. S. § 785.)

##### DERIVATION

Act Apr. 10, 1806, ch. 21, § 3, 2 Stat. 374.

#### § 502. Same; limitation of suit on marshal's bond.

No suit on a marshal's bond shall be maintained unless it is commenced within six years after the right of action accrues, saving, nevertheless, the rights of infants, married women, and insane persons, so that they sue within three years after their disabilities are removed. (R. S. § 786.)

##### DERIVATION

Act Apr. 10, 1806, ch. 21, § 4, 2 Stat. 374.

##### CROSS REFERENCE

Limitation of actions against sureties, see section 5 of Title 6, Official and Penal Bonds.

#### § 503. Marshals; duties.

It shall be the duty of the marshal of each district to attend the district courts when sitting therein and to execute all lawful precepts issued under the authority of the United States; and he shall have power to command all necessary assistance in the execution of his duty. (R. S. § 787; Mar. 3, 1911,

ch. 231, § 291, 36 Stat. 1167; June 15, 1935, ch. 259, § 1, 49 Stat. 377.)

##### DERIVATION

Act Sept. 24, 1789, ch. 20, § 27, 1 Stat. 87.

##### FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 4 on this section, see note by Advisory Committee under said Rule 4.

Process, see Rule 4, following section 723c of this title.

#### § 504. Same; powers as sheriffs.

The marshals and their deputies shall have, in each State, the same powers, in executing the laws of the United States, as the sheriffs and their deputies in such State may have, by law, in executing the laws thereof. (R. S. § 788.)

##### DERIVATION

Acts Feb. 28, 1795, ch. 36, § 9, 1 Stat. 425; July 29, 1861, ch. 25, § 7, 12 Stat. 282.

#### § 504a. Same; arrests without warrant; carrying firearms.

In addition to all other powers, United States marshals and their deputies shall have the power to make arrests without warrant for any offense against the laws of the United States committed in their presence or for any felony cognizable under the laws of the United States in cases where such felony has in fact been or is being committed and they have reasonable grounds to believe that the person to be arrested has committed or is committing it. The marshals and their deputies shall also have the power to carry firearms. (June 15, 1935, ch. 259, § 2, 49 Stat. 378.)

#### § 505. Same; payment of salaries of officers.

It shall be the duty of the United States marshals to pay, under regulations prescribed by the Attorney General, the salaries of all judges of the United States courts, except the justices of the Supreme Court of the United States, the salaries of judges retired under section 375 of this title, and the judges, officials, and employees of all courts whose sessions are held in the District of Columbia, whose salaries shall be paid through the disbursing officer of the Department of Justice as hitherto provided, United States district attorneys, their regular assistants, clerks, and messengers, and United States marshals and their deputies. Every United States marshal operating under a bond executed prior to August 1, 1914, shall give bond effective thereafter for the faithful performance of the duties of his office, including the payment of the salaries above mentioned. (Aug. 1, 1914, ch. 223, § 1, 38 Stat. 653.)

##### TRANSFER OF FUNCTIONS

Disbursement functions of United States marshals which would otherwise have devolved upon the Treasury Department on July 1, 1940, by virtue of Ex. Ord. No. 6166, June 10, 1933, as amended, set out in note under section 132 of Title 5, Executive Departments and Government Officers and Employees, were transferred to and vested in Department of Justice to be exercised by United States marshals under supervision of Attorney General in accordance with existing statutes pertaining to such functions, by Reorg. Plan No. IV, § 3, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1234, set out in note under section 133t of Title 5. See, also, sections 13-15 of said plan for provisions relating to transfer of functions of department heads, records, property, personnel, and funds.

**§ 506. Same; death; deputies to continue.**

In case of the death of any marshal, his deputy or deputies shall continue in office, unless otherwise specially removed, and shall execute the same in the name of the deceased, until another marshal is appointed, as provided in this chapter, and duly qualified. The defaults or misfeasances in office of such deputies in the meantime shall be adjudged a breach of the condition of the bond given by the marshal who appointed them; and the executor or administrator of the deceased marshal shall have like remedy for the defaults and misfeasances in office of such deputies, during such interval, as he would be entitled to if the marshal had continued in life and in the exercise of his said office until his successor was appointed and duly qualified. (R. S. § 789.)

**REFERENCES IN TEXT**

In the original "this chapter" referred to chapter fourteen of title XIII of the Revised Statutes (R. S. §§ 767-799). Said chapter was incorporated into the Code as sections 481, 482, 485, 487-490, 491, 493, 494, 496, 499-504, 506, 507, 509-513, 517-519, and 523 of this title.

**DERIVATION**

Act Sept. 24, 1789, ch. 20, § 28, 1 Stat. 87.

**§ 507. Same; delivery of prisoners to successor.**

Every marshal when removed from office, or when the term for which the marshal is appointed expires, shall be held responsible for the delivery to his successor of all prisoners who may be in his custody at the time of his removal, or when the term for which he is appointed expires; and for that purpose he may retain such prisoners in his custody until his successor is appointed and duly qualified. (R. S. § 790.)

**DERIVATION**

Acts Sept. 24, 1789, ch. 20, § 28, 1 Stat. 87; May 7, 1800, ch. 45, § 3, 2 Stat. 61.

**§ 508. Same; delivery of unserved process to successors.**

All unserved process remaining in the hands of a United States marshal or his deputies, when the marshal ceases to be such, shall be immediately delivered to the succeeding marshal upon request; and when a deputy United States marshal resigns or is removed he shall, upon request, deliver to the United States marshal for the district all process remaining in his hands. (Mar. 3, 1899, ch. 427, § 1, 30 Stat. 1237.)

**§ 509. Same; returns to General Counsel for the Treasury.**

Every marshal shall, within thirty days before the commencement of each term of the district courts in his district, make returns to the General Counsel for the Department of the Treasury of the proceedings had upon all writs of execution, or other process which have been placed in his hands, for the collection of moneys adjudged and decreed to the United States in the said courts, respectively. (R. S. § 791; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; May 10, 1934, ch. 277, § 512, 48 Stat. 758.)

**DERIVATION**

Acts May 15, 1820, ch. 107, § 8, 3 Stat. 596; May 29, 1830, ch. 153, § 2, 4 Stat. 414.

**§ 510. Same; returns to Comptroller General.**

Every marshal to whom any execution upon a judgment in any suit for moneys due on account of the Post Office Department has been directed, shall make returns to the Comptroller General of the United States, at such times as he may direct, of the proceedings which have taken place upon the said process of execution. (R. S. § 792; June 10, 1921, ch. 18, §§ 304, 310, 42 Stat. 24, 25.)

**DERIVATION**

Act July 2, 1836, ch. 270, § 16, 5 Stat. 83.

**§ 511. District attorneys and marshals; vacancies; filled temporarily.**

In case of a vacancy in the office of the district attorney or marshal the district court of the United States for the district where the vacancy exists, the Supreme Court of the Territory, and the district court of the United States for the District of Columbia may appoint persons to exercise the duties of such offices within their respective jurisdictions, until such vacancy shall be filled. Such appointment shall be in writing, which shall be filed in the clerk's office of the court making the appointment, and a copy thereof shall be entered upon the journal of said court. Any marshal so appointed shall give bond, as if appointed by the President, and the bond shall be approved by said court. It shall then be filed in the clerk's office of said court, and a copy shall be entered on the journal of the court. A certified copy of such entry shall be prima facie proof of the execution of such bond, and of the contents thereof. (R. S. § 793; June 24, 1898, ch. 495, § 2, 30 Stat. 487; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 25, 1936, ch. 804, 49 Stat. 1921.)

**DERIVATION**

Act Mar. 3, 1863, ch. 93, § 2, 12 Stat. 768.

**CROSS REFERENCE**

In case of death or disability of district attorney in Alaska, judge of district court to appoint some qualified person to fill the office until a successor is appointed, see section 109 of Title 48, Territories and Insular Possessions

**§ 512. Clerks; oaths.**

The clerk of the Supreme Court, and every clerk and deputy clerk of a district court, shall, before he enters upon the execution of his office, take an oath or affirmation in the following form: "I, A B, being appointed a clerk of —, do solemnly swear (or affirm) that I will truly and faithfully enter and record all the orders, decrees, judgments, and proceedings of the said court, and that I will faithfully and impartially discharge and perform all the duties of my said office, according to the best of my abilities and understanding. So help me God." The words "so help me God" shall be omitted in all cases where an affirmation is admitted instead of an oath. (R. S. § 794; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

**DERIVATION**

Acts Sept. 24, 1789, ch. 20, § 7, 1 Stat. 76; June 30, 1870, ch. 180, § 7, 16 Stat. 175.

**§ 513. Same; bond.**

Except as otherwise provided, the clerk of every court shall give bond, in a sum to be fixed and with

sureties to be approved by the court which appoints him, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments, and determinations of the court of which he is clerk; and a new bond may be required whenever the court deems it proper that such bond should be given. A copy of every bond given by a clerk shall be entered on the journal of the court for which he is appointed, and the bond shall be deposited for safe-keeping as the court may direct. A certified copy of such entry shall be prima facie proof of the execution of such bond and of the contents thereof. (R. S. § 795.)

## DERIVATION

Acts Sept. 24, 1789, ch. 20, § 7, 1 Stat. 76; Mar. 3, 1863, ch. 93, § 2, 12 Stat. 768.

#### § 514. Same; bonds of clerks of district courts; renewal; augmented bonds.

The clerks of the district courts shall, each, before he enters upon the execution of his office, give bond, with sufficient sureties, to be approved by the court for which he is appointed, to the United States, in the sum of not less than \$5,000 and not more than \$20,000, to be determined and regulated by the Attorney General of the United States, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments, and determinations of the court of which he is clerk. It shall be the duty of the district attorneys of the United States, upon requirement by the Attorney General, to give thirty days' notice of motion in their several courts that new bonds, in accordance with the terms of sections 514-516 of this title, are required to be executed; and upon failure of any clerk to execute such new bonds, his office shall be deemed vacant. The Attorney General may at any time, upon like notice through the district attorney, require a bond of increased amount, in his discretion, from any of said clerks within the limit of the amount above specified; and the failure of the clerk to execute the same shall in like manner vacate his office. All bonds given by the clerks shall, after approval, be recorded in their respective offices, and copies thereof from the records, certified by the clerks respectively, under seal of court, shall be competent evidence in any court. The original bonds shall be filed in the Department of Justice. (Feb. 22, 1875, ch. 95, § 3, 18 Stat. 333; Mar. 3, 1911, ch. 231, § 220, 36 Stat. 1152.)

## TRANSFER OF FUNCTIONS

Transfer of administrative powers and duties of Department of Justice or Attorney General to Administrative Office of the United States Courts respecting various employees of the courts, see note under section 446 of this title.

#### § 515. Same; augmented bonds of clerks.

Whenever the business of the courts in any judicial district shall make it necessary, in the opinion of the Attorney General, for the clerk to furnish greater security than the official bond theretofore given, a bond in a sum not to exceed \$40,000 shall be given when required by the Attorney General, who shall fix the amount thereof. (Feb. 22, 1875, ch. 95, § 2, 18 Stat. 333.)

## TRANSFER OF FUNCTIONS

Transfer of administrative powers and duties of Department of Justice or Attorney General to Administrative

Office of the United States Courts respecting various employees of the courts, see note under section 446 of this title.

#### § 516. Same; renewal of bond.

The Attorney General is authorized to require the official bonds of clerks of United States courts to be renewed every four years, and to fix the amounts of such bonds within statutory limits. Failure to take such action shall not affect the liability under such bonds, but upon failure or refusal of any clerk to execute such new bond or bonds his office shall be deemed vacant by order of the President and so declared by the district attorney in open court. (July 1, 1918, ch. 113, § 1, 40 Stat. 683.)

## TRANSFER OF FUNCTIONS

Transfer of administrative powers and duties of Department of Justice or Attorney General to Administrative Office of the United States Courts respecting various employees of the courts, see section 446 of this title and note thereunder.

#### § 517. Bonds of deputy clerks.

Any district court may require any deputy clerk thereof to give bond to the United States for the faithful discharge of his duty as such deputy, in the same penalty, and with surety in the same manner, as is required by law of clerks; and such bond shall be recorded and preserved in like manner. But the taking of such bond shall not affect the legal responsibility of the clerk for the acts of such deputy. (R. S. § 796; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

## DERIVATION

Act June 30, 1870, ch. 180, § 7, 16 Stat. 175.

#### § 518. Same; list of judgments, and report of moneys paid in internal revenue cases.

Every clerk of a district court shall, within thirty days after the adjournment of each term thereof, forward to the General Counsel for the Department of the Treasury a list of all judgments and decrees, to which the United States are parties, which have been entered in said court, respectively, during such term, showing the amount adjudged or decreed, in each case, for or against the United States, and the term to which execution thereon will be returnable.

He shall also, at the close of each quarter or within ten days thereafter, report to the Commissioner of Internal Revenue all moneys paid into court on account of cases arising under the internal-revenue laws, as well as all moneys paid on suits on bonds of collectors of internal revenue. The report shall show the name and nature of each case, the date of payment into court, the amount paid on account of debt, tax, or penalty, and also the amount on account of costs. If such money, or any portion thereof, has been paid by the clerk to any internal-revenue officer or other person, the report shall show to whom each of such payments was made; and if to an internal-revenue officer, it shall be accompanied by the receipt of such officer. (R. S. § 797; Mar. 1, 1879, ch. 125, § 2, 20 Stat. 327; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; May 10, 1934, ch. 277, § 512, 48 Stat. 758.)

## DERIVATION

Acts May 15, 1820, ch. 107, § 8, 3 Stat. 596; May 29, 1830, ch. 153, § 2, 4 Stat. 414.



**§ 519. Same; account of payments and moneys in court.**

At each regular session of any court of the United States, the clerk shall present to the court an account of all moneys remaining therein, or subject to its order, stating in detail in what causes they are deposited, and in what causes payments have been made; and said account and the vouchers thereof shall be filed in the court. (R. S. § 798.)

#### DERIVATION

Act Mar. 24, 1871, ch. 2, § 8, 17 Stat. 2.

**§ 520. Mandamus to compel returns and performance of duties.**

The district courts of the United States, for the purposes of sections 326, 497, 514, 515, 521, 522, 586a, and 598 of this title, shall have power to award the writ of mandamus, according to the course of the common law, upon motion of the Attorney General or the district attorney of the United States, to any officer thereof, to compel him to make the returns and perform the duties required by said sections. (Feb. 22, 1875, ch. 95, § 4, 18 Stat. 333; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

**§ 521. Clerks; failure to perform duties; removal from office.**

If any clerk of any district court of the United States shall willfully refuse or neglect to make any report, certificate, statement, or other document required by law to be by him made, or shall willfully refuse or neglect to forward any such report, certificate, statement, or document to the department, officer, or person to whom, by law, the same should be forwarded, the President of the United States is empowered, and it is made his duty, in every such case, to remove such clerk so offending from office by an order in writing for that purpose. And upon the presentation of such order, or a copy thereof, authenticated by the Attorney General of the United States, to the judge of the court whereof such offender is clerk, such clerk shall thereupon be deemed to be out of office, and shall not exercise the functions thereof. And such district judge shall appoint a successor. And such person so removed shall not be eligible to any appointment as clerk or deputy clerk for the period of two years next after such removal. (Feb. 22, 1875, ch. 95, § 5, 18 Stat. 334; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

#### TRANSFERS OF FUNCTIONS

Transfer of administrative powers and duties of Department of Justice or Attorney General to Administrative Office of the United States Courts respecting various employees of the courts, see section 446 of this title and note thereunder.

**§ 522. Same; misdemeanors; punishment.**

If any clerk mentioned in section 521 of this title shall willfully refuse or neglect to make or to forward any such report, certificate, statement, or document therein mentioned, he shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding \$1,000, or by imprisonment not exceeding one year, in the discretion of the court; but a conviction under this section shall not be necessary as a condition precedent to the removal from office

provided for in section 521 of this title. (Feb. 22, 1875, ch. 95, § 6, 18 Stat. 334.)

**§ 523. Clerks; oaths to persons in admiralty causes.**

The clerks of the district courts may, in the absence or in case of the disability of the judges, administer oaths to all persons identifying papers found on board of vessels or elsewhere, to be used on trials in admiralty causes. (R. S. § 799; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

#### DERIVATION

Act May 8, 1792, ch. 36, § 10, 1 Stat. 278.

#### CROSS REFERENCE

Commissioners, clerks, and deputy clerks authorized to administer oaths, see section 525 of this title.

**§ 523a. Destruction of duplicate accounts and other papers on file in offices of clerks.**

Upon the recommendation of the clerk of a district court of the United States, and with the approval of the senior district judge of the proper district, the Attorney General may, in his discretion, authorize the destruction of duplicate accounts of United States marshals, attorneys, clerks, and commissioners, and other miscellaneous papers or records, not in cases, which have been on file for ten years or more, and the further retention of which will serve no useful purpose. (June 3, 1930, ch. 396, 46 Stat. 496.)

**§ 523b. Destruction of proofs of claims in bankruptcy proceedings on file in offices of clerks.**

Proofs of claims filed in bankruptcy proceedings in the United States district courts, pursuant to Title 11, and which have remained on file in the offices of clerks of United States district courts, for a period of ten years after final disposition of such proceedings, may be destroyed, pursuant to an order of the presiding judge of the court in which such proofs of claims have been filed, said order to be filed and entered of record in said court. (June 3, 1930, ch. 396, 46 Stat. 496.)

**§ 524. Residence of district attorneys, marshals, and clerks.**

The Attorney General is authorized to fix and declare the place of the official residence of the district attorney and of each of his assistants: *Provided*, That the said assistants must be residents of the district for which they are appointed. The marshal's official residence shall be deemed to be at one of the places of holding court in the district, and the Attorney General shall be authorized to fix and declare the place of such official residence. Every clerk of the district court of the United States, United States marshal, or United States district attorney shall reside permanently in the district where his official duties are to be performed, and shall give his personal attention thereto; and in case any such officer shall remove from his district, or shall fail to give personal attention to the duties of his office, except in case of sickness, such office shall be deemed vacant: *Provided*, That in the southern district of New York said officers may reside within twenty miles of their districts. (June 20, 1874, ch. 328, § 2, 18 Stat. 109; May

28, 1896, ch. 252, §§ 8, 12, 29 Stat. 181, 183; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

#### CROSS REFERENCE

Residence of district attorneys in Alaska; see section 109 of Title 48, Territories and Insular Possessions.

§ 525. Commissioners, clerks, and deputy clerks may administer oaths.

Except as provided in section 591 of this title United States commissioners and all clerks and all deputy clerks of United States courts are authorized to administer oaths. (May 28, 1896, ch. 252, § 19, 29 Stat. 184; Mar. 2, 1901, ch. 814, 31 Stat. 956.)

§ 526. Commissioners; appointment; powers and duties; term; removal; holding other office.

Except as provided in section 591 of this title, it shall be the duty of the district court of each judicial district to appoint such number of persons, to be known as United States commissioners, at such places in the district as may be designated by the district court, which United States commissioner shall have the same powers and perform the same duties as are conferred and imposed by law. The appointment of such United States commissioners shall be entered of record in the district courts, and notice thereof at once given by the clerk to the Attorney General. Such United States commissioners shall hold their offices for the term of four years, but they shall be at any time subject to removal by the district court; and no person shall at any time be a clerk or deputy clerk of a United States court and a United States commissioner without the approval of the Attorney General. (May 28, 1896, ch. 252, § 19, 29 Stat. 184; Mar. 2, 1901, ch. 814, 31 Stat. 956.)

#### CROSS REFERENCE

Trial of petty offenses by commissioners, see section 576 et seq. of Title 18, Criminal Code and Criminal Procedure.

§ 527. Commissioners or receivers; persons ineligible.

Except as provided in section 591 of this title no marshal or deputy marshal, attorney or assistant attorney of any district, jury commissioner, clerk of marshal, no bailiff, crier, juror, janitor of any Government building, nor any civil or military employee of the Government, except as provided in section 526 of this title, and no clerk or employee of any United States justice or judge shall have, hold, or exercise the duties of the United States commissioner. And it shall not be lawful to appoint any of the officers named in this section receiver or receivers in any case or cases brought in the courts of the United States. (May 28, 1896, ch. 252, § 20, 29 Stat. 184.)

§ 528. Commissioners; seals.

Each United States commissioner shall provide himself with an official impression seal, to be prescribed by the Attorney General, which said seal shall be affixed to each jurat or certificate of the official acts of said commissioner, but no increase of fees shall be allowed by reason thereof. (June 28, 1906, ch. 3573, 34 Stat. 546.)

§ 529. Same; records in criminal cases.

Except as provided in section 591 of this title, the United States commissioners shall keep a complete

record of all proceedings before them in criminal cases, in a well-bound book, which record book shall be delivered to and preserved by the clerk of the district court for such district on the death, resignation, removal, or expiration of term of the commissioner, for which record the commissioner shall receive no compensation. (May 28, 1896, ch. 252, § 21, 29 Stat. 185.)

§ 530. Law books for judges transmitted to successors.

The law books, purchased for United States judges, district attorneys, and other judicial officers, including the libraries of the ten United States circuit courts of appeals, and the Federal Reporter and continuations thereto as issued, shall in all cases be transmitted to their successors in office; all books so purchased to be marked plainly, "The Property of the United States": *Provided*, That not to exceed \$2 per volume shall be paid for the current and future volumes of the United States Code, Annotated, and that the reports of the United States Court of Appeals for the District of Columbia shall not be sold for a price exceeding that approved by the court and for not more than \$6.50 per volume. (May 14, 1940, ch. 189, title IV, 54 Stat. 210.)

#### SIMILAR PROVISIONS

The text of this section was taken from act May 14, 1940, ch. 189, title IV, 54 Stat. 210. Similar provisions were contained in the following acts:

- 1939—June 29, 1939, ch. 248, title II, 53 Stat. 906.
- 1938—Apr. 27, 1938, ch. 180, § 1, title II, 52 Stat. 269.
- 1937—June 16, 1937, ch. 359, § 1, title II, 50 Stat. 279.
- 1936—May 15, 1936, ch. 405, § 1, 49 Stat. 1328.
- 1935—Mar. 22, 1935, ch. 39, § 1, 49 Stat. 83.
- 1934—Apr. 7, 1934, ch. 104, title II, 48 Stat. 543.
- 1933—Mar. 1, 1933, ch. 144, title II, 47 Stat. 1384.
- 1932—July 1, 1932, ch. 361, title II, 47 Stat. 493.
- 1931—Feb. 23, 1931, ch. 280, title II, 46 Stat. 1326.
- 1930—Apr. 18, 1930, ch. 184, title II, 46 Stat. 190.
- 1929—Jan. 25, 1929, ch. 102, title II, 45 Stat. 1112.
- 1928—Feb. 15, 1928, ch. 57, title II, 45 Stat. 81.
- 1925—Mar. 4, 1925, ch. 556, § 1, 43 Stat. 1333.
- Feb. 27, 1925, ch. 364, title II, 43 Stat. 1031.
- 1924—May 28, 1924, ch. 204, title II, 43 Stat. 221.
- 1923—Jan. 3, 1923, ch. 21, title II, 42 Stat. 1084.
- 1922—June 1, 1922, ch. 204, title II, 42 Stat. 617.
- 1916—May 10, 1916, ch. 117, § 1, 39 Stat. 119.

§ 531. Appointment of relative as receiver or trustee.

It shall be unlawful for the Judge of any court of the United States to appoint as Receiver, or Trustee, any person related to such Judge by consanguinity, or affinity, within the fourth degree.

Any person who commits any act declared by this section to be unlawful shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than five years, or both. (Aug. 25, 1937, ch. 777, 50 Stat. 810.)

#### Chapter 16.—FEES, COMPENSATION, AND ACCOUNTS OF OFFICERS

##### CLERKS' FEES, SALARIES, PENSES, AND ACCOUNTS

###### Sec.

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- 542. Same; compensation retained by; surplus paid into Treasury.
- 543. Circuit Court of Appeals; costs and fees; tables of fees; revision thereof.
- 544. Clerks of circuit courts of appeals; allowance and payment of office expenses, personal compensation, and so forth.

- Sec.  
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#### CLERKS' FEES, SALARIES, EXPENSES, AND ACCOUNTS

- § 541. Clerk of Supreme Court; annual returns.

The clerk of the Supreme Court of the United States, on the 1st day of January in each year, or within thirty days thereafter, shall, on a form prescribed by the Attorney General, make to the Attorney General a return, under oath, of all fees and costs collected by him in cases disposed of at the preceding term or terms of the court, and of all emoluments collected by him, and after deducting from such collections his compensation as provided in section 542 of this chapter, and the incidental expenses of his office, including clerk hire, such expenses to be certified by the Chief Justice, and audited and allowed by the proper accounting officers, shall at the time of making such returns pay any surplus that may remain into the Treasury of the United States. (Mar. 15, 1898, ch. 68, § 8, 30 Stat. 317; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

## TRANSFER OF FUNCTIONS

Transfer of administrative powers and duties of Department of Justice or Attorney General to Administrative Office of the United States Courts respecting various employees of the courts, see section 446 of this title and note thereunder.

§ 542. Same; compensation retained by; surplus paid into Treasury.

The clerk of the Supreme Court of the United States shall not retain of the fees and emoluments of his office for his personal compensation over and above his necessary clerk hire and the incidental expenses of his office, certified to by the court, or by one of its justices appointed by it for that purpose, and to be audited and allowed by the General Accounting Office, a sum exceeding \$6,000 a year, or exceeding that rate for any time less than a year; and the surplus of such fees and emoluments shall be paid into the Treasury as provided by law in cases of clerks of the district courts of the United States. (Mar. 3, 1883, ch. 143, 22 Stat. 631; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

§ 543. Circuit Court of Appeals; costs and fees; tables of fees; revision thereof.

The costs and fees in each circuit court of appeals shall be fixed and established by said court in a table of fees, to be adopted within three months after February 19, 1897: *Provided*, That the costs and fees so fixed by any court of appeals shall not, with respect to any item, exceed the costs and fees now charged in the Supreme Court. Each circuit court of appeals shall, within three months after the fixing and establishing of costs and fees as aforesaid, transmit said table to the Chief Justice of the United States, and within one year thereof, the Supreme Court of the United States shall revise said table, making the same, so far as may seem just and reasonable, uniform throughout the United States. The table of fees, when so revised, shall thereupon be in force for each circuit. (Mar. 3, 1891, ch. 517, § 2, 26 Stat. 826; Feb. 19, 1897, ch. 263, 29 Stat. 536.)

§ 544. Clerks of circuit courts of appeals; allowance and payment of office expenses, personal compensation, and so forth.

Office expenses of clerks of United States circuit courts of appeals, also the personal compensation of said clerks, their deputies, and other assistants, and their expenses of travel and subsistence, when absent from official headquarters on official business shall be allowed after authorization and approval by the Attorney General, and shall be paid by the respective United States marshals designated by the Attorney General. But the salaries of clerks of the United States circuit courts of appeals shall not be fixed at a rate in excess of \$5,000 per annum. All fees and other moneys of every character and description received by said clerks, by virtue of their offices, shall be paid into the Treasury, as in the case of clerks of United States district courts. (Mar. 3, 1891, ch. 517, § 2, 26 Stat. 826; June 1, 1922, ch. 204, title II, 42 Stat. 616.)

## TRANSFERS OF FUNCTIONS

Disbursement functions of United States marshals which would otherwise have devolved upon the Treasury Department on July 1, 1940, by virtue of Ex. Ord. No. 6166, June 10, 1933, as amended, set out in note under section 182 of Title 5, Executive Departments and Government Officers and Employees, were transferred to and vested in Department of Justice to be exercised by United States marshals under supervision of Attorney General in accordance with existing statutes pertaining to such functions, by Reorg. Plan No. IV, § 3, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1234, set out in note under section 133t of Title 5. See, also, sections 13–15 of said plan for provisions relating to transfer of functions of department heads, records, property, personnel, and funds.

## CROSS REFERENCE

Allowance of expenses of court clerks, see, also, sections 545, 557, 558, 560, and 562–567 of this title.

§ 545. Same; travel expenses.

Only actual expenses of travel and expenses of lodging and subsistence, not to exceed \$5 per day, shall be allowed any clerk of a United States circuit court of appeals when absent from his official residence on official business. (July 19, 1919, ch. 24, § 1, 41 Stat. 210.)

§ 546. Same; annual returns.

Clerks of the United States circuit courts of appeals, annually and within thirty days after the 30th day of June in each year, shall make a return to the Attorney General of the United States of all the fees and emoluments of their offices, respectively. Such return shall cover all fees and emoluments earned during the preceding year. The respective clerks shall, at the time of making such returns, pay into the Treasury of the United States the amount of such fees and emoluments. (June 6, 1900, ch. 791, § 1, 31 Stat. 639.)

## TRANSFERS OF FUNCTIONS

Transfer of administrative powers and duties of Department of Justice or Attorney General to Administrative Office of the United States Courts respecting various employees of the courts, see section 446 of this title and note thereunder.

## CROSS REFERENCE

Clerks, at time of making returns, to pay fees and other moneys of every character into the Treasury, see sections 544, 567 of this title.

§ 547. Criers, clerks, bailiffs, and messengers of circuit courts of appeals; compensation.

The criers, clerks, bailiffs, and messengers of the circuit courts of appeals shall be allowed the same compensation for their respective services as are allowed for similar services in the district courts. (Mar. 3, 1891, ch. 517, § 9, 26 Stat. 829; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

§ 548. Fees of clerks of district courts; United States not liable for fees.

The fees provided for in sections 549–555 of this chapter, and no other, shall be charged and collected by clerks of the district courts of the United States for services performed by them or their assistants. The United States shall not be required to pay any sum or fee herein provided for. (R. S. § 823; Feb. 11, 1925, ch. 204, § 1, 43 Stat. 857.)

## REFERENCES IN TEXT

In the original "provided for in sections 549-555 of this chapter" reads "hereinafter provided for."

## DERIVATION

Acts Feb. 26, 1853 ch. 80, § 1, 10 Stat. 161; Mar. 3, 1855, ch. 155, § 12, 10 Stat. 670, 671.

## CROSS REFERENCE

Fees of clerks and marshals in bankruptcy proceedings, see section 80 of Title 11, Bankruptcy.

## 9. Same; on institution of suit or proceeding.

Upon the institution of any suit or proceeding, whether by original process, removal, indictment, information, or otherwise, there shall be paid by the party or parties so instituting such suit or proceeding, as fees of the clerk for all services to be performed by him in such case or proceeding, except as hereinafter provided, the sum of \$5. (Feb. 11, 1925, ch. 204, § 2, 43 Stat. 857.)

## § 550. Same; on filing answer or paper joining issue or entering order for trial; on entering plea of guilty.

Upon the filing of any answer or paper joining issue, or the entering of order for trial, there shall be charged and collected by the clerk, from the party or parties filing any such answer or paper, for services performed and to be performed by said clerk in said case or proceeding the further sum of \$5: *Provided*, That after one fee, as hereinbefore provided in this section, has been paid by any defendant, cross petitioner, intervenor, or party, other defendants, cross petitioners, intervenors, or parties, separately appearing or filing any answer or paper in said suit or proceeding, shall pay a further fee of \$2 for each answer or paper so filed: *And provided further*, That upon a plea of not guilty in any criminal case there shall be charged in the costs the sum of \$5, which, however, shall not be demanded of any such defendant unless and until by order, judgment, or decree of the court the costs in the case are taxed and assessed against him. (Feb. 11, 1925, ch. 204, § 3, 43 Stat. 857; Jan. 22, 1927, ch. 50, § 1, 44 Stat. 1022.)

## § 551. Same; on entry of judgment, decree, or final order.

Upon the entry of any judgment, decree, or final order of the court in any suit or proceeding there shall be charged and collected by the clerk, from the prevailing party or parties, as an additional fee for services performed and to be performed in said suit or proceeding, the further sum of \$5. In any criminal case the clerk shall not be required to account for any such fee not collected by him. (Feb. 11, 1925, ch. 204, § 4, 43 Stat. 857.)

## § 552. Same; on filing petition for appeal.

Upon the filing of any petition for appeal to any circuit court of appeals or the Supreme Court of the United States there shall be charged and collected by the clerk, from the party or parties prosecuting such appeal, an additional fee in said suit or proceeding of \$5. (Feb. 11, 1925, ch. 204, § 5, 43 Stat. 857; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

## § 553. Same; on filing petition or application for habeas corpus, or appeal from deportation order.

Upon the filing of any petition or application for a writ of habeas corpus, or appeal from a deportation order of a United States commissioner, there shall be charged and collected by the clerk, from the petitioner or applicant, as full payment for all services performed or to be performed by him in said proceeding, the sum of \$5. If an appeal is prosecuted from the order of the district court in said proceeding, then and in that event the additional sum of \$5, as provided in section 551 of this title, shall be charged and collected by the clerk. (Feb. 11, 1925, ch. 204, § 6, 43 Stat. 857.)

## § 554. Same; for each additional trial or final hearing upon reversal by circuit court of appeals or Supreme Court or disagreement by jury; on grant of new trial or rehearing.

For each additional trial or final hearing, upon a reversal by a circuit court of appeals or the Supreme Court of the United States, or following a disagreement by a jury or the granting of a new trial or rehearing by the court, there shall be charged and collected by the clerk, from the party or parties securing such reversal, new trial, or rehearing, or from the plaintiff or plaintiffs in the event of a disagreement, the further sum of \$5. The clerk shall not be required to account for any such fee not collected by him in any criminal case. Nothing herein contained shall prohibit the court from directing by rule or standing order the collection at the time the services are rendered of the fees herein enumerated, from either party, but all such fees shall be taxed as costs in the respective cases. (Feb. 11, 1925, ch. 204, § 7, 43 Stat. 857.)

## § 555. Same; additional fees enumerated.

In addition to the fees for services rendered in cases, hereinbefore enumerated, the clerk shall charge and collect, for miscellaneous services performed by him and his assistants, except when on behalf of the United States, the following fees:

1. For issuing any writ or a subpoena for a witness, not in a case instituted or pending in the court from which it is issued, and filing and entering the return of the marshal thereon, 50 cents.
2. For filing and indexing any paper, not in a case or proceeding, 25 cents.
3. For administering an oath or affirmation, not in a case or proceeding pending in the court where the oath is administered, 10 cents.
4. For an acknowledgment, certificate, affidavit, or countersignature, with seal, 50 cents.
5. For taking and certifying depositions to file, 20 cents for each folio of one hundred words, and if taken stenographically, 15 cents per folio additional, for the stenographer.
6. For a copy of any record, entry, or other paper, and the comparison thereof, 15 cents for each folio of one hundred words.
7. For filing praecipe or requisition and searching the records of the court for judgments, decrees, or other instruments or suits pending, or bankruptcy proceedings, including the certifying of the results of such search, 60 cents for the first name and 25

cents for each additional name embraced in the certificate.

8. For receiving, keeping, and paying out money in pursuance of any statute or order of court, including cash bail or bonds or securities authorized by law to be deposited in lieu of other security, 1 per centum of the amount so received, kept and paid out, or of the face value of such bonds or securities.

9. For keeping a record of surety companies and bonds thereof, 15 cents for each folio of one hundred words.

10. For preparation and mailing notices in bankruptcy, 10 cents each for the first twenty notices and 5 cents for each additional notice. This fee shall cover and include all services and expenses in connection therewith: *And provided further*, That such fee shall not be deemed to be included in any other fee for services in bankruptcy proceedings.

11. For making and comparing a transcript of record on appeal when required or requested, 15 cents for each folio of one hundred words.

12. For comparing any transcript, copy of record, or other paper not made by the clerk with the original thereof, 5 cents for each folio of one hundred words.

13. For making a final record in any case at the request of either party or upon order of court in a particular case, 15 cents for each folio of one hundred words. When any such final record is made upon order of court the fees therefor shall be taxed in the costs of the case.

14. For admission of attorneys to practice, \$1 each; for certificate of admission to be furnished upon request, \$2 additional.

15. For making any record not in a case and not provided for in sections 548-555 of this title, 15 cents for each folio of one hundred words. Nothing in this section and the sections 548-554 of this chapter shall repeal or in any way modify or enlarge the provisions of sections 832-836 of this title. (R. S. § 828; June 28, 1902, ch. 1301, § 1, 32 Stat. 476; Feb. 11, 1925, ch. 204, § 8, 43 Stat. 858; Jan. 22, 1927, ch. 50, 44 Stat. 1023; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

#### DERIVATION

Act Feb. 26, 1853, ch. 80, § 1, 10 Stat. 163, 167.

§ 556. Clerks of district courts; books open to inspection.

All books in the offices of the clerks of the district courts, containing the docket or minute of the judgments, or decrees thereof, shall, during office hours, be open to the inspection of any person desiring to examine the same, without any fees or charge therefor. (R. S. § 828; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

#### DERIVATION

Act Feb. 26, 1853, ch. 80, § 1, 10 Stat. 163, 167.

#### FEDERAL RULES OF CIVIL PROCEDURE

Books kept by clerk and entries therein, see Rule 79, following section 723c of this title.

#### CROSS REFERENCE

Disposition of fees collected in naturalization proceedings, see section 742 (d) of Title 8, Aliens and Nationality.

§ 557. Same; salaries in lieu of fees; collection and disposition of fees.

All fees and emoluments authorized by law to be paid to the clerks of the United States district courts, including the clerks of the district courts of the United States for Hawaii and Puerto Rico, and the clerk of the district court of the United States for the District of Columbia, except the clerks of the district courts of Alaska, shall be charged and collected, as far as possible, and paid into the Treasury of the United States in such manner and at such times as hereinafter provided; and such clerks shall be paid, in lieu of the fees and emoluments allowed by law on February 26, 1919, an annual salary as provided in section 558 of this chapter. This section shall not be construed to require or authorize fees to be charged or collected from the United States. (Feb. 26, 1919, ch. 49, § 1, 40 Stat. 1182; Feb. 11, 1921, ch. 46, 41 Stat. 1099; Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1412; May 17, 1932, ch. 190, 47 Stat. 158; June 25, 1936, ch. 804, 49 Stat. 1921.)

#### CROSS REFERENCE

Disposition of fees collected in naturalization proceedings, see section 742 (d) of Title 8, Aliens and Nationality

§ 558. Same; salaries; amount.

The clerk of the United States district court for each of the judicial districts of the United States, including the clerks of the district courts of the United States for Hawaii and Puerto Rico, and the clerk of the district court of the United States for the District of Columbia, except the clerks of the district courts of Alaska, shall be paid, in lieu of the fees, salaries, and per centum allowed by law on February 26, 1919, an annual salary to be fixed by the Attorney General at not less than \$2,500 nor more than \$5,000, based in each instance upon the amount of business transacted by the court and the fees and the emoluments received by the clerks in the four years last preceding February 26, 1919. (Feb. 26, 1919, ch. 49, § 2, 40 Stat. 1182; Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1412; May 17, 1932, ch. 190, 47 Stat. 158; June 25, 1936, ch. 804, 49 Stat. 1921.)

§ 559. Same; change in salaries.

The Attorney General is authorized and empowered to increase or decrease the salary of any clerk of a United States district court within the limits prescribed by section 558 of this chapter, where upon investigation the Attorney General finds that there has been such material increase or decrease in the volume of business transacted in any such district when contrasted with the volume of business upon which the said salaries have been fixed as to justify such increase or decrease, but in all cases the said increase or decrease shall be based upon the amount of business transacted by the court and the fees and emoluments collected by the clerks and by them paid into the Treasury of the United States during the four years last preceding the time of such increase or decrease of salary to be made by the Attorney General under the power hereby conferred. No change in the salary of any clerk having been fixed under power hereby con-

ferred shall be made until after the lapse of four years from the date of such change. (Apr. 26, 1922, ch. 146, 42 Stat. 500.)

#### TRANSFERS OF FUNCTIONS

Transfer of administrative powers and duties of Department of Justice or Attorney General to Administrative Office of the United States Courts respecting various employees of the courts, see section 446 of this title and note thereunder.

#### § 560. Same; traveling expenses.

When any clerk of a district court, including the clerks of the district courts of the United States for Hawaii and Puerto Rico, and the clerk of the district court of the United States for the District of Columbia, is necessarily absent from his official residence on any official business he shall be allowed his actual traveling expenses only and his necessary and actual expenses for lodging and subsistence, the latter not to exceed \$4 per day. (Feb. 26, 1919, ch. 49, § 3, 40 Stat. 1182; Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1412; May 17, 1932, ch. 190, 47 Stat. 158; June 25, 1936, ch. 804, 49 Stat. 1921.)

#### CROSS REFERENCE

Per diem in lieu of actual expenses to be paid employees of Government away on official business, see section 823 of Title 5, Executive Departments and Government Officers and Employees.

#### § 561. Same; per diem in lieu of subsistence.

Per diem in lieu of subsistence may be granted to clerks of United States district courts, their deputies and other assistants, instead of, but at the rates prescribed and under conditions applicable to the allowance for actual expenses of subsistence, as provided in sections 557, 558, 560, and 562-567 of this title. (Nov. 4, 1919, ch. 93, § 1, 41 Stat. 338.)

#### CROSS REFERENCE

Per diem in lieu of actual expenses to be paid to Government employees away on official business, see section 823 of Title 5, Executive Departments and Government Officers and Employees.

#### § 561a. Per diem in lieu of subsistence to deputy clerks and clerical assistants.

Per diem in lieu of subsistence not to exceed \$4 may be granted to deputy clerks and clerical assistants to clerks of United States district courts, instead of but under conditions applicable to the allowance for actual expenses of subsistence, as provided in section 562 of this title. (Apr. 29, 1926, ch. 195, title II, 44 Stat. 346.)

#### CROSS REFERENCE

Per diem in lieu of actual expenses to be paid to Government employees away on official business, see section 823 of Title 5, Executive Departments and Government Officers and Employees.

#### § 562. Same; deputies and clerical assistants; compensation; traveling expenses.

The compensation of deputy clerks and clerical assistants to clerks of the district courts, including the clerks of the district courts of the United States for Hawaii and Puerto Rico, and the clerk of the district court of the United States for the District of Columbia, shall be fixed by the Attorney General

from time to time and paid as provided in section 564 of this title.

When any such deputy or clerical assistant is necessarily absent from the place of his regular employment on official business he shall be allowed his actual traveling expenses only and his necessary and actual expenses for lodging and subsistence, the latter not to exceed \$3 per day. (Feb. 26, 1919, ch. 49, § 4, 40 Stat. 1182; Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1412; May 17, 1932, ch. 190, 47 Stat. 158; June 25, 1936, ch. 804, 49 Stat. 1921.)

#### § 563. Same; office expenses.

The necessary office expenses of the clerks of the district courts of the United States, including the clerks of the district courts of the United States for Hawaii and Puerto Rico, and the clerk of the district court of the United States for the District of Columbia, shall be allowed when authorized by the Attorney General. (Feb. 26, 1919, ch. 49, § 5, 40 Stat. 1182; Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1412; May 17, 1932, ch. 190, 47 Stat. 158; June 25, 1936, ch. 804, 49 Stat. 1921.)

#### § 564. Same; salaries; when and by whom payable.

The salaries of the clerks, deputy clerks, and clerical assistants to the clerks of the district courts, including the clerks of the district courts of the United States for Hawaii and Puerto Rico, and the clerk of the district court of the United States for the District of Columbia, shall be paid monthly by the marshals of the respective districts. (Feb. 26, 1919, ch. 49, § 6, 40 Stat. 1182; Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1412; May 17, 1932, ch. 190, 47 Stat. 158; June 25, 1936, ch. 804, 49 Stat. 1921.)

#### TRANSFERS OF FUNCTIONS

Disbursement functions of United States marshals which would otherwise have devolved upon the Treasury Department on July 1, 1940, by virtue of Ex. Ord. No. 6166, June 10, 1933, as amended, set out in note under section 132 of Title 5, were transferred to and vested in Department of Justice to be exercised by United States marshals under supervision of Attorney General in accordance with existing statutes pertaining to such functions, by Reorg. Plan No. IV, § 3, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1234, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See, also, sections 13-15 of said plan for provisions relating to transfer of functions of department heads, records, property, personnel, and funds.

#### § 565. Same; expense accounts.

The expense accounts of clerks of the United States district courts, including the clerks of the district courts of the United States for Hawaii and Puerto Rico, and the clerk of the district court of the United States for the District of Columbia, when made out and verified, and the expense accounts of their deputy clerks and clerical assistants, when made out and certified as correct by the clerk of such court, covering the necessary expenses incurred by such clerk, deputy clerk, or clerical assistants when necessarily absent from the place of regular employment on official business, shall be paid by the marshal, who shall include them in his accounts with the United States. (Feb. 26, 1919, ch. 49, § 7, 40 Stat. 1182; Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1412; May 17, 1932, ch. 190, 47 Stat. 158; June 25, 1936, ch. 804, 49 Stat. 1921.)



## TRANSFERS OF FUNCTIONS

Disbursement functions of United States marshals which would otherwise have devolved upon the Treasury Department on July 1, 1940, by virtue of Ex. Ord. No. 6186, June 10, 1933, as amended, set out in note under section 132 of Title 5, were transferred to and vested in Department of Justice to be exercised by United States marshals under supervision of Attorney General in accordance with existing statutes pertaining to such functions, by Reorg. Plan No. IV, § 3, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1234, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See, also, sections 13–15 of said plan for provisions relating to transfer of functions of department heads, records, property, personnel, and funds.

§ 566. Same; office expenses; payment.

The necessary office expenses of the clerks of the United States district courts, including the clerks of the district courts of the United States for Hawaii and Puerto Rico, and the clerk of the district court of the United States for the District of Columbia, as allowed and authorized by the Attorney General, shall be paid by the marshal and included in his accounts with the United States. (Feb. 26, 1919, ch. 49, § 8, 40 Stat. 1182; Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1412; May 17, 1932, ch. 190, 47 Stat. 158; June 25, 1936, ch. 804, 49 Stat. 1921.)

## TRANSFERS OF FUNCTIONS

See note under section 565 of this title.

§ 567. Same; accounts.

The clerk of every district court, including the clerks of the district courts of the United States for Hawaii and Puerto Rico, and the clerk of the district court of the United States for the District of Columbia, except the clerks of the district courts of Alaska, shall account quarterly for all the fees and emoluments earned during the quarter last preceding such accounting, except where the person requiring the services is relieved by law from prepayment of fees and costs, and for all fees and emoluments received within the quarter which had been earned prior thereto. Such accounting shall be in writing and shall be made to the Attorney General, in such form as he may prescribe, on the first days of January, April, July, and October in each year, or within twenty days thereafter, and shall include all moneys received in connection with the admission of attorneys to practice in the court, all that portion retained by the clerk of moneys received for services in naturalization proceedings in whatever capacity rendered, and all other amounts received for services in any way connected with the clerk's office. Such accounts shall be made in duplicate and be verified by the oath of the officer making them. The Attorney General shall cause each such return or account to be carefully examined by the proper officer of the Department of Justice and shall approve the same as he may deem just and proper, and shall transmit it with his approval to the General Accounting Office, by which an account shall be stated against the officer rendering such return or account. Immediately upon receipt of notice from the General Accounting Office, or within ten days thereafter, the clerk shall deposit to the credit of the Treasurer of the United States the amount so stated against him. (R. S. § 833; June 28, 1902, ch. 1301, § 1, 32 Stat. 475; Feb.

26, 1919, ch. 49, § 9, 40 Stat. 1183; June 10, 1921, ch. 18, §§ 301, 310, 42 Stat. 23, 25; Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1412; May 17, 1932, ch. 190, 47 Stat. 158; June 25, 1936, ch. 804, 49 Stat. 1921.)

## DERIVATION

Acts Feb. 26, 1853, ch. 80, § 3, 10 Stat. 165; June 22, 1870, ch. 50, § 15, 16 Stat. 164.

## TRANSFERS OF FUNCTIONS

Transfer of administrative powers and duties of Department of Justice or Attorney General to Administrative Office of the United States Courts respecting various employees of the courts, see section 446 of this title and note thereunder.

## FEDERAL RULES OF CIVIL PROCEDURE

Books kept by clerk and entries therein, see Rule 79, following section 723c of this title.

## CROSS REFERENCES

Disposition of fees collected in naturalization proceedings, see section 742 of Title 8, Aliens and Nationality.

§ 568. Same; reports and accounts of moneys received; dockets.

The Attorney General shall hereafter, under rules and regulations prescribed by him, require the clerks of the United States district courts, clerks of the Territorial courts, and the clerks of the United States courts in Alaska to report and account for all moneys received by them on account of or as security for fees and costs, and to report and account for all amounts collected or received by them on behalf of the United States on account of judgments, fines, forfeitures, penalties, and costs. The Attorney General shall also require such clerks to report and account for any other moneys received by them in their official capacity, whether on behalf of the United States or otherwise, and the Attorney General shall prescribe such docket or dockets or other books as he may deem proper to be kept and used by such clerks in recording, reporting, and accounting for moneys mentioned above in this paragraph, and in recording all fees and emoluments earned by them, which dockets or other books shall be kept and used by said clerks in accordance with rules and regulations prescribed by the Attorney General. (June 30, 1906, ch. 3914, § 1, 34 Stat. 754; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

## FEDERAL RULES OF CIVIL PROCEDURE

Books kept by clerk and entries therein, see Rule 79, following section 723c of this title.

§ 569. Same; compensation from other offices prohibited; violation entails vacation of appointment; exception.

No clerk or deputy clerk or assistant in the office of the clerk of a United States district court shall receive any compensation or emoluments through any office or position to which he may be appointed by the court, other than that received as such clerk, deputy clerk, or assistant, whether from the United States or from private litigants, and the acceptance of payment for personal services from private litigants shall be deemed a vacation of their appointments, but clerks of United States district courts,

their deputies and assistants, who are or may be appointed United States commissioners, may receive compensation for both offices in an aggregate amount not exceeding the rate of \$3,000 per annum. (Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1413; June 16, 1921, ch. 23, § 1, 42 Stat. 41; June 16, 1938, ch. 465, 52 Stat. 752.)

#### § 570. Clerks; fees not earned or due.

It shall be unlawful for any clerk of any court of the United States to include in his emolument, account, or return any fee or fees not actually earned and due at the time such account or return is required by law to be made, and no fees not actually earned shall be allowed in any such account. (Mar. 2, 1895, ch. 189, § 1, 28 Stat. 956.)

#### CROSS REFERENCE

Annual salary in lieu of fees and emoluments to be paid clerks of district courts, see section 557 of this title.

### FEES OF ATTORNEYS, SOLICITORS, AND PROCTORS

#### § 571. Fees to be taxed.

The following fees and no other shall be taxed and allowed to attorneys, solicitors, and proctors in the courts of the United States, and to district attorneys, except in cases otherwise expressly provided by law. But nothing herein shall be construed to prohibit attorneys, solicitors, and proctors from charging to and receiving from their clients, other than the Government, such reasonable compensation for their services, in addition to the taxable costs, as may be in accordance with general usage in their respective States, or may be agreed upon between the parties. (R. S. § 823; May 28, 1896, ch. 252, § 6, 29 Stat. 179; Feb. 26, 1919, ch. 49, § 1, 40 Stat. 1182; Feb. 11, 1921, ch. 46, 41 Stat. 1099.)

#### DERIVATION

Acts Feb. 26, 1853, ch. 80, § 1, 10 Stat. 161; Mar. 3, 1855, ch. 155, § 12, 10 Stat. 670, 671.

#### § 572. Attorneys, solicitors, and proctors.

On a trial before a jury, in civil or criminal causes or before referees, or on a final hearing in equity or admiralty, a docket fee of \$20: *Provided*, That in cases of admiralty and maritime jurisdiction, where the libellant recovers less than \$50, the docket fee of his proctor shall be but \$10.

On appeals in admiralty, where the amount involved is not over \$1,000 a proctor's docket fee of \$20; where the amount involved is from \$1,000 to \$5,000 a proctor's docket fee of \$50; where the amount involved is over \$5,000 a proctor's docket fee of \$100. On such appeals cost of brief of successful party to be taxed, where amount involved is not over \$1,000 at not exceeding \$25; where amount involved is between \$1,000 and \$5,000 at not exceeding \$50; where amount involved is over \$5,000 at not exceeding \$75.

In cases at law, when judgment is rendered without a jury, \$10.

In cases at law, when the cause is discontinued, \$5.

For scire facias, and other proceedings on recognizances, \$5.

For each deposition taken and admitted in evidence in a cause, \$2.50. (R. S. § 824; Aug. 3, 1935, ch. 431, § 1, 49 Stat. 513.)

#### DERIVATION

Act Feb. 26, 1853, ch. 80, § 1, 10 Stat. 161, 162.

#### FEDERAL RULES OF CIVIL PROCEDURE

Application of, see Rule 81, following section 723c of this title.

Effect of Rule 81 on this section, see note by Advisory Committee under said Rule 81.

#### § 572a. Fees in receivership, bankruptcy, or reorganization proceedings—(a) Agreement fixing fee unlawful.

It shall be unlawful for any party in interest, or any attorney for any party in interest, in any receivership, bankruptcy, or reorganization proceeding, in or under the supervision of any court of the United States, to enter into any agreement, written or oral, express or implied, with any other party in interest, or any attorney of any other party in interest, in such proceeding for the purpose of fixing the amount of the fees or other compensation to be paid to any party in interest or any attorney of any party in interest in such proceeding, for services rendered in connection therewith when such fees or other compensation are to be paid from the assets of the estate in receivership, bankruptcy or reorganization. As used in this section, the term "party in interest" includes any debtor, creditor, receiver, or trustee and any representative of any of them.

#### (b) Judicial approval unlawful.

It shall be unlawful for the judge of any court of the United States to approve the payment of any fees or compensation the amount of which is fixed as the result of any act declared to be unlawful by subsection (a) of this section.

#### (c) Penalties.

Any person who commits any act declared by this section to be unlawful shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than five years, or both. (Aug. 25, 1937, ch. 777, 50 Stat. 810.)

### MARSHALS' FEES

#### § 573. Marshal of Supreme Court of United States.

The marshal of the Supreme Court of the United States shall be entitled to receive for the service of any warrant, attachment, summons, capias, or other writ, except execution, venire, or a summons, or subpoena for a witness, \$1 for each person on whom such service may be made. His fees for all other services shall be the same as are allowed to other marshals; but he shall pay into the Treasury of the United States all fees received by him, and render a true account thereof at the close of each term to the Attorney General. (R. S. § 832.)

#### DERIVATION

Acts June 27, 1864, ch. 163, §§ 1, 4, 13 Stat. 195, 196; Mar. 2, 1867, ch. 156, § 2, 14 Stat. 433; June 22, 1870, ch. 150, § 15, 16 Stat. 164.

#### § 574. Marshals; fees enumerated.

The following fees and no other shall be taxed and allowed to marshals, except in cases otherwise

expressly provided by law: For service of any warrant, attachment, summons, capias, or other writ, except execution, venire, or a summons or subpoena for a witness, \$2 for each person on whom service is made.

For the keeping of personal property attached on mesne process, such compensation as the court, on petition setting forth the facts under oath, may allow.

For serving venires and summoning every twelve men as grand or petit jurors, \$4, or 33⅓ cents each.

For holding a court of inquiry or other proceedings before a jury, including the summoning of a jury, \$5.

For serving a writ of subpoena on a witness, 50 cents; and no further compensation shall be allowed for any copy, summons, or notice for a witness.

For serving a writ of possession, partition, execution, or any final process, the same mileage as is allowed for the service of any other writ, and for making the service, seizing or levying on property, advertising and disposing of the same by sale, set off, or otherwise according to law receiving and paying over the money, the same fees and poundage as are or shall be allowed for similar services to the sheriffs of the States, respectively, in which the service is rendered.

In all cases in which the vessel or other property is sold by a public auctioneer or by some party other than the marshal or his deputy, the fee herein authorized to be paid to the marshal shall be reduced by the amount paid to said auctioneer or other party.

For each bail-bond, 50 cents.

For summoning appraisers, 50 cents each.

For executing a deed prepared by a party or his attorney, \$1.

For drawing and executing a deed, \$5.

For copies of writs or papers furnished at the request of any party, 10 cents a folio.

For every proclamation in admiralty, 30 cents.

For serving an attachment in rem or a libel in admiralty, \$2.

For the necessary expenses of keeping boats, vessels, or other property attached or libeled in admiralty, such amount as the court, on petition setting forth the facts under oath, may allow.

For sale of vessels or other property under process in admiralty, or under the order of a court of admiralty, and for receiving and paying over the money, 2½ per centum on any sum under \$500, and 1¼ per centum on the excess of any sum over \$500.

For disbursing moneys, 2 per centum.

For expenses while employed in endeavoring to arrest, under process, any person charged with or convicted of a crime, the sum actually expended, not to exceed \$2 a day, in addition to his compensation for service and travel.

For every commitment or discharge of a prisoner, 50 cents.

For transporting criminals, 10 cents a mile for himself and for each prisoner and necessary guard; except in the case provided for in the next paragraph.

For transporting criminals convicted of a crime in any district or Territory where there is no penitentiary available for the confinement of convicts of the United States to a prison in another district or Ter-

ritory designated by the Attorney General, the reasonable actual expense of transportation of the criminals, the marshal, and the guards, and the necessary subsistence and hire.

For attending examinations before a commissioner, and bringing in, guarding, and returning prisoners charged with crime, and witnesses, \$2 a day; and for each deputy, not exceeding two, necessarily attending, \$2 a day.

For travel, in going only, to serve any process, warrant, attachment, or other writ, including writs of subpoena in civil or criminal cases, 6 cents a mile, to be computed from the place where the process is returned to the place of service, or, when more than one person is served therewith, to the place of service which is most remote, adding thereto the extra travel which is necessary to serve it on the others. But when more than two writs of any kind required to be served in behalf of the same party on the same person might be served at the same time, the marshal shall be entitled to compensation for travel on only two of such writs; and to save unnecessary expense, it shall be the duty of the clerk to insert the names of as many witnesses in a cause in such subpoena as convenience in serving the same will permit.

In all cases where mileage is allowed to the marshal, he may elect to receive the same or his actual traveling expenses, to be proved, on his oath, to the satisfaction of the court. (R. S. §§ 823, 829; May 28, 1896, ch. 252, § 6, 29 Stat. 179; May 29, 1930, ch. 356, 46 Stat. 486; Aug. 3, 1935, ch. 431, § 2, 49 Stat. 513.)

#### DERIVATION

R. S. § 823 from acts Feb. 26, 1853, ch. 80, § 1, 10 Stat. 161; Mar. 3, 1855, ch. 155, § 12, 10 Stat. 670, 671.

R. S. § 829 from act Feb. 26, 1853, ch. 80, § 1, 10 Stat. 164.

#### TRANSFERS OF FUNCTIONS

Disbursement functions of United States marshals which would otherwise have devolved upon the Treasury Department on July 1, 1940, by virtue of Ex. Ord. No. 6166, June 10, 1933, as amended, set out in note under section 132 of Title 5, were transferred to and vested in Department of Justice to be exercised by United States marshals under supervision of Attorney General in accordance with existing statutes pertaining to such functions, by Reorg. Plan No. IV, § 3, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1234, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See, also, sections 13-15 of said plan for provisions relating to transfer of functions of department heads, records, property, personnel, and funds.

#### FEDERAL RULES OF CIVIL PROCEDURE

Execution, see Rule 69, following section 723c of this title.

#### § 575. Warrants in prosecutions under internal revenue laws.

No part of any money appropriated to pay any fees to the United States commissioners, marshals, or clerks shall be used for any warrant issued or arrest made, or other fees in prosecutions under the internal revenue laws, unless said fees have been taxed against and collected from the defendant, or unless the prosecution has been commenced upon a sworn complaint setting forth the facts constituting the offense and alleging them to be within the personal knowledge of the affiant, or upon a sworn complaint by a United States district attorney, collector, or deputy collector of internal revenue or revenue

agent, setting forth the facts upon information and belief, and approved either before or after such arrest by a circuit or district judge or the attorney of the United States in the district where the offense is alleged to have been committed or the indictment is found. (Aug. 18, 1894, ch. 301, § 1, 28 Stat. 416.)

**§ 576. Same; execution or return of writs.**

No marshal or deputy marshal shall be allowed more than one mileage for each mile actually and necessarily traveled, irrespective of the number of writs he may execute in making such travel; nor shall any marshal or deputy marshal be allowed any additional mileage incident to the execution or return of any writ of arrest, commitment, or removal other than the 10 cents a mile allowed by law for each deputy, prisoner, and guard; and no mileage shall be allowed upon any writ not executed or when the travel was without cost to marshal or deputy. (Aug. 18, 1894, ch. 301, § 1, 28 Stat. 416; June 6, 1900, ch. 791, § 1, 31 Stat. 639.)

**SALARIES, EXPENSES, AND ACCOUNTS OF DISTRICT ATTORNEYS AND MARSHALS**

**§ 577. Accounts of fees or costs not reexamined.**

No accounts of fees or costs paid to any witness or juror, upon the order of any judge or commissioner, shall be so reexamined as to charge any marshal for an erroneous taxation of such fees or costs. Where the ministerial officers of the United States have or shall incur extraordinary expense in executing the laws thereof, the payment of which is not specifically provided for, the President of the United States is authorized to allow the payment thereof under the special taxation of the district court of the district in which the said services have been or shall be rendered, to be paid from the appropriation for defraying the expenses of the judiciary. (R. S. § 846; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 318; May 28, 1896, ch. 252, § 13, 29 Stat. 183; May 27, 1908, ch. 200, § 1, 35 Stat. 375; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Feb. 26, 1919, ch. 49, § 7, 40 Stat. 1182.)

**DERIVATION**

Act Aug. 16, 1856, ch. 124, §§ 1, 2, 11 Stat. 49.

**§ 578. Fees and emoluments due United States attorneys; collection and disposition.**

Except as provided in section 591 of this title, all fees and emoluments authorized by law to be paid to United States district attorneys, including the office of the district attorney for the District of Columbia and his assistants, shall be charged and collected, as far as possible, and paid to the clerk of the court having jurisdiction, and by him covered into the Treasury of the United States: *Provided*, That this section shall not be construed to require or authorize fees to be charged against or collected from the United States, except as provided by sections 583 and 586 of this title. (May 28, 1896, ch. 252, §§ 6, 24, 29 Stat. 179, 186; July 19, 1919, ch. 24, § 1, 41 Stat. 209; June 6, 1930, ch. 409, 46 Stat. 522.)

**§ 578a. Fees and emoluments due United States marshals; collection and disposition.**

Except as provided in section 591 of this title, all fees and emoluments authorized by law to be paid to

United States marshals shall be charged and collected, as far as possible, and deposited by said marshals in accordance with the provisions of section 495 of Title 31: *Provided*, That this section shall not be construed to require or authorize fees to be charged against or collected from the United States, except as provided by sections 583 and 586 of this title. (May 28, 1896, ch. 252, §§ 6, 24, 29 Stat. 179, 186; June 6, 1930, ch. 409, 46 Stat. 522.)

**§ 578b. Right of United States attorneys and United States marshals to compensation.**

United States district attorneys, including the office of the district attorney of the District of Columbia and his assistants, and United States marshals shall be paid for their official services, which, in the case of district attorneys, shall include services in the circuit courts of appeals of their respective circuits wherever sitting, salaries and compensation hereinafter provided and not otherwise. (May 28, 1896, ch. 252, § 6, 29 Stat. 179; July 19, 1919, ch. 24, § 1, 41 Stat. 209.)

**SOUTHERN DISTRICT OF N. Y., APPLICATION TO**

Section 24 of act May 28, 1896, cited to text (section 591 of this title), provided that the provisions of this section should not apply to the Southern District of New York. In this regard, act June 6, 1900, ch. 785, 31 Stat. 304, provided in part as follows: "So much of section six of the Act approved May twenty-sixth, eighteen hundred and ninety-six, [this section] as provides that the salaries paid to United States district attorneys shall cover and include compensation for services rendered by them in the circuit courts of appeals is hereby made applicable to the United States district attorney for the southern district of New York."

**§ 578c. Right of United States attorneys to fees in addition to salary.**

In no case except in the District of Columbia shall United States attorneys receive fees of office in addition to the salary allowed them by law. (Mar. 3, 1905, ch. 1483, § 1, 33 Stat. 1207.)

**§ 579. Salaries of United States attorneys and marshals.**

The salaries of the United States attorneys and United States marshals for the several judicial districts of the United States shall be fixed by the Attorney General, at rates not less than \$3,000 nor more than \$7,500 per annum for attorneys and at rates not less than \$3,000 nor more than \$6,500 per annum for marshals, the amount to be based in each instance upon the business transacted during the four years ending June 30, 1923. The salaries of the United States attorneys for the southern district of New York, the northern district of Illinois, and the District of Columbia may be fixed at rates not exceeding \$10,000 per annum for each of said districts.

The Attorney General may increase or decrease any of the salaries fixed, as aforesaid, within the limits prescribed in the foregoing if, upon investigation, he finds that there has been a material increase or decrease in the volume of business transacted: *Provided*, That no salary fixed under the provisions of this section shall be changed more than once in any four years. (Mar. 4, 1923, ch. 295, 42 Stat. 1560.)

**§ 580. Assistant district attorneys; salaries.**

Except as provided in section 591 of this title, assistant district attorneys, including those of the District of Columbia, shall be paid such salary as the Attorney General may from time to time determine as to each, which shall in no case exceed \$3,500 per annum except in the case of the assistant district attorney for the eastern district of Pennsylvania, whose salary shall not exceed \$4,000. (May 28, 1896, ch. 252, §§ 8, 24, 29 Stat. 181; Mar. 3, 1903, ch. 1007, § 1, 32 Stat. 1141; Mar. 4, 1907, ch. 2918, § 1, 34 Stat. 1360; May 27, 1908, ch. 200, § 1, 35 Stat. 375; July 19, 1919, ch. 24, § 1, 41 Stat. 209; Jan. 3, 1923, ch. 21, title II, 42 Stat. 1083.)

**CROSS REFERENCE**

Salary of principal assistant to district attorney for District of Columbia, see section 594 of this title.

**§ 581. District attorneys and assistants; per diem in lieu of subsistence.**

Section, acts June 1, 1922, ch. 204, title II, 42 Stat. 616; Jan. 3, 1923, ch. 21, title II, 42 Stat. 1083; Apr. 2, 1924, ch. 81, § 1, 43 Stat. 44; May 28, 1924, ch. 204, title II, 43 Stat. 220; Feb. 27, 1925, ch. 364, title II, 43 Stat. 1029, was limited to the appropriation acts of which it was a part.

**§ 582. Marshals; salaries and expenses of office deputies and clerks.**

Except as provided in section 591 of this title, office deputies and clerical assistants of the marshal shall receive salaries to be fixed by the Attorney General, from time to time, and paid as provided in section 588 of this title. When any of such office deputies is engaged in the service of any writ, process, subpoena, or other order of the court, or when necessarily absent from the place of his regular employment, on official business, he shall be allowed his actual traveling expenses only, and his necessary and actual expenses for lodging and subsistence, not to exceed \$4 per day, and the necessary actual expenses in transporting prisoners, including necessary guard hire; and he shall make and render accounts thereof as provided in section 586 of this title. (May 28, 1896, ch. 252, §§ 10, 24, 29 Stat. 182; Feb. 19, 1909, ch. 161, 35 Stat. 640; June 1, 1922, ch. 204, title II, 42 Stat. 615; Feb. 27, 1925, ch. 364, title II, 43 Stat. 1029.)

**TRANSFERS OF FUNCTIONS**

Transfer of administrative powers and duties of Department of Justice or Attorney General to Administrative Office of the United States Courts respecting various employees of the courts, see note under section 446 of this title.

**§ 583. Same; field deputies; compensation.**

Except as provided in section 591 of this title, field deputies to the marshal shall each, as his compensation, receive the gross fees, including mileage, as provided by law, earned by him, not to exceed \$1,500 per fiscal year, or at that rate for any part of a fiscal year; and in addition shall be allowed his actual necessary expenses, not exceeding \$2 a day, while endeavoring to arrest, under process, a person charged with or convicted of crime. A field deputy may elect to receive actual expenses on any trip in lieu of mileage. In special cases, where in his judgment justice requires, the Attorney General may make an additional allowance, not, however, in any case to make

the aggregate annual compensation of any field deputy in excess of \$2,500 nor more than the gross fees earned by such field deputy. (May 28, 1896, ch. 252, §§ 11, 24, 29 Stat. 182; Mar. 4, 1911, ch. 269, 36 Stat. 1355.)

**§ 584. Same; expenses.**

Except as provided in section 591 of this title, the marshal, when attending court at any place other than his official residence, and when engaged in the service or attempted service of any process, writ, or subpoena, and when otherwise necessarily absent from his official residence on official business, shall be allowed his necessary expenses for lodging and subsistence, not exceeding \$4 per day and his actual necessary traveling expenses. He shall also be allowed the actual necessary expenses in transporting prisoners, including necessary guard hire. An account of such expenses shall be made out and paid as provided in section 586 of this title. (May 28, 1896, ch. 252, §§ 12, 24, 29 Stat. 183.)

**§ 584a. Same; substitute transportation allowance.**

United States marshals and their deputies may be allowed, in lieu of actual expenses of transportation, not to exceed 3 cents per mile for the use of their own automobiles for transportation when traveling on official business within the limits of their official station. (April 27, 1938, ch. 180, title II, § 1, 52 Stat. 267; June 29, 1939, ch. 248, title II, 53 Stat. 900; May 14, 1940, ch. 189, title III, 54 Stat. 204.)

**§ 585. Same; per diem.**

Marshals and office deputy marshals (except in the District of Alaska) may be granted a per diem of not to exceed \$4 in lieu of subsistence, instead of, but under the conditions prescribed for the present allowance for actual expenses of subsistence. (June 1, 1922, ch. 204, title II, 42 Stat. 615; Jan. 3, 1923, ch. 21, title II, 42 Stat. 1083; May 28, 1924, ch. 204, title II, 43 Stat. 220; Feb. 27, 1925, ch. 364, title II, 43 Stat. 1029; Apr. 29, 1926, ch. 195, title II, 44 Stat. 345.)

**§ 586. Attorneys and marshals; expense accounts.**

Except as provided in section 591 of this title, whenever in sections 526, 578, 582-584, 591, and 597 of this title, an officer, including the district attorney for the District of Columbia and his assistants, is allowed actual expenses, the account therefor shall be made out quarterly, in accordance with rules and regulations prescribed by the Attorney General. When made out, the account shall be verified on oath before an officer authorized to administer oaths. The expense accounts of the marshals and their office deputies and the accounts of the field deputies shall be paid by the marshals; said accounts and the expense accounts of the district attorneys and their assistants, when made out in accordance with sections 526, 578, 582-584, 591, and 597, shall be submitted to and examined by the district court of the district, and when approved by the court shall be audited and allowed as provided by law. Each marshal shall make such returns of the earnings and expenses of his office as shall be required under rules and regulations prescribed by the Attorney General.

No office or field deputy shall receive compensation as bailiff, and no field deputy shall receive fees for representing the marshal in court. (R. S. §§ 833, 834; May 28, 1896, ch. 252, §§ 13, 24, 29 Stat. 183; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; July 19, 1919, ch. 24, § 1, 41 Stat. 209.)

REFERENCES IN TEXT

In the original "sections 526, 578, 582, 584, 591, and 597 of this title" reads "this Act," meaning act May 28, 1896, cited to text. Said act was incorporated in the Code as sections 38, 92, 267, and 337 of Title 5, Executive Departments and Government Officers and Employees, sections 45 and 52 of Title 8, Aliens and Nationality, sections 591, 594, 595, 641, and 667 of Title 18, Criminal Code and Criminal Procedure, section 3 of Title 20, Education, section 257 of Title 22, Foreign Relations and Intercourse, sections 96, 126, and 1195 of Title 26, Internal Revenue Code, sections 483, 484, 492, 493, 524-527, 529, 571, 574, 577, 578, 579, 580, 582-584, 586, 587-591, 597-599, 639 of this title, sections 495 and 670 of Title 31, Money and Finance, sections 1152-1155 of Title 34, Navy, section 807 of Title 39, The Postal Service, section 213 of Title 40, Public Buildings, Property, and Works, sections 440, 603, and 604 of Title 46, Shipping, and section 12 of Title 49, Transportation.

DERIVATION

R. S. § 833 from acts Feb. 26, 1853, ch. 80, § 3, 10 Stat. 165; June 22, 1870, ch. 50, § 15, 16 Stat. 164.

R. S. § 834 from acts Mar. 3, 1863, ch. 76, §§ 11, 12, 12 Stat. 741; June 27, 1864, ch. 163, § 2, 13 Stat. 196.

§ 586a. Marshals; accounts; when and to whom rendered; duplicates; approval.

The accounts of United States marshals, except the marshals of the United States courts in China and the Canal Zone, shall be rendered quarterly, under such regulations as may be prescribed by the Attorney General, and transmitted to the Attorney General within twenty days after the close of each quarter. The said accounts shall be rendered in duplicate, but no signature shall be required on the duplicate vouchers. It shall be the duty of the marshal to retain in his office the duplicate accounts, where they shall be open to public inspection at all times. The approval of the court as to the accounts of marshals shall not be required. (Feb. 22, 1875, ch. 95, § 1, 18 Stat. 333; May 29, 1928, ch. 906, 45 Stat. 998.)

§ 587. Same; office expenses.

Except as provided in section 591 of this title, the necessary office expenses of the district attorneys, including the district attorney for the District of Columbia and his assistants, and marshals shall be allowed when authorized by the Attorney General. (May 28, 1896, ch. 252, §§ 14, 24, 29 Stat. 183; July 19, 1919, ch. 24, § 1, 41 Stat. 209.)

§ 588. Time of payment of salaries.

All salaries provided by sections 483, 484, 492, 493, 578, 580, 582-584, 586, and 587 of this title, shall be paid monthly by the Department of Justice, except as provided in section 591 of this title. (May 28, 1896, ch. 252, § 16, 29 Stat. 183.)

§ 589. Costs not affected.

Except as provided in section 591 of this title, sections 483, 484, 492, 493, 524, 578, 580, 582-584, 586, 587, and 588 of this title shall not be so construed as to

prevent or affect the amount or taxation of costs against the unsuccessful party in civil proceedings or against defendants convicted of crimes or misdemeanors. (May 28, 1896, ch. 252, §§ 17, 24, 29 Stat. 183.)

§ 590. Illegal fees; failure to account for or pay over fees.

Except as provided in section 591 of this title, any officer whose compensation is fixed by sections 483, 484, 492, 493, 578, 580, 582-584, 586, 587, and 588 of this title, who shall directly or indirectly demand, receive, or accept any fee or compensation for the performance of any official service other than is provided in said sections, or shall willfully fail or neglect to account for or pay over to the proper officer any fee received or collected by him shall, upon conviction thereof, be punished by a fine of not less than \$50 nor more than \$500, or by imprisonment, at the discretion of the court, not exceeding five years, or by both such fine and imprisonment. (May 28, 1896, ch. 252, §§ 18, 24, 29 Stat. 183.)

§ 591. Exceptions from provisions of preceding sections.

None of the provisions of sections 483, 484, 492, 493, 525, 526, 527, 529, 578, 578b, 580, 582-584, 586-590, and 597 of this title, 337 of Title 5, and 594 of Title 18, shall apply to the District of Alaska. None of the provisions of sections 483, 484, 578, 578b, and 580 of this title shall apply to the office of the United States district attorney and his assistants for the southern district of New York, or the northern district of Illinois insofar as they fix the annual salaries of the United States attorney, and of assistants in his office, for said district. (May 28, 1896, ch. 252, § 24, 29 Stat. 186; Feb. 19, 1897, ch. 265, § 1, 29 Stat. 577; Mar. 3, 1903, ch. 1007, § 1, 32 Stat. 1141; Mar. 4, 1907, ch. 2918, § 1, 34 Stat. 1360; July 19, 1919, ch. 24, § 1, 41 Stat. 209.)

SOUTHERN DISTRICT OF NEW YORK

Act June 6, 1900, ch. 785, 31 Stat. 304 provided in part as follows: "So much of section six of the Act approved May twenty-sixth, eighteen hundred and ninety-six, (sections 578, 578b of this title) as provides that the salaries paid to United States district attorneys shall cover and include compensation for services rendered by them in the circuit courts of appeals is hereby made applicable to the United States district attorney for the southern district of New York."

§ 592. District attorneys; traveling expenses; subsistence.

The necessary expenses for lodging and subsistence actually paid, not exceeding \$4 per day and actual and necessary traveling expenses of the United States district attorneys, including the district attorneys and their assistants for the District of Columbia, for the southern district of New York, and for the northern district of Illinois and their assistants, while absent from their respective official residences and necessarily employed in going to, returning from, and attending before any United States court, commissioner, or other committing magistrate, and while otherwise necessarily absent from their respective official residences on official business shall be allowed

and paid in the following manner: That the accounts of the United States attorneys and assistant United States attorneys for expenses herein provided for shall be made out monthly in accordance with rules and regulations prescribed by the Attorney General. And when said expense accounts are made out, as hereinbefore provided, and verified on oath before an officer authorized by law to administer oaths, they shall be submitted to and examined by one of the judges of the district court of the district for which said United States attorney or assistant United States attorney was appointed, and when approved by said judge, may be allowed and paid by the United States marshal for said district, and the amount of such payments shall be included in said marshal's accounts with the United States, and audited and allowed as provided by law. (Mar. 4, 1907, ch. 2918, § 1, 34 Stat. 1360; May 27, 1908, ch. 200, § 1, 35 Stat. 375; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; July 1, 1918, ch. 113, § 1, 40 Stat. 683.)

#### TRANSFERS OF FUNCTIONS

Disbursement functions of United States marshals which would otherwise have devolved upon the Treasury Department on July 1, 1940, by virtue of Ex. Ord. No. 6166, June 10, 1933, as amended, set out in note under section 132 of Title 5, were transferred to and vested in Department of Justice to be exercised by United States marshals under supervision of Attorney General in accordance with existing statutes pertaining to such functions, by Reorg. Plan No. IV, § 3, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1234, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See, also, sections 13-15 of said plan for provisions relating to transfer of functions of department heads, records, property, personnel, and funds.

§ 593. Same; clerks and messengers for southern district of New York.

Clerks and messengers in the office of the United States district attorney for the southern district of New York shall be paid from appropriations for salaries and expenses of district attorneys, by the disbursing clerk of the Department of Justice, in such number and at such salaries as may be fixed by the Attorney General, and such office expenses of said district attorney as may be approved by the Attorney General shall also be paid in the same manner and from the same appropriations as similar expenses in other judicial districts. (June 30, 1906, ch. 3914, § 1, 34 Stat. 753.)

#### CROSS REFERENCE

Clerks and messengers of United States courts to be paid by the United States marshals, see section 505 of this title.

§ 594. Appointment and salaries of assistant district attorneys for District of Columbia.

Certificates to the effect that the public interest requires the appointment of assistants to the district attorney for the District of Columbia shall be made by the chief justice of the district court of the United States for the District of Columbia and the district attorney. The principal assistant to the district attorney shall be paid a salary not in excess of \$4,000 per annum, as the Attorney General may from time to time determine. (July 19, 1919, ch. 24, § 1, 41 Stat. 209; Mar. 4, 1923, ch. 295, 42 Stat. 1560; June 25, 1936, ch. 804, 49 Stat. 1921.)

#### COMPENSATION OF CRIERS AND BAILIFFS

§ 595. Criers of courts and attendants on juries.

All persons employed under section 9 of this title shall be allowed for their services the sum of \$3 per day, to be paid by and included in the accounts of the marshal, out of any money of the United States in his hands. Such compensation shall be paid only for actual attendance. Such persons shall be deemed to be in actual attendance when they attend upon the order of the courts, but no such person shall be employed during vacation. (R. S. § 715; Mar. 3, 1905, ch. 1487, 33 Stat. 1259; June 1, 1922, ch. 204, title II, 42 Stat. 617; Jan. 3, 1923, ch. 21, title II, 42 Stat. 1084; May 28, 1924, ch. 204, title II, 43 Stat. 221.)

#### DERIVATION

Acts Feb. 26, 1853, ch. 80, § 1, 10 Stat. 165; Mar. 2, 1867, ch. 156, § 2, 14 Stat. 433.

§ 596. Per diem of bailiffs.

Except in the case of bailiffs in charge of juries over Sundays and holidays, no per diem shall be paid to any bailiff unless the judge is present and presiding in court or present in chambers. (May 14, 1940, ch. 189, title III, 54 Stat. 204.)

#### SIMILAR PROVISIONS

The text of this section was taken from the Department of Justice Appropriation Act, 1941. Similar provisions were contained in act Feb. 27, 1925, ch. 364, title II, 43 Stat. 1030.

#### COMMISSIONERS' FEES

§ 597. Commissioners' fees; enumeration.

Except as provided in section 591 of this title, each United States commissioner shall be entitled to the following-named fees, and none other: Drawing a complaint, with oath and jurat to same, 50 cents; copy of complaint, with certificate to same, 30 cents; issuing warrant of arrest, 75 cents; issuing a commitment and making copy of same, \$1; entering a return, 15 cents; issuing subpoena or subpoenas in any one case, with 5 cents for each necessary witness in addition to the first, 25 cents; drawing a bond of defendant and sureties, taking acknowledgment of same and justification of sureties, 75 cents; for administering an oath (except to witness as to attendance and travel), 10 cents; recognizance of all witnesses in a case, when the defendant or defendants are held for court, 50 cents; transcripts of proceedings, when required by order of court and transmission of original papers to court, 60 cents; copy of warrant of arrest, with certificate to same, when defendant is held for court, and the original papers are not sent to court, 40 cents; order in duplicate to pay all witnesses in a case: For first witness, 30 cents, and for each additional witness, 5 cents, and for oath to each witness as to attendance and travel, 5 cents; for hearing and deciding on criminal charges and reducing the testimony to writing when required by law or order of court, \$5 a day for the time necessarily employed: *Provided*, That not more than one per diem shall be allowed in a case, unless the account shall show that the hearing could not be completed in one day, when



one additional per diem may be specially approved and allowed by the court: *Provided further*, That not more than one per diem shall be allowed for any one day: *Provided further*, That no per diem shall be allowed for taking a bond or recognizance and passing on the sufficiency of the bond or recognizance and the sureties thereon when the bond or recognizance was taken after the defendant had been committed to prison upon a final commitment, or has given bond or been recognized for his appearance at court, or when the defendant has been arrested on a *capias* or bench warrant, or was in custody under any process or order of a court of record. For the examination and certificate in cases of application for discharge of poor convicts imprisoned for nonpayment of fine or fine and costs, and all services connected therewith, \$3; for attending to a reference in a litigated matter, in a civil cause at law, in equity, or in admiralty, in pursuance of an order of the court, \$3 a day; for taking and certifying depositions to file in civil cases, 10 cents for each folio; for each copy of the same furnished to a party on request, 10 cents for each folio. (May 28, 1896, ch. 252, §§ 21, 24, 29 Stat. 184.)

#### § 598. Commissioners' accounts; proof, and approval by court.

The accounts of United States commissioners shall be rendered quarterly, in duplicate, under such regulations as may be prescribed by the Attorney General, and transmitted to the clerk of the United States district court for the district in which the commissioner resides, who shall file the duplicate in his office and transmit the original to the Attorney General. The approval of the court as to the accounts of commissioners shall not be required. (Feb. 22, 1875, ch. 95, § 1, 18 Stat. 333; May 28, 1896, ch. 252, § 13, 29 Stat. 183; Feb. 26, 1919, ch. 49, § 9, 40 Stat. 1183; May 29, 1928, ch. 906, 45 Stat. 998.)

#### § 599. Commissioners' fees; how paid.

The fees of commissioners, in cases where the United States are liable to pay the same, shall be paid on settling their accounts in the General Accounting Office. (R. S. §§ 236, 856; June 10, 1921, ch. 18, § 305, 42 Stat. 24.)

#### REFERENCES IN TEXT

Section is from R. S. § 856, cited to text. Act June 10, 1921, amended R. S. § 236, both cited to text, to provide for the settlement and adjustment of all Government accounts in the General Accounting Office, and is authority for the substitution in this section of the words "in the General Accounting Office" for "at the Treasury".

#### DERIVATION

Act Feb. 26, 1853, ch. 80, § 3, 10 Stat. 168.

#### § 599a. Commissioners' fees; rendition of account within year prerequisite to payment.

The statutory fees of United States commissioners for services rendered after June 30, 1933, shall be applicable and payable only when an account therefor is rendered by the commissioner within one year after the rendition of such services. (Mar. 1, 1933, ch. 144, title II, 47 Stat. 1383.)

### FEES OF JURORS AND WITNESSES

#### § 600. Grand and petit jurors; fees.

Jurors in the United States courts or before United States commissioners shall receive the following and no other compensation, except in cases otherwise expressly provided by law. For actual attendance at any court or courts, and for the time necessarily occupied in going to and returning from the same, \$4 per day during such attendance.

For the distance necessarily traveled from their residence in going to and returning from said court by the shortest practicable route, 5 cents per mile. (R. S. §§ 823, 852; June 21, 1902, ch. 1138, 32 Stat. 396; Apr. 26, 1926, ch. 183, §§ 1, 2, 44 Stat. 323.)

#### DERIVATION

R. S. § 823 from acts Feb. 26, 1853, ch. 80, § 1, 10 Stat. 161; Mar. 3, 1855, ch. 175, § 12, 10 Stat. 670, 671.

R. S. § 852 from act July 15, 1870, ch. 298, § 1, 16 Stat. 363.

#### TEMPORARY REDUCTION OF FEES

Act June 30, 1932, ch. 314, § 323, 47 Stat. 413, reduced from \$4 to \$3, during the fiscal year 1933, the per diem fee authorized to be paid jurors under section 600b, post, and reduced from \$2 to \$1.50, during the fiscal year 1933, the per diem fee authorized to be paid to witnesses under section 600c, post, and, further, suspended, during the fiscal year 1933, the proviso of section 600c, post, relative to per diem for expenses of subsistence.

The economy provisions of section 323 of the act of 1932, referred to in the preceding paragraph, were continued in force and effect "during the fiscal year ending June 30, 1934" by act Mar. 20, 1933, ch. 3, § 4, 48 Stat. 13, and in force and effect "during the fiscal year ending June 30, 1935" by act Mar. 28, 1934, ch. 102, § 24, 48 Stat. 522.

Section 323 of the act of 1932, referred to above, "except so much thereof as suspends the per diem for expenses of subsistence for witnesses" was continued in force and effect "during the fiscal year ending June 30, 1936," by act Mar. 22, 1935, ch. 39, § 3, 49 Stat. 105; in force and effect "during the fiscal year ending June 30, 1937," by act May 15, 1936, ch. 405, title II, 49 Stat. 1331; in force and effect "during the fiscal year ending June 30, 1938" by act June 16, 1937, ch. 359, § 1, title II, 50 Stat. 282.

The act of Aug. 14, 1937, ch. 630, 50 Stat. 647, provided that the paragraph in the act of June 16, 1937, ch. 359, § 1, title II, 50 Stat. 282, "which continues for the fiscal year 1938 the reduction of jurors' fees from \$4 to \$3, is hereby repealed."

The Department of Justice Appropriation Act, 1939, act April 27, 1938, ch. 180, 52 Stat. 268, making an appropriation for the payment of witness fees, contains a proviso "that no part of the sum herein appropriated shall be used to pay any witness more than one attendance fee for any one calendar day, which fee shall not exceed \$1.50."

#### § 600a, 600b. Per diem; mileage.

Subject matter of these sections, acts Apr. 26, 1926, ch. 183, §§ 1, 2, 44 Stat. 323 and May 17, 1932, ch. 190, 47 Stat. 158, is now covered by section 600 of this title.

#### § 600c. Amount of per diem and mileage for witnesses; subsistence.

Witnesses attending in United States courts, or before United States commissioners, shall receive for each day's attendance and for the time necessarily occupied in going to and returning from the same \$2, and 5 cents per mile for going from his or her place of residence to the place of trial or hearing and 5 cents per mile for returning: *Provided*, That witnesses (other than witnesses who are salaried employees of the Government and detained witnesses) in the United States courts, including the District

Court of Hawaii, the District Court of Puerto Rico, and the District Court of the United States for the District of Columbia, who attend court or attend before United States commissioners, at points so far removed from their respective residences as to prohibit return thereto from day to day, shall, when this fact is certified to in the order of the court or the commissioner for payment, be entitled, in addition to the compensation provided by existing law, to a per diem of \$3 for expenses of subsistence for each day of actual attendance and for each day necessarily occupied in traveling to attend court and return home.

When a witness is subpoenaed in more than one cause between the same parties, at the same court, only one travel fee and one per diem compensation shall be allowed for attendance. Both shall be taxed in the case first disposed of, after which the per diem attendance fee alone shall be taxed in the other cases in the order in which they are disposed of.

When a witness is detained in prison for want of security for his appearance, he shall be entitled, in addition to his subsistence, to a compensation of \$1 a day. (R. S. §§ 823, 848; Apr. 26, 1926, ch. 183, § 3, 44 Stat. 324; May 17, 1932, ch. 190, 47 Stat. 158; June 25, 1936, ch. 804, 49 Stat. 1921.)

#### DERIVATION

R. S. § 823 was derived from acts Feb. 26, 1853, ch. 80, § 1, 10 Stat. 161; Mar. 3, 1855, ch. 155, § 12, 10 Stat. 670, 671.

R. S. § 848 from act Feb. 26, 1853, ch. 80, § 3, 10 Stat. 167.

#### FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see Rule 45, following section 723c of this title.

#### CROSS REFERENCE

Temporary reduction of fees and suspension of subsistence during years 1933-38, see note under section 600 of this title.

#### § 600d. Fees and mileage in certain States.

This section, act Apr. 26, 1926, ch. 183, § 4, 44 Stat. 324, abolished special provisions relating to fees of jurors and witnesses in certain States.

#### § 601. Witnesses' fees; enumeration.

Subject matter of this section, R. S. §§ 823, 848, is now covered by section 600c of this title.

#### FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see Rule 45, following section 723c of this title.

#### § 602. Fees of persons summoned in two capacities or in two cases.

No constructive or double mileage fees shall be allowed by reason of any person being summoned as both a witness and juror, or as a witness in two or more cases pending in the same court and triable at the same term thereof. (May 27, 1908, ch. 200, § 1, 35 Stat. 377.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see Rule 45, following section 723c of this title.

#### § 603. No officer of court to have witness fees.

No officer of the United States courts in any State or Territory or in the District of Columbia shall be

entitled to witness fees for attending before any court or commissioner where he is officiating. (R. S. § 849.)

#### DERIVATION

Acts Aug. 16, 1856, ch. 124, § 8, 11 Stat. 50; July 21, 1852, ch. 66, § 1, 10 Stat. 16 (22).

#### FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see Rule 45, following section 723c of this title.

#### § 604. Expenses of officers of United States as witnesses.

When any clerk or other officer of the United States is sent away from his place of business as a witness for the Government, his necessary expenses, stated in items and sworn to, in going, returning, and attendance on the court shall be audited and paid, but no mileage or other compensation in addition to his salary shall in any case be allowed. (R. S. § 850.)

#### DERIVATION

Act Feb. 26, 1853, ch. 80, § 3, 10 Stat. 167, 168.

#### CROSS REFERENCE

Jury service by employees of United States, see sections 30n-30p of Title 5, Executive Departments and Government Officers and Employees.

#### § 605. Seamen as witnesses.

There shall be paid to each seaman or other person who is sent to the United States from any foreign port, station, sea, or ocean, by any United States minister, chargé d'affaires, consul, captain, or commander, to give testimony in any criminal case depending in any court of the United States, such compensation, exclusive of subsistence and transportation as such court may adjudge to be proper, not exceeding \$1 for each day necessarily employed in such voyage and in arriving at the place of examination or trial. In fixing such compensation the court shall take into consideration the condition of said seaman or witness, and whether his voyage has been broken up, to his injury, by his being sent to the United States.

When such seaman or person is transported in an armed vessel of the United States, no charge for subsistence or transportation shall be allowed. When he is transported in any other vessel, the compensation for his transportation and subsistence, not exceeding in any case 50 cents a day, may be fixed by the court, and shall be paid to the captain of said vessel accordingly. (R. S. § 851.)

#### DERIVATION

Act Feb. 26, 1853, ch. 80, § 3, 10 Stat. 168.

#### PRINTERS' FEES

#### § 606. Printers' fees.

The following and no other compensation shall be taxed and allowed to printers in the several States and Territories, except in cases otherwise expressly provided by law: For publishing any notice, or order, required by law, or the lawful order of any court, department, bureau, or other person, in any newspaper, printers shall be allowed a fee of 40 cents per folio for the first insertion and 20 cents per folio for each subsequent insertion. The compensation herein provided shall include the furnishing of lawful evidence, under oath, of publication, to be made and

furnished by the printer or publisher making such publication. (R. S. §§ 823, 853; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 317.)

## DERIVATION

R. S. § 823 from acts Feb. 26, 1853, ch. 80, § 1, 10 Stat. 161; Mar. 3, 1855, ch. 155, § 12, 10 Stat. 670, 671.

R. S. § 853 from act Feb. 26, 1853, ch. 80, § 3, 10 Stat. 168.

## CROSS REFERENCE

Rate charged for notices not to exceed the commercial rate charged to private individuals, with usual discounts, see section 322 of Title 44, Public Printing and Documents.

## § 607. Meaning of folio.

The term folio, in this chapter, shall mean one hundred words, counting each figure as a word. When there are over fifty and under one hundred words, they shall be counted as one folio; but a less number than fifty words shall not be counted, except when the whole statute, notice, or order contains less than fifty words. (R. S. § 854.)

## DERIVATION

Act Feb. 26, 1853, ch. 80, § 3, 10 Stat. 168.

## FEES, HOW PAID AND RECOVERED

## § 608. Jurors and witnesses; paid by marshal.

In cases where the United States are parties, the marshal shall, on the order of the court, to be entered on its minutes, pay to the jurors and witnesses all fees to which they appear by such order to be entitled which sum shall be allowed him in the General Accounting Office in his accounts. (R. S. §§ 236, 855; June 10, 1921, ch. 18, § 305, 42 Stat. 24.)

## DERIVATION

Act Feb. 26, 1853, ch. 80, § 3, 10 Stat. 168.

## TRANSFERS OF FUNCTIONS

Disbursement functions of United States marshals which would otherwise have devolved upon the Treasury Department on July 1, 1940, by virtue of Ex. Ord. No. 6166, June 10, 1933, as amended, set out in note under section 132 of Title 5, were transferred to and vested in Department of Justice to be exercised by United States marshals under supervision of Attorney General in accordance with existing statutes pertaining to such functions, by Reorg. Plan No. IV, § 3, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1234, set out in note under section 133 of Title 5, Executive Departments and Government Officers and Employees. See, also, sections 13–15 of said plan for provisions relating to transfer of functions of department heads, records, property, personnel, and funds.

## § 609. Recovery of fees.

The fees and compensations of the officers and persons hereinbefore mentioned, except those which are directed to be paid out of the Treasury, shall be recovered in like manner as the fees of the officers of the States respectively for like services are recovered. (R. S. § 857.)

## DERIVATION

Act May 8, 1792, ch. 36, § 6, 1 Stat. 278.

## Chapter 17.—EVIDENCE

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- 631. Competency of witnesses governed by State laws.
- 632. Same; defendants in criminal cases.
- 633. Same; husband or wife of defendant in prosecution for bigamy.
- 634. Testimony of witnesses before Congress.

Sec.

- 635. Proof in common-law actions.
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- 643. Depositions; taken in mode prescribed by State laws.
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- 667. Same; regulations for carrying out provisions of section 666.
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- 669. Copies of returns in returns office admissible.
- 670. Admissibility of copies of statements of demands by Post Office Department.
- 671. Admissibility of copies of post office records and statement of accounts.
- 672. Admissibility of copies of records of General Land Office.
- 673. Admissibility of copies of records, and so forth, of Patent Office.
- 674. Copies of foreign letters patent as prima facie evidence.
- 675. Copies of specifications and drawings of patents admissible.
- 676. Extracts from Journals of Congress admissible when injunction of secrecy removed.
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- 679. Records in clerks' offices, western district of North Carolina.
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- 682. Same; when certified copy not obtainable.
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# WRITINGS AND RECORDS MADE IN REGULAR COURSE OF BUSINESS

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- 695. Admissibility.
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- 695f. Same; fees and expenses of consuls and witnesses; payment.
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## TESTIMONY FOR USE IN FOREIGN COUNTRIES

- 701. Taking.
- 702. Privilege of witness.
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## TESTIMONY OF WITNESS IN FOREIGN COUNTRIES; CONTEMPTS

- 711. Letters rogatory to take testimony of witness, addressed to court of foreign country; failure of witness to appear; subpoena.
- 712. Trial of criminal actions; witness beyond jurisdiction of United States; issue of subpoena addressed to consul in foreign country.
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- 716. Service of order to show cause.
- 717. Hearing on order to show cause; judgment; satisfaction.
- 718. Opening judgment when rendered upon service by publication.

## § 631. Competency of witnesses governed by State laws.

The competency of a witness to testify in any civil action, suit, or proceeding in the courts of the United States shall be determined by the laws of the State or Territory in which the court is held. (R. S. § 858; June 29, 1906, ch. 3608, 34 Stat. 618.)

### DERIVATION

Acts July 16, 1862, ch. 189, § 1, 12 Stat. 588; July 2, 1864, ch. 210, § 3, 13 Stat. 351; Mar. 3, 1865, ch. 113, 13 Stat. 533.

### FEDERAL RULES OF CIVIL PROCEDURE

Evidence, see Rule 43, following section 723c of this title.

Modification of section by Rule 43, see note by Advisory Committee under said Rule 43.

## § 632. Same; defendants in criminal cases.

In the trial of all indictments, informations, complaints, and other proceedings against persons charged with the commission of crimes, offenses, and misdemeanors, in the United States courts, Territorial courts, and courts martial, and courts of inquiry, in any State or Territory, including the District of Columbia, the person so charged shall, at his own request but not otherwise, be a competent wit-

ness. And his failure to make such request shall not create any presumption against him. (Mar. 16, 1878, ch. 37, 20 Stat. 30.)

## § 633. Same; husband or wife of defendant in prosecution for bigamy.

In any proceeding or examination before a grand jury, a judge, justice, or a United States commissioner, or a court, in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, the lawful husband or wife of the person accused shall be a competent witness, and may be called, but shall not be compelled to testify in such proceeding, examination, or prosecution without the consent of the husband or wife, as the case may be; and such witness shall not be permitted to testify as to any statement or communication made by either husband or wife to each other, during the existence of the marriage relation, deemed confidential at common law. (Mar. 3, 1887, ch. 397, § 1, 24 Stat. 635.)

## § 634. Testimony of witnesses before Congress.

No testimony given by a witness before either House, or before any committee of either House, or before any joint committee established by a joint or concurrent resolution of the two Houses of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony. But an official paper or record produced by him is not within the said privilege. (R. S. § 859; June 22, 1938, ch. 594, 52 Stat. 943.)

### DERIVATION

Acts Jan. 24, 1857, ch. 19, § 2, 11 Stat. 156; Jan. 24, 1862, ch. 11, 12 Stat. 333.

## § 635. Proof in common-law actions.

The mode of proof in the trial of actions at common law shall be by oral testimony and examination of witnesses in open court, except as hereinafter provided. (R. S. § 861.)

### DERIVATION

Acts Sept. 24, 1789, ch. 20, § 30, 1 Stat. 88; Feb. 20, 1812, ch. 25, § 3, 2 Stat. 682; Jan. 24, 1827, ch. 4, §§ 1, 2, 4 Stat. 197, 199.

### FEDERAL RULES OF CIVIL PROCEDURE

Evidence, see Rule 43, following section 723c of this title.

## § 636. Production of books and writings.

In the trial of actions at law, the courts of the United States may, on motion and due notice thereof, require the parties to produce books or writings in their possession or power which contain evidence pertinent to the issue, in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceeding in chancery. If a plaintiff fails to comply with such order, the court may, on motion, give the like judgment for the defendant as in cases of nonsuit; and if a defendant fails to comply with such order, the court may, on motion, give judgment against him by default. (R. S. § 724.)

### DERIVATION

Act Sept. 24, 1789, ch. 20, § 15, 1 Stat. 82.

## FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 45 on this section, see note by Advisory Committee under said Rule 45.

Subpoena, see Rule 45, following section 723c of this title.

## § 637. Proof in equity and admiralty.

The mode of proof in causes of equity and of admiralty and maritime jurisdiction shall be according to rules now or hereafter prescribed by the Supreme Court, except as herein specially provided. (R. S. § 862.)

## DERIVATION

Act Aug. 23, 1842, ch. 188, § 6, 5 Stat. 518.

## FEDERAL RULES OF CIVIL PROCEDURE

Evidence, see Rule 43, following section 723c of this title.

## § 638. Comparison of handwriting to determine genuineness.

In any proceeding before a court or judicial officer of the United States where the genuineness of the handwriting of any person may be involved, any admitted or proved handwriting of such person shall be competent evidence as a basis for comparison by witnesses, or by the jury, court, or officer conducting such proceeding, to prove or disprove such genuineness. (Feb. 26, 1913, ch. 79, 37 Stat. 683.)

## §§ 639-641. Depositions de bene esse; notice; transmission to court.

These sections, R. S. §§ 863, 864, 865; acts May 28, 1896, ch. 252, § 19, 29 Stat. 184; May 23, 1900, ch. 541, 31 Stat. 182; and Mar. 2, 1901, ch. 814, 31 Stat. 956, were modified, broadened, and incorporated in Rules 26 et seq. of the Federal Rules of Civil Procedure, set out following section 723c of this title. See note of Advisory Committee under said Rule 26.

## § 642. Depositions, acknowledgments, and affidavits taken by notaries public.

Notaries public of the several States, Territories, and the District of Columbia may take depositions, and do all other acts in relation to taking testimony to be used in the courts of the United States, take acknowledgments and affidavits, in the same manner and with the same effect as commissioners of the United States district court may lawfully take or do. (Aug. 15, 1876, ch. 304, 19 Stat. 206.)

## FEDERAL RULES OF CIVIL PROCEDURE

Persons before whom depositions may be taken, see Rule 28, following section 723c of this title.

## § 643. Depositions; taken in mode prescribed by State laws.

The subject matter of this section, act Mar. 9, 1892, ch. 14, 27 Stat. 7, and the manner in which depositions may be taken are now covered by Rules 26 et seq. of the Federal Rules of Civil Procedure, set out following section 723c of this title. See note under said Rule 26.

## § 644. Depositions under dedimus potestatem and in perpetuum.

This section, R. S. § 866, was modified, broadened, and incorporated in Rules 26 et seq. of the Federal Rules of Civil Procedure set out following section 723c of this title. See note of Advisory Committee under said Rule 26.

## § 645. Depositions in perpetuum; admissible at discretion of court.

Any court of the United States may, in its discretion, admit in evidence in any cause before it any

deposition taken in perpetuum rei memoriam, which would be so admissible in a court of the State wherein such cause is pending, according to the laws thereof. (R. S. § 867.)

## DERIVATION

Act Feb. 20, 1812, ch. 25, § 3, 2 Stat. 682.

## § 646. Depositions under dedimus potestatem; how taken.

This section, R. S. § 868, was modified, broadened, and incorporated in Rules 26 et seq. of the Federal Rules of Civil Procedure set out following section 723c of this title. See note of Advisory Committee under said Rule 26.

## § 647. Same; subpoena duces tecum.

When either party in such suit applies to any judge of a United States court in such district or Territory for a subpoena commanding the witness, therein to be named, to appear and testify before said commissioner, at the time and place to be stated in the subpoena, and to bring with him and produce to such commissioner any paper or writing or written instrument or book or other document supposed to be in the possession or power of such witness, and to be described in the subpoena, such judge, on being satisfied by the affidavit of the person applying, or otherwise, that there is reason to believe that such paper, writing, written instrument, book, or other document is in the possession or power of the witness, and that the same, if produced, would be competent and material evidence for the party applying therefor, may order the clerk of said court to issue such subpoena accordingly. And if the witness, after being served with such subpoena, fails to produce to the commissioner, at the time and place stated in the subpoena, any such paper, writing, written instrument, book, or other document being in his possession or power and described in the subpoena, and such failure is proved to the satisfaction of said judge, he may proceed to enforce obedience to said process of subpoena or punish the disobedience in like manner as any court of the United States may proceed in case of disobedience to like process issued by such court. When any such paper, writing, written instrument, book, or other document is produced to such commissioner, he shall, at the cost of the party requiring the same, cause to be made a correct copy thereof, or of so much thereof as shall be required by either of the parties. (R. S. § 869.)

## DERIVATION

Act Jan. 24, 1827, ch. 4, § 2, 4 Stat. 199.

## FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see Rule 45, following section 723c of this title.

## § 648. Same; witnesses; when required to attend.

No witness shall be required, under the provisions of either of sections 646 or 647 of this title, to attend at any place out of the county where he resides, nor more than forty miles from the place of his residence, to give his deposition; nor shall any witness be deemed guilty of contempt for disobeying any subpoena directed to him by virtue of either of the said sections, unless his fee for going to, returning from, and one day's attendance at the place of

examination are paid or tendered to him at the time of the service of the subpoena. (R. S. § 870.)

#### DERIVATION

Act Jan. 24, 1827, ch. 4, §§ 1, 2, 4 Stat. 199.

#### FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see Rule 45, following section 723c of this title.

### § 649. Depositions in District of Columbia in suits pending elsewhere.

When a commission to take the testimony of any witness found within the District of Columbia, to be used in a suit depending in any State or Territorial or foreign court, is issued from such court, or a notice to the same effect is given according to its rules of practice, and such commission or notice is produced to a justice of the district court of the United States for said District, and due proof is made to him that the testimony of such witness is material to the party desiring the same, the said justice shall issue a summons to the witness, requiring him to appear before the commissioners named in the commission or notice, to testify in such suit, at a time and at a place within said District therein specified. (R. S. § 871; June 25, 1936, ch. 804, 49 Stat. 1921.)

#### DERIVATION

Act Mar. 3, 1869, ch. 128, § 1, 15 Stat. 324.

### § 650. Same; commission or notice.

When it satisfactorily appears by affidavit to any justice of the district court of the United States for the District of Columbia, or to any commissioner for taking depositions appointed by said court—First. That any person within said District is a material witness for either party in a suit pending in any State or Territorial or foreign court; Second. That no commission nor notice to take the testimony of such witness has been issued or given; and Third. That, according to the practice of the court in which the suit is pending, the deposition of a witness taken without the presence and consent of both parties will be received on the trial or hearing thereof, such officer shall issue his summons, requiring the witness to appear before him at a place within the District, at some reasonable time, to be stated therein, to testify in such suit. (R. S. § 872; June 25, 1936, ch. 804, 49 Stat. 1921.)

#### DERIVATION

Act Mar. 3, 1869, ch. 128, § 2, 15 Stat. 325.

### § 651. Same; manner of taking and transmitting.

Testimony obtained under sections 649 and 650 of this title shall be taken down in writing by the officer before whom the witness appears, and shall be certified and transmitted by him to the court in which the suit is pending, in such manner as the practice of that court may require. If any person refuses or neglects to appear at the time and place mentioned in the summons, or, on his appearance, refuses to testify, he shall be liable to the same penalties as would be incurred for a like offense on the trial of a suit. (R. S. § 873.)

#### DERIVATION

Act Mar. 3, 1869, ch. 128, § 3, 15 Stat. 325.

### § 652. Same; witness fees.

Every witness appearing and testifying under sections 649–651 of this chapter shall be entitled to receive for each day's attendance, from the party at whose instance he is summoned, the fees provided by law for each day he shall give attendance. (R. S. § 874.)

#### DERIVATION

Act Mar. 3, 1869, ch. 128, § 4, 15 Stat. 325.

### § 653. Letters rogatory; procedure.

When any commission or letter rogatory, issued to take the testimony of any witness in a foreign country, in any suit in which the United States are parties or have an interest, is executed by the court or the commissioner to whom it is directed, it shall be returned by such court or commissioner to the minister or consul of the United States nearest the place where it is executed. On receiving the same, the said minister or consul shall indorse thereon a certificate, stating when and where the same was received, and that the said deposition is in the same condition as when he received it; and he shall thereupon transmit the said letter or commission, so executed and certified, by mail, to the clerk of the court from which the same issued, in the manner in which his official dispatches are transmitted to the Government. And the testimony of witnesses so taken and returned shall be read as evidence on the trial of the suit in which it was taken, without objection as to the method of returning the same. When letters rogatory are addressed from any court of a foreign country to any district court of the United States, a commissioner of such district court designated by said court to make the examination of the witnesses mentioned in said letters, shall have power to compel the witnesses to appear and depose in the same manner as witnesses may be compelled to appear and testify in courts. (R. S. § 875; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 241; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

#### DERIVATION

Act Mar. 3, 1863, ch. 95, § 4, 12 Stat. 770.

### § 654. Witnesses; subpoenas; may run into another district.

Until September 19, 1928, subpoenas for witnesses who are required to attend a court of the United States, in any district, may run into any other district: *Provided*, That in civil cases no writ of subpoena shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the court being first had upon proper application and cause shown. The word "district" and the words "district court" as used herein shall be construed to include the District of Columbia and the district court of the United States for the District of Columbia. After September 19, 1928, subpoenas for witnesses who are required to attend a court of the United States, in any district, may run into any other district: *Provided*, That in civil causes the witnesses living out of the district in which the court is held do not live at a greater distance than one hundred miles from the place of hold-

ing the same. (R. S. § 876; Sept. 19, 1922, ch. 344, 42 Stat. 848; Mar. 4, 1925, ch. 526, § 2, 43 Stat. 1265; June 25, 1936, ch. 804, 49 Stat. 1921.)

DERIVATION

Act Mar. 2, 1793, ch. 22, § 6, 1 Stat. 335.

FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see Rule 45, following section 723c of this title.

CROSS REFERENCE

Subpoenas for witnesses under Food, Drug, and Cosmetics Act as running into any district notwithstanding this section, see section 337 of Title 21, Food and Drugs.

§ 655. Same; subpoena; form; attendance under.

Witnesses who are required to attend any term of a district court on the part of the United States, shall be subpoenaed to attend to testify generally on their behalf, and not to depart the court without leave thereof, or of the district attorney; and under such process they shall appear before the grand or petit jury, or both, as they may be required by the court or district attorney. (R. S. § 877; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

DERIVATION

Act Feb. 6, 1853, ch. 80, § 3, 10 Stat. 169.

FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see Rule 45, following section 723c of this title.

§ 656. Same; for indigent defendants in criminal cases.

Whenever any person indicted in a court of the United States makes affidavit setting forth that there are witnesses whose evidence is material to his defense; that he cannot safely go to trial without them; what he expects to prove by each of them; that they are within the district in which the court is held, or within one hundred miles of the place of trial; and that he is not possessed of sufficient means, and is actually unable to pay the fees of such witnesses, the court in term, or any judge thereof in vacation, may order that such witnesses be subpoenaed if found within the limits aforesaid. In such case the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpoenaed in behalf of the United States. (R. S. § 878.)

DERIVATION

Act Aug. 8, 1846, ch. 98, § 11, 9 Stat. 74.

§ 657. Same; recognizance; at hearing of charges in criminal cases.

Any judge or other officer who may be authorized to arrest and imprison or bail persons charged with any crime or offense against the United States may, at the hearing of any such charge, require of any witness produced against the prisoner, on pain of imprisonment, a recognizance, with or without sureties, in his discretion, for his appearance to testify in the case. And where the crime or offense is charged to have been committed on the high seas, or elsewhere within the admiralty and maritime jurisdiction of the United States, he may, in his discretion, require a like recognizance, with such sureties as he may deem necessary, of any witness produced in behalf of the accused whose testimony, in his

opinion, is important and is in danger of being otherwise lost. (R. S. § 879.)

DERIVATION

Acts Sept. 24, 1789, ch. 20, § 33, 1 Stat. 91; Aug. 23, 1842, ch. 188, § 2, 5 Stat. 517; Aug. 8, 1846, ch. 98, § 7, 9 Stat. 73.

8. Same; recognizance; Vermont.

In the district of Vermont, all recognizances of witnesses, taken by any magistrate in said district, for their appearance to testify in any case cognizable in the district court thereof, shall be to the district court next thereafter to be held in the said district. (R. S. § 880; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

DERIVATION

Act Apr. 29, 1802, ch. 31, § 29, 2 Stat. 167.

§ 659. Same; recognizance; when required.

Any judge of the United States, on the application of a district attorney, and on being satisfied by proof that the testimony of any person is competent and will be necessary on the trial of any criminal proceeding in which the United States are parties or are interested, may compel such person to give recognizance, with or without sureties, at his discretion, to appear to testify therein; and, for that purpose, may issue a warrant against such person, under his hand, with or without seal, directed to the marshal or other officer authorized to execute process in behalf of the United States, to arrest and bring before him such person. If the person so arrested neglects or refuses to give recognizance in the manner required, the judge may issue a warrant of commitment against him, and the officer shall convey him to the prison mentioned therein. And the said person shall remain in confinement until he is removed to the court for the purpose of giving his testimony or until he gives the recognizance required by said judge. (R. S. § 881.)

DERIVATION

Act Aug. 8, 1846, ch. 98, § 7, 9 Stat. 73.

§ 660. Same; attachment without previous subpoena in certain prosecutions.

In any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, whether before a United States commissioner, justice, judge, a grand jury, or any court, an attachment for any witness may be issued by the court, judge, or commissioner, without a previous subpoena, compelling the immediate attendance of such witness, when it shall appear by oath or affirmation, to the commissioner, justice, judge, or court, as the case may be, that there is reasonable ground to believe that such witness will unlawfully fail to obey a subpoena issued and served in the usual course in such cases; and in such case the usual witness fee shall be paid to such witness so attached. The person so attached may at any time secure his or her discharge from custody by executing a recognizance with sufficient surety, conditioned for the appearance of such person at the proper time, as a witness in the cause or proceeding wherein the attachment may be issued. (Mar. 3, 1887, ch. 397, § 2, 24 Stat. 635.)



**§ 661. Copies of department or corporation records and papers; admissibility; seal.**

(a) Copies of any books, records, papers, or other documents in any of the executive departments, or of any corporation all of the stock of which is beneficially owned by the United States, either directly or indirectly, shall be admitted in evidence equally with the originals thereof, when duly authenticated under the seal of such department or corporation, respectively.

(b) Books or records of account in whatever form, and minutes (or portions thereof) of proceedings, of any such executive department or corporation, or copies of such books, records, or minutes authenticated under the seal of such department or corporation, shall be admissible as evidence of any act, transaction, occurrence, or event as a memorandum of which such books, records, or minutes were kept or made.

(c) The seal of any such executive department or corporation shall be judicially noticed. (R. S. § 882; June 19, 1934, ch. 653, § 6 (a), 48 Stat. 1109.)

**DERIVATION**

Acts Sept. 15, 1789, ch. 14, § 5, 1 Stat. 69; Feb. 22, 1849, ch. 61, § 3, 9 Stat. 347; May 31, 1854, ch. 60, § 2, 10 Stat. 297.

**FEDERAL RULES OF CIVIL PROCEDURE**

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

**§ 662. Same; in office of General Counsel of the Treasury.**

Copies of any documents, records, books, or papers in the office of the General Counsel of the Department of the Treasury, certified by him under the seal of his office, or, when his office is vacant, by the officer acting as solicitor for the time, shall be evidence equally with the originals. (R. S. § 883; May 10, 1934, ch. 277, § 512, 48 Stat. 758.)

**DERIVATION**

Act Feb. 22, 1849, ch. 61, § 2, 9 Stat. 347.

**FEDERAL RULES OF CIVIL PROCEDURE**

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

**§ 663. Instruments and papers of Comptroller of Currency; admissibility.**

Every certificate, assignment, and conveyance executed by the Comptroller of the Currency, in pursuance of law, and sealed with his seal of office, shall be received in evidence in all places and courts; and all copies of papers in his office, certified by him and authenticated by the said seal, shall in all cases be evidence equally with the originals. An impression of such seal directly on the paper shall be as valid as if made on wax or wafer. (R. S. § 884.)

**DERIVATION; NATIONAL BANK ACT**

This section, which was derived, through R. S. § 884, from act June 3, 1864, ch. 106, § 2, 13 Stat. 100, is part of the National Bank Act. See section 38 of Title 12, Banks and Banking.

**FEDERAL RULES OF CIVIL PROCEDURE**

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

**§ 664. Organization certificates of national banks; admissibility.**

Copies of the organization certificate of any national banking association, duly certified by the Comptroller of the Currency, and authenticated by his seal of office, shall be evidence in all courts and places within the jurisdiction of the United States of the existence of the association, and of every matter which could be proved by the production of the original certificate. (R. S. § 885.)

**DERIVATION; NATIONAL BANK ACT**

This section, which was derived, through R. S. § 885, from act June 3, 1864, ch. 106, § 6, 13 Stat. 101, is part of the National Bank Act. See section 38 of Title 12, Banks and Banking.

**FEDERAL RULES OF CIVIL PROCEDURE**

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

**§ 665. Transcripts from books of Treasury in suits against delinquents; admissibility.**

When suit is brought in any case of delinquency of a revenue officer, or other person accountable for public money, a transcript from the books and proceedings of the Treasury Department, certified by the register and authenticated under the seal of the department, or, when the suit involves the accounts of the War or Navy Departments, certified by the Comptroller General of the United States, and authenticated under the seal of the General Accounting Office, shall be admitted as evidence, and the court trying the cause shall be authorized to grant judgment and award execution accordingly. And all copies of bonds, contracts, or other papers relating to, or connected with, the settlement of any account between the United States and an individual, when certified by the register, or by the Comptroller General, as the case may be, to be true copies of the originals on file, and authenticated under the seal of the department, may be annexed to such transcripts, and shall have equal validity, and be entitled to the same degree of credit which would be due to the original papers if produced and authenticated in court. Where suit is brought upon a bond or other sealed instrument, and the defendant pleads "non est factum", or makes his motion to the court, verifying such plea or motion by his oath, the court may take the same into consideration, and, if it appears to be necessary for the attainment of justice, may require the production of the original bond, contract, or other paper specified in such affidavit. (R. S. § 886; June 10, 1921, ch. 18, §§ 302, 310, 42 Stat. 23, 25.)

**DERIVATION**

Acts Mar. 3, 1797, ch. 20, § 1, 1 Stat. 512; Mar. 3, 1817, ch. 45, § 11, 3 Stat. 367.

**FEDERAL RULES OF CIVIL PROCEDURE**

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

§ 666. Same; certificate by Secretary or Assistant Secretary.

The transcripts from the books and proceedings of the Department of the Treasury and the copies of bonds, contracts, and other papers provided for in section 665 of this chapter shall hereafter be certified by the Secretary or an Assistant Secretary of the Treasury under the seal of the department, or by the Comptroller General under the seal of the General Accounting Office, as the case may be. (July 31, 1894, ch. 174, § 17, 28 Stat. 210; Mar. 2, 1895, ch. 177, § 10, 28 Stat. 809; June 10, 1921, ch. 18, §§ 302, 304, 310, 42 Stat. 23, 24, 25.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

§ 667. Same; regulations for carrying out provisions of section 666.

It shall be the duty of the Secretary of the Treasury to make appropriate rules and regulations for carrying out the provisions of section 666 of this chapter. (July 31, 1894, ch. 174, § 22, 28 Stat. 210.)

§ 668. Same; indictments for embezzlement of public moneys.

Upon the trial of any indictment against any person for embezzling public moneys, it shall be sufficient evidence, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the Treasury Department, as provided by section 665 of this title. (R. S. § 887.)

#### DERIVATION

Acts Mar. 2, 1797, ch. 20, § 1, 1 Stat. 512; Aug. 6, 1846, ch. 90, § 16, 9 Stat. 63.

§ 669. Copies of returns in returns office admissible.

A copy of any return of a contract returned and filed in the returns office of the General Accounting Office, as provided by law, when certified by the clerk of the said office to be full and complete, and when authenticated by the seal of the department, shall be evidence in any prosecution against any officer for falsely and corruptly swearing to the affidavit required by law to be made by such officer in making his return of any contract, as required by law, to said returns office. (R. S. § 888; Feb. 4, 1929, ch. 146, 45 Stat. 1147.)

#### DERIVATION

Act June 2, 1862, ch. 93, § 4, 12 Stat. 412.

§ 670. Admissibility of copies of statements of demands by Post Office Department.

In all suits for the recovery of balances due from postmasters, a copy, duly certified under the seal of the General Accounting Office, of the statement of any postmaster, special agent, or other person employed by the Postmaster General or the General Accounting Office for that purpose, that he has mailed a letter to such delinquent postmaster at the post office where the indebtedness accrued, or at his last usual place of abode; that a sufficient time has elapsed for said letter to have reached its destination in the ordinary course of the mail; and that payment of such balance has not been received, within the time

designated in his instructions, shall be received as sufficient evidence in the courts of the United States or other courts that a demand has been made upon the delinquent postmaster; but when the account of a late postmaster has been once adjusted and settled, and a demand has been made for the balance appearing to be due, and afterward allowances are made or credits entered, it shall not be necessary to make a further demand for the new balance found to be due. (R. S. § 890; June 10, 1921, ch. 18, 42 Stat. 23.)

#### DERIVATION

Act July 27, 1868, ch. 246, § 19, 15 Stat. 197.

#### FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

§ 671. Admissibility of copies of post office records and statement of accounts.

Copies of the quarterly returns of postmasters and of any papers pertaining to the accounts in the office of the General Accounting Office, and transcripts from the money-order account books of the Post Office Department, when certified by the General Accounting Office under the seal of that office, shall be admitted as evidence in the courts of the United States in civil suits and criminal prosecutions; and in any civil suit, in case of delinquency of any postmaster or contractor, a statement of the account, certified as aforesaid, shall be admitted in evidence, and the court shall be authorized thereupon to give judgment and award execution, subject to the provisions of law as to proceedings in such civil suits. (R. S. § 889; June 10, 1921, ch. 18, 42 Stat. 23.)

#### DERIVATION

Acts Mar. 3, 1825, ch. 64, § 38, 4 Stat. 113; July 2, 1836, ch. 270, § 15, 5 Stat. 82; May 17, 1864, ch. 87, § 11, 13 Stat. 78; July 27, 1868, ch. 246, § 18, 15 Stat. 197.

#### FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

§ 672. Admissibility of copies of records of General Land Office.

Copies of any records, books, or papers in the General Land Office, authenticated by the seal and certified by the commissioner thereof, or, when his office is vacant, by the principal clerk, shall be evidence equally with the originals thereof. And literal exemplifications of any such records shall be held, when so introduced in evidence, to be of the same validity as if the names of the officers signing and countersigning the same had been fully inserted in such record. (R. S. § 891.)

#### DERIVATION

Acts Apr. 25, 1812, ch. 68, § 4, 2 Stat. 717; July 4, 1836, ch. 352, §§ 2, 7, 5 Stat. 109, 111; Mar. 3, 1843, ch. 95, §§ 1, 2, 5 Stat. 627, 628.

#### FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

## CROSS REFERENCE

Authenticated copies of records, books, papers, documents, maps, plots, or diagrams, furnished by heads of departments of the Government to be admitted in evidence equally with the originals, see sections 488, 490 of Title 5, Executive Departments and Government Officers and Employees.

**§ 673. Admissibility of copies of records, and so forth, of Patent Office.**

Written or printed copies of any records, books, papers, or drawings belonging to the Patent Office, of letters patent, of certificates of registration of trade marks, labels, or prints, authenticated by the seal of the Patent Office and certified by the commissioner thereof, or in his name attested by a chief of division duly designated by the commissioner, shall be evidence in all cases wherein the originals could be evidence; and any person making application therefor and paying the fee required by law shall have certified copies thereof. (R. S. § 892; Mar. 4, 1925, ch. 535, § 2, 43 Stat. 1269.)

## DERIVATION

Act July 8, 1870, ch. 230, § 57, 16 Stat. 207.

## FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

**§ 674. Copies of foreign letters patent as prima facie evidence.**

Copies of the specifications and drawings of foreign letters patent, certified as provided in section 673 of this title, shall be prima facie evidence of the fact of the granting of such letters patent, and of the date and contents thereof. (R. S. § 893.)

## DERIVATION

Act July 8, 1870, ch. 230, § 57, 16 Stat. 207.

## FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

**§ 675. Copies of specifications and drawings of patents admissible.**

The printed copies of specifications and drawings of patents, which the Commissioner of Patents is authorized to print for gratuitous distribution, and to deposit in the capitols of the States and Territories, and in the clerk's offices of the district courts, shall, when certified by him and authenticated by the seal of his office, be received in all courts as evidence of all matters therein contained. (R. S. § 894.)

## DERIVATION

Res. Jan. 11, 1871, No. 5, 16 Stat. 590.

## FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

**§ 676. Extracts from Journals of Congress admissible when injunction of secrecy removed.**

Extracts from the Journals of the Senate, or of the House of Representatives, and of the Executive Journal of the Senate when the injunction of secrecy

is removed, certified by the Secretary of the Senate or by the Clerk of the House of Representatives, shall be admitted as evidence in the courts of the United States, and shall have the same force and effect as the originals would have if produced and authenticated in court. (R. S. § 895.)

## DERIVATION

Act Aug. 8, 1846, ch. 107, § 1, 9 Stat. 80.

## FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

**§ 677. Copies of records in offices of United States consuls admissible.**

Copies of all official documents and papers in the office of any consul or vice consul of the United States, and of all official entries in the books or records of any such office, certified under the hand and seal of such officer, shall be admitted in evidence in the courts of the United States. (R. S. § 896; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

## DERIVATION

Act Jan. 8, 1869, ch. 7, 15 Stat. 266.

## FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

**§ 678. Books and papers in certain district courts.**

The transcripts into new books, made by the clerks of the district courts in the several districts of Texas, Florida, Wisconsin, Minnesota, Iowa, and Kansas, in pursuance of the Act of June 27, 1864, chapter 165 [13 Stat. 199] providing that the books of records and journals of the district courts of said States should be transferred to the circuit courts after having first copied into a book for that purpose provided, all entries, orders, or other proceedings, which may be found in said books, journals, or records relating in any manner to cases which were not of circuit court cognizance, and which could not have been prosecuted in a circuit court] from the records and journals transferred by them, respectively, under the said act, to the clerks of the circuit courts in said districts, when certified by the clerks respectively making the same to be full and true copies from the original books, shall have the same force and effect as records as the originals. (R. S. § 897; June 27, 1864, ch. 165, 13 Stat. 199; Mar. 3, 1911, ch. 231, § 289, 36 Stat. 1167.)

## DERIVATION

Act June 27, 1864, ch. 165, §§ 2, 4, 13 Stat. 199.

## FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

**§ 679. Records in clerks' offices, western district of North Carolina.**

The transcripts into new books made by the clerks of the circuit and district courts for the western district of North Carolina, in pursuance of the act

of June 4, 1872, chapter 282 [(17 Stat. 215) authorizing the clerks of the district and circuit courts of the western district to make transcripts, from any of the records, files or papers of the district and circuit courts remaining in the office of the clerks of the eastern district, of all matters and proceedings which relate to or concern liens upon or titles to real estate situate in the western district] when certified by the clerks respectively making the same to be full and true copies from the original books, shall have the same force and effect as records as the originals. And the certificate of the clerk of the district court of the western district of transcripts of any of the said transcribed records, shall also be received in evidence with the like effect as if made from the originals from which such records were transcribed. (R. S. § 898; June 4, 1872, ch. 282, 17 Stat. 215; Mar. 3, 1911, ch. 231, § 289, 36 Stat. 1167.)

#### DERIVATION

Act June 4, 1872, ch. 282, § 10, 17 Stat. 217.

#### FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

#### 0. Records in clerks' offices of former district of California.

The clerk of the district court for the northern district of California is authorized, at the request of the district judge of the southern district, and at the cost of the parties requiring the same, to make transcripts of any of the records, files, or papers of the district court of the United States, remaining in the office of the clerk of the northern district of California, and of all matters and proceedings which relate to or concern liens upon or titles to real estate situated in said southern district; and such transcripts, when so made, shall be certified to be true and correct by the clerk making the same, and the same, when so made and certified, and filed in the proper court, shall constitute the record in such court, and shall be evidence in all courts and places equally with said originals. (Aug. 5, 1886, ch. 928, § 9, 24 Stat. 310; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

#### § 681. Original records lost or destroyed; certified copy admissible.

When the record of any judgment, decree, or other proceeding of any court of the United States is lost or destroyed, any party or person interested therein may, on application to such court, and on showing to its satisfaction that the same was lost or destroyed without his fault, obtain from it an order authorizing such defect to be supplied by a duly certified copy of the original record, where the same can be obtained; and such certified copy shall thereafter have, in all respects, the same effect as the original record would have had. (R. S. § 899.)

#### DERIVATION

Act Mar. 3, 1871, ch. 111, § 1, 16 Stat. 474.

#### FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

#### § 682. Same; when certified copy not obtainable.

When any record of a judgment, decree or other proceeding of any court of the United States is lost or destroyed, and the defect cannot be supplied as provided in section 681 of this title, any party or person interested therein may make a written application to the court to which the record belonged, verified by affidavit, showing such loss or destruction; that the same occurred without his fault or neglect; that certified copies of such record cannot be obtained by him; and showing also the substance of the record so lost or destroyed, and that the loss or destruction thereof, unless supplied, will or may result in damage to him. The court shall cause said application to be entered of record, and a copy of it shall be served personally upon every person interested therein, together with written notice that on a day therein stated, which shall not be less than sixty days after such service, said application will be heard; and if, upon such hearing, the court is satisfied that the statements contained in the application are true, it shall make and cause to be entered of record an order reciting the substance and effect of said lost or destroyed record. Said order shall have the same effect, so far as concerns the party or person making such application and the persons served as above provided, but subject to intervening rights, which the original record would have had, if the same had not been lost or destroyed. (R. S. § 900.)

#### DERIVATION

Act Mar. 3, 1871, ch. 111, § 2, 16 Stat. 475.

#### FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

#### § 683. Same; on removal to Supreme Court.

When any cause has been removed to the Supreme Court, and the original record thereof is afterward lost, a duly certified copy of the record remaining in said court may be filed in the court from which the cause was removed, on motion of any party or person claiming to be interested therein; and the copy so filed shall have the same effect as the original record would have had if the same had not been lost or destroyed. (R. S. § 901.)

#### DERIVATION

Act Mar. 3, 1871, ch. 111, § 3, 16 Stat. 475.

#### § 684. Same; notice and proof of service.

In any proceedings in conformity with law to restore the records of any court of the United States which have been or may be hereafter lost or destroyed, the notice required may be served on any nonresident of the district in which such court is held anywhere within the jurisdiction of the United States, or in any foreign country; the proof of service of such notice, if made in a foreign country, to be certified by a minister or consul of the United States

in such country, under his official seal. (R. S. § 902; Jan. 31, 1879, ch. 39, § 1, 20 Stat. 277.)

## DERIVATION

Act Mar. 18, 1872, ch. 56, § 1, 17 Stat. 40.

§ 685. Same; certified copy of official papers.

A certified copy of the official return, or any other official paper of the United States attorney, marshal, or clerk, or other certifying or recording officer of any court of the United States, made in pursuance of law, and on file in any department of the Government, relating to any cause or matter to which the United States was a party in any such court, the record of which has been or may be lost or destroyed, may be filed in the court to which it appertains, and shall have the same force and effect as if it were an original report, return, paper, or other document made to or filed in such court; and in any case in which the names of the parties and the date and amount of judgment or decree shall appear from such return, paper, or document, it shall be lawful for the court in which they are filed to issue the proper process to enforce such decree or judgment, in the same manner as if the original record remained in said court. And in all cases where any of the files, papers, or records of any court of the United States have been or shall be lost or destroyed, the files, records, and papers which, pursuant to law, may have been or may be restored or supplied in place of such records, files, and papers, shall have the same force and effect, to all intents and purposes, as the originals thereof would have been entitled to. (R. S. § 903; Jan. 31, 1879, ch. 39, § 2, 20 Stat. 277.)

## DERIVATION

Act Mar. 18, 1872, ch. 56, § 2, 17 Stat. 41.

## FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

§ 686. Same; restoration by district attorney.

Whenever any of the records or files in which the United States are interested of any court of the United States have been or may be lost or destroyed, it shall be the duty of the attorney of the United States for the district or court to which such files and records belong, so far as the judges of such courts respectively shall deem it essential to the interests of the United States that such records and files be restored or supplied, to take such steps, under the direction of said judges, as may be necessary to effect such restoration or substitution, including such dockets, indices, and other books and papers as said judges shall think proper.

Said judges may direct the performance, by the clerks of said courts respectively and by the United States attorneys, of any duties incident thereto; and said clerks and attorneys shall be allowed such compensation for services in the matter and for lawful disbursements as may be approved by the Attorney General of the United States, upon a certificate by the judges of said courts stating that such claim for services and disbursements is just and reasonable; and the sum so allowed shall be paid out of the judi-

ciary fund. (R. S. § 904; Jan. 31, 1879, ch. 39, § 3, 20 Stat. 277.)

## DERIVATION

Act Mar. 18, 1872, ch. 56, § 3, 17 Stat. 41.

§ 687. Authentication of legislative acts; proof of judicial proceedings of State.

The acts of the legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory, or country affixed thereto. The records and judicial proceedings of the courts of any State or Territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken. (R. S. § 905.)

## DERIVATION

Acts May 26, 1790, ch. 11, 1 Stat. 122; Mar. 27, 1804, ch. 56, § 2, 2 Stat. 299.

## FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44

Proof of official records, see Rule 44, following section 723c of this title.

§ 688. Proofs of records in offices not pertaining to courts.

All records and exemplifications of books, which may be kept in any public office of any State or Territory, or of any country subject to the jurisdiction of the United States, not appertaining to a court, shall be proved or admitted in any court or office in any other State or Territory, or in any such country, by the attestation of the keeper of the said records or books, and the seal of his office annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, parish, or district in which such office may be kept, or of the governor, or secretary of state, the chancellor or keeper of the great seal, of the State, or Territory, or country, that the said attestation is in due form, and by the proper officers. If the said certificate is given by the presiding justice of a court, it shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or, if given by such governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the State, Territory, or country aforesaid in which it is made. And the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the State, Territory, or country, as aforesaid, from which they are taken. (R. S. § 906.)

DERIVATION

Acts Mar. 27, 1804, ch. 56, §§ 1, 2, 2 Stat. 298, 299; Feb. 21, 1871, ch. 62, 16 Stat. 419.

FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

§ 689. Copies of foreign records relating to land titles.

It shall be lawful for any keeper or person having the custody of laws, judgments, orders, decrees, journals, correspondence, or other public documents of any foreign government or its agents, relating to the title to lands claimed by or under the United States, on the application of the head of one of the departments, the General Counsel for the Department of the Treasury, or the Commissioner of the General Land Office, to authenticate copies thereof under his hand and seal, and to certify them to be correct and true copies of such laws, judgments, orders, decrees, journals, correspondence, or other public documents, respectively; and when such copies are certified by an American minister or consul, under his hand and seal of office, to be true copies of the originals, they shall be sealed up by him and returned to the General Counsel for the Department of the Treasury, who shall file them in his office, and cause them to be recorded in a book to be kept for that purpose. A copy of any such law, judgment, order, decree, journal, correspondence, or other public document, so filed, or of the same so recorded in said book, may be read in evidence in any court, where the title to land claimed by or under the United States may come into question, equally with the originals. (R. S. § 907; May 10, 1934, ch. 277, § 512, 48 Stat. 759.)

DERIVATION

Acts Feb. 22, 1849, ch. 61, § 1, 9 Stat. 346; Mar. 2, 1849, ch. 82, 9 Stat. 350.

FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

§ 690. Possessory actions for recovery of mining titles.

No possessory action between persons, in any court of the United States, for the recovery of any mining title, or for damages to any such title, shall be affected by the fact that the paramount title to the land in which such mines lie is in the United States; but each case shall be adjudged by the law of possession. (R. S. § 910.)

DERIVATION

Act Feb. 27, 1865, ch. 64, § 9, 13 Stat. 441.

WRITINGS AND RECORDS MADE IN REGULAR COURSE OF BUSINESS

§ 695. Admissibility.

In any court of the United States and in any court established by Act of Congress, any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of said act, transaction, oc-

currence, or event, if it shall appear that it was made in the regular course of any business, and that it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but they shall not affect its admissibility. The term "business" shall include business, profession, occupation, and calling of every kind. (June 20, 1936, ch. 640, § 1, 49 Stat. 1561.)

FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

§ 695a. Foreign documents.

Any book, paper, statement, record, account, writing, or other document, or any portion thereof, of whatever character and in whatever form, as well as any copy thereof equally with the original, which is not in the United States (hereinafter referred to as a foreign document) shall, when duly certified as provided in sections 695d and 695e of this title, be admissible in evidence in any criminal action or proceeding in any court of the United States if the court shall find, from all the testimony taken with respect to such foreign document pursuant to a commission executed under section 695b, that such document (or the original thereof in case such document is a copy) satisfies the requirements of section 695 of this title, unless in the event that the genuineness of such document is denied, any party to such criminal action or proceeding making such denial shall establish to the satisfaction of the court that such document is not genuine. Nothing contained herein shall be deemed to require authentication under the provisions of sections 695d and 695e of this title of any foreign documents which may otherwise be properly authenticated by law. (June 20, 1936, ch. 640, § 2, 49 Stat. 1562.)

§ 695b. Same; testimony to prove genuineness; commission to consular or diplomatic officer to take; representation of witness by foreign counsel.

(a) The testimony of any witness in a foreign country may be taken either on oral or written interrogatories, or on interrogatories partly oral and partly written, pursuant to a commission issued, as hereinafter provided, for the purpose of determining whether any foreign documents sought to be used in any criminal action or proceeding in any court of the United States are genuine, and whether the requirements of section 695 of this title are satisfied with respect to any such document (or the original thereof in case such document is a copy). Application for the issuance of a commission for such purpose may be made to the court in which such action or proceeding is pending by the United States or any other party thereto, after five days' notice in writing by the applicant party, or his attorney, to the opposite party, or his attorney of record, which notice shall state the names and addresses of witnesses

whose testimony is to be taken and the time when it is desired to take such testimony. In granting such application the court shall issue a commission for the purpose of taking the testimony sought by the applicant addressed to any consular officer of the United States conveniently located for the purpose. In cases of testimony taken on oral or partly oral interrogatories, the court shall make provisions in the commission for the selection as hereinafter provided of foreign counsel to represent each party (except the United States) to the criminal action or proceeding in which the foreign documents in question are to be used, unless such party has, prior to the issuance of the commission, notified the court that he does not desire the selection of foreign counsel to represent him at the time of taking of such testimony. In cases of testimony taken on written interrogatories, such provision shall be made only upon the request of any such party prior to the issuance of such commission. Selection of foreign counsel shall be made by the party whom such foreign counsel is to represent within ten days prior to the taking of testimony or by the court from which the commission issued, upon the request of such party made within such time.

(b) Any consular officer to whom a commission is addressed to take testimony, who is interested in the outcome of the criminal action or proceeding in which the foreign documents in question are to be used or has participated in the prosecution of such action or proceeding, whether by investigations, preparation of evidence, or otherwise, may be disqualified on his own motion or on that of the United States or any other party to such criminal action or proceeding made to the court from which the commission issued at any time prior to the execution thereof. If, after notice and hearing, the court grants the motion, it shall instruct the consular officer thus disqualified to send the commission to any other consular officer of the United States named by the court, and such other officer shall execute the commission according to its terms and shall for all purposes be deemed the officer to whom the commission is addressed.

(c) The provisions of sections 695b-695h of this title applicable to consular officers shall be applicable to diplomatic officers pursuant to such regulations as may be prescribed by the President. (June 20, 1936, ch. 640, § 3, 49 Stat. 1562.)

**§ 695c. Same; manner of taking testimony; reduction to writing and signature; annexation of documents; interpreters.**

The consular officer to whom any commission authorized under section 695b of this title is addressed shall take testimony in accordance with its terms. Every person whose testimony is taken shall be cautioned and sworn to testify the whole truth and carefully examined. His testimony shall be reduced to writing or typewriting by the consular officer taking the testimony, or by some person under his personal supervision, or by the witness himself, in the presence of the consular officer and by no other person, and shall, after it has been reduced to writing or typewriting, be subscribed by the witness. Every foreign document, with respect to which testimony is taken,

shall be annexed to such testimony and subscribed by each witness who appears for the purpose of establishing the genuineness of such document. When counsel for all the parties attend the examination of any witness whose testimony is to be taken on written interrogatories, they may consent that oral interrogatories in addition to those accompanying the commission may be put to the witness. The consular officer taking any testimony shall require an interpreter to be present when his services are needed or are requested by any party or his attorney. (June 20, 1936, ch. 640, § 4, 49 Stat. 1563.)

**§ 695d. Same; certification of genuineness of document by officer; transmission of testimony and documents to clerk of court; inspection by parties.**

If the consular officer executing any commission authorized under section 695b of this title shall be satisfied, upon all the testimony taken, that a foreign document is genuine, he shall certify such document to be genuine under the seal of his office. Such certification shall include a statement that he is not subject to disqualification under the provisions of section 695b (3) of this title. He shall thereupon transmit, by mail, such foreign documents, together with the record of all testimony taken and the commission which has been executed, to the clerk of the court from which such commission issued, in the manner in which his official dispatches are transmitted to the Government. The clerk receiving any executed commission shall open it and shall make any foreign documents and record of testimony, transmitted with such commission, available for inspection by the parties to the criminal action or proceeding in which such documents are to be used, and said parties shall be furnished copies of such documents free of charge. (June 20, 1936, ch. 640, § 5, 49 Stat. 1563.)

**§ 695e. Same; documents on record in public offices; certification.**

A copy of any foreign document of record or on file in a public office of a foreign country, or political subdivision thereof, certified by the lawful custodian of such document, shall be admissible in evidence in any court of the United States when authenticated by a certificate of a consular officer of the United States resident in such foreign country, under the seal of his office, certifying that the copy of such foreign document has been certified by the lawful custodian thereof. Nothing contained in this section shall be deemed to alter, amend, or repeal section 689 of this title. (June 20, 1936, ch. 640, § 6, 49 Stat. 1563.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following section 723c of this title.

**§ 695e-1. Same; State of the Vatican City; certification by consular officer in Rome.**

Until the United States shall have consular officer resident in the State of the Vatican City, a copy of any document of record or on file in a public office of said State of the Vatican City, certified by the lawful custodian of such document, may be authen-



ticated, as provided in section 695e of this subchapter, by a consular officer of the United States resident in the city of Rome, Kingdom of Italy, and such document or record shall, when so certified and authenticated, be admissible in evidence in any court of the United States. (June 25, 1938, ch. 682, 52 Stat. 1163.)

§ 695f. Same; fees and expenses of consuls and witnesses; payment.

(a) The consular fees prescribed under section 127 of Title 22, for official services in connection with the taking of testimony under sections 695b–695d of this title, and the fees of any witness whose testimony is taken shall be paid by the party who applied for the commission pursuant to which such testimony was taken. Every witness under section 695c of this title shall be entitled to receive, for each day's attendance, fees prescribed under section 695g of this title. Every foreign counsel selected pursuant to a commission issued on application of the United States, and every interpreter whose services are required by a consular officer under section 695c of this title, shall be paid by the United States, such compensation, together with such personal and incidental expense upon verified statements filed with the consular officer, as he may allow. Compensation and expenses of foreign counsel selected pursuant to a commission issued on application of any party other than the United States shall be paid by the party whom such counsel represents and shall be allowed in the same manner.

(b) Whenever any party makes affidavit, prior to the issuance of a commission for the purpose of taking testimony, that he is not possessed of sufficient means and is actually unable to pay any fees and costs incurred under this section, such fees and costs shall, upon order of the court, be paid in the same manner as fees and costs are paid which are chargeable to the United States.

(c) Any appropriation available for the payment of fees and costs in the case of witnesses subpoenaed in behalf of the United States in criminal cases shall be available for any fees or costs which the United States is required to pay under this section. (June 20, 1936, ch. 640, § 7, 49 Stat. 1564.)

§ 695g. Same; regulations by President as to commissions, fees of witnesses, counsel and interpreters.

The President is authorized to prescribe regulations governing the manner of executing and returning commissions by consular officers under the provisions of sections 695b–695d of this title and schedules of fees allowable to witnesses, foreign counsel, and interpreters under section 695f of this title. (June 20, 1936, ch. 640, § 8, 49 Stat. 1564.)

§ 695h. Prospective nature of subchapter.

Sections 695–695h of this title shall be prospective only, and not retroactive. (June 20, 1936, ch. 640, § 9, 49 Stat. 1564.)

## TESTIMONY FOR USE IN FOREIGN COUNTRIES

§ 701. Taking.

The testimony of any witness residing within the United States, to be used in any suit for the recovery

of money or property depending in any court in any foreign country with which the United States are at peace, and in which the government of such foreign country shall be a party or shall have an interest, may be obtained, to be used in such suit. If a commission or letters rogatory to take such testimony, together with specific written interrogatories, accompanying the same, and addressed to such witness, shall have been issued from the court in which such suit is pending, on producing the same before the district judge of any district where the witness resides or shall be found, and on due proof being made to such judge that the testimony of any witness is material to the party desiring the same, such judge shall issue a summons to such witness requiring him to appear before the officer or commissioner named in such commission or letters rogatory, to testify in such suit. And no witness shall be compelled to appear or to testify under this section except for the purpose of answering such interrogatories so issued and accompanying such commission or letters. When counsel for all the parties attend the examination, they may consent that questions in addition to those accompanying the commission or letters rogatory may be put to the witness, unless the commission or letters rogatory exclude such additional interrogatories. The summons shall specify the time and place at which the witness is required to attend, which place shall be within one hundred miles of the place where the witness resides or shall be served with such summons. (R. S. § 4071.)

### DERIVATION

Acts Mar. 3, 1863, ch. 95, § 1, 12 Stat. 769; Mar. 3, 1873, ch. 245, § 1, 17 Stat. 581.

§ 702. Privilege of witness.

No witness shall be required, on such examination or any other under letters rogatory, to make any disclosure or discovery which shall tend to criminate him either under the laws of the State or Territory within which such examination is had, or any other, or any foreign State. (R. S. § 4072.)

### DERIVATION

Act Mar. 3, 1873, ch. 245, § 2, 17 Stat. 581.

§ 703. Punishment of witness for contempt.

If any person shall refuse or neglect to appear at the time and place mentioned in the summons issued, in accordance with section 701 of this title, or if upon his appearance he shall refuse to testify, he shall be liable to the same penalties as would be incurred for a like offense on the trial of a suit in the district court of the United States. (R. S. § 4073.)

### DERIVATION

Act Mar. 3, 1863, ch. 95, § 2, 12 Stat. 769.

§ 704. Fees and mileage of witnesses.

Every witness who shall so appear and testify shall be allowed, and shall receive from the party at whose instance he shall have been summoned, the same fees and mileage as are allowed to witnesses in suits depending in the district courts of the United States. (R. S. § 4074.)

### DERIVATION

Act Mar. 3, 1863, ch. 95, § 3, 12 Stat. 769.

**TESTIMONY OF WITNESS IN FOREIGN COUNTRIES; CONTEMPTS**

**§ 711. Letters rogatory to take testimony of witness, addressed to court of foreign country; failure of witness to appear; subpoena.**

Whenever letters rogatory shall issue out of any court of the United States, either with or without interrogatories addressed to any court of any foreign country, to take the testimony of any witness, being a citizen of the United States or domiciled therein, and such witness, having been personally notified by it according to the practice of such court, to appear and testify pursuant to such letters rogatory and such witness shall neglect to appear, or having appeared shall decline, refuse, or neglect to answer to any question which may be propounded to him by or under the authority of such court, to which he would be required to make answer were he being examined before the court issuing such letters, the court out of which said letters issued may upon proper showing order that a subpoena issue addressed to any consul of the United States within any country in which such witness may be, commanding such witness to appear before the said court at a time and place therein designated. (July 3, 1926, ch. 762, § 1, 44 Stat. 835.)

**FEDERAL RULES OF CIVIL PROCEDURE**

Refusal to make discovery and subpoena, see Rules 37, 45, following section 723c of this title.

**§ 712. Trial of criminal actions; witness beyond jurisdiction of United States; issue of subpoena addressed to consul in foreign country.**

Whenever the attendance at the trial of any criminal action of a witness, being a citizen of the United States or domiciled therein, who is beyond the jurisdiction of the United States, is desired by the Attorney General or any assistant or district attorney acting under him, the judge of the court before which such action is pending, or who is to sit in the trial of the same, may, upon proper showing, order that a subpoena issue, addressed to any consul of the United States within any country in which such witness may be, commanding such witness to appear before the said court at a time and place therein designated. (July 3, 1926, ch. 762, § 2, 44 Stat. 835.)

**§ 713. Service of subpoena on witness in foreign country.**

It shall be the duty of any consul of the United States within any country in which such witness may be at the request of the clerk of the court issuing any subpoena under sections 711–718 of this title or at the request of the officer causing such subpoena to be issued, to serve the same personally upon such witness and also to serve any orders to show cause, rules, judgments, or decrees when requested by the court or United States marshal, and to make a return thereof to the court out of which the same issued, first tendering to the witness the amount of his necessary expenses in traveling to and from the place at which the court sits and his attendance thereon, which amount shall be determined by the judge on issuing the order for the subpoena and

supplied to the consul making the service. (July 3, 1926, ch. 762, § 3, 44 Stat. 835.)

**FEDERAL RULES OF CIVIL PROCEDURE**

Subpoena, see Rule 45, following section 723c of this title.

**§ 714. Failure of witness to obey subpoena; order to show cause in contempt proceedings.**

If the witness so served shall neglect or refuse to appear as in such subpoena directed, the court out of which it was issued shall, upon proof being made of the service and default, issue an order directing the witness to appear before the court at a time in such order designated to show cause why he should not be adjudged guilty of contempt and be punished accordingly. (July 3, 1926, ch. 762, § 4, 44 Stat. 836.)

**§ 715. Direction in order to show cause for seizure of property of witness in contempt.**

Upon issuing such order the court may, upon the giving of security for any damages which the recusing witness may have suffered, should the charge be dismissed (except that no security shall be required of the United States), direct as a part of such order that the property of the recusing witness, at any place within the United States, or so much thereof in value as the court may direct, shall be levied upon and seized by the marshal of said court in the manner provided by law or the rule of the court for a levy or seizure under execution, to be held to satisfy any judgment that may be rendered against such witness in the proceeding so instituted. (July 3, 1926, ch. 762, § 5, 44 Stat. 836.)

**§ 716. Service of order to show cause.**

The marshal, having made such levy, shall thereupon forward to the consul of any country where the recusing witness may be a copy of the order to show cause why such witness should not be adjudged guilty of contempt with the request that said consul make service of the same personally upon the recusing witness, and shall cause to be published such order to show cause and for the sequestration of the property of such witness, in some newspaper of general circulation in the district within which the court issuing such order sits, once each week for six consecutive weeks. (July 3, 1926, ch. 762, § 6, 44 Stat. 836.)

**§ 717. Hearing on order to show cause; judgment; satisfaction.**

On the return day of such order or any later day to which the hearing may by the court be continued, proof shall be taken; and if the charge of recusancy against the witness shall be sustained, the court shall adjudge him guilty of contempt and, notwithstanding any limitation upon the power of the court generally to punish for contempt, impose upon him a fine not exceeding \$100,000 and direct that the amount thereof, with the costs of the proceeding, be satisfied, unless paid, by a sale of the property of the witness so seized or levied upon, such sale to be conducted upon the notice required and in the manner provided for sales upon execution. (July 3, 1926, ch. 762, § 7, 44 Stat. 836.)

**§ 718. Opening judgment when rendered upon service by publication.**

Any judgment rendered pursuant to sections 711-717 of this title upon service by publication only may be opened for answer within the time and in the manner provided in section 118 of this title. (July 3, 1926, ch. 762, § 8, 44 Stat. 836.)

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## § 721. Sealing and testing of writs.

All writs and processes issuing from the courts of the United States shall be under the seal of the court from which they issue, and shall be signed by the clerk thereof. Those issuing from the Supreme Court or a district court shall bear teste of the Chief Justice of the United States, or, when that office is vacant, of the associate justice next in precedence, and those issuing from a district court shall bear teste of the judge, or, when that office is vacant, of the clerk thereof. The seals of said courts shall be provided at the expense of the United States. (R. S. § 911; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

## DERIVATION

Act May 8, 1792, ch. 36, § 1, 1 Stat. 275.

## FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 4 on this section, see note by Advisory Committee under said Rule 4.

Process, see Rule 4, following section 723c of this title.

## § 722. Teste of process, day of.

Subject matter of this section, R. S. § 912, is now covered by Rule 4 of the Federal Rules of Civil Procedure set out following section 723c of this title. See note of Advisory Committee under said Rule.

## § 723. Mesne process; proceedings in equity and admiralty.

The forms of mesne process and the forms and modes of proceeding in suits of equity and of admiralty and maritime jurisdiction in the district courts shall be according to the principles, rules, and usages which belong to courts of equity and of admiralty, respectively, except when it is otherwise provided by statute or by rules of court made in pursuance thereof; but the same shall be subject to alteration and addition by the said courts, respectively, and to regulation by the Supreme Court, by rules prescribed, from time to time, to any district court, not inconsistent with the laws of the United States. (R. S. § 913; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

## DERIVATION

Acts Sept. 29, 1789, ch. 21, § 2, 1 Stat. 93; May 8, 1792, ch. 36, § 2, 1 Stat. 276; May 19, 1828, ch. 68, § 1, 4 Stat. 278; Aug. 1, 1842, ch. 109, 5 Stat. 499.

## EQUITY RULES

The Federal Rules of Civil Procedure (set out following section 723c of this title) supplant the Equity Rules since in general they cover the field now covered by the Equity Rules and the Conformity Act.

This table shows the Equity Rules to which references are made in the notes to the Federal Rules of Civil Procedure.

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18.....	7, 8	60.....	53
19.....	1, 15, 61	61.....	53
20.....	12	61½.....	53
21.....	11, 12	62.....	53
22.....	1	63.....	53
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24.....	11	65.....	53
25.....	8, 9, 10, 19	66.....	53
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## ADMIRALTY RULES

RULES OF PRACTICE IN ADMIRALTY AND MARITIME CASES, PROMULGATED BY THE SUPREME COURT OF THE UNITED STATES DECEMBER 6, 1920, TO TAKE EFFECT MARCH 7, 1921, REVISED TO MARCH 15, 1928

These rules supersede the rules promulgated under Act Aug. 23, 1842, ch. 188, 5 Stat. 516 and the various amendments thereto. The former rules referred to under the present rules are the rules as they stood just prior to the adoption of the present rules.

Such of the following rules as first appeared in the rules of 1921 are marked "new."

The following former rules were repealed by omission from the rules of 1921.

Rule 7 (arrest for sum exceeding \$500).

Rule 35 (manner of making stipulations required by former Rule 34—see in this connection present Rule 6).

Rule 45 (time for appeal).

For cases relating generally to the rules, see notes 8-12 in the annotations following the rules.

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#### RULE 1. PROCESS ON FILING LIBEL

No mesne process shall issue from the District Court in any civil cause of admiralty and maritime jurisdiction until the libel, or libel of information, shall have been filed in the clerk's office from which such process is to issue. All process shall be served by the marshal or by his deputy, or, where he or they are interested, by some discreet and disinterested person appointed by the court.

This rule supersedes former Rule 1.

The only change from the rule superseded is the substitution of "have been" for "be" in the first sentence.

#### RULE 2. SUITS IN PERSONAM—PROCESS IN—ARREST IN SAME

In suits in personam the mesne process shall be by a simple monition in the nature of a summons to appear and answer to the suit, or by a simple warrant of arrest of the person of the respondent in the nature of a *capias*, as the libellant may, in his libel or information pray for or elect; in either case with a clause therein to attach his goods and chattels, or credits and effects in the hands of the garnishees named in the libel to the amount sued for, if said respondent shall not be found within the district. But no warrant of arrest of the person of the respondent shall issue unless by special order of the court, on proof of the propriety thereof by affidavit or otherwise.

This rule supersedes former Rule 2.

The rule superseded read as follows: "In suits in personam, the mesne process may be by a simple warrant of arrest of the person of the defendant, in the nature of a *capias*, or by a warrant of arrest of the person of the defendant, with a clause therein, that if he cannot be found, to attach his goods and chattels to the amount sued for; or if such property can not be found, to attach his credits and effects to the amount sued for in the hands of the garnishees named therein; or by a simple monition, in the nature of a summons to appear and answer to the suit, as the libellant shall, in his libel or information, pray for or elect."

#### RULE 3. BAIL—IMPRISONMENT FOR DEBT

In all suits in personam, where a simple warrant of arrest issues and is executed, bail shall be taken by the marshal and the court in those cases only in which it is required by the laws of the state where

an arrest is made on similar or analogous process issuing from the state court.

And imprisonment for debt, on process issuing out of the admiralty court, is abolished, in all cases where, by the laws of the state in which the court is held, imprisonment for debt has been, or shall be hereafter, abolished, on similar or analogous process issuing from a state court.

This rule supersedes former Rule 47.

The rule superseded was identical with the present rule.

#### RULE 4. BAIL IN SUITS IN PERSONAM

The marshal shall take from the party arrested, as bail, either sufficient cash or a bond or stipulation in a sufficient sum, with sufficient sureties or an approved corporate surety, to be held by him to secure the appearance of the party so arrested in the suit. And upon such bond or stipulation summary process of execution shall be issued against the principal and sureties or corporate surety by the court to which the process is returnable.

This rule supersedes former Rule 3.

The rule superseded read as follows: "In all suits in personam, where a simple warrant of arrest issues and is executed, the marshal may take bail, with sufficient sureties, from the party arrested, by bond or stipulation, upon condition that he will appear in the suit and abide by all orders of the court, interlocutory or final, in the cause, and pay the money awarded by the final decree rendered therein in the court to which the process is returnable, or in any appellate court. And upon such bond or stipulation summary process of execution may and shall be issued against the principal and sureties by the court to which such process is returnable, to enforce the final decree so rendered, or upon appeal by the appellate court."

#### RULE 5. BOND IN ATTACHMENT SUITS IN PERSONAM

In all suits in personam, where goods and chattels, or credits and effects, are attached under a process authorizing the same, the attachment shall be dissolved by order of the court to which the process is returnable, on the giving of a bond or stipulation, with sufficient sureties, or an approved corporate surety, by the respondent whose property is so attached, or by someone on his behalf, conditioned to abide by all orders, interlocutory or final, of the court, and to pay the amount awarded by the final decree of the court to which the process is returnable, or in any appellate court, not exceeding, however, the value of the goods so attached with interest at six per centum per annum and costs; and upon such bond or stipulation, summary process of execution shall be issued against the principal and sureties or surety by the court to which the process is returnable, to enforce the final decree so rendered or on appeal by any appellate court.

This rule supersedes former Rule 4.

The rule superseded read as follows: "In all suits in personam, where goods and chattels, or credits and effects, are attached under such warrant authorizing the same, the attachment may be dissolved by order of the court to which the same warrant is returnable, upon the defendant whose property is so attached giving a bond or stipulation, with sufficient sureties, to abide by all orders, interlocutory or final, of the court, and pay the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court; and upon such bond or stipulation, summary process of execution shall and may be issued against the principal

and sureties by the court to which such warrant is returnable, to enforce the final decree so rendered, or upon appeal by the appellate court."

#### RULE 6. BONDS—STIPULATION—HOW GIVEN

All bonds or stipulations in admiralty suits may be given and taken in open court, or at chambers, or before the clerk or a deputy clerk or before any commissioner of the court who is authorized by the court to take affidavits of bail and depositions in cases pending before the court, or before any commissioner of the United States authorized by law to take bail and affidavits in civil cases, or otherwise by written agreement of the parties or their proctors of record.

This rule supersedes former Rule 5.

The rule superseded read as follows: "Bonds or stipulations in admiralty suits may be given and taken in open court, or at chambers, or before any commissioner of the court who is authorized by the court to take affidavits of bail and depositions in cases pending before the court, or any commissioner of the United States authorized by law to take bail and affidavits in civil cases."

#### RULE 7. BONDS—PREMIUMS—TAXABLE AS COSTS

If costs shall be awarded by the court to either or any party then the reasonable premiums or expense paid on all bonds or stipulations or other security given by that party in that suit shall be taxed as part of the costs of that party.

This rule is new.

#### RULE 8. REDUCTION OF BAIL, BOND OR STIPULATION—NEW SURETIES

In all suits either in rem or in personam, where bail is given or a bond or stipulation is taken, the court may, on motion, for due cause shown, reduce the amount of such bail or may reduce the amount of security given by either bond or stipulation; and in all cases, either in rem or in personam, where a bond or stipulation is given, if either of the sureties or the corporate surety shall be or become insufficient or the security for costs shall for any reason be insufficient pending the suit, new or additional security may be required by order of the court on motion.

This rule supersedes former Rule 6.

The rule superseded read as follows: "In all suits in personam, where bail is taken, the court may, upon motion, for due cause shown, reduce the amount of the sum contained in the bond or stipulation therefor; and in all cases where a bond or stipulation is taken as bail, or upon dissolving an attachment of property as aforesaid, if either of the sureties shall become insolvent pending the suit, new sureties may be required by the order of the court, to be given, upon motion, and due proof thereof."

#### RULE 9. MONITION TO THIRD PARTIES IN SUITS IN REM

In all suits in rem against a ship, and/or her appurtenances if her appurtenances or any of them are in the possession or custody of any third person, the court shall, on due notice to such third person and after hearing, decree that the same be delivered into the custody of the marshal or other proper officer, if on hearing it appears that the same is required by law and justice.

This rule supersedes former Rule 8.

The superseded rule read as follows: "In all suits in rem against a ship, her tackle, sails, apparel, furniture, boats, or other appurtenances, if such tackle, sails, apparel, furniture, boats, or other appurtenances are in the possession or custody of any third person, the court may, after a due monition to such third person, and a hearing of the cause, if any, why the same should not be delivered over, award and decree that the same be delivered into the custody of the marshal or other proper officer, if, upon the hearing, the same is required by law and justice."

#### RULE 10. PROCESS IN SUITS IN REM

In all cases of seizure, and in other suits and proceedings in rem, the process, if issued and unless otherwise provided for by statute, shall be by a warrant of arrest of the ship, goods, or other thing to be arrested; and the marshal shall thereupon arrest and take the ship, goods, or other thing into his possession for safe custody, and shall cause public notice thereof and of the time assigned for the return of such process and the hearing of the cause, to be given in such newspaper within the district as the district court shall order; and if there is no newspaper published therein, then in such other public places in the district as the court shall direct.

This rule supersedes former Rule 9.

The only change from the former rule is the introduction of the words "if issued and" in the opening phrase of the rule.

#### RULE 11. PERISHABLE GOODS—HOW DISPOSED OF

In all cases where any goods or other things are arrested, if the expense of keeping the same is excessive or disproportionate, or if the same are perishable, or are liable to deterioration, decay, or injury, by being detained in custody pending the suit, the court may, on the application of either party, order the same or any portion thereof to be sold; and the proceeds, or so much thereof as shall be full security to satisfy any decree, to be brought into court to abide the event of the suit; or the court may, on the application of the claimant, order a delivery thereof to him, either on the filing of a written agreement of the parties or their proctors of record to that effect, or on a due appraisalment, to be had under its direction, unless the value has been agreed to in writing by the parties or their proctors of record, on the claimant's depositing in court so much money as the court shall order, or on his giving a stipulation, with sufficient sureties or an approved corporate surety, in such sum as the court shall direct or as shall be agreed upon in writing by the parties or their proctors of record, conditioned to abide by and pay the money awarded by the final decree rendered by the court, or any appellate court, if any appeal intervenes, not to exceed however in any event such agreed or appraised value with interest at six per cent. per annum and costs, as the one or the other course shall be ordered by the court.

This rule supersedes former Rule 10.

The rule superseded read as follows: "In all cases where any goods or other things are arrested, if the same are perishable, or are liable to deterioration, decay, or injury, by being detained in custody pending the suit, the court may, upon the application of either party, in its discretion, order the same or so much thereof to be sold as shall be perishable or liable to depreciation, decay, or

injury; and the proceeds, or so much thereof as shall be a full security to satisfy the decree, to be brought into court to abide the event of the suit; or the court may, upon the application of the claimant, order a delivery thereof to him, upon a due appraisalment to be had under its direction, either upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation, with sureties, in such sum as the court shall direct, to abide by and pay the money awarded by the final decree rendered by the court, or the appellate court, if any appeal intervenes, as the one or the other course shall be ordered by the court."

#### RULE 12. SHIP—HOW APPRAISED, SOLD OR BONDED

Where any ship shall be arrested, the same shall, on the application of the claimant, be delivered to him either on a due appraisalment, to be had under the direction of the court, or on his filing an agreement in writing to that effect signed by the parties or their proctors of record, and on the claimant's depositing in court so much money as the court shall order, or on his giving a stipulation for like amount, with sufficient sureties, or an approved corporate surety, conditioned as provided in the foregoing rule; and if the claimant shall unreasonably neglect to make any such application, then the court may, on the application of either party, on due cause shown, order a sale of such ship, and require the proceeds thereof to be brought into court or otherwise disposed of.

This rule supersedes former Rule 11.

The rule superseded read as follows: "In like manner, where any ship shall be arrested, the same may, upon the application of the claimant, be delivered to him upon a due appraisalment, to be had under the direction of the court, upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation, with sureties, as aforesaid; and if the claimant shall decline any such application, then the court may, in its discretion, upon the application of either party, upon due cause shown, order a sale of such ship, and the proceeds thereof to be brought into court or otherwise disposed of, as it may deem most for the benefit of all concerned."

#### RULE 13. SEAMEN'S WAGES—MATERIALMEN—REMEDIES

In all suits for mariners' wages or by materialmen for supplies or repairs or other necessities, the libellant may proceed in rem against the ship and freight and/or in personam against any party liable.

This rule supersedes former Rules 12 and 13.

The rules superseded read as follows:

"Rule 12. In all suits by materialmen for supplies or repairs, or other necessities, the libellant may proceed against the ship and freight in rem, or against the master or owner alone in personam."

"Rule 13. In all suits for mariners' wages, the libellant may proceed against the ship, freight, and master, or against the ship and freight, or against the owner or the master alone in personam."

#### RULE 14. PILOTAGE—COLLISION—REMEDIES

In all suits for pilotage or damage by collision, the libellant may proceed in rem against the ship and/or in personam against the master and/or the owner.

This rule supersedes former Rules 14 and 15.

The rules superseded read as follows:

"Rule 14. In all suits for pilotage, the libellant may proceed against the ship and master, or against the ship, or against the owner alone or the master alone in personam."



"Rule 15. In all suits for damage by collision, the libellant may proceed against the ship and master, or against the ship alone, or against the master or the owner alone in personam."

#### RULE 15. ASSAULT OR BEATING—REMEDIES

In all suits for an assault or beating on the high seas, or elsewhere within the admiralty and maritime jurisdiction, the suit shall be in personam only.

This rule supersedes former Rule 16.

The rule superseded was identical in terms with the present rule.

#### RULE 16. MARITIME HYPOTHECATION—REMEDIES

In all suits founded upon a mere maritime hypothecation of ship or freight, either express or implied, by the master for moneys taken up in a foreign port for supplies or repairs or other necessities for the voyage, without any claim of maritime interest, the libellant may proceed in rem and/or in personam against the master and/or the owners.

This rule supersedes former Rule 17.

The rule superseded was identical with the present rule except as to the last clause which authorized the libellant to "proceed either in rem or against the master or the owner alone in personam."

#### RULE 17. BOTTOMRY BONDS—REMEDIES

In all suits on bottomry bonds, properly so called, the suit shall be in rem only against the property hypothecated, or the proceeds of the property, in whosoever hands the same may be found, unless the master has, without authority, given the bottomry bond, or by his fraud or misconduct has avoided the same, or has subtracted the property, or unless the owner has, by its own misconduct or wrong, lost or subtracted the property, in which latter cases the suit may be in personam against the wrongdoer.

This rule supersedes former Rule 18.

The rule superseded was identical with the present rule except that it used the word "his" instead of "its" between the words "the owner has by" and the words "own misconduct."

#### RULE 18. SALVAGE—REMEDIES

In all suits for salvage, the suit may be in rem against the property saved, or the proceeds thereof, and/or in personam against any party liable for the salvage service.

This rule supersedes former Rule 19.

The rule superseded read as follows: "In all suits for salvage, the suit may be in rem against the property saved, or the proceeds thereof, or in personam against the party at whose request and for whose benefit the salvage service has been performed."

#### RULE 19. PETITORY OR POSSESSORY SUITS

In all petitory and possessory suits between part owners or adverse proprietors, or by the owners of a ship or the majority thereof, against the master of a ship, for the ascertainment of the title and delivery of the possession, or for the possession only, or by one or more part owners against the others to obtain security for the return of the ship from any voyage undertaken without their consent, or by one or more part owners against the others to obtain possession of the ship for any voyage, on giving se-

curity for the safe return thereof, the process shall be by an arrest of the ship, and by a monition to the adverse party or parties to appear and make answer to the suit.

This rule supersedes former Rule 20.

The rule superseded was identical in terms with the present rule.

#### RULE 20. EXECUTION ON DECREES

In all cases of a final decree for the payment of money, the libellant shall have a writ of execution, in the nature of a fieri facias, commanding the marshal or his deputy to levy and collect the amount thereof out of the goods and chattels, lands and tenements, or other real estate of the respondent, claimant, or stipulators. And any other remedies shall be available that may exist under the state or federal law for the enforcement of judgments or decrees.

This rule supersedes former Rule 21.

The rule superseded was identical with the first sentence of the present rule.

#### RULE 21. REQUISITES OF LIBEL OF INFORMATION

All informations and libels of information upon seizures for any breach of the revenue, or navigation or other laws of the United States, shall state the place of seizure, whether it be on land or on the high seas, or on navigable waters within the admiralty and maritime jurisdiction of the United States, and the district within which the property is brought and where it then is. The information or libel of information shall also propound in distinct articles the matters relied on as grounds or causes of forfeiture, and aver the same to be contrary to the form of the statute or statutes of the United States in such case provided, as the case may require, and shall conclude with a prayer of due process to enforce the forfeiture, and to give notice to all persons concerned in interest to appear and show cause at the return-day of the process why the forfeiture should not be decreed.

This rule supersedes former Rule 22.

The rule superseded was identical with the present rule.

#### RULE 22. REQUISITES OF LIBEL IN INSTANCE CAUSES

All libels in instance causes, civil or maritime, shall be on oath or solemn affirmation and shall state the nature of the cause, as, for example, that it is a cause, civil and maritime, of contract, or a tort or damage, or of salvage, or of possession, or otherwise, as the same may be; and, if the libel be in rem, that the property is within the district; and, if in personam, the names and places of residence of the parties so far as known. The libel shall also propound and allege in distinct articles the various allegations of fact upon which the libellant relies in support of his suit, so that the respondent or claimant may be enabled to answer distinctly and separately the several matters contained in each article; and it shall conclude with a prayer for due process to enforce his rights in rem, or in personam, as the case may be, and for such relief and redress as the court is competent to give in the premises.

This rule supersedes former Rule 23.

The rule superseded read as follows: "All libels in instance causes, civil or maritime, shall state the nature of the cause; as, for example, that it is a cause, civil and maritime, of contract, or of tort or damage, or of salvage, or of possession, or otherwise, as the case may be; and, if the libel be in rem, that the property is within the district; and, if in personam, the names and occupations and places of residence of the parties. The libel shall also propound and articulate in distinct articles the various allegations of fact upon which the libellant relies in support of his suit, so that the defendant may be enabled to answer distinctly and separately the several matters contained in each article; and it shall conclude with a prayer of due process to enforce his rights, in rem or in personam (as the case may require), and for such relief and redress as the court is competent to give in the premises. And the libellant may further require the defendant to answer on oath all interrogatories propounded by him touching all and singular the allegations in the libel at the close or conclusion thereof."

The last sentence of former Rule 23 is now embodied in Rule 31.

#### RULE 23. AMENDMENTS TO LIBELS

In all informations and libels in causes of admiralty and maritime jurisdiction, amendments in matters of form may be made at any time, on motion to the court, as of course. And new counts may be filed, and amendments in matters of substance may be made, on motion, at any time before the final decree, on such terms as the court shall impose. And where any defect of form is set down by the respondent or claimant upon special exceptions, and is allowed, the court may, in granting leave to amend, impose terms on the libellant.

This rule supersedes former Rule 24.

The rule superseded was identical with the present rule except that in the second sentence the word "defendant" was used instead of "respondent or claimant."

#### RULE 24. STIPULATIONS FOR COSTS

In all cases the court may, on the filing of a libel or on the appearance of any respondent, or claimant, or at any other time, require the libellant, respondent or claimant, or either of them to give a stipulation or an additional stipulation with sufficient sureties, or an approved corporate surety, in such sum as the court shall direct, to pay all costs and expenses which shall be awarded against him, it, or them, by the final decree of the court, or by any interlocutory order in the progress of the suit, or an appeal by any appellate court.

This rule supersedes former Rule 25.

The rule superseded read as follows: "In all cases of libels in personam, the court may, in its discretion, upon the appearance of the defendant, where no bail has been taken, and no attachment of property has been made to answer the exigency of the suit, require the defendant to give a stipulation, with sureties, in such sum as the court shall direct, to pay all costs and expenses which shall be awarded against him in the suit, upon the final adjudication thereof, or by any interlocutory order in the progress of the suit."

#### RULE 25. CLAIM—HOW VERIFIED—CLAIMANT'S BONDS

In suits in rem the party claiming the property shall verify his claim on oath or solemn affirmation, stating that the claimant by whom or on whose behalf the claim is made is the true and bona fide owner. And where the claim is put in by an agent or consignee, he shall also make oath that he is

duly authorized thereto by the owner; or, if the property be, at the time of the arrest, in the possession of the master of a ship, that he is the lawful bailee thereof for the owner. And, on putting in such claim, the claimant shall file a bond or stipulation for costs as above provided.

This rule supersedes former Rule 26.

The rule superseded read as follows: "In suits in rem, the party claiming the property shall verify his claim on oath or solemn affirmation, stating that the claimant by whom or on whose behalf the claim is made is the true and bona fide owner, and that no other person is the owner thereof. And, where the claim is put in by an agent or consignee, he shall also make oath that he is duly authorized thereto by the owner; or, if the property be, at the time of the arrest, in the possession of the master of a ship, that he is the lawful bailee thereof for the owner. And, upon putting in such claim, the claimant shall file a stipulation, with sureties, in such sum as the court shall direct, for the payment of all costs and expenses which shall be awarded against him by the final decree of the court, or, upon an appeal, by the appellate court."

#### RULE 26. ANSWERS—REQUISITES OF

In all libels in causes of civil and maritime jurisdiction, whether in rem or in personam, the answers of or on behalf of the respondent or claimant to the libels and interrogatories shall be on oath or solemn affirmation; and all answers shall be full and explicit and distinct to each separate article and separate allegation in the libel, in the same order as numbered in the libel, and shall also answer in like manner or except to each interrogatory propounded by the libellant. But this rule shall not apply to cases where the sum or value in dispute does not exceed fifty dollars, exclusive of costs, unless the District Court shall be of opinion that the proceedings prescribed herein are necessary for the purposes of justice in the case before the court.

This rule supersedes former Rules 27 and 48.

Former Rules 27 and 48 were combined in this rule, being respectively the first and second sentences thereof

#### RULE 27. PLEADINGS—INTERROGATORIES— EXCEPTIONS TO

Either party may except to the sufficiency, fullness, distinctness, relevancy or competency of any of the pleadings or interrogatories filed by the other party; and if the court shall so adjudge on a hearing on the exceptions, and shall order further pleadings or answers to be filed by either party, such pleadings or answers shall be filed within such time and on such terms as the court may direct.

This rule supersedes former Rule 28.

The rule superseded read as follows: "The libellant may except to the sufficiency, or fullness, or distinctness, or relevancy of the answer to the articles and interrogatories in the libel; and, if the court shall adjudge the same exceptions, or any of them, to be good and valid, the court shall order the defendant forthwith, within such time as the court shall direct, to answer the same, and may further order the defendant to pay such costs as the court shall adjudge reasonable."

#### RULE 28. DEFAULT ON FAILURE TO ANSWER

If the respondent or claimant shall omit or refuse to make due answer to the libel upon the return day of the process, or other day assigned by the court,

the court may pronounce him to be in contumacy and default and thereupon shall proceed to hear the cause *ex parte*, and adjudge therein as to law and justice shall appertain. But the court may set aside the default and upon the application of the respondent or claimant admit him to make answer to the libel on such terms as the court may direct.

This rule supersedes former Rule 29.

The rule superseded read as follows: "If the defendant shall omit or refuse to make due answer to the libel upon the return day of the process, or other day assigned by the court, the court shall pronounce him to be in contumacy and default; and thereupon the libel shall be adjudged to be taken *pro confesso* against him, and the court shall proceed to hear the cause *ex parte*, and adjudge therein as to law and justice shall appertain. But the court may, in its discretion, set aside the default, and, upon the application of the defendant, admit him to make answer to the libel, at any time before the final hearing and decree, upon his payment of all the costs of the suit up to the time of granting leave therefor."

#### RULE 29. EFFECT OF FAILURE TO ANSWER FULLY

In all cases where the respondent or claimant answers, but does not answer fully and explicitly and distinctly to all the matters in any article of the libel, and exception is taken thereto by the libellant, and the exception is allowed, the court may, by attachment or otherwise, compel the respondent or claimant to make further answer thereto; or may make such other order in the cause as it shall deem most fit to promote justice.

This rule supersedes former Rule 30.

The rule superseded read as follows: "In all cases where the defendant answers, but does not answer fully and explicitly and distinctly to all the matters in any article of the libel, and exception is taken thereto by the libellant, and the exception is allowed, the court may by attachment, compel the defendant to make further answer thereto, or may direct the matter of the exception to be taken *pro confesso* against the defendant, to the full purport and effect of the article to which it purports to answer, and as if no answer had been put in thereto."

#### RULE 30. WHAT EITHER PARTY MAY OBJECT TO ANSWERING

Either party may object by proper pleadings to answering any allegation contained in any pleading or interrogatory filed by the other party, which will tend to expose him, it, or them, to any prosecution or punishment for crime, or for any penalty or any forfeiture of his, its or their property for any penal offense.

This rule supersedes former Rule 31.

The rule superseded read as follows: "The defendant may object, by his answer, to answer any allegation or interrogatory contained in the libel which will expose him to any prosecution or punishment for crime, or for any penalty or any forfeiture of his property for any penal offense."

#### RULE 31. INTERROGATORIES TO PARTIES

Any party may serve upon any adverse party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer thereof competent to testify in its behalf. The interrogatories shall be answered separately and fully in writing under oath. The answers shall be

signed by the person making them; and the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories within 15 days after the delivery of the interrogatories, unless the court, on motion and notice and for good cause shown, enlarges or shortens the time. Objections to any interrogatories may be presented to the court within 10 days after service thereof, with notice as in case of a motion; and answers shall be deferred until the objections are determined, which shall be at as early a time as is practicable. No party may, without leave of court, serve more than one set of interrogatories to be answered by the same party. (Added May 22, 1939. Eff. Sept. 1, 1939.)

This rule and Rules 32, 32A, 32B, and 32C, were substituted for former Rules 31 and 32 by order May 22, 1939, effective Sept. 1, 1939.

#### RULE 32. DISCOVERY AND PRODUCTION OF DOCUMENTS AND THINGS FOR INSPECTION, COPYING, OR PHOTOGRAPHING

Upon motion of any party showing good cause therefor and upon notice to all other parties, the court in which an action is pending may (1) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody, or control; or (2) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place, and manner of making the inspection and taking the copies and photographs and may prescribe such terms and conditions as are just. (Added May 22, 1939. Eff. Sept. 1, 1939.)

This rule and Rules 31, 32A, 32B, and 32C were substituted for former Rules 31 and 32 by order May 22, 1939, effective Sept. 1, 1939.

#### RULE 32A. PHYSICAL AND MENTAL EXAMINATION OF PERSONS

(a) *Order for Examination.* In an action in which the mental or physical condition of a party is in controversy, the court in which the action is pending may order him to submit to a physical or mental examination by a physician. The order may be made only on motion for good cause shown and upon notice to the party to be examined and to all other parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) *Report of Findings.*

(1) If requested by the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings and conclusions. After such request and delivery the party causing the examination to be made shall be entitled upon request to receive from the party ex-

amined a like report of any examination, previously or thereafter made, of the same mental or physical condition. If the party examined refuses to deliver such report the court on motion and notice may make an order requiring delivery on such terms as are just, and if a physician fails or refuses to make such a report the court may exclude his testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition. (Added May 22, 1939. Eff. Sept. 1, 1939.)

This rule and Rules 31, 32, 32B, and 32C were substituted for former Rules 31 and 32 by order May 22, 1939, effective Sept. 1, 1939.

#### RULE 32B. ADMISSION OF FACTS AND OF GENUINENESS OF DOCUMENTS

(a) *Request for Admission.* At any time after the pleadings are closed, a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth therein. Copies of the documents shall be delivered with the request unless copies have already been furnished. Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than 10 days after service thereof or within such further time as the court may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

(b) *Effect of Admission.* Any admission made by a party pursuant to such request is for the purpose of the pending action only and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding. (Added May 22, 1939. Eff. Sept. 1, 1939.)

This rule and Rules 31, 32, 32B, and 32C were substituted for former Rules 31 and 32 by order May 22, 1939, effective Sept. 1, 1939.

#### RULE 32C. REFUSAL TO MAKE DISCOVERY: CONSEQUENCES

(a) *Refusal to Answer.* If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, he may apply to the court in the district where the deposition is taken for an order compelling an answer. Upon the refusal of a deponent to answer any interrogatory submitted under any provision of law, or upon the refusal of a party to answer any interrogatory submitted under Rule 31, the

proponent of the interrogatory may on like notice make like application for such an order. If the motion is granted and if the court finds that the refusal was without substantial justification the court shall require the refusing party or deponent and the party or attorney advising the refusal or either of them to pay to the examining party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees. If the motion is denied and if the court finds that the motion was made without substantial justification, the court shall require the examining party or the attorney advising the motion or both of them to pay to the refusing party or witness the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney's fees.

(b) *Failure to Comply With Order.*

(1) Contempt. If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the court in the district in which the deposition is being taken, the refusal may be considered a contempt of that court.

(2) Other Consequences. If any party or an officer or managing agent of a party refuses to obey an order made under subdivision (a) of this rule requiring him to answer designated questions, or an order made under Rule 32 to produce any document or other thing for inspection, copying, or photographing or to permit it to be done, or to permit entry upon land or other property, or an order made under Rule 32A requiring him to submit to a physical or mental examination, the court may make such orders in regard to the refusal as are just, and among others the following:

(i) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental condition of the party, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of physical or mental condition;

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(iv) In lieu of any of the foregoing orders or in addition thereto, an order directing the arrest of any party or agent of a party for disobeying any of such orders except an order to submit to a physical or mental examination.

(c) *Expenses on Refusal to Admit.* If a party, after being served with a request under Rule 32B to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof and if the party requesting the admissions thereafter proves the genuineness of any such document or the truth of any such matter of fact, he may apply to the court for an order requiring the

other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorney's fees. Unless the court finds that there were good reasons for the denial or that the admissions sought were of no substantial importance, the order shall be made.

(d) *Failure of Party to Attend or Serve Answers.* If a party or an officer or managing agent of a party wilfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under Rule 31, after proper service of such interrogatories, the court on motion and notice may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party.

(e) *Failure to Respond to Letters Rogatory.* A subpoena may be issued as provided in the Act of July 3, 1926, ch. 762, § 1 (44 Stat. 835), U. S. C., Title 28, § 711, 28 U. S. C. A., § 711, under the circumstances and conditions therein stated.

(f) *Expenses Against United States.* Expenses and attorney's fees are not to be imposed upon the United States under this rule. (Added May 22, 1939 Eff. Sept. 1, 1939.)

This rule and Rules 31, 32, 32A, and 32B were substituted for former Rules 31 and 32 by order May 22, 1939, effective Sept. 1, 1939.

#### **RULE 33. HOW VERIFICATION OF ANSWER TO INTERROGATORY OBLIATED**

Where either the libellant or the respondent or claimant is out of the country, or unable, from sickness or other casualty, to make an answer to any interrogatory on oath or solemn affirmation at the proper time, the court may, in its discretion in furtherance of the due administration of justice, dispense therewith, or may award a commission to take the answer of the respondent or claimant when and as soon as it may be practicable or may receive a verification by agent or attorney with like force and effect as if made by the party.

This rule supersedes former Rule 33.

The rule superseded read as follows: "Where either the libellant or the defendant is out of the country, or unable, from sickness or other casualty, to make an answer to any interrogatory on oath or solemn affirmation at the proper time, the court may, in its discretion, in furtherance of the due administration of justice, dispense therewith, or may award a commission to take the answer of the defendant when and as soon as it may be practicable."

#### **RULE 34. HOW THIRD PARTY MAY INTERVENE**

If any third person shall intervene in any cause of admiralty and maritime jurisdiction in rem for his own interest, and he is entitled, according to the course of admiralty proceedings, to be heard therein, he shall propound the matter in suitable allegations, to which, if admitted by the court, the other party or parties in the suit may be required, by order of the court, to make due answer; and such further proceedings shall be had and decree rendered by the court therein as to law and justice shall appertain. But every such intervenor shall be required, on filing his allegations, to give a stipulation with sufficient sureties or an approved corporate surety to abide by

the final decree rendered in the cause, and to pay all such costs and expenses and damages as shall be awarded against him by the court on the final decree, whether it is rendered in the original or appellate court, not to exceed however in any event the agreed or appraised value of the property so claimed by him, it, or them, with interest at six per cent. per annum and costs.

This rule supersedes former Rule 34.

The rule superseded read as follows: "If any third person shall intervene in any cause of admiralty and maritime jurisdiction in rem for his own interest, and he is entitled, according to the course of admiralty proceedings, to be heard for his own interest therein, he shall propound the matter in suitable allegations, to which, if admitted by the court, the other party or parties in the suit may be required by order of the court, to make due answer; and such further proceedings shall be had and decree rendered by the court therein as to law and justice shall appertain. But every such intervenor shall be required, upon filing his allegations, to give a stipulation, with sureties, to abide by the final decree rendered in the cause, and to pay all such costs and expenses and damages as shall be awarded by the court upon the final decree, whether it is rendered in the original or appellate court."

#### **RULE 35. EXCEPTIONS TO PLEADINGS FOR SURPLUSAGE OR SCANDAL**

Exceptions may be taken to any libel, allegation, answer or other pleading for surplusage, impertinence or scandal; and if on hearing the matter excepted to shall be held to be so objectionable it shall be expunged on such terms as the court may direct.

This rule supersedes former Rule 36.

The rule superseded read as follows: "Exceptions may be taken to any libel, allegation, or answer for surplusage, irrelevancy, impertinence, or scandal; and if, upon reference to a master, the exception shall be reported to be so objectionable, and allowed by the court, the matter shall be expunged, at the cost and expense of the party in whose libel or answer the same is found."

#### **RULE 36. PROCEDURE AGAINST GARNISHEE**

In cases of foreign attachment, the garnishee shall be required to answer on oath or solemn affirmation as to the debts, credits, or effects of the respondent or claimant in his hands, and to such interrogatories touching the same as may be propounded by the libellant; and if he shall refuse or neglect so to do, the court may award compulsory process in personam against him. If he admits any debts, credits or effects, the same shall be held in his hands, or paid into the registry of the court and shall be held in either case subject to the further order of the court.

This rule supersedes former Rule 37.

The first sentence of the superseded rule was identical with the first sentence of the present rule. The second sentence read as follows: "If he admits any debts, credits, or effects, the same shall be held in his hands, liable to answer the exigency of the suit."

#### **RULE 37. BRINGING FUNDS INTO COURT**

In cases of mariners' wages, or bottomry, or salvage, or other proceeding in rem, where freight or other proceeds of property are attached to or are bound by the suit, which are in the hands or possession of any person, the court may, on due application, by petition of the party interested, require the party charged with the possession thereof to

appear and show cause why the same should not be brought into court to answer the exigency of the suit, and if no cause be shown, the court may order the same to be brought into court to answer the exigency of the suit, and on failure of the party to comply with the order, may award an attachment, or other compulsory process to compel obedience thereto.

This rule supersedes former Rule 38.

The rule superseded was identical with the present rule.

#### RULE 38. DISMISSAL FOR FAILURE TO PROSECUTE

If, in any admiralty suit, the libellant shall not appear and prosecute his suit, and comply with the orders of the court, he shall be deemed in default and contumacy; and the court may, on the application of the respondent or claimant, pronounce the suit to be deserted, and the same may be dismissed with costs.

This rule supersedes former Rule 39.

The rule superseded used the phrase "prosecute his suit according to the course and orders of the court" and used the word "defendant" instead of "respondent or claimant."

#### RULE 39. REOPENING DEFAULT DECREES

The court may, in its discretion, on motion of the respondent or claimant and the payment of costs, rescind the decree in any suit in which, on account of his contumacy and default, the matter of the libel shall have been decreed against him, and grant a rehearing thereof at any time within sixty days after the decree has been entered, the respondent or claimant submitting to such further orders and terms in the premises as the court may direct; and the term of the court shall be deemed extended for this purpose until the expiration of such period of sixty days.

This rule supersedes former Rule 40.

The rule superseded read as follows: "The court may, in its discretion, upon the motion of the defendant and the payment of costs, rescind the decree in any suit in which, on account of his contumacy and default, the matter of the libel shall have been decreed against him, and grant a rehearing thereof at any time within ten days after the decree has been entered, the defendant submitting to such further orders and terms in the premises as the court may direct."

#### RULE 40. SALES IN ADMIRALTY

All sales of property under any decree of admiralty shall be made by the marshal or his deputy, or other proper officer assigned by the court, where the marshal is a party in interest, in pursuance of the orders of the court; and the proceeds thereof, when sold, shall be forthwith paid into the registry of the court by the officer making the sale, to be disposed of by the court according to law.

This rule supersedes former Rule 41.

The rule superseded was identical with the present rule.

#### RULE 41. FUNDS IN COURT REGISTRY

All moneys paid into the registry of the court shall be deposited in some bank designated by the court, and shall be so deposited in the name of the court, and shall not be drawn out, except by a check or checks signed by a judge of the court and counter-

signed by the clerk, stating on whose account and for whose use it is drawn, and in what suit and out of what fund in particular it is paid. The clerk shall keep a regular book, containing a memorandum and copy of all of the checks so drawn and the date thereof.

This rule supersedes former Rule 42.

The rule superseded was identical with the present rule.

#### RULE 42. CLAIMS AGAINST PROCEEDS IN REGISTRY

Any person having an interest in any proceeds in the registry of the court shall have a right, by petition and summary proceedings, to intervene pro interesse suo for delivery thereof to him, and on due notice to the adverse parties, if any, the court shall and may proceed summarily to hear and decide thereon, and to decree therein according to law and justice. And if such petition or claim shall be deserted, or on a hearing, be dismissed, the court may, in its discretion, award costs against the petitioner in favor of the adverse party.

This rule supersedes former Rule 43.

The rule superseded was identical with the present rule.

#### RULE 43. REFERENCE TO COMMISSIONERS

In cases where the court shall deem it expedient or necessary for the purposes of justice, it may refer any matters arising in the progress of the suit to one or two commissioners or assessors, to be appointed by the court, to hear the parties and make a report therein. And such commissioners or assessors shall have and possess all the powers in the premises which are usually given to or exercised by masters in chancery in references to them, including the power to administer oaths to and examine the parties and witnesses touching the premises.

This rule supersedes former Rule 44.

The rule superseded authorized reference to "one or more commissioners" instead of to "one or two commissioners or assessors."

#### RULE 43½. REPORT OF COMMISSIONERS: PRESUMPTION AS TO CORRECTNESS; REVIEW

In all references to commissioners or assessors, by consent or otherwise, whether the reference be of all issues of law and fact, or only particular issues either of law or fact or both, the report of the commissioners or assessors shall be treated as presumptively correct, but shall be subject to review by the court, and the court may adopt the same, or may modify or reject the same in whole or in part when the court in the exercise of its judgment is fully satisfied that error has been committed: *Provided*, That when a case or any issue is referred by consent and the intention is plainly expressed in the consent order that the submission is to the commissioners or assessors as arbitrators, the court may review the same only in accordance with the principles governing a review of an award and decision by an arbitrator.

This is a new rule promulgated May 31, 1932.

#### RULE 44. RIGHT OF TRIAL COURTS TO MAKE RULES OF PRACTICE

In suits in admiralty in all cases not provided for by these rules or by statute, the District Courts are

to regulate their practice in such a manner as they deem most expedient for the due administration of justice, provided the same are not inconsistent with these rules.

This rule supersedes former Rule 46.

The rule superseded omitted the first four words of the present rule and included Circuit as well as District Courts.

#### RULE 45. FURTHER PROOF ON APPEAL

Further proof taken by leave of a Circuit Court of Appeals or the Supreme Court on an appeal in admiralty shall be taken in such manner as may be prescribed by statute or by said court.

This rule supersedes former Rule 49.

The rule superseded read as follows: "Further proof, taken in a Circuit Court upon an admiralty appeal, shall be by deposition, taken before some commissioner appointed by a Circuit Court, pursuant to the acts of Congress in that behalf, or before some officer authorized to take depositions by the thirtieth section of the act of Congress of the twenty-fourth of September, 1789, upon an oral examination and cross-examination, unless the court in which such appeal shall be pending, or one of the judges thereof, shall, upon motion, allow a commission to issue to take such depositions upon written interrogatories and cross-interrogatories. When such deposition shall be taken by oral examination, a notification from the magistrate before whom it is to be taken, or from the clerk of the court in which such appeal shall be pending, to the adverse party, to be present at the taking of the same, and to put interrogatories, if he think fit, shall be served on the adverse party or his attorney, allowing time for their attendance after being notified, not less than twenty-four hours, and, in addition thereto, one day, Sundays exclusive, for every twenty miles' travel; provided, that the court in which such appeal may be pending, or either of the judges thereof, may, upon motion, increase or diminish the length of notice above required."

#### RULE 46. EVIDENCE—HOW TAKEN

In all trials in admiralty the testimony of witnesses shall be taken orally in open court, except as otherwise provided by statute, or agreement of parties. When deemed necessary by the court or the officer taking the testimony or by the parties, a stenographer may be employed who shall take down the testimony in shorthand or otherwise and, if requested by the court or either party, transcribe the same. The fees may be fixed by the court and taxed as costs.

This rule supersedes former Rule 50.

The rule superseded read as follows: "When oral evidence shall be taken down by the clerk of the District Court, pursuant to the above-mentioned section of the act of Congress, and shall be transmitted to the Circuit Court, the same may be used in evidence on the appeal, saving to each party the right to take the depositions of the same witnesses, or either of them, if he should so elect."

#### RULE 46½. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In deciding cases of admiralty and maritime jurisdiction the court of first instance shall find the facts specially and state separately its conclusions of law thereon; and its findings and conclusions shall be entered of record and, if an appeal is taken from the decree, shall be included by the clerk in the record which is certified to the appellate court under rule 49.

This is a new rule, numbered 46½, promulgated June 2, 1930, to take effect October 1, 1930.

#### RULE 46A. SCOPE OF EXAMINATION AND CROSS-EXAMINATION

A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of his examination in chief. (Added May 22, 1939. Eff. Sept. 1, 1939.)

#### RULE 46B. RECORD OF EXCLUDED EVIDENCE

If an objection to a question propounded to a witness is sustained by the court, the latter upon request shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged. (Added May 22, 1939. Eff. Sept. 1, 1939.)

Rules of Civil Procedure for the District Courts of the United States, effective September 1, 1938, do not apply to proceedings in admiralty. See Rule 81 in note under section 723c of this title.

#### RULE 47. COSTS—TRAVEL OF WITNESSES

Traveling expenses of any witness for more than one hundred miles to and from the court or place of taking the testimony shall not be taxed as costs.

This rule is new.

#### RULE 48. ISSUE ON NEW FACTS IN ANSWER

When the respondent or claimant in his answer, alleges new facts, these shall be considered as denied by the libellant, and no replication or reply, general or special, shall be filed, unless ordered by the court on proper cause shown. But within such time after the answer is filed as shall be fixed by the district court, either by general rule or by special order, the libellant may amend his libel so as to confess and avoid, or explain or add to, the new matters set forth in the answer; and within such time as may be fixed, in like manner, the respondent or claimant shall answer such amendments.

This rule supersedes former Rule 51.

The superseded rule was identical with the present rule except that "defendant" was used instead of "respondent or claimant."

#### RULE 49. RECORD ON APPEAL

The clerks of the District Courts shall make up the records to be transmitted to the Circuit Court of Appeals.

I. They shall contain the following:

A. The style of the court.

B. The names of the parties, setting forth the original parties, and those who have become parties before the appeal, if any change has taken place.

C. If bail was taken, or property was attached or arrested, the process of the arrest or attachment and the service thereof, all bail and stipulations, and, if



any sale has been made, the orders, warrants, and reports relating thereto.

D. The libel, with exhibits annexed thereto.

E. The pleadings of the respondent or claimant with the exhibits annexed thereto.

F. The testimony as taken on the part of the libellant, and any exhibits not annexed to the libel.

G. The testimony as taken on the part of the respondent or claimant and any exhibits not annexed to his pleadings.

H. Any orders and opinions of the court.

I. Any report of a commissioner or assessor, if excepted to, with the orders of the court respecting the same, and the exceptions to the report. If the report was not excepted to, only the fact that a reference was made, and so much of the report as shows what results were arrived at by the commissioner or assessor are to be stated.

J. The final decree.

K. The notice of or prayer for an appeal, and the assignment of errors.

II. The following shall be omitted:

A. The continuances.

B. All motions, rules, and orders which are merely preparatory for trial and to which no exception was taken or error assigned.

C. The commissions to take depositions, notices therefor, their captions, and certificates of their being sworn to, unless some exception to a deposition in the District Court was founded on some one or more of these; in which case so much of either of them as may be involved in the exception shall be set out. In all other cases it shall be sufficient to give the name of the witness, and to copy the interrogatories and answers, and to state the name of the commissioner, and the place where and the date when the deposition was sworn to; and in copying all depositions taken on interrogatories, the answer shall be inserted immediately following the question.

III. The clerk of the District Court shall page the copy of the record thus made up, and shall make an index thereto, and he shall certify the entire document at the end thereof under the seal of the court, to be a transcript of the record of the District Court in the cause named at the beginning of the copy made up pursuant to this rule.

IV. In making up the record to be transmitted to the Circuit Court of Appeals, the clerk of the District Court shall omit therefrom any of the pleadings, testimony or exhibits which the parties, by their proctors, shall, by written stipulation, agree may be omitted; and shall receive and include in the record any statement of the case which may be signed by the proctors showing how the questions arose and were decided in the District Court and setting forth so much only of the facts alleged and proved, or sought to be proved, or of the evidence thereof, as is essential to a decision of such question by the appellate court, and such stipulation and statement shall be filed and certified up with the record.

This rule supersedes former Rule 52.

The superseded rule was substantially identical with the present rule except that it referred to the "Circuit Court" as the Appellate Court.

#### RULE 50. SECURITY ON CROSS-LIBEL

Whenever a cross-libel is filed upon any counterclaim arising out of the same contract or cause of action for which the original libel was filed, and the respondent or claimant in the original suit shall have given security to respond in damages, the respondent in the cross-libel shall give security in the usual amount and form to respond in damages to the claims set forth in said cross-libel, unless the court, for cause shown, shall otherwise direct; and all proceedings on the original libel shall be stayed until such security be given unless the court otherwise directs.

This rule supersedes former Rule 53.

The rule superseded read as follows: "Whenever a cross-libel is filed upon any counterclaim, arising out of the same cause of action for which the original libel was filed, the respondents in the cross-libel shall give security in the usual amount and form, to respond in damages, as claimed in said cross-libel, unless the court, on cause shown, shall otherwise direct; and all proceedings upon the original libel shall be stayed until such security shall be given."

#### RULE 51. LIMITATION OF LIABILITY—HOW CLAIMED

When any ship or vessel shall be libeled, or the owner or owners thereof shall be sued, for any embezzlement, loss, or destruction by the master, officers, mariners, passengers, or any other person or persons, of any property, goods, or merchandise, shipped or put on board of such ship or vessel, or for any loss, damage or injury by collision, or for any act, matter or thing, loss, damage or forfeiture, done, occasioned or incurred, without the privity or knowledge of such owner or owners, and he or they shall desire to claim the benefit of limitation of liability provided for in the third and fourth sections of the act of March 3, 1851, entitled "An act to limit the liability of shipowners and for other purposes" now embodied in sections 4283 to 4285 of the Revised Statutes (Sections 183 to 185 of Title 46, Shipping) as now or hereafter amended or supplemented, the said owner or owners shall and may file a libel or petition in the proper District Court of the United States, as hereinafter specified, setting forth the facts and circumstances on which said limitation of liability is claimed, and praying proper relief in that behalf; and thereupon said court, having caused due appraisement to be had of the amount or value of the interest of said owner or owners, respectively, in such ship or vessel, and her freight, for the voyage, shall make an order for the payment of the same into court, or for the giving of a stipulation with sufficient sureties or an approved corporate surety for the payment thereof into court with interest at the rate of six per cent. per annum from the date of said stipulation and costs, whenever the same shall be ordered; or, if the said owner or owners shall so elect, the said court shall, without such appraisement make an order for the transfer by him or them of his or their interest in such vessel and freight to a trustee to be appointed by the court under the fourth section of said act; and, upon compliance with such order, the said court shall issue a monition against all persons claiming damages for any such embezzlement, loss, destruction, damage

or injury, citing them to appear before the said court and file their respective claims at or before a certain time to be named in said writ, not less than 30 days from the issuing of the same; and public notice of such monition shall be given as in other cases, and such further notice served through the post office, or otherwise, as the court, in its discretion, may direct; and the said court shall also, on the application of the said owner or owners, make an order to restrain the further prosecution of all and any suit or suits against said owner or owners in respect to any such claim or claims.

This rule supersedes former Rule 54.

The rule superseded read as follows: "When any ship or vessel shall be libeled, or the owner or owners thereof shall be sued, for any embezzlement, loss, or destruction by the master, officers, mariners, passengers, or any other person or persons, of any property, goods, or merchandise shipped or put on board of such ship or vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture done, occasioned, or incurred, without the privity or knowledge of such owner or owners, and he or they shall desire to claim the benefit of limitation of liability provided for in the third and fourth sections of the act of March 3, 1851, entitled 'An act to limit the liability of shipowners and for other purposes,' now embodied in sections 4283 to 4285 of the Revised Statutes, the said owner or owners shall and may file a libel or petition in the proper District Court of the United States, as hereinafter specified, setting forth the facts and circumstances on which such limitation of liability is claimed, and praying proper relief in that behalf; and thereupon said court, having caused due appraisement to be had of the amount or value of the interest of said owner or owners, respectively, in such ship or vessel, and her freight, for the voyage, shall make an order for the payment of the same into court, or for the giving of a stipulation, with sureties, for payment thereof into court whenever the same shall be ordered; or, if the said owner or owners shall so elect, the said court shall without such appraisement, make an order for the transfer by him or them of his or their interest in such vessel and freight, to a trustee to be appointed by the court under the fourth section of said act; and, upon compliance with such order, the said court shall issue a monition against all persons claiming damages for any such embezzlement, loss, destruction, damage, or injury, citing them to appear before the said court and make due proof of their respective claims at or before a certain time to be named in said writ, not less than three months from the issuing of the same; and public notice of such monition shall be given as in other cases, and such further notice reserved through the post office, or otherwise, as the court, in its discretion, may direct; and the said court shall also, on the application of the said owner or owners, make an order to restrain the further prosecution of all and any suit or suits against said owner or owners in respect of any such claim or claims."

#### RULE 52. PROOF OF CLAIMS IN LIMITED LIABILITY PROCEDURE

Proof of all claims which shall be filed in pursuance of said monition shall thereafter be made before a commissioner to be designated by the court, or before the court as the court may determine, subject to the right of any person interested to question or controvert the same; and on the completion of said proofs, the commissioner shall make report, or the court its finding on the claims so proven, and on confirmation of said commissioner's report, after hearing any exceptions thereto, or on such finding by the court, the moneys paid or secured to be paid into court as aforesaid, or the proceeds of said ship or vessel and freight (after payment of costs and expense)

shall be divided pro rata amongst the several claimants in proportion to the amount of their respective claims, duly proved and confirmed as aforesaid, saving, however, to all parties any priority to which they may be legally entitled.

This rule supersedes former Rule 55.

The rule superseded was identical with the present rule.

#### RULE 53. DEFENSE TO CLAIMS IN LIMITED LIABILITY PROCEDURE

In the proceedings aforesaid, the said owner or owners shall be at liberty to contest his or their liability, or the liability of said ship or vessel for said embezzlement, loss, destruction, damage or injury (independently of the limitation of liability claimed under said act), provided he, it or they shall have complied with the requirements of Rule fifty-one and shall also have given a bond for costs and provided that, in his or their libel or petition, he or they shall state the facts and circumstances by reason of which exemption from liability is claimed; and any person or persons claiming damages as aforesaid, and who shall have filed his or their claim under oath, shall and may answer such libel or petition, and contest the right of the owner or owners of said ship or vessel, either to an exemption from liability, or to a limitation of liability under the said act of Congress, or both, provided such answer shall in suitable allegations state the facts and circumstances by reason of which liability is claimed or right to limitation of liability should be denied.

This rule supersedes former Rule 56.

The rule superseded was identical with the present rule.

#### RULE 54. COURTS HAVING COGNIZANCE OF LIMITED LIABILITY PROCEDURE

The said libel or petition shall be filed and the said proceedings had in any District Court of the United States in which said ship or vessel may be libeled to answer for any such embezzlement, loss, destruction, damage or injury; or, if the said ship or vessel be not libeled, then in the District Court for any district in which the said owner or owners may be sued in that behalf; when the said ship or vessel has not been libeled to answer the matters aforesaid, and suit has not been commenced against the said owner or owners, or has been commenced in a district other than that in which the said ship or vessel may be, the said proceedings may be had in the District Court of the district in which the said ship or vessel may be, and where it may be subject to the control of such court for the purposes of the case as hereinbefore provided. If the ship shall have already been libeled or sold, the proceeds shall represent the same for the purposes of these rules.

This rule supersedes former Rule 57.

The rule superseded was identical with the present rule.

#### RULE 55. APPEALS IN LIMITED LIABILITY CASES

All the preceding rules and regulations for proceeding in causes where the owner or owners of a ship or vessel shall desire to claim the benefit of limitation of liability provided for in the act of Congress in that behalf, shall apply to the Circuit Courts of Appeals of the United States where such

cases are or shall be pending in said courts on appeal from the District Courts.

This rule supersedes former Rule 58.

The rule superseded was identical with the present rule except that the "Circuit Court" was designated as the appellate tribunal.

#### RULE 56. RIGHT TO BRING IN PARTY JOINTLY LIABLE

In any suit, whether in rem or in personam, the claimant or respondent (as the case may be) shall be entitled to bring in any other vessel or person (individual or corporation) who may be partly or wholly liable either to the libellant or to such claimant or respondent by way of remedy over, contribution or otherwise, growing out of the same matter. This shall be done by petition, on oath, presented before or at the time of answering the libel, or at any later time during the progress of the cause that the court may allow. Such petition shall contain suitable allegations showing such liability, and the particulars thereof, and that such other vessel, or person ought to be proceeded against in the same suit for such damage, and shall pray that process be issued against such vessel or person to that end. Thereupon such process shall issue, and if duly served, such suit shall proceed as if such vessel or person had been originally proceeded against; the other parties in the suit shall answer the petition; the claimant of such vessel or such new party shall answer the libel; and such further proceedings shall be had and decree rendered by the court in the suit as to law and justice shall appertain. But every such petitioner shall, upon filing his petition, give a stipulation, with sufficient sureties, or an approved corporate surety, to pay the libellant and to any claimant or any new party brought in by virtue of such process, all such costs, damages, and expenses as shall be awarded against the petitioner by the court on the final decree, whether rendered in the original or appellate court; and any such claimant or new party shall give the same bonds or stipulations which are required in the like cases from parties brought in under process issued on the prayer of a libellant.

This rule supersedes former Rule 59.

The rule superseded provided as follows: "In a suit for damage by collision, if the claimant of any vessel proceeded against, or any respondent proceeded against in personam, shall, by petition, on oath, presented before or at the time of answering the libel, or within such further time as the court may allow, and containing suitable allegations showing fault or negligence in any other vessel contributing to the same collision, and the particulars thereof, and that such other vessel or any other party ought to be proceeded against in the same suit for such damage, pray that process be issued against such vessel or party to that end, such process may be issued, and, if duly served, such suit shall proceed as if such vessel or party had been originally proceeded against; the other parties in the suit shall answer the petition; the claimant of such vessel or such new party shall answer the libel; and such further proceedings shall be had and decree rendered by the court in the suit as to law and justice shall appertain. But every such petitioner shall, upon filing his petition, give a stipulation with sufficient sureties, to pay to the libellant and to any claimant or new party brought in by virtue of such process, all such costs, damages, and expenses as shall be awarded against the petitioner by the court upon the final decree, whether rendered in the original or appellate court;

and any such claimant or new party shall give the same bonds or stipulations which are required in like cases from parties brought in under process issued on the prayer of a libellant."

#### RULE 57. PROPERTY IN CUSTODY OF MARSHAL

No property in the custody of the marshal or other officer of the court shall be delivered up without an order of the court but, except in possessory actions, such order may be entered, as of course, by the clerk, on the filing of either a written consent thereto by the proctor on whose behalf it is detained, or an approved stipulation or bond given as provided by law and these rules; or upon the dismissal or discontinuance of the libel; except that in proceedings under section 941 of the Revised Statutes [Section 754 of this Title] the marshal shall not deliver any property so released until the costs and charges of the officers of the court shall first have been paid into the court by the party receiving such property subject to the decision of the court with respect to the amount of costs due such officers.

This rule is new.

#### § 723a. Proceedings in criminal cases after verdict, after finding of guilt by court, or after plea of guilty; power of Supreme Court to prescribe by rule.

This section, acts Feb. 24, 1933, ch. 119, §§ 1-3, 47 Stat. 904; Mar. 8, 1934, ch. 49, 48 Stat. 399; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1936, ch. 804, 49 Stat. 1921, and the rules promulgated thereunder are now set out as section 688 of Title 18, Criminal Code and Criminal Procedure

#### § 723a-1. Proceedings in criminal cases prior to and including verdict; power of Supreme Court to prescribe rules.

This section, act June 29, 1940, ch. 445, 54 Stat. 688, is now set out as section 687 of Title 18, Criminal Code and Criminal Procedure.

#### § 723b. Rules in actions at law; Supreme Court authorized to make.

The Supreme Court of the United States shall have the power to prescribe, by general rules, for the district courts of the United States and for the courts of the District of Columbia, the forms of process, writs, pleadings, and motions, and the practice and procedure in civil actions at law. Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant. They shall take effect six months after their promulgation, and thereafter all laws in conflict therewith shall be of no further force or effect. (June 19, 1934, ch. 651, § 1, 48 Stat. 1064.)

#### CROSS REFERENCE

Hawaii, application of rules to district court for, see section 646 of Title 48, Territories and Insular Possessions.

#### FEDERAL RULES OF CIVIL PROCEDURE

Application of, see Rules 1, 2, 35, 81, following section 723c of this title.

Continuation of section under rules, see note by Advisory Committee under Rule 2.

#### § 723c. Union of equity and action at law rules; power of Supreme Court.

The court may at any time unite the general rules prescribed by it for cases in equity with those in ac-

tions at law so as to secure one form of civil action and procedure for both: *Provided, however,* That in such union of rules the right of trial by jury as at common law and declared by the seventh amendment to the Constitution shall be preserved to the parties inviolate. Such united rules shall not take effect until they shall have been reported to Congress by the Attorney General at the beginning of a regular

session thereof and until after the close of such session. (June 19, 1934, ch. 651, § 2, 48 Stat. 1064.)

#### CROSS REFERENCE

Hawaii, application of rules to district court for, see section 646 of Title 48, Territories and Insular Possessions.

#### FEDERAL RULES OF CIVIL PROCEDURE

Application of, see Rules 1, 2, 35, 38, 81, following.

## RULES OF CIVIL PROCEDURE FOR THE DISTRICT COURTS OF THE UNITED STATES

### AUTHORITY

The Rules of Civil Procedure hereinafter set out were promulgated by the Supreme Court of the United States under authority of sections 723b, 723c of this title.

### EFFECTIVE DATE

Effective date of these rules, see Rule 86 of these rules

### REFERENCES TO INTERNAL REVENUE LAWS

In the notes of Advisory Committee following various rules, references were made to Title 26 prior to the enactment of the Internal Revenue Code. For corresponding sections of the Internal Revenue Code, consult Table under Parallel Tables at end of volume

### ANALYSIS OF RULES

#### I. Scope of Rules—One Form of Action

##### Rule 1. Scope of Rules

##### Rule 2. One Form of Action

#### II. Commencement of Action; Service of Process, Pleadings, Motions, and Orders

##### Rule 3. Commencement of Action

##### Rule 4. Process

- (a) Summons; issuance
- (b) Same; form.
- (c) By whom served
- (d) Summons; personal service.
- (e) Same; other service
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- (a) Service; when required.
- (b) Same; how made
- (c) Same; numerous defendants.
- (d) Filing.
- (e) Filing with the court defined.

##### Rule 6. Time

- (a) Computation
- (b) Enlargement.
- (c) Unaffected by expiration of term.
- (d) For motions—affidavits
- (e) Additional time after service by mail.

#### III. Pleadings and Motions

##### Rule 7. Pleadings Allowed; Form of Motions

- (a) Pleadings.
- (b) Motions and other papers
- (c) Demurrers, pleas, etc., abolished.

##### Rule 8. General Rules of Pleading

- (a) Claims for relief.
- (b) Defenses; form of denials.
- (c) Affirmative defenses
- (d) Effect of failure to deny.
- (e) Pleading to be concise and direct; consistency.
- (f) Construction of pleadings.

##### Rule 9. Pleading Special Matters

- (a) Capacity.
- (b) Fraud, mistake, condition of the mind.
- (c) Conditions precedent.
- (d) Official document or act.
- (e) Judgment.
- (f) Time and place.
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##### Rule 10. Form of Pleadings

- (a) Caption; names of parties.
- (b) Paragraphs; separate statements.
- (c) Adoption by reference; exhibits.

##### Rule 11. Signing of Pleadings

#### III. Pleadings and Motions—Continued.

##### Rule 12. Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on Pleadings

- (a) When presented.
- (b) How presented.
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- (d) Preliminary hearings.
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- (h) Waiver of defenses.

##### Rule 13. Counterclaim and Cross-Claim

- (a) Compulsory counterclaims
- (b) Permissive counterclaims.
- (c) Counterclaim exceeding opposing claim
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##### (i) Separate trials; separate judgments

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- (a) When defendant may bring in third party.
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##### Rule 17. Parties Plaintiff and Defendant; Capacity

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##### Rule 18. Joinder of Claims and Remedies

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##### Rule 19. Necessary Joinder of Parties

- (a) Necessary joinder.
- (b) Effect of failure to join.
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- (a) Permissive joinder.
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- (a) Representation.
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- (a) Intervention of right.
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## IV. Parties—Continued.

## Rule 25. Substitution of Parties

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## Rule 26. Depositions Pending Action

- (a) When depositions may be taken.
- (b) Scope of examination.
- (c) Examination and cross-examination
- (d) Use of depositions
- (e) Objections to admissibility.
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- (a) Before action.
  - (1) Petition.
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  - (4) Use of deposition.
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## Rule 28. Persons Before Whom Depositions May Be Taken

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- (a) Notice of examination; time and place.
- (b) Orders for the protection of parties and deponents.
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- (a) Serving interrogatories; notice
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## Rule 32. Effect of Errors and Irregularities in Depositions

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- (a) Order for examination
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- (a) Request for admission.
- (b) Effect of admission.

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  - (1) Contempt.
  - (2) Other consequences.
- (c) Expenses on refusal to admit.
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## V. Depositions and Discovery—Continued.

## Rule 37—Continued

- (e) Failure to respond to letters rogatory.
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- (a) Right preserved.
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- (c) Same; specification of issues.
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- (a) By jury.
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- (a) Voluntary dismissal; effect thereof.
  - (1) By plaintiff; by stipulation.
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- (b) Involuntary dismissal; effect thereof.
- (c) Dismissal of counterclaim, cross-claim, or third-party claim.
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## Rule 42. Consolidation; Separate Trials

- (a) Consolidation.
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- (a) Authentication of copy.
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- (a) For attendance of witnesses; forms; issuance
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- (a) Examination of jurors.
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## Rule 48. Juries of Less than Twelve—Majority Verdict

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- (a) Special verdicts.
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## Rule 50. Motion for a Directed Verdict

- (a) When made; effect.
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- (a) Effect.
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## Rule 53. Masters

- (a) Appointment and compensation.
- (b) Reference.
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- (1) Meetings.
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- (1) Contents and filing.
- (2) In non-jury actions.
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- (a) Definition; form.
- (b) Judgment at various stages.
- (c) Demand for judgment.
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- (a) Entry.
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- (c) Setting aside default.
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- (a) For claimant.
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- (c) Motion and proceedings thereon.
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- (e) Form of affidavits; further testimony.
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- (a) Preliminary; notice.
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## Rule 72. Appeal from a District Court to the Supreme Court

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- (a) How taken.
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- (c) Bond on appeal.
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  - (c) Form of testimony.
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  - (f) Stipulation as to record.
  - (g) Record to be prepared by clerk—necessary parts.
  - (h) Power of court to correct record.
  - (i) Order as to original papers or exhibits.
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TABLE I

The new Federal Rules of Civil Procedure will supplant the Equity Rules since in general they cover the field now covered by the Equity Rules and the Conformity Act.

This table shows the Equity Rules to which references are made in the notes to the Federal Rules of Civil Procedure.

Equity Rules	Federal Rules of Civil Procedure	Equity Rules	Federal Rules of Civil Procedure
1.....	77	6.....	7
2.....	77	7.....	4, 7
3.....	79	8.....	6, 7
4.....	77	9.....	7
5.....	77	10.....	18, 5



TABLE I—Continued

TABLE II—Continued

Equity Rules	Federal Rules of Civil Procedure	Equity Rules	Federal Rules of Civil Procedure	U. S. C.	Federal Rules of Civil Procedure	U. S. C.	Federal Rules of Civil Procedure
11.....	71	48.....	43	Tit. 7—Continued		Tit. 20, § 614.....	45
12.....	3, 4, 5, 12, 55	49.....	53	608c (15) (B).....	4	619 (b).....	45
13.....	4	50.....	30, 80	855.....	4	1523 (a).....	45
14.....	4	51.....	30, 53	Tit. 8, § 9a.....	44	1569.....	4
15.....	4, 45	52.....	45, 53	45.....	54	1569 (d).....	54
16.....	6, 55	53.....	53	164.....	41	1610 (a).....	69
17.....	55	54.....	26	282.....	81 (T)	1645 (c).....	17
18.....	7, 8	55.....	30	ch 9.....	81	1645 (d).....	54
19.....	1, 15, 61	56.....	40	§ 356.....	44	1670 (b) (2).....	54
20.....	12	57.....	40	399b (d).....	44	1672-1673.....	13
21.....	11, 12	58.....	26, 33, 34, 36	405.....	4, 81 (T)	Tit. 28, § 12.....	6
22.....	1	59.....	53	Tit. 9.....	81 (T)	13.....	77
23.....	1, 39	60.....	53	Tit. 10, § 610.....	69	41 (1).....	13
24.....	11	61.....	53	Tit. 11, § 44 (d).....	44	41 (26).....	22 (T), 65
25.....	8, 9, 10, 19	61½.....	53	44 (c).....	44	(T), 67.....	4
26.....	18, 20, 82	62.....	53	44 (f).....	44	45.....	3, 4, 7, 12, 55
27.....	23	63.....	53	44 (g).....	44	45a.....	24
28.....	15	64.....	26	69.....	45	46.....	65
29.....	7, 12, 42, 55	65.....	53	204.....	44	47.....	40, 62, 65
30.....	8, 13, 82	66.....	53	207 (j).....	44	47a.....	62 (T)
31.....	7, 8, 12, 55	67.....	53	Tit. 12, § 91.....	69	48.....	24
32.....	15	68.....	53	632.....	69	71.....	81
33.....	7, 12	69.....	59	Tit. 15, § 4.....	65	72.....	81
34.....	15	70.....	17	5.....	4	73.....	81
35.....	15	70½.....	52	10.....	4	74.....	81
36.....	11	71.....	54	15.....	54	75.....	81
37.....	17, 19, 20, 24	72.....	60, 61	23.....	45	76.....	81
38.....	23	73.....	65	25.....	4, 65	77.....	81
39.....	19	74.....	62	26.....	65	78.....	81
40.....	20	75.....	75	28.....	40, 62	79.....	81
41.....	17	76.....	75	49.....	45, 81	80.....	12, 81
42.....	19, 20	77.....	76	72.....	54	81.....	81
43.....	12, 21	78.....	43	77k.....	54	82.....	81
44.....	12, 21	79.....	83	77t (b).....	65	83.....	81
45.....	25	80.....	6	77t (c).....	81	109.....	4
46.....	43, 61	81.....	86	77v (a).....	54	111.....	19
47.....	26			77v (b).....	45	113.....	4

TABLE II

This table shows the Constitution, its amendments, and the sections of the United States Code to which references are made in the Federal Rules of Civil Procedure and the notes thereto.

[Unless followed by "(T)", to indicate that the reference appears in the text of the Rule, the references appear in the Note to the Rule.]

Constitution and its amendments	Federal Rules of Civil Procedure	U. S. C.	Federal Rules of Civil Procedure	U. S. C.	Federal Rules of Civil Procedure	U. S. C.	Federal Rules of Civil Procedure
Constitution.....	17 (T), 25 (T), 39 (T)	Tit. 6.....	62, 65, 73	820.....	81 (T)	349a.....	72
7th Amendment.....	38 (T)	§ 6.....	73	715d (c).....	81 (T)	350.....	69
		7.....	4, 41, 73	Tit. 16, § 797 (g).....	45	376.....	64
		8.....	73	820.....	81	377.....	81
		9.....	73	825f.....	45	377a.....	81
		11.....	73	825m (b).....	81	377b.....	81
		12.....	73	825p.....	54	377c.....	81
		13.....	73	831x.....	81	378.....	65
		14.....	73	Tit. 17, § 25.....	81 (T), 81	379.....	65
		15.....	73	Tit. 19, § 199.....	69	380.....	40, 62, 65
Tit. 1, § 1.....	43	Tit. 7.....		274.....	54	380a.....	40
30.....	44	§ 116.....	81	608.....	8	381.....	11, 65
30a.....	44	210 (f).....	54	1333 (b).....	45	382.....	65
54.....	44	216.....	65	1333 (c).....	81	383.....	65
55.....	44	217.....	4, 62, 65	Tit. 20, § 52.....	44	384.....	2
Tit. 2, § 118.....	69 (T), 69	222.....	45, 81	Tit. 21, § 14.....	81	391.....	59, 61
Tit. 5, § 301.....	79	292.....	81 (T)	Tit. 22, § 21 (h).....	69	397.....	1, 2
318.....	79	499g (c).....	54, 81 (T)	240.....	40	398.....	1, 2
490.....	44	499k.....	4, 62	268.....	45	399.....	12, 15
729.....	69	511n.....	45	270d.....	45	400.....	57 (T)
				270e.....	45	400 (3).....	49
				Tit. 25, § 6.....	44	401.....	24 (T), 24
				201.....	17		

TABLE II—Continued

TABLE II—Continued

U. S. C.	Federal Rules of Civil Procedure	U. S. C.	Federal Rules of Civil Procedure	U. S. C.	Federal Rules of Civil Procedure	U. S. C.	Federal Rules of Civil Procedure
Tit. 28—Continued				Tit. 28—Continued			
411.....	47	726.....	64	861a.....	72, 73	445.....	4, 22, 45
412.....	47	727.....	69	861b.....	72, 73	618.....	69
413.....	47	729.....	69	862.....	72, 73, 75	Tit. 40, § 120.....	81
415.....	47	730.....	1, 2	863.....	72, 75	238.....	44
416.....	47	731.....	83	864.....	72, 75	258.....	81
417.....	47	734.....	42	865.....	75	270b.....	17
417a.....	47	737.....	64	866.....	75	270c.....	44
418.....	47	738.....	64	867.....	73	276a-2 (b).....	24
423.....	47	739.....	64	868.....	72	c. 7.....	51
424.....	47	740.....	64	869.....	69, 72, 73	Tit. 41, § 39.....	45
ch. 14.....	81	741.....	64	870.....	54, 62, 72, 73	Tit. 43, § 57.....	44
§ 489.....	69	742.....	64	872.....	72, 73	58.....	44
503.....	4	743.....	64	873.....	72	59.....	44
556.....	79	744.....	64	874.....	62, 69, 72, 73	83.....	44
567.....	79	745.....	64	875.....	40, 52	175.....	69
568.....	79 (T), 79	746.....	64	902.....	4	Tit. 45, § 88.....	81
572.....	81	747.....	64	906.....	54	153p.....	54, 81
574.....	69	748.....	64	Tit. 29, c 6.....	65 (T)	157 3d (h).....	45
600a.....	45	749.....	64	§ 52.....	65 (T)	159.....	81 (T)
600c.....	45	750.....	64	53.....	65 (T)	185.....	81
600d.....	45	755.....	64	107.....	73	222 (b).....	45
601.....	45	756.....	64	159.....	81 (T)	Tit. 46, § 38.....	54
602.....	45	757.....	64	160 (e).....	81 (T)	823.....	44
603.....	45	758.....	64	160 (g).....	81 (T)	829.....	54
631.....	43	759.....	64	160 (i).....	81 (T)	941.....	54
635.....	43	760.....	64	161.....	45	1124 (b).....	45
636.....	45	762.....	3, 11	Tit. 30, § 32.....	54	1227.....	54
637.....	43	763.....	4, 12, 55	Tit. 31, § 46.....	44	Tit. 47, § 11.....	81
639.....	26, 28, 30	764.....	52, 75	195.....	69	13.....	4
640.....	26, 30	766.....	3, 4	227.....	13	154 (m).....	44
641.....	26, 30	767.....	1, 4	232.....	41, 54	206.....	54
642.....	28	768.....	40	234.....	54	401.....	54
643.....	26	769.....	40	725v.....	67 (T)	401 (a).....	81
644.....	26, 27	770.....	38	Tit. 33, § 495.....	81 (T)	406.....	81
646.....	26	772.....	39	506.....	45	409 (c).....	45
647.....	45	773.....	38, 30, 52	916.....	69	409 (d).....	45
648.....	45	774.....	13	918.....	69	412.....	44
654.....	45	775.....	13	921.....	81 (T)	Tit. 48, § 1371c.....	69
655.....	45	776.....	46, 63, 75	926.....	54	Tit. 49, § 12 (2).....	45
661.....	44	777.....	1, 15, 61	Tit. 34, § 365 (c).....	69	12 (3).....	45
662.....	44	778.....	25, 81	Tit. 35, § 40d.....	8	14 (3).....	44
663.....	44	779.....	25	54.....	45	16 (2).....	54
664.....	44	780.....	25 (T), 25	55.....	45	16 (13).....	44
665.....	44	785.....	55	56.....	45	19a (1).....	44
666.....	44	786.....	69	67.....	54	19a (2).....	81
670.....	44	811.....	69	69.....	8, 54	20 (9).....	81
671.....	44	813.....	79	71.....	54	44.....	40, 62
672.....	44	815.....	54	72a.....	4	74 (g).....	69
673.....	44	817.....	54	Tit. 38, § 11g.....	44	97.....	22
674.....	44	821.....	54	54.....	69	173a.....	45
675.....	44	825.....	54	133.....	45	321 (c).....	4
676.....	44	829.....	11, 54	393.....	69		
677.....	44	830.....	54				
678.....	44	832.....	54, 72, 73				
679.....	44	833.....	54				
680.....	44	834.....	54				
681.....	44	835.....	54				
682.....	44	836.....	54				
685.....	44	838.....	4, 69				
687.....	44	839.....	4, 69				
688.....	44	840.....	59, 62, 69				
689.....	44	841.....	62, 69				
695.....	44	842.....	54, 69 (T), 69				
696e.....	44						
711.....	37 (T), 45	843.....	64, 69				
	(T), 45	844.....	64, 69				
713.....	45 (T), 45	845.....	64, 69				
721.....	4	846.....	69				
722.....	4	847.....	69				
723.....	1, 2	848.....	69				
723b.....	1, 2, 35, 81	849.....	69				
723c.....	1, 2, 35, 38, 81	850.....	69				
724.....	1, 2, 55	851.....	67 (T)				
725.....	43, 81	852.....	67 (T)				

## I.—SCOPE OF RULES—ONE FORM OF ACTION

## RULE 1.—SCOPE OF RULES

These rules govern the procedure in the district courts of the United States in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

## NOTES OF ADVISORY COMMITTEE ON RULES

1. Rule 81 states certain limitations in the application of these rules to enumerated special proceedings.

2. The expression "district courts of the United States" appearing in the statute authorizing the Supreme Court of the United States to promulgate rules of civil procedure does not include the district courts held in the Territories

and insular possessions. See *Mookini et al. v. United States*, 303 U. S. 201, 58 S. Ct. 543, 82 L. Ed. 748 (1938).

3. These rules are drawn under the authority of the act of June 19, 1934, U. S. C., Title 28, § 723b (Rules in actions at law; Supreme Court authorized to make), and § 723c (Union of equity and action at law rules; power of Supreme Court) and also other grants of rule making power to the Court. See Clark and Moore, *A New Federal Civil Procedure—I. The Background*, 44 Yale L. J. 387, 391 (1935). Under § 723b after the rules have taken effect all laws in conflict therewith are of no further force or effect. In accordance with § 723c the Court has united the general rules prescribed for cases in equity with those in actions at law so as to secure one form of civil action and procedure for both. See Rule 2 (One Form of Action). For the former practice in equity and at law see U. S. C., Title 28, §§ 723 and 730 (conferring power on the Supreme Court to make rules of practice in equity) and the Equity Rules promulgated thereunder; U. S. C., Title 28, § 724 (Conformity act); Equity Rule 22 (Action at Law Erroneously Begun as Suit in Equity—Transfer); Equity Rule 23 (Matters Ordinarily Determinable at Law When Arising in Suit in Equity to be Disposed of Therein); U. S. C., Title 28, §§ 397 (Amendments to pleadings when case brought to wrong side of court), and 398 (Equitable defenses and equitable relief in actions at law).

4. With the second sentence compare U. S. C., Title 28, §§ 777 (Defects of form; amendments), 767 (Amendment of process); Equity Rule 19 (Amendments Generally).

#### RULE 2.—ONE FORM OF ACTION

There shall be one form of action to be known as "civil action."

##### NOTES OF ADVISORY COMMITTEE ON RULES

1. This rule modifies U. S. C., Title 28, § 384 (Suits in equity, when not sustainable). U. S. C., Title 28, §§ 723 and 730 (conferring power on the Supreme Court to make rules of practice in equity), are unaffected in so far as they relate to the rule making power in admiralty. These sections, together with § 723b (Rules in actions at law; Supreme Court authorized to make) are continued in so far as they are not inconsistent with § 723c (Union of equity and action at law rules; power of Supreme Court). See Note 3 to Rule 1. U. S. C., Title 28, §§ 724 (Conformity act), 397 (Amendments to pleadings when case brought to wrong side of court) and 398 (Equitable defenses and equitable relief in actions at law) are superseded.

2. Reference to actions at law or suits in equity in all statutes should now be treated as referring to the civil action prescribed in these rules.

3. This rule follows in substance the usual introductory statements to code practices which provide for a single action and mode of procedure, with abolition of forms of action and procedural distinctions. Representative statutes are N. Y. Code 1848 (Laws 1848, ch. 379) § 62; N. Y. C. P. A. (1937) § 8; Calif. Code Civ. Proc. (Deering, 1937) § 307; 2 Minn. Stat. (Mason, 1927) § 9164; 2 Wash. Rev. Stat. Ann. (Remington, 1932) §§ 153, 255.

## II.—COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

#### RULE 3.—COMMENCEMENT OF ACTION

A civil action is commenced by filing a complaint with the court.

##### NOTES OF ADVISORY COMMITTEE ON RULES

1. Rule 5 (e) defines what constitutes filing with the court.

2. This rule governs the commencement of all actions, including those brought by or against the United States or an officer or agency thereof, regardless of whether service is to be made personally pursuant to Rule 4 (d), or otherwise pursuant to Rule 4 (e).

3. With this rule compare Equity Rule 12 (Issue of Subpoena—Time for Answer) and the following statutes (and

other similar statutes) which provide a similar method for commencing an action:

U. S. C., Title 28:

§ 45 (District courts; practice and procedure in certain cases under interstate commerce laws).

§ 762 (Petition in suit against United States).

§ 766 (Partition suits where United States is tenant in common or joint tenant).

4. This rule provides that the first step in an action is the filing of the complaint. Under Rule 4 (a) this is to be followed forthwith by issuance of a summons and its delivery to an officer for service. Other rules providing for dismissal for failure to prosecute suggest a method available to attack unreasonable delay in prosecuting an action after it has been commenced. When a Federal or State statute of limitations is pleaded as a defense, a question may arise under this rule whether the mere filing of the complaint stops the running of the statute, or whether any further step is required, such as, service of the summons and complaint or their delivery to the marshal for service. The answer to this question may depend on whether it is competent for the Supreme Court, exercising the power to make rules of procedure without affecting substantive rights, to vary the operation of statutes of limitations. The requirement of Rule 4 (a) that the clerk shall forthwith issue the summons and deliver it to the marshal for service will reduce the chances of such a question arising.

#### RULE 4.—PROCESS

##### (a) Summons; issuance.

Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver it for service to the marshal or to a person specially appointed to serve it. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

##### (b) Same; form.

The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint.

##### (c) By whom served.

Service of all process shall be made by a United States marshal, by his deputy, or by some person specially appointed by the court for that purpose, except that a subpoena may be served as provided in Rule 45. Special appointments to serve process shall be made freely when substantial savings in travel fees will result.

##### (d) Summons; personal service.

The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an

agent authorized by appointment or by law to receive service of process.

(2) Upon an infant or an incompetent person, by serving the summons and complaint in the manner prescribed by the law of the state in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the United States, by delivering a copy of the summons and of the complaint to the United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court and by sending a copy of the summons and of the complaint by registered mail to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered mail to such officer or agency.

(5) Upon an officer or agency of the United States, by serving the United States and by delivering a copy of the summons and of the complaint to such officer or agency. If the agency is a corporation the copy shall be delivered as provided in paragraph (3) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the complaint to the chief executive officer thereof or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.

(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if the summons and complaint are served in the manner prescribed by any statute of the United States or in the manner prescribed by the law of the state in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state.

(e) Same; other service.

Whenever a statute of the United States or an order of court provides for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, service shall be made under the circumstances and in the manner prescribed by the statute, rule, or order.

(f) Territorial limits of effective service.

All process other than a subpoena may be served anywhere within the territorial limits of the state in which the district court is held and, when a statute of the United States so provides, beyond the territorial limits of that state. A subpoena may be served within the territorial limits provided in Rule 45.

(g) Return.

The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process. If service is made by a person other than a United States marshal or his deputy, he shall make affidavit thereof. Failure to make proof of service does not affect the validity of the service.

(h) Amendment.

At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

Form of summons. see Form 1, Appendix, following Rule 86.

#### NOTES OF ADVISORY COMMITTEE ON RULES

*Note to Subdivision (a).* With the provision permitting additional summons upon request of the plaintiff compare Equity Rule 14 (Alias Subpoena) and the last sentence of Equity Rule 12 (Issue of Subpoena—Time for Answer).

*Note to Subdivision (b).* This rule prescribes a form of summons which follows substantially the requirements stated in Equity Rules 12 (Issue of Subpoena—Time for Answer) and 7 (Process, Mesne and Final).

U. S. C., Title 28, § 721 (Sealing and testing of writs) is substantially continued insofar as it applies to a summons, but its requirements as to teste of process are superseded. U. S. C., Title 28, § 722 (Teste of process, day of) is superseded.

See Rule 12 (a) for a statement of the time within which the defendant is required to appear and defend.

*Note to Subdivision (c).* This rule does not affect U. S. C., Title 28, § 503, as amended June 15, 1935 (Marshals; duties) and such statutes as the following insofar as they provide for service of process by a marshal, but modifies them insofar as they may imply service by a marshal only:

U. S. C., Title 15:

§ 5 (Bringing in additional parties) (Sherman Act)

§ 10 (Bringing in additional parties)

§ 25 (Restraining violations; procedure)

U. S. C., Title 28:

§ 45 (Practice and procedure in certain cases under the interstate commerce laws)

Compare Equity Rule 15 (Process, by Whom Served).

*Note to Subdivision (d).* Under this rule the complaint must always be served with the summons.

Paragraph (1). For an example of a statute providing for service upon an agent of an individual see U. S. C., Title 28, § 109 (Patent cases).

Paragraph (3). This enumerates the officers and agents of a corporation or of a partnership or other unincorporated association upon whom service of process may be made, and permits service of process only upon the officers, managing or general agents, or agents authorized by appointment or by law, of the corporation, partnership or unincorporated association against which the action is brought. See *Christian v. International Ass'n of Machinists*, 7 F. (2d) 481 (D. C. Ky., 1925) and *Singleton*

*v. Order of Railway Conductors of America*, 9 F. Supp. 417 (D. C. Ill., 1935). Compare *Operative Plasterers' and Cement Finishers' International Ass'n of the United States and Canada v. Case*, 93 F. (2d) 56 (App. D. C., 1937).

For a statute authorizing service upon a specified agent and requiring mailing to the defendant, see U. S. C., Title 6, § 7 (Surety companies as sureties; appointment of agents; service of process).

Paragraphs (4) and (5) provide a uniform and comprehensive method of service for all actions against the United States or an officer or agency thereof. For statutes providing for such service, see U. S. C., Title 7, §§ 217 (Proceedings for suspension of orders), 499k (Injunctions; application of injunction laws governing orders of Interstate Commerce Commission), 608c (15) (B) (Court review of ruling of Secretary of Agriculture), and 855 (making § 608c (15) (B) applicable to orders of the Secretary of Agriculture as to handlers of anti-hog-cholera serum and hog-cholera virus); U. S. C., Title 26, § 1569 (Bill in chancery to clear title to realty on which the United States has a lien for taxes); U. S. C., Title 28, §§ 45 (District Courts; practice and procedure in certain cases under the interstate commerce laws), 763 (Petition in suit against the United States; service; appearance by district attorney), 766 (Partition suits where United States is tenant in common or joint tenant), 902 (Foreclosure of mortgages or other liens on property in which the United States has an interest). These and similar statutes are modified insofar as they prescribe a different method of service or dispense with the service of a summons.

For the Equity Rule on service, see Equity Rule 13 (Manner of Serving Subpoena).

*Note to Subdivision (e).* The provisions for the service of a summons or of notice or of an order in lieu of summons contained in U. S. C., Title 8, § 405 (Cancellation of certificates of citizenship fraudulently or illegally procured) (service by publication in accordance with State law); U. S. C., Title 28, § 118 (Absent defendants in suits to enforce liens); U. S. C., Title 35, § 72a (Jurisdiction of District Court of United States for the District of Columbia in certain equity suits where adverse parties reside elsewhere) (service by publication against parties residing in foreign countries); U. S. C., Title 38, § 445 (Action against the United States on a veteran's contract of insurance) (parties not inhabitants of or not found within the District may be served with an order of the court, personally or by publication) and similar statutes are continued by this rule. Title 24, § 378 of the Code of the District of Columbia (Publication against nonresident; those absent for six months; unknown heirs or devisees; for divorce or in rem; actual service beyond District) is continued by this rule.

*Note to Subdivision (f).* This rule enlarges to some extent the present rule as to where service may be made. It does not, however, enlarge the jurisdiction of the district courts.

U. S. C., Title 28, §§ 113 (Suits in States containing more than one district) (where there are two or more defendants residing in different districts), 115 (Suits of a local nature), 116 (Property in different districts in same State), 838 (Executions run in all districts of State); U. S. C., Title 47, § 13 (Action for damages against a railroad or telegraph company whose officer or agent in control of a telegraph line refuses or fails to operate such line in a certain manner—"upon any agent of the company found in such state"); U. S. C., Title 49, § 321 (c) (Requiring designation of a process agent by interstate motor carriers and in case of failure so to do, service may be made upon any agent in the State) and similar statutes, allowing the running of process throughout a State, are substantially continued.

U. S. C., Title 15, §§ 5 (Bringing in additional parties) (Sherman Act), 25 (Restraining violations; procedure); U. S. C., Title 28, §§ 44 (Procedure in certain cases under interstate commerce laws; service of processes of court), 117 (Property in different States in same circuit; jurisdiction of receiver), 839 (Executions; run in every State and Territory) and similar statutes, providing for the running of process beyond the territorial limits of a State, are expressly continued.

*Note to Subdivision (g).* With the second sentence compare Equity Rule 15 (Process, by Whom Served).

*Note to Subdivision (h).* This rule substantially continues U. S. C., Title 28, § 767 (Amendment of process).

#### RULE 5.—SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

##### (a) Service: When required.

Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard *ex parte*, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties affected thereby, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

##### (b) Same: How made.

Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

##### (c) Same: Numerous defendants.

In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

##### (d) Filing.

All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter.

##### (e) Filing with the court defined.

The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing

date and forthwith transmit them to the office of the clerk.

#### NOTES OF ADVISORY COMMITTEE ON RULES

*Note to Subdivisions (a) and (b).* Compare 2 Minn. Stat. (Mason, 1927) §§ 9240, 9241, 9242; N. Y. C. P. A. (1937) §§ 163, 164, and N. Y. R. C. P. (1937) Rules 20, 21; 2 Wash. Rev. Stat. Ann. (Remington, 1932) §§ 244-249.

*Note to Subdivision (d).* Compare the present practice under Equity Rule 12 (Issue of Subpoena—Time for Answer).

#### RULE 6.—TIME

##### (a) Computation.

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

##### (b) Enlargement.

When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion (1) with or without motion or notice, order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion permit the act to be done after the expiration of the specified period where the failure to act was the result of excusable neglect; but it may not enlarge the period for taking any action under Rule 59, except as stated in subdivision (c) thereof, or the period for taking an appeal as provided by law.

##### (c) Unaffected by expiration of term.

The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the expiration of a term of court. The expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action which has been pending before it.

##### (d) For motions—Affidavits.

A written motion, other than one which may be heard *ex parte*, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on *ex parte* application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59 (c), opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

##### (e) Additional time after service by mail.

Whenever a party has the right or is required to do some act or take some proceedings within a pre-

scribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

#### NOTES OF ADVISORY COMMITTEE ON RULES

*Note to Subdivisions (a) and (b).* These are amplifications along lines common in state practices, of Equity Rule 80 (Computation of Time—Sundays and Holidays) and of the provisions for enlargement of time found in Equity Rules 8 (Enforcement of Final Decrees) and 16 (Defendant to Answer—Default—Decree Pro Confesso). See also Rule XIII, Rules and Forms in Criminal Cases, 292 U. S. 661, 666 (1934). Compare Ala. Code Ann. (Michie, 1928) § 13 and former Law Rule 8 of the Rules of the Supreme Court of the District of Columbia (1924), superseded in 1929 by Law Rule 8, Rules of the District Court of the United States for the District of Columbia (1937).

*Note to Subdivision (c).* This eliminates the difficulties caused by the expiration of terms of court. Such statutes as U. S. C., Title 28, § 12 (Trials not discontinued by new term) are not affected. Compare Rules of the United States District Court of Minnesota, Rule 25 (Minn. Stat. (Mason, Supp. 1936), p. 1089).

*Note to Subdivision (d).* Compare 2 Minn. Stat. (Mason, 1927) § 9246; N. Y. R. C. P. (1937) Rules 60 and 64.

### III.—PLEADINGS AND MOTIONS

#### RULE 7.—PLEADINGS ALLOWED; FORM OF MOTIONS

##### (a) Pleadings.

There shall be a complaint and an answer; and there shall be a reply, if the answer contains a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if leave is given under Rule 14 to summon a person who was not an original party; and there shall be a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

##### (b) Motions and other papers.

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

##### (c) Demurrers, pleas, etc., abolished.

Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

#### NOTES OF ADVISORY COMMITTEE ON RULES

1. A provision designating pleadings and defining a motion is common in the State practice acts. See Ill. Rev. Stat. (1937), ch. 110, § 156 (Designation and order of pleadings); 2 Minn. Stat. (Mason, 1927) § 9246 (Definition of motion); and N. Y. C. P. A. (1937) § 113 (Definition of motion). Equity Rules 18 (Pleadings—Technical Forms Abrogated) 29 (Defenses—How Presented), and 33 (Testing Sufficiency of Defense) abolished technical forms of pleading, demurrers, and pleas, and exceptions for insufficiency of an answer.

2. *Note to Subdivision (a).* This preserves the substance of Equity Rule 31 (Reply—When Required—When Cause at Issue). Compare the English practice, English Rules Under the Judicature Act (The Annual Practice, 1937) O. 23, r. r. 1, 2 (Reply to counterclaim; amended, 1933, to

be subject to the rules applicable to defenses, O. 21). See O. 21, r. r. 1-14; O. 27, r. 13 (When pleadings deemed denied and put in issue). Under the codes the pleadings are generally limited. A reply is sometimes required to an affirmative defense in the answer. 1 Colo. Stat. Ann. (1935) § 66; Ore. Code Ann. (1930) §§ 1-614, 1-616. In other jurisdictions no reply is necessary to an affirmative defense in the answer, but a reply may be ordered by the court. N. C. Code Ann. (1935) § 525; 1 S. D. Comp. Laws (1929) § 2357. A reply to a counterclaim is usually required. Ark. Civ. Code (Crawford, 1934) §§ 123-125; Wis. Stat. (1935) §§ 263.20, 263.21. U. S. C., Title 28, § 45 (District courts; practice and procedure in certain cases) is modified in so far as it may dispense with a reply to a counterclaim.

For amendment of pleadings, see Rule 15 dealing with amended and supplemental pleadings.

3. All statutes which use the words "petition", "bill of complaint", "plea", "demurrer", and other such terminology are modified in form by this rule.

#### RULE 8.—GENERAL RULES OF PLEADING

##### (a) Claims for relief.

A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

##### (b) Defenses; form of denials.

A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11.

##### (c) Affirmative defenses.

In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mis-

takenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

##### (d) Effect of failure to deny.

Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

##### (e) Pleading to be concise and direct; consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

##### (f) Construction of pleadings.

All pleadings shall be so construed as to do substantial justice.

Forms, see Appendix, following Rule 86.

#### NOTES OF ADVISORY COMMITTEE ON RULES

*Note to Subdivision (a).* See Equity Rules 25 (Bill of Complaint—Contents), and 30 (Answer—Contents—Counterclaim). Compare 2 Ind. Stat. Ann. (Burns, 1933) §§ 2-1004, 2-1015; 2 Ohio Gen. Code Ann. (Page, 1926) §§ 11305, 11314; Utah Rev. Stat. Ann. (1933), §§ 104-7-2, 104-9-1.

See Rule 19 (c) for the requirement of a statement in a claim for relief of the names of persons who ought to be parties and the reason for their omission.

See Rule 23 (b) for particular requirements as to the complaint in a secondary action by shareholders.

*Note to Subdivision (b).* 1. This rule supersedes the methods of pleading prescribed in U. S. C., Title 19, § 508 (Persons making seizures pleading general issue and proving special matter); U. S. C., Title 35, §§ 40d (Proving under general issue, upon notice, that a statement in application for an extended patent is not true), 69 (Pleading and proof in actions for infringement) and similar statutes.

2. This rule is, in part, Equity Rule 30 (Answer—Contents—Counterclaim), with the matter on denials largely from the Connecticut practice. See Conn. Practice Book (1934) §§ 107, 108, and 122; Conn. Gen. Stat. (1930) §§ 5508-5514. Compare the English practice, English Rules Under the Judicature Act (The Annual Practice, 1937) O. 19, r. r. 17-20.

*Note to Subdivision (c).* This follows substantially English Rules Under the Judicature Act (The Annual Practice, 1937) O. 19, r. 15 and N. Y. C. P. A. (1937) § 242, with "surprise" omitted in this rule.

*Note to Subdivision (d).* The first sentence is similar to Equity Rule 30 (Answer—Contents—Counterclaim). For the second sentence see Equity Rule 31 (Reply—When Required—When Cause at Issue). This is similar to English Rules Under the Judicature Act (The Annual Practice, 1937) O. 19, r. r. 13, 18; and to the practice in the States.

*Note to Subdivision (e).* This rule is an elaboration upon Equity Rule 30 (Answer—Contents—Counterclaim),



plus a statement of the actual practice under some codes. Compare also Equity Rule 18 (Pleadings—Technical Forms Abrogated). See Clark, *Code Pleading* (1928), pp. 171-4, 482-5; Hankin, *Alternative and Hypothetical Pleading* (1924), 33 Yale L. J. 365.

*Note to Subdivision (f).* A provision of like import is of frequent occurrence in the codes. Ill. Rev. Stat. (1937) ch. 110, § 157 (3); 2 Minn. Stat. (Mason, 1927) § 9266; N. Y. C. P. A. (1937) § 275; 2 N. D. Comp. Laws Ann. (1913) § 7458.

#### RULE 9.—PLEADING SPECIAL MATTERS

##### (a) Capacity.

It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

##### (b) Fraud, mistake, condition of the mind.

In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

##### (c) Conditions precedent.

In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

##### (d) Official document or act.

In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

##### (e) Judgment.

In pleading a judgment or decision of a domestic or foreign court, judicial or quasijudicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

##### (f) Time and place.

For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

##### (g) Special damage.

When items of special damage are claimed, they shall be specifically stated.

#### NOTES OF ADVISORY COMMITTEE ON RULES

*Note to Subdivision (a).* Compare Equity Rule 25 (Bill of Complaint—Contents) requiring disability to be stated; Utah Rev. Stat. Ann. (1933) § 104-13-15, enumerating a number of situations where a general averment of capacity is sufficient. For provisions governing averment of incorporation, see 2 Minn. Stat. (Mason, 1927) § 9271; N. Y. R. C. P. (1937) Rule 93; 2 N. D. Comp. Laws Ann. (1913) § 7981 et seq.

*Note to Subdivision (b).* See English Rules Under the Judicature Act (The Annual Practice, 1937) O. 19, r. 22.

*Note to Subdivision (c).* The codes generally have this or a similar provision. See English Rules Under the Judicature Act (The Annual Practice, 1937) O. 19, r. 14; 2 Minn. Stat. (Mason, 1927) § 9273; N. Y. R. C. P. (1937) Rule 92; 2 N. D. Comp. Laws Ann. (1913) § 7461; 2 Wash. Rev. Stat. Ann. (Remington, 1932) § 288.

*Note to Subdivision (e).* The rule expands the usual code provisions on pleading a judgment by including judgments or decisions of administrative tribunals and foreign courts. Compare Ark. Civ. Code (Crawford, 1934) § 141; 2 Minn. Stat. (Mason, 1927) § 9269; N. Y. R. C. P. (1937) Rule 95; 2 Wash. Rev. Stat. Ann. (Remington, 1932) § 287.

#### RULE 10.—FORM OF PLEADINGS

##### (a) Caption; names of parties.

Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7 (a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

##### (b) Paragraphs; separate statements.

All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

##### (c) Adoption by reference; exhibits.

Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

Forms, see Appendix, following Rule 86.

#### NOTES OF ADVISORY COMMITTEE ON RULES

The first sentence is derived in part from the opening statement of Equity Rule 25 (Bill of Complaint—Contents). The remainder of the rule is an expansion in conformity with usual state provisions. For numbered paragraphs and separate statements, see Conn. Gen. Stat. (1930) § 5513; Ill. Rev. Stat. (1937) ch. 110, § 157 (2); N. Y. R. C. P. (1937) Rule 90. For incorporation by reference, see N. Y. R. C. P. (1937) Rule 90. For written instruments as exhibits, see Ill. Rev. Stat. (1937) ch. 110, § 160.

#### RULE 11.—SIGNING OF PLEADINGS

Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney constitutes a certificate by him

that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a wilful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

#### NOTES OF ADVISORY COMMITTEE ON RULES

This is substantially the content of Equity Rules 24 (Signature of Counsel) and 21 (Scandal and Impertinence) consolidated and unified. Compare Equity Rule 36 (Officers Before Whom Pleadings Verified). Compare to similar purposes, English Rules Under the Judicature Act (The Annual Practice, 1937) O. 19, r. 4, and *Great Australian Gold Mining Co. v. Martin, L. R.*, 5 Ch. Div. 1. 10 (1877). Subscription of pleadings is required in many codes. 2 Minn. Stat. (Mason, 1927) § 9265; N. Y. R. C. P. (1937) Rule 91; 2 N. D. Comp. Laws Ann. (1913) § 7455.

This rule expressly continues any statute which requires a pleading to be verified or accompanied by an affidavit, such as:

U. S. C., Title 28:

§ 381 (Preliminary injunctions and temporary restraining orders)

§ 762 (Suit against the United States).

U. S. C., Title 28, § 829 (Costs; attorney liable for, when) is unaffected by this rule

For complaints which must be verified under these rules, see Rules 23 (b) (Secondary Action by Shareholders) and 65 (Injunctions).

For abolition of the rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances, see Pa. Stat. Ann. (Purdon, 1931) Title 12, § 1222; for the rule in equity itself, see *Greenfield v. Blumenthal*, 69 F. 2d 294 (C. C. A. 3d, 1934).

#### RULE 12.—DEFENSES AND OBJECTIONS—WHEN AND HOW PRESENTED—BY PLEADING OR MOTION—MOTION FOR JUDGMENT ON PLEADINGS

##### (a) When presented.

A defendant shall serve his answer within 20 days after the service of the summons and complaint upon him, unless the court directs otherwise when service of process is made pursuant to Rule 4 (e). A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within 60 days after the service upon the United States attorney of the pleading in which the claim is asserted. The service of any motion provided for in this rule alters the time fixed by these rules for serving any required responsive pleading as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading may be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement or for a bill of particulars,

the responsive pleading may be served within ten days after the service of the more definite statement or bill of particulars. In either case the time for service of the responsive pleading shall be not less than remains of the time which would have been allowed under these rules if the motion had not been made.

##### (b) How presented.

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief.

##### (c) Motion for judgment on the pleadings.

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.

##### (d) Preliminary hearings.

The defenses specifically enumerated (1)–(6) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule, shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

##### (e) Motion for more definite statement or for bill of particulars.

Before responding to a pleading or, if no responsive pleading is permitted by these rules, within 20 days after the service of the pleading upon him, a party may move for a more definite statement or for a bill of particulars of any matter which is not averred with sufficient definiteness or particularity to enable him properly to prepare his responsive pleading or to prepare for trial. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just. A bill of particulars becomes a part of the pleading which it supplements.

##### (f) Motion to strike.

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him or upon the court's own initiative at any time,

the court may order any redundant, immaterial, impertinent, or scandalous matter stricken from any pleading.

**(g) Consolidation of motions.**

A party who makes a motion under this rule may join with it the other motions herein provided for and then available to him. If a party makes a motion under this rule and does not include therein all defenses and objections then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on any of the defenses or objections so omitted, except that prior to making any other motions under this rule he may make a motion in which are joined all the defenses numbered (1) to (5) in subdivision (b) of this rule which he cares to assert.

**(h) Waiver of defenses.**

A party waives all defenses and objections which he does not present either by motion as hereinbefore provided or, if he has made no motion, in his answer or reply, except (1) that the defense of failure to state a claim upon which relief can be granted, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. The objection or defense, if made at the trial, shall then be disposed of as provided in Rule 15 (b) in the light of any evidence that may have been received.

Forms, see Forms 19 and 20, Appendix, following Rule 86.

**NOTES OF ADVISORY COMMITTEE ON RULES.**

*Note to Subdivision (a).* 1. Compare Equity Rules 12 (Issue of Subpoena—Time for Answer) and 31 (Reply—When Required—When Cause at Issue); 4 Mont. Rev. Codes Ann. (1935) §§ 9107, 9158; N. Y. C. P. A. (1937) § 263; N. Y. R. C. P. (1937) Rules 109–111.

2. U. S. C., Title 28, § 763 (Petition in action against United States; service; appearance by district attorney) provides that the United States as a defendant shall have 60 days within which to answer or otherwise defend. This and other statutes which provide 60 days for the United States or an officer or agency thereof to answer or otherwise defend are continued by this rule. In so far as any statutes not excepted in Rule 81 provide a different time for a defendant to defend, such statutes are modified. See U. S. C., Title 28, § 45 (District courts; practice and procedure in certain cases under the interstate commerce laws) (30 days).

3. Compare the last sentence of Equity Rule 29 (Defenses—How Presented) and N. Y. C. P. A. (1937) § 283. See Rule 15 (a) for time within which to plead to an amended pleading.

*Note to Subdivisions (b) and (d).* 1. See generally Equity Rules 29 (Defenses—How Presented), 33 (Testing Sufficiency of Defense), 43 (Defect of Parties—Resisting Objection), and 44 (Defect of Parties—Tardy Objection); N. Y. C. P. A. (1937) §§ 277–280; N. Y. R. C. P. (1937) Rules 106–112; English Rules Under the Judicature Act (The Annual Practice, 1937) O. 25, r. r. 1–4; Clark, *Code Pleading* (1928) pp. 371–381.

2. For provisions authorizing defenses to be made in the answer or reply see English Rules Under the Judicature Act (The Annual Practice, 1937) O. 25, r. r. 1–4; 1 Miss. Code Ann. (1930) §§ 378, 379. Compare Equity Rule 29 (Defenses—How Presented); U. S. C., Title 28, § 45 (District Courts; practice and procedure in certain cases under the interstate commerce laws). U. S. C., Title 28, § 45,

substantially continued by this rule, provides: "No replication need be filed to the answer, and objections to the sufficiency of the petition or answer as not setting forth a cause of action or defense must be taken at the final hearing or by motion to dismiss the petition based on said grounds, which motion may be made at any time before answer is filed." Compare Calif. Code Civ. Proc. (Deering, 1937) § 433; 4 Nev. Comp. Laws (Hillyer, 1929) § 8600. For provisions that the defendant may demur and answer at the same time, see Calif. Code Civ. Proc. (Deering, 1937) § 431; 4 Nev. Comp. Laws (Hillyer, 1929) § 8598.

3. Equity Rule 29 (Defenses—How Presented) abolished demurrers and provided that defenses in point of law arising on the face of the bill should be made by motion to dismiss or in the answer, with further provision that every such point of law going to the whole or material part of the cause or causes stated might be called up and disposed of before final hearing "at the discretion of the court." Likewise many state practices have abolished the demurrer; or retain it only to attack substantial and not formal defects. See 6 Tenn. Code Ann. (Williams, 1934) § 8784; Ala. Code Ann. (Michie, 1928) § 9479; 2 Mass. Gen. Laws (Ter. Ed., 1932) ch. 231, § 15–18; Kansas Gen. Stat. Ann. (1935) §§ 60–705, 60–706.

*Note to Subdivision (c).* Compare Equity Rule 33 (Testing Sufficiency of Defense); N. Y. R. C. P. (1937) Rules 111 and 112.

*Note to Subdivisions (e) and (f).* Compare Equity Rules 20 (Further and Particular Statement in Pleading May Be Required) and 21 (Scandal and Impertinence); English Rules Under the Judicature Act (The Annual Practice, 1937) O. 19, r. r. 7, 7a, 7b, 8; 4 Mont. Rev. Codes Ann. (1935) §§ 9166, 9167; N. Y. C. P. A. (1937) § 247; N. Y. R. C. P. (1937) Rules 103, 115, 116, 117; Wyo. Rev. Stat. Ann. (Courtright, 1931) §§ 89–1033, 89–1034.

*Note to Subdivision (g).* Compare Rules of the District Court of the United States for the District of Columbia (1937), Equity Rule 11; N. M. Rules of Pleading, Practice and Procedure, 38 N. M. Rep. vii [105–408] (1934); Wash. Gen. Rules of the Superior Courts, 1 Wash. Rev. Stat. Ann. (Remington, 1932) p. 160, Rule VI (e) and (f).

*Note to Subdivision (h).* Compare Calif. Code Civ. Proc. (Deering, 1937) § 434; 2 Minn. Stat. (Mason, 1927) § 9252; N. Y. C. P. A. (1937) §§ 278 and 279; Wash. Gen. Rules of the Superior Courts, 1 Wash. Rev. Stat. Ann. (Remington, 1932) p. 160, Rule VI (e). This rule continues U. S. C., Title 28, § 80 (Dismissal or remand) (of action over which district court lacks jurisdiction), while U. S. C., Title 28, § 399 (Amendments to show diverse citizenship) is continued by Rule 15.

**RULE 13.—COUNTERCLAIM AND CROSS-CLAIM**

**(a) Compulsory counterclaims.**

A pleading shall state as a counterclaim any claim, not the subject of a pending action, which at the time of filing the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.

**(b) Permissive counterclaims.**

A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

**(c) Counterclaim exceeding opposing claim.**

A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

**(d) Counterclaim against the United States.**

These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the United States or an officer or agency thereof.

**(e) Counterclaim maturing or acquired after pleading.**

A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

**(f) Omitted counterclaim.**

When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of court set up the counterclaim by amendment.

**(g) Cross-claim against co-party.**

A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

**(h) Additional parties may be brought in.**

When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim or cross-claim, the court shall order them to be brought in as defendants as provided in these rules, if jurisdiction of them can be obtained and their joinder will not deprive the court of jurisdiction of the action.

**(i) Separate trials; separate judgments.**

If the court orders separate trials as provided in Rule 42 (b), judgment on a counterclaim or cross-claim may be rendered when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

**NOTES OF ADVISORY COMMITTEE ON RULES**

1. This is substantially Equity Rule 30 (Answer—Counterclaims), broadened to include legal as well as equitable counterclaims.

2. Compare the English practice, English Rules Under the Judicature Act (The Annual Practice, 1937) O. 19, r. 2 and 3, and O. 21, r. 10-17; *Beddall v. Maitland*, L. R. 17 Ch Div. 174, 181, 182 (1881).

3. Certain States have also adopted almost unrestricted provisions concerning both the subject matter of and the parties to a counterclaim. This seems to be the modern tendency. Ark. Civ. Code (Crawford, 1934) §§ 117 (as amended) and 118; N. J. Comp. Stat. (2 Cum. Supp. 1911-1924), Title 163, § 288; <sup>1</sup>N. Y. C. P. A. (1937) §§ 262, 266, 267 (all as amended, Laws of 1936, ch. 324), 268, 269, and 271; Wis. Stat. (1935) § 263.14 (1) (c).

4. Most codes do not expressly provide for a counterclaim in the reply. Clark, *Code Pleading* (1928), p. 486. Ky. Codes (Carroll, 1932) Civ. Pract. § 98 does provide, however, for such counterclaim.

5. The provisions of this rule respecting counterclaims are subject to Rule 82 (Jurisdiction and Venue Unaffected). For a discussion of Federal jurisdiction and venue in regard to counterclaims and cross-claims, see Shulman and Jaegerman, *Some Jurisdictional Limitations in Federal Procedure* (1936), 45 Yale L. J. 393, 410 et seq.

6. This rule does not affect such statutes of the United States as U. S. C., Title 28, § 41 (1) (United States as plaintiff; civil suits at common law and in equity), relat-

ing to assigned claims in actions based on diversity of citizenship.

7. If the action proceeds to judgment without the interposition of a counterclaim as required by subdivision (a) of this rule, the counterclaim is barred. See *American Mills Co. v. American Surety Co.*, 260 U. S. 360, 43 S. Ct. 149, 67 L. Ed. 306 (1922); *Marconi Wireless Telegraph Co. v. National Electric Signalling Co.*, 206 Fed. 295 (E. D. N. Y., 1913); Hopkins, *Federal Equity Rules* (8th ed., 1933), p. 213; Simkins, *Federal Practice* (1934), p. 663.

8. For allowance of credits against the United States see U. S. C., Title 26, §§ 1672-1673 (Suits for refunds of internal revenue taxes—limitations); U. S. C., Title 28, §§ 774 (Suits by United States against individuals; credits), 775 (Suits under postal laws; credits); U. S. C., Title 31, § 227 (Offsets against judgments and claims against United States).

<sup>1</sup>N. J. Rev. Stat. (1937) 2:27-137, 2:27-139, 2:27-141.

**RULE 14.—THIRD-PARTY PRACTICE****(a) When defendant may bring in third party.**

Before the service of his answer a defendant may move ex parte or, after the service of his answer, on notice to the plaintiff, for leave as a third-party plaintiff to serve a summons and complaint upon a person not a party to the action who is or may be liable to him or to the plaintiff for all or part of the plaintiff's claim against him. If the motion is granted and the summons and complaint are served, the person so served, hereinafter called the third-party defendant, shall make his defenses as provided in Rule 12 and his counterclaims and cross-claims against the plaintiff, the third-party plaintiff, or any other party as provided in Rule 13. The third-party defendant may assert any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant is bound by the adjudication of the third-party plaintiff's liability to the plaintiff, as well as of his own to the plaintiff or to the third-party plaintiff. The plaintiff may amend his pleadings to assert against the third-party defendant any claim which the plaintiff might have asserted against the third-party defendant had he been joined originally as a defendant. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him or to the third-party plaintiff for all or part of the claim made in the action against the third-party defendant.

**(b) When plaintiff may bring in third party.**

When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

Form, see Form 22, Appendix, following Rule 86.

**NOTES OF ADVISORY COMMITTEE ON RULES**

Third-party impleader is in some aspects a modern innovation in law and equity although well known in admiralty. Because of its many advantages a liberal procedure with respect to it has developed in England, in the Federal admiralty courts, and in some American State jurisdictions. See English Rules Under the Judicature Act (The Annual Practice, 1937) O. 16A, r. 1-13; United States Supreme Court Admiralty Rules (1920), Rule 56 (Right to Bring in Party Jointly Liable); Pa. Stat. Ann. (Purdon, 1936) Title 12, § 141; Wis. Stat. (1935) §§ 260.19, 260.20; N. Y. C. P. A. (1937) §§ 193 (2), 211 (a). Compare La. Code Pract. (Dart, 1932) §§ 378-388. For the practice in Texas as developed by judicial decision, see *Lottman v. Culla*, 288 S. W. 123, 126 (Tex., 1926). For a treatment of this subject see Gregory, *Legislative Loss Distribution*

in *Negligence Actions* (1936); Shulman and Jaegerman, *Some Jurisdictional Limitations on Federal Procedure* (1936), 45 Yale L. J. 393, 417, et seq.

Third-party impleader under the conformity act has been applied in actions at law in the Federal courts. *Lowry and Co., Inc., v. National City Bank of New York*, 28 F. 2d 895 (S. D. N. Y., 1928); *Yellow Cab Co. of Philadelphia v. Rodgers*, 61 F. 2d 729 (C. C. A. 3d, 1932).

#### RULE 15.—AMENDED AND SUPPLEMENTAL PLEADINGS

##### (a) Amendments.

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

##### (b) Amendments to conform to the evidence.

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

##### (c) Relation back of amendments.

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

##### (d) Supplemental pleadings.

Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor.

#### NOTES OF ADVISORY COMMITTEE ON RULES

See generally for the present federal practice, Equity Rules 19 (Amendments Generally), 28 (Amendment of Bill as of Course), 32 (Answer to Amended Bill), 34 (Supplemental Pleading), and 35 (Bills of Revivor and Supple-

mental Bills—Form); U. S. C., Title 28, §§ 399 (Amendments to show diverse citizenship) and 777 (Defects of Form; amendments). See English Rules Under the Judicature Act (The Annual Practice, 1937) O. 28, r. r. 1-13; O. 20, r. 4; O. 24, r. r. 1-3.

*Note to Subdivision (a).* The right to serve an amended pleading once as of course is common. 4 Mont. Rev. Codes Ann. (1935) § 9186; 1 Ore. Code Ann. (1930) § 1-904; 1 S. C. Code (Michie, 1932) § 493; English Rules Under the Judicature Act (The Annual Practice, 1937) O. 28, r. 2. Provision for amendment of pleading before trial, by leave of court, is in almost every code. If there is no statute the power of the court to grant leave is said to be inherent Clark, *Code Pleading*, (1928) pp. 498, 509.

*Note to Subdivision (b).* Compare Equity Rule 19 (Amendments Generally) and code provisions which allow an amendment "at any time in furtherance of justice," (e. g., Ark. Civ. Code (Crawford, 1934) § 155) and which allow an amendment of pleadings to conform to the evidence, where the adverse party has not been misled and prejudiced (e. g., N. M. Stat. Ann. (Courtright, 1929) §§ 105-601, 105-602).

*Note to Subdivision (c).* "Relation back" is a well recognized doctrine of recent and now more frequent application. Compare Ala. Code Ann. (Michie, 1928) § 9513; Ill. Rev. Stat. (1937) ch. 110, § 170 (2); 2 Wash. Rev. Stat. Ann. (Remington, 1932) § 308-3 (4). See U. S. C., Title 28, § 399 (Amendments to show diverse citizenship) for a provision for "relation back."

*Note to Subdivision (d).* This is an adaptation of Equity Rule 34 (Supplemental Pleading).

#### RULE 16.—PRE-TRIAL PROCEDURE; FORMULATING ISSUES

In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider

- (1) The simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (4) The limitation of the number of expert witnesses;
- (5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;
- (6) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions.

#### NOTES OF ADVISORY COMMITTEE ON RULES

1. Similar rules of pre-trial procedure are now in force in Boston, Cleveland, Detroit, and Los Angeles, and a rule substantially like this one has been proposed for the urban centers of New York state. For a discussion of the successful operation of pre-trial procedure in relieving the congested condition of trial calendars of the courts in such cities and for the proposed New York plan, see *A Proposal for Minimizing Calendar Delay in Jury Cases* (Dec. 1936—published by The New York Law Society);

*Pre-Trial Procedure and Administration*, Third Annual Report of the Judicial Council of the State of New York (1937), pp. 207-243; *Report of the Commission on the Administration of Justice in New York State* (1934), pp. (288)-(290). See also *Pre-Trial Procedure in the Wayne Circuit Court, Detroit, Michigan*, Sixth Annual Report of the Judicial Council of Michigan (1936), pp. 63-75; and Sunderland, *The Theory and Practice of Pre-Trial Procedure* (Dec. 1937) 36 Mich. L. Rev. 215-226, 21 J. Am. Jud. Soc. 125. Compare the English procedure known as the "summons for directions," English Rules Under the Judicature Act (The Annual Practice, 1937) O. 38a; and a similar procedure in New Jersey, N. J. Comp. Stat. (2 Cum. Supp. 1911-1924) Title 163, § 293<sup>1</sup> (Supp. 1925-1930) Title 163, § 347a,<sup>2</sup> N. J. Supreme Court Rules, 2 N. J. Misc. Rep. (1924) 1230, Rules 94, 92, 93, 95 (the last three as amended 1933, 11 N. J. Misc. Rep. (1933) 955).

2. Compare the similar procedure under Rule 56 (d) (Summary Judgment—Case Not Fully Adjudicated on Motion). Rule 12 (g) (Consolidation of Motions), by requiring to some extent the consolidation of motions dealing with matters preliminary to trial, is a step in the same direction. In connection with clause (5) of this rule, see Rules 53 (b) (Masters; Reference) and 53 (e) (3) (Master's Report; In Jury Actions).

<sup>1</sup> 1 N. J. Rev. Stat. (1937) 2:27-160.

<sup>2</sup> 1 N. J. Rev. Stat. (1937) 2:27-135, 2:27-136.

#### IV.—PARTIES

##### RULE 17.—PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

###### (a) Real party in interest.

Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States.

###### (b) Capacity to sue or be sued.

The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of his domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held; except that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States.

###### (c) Infants or incompetent persons.

Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other

order as it deems proper for the protection of the infant or incompetent person.

##### NOTES OF ADVISORY COMMITTEE ON RULES.

*Note to Subdivision (a).* The real party in interest provision, except for the last clause which is new, is taken verbatim from Equity Rule 37 (Parties Generally—Intervention), except that the word "expressly" has been omitted. For similar provisions see N. Y. C. P. A. (1937) § 210; Wyo. Rev. Stat. Ann. (1931) §§ 89-501, 89-502, 89-503; English Rules Under the Judicature Act (The Annual Practice, 1937) O. 16, r. 8. See also Equity Rule 41 (Suit to Execute Trusts of Will—Heir as Party). For examples of statutes of the United States providing particularly for an action for the use or benefit of another in the name of the United States, see U. S. C., Title 40, § 270b (Suit by persons furnishing labor and material for work on public building contracts \* \* \* may sue on a payment bond, "in the name of the United States for the use of the person suing"); and U. S. C., Title 25, § 201 (Penalties under laws relating to Indians—how recovered). Compare U. S. C., Title 26, § 1645 (c) (Suits for penalties, fines, and forfeitures, under this title, where not otherwise provided for, to be in name of United States).

*Note to Subdivision (b).* For capacity see generally Clark and Moore, *A New Federal Civil Procedure—II. Pleadings and Parties*, 44 Yale L. J. 1291, 1312-1317 (1935) and specifically *Coppedge v. Clinton*, 72 F. 2d 531 (C. C. A. 10th, 1934) (natural person); *David Lupton's Sons Co. v. Automobile Club of America*, 225 U. S. 489, 32 S. Ct. 711, 56 L. Ed. 1177, Ann. Cas. 1914A, 699 (1912) (corporation); *Puerto Rico v. Russell & Co.*, 288 U. S. 476, 53 S. Ct. 447, 77 L. Ed. 903 (1933) (unincorporated assn.); *United Mine Workers of America v. Coronado Coal Co.*, 259 U. S. 344, 42 S. Ct. 570, 66 L. Ed. 975, 27 A. L. R. 762 (1922) (federal substantive right enforced against unincorporated association by suit against the association in its common name without naming all its members as parties). This rule follows the existing law as to such associations, as declared in the case last cited above. Compare *Moffat Tunnel League v. United States*, 289 U. S. 113, 53 S. Ct. 543, 77 L. Ed. 1069 (1933). See note to Rule 23, clause (1).

*Note to Subdivision (c).* The provision for infants and incompetent persons is substantially Equity Rule 70 (Suits by or Against Incompetents) with slight additions. Compare the more detailed English provisions, English Rules Under the Judicature Act (The Annual Practice, 1937) O. 16, r. r. 16-21.

##### RULE 18.—JOINDER OF CLAIMS AND REMEDIES

###### (a) Joinder of claims.

The plaintiff in his complaint or in a reply setting forth a counterclaim and the defendant in an answer setting forth a counterclaim may join either as independent or as alternate claims as many claims either legal or equitable or both as he may have against an opposing party. There may be a like joinder of claims when there are multiple parties if the requirements of Rules 19, 20 and 22 are satisfied. There may be a like joinder of cross-claims or third-party claims if the requirements of Rules 13 and 14 respectively are satisfied.

###### (b) Joinder of remedies; fraudulent conveyances.

Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money.

Form, see Form 13, Appendix, following Rule 86.

## NOTES OF ADVISORY COMMITTEE ON RULES

*Note to Subdivision (a).* 1. Recent development, both in code and common law states, has been toward unlimited joinder of actions. See Ill. Rev. Stat. (1937) ch. 110, § 168; N. J. Comp. Stat. (2 Cum. Supp. 1911-1924) Title 163, § 287<sup>4</sup> as modified by N. J. Sup. Ct. Rules, Rule 21, 2 N. J. Misc. 1208 (1924); N. Y. C. P. A. (1937) § 258 as amended by Laws of 1935, ch. 339.

2. This provision for joinder of actions has been patterned upon Equity Rule 26 (Joinder of Causes of Action) and broadened to include multiple parties. Compare the English practice, English Rules Under the Judicature Act (The Annual Practice, 1937) O. 18, r. r. 1-9 (noting rules 1 and 6). The earlier American codes set forth classes of joinder, following the now abandoned New York rule. See N. Y. C. P. A. § 258 before amended in 1935; Compare Kan. Gen. Stat. Ann. (1935) § 60-601; Wis. Stat. (1935) § 263.04 for the more liberal practice.

3. The provisions of this rule for the joinder of claims are subject to Rule 82 (Jurisdiction and Venue Unaffected). For the jurisdictional aspects of joinder of claims, see Shulman and Jaegerman, *Some Jurisdictional Limitations on Federal Procedure* (1936), 45 Yale L. J. 393, 397-410. For separate trials of joined claims, see Rule 42 (b).

*Note to Subdivision (b).* This rule is inserted to make it clear that in a single action a party should be accorded all the relief to which he is entitled regardless of whether it is legal or equitable or both. This necessarily includes a deficiency judgment in foreclosure actions formerly provided for in Equity Rule 10 (Decree for Deficiency in Foreclosures, Etc.). In respect to fraudulent conveyances the rule changes the former rule requiring a prior judgment against the owner (*Braun v. American Laundry Mach. Co.*, 56 F. 2d 197 (S. D. N. Y. 1932)) to conform to the provisions of the Uniform Fraudulent Conveyance Act, §§ 9 and 10. See McLaughlin, *Application of the Uniform Fraudulent Conveyance Act*, 46 Harv. L. Rev. 404, 444 (1933).

<sup>4</sup> 1 N. J. Rev. Stat. (1937) 2:27-37.

## RULE 19.—NECESSARY JOINDER OF PARTIES

## (a) Necessary joinder.

Subject to the provisions of Rule 23 and of subdivision (b) of this rule, persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants. When a person who should join as a plaintiff refuses to do so, he may be made a defendant or, in proper cases, an involuntary plaintiff.

## (b) Effect of failure to join.

When persons who are not indispensable, but who ought to be parties if complete relief is to be accorded between those already parties, have not been made parties and are subject to the jurisdiction of the court as to both service of process and venue and can be made parties without depriving the court of jurisdiction of the parties before it, the court shall order them summoned to appear in the action. The court in its discretion may proceed in the action without making such persons parties, if its jurisdiction over them as to either service of process or venue can be acquired only by their consent or voluntary appearance or if, though they are subject to its jurisdiction, their joinder would deprive the court of jurisdiction of the parties before it; but the judgment rendered therein does not affect the rights or liabilities of absent persons.

## (c) Same: Names of omitted persons and reasons for non-joinder to be pleaded.

In any pleading in which relief is asked, the pleader shall set forth the names, if known to him,

of persons who ought to be parties if complete relief is to be accorded between those already parties, but who are not joined, and shall state why they are omitted.

## NOTES OF ADVISORY COMMITTEE ON RULES

*Note to Subdivision (a).* The first sentence with verbal differences (e. g., "united" interest for "joint" interest) is to be found in Equity Rule 37 (Parties Generally—Intervention). Such compulsory joinder provisions are common. Compare Alaska Comp. Laws (1933) § 8392 (containing in same sentence a "class suit" provision); Wyo. Rev. Stat. Ann. (Courtright, 1931) § 89-515 (immediately followed by "class suit" provisions, § 89-516). See also Equity Rule 42 (Joint and Several Demands). For example of a proper case for involuntary plaintiff, see *Independent Wireless Telegraph Co. v. Radio Corp. of America*, 269 U. S. 459, 46 S. Ct. 166, 70 L. Ed. 357 (1926).

The joinder provisions of this rule are subject to Rule 82 (Jurisdiction and Venue Unaffected).

*Note to Subdivision (b).* For the substance of this rule see Equity Rule 39 (Absence of Persons who Would be Proper Parties) and U. S. C., Title 28, § 111 (When part of several defendants cannot be served); *Camp v. Gress*, 250 U. S. 308, 39 S. Ct. 478, 63 L. Ed. 997 (1919). See also the second and third sentences of Equity Rule 37 (Parties Generally—Intervention).

*Note to Subdivision (c).* For the substance of this rule see the fourth subdivision of Equity Rule 25 (Bill of Complaint—Contents).

## RULE 20.—PERMISSIVE JOINDER OF PARTIES

## (a) Permissive joinder.

All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

## (b) Separate trials.

The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

## NOTES OF ADVISORY COMMITTEE ON RULES

The provisions for joinder here stated are in substance the provisions found in England, California, Illinois, New Jersey, and New York. They represent only a moderate expansion of the present federal equity practice to cover both law and equity actions.

With this rule compare also Equity Rules 26 (Joinder of Causes of Action), 37 (Parties Generally—Intervention), 40 (Nominal Parties), and 42 (Joint and Several Demands).

The provisions of this rule for the joinder of parties are subject to Rule 82 (Jurisdiction and Venue Unaffected).



*Note to Subdivision (a).* The first sentence is derived from English Rules Under the Judicature Act (The Annual Practice, 1937.) O. 16, r. 1. Compare Calif. Code Civ. Proc. (Deering, 1937) §§ 378, 379a; Ill. Rev. Stat. (1937) ch. 110, §§ 147-148; N. J. Comp. Stat. (2 Cum. Supp., 1911-1924), Title 163, §§ 280, 282; \* N. Y. C. P. A. (1937) §§ 209, 211. The second sentence is derived from English Rules Under the Judicature Act (The Annual Practice, 1937) O. 16, r. 4. The third sentence is derived from O. 16, r. 5, and the fourth from O. 16, r. 1 and 4.

*Note to Subdivision (b).* This is derived from English Rules Under the Judicature Act (The Annual Practice, 1937) O. 16, r. 1 and 5.

\* 1 N. J. Rev. Stat. (1937) 2:27-24, 2:27-25, 2:27-38.

#### RULE 21.—MISJOINDER AND NON-JOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

##### NOTES OF ADVISORY COMMITTEE ON RULES

See English Rules Under the Judicature Act (The Annual Practice, 1937) O. 16, r. 11. See also Equity Rules 43 (Defect of Parties—Resisting Objection) and 44 (Defect of Parties—Tardy Objection).

For separate trials see Rules 13 (1) (Counterclaims and Cross-Claims: Separate Trials; Separate Judgments), 20 (b) (Permissive Joinder of Parties: Separate Trials), and 42 (b) (Separate Trials, generally) and the note to the latter rule.

#### RULE 22.—INTERPLEADER

(1) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that of the several claimants or the titles on which their claims depend he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

(2) The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by Section 24 (26) of the Judicial Code, as amended, U. S. C., Title 28, § 41 (26). Actions under that section shall be conducted in accordance with these rules.

##### NOTES OF ADVISORY COMMITTEE ON RULES

The first paragraph provides for interpleader relief along the newer and more liberal lines of joinder in the alternative. It avoids the confusion and restrictions that developed around actions of strict interpleader and actions in the nature of interpleader. Compare *John Hancock Mutual Life Insurance Co. v. Kegan et al.*, 22 F. Supp. 326 (D. C. Md., 1938). It does not change the rules on service of process, jurisdiction, and venue, as established by judicial decision.

The second paragraph allows an action to be brought under the recent interpleader statute when applicable. By this paragraph all remedies under the statute are continued, but the manner of obtaining them is in accordance with these rules. For temporary restraining orders and preliminary injunctions under this statute, see Rule 65 (e).

This rule substantially continues such statutory provisions as U. S. C., Title 38, § 445 (Actions on claims; jurisdiction; parties; procedure; limitation; witnesses; definitions) (actions upon veterans' contracts of insurance with the United States), providing for interpleader by the United States where it acknowledges indebtedness under a contract of insurance with the United States; U. S. C., Title 49, § 97 (Interpleader of conflicting claimants) (by carrier which has issued bill of lading). See *Chafee, The Federal Interpleader Act of 1936: I and II* (1936), 45 Yale L. J. 963, 1161.

#### RULE 23.—CLASS ACTIONS

##### (a) Representation.

If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is

(1) joint, or common, or secondary in the sense that the owner of a primary right refuses to enforce that right and a member of the class thereby becomes entitled to enforce it;

(2) several, and the object of the action is the adjudication of claims which do or may affect specific property involved in the action; or

(3) several, and there is a common question of law or fact affecting the several rights and a common relief is sought.

##### (b) Secondary action by shareholders.

In an action brought to enforce a secondary right on the part of one or more shareholders in an association, incorporated or unincorporated, because the association refuses to enforce rights which may properly be asserted by it, the complaint shall be verified by oath and shall aver (1) that the plaintiff was a shareholder at the time of the transaction of which he complains or that his share thereafter devolved on him by operation of law and (2) that the action is not a collusive one to confer on a court of the United States jurisdiction of any action of which it would not otherwise have jurisdiction. The complaint shall also set forth with particularity the efforts of the plaintiff to secure from the managing directors or trustees and, if necessary, from the shareholders such action as he desires, and the reasons for his failure to obtain such action or the reasons for not making such effort.

##### (c) Dismissal or compromise.

A class action shall not be dismissed or compromised without the approval of the court. If the right sought to be enforced is one defined in paragraph (1) of subdivision (a) of this rule notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs. If the right is one defined in paragraphs (2) or (3) of subdivision (a) notice shall be given only if the court requires it.

##### NOTES OF ADVISORY COMMITTEE ON RULES

*Note to Subdivision (a).* This is a substantial restatement of Equity Rule 38 (Representatives of Class) as that rule has been construed. It applies to all actions, whether formerly denominated legal or equitable. For a general analysis of class actions, effect of judgment, and requisites of jurisdiction see Moore, *Federal Rules of Civil Procedure*:

*Some Problems Raised by the Preliminary Draft*, 25 Georgetown L. J. 551, 570 et seq. (1937); Moore and Cohn, *Federal Class Actions*, 32 Ill. L. Rev. 307 (1937); Moore and Cohn, *Federal Class Actions—Jurisdiction and Effect of Judgment*, 32 Ill. L. Rev. 555-567 (1938); Lesar, *Class Suits and the Federal Rules*, 22 Minn. L. Rev. 34 (1937); cf. Arnold and James, *Cases on Trials, Judgments and Appeals* (1936) 175; and see Blume, *Jurisdictional Amount in Representative Suits*, 15 Minn. L. Rev. 501 (1931).

The general test of Equity Rule 38 (Representatives of Class) that the question should be "one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court," is a common test. For states which require the two elements of a common or general interest and numerous persons, as provided for in Equity Rule 38, see Del. Ch. Rule 113; Fla. Comp. Gen. Laws Ann. (Supp. 1936) § 4918 (7); Georgia Code (1933) § 37-1002, and see English Rules Under the Judicature Act (The Annual Practice, 1937) O. 16, r. 9. For statutory provisions providing for class actions when the question is one of common or general interest or when the parties are numerous, see Ala. Code Ann. (Michie, 1928) § 5701; 2 Ind. Stat. Ann. (Burns, 1933) § 2-220; N. Y. C. P. A. (1937) § 195; Wis. Stat. (1935) § 260.12. These statutes have, however, been uniformly construed as though phrased in the conjunctive. See *Garfein v. Stiglitz*, 260 Ky. 430, 86 S. W. 2d 155 (1935). The rule adopts the test of Equity Rule 38, but defines what constitutes a "common or general interest". Compare with code provisions which make the action dependent upon the propriety of joinder of the parties. See Blume, *The "Common Questions" Principle in the Code Provision for Representative Suits*, 30 Mich. L. Rev. 878 (1932). For discussion of what constitutes "numerous persons" see Wheaton, *Representative Suits Involving Numerous Litigants*, 19 Corn. L. Q. 399 (1934); Note, 36 Harv. L. Rev. 89 (1922).

*Clause (1), Joint, Common, or Secondary Right.* This clause is illustrated in actions brought by or against representatives of an unincorporated association. See *Oster v. Brotherhood of Locomotive Firemen and Enginemen*, 271 Pa. 419, 114 Atl. 377 (1921); *Pickett v. Walsh*, 192 Mass. 572, 78 N. E. 753, 6 L. R. A., N. S., 1067 (1906); *Colt v. Hicks*, 97 Ind. App. 177, 179 N. E. 335 (1932). Compare Rule 17 (b) as to when an unincorporated association has capacity to sue or be sued in its common name; *United Mine Workers of America v. Coronado Coal Co.*, 259 U. S. 344, 42 S. Ct. 570, 66 L. Ed. 975, 27 A. L. R. 762 (1922) (an unincorporated association was sued as an entity for the purpose of enforcing against it a federal substantive right); Moore, *Federal Rules of Civil Procedure: Some Problems Raised by the Preliminary Draft*, 25 Georgetown L. J. 551, 566 (for discussion of jurisdictional requisites when an unincorporated association sues or is sued in its common name and jurisdiction is founded upon diversity of citizenship). For an action brought by representatives of one group against representatives of another group for distribution of a fund held by an unincorporated association, see *Smith v. Swormstedt*, 16 How. 288, 14 L. Ed. 942 (U. S. 1853). Compare *Christopher, et al. v. Brusselback*, 302 U. S. 500, 58 S. Ct. 350, 82 L. Ed. 388 (1938).

For an action to enforce rights held in common by policyholders against the corporate issuer of the policies, see *Supreme Tribe of Ben Hur v. Cauble*, 255 U. S. 356, 41 S. Ct. 338, 65 L. Ed. 673 (1921). See also *Terry v. Little*, 101 U. S. 216, 25 L. Ed. 864 (1880); *John A. Roebling's Sons Co. v. Kinnicutt*, 248 Fed. 596 (D. C. N. Y., 1917) dealing with the right held in common by creditors to enforce the statutory liability of stockholders.

Typical of a secondary action is a suit by stockholders to enforce a corporate right. For discussion of the general nature of these actions see *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 56 S. Ct. 468, 80 L. Ed. 668 (1936); Glenn, *The Stockholder's Suit—Corporate and Individual Grievances*, 33 Yale L. J. 580 (1924); McLaughlin, *Capacity of Plaintiff-Stockholder to Terminate a Stockholder's Suit*, 46 Yale L. J. 421 (1937). See also *Subdivision (b)* of this rule which deals with Shareholder's Action; Note, 15 Minn. L. Rev. 453 (1931).

*Clause (2).* A creditor's action for liquidation or reorganization of a corporation is illustrative of this clause. An action by a stockholder against certain named defendants as representatives of numerous claimants presents a situation converse to the creditor's action.

*Clause (3).* See *Everglades Drainage League v. Napoleon Broward Drainage Dist.*, 253 Fed. 246 (D. C. Fla., 1918); *Gramling v. Maxwell*, 52 F. 2d 256 (D. C. N. C., 1931), approved in 30 Mich. L. Rev. 624 (1932); *Skinner v. Mitchell*, 108 Kan. 861, 197 Pac. 569 (1921); *Duke of Bedford v. Ellis* (1901) A. C. 1, for class actions when there were numerous persons and there was only a question of law or fact common to them; and see Blume, *The "Common Questions" Principle in the Code Provision for Representative Suits*, 30 Mich. L. Rev. 878 (1932).

*Note to Subdivision (b).* This is Equity Rule 27 (Stockholder's Bill) with verbal changes. See also *Haves v. Oakland*, 104 U. S. 450, 26 L. Ed. 827 (1882) and former Equity Rule 94, promulgated January 23, 1882, 104 U. S. 1X.

*Note to Subdivision (c).* See McLaughlin, *Capacity of Plaintiff-Stockholder to Terminate a Stockholder's Suit*, 46 Yale L. J. 421 (1937).

## RULE 24.—INTERVENTION

### (a) Intervention of right.

Upon timely application anyone shall be permitted to intervene in an action: (1) When a statute of the United States confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof.

### (b) Permissive intervention.

Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

### (c) Procedure.

A person desiring to intervene shall serve a motion to intervene upon all parties affected thereby. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action to which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in the act of August 24, 1937, ch. 754, § 1.

Form, see Form 23, Appendix, following Rule 86.

## NOTES OF ADVISORY COMMITTEE ON RULES

The right to intervene given by the following and similar statutes is preserved, but the procedure for its assertion is governed by this rule:

## U. S. C., Title 28:

- § 45a (Special attorneys; participation by Interstate Commerce Commission; intervention) (in certain cases under interstate commerce laws)
- § 48 (Suits to be against United States; intervention by United States)
- § 401 (Intervention by United States; constitutionality of Federal statute)

## U. S. C., Title 40:

- § 276a-2 (b) (Bonds of contractors for public buildings or works; rights of persons furnishing labor and materials).

Compare with the last sentence of Equity Rule 37 (Parties Generally—Intervention). This rule amplifies and restates the present federal practice at law and in equity. For the practice in admiralty see Admiralty Rules 34 (How Third Party May Intervene) and 42 (Claims Against Proceeds in Registry). See generally Moore and Levi, *Federal Intervention: I The Right to Intervene and Reorganization* (1936), 45 Yale L. J. 565. Under the codes two types of intervention are provided, one for the recovery of specific real or personal property (2 Ohio Gen. Code Ann. (Page, 1926) § 11263; Wyo. Rev. Stat. Ann. (Courtright, 1931) § 89-522), and the other allowing intervention generally when the applicant has an interest in the matter in litigation (1 Colo. Stat. Ann. (1935) Code Civ. Proc. § 22; La. Code Pract. (Dart, 1932) Arts. 389-394; Utah Rev. Stat. Ann. (1933) § 104-3-24). The English intervention practice is based upon various rules and decisions and falls into the two categories of absolute right and discretionary right. For the absolute right see English Rules Under the Judicature Act (The Annual Practice, 1937) O. 12, r. 24 (admiralty), r. 25 (land), r. 23 (probate); O. 57, r. 12 (execution); J. A. (1925) §§ 181, 182, 183 (2) (divorce); *In re Metropolitan Amalgamated Estates, Ltd.*, (1912) 2 Ch. 497 (receivership); *Wilson v. Church*, 9 Ch. D. 552 (1878) (representative action). For the discretionary right see O. 16, r. 11 (non-joinder) and *Re Fowler*, 142 L. T. Jo. 94 (Ch. 1916), *Vavasseur v. Krupp*, 9 Ch. D. 351 (1878) (persons out of the jurisdiction).

## RULE 25.—SUBSTITUTION OF PARTIES

## (a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court within 2 years after the death may order substitution of the proper parties. If substitution is not so made, the action shall be dismissed as to the deceased party. The motion for substitution may be made by the successors or representatives of the deceased party or by any party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any judicial district.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

## (b) Incompetency.

If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against his representative.

## (c) Transfer of interest.

In case of any transfer of interest, the action may be continued by or against the original party, unless

the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

## (d) Public officers; death or separation from office.

When an officer of the United States, the District of Columbia, a state, county, city, or other governmental agency, or any other officer specified in the act of February 13, 1925, ch. 229, § 11 (43 Stat. 941), U. S. C., Title 28, § 780, is a party to an action and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against his successor, if within 6 months after the successor takes office it is satisfactorily shown to the court that there is a substantial need for so continuing and maintaining it. Substitution pursuant to this rule may be made when it is shown by supplemental pleading that the successor of an officer adopts or continues or threatens to adopt or continue the action of his predecessor in enforcing a law averred to be in violation of the Constitution of the United States. Before a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to object.

## NOTES OF ADVISORY COMMITTEE ON RULES

*Note to Subdivision (a).* 1. The first paragraph of this rule is based upon Equity Rule 45 (Death of Party—Revivor) and U. S. C., Title 28, § 778 (Death of parties; substitution of executor or administrator). The *scire facias* procedure provided for in the statute cited is superseded and the writ is abolished by Rule 81 (b). Paragraph two states the content of U. S. C., Title 28, § 779 (Death of one of several plaintiffs or defendants). With these two paragraphs compare generally English Rules Under the Judicature Act (The Annual Practice, 1937) O. 17, r. 1-10.

2. This rule modifies U. S. C., Title 28, §§ 778 (Death of parties; substitution of executor or administrator), 779 (Death of one of several plaintiffs or defendants), and 780 (Survival of actions, suits, or proceedings, etc.) in so far as they differ from it.

*Note to Subdivisions (b) and (c).* These are a combination and adaptation of N. Y. C. P. A. (1937) § 83 and Calif Code Civ. Proc. (Deering, 1937) § 385; see also 4 Nev. Comp. Laws (Hillyer, 1929) § 8561.

*Note to Subdivision (d).* With the first and last sentences compare U. S. C., Title 28, § 780 (Survival of actions, suits, or proceedings, etc.). With the second sentence of this subdivision compare *Ex parte La Prade*, 289 U. S. 444, 53 S. Ct. 682, 77 L. Ed. 1311 (1933).

## V.—DEPOSITIONS AND DISCOVERY

## RULE 26.—DEPOSITIONS PENDING ACTION

## (a) When depositions may be taken.

By leave of court after jurisdiction has been obtained over any defendant or over property which is the subject of the action or without such leave after an answer has been served, the testimony of any person, whether a party or not, may be taken at the instance of any party by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the action or for both purposes. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. Depositions shall be taken only in accordance with these rules. The deposition of a person confined

in prison may be taken only by leave of court on such terms as the court prescribes.

**(b) Scope of examination.**

Unless otherwise ordered by the court as provided by Rule 30 (b) or (d), the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether relating to the claim or defense of the examining party or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts.

**(c) Examination and cross-examination.**

Examination and cross-examination of deponents may proceed as permitted at the trial under the provisions of Rule 43 (b).

**(d) Use of depositions.**

At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent of a public or private corporation, partnership, or association which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: 1, that the witness is dead; or 2, that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or 3, that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or 4, that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or 5, upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.

Substitution of parties does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and

duly filed in the former action may be used in the latter as if originally taken therefor.

**(e) Objections to admissibility.**

Subject to the provisions of Rule 32 (c), objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

**(f) Effect of taking or using depositions.**

A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition as described in paragraph (2) of subdivision (d) of this rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

**NOTES OF ADVISORY COMMITTEE ON RULES**

*Note to Subdivision (a).* This rule freely authorizes the taking of depositions under the same circumstances and by the same methods whether for the purpose of discovery or for the purpose of obtaining evidence. Many states have adopted this practice on account of its simplicity and effectiveness, safeguarding it by imposing such restrictions upon the subsequent use of the deposition at the trial or hearing as are deemed advisable. See Ark. Civ. Code (Crawford, 1934) §§ 606-607; Calif. Code Civ. Proc. (Deering, 1937) § 2021; 1 Colo. Stat. Ann. (1935) Code Civ. Proc. § 376; Idaho Code Ann. (1932) § 16-906; Ill. Rules of Pract., Rule 19 (Ill. Rev. Stat. (1937) ch. 110, § 259.19); Ill. Rev. Stat. (1937) ch. 51, § 24; 2 Ind. Stat. Ann. (Burns, 1933) §§ 2-1501, 2-1506; Ky. Codes (Carroll, 1932) Civ. Pract. § 557; 1 Mo. Rev. Stat. (1929) § 1753; 4 Mont. Rev. Codes Ann. (1935) § 10645; Neb. Comp. Stat. (1929) ch. 20, §§ 1246-7; 4 Nev. Comp. Laws (Hillyer, 1929) § 9001; 2 N. H. Pub. Laws (1926) ch. 337, § 1; N. C. Code Ann. (1935) § 1809; 2 N. D. Comp. Laws Ann. (1913) §§ 7889-7897; 2 Ohio Gen. Code Ann. (Page, 1926) §§ 11525-6; 1 Ore. Code Ann. (1930) Title 9, § 1503; 1 S. D. Comp. Laws (1929) §§ 2713-16; Tex. Stat. (Vernon, 1928) arts. 3738, 3752, 3769; Utah Rev. Stat. Ann. (1933) § 104-51-7; Wash. Rules of Practice adopted by the Supreme Ct., Rule 8, 2 Wash. Rev. Stat. Ann. (Remington, 1932) § 308-8; W. Va. Code (1931) ch. 57, art. 4, § 1. Compare Equity Rules 47 (Depositions—To be Taken in Exceptional Instances); 54 (Depositions Under Revised Statutes, Sections 863, 865, 866, 867—Cross-Examination); 58 (Discovery—Interrogatories—Inspection and Production of Documents—Admission of Execution or Genuineness).

This and subsequent rules incorporate, modify, and broaden the provisions for depositions under U. S. C., Title 28, §§ 639 (Depositions *de bene esse*; when and where taken; notice), 640 (Same; mode of taking), 641 (Same; transmission to court), 644 (Depositions under *dedimus potestatem* and *in perpetuum*), 646 (Deposition under *dedimus potestatem*; how taken). These statutes are superseded in so far as they differ from this and subsequent rules. U. S. C., Title 28, § 643 (Depositions; taken in mode prescribed by State laws) is superseded by the third sentence of Subdivision (a).

While a number of states permit discovery only from parties or their agents, others either make no distinction between parties or agents of parties and ordinary witnesses, or authorize the taking of ordinary depositions, without restriction, from any persons who have knowledge of relevant facts. See Ark. Civ. Code (Crawford, 1934) §§ 606-607; 1 Idaho Code Ann. (1932) § 16-906; Ill. Rules of Pract., Rule 19 (Ill. Rev. Stat. (1937) ch. 110, § 259.19); Ill. Rev. Stat. (1937) ch. 51, § 24; 2 Ind. Stat. Ann. (Burns,

1933) § 2-1501; Ky. Codes (Carroll, 1932) Civ. Pract. §§ 554-558; 2 Md. Ann. Code (Bagby, 1924) Art. 85, § 21; 2 Minn. Stat. (Mason, 1927) § 9820; 1 Mo. Rev. Stat. (1929) §§ 1753, 1759; Neb. Comp. Stat. (1929) ch. 20, §§ 1246-7; 2 N. H. Pub. Laws (1926) ch. 337, § 1; 2 N. D. Comp. Laws Ann. (1913) § 7897; 2 Ohio Gen. Code Ann. (Page, 1926) §§ 11525-6; 1 S. D. Comp. Laws (1929) §§ 2713-16; Tex. Stat. (Vernon, 1928) arts. 3738, 3753, 3769; Utah Rev. Stat. Ann. (1933) § 104-51-7; Wash. Rules of Practice adopted by Supreme Ct., Rule 8, 2 Wash. Rev. Stat. Ann. (Remington, 1932) § 308-8; W. Va. Code (1931) ch. 57, art. 4, § 1.

The more common practice in the United States is to take depositions on notice by the party desiring them, without any order from the court, and this has been followed in these rules. See Calif. Code Civ. Proc. (Deering 1937) § 2031; 2 Fla. Comp. Gen. Laws Ann. (1927) §§ 4405-7; 1 Idaho Code Ann. (1932) § 16-902; Ill. Rules of Pract., Rule 19 (Ill. Rev. Stat. (1937) ch. 110, § 259.19); Ill. Rev. Stat. (1937) ch. 51, § 24; 2 Ind. Stat. Ann. (Burns, 1933) § 2-1502; Kan. Gen. Stat. Ann. (1935) § 60-2827; Ky. Codes (Carroll, 1932) Civ. Pract. § 565; 2 Minn. Stat. (Mason, 1927) § 9820; 1 Mo. Rev. Stat. (1929) § 1761; 4 Mont. Rev. Codes Ann. (1935) § 10651; Nev. Comp. Laws (Hillyer, 1929) § 9002; N. C. Code Ann. (1935) § 1809; 2 N. D. Comp. Laws Ann. (1913) § 7895; Utah Rev. Stat. Ann. (1933) § 104-51-8.

**Note to Subdivision (b).** While the old chancery practice limited discovery to facts supporting the case of the party seeking it, this limitation has been largely abandoned by modern legislation. See Ala. Code Ann. (Michie, 1928) §§ 7764-7773; 2 Ind. Stat. Ann. (Burns, 1933) §§ 2-1028, 2-1506, 2-1728—2-1732; Iowa Code (1935) § 11185; Ky. Codes (Carroll, 1932) Civ. Pract. §§ 557, 606 (8); La. Code Pract. (Dart, 1932) arts. 347-356; 2 Mass. Gen. Laws (Ter. Ed., 1932) ch. 231, §§ 61-67; 1 Mo. Rev. Stat. (1929) §§ 1753, 1759; Neb. Comp. Stat. (1929) §§ 20-1246, 20-1247; 2 N. H. Pub. Laws (1926) ch. 337, § 1; 2 Ohio Gen. Code Ann. (Page, 1926) §§ 11497, 11528; Tex. Stat. (Vernon, 1928) arts. 3738, 3753, 3769; Wis. Stat. (1935) § 326.12; Ontario Consol. Rules of Pract. (1928) Rules 237-347; Quebec Code of Civ. Proc. (Curran, 1922) §§ 288-290.

**Note to Subdivisions (d), (e), and (f).** The restrictions here placed upon the use of depositions at the trial or hearing are substantially the same as those provided in U. S. C., Title 28, § 641, for depositions taken, *de bene esse*, with the additional provision that any deposition may be used when the court finds the existence of exceptional circumstances. Compare English Rules Under the Judicature Act (The Annual Practice, 1937) O. 37, r. 18 (with additional provision permitting use of deposition by consent of the parties). See also Equity Rule 64 (Former Depositions, Etc., May be Used Before Master); and 2 Minn. Stat. (Mason, 1927) § 9835 (Use in a subsequent action of a deposition filed in a previously dismissed action between the same parties and involving the same subject matter).

#### RULE 27.—DEPOSITIONS BEFORE ACTION OR PENDING APPEAL

##### (a) Before action.

(1) **Petition.** A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in any court of the United States may file a verified petition in the district court of the United States in the district of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: 1, that the petitioner expects to be a party to an action cognizable in a court of the United States but is presently unable to bring it or cause it to be brought, 2, the subject matter of the expected action and his interest therein, 3, the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it, 4, the names or a description of the persons he expects will be adverse parties and their addresses so far as known, and 5, the names and addresses of the

persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) **Notice and Service.** The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served either within or without the district or state in the manner provided in Rule 4 (d) for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4 (d), an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 17 (c) apply.

(3) **Order and Examination.** If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) **Use of Deposition.** If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in a district court of the United States, in accordance with the provisions of Rule 26 (d).

##### (b) Pending appeal.

If an appeal has been taken from a judgment of a district court or before the taking of an appeal if the time therefor has not expired, the district court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the district court. In such case the party who desires to perpetuate the testimony may make a motion in the district court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the district court. The motion shall show (1) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each; (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay

of justice, it may make an order allowing the depositions to be taken, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the district court.

(c) Perpetuation by action.

This rule does not limit the power of a court to entertain an action to perpetuate testimony.

NOTES OF ADVISORY COMMITTEE ON RULES

*Note to Subdivision (a).* This rule offers a simple method of perpetuating testimony in cases where it is usually allowed under equity practice or under modern statutes. See *Arizona v. California*, 292 U. S. 341, 54 S. Ct. 735, 78 L. Ed. 1298 (1934); *Todd Engineering Dry Dock and Repair Co. v. United States*, 32 F. 2d 734 (C. C. A. 5th, 1929); *Hall v. Stout*, 4 Del. ch. 269 (1871). For comparable state statutes see Ark. Civ. Code (Crawford, 1934) §§ 666-670; Calif. Code Civ. Proc. (Deering, 1937) 2083-2089; Ill. Rev. Stat. (1937) ch. 51, §§ 39-48; Iowa Code (1935) §§ 11400-11407; 2 Mass. Gen. Laws (Ter. Ed., 1932) ch. 233, § 46-63; N. Y. C. P. A. (1937) § 295; Ohio Gen. Code Ann. (Throckmorton, 1936) § 12216-12222; Va. Code Ann. (Michie, 1936) § 6235; Wis. Stat. (1935) §§ 326.27-326.29. The appointment of an attorney to represent absent parties or parties not personally notified, or a guardian ad litem to represent minors and incompetents, is provided for in several of the above statutes.

*Note to Subdivision (b).* This follows the practice approved in *Richter v. Union Trust Co.*, 115 U. S. 55, 5 S. Ct. 1162, 29 L. Ed. 845 (1885), by extending the right to perpetuate testimony to cases pending an appeal.

*Note to Subdivision (c).* This preserves the right to employ a separate action to perpetuate testimony under U. S. C., Title 28, § 644 (Depositions under *dedimus potestatem* and *in perpetuum*) as an alternate method.

**RULE 28.—PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN**

(a) Within the United States.

Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(b) In foreign countries.

In a foreign state or country depositions shall be taken (1) on notice before a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or (2) before such person or officer as may be appointed by commission or under letters rogatory. A commission or letters rogatory shall be issued only when necessary or convenient, on application and notice, and on such terms and with such directions as are just and appropriate. Officers may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed "To the Appropriate Judicial Authority in [here name the country]."

(c) Disqualification for interest.

No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

NOTES OF ADVISORY COMMITTEE ON RULES

In effect this rule is substantially the same as U. S. C., Title 28, § 639 (Depositions *de bene esse*; when and where taken; notice). U. S. C., Title 28, § 642 (Depositions, acknowledgments, and affidavits taken by notaries public) does not conflict with subdivision (a).

**RULE 29.—STIPULATIONS REGARDING THE TAKING OF DEPOSITIONS**

If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions.

**RULE 30.—DEPOSITIONS UPON ORAL EXAMINATION**

(a) Notice of examination: Time and place.

A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of any party upon whom the notice is served, the court may for cause shown enlarge or shorten the time.

(b) Orders for the protection of parties and deponents.

After notice is served for taking a deposition by oral examination, upon motion seasonably made by any party or by the person to be examined and upon notice and for good cause shown, the court in which the action is pending may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the court, or that secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; or the court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression.

(c) Record of examination; oath; objections.

The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by some one acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed unless the parties agree otherwise. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of



participating in the oral examination, parties served with notice of taking a deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Motion to terminate or limit examination.

At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in subdivision (b). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. In granting or refusing such order the court may impose upon either party or upon the witness the requirement to pay such costs or expenses as the court may deem reasonable.

(e) Submission to witness; changes; signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 32 (d) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and filing by officer; copies; notice of filing.

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the court in which the action is pending or send it by registered mail to the clerk thereof for filing.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) Failure to attend or to serve subpoena; expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.

NOTES OF ADVISORY COMMITTEE ON RULES

*Note to Subdivision (a).* This is in accordance with common practice. See U. S. C., Title 28, § 639 (Depositions *de bene esse*; when and where taken; notice), the relevant provisions of which are incorporated in this rule; Calif Code Civ. Proc. (Deering, 1937) § 2031; and statutes cited in respect to notice in the Note to Rule 26 (a). The provision for enlarging or shortening the time of notice has been added to give flexibility to the rule.

*Note to Subdivisions (b) and (d).* These are introduced as a safeguard for the protection of parties and deponents on account of the unlimited right of discovery given by Rule 26.

*Note to Subdivisions (c) and (e).* These follow the general plan of Equity Rule 51 (Evidence Taken Before Examiners, Etc.) and U. S. C., Title 28, §§ 640 (Depositions *de bene esse*; mode of taking), and 641 (Same; transmission to court), but are more specific. They also permit the deponent to require the officer to make changes in the deposition if the deponent is not satisfied with it. See also Equity Rule 50 (Stenographer—Appointment—Fees).

*Note to Subdivision (f).* Compare Equity Rule 55 (Depositions Deemed Published When Filed).

*Note to Subdivision (g).* This is similar to 2 Minn Stat. (Mason, 1927) § 9833, but is more extensive.

**RULE 31.—DEPOSITIONS OF WITNESSES UPON WRITTEN INTERROGATORIES**

(a) Serving interrogatories; notice.

A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within 10 days thereafter a party so served may serve cross interrogatories upon the party proposing to take the deposition. Within 5 days thereafter the latter may serve redirect interrogatories upon a party who has served cross interrogatories. Within 3 days after being served with redirect interrogatories, a party may serve recross interrogatories upon the party proposing to take the deposition.

(b) Officer to take responses and prepare record.

A copy of the notice and copies of all interrogatories served shall be delivered by the party taking the deposition to the officer designated in the notice.



who shall proceed promptly, in the manner provided by Rule 30 (c), (e), and (f), to take the testimony of the witness in response to the interrogatories and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the interrogatories received by him.

**(c) Notice of filing.**

When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

**(d) Orders for the protection of parties and deponents.**

After the service of interrogatories and prior to the taking of the testimony of the deponent, the court in which the action is pending, on motion promptly made by a party or a deponent, upon notice and good cause shown, may make any order specified in Rule 30 which is appropriate and just or an order that the deposition shall not be taken before the officer designated in the notice or that it shall not be taken except upon oral examination.

**NOTES OF ADVISORY COMMITTEE ON RULES**

This rule is in accordance with common practice. In most of the states listed in the Note to Rule 26 (a), provisions similar to this rule will be found in the statutes which in their respective statutory compilations follow those cited in the Note to Rule 26 (a).

**RULE 32.—EFFECT OF ERRORS AND IRREGULARITIES IN DEPOSITIONS**

**(a) As to notice.**

All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

**(b) As to disqualification of officer.**

Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

**(c) As to taking of deposition.**

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(3) Objections to the form of written interrogatories submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other interrogatories and within 3 days after service of the last interrogatories authorized.

**(d) As to completion and return of deposition.**

Errors and irregularities in the manner in which the testimony is transcribed or the deposition is pre-

pared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

**NOTES OF ADVISORY COMMITTEE ON RULES**

This rule is in accordance with common practice. In most of the states listed in the Note to Rule 26, provisions similar to this rule will be found in the statutes which in their respective statutory compilations follow those cited in the Note to Rule 26.

**RULE 33.—INTERROGATORIES TO PARTIES**

Any party may serve upon any adverse party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer thereof competent to testify in its behalf. The interrogatories shall be answered separately and fully in writing under oath. The answers shall be signed by the person making them; and the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories within 15 days after the delivery of the interrogatories, unless the court, on motion and notice and for good cause shown, enlarges or shortens the time. Objections to any interrogatories may be presented to the court within 10 days after service thereof, with notice as in case of a motion; and answers shall be deferred until the objections are determined, which shall be at as early a time as is practicable. No party may, without leave of court, serve more than one set of interrogatories to be answered by the same party.

**NOTES OF ADVISORY COMMITTEE ON RULES**

This rule restates the substance of Equity Rule 58 (Discovery—Interrogatories—Inspection and Production of Documents—Admission of Execution or Genuineness), with modifications to conform to these rules.

**RULE 34.—DISCOVERY AND PRODUCTION OF DOCUMENTS AND THINGS FOR INSPECTION, COPYING, OR PHOTOGRAPHING**

Upon motion of any party showing good cause therefor and upon notice to all other parties, the court in which an action is pending may (1) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody, or control; or (2) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place, and manner of making the inspection and taking the copies and photographs and may prescribe such terms and conditions as are just.

Form, see Form 24, Appendix, following Rule 86.

## NOTES OF ADVISORY COMMITTEE ON RULES

In England orders are made for the inspection of documents, English Rules Under the Judicature Act (The Annual Practice, 1937) O. 31, r. r. 14, et seq., or for the inspection of tangible property or for entry upon land, O. 50, r. 3. Michigan provides for inspection of damaged property when such damage is the ground of the action. Mich. Court Rules Ann. (Searl, 1933) Rule 41, § 2.

Practically all states have statutes authorizing the court to order parties in possession or control of documents to permit other parties to inspect and copy them before trial. See Ragland, *Discovery Before Trial* (1932), Appendix, p. 267, setting out the statutes.

Compare Equity Rule 58 (Discovery—Interrogatories—Inspection and Production of Documents—Admission of Execution or Genuineness) (fifth paragraph).

### RULE 35.—PHYSICAL AND MENTAL EXAMINATION OF PERSONS

#### (a) Order for examination.

In an action in which the mental or physical condition of a party is in controversy, the court in which the action is pending may order him to submit to a physical or mental examination by a physician. The order may be made only on motion for good cause shown and upon notice to the party to be examined and to all other parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

#### (b) Report of findings.

(1) If requested by the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings and conclusions. After such request and delivery the party causing the examination to be made shall be entitled upon request to receive from the party examined a like report of any examination, previously or thereafter made, of the same mental or physical condition. If the party examined refuses to deliver such report the court on motion and notice may make an order requiring delivery on such terms as are just, and if a physician fails or refuses to make such a report the court may exclude his testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

## NOTES OF ADVISORY COMMITTEE ON RULES

Physical examination of parties before trial is authorized by statute or rule in a number of states. See *Ariz. Rev. Code Ann.* (Struckmeyer, 1928) § 4468; *Mich. Court Rules Ann.* (Searl, 1933) Rule 41, § 2; 2 *N. J. Comp. Stat.* (1910) Evidence, § 19, p. 2226; \* *N. Y. C. P. A.* (1937) § 306; 1 *S. D. Comp. Laws* (1929) § 2716A; 3 *Wash. Rev. Stat. Ann.* (Remington, 1932) § 1230-1.

Mental examination of parties is authorized in Iowa. *Iowa Code* (1935) ch. 491-F1. See McCash, *The Evolution of the Doctrine of Discovery and Its Present Status in Iowa*, 20 *Ia. L. Rev.* 68 (1934).

The constitutionality of legislation providing for physical examination of parties was sustained in *Lyon v. Manhattan Railway Co.*, 142 *N. Y.* 298, 37 *N. E.* 113 (1894), and *McGovern v. Hope*, 63 *N. J. L.* 76, 42 *Atl.* 830 (1899). In

*Union Pacific Ry. Co. v. Botsford*, 141 *U. S.* 250, 11 *S. Ct.* 1000, 35 *L. Ed.* 734 (1891), it was held that the court could not order the physical examination of a party in the absence of statutory authority. But in *Camden and Suburban Ry. Co. v. Stetson*, 177 *U. S.* 172, 20 *L. Ed.* 617, 44 *L. Ed.* 721 (1900) where there was statutory authority for such examination, derived from a state statute made operative by the conformity act, the practice was sustained. Such authority is now found in the present rule made operative by the Act of June 19, 1934, ch. 651, *U. S. C.*, Title 28, §§ 723b (Rules in actions at law; Supreme Court authorized to make) and 723c (Union of equity and action at law rules; power of Supreme Court).

\* 1 *N. J. Rev. Stat.* (1937) 2: 99-1.

### RULE 36.—ADMISSION OF FACTS AND OF GENUINENESS OF DOCUMENTS

#### (a) Request for admission.

At any time after the pleadings are closed, a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth therein. Copies of the documents shall be delivered with the request unless copies have already been furnished. Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than 10 days after service thereof or within such further time as the court may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

#### (b) Effect of admission.

Any admission made by a party pursuant to such request is for the purpose of the pending action only and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding.

Form, see Form 25, Appendix, following Rule 86.

## NOTES OF ADVISORY COMMITTEE ON RULES

Compare similar rules: Equity Rule 58 (last paragraph, which provides for the admission of the execution and genuineness of documents); English Rules Under the Judicature Act (The Annual Practice, 1937) O. 32; *Ill. Rev. Stat.* (1937) ch. 110, § 182 and Rule 18 (*Ill. Rev. Stat.* (1937) ch. 110, § 259.18); 2 *Mass. Gen. Laws* (Ter. Ed., 1932) ch. 231, § 69; *Mich. Court Rules Ann.* (Searl, 1933) Rule 42; *N. J. Comp. Stat.* (2 Cum. Supp. 1911-1924) ch. 163, § 294; \* *N. Y. C. P. A.* (1937) §§ 322, 323; *Wis. Stat.* (1935) § 327.22.

\* 1 *N. J. Rev. Stat.* (1937) 2: 27-161.

### RULE 37.—REFUSAL TO MAKE DISCOVERY: CONSEQUENCES

#### (a) Refusal to answer.

If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, he may apply to the court in the district where the deposition is taken for an order compelling an answer. Upon the refusal of a deponent to answer any interrogatory submitted

under Rule 31 or upon the refusal of a party to answer any interrogatory submitted under Rule 33, the proponent of the question may on like notice make like application for such an order. If the motion is granted and if the court finds that the refusal was without substantial justification the court shall require the refusing party or deponent and the party or attorney advising the refusal or either of them to pay to the examining party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees. If the motion is denied and if the court finds that the motion was made without substantial justification, the court shall require the examining party or the attorney advising the motion or both of them to pay to the refusing party or witness the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney's fees.

**(b) Failure to comply with order.**

(1) *Contempt.* If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the court in the district in which the deposition is being taken, the refusal may be considered a contempt of that court.

(2) *Other Consequences.* If any party or an officer or managing agent of a party refuses to obey an order made under subdivision (a) of this rule requiring him to answer designated questions, or an order made under Rule 34 to produce any document or other thing for inspection, copying, or photographing or to permit it to be done, or to permit entry upon land or other property, or an order made under Rule 35 requiring him to submit to a physical or mental examination, the court may make such orders in regard to the refusal as are just, and among others the following:

(i) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental condition of the party, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of physical or mental condition;

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(iv) In lieu of any of the foregoing orders or in addition thereto, an order directing the arrest of any party or agent of a party for disobeying any of such orders except an order to submit to a physical or mental examination.

**(c) Expenses on refusal to admit.**

If a party, after being served with a request under Rule 36 to admit the genuineness of any documents or the truth of any matters of fact, serves a

sworn denial thereof and if the party requesting the admissions thereafter proves the genuineness of any such document or the truth of any such matter of fact, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorney's fees. Unless the court finds that there were good reasons for the denial or that the admissions sought were of no substantial importance, the order shall be made.

**(d) Failure of party to attend or serve answers.**

If a party or an officer or managing agent of a party wilfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under Rule 33, after proper service of such interrogatories, the court on motion and notice may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party.

**(e) Failure to respond to letters rogatory.**

A subpoena may be issued as provided in the Act of July 3, 1926, ch. 762, § 1 (44 Stat. 835), U. S. C., Title 28, § 711, under the circumstances and conditions therein stated.

**(f) Expenses against United States.**

Expenses and attorney's fees are not to be imposed upon the United States under this rule.

**NOTES OF ADVISORY COMMITTEE ON RULES**

The provisions of this rule authorizing orders establishing facts or excluding evidence or striking pleadings, or authorizing judgments of dismissal or default, for refusal to answer questions or permit inspection or otherwise make discovery, are in accord with *Hammond Packing Co. v. Arkansas*, 212 U. S. 322, 29 S. Ct. 370, 53 L. Ed. 530, 15 Ann. Cas. 645 (1909), which distinguishes between the justifiable use of such measures as a means of compelling the production of evidence, and their unjustifiable use, as in *Hovey v. Elliott*, 167 U. S. 409, 17 S. Ct. 841, 42 L. Ed. 215 (1897), for the mere purpose of punishing for contempt.

**VI.—TRIALS**

**RULE 38.—JURY TRIAL OF RIGHT**

**(a) Right preserved.**

The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

**(b) Demand.**

Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be indorsed upon a pleading of the party.

**(c) Same: Specification of issues.**

In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as

the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

**(d) Waiver.**

The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5 (d) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

**NOTES OF ADVISORY COMMITTEE ON RULES**

This rule provides for the preservation of the constitutional right of trial by jury as directed in the enabling act (act of June 19, 1934, 48 Stat. 1064, U. S. C., Title 28, § 723c), and it and the next rule make definite provision for claim and waiver of jury trial, following the method used in many American states and in England and the British Dominions. Thus the claim must be made at once on initial pleading or appearance under Ill. Rev. Stat. (1937) ch. 110, § 188; 6 Tenn. Code Ann. (Williams, 1934) § 8734; compare Wyo. Rev. Stat. Ann. (1931) § 89-1320 (with answer or reply); within 10 days after the pleadings are completed or the case is at issue under 2 Conn. Gen. Stat. (1930) § 5624; Hawaii Rev. Laws (1935) § 4101; 2 Mass. Gen. Laws (Ter. Ed. 1932) ch. 231, § 60; 3 Mich. Comp. Laws (1929) § 14263; Mich. Court Rules Ann. (Searl, 1933) Rule 33 (15 days); England (until 1933) O. 36, r. r. 2 and 6; and Ontario Jud. Act (1927) § 57 (1) (4 days, or, where prior notice of trial, 2 days from such notice); or at a definite time varying under different codes, from 10 days before notice of trial to 10 days after notice, or, as in many, when the case is called for assignment, Ariz. Rev. Code Ann. (Struckmeyer, 1928) § 3802; Calif. Code Civ. Proc. (Deering, 1937) § 631, par. 4; Iowa Code (1935) § 10724; 4 Nev. Comp. Laws (Hillyer, 1929) § 8782; N. M. Stat. Ann. (Courtright, 1929) § 105-814; N. Y. C. P. A. (1937) § 426, subdivision 5 (applying to New York, Bronx, Richmond, Kings, and Queens Counties); R. I. Pub. Laws (1929), ch. 1327, amending R. I. Gen. Laws (1923) ch. 337, § 6; Utah Rev. Stat. Ann. (1933) § 104-23-6; 2 Wash. Rev. Stat. Ann. (Remington, 1932) § 316; England (4 days after notice of trial), Administration of Justice Act (1933) § 6 and amended rule under the Judicature Act (The Annual Practice, 1937), O. 36, r. 1; Australia High Court Procedure Act (1921) § 12, Rules, O. 38, r. 2; Alberta Rules of Ct. (1914) 172, 183, 184; British Columbia Sup. Ct. Rules (1925) O. 36, r. r. 2, 6, 11, and 16; New Brunswick Jud. Act (1927) O. 36, r. r. 2 and 5. See James, *Trial by Jury and the New Federal Rules of Procedure* (1936), 45 Yale L. J. 1022.

Rule 81 (c) provides for claim for jury trial in removed actions.

The right to trial by jury as declared in U. S. C., Title 28, § 770 (Trial of issues of fact; by jury; exceptions), and similar statutes, is unaffected by this rule. This rule modifies U. S. C., Title 28, § 773 (Trial of issues of fact; by court).

**RULE 39.—TRIAL BY JURY OR BY THE COURT**

**(a) By jury.**

When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of the United States.

**(b) By the court.**

Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues.

**(c) Advisory jury and trial by consent.**

In all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury or, except in actions against the United States when a statute of the United States provides for trial without a jury, the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

**NOTES OF ADVISORY COMMITTEE ON RULES**

The provisions for express waiver of jury trial found in U. S. C., Title 28, § 773 (Trial of issues of fact; by court) are incorporated in this rule. See rule 38, however, which extends the provisions for waiver of jury. U. S. C., Title 28, § 772 (Trial of issues of fact; in equity in patent causes) is unaffected by this rule. When certain of the issues are to be tried by jury and others by the court, the court may determine the sequence in which such issues shall be tried. See *Liberty Oil Co. v. Condon Nat. Bank*, 260 U. S. 235, 43 S. Ct. 118, 67 L. Ed. 232 (1922).

A discretionary power in the courts to send issues of fact to the jury is common in state procedure. Compare Calif. Code Civ. Proc. (Deering, 1937) § 592; 1 Colo. Stat. Ann. (1935) Code Civ. Proc., ch. 12, § 191; Conn. Gen. Stat. (1930) § 5625; 2 Minn. Stat. (Mason, 1927) § 9288; 4 Mont. Rev. Codes Ann. (1935) § 9327; N. Y. C. P. A. (1937) § 430; 2 Ohio Gen. Code Ann. (Page, 1926) § 11380; 1 Okla. Stat. Ann. (Harlow, 1931) § 351; Utah Rev. Stat. Ann. (1933) § 104-23-6; 2 Wash. Rev. Stat. Ann. (Remington, 1932) § 315; Wis. Stat. (1935) § 270.07. See Equity Rule 23 (Matters Ordinarily Determinable at Law When Arising in Suit in Equity to be Disposed of Therein) and U. S. C., Title 28, § 772 (Trial of issues of fact; in equity in patent causes); *Colleton Merc. Mfg. Co. v. Savannah River Lumber Co.*, 280 Fed. 358 (C. C. A. 4th, 1922); *Fed. Res. Bk. of San Francisco v. Idaho Grimm Alfalfa Seed Growers' Ass'n*, 8 F. 2d 922 (C. C. A. 9th, 1925), cert. den. 270 U. S. 646, 46 S. Ct. 347, 70 L. Ed. 778 (1926); *Watt v. Starke*, 101 U. S. 247, 25 L. Ed. 826 (1879).

**RULE 40.—ASSIGNMENT OF CASES FOR TRIAL**

The district courts shall provide by rule for the placing of actions upon the trial calendar (1) without request of the parties or (2) upon request of a party and notice to the other parties or (3) in such other manner as the courts deem expedient. Precedence shall be given to actions entitled thereto by any statute of the United States.

**NOTES OF ADVISORY COMMITTEE ON RULES**

U. S. C., Title 28, § 769 (Notice of case for trial) is modified. See Equity Rule 56 (On Expiration of Time for Depositions, Case Goes on Trial Calendar). See also Equity Rule 57 (Continuances).

For examples of statutes giving precedence, see U. S. C., Title 28, § 47 (Injunctions as to orders of Interstate Commerce Commission); § 380 (Injunctions; alleged unconstitutionality of state statutes); § 380a (Same; Constitutionality of federal statute); § 768 (Priority of cases where a state is party); Title 15, § 28 (Antitrust laws; suits against monopolies expedited); Title 22, § 240 (Petition for restoration of property seized as munitions of war, etc.); and Title 49, § 44 (Proceedings in equity under interstate commerce laws; expedition of suits).

## RULE 41.—DISMISSAL OF ACTIONS

## (a) Voluntary dismissal: Effect thereof.

(1) *By Plaintiff; By Stipulation.* Subject to the provisions of Rule 23 (c) and of any statute of the United States, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service of the answer or (ii) by filing a stipulation of dismissal signed by all the parties who have appeared generally in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

(2) *By Order of Court.* Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

## (b) Involuntary dismissal: Effect thereof.

For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue, operates as an adjudication upon the merits.

## (c) Dismissal of counterclaim, cross-claim, or third-party claim.

The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

## (d) Costs of previously dismissed action.

If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

## NOTES OF ADVISORY COMMITTEE ON RULES

*Note to Subdivision (a).* Compare Ill. Rev. Stat. (1937) ch. 110, § 176, and English Rules Under the Judicature Act (The Annual Practice, 1937) O. 26.

Provisions regarding dismissal in such statutes as U. S. C., Title 8, § 164 (Jurisdiction of district courts in immigration cases) and U. S. C., Title 22, § 232 (Liability of persons making false claims against United States; suits) are preserved by paragraph (1).

*Note to Subdivision (b).* This provides for the equivalent of a nonsuit on motion by the defendant after the completion of the presentation of evidence by the plaintiff. Also, for actions tried without a jury, it provides the equivalent of the directed verdict practice for jury actions which is regulated by Rule 50.

## RULE 42.—CONSOLIDATION; SEPARATE TRIALS

## (a) Consolidation.

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

## (b) Separate trials.

The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

## NOTES OF ADVISORY COMMITTEE ON RULES

*Subdivision (a)* is based upon U. S. C., Title 28, § 734 (Orders to save costs; consolidation of causes of like nature) but insofar as the statute differs from this rule, it is modified.

For comparable statutes dealing with consolidation see Ark. Dig. Stat. (Crawford & Moses, 1921) § 1081; Calif. Code Civ. Proc. (Deering, 1937) § 1048; N. M. Stat. Ann. (Courtright, 1929) § 105-828; N. Y. C. P. A. (1937) §§ 96, 96a, and 97; American Judicature Society, Bulletin XIV, (1919) Art. 26.

For severance or separate trials see Calif. Code Civ. Proc. (Deering, 1937) § 1048; N. Y. C. P. A. (1937) § 96; American Judicature Society, Bulletin XIV (1919) Art. 3, § 2 and Art. 10, § 10. See also the third sentence of Equity Rule 29 (Defenses—How Presented) providing for discretionary separate hearing and disposition before trial of pleas in bar or abatement, and see also Rule 12 (d) of these rules for preliminary hearings of defenses and objections.

For the entry of separate judgments, see Rule 54 (b) (Judgment at Various Stages).

## RULE 43.—EVIDENCE

## (a) Form and admissibility.

In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules. All evidence shall be admitted which is admissible under the statutes of the United States, or under the rules of evidence heretofore applied in the courts of the United States on the hearing of suits in equity, or under the rules of evidence applied in the courts of general jurisdiction of the state in which the United States court is held. In any case, the statute or rule which favors the reception of the evidence governs and the evidence shall be presented according to the most convenient method prescribed in any of the statutes or rules to which reference is herein made. The competency

of a witness to testify shall be determined in like manner.

**(b) Scope of examination and cross-examination.**

A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of his examination in chief.

**(c) Record of excluded evidence.**

In an action tried by a jury, if an objection to a question propounded to a witness is sustained by the court, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness. The court may require the offer to be made out of the hearing of the jury. The court may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. In actions tried without a jury the same procedure may be followed, except that the court upon request shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.

**(d) Affirmation in lieu of oath.**

Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

**(e) Evidence on motions.**

When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

**NOTES OF ADVISORY COMMITTEE ON RULES**

*Note to Subdivision (a).* The first sentence is a restatement of the substance of U. S. C., Title 28, § 635 (Proof in common-law actions), § 637 (Proof in equity and admiralty), and Equity Rule 46 (Trial—Testimony Usually Taken in Open Court—Rulings on Objections to Evidence). This rule abolishes in patent and trade-mark actions, the practice under Equity Rule 48 of setting forth in affidavits the testimony in chief of expert witnesses whose testimony is directed to matters of opinion. The second and third sentences on admissibility of evidence and *Subdivision (b)* on contradiction and cross-examination modify U. S. C., Title 28, § 725 (Laws of states as rules of decision) insofar as that statute has been construed to prescribe conformity to state rules of evidence. Compare Callahan and Ferguson, *Evidence and the New Federal Rules of Civil Procedure*, 45 Yale L. J. 622 (1936), and *Same*: 2, 47 Yale L. J. 195 (1937). The last sentence modifies to the extent indicated U. S. C., Title 28, § 631 (Competency of witnesses governed by State laws).

*Note to Subdivision (b).* See 4 *Wigmore on Evidence* (2d ed., 1923) § 1885 *et seq.*

*Note to Subdivision (c).* See Equity Rule 46 (Trial—Testimony Usually Taken in Open Court—Rulings on Objections to Evidence). With the last sentence compare *Dowagiac v. Lochren*, 143 Fed. 211 (C. C. A. 8th, 1906). See also *Blease v. Garlington*, 92 U. S. 1, 23 L. Ed.

521 (1876); *Nelson v. United States*, 201 U. S. 92, 114, 26 S. Ct. 358, 50 L. Ed. 673 (1906); *Unkle v. Wills*, 281 Fed. 29 (C. C. A. 8th, 1922).

See Rule 61 for harmless error in either the admission or exclusion of evidence.

*Note to Subdivision (d).* See Equity Rule 78 (Affirmation in Lieu of Oath) and U. S. C., Title 1, § 1 (Words importing singular number, masculine gender, etc.; extended application), providing for affirmation in lieu of oath.

**RULE 44.—PROOF OF OFFICIAL RECORD**

**(a) Authentication of copy.**

An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office.

**(b) Proof of lack of record.**

A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry.

**(c) Other proof.**

This rule does not prevent the proof of official records or of entry or lack of entry therein by any method authorized by any applicable statute or by the rules of evidence at common law.

**NOTES OF ADVISORY COMMITTEE ON RULES**

This rule provides a simple and uniform method of proving public records, and entry or lack of entry therein, in all cases including those specifically provided for by statutes of the United States. Such statutes are not superseded, however, and proof may also be made according to their provisions whenever they differ from this rule. Some of those statutes are:

**U. S. C., Title 28:**

- § 661 (Copies of department or corporation records and papers; admissibility; seal)
- § 662 (Same; in office of General Counsel of the Treasury)
- § 663 (Instruments and papers of Comptroller of Currency; admissibility)
- § 664 (Organization certificates of national banks; admissibility)
- § 665 (Transcripts from books of Treasury in suits against delinquents; admissibility)
- § 666 (Same; certificate by Secretary or Assistant Secretary)

## U. S. C., Title 28—Continued.

- § 670 (Admissibility of copies of statements of demands by Post Office Department)
  - § 671 (Admissibility of copies of post office records and statement of accounts)
  - § 672 (Admissibility of copies of records in General Land Office)
  - § 673 (Admissibility of copies of records, and so forth, of Patent Office)
  - § 674 (Copies of foreign letters patent as prima facie evidence)
  - § 675 (Copies of specifications and drawings of patents admissible)
  - § 676 (Extracts from Journals of Congress admissible when injunction of secrecy removed)
  - § 677 (Copies of records in offices of United States consuls admissible)
  - § 678 (Books and papers in certain district courts)
  - § 679 (Records in clerks' offices, western district of North Carolina)
  - § 680 (Records in clerks' offices of former district of California)
  - § 681 (Original records lost or destroyed; certified copy admissible)
  - § 682 (Same; when certified copy not obtainable)
  - § 685 (Same; certified copy of official papers)
  - § 687 (Authentication of legislative acts; proof of judicial proceedings of State)
  - § 688 (Proofs of records in offices not pertaining to courts)
  - § 689 (Copies of foreign records relating to land titles)
  - § 695 (Writings and records made in regular course of business; admissibility)
  - § 695e (Foreign documents on record in public offices; certification)
- U. S. C., Title 1:
- § 30 (Statutes at large; contents; admissibility in evidence)
  - § 30a ("Little and Brown's" edition of laws and treaties competent evidence of Acts of Congress)
  - § 54 (Codes and supplements as establishing prima facie the laws of United States and District of Columbia, etc.)
  - § 55 (Copies of supplements to Code of Laws of United States and of District of Columbia Code and supplements; conclusive evidence of original)
- U. S. C., Title 5:
- § 490 (Records of Department of Interior; authenticated copies as evidence)
- U. S. C., Title 6:
- § 7 (Surety Companies as sureties; appointment of agents; service of process)
- U. S. C., Title 8:
- § 9a (Citizenship of children of persons naturalized under certain laws; repatriation of native-born women married to aliens prior to September 22, 1922; copies of proceedings)
  - § 356 (Regulations for execution of naturalization laws; certified copies of papers as evidence)
  - § 399b (d) (Certifications of naturalization records; authorization; admissibility as evidence)
- U. S. C., Title 11:
- § 44 (d), (e), (f), (g) (Bankruptcy court proceedings and orders as evidence)
  - § 204 (Extensions extended, etc.; evidence of confirmation)
  - § 207 (j) (Corporate reorganizations; certified copy of decree as evidence)
- U. S. C., Title 15:
- § 127 (Trade-mark records in Patent Office; copies as evidence)
- U. S. C., Title 20:
- § 52 (Smithsonian Institution; evidence of title to site and buildings)
- U. S. C., Title 25:
- § 6 (Bureau of Indian Affairs; seal; authenticated and certified documents; evidence)

## U. S. C., Title 31:

- § 46 (Laws governing General Accounting Office; copies of books, records, etc., thereof as evidence)
- U. S. C., Title 38:
- § 11g (Seal of Veterans' Administration; authentication of copies of records)
- U. S. C., Title 40:
- § 238 (National Archives; seal; reproduction of archives; fee; admissibility in evidence of reproductions)
  - § 270c (Bonds of contractors for public works; right of person furnishing labor or material to copy of bond)
- U. S. C., Title 43:
- §§ 57-59 (Copies of land surveys, etc., in certain states and districts admissible as evidence)
  - § 83 (General Land Office registers and receivers; transcripts of records as evidence)
- U. S. C., Title 46:
- § 823 (Records of Maritime Commission; copies; publication of reports; evidence)
- U. S. C., Title 47:
- § 154 (m) (Federal Communications Commission; copies of reports and decisions as evidence)
  - § 412 (Documents filed with Federal Communications Commission as public records; prima facie evidence; confidential records)
- U. S. C., Title 49:
- § 14 (3) (Interstate Commerce Commission reports and decisions; printing and distribution of copies)
  - § 16 (13) (Copies of schedules, tariffs, etc., filed with Interstate Commerce Commission as evidence)
  - § 19a (1) (Valuation of property of carriers by Interstate Commerce Commission; final published valuations as evidence)

## RULE 45.—SUBPOENA

## (a) For attendance of witnesses; form; issuance.

Every subpoena shall be issued by the clerk under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

## (b) For production of documentary evidence.

A subpoena may also command the person to whom it is directed to produce the books, papers, or documents designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, or documents.

## (c) Service.

A subpoena may be served by the marshal, by his deputy, or by any other person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fees for one day's attendance and the mileage allowed by law. When the subpoena



is issued on behalf of the United States or an officer or agency thereof, fees and mileage need not be tendered.

**(d) Subpoena for taking depositions; place of examination.**

(1) Proof of service of a notice to take a deposition as provided in Rules 30 (a) and 31 (a) constitutes a sufficient authorization for the issuance by the clerk of the district court for the district in which the deposition is to be taken of subpoenas for the persons named or described therein. A subpoena commanding the production of documentary evidence on the taking of a deposition shall not be used without an order of the court.

(2) A resident of the district in which the deposition is to be taken may be required to attend an examination only in the county wherein he resides or is employed or transacts his business in person. A nonresident of the district may be required to attend only in the county wherein he is served with a subpoena, or within 40 miles from the place of service, or at such other place as is fixed by an order of court.

**(e) Subpoena for a hearing or trial.**

(1) At the request of any party subpoenas for attendance at a hearing or trial shall be issued by the clerk of the district court for the district in which the hearing or trial is held. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the district, or at any place without the district that is within 100 miles of the place of the hearing or trial specified in the subpoena; and, when a statute of the United States provides therefor, the court upon proper application and cause shown may authorize the service of a subpoena at any other place.

(2) A subpoena directed to a witness in a foreign country shall issue under the circumstances and in the manner and be served as provided in the Act of July 3, 1926, ch. 762, §§ 1, 3 (44 Stat. 835), U. S. C., Title 28, §§ 711, 713.

**(f) Contempt.**

Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued.

**NOTES OF ADVISORY COMMITTEE ON RULES**

This rule applies to subpoenas *ad testificandum* and *duces tecum* issued by the district courts for attendance at a hearing or a trial, or to take depositions. It does not apply to the enforcement of subpoenas issued by administrative officers and commissions pursuant to statutory authority. The enforcement of such subpoenas by the district courts is regulated by appropriate statutes. Many of these statutes do not place any territorial limits on the validity of subpoenas so issued, but provide that they may be served anywhere within the United States. Among such statutes are the following:

- U. S. C., Title 7, §§ 222 and 511n (Secretary of Agriculture)
- U. S. C., Title 15, § 49 (Federal Trade Commission)
- U. S. C., Title 15, §§ 77v (b), 78u (c), 79r (d) (Securities and Exchange Commission)
- U. S. C., Title 16, §§ 797 (g) and 825f (Federal Power Commission)
- U. S. C., Title 19, § 1333 (b) (Tariff Commission)
- U. S. C., Title 22, §§ 268, 270d and 270e (International Commissions, etc.)

- U. S. C., Title 26, §§ 614, 619 (b) (Board of Tax Appeals)
- U. S. C., Title 26, § 1523 (a) (Internal Revenue Officers)
- U. S. C., Title 29, § 161 (Labor Relations Board)
- U. S. C., Title 33, § 506 (Secretary of War)
- U. S. C., Title 35, §§ 54–56 (Patent Office proceedings)
- U. S. C., Title 38, § 133 (Veterans' Administration)
- U. S. C., Title 41, § 39 (Secretary of Labor)
- U. S. C., Title 45, § 157 Third. (b) (Board of Arbitration under Railway Labor Act)
- U. S. C., Title 45, § 222 (b) (Investigation Commission under Railroad Retirement Act of 1935)
- U. S. C., Title 46, § 1124 (b) (Maritime Commission)
- U. S. C., Title 47, § 409 (c) and (d) (Federal Communications Commission)
- U. S. C., Title 49, § 12 (2) and (3) (Interstate Commerce Commission)
- U. S. C., Title 49, § 173a (Secretary of Commerce)

*Note to Subdivisions (a) and (b).* These simplify the form of subpoena as provided in U. S. C., Title 28, § 655 (Witnesses; subpoena; form; attendance under); and broaden U. S. C., Title 28, § 636 (Production of books and writings) to include all actions, and to extend to any person. With the provision for relief from an oppressive or unreasonable subpoena *duces tecum*, compare N. Y. C. P. A. (1937) § 411.

*Note to Subdivision (c).* This provides for the simple and convenient method of service permitted under many state codes; e. g., N. Y. C. P. A. (1937) §§ 220, 404, J. Ct. Act, § 191; 3 Wash. Rev. Stat. Ann. (Remington, 1932) § 1218. Compare Equity Rule 15 (Process, by Whom Served).

For statutes governing fees and mileage of witnesses see:

- U. S. C., Title 28:
- § 600a (Per diem; mileage)
- § 600c (Amount per diem and mileage for witnesses; subsistence)
- § 600d (Fees and mileage in certain states)
- § 601 (Witnesses' fees; enumeration)
- § 602 (Fees and mileage of jurors and witnesses)
- § 603 (No officer of court to have witness fees)

*Note to Subdivision (d).* The method provided in paragraph (1) for the authorization of the issuance of subpoenas has been employed in some districts. See *Henning v. Boyle*, 112 Fed. 397 (S. D. N. Y., 1901). The requirement of an order for the issuance of a subpoena *duces tecum* is in accordance with U. S. C., Title 28, § 647 (Deposition under *dedimus potestatem*; subpoena *duces tecum*). The provisions of paragraph (2) are in accordance with common practice. See U. S. C., Title 28, § 648 (Deposition under *dedimus potestatem*; witnesses, when required to attend); N. Y. C. P. A. (1937) § 300; 1 N. J. Rev. Stat. (1937) 2:27–174.

*Note to Subdivision (e).* The first paragraph continues the substance of U. S. C., Title 28, § 654 (Witnesses; subpoenas; may run into another district). Compare U. S. C., Title 11, § 69 (Referees in bankruptcy; contempts before) (production of books and writings) which is not affected by this rule. For examples of statutes which allow the court, upon proper application and cause shown, to authorize the clerk of the court to issue a subpoena for a witness who lives in another district and at a greater distance than 100 miles from the place of the hearing or trial, see:

- U. S. C., Title 15:
- § 23 (Suits by United States; subpoenas for witnesses) (under antitrust laws).
- U. S. C., Title 38:
- § 445 (Actions on claims; jurisdiction; parties; procedure; limitation; witnesses; definitions) (Veterans' insurance contracts).

The second paragraph continues the present procedure applicable to certain witnesses who are in foreign countries. See U. S. C., Title 28, §§ 711 (Letters rogatory to take testimony of witness, addressed to court of foreign country; failure of witness to appear; subpoena) and 713 (Service of subpoena on witness in foreign country).

*Note to Subdivision (f).* Compare Equity Rule 52 (Attendance of Witnesses Before Commissioner, Master, or Examiner).

**RULE 46.—EXCEPTIONS UNNECESSARY**

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

**NOTES OF ADVISORY COMMITTEE ON RULES**

Abolition of formal exceptions is often provided by statute. See Ill. Rev. Stat. (1937) ch. 110, § 204; Neb. Comp. Stat. (1929) § 20-1139; N. M. Stat. Ann. (Court-right, 1929) § 105-830; 2 N. D. Comp. Laws Ann. (1913) § 7653; Ohio Code Ann. (Throckmorton, 1936) § 11560; 1 S. D. Comp. Laws (1929) § 2542; Utah Rev. Stat. Ann. (1933) §§ 104-39-2, 104-24-18; Va. Rules of Court, Rule 22, 163 Va. v. xii (1935); Wis. Stat. (1935) § 270.39. Compare N. Y. C. P. A. (1937) §§ 583, 445, and 446, all as amended by L. 1936, ch. 915. Rule 51 deals with objections to the court's instructions to the jury.

U. S. C., Title 28, §§ 776 (Bill of exceptions; authentication; signing of by judge) and 875 (Review of findings in cases tried without a jury) are superseded in so far as they provide for formal exceptions, and a bill of exceptions.

**RULE 47.—JURORS****(a) Examination of jurors.**

The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper.

**(b) Alternate jurors.**

The court may direct that one or two jurors in addition to the regular panel be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the principal jurors. An alternate juror who does not replace a principal juror shall be discharged after the jury retires to consider its verdict. If one or two alternate jurors are called each party is entitled to one peremptory challenge in addition to those otherwise allowed by law. The additional peremptory challenge may be used only against an alternate juror, and the other peremptory challenges allowed by law shall not be used against the alternates.

**NOTES OF ADVISORY COMMITTEE ON RULES**

*Note to Subdivision (a).* This permits a practice found very useful by Federal trial judges. For an example of a state practice in which the examination by the court is supplemented by further inquiry by counsel, see Rule 27 of the Code of Rules for the District Courts of Minne-

sota, 186 Minn. xxxiii (1932), 3 Minn. Stat. (Mason, supp. 1936) Appendix 4, p. 1062.

*Note to Subdivision (b).* The provision for an alternate juror is one often found in modern state codes. See N. C. Code (1935) § 2330 (a); Ohio Gen. Code Ann. (Page, Supp. 1926-1935) § 11419-47; Pa. Stat. Ann. (Purdon, Supp. 1936) Title 17, § 1153; compare U. S. C., Title 28, § 417a (Alternate jurors in criminal trials); 1 N. J. Rev. Stat. (1937) 2:91A-1, 2:91A-2, 2:91A-3.

Provisions for qualifying, drawing, and challenging of jurors are found in U. S. C., Title 28:

- § 411 (Qualifications and exemptions)
- § 412 (Manner of drawing)
- § 413 (Apportioned in district)
- § 415 (Not disqualified because of race or color)
- § 416 (Venire; service and return)
- § 417 (Talesmen for petit jurors)
- § 418 (Special juries)
- § 423 (Jurors not to serve more than once a year)
- § 424 (Challenges)

and D. C. Code (1930) Title 18, §§ 341-360 (Juries and Jury Commission) and Title 6, § 366 (Peremptory challenges).

**RULE 48.—JURIES OF LESS THAN TWELVE—MAJORITY VERDICT**

The parties may stipulate that the jury shall consist of any number less than twelve or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

**NOTES OF ADVISORY COMMITTEE ON RULES**

For provisions in state codes, compare Utah Rev. Stat. Ann. (1933) § 48-O-5 (In civil cases parties may agree in open court on lesser number of jurors); 2 Wash. Rev. Stat. Ann. (Remington, 1932) § 323 (Parties may consent to any number of jurors not less than three).

**RULE 49.—SPECIAL VERDICTS AND INTERROGATORIES****(a) Special verdicts.**

The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

**(b) General verdict accompanied by answer to interrogatories.**

The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a gen-

eral verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the court shall direct the entry of the appropriate judgment upon the verdict and answers. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict or may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, the court shall not direct the entry of judgment but may return the jury for further consideration of its answers and verdict or may order a new trial.

#### NOTES OF ADVISORY COMMITTEE ON RULES

The Federal courts are not bound to follow state statutes authorizing or requiring the court to ask a jury to find a special verdict or to answer interrogatories. *Victor American Fuel Co. v. Peccarich*, 209 Fed. 568 (C. C. A. 8th, 1913) cert. den. 232 U. S. 727, 34 S. Ct. 603, 58 L. Ed. 817 (1914); *Spokane and I. E. R. Co. v. Campbell*, 217 Fed. 518 (C. C. A. 9th, 1914), affd 241 U. S. 497, 36 S. Ct. 683, 60 L. Ed. 1125 (1916); *Simkins, Federal Practice* (1934) § 186. The power of a territory to adopt by statute the practice under *Subdivision (b)* has been sustained. *Walker v. New Mexico and Southern Pacific R. R.*, 165 U. S. 593, 17 S. Ct. 421, 41 L. Ed. 837 (1897); *Southwestern Brewery and Ice Co. v. Schmidt*, 226 U. S. 162, 33 S. Ct. 68, 57 L. Ed. 170 (1912).

Compare Wis Stat. (1935) §§ 270.27, 270.28 and 270.30; Green, *A New Development in Jury Trial* (1927), 13 A. B. A. J. 715; Morgan, *A Brief History of Special Verdicts and Special Interrogatories*, 1923, 32 Yale L. J. 575.

The provisions of U. S. C., Title 28, § 400 (3) (Declaratory judgments authorized; procedure) permitting the submission of issues of fact to a jury are covered by this rule.

#### RULE 50.—MOTION FOR A DIRECTED VERDICT

##### (a) When made: Effect.

A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor.

##### (b) Reservation of decision on motion.

Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Within 10 days after the reception of a verdict, a party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, within 10 days after the jury has been discharged, may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new

trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

#### NOTES OF ADVISORY COMMITTEE ON RULES

*Note to Subdivision (a).* The present federal rule is changed to the extent that the formality of an express reservation of rights against waiver is no longer necessary. See *Sampliner v. Motion Picture Patents Co.*, 254 U. S. 233, 41 S. Ct. 79, 65 L. Ed. 240 (1920); *Union Indemnity Co. v. United States*, 74 F. 2d 645 (C. C. A. 6th, 1935). The requirement that specific grounds for the motion for a directed verdict must be stated settles a conflict in the federal cases. See *Simkins, Federal Practice* (1934) § 189.

*Note to Subdivision (b).* For comparable state practice upheld under the conformity act, see *Baltimore and Carolina Line v. Redman*, 295 U. S. 654, 55 S. Ct. 890, 79 L. Ed. 1636 (1935); compare *Slocum v. New York Life Ins. Co.*, 228 U. S. 364, 33 S. Ct. 523, 57 L. Ed. 879, Ann. Cas. 1914D, 1029 (1913).

See *Northern Ry. Co. v. Page*, 274 U. S. 65, 47 S. Ct. 491, 71 L. Ed. 929 (1927), following the Massachusetts practice of alternative verdicts, explained in Thorndike, *Trial by Jury in United States Courts*, 26 Harv. L. Rev. 732 (1913). See also Thayer, *Judicial Administration*, 63 U. of Pa. L. Rev. 585, 600-601, and note 32 (1915); Scott, *Trial by Jury and the Reform of Civil Procedure*, 31 Harv. L. Rev. 669, 685 (1918); Comment, 34 Mich. L. Rev. 93, 98 (1935).

#### RULE 51.—INSTRUCTIONS TO JURY: OBJECTION

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

#### NOTES OF ADVISORY COMMITTEE ON RULES

Supreme Court Rule 8 requires exceptions to the charge of the court to the jury which shall distinctly state the several matters of law in the charge to which exception is taken. Similar provisions appear in the rules of the various Circuit Courts of Appeals.

#### RULE 52.—FINDINGS BY THE COURT

##### (a) Effect.

In all actions tried upon the facts without a jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court

adopts them, shall be considered as the findings of the court.

(b) Amendment.

Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

NOTES OF ADVISORY COMMITTEE ON RULES

See Equity Rule 70½, as amended Nov. 25, 1935, (Findings of Fact and Conclusions of Law) and U. S. C., Title 28, § 764 (Opinion, findings, and conclusions in action against United States) which are substantially continued in this rule. The provisions of U. S. C., Title 28, §§ 773 (Trial of issues of fact; by court) and 875 (Review in cases tried without a jury) are superseded in so far as they provide a different method of finding facts and a different method of appellate review. The rule stated in the third sentence of Subdivision (a) accords with the decisions on the scope of the review in modern federal equity practice. It is applicable to all classes of findings in cases tried without a jury whether the finding is of a fact concerning which there was conflict of testimony, or of a fact deduced or inferred from uncontradicted testimony. See *Silver King Coalition Mines Co. v. Silver King Consolidated Mining Co.*, 204 Fed. 166 (C. C. A. 8th, 1913), cert. den. 229 U. S. 824, 33 S. Ct. 1051, 57 L. Ed. 1356 (1913); *Warren v. Kepp*, 155 U. S. 265, 15 S. Ct. 83, 39 L. Ed. 144 (1894); *Furrer v. Ferris*, 145 U. S. 132, 12 S. Ct. 821, 36 L. Ed. 649 (1892); *Tilghman v. Proctor*, 125 U. S. 136, 149, 8 S. Ct. 894, 31 L. Ed. 664 (1888); *Kimberly v. Arms*, 129 U. S. 512, 524, 9 S. Ct. 355, 32 L. Ed. 764 (1889). Compare *Kaesser & Blair, Inc., v. Merchants' Ass'n*, 64 F. 2d 575, 576 (C. C. A. 6th, 1933); *Dunn v. Trefry*, 260 Fed. 147, 148 (C. C. A. 1st, 1919).

In the following states findings of fact are required in all cases tried without a jury (waiver by the parties being permitted as indicated at the end of the listing): Arkansas, Civ. Code (Crawford, 1934) § 364; California, Code Civ. Proc. (Deering, 1937) §§ 632, 634; Colorado, 1 Stat. Ann. (1935) Code Civ. Proc. §§ 232, 291 (in actions before referees or for possession of and damages to land); Connecticut, Gen. Stats. §§ 5660, 5664; Idaho, 1 Code Ann. (1932) §§ 7-302 through 7-305; Massachusetts (equity cases), 2 Gen. Laws (Ter. Ed., 1932) ch. 214, § 23; Minnesota, 2 Stat. (Mason, 1927) § 9311; Nevada, 4 Comp. Laws (Hillyer, 1929) § 8768-8784; New Jersey, Sup. Ct. Rule 113, 2 N. J. Misc. 1197, 1239 (1924); New Mexico, Stat. Ann. (Court-right, 1929) § 105-813; North Carolina, Code (1935) § 569; North Dakota, 2 Comp. Laws Ann. (1913) § 7641; Oregon, 2 Code Ann. (1930) § 2-502; South Carolina, Code (Michie, 1932) § 649; South Dakota, 1 Comp. Laws (1929) §§ 2525-2526; Utah, Rev. Stat. Ann. (1933) § 104-26-2, 104-26-3; Vermont (where jury trial waived), Pub. Laws (1933) § 2069; Washington, 2 Rev. Stat. Ann. (Remington, 1932) § 367; Wisconsin, Stat. (1935) § 270.33. The parties may waive this requirement for findings in California, Idaho, North Dakota, Nevada, New Mexico, Utah, and South Dakota.

In the following states the review of findings of fact in all non-jury cases, including jury waived cases, is assimilated to the equity review: Alabama, Code Ann. (Michie, 1928) §§ 9498, 8599; California, Code Civ. Proc. (Deering, 1937) § 956a; but see 20 Calif. Law Rev. 171 (1932); Colorado, *Johnson v. Kountze*, 21 Colo. 486, 43 Pac. 445 (1895), *semble*; Illinois, *Baker v. Hinricks*, 359 Ill. 138, 194 N. E. 284 (1934); *Weininger v. Metropolitan Fire Ins. Co.*, 359 Ill. 584, 195 N. E. 420, 98 A. L. R. 169 (1935); Minnesota, *State Bank of Gibson v. Walter*, 167 Minn. 37, 38, 208 N. W. 428 (1926); *Waldron v. Page*, 191 Minn. 302, 258 N. W. 894

(1934); New Jersey, N. J. Comp. Stat. (2 Cum. Supp. 1911-1924) Title 163, § 303,\* as interpreted in *Bussy v. Hatch*, 95 N. J. L. 56, 111 A. 546 (1920); New York, *York Mortgage Corporation v. Clotar Const. Corp.*, 254 N. Y. 128, 133, 172 N. E. 265 (1930); North Dakota, Comp. Laws Ann. (1913) § 7846, as amended by N. D. Laws 1933, ch. 208, *Minor Holding Co. v. Holt*, 63 N. D. 362, 370, 248 N. W. 315 (1933); Oklahoma, *Wichita Mining and Improvement Co. v. Hale*, 20 Okla. 159, 167, 94 Pac. 530 (1908); South Dakota, *Randall v. Burk Township*, 4 S. D. 337, 57 N. W. 4 (1893); Texas, *Custard v. Flowers*, 14 S. W. 2d 109 (1929); Utah, Rev. Stat. Ann. (1933) § 104-41-5; Vermont, *Roberge v. Troy*, 105 Vt. 134, 163 Atl. 770 (1933); Washington, 2 Rev. Stat. Ann. (Remington, 1932) §§ 309-316; *McCullough v. Puget Sound Realty Associates*, 76 Wash. 700, 136 Pac. 1146 (1913), but see *Cornwall v. Anderson*, 85 Wash. 369, 148 Pac. 1 (1915); West Virginia, *Kinsey v. Carr*, 60 W. Va. 449, 55 S. E. 1004 (1906), *semble*; Wisconsin, Stat. (1935) § 251.09; *Campbell v. Sutliff*, 193 Wis. 370, 214 N. W. 374 (1927); *Gessler v. Erwin Co.*, 182 Wis. 315, 193 N. W. 363 (1924).

For examples of an assimilation of the review of findings of fact in cases tried without a jury to the review at law as made in several states, see Clark and Stone, *Review of Findings of Fact*, 4 U. of Chi. L. Rev. 190, 215 (1937).

\* 1 N. J. Rev. Stat. (1937) 2:27-241, 2:27-363.

RULE 53.—MASTERS

(a) Appointment and compensation.

Each district court with the concurrence of a majority of all the judges thereof may appoint one or more standing masters for its district, and the court in which any action is pending may appoint a special master therein. As used in these rules the word "master" includes a referee, an auditor, and an examiner. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) Reference.

A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it.

(c) Powers.

The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the

production of all books, papers, vouchers, documents, and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Rule 43 (c) for a court sitting without a jury.

(d) **Proceedings.**

(1) *Meetings.* When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) *Witnesses.* The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, he may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.

(3) *Statement of Accounts.* When matters of accounting are in issue before the master, he may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as he directs.

(e) **Report.**

(1) *Contents and Filing.* The master shall prepare a report upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. He shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

(2) *In Non-Jury Actions.* In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. With-

in 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6 (d). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) *In Jury Actions.* In an action to be tried by a jury the master shall not be directed to report the evidence. His findings upon the issues submitted to him are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(4) *Stipulation as to Findings.* The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) *Draft Report.* Before filing his report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

NOTES OF ADVISORY COMMITTEE ON RULES

*Note to Subdivision (a).* This is a modification of Equity Rule 68 (Appointment and Compensation of Masters).

*Note to Subdivision (b).* This is substantially the first sentence of Equity Rule 59 (Reference to Master—Exceptional, Not Usual) extended to actions formerly legal. See *Ex parte Peterson*, 253 U. S. 300, 40 S. Ct. 543, 64 L. Ed. 919 (1920).

*Note to Subdivision (c).* This is Equity Rules 62 (Powers of Master) and 65 (Claimants Before Master—Examinable by Him) with slight modifications. Compare Equity Rules 49 (Evidence Taken Before Examiners, Etc.) and 51 (Evidence Taken Before Examiners, Etc.).

*Note to Subdivision (d).* (1) This is substantially a combination of the second sentence of Equity Rule 59 (Reference to Master—Exceptional, Not Usual) and Equity Rule 60 (Proceedings Before Master). Compare Equity Rule 53 (Notice of Taking Testimony Before Examiner, Etc.).

(2) This is substantially Equity Rule 52 (Attendance of Witnesses Before Commissioner, Master, or Examiner).

(3) This is substantially Equity Rule 63 (Form of Accounts Before Master).

*Note to Subdivision (e).* This contains the substance of Equity Rules 61 (Master's Report—Documents Identified but not Set Forth), 61½ (Master's Report—Presumption as to Correctness—Review), and 66 (Return of Master's Report—Exceptions—Hearing), with modifications as to the form and effect of the report and for inclusion of reports by auditors, referees, and examiners, and references in actions formerly legal. Compare Equity Rules 49 (Evidence Taken Before Examiners, Etc.) and 67 (Costs on Exceptions to Master's Report). See *Camden v. Stuart*, 144 U. S. 104, 12 S. Ct. 585, 36 L. Ed. 363 (1892); *Ex parte Peterson*, 253 U. S. 300, 40 S. Ct. 543, 64 L. Ed. 919 (1920).

VII.—JUDGMENT

RULE 54.—JUDGMENTS; COSTS

(a) **Definition; Form.**

"Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

**(b) Judgment at various stages.**

When more than one claim for relief is presented in an action, the court at any stage, upon a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim, may enter a judgment disposing of such claim. The judgment shall terminate the action with respect to the claim so disposed of and the action shall proceed as to the remaining claims. In case a separate judgment is so entered, the court by order may stay its enforcement until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

**(c) Demand for judgment.**

A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

**(d) Costs.**

Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court.

**NOTES OF ADVISORY COMMITTEE ON RULES**

*Note to Subdivision (a).* The second sentence is derived substantially from Equity Rule 71 (Form of Decree).

*Note to Subdivision (b).* This provides for the separate judgment of equity and code practice. See Wis. Stat. (1935) § 270.54; Compare N. Y. C. P. A. (1937) § 476.

*Note to Subdivision (c).* For the limitation on default contained in the first sentence, see 2 N. D. Comp. Laws Ann. (1913) § 7680; N. Y. C. P. A. (1937) § 479. Compare English Rules Under the Judicature Act (The Annual Practice, 1937) O. 13, r. r. 3-12. The remainder is a usual code provision. It makes clear that a judgment should give the relief to which a party is entitled, regardless of whether it is legal or equitable or both. This necessarily includes the deficiency judgment in foreclosure cases formerly provided for by Equity Rule 10 (Decree for Deficiency in Foreclosures, Etc.).

*Note to Subdivision (d).* For the present rule in common law actions, see *Ex parte Peterson*, 253 U. S. 300, 40 S. Ct 543, 64 L. Ed. 919 (1920); *Payne, Costs in Common Law Actions in the Federal Courts* (1935), 21 Va. L. Rev. 397.

The provisions as to costs in actions in *forma pauperis* contained in U. S. C., Title 28, §§ 832-836 are unaffected by this rule. Other sections of U. S. C., Title 28, which are unaffected by this rule are: §§ 815 (Costs; plaintiff not entitled to, when), 821 (Costs; infringement of patent; disclaimer), 825 (Costs; several actions), 829 (Costs; attorney liable for, when), and 830 (Costs; bill of; taxation).

The provisions of the following and similar statutes as to costs against the United States and its officers and agencies are specifically continued:

U. S. C., Title 15, §§ 77v (a), 78aa, 79y (Securities and Exchange Commission)

U. S. C., Title 16, § 825p (Federal Power Commission)

U. S. C., Title 26, §§ 1569 (d) and 1645 (d) (Internal revenue actions)

U. S. C., Title 26, § 1670 (b) (2) (Reimbursement of costs of recovery against revenue officers)

U. S. C., Title 28, § 817 (Internal revenue actions)

U. S. C., Title 28, § 836 (United States—actions in *forma pauperis*)

U. S. C., Title 28, § 842 (Actions against revenue officers)

U. S. C., Title 28, § 870 (United States—in certain cases)

U. S. C., Title 28, § 906 (United States—foreclosure actions)

U. S. C., Title 47, § 401 (Communications Commission)

The provisions of the following and similar statutes as to costs are unaffected:

U. S. C., Title 7, § 210 (f) (Actions for damages based on an order of the Secretary of Agriculture under Stockyards Act)

U. S. C., Title 7, § 499g (c) (Appeals from reparations orders of Secretary of Agriculture under Perishable Commodities Act)

U. S. C., Title 8, § 45 (Action against district attorneys in certain cases)

U. S. C., Title 15, § 15 (Actions for injuries due to violation of antitrust laws)

U. S. C., Title 15, § 72 (Actions for violation of law forbidding importation or sale of articles at less than market value or wholesale prices)

U. S. C., Title 15, § 77k (Actions by persons acquiring securities registered with untrue statements under Securities Act of 1933)

U. S. C., Title 15, § 781 (e) (Certain actions under the Securities Exchange Act of 1934)

U. S. C., Title 15, § 78r (Similar to 781 (e))

U. S. C., Title 15, § 96 (Infringement of trade-mark—damages)

U. S. C., Title 15, § 99 (Infringement of trade-mark—injunctions)

U. S. C., Title 15, § 124 (Infringement of trade-mark—damages)

U. S. C., Title 19, § 274 (Certain actions under customs law)

U. S. C., Title 30, § 32 (Action to determine right to possession of mineral lands in certain cases)

U. S. C., Title 31, §§ 232 and 234 (Action for making false claims upon United States)

U. S. C., Title 33, § 926 (Actions under Harbor Workers' Compensation Act)

U. S. C., Title 35, § 67 (Infringement of patent—damages)

U. S. C., Title 35, § 69 (Infringement of patent—pleading and proof)

U. S. C., Title 35, § 71 (Infringement of patent—when specification too broad)

U. S. C., Title 45, § 153p (Actions for non-compliance with an order of National R. R. Adjustment Board for payment of money)

U. S. C., Title 46, § 38 (Action for penalty for failure to register vessel)

U. S. C., Title 46, § 829 (Action based on non-compliance with an order of Maritime Commission for payment of money)

U. S. C., Title 46, § 941 (Certain actions under Ship Mortgage Act)

U. S. C., Title 46, § 1227 (Actions for damages for violation of certain provisions of the Merchant Marine Act, 1936)

U. S. C., Title 47, § 206 (Actions for certain violations of Communications Act of 1934)

U. S. C., Title 49, § 16 (2) (Action based on non-compliance with an order of I. C. C. for payment of money)

**RULE 55.—DEFAULT****(a) Entry.**

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.

**(b) Judgment.**

Judgment by default may be entered as follows:

(1) *By the Clerk.* When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if he has been defaulted for failure to appear and if he is not an infant or incompetent person.

(2) *By the Court.* In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States.

**(c) Setting aside default.**

For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60 (b).

**(d) Plaintiffs, counterclaimants, cross-claimants.**

The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54 (c).

**(e) Judgment against the United States.**

No judgment by default shall be entered against the United States or an officer or agency thereof unless the claimant establishes his claim or right to relief by evidence satisfactory to the court.

**NOTES OF ADVISORY COMMITTEE ON RULES**

This represents the joining of the equity decree *pro confesso* (Equity Rules 12 (Issue of Subpoena—Time for Answer), 16 (Defendant to Answer—Default—Decree *Pro Confesso*), 17 (Decree *Pro Confesso* to be Followed by Final Decree—Setting Aside Default), 29 (Defenses—How Presented), 31 (Reply—When Required—When Cause at Issue)) and the judgment by default now governed by U. S. C., Title 28, § 724 (Conformity act). For dismissal of an action for failure to comply with these rules or any order of the court, see Rule 41 (b).

*Note to Subdivision (a).* The provision for the entry of default comes from the Massachusetts practice, 2 Mass. Gen. Laws (Ter. Ed., 1932) ch. 231, § 57. For affidavit of default, see 2 Minn. Stat. (Mason, 1927) § 9256.

*Note to Subdivision (b).* The provision in paragraph (1) for the entry of judgment by the clerk when plaintiff claims a sum certain is found in the N. Y. C. P. A. (1937) § 485, in Calif. Code Civ. Proc. (Deering, 1937)

§ 585 (1), and in Conn. Practice Book (1934) § 47. For provisions similar to paragraph (2), compare Calif. Code, *supra*, § 585 (2); N. Y. C. P. A. (1937) § 490; 2 Minn. Stat. (Mason, 1927) § 9256 (3); 2 Wash. Rev. Stat. Ann. (Remington, 1932) § 411 (2). U. S. C., Title 28, § 785 (Action to recover forfeiture in bond) and similar statutes are preserved by the last clause of paragraph (2).

*Note to Subdivision (e).* This restates substantially the last clause of U. S. C., Title 28, § 763 (Action against the United States under the Tucker Act). As this rule governs in all actions against the United States, U. S. C., Title 28, § 45 (Practice and procedure in certain cases under the interstate commerce laws) and similar statutes are modified in so far as they contain anything inconsistent therewith.

**RULE 56.—SUMMARY JUDGMENT****(a) For claimant.**

A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the pleading in answer thereto has been served, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

**(b) For defending party.**

A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

**(c) Motion and proceedings thereon.**

The motion shall be served at least 10 days before the time specified for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

**(d) Case not fully adjudicated on motion.**

If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

**(e) Form of affidavits; further testimony.**

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be



supplemented or opposed by depositions or by further affidavits.

(f) When affidavits are unavailable.

Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits made in bad faith.

Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

#### NOTES OF ADVISORY COMMITTEE ON RULES

This rule is applicable to all actions, including those against the United States or an officer or agency thereof.

Summary judgment procedure is a method for promptly disposing of actions in which there is no genuine issue as to any material fact. It has been extensively used in England for more than 50 years and has been adopted in a number of American states. New York, for example, has made great use of it. During the first nine years after its adoption there, the records of New York county alone show 5,600 applications for summary judgments. *Report of the Commission on the Administration of Justice in New York State* (1934), p. 383. See also Third Annual Report of the Judicial Council of the State of New York (1937), p. 30.

In England it was first employed only in cases of liquidated claims, but there has been a steady enlargement of the scope of the remedy until it is now used in actions to recover land or chattels and in all other actions at law, for liquidated or unliquidated claims, except for a few designated torts and breach of promise of marriage. English Rules Under the Judicature Act (*The Annual Practice*, 1937) O. 3, r. 6; Orders 14, 14A, and 15; see also O. 32, r. 6, authorizing an application for judgment at any time upon admissions. In Michigan (3 Comp. Laws (1929) § 14260) and Illinois (Ill. Rev. Stat. (1937) ch. 110, §§ 181, 259.15, 259.16), it is not limited to liquidated demands. New York (N. Y. R. C. P. (1937) Rule 113; see also Rule 107) has brought so many classes of actions under the operation of the rule that the Commission on Administration of Justice in New York State (1934) recommend that all restrictions be removed and that the remedy be available "in any action" (p. 287). For the history and nature of the summary judgment procedure and citations of state statutes, see Clark and Samenow, *The Summary Judgment* (1929), 38 Yale L. J. 423.

*Note to Subdivision (d).* See Rule 16 (Pre-Trial Procedure; Formulating Issues) and the *Note* thereto.

*Note to Subdivisions (e) and (f).* These are similar to rules in Michigan. Mich. Court Rules Ann. (Searl, 1933) Rule 30.

#### RULE 57.—DECLARATORY JUDGMENTS

The procedure for obtaining a declaratory judgment pursuant to Section 274 (d) of the Judicial Code, as amended, U. S. C., Title 28, § 400, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does

not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

#### NOTES OF ADVISORY COMMITTEE ON RULES

The fact that a declaratory judgment may be granted "whether or not further relief is or could be prayed" indicates that declaratory relief is alternative or cumulative and not exclusive or extraordinary. A declaratory judgment is appropriate when it will "terminate the controversy" giving rise to the proceeding. Inasmuch as it often involves only an issue of law on undisputed or relatively undisputed facts, it operates frequently as a summary proceeding, justifying docketing the case for early hearing as on a motion, as provided for in California (Code Civ. Proc. (Deering, 1937) § 1062a), Michigan (3 Comp. Laws (1929) § 13904), and Kentucky (Codes (Carroll, 1932) Civ. Pract. § 639a-3).

The "controversy" must necessarily be "of a justiciable nature, thus excluding an advisory decree upon a hypothetical state of facts." *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 325, 56 S. Ct. 466, 473, 80 L. Ed. 688, 699 (1936). The existence or nonexistence of any right, duty, power, liability, privilege, disability, or immunity or of any fact upon which such legal relations depend, or of a status, may be declared. The petitioner must have a practical interest in the declaration sought and all parties having an interest therein or adversely affected must be made parties or be cited. A declaration may not be rendered if a special statutory proceeding has been provided for the adjudication of some special type of case, but general ordinary or extraordinary legal remedies, whether regulated by statute or not, are not deemed special statutory proceedings.

When declaratory relief will not be effective in settling the controversy, the court may decline to grant it. But the fact that another remedy would be equally effective affords no ground for declining declaratory relief. The demand for relief shall state with precision the declaratory judgment desired, to which may be joined a demand for coercive relief, cumulatively or in the alternative; but when coercive relief only is sought but is deemed ungratable or inappropriate, the court may *sua sponte*, if it serves a useful purpose, grant instead a declaration of rights. *Hasselbring v. Koepke*, 263 Mich. 466, 248 N. W. 869, 93 A. L. R. 1170 (1933). Written instruments, including ordinances and statutes, may be construed before or after breach at the petition of a properly interested party, process being served on the private parties or public officials interested. In other respects the Uniform Declaratory Judgment Act affords a guide to the scope and function of the Federal act. Compare *Aetna Life Insurance Co. v. Haworth*, 300 U. S. 227, 57 S. Ct. 461, 81 L. Ed. 617, 108 A. L. R. 1000 (1937); *Nashville, Chattanooga & St. Louis Ry. v. Wallace*, 288 U. S. 249, 53 S. Ct. 345, 77 L. Ed. 730, 87 A. L. R. 1191 (1933); *Gully, Tax Collector v. Interstate Natural Gas Co.*, 82 F. 2d 145 (C. C. A. 5th, 1936); *Ohio Casualty Ins. Co. v. Plummer*, 13 F. Supp. 169 (S. D. Tex., 1935); *Borchard, Declaratory Judgments* (1934), *passim*.

#### RULE 58.—ENTRY OF JUDGMENT

Unless the court otherwise directs, judgment upon the verdict of a jury shall be entered forthwith by the clerk; but the court shall direct the appropriate judgment to be entered upon a special verdict or upon a general verdict accompanied by answers to interrogatories returned by a jury pursuant to Rule 49. When the court directs the entry of a judgment that a party recover only money or costs or that there be no recovery, the clerk shall enter judgment forthwith upon receipt by him of the direction; but when the court directs entry of judgment for other relief, the judge shall promptly settle or approve the form of the judgment and direct that it be entered by the clerk. The notation of a judgment in

the civil docket as provided by Rule 79 (a) constitutes the entry of the judgment; and the judgment is not effective before such entry.

#### NOTES OF ADVISORY COMMITTEE ON RULES

See Wis. Stat. (1935) § 270.31 (judgment entered forthwith on verdict of jury unless otherwise ordered), § 270.65 (where trial is by the court, entered by direction of the court), § 270.63 (entered by clerk on judgment on admitted claim for money). Compare 1 Idaho Code Ann. (1932) § 7-1101, and 4 Mont. Rev. Codes Ann. (1935) § 9403, which provide that judgment in jury cases be entered by clerk within 24 hours after verdict unless court otherwise directs. Conn. Practice Book (1934) § 200, provides that all judgments shall be entered within one week after rendition. In some States such as Washington, 2 Rev. Stat. Ann. (Remington, 1932) § 431, in jury cases the judgment is entered two days after the return of verdict to give time for making motion for new trial; § 435 (*ibid.*), provides that all judgments shall be entered by the clerk, subject to the court's direction.

#### RULE 59.—NEW TRIALS

##### (a) Grounds.

A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

##### (b) Time for motion.

A motion for a new trial shall be served not later than 10 days after the entry of the judgment, except that a motion for a new trial on the ground of newly discovered evidence may be made after the expiration of such period and before the expiration of the time for appeal, with leave of court obtained on notice and hearing and on a showing of due diligence.

##### (c) Time for serving affidavits.

When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

##### (d) On initiative of court.

Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party, and in the order shall specify the grounds therefor.

#### NOTES OF ADVISORY COMMITTEE ON RULES

This rule represents an amalgamation of the petition for rehearing of Equity Rule 69 (Petition for Rehearing) and the motion for new trial of U. S. C., Title 28, § 391

(New trials; harmless error), made in the light of the experience and provision of the code States. Compare Calif. Code Civ. Proc. (Deering, 1937) §§ 656-663a. U. S. C., Title 28, § 391 (New trials; harmless error) is thus substantially continued in this rule. U. S. C., Title 28, § 840 (Executions; stay on conditions) is modified insofar as it contains time provisions inconsistent with *Subdivision* (b). For the effect of the motion for new trial upon the time for taking an appeal see *Morse v. United States*, 270 U. S. 151, 46 S. Ct. 241, 70 L. Ed. 518 (1926); *Aspen Mining and Smelting Co. v. Billings*, 150 U. S. 31, 14 S. Ct. 4, 37 L. Ed. 986 (1893).

For partial new trials which are permissible under *Subdivision* (a), see *Gasoline Products Co., Inc. v. Champlin Refining Co.*, 283 U. S. 494, 51 S. Ct. 513, 75 L. Ed. 1188 (1931); *Schuerholz v. Roach*, 58 F. 2d 32 (C. C. A. 4th, 1932); *Simmons v. Fish*, 210 Mass. 563, 97 N. E. 102, Ann. Cas. 1912D, 588 (1912) (sustaining and recommending the practice and citing Federal cases and cases in accord from about sixteen States and *contra* from three States). The procedure in several States provides specifically for partial new trials. Ariz. Rev. Code Ann. (Struckmeyer, 1928) § 3852; Calif. Code Civ. Proc. (Deering, 1937) §§ 657, 662; Ill. Rev. Stat. (1937) ch. 110, § 216 (par. (f)); Md. Ann. Code (Bagby, 1924) Art. 5, §§ 25, 26; Mich. Court Rules Ann. (Searl, 1933) Rule 47, § 2; Miss. Sup. Ct. Rule 12, 161 Miss. 903, 905 (1931); N. J. Sup. Ct. Rules 131, 132, 147, 2 N. J. Misc. 1197, 1246-1251, 1255 (1924); 2 N. D. Comp. Laws Ann. (1913), § 7844, as amended by N. D. Laws 1927, ch. 214.

#### RULE 60.—RELIEF FROM JUDGMENT OR ORDER

##### (a) Clerical mistakes.

Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

##### (b) Mistake; inadvertence; surprise; excusable neglect.

On motion the court, upon such terms as are just, may relieve a party or his legal representative from a judgment, order, or proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect. The motion shall be made within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken. A motion under this subdivision does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court (1) to entertain an action to relieve a party from a judgment, order, or proceeding, or (2) to set aside within one year, as provided in Section 57 of the Judicial Code, U. S. C., Title 28, § 118, a judgment obtained against a defendant not actually personally notified.

#### NOTES OF ADVISORY COMMITTEE ON RULES

*Note to Subdivision* (a). See Equity Rule 72 (Correction of Clerical Mistakes in Orders and Decrees); Mich. Court Rules Ann. (Searl, 1933) Rule 48, § 3; 2 Wash. Rev. Stat. Ann. (Remington, 1932) § 464 (3); Wyo. Rev. Stat. Ann. (Courtright, 1931) § 89-2301 (3). For an example of a very liberal provision for the correction of clerical errors and for amendment after judgment, see Va. Code Ann. (Michie, 1936) §§ 6329, 6333.

*Note to Subdivision* (b). Application to the court under this subdivision does not extend the time for taking an appeal, as distinguished from the motion for new trial. This section is based upon Calif. Code Civ. Proc. (Deering, 1937) § 473. See also N. Y. C. P. A. (1937) § 108; 2 Minn. Stat. (Mason, 1927) § 9283.

For the independent action to relieve against mistake, etc., see *Doble, Federal Procedure*, pages 760-765, compare 639; and *Simkins, Federal Practice*, ch. CXXI (pp. 820-830) and ch. CXXII (pp. 831-834), compare § 214.

#### RULE 61.—HARMLESS ERROR

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

#### NOTES OF ADVISORY COMMITTEE ON RULES

A combination of U. S. C., Title 28, §§ 391 (New trials; harmless error) and 777 (Defects of form; amendments) with modifications. See *McCandless v. United States*, 298 U. S. 342, 56 S. Ct. 764, 80 L. Ed. 1205 (1936). Compare Equity Rule 72 (Correction of Clerical Mistakes in Orders and Decrees); and last sentence of Equity Rule 46 (Trial—Testimony Usually Taken in Open Court—Rulings on Objections to Evidence). For the last sentence see the last sentence of Equity Rule 19 (Amendments Generally).

#### RULE 62.—STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

##### (a) Automatic stay; exceptions—Injunctions, receiverships, and patent accountings.

Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action, or a judgment or order directing an accounting in an action for infringement of letters patent, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

##### (b) Stay on motion for new trial or for judgment.

In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52 (b).

##### (c) Injunction pending appeal.

When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party. If the judgment

appealed from is rendered by a district court of three judges specially constituted pursuant to a statute of the United States, no such order shall be made except (1) by such court sitting in open court or (2) by the assent of all the judges of such court evidenced by their signatures to the order.

##### (d) Stay upon appeal.

When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

##### (e) Stay in favor of the United States or agency thereof.

When an appeal is taken by the United States or an officer or agency thereof or by direction of any department of the Government of the United States and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

##### (f) Stay according to State law.

In any state in which a judgment is a lien upon the property of the judgment debtor and in which the judgment debtor is entitled to a stay of execution, a judgment debtor is entitled, in the district court held therein, to such stay as would be accorded him had the action been maintained in the courts of that state.

##### (g) Power of appellate court not limited.

The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered; and these rules do not supersede the provisions of Section 210 of the Judicial Code, as amended, U. S. C., Title 28, § 47a, or of other statutes of the United States to the effect that stays pending appeals to the Supreme Court may be granted only by that court or a justice thereof.

#### NOTES OF ADVISORY COMMITTEE ON RULES

*Note to Subdivision (a).* The first sentence states the substance of the last sentence of U. S. C., Title 28, § 874 (Supersedeas). The remainder of the subdivision states the substance of the last clause of U. S. C., Title 28, § 227 (Appeals in proceedings for injunctions; receivers; and admiralty), and of § 227a (Appeals in suits in equity for infringement of letters patent for inventions; stay of proceedings for accounting), but extended to include final as well as interlocutory judgments.

*Note to Subdivision (b).* This modifies U. S. C., Title 28, § 840 (Executions; stay on conditions).

*Note to Subdivision (c).* Compare Equity Rule 74 (Injunction Pending Appeal); and *Cumberland Telephone and Telegraph Co. v. Louisiana Public Service Commission*, 260 U. S. 212, 43 S. Ct. 75, 67 L. Ed. 217 (1922). See *Simkins, Federal Practice* (1934) § 916 in regard to the effect of appeal on injunctions and the giving of bonds. See U. S. C., Title 6 (Official and Penal Bonds) for bonds by surety companies. For statutes providing for a specially constituted district court of three judges, see:

## U. S. C., Title 7:

§ 217 (Proceedings for suspension of orders of Secretary of Agriculture under Stockyards Act)—by reference.

§ 499k (Injunctions; application of injunction laws governing orders of Interstate Commerce Commission to orders of Secretary of Agriculture under Perishable Commodities Act)—by reference.

## U. S. C., Title 15:

§ 28 (Antitrust laws; suits against monopolies expedited)

## U. S. C., Title 28:

§ 47 (Injunctions as to orders of Interstate Commerce Commission, etc.)

§ 380 (Injunctions; alleged unconstitutionality of State statutes.

§ 380a (Same; constitutionality of federal statute)

## U. S. C., Title 49:

§ 44 (Suits in equity under interstate commerce laws; expedition of suits)

*Note to Subdivision (d).* This modifies U. S. C., Title 28, § 874 (Supersedeas). See Rule 36 (2), Rules of the Supreme Court of the United States, which governs supersedeas bonds on direct appeals to the Supreme Court, and Rule 73 (d), of these rules, which governs supersedeas bonds on appeals to a circuit court of appeals. The provisions governing supersedeas bonds in both kinds of appeals are substantially the same.

*Note to Subdivision (e).* This states the substance of U. S. C., Title 28, § 870 (Bond; not required of the United States).

*Note to Subdivision (f).* This states the substance of U. S. C., Title 28, § 841 (Executions; stay of one term) with appropriate modification to conform to the provisions of Rule 6 (c) as to terms of court.

## RULE 63.—DISABILITY OF A JUDGE

If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

## NOTES OF ADVISORY COMMITTEE ON RULES

This rule adapts and extends the provisions of U. S. C., Title 28, § 776 (Bill of exceptions; authentication; signing of by judge) to include all duties to be performed by the judge after verdict or judgment. The statute is therefore superseded.

## VIII.—PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

## RULE 64.—SEIZURE OF PERSON OR PROPERTY

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the state in which the district court is held, existing at the time the remedy is sought, subject to the following qualifications: (1) any existing statute of the United States governs to the extent to which it is applicable; (2) the action in which any of the foregoing remedies is used shall be commenced and prosecuted or,

if removed from a state court, shall be prosecuted after removal, pursuant to these rules. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether by state procedure the remedy is ancillary to an action or must be obtained by an independent action.

## NOTES OF ADVISORY COMMITTEE ON RULES

This rule adopts the existing Federal law, except that it specifies the applicable State law to be that of the time when the remedy is sought. Under U. S. C., Title 28, § 726 (Attachments as provided by State laws) the plaintiff was entitled to remedies by attachment or other process which were on June 1, 1872, provided by the applicable State law, and the district courts might, from time to time, by general rules, adopt such State laws as might be in force. This statute is superseded as are district court rules which are rendered unnecessary by the rule.

*Lis pendens.* No rule concerning *lis pendens* is stated, for this would appear to be a matter of substantive law affecting State laws of property. It has been held that in the absence of a State statute expressly providing for the recordation of notice of the pendency of Federal actions, the commencement of a Federal action is notice to all persons affected. *King v. Davis*, 137 Fed. 198 (W. D. Va., 1903). It has been held, however, that when a State statute does so provide expressly, its provisions are binding. *United States v. Calcasieu Timber Co.*, 236 Fed. 196 (C. C. A. 5th, 1916).

For statutes of the United States on attachment, see e. g.:

## U. S. C., Title 28:

- § 737 (Attachment in postal suits)
- § 738 (Attachment; application for warrant)
- § 739 (Attachment; issue of warrant)
- § 740 (Attachment; trial of ownership of property)
- § 741 (Attachment; investment of proceeds of attached property)
- § 742 (Attachment; publication of attachment)
- § 743 (Attachment; personal notice of attachment)
- § 744 (Attachment; discharge; bond)
- § 745 (Attachment; accrued rights not affected)
- § 746 (Attachments dissolved in conformity with State laws)

For statutes of the United States on garnishment, see e. g.:

## U. S. C., Title 28:

- § 748 (Garnishees in suits by United States against a corporation)
- § 749 (Same; issue tendered on denial of indebtedness)
- § 750 (Same; garnishee failing to appear)

For statutes of the United States on arrest, see e. g.:

## U. S. C., Title 28:

- § 376 (Writs of ne exeat)
- § 755 (Special bail in suits for duties and penalties)
- § 756 (Defendant giving bail in one district and committed in another)
- § 757 (Defendant giving bail in one district and committed in another; defendant held until judgment in first suit)
- § 758 (Bail and affidavits; taking by commissioners)
- § 759 (Calling of bail in Kentucky)
- § 760 (Clerks may take bail de bene esse)
- § 843 (Imprisonment for debt)
- § 844 (Imprisonment for debt; discharge according to State laws)
- § 845 (Imprisonment for debt; jail limits)

For statutes of the United States on replevin, see, e. g.:

## U. S. C., Title 28:

- § 747 (Replevy of property taken under revenue laws)

## RULE 65.—INJUNCTIONS

## (a) Preliminary; notice.

No preliminary injunction shall be issued without notice to the adverse party.

## (b) Temporary restraining order; notice; hearing; duration.

No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

## (c) Security.

No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States or of an officer or agency thereof.

## (d) Form and scope of injunction or restraining order.

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

## (e) Employer and employee; interpleader; constitutional cases.

These rules do not modify the Act of October 15, 1914, ch. 323, §§ 1 and 20 (38 Stat. 730), U. S. C., Title 29, §§ 52 and 53, or the Act of March 23, 1932, ch. 90 (47 Stat. 70), U. S. C., Title 29, ch. 6, relating to temporary restraining orders and preliminary injunctions in actions affecting employer and employee; or the provisions of Section 24 (26) of the Judicial Code as amended, U. S. C., Title 28, § 41 (26), relating to preliminary injunctions in actions of interpleader or in the nature of interpleader; or the Act of August 24, 1937, ch. 754, § 3, relating to actions to enjoin the enforcement of acts of Congress.

## NOTES OF ADVISORY COMMITTEE ON RULES

*Note to Subdivisions (a) and (b).* These are taken from U. S. C., Title 28, § 381 (Injunctions; preliminary injunctions and temporary restraining orders).

*Note to Subdivision (c).* Except for the last sentence, this is substantially U. S. C., Title 28, § 382 (Injunctions; security on issuance of). The last sentence continues the following and similar statutes which expressly except the United States or an officer or agency thereof from such security requirements: U. S. C., Title 15, §§ 77t (b), 78u (e), and 79r (f) (Securities and Exchange Commission). It also excepts the United States or an officer or agency thereof from such security requirements in any action in which a restraining order or interlocutory judgment of injunction issues in its favor whether there is an express statutory exception from such security requirements or not.

See U. S. C., Title 6 (Official and Penal Bonds) for bonds by surety companies.

*Note to Subdivision (d).* This is substantially U. S. C., Title 28, § 383 (Injunctions; requisites of order; binding effect).

*Note to Subdivision (e).* The words "relating to temporary restraining orders and preliminary injunctions in actions affecting employer and employee" are words of description and not of limitation.

Compare Equity Rule 73 (Preliminary Injunctions and Temporary Restraining Orders) which is substantially equivalent to the statutes.

For other statutes dealing with injunctions which are continued, see e. g.:

## U. S. C., Title 28:

- § 46 (Suits to enjoin orders of Interstate Commerce Commission to be against United States)
- § 47 (Injunctions as to orders of Interstate Commerce Commission; appeal to Supreme Court; time for taking)
- § 378 (Injunctions; when granted)
- § 379 (Injunctions; stay in State courts)
- § 380 (Injunctions; alleged unconstitutionality of State statutes; appeal to Supreme Court)
- § 380a (Injunctions; constitutionality of Federal statute; application for hearing; appeal to Supreme Court)

## U. S. C., Title 7:

- § 216 (Court proceedings to enforce orders; injunction)
- § 217 (Proceedings for suspension of orders)

## U. S. C., Title 15:

- § 4 (Jurisdiction of courts; duty of district attorney; procedure)
- § 25 (Restraining violations; procedure)
- § 26 (Injunctive relief for private parties; exceptions)
- § 77t (b) (Injunctions and prosecution of offenses)

## RULE 66.—RECEIVERS

The practice in the administration of estates by receivers or by other similar officers appointed by the court shall be in accordance with the practice heretofore followed in the courts of the United States

or as provided in rules promulgated by the district courts, but all appeals in receivership proceedings are subject to these rules.

#### RULE 67.—DEPOSIT IN COURT

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing. Money paid into court under this rule shall be deposited and withdrawn in accordance with the provisions of Sections 995 and 996, Revised Statutes, as amended, U. S. C., Title 28, §§ 851, 852; the Act of June 26, 1934, ch. 756, § 23 (48 Stat. 1236), U. S. C., Title 31, § 725v; or any like statute.

#### NOTES OF ADVISORY COMMITTEE ON RULES

This rule provides for deposit in court generally, continuing similar special provisions contained in such statutes as U. S. C., Title 28, § 41 (26) (Original jurisdiction of bills of interpleader, and of bills in the nature of interpleader). See generally *Howard v. United States*, 184 U. S. 676, 22 S. Ct. 543, 46 L. Ed. 754 (1902); United States Supreme Court Admiralty Rules (1920), Rules 37 (Bringing Funds into Court), 41 (Funds in Court Registry), and 42 (Claims Against Proceeds in Registry). With the first sentence, compare English Rules Under the Judicature Act (The Annual Practice, 1937) O. 22, r. 1 (1)

#### RULE 68.—OFFER OF JUDGMENT

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. If the offer is not so accepted it shall be deemed withdrawn and evidence thereof is not admissible. If the adverse party fails to obtain a judgment more favorable than that offered, he shall not recover costs in the district court from the time of the offer but shall pay costs from that time.

#### NOTES OF ADVISORY COMMITTEE ON RULES

See 2 Minn. Stat. (Mason, 1927) § 9323; 4 Mont. Rev. Codes Ann. (1935) § 9770; N. Y. C. P. A. (1937) § 177.

For the recovery of costs against the United States, see Rule 54 (d).

#### RULE 69.—EXECUTION

##### (a) In general.

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable. In aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may examine any person, including the

judgment debtor, in the manner provided in these rules for taking depositions or in the manner provided by the practice of the state in which the district court is held.

##### (b) Against certain public officers.

When a judgment has been entered against a collector or other officer of revenue under the circumstances stated in Section 989, Revised Statutes, U. S. C., Title 28, § 842, or against an officer of Congress in an action mentioned in the Act of March 3, 1875, ch. 130, § 8 (18 Stat. 401), U. S. C., Title 2, § 118, and when the court has given the certificate of probable cause for his act as provided in those statutes, execution shall not issue against the officer or his property but the final judgment shall be satisfied as provided in such statutes.

#### NOTES OF ADVISORY COMMITTEE ON RULES

*Note to Subdivision (a).* This follows in substance U. S. C., Title 28, §§ 727 (Executions as provided by State laws) and 729 (Proceedings in vindication of civil rights), except that, as in the similar case of attachments (see note to Rule 64), the rule specifies the applicable State law to be that of the time when the remedy is sought, and thus renders unnecessary, as well as supersedeas, local district court rules.

Statutes of the United States on execution, when applicable, govern under this rule. Among these are:

##### U. S. C., Title 12:

§ 91 (Transfers by bank and other acts in contemplation of insolvency)

§ 632 (Jurisdiction of United States district courts in cases arising out of foreign banking jurisdiction where Federal reserve bank a party)

##### U. S. C., Title 19:

§ 199 (Judgments for customs duties, how payable)

##### U. S. C., Title 28:

§ 1610 (a) (Surrender of property subject to distraint)

##### U. S. C., Title 28:

§ 122 (Creation of new district or transfer of territory; lien)

§ 350 (Time for making application for appeal or certiorari; stay pending application for certiorari)

§ 489 (District Attorneys; reports to Department of Justice)

§ 574 (Marshals, fees enumerated)

§ 786 (Judgments for duties; collected in coin)

§ 811 (Interest on judgments)

§ 838 (Executions; run in all districts of State)

§ 839 (Executions; run in every State and Territory)

§ 840 (Executions; stay on conditions), as modified by Rule 62 (b)

§ 841 (Executions; stay of one term), as modified by Rule 62 (f)

§ 842 (Executions; against officers of revenue in cases of probable cause), as incorporated in Subdivision (b) of this rule

§ 843 (Imprisonment for debt)

§ 844 (Imprisonment for debt; discharge according to State laws)

§ 845 (Imprisonment for debt; jail limits)

§ 846 (Fieri Facias; appraisal of goods; appraisers)

§ 847 (Sales; real property under order or decree)

§ 848 (Sales; personal property under order or decree)

§ 849 (Sales; necessity of notice)

§ 850 (Sales; death of marshal after levy or after sale)

§ 869 (Bond in former error and on appeal), as incorporated in Rule 73 (c)

§ 874 (Supersedeas), as modified by Rules 62 (d) and 73 (d)

- U. S. C., Title 31:  
 § 195 (Purchase on execution)
- U. S. C., Title 33:  
 § 918 (Collection of defaulted payments)
- U. S. C., Title 49:  
 § 74 (g) (Causes of action arising out of Federal control of railroads; execution and other process)

Special statutes of the United States on exemption from execution are also continued. Among these are:

- U. S. C., Title 2:  
 § 118 (Actions against officers of Congress for official acts)
- U. S. C., Title 5:  
 § 729 (Federal employees retirement annuities not subject to assignment, execution, levy, or other legal process)
- U. S. C., Title 10:  
 § 610 (Exemption of enlisted men from arrest on civil process)
- U. S. C., Title 22:  
 § 21 (h) (Foreign service retirement and disability system; establishment; rules and regulations; annuities; nonassignable; exemption from legal process)
- U. S. C., Title 33:  
 § 916 (Assignment and exemption from claims of creditors) Longshoremen's and Harbor-workers' Compensation Act)
- U. S. C., Title 38:  
 § 54 (Attachment, levy or seizure of moneys due pensioners prohibited)
- § 393 (Army and Navy Medal of Honor Roll; pensions additional to other pensions; liability to attachment, etc.) Compare Title 34, § 365 (c) (Medal of Honor Roll; special pension to persons enrolled)
- § 618 (Benefits exempt from seizure under process and taxation; no deductions for indebtedness to United States)
- U. S. C., Title 43:  
 § 175 (Exemption from execution of homestead land)
- U. S. C., Title 48:  
 § 1371c (Panama Canal and railroad retirement annuities, exemption from execution and so forth)

#### RULE 70.—JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the district, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

#### NOTES OF ADVISORY COMMITTEE ON RULES

Compare Equity Rules 7 (Process, Mesne and Final), 8 (Enforcement of Final Decrees), and 9 (Writ of Assistance). To avoid possible confusion, both old and new denominations for attachment (sequestration) and execution (assistance) are used in this rule. Compare with the provision in this rule that the judgment may itself vest title, 6 Tenn. Ann. Code (Williams, 1934), § 10594; 2 Conn. Gen. Stat. (1930), § 5455; N. M. Stat. Ann. (Court-right, 1929), § 117-117; 2 Ohio Gen. Code Ann. (Page, 1926), § 11590; and England, Supreme Court of Judicature Act (1925), § 47.

#### RULE 71.—PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES

When an order is made in favor of a person who is not a party to the action, he may enforce obedience to the order by the same process as if he were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party.

#### NOTES OF ADVISORY COMMITTEE ON RULES

Compare Equity Rule 11 (Process in Behalf of and Against Persons Not Parties). Compare also *Terrell v. Allison*, 21 Wall. 289, 22 L. Ed. 634 (U. S., 1875); *Farmers' Loan and Trust Co. v. Chicago and A. Ry. Co.*, 44 Fed. 653 (C. C. Ind., 1890); *Robert Findlay Mfg. Co. v. Hygrade Lighting Fixture Corp.*, 288 Fed. 80 (E. D. N. Y., 1923); *Thompson v. Smith*, Fed. Cas. No. 13,977 (C. C. Minn., 1870).

#### IX.—APPEALS

#### RULE 72.—APPEAL FROM A DISTRICT COURT TO THE SUPREME COURT

When an appeal is permitted by law from a district court to the Supreme Court of the United States, an appeal shall be taken by petition for appeal accompanied by an assignment of errors. The appeal shall be allowed, a citation issued, a jurisdictional statement filed, a bond on appeal and supersedeas bond taken, and the record on appeal made and certified as prescribed by law and the Rules of the Supreme Court of the United States governing such an appeal.

#### NOTES OF ADVISORY COMMITTEE ON RULES

In so far as the Rules of the Supreme Court of the United States prescribe a different method to perfect a direct appeal than is prescribed in the succeeding rule (Rule 73), there are two methods of appeal: (1) the method prescribed in this rule for a direct appeal from a district court to the Supreme Court of the United States; (2) the method prescribed in Rule 73 for an appeal from a district court to a circuit court of appeals.

Rule 72 applies to those cases prescribed in U. S. C., Title 28, § 345 (Appellate jurisdiction from decrees of United States district courts—giving references to other statutes), and in §§ 349a (Direct appeal to Supreme Court; constitutionality of Federal statutes; time; precedence) and 380a (Injunctions; constitutionality of Federal statute; application for hearing; appeal to Supreme Court). See United States Supreme Court Rule 46½ (Appeals Under the Act of August 24, 1937) promulgated January 10, 1938. The following and similar statutes concerning direct appeals to the Supreme Court are continued in effect, subject, however, to modification by rules of the Supreme Court which may hereafter be promulgated in so far as such rules may prescribe a different method of appeal than is now provided:

- U. S. C., Title 28:  
 § 861a (Writ of error abolished; substitution of appeal)  
 § 861b (Statutes governing writs of error to apply to appeals)



## U. S. C., Title 28—Continued.

- § 862 (Removal of causes by former writ of error)
- § 863 (Transcripts on appeal)
- § 864 (One record)
- § 868 (Citation on writ of error to district court by Supreme Court)
- § 869 (Bond in error and on appeal)
- § 870 (Same; not required of United States)
- § 872 (Writs of error returnable to Supreme Court or to circuit court of appeals)
- § 873 (Amendment of former writ of error)
- § 874 (Supersedeas)

U. S. C., Title 28, § 832 (Suits, and so forth, by poor persons; prepayment of fees and costs) is continued.

## RULE 73.—APPEAL TO A CIRCUIT COURT OF APPEALS

## (a) How taken.

When an appeal is permitted by law from a district court to a circuit court of appeals and within the time prescribed, a party may appeal from a judgment by filing with the district court a notice of appeal. Failure of the appellant to take any of the further steps to secure the review of the judgment appealed from does not affect the validity of the appeal, but is ground only for such remedies as are specified in this rule or, when no remedy is specified, for such action as the appellate court deems appropriate, which may include dismissal of the appeal.

## (b) Notice of appeal.

The notice of appeal shall specify the parties taking the appeal; shall designate the judgment or part thereof appealed from; and shall name the court to which the appeal is taken. Notification of the filing of the notice of appeal shall be given by the clerk by mailing copies thereof to all the parties to the judgment other than the party or parties taking the appeal, but his failure so to do does not affect the validity of the appeal. The notification to a party shall be given by mailing a copy of the notice of appeal to his attorney of record or, if the party is not represented by an attorney, then to the party at his last known address, and such notification is sufficient notwithstanding the death of the party or of his attorney prior to the giving of the notification. The clerk shall note in the civil docket the names of the parties to whom he mails the copies, with date of mailing.

## (c) Bond on appeal.

Whenever a bond for costs on appeal is required by law, the bond shall be filed with the notice of appeal. The bond shall be in the sum of two hundred and fifty dollars, unless the court fixes a different amount or unless a supersedeas bond is filed, in which event no separate bond on appeal is required. The bond on appeal shall have sufficient surety and shall be conditioned to secure the payment of costs if the appeal is dismissed or the judgment affirmed, or of such costs as the appellate court may award if the judgment is modified. If a bond on appeal in the sum of two hundred and fifty dollars is given, no approval thereof is necessary. After a bond on appeal is filed an appellee may raise objections to the form of the bond or to the sufficiency of the surety for determination by the clerk.

## (d) Supersedeas bond.

Whenever an appellant entitled thereto desires a stay on appeal, he may present to the court for its approval a supersedeas bond which shall have such surety or sureties as the court requires. The bond shall be conditioned for the satisfaction of the judgment in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest, and damages as the appellate court may adjudge and award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy as in real actions, replevin, and actions to foreclose mortgages or when such property is in the custody of the marshal or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay.

## (e) Failure to file or insufficiency of bond.

If a bond on appeal or a supersedeas bond is not filed within the time specified, or if the bond filed is found insufficient, and if the action is not yet docketed with the appellate court, a bond may be filed at such time before the action is so docketed as may be fixed by the district court. After the action is so docketed, application for leave to file a bond may be made only in the appellate court.

## (f) Judgment against surety.

By entering into an appeal or supersedeas bond given pursuant to subdivisions (c) and (d) of this rule, the surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the surety if his address is known.

## (g) Docketing and record on appeal.

The record on appeal as provided for in Rules 75 and 76 shall be filed with the appellate court and the action there docketed within 40 days from the date of the notice of appeal; except that, when more than one appeal is taken from the same judgment to the same appellate court, the district court may prescribe the time for filing and docketing, which in no event shall be less than 40 days from the date of the first notice of appeal. In all cases the district court in its discretion and with or without motion or notice may extend the time for filing the record on

appeal and docketing the action, if its order for extension is made before the expiration of the period for filing and docketing as originally prescribed or as extended by a previous order; but the district court shall not extend the time to a day more than 90 days from the date of the first notice of appeal.

#### NOTES OF ADVISORY COMMITTEE ON RULES

1. This rule prescribes the method of appeal from a district court to a circuit court of appeals. Compare the system of appeals in criminal cases, 292 U. S. 661, 662-663 (1934). To the extent to which the following statutes prescribe a different method for the taking of an appeal from the district courts to a circuit court of appeals, they are superseded:

U. S. C., Title 28:

§ 228 (Allowance of appeals)

§ 228a (Provisions relating to appellate procedure continued in force for circuit courts of appeals)

§ 867 (Citation on former writ of error)

§ 872 (Writs of error returnable to Supreme Court or circuit courts of appeals)

Those statutes were modified by:

U. S. C., Title 28:

§ 861a (Writ of error abolished; substitution of appeal)

§ 861b (Statutes governing writs of error to apply to appeals).

2. In the cases which come within the Federal Rules of Civil Procedure, this rule governs the taking of an appeal from a district court to a circuit court of appeals, in the situations provided for by statute, such as U. S. C., Title 28, § 225 (Appellate jurisdiction), *Subsection (a)* (Review of final decisions), *Subsection (b)* (Review of interlocutory orders or decrees of district courts), U. S. C., Title 28, §§ 226 (Review of judgments of district courts exercising concurrent jurisdiction with Court of Claims or adjudicating claims against the United States), 227 (Appeals in proceedings for injunctions and receivers), 227a (Appeals in suits in equity for infringement of letters patent for inventions; stay of proceedings for accounting).

See Clark, *Power of the Supreme Court to make Rules of Appellate Procedure* (1936), 49 Harv. L. Rev. 1308.

3. This rule continues in effect the statutes providing for the time for taking an appeal such as:

U. S. C., Title 28:

§ 227 (Appeals in proceeding for injunctions and receivers).

§ 230 (Time for making application for appeal).

*Note to Subdivision (a).* This supplants the petition for appeal, the order allowing an appeal, and the citation on appeal; and, in the cases to which this rule applies, supersedes U. S. C., Title 28, § 862 (Removal of causes by former writs of error), 872 (Writs of error returnable to Supreme Court or to circuit courts of appeals), and 867 (Citation on former writ of error), all as modified by U. S. C., Title 28, § 861a (Writ of error abolished; substitution of appeal), and § 861b (Statutes governing writs of error to apply to appeals). It substitutes therefor the notice of appeal which is common in a great number of the code states, including Arizona, Rev. Code Ann. (Struckmeyer, 1928) § 3663; Idaho, 1 Code Ann. (1932) § 11-202; Illinois, Rev. Stat. (1937) ch. 110, § 259.33; Michigan, Court Rules Ann. (Searl, 1933) Rule 56; Minnesota, 2 Stat. (Mason, 1927) § 9492; Montana, 4 Codes Ann. (1935) § 9733; New York, C. P. A. (1937) § 562; Ohio, Code Ann. (Throckmorton, 1936) § 12223-5; Washington, 4 Rev. Stat. Ann. (Remington, 1932) § 1719; Wisconsin, Stat. (1935) § 306.02. See also United States Supreme Court Rules for appeals in criminal cases, 292 U. S. 661, 662-663, Rule III.

*Note to Subdivision (b).* No assignments of error need be filed in the district court, but see Rule 75 (d) (Statement of Points) for the service by the appellant of a statement of the points on which he intends to rely on the appeal. Compare the state provisions cited above. The provision regarding assignments of error contained

in U. S. C., Title 28, § 862 (Removal of causes by former writ of error) as modified by U. S. C., Title 28, § 861a (Writ of error abolished; substitution of appeal) and § 861b (Statutes governing writs of error to apply to appeals) are superseded in so far as no assignments of error are required to be filed in the district court. Compare Rule 9 of the Supreme Court of the United States and the rules of the various circuit courts of appeals.

*Note to Subdivision (c).* The first sentence leaves unaffected the bond provisions of U. S. C., Title 28, §§ 832 (Suits, and so forth, by poor persons; prepayment of fees and costs), 869 (Bond in error and on appeal), 870 (Bond in error and on appeal; not required of United States). This rule does not affect the additional bond as a condition of appeal which may be required by U. S. C., Title 28, § 227 (Appeals in proceedings for injunctions and receivers). As to the amount of the bond, the rules of the circuit courts of appeals provide as follows: Second Circuit—\$250, Rule 12; the other circuits leave the amount of the bond to be fixed by the district court. This rule supersedes all such provisions of circuit court rules in the cases to which it applies. U. S. C., Title 6, § 6 (Surety companies as sureties) is modified in so far as it may require approval of a \$250 bond on appeal. As to the method of accepting bonds, compare N. Y. C. P. A. (1937) § 566; 2 Minn. Stat. (Mason, 1927) § 9499.

*Note to Subdivision (d).* This modifies U. S. C., Title 28, § 874 (Supersedeas). Provisions have been here added for giving the district court power to ameliorate the possible harshness of the present rules in proper cases. Compare Rule 36 of the Supreme Court of the United States and the rules of the various circuit courts of appeals.

*Note to Subdivision (e).* This is incorporated to make clear the extent of the jurisdiction of the district court to entertain motions for failure to file or for insufficiency of a bond on appeal or a supersedeas bond.

*Note to Subdivision (f).* Compare U. S. C., Title 29, § 107 (Issuance of injunctions in labor disputes; undertakings) which is continued by this rule insofar as it is applicable to a bond on appeal or a supersedeas bond. This subdivision provides a remedy in addition to any other remedies against sureties, such as those provided in U. S. C., Title 6 (Official and Penal Bonds). U. S. C., Title 6 contains complete provisions for surety companies on federal bonds, providing for qualified surety companies, § 6 (Surety companies as sureties); for the appointment of process agents, § 7 (Appointment of agents; service of process); for conditions upon which the Secretary of the Treasury shall grant authority to do business, § 8 (Deposit of charter); for quarterly statements to be filed with Secretary of the Treasury, § 9 (Quarterly Statements); for jurisdiction of actions on bonds (Jurisdiction of suits on bonds); and various other provisions, §§ 11-15.

*Note to Subdivision (g).* Compare the rules of the various circuit courts of appeals. The first, second, third, fifth, sixth, seventh, and ninth circuits allow 30 days for the docketing of the case, while those of the fourth, eighth, and tenth circuits allow 40 days.

#### RULE 74.—JOINT OR SEVERAL APPEALS TO THE SUPREME COURT OR TO A CIRCUIT COURT OF APPEALS; SUMMONS AND SEVERANCE ABOLISHED

Parties interested jointly, severally, or otherwise in a judgment may join in an appeal therefrom; or, without summons and severance, any one or more of them may appeal separately or any two or more of them may join in an appeal.

#### NOTES OF ADVISORY COMMITTEE ON RULES

For the federal practice on summons and severance, see *Masterson v. Herndon*, 10 Wall. 416, 19 L. Ed. 953 (1870) and *Hartford Accident and Indemnity Co. v. Bunn*, 285 U. S. 169, 52 S. Ct. 354, 76 L. Ed. 685 (1932). The practice of summons and severance is not common in state procedures; see *Doty v. Strong*, 1 Pinney 165, 168 (Wis., 1842).

**RULE 75.—RECORD ON APPEAL TO A CIRCUIT COURT OF APPEALS****(a) Designation of contents of record on appeal.**

Promptly after an appeal to a circuit court of appeals is taken, the appellant shall serve upon the appellee and file with the district court a designation of the portions of the record, proceedings, and evidence to be contained in the record on appeal. Within 10 days thereafter any other party to the appeal may serve and file a designation of additional portions of the record, proceedings, and evidence to be included.

**(b) Transcript.**

If there be designated for inclusion any evidence or proceedings at a trial or hearing which was stenographically reported, the appellant shall file with his designation two copies of the reporter's transcript of the evidence or proceedings included in his designation. If the designation includes only part of the reporter's transcript, the appellant shall file two copies of such additional parts thereof as the appellee may need to enable him to designate and file the parts he desires to have added, and if the appellant fails to do so the court on motion may require him to furnish the additional parts needed. One of the copies so filed by the appellant shall be available for the use of the other parties and for use in the appellate court in printing the record.

**(c) Form of testimony.**

Testimony of witnesses designated for inclusion need not be in narrative form, but may be in question and answer form. A party may prepare and file with his designation a condensed statement in narrative form of all or part of the testimony, and any other party to the appeal, if dissatisfied with the narrative statement, may require testimony in question and answer form to be substituted for all or part thereof.

**(d) Statement of points.**

If the appellant does not designate for inclusion the complete record and all the proceedings and evidence in the action, he shall serve with his designation a concise statement of the points on which he intends to rely on the appeal.

**(e) Record to be abbreviated.**

All matter not essential to the decision of the questions presented by the appeal shall be omitted. Formal parts of all exhibits and more than one copy of any document shall be excluded. Documents shall be abridged by omitting all irrelevant and formal portions thereof. For any infraction of this rule or for the unnecessary substitution by one party of evidence in question and answer form for a fair narrative statement proposed by another, the appellate court may withhold or impose costs as the circumstances of the case and discouragement of like conduct in the future may require; and costs may be imposed upon offending attorneys or parties.

**(f) Stipulation as to record.**

Instead of serving designations as above provided, the parties by written stipulation filed with the clerk of the district court may designate the parts of the

record, proceedings, and evidence to be included in the record on appeal.

**(g) Record to be prepared by clerk—Necessary parts.**

The clerk of the district court, under his hand and the seal of the court, shall transmit to the appellate court a true copy of the matter designated by the parties, but shall always include, whether or not designated, copies of the following: the material pleadings without unnecessary duplication; the verdict or the findings of fact and conclusions of law together with the direction for the entry of judgment thereon; in an action tried without a jury, the master's report, if any; the opinion; the judgment or part thereof appealed from; the notice of appeal with date of filing; the designations or stipulations of the parties as to matter to be included in the record; and any statement by the appellant of the points on which he intends to rely. The matter so certified and transmitted constitutes the record on appeal. The clerk shall transmit with the record on appeal a copy thereof for use in printing the record, if a copy is required by the rules of the circuit court of appeals.

**(h) Power of court to correct record.**

It is not necessary for the record on appeal to be approved by the district court or judge thereof, but, if any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record on appeal by error or accident or is misstated therein, the parties by stipulation, or the district court, either before or after the record is transmitted to the appellate court, or the appellate court, on a proper suggestion or of its own initiative, may direct that the omission or misstatement shall be corrected, and if necessary that a supplemental record shall be certified and transmitted by the clerk of the district court.

**(i) Order as to original papers or exhibits.**

Whenever the district court is of opinion that original papers or exhibits should be inspected by the appellate court or sent to the appellate court in lieu of copies, it may make such order therefor and for the safekeeping, transportation, and return thereof as it deems proper.

**(j) Record for preliminary hearing in appellate court.**

If, prior to the time the complete record on appeal is settled and certified as herein provided, a party desires to docket the appeal in order to make in the appellate court a motion for dismissal, for a stay pending appeal, for additional security on the bond on appeal or on the supersedeas bond, or for any intermediate order, the clerk of the district court at his request shall certify and transmit to the appellate court a copy of such portion of the record or proceedings below as is needed for that purpose.

**(k) Several appeals.**

When more than one appeal is taken to the same court from the same judgment, a single record on appeal shall be prepared containing all the matter

designated or agreed upon by the parties, without duplication.

(I) Printing.

What part of the record on appeal filed in the appellate court shall be printed and the manner of the printing and the supervision thereof shall be as prescribed in the rules of the court to which the appeal is taken; but the type, paper, and dimensions of printed matter in the circuit court of appeals shall conform to the Rules of the Supreme Court relating to records on appeals to that court.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule applies only to appeals to a circuit court of appeals, and not to the direct appeal from the district court to the Supreme Court of the United States provided for in Rule 72. Compare Equity Rule 75 (Record on Appeal—Reduction and Preparation), Equity Rule 76 (Record on Appeal—Reduction and Preparation—Costs—Correction of Omissions).

This rule continues U. S. C., Title 28, § 764 (Opinion, findings, and conclusions in action against United States) in so far as that statute relates to the record on appeal, and supersedes U. S. C., Title 28, § 776 (Bill of exceptions; authentication; signing of by judge). The following statutes are modified in so far as they prescribe a different record:

U. S. C., Title 28:

- § 862 (Removal of causes by former writ of error)
- § 863 (Transcript on appeals)
- § 865 (Printed transcript of record on appeal to circuit court of appeals)
- § 866 (Printed record as part of transcript on appeal to Supreme Court)

Compare Rules 8 and 10 of the Supreme Court of the United States and rules of the various circuit courts of appeals.

Compare U. S. C., Title 28, § 864 (One record) with the provision in the rule for a single record.

*Note to Subdivision (c).* This rule does not require the narrative form of record nor does it forbid its use. It allows a party to offer a narrative statement and permits his adversary to reject it and substitute question and answer form. The narrative form of testimony has been adversely criticized by the bar, by a considerable section of the bench, and by commentators. For a discussion of this topic, see Griswold and Mitchell, *The Narrative Record in Federal Equity Appeals* (1929), 42 Harv. L. Rev. 483; Lane, *Twenty Years Under the Federal Equity Rules* (1933), 46 Harv. L. Rev. 638, as well as the earlier articles by Lane, which are cited therein; Stone, *The Record on Appeal in Civil Cases*, 23 Va. L. Rev. 766 (1937); Hopkins, *Federal Equity Rules* (8th ed., 1933), 307, n. 1. The only states which still require the narrative form to be used as in Equity Rule 75 (b) are: Alabama, (limited to bills of exception) Cir. Court Rule 32 (Ala. Code Ann. (Michie, 1928), p. 1939), *Turner v. Thornton*, 192 Ala. 98, 68 So. 813 (1915), *Lone Star Cement Co. of La. v. Wilson*, 231 Ala. 83, 163 So. 601 (1935); Arizona, Supreme Court Rule iv (1), (7) (1928), (bills of exception, depositions, statements of facts; but with alternative provision for reporter's transcript, Supreme Court Rule iv (1), (13); Ariz. Rev. Code Ann. (Struckmeyer, 1928) §§ 3863-3869); Florida, Special Rule 1, Circuit Court Rules at Law, 5 Comp. Gen. Laws (1927) p. 4645-6 (with discretion to trial court to order otherwise); Massachusetts, (bills of exception; compare *Cornell-Andrews etc. Co. v. Boston & Providence R. R.*, 215 Mass. 381, 387, 102 N. E. 625 (1913) and *Taylor v. Pierce Bros. Ltd.*, 219 Mass. 187, 106 N. E. 565 (1914) which indicate that the courts favor a narrative form as opposed to question and answer form); Missouri, (parol evidence in equity cases) Sup. Ct. Rule 7 (1934); Montana, Sup. Ct. Rule vii (1931); North Carolina, Supreme Ct. Rule 19 (4) (N. C. Code Ann. (1935) Appendix VII, p. 2668). Minnesota (Rule 8 (2) Sup. Ct., 2 Minn. Stat. (Mason, 1927) p. 2118) and Missouri (in law when the parties disagree, Sup. Ct. Rule 6 (1934) allow the narrative form optionally.

Of the 42 or 43 States which do not require the narrative form of record, the division is about equal between (1) those which require that a transcript of the entire evidence, as taken by the stenographer, be inserted in the record on appeal so far as it relates to the errors relied upon; for example, Michigan, Court Rules Ann. (Searl, 1933) Rules 66 (3) and 68 (7); New York, C. P. A. (1937) § 576; Ohio, Code Ann. (Throckmorton, 1936) § 12223-8, 12223-32; Wyoming, Rev. Stat. (1931) § 89-4905, and (2) those which permit the full stenographic transcript of relevant evidence to be used in the record on appeal at the option of one of the parties or the court; for example, California, Code Civ. Proc. (Deering, 1937) § 953a; Illinois, Rev. Stat. (1937) ch. 110, § 259.36 (1) (c), (d); Missouri, 1 Rev. Stat. (1929) § 1033; South Carolina, Code (Michie, 1932) Sup. Ct. Rule 2, p. 1272.

*Note to Subdivision (I).* Some confusion exists as to whether the district courts or the circuit courts of appeals shall supervise the printing of records for the circuit courts of appeals. This arises because of the act of February 13, 1911 (c. 47, 36 Stat. 901; U. S. C., Title 28, §§ 865, 866), which provides that on appeal to the circuit court of appeals from a final judgment, the appellant shall cause the record to be printed "under such rules as the lower court shall prescribe". This seems to give the district court charge of the printing of the record. In some of the circuit courts of appeals the clerks claim the right to supervise the printing of the record. In the Circuit Court of Appeals of the Second Circuit, there is a rule (Rule XXI) that in cases covered by the act of February 13, 1911, (appeals from final judgments) the appellant shall cause the record to be printed (presumably under the rules of the district court), but in other classes of appeals the printing shall be supervised by the clerk of the court of appeals. The Advisory Committee felt obliged to deal with this subject because the act of February 13, 1911 purports to impose some powers and duties on the district courts in respect of printing records on appeal. The Advisory Committee concluded that the district courts should have nothing to do with the Supervision of printing in the upper courts; so it is provided in *Subdivision (I)* of Rule 75 that this subject shall be governed by the rules of the court to which the appeal is taken.

If the rule had stopped there the result would have been to supersede the provision in the act of February 13, 1911 which provides that printed records in the circuit courts of appeals from final judgments of district courts shall be "in such form as the Supreme Court of the United States shall by rule prescribe." The desire to preserve this authority in the Supreme Court explains the presence in *Subdivision (I)* of the provision to that effect. This power in the Supreme Court does not seem to have been exercised. Its purpose was to enable the Supreme Court to prescribe the form of type and dimensions of printed matter in printed records in the circuit courts of appeals so that extra copies of those records might be used in the Supreme Court without reprinting. Rules of the Supreme Court (13 and 26) now provide that in cases of appeals to the Supreme Court or where the record below is reprinted for the use of the Supreme Court, the work shall be done under the supervision of the clerk and the size of type and dimensions of printed matter are specified. On the other hand, Supreme Court Rule 38, relating to review on certiorari provides in paragraph 7, that when certiorari is granted, it is permissible to use printed copies of the record "as printed below." Printed records in the respective United States circuit courts of appeals are not uniform and do not always conform to the rules of the Supreme Court respecting the dimensions of printed matter or of size of type or spacing between lines.

It will be noted that there is nothing in this rule or in the present rules of the Supreme Court which prevent the use of printed exhibits. It is customary in patent cases to insert in the record printed copies of patents, as they come from the Government Printing Office and that practice may be continued.

Consideration was given by the Committee to the question whether in the circuit courts of appeals the supervision of printing and the designation of printers should be in the hands of the clerk of that court or whether

appellants should be allowed to take charge of the printing and make their own arrangements therefor, subject to rules as to the form of the print. There has been some complaint from lawyers that printing done under the supervision of clerks costs substantially more than where the parties engage their own printers. This is a problem outside of the province of district court rules and should be settled by the rules of the appellate courts. The question whether the records in the circuit courts of appeals should be printed or cases heard on typewritten records is also a matter to be settled by the rules of the appellate courts. As this rule is drawn any United States circuit court of appeals which is willing to hear an appeal on a typewritten record may do so by requiring appellant to furnish sufficient typewritten copies of the record on appeal.

**RULE 76.—RECORD ON APPEAL TO A CIRCUIT COURT OF APPEALS; AGREED STATEMENT**

When the questions presented by an appeal to a circuit court of appeals can be determined without an examination of all the pleadings, evidence, and proceedings in the court below, the parties may prepare and sign a statement of the case showing how the questions arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the questions by the appellate court. The statement shall include a copy of the judgment appealed from, a copy of the notice of appeal with its filing date, and a concise statement of the points to be relied on by the appellant. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the questions raised by the appeal, shall be approved by the district court and shall then be certified to the appellate court as the record on appeal.

**NOTES OF ADVISORY COMMITTEE ON RULES**

Compare Equity Rule 77 (Record on Appeal—Agreed Statement). Its provisions are adopted with appropriate modifications to conform to these rules.

**X.—DISTRICT COURTS AND CLERKS**

**RULE 77.—DISTRICT COURTS AND CLERKS**

**(a) District courts always open.**

The district courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

**(b) Trials and hearings; orders in chambers.**

All trials upon the merits shall be conducted in open court and so far as convenient in a regular court room. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.

**(c) Clerk's office and orders by clerk.**

The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Sundays and legal holidays. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to en-

force and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but his action may be suspended or altered or rescinded by the court upon cause shown.

**(d) Notice of orders or judgments.**

Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail in the manner provided for in Rule 5 upon every party affected thereby who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these rules; but any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers.

**NOTES OF ADVISORY COMMITTEE ON RULES**

This rule states the substance of U. S. C., Title 28, § 13 (Courts open as courts of admiralty and equity). Compare Equity Rules 1 (District Court Always Open For Certain Purposes—Orders at Chambers), 2 (Clerk's Office Always Open, Except, Etc.), 4 (Notice of Orders), and 5 (Motions Grantable of Course by Clerk).

**RULE 78.—MOTION DAY**

Unless local conditions make it impracticable, each district court shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the judge at any time or place and on such notice, if any, as he considers reasonable may make orders for the advancement, conduct, and hearing of actions.

To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

**NOTES OF ADVISORY COMMITTEE ON RULES**

Compare Equity Rule 6 (Motion Day) with the first paragraph of this rule. The second paragraph authorizes a procedure found helpful for the expedition of business in some of the Federal and State courts. See Rule 43 (e) of these rules dealing with evidence on motions. Compare Civil Practice Rules of the Municipal Court of Chicago (1935), Rules 269, 270, 271.

**RULE 79.—BOOKS KEPT BY THE CLERK AND ENTRIES THEREIN**

**(a) Civil docket.**

The clerk shall keep a book known as "civil docket" of such form and style as may be prescribed by the Attorney General under the authority of the Act of June 30, 1906, ch. 3914, § 1 (34 Stat. 754), as amended, U. S. C., Title 28, § 568, or other statutory authority, and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be noted chronologically in the civil docket on the folio assigned to the action and shall be marked with

its file number. These notations shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The notation of an order or judgment shall show the date the notation is made. When in an action trial by jury has been properly demanded or ordered the clerk shall enter the word "jury" on the folio assigned to that action.

**(b) Civil order book.**

The clerk shall also keep a book for civil actions entitled "civil order book" in which shall be kept in the sequence of their making exact copies of all final judgments and orders, all orders affecting title to or lien upon real or personal property, all appealable orders, and such other orders as the court may direct.

**(c) Indices; calendars.**

Separate and suitable indices of the civil docket and of the civil order book shall be kept by the clerk under the direction of the court. There shall be prepared under the direction of the court calendars of all actions ready for trial, which shall distinguish "jury actions" from "court actions."

**NOTES OF ADVISORY COMMITTEE ON RULES**

Compare Equity Rule 3 (Books Kept by Clerk and Entries Therein). In connection with this rule, see also the following statutes of the United States:

**U. S. C., Title 5:**

- § 301 (Officials for investigation of official acts, records and accounts of marshals, attorneys, clerks of courts, United States commissioners, referees and trustees)

- § 318 (Accounts of district attorneys)

**U. S. C., Title 28:**

- § 556 (Clerks of district courts; books open to inspection)
- § 567 (Same; accounts)
- § 568 (Same; reports and accounts of moneys received; dockets)
- § 813 (Indices of judgment debtors to be kept by clerks)

And see "Instructions to United States Attorneys, Marshals, Clerks and Commissioners" issued by the Attorney General of the United States.

**RULE 80.—STENOGRAPHER; STENOGRAPHIC REPORT OR TRANSCRIPT AS EVIDENCE**

**(a) Stenographer.**

A court or master may direct that evidence be taken stenographically and may appoint a stenographer for that purpose. His fees shall be fixed by the court and may be taxed ultimately as costs, in the discretion of the court. The cost of a transcript shall be paid in the first instance by the party ordering the transcript.

**(b) Official stenographers.**

Each district court may designate one or more official court stenographers for the district and fix by rule of court the compensation which such stenographers shall be entitled to charge for their services, with provision that amounts properly paid by parties for the service of such stenographers be taxable as costs in the case in the discretion of the trial judge. The work of the stenographers shall be so arranged as to avoid delay in furnishing transcripts ordered

for the purposes of motions for new trial, for amended findings, or for appeals.

**(c) Stenographic report or transcript as evidence.**

Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

**NOTES OF ADVISORY COMMITTEE ON RULES**

*Note to Subdivision (a).* This follows substantially Equity Rule 50 (Stenographer—Appointment—Fees).

*Note to Subdivision (b).* See Reports of Conferences of Senior Circuit Judges with the Chief Justice of the United States (1936), 22 A. B. A. J. 818, 819; (1937), 24 A. B. A. J. 75, 77.

*Note to Subdivision (c).* Compare Iowa Code (1935) § 11353.

**XI.—GENERAL PROVISIONS**

**RULE 81.—APPLICABILITY IN GENERAL**

**(a) To what proceedings applicable.**

(1) These rules do not apply to proceedings in admiralty. They do not apply to proceedings in bankruptcy or proceedings in copyright under the act of March 4, 1909, c. 320, § 25 (35 Stat. 1081), as amended, U. S. C., Title 17, § 25, except in so far as they may be made applicable thereto by rules promulgated by the Supreme Court of the United States. They do not apply to probate, adoption, or lunacy proceedings in the District Court of the United States for the District of Columbia except to appeals therein.

(2) In the following proceedings appeals are governed by these rules, but they are not applicable otherwise than on appeal except to the extent that the practice in such proceedings is not set forth in statutes of the United States and has heretofore conformed to the practice in actions at law or suits in equity: admission to citizenship, habeas corpus, quo warranto, and forfeiture of property for violation of a statute of the United States.

(3) In proceedings under the act of February 12, 1925, c. 213 (43 Stat. 883), U. S. C., Title 9, relating to arbitration, or under the act of May 20, 1926, c. 347, § 9 (44 Stat. 585), U. S. C., Title 45, § 159, relating to boards of arbitration of railway labor disputes, these rules apply to appeals, but otherwise only to the extent that matters of procedure are not provided for in those statutes.

(4) These rules do not alter the method prescribed by the act of February 18, 1922, c. 57, § 2 (42 Stat. 388), U. S. C., Title 7, § 292; or by the act of June 10, 1930, c. 436, § 7 (46 Stat. 534), as amended, U. S. C., Title 7, § 499g (c), for instituting proceedings in the district courts of the United States to review orders of the Secretary of Agriculture; or prescribed by the act of June 25, 1934, c. 742, § 2 (48 Stat. 1214), U. S. C., Title 15, § 522, for instituting proceedings to review orders of the Secretary of Commerce; or prescribed by the act of February 22, 1935, c. 18, § 5 (49 Stat. 31), U. S. C., Title 15, § 715d (c), as extended, for instituting proceedings to review orders of petroleum control boards; but the conduct of such proceedings in the district courts shall be made to conform to these rules so far as applicable.

(5) These rules do not alter the practice in the district courts of the United States prescribed in the act of July 5, 1935, c. 372, §§ 9 and 10 (49 Stat. 453), U. S. C., Title 29, §§ 159 and 160 (e), (g), and (l), for beginning and conducting proceedings to enforce orders of the National Labor Relations Board; and in respects not covered by those statutes, the practice in the district courts shall conform to these rules so far as applicable.

(6) These rules do not apply to proceedings under the act of September 13, 1888, c. 1015, § 13 (25 Stat. 479), as amended, U. S. C., Title 8, § 282, relating to deportation of Chinese; they apply to proceedings for enforcement or review of compensation orders under the Longshoremen's and Harbor Workers' Compensation Act, act of March 4, 1927, c. 509, §§ 18, 21 (44 Stat. 1434, 1436), U. S. C., Title 33, §§ 918, 921, except to the extent that matters of procedure are provided for in that act. The provisions for service by publication and allowing the defendant 60 days within which to answer in proceedings to cancel certificates of citizenship under the act of June 29, 1906, c. 3592, § 15 (34 Stat. 601), as amended, U. S. C., Title 8, § 405, remain in effect.

(7) In proceedings for condemnation of property under the power of eminent domain, these rules govern appeals but are not otherwise applicable.

**(b) Scire facias and mandamus.**

The writs of scire facias and mandamus are abolished. Relief heretofore available by mandamus or scire facias may be obtained by appropriate action or by appropriate motion under the practice prescribed in these rules.

**(c) Removed actions.**

These rules apply to civil actions removed to the district courts of the United States from the state courts and govern all procedure after removal. Repleading is not necessary unless the court so orders. In a removed action in which the defendant has not answered, he shall answer or present the other defenses or objections available to him under these rules within the time allowed for answer by the law of the state or within 5 days after the filing of the transcript of the record in the district court of the United States, whichever period is longer. If at the time of removal all necessary pleadings have been filed, a party entitled to trial by jury under Rule 38 and who has not already waived his right to such trial shall be accorded it, if his demand therefor is served within 10 days after the record of the action is filed in the district court of the United States.

**(d) District of Columbia; courts and judges.**

Whenever in these rules reference is made to a district court or to a district judge, the reference includes the District Court of the United States for the District of Columbia or a justice thereof; and whenever reference is made to a circuit court of appeals or to a judge thereof, the reference includes the United States Court of Appeals for the District of Columbia or a justice thereof.

**(e) Law applicable.**

Whenever in these rules the law of the state in which the district court is held is made applicable, the law applied in the District of Columbia governs

proceedings in the District Court of the United States for the District of Columbia. When the word "state" is used, it includes, if appropriate, the District of Columbia. When the term "statute of the United States" is used, it includes, so far as concerns proceedings in the District Court of the United States for the District of Columbia, any act of Congress locally applicable to and in force in the District of Columbia. When the law of a state is referred to, the word "law" includes the statutes of that state and the state judicial decisions construing them. (As amended Dec. 28, 1939.)

**AMENDMENT; EFFECTIVE DATE**

The order amending the first sentence of Rule 81 (a) (6), contained the following relative to effective date:

*"Effective Date.* That the foregoing amendment take effect on the day which is three months subsequent to the adjournment of the second regular session of the 76th Congress, but if that day is prior to September 1, 1940, then this amendment shall take effect on September 1, 1940. This amendment governs all proceedings in actions brought after it takes effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the Court its application in a particular action pending when the amendment takes effect would not be feasible or would work injustice, in which event the former procedure applies.

"That the Chief Justice be authorized to transmit this amendment to the Attorney General with the request that he report it to the Congress at the beginning of the regular session in January, 1940."

*Copyright Rules.* Copyright rule 1 following section 25 of Title 17 was amended on June 5, 1939, effective September 1, 1939, to read as follows:

"Proceedings in actions brought under section 25 of the act of March 4, 1909, entitled 'An Act to amend and consolidate the acts respecting copyright', including proceedings relating to the perfecting of appeals, shall be governed by the Rules of Civil Procedure, in so far as they are not inconsistent with these rules."

**NOTES OF ADVISORY COMMITTEE ON RULES**

*Note to Subdivision (a).* Paragraph (1): Compare the enabling act, act of June 19, 1934, U. S. C., Title 28, §§ 723b (Rules in actions at law; Supreme Court authorized to make) and 723c (Union of equity and action at law rules; power of Supreme Court). For the application of these rules in bankruptcy and copyright proceedings, see Orders xxxvi and xxxvii in Bankruptcy and Rule 1 of Rules of Practice and Procedure under § 25 of the copyright act, act of March 4, 1909, U. S. C., Title 17, § 25 (Infringement and rules of procedure).

For examples of statutes which are preserved by paragraph (2) see: U. S. C., Title 8, ch. 9 (Naturalization); Title 28, ch. 14 (Habeas corpus); Title 28, §§ 377a-377c (Quo warranto); and such forfeiture statutes as U. S. C., Title 7, § 116 (Misbranded seeds, confiscation), and Title 21, § 14 (Pure Food and Drug Act—condemnation of adulterated or misbranded food; procedure). See also 443 *Cans of Frozen Eggs Product v. U. S.*, 226 U. S. 172, 33 S. Ct. 50, 57 L. Ed. 174 (1912).

For examples of statutes which under paragraph (7) will continue to govern procedure in condemnation cases, see U. S. C., Title 40, § 258 (Condemnation of realty for sites for public building, etc., procedure); U. S. C., Title 16, § 831x (Condemnation by Tennessee Valley Authority); U. S. C., Title 40, § 120 (Acquisition of lands for public use in District of Columbia); Title 40, ch. 7 (Acquisition of lands in District of Columbia for use of United States; condemnation).

*Note to Subdivision (b).* Some statutes which will be affected by this subdivision are:

U. S. C., Title 7:

§ 222 (Federal Trade Commission powers adopted for enforcement of Stockyards Act) (By reference to Title 15, § 49)



## U. S. C., Title 15:

- § 49 (Enforcement of Federal Trade Commission orders and antitrust laws)
- § 77t (c) (Enforcement of Securities and Exchange Commission orders and Securities Act of 1933)
- § 78u (f) (Same; Securities Exchange Act of 1934)
- § 79r (g) (Same; Public Utility Holding Company Act of 1935)

## U. S. C., Title 16:

- § 820 (Proceedings in equity for revocation or to prevent violations of license of Federal Power Commission licensee)
- § 825m (b) (Mandamus to compel compliance with Federal Water Power Act, etc.)

## U. S. C., Title 19:

- § 1333 (c) (Mandamus to compel compliance with orders of Tariff Commission, etc.)

## U. S. C., Title 28:

- § 377 (Power to issue writs)
- § 572 (Fees, attorneys, solicitors and proctors)
- § 778 (Death of parties; substitution of executor or administrator). Compare Rule 25 (a) (Substitution of parties; death), and the note thereto.

## U. S. C., Title 33:

- § 495 (Removal of bridges over navigable waters)

## U. S. C., Title 45:

- § 88 (Mandamus against Union Pacific Railroad Company)
- § 153 (p) (Mandamus to enforce orders of Adjustment Board under Railway Labor Act)
- § 185 (Same; National Air Transport Adjustment Board) (By reference to § 153)

## U. S. C., Title 47:

- § 11 (Powers of Federal Communications Commission)
- § 401 (a) (Enforcement of Federal Communications Act and orders of Commission)
- § 406 (Same; compelling furnishing of facilities; mandamus)

## U. S. C., Title 49:

- § 19a (1) (Mandamus to compel compliance with Interstate Commerce Act)
- § 20 (9) (Jurisdiction to compel compliance with interstate commerce laws by mandamus)

For comparable provisions in state practice see Ill. Rev. Stat. (1937), ch. 110, § 179; Calif. Code Civ. Proc. (Deering, 1937) § 802.

*Note to Subdivision (c).* Such statutes as the following dealing with the removal of actions are substantially continued and made subject to these rules:

## U. S. C., Title 28:

- § 71 (Removal of suits from state courts)
- § 72 (Same; procedure)
- § 73 (Same; suits under grants of land from different states)
- § 74 (Same; causes against persons denied civil rights)
- § 75 (Same; petitioner in actual custody of state court)
- § 76 (Same; suits and prosecutions against revenue officers)
- § 77 (Same; suits by aliens)
- § 78 (Same; copies of records refused by clerk of state court)
- § 79. (Same; previous attachment bonds or orders)
- § 80 (Same; dismissal or remand)
- § 81 (Same; proceedings in suits removed)
- § 82 (Same; record; filing and return)
- § 83 (Service of process after removal)

U. S. C., Title 28, § 72, *supra*, however, is modified by shortening the time for pleading in removed actions.

*Note to Subdivision (e).* The last sentence of this subdivision modifies U. S. C., Title 28, § 725 (Laws of States as rules of decision) in so far as that statute has been construed to govern matters of procedure and to exclude state judicial decisions relative thereto.

## RULE 82.—JURISDICTION AND VENUE UNAFFECTED

These rules shall not be construed to extend or limit the jurisdiction of the district courts of the United States or the venue of actions therein.

## NOTES OF ADVISORY COMMITTEE ON RULES

These rules grant extensive power of joining claims and counterclaims in one action, but, as this rule states, such grant does not extend federal jurisdiction. The rule is declaratory of existing practice under the Federal Equity Rules with regard to such provisions as Equity Rule 26 on Joinder of Causes of Action and Equity Rule 30 on Counterclaims. Compare Shulman and Jaegerman, *Some Jurisdictional Limitations on Federal Procedure*, 45 Yale L. J. 393 (1936).

## RULE 83.—RULES BY DISTRICT COURTS

Each district court by action of a majority of the judges thereof may from time to time make and amend rules governing its practice not inconsistent with these rules. Copies of rules and amendments so made by any district court shall upon their promulgation be furnished to the Supreme Court of the United States. In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules.

## NOTES OF ADVISORY COMMITTEE ON RULES

This rule substantially continues U. S. C., Title 28, § 731 (Rules of practice in district courts) with the additional requirement that copies of such rules and amendments be furnished to the Supreme Court of the United States. See Equity Rule 79 (Additional Rules by District Court). With the last sentence compare United States Supreme Court Admiralty Rules (1920), Rule 44 (Right of Trial Courts To Make Rules of Practice) (originally promulgated in 1842).

## RULE 84.—FORMS

The forms contained in the Appendix of Forms are intended to indicate, subject to the provisions of these rules, the simplicity and brevity of statement which the rules contemplate.

## NOTES OF ADVISORY COMMITTEE ON RULES

In accordance with the practice found useful in many codes, provision is here made for a limited number of official forms which may serve as guides in pleading. Compare 2 Mass. Gen. Laws (Ter. Ed., 1932) ch. 231, § 147, Forms 1-47; English Annual Practice (1937) Appendix A to M, inclusive; Conn. Practice Book (1934) Rules, 47-68, pp. 123-427.

## RULE 85.—TITLE

These rules may be known and cited as the Federal Rules of Civil Procedure.

## RULE 86.—EFFECTIVE DATE

These rules will take effect on the day which is 3 months subsequent to the adjournment of the second regular session of the 75th Congress, but if that day is prior to September 1, 1938, then these rules will take effect on September 1, 1938. They govern all proceeding in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

## NOTES OF ADVISORY COMMITTEE ON RULES

See Equity Rule 81 (These Rules Effective February 1, 1913—Old Rules Abrogated).

## APPENDIX OF FORMS

(See Rule 84)

## INTRODUCTORY STATEMENT

1. The following forms are intended for illustration only. They are limited in number. No attempt is made to furnish a manual of forms. Each form assumes the action to be brought in the Southern District of New York. If the district in which an action is brought has divisions, the division should be indicated in the caption.

2. Except where otherwise indicated each pleading, motion, and other paper should have a caption similar to that of the summons, with the designation of the particular paper substituted for the word "Summons". In the caption of the summons and in the caption of the complaint all parties must be named but in other pleadings and papers, it is sufficient to state the name of the first party on either side, with an appropriate indication of other parties. See Rules 4 (b), 7 (b) (2), and 10 (a).

3. In Form 3 and the forms following, the words, "Allegation of jurisdiction," are used to indicate the appropriate allegation in Form 2.

4. Each pleading, motion, and other paper is to be signed in his individual name by at least one attorney of record (Rule 11). The attorney's name is to be followed by his address as indicated in Form 3. In forms following Form 3 the signature and address are not indicated.

5. If a party is not represented by an attorney, the signature and address of the party are required in place of those of the attorney.

## Form 1.—Summons.

DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action, File Number.....

A. B., Plaintiff  
v.  
C. D., Defendant } *Summons*

To the above-named Defendant:

You are hereby summoned and required to serve upon \_\_\_\_\_, plaintiff's attorney, whose address is \_\_\_\_\_, an answer to the complaint which is herewith served upon you, within 20<sup>1</sup> days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Clerk of Court.

[Seal of the U. S. District Court]

Dated .....

(This Summons Is Issued Pursuant to Rule 4 of the Federal Rules of Civil Procedure)

<sup>1</sup> If the United States or an officer or agency thereof is a defendant, the time to be inserted as to it is 60 days.

## Form 2.—Allegation of jurisdiction.

(a) Jurisdiction founded on diversity of citizenship and amount.

Plaintiff is a citizen of the State of Connecticut and defendant is a corporation incorporated under

the laws of the State of New York. The matter in controversy exceeds, exclusive of interest and costs, the sum of three thousand dollars.

(b) Jurisdiction founded on the existence of a Federal question and amount in controversy.

The action arises under the Constitution of the United States, Article \_\_\_\_\_, Section \_\_\_\_\_; (the \_\_\_\_\_ Amendment to the Constitution of the United States, Section \_\_\_\_\_); (the Act of \_\_\_\_\_, Stat. \_\_\_\_\_; U. S. C., Title \_\_\_\_\_, § \_\_\_\_\_); (the Treaty of the United States with (here describe the treaty)),<sup>\*</sup> as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of three thousand dollars.

(c) Jurisdiction founded on the existence of a question arising under particular statutes.

The action arises under the Act of \_\_\_\_\_, Stat. \_\_\_\_\_; U. S. C., Title \_\_\_\_\_, § \_\_\_\_\_, as hereinafter more fully appears.

<sup>\*</sup> Use the appropriate phrase or phrases. The general allegation of the existence of a Federal question is ineffective unless the matters constituting the claim for relief as set forth in the complaint raise a Federal question.

## NOTES

1. *Diversity of Citizenship.* If the plaintiff is an assignee, he should allege such other facts of citizenship as will show that he is entitled to prosecute his action under U. S. C., Title 28, § 41 (1).

2. *Jurisdiction Founded on Some Fact Other Than Diversity of Citizenship.* The allegation as to the matter in controversy may be omitted in any case where by law no jurisdictional amount is required. See for example, U. S. C., Title 28, § 41 (2)–(28).

3. *Pleading Venue.* Since improper venue is an affirmative dilatory defense, it is not necessary for plaintiff to include allegations showing the venue to be proper.

4. It is sufficient to allege that a corporation is incorporated in a particular state, there being, for jurisdictional purposes, a conclusive presumption that all of its members or stockholders are citizens of that State, *Marshall v. Baltimore and Ohio R. R. Co.*, 16 How. 314 (U. S. 1853); *Henderson, Position of Foreign Corporations in American Constitutional Law* (1918) 54–64. See Form No. 124 and note thereto, and Form No. 125, 1 *Sylvester's Bender's Federal Forms*.

## Form 3.—Complaint on a promissory note.

1. Allegation of jurisdiction.

2. Defendant on or about June 1, 1935, executed and delivered to plaintiff a promissory note [in the following words and figures: (here set out the note verbatim)]; [a copy of which is hereto annexed as Exhibit A]; [whereby defendant promised to pay to plaintiff or order on June 1, 1936 the sum of ten thousand dollars with interest thereon at the rate of six per cent. per annum].

3. Defendant owes to plaintiff the amount of said note and interest.

Wherefore plaintiff demands judgment against defendant for the sum of ten thousand dollars, interest, and costs.

Signed: .....

Attorney for Plaintiff.

Address: .....

## NOTES

1. The pleader may use the material in one of the three sets of brackets. His choice will depend upon whether he desires to plead the document verbatim, or by exhibit, or according to its legal effect.

2. Under the rules free joinder of claims is permitted. See rules 8 (e) and 18. Consequently the claims set forth in each and all of the following forms may be joined with this complaint or with each other. Ordinarily each claim should be stated in a separate division of the complaint, and the divisions should be designated as counts successively numbered. In particular the rules permit alternative and inconsistent pleading. See Form 10.

**Form 4.—Complaint on an account.**

1. Allegation of jurisdiction.
2. Defendant owes plaintiff ten thousand dollars according to the account hereto annexed as Exhibit A. Wherefore (etc. as in Form 3).

**Form 5.—Complaint for goods sold and delivered.**

1. Allegation of jurisdiction.
2. Defendant owes plaintiff ten thousand dollars for goods sold and delivered by plaintiff to defendant between June 1, 1936 and December 1, 1936. Wherefore (etc. as in Form 3).

**NOTE**

This form may be used where the action is for an agreed price or for the reasonable value of the goods.

**Form 6.—Complaint for money lent.**

1. Allegation of jurisdiction.
2. Defendant owes plaintiff ten thousand dollars for money lent by plaintiff to defendant on June 1, 1936. Wherefore (etc. as in Form 3).

**Form 7.—Complaint for money paid by mistake.**

1. Allegation of jurisdiction.
2. Defendant owes plaintiff ten thousand dollars for money paid by plaintiff to defendant by mistake on June 1, 1936, under the following circumstances: [here state the circumstances with particularity—see Rule 9 (b)]. Wherefore (etc. as in Form 3).

**Form 8.—Complaint for money had and received.**

1. Allegation of jurisdiction.
2. Defendant owes plaintiff ten thousand dollars for money had and received from one G. H. on June 1, 1936, to be paid by defendant to plaintiff. Wherefore (etc. as in Form 3).

**Form 9.—Complaint for negligence.**

1. Allegation of jurisdiction.
2. On June 1, 1936, in a public highway called Boylston Street in Boston, Massachusetts, defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway.
3. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against defendant in the sum of ten thousand dollars and costs.

**NOTE**

Since contributory negligence is an affirmative defense the complaint need contain no allegation of due care of plaintiff.

**Form 10.—Complaint for negligence where plaintiff is unable to determine definitely whether the person responsible is C. D. or E. F. or whether both are responsible and where his evidence may justify a finding of wilfulness or of recklessness or of negligence.**

A. B., Plaintiff  
v.  
C. D. and E. F., Defendants } *Complaint*

1. Allegation of jurisdiction.
2. On June 1, 1936, in a public highway called Boylston Street in Boston, Massachusetts, defendant C. D. or defendant E. F., or both defendants C. D. and E. F. wilfully or recklessly or negligently drove or caused to be driven a motor vehicle against plaintiff who was then crossing said highway.
3. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against C. D. or against E. F. or against both in the sum of ten thousand dollars and costs.

**Form 11.—Complaint for conversion.**

1. Allegation of jurisdiction.
2. On or about December 1, 1936, defendant converted to his own use ten bonds of the ----- Company (here insert brief identification as by number and issue) of the value of ten thousand dollars, the property of plaintiff.

Wherefore plaintiff demands judgment against defendant in the sum of ten thousand dollars, interest, and costs.

**Form 12.—Complaint for specific performance of contract to convey land.**

1. Allegation of jurisdiction.
2. On or about December 1, 1936, plaintiff and defendant entered into an agreement in writing a copy of which is hereto annexed as Exhibit A.
3. In accord with the provisions of said agreement plaintiff tendered to defendant the purchase price and requested a conveyance of the land, but defendant refused to accept the tender and refused to make the conveyance.

4. Plaintiff now offers to pay the purchase price.

Wherefore plaintiff demands (1) that defendant be required specifically to perform said agreement, (2) damages in the sum of one thousand dollars, and (3) that if specific performance is not granted plaintiff have judgment against defendant in the sum of ten thousand dollars.

**NOTE**

Here, as in Form 3, plaintiff may set forth the contract verbatim in the complaint or plead it, as indicated, by exhibit, or plead it according to its legal effect. Furthermore, plaintiff may seek legal or equitable relief or both even though this was impossible under the system in operation before these rules.

**Form 13.—Complaint on claim for debt and to set aside fraudulent conveyance under Rule 18 (b).**

A. B., Plaintiff  
v.  
C. D. and E. F., Defendants } *Complaint*

1. Allegation of jurisdiction.

2. Defendant C. D. on or about \_\_\_\_\_ executed and delivered to plaintiff a promissory note (in the following words and figures: (here set out the note verbatim)); [a copy of which is hereto annexed as Exhibit A]; [whereby defendant C. D. promised to pay to plaintiff or order on \_\_\_\_\_ the sum of five thousand dollars with interest thereon at the rate of \_\_\_\_\_ percent, per annum].

3. Defendant C. D. owes to plaintiff the amount of said note and interest.

4. Defendant C. D. on or about \_\_\_\_\_ conveyed all his property, real and personal (or specify and describe) to defendant E. F. for the purpose of defrauding plaintiff and hindering and delaying the collection of the indebtedness evidenced by the note above referred to.

Wherefore plaintiff demands:

(1) That plaintiff have judgment against defendant C. D. for ten thousand dollars and interest; (2) that the aforesaid conveyance to defendant E. F. be declared void and the judgment herein be declared a lien on said property; (3) that plaintiff have judgment against the defendants for costs.

**Form 14.—Complaint for negligence under Federal Employer's Liability Act.**

1. Allegation of jurisdiction.

2. During all the times herein mentioned defendant owned and operated in interstate commerce a railroad which passed through a tunnel located at \_\_\_\_\_ and known as Tunnel No. \_\_\_\_\_.

3. On or about June 1, 1936, defendant was repairing and enlarging the tunnel in order to protect interstate trains and passengers and freight from injury and in order to make the tunnel more conveniently usable for interstate commerce.

4. In the course of thus repairing and enlarging the tunnel on said day defendant employed plaintiff as one of its workmen, and negligently put plaintiff to work in a portion of the tunnel which defendant had left unprotected and unsupported.

5. By reason of defendant's negligence in thus putting plaintiff to work in that portion of the tunnel, plaintiff was, while so working pursuant to defendant's orders, struck and crushed by a rock, which fell from the unsupported portion of the tunnel, and was (here describe plaintiff's injuries).

6. Prior to these injuries, plaintiff was a strong, able-bodied man, capable of earning and actually earning \_\_\_\_\_ dollars per day. By these injuries he has been made incapable of any gainful activity, has suffered great physical and mental pain, and has incurred expense in the amount of \_\_\_\_\_ dollars for medicine, medical attendance, and hospitalization.

Wherefore plaintiff demands judgment against defendant in the sum of \_\_\_\_\_ dollars and costs.

**Form 15.—Complaint for damages under Merchant Marine Act.**

1. Allegation of jurisdiction.

2. During all the times herein mentioned defendant was the owner of the steamship \_\_\_\_\_ and used it in the transportation of freight for hire by water in interstate and foreign commerce.

3. During the first part of (month and year) at \_\_\_\_\_ plaintiff entered the employ of defendant as

an able seaman on said steamship under seamen's articles of customary form for a voyage from \_\_\_\_\_ ports to the Orient and return at a wage of \_\_\_\_\_ dollars per month and found, which is equal to a wage of \_\_\_\_\_ dollars per month as a shore worker.

4. On June 1, 1936, said steamship was about \_\_\_\_\_ days out of the port of \_\_\_\_\_ and was being navigated by the master and crew on the return voyage to \_\_\_\_\_ ports. (Here describe weather conditions and the condition of the ship and state as in an ordinary complaint for personal injuries the negligent conduct of defendant.)

5. By reason of defendant's negligence in thus (brief statement of defendant's negligent conduct) and the unseaworthiness of said steamship, plaintiff was (here describe plaintiff's injuries).

6. Prior to these injuries, plaintiff was a strong, able-bodied man, capable of earning and actually earning \_\_\_\_\_ dollars per day. By these injuries he has been made incapable of any gainful activity; has suffered great physical and mental pain, and has incurred expense in the amount of \_\_\_\_\_ dollars for medicine, medical attendance, and hospitalization.

7. Plaintiff elects to maintain this action under the provisions of section 33 of the act of June 5, 1920, ch. 250, 41 Stat. 1007.

Wherefore plaintiff demands judgment against defendant in the sum of \_\_\_\_\_ dollars and costs.

**Form 16.—Complaint for infringement of patent.**

1. Allegation of jurisdiction.

2. On May 16, 1934, United States Letters Patent No. \_\_\_\_\_ were duly and legally issued to plaintiff for an invention in an electric motor; and since that date plaintiff has been and still is the owner of those Letters Patent.

3. Defendant has for a long time past been and still is infringing those Letters Patent by making, selling, and using electric motors embodying the patented invention, and will continue to do so unless enjoined by this court.

4. Plaintiff has placed the required statutory notice on all electric motors manufactured and sold by him under said Letters Patent, and has given written notice to defendant of his said infringement.

Wherefore plaintiff demands a preliminary and final injunction against further infringement by defendant and those controlled by defendant, an accounting for profits and damages, and an assessment of costs against defendant.

**Form 17.—Complaint for infringement of copyright and unfair competition.**

1. Allegation of jurisdiction.

2. Prior to March 2, 1936, plaintiff, who then was and ever since has been a citizen of the United States, created and wrote an original book, entitled

3. This book contains a large amount of material wholly original with plaintiff and is copyrightable subject matter under the laws of the United States.

4. Between March 2, 1936, and March 10, 1936, plaintiff complied in all respects with the act of (give citation) and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said book, and received

from the Register of Copyrights a certificate of registration, dated and identified as follows: "March 10, 1936, Class -----, No. -----".

5. Since March 10, 1936, said book has been published by plaintiff and all copies of it made by plaintiff or under his authority or license have been printed, bound, and published in strict conformity with the provisions of the act of ----- and all other laws governing copyright.

6. Since March 10, 1936, plaintiff has been and still is the sole proprietor of all rights, title, and interest in and to the copyright in said book.

7. After March 10, 1936, defendant infringed said copyright by publishing and placing upon the market a book entitled -----, which was copied largely from plaintiff's copyrighted book, entitled -----.

8. A copy of plaintiff's copyrighted book is hereto attached as "Exhibit 1"; and a copy of defendant's infringing book is hereto attached as "Exhibit 2".

9. Plaintiff has notified defendant that defendant has infringed the copyright of plaintiff, and defendant has continued to infringe the copyright.

Wherefore plaintiff demands:

(1) That defendant, his agents, and servants be enjoined during the pendency of this action and permanently from infringing said copyright of said plaintiff in any manner.

(2) That defendant be required to pay to plaintiff such damages as plaintiff has sustained in consequence of defendant's infringement of said copyright and to account and pay over to plaintiff all the gains, profits, and advantages derived by defendant from his infringement of plaintiff's copyright or such damages as to the court shall appear proper within the provisions of the copyright statutes, but not less than two hundred and fifty dollars.

(3) That defendant be required to deliver up to be impounded during the pendency of this action all copies in his possession or under his control infringing said copyright and to deliver up for destruction all infringing copies and all plates, molds, and other matter for making such infringing copies.

(4) That defendant pay to plaintiff the costs of this action and reasonable attorney's fees to be allowed to the plaintiff by the court.

(5) That plaintiff have such other and further relief as is just.

**Form 18.—Complaint for interpleader and declaratory relief.**

1. Allegation of jurisdiction.

2. On or about June 1, 1935, plaintiff issued to G. H. a policy of life insurance whereby plaintiff promised to pay to K. L. as beneficiary the sum of ten thousand dollars upon the death of G. H. The policy required the payment by G. H. of a stipulated premium on June 1, 1936, and annually thereafter as a condition precedent to its continuance in force.

3. No part of the premium due June 1, 1936, was ever paid and the policy ceased to have any force or effect on July 1, 1936.

4. Thereafter, on September 1, 1936, G. H. and K. L. died as the result of a collision between a locomotive and the automobile in which G. H. and K. L. were riding.

5. Defendant C. D. is the duly appointed and acting executor of the will of G. H.; defendant E. F. is the duly appointed and acting executor of the will of K. L.; defendant X. Y. claims to have been duly designated as beneficiary of said policy in place of K. L.

6. Each of defendants, C. D., E. F., and X. Y. is claiming that the above-mentioned policy was in full force and effect at the time of the death of G. H.; each of them is claiming to be the only person entitled to receive payment of the amount of the policy and has made demand for payment thereof.

7. By reason of these conflicting claims of the defendants, plaintiff is in great doubt as to which defendant is entitled to be paid the amount of the policy, if it was in force at the death of G. H.

Wherefore plaintiff demands that the court adjudge:

(1) That none of the defendants is entitled to recover from plaintiff the amount of said policy or any part thereof.

(2) That each of the defendants be restrained from instituting any action against plaintiff for the recovery of the amount of said policy or any part thereof.

(3) That, if the court shall determine that said policy was in force at the death of G. H., the defendants be required to interplead and settle between themselves their rights to the money due under said policy, and that plaintiff be discharged from all liability in the premises except to the person whom the court shall adjudge entitled to the amount of said policy.

(4) That plaintiff recover its costs.

**Form 19.—Motion to dismiss, presenting defenses of failure to state a claim, of lack of service of process, of improper venue, and of lack of jurisdiction under Rule 12 (b).**

The defendant moves the court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

2. To dismiss the action or in lieu thereof to quash the return of service of summons on the grounds (a) that the defendant is a corporation organized under the laws of Delaware and was not and is not subject to service of process within the Southern District of New York, and (b) that the defendant has not been properly served with process in this action, all of which more clearly appears in the affidavits of M. N. and X. Y. hereto annexed as Exhibit A and Exhibit B, respectively.

3. To dismiss the action on the ground that it is in the wrong district because (a) the jurisdiction of this court is invoked solely on the ground that the action arises under the Constitution and laws of the United States and (b) the defendant is a corporation incorporated under the laws of the State of Delaware and is an inhabitant thereof.

4. To dismiss the action on the ground that the court lacks jurisdiction because the amount actually

in controversy is less than three thousand dollars exclusive of interest and costs.

Signed:-----

*Attorney for Defendant.*

Address:-----

#### NOTICE OF MOTION

To -----

*Attorney for Plaintiff.*

Please take notice, that the undersigned will bring the above motion on for hearing before this Court at Room -----, United States Courts and Post Office Building, Borough of Manhattan, City of New York, on the ----- day of ----- 193-----, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Signed:-----

*Attorney for Defendant.*

Address:-----

#### NOTE

The above motion and notice of motion may be combined and denominated Notice of Motion. See Rule 7 (b).

**Form 20.—Answer presenting defenses under Rule 12 (b).**

#### FIRST DEFENSE

The complaint fails to state a claim against defendant upon which relief can be granted.

#### SECOND DEFENSE

If defendant is indebted to plaintiffs for the goods mentioned in the complaint, he is indebted to them jointly with G. H. G. H. is alive; is a citizen of the State of New York and a resident of this district, is subject to the jurisdiction of this court, as to both service of process and venue; can be made a party without depriving this court of jurisdiction of the present parties, and has not been made a party.

#### THIRD DEFENSE

Defendant admits the allegation contained in paragraphs 1 and 4 of the complaint; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint; and denies each and every other allegation contained in the complaint.

#### FOURTH DEFENSE

The right of action set forth in the complaint did not accrue within six years next before the commencement of this action.

#### COUNTERCLAIM

(Here set forth any claim as a counterclaim in the manner in which a claim is pleaded in a complaint. No statement of the grounds on which the court's jurisdiction depends need be made unless the counterclaim requires independent grounds of jurisdiction.)

#### CROSS-CLAIM AGAINST DEFENDANT M. N.

(Here set forth the claim constituting a cross-claim against defendant M. N. in the manner in which a claim is pleaded in a complaint. The statement of grounds upon which the court's jurisdiction depends need not be made unless the cross-claim requires independent grounds of jurisdiction.)

#### NOTE

The above form contains the various defenses provided for in rule 12 (b). The first defense raises the legal sufficiency of the complaint. Its effect is equivalent to a general demurrer or a motion to dismiss.

The second defense is equivalent to a plea in abatement.

The third defense is equivalent to an answer on the merits.

The fourth defense is one of the affirmative defenses provided for in rule 8 (c).

The answer also includes a counterclaim and a cross-claim.

**Form 21.—Answer to complaint set forth in Form 8, with counterclaim for interpleader.**

#### DEFENSE

Defendant admits the allegations stated in paragraph 1 of the complaint; and denies the allegations stated in paragraph 2 to the extent set forth in the counterclaim herein.

#### COUNTERCLAIM FOR INTERPLEADER

1. Defendant received the sum of ten thousand dollars as a deposit from E. F.

2. Plaintiff has demanded the payment of such deposit to him by virtue of an assignment of it which he claims to have received from E. F.

3. E. F. has notified the defendant that he claims such deposit, that the purported assignment is not valid, and that he holds the defendant responsible for the deposit.

Wherefore defendant demands:

(1) That the court order E. F. to be made a party defendant to respond to the complaint and to this counterclaim.<sup>a</sup>

(2) That the court order the plaintiff and E. F. to interplead their respective claims.

(3) That the court adjudge whether the plaintiff or E. F. is entitled to the sum of money.

(4) That the court discharge defendant from all liability in the premises except to the person it shall adjudge entitled to the sum of money.

(5) That the court award to the defendant its costs and attorney's fees.

<sup>a</sup> Rule 13 (h) provides for the court ordering parties to a counterclaim, but who are not parties to the original action, to be brought in as defendants.

**Form 22.—Motion to bring in third-party defendant.**

Defendant moves for leave to make E. F. a party to this action and that there be served upon him summons and third-party complaint as set forth in Exhibit A hereto attached.

Signed:-----

*Attorney for Defendant C. D.*

Address:-----

## NOTICE OF MOTION

(Contents the same as in Form 19. No notice is necessary if the motion is made before the moving defendant has served his answer.)

## EXHIBIT A

District Court of the United States for the Southern  
District of New York

Civil Action, File Number -----

A. B., Plaintiff

v.

C. D., Defendant and third-party Plaintiff

v.

E. F., third-party defendant

*To the above-named Third-Party Defendant:*

You are hereby summoned and required to serve upon -----, plaintiff's attorney whose address is -----, and upon -----, who is attorney for C. D., defendant and third-party plaintiff, and whose address is -----, an answer to the third-party complaint which is herewith served upon you and an answer to the complaint of the plaintiff, a copy of which is herewith served upon you, within 20 days after the service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third-party complaint.

*Clerk of Court.*

[Seal of District Court]

Dated -----

United States District Court for the Southern District  
of New York

Civil Action, File Number -----

A. B., Plaintiff

v.

C. D., defendant and third-party plaintiff

v.

E. F., third-party defendant

*Third-Party complaint*

1. Plaintiff A. B. has filed against defendant C. D. a complaint, a copy of which is hereto attached as "Exhibit C."

2. (Here state the grounds upon which C. D. is entitled to recover from E. F., all or part of what A. B. may recover from C. D., or upon which A. B. is entitled to recover from E. F. and not from C. D. The statement should be framed as in an original complaint.)

Wherefore C. D. demands judgment against third-party defendant E. F. for all sums that may be adjudged against defendant C. D. in favor of plaintiff A. B.

Signed: -----

*Attorney for C. D., Third-Party Plaintiff.*

Address: -----

Form 23.—Motion to intervene as a defendant under Rule 24.

(Based Upon the Complaint, Form 16)

District Court of the United States for the Southern  
District of New York

Civil Action, File Number -----

A. B., plaintiff

v.

C. D., defendant

E. F., applicant for intervention

*Motion to intervene as  
a defendant*

E. F. moves for leave to intervene as a defendant in this action, in order to assert the defenses set forth in his proposed answer, of which a copy is hereto attached, on the ground that he is the manufacturer and vendor to the defendant, as well as to others, of the articles alleged in the complaint to be an infringement of plaintiff's patent, and as such has a defense to plaintiff's claim presenting both questions of law and of fact which are common to the main action.<sup>4</sup>

Signed: -----

*Attorney for E. F., Applicant for Intervention.*

Address: -----

## NOTICE OF MOTION

(Contents the Same as in Form 19)

District Court of the United States for the Southern  
District of New York

Civil Action, File Number -----

A. B., plaintiff

v.

C. D., defendant

E. F., intervener

*Intervener's Answer*

## FIRST DEFENSE

Intervener admits the allegations stated in paragraphs 1 and 4 of the complaint; denies the allegations in paragraph 3, and denies the allegations in paragraph 2 in so far as they assert the legality of the issuance of the Letters Patent to plaintiff.

## SECOND DEFENSE

Plaintiff is not the first inventor of the articles covered by the Letters Patent specified in his complaint, since articles substantially identical in character were previously patented in Letters Patent granted to intervener on January 5, 1920.

Signed: -----

*Attorney for E. F., Intervener.*

Address: -----

<sup>4</sup>For other grounds of intervention, either of right or in the discretion of the court, see Rule 24 (a) and (b).

Form 24.—Motion for production of documents, etc., under Rule 34.

Plaintiff A. B. moves the court for an order requiring defendant C. D.

(1) To produce and to permit plaintiff to inspect and to copy each of the following documents:

(Here list the documents and describe each of them.)



(2) To produce and permit plaintiff to inspect and to photograph each of the following objects:

(Here list the objects and describe each of them.)

(3) To permit plaintiff to enter (here describe property to be entered) and to inspect and to photograph (here describe the portion of the real property and the objects to be inspected and photographed).

Defendant C. D. has the possession, custody, or control of each of the foregoing documents and objects and of the above mentioned real estate. Each of them constitutes or contains evidence relevant and material to a matter involved in this action, as is more fully shown in Exhibit A hereto attached.

Signed \_\_\_\_\_,  
Attorney for Plaintiff.  
Address \_\_\_\_\_

#### NOTICE OF MOTION

(Contents the Same as in Form 19)

#### EXHIBIT A

State of \_\_  
County of

A. B., being first duly sworn says:

(1) (Here set forth all that plaintiff knows which shows that defendant has the papers or objects in his possession or control.)

(2) (Here set forth all that plaintiff knows which shows that each of the above mentioned items is relevant to some issue in the action.)

Signed: A. B.

[Jurat]

#### Form 25.—Request for admission under Rule 36.

Plaintiff A. B. requests defendant C. D. to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, exhibited with this request, is genuine.

(Here list the documents and describe each document.)

2. That each of the following statements is true.  
(Here list the statements.)

Signed -

Attorney for Plaintiff.

Address .

#### Form 26.—Allegation of reason for omitting party.

When it is necessary, under Rule 19 (c), for the pleader to set forth in his pleading the names of persons who ought to be made parties, but who are not so made, there should be an allegation such as the one set out below:

John Doe named in this complaint is not made a party to this action [because he is not subject to the jurisdiction of this court]; [because he cannot be made a party to this action without depriving this court of jurisdiction].

#### Form 27.—Notice of appeal to circuit court of appeals under Rule 73 (b).

Notice is hereby given that C. D. and E. F., defendants above named, hereby appeal to the Circuit

Court of Appeals for the Second Circuit [from the order (describing it)] [from the final judgment] entered in this action on \_\_\_\_\_, 19\_\_\_\_\_.

Signed: \_\_\_\_\_,

Attorney for Appellants C. D. and E. F.

Address: \_\_\_\_\_

#### NOTE

Use either the material in the first set of brackets or that in the second, as the case requires. If the appeal is from a part only of an order or judgment that part must be specified.

Rule 73 (b) does not require the appellee to be named. It does require the clerk to notify all other parties than appellant.

#### § 724. Conformity to practice in State courts.

The provisions of this section, R. S. § 914, are in conflict with the Federal Rules of Civil Procedure set out following section 723c of this title and therefore are no longer of any force or effect. See section 723b of this title and note of Advisory Committee under Rule 2 of the Federal Rules.

#### § 725. Laws of States as rules of decision.

The laws of the several States, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply. (R. S. § 721.)

#### DERIVATION

Act Sept. 24, 1789, ch. 20, § 34, 1 Stat. 92.

#### FEDERAL RULES OF CIVIL PROCEDURE

Evidence, see Rules 43, 81, following section 723c of this title.

Modification of section by rules, see note by Advisory Committee under Rules 43 and 81.

#### § 726. Attachments as provided by State laws.

The subject matter of this section, R. S. § 915, is now covered by Rule 64 of the Federal Rules of Civil Procedure set out following section 723c of this title. See note of Advisory Committee under said Rule 64.

#### § 727. Execution as provided by State laws.

The subject matter of this section, R. S. § 916, is now covered by Rule 69 of the Federal Rules of Civil Procedure set out following section 723c of this title.

#### § 728. Rights and remedies of occupying claimants of land as given by State laws.

When an occupant of land, having color of title, in good faith has made valuable improvements thereon, and is, in the proper action, found not to be the rightful owner thereof, such occupant shall be entitled in the Federal courts to all the rights and remedies, and, upon instituting the proper proceedings, such relief as may be given or secured to him by the statutes of the State or Territory where the land lies, although the title of the plaintiff in the action may have been granted by the United States after said improvements were so made. (June 1, 1874, ch. 200, 18 Stat. 50.)

#### § 729. Proceedings in vindication of civil rights.

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of chapter 3 of Title 8, and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United

States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. (R. S. § 722.)

## DERIVATION

Acts Apr. 9, 1866, ch. 31, § 3, 14 Stat. 27; May 31, 1870, ch. 114, § 18, 16 Stat. 144.

## REFERENCES IN TEXT

In the original "chapter 3 of Title 8 and Title 18" reads "this title and of title 'Civil Rights', and of title 'Crimes'," meaning Titles XIII, XXIV, and LXX of the Revised Statutes.

## FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 69 on this section, see note by Advisory Committee under said Rule 69.

Execution, see Rule 69, following section 723c of this title.

### § 730. Regulation of practice of district courts by Supreme Court.

The Supreme Court shall have power to prescribe, from time to time, and in any manner not inconsistent with any law of the United States, the forms of writs and other process, the modes of framing and filing proceedings and pleadings, of taking and obtaining evidence, of obtaining discovery, of proceeding to obtain relief, of drawing up, entering, and enrolling decrees, and of proceeding before trustees appointed by the court, and generally to regulate the whole practice, to be used, in suits in equity or admiralty, by the district courts. (R. S. § 917; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

## DERIVATION

Act Aug. 23, 1842, ch. 188, § 6, 5 Stat. 518.

## FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under rules, see note by Advisory Committee under Rule 2.

Scope of Rules of Civil Procedure, see Rules 1, 2, following section 723c of this title.

### § 731. Rules of practice in district courts.

The district courts may, from time to time, and in any manner not inconsistent with any law of the United States, or with any rule prescribed by the Supreme Court under section 730 of this title, make rules and orders directing the returning of writs and processes, the filing of pleadings, the taking of rules, the entering and making up of judgments by default, and other matters in vacation, and otherwise regulate their own practice as may be necessary or convenient for the advancement of justice and the prevention of delays in proceedings. (R. S. § 918; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

## DERIVATION

Acts Mar. 2, 1793, ch. 22, § 7, 1 Stat. 335; Aug. 23, 1842, ch. 188, § 6, 5 Stat. 518.

## FEDERAL RULES OF CIVIL PROCEDURE

District court rules, see Rule 83, following section 723c of this title.

### § 732. Suits for duties, imposts, taxes, penalties, or forfeitures.

All suits for the recovery of any duties, imposts, or taxes, or for the enforcement of any penalty or forfeiture provided by any act respecting imports or tonnage, or the registering and recording or enrolling and licensing of vessels, or the internal revenue, or direct taxes, and all suits arising under the postal laws, shall be brought in the name of the United States. (R. S. § 919.)

## DERIVATION

Acts Aug. 4, 1790, ch. 35, § 67, 1 Stat. 176; Dec. 31, 1792, ch. 1, § 29, 1 Stat. 298; Feb. 18, 1793, ch. 8, § 35, 1 Stat. 317; Mar. 2, 1799, ch. 22, § 89, 1 Stat. 695, 696; July 13, 1866, ch. 184, § 9, 14 Stat. 111, 145; and June 8, 1872, ch. 335, § 303, 17 Stat. 323.

### § 733. Consolidation of revenue seizures.

Whenever two or more things belonging to the same person are seized for an alleged violation of the revenue laws, the whole must be included in one suit; and if separate actions are prosecuted in such cases, the court shall consolidate them. (R. S. § 920.)

## DERIVATION

Act Feb. 26, 1853, ch. 80, § 1, 10 Stat. 162.

### § 734. Orders to save costs; consolidation of causes of like nature.

When causes of a like nature or relative to the same question are pending before a court of the United States, or of any Territory, the court may make such orders and rules concerning proceedings therein as may be conformable to the usages of courts for avoiding unnecessary costs or delay in the administration of justice, and may consolidate said causes when it appears reasonable to do so. (R. S. § 921.)

## DERIVATION

Act July 22, 1813, ch. 14, § 3, 3 Stat. 21.

## FEDERAL RULES OF CIVIL PROCEDURE

Consolidation of actions, see Rule 42, following section 723c of this title.

Modification of section by Rule 42, see note by Advisory Committee under said Rule 42.

### § 735. Marshal or deputy as party in cause.

When the marshal or his deputy is a party in any cause, the writs and precepts therein shall be directed to such disinterested person as the court or any justice or judge thereof may appoint, and the person so appointed may execute and return them. (R. S. § 922.)

## DERIVATION

Act Sept. 24, 1789, ch. 20, § 28, 1 Stat. 87.

### § 736. Seizure for forfeiture.

When any vessel, goods, wares, or merchandise are seized by any officer of the customs, and prosecuted for forfeiture by virtue of any law respecting the revenue, or the registering and recording, or the enrolling and licensing of vessels, the court shall cause fourteen days' notice to be given of such seizure and libel, by causing the substance of such

libel, with the order of the court thereon, setting forth the time and place appointed for trial, to be inserted in some newspaper published near the place of seizure, and by posting up the same in the most public manner for the space of fourteen days, at or near the place of trial; and proclamation shall be made in such manner as the court shall direct. And if no person appears and claims such vessel, goods, wares, or merchandise, and gives bond to defend the prosecution thereof and to respond the cost in case he shall not support his claim, the court shall proceed to hear and determine the cause according to law. (R. S. § 923.)

## DERIVATION

Acts Aug. 4, 1790, ch. 35, § 67, 1 Stat. 176; Dec. 31, 1792, ch. 1, § 29, 1 Stat. 298; Feb. 18, 1793, ch. 8, § 35, 1 Stat. 317; Mar. 2, 1799, ch. 22, §§ 70, 89, 1 Stat. 678, 695, 696.

## CROSS REFERENCE

Remission of forfeitures, see sections 646 and 647 of Title 18, Criminal Code and Criminal Procedure.

## § 737. Attachment in postal suits.

In all cases where debts are due from defaulting or delinquent postmasters, contractors, or other officers, agents, or employees of the Post Office Department, a warrant of attachment may issue against all real and personal property and legal and equitable rights belonging to such officer, agent, or employee, and his sureties, or either of them, in the following cases:

First. When such officer, agent, or employee, and his sureties, or either of them, is a nonresident of the district where such officer, agent, or employee was appointed, or has departed from such district for the purpose of permanently residing out of the same, or of defrauding the United States, or of avoiding the service of civil process.

Second. When such officer, agent, or employee, and his sureties, or either of them, has conveyed away, or is about to convey away his property, or any part thereof, or has removed or is about to remove the same or any part thereof from the district wherein it is situate, with intent to defraud the United States.

And when any such property has been removed, certified copies of the warrant may be sent to the marshal of the district into which the same has been removed, under which certified copies he may seize said property and convey it to some convenient point within the jurisdiction of the court from which the warrant originally issued. And alias warrants may be issued in such cases upon due application, and the validity of the warrant first issued shall continue until the return day thereof. (R. S. § 924.)

## DERIVATION

Act Feb. 23, 1865, ch. 47, § 1, 13 Stat. 432, 433.

## FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

## § 738. Same; application for warrant.

Application for such warrant of attachment may be made by any district or assistant district attorney, or any other person authorized by the Postmaster General, before the judge, or, in his absence,

before the clerk of any court of the United States having original jurisdiction of the cause of action. And such application shall be made upon an affidavit of the applicant, or of some other credible person, stating the existence of either of the grounds of attachments enumerated in section 737 of this title, and upon production of legal evidence of the debt. (R. S. § 925.)

## DERIVATION

Act Feb. 23, 1865, ch. 47, § 2, 13 Stat. 433.

## FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

## § 739. Same; issue of warrant.

Upon any such application and upon due order of any judge of the court, or, in his absence, without such order, the clerk shall issue a warrant for the attachment of all the property of any kind belonging to the person specified in the affidavit, which warrant shall be executed with all possible dispatch by the marshal, who shall take the property attached, if personal, into his custody, and hold the same subject to all interlocutory or final orders of the court. (R. S. § 926.)

## DERIVATION

Act Feb. 23, 1865, ch. 47, § 2, 13 Stat. 433.

## FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

## § 740. Same; trial of ownership of property.

At any time within twenty days before the return day of such warrant, the party whose property is attached may, on giving notice to the district attorney of his intention, file a plea in abatement, traversing the allegations of the affidavit, or denying the ownership of the property attached to be in the defendants or either of them; in which case the court may, upon application of either party, order an immediate trial by jury of the issues raised by the affidavit and plea; but the parties may, by consent, waive a trial by jury, in which case the court shall decide the issues raised. And any party claiming ownership of the property attached and a specific return thereof shall be confined to the remedy herein afforded, but his right to an action of trespass, or other action for damages, shall not be impaired hereby. (R. S. § 927.)

## DERIVATION

Act Feb. 23, 1865, ch. 47, § 3, 13 Stat. 433.

## FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

## § 741. Same; investment of proceeds of attached property.

When the property attached is sold on any interlocutory order of the court or is producing any revenue, the money arising from such sale or revenue shall be invested in securities of the United States, under the order of the court, and all accretions shall be held subject to the orders of the same. (R. S. § 928.)

## DERIVATION

Act Feb. 23, 1865, ch. 47, § 4, 13 Stat. 433

States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. (R. S. § 722.)

## DERIVATION

Acts Apr. 9, 1866, ch. 31, § 3, 14 Stat. 27; May 31, 1870, ch. 114, § 18, 16 Stat. 144.

## REFERENCES IN TEXT

In the original "chapter 3 of Title 8 and Title 18" reads "this title and of title 'Civil Rights', and of title 'Crimes'," meaning Titles XIII, XXIV, and LXX of the Revised Statutes.

## FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 69 on this section, see note by Advisory Committee under said Rule 69.

Execution, see Rule 69, following section 723c of this title.

### § 730. Regulation of practice of district courts by Supreme Court.

The Supreme Court shall have power to prescribe, from time to time, and in any manner not inconsistent with any law of the United States, the forms of writs and other process, the modes of framing and filing proceedings and pleadings, of taking and obtaining evidence, of obtaining discovery, of proceeding to obtain relief, of drawing up, entering, and enrolling decrees, and of proceeding before trustees appointed by the court, and generally to regulate the whole practice, to be used, in suits in equity or admiralty, by the district courts. (R. S. § 917; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

## DERIVATION

Act Aug. 23, 1842, ch. 188, § 6, 5 Stat. 518.

## FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under rules, see note by Advisory Committee under Rule 2.

Scope of Rules of Civil Procedure, see Rules 1, 2, following section 723c of this title.

### § 731. Rules of practice in district courts.

The district courts may, from time to time, and in any manner not inconsistent with any law of the United States, or with any rule prescribed by the Supreme Court under section 730 of this title, make rules and orders directing the returning of writs and processes, the filing of pleadings, the taking of rules, the entering and making up of judgments by default, and other matters in vacation, and otherwise regulate their own practice as may be necessary or convenient for the advancement of justice and the prevention of delays in proceedings. (R. S. § 918; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

## DERIVATION

Acts Mar. 2, 1793, ch. 22, § 7, 1 Stat. 335; Aug. 23, 1842, ch. 188, § 6, 5 Stat. 518.

## FEDERAL RULES OF CIVIL PROCEDURE

District court rules, see Rule 83, following section 723c of this title.

### § 732. Suits for duties, imposts, taxes, penalties, or forfeitures.

All suits for the recovery of any duties, imposts, or taxes, or for the enforcement of any penalty or forfeiture provided by any act respecting imports or tonnage, or the registering and recording or enrolling and licensing of vessels, or the internal revenue, or direct taxes, and all suits arising under the postal laws, shall be brought in the name of the United States. (R. S. § 919.)

## DERIVATION

Acts Aug. 4, 1790, ch. 35, § 67, 1 Stat. 176; Dec. 31, 1792, ch. 1, § 29, 1 Stat. 298; Feb. 18, 1793, ch. 8, § 35, 1 Stat. 317; Mar. 2, 1799, ch. 22, § 89, 1 Stat. 695, 696; July 13, 1866, ch. 184, § 9, 14 Stat. 111, 145; and June 8, 1872, ch. 335, § 303, 17 Stat. 323.

### § 733. Consolidation of revenue seizures.

Whenever two or more things belonging to the same person are seized for an alleged violation of the revenue laws, the whole must be included in one suit; and if separate actions are prosecuted in such cases, the court shall consolidate them. (R. S. § 920.)

## DERIVATION

Act Feb. 26, 1853, ch. 80, § 1, 10 Stat. 162.

### § 734. Orders to save costs; consolidation of causes of like nature.

When causes of a like nature or relative to the same question are pending before a court of the United States, or of any Territory, the court may make such orders and rules concerning proceedings therein as may be conformable to the usages of courts for avoiding unnecessary costs or delay in the administration of justice, and may consolidate said causes when it appears reasonable to do so. (R. S. § 921.)

## DERIVATION

Act July 22, 1813, ch. 14, § 3, 3 Stat. 21.

## FEDERAL RULES OF CIVIL PROCEDURE

Consolidation of actions, see Rule 42, following section 723c of this title.

Modification of section by Rule 42, see note by Advisory Committee under said Rule 42.

### § 735. Marshal or deputy as party in cause.

When the marshal or his deputy is a party in any cause, the writs and precepts therein shall be directed to such disinterested person as the court or any justice or judge thereof may appoint, and the person so appointed may execute and return them. (R. S. § 922.)

## DERIVATION

Act Sept. 24, 1789, ch. 20, § 28, 1 Stat. 87.

### § 736. Seizure for forfeiture.

When any vessel, goods, wares, or merchandise are seized by any officer of the customs, and prosecuted for forfeiture by virtue of any law respecting the revenue, or the registering and recording, or the enrolling and licensing of vessels, the court shall cause fourteen days' notice to be given of such seizure and libel, by causing the substance of such

libel, with the order of the court thereon, setting forth the time and place appointed for trial, to be inserted in some newspaper published near the place of seizure, and by posting up the same in the most public manner for the space of fourteen days, at or near the place of trial; and proclamation shall be made in such manner as the court shall direct. And if no person appears and claims such vessel, goods, wares, or merchandise, and gives bond to defend the prosecution thereof and to respond the cost in case he shall not support his claim, the court shall proceed to hear and determine the cause according to law. (R. S. § 923.)

#### DERIVATION

Acts Aug. 4, 1790, ch. 35, § 67, 1 Stat. 176; Dec. 31, 1792, ch. 1, § 29, 1 Stat. 298; Feb. 18, 1793, ch. 8, § 35, 1 Stat. 317; Mar. 2, 1799, ch. 22, §§ 70, 89, 1 Stat. 678, 695, 696.

#### CROSS REFERENCE

Remission of forfeitures, see sections 646 and 647 of Title 18, Criminal Code and Criminal Procedure.

### § 737. Attachment in postal suits.

In all cases where debts are due from defaulting or delinquent postmasters, contractors, or other officers, agents, or employees of the Post Office Department, a warrant of attachment may issue against all real and personal property and legal and equitable rights belonging to such officer, agent, or employee, and his sureties, or either of them, in the following cases:

First. When such officer, agent, or employee, and his sureties, or either of them, is a nonresident of the district where such officer, agent, or employee was appointed, or has departed from such district for the purpose of permanently residing out of the same, or of defrauding the United States, or of avoiding the service of civil process.

Second. When such officer, agent, or employee, and his sureties, or either of them, has conveyed away, or is about to convey away his property, or any part thereof, or has removed or is about to remove the same or any part thereof from the district wherein it is situate, with intent to defraud the United States.

And when any such property has been removed, certified copies of the warrant may be sent to the marshal of the district into which the same has been removed, under which certified copies he may seize said property and convey it to some convenient point within the jurisdiction of the court from which the warrant originally issued. And alias warrants may be issued in such cases upon due application, and the validity of the warrant first issued shall continue until the return day thereof. (R. S. § 924.)

#### DERIVATION

Act Feb. 23, 1865, ch. 47, § 1, 13 Stat. 432, 433.

#### FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

### § 738. Same; application for warrant.

Application for such warrant of attachment may be made by any district or assistant district attorney, or any other person authorized by the Postmaster General, before the judge, or, in his absence,

before the clerk of any court of the United States having original jurisdiction of the cause of action. And such application shall be made upon an affidavit of the applicant, or of some other credible person, stating the existence of either of the grounds of attachments enumerated in section 737 of this title, and upon production of legal evidence of the debt. (R. S. § 925.)

#### DERIVATION

Act Feb. 23, 1865, ch. 47, § 2, 13 Stat. 433.

#### FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

### § 739. Same; issue of warrant.

Upon any such application and upon due order of any judge of the court, or, in his absence, without such order, the clerk shall issue a warrant for the attachment of all the property of any kind belonging to the person specified in the affidavit, which warrant shall be executed with all possible dispatch by the marshal, who shall take the property attached, if personal, into his custody, and hold the same subject to all interlocutory or final orders of the court. (R. S. § 926.)

#### DERIVATION

Act Feb. 23, 1865, ch. 47, § 2, 13 Stat. 433.

#### FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

### § 740. Same; trial of ownership of property.

At any time within twenty days before the return day of such warrant, the party whose property is attached may, on giving notice to the district attorney of his intention, file a plea in abatement, traversing the allegations of the affidavit, or denying the ownership of the property attached to be in the defendants or either of them; in which case the court may, upon application of either party, order an immediate trial by jury of the issues raised by the affidavit and plea; but the parties may, by consent, waive a trial by jury, in which case the court shall decide the issues raised. And any party claiming ownership of the property attached and a specific return thereof shall be confined to the remedy herein afforded, but his right to an action of trespass, or other action for damages, shall not be impaired hereby. (R. S. § 927.)

#### DERIVATION

Act Feb. 23, 1865, ch. 47, § 3, 13 Stat. 433.

#### FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

### § 741. Same; investment of proceeds of attached property.

When the property attached is sold on any interlocutory order of the court or is producing any revenue, the money arising from such sale or revenue shall be invested in securities of the United States, under the order of the court, and all accretions shall be held subject to the orders of the same. (R. S. § 928.)

#### DERIVATION

Act Feb. 23, 1865, ch. 47, § 4, 13 Stat. 433.

## FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

## § 742. Same; publication of attachment.

Immediately upon the execution of any such warrant of attachment, the marshal shall cause due publication thereof to be made, in the case of absconding debtors for two months and of nonresidents for four months. The publication shall be made in some newspaper published in the district where the property is situate, and the details thereof shall be regulated by the order under which the warrant is issued. (R. S. § 929.)

## DERIVATION

Act Feb. 23, 1865, ch. 47, § 5, 13 Stat. 434.

## FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

## § 743. Same; personal notice of attachment.

After the first publication of such notice of attachment as required by law, every person indebted to, or having possession of any property belonging to, the said defendants, or either of them, and having knowledge of such notice, shall account and answer for the amount of such debt and the value of such property; and any disposal or attempt to dispose of any such property, to the injury of the United States, shall be illegal and void. And when the person indebted to, or having possession of the property of, such defendants, or either of them, is known to the district attorney or marshal, such officer shall see that personal notice of the attachment is served upon such person, but the want of such notice shall not invalidate the attachment. (R. S. § 930.)

## DERIVATION

Act Feb. 23, 1865, ch. 47, § 6, 13 Stat. 434.

## FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

## § 744. Same; discharge; bond.

Upon application of the party whose property has been attached, the court, or any judge thereof, may discharge the warrant of attachment as to the property of the applicant, provided such applicant shall execute to the United States a good and sufficient penal bond, in double the value of the property attached, to be approved by a judge of the court, and with condition for the return of said property, or to answer any judgment which may be rendered by the court in the premises. (R. S. § 931.)

## DERIVATION

Act Feb. 23, 1865, ch. 47, § 7, 13 Stat. 434.

## FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

## § 745. Same; accrued rights not affected.

Nothing contained in sections 737-744 of this title shall be construed to limit or abridge, in any manner, such rights of the United States as have accrued or been allowed in any district under the former prac-

tice of, or the adoption of State laws by, the United States courts. (R. S. § 932.)

## DERIVATION

Act Feb. 23, 1865, ch. 47, § 9, 13 Stat. 434.

## FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

## § 746. Attachments dissolved in conformity with State laws.

An attachment of property, upon process instituted in any court of the United States, to satisfy such judgment as may be recovered by the plaintiff therein, except in the cases mentioned in sections 737-745 of this title, shall be dissolved when any contingency occurs by which, according to the laws of the State where said court is held, such attachment would be dissolved upon like process instituted in the courts of said State. Nothing herein contained shall interfere with any priority of the United States in the payment of debts. (R. S. § 933.)

## DERIVATION

Acts Mar. 14, 1848, ch. 18, § 1, 9 Stat. 213; Feb. 23, 1865, ch. 47, §§ 1, 9, 13 Stat. 432, 434.

## FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

## § 747. Replevy of property taken under revenue laws.

All property taken or detained by any officer or other person, under authority of any revenue law of the United States, shall be irrepleviable, and shall be deemed to be in the custody of the law, and subject only to the orders and decrees of the courts of the United States having jurisdiction thereof. (R. S. § 934.)

## DERIVATION

Acts Mar. 2, 1833, ch. 57, § 2, 4 Stat. 632; July 13, 1866, ch. 184, § 67, 14 Stat. 172.

## FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

## § 748. Garnishees in suits by United States against a corporation.

In any suit by the United States against a corporation for the recovery of money upon a bill, note, or other security, the debtors of the corporation may be summoned as garnishees; and it shall be the duty of any person so summoned to appear in open court and to depose, in writing, to the amount which he was indebted to the said corporation at the time of the service of the summons and at the time of making such deposition; and judgment may be entered in favor of the United States for the sum admitted by such garnishee to be due to the said corporation, in the same manner as if it had been due to the United States. No judgment shall be entered against any garnishee until after judgment has been rendered against the corporation defendant to the said action, nor until the sum in which the garnishee stands indebted is actually due. (R. S. § 935.)

## DERIVATION

Act Apr. 30, 1818, ch. 83, § 8, 3 Stat. 443.

## FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

## § 749. Same; issue tendered on denial of indebtedness.

When any person summoned as garnishee deposes in open court that he is not, and was not at the time of the service of the summons, indebted to such corporation, an issue may be tendered by the United States upon such demand, and if, upon the trial of that issue, a verdict is rendered against the garnishee, judgment shall be entered in favor of the United States, pursuant to such verdict, with costs of suit. (R. S. § 936.)

## DERIVATION

Act Apr. 20, 1818, ch. 83, § 9, 3 Stat. 443.

## FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

## § 750. Same; garnishee failing to appear.

If any person summoned as garnishee, as aforesaid, fails to appear at the term of the court to which he is summoned, he shall be subject to attachment for contempt of the court. (R. S. § 937.)

## DERIVATION

Act Apr. 20, 1818, ch. 83, § 10, 3 Stat. 444.

## FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

## § 751. Property seized under customs laws; bond.

Upon the prayer of any claimant to the court, that any vessel, goods, wares, or merchandise, seized and prosecuted under any law respecting the revenue from imports or tonnage, or the registering and recording, or the enrolling and licensing of vessels, or any part thereof, should be delivered to him, the court shall appoint three proper persons to appraise such property, who shall be sworn in open court, or before a commissioner appointed by the district court to administer oaths to appraisers, for the faithful discharge of their duty; and the appraisal shall be made at the expense of the party on whose prayer it is granted. If, on the return of the appraisal, the claimant, with one or more sureties, to be approved by the court, shall execute a bond to the United States for the payment of a sum equal to the sum at which the property prayed to be delivered is appraised, and produce a certificate from the collector of the district where the trial is had, and of the Comptroller of Customs thereof, if any there be, that the duties on the goods, wares, and merchandise, or tonnage duty on the vessel so claimed, have been paid or secured in like manner as if the same had been legally entered, the court shall, by rule, order such vessel, goods, wares, or merchandise to be delivered to such claimant; and the said bond shall be lodged with the proper officer of the court. If judgment passes in favor of the claimant, the court shall cause the said bond to be canceled; but if judgment passes against the claimant, as to the whole or any part of such vessel, goods, wares, or merchandise, and the claimant does not within twenty days thereafter pay into the court, or to the proper officer thereof,

the amount of the appraised value of such vessel, goods, wares, or merchandise so condemned, with the costs, judgment shall be granted upon the bond, on motion in open court, without further delay. Notwithstanding the provisions of this section or any other provisions of law relating to the return on bond of vessels seized for the violation of any law of the United States, the court having jurisdiction of the subject matter, may, in its discretion and upon good cause shown by the United States, refuse to order such return of any such vessel to the claimant thereof. (R. S. § 938; Sept. 21, 1922, ch. 356, title IV, § 523, 42 Stat. 974; June 19, 1934, ch. 656, § 1, 48 Stat. 1116.)

## DERIVATION

Acts Aug. 4, 1790, ch. 35, § 67, 1 Stat. 176; Dec. 31, 1792, ch. 1, § 29, 1 Stat. 298; Feb. 18, 1793, ch. 8, § 35, 1 Stat. 317; June 9, 1794, ch. 64, § 1, 1 Stat. 395; Mar. 2, 1799, ch. 22, § 89, 1 Stat. 695, 696.

## CROSS REFERENCES

Custody, forfeiture, and sale of property seized under the customs laws, see sections 1605-1617 of Title 19, Customs Duties.

Remission of forfeitures, see sections 646 and 647 of Title 18, Criminal Code and Criminal Procedure.

## § 752. Same; sale after condemnation.

All vessels, goods, wares, or merchandise which shall be condemned by virtue of any law respecting the revenue from imports or tonnage, or the registering and recording or the enrolling and licensing of vessels, and for which bonds shall not have been given by the claimant, shall be sold by the marshal or other proper officer of the court in which condemnation shall be had, to the highest bidder, at public auction, by order of such court, and at such place as the court may appoint, giving at least fifteen days' notice (except in cases of perishable merchandise) in one or more of the public newspapers of the place where such sale shall be; or if no paper is published in such place, in one or more of the papers published in the nearest place thereto. And the amount of such sales, deducting all proper charges, shall be paid within ten days after such sale by the person selling the same to the clerk or other proper officer of the court directing such sale, to be by him, after deducting the charges allowed by the court, paid to the collector of the district in which such seizure or forfeiture has taken place, as hereinbefore directed. (R. S. § 939; May 29, 1930, ch. 355, 46 Stat. 485.)

## DERIVATION

Acts Aug. 4, 1790, ch. 35, § 68, 1 Stat. 177; Dec. 31, 1792, ch. 1, § 29, 1 Stat. 298; Feb. 18, 1793, ch. 8, § 35, 1 Stat. 317; Mar. 2, 1799, ch. 22, § 90, 1 Stat. 696.

## § 753. Bailing of property seized in vacation.

In any cause of admiralty and maritime jurisdiction, or other case of seizure, depending in any court of the United States, any judge of the said court, in vacation, shall have the same authority to order any vessel or cargo, or other property to be delivered to the claimants, upon bail or bond, or to be sold when necessary, as the said court has in term time, and to appoint appraisers, and exercise every other incidental power necessary to the complete execution of the authority herein granted; and the recognizance of bail or bond, under such order, may be executed



before the clerk upon the party's producing the certificate of the collector of the district, of the sufficiency of the security offered; and the same proceedings shall be had in case of said order of delivery or of sale, as are had in like cases when ordered in term time. Upon every such application, either for an order of delivery or of sale, the collector and the attorney of the district shall have reasonable notice in cases of the United States, and the party or counsel in all other cases. (R. S. § 940.)

## DERIVATION

Acts Aug. 4, 1790, ch. 35, § 67, 1 Stat. 176; Dec. 31, 1792, ch. 1, § 29, 1 Stat. 298; Feb. 18, 1793, ch. 8, § 35, 1 Stat. 317; Mar. 2, 1799, ch. 22, § 89, 1 Stat. 695, 696; Apr. 5, 1832, ch. 66, 4 Stat. 503.

#### § 754. Delivery bond in admiralty proceedings; further security; special bond.

When a warrant of arrest or other process in rem is issued in any cause of admiralty jurisdiction, except in cases of seizures for forfeiture under any law of the United States, the marshal shall stay the execution of such process, or discharge the property arrested if the process has been levied, on receiving from the claimant of the property a bond or stipulation in double the amount claimed by the libellant, with sufficient surety, to be approved by the judge of the court where the cause is pending, or, in his absence, by the collector of the port, conditioned to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court, and judgment thereon, against both the principal and sureties, may be recovered at the time of rendering the decree in the original cause. And the owner of any vessel may cause to be executed and delivered to the marshal a bond or stipulation, with sufficient surety, to be approved by the judge of the court in which he is marshal, conditioned to answer the decree of said court in all or any cases that shall thereafter be brought in said court against the said vessel, and thereupon the execution of all such process against said vessel shall be stayed so long as the amount secured by such bond or stipulation shall be at least double the aggregate amount claimed by the libellants in such suits which shall be begun and pending against said vessel; and like judgments and remedies may be had on said bond or stipulation as if a special bond or stipulation had been filed in each of said suits. The court may make such orders as may be necessary to carry this section into effect, and especially for the giving of proper notice of any such suit. Such bond or stipulation shall be indorsed by the clerk with a minute of the suits wherein process is so stayed, and further security may at any time be required by the court. If a special bond or stipulation in the particular cause shall be given under this section, the liability as to said cause on the general bond or stipulation shall cease: *Provided*, That the parties may stipulate the amount of the bond or stipulation for the release of a vessel or other property on libel in admiralty to be not more than the amount claimed in the libel, with interest, plus an allowance for libellant's costs: *Provided further*, That in the event of the inability or refusal of the parties to so stipulate the amount of the bond, the court shall fix the amount thereof, but if not so fixed

then a bond shall be required in the amount hereinbefore prescribed in this section. (R. S. § 941; Mar. 3, 1899, ch. 441, 30 Stat. 1354; Aug. 3, 1935, ch. 431, § 3, 49 Stat. 513.)

## DERIVATION

Acts Aug. 4, 1790, ch. 35, § 67, 1 Stat. 176; Dec. 31, 1792, ch. 1, § 29, 1 Stat. 298; Feb. 18, 1793, ch. 8, § 35, 1 Stat. 317; Mar. 2, 1799, ch. 22, § 89, 1 Stat. 695, 696; Mar. 3, 1847, ch. 55, 9 Stat. 181.

#### § 755. Special bail in suits for duties and penalties.

In all suits or prosecutions for the recovery of duties or pecuniary penalties prescribed by the laws of the United States, commenced in any State where, by the laws thereof, imprisonment for debt shall not have been abolished, the person against whom process is issued shall be held to special bail, subject to the rules which prevail in civil suits in which special bail is required. (R. S. § 942.)

## DERIVATION

Acts Mar. 2, 1799, ch. 22, § 65, 1 Stat. 676; Feb. 28, 1839, ch. 35, 5 Stat. 321; Jan. 14, 1841, ch. 2, 5 Stat. 410.

## FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

#### § 756. Defendant giving bail in one district and committed in another.

When a defendant who has procured bail to respond to the judgment in a suit in any court of the United States in any district is afterward arrested in any other district and is committed to a jail, the use of which had been ceded to the United States for the custody of prisoners, the judge of the court wherein the suit in which the defendant has so procured bail is depending, shall, at the request of the bail, order that such defendant be held in said jail, in the custody of the marshal of the district in which it is. The said marshal, upon the delivery of such order, duly authenticated, shall receive such person into his custody, and thereupon be chargeable for an escape, and shall forthwith make a certificate, under his hand and seal, of such commitment, and transmit the same to the court from which the order issued, and, if required, shall make and deliver to such bail or to his attorney a duplicate thereof. Upon the return of said certificate, the court which made the said order, or any judge thereof, may direct that an exoneretur be entered upon the bail-piece, where special bail shall have been found, or otherwise discharge such bail. (R. S. § 943.)

## DERIVATION

Act Mar. 2, 1799, ch. 32, § 1, 1 Stat. 727.

## FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

#### § 757. Same; defendant held until judgment in first suit.

When a defendant is committed by virtue of the order provided in section 756 of this title, he shall, unless sooner discharged by law, be holden in jail until final judgment is rendered in the suit in which he procured bail as aforesaid and sixty days thereafter, if such judgment is rendered against him, in order that he may be charged in execution, which

may, in such cases, be directed to and served by the marshal in whose custody he is. (R. S. § 944.)

#### DERIVATION

Act Mar. 2, 1799, ch. 32, § 3, 1 Stat. 727.

#### FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

### § 758. Bail and affidavits; taking by commissioners.

Bail and affidavits, when required or allowed in any civil cause in any district court, may be taken by a commissioner of the district court for the district; and such acknowledgments of bail and affidavits shall have the same effect as if taken before any judge of such court. (R. S. § 945; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

#### DERIVATION

Acts Feb. 20, 1812, ch. 25, § 1, 2 Stat. 679; Mar. 1, 1817, ch. 30, 3 Stat. 350.

#### FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

### § 759. Calling of bail in Kentucky.

When a bail bond is given for the appearance of any person to answer in the district court for the district of Kentucky, the clerk of such court shall call the party at the time he is bound to appear. If the party fails, the clerk shall enter such failure on his minutes, and on said entry judgment may afterward be made of record by the court; but if the party appears, the clerk shall take another bond, with sureties similar to the first, for further appearance at the next succeeding term of the court, and if the party fails to give such other bond and surety, he shall stand committed by order of the clerk until he complies. (R. S. § 946; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

#### DERIVATION

Act May 15, 1862, ch. 71, § 10, 12 Stat. 387.

#### FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

### § 760. Clerks may take bail de bene esse.

Recognizances of special bail may be taken de bene esse by the clerks of the district court, in the absence or in case of the disability of the judge, in any action depending in said court, where special bail is demandable. (R. S. § 947; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

#### DERIVATION

Act May 8, 1792, ch. 36, § 10, 1 Stat. 278.

#### FEDERAL RULES OF CIVIL PROCEDURE

Seizure of person or property, see Rule 64, following section 723c of this title.

### § 761. Proceedings in suits against United States.

The course of procedure for the district courts and the Court of Claims in cases under section 41, paragraph 20, and section 250 of this title, insofar as applicable and not inconsistent with sections 762-765, and the procedure prescribed for the Court of Claims shall be in accordance with the established rules of said respective courts, and of such additions and modifications thereof as said courts may

adopt. (Mar. 3, 1887, ch. 359, § 4, 24 Stat. 506; Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168; Feb. 13, 1925, ch. 229, § 13, 43 Stat. 941.)

### § 762. Petition in suit against United States.

The plaintiff in any suit brought under the provisions of section 41, paragraph 20, of this title shall file a petition, duly verified with the clerk of the respective court having jurisdiction of the case, and in the district where the plaintiff resides. Such petition shall set forth the full name and residence of the plaintiff, the nature of his claim, and a succinct statement of the facts upon which the claim is based, the money or any other thing claimed, or the damages sought to be recovered and praying the court for a judgment or decree upon the facts and law. (Mar. 3, 1887, ch. 359, § 5, 24 Stat. 506.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Commencement of action and signing of pleadings, see Rules 3, 11, following section 723c of this title.

Continuation of section under Rule 11, see note by Advisory Committee under said Rule 11.

### § 763. Same; service; appearance by district attorney.

The plaintiff shall cause a copy of his petition filed under section 762 of this title, to be served upon the district attorney of the United States in the district wherein suit is brought, and shall mail a copy of the same, by registered letter, to the Attorney General of the United States, and shall thereupon cause to be filed with the clerk of the court wherein suit is instituted an affidavit of such service and the mailing of such letter. It shall be the duty of the district attorney upon whom service of petition is made as aforesaid to appear and defend the interests of the Government in the suit, and within sixty days after the service of petition upon him, unless the time should be extended by order of the court made in the case to file an answer on the part of the Government, and to file a notice of any counterclaim, set-off, claim for damages, or other demand or defense whatsoever of the Government in the premises. Should the district attorney neglect or refuse to file the answer or defense, as required, the plaintiff may proceed with the case under such rules as the court may adopt in the premises; but the plaintiff shall not have judgment or decree for his claim, or any part thereof, unless he shall establish the same by proof satisfactory to the court. (Mar. 3, 1887, ch. 359, § 6, 24 Stat. 506.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Modification of section under rules, see notes by Advisory Committee under Rules 4, 12, and 55.

Process, defenses and objections and default, see Rules 4, 12, 55, following section 723c of this title.

### § 764. Opinion, findings, and conclusions in suit against United States.

It shall be the duty of the court to cause a written opinion to be filed in the cause, setting forth the specific findings by the court of the facts therein and the conclusions of the court upon all questions of law involved in the case, and to render judgment thereon. If the suit be in equity or admiralty, the court shall proceed with the same according to the rules of such courts. (Mar. 3, 1887, ch. 359, § 7, 24 Stat. 506.)

## FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under rules, see notes by Advisory Committee under Rules 52 and 75.

Findings and record on appeal to Circuit Court of Appeals, see Rules 52, 75, following section 723c of this title.

### § 765. Judgment adverse to Government in suit against United States; appeal.

When the findings of fact and the law applicable thereto have been filed in any case as provided in section 763 of this title, and the judgment or decree is adverse to the Government, it shall be the duty of the district attorney to transmit to the Attorney General of the United States certified copies of all the papers filed in the cause, with a transcript of the testimony taken, the written findings of the court, and his written opinion as to the same; whereupon the Attorney General shall determine and direct whether an appeal shall be taken or not; and when so directed the district attorney shall cause an appeal to be perfected in accordance with the terms of the statutes and rules of practice governing the same. From the date of such final judgment or decree interest shall be computed thereon, at the rate of 4 per centum per annum, until the time when an appropriation is made for the payment of the judgment or decree. (Mar. 3, 1887, ch. 359, § 10, 24 Stat. 507; Feb. 13, 1925, ch. 229, § 8, 43 Stat. 940; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 64.)

### § 766. Partition suits where United States is tenant in common or joint tenant.

When any suit in equity is brought by any tenant in common or joint tenant owning an undivided interest in lands, where the United States is one of such tenants in common or joint tenants, against the United States alone or against the United States and any other of such owners, service shall be made on the United States by causing a copy of the bill filed to be served upon the district attorney of the district wherein the suit is brought, and by mailing a copy of the same by registered letter to the Attorney General of the United States; and the complainant in such bill shall file with the clerk of the court in which such bill is filed an affidavit of such service and of the mailing of such letter. It shall be the duty of the district attorney upon whom service of the bill is made as aforesaid to appear and defend the interests of the Government, and within sixty days after service upon him as hereinabove prescribed, unless the time shall be enlarged by order of the court made in the case, to file an answer on the part of the Government, and the cause shall proceed as other cases for partition by courts of equity, and in making such partition the court shall be governed by the same principles of equity that control courts of equity in partition proceedings between private persons. Whenever in such suit the court shall order a sale of the property or any part thereof the Attorney General of the United States may, in his discretion, bid for the same in behalf of the United States. If the United States shall be the purchaser, the amount of the purchase money shall be paid from the Treasury of the United States upon a warrant drawn by the Secretary of the Treasury on

the requisition of the Attorney General. (May 17, 1898, ch. 339, §§ 1, 2, 30 Stat. 416.)

## FEDERAL RULES OF CIVIL PROCEDURE

Commencement of action and process, see Rules 3, 4, following section 723c of this title.

Modification of section under Rule 4, see note by Advisory Committee under said Rule 4.

### § 767. Amendment of process.

Any district court may at any time, in its discretion, and upon such terms as it may deem just, allow an amendment of any process returnable to or before it, where the defect has not prejudiced, and the amendment will not injure the party against whom such process issues. (R. S. § 948; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

## DERIVATION

Act June 1, 1872, ch. 255, § 3, 17 Stat. 197.

## FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under Rule 4, see note by Advisory Committee under said Rule 4.

Process, see Rules 1, 4, following section 723c of this title.

### § 768. Priority of cases where a State is party.

When a State is a party, or the execution of the revenue laws of a State is enjoined or stayed, in any suit in a court of the United States, such State or the party claiming under the revenue laws of a State, the execution whereof is enjoined or stayed, shall be entitled, on showing sufficient reason, to have the cause heard at any time after it is docketed, in preference to any civil cause pending in such court between private parties. (R. S. § 949.)

## DERIVATION

Act June 30, 1870, ch. 181, 16 Stat. 176.

## FEDERAL RULES OF CIVIL PROCEDURE

Assignment of cases for trial, see Rule 40, following section 723c of this title.

### § 769. Notice of case for trial.

In all civil actions in the courts of the United States either party may notice the same for trial. (R. S. § 950.)

## DERIVATION

Act Feb. 28, 1871, ch. 99, § 17, 16 Stat. 439.

## FEDERAL RULES OF CIVIL PROCEDURE

Assignment of cases for trial, see Rule 40, following section 723c of this title.

Modification of section under Rule 40, see note by Advisory Committee under said Rule 40.

### § 770. Trial of issues of fact; by jury.

The trial of issues of fact in the district courts, in all causes except cases in equity and cases of admiralty and maritime jurisdiction, and except as otherwise provided in proceeding in bankruptcy, shall be by jury. In causes of admiralty and maritime jurisdiction relating to any matter of contract or tort arising upon or concerning any vessel of twenty tons burden or upward, enrolled and licensed for the coasting trade, and at the time employed in the business of commerce and navigation between places in different States and Territories upon the lakes and navigable waters connecting the lakes, the trial of issues of fact shall be by jury when either

party requires it. (R. S. §§ 566, 648; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

#### DERIVATION

R. S. § 566 from acts Sept. 24, 1789, ch. 20, § 9, 1 Stat. 76; Feb. 26, 1845, ch. 20, 5 Stat. 726.

R. S. § 648 from acts Sept. 24, 1789, ch. 20, § 12, 1 Stat. 79; Mar. 3, 1865, ch. 86, § 4, 13 Stat. 501.

#### FEDERAL RULES OF CIVIL PROCEDURE

Jury trial of right and waiver of jury trial, see Rule 38, following section 723c of this title.

#### CROSS REFERENCE

Issues of fact in civil cases to be tried by court, without jury, whenever the parties or their attorneys agree to waive the jury by a stipulation in writing filed with the clerk or oral stipulation made in open court and entered in the record, see section 773 of this title.

#### § 771. Same; in admiralty causes.

The district courts of the United States, in deciding causes of admiralty and maritime jurisdiction on the instance side of the court, shall find the facts and the conclusions of law upon which it renders its judgments or decrees, and shall state the facts and conclusions of law separately. And in finding the facts, as before provided, said court may, upon the consent of the parties who shall have appeared and put any matter of fact in issue, and subject to such general rules in the premises as shall be made and provided from time to time, impanel a jury of not less than five and not more than twelve persons, to whom shall be submitted the issues of fact in such cause, under the direction of the court, as in cases at common law. And the finding of such jury, unless set aside for lawful cause, shall be entered of record, and stand as the finding of the court, upon which judgment shall be entered according to law. (Feb. 16, 1875, ch. 77, § 1, 18 Stat. 315; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Feb. 13, 1925, ch. 229, § 1, 43 Stat. 938.)

#### § 772. Same; in equity in patent causes.

District courts, when sitting in equity for the trial of patent causes, may impanel a jury of not less than five and not more than twelve persons, subject to such general rules in the premises as may, from time to time, be made by the Supreme Court, and submit to them such questions of fact arising in such cause as such district court shall deem expedient and the verdict of such jury shall be treated and proceeded upon in the same manner and with the same effect as in the case of issues sent from chancery to a court of law and returned with such findings. (Feb. 16, 1875, c. 77, § 2, 18 Stat. 316; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 39 on this section, see note by Advisory Committee under said Rule 39.

Trial by jury or by court, see Rule 39, following section 723c of this title.

#### § 773. Trial of issues of fact by court.

Subject matter of this section, R. S. § 649 and act May 29, 1930, ch. 357, 46 Stat. 486, is now covered by Rules 38 and 52 of the Federal Rules of Civil Procedure set out following section 723c of this title. See notes of Advisory Committee under said rules.

#### § 774. Suits by United States against individuals; credits.

In suits brought by the United States against individuals, no claim for a credit shall be admitted, upon trial, except such as appear to have been presented to the General Accounting Office for its examination, and to have been by it disallowed, in whole or in part, unless it is proved to the satisfaction of the court that the defendant is, at the time of the trial, in possession of vouchers not before in his power to procure, and that he was prevented from exhibiting a claim for such credit at the General Accounting Office by absence from the United States or by some unavoidable accident. (R. S. §§ 236, 951; June 10, 1921, ch. 18, §§ 304, 305, 42 Stat. 24.)

#### DERIVATION

Act Mar. 3, 1797, ch. 20, § 3, 1 Stat. 514.

#### FEDERAL RULES OF CIVIL PROCEDURE

Counterclaim and cross-claim, see Rule 13, following section 723c of this title.

#### § 775. Suits under postal laws; credits.

No claim for a credit shall be allowed upon the trial of any suit for delinquency against a postmaster, contractor, or other officer, agent, or employee of the Post Office Department, unless the same has been presented to the General Accounting Office and by it disallowed, in whole or in part, or unless it is proved to the satisfaction of the court that the defendant is, at the time of trial, in possession of vouchers not before in his power to procure, and that he was prevented from exhibiting to the General Accounting Office a claim for such credit by some unavoidable accident. (R. S. § 952; June 10, 1921, ch. 118, § 310, 42 Stat. 25.)

#### DERIVATION

Act July 2, 1836, ch. 270, § 15, 5 Stat. 82.

#### FEDERAL RULES OF CIVIL PROCEDURE

Counterclaim and cross-claim, see Rule 13, following section 723c of this title.

#### § 776. Bill of exceptions; authentication; signing of by judge.

Subject matter of this section, R. S. § 953 and act June 5, 1900, ch. 717, § 1, 31 Stat. 270, is now covered by Rules 46, 63, and 75 of the Federal Rules of Civil Procedure set out following section 723c of this title. See notes of Advisory Committee under said rules.

#### § 777. Defects of form; amendments.

No summons, writ, declaration, return, process, judgment, or other proceedings in civil causes, in any court of the United States, shall be abated, arrested, quashed, or reversed for any defect or want of form; but such court shall proceed and give judgment according as the right of the cause and matter in law shall appear to it, without regarding any such defect or want of form, except those which, in cases of demurrer, the party demurring specially sets down, together with his demurrer, as the cause thereof; and such court shall amend every such defect and want of form other than those which the party demurring so expresses; and may at any time permit either of the parties to amend any defect in the process or pleadings, upon such conditions as it shall, in its discretion and by its rules, prescribe. (R. S. § 954.)

## DERIVATION

Act Sept. 24, 1789, ch. 20, § 32, 1 Stat. 91.

## CROSS REFERENCES

Demurrers, pleas, etc., abolished, see Rule 7 of the Federal Rules of Civil Procedure set out following section 723c of this title.

## FEDERAL RULES OF CIVIL PROCEDURE

Amendment and supplemental pleadings and harmless error, see Rules 1, 15, 61, following section 723c of this title.

## §§ 778-780. Survival of actions, suits, and proceedings.

Subject matter of these sections, R. S. §§ 955, 956, and acts Feb. 8, 1899, ch. 121, 30 Stat. 822; Nov. 23, 1921, ch. 142, §§ 1, 2, 42 Stat. 823, 824; Dec. 22, 1921, ch. 18, 42 Stat. 352; and Feb. 13, 1925, ch. 229, § 11, 43 Stat. 941, is now covered by Rules 25 and 81 of the Federal Rules of Civil Procedure set out following section 723c of this title. See notes of Advisory Committee under said rules.

## § 780a. Survival of action to recover damages.

No civil action to recover damages, brought by the United States or in its behalf, or in which the United States shall be directly or indirectly interested, and pending against any defendant prior to the time of his death, in any court of the United States, shall abate by reason of the death of any such defendant; but any such action shall survive and be enforceable against the estate of any such deceased defendant. This section shall not be construed to deprive the plaintiff in any such action of any remedy which he may have against a surviving defendant. (June 16, 1933, ch. 103, 48 Stat. 311.)

## § 781. Delinquents for public money; judgment.

When suit is brought by the United States against any revenue officer or other person accountable for public money, who neglects or refuses to pay into the Treasury the sum or balance reported to be due to the United States, upon the adjustment of his account it shall be the duty of the court to grant judgment at the return term, upon motion, unless the defendant, in open court (the United States attorney being present), makes and subscribes an oath that he is equitably entitled to credits which had been, previous to the commencement of the suit, submitted to the General Accounting Office, and rejected; specifying in the affidavit each particular claim so rejected, and that he cannot then safely come to trial. If the court, when such oath is made, subscribed, and filed, is thereupon satisfied, a continuance until the next succeeding term may be granted. Such continuance may also be granted when the suit is brought upon a bond or other sealed instrument, and the defendant pleads non est factum, or makes a motion to the court, verifying such plea or motion by his oath, and the court thereupon requires the production of the original bond, contract, or other paper certified in the affidavit. And no continuance shall be granted except as herein provided. (R. S. § 957; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

## DERIVATION

Act Mar. 3, 1797, ch. 20, § 3, 1 Stat. 514.

## § 782. Suits under postal laws; judgment; continuance.

In suits arising under the postal laws the court shall proceed to trial, and render judgment at the return term; but whenever service of process is not

made at least twenty days before the return day of such term, the defendant is entitled to one continuance, if, on his statement, the court deems it expedient; and if he makes affidavit that he has a claim against the Post Office Department, which has been submitted to and disallowed by the General Accounting Office, specifying such claim in his affidavit, and that he could not be prepared for trial at such term for want of evidence, the court, if satisfied thereof, may grant a continuance until the next term. (R. S. § 958; June 10, 1921, ch. 18, § 310, 42 Stat. 25.)

## DERIVATION

Acts Mar. 3, 1825, ch. 64, § 38, 4 Stat. 113; July 2, 1836, ch. 270, § 15, 5 Stat. 82.

## § 783. Suits on debentures; judgment; continuance.

In all suits for the recovery of money upon debentures issued by the collectors of customs, under any act for the collection of duties, it shall be the duty of the court to grant judgment at the return term, unless the defendant, in open court, exhibits some plea, on oath, by which the court is satisfied that a continuance is necessary to the attainment of justice; in which case, and not otherwise, a continuance until the next term may be granted. (R. S. § 959.)

## DERIVATION

Act Mar. 2, 1799, ch. 22, § 80, 1 Stat. 688, 689.

## § 784. Suits on bonds for recovery of duties; judgment; continuance.

When suit is brought on any bond for the recovery of duties due to the United States, it shall be the duty of the court to grant judgment at the return term, upon motion, unless the defendant in open court (the United States attorney being present) makes oath that an error has been committed in the liquidation of the duties demanded upon such bond, specifying the errors alleged to have been committed, and that the same have been notified in writing to the collector of the district before the said return term; whereupon a continuance may be granted until the next term, and no longer, if the court is satisfied that such continuance is necessary for the attainment of justice. (R. S. § 960.)

## DERIVATION

Act Mar. 2, 1799, ch. 22, § 65, 1 Stat. 676.

## § 785. Suit to recover forfeiture in bond.

In all suits brought to recover the forfeiture annexed to any articles of agreement, covenant, bond, or other specialty, where the forfeiture, breach, or nonperformance appears by the default or confession of the defendant, or upon demurrer, the court shall render judgment for the plaintiff to recover so much as is due according to equity. And when the sum for which judgment should be rendered is uncertain, it shall, if either of the parties request it, be assessed by a jury. (R. S. § 961.)

## DERIVATION

Act Sept. 24, 1789, ch. 20, § 26, 1 Stat. 87.

## FEDERAL RULES OF CIVIL PROCEDURE

Default judgment, see Rule 55, following section 723c of this title.

Preservation of section under Rule 55, see note by Advisory Committee under said Rule 55.

**§ 786. Judgment for duties; collected in coin.**

In all suits by the United States for the recovery of duties upon imports, or of penalties for the nonpayment thereof, the judgment shall recite that it is rendered for duties, and such judgment, with interest thereon, and costs, shall be payable in the coin by law receivable for duties; and the execution issued thereon shall set forth that the recovery is for duties, and shall require the marshal to satisfy the same in the coin by law receivable for duties; and in case of levy upon and sale of the property of the judgment debtor, the marshal shall refuse payment from any purchaser at such sale in any other money than that specified in the execution. (R. S. § 962.)

**DERIVATION**

Act Mar. 3, 1865, ch. 80, § 12, 13 Stat. 494.

**FEDERAL RULES OF CIVIL PROCEDURE**

Execution, see Rule 69, following section 723c of this title.

**CROSS REFERENCE**

All coins and currencies of United States to be legal tender for payment of duties, see section 462 of Title 31, Money and Finance.

**§ 787. Interest; in suits on bonds for recovery of duties.**

Upon all bonds, on which suits are brought for the recovery of duties, interest shall be allowed, at the rate of 6 per centum a year, from the time when said bonds became due. (R. S. § 963.)

**DERIVATION**

Act Mar. 2, 1799, ch. 22, § 65, 1 Stat. 676.

**§ 788. Same; in suits for balances due Post Office Department.**

In all suits for balances due to the Post Office Department, interest thereon shall be recovered, from the time of the default, at the rate of 6 per centum per year. (R. S. § 964.)

**DERIVATION**

Act July 2, 1836, ch. 270, § 15, 5 Stat. 82.

**§ 789. Same; in suits on debentures.**

In suits upon debentures, issued by the collectors of the customs under any act for the collection of duties, interest shall be allowed, at the rate of 6 per centum per annum, from the time when such debenture became due and payable. (R. S. § 965.)

**DERIVATION**

Act Mar. 2, 1799, ch. 22, § 80, 1 Stat. 687, 689.

**§ 790. Final record in equity and admiralty.**

In equity and admiralty causes, only the process, pleadings, and decree, and such orders and memorandums as may be necessary to show the jurisdiction of the court and regularity of the proceedings, shall be entered upon the final record. (R. S. § 750.)

**DERIVATION**

Act Feb. 26, 1853, ch. 80, § 1, 10 Stat. 163.

**§ 791. Penalties and forfeitures; under laws of United States.**

No suit or prosecution for any penalty or forfeiture, pecuniary or otherwise, accruing under the laws of the United States, shall be maintained, ex-

cept in cases where it is otherwise specially provided, unless the same is commenced within five years from the time when the penalty or forfeiture accrued: *Provided*, That the person of the offender, or the property liable for such penalty or forfeiture, shall, within the same period, be found within the United States; so that the proper process therefor may be instituted and served against such person or property. (R. S. § 1047.)

**DERIVATION**

Acts Mar. 2, 1799, ch. 22, § 89, 1 Stat. 695; Mar. 26, 1804, ch. 40, § 3, 2 Stat. 290; Apr. 20, 1818, ch. 91, § 9, 3 Stat. 452; Feb. 28, 1839, ch. 36, § 4, 5 Stat. 322; Mar. 3, 1863, ch. 76, § 14, 12 Stat. 741; and July 25, 1868, ch. 236, § 1, 15 Stat. 183.

**JUDGMENTS****§ 811. Interest on judgments.**

Interest shall be allowed on all judgments in civil causes, recovered in a district court, and may be levied by the marshal under process of execution issued thereon, in all cases where, by the law of the State in which such court is held, interest may be levied under process of execution on judgments recovered in the courts of such State; and it shall be calculated from the date of the judgment, at such rate as is allowed by law on judgments recovered in the courts of such State. (R. S. § 966; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

**DERIVATION**

Act Aug. 23, 1842, ch. 118, § 8, 5 Stat. 518.

**FEDERAL RULES OF CIVIL PROCEDURE**

Execution, see Rule 69, following section 723c of this title.

**§ 812. Judgments; liens of.**

Judgments and decrees rendered in a district court of the United States within any State, shall be liens on property throughout such State in the same manner and to the same extent and under the same conditions only as if such judgments and decrees had been rendered by a court of general jurisdiction of such State. Whenever the laws of any State require a judgment or decree of a State court to be registered, recorded, docketed, indexed, or any other thing to be done, in a particular manner, or in a certain office or county, or parish in the State of Louisiana before a lien shall attach, this section and section 813 of this chapter shall be applicable therein whenever and only whenever the laws of such State shall authorize the judgments and decrees of the United States courts to be registered, recorded, docketed, indexed, or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the State. (Aug. 1, 1888, ch. 729, § 1, 25 Stat. 357; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Aug. 17, 1912, ch. 300, 37 Stat. 311.)

**§ 813. Indices of judgment debtors to be kept by clerks.**

The clerks of the several courts of the United States shall prepare and keep in their respective offices complete and convenient indices of all judgment debtors under decrees, judgments, or orders of said courts, and such indices and judgments shall at all times be open to the inspection and examination

of the public. (Aug. 1, 1888, ch. 729, § 2, 25 Stat. 357; Feb. 7, 1925, ch. 149, 43 Stat. 813.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Books kept by clerk and entries therein, see Rule 79, following section 723c of this title.

#### § 814. Judgments cease to be liens, when.

Judgments and decrees rendered in a district court, within any State, shall cease to be liens on real estate or chattels real, in the same manner and at like periods as judgments and decrees of the courts of such State cease, by law, to be liens thereon. (R. S. § 967; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

#### DERIVATION

Act July 4, 1840, ch. 43, § 4, 5 Stat. 393.

### COSTS AND FEES

#### § 815. Costs; plaintiff not entitled to, when.

When, in a district court, a plaintiff in an action at law originally brought there, or a petitioner in equity, other than the United States, recovers less than the sum or value of \$500, exclusive of costs, in a case which cannot be brought there unless the amount in dispute, exclusive of costs, exceeds said sum or value; or a libellant, upon his own appeal, recovers less than the sum or value of \$300, exclusive of costs, he shall not be allowed, but, at the discretion of the court, may be adjudged to pay, costs. (R. S. § 968; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

#### DERIVATION

Acts Sept. 24, 1789, ch. 20, § 20, 1 Stat. 83; Mar. 3, 1803, ch. 40, § 2, 2 Stat. 244.

#### FEDERAL RULES OF CIVIL PROCEDURE

Costs, see Rule 54, following section 723c of this title.

#### § 816. Costs of keeping vessels or other property attached or libeled in admiralty.

This section, acts June 1, 1922, ch. 204, title II, 42 Stat. 615; Jan. 3, 1923, ch. 21, title II, 42 Stat. 1083; May 28, 1924, ch. 204, title II, 43 Stat. 220; Feb. 27, 1925, ch. 364, title II, 43 Stat. 1029, expired with the appropriation acts of which it was a part.

#### § 817. Costs; in internal revenue suits.

This section, R. S. § 969, is now set out as section 3745 (d) of Title 26, Internal Revenue Code.

#### § 818. Same; seizures; claimant not entitled to, when.

When, in any prosecution commenced on account of the seizure of any vessel, goods, wares, or merchandise, made by any collector or other officer, under any act of Congress authorizing such seizure, judgment is rendered for the claimant, but it appears to the court that there was reasonable cause of seizure, the court shall cause a proper certificate thereof to be entered, and the claimant shall not, in such case, be entitled to costs, nor shall the person who made the seizure, nor the prosecutor, be liable to suit or judgment on account of such suit or prosecution: *Provided*, That the vessel, goods, wares, or merchandise be, after judgment, forthwith returned to such claimant or his agent. (R. S. § 970.)

#### DERIVATION

Acts Mar. 2, 1799, ch. 22, § 89, 1 Stat. 695, 696; Feb. 24, 1807, ch. 19, § 1, 2 Stat. 422.

#### § 819. Same; seizures; double costs.

If, in any suit against an officer or other person executing or aiding or assisting in the seizure of goods, under any act providing for or regulating the collection of duties on imports or tonnage, the plaintiff is nonsuited, or judgment passed against him, the defendant shall recover double costs. (R. S. § 971.)

#### DERIVATION

Act Mar. 2, 1799, ch. 22, § 71, 1 Stat. 678.

#### § 820. Repealed. Feb. 28, 1933, ch. 131, § 1, 47 Stat. 1349.

This section, R. S. § 972, related to costs in copyright suits. For present provisions on this subject, see section 40 of Title 17, Copyrights.

#### § 821. Costs; infringement of patent; disclaimer.

When judgment or decree is rendered for the plaintiff or complainant, in any suit at law or in equity, for the infringement of a part of a patent, in which it appears that the patentee, in his specification, claimed to be the original and first inventor or discoverer of any material or substantial part of the thing patented, of which he was not the original and first inventor, no costs shall be recovered, unless the proper disclaimer, as provided by the patent laws, has been entered at the Patent Office before the suit was brought. (R. S. § 973.)

#### DERIVATION

Act July 8, 1870, ch. 230, § 60, 16 Stat. 207.

#### FEDERAL RULES OF CIVIL PROCEDURE

Costs, see Rule 54, following section 723c of this title.

#### § 822. Same; fines or forfeitures.

When judgment is rendered against the defendant in a prosecution for any fine or forfeiture incurred under a statute of the United States, he shall be subject to the payment of costs; and on every conviction for any other offense not capital, the court may, in its discretion, award that the defendant shall pay the costs of the prosecution. (R. S. § 974.)

#### DERIVATION

Act May 8, 1792, ch. 36, § 5, 1 Stat. 277.

#### § 823. Same; when recoverable by defendant in prosecution; exception.

If any informer or plaintiff on a penal statute, to whom the penalty or any part thereof, if recovered, is directed to accrue, discontinues his suit or prosecution, or is nonsuited therein, or if upon trial judgment is rendered in favor of the defendant, the court shall award to the defendant his costs, unless such informer or plaintiff is an officer of the United States specially authorized to commence such prosecution, and the court, at the trial in open court, certifies upon the record that there was reasonable cause for commencing the same; in which case no costs shall be adjudged to the defendant. (R. S. § 975.)

#### DERIVATION

Act May 8, 1792, ch. 36, § 5, 1 Stat. 277.

#### § 824. Fees of clerk, marshal, or attorney; when payable by informer.

If any informer on a penal statute, to whom the penalty or any part thereof, if recovered, is directed



to accrue, discontinues his suit or prosecution, or is nonsuited therein, or if upon trial judgment is rendered in favor of the defendant, such informer shall be alone liable to the clerk, marshal, and attorney for the fees of such prosecution, unless he is an officer of the United States whose duty it is to commence such prosecution, and the court certifies that there was reasonable cause for commencing the same; in which case the United States shall be responsible for such fees. (R. S. § 976.)

## DERIVATION

Act Feb. 28, 1799, ch. 19, § 8, 1 Stat. 626.

## § 825. Costs; several actions.

If several actions or processes are instituted, in a court of the United States or one of the Territories, against persons who might legally be joined in one action or process touching the matter in dispute, the party pursuing the same shall not recover, on all of the judgments therein which may be rendered in his favor, the costs of more than one action or process, unless special cause for said several actions or processes is satisfactorily shown on motion in open court. (R. S. § 977.)

## DERIVATION

Act July 22, 1813, ch. 14, § 1, 3 Stat. 19.

## FEDERAL RULES OF CIVIL PROCEDURE

Costs, see Rule 54, following section 723c of this title.

## § 826. Same; several libels against vessel and cargo.

When proceedings are had before a court of the United States or of the Territories, on several libels against any vessel and cargo which might legally be joined in one libel, there shall not be allowed thereon more costs than on one libel, unless special cause for libeling the vessel and cargo separately is satisfactorily shown on motion in open court. And in proceedings on several libels or informations against any cargo, or parts of cargo, or merchandise seized as forfeited for the same cause, there shall not be allowed more costs than would be lawful on one libel or information, whatever may be the number of owners or consignees therein concerned. But allowance may be made on one libel or information for the costs incidental to several claims. (R. S. § 978.)

## DERIVATION

Act July 22, 1813, ch. 14, § 2, 3 Stat. 20.

## § 827. Same; payment before possession of vessel.

When judgment is rendered in favor of the claimant of any vessel or other property seized on behalf of the United States, and libeled or informed against as forfeited under any law thereof, he shall be entitled to possession of the same when his own costs are paid. (R. S. § 979.)

## DERIVATION

Act July 22, 1813, ch. 14, § 2, 3 Stat. 21.

## § 828. Witness fees before commissioner; taxation.

In no case shall the fees of more than four witnesses be taxed against the United States, in the examination of any criminal case before a United States commissioner, unless their materiality and importance are first approved and certified to by the

district attorney for the district in which the examination is had; and such taxation shall be subject to revision, as in other cases. (R. S. § 981; May 28, 1896, ch. 252, § 19, 29 Stat. 184.)

## DERIVATION

Act Aug. 16, 1856, ch. 124, § 3, 11 Stat. 49.

## § 829. Costs; attorney liable for, when.

If any attorney, proctor, or other person admitted to conduct causes in any court of the United States, or of any Territory, appears to have multiplied the proceedings in any cause before such court so as to increase costs unreasonably and vexatiously, he shall be required, by order of the court, to satisfy any excess of costs so increased. (R. S. § 982.)

## DERIVATION

Acts July 22, 1813, ch. 14, § 3, 3 Stat. 21; Feb. 26, 1853, ch. 80, § 1, 10 Stat. 162.

## FEDERAL RULES OF CIVIL PROCEDURE

Costs, see Rules 11, 54, following section 723c of this title.

## § 830. Same; bill of; taxation.

The bill of fees of the clerk, marshal, and attorney, and the amount paid printers and witnesses, and lawful fees for exemplifications and copies of papers necessarily obtained for use on trials in cases where by law costs are recoverable in favor of the prevailing party, shall be taxed by a judge or clerk of the court, and be included in and form a portion of a judgment or decree against the losing party. Such taxed bills shall be filed with the papers in the cause. (R. S. § 983.)

## DERIVATION

Act Feb. 26, 1853, ch. 80, § 3, 10 Stat. 168.

## FEDERAL RULES OF CIVIL PROCEDURE

Costs, see Rule 54, following section 723c of this title.

## § 831. Same; bill of; sworn to.

Before any bill of costs shall be taxed by any judge or other officer, or allowed by the General Accounting Office, for services of clerks, marshals, commissioners, or district attorneys, the party claiming such bill shall prove by his own oath, or that of some other person having a knowledge of the facts, to be attached to such bill, and filed therewith, that the services charged therein have been actually and necessarily performed, as therein stated. (R. S. § 984; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

## DERIVATION

Acts Feb. 26, 1853, ch. 80, § 3, 10 Stat. 169; June 23, 1874, ch. 409, § 7, 18 Stat. 256.

## § 832. Suits, and so forth, by poor persons; prepayment of fees and costs.

Any citizen of the United States entitled to commence any suit or action, civil or criminal, in any court of the United States, may, upon the order of the court, commence and prosecute or defend to conclusion any suit or action, or an appeal to the circuit court of appeals, or to the Supreme Court in such suit or action, including all appellate proceedings, unless the trial court shall certify in writing that in the opinion of the court such appeal is not taken in good faith, without being required to prepay fees

or costs or for the printing of the record in the appellate court or give security therefor, before or after bringing suit or action, or upon appealing, upon filing in said court a statement under oath in writing, that because of his poverty he is unable to pay the costs of said suit or action or appeal, or to give security for the same, and that he believes that he is entitled to the redress he seeks in such suit or action or appeal, and setting forth briefly the nature of his alleged cause of action, or appeal. In any criminal case the court may, upon the filing in said court of the affidavit hereinbefore mentioned, direct that the expense of printing the record on appeal be paid by the United States, and the same shall be paid when authorized by the Attorney General. (July 20, 1892, ch. 209, § 1, 27 Stat. 252; June 25, 1910, ch. 435, 36 Stat. 866; June 27, 1922, ch. 246, 42 Stat. 666; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

**FEDERAL RULES OF CIVIL PROCEDURE**

Costs, see Rules 54, 72, 73, following section 723c of this title.

Effect of rules on this section, see note by Advisory Committee under Rules 54, 72, and 73.

**§ 833. Same; false swearing in affidavit of poverty, perjury.**

After any such suit or action shall have been brought, the plaintiff may answer and avoid a demand for fees or security for costs by filing a like affidavit, and willful false swearing in any affidavit provided for in this section or section 832 of this title, shall be punishable as perjury in other cases. (July 20, 1892, ch. 209, § 2, 27 Stat. 252.)

**FEDERAL RULES OF CIVIL PROCEDURE**

Costs, see Rule 54, following section 723c of this title

**§ 834. Same; process; witnesses.**

The officers of court shall issue, serve all process, and perform all duties in such cases, and witnesses shall attend as in other cases, and the plaintiff shall have the same remedies as are provided by law in other cases. (July 20, 1892, ch. 209, § 3, 27 Stat. 252.)

**FEDERAL RULES OF CIVIL PROCEDURE**

Costs, see Rule 54, following section 723c of this title.

**§ 835. Same; assignment of attorney; dismissal of cause.**

The court may request any attorney of the court to represent such poor person, if it deems the cause worthy of a trial, and may dismiss any such cause so brought if it be made to appear that the allegation of poverty is untrue, or if said court be satisfied that the alleged cause of action is frivolous or malicious. (July 20, 1892, ch. 209, § 4, 27 Stat. 252.)

**FEDERAL RULES OF CIVIL PROCEDURE**

Costs, see Rule 54, following section 723c of this title.

**§ 836. Same; judgment for costs.**

Judgment may be rendered for costs at the conclusion of the suit as in other cases: *Provided*, That the United States shall not be liable for any of the costs thus incurred. (July 20, 1892, ch. 209, § 5, 27 Stat. 252.)

**FEDERAL RULES OF CIVIL PROCEDURE**

Costs, see Rule 54, following section 723c of this title

**§ 837. Suits by seamen without prepayment of or bond for costs.**

Courts of the United States, including appellate courts, shall be open to seamen, without furnishing bonds or prepayment of or making deposit to secure fees or costs, for the purpose of entering and prosecuting suit or suits in their own name and for their own benefit for wages or salvage and to enforce laws made for their health and safety. (June 12, 1917, ch. 27, § 1, 40 Stat. 157; July 1, 1918, ch. 113, § 1, 40 Stat. 683.)

**EXECUTIONS AND SALES OF PROPERTY**

**§ 838. Executions; run in all districts of State.**

All writs of execution upon judgments or decrees obtained in a district court, in any State which is divided into two or more districts, may run and be executed in any part of such State; but shall be issued from, and made returnable to, the court wherein the judgment was obtained. (R. S. § 985; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

**DERIVATION**

Act May 20, 1826, ch. 124, 4 Stat. 184.

**FEDERAL RULES OF CIVIL PROCEDURE**

Continuation of section under rules, see notes by Advisory Committee under Rules 4 and 69.

Process and execution, see Rules 4, 69, following section 723c of this title.

**§ 839. Same; run in every State and Territory.**

All writs of execution upon judgments obtained for the use of the United States, in any court thereof, in one State, may run and be executed in any other State, or in any Territory, but shall be issued from and made returnable to, the court wherein the judgment was obtained. (R. S. § 986.)

**DERIVATION**

Act Mar. 3, 1797, ch. 20, § 6, 1 Stat. 515.

**FEDERAL RULES OF CIVIL PROCEDURE**

Continuation of section under rules, see notes by Advisory Committee under Rules 4 and 69.

Process and execution, see Rules 4, 69, following section 723c of this title.

**§ 840. Same; stay on conditions.**

When a district court enters judgment in a civil action, either upon a verdict or on a finding of the court upon the facts, in cases where such finding is allowed, execution may, on motion of either party, at the discretion of the court, and on such conditions for the security of the adverse party as it may judge proper, be stayed forty-two days from the time of entering judgment, to give time to file in the clerk's office of said court a petition for a new trial. If such petition is filed within said term of forty-two days, with a certificate thereon from any judge of such court that he allows it to be filed, which certificate he may make or refuse at his discretion, execution shall, of course, be further stayed to the next session of said court. If a new trial be granted, the former judgment shall be thereby rendered void. (R. S. § 987; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

**DERIVATION**

Acts Sept. 24, 1789, ch. 20, § 18, 1 Stat. 83; Mar. 3, 1865, ch. 86, § 4, 13 Stat. 801

## FEDERAL RULES OF CIVIL PROCEDURE

Modification of section under Rules 59 and 62, see notes by Advisory Committee under said Rules.

New trial and stay of proceedings, see Rules 59, 62, 69, following section 723c of this title.

## § 841. Same; stay of one term.

In any State where judgments are liens upon the property of the defendant, and where, by the laws of such State, defendants are entitled, in the courts thereof, to a stay of execution for one term or more, defendants in actions in the courts of the United States, held therein, shall be entitled to a stay of execution for one term. (R. S. § 988.)

## DERIVATION

Act May 19, 1828, ch. 68, § 2, 4 Stat. 281.

## FEDERAL RULES OF CIVIL PROCEDURE

Execution and stay of proceedings to enforce judgment, see Rules 62, 69, following section 723c of this title.

Modification of section under Rule 62, see note by Advisory Committee under said Rule 62.

## § 842. Same; against officers of revenue in cases of probable cause.

When a recovery is had in any suit or proceeding against a collector or other officer of the revenue for any act done by him, or for the recovery of any money exacted by or paid to him and by him paid into the Treasury, in the performance of his official duty, and the court certifies that there was probable cause for the act done by the collector or other officer, or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the Government, no execution shall issue against such collector or other officer, but the amount so recovered shall, upon final judgment, be provided for and paid out of the proper appropriation from the Treasury. (R. S. § 989.)

## DERIVATION

Act Mar. 3, 1863, ch. 76, § 12, 12 Stat. 741.

## FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under rules, see notes by Advisory Committee under Rules 54 and 69.

Judgment and execution, see Rules 54, 69, following section 723c of this title.

## § 843. Imprisonment for debt.

No person shall be imprisoned for debt in any State, on process issuing from a court of the United States, where, by the laws of such State, imprisonment for debt has been or shall be abolished. And all modifications, conditions, and restrictions upon imprisonment for debt, provided by the laws of any State, shall be applicable to the process issuing from the courts of the United States to be executed therein; and the same course of proceedings shall be adopted therein as may be adopted in the courts of such State. (R. S. § 990.)

## DERIVATION

Acts Feb. 28, 1839, ch. 35, 5 Stat. 321; Jan. 14, 1841, ch. 2, 5 Stat. 410; Mar. 2, 1867, ch. 180, 14 Stat. 543

## FEDERAL RULES OF CIVIL PROCEDURE

Execution and seizure of person or property, see Rules 64, 69, following section 723c of this title.

## § 844. Same; discharge according to State laws.

When any person is arrested or imprisoned in any State, on mesne process or execution issued from any

court of the United States, in any civil action, he shall be entitled to discharge from such arrest or imprisonment in the same manner as if he were so arrested and imprisoned on like process from the courts of such State. The same oath may be taken, and the same notice thereof shall be required, as may be provided by the laws of such State, and the same course of proceedings shall be adopted as may be adopted in the courts thereof. But all such proceedings shall be had before one of the United States commissioners of the district court for the district where the defendant is so held. (R. S. § 991; May 28, 1896, ch. 252, § 19, 29 Stat. 184; Mar. 2, 1901, ch. 814, 31 Stat. 956; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

## DERIVATION

Acts Jan. 6, 1800, ch. 4, § 2, 2 Stat. 5; Jan. 7, 1824, ch. 3, 4 Stat. 1; Apr. 22, 1824, ch. 39, §§ 1, 2, 4 Stat. 19, 20; Mar. 2, 1867, ch. 180, 14 Stat. 543.

## FEDERAL RULES OF CIVIL PROCEDURE

Execution and seizure of person or property, see Rules 64, 69, following section 723c of this title.

## § 845. Same; jail limits.

Persons imprisoned on process issuing from any court of the United States in civil actions, as well as the suit of the United States as at the suit of any person, shall be entitled to the same privileges of the yards of the respective jails as persons confined in like cases on process from the courts of the respective States are entitled to, and under the like regulations and restrictions. (R. S. § 992.)

## DERIVATION

Acts Jan. 6, 1800, ch. 4, § 1, 2 Stat. 4; May 19, 1828, ch. 68, § 1, 4 Stat. 278; Aug. 1, 1842, ch. 109, 5 Stat. 499.

## FEDERAL RULES OF CIVIL PROCEDURE

Execution and seizure of person or property, see Rules 64, 69, following section 723c of this title.

## § 846. Fieri facias; appraisal of goods; appraisers.

When it is required by the laws of any State that goods taken in execution on a writ of fieri facias shall be appraised, before the sale thereof, the appraisers appointed under the authority of the State may appraise goods taken in execution on a fieri facias issued out of any court of the United States, in the same manner as if such writ had issued out of a court of such State. And the marshal, in whose custody such goods may be, shall summon the appraisers, in the same manner as the sheriff is, by the laws of such State, required to summon them; and if the appraisers, being duly summoned, fail to attend and perform the duties required of them, the marshal may proceed to sell such goods without an appraisement. When such appraisers attend they shall be entitled to the like fees as in cases of appraisements under the laws of the State. (R. S. § 993.)

## DERIVATION

Act Mar. 2, 1793, ch. 22, § 8, 1 Stat. 335.

## FEDERAL RULES OF CIVIL PROCEDURE

Execution, see Rule 69, following section 723c of this title.

## § 847. Sales; real property under order or decree.

All real estate or any interest in land sold under any order or decree of any United States court shall

be sold at public sale at the courthouse of the county, parish, or city in which the property, or the greater part thereof, is located, or upon the premises or some parcel thereof located therein, as the court rendering such order or decree of sale may direct, said sale to be upon such terms and conditions as said court shall approve: *Provided, however*, That if said property shall be situated in more than one county, State, judicial district of the United States, or judicial circuit of the United States, whether in one or more parcels, said property shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part thereof is located or upon the premises or some parcel thereof as the court rendering such order or decree of sale may direct: *And provided further*, That if at the time said property is offered for sale it is in the possession of a receiver or receivers, or ancillary receiver or ancillary receivers, appointed by one or more district courts of the United States, said property wherever situated shall be sold at public sale in the district of primary jurisdiction at the courthouse of the county, parish, or city situated therein in which the greater part of said property in said district is located or on the premises or some parcel thereof located in such county, parish, or city therein as the court having primary jurisdiction by such order or decree of sale may direct, unless said court shall order the sale of the properties or one or more parcels thereof in one or more ancillary districts. The United States court having primary jurisdiction shall be deemed to be the court first appointing any such receiver.

After a hearing of which notice to all interested parties shall be given by publication or otherwise as the court may direct, the court may order and decree the sale of such real estate or interest in land or any part thereof at private sale for cash or other considerations and upon such terms and conditions as the court directing the sale may approve, if it finds that the best interests of the estate will be conserved thereby: *Provided*, That before confirmation of any private sale, the court shall appoint three disinterested persons to appraise said property or, if the court deems advisable, different groups of three appraisers each to appraise properties of different classes or situate in different localities, and no private sale shall be confirmed at a price less than two-thirds of the appraised value: *Provided further*, That before confirmation of any private sale, the terms of such sale shall first be published in such newspaper or newspapers of general circulation as the court having jurisdiction may direct at least ten days before confirmation; and such private sale shall not then be confirmed by said court where a bona fide offer has been made, under such conditions as said court may prescribe, which offer shall guarantee at least a 10 per centum increase over the offered price specified in such private sale. The provisions of this section shall apply to sales and proceedings now pending in the courts of the United States as well as those commenced hereafter. The provisions of this section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks, appointed by the Comptroller of the Currency. (Mar. 3, 1893, ch. 225, § 1, 27 Stat. 751; June

19, 1934, ch. 662, 48 Stat. 1119; Apr. 24, 1935, ch. 77, § 1, 49 Stat. 159; June 19, 1935, ch. 276, 49 Stat. 390.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Execution, see Rule 69, following section 723c of this title.

#### § 848. Same; personal property under order or decree.

All personal property sold under any order or decree of any court of the United States shall be sold as provided in section 847 of this title, unless in the opinion of the court rendering such order or decree, it would be best to sell it in some other manner. The provisions of this section shall apply to sales and proceedings now pending in the courts of the United States as well as those commenced hereafter. The provisions of this section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks, appointed by the Comptroller of the Currency. (Mar. 3, 1893, ch. 225, § 2, 27 Stat. 751; Apr. 24, 1935, ch. 77, § 2, 49 Stat. 160; June 19, 1935, ch. 276, 49 Stat. 390.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Execution, see Rule 69, following section 723c of this title.

#### § 849. Same; necessity of notice.

No sale of real estate ordered pursuant to section 847 of this title by any order, judgment, or decree of any United States court, other than a private sale, shall be had without previous publication of notices of such proposed sale being ordered and had once a week for at least four weeks prior to such sale in at least one newspaper printed, regularly issued, and having a general circulation in the county, State, judicial district of the United States, or judicial circuit of the United States where the real estate proposed to be sold is situated, if such there be. If said property shall be situated in more than one county, State, judicial district of the United States, or judicial circuit of the United States, such notice shall be published in one or more of the counties, States, judicial districts of the United States, or judicial circuits of the United States where said property is situated, as the court may direct. Said notice shall be substantially in such form and contain such description of the property by reference or otherwise as the court ordering the sale shall approve. The court may, in its discretion, direct that the publication of the notice of sale herein provided for be made in such other newspapers as may seem proper. The provisions of this section shall apply to sales and proceedings now pending in the courts of the United States as well as those commenced hereafter in said courts. The provisions of this section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks, appointed by the Comptroller of the Currency. (Mar. 3, 1893, ch. 225, § 3, 27 Stat. 751; Apr. 24, 1935, ch. 77, § 3, 49 Stat. 160; June 19, 1935, ch. 276, 49 Stat. 390.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Execution, see Rule 69, following section 723c of this title.

#### § 850. Same; death of marshal after levy or after sale.

When a marshal dies, or is removed from office, or the term of his commission expires, after he has

taken in execution, under process from a court of the United States, any lands, tenements, or hereditaments, and before sale or other final disposition thereof, the like process shall issue to the succeeding marshal, and the same proceeding shall be had as if such marshal had not died or been removed, or the term of his commission had not expired. And when a marshal dies or is removed from office, or the term of his commission expires, after he has sold any lands, tenements, or hereditaments, under process from a court of the United States, and before a deed for the same is executed by him to the purchaser, such court may, on application by the purchaser, or by the plaintiff at whose suit the sale was made, setting forth the case and the reason why the title was not perfected by said marshal, order the marshal for the time being to perfect the title and execute a deed to the purchaser, upon his paying the purchase money and costs remaining unpaid. (R. S. § 994.)

## DERIVATION

Act May 7, 1800, ch. 45, § 3, 2 Stat. 61.

## FEDERAL RULES OF CIVIL PROCEDURE

Execution, see Rule 69, following section 723c of this title.

## MONEYS PAID INTO COURT

## § 851. Moneys paid into court; deposit.

All moneys paid into any court of the United States, or received by the officers thereof, in any cause pending or adjudicated in such court, shall be forthwith deposited with the Treasurer, or a designated depository of the United States, in the name and to the credit of such court. Nothing herein shall be construed to prevent the delivery of any such money upon security, according to agreement of parties, under the direction of the court. (R. S. § 995; May 29, 1920, ch. 214, § 1, 41 Stat. 654.)

## DERIVATION

Act Mar. 24, 1871, ch. 2, § 1, 17 Stat. 1.

## FEDERAL RULES OF CIVIL PROCEDURE

Deposit in court, see Rule 67, following section 723c of this title

## § 852. Same; withdrawal.

No money deposited as aforesaid shall be withdrawn except by order of the judge or judges of said court, respectively, in term or in vacation, to be signed by such judge or judges, and to be entered and certified of record by the clerk; and every such order shall state the cause in or on account of which it is drawn.

In every case in which the right to withdraw money so deposited has been adjudicated or is not in dispute and such money has remained so deposited for at least five years unclaimed by the person entitled thereto, it shall be the duty of the judge or judges of said court, or its successor, to cause such money to be deposited in the Treasury of the United States, in the name and to the credit of the United States. Any person or persons or any corporation or company entitled to any such money may, on petition to the court from which the money was received, or its successor, and upon notice to the United States attorney and full proof of right

thereto, obtain an order of court directing the payment of such money to the claimant, and the money deposited as aforesaid shall constitute and be a permanent appropriation for payments in obedience to such orders. (R. S. § 996; Feb. 19, 1897, ch. 265, § 3, 29 Stat. 578; Mar. 3, 1911, ch. 224, 36 Stat. 1083.)

## DERIVATION

Act Mar. 24, 1871, ch. 2, § 2, 17 Stat. 1.

## PERMANENT APPROPRIATIONS ABOLISHED

Effective July 1, 1935, the appropriation provided for in this section was affected by act June 26, 1934, ch. 756, § 17, 48 Stat. 1230. See section 725p (b) of Title 31, Money and Finance.

## FEDERAL RULES OF CIVIL PROCEDURE

Deposit in court, see Rule 67, following section 723c of this title.

## PROCEDURE ON APPEAL

## § 861. Dismissal of appeal because of error in procedure.

Section, acts Sept. 6, 1916, ch. 448, § 4, 39 Stat. 727; Feb. 13, 1925, ch. 229, § 10, 43 Stat. 941; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54, related to dismissal of writs of error because appeal was proper and vice versa. Writs of error have been abolished. See sections 861a and 861b of this title.

## § 861a. Writ of error abolished; substitution of appeal.

The writ of error in cases, civil and criminal, is abolished. All relief which prior to January 31, 1928, could be obtained by writ of error shall hereafter be obtainable by appeal. (Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

## FEDERAL RULES OF CIVIL PROCEDURE

Appeals from district court to Supreme Court or Circuit Court of Appeals, see Rules 72, 73, following section 723c of this title.

Effect of rules on this section, see notes by Advisory Committee under Rules 72 and 73.

## § 861b. Statutes governing writs of error to apply to appeals.

The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which section 861a of this title substitutes for a writ of error. (Jan. 31, 1928, ch. 14, § 2, 45 Stat. 54; Apr. 26, 1928, ch. 440, 45 Stat. 466.)

## FEDERAL RULES OF CIVIL PROCEDURE

Appeals from district court to Supreme Court or Circuit Court of Appeals, see Rules 72, 73, following section 723c of this title.

Effect of rules on this section, see notes by Advisory Committee under Rules 72 and 73.

## § 862. Removal of causes by writ of error.

There shall be annexed to and returned with any writ of error for the removal of a cause, at the day and place therein mentioned, an authenticated transcript of the record, an assignment of errors, and a prayer for reversal, with a citation to the adverse party. (R. S. § 997; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

## DERIVATION

Acts Sept. 24, 1789, ch. 20, § 22, 1 Stat. 84; Feb. 5, 1867, ch. 28, § 2, 14 Stat. 386.

## WRITS OF ERROR ABOLISHED

The provisions of this section (in so far as it is not superseded by the Federal Rules of Civil Procedure) probably now apply to appeals instead of writs of error in view of sections 861a and 861b of this title abolishing writs of error. See also Rules 72–76 of the Federal Rules of Civil Procedure set out following section 723c of this title and notes of the Advisory Committee thereunder.

## FEDERAL RULES OF CIVIL PROCEDURE

Appeals generally, see Rules 72, 73, 75, following section 723c of this title.

Effect of rules on this section, see notes by Advisory Committee under Rules 72, 73, and 75.

## § 863. Transcripts on appeals.

Upon the appeal of any cause in equity, or of admiralty and maritime jurisdiction, or of prize or no prize, a transcript of the record, as directed by law to be made, and copies of the proofs, and of such entries and papers on file as may be necessary on the hearing of the appeal, shall be transmitted to the Supreme Court. Either the court below or the Supreme Court may order any original document or other evidence to be sent up, in addition to the copy of the record, or in lieu of a copy of a part thereof. And on such appeals no new evidence shall be received in the Supreme Court, except in admiralty and prize causes. (R. S. § 698; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

## DERIVATION

Act Mar. 3, 1803, ch. 40, § 2, 2 Stat. 244; act Feb. 26, 1853, ch. 80, § 1, 10 Stat. 163; act June 30, 1864, ch. 174, § 13, 13 Stat. 310.

## FEDERAL RULES OF CIVIL PROCEDURE

Appeal and record on appeal, see Rules 72, 75, following section 723c of this title.

Modification of section under rules, see notes by Advisory Committee under Rules 72 and 75.

## § 864. One record.

Where appeal is duly taken by both parties from the judgment or decree of a district court to the Supreme Court, a transcript of the record filed in the Supreme Court by either appellant may be used on both appeals, and both shall be heard thereon in the same manner as if records had been filed by the appellants in both cases. (R. S. § 1013.)

## DERIVATION

Act Aug. 6, 1861, ch. 61, § 1, 12 Stat. 319.

## FEDERAL RULES OF CIVIL PROCEDURE

Appeal and record on appeal, see Rules 72, 75, following section 723c of this title.

Modification of section under rules, see notes by Advisory Committee under Rules 72 and 75.

## § 865. Printed transcript of record on appeal to circuit court of appeals.

In any cause or proceeding wherein the final judgment or decree is sought to be reviewed on appeal to a United States circuit court of appeals the appellant shall cause to be printed under such rules as the lower court shall prescribe, and shall file in the office of the clerk of such circuit court of appeals at least twenty days before the case is called for argument therein, at least twenty-five printed transcripts of

the record of the lower court, and of such part or abstract of the proofs as the rules of such circuit court of appeals may require, and in such form as the Supreme Court of the United States shall by rule prescribe, one of which printed transcripts shall be certified under the hand of the clerk of the lower court and under the seal thereof, and shall furnish three copies of such printed transcript to the adverse party at least twenty days before such argument. Either the court below or the circuit court of appeals may order any original document or other evidence to be sent up in addition to the printed copies of the record or in lieu of printed copies of a part thereof; and no written or typewritten transcript of the record shall be required. (Feb. 13, 1911, ch. 47, § 1, 36 Stat. 901; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

## FEDERAL RULES OF CIVIL PROCEDURE

Modification of section under Rule 75, see note by Advisory Committee under said Rule 75.

Record on appeal to Circuit Court of Appeals, see Rule 75, following section 723c of this title.

## § 866. Printed record as part of transcript on appeal to Supreme Court.

In any cause or proceeding wherein the final judgment or decree is sought to be reviewed on appeal to or by writ of certiorari from the Supreme Court of the United States, in which the record has been printed and used upon the hearing in the court below and which substantially conforms to the printed record in said Supreme Court, if there have been at the time of filing the record in the court below twenty-five copies of said printed record, in addition to those provided in the preceding section, lodged with the clerk of the court below, one copy thereof shall be used by the clerk of the court below in the preparation and as a part of the transcript of the record of the court below; and no fee shall be allowed the clerk of the court below in the preparation of the transcript for such part thereof as is included in said printed record so lodged with him. And the clerk of the court below in transmitting the transcript of record to the Supreme Court of the United States for review shall at the same time transmit the remaining uncertified copies of the printed record so lodged with him, which shall be used in the preparation and as a part of the printed record in the Supreme Court of the United States, and the clerk's fee for preparing the record for the printer, indexing the same, supervising the printing and binding and distributing the copies shall be at such rate per folio thereof, exclusive of the printed record so furnished by the clerk of the court below, as the Supreme Court of the United States may from time to time by rule prescribe; and no written or typewritten transcript of so much of the record as shall have been printed as herein provided shall be required. (Feb. 13, 1911, ch. 47, § 2, 36 Stat. 901; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

## FEDERAL RULES OF CIVIL PROCEDURE

Modification of section under Rule 75, see note by Advisory Committee under said Rule 75.

Record on appeal to Circuit Court of Appeals, see Rule 75, following section 723c of this title.

## CROSS REFERENCE

Fees provided by law and no others to be charged by clerks of district courts and no fees to be charged United States, see section 548 of this title.

## § 867. Citation on writ of error.

Section, R. S. § 998, related to notice and signing of writs of error upon their issue by a circuit court of appeals. Writs of error were abolished and appeal substituted therefor by sections 861a and 861b of this title. Present provisions relating to appeals are contained in Rules 72-76 of the Federal Rules of Civil Procedure set out following section 723c of this title. See also notes of Advisory Committee under said rules.

## § 868. Citation on writs of error to district and State courts by Supreme Court.

When a writ of error is issued by the Supreme Court to a circuit court of appeals or a district court, the citation shall be signed by a judge of such circuit court of appeals or district court, or by a justice of the Supreme Court, and the adverse party shall have at least thirty days' notice; and when it is issued by the Supreme Court to a State court, the citation shall be signed by the Chief Justice, or judge, or chancellor of such court, rendering the judgment or passing the decree complained of, or by a justice of the Supreme Court of the United States, and the adverse party shall have at least thirty days' notice. (R. S. § 999; Mar. 3, 1911, ch. 231, §§ 117, 289, 36 Stat. 1131, 1167.)

## DERIVATION

Acts Sept. 24, 1789, ch. 20, § 22, 1 Stat. 84; Feb. 5, 1867, ch. 28, § 2, 14 Stat. 386

## WRITS OF ERROR ABOLISHED

The provisions of this section (insofar as it was not superseded by the Federal Rules of Civil Procedure) probably now apply to appeals instead of writs of error in view of sections 861a and 861b of this title abolishing writs of error. See also Rules 72-76 of the Federal Rules of Civil Procedure set out following section 723c of this title and notes of the Advisory Committee thereunder.

## § 869. Bond in former error and on appeal.

Every justice or judge signing a citation on any writ of error, shall, except in cases brought up by the United States or by direction of any department of the Government, take good and sufficient security that the plaintiff in error or the appellant shall prosecute his writ or appeal to effect, and, if he fail to make his plea good, shall answer all damages and costs, where the writ is a supersedeas and stays execution, or all costs only where it is not a supersedeas as aforesaid. (R. S. § 1000.)

## DERIVATION

Acts Sept. 24, 1789, ch. 20, § 22, 1 Stat. 84; Dec. 12, 1794, ch. 3, 1 Stat. 404; Feb. 21, 1863, ch. 50, 12 Stat. 657; July 27, 1868, ch. 255, § 1, 15 Stat. 226.

## CROSS REFERENCES

Seamen allowed to appeal without giving bond for costs or fees in suits for their own benefit for wages or salvage or to enforce laws made for their health and safety, see section 837 of this title.

Statutes relating to right to writ of error, which remedy was abolished by section 861a of this title, to apply to appeals substituted therefor, including provisions relating to cost, supersedeas, and mandate, see section 861b of this title.

## FEDERAL RULES OF CIVIL PROCEDURE

Appeals generally, see Rules 69, 72, 73, following section 723c of this title.

Effect of rules on this section, see notes by Advisory Committee under Rules 69, 72, and 73.

## § 870. Same; not required of United States.

Whenever an appeal, or other process in law, admiralty, or equity, issues from or is brought up to the Supreme Court, or a district court, either by the United States or by direction of any department of the Government or any corporation all the stock of which is beneficially owned by the United States, either directly or indirectly, no bond, obligation, or security shall be required from the United States, or from any party acting under the direction aforesaid, either to prosecute said suit, or to answer in damages or costs. In case of an adverse decision, such costs as by law are taxable against the United States, or against the party acting by direction as aforesaid, shall be paid out of the contingent fund of the department under whose directions the proceedings were instituted. (R. S. § 1001; Mar. 3, 1911, ch. 231, §§ 117, 289, 36 Stat. 1131, 1167; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54; June 19, 1934, ch. 653, § 7, 48 Stat. 1109.)

## DERIVATION

Acts Feb. 21, 1863, ch. 50, 12 Stat. 657; July 27, 1868, ch. 255, § 1, 15 Stat. 226.

## REFERENCES IN TEXT

The phrase "or a district court" is apparently proper in view of *U. S. v. Kinney*, 264 F. 542, based on *U. S. v. Bryant*, 111 U. S. 499, 4 S. Ct. 601, and holding that "while the section is allocated with others dealing with appeals, its terms are broad enough to cover any process in law issuing from a Circuit (District) Court." See section 228a of this title.

## FEDERAL RULES OF CIVIL PROCEDURE

Appeals generally, see Rules 54, 62, 72, 73, following section 723c of this title.

Effect on this section of rules, see notes by Advisory Committee under Rules 54, 62, 72, and 73.

## § 871. Writs of error to State courts, manner of issue.

Writs of error from the Supreme Court to a State court in cases authorized by law, shall be issued in the same manner, and under the same regulations, and shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States. (R. S. § 1003.)

## DERIVATION

Acts Sept. 24, 1789, ch. 20, § 25, 1 Stat. 85, 86; Feb. 5, 1867, ch. 28, § 2, 14 Stat. 386.

## WRITS OF ERROR ABOLISHED

The provisions of this section (insofar as they were not affected by the Federal Rules of Civil Procedure) probably now apply to appeals instead of writs of error in view of sections 861a and 861b of this title abolishing writs of error. See also Rules 72-76 of the Federal Rules of Civil Procedure set out following section 723c of this title and notes of the Advisory Committee thereunder.

## CROSS REFERENCE

Appeal from highest State court to Supreme Court to have same effect as if judgment or decree had been rendered in a court of the United States, see section 344 (a) of this title.

## § 872. Writs of error returnable to Supreme Court or to circuit courts of appeals.

Writs of error returnable to the Supreme Court or a circuit court of appeals may be issued as well by the clerks of the district courts, under the seal there-



DERIVATION

Acts Sept. 24, 1789, ch. 20, § 22, 1 Stat. 84; Feb. 5, 1867, ch. 28, § 2, 14 Stat. 386.

WRITS OF ERROR ABOLISHED

The provisions of this section (in so far as it is not superseded by the Federal Rules of Civil Procedure) probably now apply to appeals instead of writs of error in view of sections 861a and 861b of this title abolishing writs of error. See also Rules 72–76 of the Federal Rules of Civil Procedure set out following section 723c of this title and notes of the Advisory Committee thereunder.

FEDERAL RULES OF CIVIL PROCEDURE

Appeals generally, see Rules 72, 73, 75, following section 723c of this title.

Effect of rules on this section, see notes by Advisory Committee under Rules 72, 73, and 75.

§ 863. Transcripts on appeals.

Upon the appeal of any cause in equity, or of admiralty and maritime jurisdiction, or of prize or no prize, a transcript of the record, as directed by law to be made, and copies of the proofs, and of such entries and papers on file as may be necessary on the hearing of the appeal, shall be transmitted to the Supreme Court. Either the court below or the Supreme Court may order any original document or other evidence to be sent up, in addition to the copy of the record, or in lieu of a copy of a part thereof. And on such appeals no new evidence shall be received in the Supreme Court, except in admiralty and prize causes. (R. S. § 698; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

DERIVATION

Act Mar. 3, 1803, ch. 40, § 2, 2 Stat. 244; act Feb. 26, 1853, ch. 80, § 1, 10 Stat. 163; act June 30, 1864, ch. 174, § 13, 13 Stat. 310.

FEDERAL RULES OF CIVIL PROCEDURE

Appeal and record on appeal, see Rules 72, 75, following section 723c of this title.

Modification of section under rules, see notes by Advisory Committee under Rules 72 and 75.

§ 864. One record.

Where appeal is duly taken by both parties from the judgment or decree of a district court to the Supreme Court, a transcript of the record filed in the Supreme Court by either appellant may be used on both appeals, and both shall be heard thereon in the same manner as if records had been filed by the appellants in both cases. (R. S. § 1013.)

DERIVATION

Act Aug. 6, 1861, ch. 61, § 1, 12 Stat. 319.

FEDERAL RULES OF CIVIL PROCEDURE

Appeal and record on appeal, see Rules 72, 75, following section 723c of this title.

Modification of section under rules, see notes by Advisory Committee under Rules 72 and 75.

§ 865. Printed transcript of record on appeal to circuit court of appeals.

In any cause or proceeding wherein the final judgment or decree is sought to be reviewed on appeal to a United States circuit court of appeals the appellant shall cause to be printed under such rules as the lower court shall prescribe, and shall file in the office of the clerk of such circuit court of appeals at least twenty days before the case is called for argument therein, at least twenty-five printed transcripts of

the record of the lower court, and of such part or abstract of the proofs as the rules of such circuit court of appeals may require, and in such form as the Supreme Court of the United States shall by rule prescribe, one of which printed transcripts shall be certified under the hand of the clerk of the lower court and under the seal thereof, and shall furnish three copies of such printed transcript to the adverse party at least twenty days before such argument. Either the court below or the circuit court of appeals may order any original document or other evidence to be sent up in addition to the printed copies of the record or in lieu of printed copies of a part thereof; and no written or typewritten transcript of the record shall be required. (Feb. 13, 1911, ch. 47, § 1, 36 Stat. 901; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

FEDERAL RULES OF CIVIL PROCEDURE

Modification of section under Rule 75, see note by Advisory Committee under said Rule 75.

Record on appeal to Circuit Court of Appeals, see Rule 75, following section 723c of this title.

§ 866. Printed record as part of transcript on appeal to Supreme Court.

In any cause or proceeding wherein the final judgment or decree is sought to be reviewed on appeal to or by writ of certiorari from the Supreme Court of the United States, in which the record has been printed and used upon the hearing in the court below and which substantially conforms to the printed record in said Supreme Court, if there have been at the time of filing the record in the court below twenty-five copies of said printed record, in addition to those provided in the preceding section, lodged with the clerk of the court below, one copy thereof shall be used by the clerk of the court below in the preparation and as a part of the transcript of the record of the court below; and no fee shall be allowed the clerk of the court below in the preparation of the transcript for such part thereof as is included in said printed record so lodged with him. And the clerk of the court below in transmitting the transcript of record to the Supreme Court of the United States for review shall at the same time transmit the remaining uncertified copies of the printed record so lodged with him, which shall be used in the preparation and as a part of the printed record in the Supreme Court of the United States, and the clerk's fee for preparing the record for the printer, indexing the same, supervising the printing and binding and distributing the copies shall be at such rate per folio thereof, exclusive of the printed record so furnished by the clerk of the court below, as the Supreme Court of the United States may from time to time by rule prescribe; and no written or typewritten transcript of so much of the record as shall have been printed as herein provided shall be required. (Feb. 13, 1911, ch. 47, § 2, 36 Stat. 901; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

FEDERAL RULES OF CIVIL PROCEDURE

Modification of section under Rule 75, see note by Advisory Committee under said Rule 75.

Record on appeal to Circuit Court of Appeals, see Rule 75, following section 723c of this title.

## CROSS REFERENCE

Fees provided by law and no others to be charged by clerks of district courts and no fees to be charged United States, see section 548 of this title.

## § 867. Citation on writ of error.

Section, R. S. § 998, related to notice and signing of writs of error upon their issue by a circuit court of appeals. Writs of error were abolished and appeal substituted therefor by sections 861a and 861b of this title. Present provisions relating to appeals are contained in Rules 72-76 of the Federal Rules of Civil Procedure set out following section 723c of this title. See also notes of Advisory Committee under said rules.

## § 868. Citation on writs of error to district and State courts by Supreme Court.

When a writ of error is issued by the Supreme Court to a circuit court of appeals or a district court, the citation shall be signed by a judge of such circuit court of appeals or district court, or by a justice of the Supreme Court, and the adverse party shall have at least thirty days' notice; and when it is issued by the Supreme Court to a State court, the citation shall be signed by the Chief Justice, or judge, or chancellor of such court, rendering the judgment or passing the decree complained of, or by a justice of the Supreme Court of the United States, and the adverse party shall have at least thirty days' notice. (R. S. § 999; Mar. 3, 1911, ch. 231, §§ 117, 289, 36 Stat. 1131, 1167.)

## DERIVATION

Acts Sept. 24, 1789, ch. 20, § 22, 1 Stat. 84; Feb. 5, 1867, ch. 28, § 2, 14 Stat. 386.

## WRITS OF ERROR ABOLISHED

The provisions of this section (insofar as it was not superseded by the Federal Rules of Civil Procedure) probably now apply to appeals instead of writs of error in view of sections 861a and 861b of this title abolishing writs of error. See also Rules 72-76 of the Federal Rules of Civil Procedure set out following section 723c of this title and notes of the Advisory Committee thereunder.

## § 869. Bond in former error and on appeal.

Every justice or judge signing a citation on any writ of error, shall, except in cases brought up by the United States or by direction of any department of the Government, take good and sufficient security that the plaintiff in error or the appellant shall prosecute his writ or appeal to effect, and, if he fail to make his plea good, shall answer all damages and costs, where the writ is a supersedeas and stays execution, or all costs only where it is not a supersedeas as aforesaid. (R. S. § 1000.)

## DERIVATION

Acts Sept. 24, 1789, ch. 20, § 22, 1 Stat. 84; Dec. 12, 1794, ch. 3, 1 Stat. 404; Feb. 21, 1863, ch. 50, 12 Stat. 657; July 27, 1868, ch. 255, § 1, 15 Stat. 226.

## CROSS REFERENCES

Seamen allowed to appeal without giving bond for costs or fees in suits for their own benefit for wages or salvage or to enforce laws made for their health and safety, see section 837 of this title.

Statutes relating to right to writ of error, which remedy was abolished by section 861a of this title, to apply to appeals substituted therefor, including provisions relating to cost, supersedeas, and mandate, see section 861b of this title.

## FEDERAL RULES OF CIVIL PROCEDURE

Appeals generally, see Rules 69, 72, 73, following section 723c of this title.

Effect of rules on this section, see notes by Advisory Committee under Rules 69, 72, and 73.

## § 870. Same; not required of United States.

Whenever an appeal, or other process in law, admiralty, or equity, issues from or is brought up to the Supreme Court, or a district court, either by the United States or by direction of any department of the Government or any corporation all the stock of which is beneficially owned by the United States, either directly or indirectly, no bond, obligation, or security shall be required from the United States, or from any party acting under the direction aforesaid, either to prosecute said suit, or to answer in damages or costs. In case of an adverse decision, such costs as by law are taxable against the United States, or against the party acting by direction as aforesaid, shall be paid out of the contingent fund of the department under whose directions the proceedings were instituted. (R. S. § 1001; Mar. 3, 1911, ch. 231, §§ 117, 289, 36 Stat. 1131, 1167; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54; June 19, 1934, ch. 653, § 7, 48 Stat. 1109.)

## DERIVATION

Acts Feb. 21, 1863, ch. 50, 12 Stat. 657; July 27, 1868, ch. 255, § 1, 15 Stat. 226.

## REFERENCES IN TEXT

The phrase "or a district court" is apparently proper in view of *U. S. v. Kinney*, 264 F. 542, based on *U. S. v. Bryant*, 111 U. S. 499, 4 S. Ct. 601, and holding that "while the section is allocated with others dealing with appeals, its terms are broad enough to cover any process in law issuing from a Circuit (District) Court." See section 228a of this title.

## FEDERAL RULES OF CIVIL PROCEDURE

Appeals generally, see Rules 54, 62, 72, 73, following section 723c of this title.

Effect on this section of rules, see notes by Advisory Committee under Rules 54, 62, 72, and 73.

## § 871. Writs of error to State courts, manner of issue.

Writs of error from the Supreme Court to a State court in cases authorized by law, shall be issued in the same manner, and under the same regulations, and shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States. (R. S. § 1003.)

## DERIVATION

Acts Sept. 24, 1789, ch. 20, § 25, 1 Stat. 85, 86; Feb. 5, 1867, ch. 28, § 2, 14 Stat. 386.

## WRITS OF ERROR ABOLISHED

The provisions of this section (insofar as they were not affected by the Federal Rules of Civil Procedure) probably now apply to appeals instead of writs of error in view of sections 861a and 861b of this title abolishing writs of error. See also Rules 72-76 of the Federal Rules of Civil Procedure set out following section 723c of this title and notes of the Advisory Committee thereunder.

## CROSS REFERENCE

Appeal from highest State court to Supreme Court to have same effect as if judgment or decree had been rendered in a court of the United States, see section 344 (a) of this title.

## § 872. Writs of error returnable to Supreme Court or to circuit courts of appeals.

Writs of error returnable to the Supreme Court or a circuit court of appeals may be issued as well by the clerks of the district courts, under the seal there-

of, as by the clerk of the Supreme Court or of a circuit court of appeals. When so issued they shall be as nearly as each case may admit agreeable to the form of a writ of error issued by the clerk of the Supreme Court or the clerk of a circuit court of appeals. (R. S. § 1004; Jan. 22, 1912, ch. 12, 37 Stat. 54.)

#### DERIVATION

Act May 8, 1792, ch. 36, § 9, 1 Stat. 278.

#### WRITS OF ERROR ABOLISHED; SUPERSEDURE OF SECTION

The provisions of this section probably now apply to appeals instead of writs of error in view of sections 861a and 861b of this title abolishing writs of error. In so far as this section prescribes a method of appeal different from that in Rule 73 of the Federal Rules of Civil Procedure it is superseded thereby. See Rules 72-76 of said rules set out following section 723c of this title and notes of the Advisory Committee thereunder.

#### § 873. Amendment of writ of error.

The Supreme Court may, at any time, in its discretion and upon such terms as it may deem just, allow an amendment of a writ of error, when there is a mistake in the teste of the writ, or a seal to the writ is wanting, or when the writ is made returnable on a day other than the day of the commencement of the term next ensuing the issue of the writ, or when the statement of the title of the action or parties thereto in the writ is defective, if the defect can be remedied by reference to the accompanying record, and in all other particulars of form: *Provided*, The defect has not prejudiced, and the amendment will not injure, the defendant in error. (R. S. § 1005.)

#### DERIVATION

Act June 1, 1872, ch. 255, § 3, 17 Stat. 196.

#### WRITS OF ERROR ABOLISHED

The provisions of this section (insofar as they were not affected by the Federal Rules of Civil Procedure) probably now apply to appeals instead of writs of error in view of sections 861a and 861b of this title abolishing writs of error. See also Rules 72-76 of the Federal Rules of Civil Procedure set out following section 723c of this title and notes of the Advisory Committee thereunder.

#### § 874. Supersedeas.

In any case where a writ of error may be a supersedeas, the defendant may obtain such supersedeas by serving the writ of error, by lodging a copy thereof for the adverse party in the clerk's office where the record remains, within sixty days, Sundays exclusive, after the rendering of the judgment complained of, and giving the security required by law on the issuing of the citation. But if he desires to stay process on the judgment, he may, having served his writ of error as aforesaid, give the security required by law within sixty days after the rendition of such judgment, or afterward with the permission of a justice or judge of the appellate court. And in such cases where a writ of error may be a supersedeas, executions shall not issue until the expiration of ten days. (R. S. § 1007; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 318.)

#### DERIVATION

Acts Sept. 24, 1789, ch. 20, § 23, 1 Stat. 85; June 1, 1872, ch. 255, § 11, 17 Stat. 198.

#### WRITS OF ERROR ABOLISHED

The provisions of this section probably now apply to appeals instead of writs of error in view of sections 861a and 861b of this title abolishing writs of error. See also

Rules 72-76 of the Federal Rules of Civil Procedure set out following section 723c of this title and notes of the Advisory Committee thereunder.

#### § 875. Review in cases tried without jury.

When an issue of fact in any civil cause in a district court is tried and determined by the court without the intervention of a jury, according to section 773 of this title, the rulings of the court in the progress of the trial of the cause, if excepted to at the time, and duly presented by a bill of exceptions, may be reviewed upon appeal; and when the finding is special the review may extend to the determination of the sufficiency of the facts found to support the judgment. (R. S. § 700; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Feb. 13, 1925, ch. 229, § 1, 43 Stat. 936; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

#### DERIVATION

Acts Sept. 24, 1789, ch. 20, § 22, 1 Stat. 84; Mar. 3, 1803, ch. 40, § 2, 2 Stat. 244; Mar. 3, 1865, ch. 86, § 4, 13 Stat. 501.

#### FEDERAL RULES OF CIVIL PROCEDURE

Exceptions and findings by court, see Rules 46, 52, following section 723c of this title.

Supersedeure of section under rules, see notes by Advisory Committee under Rules 46 and 52.

#### § 876. Judgment or decree on review from district court.

The Supreme Court may affirm, modify, or reverse any judgment, decree, or order of a district court lawfully brought before it for review, or may direct such judgment, decree, or order to be rendered, or such further proceedings to be had by the inferior court, as the justice of the case may require. The Supreme Court shall not issue execution in a cause removed before it from such courts, but shall send a special mandate to the inferior court to award execution thereupon. (R. S. § 701; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

#### DERIVATION

Acts Sept. 24, 1789, ch. 20, § 24, 1 Stat. 85; Mar. 3, 1803, ch. 40, § 2, 2 Stat. 244; June 30, 1864, ch. 174, § 13, 13 Stat. 310; June 1, 1872, ch. 255, § 2, 17 Stat. 196.

#### § 877. Remand by Supreme Court or circuit court of appeals.

Whenever on appeal or otherwise a case coming directly from the district court shall be reviewed and determined in the Supreme Court the cause shall be remanded to the proper district court for further proceedings to be taken in pursuance of such determination. And whenever on appeal or otherwise a case coming from a circuit court of appeals shall be reviewed and determined in the Supreme Court the cause shall be remanded by the Supreme Court to the proper district court for further proceedings in pursuance of such determination. Whenever on appeal or otherwise a case coming from a district court shall be reviewed and determined in the circuit court of appeals in a case in which the decision in the circuit court of appeals is final such cause shall be remanded to the said district court for further proceedings to be there taken in pursuance of such determination. (Mar. 3, 1891, ch. 517, § 10, 26 Stat. 829; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

**§ 878. Damages and costs on affirmance.**

Where, upon a writ of error, judgment is affirmed in the Supreme Court or a circuit court of appeals, the court shall adjudge to the respondents in error just damages for his delay, and single or double costs, at its discretion. (R. S. § 1010; Mar. 3, 1911, ch. 231, §§ 117, 289, 36 Stat. 1131, 1167.)

**DERIVATION**

Acts Sept. 24, 1789, ch. 20, §§ 23, 25, 1 Stat. 85; Mar. 3, 1803, ch. 40, § 2, 2 Stat. 244; Feb. 5, 1867, ch. 28, § 2, 14 Stat. 386.

**WRITS OF ERROR ABOLISHED**

Writs of error were abolished and appeal substituted therefor by sections 861a and 861b of this title.

**§ 879. Reversal on former error limited.**

There shall be no reversal in the Supreme Court or in a circuit court of appeals upon a writ of error, for error in ruling any plea in abatement, other than a plea to the jurisdiction of the court, or for any error in fact. (R. S. § 1011; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 318.)

**DERIVATION**

Acts Sept. 24, 1789, ch. 20, § 22, 1 Stat. 84; Mar. 2, 1803, ch. 40, § 2, 2 Stat. 244.

**WRITS OF ERROR ABOLISHED**

Writs of error were abolished and appeal substituted therefor by sections 861a and 861b of this title.

**§ 880. Appeals from district courts; applicability of same rules, etc., as writs of error.**

Appeals from district courts shall be subject to the same rules, regulations, and restrictions as were prior to January 31, 1928, prescribed in law in cases of writs of error. (R. S. § 1012; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

**DERIVATION**

R. S. § 1012 from acts Mar. 3, 1803, ch. 40, § 2, 2 Stat. 244; June 30, 1864, ch. 174, § 13, 13 Stat. 310.

**WRITS OF ERROR ABOLISHED**

Writs of error were abolished and appeal substituted therefor by sections 861a and 861b of this title. See also Rules 72–76 of the Federal Rules of Civil Procedure set out following section 723c of this title.

**Chapter 19.—UNITED STATES AS PARTY DEFENDANT IN CERTAIN CASES****Sec.**

- 901. Foreclosure of mortgages or other liens; consent.
- 902. Same; service; appearance; pleadings.
- 903. Same; removal of causes; procedure.
- 904. Same; judicial sales; affirmative relief.
- 905. Same; junior liens; release.
- 906. Same; costs or other money judgments.

**§ 901. Foreclosure of mortgages or other liens; consent.**

Upon the conditions prescribed in this chapter for the protection of the United States, the consent of the United States is given, to be named a party in any suit which is now pending or which may hereafter be brought in any United States district court, including those for the districts of Alaska, Hawaii, and Puerto Rico, and the district court of the United States for the District of Columbia, and in any State court having jurisdiction of the subject matter, for the foreclosure of a mortgage or other lien upon real estate, for the purpose of securing an adjudication touching any mortgage or other lien the

United States may have or claim on the premises involved. (Mar. 4, 1931, ch. 515, § 1, 46 Stat. 1528; May 17, 1932, ch. 190, 47 Stat. 158; June 25, 1936, ch. 804, 49 Stat. 1921.)

**§ 902. Same; service; appearance; pleadings.**

Service upon the United States shall be made by serving the process of the court with a copy of the bill of complaint upon the United States attorney for the district or division in which the suit has been or may be brought, or upon an assistant United States attorney or a clerical employee designated by the United States attorney in a writing filed with the clerk of the court in which suit is brought, and by sending copies of the process and bill, by registered mail, to the Attorney General of the United States at Washington, District of Columbia. The United States shall have sixty days after service as above provided, or such further time as the court may allow, within which to appear and answer, plead, or demur. (Mar. 4, 1931, ch. 515, § 2, 46 Stat. 1528; June 6, 1940, ch. 242, 54 Stat. 234.)

**FEDERAL RULES OF CIVIL PROCEDURE**

Modification of section under Rule 4, see note by Advisory Committee under said Rule 4.

Process, see Rule 4, following section 723c of this title.

**§ 903. Same; removal of causes; procedure.**

Any such suit brought against the United States in any State court may be removed by the United States to the United States district court for the district in which the suit may be pending. The removal shall be effected in the manner prescribed by section 72 of this title: *Provided*, That the petition for removal may be filed at any time before the expiration of thirty days after the time herein or by the court allowed to the United States to answer, and no removal bond shall be required. The court to which the cause is removed may, before judgment, remand it to the State court if it shall appear that there is no real dispute respecting the rights of the United States, or all the other parties shall concede of record the claims of the United States. (Mar. 4, 1931, ch. 515, § 3, 46 Stat. 1529.)

**§ 904. Same; judicial sales; affirmative relief.**

Except as herein otherwise provided, a judicial sale made in pursuance of a judgment in such a suit shall have the same effect respecting the discharge of the property from liens and encumbrances held by the United States as may be provided with respect to such matters by the law of the State, Territory, or District in which the land is situated, provided that a sale to satisfy a lien inferior to one of the United States shall be made subject to and without disturbing the lien of the United States, unless the United States, by its attorneys, consents that the property may be sold free of its mortgage or lien and the proceeds divided as the parties may be entitled: *And provided further*, That where a sale is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem. In any case where the debt owing the United States is due, the United States may ask, by way of affirmative relief, for the foreclosure of its own lien or mortgage and in any case where property is

sold to satisfy a first mortgage or first lien held by the United States, the United States may bid at the sale such sum not exceeding the amount of its claim with expenses of sale, as may be directed by the chief of the department, bureau or other agency of the Government which has charge of the administration of the laws in respect of which the claim of the United States arises. (Mar. 4, 1931, ch. 515, § 4, 46 Stat. 1529.)

**§ 905. Same; junior liens; release.**

If any person shall have a lien upon any real or personal property, duly filed of record in the jurisdiction in which the property is located, and a junior lien (other than a lien for any tax) in favor of the United States attaches to such property, such person may make a written request to the officer of the United States charged with the administration of the laws in respect of which the lien of the United States arises, to have the same extinguished. If after appropriate investigation, it appears to such officer that

the proceeds from the sale of the property would be insufficient to satisfy, in whole or in part, the lien of the United States, or that the claim of the United States has been satisfied, or by lapse of time or otherwise has become unenforceable, such officer shall so report to the Comptroller General who thereupon may issue a certificate of release, which shall operate to release the property from such lien. (Mar. 4, 1931, ch. 515, § 5, 46 Stat. 1529.)

**§ 906. Same; costs or other money judgments.**

No judgment for costs or other money judgment shall be rendered against the United States in any suit or proceeding which may be instituted under the provisions of this chapter. Nor shall the United States be or become liable for the payment of the costs of any such suit or proceeding or any part thereof. (Mar. 4, 1931, ch. 515, § 6, 46 Stat. 1529.)

**FEDERAL RULES OF CIVIL PROCEDURE**

Continuation of section under Rule 54, see note by Advisory Committee under said Rule 54.

Costs, see Rule 54, following section 723c of this title.

## TITLE 29.—LABOR

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### CROSS REFERENCES

Department of Labor; see Title 5, Executive Departments and Government Officers and Employees.

Hours of service on public works; see chapter 5 of Title 40, Public Buildings, Property, and Works.

Hours of service on railroads; see Title 45, Railroads.

Injuries to employees of railroads; see Title 45, Railroads. Secretary of Labor; see Title 5, Executive Departments and Government Officers and Employees.

### Chapter 1.—BUREAU OF LABOR STATISTICS

#### SUBCHAPTER I.—BUREAU OF LABOR STATISTICS

Sec.	
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2.	Collection, collation, and reports of labor statistics.
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7.	Reports of labor statistics in Hawaii.

#### SUBCHAPTER II.—SPECIAL STATISTICS

9.	Authorization of special studies, compilations, and transcripts on request; cost.
9a.	Credit of receipts.
9b.	Rules and regulations; reports to Congress.

#### SUBCHAPTER I.—BUREAU OF LABOR STATISTICS

##### § 1. Design and duties of bureau generally.

The general design and duties of the Bureau of Labor Statistics shall be to acquire and diffuse among the people of the United States useful information on subjects connected with labor, in the most general and comprehensive sense of that word, and especially upon its relation to capital, the hours of labor, the earnings of laboring men and women, and the means of promoting their material, social, intellectual, and moral prosperity. (June 13, 1888, ch. 389, § 1, 25 Stat. 182; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737.)

##### § 2. Collection, collation, and reports of labor statistics.

The Bureau of Labor Statistics, under the direction of the Secretary of Labor, shall collect, collate, and report at least once each year, or oftener if necessary, full and complete statistics of the conditions of labor and the products and distribution of the products of the same, and to this end said Secretary shall have power to employ any or either of the bureaus provided for his department and to rearrange such statistical work, and to distribute or consolidate the same as may be deemed desirable in the public interests; and said Secretary shall also have authority to call upon other departments of the Government for statistical data and results obtained by them; and said Secretary of Labor may collate, arrange, and publish such statistical information so obtained in such manner as to him may seem wise.

The Bureau of Labor Statistics shall also collect, collate, report, and publish at least once each month full and complete statistics of the volume of and changes in employment, as indicated by the number of persons employed, the total wages paid, and the total hours of employment, in the service of the Federal Government, the States and political subdivisions thereof, and in the following industries and their principal branches: (1) Manufacturing; (2) mining, quarrying, and crude petroleum production; (3) building construction; (4) agriculture and lumbering; (5) transportation, communication, and other public utilities; (6) the retail and wholesale trades; and such other industries as the Secretary of Labor may deem it in the public interest to include. Such statistics shall be reported for all such industries and their principal branches throughout the United States and also by States and/or Federal reserve districts and by such smaller geographical subdivisions as the said Secretary may from time to time prescribe. The said Secretary is authorized to arrange with any Federal, State, or municipal bureau or other governmental agency for the collection of such statistics in such manner as he may deem satisfactory, and may assign special agents of the Department of Labor to any such bureau or agency to assist in such collection. (Mar. 4, 1913, ch. 141, § 4, 37 Stat. 737; July 7, 1930, ch. 873, 46 Stat. 1019.)

#### REPORT COVERING STATE AND FEDERAL PRISON STATISTICS

Res. June 17, 1940, ch. 389, 54 Stat. 401, provided as follows: "That for the purpose of furnishing information to the Congress regarding the amount of goods produced in State and Federal prisons, the Bureau of Labor Statistics of the United States Department of Labor is authorized and directed to collect information concerning the character, kind, type, amount, and value of all goods produced in State and Federal prisons, showing separately the amount and value of goods produced under the State-use, State-account, contract, and piece-price systems.

"For the purpose of making this study, there is hereby authorized to be appropriated, from any money in the

Treasury not otherwise appropriated, the sum of \$20,000. The Commissioner of Labor Statistics is directed to submit the report to the Congress on or before May 1, 1941."

**§ 2a. Statistical reports; collection through local agents; piece-price basis.**

The Commissioner of Labor [Statistics] is authorized to collect statistical reports through local special agents paid on piece-price basis. (Feb. 24, 1927, ch. 189, title IV, 44 Stat. 1222.)

**§ 2b. Studies of productivity and labor costs in industries; annual reports to Congress.**

The Bureau of Labor Statistics of the United States Department of Labor is authorized and directed to make continuing studies of productivity and labor costs in the manufacturing, mining, transportation, distribution, and other industries.

The Secretary of Labor is directed to submit annually to the Congress a report of the findings of the Bureau of Labor Statistics in complying with this section. (June 7, 1940, ch. 267, 54 Stat. 249.)

**APPROPRIATIONS**

Second sentence of section authorized appropriation not to exceed \$100,000 for the first fiscal year.

**§ 3. Commissioner; appointment and tenure of office; compensation.**

The Bureau of Labor Statistics shall be under the charge of a Commissioner of Labor Statistics, who shall be appointed by the President, by and with the advice and consent of the Senate; he shall hold his office for four years, unless sooner removed, and shall receive a salary. (June 13, 1888, ch. 389, § 2, 25 Stat. 182; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737.)

**CROSS REFERENCE**

Salary, see sections 661-663, 664-673, 674 of Title 5, Executive Departments and Government Officers and Employees.

**§ 4. Duties of commissioner in general.**

It shall be the duty of the Commissioner of Labor Statistics to ascertain the effect of the customs laws, and the effect thereon of the state of the currency, in the United States, on the agricultural industry, especially as to its effect on mortgage indebtedness of farmers. He shall also establish a system of reports by which, at intervals of not less than two years, he can report the general condition, so far as production is concerned, of the leading industries of the country. He is also specially charged to investigate the causes of, and facts relating to, all controversies and disputes between employers and employees as they may occur, and which may tend to interfere with the welfare of the people of the different States. He shall also obtain such information upon the various subjects committed to him as he may deem desirable from different foreign nations, and what, if any, convict-made goods are imported into this country, and if so from whence. (June 13, 1888, ch. 389, § 7, 25 Stat. 183; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737; May 29, 1928, ch. 901, § 1 (111), 45 Stat. 994.)

**§ 5. Bulletin as to labor conditions.**

The Commissioner of Labor Statistics is hereby authorized to prepare and publish a bulletin of the

Bureau of Labor Statistics, as to the condition of labor in this and other countries, condensations of State and foreign labor reports, facts as to conditions of employment, and such other facts as may be deemed of value to the industrial interests of the country. (Mar. 2, 1895, ch. 177, § 1, 28 Stat. 805.)

**§ 6. Annual and special reports to President and Congress.**

The Commissioner of Labor Statistics shall annually make a report in writing to the President and Congress, of the information collected and collated by him, and containing such recommendations as he may deem calculated to promote the efficiency of the department. He is also authorized to make special reports on particular subjects whenever required to do so by the President or either House of Congress, or when he shall think the subjects in his charge require it. He shall, on or before the 15th day of December in each year, make a report in detail to Congress of all moneys expended under his direction during the preceding fiscal year. (June 13, 1888, ch. 389, § 8, 25 Stat. 183; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737.)

**§ 7. Reports of labor statistics in Hawaii.**

It shall be the duty of the United States Commissioner of Labor Statistics to collect, assort, arrange, and present in reports every five years statistical details relating to all departments of labor in the Territory of Hawaii, especially in relation to the commercial, industrial, social, educational, and sanitary condition of the laboring classes, and to all such other subjects as Congress may by law direct. The said commissioner is especially charged to ascertain the highest, lowest, and average number of employees engaged in the various industries in the Territory, to be classified as to nativity, sex, hours of labor, and conditions of employment, and to report the same to Congress. (Apr. 30, 1900, ch. 339, § 76, 31 Stat. 155; Apr. 8, 1904, ch. 948, 33 Stat. 164.)

**SUBCHAPTER II.—SPECIAL STATISTICS**

**§ 9. Authorization of special studies, compilations, and transcripts on request; cost.**

The Department of Labor hereby is authorized, within the discretion of the Secretary of Labor, upon the written request of any person, to make special statistical studies relating to employment, hours of work, wages, and other conditions of employment; to prepare from its records special statistical compilations; and to furnish transcripts of its studies, tables, and other records, upon the payment of the actual cost of such work by the person requesting it. (April 13, 1934, ch. 118, § 1, 48 Stat. 582; Apr. 11, 1935, ch. 59, 49 Stat. 154; June 15, 1937, ch. 349, 50 Stat. 259; Apr. 15, 1939, ch. 71, 53 Stat. 581.)

**EXPIRATION**

This section and sections 9a and 9b of this title comprised sections 1-3 of act April 13, 1934, cited to text. Section 4 of that act provided as follows: "This act shall cease to be effective one year after the date of its enactment." The act was temporarily extended by acts April 11, 1935, and June 15, 1937, both cited to text, and was permanently extended by act April 15, 1939, cited to text.



**§ 9a. Credit of receipts.**

All moneys hereinafter<sup>1</sup> received by the Department of Labor in payment of the cost of such work shall be deposited to the credit of the appropriation of that bureau, service, office, division, or other agency of the Department of Labor which supervised such work, and may be used, in the discretion of the Secretary of Labor, and notwithstanding any other provision of law, for the ordinary expenses of such agency and/or to secure the special services of persons who are neither officers nor employees of the United States. (April 13, 1934, ch. 118, § 2, 48 Stat. 582; April 11, 1935, ch. 59, 49 Stat. 154; June 15, 1937, ch. 349, 50 Stat. 259; April 15, 1939, ch. 71, 53 Stat. 581.)

<sup>1</sup> So in original. Probably should read "hereafter".

**§ 9b. Rules and regulations; reports to Congress.**

The Secretary of Labor shall prescribe rules and regulations for the enforcement of sections 9 and 9a of this title; and the Secretary of Labor shall make a report to Congress, at the beginning of each regular session, giving a detailed statement showing (1) the name of every person for whom work has been performed under the authority of this subchapter, (2) the nature of the services rendered to him, (3) the price charged for these services by the Department of Labor, and (4) the manner in which the moneys received were deposited or used. (April 13, 1934, ch. 118, § 3, 48 Stat. 583; April 11, 1935, ch. 59, 49 Stat. 154; June 15, 1937, ch. 349, 50 Stat. 259; April 15, 1939, ch. 71, 53 Stat. 581.)

**Chapter 2.—WOMEN'S BUREAU****Sec.**

- 11. Bureau established.
- 12. Director of bureau; appointment; salary.
- 13. Powers and duties of bureau.
- 14. Assistant director of bureau; appointment; salary; duties.
- 15. Employees of bureau; compensation.
- 16. Quarters for bureau.

**§ 11. Bureau established.**

There shall be established in the Department of Labor a bureau to be known as the Women's Bureau. (June 5, 1920, ch. 248, § 1, 41 Stat. 987.)

**§ 12. Director of bureau; appointment; salary.**

The Women's Bureau shall be in charge of a director, a woman, to be appointed by the President, by and with the advice and consent of the Senate, who shall receive an annual compensation. (June 5, 1920, ch. 248, § 2, 41 Stat. 987.)

**CROSS REFERENCE**

Salary, see sections 661-663, 664-673, 674 of Title 5, Executive Departments and Government Officers and Employees.

**§ 13. Powers and duties of bureau.**

It shall be the duty of the Women's Bureau to formulate standards and policies which shall promote the welfare of wage-earning women, improve their working conditions, increase their efficiency, and advance their opportunities for profitable employment. The said bureau shall have authority

to investigate and report to the Department of Labor upon all matters pertaining to the welfare of women in industry. The director of said bureau may from time to time publish the results of these investigations in such a manner and to such extent as the Secretary of Labor may prescribe. (June 5, 1920, ch. 248, § 2, 41 Stat. 987.)

**§ 14. Assistant director of bureau; appointment; salary; duties.**

There shall be in the Women's Bureau an assistant director, to be appointed by the Secretary of Labor, who shall receive an annual compensation and shall perform such duties as shall be prescribed by the director and approved by the Secretary of Labor. (June 5, 1920, ch. 248, § 3, 41 Stat. 987.)

**CROSS REFERENCE**

Salary, see sections 661-663, 664-673, 674 of Title 5, Executive Departments and Government Officers and Employees.

**§ 15. Employees of bureau; compensation.**

There is hereby authorized to be employed by the Women's Bureau a chief clerk and such special agents, assistants, clerks, and other employees at such rates of compensation and in such numbers as Congress may from time to time provide by appropriations. (June 5, 1920, ch. 248, § 4, 41 Stat. 987.)

**§ 16. Quarters for bureau.**

The Secretary of Labor is hereby directed to furnish sufficient quarters, office furniture, and equipment, for the work of the Women's Bureau. (June 5, 1920, ch. 248, § 5, 41 Stat. 987.)

**TRANSFER OF FUNCTIONS**

Allotments of space in public buildings in the District of Columbia to be made by Public Buildings Administration of the Federal Works Agency, see Reorg. Plan No. I, §§ 301, 303, 4 Fed. Reg. 2729, 53 Stat. 1426, 1427, set out following section 133t of Title 5, Executive Departments and Government Officers and Employees.

**Chapter 2A.—CHILDREN'S BUREAU****Sec.**

- 18. Bureau established.
- 18a. Chief of Bureau; investigations and reports.
- 18b. Assistant chief.
- 18c. Quarters for bureau.

This chapter was formerly set out as chapter 6 of Title 42, The Public Health and Welfare.

**§ 18. Bureau established.**

There shall be established in the Department of Labor a bureau to be known as the Children's Bureau. (Apr. 9, 1912, ch. 73, § 1, 37 Stat. 79; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737.)

**§ 18a. Chief of Bureau; investigations and reports.**

The said bureau shall be under the direction of a chief, to be appointed by the President, by and with the advice and consent of the Senate. The said bureau shall investigate and report to said department upon all matters pertaining to the welfare of children and child life among all classes of our people, and shall especially investigate the questions of infant mortality, the birth rate, orphanage, juvenile courts, desertion, dangerous occupations, accidents and diseases of children, employment, leg-

isolation affecting children in the several States and Territories. But no official, or agent, or representative of said bureau shall, over the objection of the head of the family, enter any house used exclusively as a family residence. The chief of said bureau may from time to time publish the results of these investigations in such manner and to such extent as may be prescribed by the Secretary of Labor. (Apr. 9, 1912, ch. 73, § 2, 37 Stat. 79; Mar. 4, 1913, ch. 141, §§ 3, 6, 37 Stat. 737, 738; Feb. 27, 1925, ch. 364, title IV, 43 Stat. 1050.)

#### § 18b. Assistant chief.

There shall be in the Children's Bureau, until otherwise provided for by law, an assistant chief, to be appointed by the Secretary of Labor. (Apr. 9, 1912, ch. 73, § 3, 37 Stat. 80; Mar. 4, 1913, ch. 141, §§ 3, 6, 37 Stat. 737, 738.)

#### § 18c. Quarters for bureau.

The Secretary of Labor is directed to furnish sufficient quarters for the work of this bureau at an annual rental not to exceed \$2,000. (Apr. 9, 1912, ch. 73, § 4, 37 Stat. 80; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737.)

#### TRANSFER OF FUNCTIONS

Allotments of space in public buildings in the District of Columbia to be made by Public Buildings Administration of the Federal Works Agency, see Reorg. Plan No. I, §§ 301, 303, 4 Fed. Reg. 2729, 53 Stat. 1426, 1427, set out following section 133t of Title 5, Executive Departments and Government Officers and Employees.

### Chapter 8.—NATIONAL TRADE UNIONS

§§ 21–25. Repealed. July 22, 1932, ch. 524, 47 Stat. 741.

Sections, act June 29, 1886, ch. 567, §§ 1–5, 24 Stat. 86, related to National Trade Unions.

### Chapter 4.—VOCATIONAL REHABILITATION OF PERSONS INJURED IN INDUSTRY

#### Sec.

31. Appropriations for use of States for vocational rehabilitation of persons injured in industry or occupation; allotment.
32. Conditions precedent to and limitations on expenditure of appropriations; civil employees of United States to receive benefits.
33. Definitions.
34. Acts required of States to secure benefits of appropriations.
35. Federal Security Agency; cooperation with State boards; rules and regulations; remedy of State whose allotment has been withheld.
36. Further powers and duties of Federal Security Agency; deductions from or withholding allotments to States.
37. Payment of allotments to States; disbursement by States.
38. Report by Federal Security Agency to Congress.
- 39, 40. Appropriation; report of expenditure of board.
41. Federal Security Agency authorized to receive gifts and donations.
42. Gifts or donations to constitute special fund; use of.
43. Report of gifts or donations.
44. Prohibition of discrimination for or against persons entitled to benefits of sections 31–44 of this title.
45. Provisions extended to Territory of Hawaii.
- 45a. Provisions extended to Puerto Rico; appropriation.
- 45b. Appropriation; apportionment to States.

#### § 31. Appropriations for use of States for vocational rehabilitation of persons injured in industry or occupation; allotment.

In order to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their placement in employment, there is hereby authorized to be appropriated for the use of the States, subject to the provisions of this chapter, for the fiscal year ending June 30, 1934, the sum of \$1,000,000; for the fiscal year ending June 30, 1935, the sum of \$1,000,000; for the fiscal year ending June 30, 1936, the sum of \$1,000,000; and for the fiscal year ending June 30, 1937, the sum of \$1,000,000. Said sums shall be allotted to the States in the proportion which their populations bear to the total population in the United States, not including Territories, outlying possessions, and the District of Columbia, according to the last preceding United States census: *Provided*, That the allotments of funds to any State shall not be less than a minimum of \$10,000 for any fiscal year: *Provided further*, That such portions of the sums allotted that will not be used in any fiscal year may be allotted in that year proportionately to the States which are prepared through available State funds to use the additional Federal funds. And there is hereby authorized to be appropriated for each of the fiscal years ending June 30, 1934, June 30, 1935, June 30, 1936, and June 30, 1937, the sum of \$97,000, or so much thereof as may be needed, which shall be used for the purpose of providing the minimum allotments to the States provided for in this section. (June 2, 1920, ch. 219, § 1, 41 Stat. 735; June 5, 1924, ch. 265, 43 Stat. 431; June 9, 1930, ch. 414, § 1, 46 Stat. 524; June 30, 1932, ch. 324, § 1, 47 Stat. 448.)

#### FEDERAL BOARD FOR VOCATIONAL EDUCATION

Functions of the Federal Board for Vocational Education were transferred to the Department of the Interior, the board to act in an advisory capacity, by Ex. Ord. No. 6166, § 15, June 10, 1933, set out in note following section 132 of Title 5, Executive Departments and Government Officers and Employees.

By Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424, see note following section 133t of Title 5, Executive Departments and Government Officers and Employees, the Office of Education and its functions, including vocational education, were consolidated with other agencies into the Federal Security Agency.

It was provided that the Office of Education and its functions should be administered by the Commissioner of Education under the direction and supervision of the Federal Security Administrator.

It was further provided that "all functions of the Secretary of the Interior relating to the administration of the Office of Education are hereby transferred to, and shall be exercised by, the Federal Security Administrator."

#### APPROPRIATIONS FOR VOCATIONAL REHABILITATION

Act of June 26, 1940, ch. 428, 54 Stat. 583, making appropriations for the fiscal year ending June 30, 1941, made certain appropriations for cooperative vocational rehabilitation, and expenses connected therewith, with provisions for apportionment to the States to be computed in accordance with the act of June 2, 1920, as amended, cited to text, and other acts.

#### § 32. Conditions precedent to and limitations on expenditure of appropriations; civil employees of United States to receive benefits.

All money expended under the provisions of sections 31–44 of this title from appropriations authorized by section 31 of this title shall be upon the condi-

tion (1) that for each dollar of Federal money expended there shall be expended in the State under the supervision and control of the State board at least an equal amount for the same purpose: *Provided*, That no portion of the appropriations authorized by sections 31-44 of this title shall be used by any institution for handicapped persons except for vocational rehabilitation of such individuals entitled to the benefits of this chapter as shall be determined by the Federal Security Agency; (2) that the State board shall annually submit to the Federal Security Agency for approval plans showing (a) the plan of administration and supervision of the work; (b) the qualifications of directors, supervisors, and other employees; and (c) the policies and methods of carrying on the work; (3) that the State board shall make an annual report to the Federal Security Agency on or before September 1 of each year on the work done in the State and on the receipts and expenditures of money under the provisions of sections 31-44 of this title; (4) that no portion of any money authorized to be appropriated by sections 31-44 of this title for the benefit of the States shall be applied, directly or indirectly, to the purchase, preservation, erection, or repair of any building or buildings or equipment, or for the purchase or rental of any lands; (5) that all vocational rehabilitation service given under the supervision and control of the State board shall be available, under such rules and regulations as the Federal Security Agency shall prescribe, to any civil employee of the United States disabled while in the performance of his duty. (June 2, 1920, ch. 219, § 1, 41 Stat. 735; June 5, 1924, ch. 265, 43 Stat. 431; June 9, 1930, ch. 414, § 1, 46 Stat. 524; June 30, 1932, ch. 324, § 1, 47 Stat. 449; Ex. Ord. No. 6166, § 15, June 10, 1933; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

"Federal Security Agency" was substituted for "Federal Board for Vocational Education" in this section on the authority of Ex. Ord. No. 6166, § 15, and Reorg. Plan No. I, §§ 201, 204, both cited to text. See notes to section 31 of this title.

#### § 33. Definitions.

For the purpose of sections 31-44 of this title the term "persons disabled" shall be construed to mean any person who, by reason of a physical defect or infirmity, whether congenital or acquired by accident, injury, or disease, is, or may be expected to be, totally or partially incapacitated for remunerative occupation; the term "rehabilitation" shall be construed to mean the rendering of a person disabled fit to engage in a remunerative occupation. (June 2, 1920, ch. 219, § 2, 41 Stat. 735.)

#### § 34. Acts required of States to secure benefits of appropriations.

In order to secure the benefits of the appropriations authorized by section 31 of this title any State shall, through the legislative authority thereof, (1) accept the provisions of sections 31-44 of this title; (2) empower and direct the board designated or created as the State board for vocational education to cooperate in the administration of the provisions of

sections 11-15, 16-28 of Title 20, to cooperate as herein provided with the Federal Security Agency in the administration of the provisions of sections 31-44 of this title; (3) in those States where a State workmen's compensation board, or other State board, department, or agency exists, charged with the administration of the State workmen's compensation or liability laws, the legislature shall provide that a plan of cooperation be formulated between such State board, department, or agency and the State board charged with the administration of sections 31-44 of this title, such plan to be effective when approved by the governor of the State; (4) provide for the supervision and support of the program of vocational rehabilitation to be provided by the State board in carrying out the provisions of sections 31-44 of this title; (5) appoint as custodian for said appropriations its State treasurer, who shall receive and provide for the proper custody and disbursement of all money paid to the State from said appropriations: *Provided*, That any State which, prior to June 30, 1933, has accepted and otherwise complied with the provisions of sections 31-44 of this title, shall be deemed to have accepted and complied with the provisions of this section. (June 2, 1920, ch. 219, § 3, 41 Stat. 736; June 5, 1924, ch. 265, 43 Stat. 431; June 9, 1930, ch. 414, § 2, 46 Stat. 524; June 30, 1932, ch. 324, § 2, 47 Stat. 449; Ex. Ord. No. 6166, § 15, June 10, 1933; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

"Federal Security Agency" was substituted for "Federal Board for Vocational Education" in this section on the authority of Ex. Ord. No. 6166, § 15, and Reorg. Plan No. I, §§ 201, 204, both cited to text. See notes to section 31 of this title.

#### § 35. Federal Security Agency; cooperation with State boards; rules and regulations; remedy of State whose allotment has been withheld.

The Federal Security Agency shall have power to cooperate with State boards in carrying out the purposes and provisions of sections 31-44 of this title, and is hereby authorized to make and establish such rules and regulations as may be necessary or appropriate to carry into effect the provisions of sections 31-44 of this title in order to provide for the vocational rehabilitation of disabled persons and their placement in employment; and to cooperate, for the purpose of carrying out the provisions of sections 31-44 of this title, with such public and private agencies as it may deem advisable. It shall be the duty of said Agency (1) to examine plans submitted by the State boards and approve the same if believed to be feasible and found to be in conformity with the provisions and purposes of sections 31-44 of this title; (2) to ascertain annually whether the several States are using or are prepared to use the money received by them in accordance with the provisions of sections 31-44 of this title; (3) to certify on or before the 1st day of January of each year to the Secretary of the Treasury each State which has accepted the provisions of sections 31-44 of this title and complied therewith, together with the amount which each State is entitled to receive under the provisions of sections 31-44 of this title; (4) to deduct

from the next succeeding allotment to any State whenever any portion of the fund annually allotted has not been expended for the purpose provided for in sections 31-44 of this title as a sum equal to such portion; (5) to withhold the allotment of moneys to any State whenever it shall be determined that moneys allotted are not being expended for the purposes and conditions of sections 31-44 of this title; and (6) to require the replacement by withholding subsequent allotments of any portion of the moneys received by the custodian of any State under sections 31-44 of this title that by any action or contingency is diminished or lost: *Provided*, That if any allotment is withheld from any State the State board of such State may appeal to the Congress of the United States; and if the Congress shall not, within one year from the time of said appeal, direct such sum to be paid, it shall be covered into the Treasury. (June 2, 1920, ch. 219, § 4, 41 Stat. 736; June 9, 1930, ch. 414, § 3, 46 Stat. 525; Ex. Ord. No. 6166, § 15, June 10, 1933; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

"Federal Security Agency" was substituted for "Federal Board for Vocational Education" in this section on the authority of Ex. Ord. No. 6166, § 15, and Reorg. Plan No. I, §§ 201, 204, both cited to text. See notes to section 31 of this title.

#### § 36. Further powers and duties of Federal Security Agency; deductions from or withholding allotments to States.

It shall be the duty of the Federal Security Agency (1) to examine plans submitted by the State boards and approve the same if believed to be feasible and found to be in conformity with the provisions and purposes of sections 31-44 of this title; (2) to ascertain annually whether the several States are using or are prepared to use the money received by them in accordance with the provisions of sections 31-44 of this title; (3) to certify on or before the 1st day of January of each year to the Secretary of the Treasury each State which has accepted the provisions of sections 31-44 of this title and complied therewith, together with the amount which each State is entitled to receive under the provisions of sections 31-44 of this title; (4) to deduct from the next succeeding allotment to any State whenever any portion of the fund annually allotted has not been expended for the purpose provided for in sections 31-44 of this title a sum equal to such unexpended portion; (5) to withhold the allotment of moneys to any State whenever it shall be determined that moneys allotted are not being expended for the purposes and conditions of sections 31-44 of this title; (6) to require the replacement by withholding subsequent allotments of any portion of the moneys received by the custodian of any State under sections 31-44 of this title that by any action or contingency is diminished or lost: *Provided*, That if any allotment is withheld from any State, the State board of such State may appeal to the Congress of the United States, and if the Congress shall not, within one year from the time of said appeal, direct such sum to be paid, it shall be covered into the Treasury. (June 2, 1920, ch. 219, § 4, 41 Stat. 736; Ex. Ord. No. 6166, § 15, June 10, 1933;

Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

"Federal Security Agency" was substituted for "Federal Board for Vocational Education" in this section on the authority of Ex. Ord. No. 6166, § 15, and Reorg. Plan No. I, §§ 201, 204, both cited to text. See notes to section 31 of this title.

#### § 37. Payment of allotments to States; disbursement by States.

The Secretary of the Treasury, upon the certification of the Federal Security Agency as provided in sections 31-44 of this title, shall pay in equal semi-annual payments, on the 1st day of July and January of each year, to the custodian of each State appointed as herein provided the moneys to which it is entitled under the provisions of sections 31-44 of this title. The money so received by the custodian for any State shall be paid out on the requisition of the State board as reimbursement for services already rendered or expenditures already incurred and approved by said State board. (June 2, 1920, ch. 219, § 5, 41 Stat. 736; June 30, 1932, ch. 324, § 3, 47 Stat. 450; Ex. Ord. No. 6166, § 15, June 10, 1933; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

"Federal Security Agency" was substituted for "Federal Board for Vocational Education" in this section on the authority of Ex. Ord. No. 6166, § 15, and Reorg. Plan No. I, §§ 201, 204, both cited to text. See notes to section 31 of this title.

#### § 38. Report by Federal Security Agency to Congress.

The Federal Security Agency shall make an annual report to the Congress on or before December 1 on the administration of sections 31-44 of this title and shall include in such report the reports made by the State boards on the administration of sections 31-44 of this title by each State and the expenditure of the money allotted to each State. (June 2, 1920, ch. 219, § 5, 41 Stat. 737; June 30, 1932, ch. 324, § 3, 47 Stat. 450; Ex. Ord. No. 6166, § 15, June 10, 1933; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

"Federal Security Agency" was substituted for "Federal Board for Vocational Education" in this section on the authority of Ex. Ord. No. 6166, § 15, and Reorg. Plan No. I, §§ 201, 204, both cited to text. See notes to section 31 of this title.

#### §§ 39, 40. Appropriation; report of expenditure of board.

Sections, acts June 2, 1920, ch. 219, § 6, 41 Stat. 737; June 5, 1924, ch. 265, 43 Stat. 432; June 9, 1930, ch. 414, § 4, 46 Stat. 526; June 30, 1932, ch. 324, § 4, 47 Stat. 450, made an appropriation of \$80,000 annually for a period of four years for the use of the Federal Board for Vocational Education, commencing July 1, 1933, and required an annual report to Congress as to expenditures. See section 45b of this title, making an annual appropriation to carry out the purposes of sections 31-44 of this title.

#### § 41. Federal Security Agency authorized to receive gifts and donations.

The Federal Security Agency is hereby authorized and empowered to receive such gifts and donations from either public or private sources as may be of-

ferred unconditionally. (June 2, 1920, ch. 219, § 7, 41 Stat. 737; Ex. Ord. No. 6166, § 15, June 10, 1933; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

"Federal Security Agency" was substituted for "Federal Board for Vocational Education" in this section on the authority of Ex. Ord. No. 6166, § 15, and Reorg. Plan No. I, §§ 201, 204, both cited to text. See notes to section 31 of this title.

#### § 42. Gifts or donations to constitute special fund; use of.

All moneys received as gifts or donations shall be paid into the Treasury of the United States, and shall constitute a permanent fund, to be called the "Special fund for vocational rehabilitation of disabled persons", to be used under the direction of the Federal Security Agency to defray the expenses of providing and maintaining courses of vocational rehabilitation in special cases, including the payment of necessary expenses of persons undergoing training. (June 2, 1920, ch. 219, § 7, 41 Stat. 737; Ex. Ord. No. 6166, § 15, June 10, 1933; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

"Federal Security Agency" was substituted for "Federal Board for Vocational Education" in this section on the authority of Ex. Ord. No. 6166, § 15, and Reorg. Plan No. I, §§ 201, 204, both cited to text. See notes to section 31 of this title.

#### § 43. Report of gifts or donations.

A full report of all gifts and donations offered and accepted, together with the names of the donors and the respective amounts contributed by each, and all disbursements therefrom shall be submitted annually to Congress by the Federal Security Agency. (June 2, 1920, ch. 219, § 7, 41 Stat. 737; Ex. Ord. No. 6166, § 15, June 10, 1933; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

"Federal Security Agency" was substituted for "Federal Board for Vocational Education" in this section on the authority of Ex. Ord. No. 6166, § 15, and Reorg. Plan No. I, §§ 201, 204, both cited to text. See notes to section 31 of this title.

#### § 44. Prohibition of discrimination for or against persons entitled to benefits of sections 31-44 of this title.

No discrimination shall be made or permitted for or against any person or persons who are entitled to the benefits of sections 31-44 of this title because of membership or nonmembership in any industrial, fraternal, or private organization of any kind under a penalty of \$200 for every violation thereof. (June 2, 1920, ch. 219, § 7, 41 Stat. 737.)

#### § 45. Provisions extended to Territory of Hawaii.

The Territory of Hawaii shall be entitled to share in the benefits of sections 31-44 of this title upon the same terms and conditions as any of the several States. There is authorized to be appropriated annually, out of any money in the Treasury not otherwise appropriated, for each fiscal year ending June 30, the sum of \$5,000, to be available for allotment

under such sections to the Territory. (Mar. 10, 1924, ch. 46, § 5, 43 Stat. 18.)

#### § 45a. Provisions extended to Puerto Rico; appropriation.

Puerto Rico shall be entitled to share in the benefits of sections 31-44 of this title, upon the same terms and conditions as any of the several States. (Mar. 3, 1931, ch. 404, § 2, 46 Stat. 1489; May 17, 1932, ch. 190, 47 Stat. 158.)

#### APPROPRIATIONS

Provision formerly contained in this section appropriated \$15,000 annually for two years commencing July 1, 1931, for allotment to Puerto Rico.

#### § 45b. Appropriation; apportionment to States.

(a) In order to enable the United States to cooperate with the States and Hawaii in extending and strengthening their programs of vocational rehabilitation of the physically disabled, and to continue to carry out the provisions and purposes of sections 31-44 of this title, there is hereby authorized to be appropriated for each fiscal year after the fiscal year ending June 30, 1937 the sum of \$3,500,000. Of the sums appropriated pursuant to such authorization for each fiscal year, \$15,000 shall be apportioned to the Territory of Hawaii and the remainder shall be apportioned among the several States in the manner provided in such sections: *Provided*, That the amount of such sums apportioned to any State for any fiscal year shall be not less than \$20,000.

(b) For the administration of sections 31-44 of this title, by the Federal agency authorized to administer it, there is hereby authorized to be appropriated for each fiscal year after the fiscal year ending June 30, 1937 the sum of \$150,000. (Aug. 14, 1935, ch. 531, title V, § 531, 49 Stat. 633; Aug. 10, 1939, ch. 666, title V, § 508, 53 Stat. 1381.)

#### APPROPRIATIONS

Section originally contained provisions making additional appropriations for fiscal years ending June 30, 1936, and June 30, 1937.

### Chapter 4A.—EMPLOYMENT STABILIZATION

#### Sec.

- 48. Citation.
- 48a. Definitions.
- 48b. National Resources Planning Board; powers and duties.
- 48c. Basis of action of Board.
- 48d. Public works emergency appropriation.
- 48e. Works on which appropriation used.
- 48f. Acceleration of emergency construction.
- 48g. Advance planning.

#### § 48. Citation.

Sections 48-48g of this title may be cited as the "Employment Stabilization Act of 1931." (Feb. 10, 1931, ch. 117, § 1, 46 Stat. 1084.)

#### TRANSFER OF FUNCTIONS

The Federal Employment Stabilization Board was abolished by Executive Orders No. 6166, § 1, June 10, 1933; No. 6623, March 1, 1924, set out in notes to section 132 of Title 5, Executive Departments and Government Officers and Employees, which established in the Department of Commerce a Federal Employment Stabilization Office and transferred thereto the functions of the Board.

Reorganization Plan No. I, §§ 4, 6, eff. July 1, 1939, 4 Fed. Reg. 2727, 2728, 53 Stat. 1423, 1424, set out in notes to

section 133t of Title 5, Executive Departments and Government Officers and Employees, transferred the functions of the Federal Employment Stabilization Office in the Department of Commerce to the Executive Office of the President and consolidated its functions with the functions of the National Resources Committee.

Section 4 of said Reorganization Plan No. I further provided that the functions consolidated should be administered under the direction and supervision of the President by the National Resources Planning Board, to be composed of five members to be appointed by the President.

Section 6 of said Reorganization Plan No. I abolished the Federal Employment Stabilization Office and provided that the Secretary of Commerce should promptly wind up its affairs.

#### § 48a. Definitions.

When used in sections 48–48g of this title (a) The term “office” means the National Resources Planning Board;

(b) The term “United States”, when used in a geographical sense, includes the several States and Territories and the District of Columbia;

(c) The term “public works emergency appropriation” means an appropriation made in pursuance of supplemental estimates transmitted to the Congress under the provisions of this chapter;

(d) The term “construction agencies” shall mean the following departments, bureaus, and independent agencies and such others as the President may designate from time to time:

Of the Department of Agriculture, the Bureau of Public Roads, the Bureau of Plant Industry, the Forest Service, the Bureau of Dairy Industry, and the Bureau of Animal Industry;

Of the Department of Commerce, the Aeronautics Branch, the Coast and Geodetic Survey, and the Bureau of Lighthouses;

Of the Department of Interior, the Bureau of Indian Affairs, the Bureau of Reclamation, Fish and Wildlife Service, and the National Park Service;

Of the Department of the Treasury, the Coast Guard, the Public Health Service, and the Office of the Supervising Architect;

Of the Department of War, the office of the Quartermaster General, and the office of the Chief of Engineers;

Of the Department of Justice, the Bureau of Prisons;

Of the Department of the Navy, the Bureau of Yards and Docks;

The Department of Labor;

The Post Office Department;

Of the independent agencies, the Veterans' Administration, the office of Public Buildings and Public Parks of the National Capital, the District of Columbia, the Architect of the Capitol, and the Panama Canal.

(e) The term “construction” shall include also repairs and alterations, and the purchase of such materials, supplies, and equipment as may be necessary as a part of, or incident to, such construction, repairs, or alterations.

(f) The term “authorized construction” shall include those projects which have been specifically authorized by Congress, and those projects which do not require specific legislative authorization, such as repairs and alterations. (Feb. 10, 1931, ch. 117,

§ 2, 46 Stat. 1084; Ex. Ord. No. 6623, Mar. 1, 1934; Reorg. Plan No. I, §§ 4, 6, eff. July 1, 1939, 4 Fed. Reg. 2727, 53 Stat. 1423; Reorg. Plan No. II, § 4 (e), (f), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1433; Reorg. Plan No. III, § 3, eff. June 30, 1940, 5 Fed. Reg. 2108, 54 Stat. 1232.)

#### TRANSFER OF FUNCTIONS

“National Resources Planning Board” was substituted for “Federal Employment Stabilization Office” in this section on the authority of Reorg. Plan No. I, §§ 4, 6, cited to text. See notes to section 48 of this title.

“Fish and Wildlife Service” under the Department of the Interior was substituted for “Bureau of Fisheries” in the Department of Commerce in this section on the authority of Reorg. Plan No. II, § 4 (e), (f), and Reorg. Plan No. III, § 3, both cited to text.

The Bureau of Lighthouses, to which reference is made in subd. (d), was transferred to the Coast Guard by Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.

The Office of Public Buildings and Public Parks of the National Capital, to which reference is made in subd. (d) was transferred to the Office of National Parks, Buildings and Reservations by Ex. Ord. No. 6166, § 2, set out following section 132 of Title 5, Executive Departments and Government Officers and Employees. Subsequently, by act Mar. 2, 1934, ch. 38, § 1, 48 Stat. 389, the name of said Office of National Parks, Buildings and Reservations was changed to the National Park Service.

#### § 48b. National Resources Planning Board; powers and duties.

(a) It shall be the duty of the National Resources Planning Board to advise the President from time to time of the trend of employment and business activity and of the existence or approach of periods of business depression and unemployment in the United States or in any substantial portion thereof; to cooperate with the construction agencies in formulating methods of advance planning; to make progress reports; and to perform the other functions assigned to it by sections 48–48g of this title.

(b) The Board is authorized to appoint, in accordance with the civil-service laws, a director and such experts, and clerical and other assistants, and to make such expenditures (including expenditures for personal services and rent at the seat of Government and elsewhere, for law books, books of reference, and periodicals) as may be necessary for the administration of sections 48–48g of this title, and as may be provided for by the Congress from time to time. The compensation of the director and such experts and clerical and other assistants shall be fixed in accordance with sections 661–663, 664–673, 674 of Title 5. The director and his staff may be domiciled in and attached to one of the executive departments. There is hereby authorized to be appropriated annually such sum as may be necessary for the expenses of the Board. (Feb. 10, 1931, ch. 117, § 3, 46 Stat. 1085; Ex. Ord. No. 6623, Mar. 1, 1934; Reorg. Plan No. I, §§ 4, 6, eff. July 1, 1939, 4 Fed. Reg. 2727, 53 Stat. 1423.)

#### TRANSFER OF FUNCTIONS

Provision formerly contained in this section, establishing the Federal Employment Stabilization Office, to be composed of the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Agriculture, and the Secretary of Labor, is omitted, and “National Resources Planning Board” was substituted for “Federal Employment Stabilization Office” on the authority of Reorg. Plan No. I, §§ 4, 6, cited to text. See notes to section 48 of this title.

**§ 48c. Basis of action of Board.**

(a) In advising the President the National Resources Planning Board shall take into consideration the volume, based upon value, of contracts awarded for construction work in the United States, or in any substantial portion thereof, during any three-month period in comparison with the corresponding three-month period of three previous calendar years.

(b) The Board may also take into consideration the index of employment prepared by the Department of Labor, and any other information concerning employment furnished the Department of Labor or by any other public or private agency, and any other facts which it may consider pertinent. (Feb. 10, 1931, ch. 117, § 4, 46 Stat. 1085; Ex. Ord. No. 6623, Mar. 1, 1934; Reorg. Plan No. I, §§ 4, 6, eff. July 1, 1939, 4 Fed. Reg. 2727, 53 Stat. 1423.)

**TRANSFER OF FUNCTIONS**

"National Resources Planning Board" was substituted for "Federal Employment Stabilization Office" in this section on the authority of Reorg. Plan No. I, §§ 4, 6, cited to text. See notes to section 48 of this title.

**§ 48d. Public works emergency appropriation.**

Whenever, upon recommendation of the National Resources Planning Board, the President finds that there exists, or that within the six months next following there is likely to exist, in the United States or any substantial portion thereof, a period of business depression and unemployment, he is requested to transmit to the Congress by special message, at such time and from time to time thereafter, such supplemental estimates as he deems advisable for emergency appropriations, to be expended during such period upon authorized construction in order to aid in preventing unemployment and permit the Government to avail itself of the opportunity for speedy, efficient, and economical construction during any such period. Except as provided in sections 48-48g of this title, such supplemental estimates shall conform to the provisions of sections 1, 2, 11, 13-24 and 41-58 of Title 31. (Feb. 10, 1931, ch. 117, § 5, 46 Stat. 1086; Ex. Ord. No. 6623, Mar. 1, 1934; Reorg. Plan No. I, §§ 4, 6, eff. July 1, 1939, 4 Fed. Reg. 2727, 53 Stat. 1423.)

**TRANSFER OF FUNCTIONS**

"National Resources Planning Board" was substituted for "Federal Employment Stabilization Office" in this section on the authority of Reorg. Plan No. I, §§ 4, 6, cited to text. See notes to section 48 of this title.

**§ 48e. Works on which appropriation used.**

Such emergency appropriations are authorized and shall be expended only (a) For carrying out the provisions of sections 1-25 of Title 23, as now or hereafter amended and supplemented;

(b) For the preservation and maintenance of existing river and harbor works, and for the prosecution of such projects heretofore and hereafter authorized as may be most desirable in the interest of commerce and navigation;

(c) For prosecuting flood-control projects heretofore or hereafter authorized; and

(d) For carrying into effect the provisions of sections 341-347 of Title 40, as now or hereafter amended and supplemented, in respect of public buildings within and without the District of Columbia.

(e) For prosecuting such other construction as may now or hereafter be authorized by the Congress, and which is or may be included in the six-year advance plans, as hereinafter provided. (Feb. 10, 1931, ch. 117, § 6, 46 Stat. 1086.)

**§ 48f. Acceleration of emergency construction.**

For the purpose of aiding in the prevention of unemployment during periods of business depression and of permitting the Government to avail itself of opportunity for speedy, efficient, and economical construction during such periods the President may direct the construction agencies to accelerate during such periods, to such extent as is deemed practicable, the prosecution of all authorized construction within their control. (Feb. 10, 1931, ch. 117, § 7, 46 Stat. 1086.)

**§ 48g. Advance planning.**

(a) It is declared to be the policy of Congress to arrange the construction of public works so far as practicable in such manner as will assist in the stabilization of industry and employment through the proper timing of such construction, and that to further this object there shall be advance planning, including preparation of detailed construction plans, of public works by the construction agencies and the National Resources Planning Board.

(b) Each head of a department or independent establishment having jurisdiction over one or more construction agencies shall direct each such construction agency to prepare a six-year advance plan with estimates showing projects allotted to each year. Such estimates shall show separately the estimated cost of land, the estimated cost of new construction, and the estimated annual cost of operation and of repairs and alterations.

(c) Each construction agency shall also prepare a program for prompt commencement and carrying-out of an expanded program at any time. This program shall include organization plans. It shall also include the plans for the acquisition of sites and the preparation of advance detailed construction plans for not less than one year in advance, except where in the judgment of the Board this would not be practicable.

(d) Such programs, plans, and estimates for the six-year period shall be submitted to the Board and to the Director of the Bureau of the Budget. The Director of the Bureau of the Budget shall report to the President from time to time consolidated plans and estimates.

(e) Each construction agency shall keep its six-year plan up to date by an annual revision of the plans and estimates for the unexpired years and by annually extending the plan and estimates for an additional year.

(f) The President is requested each year, before recommending the amount of construction appropriations for the next fiscal year to take into consideration the volume of construction in the United States, the state of employment, and the activity of general business.

(g) The Board shall collect information concerning advance construction plans and estimates by



States, municipalities, and other public and private agencies which may indicate the probable volume of construction within the United States or which may aid the construction agencies in formulating their advance plans. (Feb. 10, 1931, ch. 117, § 8, 46 Stat. 1086; Ex. Ord. No. 6623, Mar. 1, 1934; Reorg. Plan No. I, §§ 4, 6, eff. July 1, 1939, 4 Fed. Reg. 2727, 53 Stat. 1423.)

#### TRANSFER OF FUNCTIONS

"National Resources Planning Board" was substituted for "Federal Employment Stabilization Office" in this section on the authority of Reorg. Plan No. I, §§ 4, 6, cited to text. See notes to section 48 of this title.

### Chapter 4B.—FEDERAL EMPLOYMENT SERVICE Sec.

- 49. United States Employment Service; bureau established; transfer of records, employees, etc., of existing employment service.
- 49a. Officers and employees; exemption from civil service and compensation laws; veterans' preferences.
- 49b. Employment offices; development of national system; veterans' service; "State" defined.
- 49c. Acceptance by States; creation of State agencies.
- 49c-1. Transfer to States of property used by United States Employment Service.
- 49d. Appropriations; apportionment among States; reapportionment of unexpended balances.
- 49d-1 Same; reapportionment of unexpended balances.
- 49e. Apportionment, when made; certification to Secretary of Treasury.
- 49f. Ascertainment of amount due States; certification to Secretary of Treasury.
- 49g. State plans for carrying out law; submission to Social Security Board.
- 49h. Reports by State agencies; revocation of certificates to Treasury; appeal to Federal Security Administrator.
- 49i. Expenditures authorized before adoption of State systems; time limit.
- 49j. Federal Advisory Council; establishment and composition; State Advisory Councils; notice of strikes and lockouts to applicants.
- 49k. Rules and regulations.
- 49l. Mail franking privileges to employment systems.

§ 49. United States Employment Service; bureau established; transfer of records, employees, etc., of existing employment service.

In order to promote the establishment and maintenance of a national system of public employment offices there is hereby created a bureau to be known as the United States Employment Service. (June 6, 1933, ch. 49, § 1, 48 Stat. 113.)

#### HISTORICAL

Former subsection (b) of this section abolished the employment service existing on June 6, 1933, and transferred property, functions, etc., to United States Employment Service.

#### TRANSFER OF FUNCTIONS

Reorganization Plan No. I, § 201, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424, set out in notes to section 133t of Title 5, Executive Departments and Government Officers and Employees, consolidated the United States Employment Service in the Department of Labor and its functions and personnel, with other offices and agencies, under one agency to be known as the Federal Security Agency with a Federal Security Administrator at the head thereof.

Section 203 of said Reorganization Plan No. I provided that the functions of the United States Employment Service should be consolidated with the unemployment compensation functions of the Social Security Board and should be administered in the Social Security Board in connection with such unemployment compensation functions under the direction and supervision of the Federal Security Administrator.

Section 203 of said Reorganization Plan No. I, further, abolished the office of Director of the United States Employment Service and transferred all the functions of such office to the Social Security Board, to be exercised by such Board, and provided that the functions of the Secretary of Labor relating to the administration of the United States Employment Service should be transferred to, and exercised by, the Federal Security Administrator.

§ 49a. Officers and employees; exemption from civil-service and compensation laws; veterans' preferences.

The Federal Security Administrator is authorized, without regard to the civil-service laws, to appoint and, without regard to sections 661-663, 664-673, 674 of Title 5, to fix the compensation of one or more assistant directors and such other officers, employees, and assistants, and to make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere and for law books, books of reference, and periodicals) as may be necessary to carry out the provisions of this chapter. In case of appointments for service in the veterans' employment service provided for in section 49b of this title, the Administrator shall appoint only veterans of wars of the United States. (June 6, 1933, ch. 49, § 2, 48 Stat. 114; Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

"Federal Security Administrator" was substituted for "Secretary of Labor" in this section on the authority of Reorg. Plan No. I, §§ 201, 203, cited to text. See notes to section 49 of this title.

§ 49b. Employment offices; development of national system; veterans' service; "State" defined.

(a) It shall be the province and duty of the bureau to promote and develop a national system of employment offices for men, women, and juniors who are legally qualified to engage in gainful occupations, to maintain a veterans' service to be devoted to securing employment for veterans, to maintain a farm placement service, to maintain a public employment service for the District of Columbia, and, in the manner provided in sections 49c, 49d, 49e-49k of this title, to assist in establishing and maintaining systems of public employment offices in the several States and the political subdivisions thereof in which there shall be located a veterans' employment service. The bureau shall also assist in coordinating the public employment offices throughout the country and in increasing their usefulness by developing and prescribing minimum standards of efficiency, assisting them in meeting problems peculiar to their localities, promoting uniformity in their administrative and statistical procedure, furnishing and publishing information as to opportunities for employment and other information of value in the operation of the system, and maintaining a system for clearing labor between the several States.

(b) Whenever in sections 49-49c, 49d, 49e-49l of this title the word "State" or "States" is used it shall be understood to include the Territories of Hawaii and Alaska. (June 6, 1933, ch. 49, § 3, 48 Stat. 114.)

§ 49c. Acceptance by States; creation of State agencies.

In order to obtain the benefits of appropriations apportioned under section 49d of this title, a State

shall, through its legislature, accept the provisions of sections 49-49c, 49d, 49e-49k of this title and designate or authorize the creation of a State agency vested with all powers necessary to cooperate with the United States Employment Service under sections 49-49c, 49d, 49e-49k of this title. (June 6, 1933, ch. 49, § 4, 48 Stat. 114.)

#### CROSS REFERENCE

Transfer of Federal property to States, see section 49c-1 of this title.

#### § 49c-1. Transfer to States of property used by United States Employment Service.

For the purpose of assisting the State employment services established and maintained in accordance with the terms of sections 49-49c, 49d-49k of this title, the Federal Security Administrator is hereby authorized without payment of compensation to transfer and assign to the States in which it is located all property, including records, files, and office equipment, used by the United States Employment Service in its administrative and local employment offices in the respective States, except the records, files, and property used in the Veterans' Service and in the Farm Placement Service maintained under said sections, as soon as such States establish and maintain systems of public employment offices, in accordance with the terms of sections 49c, 49d, and 49g of this title and the regulations promulgated thereunder. (Aug. 11, 1939, ch. 693, 53 Stat. 1409.)

#### § 49d. Appropriations; apportionment among States; reapportionment of unexpended balances.

(a) For the purpose of carrying out the provisions of sections 49-49c, 49d, 49e-49k of this title there is hereby authorized to be appropriated after the fiscal year ending June 30, 1938 such sums annually as the Congress may deem necessary. The annual appropriation under sections 49-49c, 49d, 49e-49k of this title shall designate the amount to be apportioned by the Social Security Board among the several States in the proportion which their population bears to the total population of the States of the United States according to the next preceding United States census, to be available for the purpose of establishing and maintaining systems of public employment offices in the several States and the political subdivisions thereof in accordance with the provisions of sections 49-49c, 49d, 49e-49k of this title: *Provided, however,* That in apportioning the said amount among the several States, the Board shall apportion not less than \$10,000 to each State. No payment shall be made in any year out of the amount of such appropriations apportioned to any State until an equal sum has been appropriated or otherwise made available for that year by the State, or by any agency thereof, including appropriations made by local subdivisions, for the purpose of maintaining public employment offices as a part of a State-controlled system of public employment offices; except that the amounts so appropriated by the State shall not be less than 25 per centum of the apportionment according to population made by the Board for such State for the current year, and in no event less than \$5,000. The balance of the amounts appropriated under sections 49-49c, 49d,

49e-49k of this title shall be available for all the purposes of sections 49-49c, 49d, 49e-49k of this title other than for apportionment among the several States as provided in said sections.

(b) The amounts apportioned to any State for any fiscal year shall be available for payment to and expenditure by such State for the purposes of sections 49-49c, 49d, 49e-49k of this title, until the close of the next succeeding fiscal year; except that amounts apportioned to any State for any fiscal year preceding the fiscal year during which is commenced the first regular session of the legislature of such State held after the enactment of said sections shall remain available for payment to and expenditure by such State until the close of the fiscal year next succeeding that in which such session is commenced. Subject to the foregoing limitations, any amount so apportioned unexpended at the end of the period during which it is available for expenditure under sections 49-49c, 49d, 49e-49k of this title shall, within sixty days thereafter, be reapportioned for the current fiscal year among all the States in the same manner and on the same basis, and certified to the Secretary of the Treasury and treasurers of the States in the same manner, as if it were being apportioned under said sections for the first time. (June 6, 1933, ch. 49, § 5, 48 Stat. 114; May 10, 1935, ch. 102, 49 Stat. 216; June 29, 1938, ch. 816, 52 Stat. 1244; Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

"Social Security Board" was substituted for "director" in this section on the authority of Reorg. Plan No. I, §§ 201, 203, cited to text. See notes to section 49 of this title.

#### CROSS REFERENCE

Transfer of Federal property to States, see section 49c-1 of this title.

#### § 49d-1. Same; reapportionment of unexpended balances.

Section, act June 16, 1937, ch. 359, title IV, § 1, 50 Stat. 302, provided for reapportionment of unexpended appropriations.

#### § 49e. Apportionment, when made; certification to Secretary of Treasury.

Within sixty days after any appropriation has been made under authority of sections 49-49c, 49d, 49e-49k of this title the Social Security Board shall make the apportionment thereof as provided in section 49d and shall certify to the Secretary of the Treasury and to the treasurers of the several States the amount apportioned to each State for the fiscal year for which the appropriation has been made. (June 6, 1933, ch. 49, § 6, 48 Stat. 115; Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

"Social Security Board" was substituted for "director" in this section on the authority of Reorg. Plan No. I, §§ 201, 203, cited to text. See notes to section 49 of this title.

#### § 49f. Ascertainment of amount due States; certification to Secretary of Treasury.

Within sixty days after any appropriation has been made under the authority of sections 49-49c, 49d,

49e-49k of this title, and as often thereafter while such appropriation remains available as it deems advisable, the Social Security Board shall ascertain as to each of the several States (1) whether the State has, through its legislature or its governor, as the case may be, accepted the provisions of sections 49-49c, 49d, 49e-49k of this title and designated or authorized the creation of an agency to cooperate with the United States Employment Service in the administration of such sections in compliance with the provisions of section 49c of this title; and (2) the amounts, if any, which have been appropriated or otherwise made available by such State and by any agency thereof, including appropriations made by local subdivisions, in compliance with the provisions of section 49d of this title. If the Board finds that a State has complied with the requirements of such sections, and if plans have been submitted and approved in compliance with the provisions of section 49g of this title, the Board shall determine the amount of the payments, if any, to which the State is entitled under the provisions of section 49d of this title, and certify such amount to the Secretary of the Treasury. Such certificate shall be sufficient authority to the Secretary of the Treasury to make payments to the State in accordance therewith. (June 6, 1933, ch. 49, § 7, 48 Stat. 115; Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

"Social Security Board" was substituted for "director" in this section on the authority of Reorg. Plan No. I, §§ 201, 203, cited to text. See notes to section 49 of this title.

#### § 49g. State plans for carrying out law; submission to Social Security Board.

Any State desiring to receive the benefits of sections 49-49c, 49d, 49e-49k of this title shall, by the agency designated to cooperate with the United States Employment Service, submit to the Social Security Board detailed plans for carrying out the provisions of sections 49-49c, 49d, 49e-49k of this title within such State. In those States where a State board, department, or agency exists which is charged with the administration of State laws for vocational rehabilitation of physically handicapped persons, such plans shall include provision for cooperation between such board, department, or agency and the agency designated to cooperate with the United States Employment Service under such sections. If such plans are in conformity with the provisions of such sections and reasonably appropriate and adequate to carry out its purposes, they shall be approved by the Board and due notice of such approval shall be given to the State agency. (June 6, 1933, ch. 49, § 8, 48 Stat. 115; Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

"Social Security Board" was substituted for "director" in this section on the authority of Reorg. Plan No. I, §§ 201, 203, cited to text. See notes to section 49 of this title.

#### CROSS REFERENCE

Transfer of Federal property to States, see section 49c-1 of this title.

#### § 49h. Reports by State agencies; revocation of certificates to Treasury; appeal to Federal Security Administrator.

Each State agency cooperating with the United States Employment Service under sections 49-49c, 49d, 49e-49k of this title shall make such reports concerning its operations and expenditures as shall be prescribed by the Social Security Board. It shall be the duty of the Board to ascertain whether the system of public employment offices maintained in each State is conducted in accordance with the rules and regulations and the standards of efficiency prescribed by the Board in accordance with the provisions of sections 49-49c, 49d, 49e-49k of this title. The Board may revoke any existing certificates or withhold any further certificate provided for in section 49f of this title, whenever he shall determine, as to any State, that the cooperating State agency has not properly expended the moneys paid to it or the moneys herein required to be appropriated by such State, in accordance with plans approved under sections 49-49c, 49d, 49e-49k of this title. Before any such certificate shall be revoked or withheld from any State, the Board shall give notice in writing to the State agency stating specifically wherein the State has failed to comply with such plans. The State agency may appeal to the Federal Security Administrator from the action of the Board in any such case, and the Administrator may either affirm or reverse the action of the Board with such directions as he shall consider proper. (June 6, 1933, ch. 49 § 9, 48 Stat. 116; Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

"Social Security Board" was substituted for "director," and "Federal Security Administrator" was substituted for "Secretary of Labor" in this section on the authority of Reorg. Plan No. I, §§ 201, 203, cited to text. See notes to section 49 of this title.

#### § 49i. Expenditures authorized before adoption of State systems; time limit.

Section, act June 6, 1933, ch. 49, § 10, 48 Stat. 116, limited expenditures in States prior to adoption of State systems, to the current fiscal year and two fiscal years thereafter.

#### § 49j. Federal Advisory Council; establishment and composition; State Advisory Councils; notice of strikes and lockouts to applicants.

(a) The Social Security Board shall establish a Federal Advisory Council composed of men and women representing employers and employees in equal numbers and the public for the purpose of formulating policies and discussing problems relating to employment and insuring impartiality, neutrality, and freedom from political influence in the solution of such problems. Members of such council shall be selected from time to time in such manner as the Board shall prescribe and shall serve without compensation, but when attending meetings of the council they shall be allowed necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, within the limitations prescribed by law for civilian employees in the executive branch of the Government. The council shall have access to all files and records of the United States Employment

Service. The Board shall also require the organization of similar State advisory councils composed of men and women representing employers and employees in equal numbers and the public.

(b) In carrying out the provisions of sections 49-49c, 49d, 49e-49k of this title the Board is authorized and directed to provide for the giving of notice of strikes or lockouts to applicants before they are referred to employment. (June 6, 1933, ch. 49, § 11, 48 Stat. 116; Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

"Social Security Board" was substituted for "director" in this section on the authority of Reorg. Plan No. I, §§ 201, 203, cited to text. See notes to section 49 of this title.

#### § 49k. Rules and regulations.

The Social Security Board, with the approval of the Federal Security Administrator, is hereby authorized to make such rules and regulations as may be necessary to carry out the provisions of sections 49-49c, 49d, 49e-49j of this title. (June 6, 1933, ch. 49, § 12, 48 Stat. 117; Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

"Social Security Board" was substituted for "director," and "Federal Security Administrator" was substituted for "Secretary of Labor" in this section on the authority of Reorg. Plan No. I, §§ 201, 203, cited to text. See notes to section 49 of this title.

#### § 49l. Mail franking privileges to employment systems.

Section, act June 6, 1933, ch. 49, § 13, 48 Stat. 117, is set out as section 338 of Title 39, The Postal Service.

#### Chapter 4C.—APPRENTICE LABOR

##### Sec.

50. Promotion of labor standards of apprenticeship.

50a. Publication of information; national advisory committees.

50b. Appointment of employees.

#### § 50. Promotion of labor standards of apprenticeship.

The Secretary of Labor is hereby authorized and directed to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the National Youth Administration and with the Office of Education under the Federal Security Agency in accordance with section 17 of Title 20. (Aug. 16, 1937, ch. 663, § 1, 50 Stat. 664; Reorg. Plan No. I, §§ 201, 204, 206, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

Reorg. Plan No. I, §§ 201, 204, 206, cited to text, consolidated the National Youth Administration and the Office of Education, with other agencies, into the Federal Security Agency under supervision and direction of Federal Security Administrator.

#### § 50a. Publication of information; national advisory committees.

The Secretary of Labor may publish information relating to existing and proposed labor standards of apprenticeship, and may appoint national advisory committees to serve without compensation. Such committees shall include representatives of employers, representatives of labor, educators, and officers of other executive departments, with the consent of the head of any such department. (July 13, 1937, ch. 663, § 2, 50 Stat. 665.)

#### § 50b. Appointment of employees.

The Secretary of Labor is authorized to appoint such employees as he may from time to time find necessary for the administration of this section and section 50a of this title, with regard to existing laws applicable to the appointment and compensation of employees of the United States: *Provided, however,* That he may appoint persons employed on August 16, 1937, in division of apprentice training of the National Youth Administration upon certification by the Civil Service Commission of their qualifications after nonassembled examinations. (Aug. 16, 1937, ch. 663, § 3, 50 Stat. 665.)

#### CODIFICATION

Provision formerly in this section relieved National Youth Administration, after August 16, 1937, of responsibility for promotion of labor standards of apprenticeship, and directed transfer of records and papers to Department of Labor.

#### Chapter 5.—LABOR DISPUTES; MEDIATION AND INJUNCTIVE RELIEF

##### Sec.

51. Mediation in labor disputes; appointment of commissioners of conciliation.

52. Statutory restriction of injunctive relief.

53. "Person" or "persons" defined.

#### § 51. Mediation in labor disputes; appointment of commissioners of conciliation.

The Secretary of Labor shall have power to act as mediator and to appoint commissioners of conciliation in labor disputes whenever in his judgment the interests of industrial peace may require it to be done. (Mar. 4, 1913, ch. 141, § 8, 37 Stat. 738.)

#### § 52. Statutory restriction of injunctive relief.

No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading oth-

ers by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States. (Oct. 15, 1914, ch. 323, § 20, 38 Stat. 738.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see Rule 65, following section 723c of Title 28, Judicial Code and Judiciary.

#### CROSS REFERENCES

District courts to have jurisdiction to issue writs of injunction to compel compliance or restrain violation of an order of Interstate Commerce Commission, see section 5 (13) of Title 49, Transportation.

Jurisdiction of courts in matters affecting employer and employee, see sections 101–115 of this title.

Transporting strikebreakers, penalty, see section 407a of Title 18, Criminal Code and Criminal Procedure.

#### § 53. "Person" or "persons" defined.

The word "person" or "persons" wherever used in section 52 of this title shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country. (Oct. 15, 1914, ch. 323, § 1, 38 Stat. 730.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see Rule 65, following section 723c of Title 28, Judicial Code and Judiciary.

### Chapter 6.—JURISDICTION OF COURTS IN MATTERS AFFECTING EMPLOYER AND EMPLOYEE

#### Sec.

101. Issuance of restraining orders and injunctions; limitation; public policy.
102. Public policy in labor matters declared.
103. Nonenforceability of undertakings in conflict with public policy; "yellow dog" contracts.
104. Enumeration of specific acts not subject to restraining orders or injunctions.
105. Doing in concert of certain acts as constituting unlawful combination or conspiracy subjecting person to injunctive remedies.
106. Responsibility of officers and members of associations or their organizations for unlawful acts of individual officers, members, and agents.
107. Issuance of injunctions in labor disputes; hearing; findings of court; notice to affected persons; temporary restraining order; undertakings.
108. Noncompliance with obligations involved in labor disputes or failure to settle by negotiation or arbitration as preventing injunctive relief.
109. Granting of restraining order or injunction as dependent on previous findings of fact; limitation on prohibitions included in restraining orders and injunctions

#### Sec.

110. Review by Circuit Court of Appeals of issuance or denial of temporary injunctions; record; precedence.
111. Contempts; speedy and public trial; jury.
112. Contempts; demand for retirement of judge sitting in proceeding.
113. Definitions of terms and words used in chapter.
114. Invalidity of provisions of chapter; validity of remaining provisions.
115. Repeal of conflicting acts.

#### § 101. Issuance of restraining orders and injunctions; limitation; public policy.

No court of the United States, as defined in sections 101–115 of this title, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of such sections; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in such sections. (Mar. 23, 1932, ch. 90, § 1, 47 Stat. 70.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see Rule 65, following section 723c of Title 28, Judicial Code and Judiciary.

#### CROSS REFERENCE

Orders of National Labor Relations Board, see section 160 (h) of this title.

#### § 102. Public policy in labor matters declared.

In the interpretation of sections 101–115 of this title and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in such sections, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are hereby enacted. (Mar. 23, 1932, ch. 90, § 2, 47 Stat. 70.)

#### § 103. Nonenforceability of undertakings in conflict with public policy; "yellow dog" contracts.

Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 102 of this title, is hereby declared to be contrary to

the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization. (Mar. 23, 1932, ch. 90, § 3, 47 Stat. 70.)

**§ 104. Enumeration of specific acts not subject to restraining orders or injunctions.**

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title. (Mar. 23, 1932, ch. 90, § 4, 47 Stat. 70.)

**§ 105. Doing in concert of certain acts as constituting unlawful combination or conspiracy subjecting person to injunctive remedies.**

No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 104 of this title. (Mar. 23, 1932, ch. 90, § 5, 47 Stat. 71.)

**§ 106. Responsibility of officers and members of associations or their organizations for unlawful acts of individual officers, members, and agents.**

No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof. (Mar. 23, 1932, ch. 90, § 6, 47 Stat. 71.)

**§ 107. Issuance of injunctions in labor disputes; hearing; findings of court; notice to affected persons; temporary restraining order; undertakings.**

No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in sections 101–115 of this title, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's prop-

erty: *Provided, however,* That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking mentioned in this section shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing in this section contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity. (Mar. 23, 1932, ch. 90, § 7, 47 Stat. 71.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Appeal to circuit court of appeals, see Rule 73 following section 723c of Title 28, Judicial Code and Judiciary.

Continuation of section under Rule 73, see note by Advisory Committee under said Rule 73.

**§ 108. Noncompliance with obligations involved in labor disputes or failure to settle by negotiation or arbitration as preventing injunctive relief.**

No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration. (Mar. 23, 1932, ch. 90, § 8, 47 Stat. 72.)

**§ 109. Granting of restraining order or injunction as dependent on previous findings of fact; limitation on prohibitions included in restraining orders and injunctions.**

No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be

expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided in sections 101-115 of this title. (Mar. 23, 1932, ch. 90, § 9, 47 Stat. 72.)

**§ 110. Review by Circuit Court of Appeals of issuance or denial of temporary injunctions; record; precedence.**

Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the circuit court of appeals for its review. Upon the filing of such record in the circuit court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character. (Mar. 23, 1932, ch. 90, § 10, 47 Stat. 72.)

**§ 111. Contempts; speedy and public trial; jury.**

In all cases arising under sections 101-115 of this title in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided,* That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders or process of the court. (Mar. 23, 1932, ch. 90, § 11, 47 Stat. 72.)

**§ 112. Contempts; demand for retirement of judge sitting in proceeding.**

The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as is provided by law. The demand shall be filed prior to the hearing in the contempt proceeding. (Mar. 23, 1932, ch. 90, § 12, 47 Stat. 73.)

**§ 113. Definitions of terms and words used in chapter.**

When used in sections 101-115 of this title, and for the purposes of such sections—(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers



and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "persons participating or interested" therein (as defined in this section).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia. (Mar. 23, 1932, ch. 90, § 13, 47 Stat. 73.)

#### § 114. Invalidity of provisions of chapter; validity of remaining provisions.

If any provision of sections 101-115 of this title or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of such sections and the application of such provisions to other persons or circumstances shall not be affected thereby. (Mar. 23, 1932, ch. 90, § 14, 47 Stat. 73.)

#### § 115. Repeal of conflicting acts.

All acts and parts of acts in conflict with the provisions of sections 101-115 of this title are hereby repealed. (Mar. 23, 1932, ch. 90, § 15, 47 Stat. 73.)

### Chapter 7.—NATIONAL LABOR RELATIONS

- Sec.
- 151. Findings and declaration of policy.
  - 152. Definitions.
  - 153. National Labor Relations Board; creation and composition; annual reports.
  - 154. Same; salaries; officers and employees; termination of "Old Board"; payment of expenses.
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    - (1) Documentary evidence; summoning witnesses and taking testimony.
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  - 162. Offenses and penalties.
  - 163. Right to strike preserved.
  - 164. Conflict of laws.
  - 165. Separability clause.
  - 166. Citation of chapter.

#### § 151. Findings and declaration of policy.

The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of com-

merce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. (July 5, 1935, ch. 372, § 1, 49 Stat. 449.)

### § 152. Definitions.

When used in sections 151–166 of this title—

(1) The term “person” includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term “employer” includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to sections 151–163 of Title 45, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term “employee” shall include any employee, and shall not be limited to the employees of a particular employer, unless the chapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term “representatives” includes any individual or labor organization.

(5) The term “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term “commerce” means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term “affecting commerce” means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term “unfair labor practice” means any unfair labor practice listed in section 158 of this title.

(9) The term “labor dispute” includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term “National Labor Relations Board” means the National Labor Relations Board created by section 153 of this title.

(11) The term “old Board” means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to section 702a of Title 15 approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to chapter 15 of Title 15 as amended and continued by sections 702 and 705a of Title 15. (July 5, 1935, ch. 372, § 2, 49 Stat. 450.)

#### CROSS REFERENCE

Termination of existence of “old Board,” see subsection (b) of section 154 of this title.

### § 153. National Labor Relations Board; creation and composition; annual reports.

(a) There is created a board, to be known as the “National Labor Relations Board” (hereinafter referred to as the “Board”), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed. (July 5, 1935, ch. 372, § 3, 49 Stat. 451.)

§ 154. Same; salaries; officers and employees; termination of "Old Board"; payment of expenses.

(a) Each member of the Board shall receive a salary of \$10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to sections 661-663, 664-673, 674 of Title 5, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in sections 151-166 of this title shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under sections 661-663, 664-673, 674 of Title 5, without acquiring by such transfer a permanent or civil service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by sections 151-166 of this title.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose. (July 5, 1935, ch. 372, § 4, 49 Stat. 451.)

§ 155. Same; principal office, conducting inquiries throughout country; participation in decisions or inquiries conducted by member.

The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case. (July 5, 1935, ch. 372, § 5, 49 Stat. 452.)

§ 156. Same; rules and regulations.

The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of sections 151-166 of this title. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe. (July 5, 1935, ch. 372, § 6 (a), 49 Stat. 452.)

Section 6 of act July 5, 1935, cited to text, did not contain a subsection (b).

§ 157. Right of employees as to organization, collective bargaining, etc.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection. (July 5, 1935, ch. 372, § 7, 49 Stat. 452.)

§ 158. Unfair labor practices by employer defined.

It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 156 of this title, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in sections 151-166 of this title or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in sections 151-166 of this title as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 159 (a) of this title, in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under sections 151-166 of this title.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159 (a) of this title. (July 5, 1935, ch. 372, § 8, 49 Stat. 452.)

§ 158a. Providing facilities for operations of Federal Credit Unions.

Provision by an employer of facilities for the operations of a Federal Credit Union on the premises of such employer shall not be deemed to be intimidation, coercion, interference, restraint or discrimination within the provisions of sections 157 and 158 of this

title, or acts amendatory thereof. (Dec. 6, 1937, ch. 3, § 5, 51 Stat. 5.)

§ 159. Representatives of employees for collective bargaining; determination of unit by Board; question affecting commerce, hearing; record on review where commerce questions involved.

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of sections 151-166 of this title, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 160 of this title or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 160 (c) of this title is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 160 (e) or 160 (f) of this title, and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript. (July 5, 1935, ch. 372, § 9, 49 Stat. 453.)

<sup>1</sup> So in original. Probably should read "ascertain."

#### FEDERAL RULES OF CIVIL PROCEDURE

Application of rules, see Rule 81, following section 723c of Title 28, Judicial Code and Judiciary.

§ 160. Prevention of unfair labor practices—(a) Powers of Board generally.

The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Complaint and notice of hearing; answer; court rules of evidence inapplicable.

Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) Reduction of testimony to writing; findings and orders of Board.

The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this chapter. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Modification of findings or orders prior to filing record in court.

Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) Petition to court for enforcement of order; proceedings; review of judgment.

The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia<sup>1</sup>), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of

the United States (including the district court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 346 and 347 of Title 28.

**(f) Review of final order of Board on petition to court.**

Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia,<sup>1</sup> by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the pro-

ceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

<sup>1</sup> So in original. Probably should read "United States Court of Appeals for the District of Columbia" in view of act June 7, 1934, ch. 426, 48 Stat. 926, providing that the Court of Appeals of District of Columbia should thereafter be known as "United States Court of Appeals for the District of Columbia."

**(g) Institution of court proceedings as stay of Board's order.**

The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

**(h) Jurisdiction of courts unaffected by limitations prescribed in sections 101-115 of this title.**

When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by sections 101-115 of this title.

**(i) Expeditious hearings on petitions.**

Petitions filed under sections 151-166 of this title shall be heard expeditiously, and if possible within ten days after they have been docketed. (July 5, 1935, ch. 372, § 10, 49 Stat. 453; June 25, 1936, ch. 804, 49 Stat. 1921.)

**CHANGE OF NAME**

Supreme Court of the District of Columbia was changed to "District Court of the United States for the District of Columbia" by act June 25, 1936, cited to text.

**FEDERAL RULES OF CIVIL PROCEDURE**

Application of rules, see Rule 81, following section 723c of Title 28, Judicial Code and Judiciary.

**§ 161. Investigatory powers of Board.**

For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by sections 159 and 160 of this title—

**(1) Documentary evidence; summoning witnesses and taking testimony.**

The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board,

its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

**(2) Court aid in compelling production of evidence and attendance of witnesses.**

In case of contumacy or refusal to obey a subpoena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

**(3) Privilege of witnesses; immunity from prosecution.**

No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

**(4) Process, service and return; fees of witnesses.**

Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

**(5) Process, where served.**

All process of any court to which application may be made under sections 151-166 of this title may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

**(6) Information and assistance from departments.**

The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board. (July 5, 1935, ch. 372, § 11, 49 Stat. 455; June 25, 1936, ch. 804, 49 Stat. 1921.)

**FEDERAL RULES OF CIVIL PROCEDURE**

Subpena, see Rule 45, following section 723c of Title 28, Judicial Code and Judiciary.

**§ 162. Offenses and penalties.**

Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this chapter shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or both. (July 5, 1935, ch. 372, § 12, 49 Stat. 456.)

**§ 163. Right to strike preserved.**

Nothing in sections 151-166 of this title shall be construed so as to interfere with or impede or diminish in any way the right to strike. (July 5, 1935, ch. 372, § 13, 49 Stat. 457.)

**§ 164. Conflict of laws.**

Wherever the application of the provisions of section 207 of Title 11, paragraphs (l) and (m), conflicts with the application of the provisions of sections 151-166 of this title, such sections shall prevail: *Provided*, That in any situation where the provisions of sections 151-166 of this title cannot be validly enforced, the provisions of such other section shall remain in full force and effect. (July 5, 1935, ch. 372, § 14, 49 Stat. 457.)

**REFERENCE IN TEXT**

Section 207 (l) (m), referred to in this section, is now covered by section 672 of Title 11, Bankruptcy.

**§ 165. Separability clause.**

If any provision of sections 151-166 of this title, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of such sections, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. (July 5, 1935, ch. 372, § 15, 49 Stat. 457.)

**§ 166. Citation of chapter.**

Sections 151-166 of this title may be cited as the "National Labor Relations Act." (July 5, 1935, ch. 372, § 16, 49 Stat. 457.)

**Chapter 8.—FAIR LABOR STANDARDS**

**Sec.**

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### § 201. Short title.

Sections 201–219 of this title may be cited as the “Fair Labor Standards Act of 1938”. (June 25, 1938, ch. 676, § 1, 52 Stat. 1060.)

### § 202. Congressional finding and declaration of policy.

(a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

(b) It is hereby declared to be the policy of sections 201–219 of this title, through the exercise by Congress of its power to regulate commerce among the several States, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power. (June 25, 1938, ch. 676, § 2, 52 Stat. 1060.)

### § 203. Definitions.

As used in sections 201–219 of this title—

(a) “Person” means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) “Commerce” means trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof.

(c) “State” means any State of the United States or the District of Columbia or any Territory or possession of the United States.

(d) “Employer” includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(e) “Employee” includes any individual employed by an employer.

(f) “Agriculture” includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141j (g) of Title 12, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(g) “Employ” includes to suffer or permit to work.

(h) “Industry” means a trade, business, industry, or branch thereof, or group of industries, in which individuals are gainfully employed.

(i) “Goods” means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

(j) “Produced” means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this chapter an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State.

(k) “Sale” or “sell” includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(l) “Oppressive child labor” means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining) in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Chief of the Children’s Bureau in the Department of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Chief of the Children’s Bureau certifying that such person is above the oppressive child-labor age. The Chief of the Children’s Bureau shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Chief of the Children’s Bureau



determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

(m) "Wage" paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees. (June 25, 1938, ch. 676, § 3, 52 Stat. 1060.)

#### § 204. Administrator.

(a) There is hereby created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator, to be known as the Administrator of the Wage and Hour Division (in sections 201-219 of this title referred to as the "Administrator"). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of \$10,000 a year.

(b) The Administrator may, subject to the civil-service laws, appoint such employees as he deems necessary to carry out his functions and duties under this chapter and shall fix their compensation in accordance with sections 661-663, 664-673, 674 of Title 5, as amended. The Administrator may establish and utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Administrator in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. In the appointment, selection, classification, and promotion of officers and employees of the Administrator, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

(c) The principal office of the Administrator shall be in the District of Columbia, but he or his duly authorized representative may exercise any or all of his powers in any place.

(d) The Administrator shall submit annually in January a report to the Congress covering his activities for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by sections 201-219 of this title as he may find advisable. (June 25, 1938, ch. 676, § 4, 52 Stat. 1061.)

#### § 205. Industry committees.

(a) The Administrator shall as soon as practicable appoint an industry committee for each industry engaged in commerce or in the production of goods for commerce.

(b) An industry committee shall be appointed by the Administrator without regard to any other provisions of law regarding the appointment and compensation of employees of the United States. It shall include a number of disinterested persons representing the public, one of whom the Administrator

shall designate as chairman, a like number of persons representing employees in the industry, and a like number representing employers in the industry. In the appointment of the persons representing each group, the Administrator shall give due regard to the geographical regions in which the industry is carried on.

(c) Two-thirds of the members of an industry committee shall constitute a quorum, and the decision of the committee shall require a vote of not less than a majority of all its members. Members of an industry committee shall receive as compensation for their services a reasonable per diem, which the Administrator shall by rules and regulations prescribe, for each day actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and other expenses. The Administrator shall furnish the committee with adequate legal, stenographic, clerical, and other assistance, and shall by rules and regulations prescribe the procedure to be followed by the committee.

(d) The Administrator shall submit to an industry committee from time to time such data as he may have available on the matters referred to it, and shall cause to be brought before it in connection with such matters any witnesses whom he deems material. An industry committee may summon other witnesses or call upon the Administrator to furnish additional information to aid it in its deliberations.

(e) No industry committee appointed under subsection (a) of this section shall have any power to recommend the minimum rate or rates of wages to be paid under section 206 of this title to any employees in Puerto Rico or in the Virgin Islands. Notwithstanding any other provision of sections 201-219 of this title, the Administrator may appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 206 of this title to all employees in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged in commerce or in the production of goods for commerce, or the Administrator may appoint separate industry committees to recommend the minimum rate or rates of wages to be paid under section 206 of this title to employees therein engaged in commerce or in the production of goods for commerce in particular industries. An industry committee appointed under this subsection shall be composed of residents of such island or islands where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of Puerto Rico and the Virgin Islands. In determining the minimum rate or rates of wages to be paid, and in determining classifications, such industry committees and the Administrator shall be subject to the provisions of section 208 of this title and no such committee shall recommend, nor shall the Administrator approve, a minimum wage rate which will give any industry in Puerto Rico or in the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin Islands. (June 25, 1938, ch. 676, § 5, 52 Stat. 1062; June 26, 1940, ch. 432, § 3 (c), 54 Stat. 615.)

**§ 206. Minimum wages; effective date.**

(a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—

(1) during the first year from the effective date of this section, not less than 25 cents an hour,

(2) during the next six years from such date, not less than 30 cents an hour,

(3) after the expiration of seven years from such date, not less than 40 cents an hour, or the rate (not less than 30 cents an hour) prescribed in the applicable order of the Administrator issued under section 208 of this title, whichever is lower, and

(4) at any time after the effective date of this section, not less than the rate (not in excess of 40 cents an hour) prescribed in the applicable order of the Administrator issued under section 208 of this title,

(5) if such employee is a home worker in Puerto Rico or the Virgin Islands, not less than the minimum piece rate prescribed by regulation or order; or, if no such minimum piece rate is in effect, any piece rate adopted by such employer which shall yield, to the proportion or class of employees prescribed by regulation or order, not less than the applicable minimum hourly wage rate. Such minimum piece rates or employer piece rates shall be commensurate with, and shall be paid in lieu of, the minimum hourly wage rate applicable under the provisions of this section. The Administrator, or his authorized representative, shall have power to make such regulations or orders as are necessary or appropriate to carry out any of the provisions of this paragraph, including the power without limiting the generality of the foregoing, to define any operation or occupation which is performed by such home work employees in Puerto Rico or the Virgin Islands; to establish minimum piece rates for any operation or occupation so defined; to prescribe the method and procedure for ascertaining and promulgating minimum piece rates; to prescribe standards for employer piece rates, including the proportion or class of employees who shall receive not less than the minimum hourly wage rate; to define the term "home worker"; and to prescribe the conditions under which employers, agents, contractors, and subcontractors shall cause goods to be produced by home workers.

(b) This section shall take effect upon the expiration of one hundred and twenty days from the date of enactment of sections 201-219 of this title.

(c) The provisions of paragraphs (1), (2), and (3) of subsection (a) of this section shall be superseded in the case of any employee in Puerto Rico or the Virgin Islands engaged in commerce or in the production of goods for commerce only for so long as and insofar as such employee is covered by a wage order issued by the Administrator pursuant to the recommendations of a special industry committee appointed pursuant to section 205 (e) of this title. (June 25, 1938, ch. 676, § 6, 52 Stat. 1062; June 26, 1940, ch. 432, § 3 (e), (f), 54 Stat. 616.)

**§ 207. Maximum hours.**

(a) No employer shall, except as otherwise provided in this section, employ any of his employees who is

engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(b) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand hours during any period of twenty-six consecutive weeks,

(2) on an annual basis in pursuance of an agreement with his employer, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that the employee shall not be employed more than two thousand hours during any period of fifty-two consecutive weeks, or

(3) for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year in an industry found by the Administrator to be of a seasonal nature,

and if such employee receives compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

(c) In the case of an employer engaged in the first processing of milk, whey, skimmed milk, or cream into dairy products, or in the ginning and compressing of cotton, or in the processing of cottonseed, or in the processing of sugar beets, sugar beet molasses, sugarcane, or maple sap, into sugar (but not refined sugar) or into syrup, the provisions of subsection (a) shall not apply to his employees in any place of employment where he is so engaged; and in the case of an employer engaged in the first processing of, or in canning or packing, perishable or seasonal fresh fruits or vegetables, or in the first processing, within the area of production (as defined by the Administrator), of any agricultural or horticultural commodity during seasonal operations, or in handling, slaughtering, or dressing poultry or livestock, the provisions of subsection (a), during a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, shall not apply to his employees in any place of employment where he is so engaged.

(d) This section shall take effect upon the expiration of one hundred and twenty days from the date of

enactment of sections 201–219 of this title. (June 25, 1938, ch. 676, § 7, 52 Stat. 1063.)

### § 208. Wage orders.

(a) With a view to carrying out the policy of sections 201–219 of this title by reaching, as rapidly as is economically feasible without substantially curtailing employment, the objective of a universal minimum wage of 40 cents an hour in each industry engaged in commerce or in the production of goods for commerce, the Administrator shall from time to time convene the industry committee for each such industry, and the industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 206 of this title by employers engaged in commerce or in the production of goods for commerce in such industry or classification therein.

(b) Upon the convening of an industry committee, the Administrator shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, may hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under sections 201–219 of this title. The committee shall recommend to the Administrator the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry.

(c) The industry committee for any industry shall recommend such reasonable classifications within any industry as it determines to be necessary for the purpose of fixing for each classification within such industry the highest minimum wage rate (not in excess of 40 cents an hour) which (1) will not substantially curtail employment in such classification and (2) will not give a competitive advantage to any group in the industry, and shall recommend for each classification in the industry the highest minimum wage rate which the committee determines will not substantially curtail employment in such classification. In determining whether such classifications should be made in any industry, in making such classifications, and in determining the minimum wage rates for such classifications, no classification shall be made, and no minimum wage rate shall be fixed, solely on a regional basis, but the industry committee and the Administrator shall consider among other relevant factors the following:

(1) competitive conditions as affected by transportation, living, and production costs;

(2) the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

(3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum-wage standards in the industry.

No classification shall be made under this section on the basis of age or sex.

(d) The industry committee shall file with the Administrator a report containing its recommenda-

tions with respect to the matters referred to it. Upon the filing of such report, the Administrator, after due notice to interested persons, and giving them an opportunity to be heard, shall by order approve and carry into effect the recommendations contained in such report, if he finds that the recommendations are made in accordance with law, are supported by the evidence adduced at the hearing, and, taking into consideration the same factors as are required to be considered by the industry committee, will carry out the purposes of this section; otherwise he shall disapprove such recommendations. If the Administrator disapproves such recommendations, he shall again refer the matter to such committee, or to another industry committee for such industry (which he may appoint for such purpose), for further consideration and recommendations.

(e) No order issued under this section with respect to any industry prior to the expiration of seven years from the effective date of section 206 of this title shall remain in effect after such expiration, and no order shall be issued under this section with respect to any industry on or after such expiration, unless the industry committee by a preponderance of the evidence before it recommends, and the Administrator by a preponderance of the evidence adduced at the hearing finds, that the continued effectiveness or the issuance of the order, as the case may be, is necessary in order to prevent substantial curtailment of employment in the industry.

(f) Orders issued under this section shall define the industries and classifications therein to which they are to apply, and shall contain such terms and conditions as the Administrator finds necessary to carry out the purposes of such orders, to prevent the circumvention or evasion thereof, and to safeguard the minimum wage rates established therein. No such order shall take effect until after due notice is given of the issuance thereof by publication in the Federal Register and by such other means as the Administrator deems reasonably calculated to give to interested persons general notice of such issuance.

(g) Due notice of any hearing provided for in this section shall be given by publication in the Federal Register and by such other means as the Administrator deems reasonably calculated to give general notice to interested persons. (June 25, 1938, ch. 676, § 8, 52 Stat. 1064.)

### WAGE ORDERS ISSUED PRIOR TO JUNE 26, 1940, IN PUERTO RICO OR THE VIRGIN ISLANDS

Res. June 26, 1940, ch. 432, § 3 (d), 54 Stat. 616, provided as follows: "(d) No wage orders issued by the Administrator pursuant to the recommendations of an industry committee made prior to the enactment of this joint resolution pursuant to section 8 (this section) of the Fair Labor Standards Act of 1938 shall after such enactment be applicable with respect to any employees engaged in commerce or in the production of goods for commerce in Puerto Rico or the Virgin Islands."

### § 209. Attendance of witnesses.

For the purpose of any hearing or investigation provided for in sections 201–219 of this title, the provisions of sections 49 and 50 of Title 15, (relating to the attendance of witnesses and the production

of books, papers, and documents), are hereby made applicable to the jurisdiction, powers, and duties of the Administrator, the Chief of the Children's Bureau, and the industry committees. (June 25, 1938, ch. 676, § 9, 52 Stat. 1065.)

#### § 210. Court review.

(a) Any person aggrieved by an order of the Administrator issued under section 208 of this title may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Administrator be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon the Administrator, and thereupon the Administrator shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part, so far as it is applicable to the petitioner. The review by the court shall be limited to questions of law, and findings of fact by the Administrator when supported by substantial evidence shall be conclusive. No objection to the order of the Administrator shall be considered by the court unless such objection shall have been urged before the Administrator or unless there were reasonable grounds for failure so to do. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence to be taken before the Administrator and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Administrator may modify his findings by reason of the additional evidence so taken, and shall file with the court such modified or new findings which if supported by substantial evidence shall be conclusive, and shall also file his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 346 and 347 of Title 28, as amended.

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Administrator's order. The court shall not grant any stay of the order unless the person complaining of such order shall file in court an undertaking with a surety or sureties satisfactory to the court for the payment to the employees affected by the order, in the event such order is affirmed, of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they ac-

tually receive while such stay is in effect. (June 25, 1938, ch. 676, § 10, 52 Stat. 1065.)

#### § 211. Investigations, inspections, and records.

(a) The Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and order conditions and practices of employment in any industry subject to sections 201-219 of this title, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of sections 201-219 of this title, or which may aid in the enforcement of the provisions of sections 201-219 of this title. Except as provided in section 212 of this title and in subsection (b) of this section, the Administrator shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 212 of this title, the Administrator shall bring all actions under section 217 of this title to restrain violations of sections 201-219 of this title.

(b) With the consent and cooperation of State agencies charged with the administration of State labor laws, the Administrator and the Chief of the Children's Bureau may, for the purpose of carrying out their respective functions and duties under sections 201-219 of this title, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

(c) Every employer subject to any provision of sections 201-219 of this title or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of sections 201-219 of this title or the regulations or orders thereunder. (June 25, 1938, ch. 676, § 11, 52 Stat. 1066.)

#### § 212. Child labor provisions.

(a) After the expiration of one hundred and twenty days from the date of enactment of sections 201-219 of this title, no producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed: *Provided*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions prohibited in sections 201-219 of this title shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

(b) The Chief of the Children's Bureau in the Department of Labor, or any of his authorized representatives, shall make all investigations and inspections under section 211 (a) of this title with respect to the employment of minors, and, subject to the direction and control of the Attorney General, shall bring all actions under section 217 of this title to enjoin any act or practice which is unlawful by reason of the existence of oppressive child labor, and shall administer all other provisions of sections 201-219 of this title relating to oppressive child labor. (June 25, 1938, ch. 676, § 12, 52 Stat. 1067.)

#### § 213. Exemptions.

(a) The provisions of sections 206 and 207 of this title shall not apply with respect to (1) any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Administrator); or (2) any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce; or (3) any employee employed as a seaman; or (4) any employee of a carrier by air subject to the provisions of sections 181-188 of Title 45; or (5) any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including the going to and returning from work and including employment in the loading, unloading, or packing of such products for shipment or in propagating, processing, marketing, freezing, canning, curing, storing, or distributing the above products or byproducts thereof; or (6) any employee employed in agriculture; or (7) any employee to the extent that such employee is exempted by regulations or orders of the Administrator issued under section 214 of this title; or (8) any employee employed in connection with the publication of any weekly or semiweekly newspaper with a circulation of less than three thousand the major part of which circulation is within the county where printed and published; or (9) any employee of a street, suburban, or interurban electric railway, or local trolley or motor bus carrier, not included in other exemptions contained in this section; or (10) to any individual employed within the area of production (as defined by the Administrator), engaged in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products; or (11) any switchboard operator employed in a public telephone exchange which has less than five hundred stations.

(b) The provisions of section 207 of this title shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 304 of Title 49; or (2) any employee of an employer subject to the provisions of sections 1-27 of Title 49.

(c) The provisions of section 212 of this title relating to child labor shall not apply with respect to any employee employed in agriculture while not legally required to attend school, or to any child employed as an actor in motion pictures or theatrical productions. (June 25, 1938, ch. 676, § 13, 52 Stat. 1067; Aug. 9, 1939, ch. 605, 53 Stat. 1266.)

#### § 214. Learners, apprentices, and handicapped workers.

The Administrator, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for (1) the employment of learners, of apprentices, and of messengers employed exclusively in delivering letters and messages, under special certificates issued pursuant to regulations of the Administrator, at such wages lower than the minimum wage applicable under section 206 of this title and subject to such limitations as to time, number, proportion, and length of service as the Administrator shall prescribe, and (2) the employment of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, under special certificates issued by the Administrator, at such wages lower than the minimum wage applicable under section 206 of this title and for such period as shall be fixed in such certificates. (June 25, 1938, ch. 676, § 14, 52 Stat. 1068.)

#### § 215. Prohibited acts; prima facie evidence.

(a) After the expiration of one hundred and twenty days from the date of enactment of sections 201-219 of this title, it shall be unlawful for any person—

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 206, or section 207 of this title, or in violation of any regulation or order of the Administrator issued under section 214 of this title; except that no provision of this chapter shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this chapter shall excuse any common carrier from its obligation to accept any goods for transportation;

(2) to violate any of the provisions of section 206 or section 207 of this title, or any of the provisions of any regulation or order of the Administrator issued under section 214 of this title;

(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to sections 201-219 of this title, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee;

(4) to violate any of the provisions of section 212 of this title;

(5) to violate any of the provisions of section 211 (c) of this title, or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder,

knowing such statement, report, or record to be false in a material respect.

(b) For the purposes of subsection (a) (1) proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods. (June 25, 1938, ch. 676, § 15, 52 Stat. 1068.)

#### § 216. Penalties; civil and criminal liability.

(a) Any person who willfully violates any of the provisions of section 215 of this title shall upon conviction thereof be subject to a fine of not more than \$10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. (June 25, 1938, ch. 676, § 16, 52 Stat. 1069.)

#### § 217. Injunction proceedings.

The district courts of the United States and the United States courts of the Territories and posses-

sions shall have jurisdiction, for cause shown, and subject to the provisions of section 20 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended (U. S. C., 1934 edition, Title 28, sec. 381),<sup>1</sup> to restrain violations of section 215 of this title. (June 25, 1938, ch. 676, § 17, 52 Stat. 1069.)

<sup>1</sup> So in original. Section 20 of the act mentioned, relating to statutory restriction of injunctive relief, constitutes section 52 of this title.

#### § 218. Relation to other laws.

No provision of sections 201-219 of this title or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under such sections or a maximum workweek lower than the maximum workweek established under such sections, and no provision of sections 201-219 of this title relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under such sections. No provision of sections 201-219 of this title shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under sections 201-219 of this title, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under such sections. (June 25, 1938, ch. 676, § 18, 52 Stat. 1069.)

#### § 219. Separability of provisions.

If any provision of sections 201-219 of this title or the application of such provision to any person or circumstance is held invalid, the remainder of such sections and the application of such provision to other persons or circumstances shall not be affected thereby. (June 25, 1938, ch. 676, § 19, 52 Stat. 1069.)





## TITLE 30.—MINERAL LANDS AND MINING

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### Chapter 1.—THE BUREAU OF MINES

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#### § 1. Bureau of Mines; establishment; director; ex- perts and other employees.

There is established in the Department of the Interior a bureau of mining, metallurgy, and mineral technology, to be designated the Bureau of Mines, and there shall be a director of said bureau, who shall be thoroughly equipped for the duties of said office by technical education and experience and who shall be appointed by the President, by and with the advice and consent of the Senate; and there shall also be in the said bureau such experts and other employees, to be appointed by the Secretary of the Interior, as may be required to carry out the purposes of sections 1, 3, 5, 6, 7 of this title in accordance with the appropriations made from time to time by Congress for such purposes. (Feb. 14, 1903, ch. 552, § 12, 32 Stat. 830; May 16, 1910, ch. 240, § 1, 36 Stat. 369; Feb. 25, 1913, ch. 72, § 1, 37 Stat. 681; Ex. Ord. No. 4239, June 4, 1925; Ex. Ord. No. 6611, Feb. 22, 1934.)

#### TRANSFER OF FUNCTIONS

Bureau of Mines was originally created in the Department of the Interior. The Bureau was transferred to Department of Commerce by Ex. Ord. No. 4239, cited to text, but was transferred back to Department of the Interior by Ex. Ord. No. 6611, cited to text.

#### § 1a. Same; transfer of activities, employees, records, etc., from Bureau of Foreign and Domestic Com- merce.

There is hereby transferred from the Department of Commerce, Bureau of Foreign and Domestic Commerce, to the Department of the Interior, Bureau of Mines, all those activities of the Minerals Division of the Bureau of Foreign and Domestic Commerce concerned with economic and statistical analyses of mineral commodities, domestic and foreign, together with all employees, records, files, equipment, publications, and funds pertaining thereto, effective immediately. (May 9, 1935, ch. 101, § 1, 49 Stat. 205.)

#### § 2. Same; performance of duties in absence of direc- tor.

In the absence of the Director of the Bureau of Mines the assistant director of said bureau shall perform the duties of the director during the latter's absence, and in the absence of the Director and of the Assistant Director of the Bureau of Mines the Secretary of the Interior may designate some officer of said bureau to perform the duties of the director during his absence. (Feb. 14, 1903, ch. 552, § 12, 32 Stat. 830; July 1, 1916, ch. 209, § 1, 39 Stat. 303; Ex. Ord. No. 4239, June 4, 1925; Ex. Ord. No. 6611, Feb. 22, 1934.)

#### TRANSFER OF FUNCTIONS

See note under section 1 of this title.

#### § 3. Same; duties of bureau.

It shall be the province and duty of the Bureau of Mines, subject to the approval of the Secretary of the Interior, to conduct inquiries and scientific and technologic investigations concerning mining, and the preparation, treatment, and utilization of mineral substances with a view to improving health conditions, and increasing safety, efficiency, economic development, and conserving resources through the prevention of waste in the mining, quarrying, metallurgical, and other mineral industries; to inquire into the economic conditions affecting these industries; to investigate explosives and peat; and on behalf of the Government to investigate the mineral fuels and unfinished mineral products belonging to, or for the use of, the United States, with a view to their most efficient mining, preparation, treatment, and use; and to disseminate information concerning these subjects in such manner as will best carry out the purposes of the provisions of sections 1, 3, 5, 6, and 7 of this title. (Feb. 14, 1903, ch. 552, § 12, 32 Stat. 830; May 16, 1910, ch. 240, § 2, 36 Stat. 370; Feb. 25, 1913, ch. 72, 37 Stat. 681; Ex. Ord. No. 4239, June 4, 1925; Ex. Ord. No. 6611, Feb. 22, 1934.)

#### TRANSFER OF FUNCTIONS

See note under section 1 of this title.

**§ 4. Investigation of lignite coal and peat.**

The Secretary of the Interior is authorized and directed to make experiments and investigations, through the Bureau of Mines, of lignite coals and peat, to determine the commercial and economic practicability of their utilization in producing fuel oil, gasoline substitutes, ammonia, tar, solid fuels, gas for power, and other purposes. The Secretary of the Interior is authorized and directed to sell or otherwise dispose of any property, plant, or machinery purchased or acquired under the provisions of this section, as soon as the experiments and investigations hereby authorized have been concluded, and report the results of such experiments and investigations to Congress. (Feb. 14, 1903, ch. 552, § 12, 32 Stat. 830; Feb. 25, 1919, ch. 23, §§ 1, 2, 40 Stat. 1154; Ex. Ord. No. 4239, June 4, 1925; Ex. Ord. No. 6611, Feb. 22, 1934.)

**TRANSFER OF FUNCTIONS**

See note under section 1 of this title.

**§ 4a. Investigation of potash deposits; appropriation.**

Section, act June 25, 1926, ch. 674, § 1, 44 Stat. 768, authorized appropriation of \$100,000 for fiscal year ending June 30, 1927, and the four succeeding fiscal years for investigation of potash deposits.

**§ 4b. Cooperation with individuals, municipalities, etc., contracts with owners; agreements as to prices.**

The Secretary of the Interior and the Secretary of Commerce jointly are hereby authorized, within their discretion, to cooperate under formal agreement with individuals, associations, corporations, States, and municipalities, educational institutions, or other bodies, for the purposes of this section: *Provided*, That before undertaking drilling operations upon any tract or tracts of land, the mineral deposits of which are not the property of the United States, the Secretary of the Interior and the Secretary of Commerce jointly shall enter into a contract or contracts with the owners or lessees, or both, of the mineral rights therein, and the aforesaid contract or contracts shall provide, among other things, that, if deposits of potash minerals or oil shall be discovered in pursuance of operations under said contract or contracts and if and when said mineral deposits shall be mined and sold, the owners or lessees, or both, of said mineral rights shall pay to the Government and its co-operators a royalty of not less than 2½ per centum of the sale value of any potash minerals and oil therefrom, said payments to continue until such time as the total amount derived from said royalty is equal to not more than the cost of the exploration, as may be determined by the Secretary of the Interior and the Secretary of Commerce jointly: *Provided further*, That all Federal claims for reimbursement under this section shall automatically expire twenty years from the date of approval of the contracts entered into, in accordance with the provisions thereof, unless sooner terminated by agreement between the owners or lessees of the potash mineral rights and oil and the Secretary of the Interior and the Secretary of Commerce jointly: *Provided further*, That said contract or contracts shall not restrict the Secretary of the Interior and the Secretary of Commerce jointly in the choice of drilling locations within the property

or in the conduct of the exploratory operations, so long as such selection or conduct do not interfere unreasonably with the surface of the land or with the improvements thereof, and said contract or contracts shall provide that the United States shall not be liable for damages on account of such reasonable use of the surface as may be necessary in the proper conduct of the work. (June 25, 1926, ch. 674, § 2, 44 Stat. 768; Mar. 3, 1927, ch. 356, 44 Stat. 1388.)

**§ 4c. Investigation of sub-bituminous and lignite coal.**

The Bureau of Mines, under the general direction of the Secretary of the Interior, is authorized to conduct investigations, studies, and experiments on its own initiative and in cooperation with individuals, State institutions, laboratories, and other organizations, with a view to (1) the development of a commercially practicable carbonization method of processing sub-bituminous and lignite coal so as to convert such coal into an all-purpose fuel, to provide fertilizers, and obtain such other byproducts thereof as may be commercially valuable; (2) the development of efficient methods, equipment, and devices for burning lignite or char therefrom; and (3) determining and developing methods for more efficient utilization of such sub-bituminous and lignite coal for purposes of generating electric power. (May 15, 1936, ch. 397, § 1, 49 Stat. 1275.)

**§ 4d. Same; plants, machinery, and equipment.**

The Bureau of Mines is further authorized, under the general direction of the Secretary of the Interior, to erect such plants, construct and purchase such machinery and equipment, and to take such other steps as it may deem necessary and proper to effectuate the purposes of section 4c of this title. (May 15, 1936, ch. 397, § 2, 49 Stat. 1275.)

**§ 4e. Appropriation.**

Section, act May 15, 1936, ch. 397, § 3, 49 Stat. 1275, appropriated \$100,000 for carrying out provisions of sections 4c and 4d of this title to be expended during certain fiscal years, the last ending June 30, 1939.

**§ 5. Reports of investigations.**

The Director of the Bureau of Mines shall prepare and publish, subject to the direction of the Secretary of the Interior, under the appropriations made from time to time by Congress, reports of inquiries and investigations, with appropriate recommendations of the bureau, concerning the nature, causes, and prevention of accidents, and the improvement of conditions, methods, and equipment, with special reference to health, safety, and prevention of waste in the mining, quarrying, metallurgical, and other mineral industries; the use of explosives and electricity, safety methods and appliances, and rescue and first-aid work in said industries; the causes and prevention of mine fires; and other subjects included under the provisions of sections 1, 3, 5, 6, and 7 of this title. (Feb. 14, 1903, ch. 552, § 12, 32 Stat. 830; May 16, 1910, ch. 240, § 3, 36 Stat. 370; Feb. 25, 1913, ch. 72, 37 Stat. 681; Ex. Ord. No. 4239, June 4, 1925; Ex. Ord. No. 6611, Feb. 22, 1934.)

## TRANSFER OF FUNCTIONS

See note under section 1 of this title.

### § 6. Personal interest of director and members of bureau in mines.

In conducting inquiries and investigations authorized under sections 1, 3, 5, 6, and 7 of this title neither the director nor any member of the Bureau of Mines shall have any personal or private interest in any mine or the products of any mine under investigation, or shall accept employment from any private party for services in the examination of any mine or private mineral property, or issue any report as to the valuation or the management of any mine or other private mineral property. Nothing herein shall be construed as preventing the temporary employment by the Bureau of Mines, at a compensation not to exceed \$10 per day, in a consulting capacity or in the investigation of special subjects, of any engineer or other expert whose principal professional practice is outside of such employment by said bureau. (May 16, 1910, ch. 240, § 4, 36 Stat. 370; Feb. 25, 1913, ch. 72, 37 Stat. 682.)

### § 7. Fees for tests or investigations.

For tests or investigations authorized by the Secretary of the Interior under the provisions of sections 1, 3, 5, 6, and 7 of this title, except those performed for the Government of the United States or State governments within the United States, a fee sufficient in each case to compensate the Bureau of Mines for the entire cost of the services rendered shall be charged, according to a schedule prepared by the Director of the Bureau of Mines and approved by the Secretary of the Interior, who shall prescribe rules and regulations under which such tests and investigations may be made. All moneys received from such sources shall be paid into the Treasury to the credit of miscellaneous receipts. (Feb. 14, 1903, ch. 552, § 12, 32 Stat. 830; May 16, 1910, ch. 240, § 5, 36 Stat. 370; Feb. 25, 1913, ch. 72, 37 Stat. 682; June 30, 1932, ch. 314, § 311, 47 Stat. 410; Ex. Ord. No. 4239, June 4, 1935; Ex. Ord. No. 6611, Feb. 22, 1934.)

## TRANSFER OF FUNCTIONS

See note under section 1 of this title.

### § 8. Additional mining experiment stations and mine safety stations authorized.

The Secretary of the Interior is authorized and directed to establish and maintain in the several important mining regions of the United States and the Territory of Alaska, as Congress may appropriate for the necessary employees and other expenses, under the Bureau of Mines and in accordance with the provisions of sections 1, 3, 5, 6, and 7 of this title, ten mining experiment stations and seven mine safety stations, movable or stationary, in addition to those established prior to March 3, 1915, the province and duty of which shall be to make investigations and disseminate information with a view to improving conditions in the mining, quarrying, metallurgical, and other mineral industries, safeguarding life among employees, preventing unnecessary waste of resources, and otherwise contributing to the advancement of these industries. Not more than three mining experiment stations and

mine safety stations authorized in this section shall be established in any one fiscal year under the appropriations made therefor. (Feb. 14, 1903, ch. 552, § 12, 32 Stat. 830; Mar. 3, 1915, ch. 95, § 1, 38 Stat. 959; Ex. Ord. No. 4239, June 4, 1925; Ex. Ord. No. 6611, Feb. 22, 1934.)

## TRANSFER OF FUNCTIONS

See note under section 1 of this title.

### § 9. Same; acceptance of lands from States.

The Secretary of the Interior is authorized to accept lands, buildings, or other contributions from the several States offering to cooperate in carrying out the purposes of section 8 of this title. (Feb. 14, 1903, ch. 552, § 12, 32 Stat. 830; Mar. 3, 1915, ch. 95, § 2, 38 Stat. 959; Ex. Ord. No. 6611, Feb. 22, 1934.)

### § 10. Headquarters of mine rescue cars; site for experimental work; leases and donations.

The Secretary of the Interior is authorized to accept any suitable land or lands, buildings, or improvements that may be donated for the headquarters of mine rescue cars and construction of necessary railway sidings and housing for the same, or as the site of an experimental mine and plant for studying explosives, and to enter into leases for periods not exceeding ten years, subject to annual appropriations by Congress. (Feb. 14, 1903, ch. 552, § 12, 32 Stat. 830; June 5, 1920, ch. 235, § 1, 41 Stat. 912; Ex. Ord. No. 6611, Feb. 22, 1934.)

### § 11. Purchase of supplies or procurement of services for Bureau of Mines.

Section, acts Apr. 29, 1926, ch. 195, title III, 44 Stat. 369; Feb. 24, 1927, ch. 189, title III, 44 Stat. 1221; Feb. 15, 1928, ch. 57, title III, 45 Stat. 105; Jan. 25, 1929, ch. 102, title III, 45 Stat. 1135; Apr. 18, 1930, ch. 184, title III, 46 Stat. 214; Feb. 23, 1931, ch. 280, title III, 46 Stat. 1351; July 1, 1932, ch. 361, title III, 47 Stat. 518; Mar. 1, 1933, ch. 144, title III, 47 Stat. 1408; Apr. 7, 1934, ch. 104, title III, 48 Stat. 566; May 9, 1935, ch. 101, § 1, 49 Stat. 205; June 22, 1936, ch. 691, § 1, 49 Stat. 1790; Aug. 9, 1937, ch. 570, § 1, 50 Stat. 602; May 9, 1938, ch. 187, § 1, 52 Stat. 329, providing that purchase of supplies and equipment or procurement of services for Bureau of Mines might be made in open market without compliance with section 5 of Title 41, where amount involved did not exceed \$100, was a provision of Interior Department appropriation acts and was discontinued in acts subsequent to 1938 appropriation act.

## Chapter 2.—MINERAL LANDS AND REGULATIONS IN GENERAL

## Sec.

21. Mineral lands reserved.
22. Lands open to purchase by citizens.
23. Length of claims on veins or lodes.
24. Proof of citizenship.
25. Affidavit of citizenship.
26. Locators' rights of possession and enjoyment.
27. Mining tunnels; right to possession of veins on line with; abandonment of right.
28. Mining district regulations by miners; annual labor on claims pending issue of patent; expenditure on tunnels considered.
- 28a. Annual assessment work on mining claims; suspension of requirement.
29. Patents; procedure to obtain.
30. Adverse claim; proceedings and subsequent filing of judgment roll by successful claimant.
31. Same; oath of claimant.
32. Same; findings by jury; costs.
33. Pending applications; existing rights.

- Sec.  
 34. Description of vein claims on surveyed and unsurveyed lands; monuments on ground to govern conflicting calls.  
 35. Placer claims conforming entry to legal subdivisions and surveys; limitation of claims.  
 36. Same; subdivisions of 10-acre tracts; maximum of placer locations.  
 37. Same; proceedings for patent.  
 38. Evidence of possession and work to establish right to patent.  
 39. Surveyors of mining claims.  
 40. Verification of affidavits.  
 41. Intersecting or crossing veins.  
 42. Patents for nonmineral lands.  
 43. Conditions of sale by local legislature.  
 44, 45. Mineral lands, sale for agricultural purposes; recognition of homestead rights.  
 46. Additional land districts and officers.  
 47. Provisions of chapter not to affect certain rights.  
 48. Lands in certain States excepted.  
 49. Lands in Missouri and Kansas; disposal as agricultural lands.  
 50. Grants to States or corporations not to include mineral lands.  
 51. Vested rights to use of water for mining, etc.; right-of-way for canals.  
 52. Rights subject to vested and accrued water rights.

### § 21. Mineral lands reserved.

In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law. (R. S. § 2318.)

#### DERIVATION

Act July 4, 1866, ch. 166, § 5, 14 Stat. 86.

#### CROSS REFERENCES

Michigan, Wisconsin, and Minnesota mineral lands, see section 48 of this title.

Missouri and Kansas mineral deposits, see section 49 of this title.

### § 22. Lands open to purchase by citizens.

Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States. (R. S. § 2319; Feb. 25, 1920, ch. 85, § 1, 41 Stat. 437.)

#### DERIVATION

Act May 10, 1872, ch. 152, § 1, 17 Stat. 91.

#### CROSS REFERENCE

Michigan, Wisconsin, and Minnesota mineral lands, see section 48 of this title.

### § 23. Length of claims on veins or lodes.

Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, located prior to May 10, 1872, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the 10th day of May 1872, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no

location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the 10th day of May 1872 render such limitation necessary. The end lines of each claim shall be parallel to each other. (R. S. § 2320.)

#### DERIVATION

Act May 10, 1872, ch. 152, § 2, 17 Stat. 91.

#### CROSS REFERENCE

Michigan, Wisconsin, and Minnesota mineral lands, see section 48 of this title.

### § 24. Proof of citizenship.

Proof of citizenship, under sections 21-24, 26-30, 33-48, 50-52, 71-76 of this title, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge, or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any State or Territory thereof, by the filing of a certified copy of their charter or certificate of incorporation. (R. S. § 2321.)

#### DERIVATION

Act May 10, 1872, ch. 152, § 7, 17 Stat. 94.

#### CROSS REFERENCE

Michigan, Wisconsin, and Minnesota mineral lands, see section 48 of this title.

### § 25. Affidavit of citizenship.

Applicants for mineral patents, if residing beyond the limits of the district wherein the claim is situated, may make any oath or affidavit required for proof of citizenship before the clerk of any court of record or before any notary public of any State or Territory. (Apr. 26, 1882, ch. 106, § 2, 22 Stat. 49.)

### § 26. Locators' rights of possession and enjoyment.

The locators of all mining locations made on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim existed on the 10th day of May 1872 so long as they comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction

that such planes will intersect such exterior parts of such veins or ledges. Nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another. (R. S. § 2322.)

#### DERIVATION

Act May 10, 1872, ch. 152, § 3, 17 Stat. 91.

#### CROSS REFERENCE

Michigan, Wisconsin, and Minnesota mineral lands, see section 48 of this title.

### § 27. Mining tunnels; right to possession of veins on line with; abandonment of right.

Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel. (R. S. § 2323.)

#### DERIVATION

Act May 10, 1872, ch. 152, § 4, 17 Stat. 92.

#### CROSS REFERENCE

Michigan, Wisconsin, and Minnesota mineral lands, see section 48 of this title.

### § 28. Mining district regulations by miners; annual labor on claims pending issue of patent; expenditure on tunnels considered.

The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims made after May 10, 1872, shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the 10th day of May 1872, and until a patent has been issued therefor, not less than \$100 worth of labor shall be performed or improvements made during each year. On all claims located prior to the 10th day of May 1872, \$10 worth of labor shall be performed or improvements made each year, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the

same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several coowners to contribute his proportion of the expenditures required hereby, the coowners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent coowner personal notice in writing or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his coowners who have made the required expenditures. The period within which the work required to be done annually on all unpatented mineral claims located since May 10, 1872, including such claims in the Territory of Alaska, shall commence at 12 o'clock meridian on the 1st day of July succeeding the date of location of such claim.

Where a person or company has or may run a tunnel for the purposes of developing a lode or lodes, owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since May 10, 1872; and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by this section. On all such valid claims the annual period ending December 31, 1921, shall continue to 12 o'clock meridian July 1, 1922. (R. S. § 2324; Feb. 11, 1875, ch. 41, 18 Stat. 315; Jan. 22, 1880, ch. 9, § 2, 21 Stat. 61; Aug. 24, 1921, ch. 84, 42 Stat. 186.)

#### DERIVATION

Act May 10, 1872, ch. 152, § 5, 17 Stat. 92.

#### CROSS REFERENCE

Michigan, Wisconsin, and Minnesota mineral lands, see section 48 of this title.

### § 28a. Annual assessment work on mining claims; suspension of requirement.

Section, May 18, 1933, ch. 33, 48 Stat. 72, suspended requirement of annual assessment work on mining claims for one year from July 1, 1932.

### § 29. Patents; procedure to obtain.

A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under sections 21-24, 26-30, 33-48, 50-52, 71-76 of this title, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of said sections, may file in the proper land office an application for a patent, under oath, showing such compliance, together with a plat and field notes of the claim or claims in common, made by or under the direction of the United States supervisor of surveys, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent,

in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land office, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the register a certificate of the United States supervisor of surveys that \$500 worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description, to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register of the proper land office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of \$5 per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter. Where the claimant for a patent is not a resident of or within the land district wherein the vein, lode, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or its authorized agent, where said agent is conversant with the facts sought to be established by said affidavits. (R. S. § 2325; Jan. 22, 1880, ch. 9, § 1, 21 Stat. 61; Mar. 3, 1925, ch. 462, 43 Stat. 1144, 1145.)

#### DERIVATION

Act May 10, 1872, ch. 152, § 6, 7 Stat. 92.

#### CROSS REFERENCES

Adverse suits authorized by this section to be filed in Alaska at any time within sixty days after the filing of adverse claims in the local land office. See section 386 of Title 48, Territories and Insular Possessions.

Michigan, Wisconsin, and Minnesota mineral lands, see section 48 of this title.

#### § 30. Adverse claim; proceedings and subsequent filing of judgment roll by successful claimant.

Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or

the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment roll with the register of the land office, together with the certificate of the United States supervisor of surveys that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the register \$5 per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment roll shall be certified by the register to the Commissioner of the General Land Office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim, with the proper fees, and file the certificate and description by the United States supervisor of surveys, whereupon the register shall certify the proceedings and judgment roll to the Commissioner of the General Land Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of the title conveyed by a patent for a mining claim to any person whatever. (R. S. § 2326; Mar. 3, 1925, ch. 462, 43 Stat. 1144, 1145.)

#### DERIVATION

Act May 10, 1872, ch. 152, § 7, 17 Stat. 93.

#### CROSS REFERENCE

Michigan, Wisconsin, and Minnesota mineral lands, see section 48 of this title.

#### § 31. Same; oath of claimant.

The adverse claim required by section 30 of this title may be verified by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated; and the adverse claimant, if residing or at the time being beyond the limits of the district wherein the claim is situated, may make oath to the adverse claim before the clerk of any court of record of the United States or of the State or Territory where the adverse claimant may then be, or before any notary public of such State or Territory. (Apr. 26, 1882, ch. 106, § 1, 22 Stat. 49.)

#### § 32. Same; findings by jury; costs.

If, in any action brought pursuant to section 30 of this title, title to the ground in controversy shall not be established by either party, the jury shall so find, and judgment shall be entered according to the verdict. In such case costs shall not be allowed to either party, and the claimant shall not proceed in the land office or be entitled to a patent for the ground in controversy until he shall have perfected his title. (Mar. 3, 1881, ch. 140, 21 Stat. 505.)

## FEDERAL RULES OF CIVIL PROCEDURE

Judgment and costs, see Rule 54, following section 723c of Title 28, Judicial Code and Judiciary.

Continuation of section under Rule 54, see note by Advisory Committee under said Rule 54.

## § 33. Pending applications; existing rights.

Applications for patents for mining claims under laws existing prior to May 10, 1872, and pending on that date may be prosecuted to a final decision in the General Land Office; but in such cases where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of sections 21-24, 26-30, 33-48, 50-52, 71-76 of this title; and all patents for mining claims upon veins or lodes issued prior to May 10, 1872, shall convey all the rights and privileges conferred by said sections where no adverse rights existed on the 10th day of May, 1872. (R. S. § 2328.)

## DERIVATION

Act May 10, 1872, ch. 152, § 9, 17 Stat. 94.

## CROSS REFERENCE

Michigan, Wisconsin, and Minnesota mineral lands, see section 48 of this title.

## § 34. Description of vein claims on surveyed and unsurveyed lands; monuments on ground to govern conflicting calls.

The description of vein or lode claims upon surveyed lands shall designate the location of the claims with reference to the lines of the public survey, but need not conform therewith; but where patents have been or shall be issued for claims upon unsurveyed lands, the United States supervisor of surveys in extending the public survey, shall adjust the same to the boundaries of said patented claims so as in no case to interfere with or change the true location of such claims as they are officially established upon the ground. Where patents have issued for mineral lands, those lands only shall be segregated and shall be deemed to be patented which are bounded by the lines actually marked, defined, and established upon the ground by the monuments of the official survey upon which the patent grant is based, and the United States supervisor of surveys in executing subsequent patent surveys, whether upon surveyed or unsurveyed lands, shall be governed accordingly. The said monuments shall at all times constitute the highest authority as to what land is patented, and in case of any conflict between the said monuments of such patented claims and the descriptions of said claims in the patents issued therefor the monuments on the ground shall govern, and erroneous or inconsistent descriptions or calls in the patent descriptions shall give way thereto. (R. S. § 2327; Apr. 28, 1904, ch. 1796, 33 Stat. 545; Mar. 3, 1925, ch. 462, 43 Stat. 1144.)

## DERIVATION

Act May 10, 1872, ch. 152, § 8, 17 Stat. 94.

## CROSS REFERENCE

Michigan, Wisconsin, and Minnesota mineral lands, see section 48 of this title.

## § 35. Placer claims conforming entry to legal subdivisions and surveys; limitation of claims.

Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other

rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands. And where placer claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer-mining claims located after the 10th day of May 1872, shall conform as near as practicable with the United States system of public-land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral land in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead purposes. (R. S. §§ 2329, 2331; Mar. 3, 1891, ch. 561, § 4, 26 Stat. 1097.)

## DERIVATION

R. S. § 2329 was from act July 9, 1870, ch. 235, § 12, 16 Stat. 217.

R. S. § 2331 was from act May 10, 1872, ch. 152, § 10, 17 Stat. 94.

## CROSS REFERENCE

Michigan, Wisconsin, and Minnesota mineral lands, see section 48 of this title.

## § 36. Same; subdivisions of 10-acre tracts; maximum of placer locations.

Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer claim, made after the 9th day of July 1870, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona fide homestead claim upon agricultural lands, or authorize the sale of the improvements of any bona fide settler to any purchaser. (R. S. § 2330; Mar. 3, 1891, ch. 561, § 4, 26 Stat. 1097.)

## DERIVATION

Act July 9, 1870, ch. 235, § 12, 16 Stat. 217.

## CROSS REFERENCE

Michigan, Wisconsin, and Minnesota mineral lands, see section 48 of this title.

## § 37. Same; proceedings for patent.

Where the same person, association, or corporation is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer claim, subject to the provisions of sections 21-24, 26-30, 33-48, 50-52, 71-76 of this title, including such vein or lode, upon the payment of \$5 per



acre for such vein or lode claim, and twenty-five feet of surface on each side thereof. The remainder of the placer claim, or any placer claim not embracing any vein or lode claim, shall be paid for at the rate of \$2.50 per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section 23 of this title, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof. (R. S. § 2333.)

DERIVATION

Act May 10, 1872, ch. 152, § 11, 17 Stat. 94.

CROSS REFERENCE

Michigan, Wisconsin, and Minnesota mineral lands, see section 48 of this title.

§ 38. Evidence of possession and work to establish right to patent.

Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under sections 21-24, 26-30, 33-48, 50-52, 71-76 of this title, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent. (R. S. § 2332.)

DERIVATION

Act July 9, 1870, ch. 235, § 13, 16 Stat. 217.

§ 39. Surveyors of mining claims.

The United States supervisor of surveys may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining claims. The expenses of the survey of vein or lode claims, and the survey and subdivision of placer claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The Commissioner of the General Land Office shall also have power to establish the maximum charges for surveys and publication of notices under sections 21-24, 26-30, 33-48, 50-52, 71-76 of this title; and, in case of excessive charges for publication, he may designate any newspaper published in a land district where mines are situated for the publication of mining notices in such district, and fix the rates to be charged by such paper; and, to the end that the commissioner may be fully informed on the sub-

ject, each applicant shall file with the register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid the register of the Land Office, which statement shall be transmitted, with the other papers in the case, to the Commissioner of the General Land Office. (R. S. § 2334; Mar. 3, 1925, ch. 462, 43 Stat. 1144, 1145.)

DERIVATION

Act May 10, 1872, ch. 152, § 12, 17 Stat. 95.

CROSS REFERENCES

Alabama lands, see section 171 of this title.

Missouri and Kansas lands, see section 49 of this title.

§ 40. Verification of affidavits.

All affidavits required to be made under sections 21-24, 26-30, 33-48, 50-52, 71-76 of this title may be verified before any officer authorized to administer oaths within the land district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register of the Land Office. In cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken as herein provided on personal notice of at least ten days to the opposing party; or if such party cannot be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the register of the Land Office as published nearest to the location of such land; and the register shall require proof that such notice has been given. (R. S. § 2335; Mar. 3, 1925, ch. 462, 43 Stat. 1145.)

DERIVATION

Act May 10, 1872, ch. 152, § 13, 17 Stat. 95.

§ 41. Intersecting or crossing veins.

Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right-of-way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection. (R. S. § 2336.)

DERIVATION

Act May 10, 1872, ch. 152, § 14, 17 Stat. 96.

§ 42. Patents for nonmineral lands.

Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location made of such nonadjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine

in connection therewith, may also receive a patent for his mill site, as provided in this section. (R. S. § 2337.)

#### DERIVATION

Act May 10, 1872, ch. 152, § 15, 17 Stat. 96.

#### § 43. Conditions of sale by local legislature.

As a condition of sale, in the absence of necessary legislation by Congress, the local legislature of any State or Territory may provide rules for working mines, involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent. (R. S. § 2338.)

#### DERIVATION

Act July 26, 1866, ch. 262, § 5, 14 Stat. 252.

#### §§ 44, 45. Mineral lands, sale for agricultural purposes; recognition of homestead rights.

Section, R. S. §§ 2341, 2342; Mar. 3, 1891, ch. 561, § 4, 26 Stat. 1097, provided for extension of provisions of Homestead laws to citizens of United States who had prior to 1874 located on lands designated prior to 1866 as mineral lands, and improved them for agricultural purposes, provided no valuable mineral deposits had been discovered thereon, and for setting apart such lands as agricultural.

#### § 46. Additional land districts and officers.

The President is authorized to establish additional land districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of sections 21–24, 26–30, 33–48, 50–52, 71–76 of this title. (R. S. § 2343.)

#### DERIVATION

Act July 26, 1866, ch. 262, § 7, 14 Stat. 252.

#### § 47. Provisions of chapter not to affect certain rights.

Nothing contained in sections 21–24, 26–30, 33–48, 50–52, 71–76 of this title shall be construed to impair in any way, rights or interests in mining property acquired under laws in force prior to July 9, 1870; nor to affect the provisions of the act entitled "An act granting to A. Sutro the right-of-way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada", approved July 25, 1866. (R. S. § 2344.)

#### DERIVATION

Acts July 9, 1870, ch. 235, § 17, 16 Stat. 218; May 10, 1872, ch. 152, § 16, 17 Stat. 96.

#### § 48. Lands in certain States excepted.

Except as otherwise provided in sections 181–194, 201, 202–208, 211–214, 221, 223–229, 241, 251, and 261–263 of this title, the provisions of sections 21–24, 26–30, 33–47, 51, and 52 of this title shall not apply to the mineral lands situated in the States of Michigan, Wisconsin, and Minnesota, which are declared free and open to exploration and purchase, according to legal subdivisions, in like manner as before the 10th day of May 1872. And any bona fide entries of such lands within the States named since the 10th day of May 1872 may be patented without reference to sections 21–24, 26–30, 33–47, 51, and 52 of this title. Such lands shall be offered for public sale in the same manner, and at the same minimum price, as other

public lands. (R. S. § 2345; Mar. 3, 1891, ch. 561, § 4, 26 Stat. 1097; Feb. 25, 1920, ch. 85, § 1, 41 Stat. 437.)

#### DERIVATION

Act Feb. 18, 1873, ch. 159, 17 Stat. 465.

#### § 49. Lands in Missouri and Kansas; disposal as agricultural lands.

Except as otherwise provided in sections 181–194, 201, 202–208, 211–214, 221, 223–229, 241, 251, and 261–263 of this title, within the States of Missouri and Kansas deposits of coal, iron, lead, or other mineral are excluded from the operation of the provisions of sections 22–24, 26–30, 33–35, 37, 39, 40–42, 47 of this title, and all lands in said States shall be subject to disposal as agricultural lands. (May 5, 1876, ch. 91, 19 Stat. 52.)

#### § 50. Grants to States or corporations not to include mineral lands.

No act passed at the first session of the Thirty-eighth Congress, granting lands to States or corporations to aid in the construction of roads or for other purposes, or to extend the time of grants made prior to the 30th day of January 1865 shall be so construed as to embrace mineral lands, which in all cases are reserved exclusively to the United States, unless otherwise specially provided in the act or acts making the grant. (R. S. § 2346.)

#### DERIVATION

Res. Jan. 30, 1865, No. 10, 13 Stat. 567.

#### § 51. Vested rights to use of water for mining, etc.; right-of-way for canals.

Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right-of-way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage. (R. S. § 2339.)

#### DERIVATION

Act July 26, 1866, ch. 262, § 9, 14 Stat. 253.

#### CROSS REFERENCE

Michigan, Wisconsin, and Minnesota mineral lands, see section 48 of this title.

#### § 52. Rights subject to vested and accrued water rights.

All patents granted, or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by section 51 of this title. (R. S. § 2340; Mar. 3, 1891, ch. 561, § 4, 26 Stat. 1097.)

#### DERIVATION

Act July 9, 1870, ch. 235, § 17, 16 Stat. 218.

#### CROSS REFERENCE

Michigan, Wisconsin, and Minnesota mineral lands, see section 48 of this title.

### Chapter 3.—LANDS CONTAINING COAL, PHOSPHATES, PETROLEUM, OIL, OIL SHALE, GAS, SODIUM, POTASSIUM, AND SO FORTH, AND BUILDING STONE

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- Sec.  
 71. Coal lands; entry.  
 72. Same; preference right of entry.  
 73. Same; presentation of claims.  
 74. Same; one entry only.  
 75. Same; conflicting claims.  
 76. Same; rights reserved.  
 77. Coal lands in Alabama opened to agricultural entry.

#### ENTRY UNDER NONMINERAL LAND LAWS OF COAL LANDS WITH RESERVATION OF COAL TO UNITED STATES

81. Rights of entrymen of lands subsequently classified as coal lands; disposal of coal deposits.  
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 85. Patents for lands, with reservation of coal; disposal of coal deposits.  
 86. Disposition of lands in Indian reservations with reservation of coal; examination and appraisal of lands.  
 87. Same; statements in application; patents.  
 88. Same; disposition of coal by United States.  
 89. Same; disposition of proceeds.  
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#### ENTRY UNDER MINING LAWS OF LANDS CONTAINING PETROLEUM, OR OTHER MINERAL OILS, OR GAS

101. Entry of mineral oil lands under placer mining laws.  
 102. Assessment work on contiguous oil lands, located as claims, of same owner.  
 103. Patents for oil or gas lands not denied because of transfer before discovery of oil or gas.  
 104. Agreements with applicants for patents as to disposition of oil or gas, or proceeds thereof, pending determination of title; Navy petroleum fund.

#### HOMESTEAD ENTRY OF LANDS IN UTAH, WITHDRAWN OR CLASSIFIED AS OIL LANDS

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#### AGRICULTURAL ENTRY OF LANDS WITHDRAWN OR CLASSIFIED AS CONTAINING PHOSPHATE, NITRATE, POTASH, OIL, GAS, OR ASPHALTIC MINERALS

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#### PERMITS TO PROSPECT FOR CHLORIDES, SULPHATES, CARBONATES, BORATES, SILICATES, OR NITRATES OF POTASSIUM

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- 286. Repeal of sections 141 to 152; effect on pending applications.
- 287. Extension of prospecting permits.

### ENTRY ON COAL LANDS IN GENERAL

#### § 71. Coal lands; entry.

Every person above the age of twenty-one years, who is a citizen of the United States, or who has de-

clared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land office, have the right to enter, by legal subdivisions, any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the register of not less than \$10 per acre for such lands, where the same shall be situated more than fifteen miles from any completed railroad, and not less than \$20 per acre for such lands as shall be within fifteen miles of such road. (R. S. § 2347; Mar. 3, 1925, ch. 462, 43 Stat. 1145.)

#### DERIVATION

Act Mar. 3, 1873, ch. 279, § 1, 17 Stat. 607.

#### CROSS REFERENCES

Coal deposits to be subject to disposition only in the form and manner provided in enumerated sections, see section 193 of this title.

Leases and prospecting permits, see sections 201-208 of this title.

#### § 72. Same; preference right of entry.

Any person or association of persons severally qualified, as provided in section 71 of this title, who have opened and improved, or shall open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference right of entry, under section 71 of this title, of the mines so opened and improved: *Provided*, That when any association of not less than four persons, severally qualified as provided in section 71 of this title, shall have expended not less than \$5,000 in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvements. (R. S. § 2348.)

#### DERIVATION

Act Mar. 3, 1873, ch. 279, § 2, 17 Stat. 607.

#### CROSS REFERENCES

Coal deposits to be subject to disposition only in the form and manner provided in enumerated sections, see section 193 of this title.

Leases and prospecting permits, see sections 201-208 of this title.

#### § 73. Same; presentation of claims.

All claims under section 72 of this title must be presented to the register of the proper land district within sixty days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor; but when the township plat is not on file at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office. (R. S. § 2349.)

#### DERIVATION

Act Mar. 3, 1873, ch. 279, § 3, 17 Stat. 607.

#### § 74. Same; one entry only.

Sections 71-73 of this title shall be held to authorize only one entry by the same person or association

of persons; and no association of persons any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such sections shall enter or hold any other lands under their provisions; and all persons claiming under section 72 of this title shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice, or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant. (R. S. § 2350.)

## DERIVATION

Act Mar. 3, 1873, ch. 279, § 4, 17 Stat. 607.

## CROSS REFERENCES

Coal deposits to be subject to disposition only in the form and manner provided in enumerated sections, see section 193 of this title.

Leases and prospecting permits, see sections 201-208 of this title.

## § 75. Same; conflicting claims.

In case of conflicting claims upon coal lands where the improvements shall be commenced, after the 3d day of March 1873, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference right to purchase. And also where improvements have already been made prior to the 3d day of March 1873, division of the land claimed may be made by legal subdivisions, to include, as near as may be, the valuable improvements of the respective parties. The Commissioner of the General Land Office is authorized to issue all needful rules and regulations for carrying into effect the provisions of this section and sections 71-74 of this title. (R. S. § 2351.)

## DERIVATION

Act Mar. 3, 1873, ch. 279, § 5, 17 Stat. 607.

## § 76. Same; rights reserved.

Nothing in sections 71-75 of this title shall be construed to destroy or impair any rights which may have attached prior to the 3d day of March 1873, or to authorize the sale of lands valuable for mines of gold, silver, or copper. (R. S. § 2352.)

## DERIVATION

Act Mar. 3, 1873, ch. 279, § 6, 17 Stat. 607.

## § 77. Coal lands in Alabama opened to agricultural entry.

Unreserved public lands containing coal deposits in the State of Alabama which on April 23, 1912, were being withheld from homestead entry under the provisions of section 171 of this title, may be entered under the homestead laws of the United States subject to the provisions, terms, conditions, and limitations prescribed in sections 83-85 of this title. (Apr. 23, 1912, ch. 87, 37 Stat. 90.)

## ENTRY UNDER NONMINERAL LAND LAWS OF COAL LANDS WITH RESERVATION OF COAL TO UNITED STATES

## § 81. Rights of entrymen of lands subsequently classified as coal lands; disposal of coal deposits.

Any person who has in good faith located, selected, or entered under the nonmineral land laws of the United States any lands which subsequently are classified, claimed, or reported as being valuable for coal, may, if he shall so elect, and upon making satisfactory proof of compliance with the laws under which such lands are claimed, receive a patent therefor, which shall contain a reservation to the United States of all coal in said lands, and the right to prospect for, mine, and remove the same. The coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal land laws in force at the time of such disposal, but no person shall enter upon said lands to prospect for, or mine and remove coal therefrom, without previous consent of the owner under such patent, except upon such conditions as to security for and payment of all damages to such owner caused thereby as may be determined by a court of competent jurisdiction. The owner under such patent shall have the right to mine coal for use on the land for domestic purposes prior to the disposal by the United States of the coal deposit. Nothing herein contained shall be held to affect or abridge the right of any locator, selector, or entryman to a hearing for the purpose of determining the character of the land located, selected, or entered by him. Such locator, selector, or entryman who has made or shall make final proof showing good faith and satisfactory compliance with the law under which his land is claimed shall be entitled to a patent without reservation unless at the time of such final proof and entry it shall be shown that the land is chiefly valuable for coal. (Mar. 3, 1909, ch. 270, 35 Stat. 844.)

## § 82. New or supplemental patents, in case of lands subsequently classified as noncoal.

The Secretary of the Interior is authorized and directed in cases where patents for public lands have been issued to entrymen under the provisions of sections 81, 83, 84, and 85 of this title, reserving to the United States all coal deposits therein, and lands so patented are subsequently classified as noncoal in character, to issue new or supplemental patents without such reservation. (Apr. 14, 1914, ch. 55, 38 Stat. 335.)

## § 83. Same; homestead or desert-land and other entries.

Unreserved public lands of the United States exclusive of Alaska which have been withdrawn or classified as coal lands, or are valuable for coal, shall be subject to appropriate entry under the homestead laws by actual settlers only, the desert-land law, to selection under section 641, Title 43, and to withdrawal under section 416 of Title 43, whenever such entry, selection, or withdrawal shall be made with a view of obtaining or passing title, with a reservation to the United States of the coal in such lands and of the right to prospect for, mine, and remove the same.

But no desert entry made under the provisions of this section and sections 84 and 85 of this title shall contain more than one hundred and sixty acres, and all homestead entries made hereunder shall be subject to the conditions, as to residence and cultivation, of entries under section 218 of Title 43. Those who have initiated nonmineral entries, selections, or locations in good faith, prior to June 22, 1910, on lands withdrawn or classified as coal lands may perfect the same under the provisions of the laws under which said entries were made, but shall receive the limited patent provided for herein. (June 22, 1910, ch. 318, § 1, 36 Stat. 583.)

**§ 84. Same; applications for entry.**

Any person desiring to make entry under the homestead laws or the desert-land law, any State desiring to make selection under section 641 of Title 43, and the Secretary of the Interior in withdrawing under section 416 of Title 43 lands classified as coal lands, or valuable for coal, with a view of securing or passing title to the same in accordance with the provisions of said sections, shall state in the application for entry, selection, or notice of withdrawal that the same is made in accordance with and subject to the provisions and reservations of sections 83–85 of this title. (June 22, 1910, ch. 318, § 2, 36 Stat. 584.)

**§ 85. Patents for lands, with reservation of coal; disposal of coal deposits.**

Upon satisfactory proof of full compliance with the provisions of the laws under which entry is made, and of this section and sections 83 and 84 of this title, the entryman shall be entitled to a patent to the land entered by him, which patent shall contain a reservation to the United States of all the coal in the lands so patented, together with the right to prospect for, mine, and remove the same. The coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal. Any person qualified to acquire coal deposits or the right to mine and remove the coal under the laws of the United States shall have the right, at all times, to enter upon the lands selected, entered, or patented, as provided by this section and sections 83 and 84 of this title, for the purpose of prospecting for coal thereon upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting. Any person who has acquired from the United States the coal deposits in any such land, or the right to mine or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal therefrom, and mine and remove the coal, upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages. The owner under such limited patent shall have the right to mine coal for use upon the land for domestic purposes at any time prior to the disposal by the United

States of the coal deposits. Nothing herein contained shall be held to deny or abridge the right to present and have prompt consideration of applications to locate, enter, or select, under the land laws of the United States, lands which have been classified as coal lands with a view of disproving such classification and securing a patent without reservation. (June 22, 1910, ch. 318, § 3, 36 Stat. 584.)

**CROSS REFERENCE**

Coal deposits reserved in United States on sale or other disposition of lands to be subject to provisions of enumerated sections, see section 182 of this title.

**§ 86. Disposition of lands in Indian reservations with reservation of coal; examination and appraisal of lands.**

In any Indian reservation opened to settlement and entry pursuant to a classification of the surplus lands therein as mineral and nonmineral, such surplus lands not otherwise reserved or disposed of, which have been or may be withdrawn or classified as coal lands or are valuable for coal deposits, shall be subject to the same disposition as is or may be prescribed by law for the nonmineral lands in such reservation whenever proper application shall be made with a view of obtaining title to such lands, with a reservation to the United States of the coal deposits therein and of the right to prospect for, mine, and remove the same. Such surplus lands, prior to any disposition hereunder, shall be examined, separated into classes the same as are the nonmineral lands in such reservations, and appraised, as to their value, exclusive of the coal deposits therein, under such rules and regulations as shall be prescribed by the Secretary of the Interior for that purpose. (Feb. 27, 1917, ch. 133, § 1, 39 Stat. 944.)

**§ 87. Same; statements in application; patents.**

Any applicant for lands mentioned in section 86 of this title shall state in his application that the same is made in accordance with and subject to the provisions and reservations of this section and sections 86, 88, and 89 of this title, and upon submission of satisfactory proof of full compliance with the provisions of law under which application or entry is made and of said sections shall be entitled to a patent to the lands applied for and entered by him, which patent shall contain a reservation to the United States of all the coal deposits in the lands so patented, together with the right to prospect for, mine, and remove the same. (Feb. 27, 1917, ch. 133, § 2, 39 Stat. 945.)

**§ 88. Same; disposition of coal by United States.**

If the coal-land laws have been or shall be extended over lands applied for, entered, or patented hereunder the coal deposits therein shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal. Any person qualified to acquire coal deposits or the right to mine and remove the coal under the laws of the United States shall have the right at all times to enter upon the lands applied for, entered, or patented under this section and sections 86, 87, and 89 of this title, for the purpose of prospecting for coal thereon, if such coal

deposits are then subject to disposition, upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting. Any person who has acquired from the United States the coal deposits in any such lands, or the right to mine or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal therefrom, and mine and remove the coal, upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages. The owner under such limited patent shall have the right to mine coal for personal use upon the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits. Nothing herein contained shall be held to deny or abridge the right to present and have prompt consideration of applications made under the applicable land laws of the United States for any such surplus lands which have been or may be classified as coal lands with a view of disproving such classification and securing a patent without reservation. (Feb. 27, 1917, ch. 133, § 3, 39 Stat. 945.)

#### § 89. Same; disposition of proceeds.

The net proceeds derived from the sale and entry of surplus lands in conformity with the provisions of sections 86, 87, and 88 of this title shall be paid into the Treasury of the United States to the credit of the same fund under the same conditions and limitations as are or may be prescribed by law for the disposition of the proceeds arising from the disposal of other surplus lands in such Indian reservation. The provisions of said sections shall not apply to the lands of the Five Civilized Tribes of Indians in Oklahoma. (Feb. 27, 1917, ch. 133, § 4, 39 Stat. 945.)

#### § 90. Selection of coal lands by States; sale in isolated or disconnected tracts.

Unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands or are valuable for coal shall, in addition to the classes of entries or filings described in sections 83, 84, and 85 of this title be subject to selection by the several States within whose limits the lands are situate, under grants made by Congress, and to disposition, in the discretion of the Secretary of the Interior, under the laws providing for the sale of isolated or disconnected tracts of public lands, but there shall be a reservation to the United States of the coal in all such lands so selected or sold and of the right to prospect for, mine, and remove the same in accordance with the provisions of said sections, and such lands shall be subject to all the conditions and limitations of said sections. (Apr. 30, 1912, ch. 99, 37 Stat. 105.)

#### CROSS REFERENCE

Coal deposits reserved in United States on sale or other disposition of lands to be subject to provisions of enumerated sections, see section 182 of this title.

### ENTRY UNDER MINING LAWS OF LANDS CONTAINING PETROLEUM, OR OTHER MINERAL OILS, OR GAS

#### § 101. Entry of mineral oil lands under placer mining laws.

Section, act Feb. 11, 1897, ch. 216, 29 Stat. 526, is now covered by sections 181-194 and 221-251 of this title.

#### § 102. Assessment work on contiguous oil lands, located as claims, of same owner.

Where oil lands are located as placer mining claims, the annual assessment labor upon such claims may be done upon any one of a group of claims lying contiguous and owned by the same person or corporation, not exceeding five claims in all, where such labor will tend to the development or to determine the oil-bearing character of such contiguous claims. (Feb. 12, 1903, ch. 548, 32 Stat. 825.)

#### CROSS REFERENCE

Oil deposits to be subject to disposition only in form and manner provided in enumerated sections, see section 193 of this title.

#### § 103. Patents for oil or gas lands not denied because of transfer before discovery of oil or gas.

In no case shall patent be denied to or for any lands located or claimed prior to March 2, 1911, under the mining laws of the United States containing petroleum, mineral oil, or gas solely because of any transfer or assignment thereof or of any interest or interests therein by the original locator or locators, or any of them, to any qualified person or persons or corporation, prior to discovery of oil or gas therein, but if such claim is in all other respects valid and regular, patent therefor not exceeding one hundred and sixty acres in any one claim shall issue to the holder or holders thereof, as in other cases. The above provisions shall not apply where such lands were at the time of inception of development on or under such claim withdrawn from mineral entry. (Mar. 2, 1911, ch. 201, § 1, 36 Stat. 1015.)

#### § 104. Agreements with applicants for patents as to disposition of oil or gas, or proceeds thereof, pending determination of title; Navy petroleum fund.

Where applications for patents have been or may be offered for any oil or gas land included in an order of withdrawal upon which oil or gas had been discovered, or was being produced prior to March 2, 1911, or upon which drilling operations were in actual progress on October 3, 1910, and oil or gas is thereafter discovered thereon, and where there has been no final determination by the Secretary of the Interior upon such applications for patent, said Secretary, in his discretion, may enter into agreements, under such conditions as he may prescribe with such applicants for patents in possession of such land or any portions thereof, relative to the disposition of the oil or gas produced therefrom or the proceeds thereof, pending final determination of the title thereto by the Secretary of the Interior, or such other disposition of the same as may be authorized by law. Any money which may accrue to the United States under the provisions of this section and section 103 of this title from lands within the



naval petroleum reserves shall be set aside for the needs of the Navy and deposited in the Treasury to the credit of a fund to be known as the Navy petroleum fund, which fund shall be applied to the needs of the Navy as Congress may from time to time direct, by appropriation or otherwise. (Mar. 2, 1911, ch. 201, § 2, as added Aug. 25, 1914, ch. 287, 38 Stat. 708.)

#### **HOMESTEAD ENTRY OF LANDS IN UTAH, WITHDRAWN OR CLASSIFIED AS OIL LANDS**

§§ 111-113. Repealed. Dec. 16, 1930, ch. 14, § 1, 46 Stat. 1028.

Sections, act Aug. 24, 1912, ch. 387, §§ 1-3, 37 Stat. 496, related to homestead entry of lands in Utah, withdrawn or classified as oil lands, and reservation of oil and gas.

#### **AGRICULTURAL ENTRY OF LANDS WITHDRAWN OR CLASSIFIED AS CONTAINING PHOSPHATE, NITRATE, POTASH, OIL, GAS, OR ASPHALTIC MINERALS**

§ 121. Agricultural entry or purchase of lands withdrawn or classified as containing phosphate, nitrate, potash, oil, or gas; reservations to United States; application.

Lands withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or which are valuable for those deposits, shall be subject to appropriation, location, selection, entry, or purchase, if otherwise available, under the nonmineral land laws of the United States, whenever such location, selection, entry, or purchase shall be made with a view of obtaining or passing title with a reservation to the United States of the deposits on account of which the lands were withdrawn or classified or reported as valuable, together with the right to prospect for, mine, and remove the same; but no desert entry made under the provisions of this section and sections 122 and 123 shall contain more than one hundred and sixty acres. All applications to locate, select, enter, or purchase under this section shall state that the same are made in accordance with and subject to the provisions and reservations of the above-mentioned sections. (July 17, 1914, ch. 142, § 1, 38 Stat. 509.)

§ 122. Same; patents; reservation in the United States of reserved deposits; acquisition of right to remove deposits; application for entry to disprove classification.

Upon satisfactory proof of full compliance with the provisions of the laws under which the location, selection, entry, or purchase is made, the locator, selector, entryman, or purchaser shall be entitled to a patent to the land located, selected, entered, or purchased, which patent shall contain a reservation to the United States of the deposits on account of which the lands so patented were withdrawn or classified or reported as valuable, together with the right to prospect for, mine, and remove the same, such deposits to be subject to disposal by the United States only as shall be expressly directed by law. Any person qualified to acquire the reserved deposits may enter upon said lands with a view of prospecting for the same upon the approval by the Secretary of the

Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting, the measure of any such damage to be fixed by agreement of parties or by a court of competent jurisdiction. Any person who has acquired from the United States the title to or the right to mine and remove the reserved deposits, should the United States dispose of the mineral deposits in lands, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the minerals therefrom, and mine and remove such minerals, upon payment of damages caused thereby to the owner of the land, or upon giving a good and sufficient bond or undertaking therefor in an action instituted in any competent court to ascertain and fix said damages. Nothing herein contained shall be held to deny or abridge the right to present and have prompt consideration of applications to locate, select, enter, or purchase, under the land laws of the United States, lands which have been withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic mineral lands, with a view of disproving such classification and securing patent without reservation, nor shall persons who have located, selected, entered, or purchased lands subsequently withdrawn, or classified as valuable for said mineral deposits, be debarred from the privilege of showing, at any time before final entry, purchase, or approval of selection or location, that the lands entered, selected, or located are in fact nonmineral in character. (July 17, 1914, ch. 142, § 2, 38 Stat. 509.)

§ 123. Same; persons locating lands subsequently withdrawn or classified; patents to.

Any person who has, in good faith, located, selected, entered, or purchased, or any person who shall locate, select, enter, or purchase, after July 17, 1914, under the nonmineral land laws of the United States, any lands which are subsequently withdrawn, classified, or reported as being valuable for phosphate, nitrate, potash, oil, gas, or asphaltic minerals, may, upon application therefor, and making satisfactory proof of compliance with the laws under which such lands are claimed, receive a patent therefor, which patent shall contain a reservation to the United States of all deposits on account of which the lands were withdrawn, classified, or reported as being valuable, together with the right to prospect for, mine, and remove the same. (July 17, 1914, ch. 142, § 3, 38 Stat. 510.)

§ 124. Agricultural entry or purchase of lands withdrawn or classified as containing sodium or sulphur.

Lands withdrawn, classified, or reported as valuable for sodium and/or sulphur and subject to prospecting, leasing, or development under sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251, and 261-263 of this title, shall be subject to appropriation, location, selection, entry, or purchase if otherwise available in the form and manner and subject to the reservations, provisions, limitations, and conditions of sections 121, 122, and 123 of this title: *Provided, how-*

ever, That lands lying within the geologic structure of a field, or withdrawn, classified, or reported as valuable for any of the minerals named herein and/or in any of said sections, or upon which leases or prospecting permits have been applied for or granted, for the production of any of such minerals, shall not be subject to such appropriation, location, selection, entry, or purchase unless it shall be determined by the Secretary of the Interior that such disposal will not unreasonably interfere with operations under said sections. (Mar. 4, 1933, ch. 278, 47 Stat. 1570.)

#### LOCATION UNDER PLACER-MINING LAWS OF LANDS CONTAINING PHOSPHATE ROCK

§ 131. Phosphate rock land; validity of bona fide locations prior to January 11, 1915; patents obtainable.

Section, act Jan. 11, 1915, ch. 9, 38 Stat. 792, provided for perfection under placer mining laws of locations made in good faith prior to Jan. 11, 1915, on public lands containing deposits of phosphate rock.

#### PERMITS TO PROSPECT FOR CHLORIDES, SULPHATES, CARBONATES, BORATES, SILICATES, OR NITRATES OF POTASSIUM

§§ 141–152. Repealed. Feb. 7, 1927, ch. 66, § 6, 44 Stat. 1058.

Sections, act Oct. 2, 1917, ch. 62, §§ 1–13, 40 Stat. 297–300, provided for permits to prospect for deposits of potassium, and leases and patents relating thereto.

#### ENTRY OF BUILDING-STONE OR SALINE LANDS UNDER PLACER-MINING LAWS

§ 161. Entry of building-stone lands; previous law unaffected.

Any person authorized to enter lands under the mining laws of the United States may enter lands that are chiefly valuable for building stone under the provisions of the law in relation to placer-mineral claims. Lands reserved for the benefit of the public schools or donated to any States shall not be subject to entry under this section. Nothing contained in this section shall be construed to repeal section 471 of Title 16 relating to the establishment of national forests. (Aug. 4, 1892, ch. 375, §§ 1, 3, 27 Stat. 348.)

§ 162. Entry of saline lands under placer-mining laws.

All unoccupied public lands of the United States containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, shall be subject to location and purchase under the provisions of the law relating to placer-mining claims. The same person shall not locate or enter more than one claim hereunder. (Jan. 31, 1901, ch. 186, 31 Stat. 745.)

#### CROSS REFERENCES

Disposition of deposits of coal, phosphate, sodium, potassium, oil, oil shale, and gas, see section 193 of this title.

Lease of lands chiefly valuable for deposits of sodium compounds and other mineral salts, see section 262 of this title.

Prospecting permits giving exclusive right to prospect for chlorides, phosphates, nitrates of sodium, etc., see section 261 of this title.

#### DISPOSAL OF LANDS IN ALABAMA AS AGRICULTURAL LANDS

§ 171. Disposal as agricultural lands.

Except as otherwise provided in sections 181–194, 201, 202–208, 211–214, 223–229, 241, 251, 261 and 263 of this title, all public lands within the State of Alabama whether mineral or otherwise, shall be subject to disposal only as agricultural lands. All lands which had been reported to the General Land Office prior to March 3, 1883, as containing coal and iron shall first be offered at public sale. (Mar. 3, 1883, ch. 118, 22 Stat. 487.)

#### CROSS REFERENCE

Coal lands in Alabama opened to agricultural entry, see section 77 of this title and section 1171b of Title 43, Public Lands.

§ 172. Certain lands in Alabama subject to homestead entry.

All lands designated as agricultural in the reclassification of the public lands of Alabama by the Secretary of the Interior under authority of Act March 27, 1906 (chapter 1347, section 1, Thirty-fourth Statutes, page 88), shall be subject to homestead entry as such. (Mar. 27, 1906, ch. 1347, § 2, 34 Stat. 88.)

#### LEASES AND PROSPECTING PERMITS

##### 1. GENERAL PROVISIONS

§ 181. Lands subject to disposition; right to extract helium reserved; persons not entitled to benefits.

Deposits of coal, phosphate, sodium, potassium, oil, oil shale, or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands acquired under sections 513–519 of Title 16 known as the Appalachian Forest Act, and those in national parks, and in lands withdrawn or reserved for military or naval uses or purposes, except as hereinafter provided, shall be subject to disposition in the form and manner provided by sections 181–194, 201, 202–208, 211–214, 223–229, 241, 251, and 261–263 of this title to citizens of the United States, or to any association of such persons, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, and in the case of coal, oil, oil shale, or gas, to municipalities. The United States reserves the right to extract helium from all gas produced from lands permitted, leased, or otherwise granted under the provisions of the sections hereinbefore enumerated, under such rules and regulations as shall be prescribed by the Secretary of the Interior. In the extraction of helium from gas produced from such lands, it shall be so extracted as to cause no substantial delay in the delivery of gas produced from the well to the purchaser thereof. Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control, own any interest in any lease acquired under the provisions of said sections. (Feb. 25, 1920, ch. 85, § 1, 41 Stat. 437; Feb. 7, 1927, ch. 66, § 5, 44 Stat. 1058.)

## CROSS REFERENCE

Laws applicable, see sections 275 and 285 of this title and section 98a of Title 43, Public Lands.

**§ 182. Lands disposed of with reservation of deposits of coal, and so forth.**

The provisions of sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251, and 261-263 of this title shall also apply to all deposits of coal, phosphate, sodium, oil, oil shale, or gas in the lands of the United States, which lands may have been or may be disposed of under laws reserving to the United States such deposits, with the right to prospect for, mine, and remove the same, subject to such conditions as are or may hereafter be provided by such laws reserving such deposits. (Feb. 25, 1920, ch. 85, § 34, 41 Stat. 450.)

## CROSS REFERENCE

Laws applicable, see sections 275 and 285 of this title.

**§ 183. Cancellation of prospecting permits.**

The Secretary of the Interior shall reserve and may exercise the authority to cancel any prospecting permit upon failure by the permittee to exercise due diligence in the prosecution of the prospecting work in accordance with the terms and conditions stated in the permit, and shall insert in every such permit issued under the provisions of sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251, and 261-263 of this title appropriate provisions for its cancellation by him. (Feb. 25, 1920, ch. 85, § 26, 41 Stat. 448.)

## CROSS REFERENCE

Laws applicable, see sections 275 and 285 of this title.

**§ 184. Limitation on number of leases to one person; combinations or unlawful trusts.**

No person, association, or corporation, except as herein provided, shall take or hold coal, phosphate, or sodium leases or permits during the life of such leases or permits in any one State exceeding in aggregate acreage two thousand five hundred and sixty acres for each of said minerals; no person, association, or corporation shall take or hold at one time oil or gas leases or permits exceeding in the aggregate seven thousand six hundred and eighty acres granted hereunder in any one State, and not more than two thousand five hundred and sixty acres within the geologic structure of the same producing oil or gas field; and no person, association, or corporation shall take or hold at one time any interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease or leases, permit or permits, under the provisions hereof, which, together with the area embraced in any direct holding of a lease or leases, permit or permits, under sections 182-184, 185-194 of this title or which, together with any other interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease or leases, permit or permits, under the provisions hereof for any kind of mineral leases hereunder, exceeds in the aggregate an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee or permittee under such sections. Any interests held in violation of such sections shall be forfeited to the

United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property, or some part thereof, is located, except that any ownership or interests forbidden in this subchapter which may be acquired by descent, will, judgment, or decree may be held for two years and not longer after its acquisition: *Provided*, That nothing herein contained shall be construed to limit sections 227, 228, and 251 of this title or to prevent any number of lessees under the provisions of sections 182-184, 185-194 of this title from combining their several interests so far as may be necessary for the purposes of constructing and carrying on the business of a refinery, or of establishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly in the transportation of oil from their several wells, or from the wells of other lessees under such sections, or the transportation of coal or to increase the acreage which may be acquired or held under section 226 of this title: *Provided further*, That any combination for such purpose or purposes shall be subject to the approval of the Secretary of the Interior on application to him for permission to form the same: *And provided further*, That for the purpose of more properly conserving the natural resources of any single oil or gas pool or field, permittees and lessees thereof and their representatives may unite with each other or jointly or separately with others in collectively adopting and operating under a cooperative or unit plan of development or operation of said pool or field, whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest, and the Secretary of the Interior is thereunto authorized in his discretion, with the consent of the holders of leases or permits involved, to establish, alter, change, or revoke drilling, producing, and royalty requirements of such leases or permits, and to make such regulations with reference to such leases and permits with like consent on the part of the lessee or lessees and permittees in connection with the institution and operation of any such cooperative or unit plan as he may deem necessary or proper to secure the proper protection of such public interest: *And provided further*, That when any permit has been determined to be wholly or in part within the limits of a producing oil or gas field, which permit has been included, with the approval of the Secretary of the Interior, in a unit operating agreement or other plan under sections 182-184, 185-194 of this title, the Secretary of the Interior may issue a lease for the area of the permit so included in said plan without further proof of discovery: *Provided further*, That the Secretary of the Interior is hereby authorized, on such conditions as he may prescribe, to approve operating, drilling, or development contracts made by one or more permittees or lessees in oil or gas leases or permits, with one or more persons, associations, or corporations, whenever in his discretion and regardless of acreage limitations, provided for in such sections, the conservation of natural products or the public convenience or necessity may require it or the interests of the United States may be best subserved thereby:

*And provided further*, That except as herein provided, if any of the lands or deposits leased under the provisions of such sections shall be subleased, trustee, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that they form a part of or are in anywise controlled by any combination in the form of an unlawful trust, with consent of lessee, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, phosphate, oil, oil shale, gas, or sodium entered into by the lessee, or any agreement or understanding, written, verbal, or otherwise, to which such lessee shall be a party, of which his or its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individual, partnership, association, corporation, or control in excess of the amounts of lands provided in sections 182-184, 185-194 of this title, the lease thereof shall be forfeited by appropriate court proceedings: *And provided further*, That nothing in such sections shall be construed as affecting existing leases within the borders of the Naval Petroleum Reserves or agreements concerning operations thereunder or in relation to the same, but the Secretary of the Navy is hereby authorized, with the consent of the President, to enter into agreements such as those provided for herein, which agreements shall not, unless expressed therein, operate to extend the term of any lease affected thereby. (Feb. 25, 1920, ch. 85, § 27, 41 Stat. 448; Apr. 30, 1926, ch. 197, 44 Stat. 373; July 3, 1930, ch. 854, § 1, 46 Stat. 1007; Mar. 4, 1931, ch. 506, 46 Stat. 1524.)

#### CROSS REFERENCES

Laws applicable, see sections 275 and 285 of this title.

States authorized to consent to operation and development of lands acquired from United States under agreements for conservation of oil and gas resources, see section 184a of this title.

**§ 184a.** Authorization of States to include in agreements for conservation of oil and gas resources lands acquired from United States.

Notwithstanding the provisions of any applicable grant, deed, patent, exchange, or law of the United States, any State owning lands or interests therein acquired by it from the United States may consent to the operation or development of such lands or interests, or any part thereof, under agreements approved by the Secretary of the Interior made jointly or severally with lessees or permittees of lands or mineral deposits of the United States or others, for the purpose of more properly conserving the oil and gas resources within such State. Such agreements may provide for the cooperative or unit operation or development of part or all of any oil or gas pool, field, or area; for the allocation of production and the sharing of proceeds from the whole or any specified part thereof regardless of the particular tract from which production is obtained or proceeds are derived; and, with the consent of the State, for the modification of the terms and provisions of State leases for lands operated and developed thereunder, including the term of years for which said leases were originally granted, to conform said leases to the terms and provisions of such agreements: *Provided*, That nothing in this section

contained, nor the effectuation of it, shall be construed as in any respect waiving, determining or affecting any right, title, or interest, which otherwise may exist in the United States, and that the making of any agreement, as provided in this section, shall not be construed as an admission as to the title or ownership of the lands included. (Jan. 26, 1940, ch. 14, 54 Stat. 17.)

#### CROSS REFERENCE

Lessees and permittees of oil and gas fields authorized to adopt cooperative plan of development and operation in order to more properly conserve oil and gas resources, see section 184 of this title.

**§ 185.** Rights-of-way for pipe lines.

Rights-of-way through the public lands, including the forest reserves of the United States, may be granted by the Secretary of the Interior for pipeline purposes for the transportation of oil or natural gas to any applicant possessing the qualifications provided in section 181 of this title, to the extent of the ground occupied by the said pipe line and twenty-five feet on each side of the same under such regulations and conditions as to survey, location, application, and use as may be prescribed by the Secretary of the Interior and upon the express condition that such pipe lines shall be constructed, operated, and maintained as common carriers and shall accept, convey, transport, or purchase without discrimination, oil or natural gas produced from Government lands in the vicinity of the pipe line in such proportionate amounts as the Secretary of the Interior may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine to be reasonable: *Provided*, That the Government shall in express terms reserve and shall provide in every lease of oil lands under sections 181-194, 201, 202-208, 211-214, 221, 223-229, 241, 251 and 261-263 of this title that the lessee, assignee, or beneficiary, if owner, or operator or owner of a controlling interest in any pipe line or of any company operating the same which may be operated accessible to the oil derived from lands under such lease, shall at reasonable rates and without discrimination accept and convey the oil of the Government or of any citizen or company not the owner of any pipe line, operating a lease or purchasing gas or oil under the provisions of sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251 and 261-263 of this title: *Provided further*, That no right-of-way shall hereafter be granted over said lands for the transportation of oil or natural gas except under and subject to the provisions, limitations, and conditions of this section. Failure to comply with the provisions of this section or the regulations and conditions prescribed by the Secretary of the Interior shall be ground for forfeiture of the grant by the United States district court for the district in which the property, or some part thereof, is located in an appropriate proceeding. (Feb. 25, 1920, ch. 85, § 28, 41 Stat. 449; Aug. 21, 1935, ch. 599, § 1, 49 Stat. 678.)

#### CROSS REFERENCE

Laws applicable, see sections 275 and 285 of this title.

**§ 186. Reservation of easements or rights-of-way for working purposes; reservation of right to sell or lease surface of lands.**

Any permit, lease, occupation, or use permitted under sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251, and 261-263 of this title shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights of way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in the sections hereinbefore enumerated, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes. The Secretary of the Interior, in his discretion, in making any lease under the sections hereinbefore enumerated, may reserve to the United States the right to lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted, insofar as said surface is not necessary for use of the lessee in extracting and removing the deposits therein. If such reservation is made it shall be so determined before the offering of such lease. The said Secretary, during the life of the lease, is authorized to issue such permits for easements herein provided to be reserved. (Feb. 25, 1920, ch. 85 § 29, 41 Stat. 449.)

**CROSS REFERENCE**

Laws applicable, see sections 275 and 285 of this title.

**§ 187. Assignment or subletting of leases; relinquishment of rights under leases; conditions in leases as to operation of mines, wells, and so forth.**

No lease issued under the authority of sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251, and 261-263 of this title shall be assigned or sublet, except with the consent of the Secretary of the Interior. The lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease, and upon acceptance thereof be thereby relieved of all future obligations under said lease, and may with like consent surrender any legal subdivision of the area included within the lease. Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property; a provision that such rules for the safety and welfare of the miners and for the prevention of undue waste as may be prescribed by said Secretary shall be observed, including a restriction of the workday to not exceeding eight hours in any one day for underground workers except in cases of emergency; provisions prohibiting the employment of any boy under the age of sixteen or the employment of any girl or woman, without regard to age, in any mine below the surface; provisions securing the workmen complete freedom of purchase; provision requiring the payment of wages at least twice a month in lawful money of the United States, and providing proper rules and regulations to insure the fair and just weighing or measurement of the coal mined by each miner, and such other provisions as he may deem

necessary to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices, for the protection of the interests of the United States, for the prevention of monopoly, and for the safeguarding of the public welfare. None of such provisions shall be in conflict with the laws of the State in which the leased property is situated. (Feb. 25, 1920, ch. 85, § 30, 41 Stat. 449.)

**CROSS REFERENCE**

Laws applicable, see sections 275 and 285 of this title.

**§ 188. Forfeiture or cancellation of leases.**

Any lease issued under the provisions of sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251, and 261-263 of this title may be forfeited and canceled by an appropriate proceeding in the United States district court for the district in which the property, or some part thereof, is located whenever the lessee fails to comply with any of the provisions of said sections, of the lease, or of the general regulations promulgated under said sections and in force at the date of the lease; and the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof. (Feb. 25, 1920, ch. 85, § 31, 41 Stat. 450.)

**CROSS REFERENCE**

Laws applicable, see sections 275 and 285 of this title.

**§ 189. Rules and regulations; rights of States not affected.**

The Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251, and 261-263 of this title, also to fix and determine the boundary lines of any structure, or oil or gas field, for the purposes thereof. Nothing in said sections shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States. (Feb. 25, 1920, ch. 85, § 32, 41 Stat. 450.)

**CROSS REFERENCE**

Laws applicable, see sections 275 and 285 of this title.

**§ 190. Oaths required, when.**

All statements, representations, or reports required by the Secretary of the Interior under sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251, and 261-263 of this title shall be upon oath, unless otherwise specified by him, and in such form and upon such blanks as the Secretary of the Interior may require. (Feb. 25, 1920, ch. 85, § 33, 41 Stat. 450.)

**CROSS REFERENCE**

Laws applicable, see sections 275 and 285 of this title.

**§ 191. Disposition of moneys received.**

Ten per centum of all money received from sales, bonuses, royalties, and rentals under the provisions of sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251, and 261-263 of this title, excepting those from Alaska, shall be paid into the Treasury of the

United States and credited to miscellaneous receipts; for production prior to February 25, 1920, 70 per centum, and for production thereafter 52½ per centum of the amounts derived from such bonuses, royalties, and rentals shall be paid into, reserved, and appropriated as a part of the reclamation fund created by sections 372, 373, 381, 383, 391, 392, 411, 416, 419, 421, 431, 432, 434, 439, 461, 491, and 498 of Title 43, and for production prior to such date 20 per centum, and for production thereafter 37½ per centum of the amounts derived from such bonuses, royalties, and rentals shall be paid by the Secretary of the Treasury after the expiration of each fiscal year to the State within the boundaries of which the leased lands or deposits are or were located, said moneys to be used by such State or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State may direct. All moneys which may accrue to the United States hereunder from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts." (Feb. 25, 1920, ch. 85, § 35, 41 Stat. 450.)

## CROSS REFERENCE

Laws applicable, see sections 275 and 285 of this title.

### § 192. Payment of royalties in oil or gas; sale of such oil or gas.

All royalty accruing to the United States under any oil or gas lease or permit under sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251, and 261-263 of this title on demand of the Secretary of the Interior shall be paid in oil or gas.

Upon granting any oil or gas lease, and from time to time thereafter during said lease, the Secretary of the Interior shall, except whenever in his judgment it is desirable to retain the same for the use of the United States, offer for sale for such period as he may determine, upon notice and advertisement on sealed bids or at public auction, all royalty oil and gas accruing or reserved to the United States under such lease. Such advertisement and sale shall reserve to the Secretary of the Interior the right to reject all bids whenever within his judgment the interest of the United States demands; and in cases where no satisfactory bid is received or where the accepted bidder fails to complete the purchase, or where the Secretary of the Interior shall determine that it is unwise in the public interest to accept the offer of the highest bidder, the Secretary of the Interior, within his discretion, may readvertise such royalty for sale, or sell at private sale at not less than the market price for such period, or accept the value thereof from the lessee. Pending the making of a permanent contract for the sale of any royalty oil or gas as herein provided, the Secretary of the Interior may sell the current product at private sale, at not less than the market price. Any royalty oil or gas may be sold at not less than the market price at private sale to any department or agency of the United States. (Feb. 25, 1920, ch. 85, § 36, 41 Stat. 451.)

## CROSS REFERENCE

Laws applicable, see sections 275 and 285 of this title.

### § 193. Disposition of deposits of coal, and so forth.

The deposits of coal, phosphate, sodium, potassium, oil, oil shale, and gas, herein referred to, in lands valuable for such minerals, including lands and deposits in Lander, Wyoming, coal entries numbered 18 to 49, inclusive, shall be subject to disposition only in the form and manner provided in sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251, and 261-263 of this title, except as to valid claims existent on February 25, 1920, and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery. (Feb. 25, 1920, ch. 85, § 37, 41 Stat. 451; Aug. 1, 1912, No. 38, 37 Stat. 1346; Feb. 7, 1927, ch. 66, § 5, 44 Stat. 1058.)

## CROSS REFERENCE

Laws applicable, see sections 275 and 285 of this title.

### § 194. Fees and commissions of registers.

Until otherwise provided, the Secretary of the Interior shall be authorized to prescribe fees and commissions to be paid registers of United States land offices on account of business transacted under the provisions of sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251, and 261-263 of this title. (Feb. 25, 1920, ch. 85, § 38, 41 Stat. 451; Mar. 3, 1925, ch. 462, 43 Stat. 1145.)

## CROSS REFERENCE

Laws applicable, see sections 275 and 285 of this title.

## 2. COAL

### § 201. Division of land into leasing tracts; offer and award of leases; prospecting permits; notice of proposed lease.

The Secretary of the Interior is authorized to, and upon the petition of any qualified applicant shall, divide any of the coal lands or the deposits of coal, classified and unclassified, owned by the United States, outside of the Territory of Alaska, into leasing tracts of forty acres each, or multiples thereof, and in such form as, in the opinion of the Secretary of the Interior, will permit the most economical mining of the coal in such tracts, but in no case exceeding two thousand five hundred and sixty acres in any one leasing tract, and thereafter the Secretary of the Interior shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands or deposits of coal for leasing, and shall award leases thereon by competitive bidding or by such other methods as he may by general regulations adopt, to any qualified applicant. He is authorized, in awarding leases for coal lands improved and occupied or claimed in good faith, prior to February 25, 1920, to consider and recognize equitable rights of such occupants or claimants. Where prospecting or exploratory work is necessary to determine the existence or workability of coal deposits in any unclaimed, undeveloped area, the Secretary of the Interior may issue, to applicants qualified under sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251, and 261-263 of this title, prospecting permits for a term of two years, for not exceeding two thousand five hundred and sixty acres; and if within said period of two years thereafter, the permittee shows to the Secretary that the land contains

coal in commercial quantities, the permittee shall be entitled to a lease hereunder for all or part of the land in his permit. No lease of coal hereunder shall be approved or issued until after notice of the proposed lease, or offering for lease, has been given for thirty days in a newspaper of general circulation in the county in which the lands or deposits are situated. (Feb. 25, 1920, ch. 85, § 2, 41 Stat. 438.)

**§ 201a. Extension of coal prospecting permits.**

Any coal prospecting permit issued under section 201 of this title may be extended by the Secretary of the Interior for a period of two years, if he shall find that the permittee has been unable, with the exercise of reasonable diligence, to determine the existence or workability of coal deposits in the area covered by the permit and desires to prosecute further prospecting or exploration, or for other reasons in the opinion of the Secretary warranting such extension. (Mar. 9, 1928, ch. 159, § 1, 45 Stat. 251.)

**§ 201b. Extension of permits already expired.**

Section, act Mar. 9, 1928, ch. 159, § 2, 45 Stat. 251, provided for extension of coal permits already expired for a period of two years from March 9, 1928.

**§ 202. Common carriers; limitations of lease or permit.**

No company or corporation operating a common-carrier railroad shall be given or hold a permit or lease under the provisions of sections 201–208 of this title for any coal deposits except for its own use for railroad purposes; and such limitations of use shall be expressed in all permits and leases issued to such companies or corporations; and no such company or corporation shall receive or hold more than one permit or lease for each two hundred miles of its railroad line within the State in which said property is situated, exclusive of spurs or switches and exclusive of branch lines built to connect the leased coal with the railroad, and also exclusive of parts of the railroad operated mainly by power produced otherwise than by steam.

Nothing in this section shall preclude such a railroad of less than two hundred miles in length from securing one permit or lease hereunder. (Feb. 25, 1920, ch. 85, § 2, 41 Stat. 438.)

**§ 203. Inclusion of additional lands in lease.**

Any person, association, or corporation holding a lease of coal lands or coal deposits under sections 201–208 of this title may, with the approval of the Secretary of the Interior, upon a finding by him that it will be for the advantage of the lessee and the United States, secure modifications of his or its original lease by including additional coal lands or coal deposits contiguous to those embraced in such lease, but in no event shall the total area embraced in such modified lease exceed in the aggregate two thousand five hundred and sixty acres. (Feb. 25, 1920, ch. 85, § 3, 41 Stat. 439.)

**§ 204. Same; upon showing probability of exhaustion.**

Upon satisfactory showing by any lessee to the Secretary of the Interior that all of the workable deposits of coal within a tract covered by his or its

lease will be exhausted, worked out, or removed within three years thereafter, the Secretary of the Interior may, within his discretion, lease to such lessee an additional tract of land or coal deposits, which, including the coal area remaining in the existing lease, shall not exceed two thousand five hundred and sixty acres, through the same procedure and under the same conditions as in case of an original lease. (Feb. 25, 1920, ch. 85, § 4, 41 Stat. 439.)

**§ 205. Consolidation of leases.**

If, in the judgment of the Secretary of the Interior, the public interest will be subserved thereby, lessees holding under lease areas not exceeding the maximum permitted may consolidate their leases through the surrender of the original leases and the inclusion of such areas in a new lease of not to exceed two thousand five hundred and sixty acres of contiguous lands. (Feb. 25, 1920, ch. 85, § 5, 41 Stat. 439.)

**§ 206. Noncontiguous tracts in single lease.**

Where coal or phosphate lands aggregating two thousand five hundred and sixty acres and subject to lease hereunder do not exist as contiguous areas, the Secretary of the Interior is authorized, if, in his opinion, the interests of the public and of the lessee will be thereby subserved, to embrace in a single lease noncontiguous tracts which can be operated as a single mine or unit. (Feb. 25, 1920, ch. 85, § 6, 41 Stat. 439.)

**§ 207. Royalties; annual rentals; term of leases; development and operation.**

For the privilege of mining or extracting the coal in the lands covered by the lease the lessee shall pay to the United States such royalties as may be specified in the lease, which shall be fixed in advance of offering the same, and which shall not be less than 5 cents per ton of two thousand pounds, due and payable at the end of each third month succeeding that of the extraction of the coal from the mine, and an annual rental, payable at the date of such lease and annually thereafter, on the lands or coal deposits covered by such lease, at such rate as may be fixed by the Secretary of the Interior prior to offering the same, which shall not be less than 25 cents per acre for the first year thereafter, not less than 50 cents per acre for the second, third, fourth, and fifth years, respectively, and not less than \$1 per acre for each and every year thereafter during the continuance of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year. Leases shall be for indeterminate periods upon condition of diligent development and continued operation of the mine or mines, except when such operation shall be interrupted by strikes, the elements, or casualties not attributable to the lessee, and upon the further condition that at the end of each twenty-year period succeeding the date of the lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the time of the expiration of such periods. The Secretary of the Interior may, if in his judgment the



public interest will be subserved thereby, in lieu of the provision herein contained requiring continuous operation of the mine or mines, provide in the lease for the payment of an annual advance royalty upon a minimum number of tons of coal, which in no case shall aggregate less than the amount of rentals herein provided for. He may permit suspension of operation under such lease for not to exceed six months at any one time when market conditions are such that the lease cannot be operated except at a loss. (Feb. 25, 1920, ch. 85, § 7, 41 Stat. 439.)

#### § 208. Permits to take coal for local domestic needs.

In order to provide for the supply of strictly local domestic needs for fuel, the Secretary of the Interior may, under such rules and regulations as he may prescribe in advance, issue limited licenses or permits to individuals or associations of individuals to prospect for, mine, and take for their use but not for sale, coal from the public lands without payment of royalty for the coal mined or the land occupied, on such conditions not inconsistent with sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251, and 261-263 of this title as in his opinion will safeguard the public interests. This privilege shall not extend to any corporations. In the case of municipal corporations the Secretary of the Interior may issue such limited license or permit, for not to exceed three hundred and twenty acres for a municipality of less than one hundred thousand population, and not to exceed one thousand two hundred and eighty acres for a municipality of not less than one hundred thousand and not more than one hundred and fifty thousand population; and not to exceed two thousand five hundred and sixty acres for a municipality of one hundred and fifty thousand population or more, the land to be selected within the State wherein the municipal applicant may be located upon condition that such municipal corporations will mine the coal therein under proper conditions and dispose of the same without profit to residents of such municipality for household use: *Provided*, That the acquisition or holding of a lease under sections 181, 201, and 202-207 of this title shall be no bar to the holding of such tract or operation of such mine under said limited license. (Feb. 25, 1920, ch. 85, § 8, 41 Stat. 440.)

#### § 209. Suspension of rental and extension of lease on suspension of operations and production.

In the event the Secretary of the Interior, in the interest of conservation, shall direct or shall assent to the suspension of operations and production of coal, oil, and/or gas under any lease granted under the terms of sections 201, 202-208, and 223-229 of this title, any payment of acreage rental prescribed by such lease likewise shall be suspended during such period of suspension of operations and production; and the term of such lease shall be extended by adding any such suspension period thereto: *Provided*, That nothing in this section shall be construed as affecting existing leases within the borders of the naval petroleum reserves and naval oil-shale reserves. (Feb. 25, 1920, ch. 85, § 39; Feb. 9, 1933, ch. 45, 47 Stat. 798.)

### 3. PHOSPHATES

#### § 211. Authority to lease lands.

The Secretary of the Interior is authorized to lease to any applicant qualified under sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251, and 261-263 of this title any lands belonging to the United States containing deposits of phosphates, under such restrictions and upon such terms as are herein specified, through advertisement, competitive bidding, or such other methods as the Secretary of the Interior may by general regulation adopt. (Feb. 25, 1920, ch. 85, § 9, 41 Stat. 440.)

#### § 212. Amount of land included in lease; surveys.

Each lease shall be for not to exceed two thousand five hundred and sixty acres of land to be described by the legal subdivisions of the public land surveys, if surveyed; if unsurveyed, to be surveyed by the Government at the expense of the applicant for lease, in accordance with rules and regulations prescribed by the Secretary of the Interior and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such survey; deposits made to cover expense of surveys shall be deemed appropriated for that purpose; and any excess deposits shall be repaid to the person, association, or corporation making such deposits or their legal representatives. The land embraced in any one lease shall be in compact form, the length of which shall not exceed two and one-half times its width. (Feb. 25, 1920, ch. 85, § 10, 41 Stat. 440.)

#### § 213. Royalties; annual rentals; term of leases; operation.

For the privilege of mining or extracting the phosphates or phosphate rock covered by the lease the lessee shall pay to the United States such royalties as may be specified in the lease, which shall be fixed by the Secretary of the Interior in advance of offering the same, which shall not be less than 2 per centum of the gross value of the output of phosphates or phosphate rock at the mine, due and payable at the end of each third month succeeding that of the sale or other disposition of the phosphates or phosphate rock, and an annual rental payable at the date of such lease and annually thereafter on the area covered by such lease at such rate as may be fixed by the Secretary of the Interior prior to offering the lease, which shall be not less than 25 cents per acre for the first year thereafter, 50 cents per acre for the second, third, fourth, and fifth years, respectively, and \$1 per acre for each and every year thereafter during the continuance of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year. Leases shall be for indeterminate periods upon condition of a minimum annual production, except when operation shall be interrupted by strikes, the elements, or casualties not attributable to the lessee, and upon the further condition that at the end of each twenty-year period succeeding the date of the lease such readjustment of terms and conditions shall be made as the Secretary of the Interior shall determine unless otherwise provided by law at the time of the expiration of such periods. The Secretary of the Interior may permit

suspension of operation under such lease for not exceeding twelve months at any one time when market conditions are such that the lease cannot be operated except at a loss. (Feb. 25, 1920, ch. 85, § 11, 41 Stat. 440.)

#### § 214. Use of surface of other lands.

Any qualified applicant to whom the Secretary of the Interior may grant a lease to develop and extract phosphates, or phosphate rock, under the provisions of sections 211–214 of this title shall have the right to use so much of the surface of unappropriated and unentered lands, not exceeding forty acres, as may be determined by the Secretary of the Interior to be necessary for the proper prospecting for or development, extraction, treatment, and removal of such mineral deposits. (Feb. 25, 1920, ch. 85, § 12, 41 Stat. 441.)

### 4. OIL AND GAS

#### §§ 221–222h. Prospecting permits; terms and conditions; extensions.

Sections are omitted as having expired by their own terms. They provided as follows:

§ 221. Act Feb. 25, 1920, ch. 85, § 13, 41 Stat. 441, as amended by act Aug. 21, 1935, ch. 599, § 1, 49 Stat. 674, provided for prospecting permits, their terms and conditions, extension, location of lands, marking land, notice of application for permits, permits in Alaska, exchanging permits for leases, and limited extensions to December 31, 1938.

§ 222. Act Jan. 11, 1922, ch. 28, 42 Stat. 356, authorized Secretary of Interior to extend time for drilling not to exceed three years.

§§ 222a, 222b. Act Apr. 5, 1926, ch. 107, § 1, 44 Stat. 236, authorized a further extension of two years, and section 222b, which was section 2 of the same act, provided for extension of expired permits for period of two years from April 5, 1926.

§§ 222c, 222d. Act Mar. 9, 1928, ch. 163, § 1, 45 Stat. 252, gave authority to extend permits for two years, and by section 222d, which was section 2 of the act, authorized a two-year extension of permits already expired.

§§ 222e, 222f. Act Jan. 23, 1930, ch. 25, § 1, 46 Stat. 58, provided that permits issued or extended might be further extended for three years, and, by section 222f, which was section 2 of the act last cited, provided for an extension of permits already expired for a period of three years from January 23, 1930.

§§ 222g, 222h. Act June 30, 1932, ch. 319, § 1, 47 Stat. 445, provided for a further extension of three years, and by section 222h, which was section 2 of the act last cited, authorized an extension, for permits already expired, of three years from June 30, 1932.

#### § 222i. Final extension of oil and gas permits.

Oil and gas prospecting permits issued under authority of sections 181–184, 185–194, 201, 202–208, 211–214, 223–229, 241, 251 and 261–263 of this title, outstanding on December 31, 1937, (a) which have been committed in whole or in part to a cooperative or unit plan of development and operation that on December 31, 1937, has been approved or prescribed by the Secretary of the Interior, or is in process of revision or reconsideration pursuant to prior review, without rejection, in the Department of the Interior; or (b) which, together with one or more other permits, have been committed in whole or in part to a cooperative or unit plan of development and operation for the whole of any single oil or gas pool or field (or reasonably compact area) that was filed before January 1, 1937, and rejected pursuant

to instructions of said Secretary; or (c) under which approved drilling was actively in progress at some time within the calendar year 1937; or (d) Under which at least one well shall have been drilled to a depth of not less than two thousand feet subsequent to August 21, 1935, and prior to January 1, 1939;<sup>1</sup> or (e) which have been issued subsequent to August 21, 1935, and for which timely compliance has been made with the drilling requirements of section 221 of this title, to the extent required by December 31, 1937, or, in the absence of such timely drilling, for which an acceptable cooperative or unit plan of development and operation has been filed on or before said date are all hereby extended to December 31, 1939, the provisions of any other Act or Acts to the contrary notwithstanding, subject, however, to the applicable conditions of the permits and of unfilled conditions of any prior extensions. All oil and gas prospecting permits shall cease and terminate without notice of cancellation on the final date of their current term, including any extension herein granted, and no extension of any permit beyond December 31, 1939, shall be granted under the authority of this section or any other Act. (Aug. 26, 1937, ch. 828, 50 Stat. 842; Aug. 11, 1939, ch. 718, 53 Stat. 1418.)

<sup>1</sup> So in original. Word "Under" in clause (d) probably should not be capitalized, and semicolon probably should be substituted for period.

#### § 223. Leases; amount and survey of land; term of lease; royalties and annual rental.

Upon establishing to the satisfaction of the Secretary of the Interior that valuable deposits of oil or gas have been discovered within the limits of the land embraced in any permit, the permittee shall be entitled to a lease for one-fourth of the land embraced in the prospecting permit. The permittee shall be granted a lease for as much as one hundred and sixty acres of said lands, if there be that number of acres within the permit. The area to be selected by the permittee, shall be in compact form and, if surveyed, to be described by the legal subdivisions of the public-land surveys; if unsurveyed, to be surveyed by the Government at the expense of the applicant for lease in accordance with rules and regulations to be prescribed by the Secretary of the Interior and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such surveys; deposits made to cover expense of surveys shall be deemed appropriated for that purpose, and any excess deposits may be repaid to the person or persons making such deposit or their legal representatives. Such leases shall be for a term of twenty years upon a royalty of 5 per centum in amount or value of the production and the annual payment in advance of a rental of \$1 per acre, the rental paid for any one year to be credited against the royalties as they accrue for that year, and shall continue in force otherwise as prescribed in section 226 of this title for leases issued prior to August 21, 1935. The permittee shall also be entitled to a preference right to a lease for the remainder of the land in his prospecting permit at a royalty of not less than 12½ per centum in amount or value of the production nor more than the royalty rate prescribed

by regulation in force on January 1, 1935, for secondary leases issued under this section, and under such other conditions as are fixed for oil or gas leases issued under section 226 of this title the royalty to be determined by competitive bidding or fixed by such other method as the Secretary may by regulations prescribe: *Provided*, That the Secretary shall have the right to reject any or all bids. (Feb. 25, 1920, ch. 85, § 14, 41 Stat. 442; Aug. 21, 1935, ch. 599, § 1, 49 Stat. 676.)

**§ 223a. New leases in lieu of old; terms and conditions.**

(a) The Secretary of the Interior is authorized to issue new leases to lessees holding oil or gas leases under any of the provisions of sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251 and 261-263 of this title on August 21, 1935, such new leases to be in lieu of the leases then held by such lessees and to be at a royalty rate of not less than 12½ per centum in amount or value of the production and upon such other terms and conditions as the Secretary of the Interior shall by general rule prescribe: *Provided*, That no limitation of acreage not provided for under the law or regulations under which any such old lease was issued shall be applicable to any such new lease.

(b) Nothing contained in this amendatory Act shall be construed to affect the validity of oil and gas prospecting permits or leases previously issued under the authority of sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251 and 261-263 of this title, and in existence on August 21, 1935, or impair any rights or privileges which have accrued under such permits or leases. (Aug. 21, 1935, ch. 599, § 2, 49 Stat. 679.)

**§ 224. Payments for oil or gas taken prior to application for lease.**

Until the permittee shall apply for lease to the one quarter of the permit area heretofore provided for he shall pay to the United States 20 per centum of the gross value of all oil or gas secured by him from the lands embraced within his permit and sold or otherwise disposed of or held by him for sale or other disposition. (Feb. 25, 1920, ch. 85, § 15, 41 Stat. 442.)

**§ 225. Conditions of permit or lease; forfeiture for violations.**

All permits and leases of lands containing oil or gas, made or issued under the provisions of sections 223-229 of this title, shall be subject to the condition that no wells shall be drilled within two hundred feet of any of the outer boundaries of the lands so permitted or leased, unless the adjoining lands have been patented or the title thereto otherwise vested in private owners, and to the further condition that the permittee or lessee will, in conducting his explorations and mining operations, use all reasonable precautions to prevent waste of oil or gas developed in the land, or the entrance of water through wells drilled by him to the oil sands or oil-bearing strata, to the destruction or injury of the oil deposits. Violations of the provisions of this section shall constitute grounds for the forfeiture of the permit or

lease, to be enforced through appropriate proceedings in courts of competent jurisdiction. (Feb. 25, 1920, ch. 85, § 16, 41 Stat. 443.)

**§ 226. Lease of unappropriated deposits of oil or gas in producing oil or gas field; royalties and annual rentals; cancellation of leases.**

All lands subject to disposition under sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251 and 261-263 of this title which are known or believed to contain oil or gas deposits, except as herein otherwise provided, may be leased by the Secretary of the Interior after August 21, 1935, to the highest responsible qualified bidder by competitive bidding under general regulations. Such lands shall be leased in units of not exceeding six hundred and forty acres, which shall be as nearly compact in form as possible. Such leases shall be conditioned upon the payment by the lessee of such bonus as may be accepted and of such royalty as may be fixed in the lease, which shall be not less than 12½ per centum in amount or value of the production and the payment in advance of a rental to be fixed in the lease of not less than 25 cents per acre per annum, which rental except as otherwise herein provided shall not be waived, suspended, or reduced unless and until a valuable deposit of oil or gas shall have been discovered within the lands leased: *Provided*, That the rental paid for any one year shall be credited against the royalties as they accrue for that year: *Provided further*, That in the event the Secretary of the Interior shall direct or shall assent to the suspension of operations or of production of oil or gas under any such lease, any payment of acreage rental as herein provided shall likewise be suspended during such period of suspension of operations or production: *And provided further*, That in the case of leases valuable only for the production of gas the Secretary of the Interior upon showing by the lessee that the lease cannot be successfully operated upon such rental or upon the royalty provided in the lease, may waive, suspend, or reduce such rental or reduce such royalty.

The Secretary of the Interior, for the purpose of more properly conserving the oil or gas resources of any area, field, or pool, may require that leases issued after August 21, 1935 under sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251 and 261-263 of this title be conditioned upon an agreement by the lessee to operate, under such reasonable cooperative or unit plan for the development and operation of any such area, field, or pool as said Secretary may determine to be practicable and necessary or advisable, which plan shall adequately protect the rights of all parties in interest, including the United States: *Provided*, That all leases operated under such plan approved or prescribed by said Secretary shall be excepted in determining holdings or control under the provisions of sections 181-194, 201, 202-208, 211-214, 223-229, 241, 256 and 261-263 of this title.

Leases issued after August 21, 1935 under this section shall be for a period of five years and so long thereafter as oil or gas is produced in paying quantities when the lands to be leased are not within any known geological structure of a producing oil or gas

field, and for a period of ten years and so long thereafter as oil or gas is produced in paying quantities when the lands to be leased are within any known geological structure of a producing oil or gas field: *Provided*, That no such lease shall be deemed to expire by reasons of suspension of prospecting, drilling, or production pursuant to any order or consent of the said Secretary: *Provided further*, That the person first making application for the lease of any lands not within any known geologic structure of a producing oil or gas field who is qualified to hold a lease under sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251, and 261-263 of this title, including applicants for permits whose applications were filed after ninety days prior to August 21, 1935 shall be entitled to a preference right over others to a lease of such lands without competitive bidding at a royalty, in the case of oil, of  $12\frac{1}{2}$  per centum in amount or value of the production when the said production does not exceed fifty barrels per well per day for the calendar month and of not less than  $12\frac{1}{2}$  per centum in amount or value of the production when the said production exceeds fifty barrels per well per day for the calendar month, and, in the case of gas, at a royalty of  $12\frac{1}{2}$  per centum in amount or value of the production when the said production does not exceed five million cubic feet per well per day for the calendar month and, when the said production exceeds five million cubic feet per well per day for the calendar month, at a royalty of not less than  $12\frac{1}{2}$  per centum in amount or value of the production.

Leases issued prior to August 21, 1935 shall continue in force and effect in accordance with the terms of such leases and the laws under which issued: *Provided*, That any such lease that has become the subject of a cooperative or unit plan of development or operation, or other plan for the conservation of the oil and gas of a single area, field, or pool, which plan has the approval of the Secretary of the Department or Departments having jurisdiction over the Government lands included in said plan as necessary or convenient in the public interest, shall continue in force beyond said period of twenty years until the termination of such plan: *And provided further*, That said Secretary or Secretaries shall report all leases so continued to Congress at the beginning of its next regular session after the date of such continuance.

Any cooperative or unit plan of development and operation, which includes lands owned by the United States, shall contain a provision whereby authority, limited as therein provided, is vested in the Secretary of the department or departments having jurisdiction over such land to alter or modify from time to time in his discretion the rate of prospecting and development and the quantity and rate of production under said plan. The Secretary of the Interior is authorized whenever he shall deem such action necessary or in the public interest, with the consent of lessee, by order to suspend or modify the drilling or producing requirements of any oil and gas lease not subject to such a cooperative or unit plan, and no lease shall be deemed to expire by reason of the suspension of production pursuant to any such order.

Whenever it appears to the Secretary of the Interior that wells drilled upon lands not owned by the United States are draining oil or gas from lands or deposits owned in whole or in part by the United States, the Secretary of the Interior is hereby authorized and empowered to negotiate agreements whereby the United States or the United States and its permittees, lessees, or grantees shall be compensated for such drainage, such agreements to be made with the consent of the permittees and lessees affected thereby.

Whenever the average daily production of the oil wells on an entire leasehold or on any tract or portion thereof segregated for royalty purposes shall not exceed ten barrels per well per day, or where the cost of production of oil or gas is such as to render further production economically impracticable the Secretary of the Interior, for the purpose of encouraging the greatest ultimate recovery of oil and in the interest of conservation of natural resources, is authorized to reduce the royalty on future production when in his judgment the wells cannot be successfully operated upon the royalty fixed in the lease. The provision of this paragraph shall apply to all oil and gas leases issued under sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251 and 261-263 of this title, including those within an approved cooperative or unit plan of development and operation.

Any lease issued after August 21, 1935 under the provisions of this section, except those earned as a preference right as provided in section 223 of this title, shall be subject to cancellation by the Secretary of the Interior after thirty days' notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the land covered by any such lease is known to contain valuable deposits of oil or gas. Such notice in advance of cancellation shall be sent the lease owner by registered letter directed to the lease owner's record post-office address, and in case such letter shall be returned as undelivered, such notice shall also be posted for a period of thirty days in the United States Land Office for the district in which the land covered by such lease is situated, or in the event that there is no district land office for such leased land, then in the post office nearest such land. Leases covering lands known to contain valuable deposits of oil or gas shall be canceled only in the manner provided in section 188 of this title. (Feb. 25, 1920, ch. 85, § 17, 41 Stat. 443; July 3, 1930, ch. 854, § 1, 46 Stat. 1007; Mar. 4, 1931, ch. 506, 46 Stat. 1523; Aug. 21, 1935, ch. 599, § 1, 49 Stat. 676.)

**§ 226a. Lease of lands not within known productive field; waiver of rentals.**

The Secretary of the Interior, in the case of lands not within any known geologic structure of a productive oil or gas field, shall waive the rentals stipulated in oil and gas leases issued pursuant to section 226 of this title, for the second and third lease years, unless a valuable deposit of oil or gas be sooner discovered. (July 8, 1940, ch. 548, 54 Stat. 742.)

§ 227. Leases to persons relinquishing rights under prior claims on withdrawn lands under preexisting placer mining law; claims on naval petroleum reserves; fraud of claimant; adjustment of suits.

Upon relinquishment to the United States, filed in the General Land Office within six months after February 25, 1920, of all right, title, and interest claimed and possessed prior to July 3, 1910, and continuously since by the claimant or his predecessor in interest under the preexisting placer mining law to any oil- or gas-bearing land upon which there has been drilled one or more oil or gas wells to discovery embraced in the Executive order of withdrawal issued September 27, 1909, and not within any naval petroleum reserve, and upon payment as royalty to the United States of an amount equal to the value at the time of production of one-eighth of all the oil or gas already produced except oil or gas used for production purposes on the claim, or unavoidably lost, from such land, the claimant, or his successor, if in possession of such land, undisputed by any other claimant prior to July 1, 1919, shall be entitled to a lease thereon from the United States for a period of twenty years, at a royalty of not less than 12½ per centum of all the oil or gas produced except oil or gas used for production purposes on the claim, or unavoidably lost: *Provided*, That not more than one-half of the area, but in no case to exceed three thousand two hundred acres, within the geologic oil or gas structure of a producing oil or gas field shall be leased to any one claimant under the provision of this section when the area of such geologic oil structure exceeds six hundred and forty acres. Any claimant or his successor, subject to this limitation, shall, however, have the right to select and receive the lease as in this section provided for that portion of his claim or claims equal to, but not in excess of, said one-half of the area of such geologic oil structure, but not more than three thousand two hundred acres.

All such leases shall be made and the amount of royalty to be paid for oil and gas produced, except oil or gas used for production purposes on the claim, or unavoidably lost, after the execution of such lease shall be fixed by the Secretary of the Navy under appropriate rules and regulations: *Provided, however*, That as to all like claims situate within any naval petroleum reserve the producing wells thereon only shall be leased, together with an area of land sufficient for the operation thereof, upon the terms and payment of royalties for past and future production as herein provided for in the leasing of claims. No wells shall be drilled in the land subject to this provision within six hundred and sixty feet of any such leased well without the consent of the lessee: *Provided, however*, That the President may, in his discretion, lease the remainder or any part of any such claim upon which such wells have been drilled, and in the event of such leasing said claimant or his successor shall have a preference right to such lease: *And provided further*, That he may permit the drilling of additional wells by the claimant or his successor within the limited area of six hundred and sixty feet theretofore provided for upon such terms and conditions as he may prescribe.

No claimant for a lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section.

Upon the delivery and acceptance of the lease, as in this section provided, all suits brought by the Government affecting such land may be settled and adjusted in accordance herewith and all moneys impounded in such suits or under section 104 of this title shall be paid over to the parties entitled thereto. In case of conflicting claimants for leases under this section, the Secretary of the Interior is authorized to grant leases to one or more of them as shall be deemed just. All leases hereunder shall inure to the benefit of the claimant and all persons claiming through or under him by lease, contract, or otherwise, as their interests may appear, subject, however, to the same limitation as to area and acreage as is provided for claimant in this section: *Provided*, That no claimant acquiring any interest in such lands since September 1, 1919, from a claimant on or since said date claiming or holding more than the maximum allowed claimant under this section shall secure a lease thereon or any interest therein, but the inhibition of this proviso shall not apply to an exchange of any interest in such lands made prior to the 1st day of January 1920, which did not increase or reduce the area or acreage held or claimed in excess of said maximum by either party to the exchange: *Provided further*, That no lease or leases under this section shall be granted, nor shall any interest therein, inure to any person, association, or corporation for a greater aggregate area or acreage than the maximum in this section provided for. (Feb. 25, 1920, ch. 85, § 18, 41 Stat. 443; Feb. 25, 1928, ch. 104, 45 Stat. 148.)

§ 228. Prospecting permits and leases to persons of lands not withdrawn; terms and conditions of: fraud of claimants.

Any person who on October 1, 1919, was a bona fide occupant or claimant of oil or gas lands under a claim initiated while such lands were not withdrawn from oil or gas location and entry, and who had previously performed all acts under then existing laws necessary to valid locations thereof except to make discovery, and upon which discovery had not been made prior to February 25, 1920, and who has performed work or expended on or for the benefit of such locations an amount equal in the aggregate to \$250 for each location if application therefor shall be made within six months from February 25, 1920, shall be entitled to prospecting permits thereon upon the same terms and conditions, and limitations as to acreage, as other permits provided for in sections 223-229 of this title, or where any such person has made such discovery, prior to said February 25, 1920, he shall be entitled to a lease thereon under such terms as the Secretary of the Interior may prescribe unless otherwise provided for in section 227 of this title: *Provided*, That where such prospecting permit is granted upon land within any known geologic structure of a producing oil or gas field, the royalty to be fixed in any lease thereafter granted thereon or any portion thereof shall be not less than 12½ per

centum of all the oil or gas produced except oil or gas used for production purposes on the claim, or unavoidably lost: *Provided, however,* That the provisions of this section shall not apply to lands reserved for the use of the Navy. No claimant for a permit or lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith shall be entitled to any of the benefits of this section.

All permits or leases hereunder shall inure to the benefit of the claimant and all persons claiming through or under him by lease, contract, or otherwise, as their interests may appear. (Feb. 25, 1920, ch. 85, § 19, 41 Stat. 445.)

**§ 229. Preference right to permits or leases of claimants of lands bona fide entered as agricultural land; terms and conditions.**

In the case of lands bona fide entered as agricultural, and not withdrawn or classified as mineral at the time of entry, but not including lands claimed under any railroad grant, the entryman or patentee, or assigns, where assignment was made prior to January 1, 1918, if the entry has been patented with the mineral right reserved, shall be entitled to a preference right to a permit and to a lease, as herein provided, in case of discovery; and within an area not greater than a township such entryman and patentees, or assigns holding restricted patents may combine their holdings, not to exceed two thousand five hundred and sixty acres for the purpose of making joint application. Leases executed under this section and embracing only lands so entered shall provide for the payment of a royalty of not less than 12½ per centum as to such areas within the permit as may not be included within the discovery lease to which the permittee is entitled under section 223 of this title. (Feb. 25, 1920, ch. 85, § 20, 41 Stat. 445.)

**§ 229a. Water struck while drilling for oil or gas; acquisition and disposition by Secretary of the Interior.**

(a) All prospecting permits and leases for oil or gas made or issued under the provisions of sections 223–229 of this title shall be subject to the condition that in case the permittee or lessee strikes water while drilling instead of oil or gas, the Secretary of the Interior may, when such water is of such quality and quantity as to be valuable and usable at a reasonable cost for agricultural, domestic, or other purposes, purchase the casing in the well at the reasonable value thereof to be fixed under rules and regulations to be prescribed by the Secretary: *Provided,* That the land on which such well is situated shall be reserved as a water hole under section 300 of Title 43.

(b) In cases where water wells producing such water have heretofore been or may hereafter be drilled upon lands embraced in any prospecting permit or lease heretofore issued under sections 223–229 of this title, the Secretary may in like manner purchase the casing in such wells.

(c) The Secretary may make such purchase and may lease or operate such wells for the purpose of producing water and of using the same on the public lands or of disposing of such water for beneficial use

on other lands, and where such wells have heretofore been plugged or abandoned or where such wells have been drilled prior to the issuance of any permit or lease by persons not in privity with the permittee or lessee, the Secretary may develop the same for the purposes of this section: *Provided,* That owners or occupants of lands adjacent to those upon which such water wells may be developed shall have a preference right to make beneficial use of such water.

(d) The Secretary may use so much of any funds available for the plugging of wells as he may find necessary to start the program provided for by this section, and thereafter he may use the proceeds from the sale or other disposition of such water as a revolving fund for the continuation of such program, and such proceeds are hereby appropriated for such purpose.

(e) Nothing in this section shall be construed to restrict operations under any oil or gas lease or permit under sections 223–229 of this title. (Feb. 25, 1920, ch. 85, § 40; June 16, 1934, ch. 557, 48 Stat. 977.)

**§ 230. Permits or leases of certain lands in Oklahoma; adjustment of equitable claims by Secretary of the Interior.**

The Secretary of the Interior is authorized to adjust and determine the equitable claims of citizens of the United States, and domestic corporations to lands and oil and gas deposits belonging to the United States and situated south of the medial line of the main channel of Red River, Oklahoma, which lands were claimed and possessed in good faith by such citizens or corporations, or their predecessors in interest, prior to February 25, 1920, and upon which lands expenditures were made in good faith and with reasonable diligence in an effort to discover or develop oil or gas, by issuance of permits or leases to those found equitably entitled thereto. (Mar. 4, 1923, ch. 249, § 1, 42 Stat. 1448.)

**§ 231. Same; limitation of time for applications; grant to assignees or successors in interest of original locators or claimants; conflicting claims.**

Applications for permits and leases under sections 230–236 of this title shall be made to the Secretary of the Interior, and shall be made within and not after sixty days from and after March 4, 1923. Leases and permits under said sections may be granted to the assignees or successors in interest of the original locators or the original claimants in all cases where the original locators or original claimants have assigned or transferred their rights, but when leases or permits are granted to the assignees or successors in interest of the original locators or original claimants the said leases and permits shall be subject to all contracts, not contrary to law or public policy, between the original locators or original claimants and their successors in interest.

In case of conflicting claimants for permits or leases under said sections 230–236 of this title, the Secretary of the Interior is authorized to grant permits or leases to one or more of them as shall be deemed just. (Mar. 4, 1923, ch. 249, § 2, 42 Stat. 1448.)



**§ 232. Same; limitation on amount of land granted.**

Not more than one hundred and sixty acres shall be granted by leases or permits under sections 230-236 of this title to any one person or corporation, except in those cases where two or more locations or claims have been assigned to one person or corporation, and in such cases not more than six hundred and forty acres shall be granted by leases or permits to any one person or corporation. (Mar. 4, 1923, ch. 249, § 3, 42 Stat. 1448.)

**§ 233. Same; royalties.**

Each lessee shall be required to pay as royalty to the United States an amount equal to the value at the time of production of 12½ per centum of all oil and gas produced by him prior to the issuance of the lease, except oil or gas used on the property for production purposes or unavoidably lost; and shall be required to pay to the United States a royalty of not less than 12½ per centum of all oil and gas produced by him after the issuance of the lease, except oil and gas used on the property for production purposes or unavoidably lost. Of the proceeds of the oil and gas that have been produced or that may hereafter be produced by the receiver of said property, appointed by the Supreme Court of the United States, 12½ per centum as royalty shall be paid to the United States, and the residue after deducting and paying the expenses of the litigation incurred by the United States and the expenses of the receivership shall be paid to the person or corporation to whom may be granted a lease of the land on which said oil and gas were produced. The Secretary of the Interior is authorized and directed to take such legal steps as may be necessary and proper to collect from any person or persons who shall not be awarded a permit or lease under sections 230-236 of this title an amount equal to the value of all oil and gas produced by him or them from any of said lands prior to the inclusion of said property in the receivership, except oil or gas used on the property for production purposes or unavoidably lost and except other reasonable and proper allowances for the expenses of production. Of the amount so collected, 12½ per centum shall be reserved to the United States as royalty and the balance after deducting the expense of collection shall be paid over to the person or persons awarded permits or leases under said sections, as their interests may appear. (Mar. 4, 1923, ch. 249, § 4, 42 Stat. 1448.)

**§ 233a. Same; retention of royalties.**

The Secretary of the Interior is directed to retain in his custody until otherwise directed by law the 12½ per centum and other royalties heretofore or hereafter received by him in pursuance of section 233 of this title. (Mar. 4, 1925, ch. 550, § 2, 43 Stat. 1302.)

**§ 234. Same; laws applicable; disposition of remaining lands; operation of wells pending final disposition of applications for leases or permits; disposition of royalties and rentals.**

Except as otherwise provided herein the applicable provisions of sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251, and 261-263 of this title shall

apply to the leases and permits granted under sections 230-236 of this title, including the provisions of sections 191 and 192 relating to the disposition of royalties. After the adjudication and disposition of all applications under said sections 230-236 any lands and deposits remaining unappropriated and undisposed of shall, after date fixed by order of the Secretary of the Interior, be disposed of in accordance with the provisions of sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251, and 261-263. The Secretary of the Interior is authorized to take over and operate wells existing on any of such lands on March 4, 1923, pending the final disposition of applications for leases and permits, and to utilize and expend in connection with such administration and operation so much as may be necessary of moneys impounded prior to that date from past production or thereafter produced, and upon final disposition of applications for and the issuance of leases and permits, after deducting the expenses of administration and operation and payment to the United States of the royalty herein provided, to pay the balance remaining to the person or company entitled thereto. Out of the 10 per centum of money received from royalties and rentals under the provisions of sections 230-236 of this title and paid into the Treasury of the United States and credited to miscellaneous receipts, as provided by section 191, the Secretary of the Interior is authorized to use and expend such portion as may be required to pay the expense of administration and supervision over leases and permits and the products thereof. (Mar. 4, 1923, ch. 249, § 5, 42 Stat. 1449.)

**§ 235. Same; lands in possession of receivers appointed by Supreme Court.**

Nothing in sections 230-236 of this title shall be construed to interfere with the possession by the Supreme Court of the United States, through its receiver or receivers, of any part of the lands described in section 230, nor to authorize the Secretary of the Interior to dispose of any of said lands or oil or gas deposits involved in litigation pending in the Supreme Court of the United States, on March 4, 1923, until the final disposition of said proceeding. The authority herein granted to the Secretary of the Interior, to take over and operate oil wells on said lands, shall not become effective until the said lands shall be, by the Supreme Court of the United States, discharged from its possession. And nothing in said sections shall be construed to interfere with the jurisdiction, power, and authority of the Supreme Court of the United States to adjudicate claims against its said receiver, to direct the payment of such claims against the said receiver as may be allowed by the said court, to settle the said receiver's accounts, and to continue the receivership until, in due and orderly course, the same may be brought to an end. The Supreme Court of the United States is authorized, upon the termination of the said receivership, which the Attorney General is directed to apply for and secure at the earliest practicable date, to direct its receiver to pay to the Secretary of the Interior all funds derived from oil and gas produced from lands of the United States that may at that time remain



in the hands of the said receiver; and when said funds shall be paid to the Secretary of the Interior the same shall be administered as provided in sections 230-236. (Mar. 4, 1923, ch. 249, § 6, 42 Stat. 1449.)

**§ 236. Same; rules and regulations.**

The Secretary of the Interior is authorized to prescribe the necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of sections 230-235 of this title. (Mar. 4, 1923, ch. 249, § 7, 42 Stat. 1450.)

**§ 236a. Lands in naval petroleum reserves and naval oil-shale reserves; effect of other laws.**

That nothing in sections 185, 223, 223a of this title and this section shall be construed as affecting any lands within the borders of the naval petroleum reserves and naval oil-shale reserves or agreements concerning operations thereunder or in relation to the same, but the Secretary of the Navy is hereby authorized, with the consent of the President, to enter into agreements such as those provided for under section 226 of this title, which agreement shall not, unless expressed therein, operate to extend the terms of any lease affected thereby. (Aug. 21, 1935, ch. 599, § 3, 49 Stat. 679.)

**5. OIL SHALE**

**§ 241. Authority to make lease; survey of land; term of lease; royalties and annual rentals; rights of existing claimants.**

The Secretary of the Interior is authorized to lease to any person or corporation qualified under this section and sections 181-184, 185-194, 201, 202-208, 211-214, 223-229, 251, and 261-263 of this title any deposits of oil shale belonging to the United States and the surface of so much of the public lands containing such deposits, or land adjacent thereto, as may be required for the extraction and reduction of the leased minerals, under such rules and regulations, not inconsistent with such sections, as he may prescribe. No lease hereunder shall exceed five thousand one hundred and twenty acres of land, to be described by the legal subdivisions of the public-land surveys, or if unsurveyed, to be surveyed by the United States, at the expense of the applicant, in accordance with regulations to be prescribed by the Secretary of the Interior. Leases may be for indeterminate periods, upon such conditions as may be imposed by the Secretary of the Interior, including covenants relative to methods of mining, prevention of waste, and productive development. For the privilege of mining, extracting, and disposing of the oil or other minerals covered by a lease under this section the lessee shall pay to the United States such royalties as shall be specified in the lease and an annual rental, payable at the beginning of each year, at the rate of 50 cents per acre per annum, for the lands included in the lease, the rental paid for any one year to be credited against the royalties accruing for that year; such royalties to be subject to readjustment at the end of each twenty-year period by the Secretary of the Interior. For the

purpose of encouraging the production of petroleum products from shales the Secretary may, in his discretion, waive the payment of any royalty and rental during the first five years of any lease. Any person having a valid claim to such minerals under existing laws on January 1, 1919, shall, upon the relinquishment of such claim, be entitled to a lease under the provisions of this section for such area of the land relinquished as shall not exceed the maximum area authorized by this section to be leased to an individual or corporation. No claimant for a lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section. Not more than one lease shall be granted under this section to any one person, association, or corporation. (Feb. 25, 1920, ch. 85, § 21, 41 Stat. 445.)

**6. ALASKA OIL PROVISIO**

**§ 251. Prospecting permits or leases to claimants of withdrawn lands; terms and conditions; fraud of claimants.**

Any bona fide occupant or claimant of oil- or gas-bearing lands in the Territory of Alaska, who, or whose predecessors in interest, prior to withdrawal had complied otherwise with the requirements of the mining laws, but had made no discovery of oil or gas in wells and who prior to withdrawal had made substantial improvements for the discovery of oil or gas on or for each location or had prior to February 25, 1920, expended not less than \$250 in improvements on or for each location shall be entitled, upon relinquishment or surrender to the United States within one year from February 25, 1920, or within six months after final denial or withdrawal of application for patent, to a prospecting permit or permits, lease or leases, under this section and sections 181-184, 185-194, 201, 202-208, 211-214, 223-229, 241, and 261-263 of this title covering such lands, not exceeding five permits or leases in number and not exceeding an aggregate of one thousand two hundred and eighty acres in each. Leases in Alaska under such sections whether as a result of prospecting permits or otherwise shall be upon such rental and royalties as shall be fixed by the Secretary of the Interior and specified in the lease, and be subject to readjustment at the end of each twenty-year period of the lease. For the purpose of encouraging the production of petroleum products in Alaska the Secretary may, in his discretion, waive the payment of any rental or royalty not exceeding the first five years of any lease.

No claimant for a lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith shall be entitled to any of the benefits of this section. (Feb. 25, 1920, ch. 85, § 22, 41 Stat. 446.)

**7. SODIUM**

**§ 261. Prospecting permits; lands included.**

The Secretary of the Interior is authorized, under such rules and regulations as he may prescribe, to grant to any qualified applicant a prospecting permit which shall give the exclusive right to prospect for

chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium, in lands belonging to the United States for a period of not exceeding two years: *Provided*, that the area to be included in such a permit shall not exceed two thousand five hundred and sixty acres of land in reasonably compact form. (Feb. 25, 1920, ch. 85, § 23, 41 Stat. 447; Dec. 11, 1928, ch. 19, 45 Stat. 1019.)

**§ 262. Leases to permittees; survey of lands; royalties and annual rentals.**

Upon showing to the satisfaction of the Secretary of the Interior that valuable deposits of one of the substances enumerated in section 261 of this title have been discovered by the permittee within the area covered by his permit and that such land is chiefly valuable therefor, the permittee shall be entitled to a lease for any or all of the land embraced in the prospecting permit at a royalty of not less than 2 per centum of the quantity or gross value of the output of sodium compounds and other related products at the point of shipment to market; the lands in such lease to be taken in compact form by legal subdivisions of the public land surveys or, if the land be not surveyed, by survey executed at the cost of the permittee in accordance with regulations prescribed by the Secretary of the Interior. Lands known to contain valuable deposits of one of the substances enumerated in section 261 of this title and not covered by permits or leases shall be subject to lease by the Secretary of the Interior through advertisement, competitive bidding, or such other methods as he may by general regulations adopt and in such areas as he shall fix, not exceeding two thousand five hundred and sixty acres. All leases under this section shall be conditioned upon the payment by the lessee of such royalty as may be fixed in the lease, not less than 2 per centum of the quantity or gross value of the output of sodium compounds and other related products at the point of shipment to market, and the payment in advance of a rental of 25 cents per acre for the first calendar year or fraction thereof, 50 cents per acre for the second, third, fourth, and fifth calendar years respectively; and \$1 per acre per annum thereafter during the continuance of the lease, such rental for any one year to be credited against royalties accruing for that year. Leases under this section shall be for a period of twenty years, with preferential right in the lessee to renew for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior unless otherwise provided by law at the expiration of such period: *Provided*, That nothing in sections 181, 184, 185-194, 201, 202-208, 211-214, 223-229, 241, 251, and 261-263 of this title shall prohibit the mining and sale of sodium compounds under potassium leases issued pursuant to sections 141-152 of this title, and sections 281-286 of this title, nor the mining and sale of potassium compounds as a byproduct from sodium leases taken under this section: *Provided further*, That on application by any lessee the Secretary of the Interior is authorized to modify the rental and royalty provisions stipulated in any existing sodium lease to conform to the provisions of

this section. (Feb. 25, 1920, ch. 85, § 24, 41 Stat. 447; Dec. 11, 1928, ch. 19, 45 Stat. 1019.)

**§ 263. Permits to use or lease of nonmineral lands for camp sites, and so forth.**

In addition to areas of such mineral land which may be included in any such prospecting permits or leases, the Secretary of the Interior, in his discretion, may grant to a permittee or lessee of lands containing sodium deposits, and subject to the payment of an annual rental of not less than 25 cents per acre, the exclusive right to use, during the life of the permit or lease, a tract of unoccupied nonmineral public land, not exceeding forty acres in area, for camp sites, refining works, and other purposes connected with and necessary to the proper development and use of the deposits covered by the permit or lease. (Feb. 25, 1920, ch. 85, § 25, 41 Stat. 447.)

### 8. SULPHUR

**§ 271. Prospecting permits; lands included.**

The Secretary of the Interior is hereby authorized and directed, under such rules and regulations as he may prescribe, to grant to any qualified applicant a prospecting permit which shall give the exclusive right to prospect for sulphur in lands belonging to the United States located in the States of Louisiana and New Mexico for a period of not exceeding two years: *Provided*, That the area to be included in such a permit shall be not exceeding six hundred and forty acres of land in reasonably compact form. (Apr. 17, 1926, ch. 158, § 1, 44 Stat. 301; July 16, 1932, ch. 498, 47 Stat. 701.)

**§ 272. Leases to permittees; privileges extended to oil and gas permittees.**

Upon showing to the satisfaction of the Secretary of the Interior that valuable deposits of sulphur have been discovered by the permittee within the area covered by his permit, and that the land is chiefly valuable therefor, the permittee shall be entitled to a lease for any or all of the land embraced in the prospecting permit, at a royalty of 5 per centum of the quantity or gross value of the output of sulphur at the point of shipment to market, such lease to be taken in compact form by legal subdivisions of the public-land surveys; or if the land be not surveyed, by survey executed at the cost of the permittee in accordance with regulations prescribed by the Secretary of the Interior: *Provided*, That where any person having been granted an oil and gas permit makes a discovery of sulphur in lands covered by said permit, he shall have the same privilege of leasing not to exceed six hundred and forty acres of said land under the same terms and conditions as are given a sulphur permittee under the provisions of this section. (Apr. 17, 1926, ch. 158, § 2, 44 Stat. 301.)

**§ 273. Lease of lands not covered by permits or leases; rental.**

Lands known to contain valuable deposits of sulphur and not covered by permits or leases shall be held subject to lease by the Secretary of the Interior through advertisement, competitive bidding, or such other methods as he may by general regulations adopt and in such areas as he shall fix, not exceeding six

hundred and forty acres; all leases to be conditioned upon the payment by the lessee of such royalty as may be fixed in the lease and the payment in advance of a rental of 50 cents per acre per annum, the rental paid for any one year to be credited against the royalties accruing for that year. (Apr. 17, 1926, ch. 158, § 3, 44 Stat. 301.)

#### § 274. Lands containing coal or other minerals.

Prospecting permits or leases may be issued in the discretion of the Secretary of the Interior under the provisions of sections 271–276 of this title for deposits of sulphur in public lands also containing coal or other minerals on condition that such other deposits be reserved to the United States for disposal under applicable laws. (Apr. 17, 1926, ch. 158, § 4, 44 Stat. 302.)

#### § 275. Laws applicable.

The general provisions of sections 181–184, 185–194 of this title, are made applicable to permits and leases under sections 271–276 of this title, sections 181 and 193 being amended to include deposits of sulphur, and section 184 being amended so as to prohibit any person, association, or corporation from taking or holding more than three sulphur permits or leases in any one State during the life of such permits or leases. (Apr. 17, 1926, ch. 158, § 5, 44 Stat. 302.)

#### § 276. Sections 271 to 275 of this title applicable to Louisiana and New Mexico only.

The provisions of sections 271–275 of this title shall apply only to the States of Louisiana and New Mexico. (Apr. 17, 1926, ch. 158, § 6, 44 Stat. 302; July 16, 1932, ch. 498, 47 Stat. 701.)

### 9. POTASH

#### § 281. Prospecting permits for chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium; authorization; lands affected.

The Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe, to grant to any qualified applicant a prospecting permit which shall give the exclusive right to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium in lands belonging to the United States for a period of not exceeding two years: *Provided*, That the area to be included in such a permit shall not exceed two thousand five hundred and sixty acres of land in reasonably compact form: *Provided further*, That the prospecting provisions of this section and sections 282–285 of this title shall not apply to lands and deposits in or adjacent to Searles Lake, California, which lands may be leased by the Secretary of the Interior under the terms and provisions of said sections. (Feb. 7, 1927, ch. 66, § 1, 44 Stat. 1057.)

#### § 282. Leases to permittees of lands showing valuable deposits; royalty.

Upon showing to the satisfaction of the Secretary of the Interior that valuable deposits of one of the substances enumerated in sections 281–285 of this title has been discovered by the permittee within the area covered by his permit, and that such land is chiefly valuable therefor, the permittee shall be en-

titled to a lease for any or all of the land embraced in the prospecting permit, at a royalty of not less than 2 per centum of the quantity or gross value of the output of potassium compounds and other related products, except sodium, at the point of shipment to market, such lease to be taken in compact form by legal subdivisions of the public land surveys, or if the land be not surveyed, by survey executed at the cost of the permittee in accordance with regulations prescribed by the Secretary of the Interior. (Feb. 7, 1927, ch. 66, § 2, 44 Stat. 1057.)

#### § 283. Lands containing valuable deposits and not covered by permits or leases; authority to lease; conditions; partial exemptions from rental and royalty of leases resulting from prospecting permits.

Lands known to contain valuable deposits enumerated in sections 281–285 of this title and not covered by permits or leases shall be held subject to lease by the Secretary of the Interior through advertisement, competitive bidding, or such other methods as he may by general regulations adopt, and in such areas as he shall fix, not exceeding two thousand five hundred and sixty acres; all leases to be conditioned upon the payment by the lessee of such royalty as may be fixed in the lease, not less than 2 per centum of the quantity or gross value of the output of potassium compounds and other related products, except sodium, at the point of shipment to market, and the payment in advance of a rental of 25 cents per acre for the first calendar year or fraction thereof; 50 cents per acre for the second, third, fourth, and fifth years, respectively; and \$1 per acre per annum thereafter during the continuance of the lease, such rental for any year being credited against royalties accruing for that year. Leases under sections 281–285 of this title shall be for a period of 20 years, with preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the expiration of such periods. In the discretion of the Secretary of the Interior the area involved in any lease resulting from a prospecting permit may be exempt from any rental in excess of 25 cents per acre for twenty years succeeding its issue, and the production of potassium compounds under such a lease may be exempt from any royalty in excess of the minimum prescribed in said sections for the same period. (Feb. 7, 1927, ch. 66, § 3, 44 Stat. 1057.)

#### § 284. Lands containing coal or other minerals in addition to potassium deposits; issuance of prospecting permits and leases; covenants in potassium leases.

Prospecting permits or leases may be issued under the provisions of section 281–285 of this title for deposits of potassium in public lands, also containing deposits of coal or other minerals, on condition that such other deposits be reserved to the United States for disposal under appropriate laws: *Provided*, That if the interests of the Government and of the lessee will be subserved thereby, potassium leases may include covenants providing for the development by the lessee of chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium, magnesium, aluminum, or calcium, associated with the potassium

deposits leased, on terms and conditions not inconsistent with the sodium provisions of sections 261 and 263 of this title: *Provided further*, That where valuable deposits of mineral now subject to disposition under the general mining laws are found in fissure veins on any of the lands subject to permit or lease under sections 281-285 of this title, the valuable minerals so found shall continue subject to disposition under the said general mining laws notwithstanding the presence of potash therein. (Feb. 7, 1927, ch. 66, § 4, 44 Stat. 1058.)

§ 285. Laws applicable.

The general provisions of sections 181-184, 185-194, inclusive, of this title are made applicable to permits and leases under sections 281-284 of this title. (Feb. 7, 1927, ch. 66, § 5, 44 Stat. 1058.)

§ 286. Repeal of sections 141 to 152; effect on pending applications.

Section, act Feb. 7, 1927, ch. 66, § 6, 44 Stat. 1058, provided that repeal of sections 141-152 of this title should not affect pending applications for permits or leases filed prior to January 1, 1926, or valid claims existent on February 7, 1927.

§ 287. Extension of prospecting permits.

Any prospecting permit issued under sections 281-284 of this title may be extended by the Secretary of the Interior for a period not exceeding two years, upon a showing of satisfactory cause. (Feb. 7, 1927, ch. 66, § 7; May 7, 1932, ch. 174, 47 Stat. 151.)

Chapter 4.—LEASE OF GOLD, SILVER, OR QUICK-SILVER DEPOSITS WHEN TITLE CONFIRMED BY COURT OF PRIVATE LAND CLAIMS

Sec.

291. Lease of gold, silver, or quicksilver deposits on lands title to which confirmed by Court of Private Land Claims.

292. Royalties and rentals; disposition.

293. Duties of Secretary of Interior.

§ 291. Lease of gold, silver, or quicksilver deposits on lands title to which confirmed by Court of Private Land Claims.

All gold, silver, or quicksilver deposits, or mines or minerals of the same on lands embraced within any land claim confirmed or hereafter confirmed by decree of the Court of Private Land Claims, and which did not convey the mineral rights to the grantee by the terms of the grant, and to which such grantee has not become otherwise entitled in law or in equity, may be leased by the Secretary of the Interior to the grantee, or to those claiming through or under him, for a period of twenty years, with the preferential right in the lessee to renew the same for successive periods of ten years, upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the time of the expiration of such periods. (June 8, 1926, ch. 503, § 1, 44 Stat. 710.)

§ 292. Royalties and rentals; disposition.

For the privilege of mining or extracting the gold, silver, or quicksilver deposits in the land covered by such lease, the lessee shall pay to the United States a royalty, which shall not be less than 5 per centum

nor more than 12½ per centum of the net value of the output of the gold, silver, or quicksilver at the mine, due and payable at the end of each month succeeding that of the extraction of the minerals from the mine. All moneys received from royalties and rentals under the provisions of sections 291-293 of this title shall be deposited in the Treasury of the United States, and disposed of in the same manner as rentals and royalties under the provisions of section 191 of this title. (June 8, 1926, ch. 503, § 2, 44 Stat. 710.)

§ 293. Duties of Secretary of Interior.

The Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying sections 291 and 292 of this title into full force and effect. (June 8, 1926, ch. 503, § 3, 44 Stat. 710.)

Chapter 5.—LEASE OF OIL AND GAS DEPOSITS IN OR UNDER RAILROADS AND OTHER RIGHTS-OF-WAY

Sec.

301. Authorization for lease of oil and gas deposits; by and to whom leased.

302. Assignment of lease; subletting.

303. Conditions precedent to award of lease; preferred class; bidding.

304. Provisions authorized in lease.

305. Royalties under lease.

306. Rules and regulations.

§ 301. Authorization for lease of oil and gas deposits; by and to whom leased.

Whenever the Secretary of the Interior shall deem it to be consistent with the public interest he is authorized to lease deposits of oil and gas in or under lands embraced in railroad or other rights of way acquired under any law of the United States, whether the same be a base fee or mere easement: *Provided*, That, except as hereinafter authorized, no lease shall be executed hereunder except to the municipality, corporation, firm, association, or individual by whom such right of way was acquired, or to the lawful successor, assignee, or transferee of such municipality, corporation, firm, association, or individual. (May 21, 1930, ch. 307, § 1, 46 Stat. 373.)

§ 302. Assignment of lease; subletting.

The right conferred by sections 301-306 of this title may, subject to the approval of the Secretary of the Interior, be assigned or sublet by the owner thereof to any corporation, firm, association, or individual. (May 21, 1930, ch. 307, § 2, 46 Stat. 373.)

§ 303. Conditions precedent to award of lease; preferred class; bidding.

Prior to the award of any lease under section 301 of this title, the Secretary of the Interior shall notify the owner or lessee of adjoining lands and allow him a reasonable time, to be fixed in the notice given, within which to submit an offer or bid of the amount or percentage of compensatory royalty that such owner will agree to pay for the extraction through wells on his or its adjoining land, of the oil or gas under and from such adjoining right of way, and at

the same time afford the holder of the railroad or other right of way a like opportunity within the same time to submit its bid or offer as to the amount or percentage of royalty it will agree to pay, if a lease for the extraction of the oil and gas deposits under the right of way be awarded to the holder of such right of way. In case of competing offers by the said parties in interest, the Secretary shall award the right to extract the oil and gas to the bidder, duly qualified, making the offer in his opinion most advantageous to the United States. In case but one bid or offer is received after notice duly given, he may, in his discretion, award the right to extract the oil and gas to such bidder. (May 21, 1930, ch. 307, § 3, 46 Stat. 374.)

§ 304. Provisions authorized in lease.

Any lease granted by the Secretary of the Interior pursuant to sections 301–306 of this title may, in the discretion of said Secretary, contain a provision giving the lessee the right, with the approval of said Secretary, to shut down the operation of any well or wells the operation of which has become unprofitable, to resume operations when such resumption may result in profit, and to abandon any well or wells that cease to produce oil and/or gas in paying quantities. (May 21, 1930, ch. 307, § 4, 46 Stat. 374.)

§ 305. Royalties under lease.

The royalty to be paid to the United States under any lease to be issued, or agreement made pursuant to sections 301–306 of this title, shall be determined by the Secretary of the Interior, in no case to be less than 12½ per centum in amount or value of the production, nor for more than twenty years: *Provided*, That when the oil or gas is produced from land adjacent to the right of way the amount or value of the royalty to be paid to the United States shall be within the discretion of the Secretary of the Interior: *Provided further*, That when the daily average production of any oil well does not exceed ten barrels per day said Secretary may, in his discretion, reduce the royalty on subsequent production. (May 21, 1930, ch. 307, § 5, 46 Stat. 374.)

§ 306. Rules and regulations.

The Secretary of the Interior is authorized and directed to adopt rules and regulations governing the exercise of the discretion and authority conferred by sections 301–306 of this title, which rules and regulations shall constitute a part of any application or lease hereunder. (May 21, 1930, ch. 307, § 6, 46 Stat. 374.)



## TITLE 31.—MONEY AND FINANCE

Chap.	Sec.	Sec.
1. The national budget and audit system-----	1	45. Bureau of Accounts in Post Office Department; Comptroller; administrative examination of accounts and vouchers.
2. Audit and settlement of accounts-----	71	46. Laws governing General Accounting Office; copies of books, records, etc., thereof as evidence.
3. The treasurer-----	141	47. Payment of adjusted accounts or claims.
4. The register-----	161	48. Same; regulating payment of arrears of pay.
5. The Bureau of Engraving and Printing-----	171	49. Forms, systems and procedure prescribed by Comptroller General.
6. Debts due by, or to, the United States-----	191	50. Forms for use in offices for collecting customs.
7. Bureau of the Mint, mints, and assay offices	251	51. Rooms of General Accounting Office.
8. Coins, coinage, and currency-----	311	52. Attorneys and employees in General Accounting Office; appointment; removal; compensation; duties; official acts; rules and regulations made by Comptroller General.
9. Legal tender-----	451	53. Investigations and reports by Comptroller General.
10. The public moneys-----	471	54. Information furnished to Comptroller General by departments and establishments.
11. Appropriations-----	581	55. Eligible register for accountants for General Accounting Office.
12. The public debt-----	731	56. Designation of person to sign warrants.
13. Credit and currency expansion-----	821	57. Leaves of absence; piece-rate employees.

### CROSS REFERENCES

Banks and Banking, see Title 12, Banks and Banking.  
 Comptroller of Currency, see Title 12, Banks and Banking  
 Department of Treasury, see Chapter 4, Title 5, Executive Departments and Government Officers and Employees.

### Chapter 1.—THE NATIONAL BUDGET AND AUDIT SYSTEM

#### DEFINITIONS

- Sec.  
 1. Short title.  
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#### THE BUDGET

11. President to transmit Budget to Congress; contents thereof.
12. Estimates of appropriations from reclamation fund.
13. Recommendations of President accompanying Budget.
14. Supplemental or deficiency estimates transmitted to Congress.
15. Estimates or requests for appropriations, etc., not to be submitted by department officers or employees except by request.
16. Bureau of Budget; director and assistant director; Budget, etc., to be prepared by bureau.
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21. Information for bureau by departments and establishments; access to books, papers, etc., thereof.
22. Budget officers of departments and establishments; designation; duties.
23. Departmental estimates; revision; time for submission to bureau; failure to submit.
24. Same; form and manner of submission.

#### GENERAL ACCOUNTING OFFICE

41. Creation; control and direction of; certain offices abolished; officers, employees, books, papers, etc., transferred to General Accounting Office; seal thereof.
42. Comptroller General and Assistant Comptroller General.
43. Same; terms of office; removal from office; retirement.
44. Certain powers and duties transferred to General Accounting Office; conclusiveness of balances certified by Comptroller General.

### DEFINITIONS

#### § 1. Short title.

Sections 1, 2, 11, 13–24, 41–47, 49, 51–55, 71, 471, 581 of this title may be cited as the “Budget and Accounting Act, 1921.” (June 10, 1921, ch. 18, § 1, 42 Stat. 20.)

#### § 2. Definitions.

When used in sections 1, 2, 11, 13–24, 41–47, 49, 51–55, 71, 471, and 581 of this title—The terms “department and establishment” and “department or establishment” mean any executive department, independent commission, board, bureau, office, agency, or other establishment of the Government, including any independent regulatory commission or board and the municipal government of the District of Columbia, but do not include the legislative branch of the Government or the Supreme Court of the United States;

The term “the Budget” means the Budget required by section 11 of this title to be transmitted to Congress;

The term “bureau” means the Bureau of the Budget;

The term “director” means the Director of the Bureau of the Budget; and

The term “assistant director” means the Assistant Director of the Bureau of the Budget. (June 10, 1921, ch. 18, § 2, 42 Stat. 20; Apr. 3, 1939, ch. 36, title II, § 201, 53 Stat. 565.)

### THE BUDGET

#### § 11. President to transmit Budget to Congress; contents thereof.

The President shall transmit to Congress on the first day of each regular session, the Budget, which shall set forth in summary and in detail:

(a) Estimates of the expenditures and appropriations necessary in his judgment for the support of the Government for the ensuing fiscal year; except



that the estimates for such year for the legislative branch of the Government and the Supreme Court of the United States shall be transmitted to the President on or before October 15 of each year, and shall be included by him in the Budget without revision;

(b) His estimates of the receipts of the Government during the ensuing fiscal year, under (1) laws existing at the time the Budget is transmitted and also (2) under the revenue proposals, if any, contained in the Budget;

(c) The expenditures and receipts of the Government during the last completed fiscal year;

(d) Estimates of the expenditures and receipts of the Government during the fiscal year in progress;

(e) The amount of annual, permanent, or other appropriations, including balances of appropriations for prior fiscal years, available for expenditure during the fiscal year in progress, as of November 1 of such year;

(f) Balanced statements of (1) the condition of the Treasury at the end of the last completed fiscal year, (2) the estimated condition of the Treasury at the end of the fiscal year in progress, and (3) the estimated condition of the Treasury at the end of the ensuing fiscal year if the financial proposals contained in the Budget are adopted;

(g) All essential facts regarding the bonded and other indebtedness of the Government; and

(h) Such other financial statements and data as in his opinion are necessary or desirable in order to make known in all practicable detail the financial condition of the Government. (June 10, 1921, ch. 18, § 201, 42 Stat. 20.)

#### § 12. Estimates of appropriations from reclamation fund.

The aggregate of all estimates of appropriations from the "reclamation fund" contained in the Budget for any fiscal year shall be included in the totals of the Budget for that year. (Jan. 24, 1923, ch. 42, 42 Stat. 1208.)

#### § 13. Recommendations of President accompanying Budget.

(a) If the estimated receipts for the ensuing fiscal year contained in the Budget, on the basis of laws existing at the time the Budget is transmitted, plus the estimated amounts in the Treasury at the close of the fiscal year in progress, available for expenditure in the ensuing fiscal year are less than the estimated expenditures for the ensuing fiscal year contained in the Budget, the President in the Budget shall make recommendations to Congress for new taxes, loans, or other appropriate action to meet the estimated deficiency.

(b) If the aggregate of such estimated receipts and such estimated amounts in the Treasury is greater than such estimated expenditures for the ensuing fiscal year, he shall make such recommendations as in his opinion the public interests require. (June 10, 1921, ch. 18, § 202, 42 Stat. 21.)

#### § 14. Supplemental or deficiency estimates transmitted to Congress.

(a) The President from time to time may transmit to Congress supplemental or deficiency estimates for

such appropriations or expenditures as in his judgment (1) are necessary on account of laws enacted after the transmission of the Budget, or (2) are otherwise in the public interest. He shall accompany such estimates with a statement of the reasons therefor, including the reasons for their omission from the Budget.

(b) Whenever such supplemental or deficiency estimates reach an aggregate which, if they had been contained in the Budget, would have required the President to make a recommendation under subdivision (a) of section 13 of this title, he shall thereupon make such recommendation. (June 10, 1921, ch. 18, § 203, 42 Stat. 21.)

#### § 15. Estimates or requests for appropriations, etc., not to be submitted by department officers or employees except by request.

No estimate or request for an appropriation and no request for an increase in an item of any such estimate or request, and no recommendation as to how the revenue needs of the Government should be met, shall be submitted to Congress or any committee thereof by any officer or employee of any department or establishment, unless at the request of either House of Congress. (June 10, 1921, ch. 18, § 206, 42 Stat. 21.)

#### § 16. Bureau of Budget; director and assistant director; Budget, etc., to be prepared by bureau.

There is created in the Executive Office of the President a bureau to be known as the Bureau of the Budget. There shall be in the bureau a director and an assistant director, who shall be appointed by the President and receive salaries of \$10,000 and \$7,500 a year, respectively. The assistant director shall perform such duties as the director may designate, and during the absence or incapacity of the director or during a vacancy in the office of director he shall act as director. The bureau, under such rules and regulations as the President may prescribe, shall prepare for him the Budget, and any supplemental or deficiency estimates, and to this end shall have authority to assemble, correlate, revise, reduce, or increase the estimates of the several departments or establishments. (June 10, 1921, ch. 18, § 207, 42 Stat. 22; Reorg. Plan No. I, § 1, eff. July 1, 1939, 4 Fed. Reg. 2727, 53 Stat. 1423.)

#### TRANSFER OF FUNCTIONS

All functions and personnel of the Bureau of the Budget were transferred to the executive offices of the President and it was provided that said Bureau should be administered by the Director of the Bureau of the Budget under the direction and supervision of the President by Reorg. Plan No. I, § 1, eff. July 1, 1939, cited to text, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

Functions of making, waiving, and modifying appropriations of appropriations were transferred to the Director of the Bureau of the Budget by Ex. Ord. No. 6166, § 16, June 10, 1933, set out in note to section 132 of Title 5, Executive Departments and Government Officers and Employees.

#### CROSS REFERENCE

Compensation schedules for professional, subprofessional, and scientific services, see section 673 of Title 5, Executive Departments and Government Officers and Employees.

**§ 17. Attorneys and other employees of bureau; compensation; expenses of bureau; transfer of employees to bureau.**

(a) The director, under such rules and regulations as the President may prescribe, shall appoint attorneys and other employees and shall make expenditures for rent in the District of Columbia, printing, binding, telegrams, telephone service, law books, books of reference, periodicals, stationery, furniture, office equipment, other supplies, and necessary expenses of the office, within the appropriations made therefor.

(b) The director may appoint not more than four persons without regard to the civil service laws and regulations.

(c) All employees in the bureau whose compensation is at a rate of \$5,000 a year or less shall be appointed in accordance with the civil service laws and regulations. (June 10, 1921, ch. 18, § 208, 42 Stat. 22; Mar. 4, 1923, ch. 265, §§ 1-14, 42 Stat. 1488-1499.)

**§ 18. Detailed study of departments and establishments by bureau.**

The bureau, when directed by the President, shall make a detailed study of the departments and establishments for the purpose of enabling the President to determine what changes (with a view of securing greater economy and efficiency in the conduct of the public service) should be made in (1) the existing organization, activities, and methods of business of such departments or establishments, (2) the appropriations therefor, (3) the assignment of particular activities to particular services, or (4) the regrouping of services. The results of such study shall be embodied in a report or reports to the President, who may transmit to Congress such report or reports or any part thereof with his recommendations on the matters covered thereby. (June 10, 1921, ch. 18, § 209, 42 Stat. 22.)

**§ 19. Powers and duties transferred to bureau.**

The powers and duties relating to the compiling of estimates conferred and imposed upon the Division of Bookkeeping and Warrants of the office of the Secretary of the Treasury on June 10, 1921, are transferred to the bureau. (June 10, 1921, ch. 18, § 211, 42 Stat. 22.)

#### TRANSFER OF FUNCTIONS

Division of Bookkeeping and Warrants and its functions were transferred to Bureau of Accounts, and, together with certain other offices and agencies and their functions, were consolidated into Fiscal Service of Treasury Department by Reorg. Plan No. III, § 1 (a), eff. June 30, 1940, 5 Fed. Reg. 2107, 54 Stat. 1231, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See, also, sections 8 and 9 of said plan for provisions relating to transfer of records, property, personnel, and funds.

#### CENTRAL STATISTICAL BOARD

Functions and personnel transferred to Bureau of Budget in Executive Office of President by Reorg. Plan. No. I, § 2, eff. July 1, 1939, 4 Fed. Reg. 2727, 53 Stat. 1423, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See, also, sections 7-9 of said plan for provisions relating to transfer of records, property, funds, and personnel.

#### CENTRAL STATISTICAL COMMITTEE

Abolished and its functions transferred to Director of Bureau of Budget, who was also directed to wind up outstanding affairs of such committee, by Reorg. Plan No. I, § 3, eff. July 1, 1939, 4 Fed. Reg. 2727, 53 Stat. 1423, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See, also, sections 7-9 of said plan for provisions relating to transfer of records, property, funds, and personnel.

**§ 20. Aid and information for committees of Congress.**

The bureau shall, at the request of any committee of either House of Congress having jurisdiction over revenue or appropriations, furnish the committee such aid and information as it may request. (June 10, 1921, ch. 18, § 212, 42 Stat. 23.)

**§ 21. Information for bureau by departments and establishments; access to books, papers, etc., thereof.**

Under such regulations as the President may prescribe (1) every department and establishment shall furnish to the bureau such information as the bureau may from time to time require, and (2) the director and the assistant director, or any employee of the bureau when duly authorized, shall, for the purpose of securing such information, have access to, and the right to examine, any books, documents, papers, or records of any such department or establishment. (June 10, 1921, ch. 18, § 213, 42 Stat. 23.)

**§ 22. Budget officers of departments and establishments; designation; duties.**

(a) The head of each department and establishment shall designate an official thereof as Budget officer therefor, who, in each year under his direction and on or before a date fixed by him, shall prepare the departmental estimates.

(b) Such Budget officer shall also prepare, under the direction of the head of the department or establishment, such supplemental and deficiency estimates as may be required for its work. (June 10, 1921, ch. 18, § 214, 42 Stat. 23.)

**§ 23. Departmental estimates; revision; time for submission to bureau; failure to submit.**

The head of each department and establishment shall revise the departmental estimates and submit them to the bureau on or before September 15 of each year. In case of his failure so to do, the President shall cause to be prepared such estimates and data as are necessary to enable him to include in the Budget estimates and statements in respect to the work of such department or establishment. (June 10, 1921, ch. 18, § 215, 42 Stat. 23.)

#### CROSS REFERENCE

Secretary of Agriculture, separate schedule of expenditures, transfers of funds, or other transactions to be included in annual budget, see section 558a of Title 5, Executive Departments and Government Officers and Employees.

**§ 24. Same; form and manner of submission.**

The departmental estimates and any supplemental or deficiency estimates submitted to the bureau by the head of any department or establishment shall be prepared and submitted in such form, manner, and detail as the President may prescribe. (June 10, 1921, ch. 18, § 216, 42 Stat. 23.)

## CROSS REFERENCE

Secretary of Agriculture, separate schedule of expenditures, transfers of funds, or other transactions to be included in annual budget, see section 558a of Title 5, Executive Departments and Government Officers and Employees.

## GENERAL ACCOUNTING OFFICE

§ 41. Creation; control and direction of; certain offices abolished; officers, employees, books, papers, etc., transferred to General Accounting Office; seal thereof.

There is created an establishment of the Government to be known as the General Accounting Office, which shall be independent of the executive departments and under the control and direction of the Comptroller General of the United States. The offices of Comptroller of the Treasury and Assistant Comptroller of the Treasury are abolished. All other officers and employees of the office of the Comptroller of the Treasury shall be officers and employees in the General Accounting Office at their grades and salaries on July 1, 1921, and all books, records, documents, papers, furniture, office equipment and other property of the office of the Comptroller of the Treasury shall be the property of the General Accounting Office. The Comptroller General is authorized to adopt a seal for the General Accounting Office. (June 10, 1921, ch. 18, § 301, 42 Stat. 23.)

§ 42. Comptroller General and Assistant Comptroller General.

There shall be in the General Accounting Office a Comptroller General of the United States and an Assistant Comptroller General of the United States, who shall be appointed by the President with the advice and consent of the Senate, and shall receive salaries of \$10,000 and \$7,500 a year, respectively. The Assistant Comptroller General shall perform such duties as may be assigned to him by the Comptroller General, and during the absence or incapacity of the Comptroller General, or during a vacancy in that office, shall act as Comptroller General. (June 10, 1921, ch. 18, § 302, 42 Stat. 23.)

## CROSS REFERENCE

Compensation schedules for professional, subprofessional, and scientific services, see section 673 of Title 5, Executive Departments and Government Officers and Employees.

§ 43. Same; terms of office; removal from office; retirement.

Except as hereinafter provided in this section, the Comptroller General and the Assistant Comptroller General shall hold office for fifteen years. The Comptroller General shall not be eligible for reappointment. The Comptroller General or the Assistant Comptroller General may be removed at any time by joint resolution of Congress after notice and hearing, when, in the judgment of Congress, the Comptroller General or Assistant Comptroller General has become permanently incapacitated or has been inefficient, or guilty of neglect of duty, or of malfeasance in office, or of any felony or conduct involving moral turpitude, and for no other cause and in no other manner except by impeachment. Any Comptroller General or Assistant Comptroller General removed in the manner provided in this section shall be ineligible for reappointment to that

office. When a Comptroller General or Assistant Comptroller General attains the age of seventy years, he shall be retired from his office. (June 10, 1921, ch. 18, § 303, 42 Stat. 23.)

§ 44. Certain powers and duties transferred to General Accounting Office; conclusiveness of balances certified by Comptroller General.

All powers and duties which on June 30, 1921, were conferred or imposed by law upon the Comptroller of the Treasury or the six auditors of the Treasury Department, and the duties of the Division of Bookkeeping and Warrants of the Office of the Secretary of the Treasury relating to keeping the personal ledger accounts of disbursing and collecting officers, shall, so far as not inconsistent with sections 1, 2, 11, 13-24, 41-47, 49, 51-55, 71, 471, and 581 of this title, be vested in and imposed upon the General Accounting Office and be exercised without direction from any other officer. The balances certified by the Comptroller General shall be final and conclusive upon the executive branch of the Government. The revision by the Comptroller General of settlements made by the six auditors shall be discontinued, except as to settlements made before July 1, 1921. (June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

## TRANSFER OF FUNCTIONS

Division of Bookkeeping and Warrants and its functions were transferred to Bureau of Accounts, and, together with certain other offices and agencies and their functions, were consolidated into Fiscal Service of Treasury Department by Reorg. Plan No. III, § 1 (a), effective June 30, 1940, 5 Fed. Reg. 2107, 54 Stat. 1231, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See, also, sections 8 and 9 of said plan for provisions relating to transfer of records, property, personnel, and funds.

§ 45. Bureau of Accounts in Post Office Department; Comptroller; administrative examination of accounts and vouchers.

The administrative examination of the accounts and vouchers of the Postal Service imposed by law on June 30, 1921, upon the Auditor for the Post Office Department shall be performed by a bureau in the Post Office Department to be known as the Bureau of Accounts. The Bureau of Accounts shall be under the direction of a comptroller, who shall be appointed by the President with the advice and consent of the Senate, and shall receive a salary of \$5,000 a year. The comptroller shall perform the administrative duties performed by the Auditor for the Post Office Department and such other duties in relation thereto as the Postmaster General may direct. The officers and employees of the Office of the Auditor for the Post Office Department engaged in the administrative examination of accounts shall be officers and employees of the Bureau of Accounts. (June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

## CROSS REFERENCE

Salary schedules, see section 673 of Title 5, Executive Departments and Government Officers and Employees.

§ 46. Laws governing General Accounting Office; copies of books, records, etc., thereof as evidence.

All laws relating generally to the administration of the departments and establishments shall, so far as applicable, govern the General Accounting Office. Copies of any books, records, papers, or documents,

and transcripts from the books and proceedings of the General Accounting Office, when certified by the Comptroller General or the Assistant Comptroller General under its seal, shall be admitted as evidence with the same effect as the copies and transcripts referred to in sections 661 and 665 of Title 28. (June 10, 1921, ch. 18, § 306, 42 Stat. 24.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Proof of official records, see Rule 44, following section 723c of Title 28, Judicial Code and Judiciary.

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

#### § 47. Payment of adjusted accounts or claims.

The Comptroller General may provide for the payment of accounts or claims adjusted and settled in the General Accounting Office, through disbursing officers of the several departments and establishments, instead of by warrant. (June 10, 1921, ch. 18, § 307, 42 Stat. 25.)

#### § 48. Same; regulating payment of arrears of pay.

The Comptroller General may prescribe rules to govern the payment of arrears of pay due to any petty officer, seaman, or other person not an officer, on board any vessel in the employ of the United States, which has been sunk or destroyed, in case of the death of such petty officer, seaman, or person, to the person designated by law to receive the same. (R. S. § 274; July 31, 1894, ch. 174, § 4, 28 Stat. 205; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

#### DERIVATION

Act July 4, 1864, ch. 248, § 3, 13 Stat. 390.

#### § 49. Forms, systems and procedure prescribed by Comptroller General.

The Comptroller General shall prescribe the forms, systems, and procedure for administrative appropriation and fund accounting in the several departments and establishments, and for the administrative examination of fiscal officers' accounts and claims against the United States. (June 10, 1921, ch. 18, § 309, 42 Stat. 25.)

#### § 50. Forms for use in offices for collecting customs.

The Comptroller General shall report to the Secretary of the Treasury official forms to be used in the different offices for collecting the public receipts from customs, and all the manner and form of keeping and stating the accounts of the persons employed therein. (R. S. § 318; July 31, 1894, ch. 174, § 4, 28 Stat. 205; June 10, 1921, ch. 18, §§ 304, 309, 42 Stat. 24, 25.)

#### DERIVATION

Act Mar. 3, 1817, ch. 45, § 8, 3 Stat. 367; act Mar. 3, 1849, ch. 108, § 12, 9 Stat. 396.

#### § 51. Rooms of General Accounting Office.

Section, act June 10, 1921, ch. 18, § 310, 42 Stat. 25, authorized the temporary occupation of rooms in use on June 10, 1921.

#### § 52. Attorneys and employees in General Accounting Office; appointment; removal; compensation; duties; official acts; rules and regulations made by Comptroller General.

(a) The Comptroller General shall appoint and remove attorneys and other employees in the General Accounting Office.

(b) All such appointments, except to positions carrying a salary at a rate of more than \$5,000 a year, shall be made in accordance with the civil service laws and regulations.

(c) The Comptroller General may appoint not more than four persons without regard to the civil service laws and regulations.

(d) All officers and employees of the General Accounting Office, whether transferred thereto or appointed by the Comptroller General, shall perform such duties as may be assigned to them by him.

(e) All official acts performed by such officers or employees specially designated therefor by the Comptroller General shall have the same force and effect as though performed by the Comptroller General in person.

(f) The Comptroller General shall make such rules and regulations as may be necessary for carrying on the work of the General Accounting Office, including rules and regulations concerning the admission of attorneys to practice before such office. (June 10, 1921, ch. 18, § 311, 42 Stat. 25.)

#### § 53. Investigations and reports by Comptroller General.

(a) The Comptroller General shall investigate, at the seat of government or elsewhere, all matters relating to the receipt, disbursement, and application of public funds, and shall make to the President when requested by him, and to Congress at the beginning of each regular session, a report in writing of the work of the General Accounting Office, containing recommendations concerning the legislation he may deem necessary to facilitate the prompt and accurate rendition and settlement of accounts and concerning such other matters relating to the receipt, disbursement, and application of public funds as he may think advisable. In such regular report, or in special reports at any time when Congress is in session, he shall make recommendations looking to greater economy or efficiency in public expenditures.

(b) He shall make such investigations and reports as shall be ordered by either House of Congress or by any committee of either House having jurisdiction over revenue, appropriations, or expenditures. The Comptroller General shall also, at the request of any such committee, direct assistants from his office to furnish the committee such aid and information as it may request.

(c) The Comptroller General shall specially report to Congress every expenditure or contract made by any department or establishment in any year in violation of law.

(d) He shall submit to Congress reports upon the adequacy and effectiveness of the administrative examination of accounts and claims in the respective departments and establishments and upon the adequacy and effectiveness of departmental inspection of the offices and accounts of fiscal officers.

(e) He shall furnish such information relating to expenditures and accounting to the Bureau of the Budget as it may request from time to time. (June 10, 1921, ch. 18, § 312, 42 Stat. 25.)

**§ 54. Information furnished to Comptroller General by departments and establishments.**

All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them; and the Comptroller General, or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment. The authority contained in this section shall not be applicable to expenditures made under the provisions of section 107 of this title. (June 10, 1921, ch. 18, § 313, 42 Stat. 26.)

**§ 55. Eligible register for accountants for General Accounting Office.**

The Civil Service Commission shall establish an eligible register for accountants for the General Accounting Office, and the examinations of applicants for entrance upon such register shall be based upon questions approved by the Comptroller General. (June 10, 1921, ch. 18, § 314, 42 Stat. 26.)

**§ 56. Designation of person to sign warrants.**

The Comptroller General is authorized to designate such person or persons in his office as may be required from time to time to countersign in his name such classes of warrants as he may direct. (Mar. 4, 1909, ch. 297, § 1, 35 Stat. 866; May 29, 1920, ch. 214, § 1, 41 Stat. 647; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

**§ 57. Leaves of absence; piece-rate employees.**

Under such rules and regulations as may be provided, piece-rate employees in the Bureau of Accounts of the Post Office Department shall be entitled to the same leave of absence with pay as is provided for clerks and employees in the executive departments by section 30 of Title 5. The pay of any piece-rate employee during such leave shall be determined by the average quantity of work done by such employee and the pay therefor. (Mar. 4, 1913, ch. 142, § 1, 37 Stat. 754.)

**Chapter 2.—AUDIT AND SETTLEMENT OF ACCOUNTS**

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| <p><b>Sec.</b></p> <p>71. Public accounts to be settled in General Accounting Office.</p> <p>71a. Same; limitation of time on claims and demands.</p> <p>72. Same; settlement of accounts.</p> <p>73. Accounts of Post Office Department; duties of General Accounting Office and Bureau of Accounts.</p> <p>74. Certified balances of public accounts; conclusiveness; suspension of items; preservation of adjusted accounts; decision upon questions involving payments.</p> <p>75. Regulations for carrying out provisions.</p> <p>76. Requisitions for advances.</p> <p>77. Charging warrants to appropriation specified.</p> <p>78. Rendition of current accounts.</p> <p>79. Transmission of accounts of courts in Alaska to Department of Justice.</p> <p>80. Administrative examination of accounts of Army expenditures.</p> <p>81. Transmission of accounts of marshals.</p> <p>82. Administrative examination of accounts.</p> | <p><b>Sec.</b></p> <p>82a. Lists of persons receiving periodic payments; vouchers.</p> <p>83. Administrative audit of accounts under Department of Justice.</p> <p>84. Rendition of accounts of officers of courts.</p> <p>85. Transmission of accounts of expenditures in Territories to Secretary of the Interior.</p> <p>86. Accounts presented without administrative examination.</p> <p>87. Papers transmitted with accounts of customs officers.</p> <p>88. Reexamination of disallowed claims.</p> <p>89. Property returns by officers.</p> <p>90. Same; certificate as to lost property.</p> <p>91. Same; manner of making.</p> <p>92. Same; regulations.</p> <p>93. General Accounting Office superintending recovery of debts.</p> <p>94. Settlement of advance bounties.</p> <p>95. Settlement of accounts of Army officers.</p> <p>96. Settlement of overpayments.</p> <p>97. Claims for arrears of pay and bounty already paid.</p> <p>98. Statement of balances due for arrears of pay and bounty.</p> <p>99. Affidavits and declarations in bounty cases or claims for back pay; certification of official character and signature of officer taking.</p> <p>100. Claim agent withholding discharge papers.</p> <p>101. Evidence of honorable discharge returned to officers and enlisted men.</p> <p>102. Payment of claims for pay and allowances.</p> <p>103. Accounts of Departments of War and the Navy.</p> <p>103a. Disbursing officers of Army, Navy, and Marine Corps; designation of deputies.</p> <p>104. Accounts of paymasters of lost or captured public vessels.</p> <p>105. Relief of disbursing officers of Navy.</p> <p>106. Disbursements by order of commanding officer of Navy.</p> <p>107. Settlement of expenses of intercourse with foreign nations.</p> <p>108. Accounting by Navy Department for appropriations for obtaining information from abroad and at home.</p> <p>109. Collection of debts due Post Office Department.</p> <p>110. Suits on postmasters' bonds.</p> <p>111. Accounts of money-order business.</p> <p>112. Accounts of expenses of postmasters.</p> <p>113. Accounts of expenditures of Post Office Department under appropriations.</p> <p>114. Reports of financial condition of Post Office Department.</p> <p>115. Compromise of judgments.</p> <p>116. Papers in suits for delinquencies in Post Office Department.</p> <p>117. Officers authorized to administer oaths.</p> <p>118. Oaths in settlements of postal accounts.</p> <p>119. Allowance of lost checks.</p> <p>120. Checks issued by Bureau of Pensions, Bureau of War Risk Insurance, and United States Veterans' Bureau, and for payment of salaries and wages; destruction; claims on, barred.</p> <p>121. Destruction of paid United States checks and warrants.</p> <p>122. Claims on paid checks and warrants; limitations.</p> <p>123. Regulation of delivery in foreign countries of check against funds of United States; prohibition in absence of assurance that payee will receive and be able to negotiate check.</p> <p>124. Same; withholding export-prohibited checks; release; procedure resulting in deposit in special account for withheld foreign checks.</p> <p>125. Same; payments from special deposit account for withheld foreign checks.</p> <p>126. Same; application of sections 124 and 125 to checks withheld pursuant to Executive Order or administrative action.</p> <p>127. Same; rules and regulations.</p> <p>128. Same; checks in payment of salaries or wages or for goods purchased by United States in foreign countries.</p> |
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**§ 71. Public accounts to be settled in General Accounting Office.**

All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office. (R. S. § 236; June 10, 1921, ch. 18, § 305, 42 Stat. 24.)

**DERIVATION**

Act Mar. 3, 1817, ch. 45, § 2, 3 Stat. 366.

**§ 71a. Same; limitation of time on claims and demands.**

(1) Every claim or demand (except a claim or demand by any State, Territory, possession or the District of Columbia) against the United States cognizable by the General Accounting Office under sections 71 and 236 of this title shall be forever barred unless such claim, bearing the signature and address of the claimant or of an authorized agent or attorney, shall be received in said office within ten full years after the date such claim first accrued: *Provided*, That when a claim of any person serving in the military or naval forces of the United States accrues in time of war, or when war intervenes within five years after its accrual, such claim may be presented within five years after peace is established.

(2) Whenever any claim barred by subsection (1) shall be received in the General Accounting Office, it shall be returned to the claimant, with a copy of this section, and such action shall be a complete response without further communication. (Oct. 9, 1940, ch. 788, §§ 1, 2, 54 Stat. 1061.)

**CODIFICATION**

Subsections (1) and (2) of this section are from sections 1 and 2, respectively, of act Oct. 9, 1940, cited to text. Section is also set out as section 237 of this title.

**§ 72. Same; settlement of accounts.**

Accounts shall be examined as follows:

First. The General Accounting Office shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of the Treasury and all bureaus and offices under his direction, all accounts relating to the customs service, public debt, internal revenue, Treasurer and designated depositaries, mints and assay offices, Bureau of Engraving and Printing, Coast Guard, public buildings, Secret Service, and to all other business within the jurisdiction of the Department of the Treasury, and certify the balances arising thereon to the Secretary of the Treasury.

Second. Said office shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of War and all bureaus and offices under his direction, all accounts relating to the military establishment, armories and arsenals, national cemeteries, fortifications, public buildings and grounds formerly under the Chief of Engineers, rivers and harbors, the Military Academy, and to all other business within the jurisdiction of the Department of War, and certify the balances arising thereon to the Secretary of War.

Third. Said office shall receive and examine all accounts of salaries and incidental expenses of the

office of the Secretary of the Interior, and of all bureaus and offices under his direction, and all accounts relating to Army and Navy pensions, Geological Survey, public lands, Indians, Architect of the Capitol, and to all other business within the jurisdiction of the Department of the Interior, and certify the balances arising thereon to the Secretary of the Interior.

Fourth. Said office shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of the Navy, and of all bureaus and offices under his direction, all accounts relating to the Naval Establishment, Marine Corps, Naval Academy, and to all other business within the jurisdiction of the Department of the Navy, and certify the balances arising thereon to the Secretary of the Navy.

Fifth. The Bureau of Accounts in the Post Office Department shall receive and examine all accounts of salaries and incidental expenses of the office of the Postmaster General and of all bureaus and offices under his direction, all postal and money-order accounts of postmasters, all accounts relating to the transportation of the mails, and to all other business within the jurisdiction of the Post Office Department. The General Accounting Office shall audit the accounts and certify the balances arising thereon to the Postmaster General for accounts of the postal revenue and expenditures therefrom.

All expenditures in the Postal Savings System shall be audited by the General Accounting Office.

Sixth. Said office shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of Commerce, and of all bureaus and offices under his direction, all accounts relating to the Bureau of Marine Inspection and Navigation, the National Bureau of Standards, Coast and Geodetic Survey, Patents, Census, and to all other business within the jurisdiction of the Department of Commerce, and certify the balances arising thereon to the Secretary of Commerce.

Seventh. Said office shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of Labor and of all bureaus and offices under his direction, and all accounts relating to all other business within the jurisdiction of the Department of Labor, and certify the balances arising thereon to the Secretary of Labor.

Eighth. Said office shall receive and examine all accounts of salaries and incidental expenses of the offices of the Secretary of State, the Attorney General, and the Secretary of Agriculture, and of all bureaus and offices under their direction; all accounts relating to all other business within the jurisdiction of the Departments of State, Justice, and Agriculture; all accounts relating to the Foreign Service, the judiciary, United States courts, judgments of United States courts, Executive Office, Civil Service Commission, Interstate Commerce Commission, District of Columbia, Court of Claims and its judgments, Smithsonian Institution, Territorial governments, the Senate, the House of Representatives, the Public Printer, Library of Congress, Botanic Garden, and accounts of all boards, commissions, and establishments of the Government not within the jurisdiction of any of the executive departments.

Said office shall certify the balances arising thereon, according to the character of the account, to the Secretary of the Senate, Clerk of the House of Representatives, Sergeant at Arms of the House of Representatives, or the chief officer of the executive department, commission, board, or establishment concerned. (July 31, 1894, ch. 174, § 7, 28 Stat. 206; Feb. 14, 1903, ch. 552, § 2, 32 Stat. 826; June 17, 1910, ch. 301, §§ 4, 13, 36 Stat. 537, 539; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309; Aug. 24, 1912, ch. 389, § 10, 37 Stat. 559; Mar. 4, 1913, ch. 141, § 2, 37 Stat. 737; Jan. 28, 1915, ch. 20, § 1, 38 Stat. 800; June 10, 1921, ch. 18, § 304, 42 Stat. 24; May 24, 1924, ch. 182, § 1, redesignated § 8 and amended Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1207; Feb. 26, 1925, ch. 339, § 3, 43 Stat. 983; July 3, 1930, ch. 863, § 1, 46 Stat. 1016; June 30, 1932, ch. 314, §§ 501, 502, 47 Stat. 415; May 27, 1936, ch. 463, § 1, 49 Stat. 1380; Reorg. Plan No. I, § 201, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424; Reorg. Plan No. II, §§ 2 (a), 4 (e), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432, 1433.)

#### CODIFICATION

This section is a consolidation of various statutes relating to the former Auditors, with numerous changes subsequently made transferring, abolishing, or changing the names of agencies specified.

#### CHANGE OF NAMES AND TRANSFER OF FUNCTIONS

Many of the bureaus, agencies, etc., mentioned in this section have been transferred or abolished by the President's Reorganization Plans promulgated under Reorganization Act of 1939, and set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

Change of name of "Bureau of Navigation and Steamboat Inspection" to "Bureau of Marine Inspection and Navigation," see section 597a-1 of Title 5, Executive Departments and Government Officers and Employees.

#### CROSS REFERENCE

Transfer of powers and duties of Department of Justice or Attorney General respecting administrative audits of accounts and vouchers, see note under section 446 of Title 28, Judicial Code and Judiciary.

#### § 73. Accounts of Post Office Department; duties of General Accounting Office and Bureau of Accounts.

The General Accounting Office shall keep and preserve all accounts arising in the Post Office Department or relative thereto and vouchers after settlement. The General Accounting Office shall close the account of the department quarterly, and transmit to the Secretary of the Treasury quarterly statements of its receipts and expenditures. It shall report to the Postmaster General, when required to do so, the manner and form of keeping and stating the accounts of the department, and the official forms of papers to be used in connection with its receipts and expenditures. It shall report to the Postmaster General all delinquencies of postmasters in rendering their accounts and returns, or in paying over money-order funds and other receipts at their offices. The Comptroller General shall register, charge, and countersign all warrants upon the Treasury for receipts or payments issued by the Postmaster General, when warranted by law. (R. S. § 277; June 10, 1921, ch. 18, §§ 304, 305, 42 Stat. 24.)

#### DERIVATION

Act Mar. 3, 1817, ch. 45, § 4, 3 Stat. 366; act Mar. 3, 1849, ch. 108, 9 Stat. 395; act Mar. 3, 1849, ch. 129, § 3, 9 Stat.

415; act July 28, 1866, ch. 297, § 8, 14 Stat. 327; act June 30, 1864, ch. 173, § 2, 13 Stat. 223; act July 20, 1868, ch. 176, § 1, 15 Stat. 106; act June 8, 1872, ch. 335, § 22, 17 Stat. 287.

#### § 74. Certified balances of public accounts; conclusiveness; suspension of items; preservation of adjusted accounts; decision upon questions involving payments.

Balances certified by the General Accounting Office, upon the settlement of public accounts, shall be final and conclusive upon the Executive Branch of the Government, except that any person whose accounts may have been settled, the head of the Executive Department, or of the board, commission, or establishment not under the jurisdiction of an Executive Department, to which the account pertains, or the Comptroller General of the United States, may, within a year, obtain a revision of the said account by the Comptroller General of the United States, whose decision upon such revision shall be final and conclusive upon the Executive Branch of the Government. Nothing in this chapter shall prevent the General Accounting Office from suspending items in an account in order to obtain further evidence or explanations necessary to their settlement.

The General Accounting Office shall preserve, with their vouchers and certificates, all accounts which have been finally adjusted.

Disbursing officers, or the head of any executive department, or other establishment not under any of the executive departments, may apply for and the Comptroller General shall render his decision upon any question involving a payment to be made by them or under them, which decision, when rendered, shall govern the General Accounting Office in passing upon the account containing said disbursement. (July 31, 1894, ch. 174, § 8, 28 Stat. 207; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

#### § 75. Regulations for carrying out provisions.

It shall be the duty of the Secretary of the Treasury to make appropriate rules and regulations for carrying out the provisions of section 87 of this title and so much of sections 74, 76, 78, 496, and 514 of this title, as pertains to his duties, and for transferring or preserving books, papers, or other property appertaining to any office or branch of business affected by them.

It shall also be the duty of the heads of the several executive departments and of the proper officers of other Government establishments, not within the jurisdiction of any executive department, to make appropriate rules and regulations to secure a proper administrative examination of all accounts sent to them, as required by section 78 of this title, before their transmission to the General Accounting Office, and for the execution of other requirements of this chapter insofar as the same relate to the several departments or establishments. (July 31, 1894, ch. 174, § 22, 28 Stat. 210; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

#### § 76. Requisitions for advances.

Every requisition for an advance of money, before being acted on by the Secretary of the Treasury,



shall be sent to the General Accounting Office for action thereon as required by section 78 of this title.

All warrants, when authorized by law and signed by the Secretary of the Treasury, shall be countersigned in the General Accounting Office, and all warrants for the payment of money shall be accompanied either by the certificate, mentioned in section 72 of this title, or by the requisition for advance of money, which certificate or requisition shall specify the particular appropriation to which the same should be charged, instead of being specified on the warrant; and shall also go with the warrant to the Treasurer, who shall return the certificate or requisition to the General Accounting Office, with the date and amount of the draft issued indorsed thereon. Requisitions for the payment of money on all audited accounts, or for covering money into the Treasury, shall not be required. And requisitions for advances of money shall not be countersigned in the General Accounting Office. (July 31, 1894, ch. 174, § 11, 28 Stat. 209; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

#### § 77. Charging warrants to appropriation specified.

Moneys paid by virtue of such warrants shall be charged to the appropriation so specified in the books of the Secretary of the Treasury and General Accounting Office. (R. S. § 3675; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

#### DERIVATION

Act Sept. 2, 1789, ch. 13, § 6, 1 Stat. 67; act Mar. 3, 1809, ch. 28, § 1, 2 Stat. 535.

#### § 78. Rendition of current accounts.

Except as otherwise provided by law, all monthly accounts shall be mailed or otherwise sent to the proper officer at Washington within ten days after the end of the month to which they relate, and quarterly and other accounts within twenty days after the period to which they relate, and shall be transmitted to and received by the General Accounting Office within twenty days of their actual receipt at the proper office in Washington in the case of monthly, and sixty days in the case of quarterly and other accounts. Should there be any delinquency in this regard at the time of the receipt by the General Accounting Office of a requisition for an advance of money, said office shall disapprove the requisition, which said office may also do for other reasons arising out of the condition of the officer's accounts for whom the advance is requested; but the Secretary of the Treasury may overrule the General Accounting Office's decision as to the sufficiency of these latter reasons. The Secretary of the Treasury shall prescribe suitable rules and regulations, and may make orders in particular cases, relaxing the requirement of mailing or otherwise sending accounts as aforesaid, within ten or twenty days, or waiving delinquency, in such cases only in which there is, or is likely to be, a manifest physical difficulty in complying with the same, it being the purpose of this provision to require the prompt rendition of accounts without regard to the mere convenience of the officers, and to forbid the advance of money to those delinquent in rendering them. Should there be a delay by the administrative departments beyond the

aforesaid twenty or sixty days in transmitting accounts, an order of the President, or, in the event of the absence from the seat of Government or sickness of the President, an order of the Secretary of the Treasury, in the particular case, shall be necessary to authorize the advance of money requested. This section shall not apply to accounts of the postal revenue and expenditures therefrom, which shall be rendered as required by law. (July 31, 1894, ch. 174, § 12, 28 Stat. 209; Mar. 2, 1895, ch. 177, § 4, 28 Stat. 807; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

#### CROSS REFERENCE

Powers and duties of Comptroller of Treasury or the six auditors of the Treasury Department, and the Division of Bookkeeping and Warrants of the Office of the Secretary of the Treasury, are vested in General Accounting Office, by section 44 of this title.

#### § 79. Transmission of accounts of courts in Alaska to Department of Justice.

When, in the opinion of the Attorney General, it will be impossible for the accounts of any court official or other person whose accounts pertain to the United States courts in Alaska to be transmitted to the Department of Justice within the period prescribed by law, the Attorney General may modify, as he may deem proper, any requirement of law concerning the time when such accounts shall be rendered and transmitted. (Mar. 3, 1909, ch. 269, § 10, 35 Stat. 842.)

#### CROSS REFERENCE

Transfer of certain duties of Attorney General to Administrative Office of the United States Courts, see note under section 446 of Title 28, Judicial Code and Judiciary.

#### § 80. Administrative examination of accounts of Army expenditures.

The time for examination of monthly accounts, covering expenditures from appropriations for the Army, by the bureaus and offices of the War Department, after the date of actual receipt and before transmitting the same to the General Accounting Office, shall be sixty days, and in time of war may be extended to ninety days by the Comptroller General upon request of the Secretary of War. (Mar. 2, 1901, ch. 803, 31 Stat. 910; July 9, 1918, ch. 143, subch. XVIII, 40 Stat. 892; June 10, 1921, ch. 18, §§ 304, 309, 42 Stat. 24, 25.)

#### § 81. Transmission of accounts of marshals.

Accounts of United States marshals and other disbursing officers of the Department of Justice shall be transmitted to the General Accounting Office within eighty days after the date of their receipt in the Department of Justice at Washington, District of Columbia. (Mar. 4, 1907, ch. 2918, § 1, 34 Stat. 1360; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

#### TRANSFER OF FUNCTIONS

Functions relating to disbursement by United States marshals which would otherwise have become functions of Treasury Department on July 1, 1940, by virtue of Ex. Ord. No. 6166, as amended, set out in note under section 132 of Title 5, Executive Departments and Government Officers and Employees, were transferred to and vested in Department of Justice to be exercised by United States marshals under supervision of Attorney General in accordance with existing statutes pertaining to such functions, by Reorg. Plan No. IV, § 3, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1234, set out in note under section 133t of Title 5. See, also, sections 13-15 of said plan for provisions relating to transfer of functions of department heads, records, property, personnel, and funds.

**§ 82. Administrative examination of accounts.**

Except as otherwise provided, the administrative examination of all public accounts, preliminary to their audit by the General Accounting Office, shall be made as contemplated by section 78 of this title, and all vouchers and pay rolls shall be prepared and examined by and through the administrative heads of divisions and bureaus in the executive departments and not by the disbursing clerks of said departments, except those vouchers prepared outside of Washington prior to August 23, 1912, may continue to be so prepared and the disbursing officers shall make only such examination of vouchers as may be necessary to ascertain whether they represent legal claims against the United States. (Aug. 23, 1912, ch. 350, § 1, 37 Stat. 375; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

**CROSS REFERENCES**

Fiscal Service to furnish addressographed or stenciled lists of persons receiving periodic payments from United States, which lists may constitute vouchers on which Fiscal Service may make payment, notwithstanding this section, see section 82a of this title.

Procurement Division to furnish addressographed or stenciled lists of persons receiving periodic payments from United States, which lists may constitute vouchers on which Procurement Division may make payment, notwithstanding this section, see section 82a of this title.

**§ 82a. Lists of persons receiving periodic payments; vouchers.**

After May 14, 1937, the provisions of section 82 of this title shall not preclude the furnishing by the Fiscal Service, Treasury Department, at the request of administrative officers, of addressographed or stenciled lists of persons receiving periodic payments from the United States, which lists, as administratively revised and certified, if otherwise in proper form, may constitute the voucher upon which the Fiscal Service may make payment. (May 14, 1937, ch. 180, title I, 50 Stat. 140; Reorg. Plan No. III, § 1 (a), eff. June 30, 1940, 5 Fed. Reg. 2107, 54 Stat. 1231.)

**TRANSFER OF FUNCTIONS**

Division of Disbursement of Treasury Department was consolidated into Fiscal Service of Treasury Department by Reorg. Plan No. III, § 1 (a) (1), eff. June 30, 1940, cited to text, set out as note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

**§ 83. Administrative audit of accounts under Department of Justice.**

The administrative audit of all expenditures under the control of the Department of Justice shall be made in the Division of Accounts of that department. (Aug. 23, 1912, ch. 350, § 1, 37 Stat. 404.)

**CROSS REFERENCE**

Transfer of powers and duties of Department of Justice or Attorney General respecting administrative audits of accounts and vouchers, see note under section 446 of Title 28, Judicial Code and Judiciary.

**§ 84. Rendition of accounts of officers of courts.**

Before transmission to the General Accounting Office, the accounts of district attorneys, assistant attorneys, marshals, commissioners, clerks, and other officers of the courts of the United States, except consular courts, made out and approved as required by law, and accounts relating to prisoners convicted or held for trial in any court of the United States,

and all other accounts relating to the business of the Department of Justice or of the courts of the United States other than consular courts, shall be sent with their vouchers to the Attorney General and examined under his supervision. (July 31, 1894, ch. 174, § 13, 28 Stat. 210; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

**CROSS REFERENCE**

Powers and duties conferred or imposed by law upon Department of Justice or Attorney General, relating to administrative audit of accounts referred to in section 446 of Title 28, transferred to Administrative Office of the United States Courts, see act Aug. 7, 1939, ch. 501, § 5, set out as note under section 446 of Title 28, Judicial Code and Judiciary.

**§ 85. Transmission of accounts of expenditures in Territories to Secretary of the Interior.**

The accounts and vouchers relating to the expenditure of the appropriations for government in the Territories shall be transmitted to the Secretary of the Interior for administrative examination and by him passed to the General Accounting Office. (Mar. 4, 1915, ch. 141, § 1, 38 Stat. 1021; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

**§ 86. Accounts presented without administrative examination.**

In the case of claims presented to the General Accounting Office which have not had an administrative examination, the Comptroller General shall cause them to be examined by two of his subordinates independently of each other. (July 31, 1894, ch. 174, § 14, 28 Stat. 210; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

**§ 87. Papers transmitted with accounts of customs officers.**

It shall be the duty of the collectors of customs and other officers of customs to transmit, with their accounts, to the officers charged with the settlement of their accounts, all such papers, records, or copies thereof relating to their transactions as officers of customs as the Secretary of the Treasury may direct. (July 31, 1894, ch. 174, § 20, 28 Stat. 210.)

**CROSS REFERENCE**

Forms, systems, and procedure for administrative appropriation and fund accounting, and administrative examination of fiscal officer's accounts and claims against United States, to be prescribed by Comptroller General, see section 49 of this title.

**§ 88. Reexamination of disallowed claims.**

Nothing in sections 48, 50, 72, 75, 76, 78, 84, 86–88, 93, 95, 97, 103, 104, 109, 111–113, 115, 116, 147, 150, 162, 163, 496, 506, 514 of this title, sections 62, 255, 264, 267, 321, 379, 380 of Title 5, sections 31, 32, 42 of Title 19, section 94 of Title 22, sections 96, 97 of Title 25, sections 666, 667 of Title 28, section 34 of Title 39, sections 20, 21 of Title 41, sections 15, 112 of Title 42, sections 14, 32 of Title 43, section 223 of Title 44 and sections 679, 681 of Title 46 shall be construed to authorize the reexamination and payment of any claim or account which had been disallowed or settled prior to July 31, 1894. (July 31, 1894, ch. 174, § 23, 28 Stat. 211.)

**§ 89. Property returns by officers.**

Instead of forwarding to the General Accounting Office returns of public property intrusted to the possession of officers or agents, the Quartermaster General, the Surgeon General, the Chief of Engineers, the Chief of Ordnance, the Chief Signal Officer, the Paymaster General of the Navy, the Commissioner of Indian Affairs, or other like chief officers in any department, by, through, or under whom stores, supplies, and other public property are received for distribution, or whose duty it is to receive or examine returns of such property, shall certify to the General Accounting Office, for debiting on the proper account, any charge against any officer or agent intrusted with public property, arising from any loss, accruing by his fault, to the Government as to the property so intrusted to him. (Mar. 29, 1894, ch. 49, § 1, 28 Stat. 47; Aug. 24, 1912, ch. 391, § 3, 37 Stat. 591; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

**§ 90. Same; certificate as to lost property.**

The certificate required by section 89 of this title shall set forth the condition of such officer's or agent's property returns, that it includes all charges made up to its date and not previously certified, that he has had a reasonable opportunity to be heard and has not been relieved of responsibility; the effect of such certificate, when received, shall be the same as if the facts therein set forth had been ascertained by the General Accounting Office in accounting. (Mar. 29, 1894, ch. 49, § 2, 28 Stat. 47; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

**§ 91. Same; manner of making.**

The manner of making property returns to or in any administrative bureau or department, or of ascertaining liability for property, under existing laws and regulations, shall not be affected by sections 89-92 of this title, except as provided in section 89 of this title; but in all cases arising as to such property so intrusted the officer or agent shall have an opportunity to relieve himself from liability. (Mar. 29, 1894, ch. 49, § 3, 28 Stat. 47.)

**§ 92. Same; regulations.**

The heads of the several departments are hereby empowered to make and enforce regulations to carry out the provisions of sections 89-91 of this title. (Mar. 29, 1894, ch. 49, § 4, 28 Stat. 47.)

**§ 93. General Accounting Office superintending recovery of debts.**

The General Accounting Office shall superintend the recovery of all debts finally certified by it to be due to the United States. (July 31, 1894, ch. 174, § 4, 28 Stat. 206; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

**TRANSFER OF FUNCTIONS**

Functions of prosecuting in the courts claims and demands by the Government of the United States transferred to Department of Justice, see Ex. Ord. No. 6166, § 5, set out as note following section 132 of Title 5, Executive Departments and Government Officers and Employees.

**§ 94. Settlement of advance bounties.**

Any moneys paid by a paymaster in the Army to an enlisted man as an advance bounty shall be

allowed in the settlement of the accounts of the paymaster, notwithstanding the discharge of such enlisted man before serving the time required by law to entitle him to payment of such moneys. (R. S. § 280.)

**DERIVATION**

Act Mar. 3, 1863, ch. 78, § 6, 12 Stat. 743.

**§ 95. Settlement of accounts of Army officers.**

The General Accounting Office shall audit and settle the accounts of line officers of the Army, to the extent of the pay due them for their services as such, notwithstanding the inability of any such line officer to account for property intrusted to his possession, or to make his monthly reports or returns, if such office shall be satisfied by the affidavit of the officer or otherwise that the inability was caused by the officer's having been a prisoner in the hands of the enemy, or by any accident or casualty of war. (R. S. § 278; July 31, 1894, ch. 174, § 3, 28 Stat. 205; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

**DERIVATION**

Res. Mar. 29, 1867, No. 22, 15 Stat. 25.

**§ 96. Settlement of overpayments.**

Section, R. S. § 281, authorized proper accounting officers, in settling accounts of the paymasters of the Army, to allow credit for such overpayments made between April 14, 1861 and March 16, 1868 as appeared just.

**§ 97. Claims for arrears of pay and bounty already paid.**

Nothing in R. S. § 277 shall be construed to prevent the General Accounting Office from disallowing claims for arrears of pay and bounty in cases where it appears from the records and files that payment in full has already been made to the soldier himself, or to his widow or legal heirs. The action of such office shall be deemed final and conclusive and be subject to revision only by Congress or the proper courts. (July 16, 1892, ch. 196, § 1, 27 Stat. 194; July 31, 1894, ch. 174, § 7, 28 Stat. 206; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

**REFERENCES IN TEXT**

R. S. § 277, mentioned in text, was largely superseded by section 7 of act July 31, 1894, ch. 174, 28 Stat. 206. See section 72 of this title.

**§ 98. Statement of balances due for arrears of pay and bounty.**

The General Accounting Office in stating balances due for arrears of pay of two- and three-year volunteers, for bounty to volunteers and their widows and legal heirs, for bounty under the Act of July 28, 1866 (14 Stat. 322), and for amounts for commutation of rations to prisoners of war in rebel States, and to soldiers on furlough, shall follow the decisions of the United States Supreme Court or of the Court of Claims of the United States after the time for certiorari has expired, if no certiorari be taken, without regard to former settlements or adjudications by its predecessors. (Mar. 4, 1907, ch. 2918, § 1, 34 Stat. 1356; June 10, 1921, ch. 18, § 304, 42 Stat. 24; Feb. 13, 1925, ch. 229, § 3, 43 Stat. 939.)

§ 99. Affidavits and declarations in bounty cases or claims for back pay; certification of official character and signature of officer taking.

Any and all affidavits and declarations made or used in bounty cases, or in claims against the Government for back pay may be taken by any officer authorized to administer oaths for general purposes in the State, city, or county where said officer resides. If such officer has a seal and uses it upon such paper, no certificate of a county clerk, or prothonotary, or clerk of a court shall be necessary. But when declarations, affidavits, and other papers are verified by justices of the peace and other officers duly authorized by law to administer oaths for general persons,<sup>1</sup> but not required by law to have seals, the official character, signature, and term of service of such justice or other officer shall be certified by the clerk of the county or court of record or other proper officer, under the seal of such county or court or public officer, in the department or bureau in which such papers are to be used; and one such certificate duly filed in such department or bureau, shall be sufficient as to all verifications of such officer during his official term, and all papers heretofore<sup>2</sup> or hereafter filed shall be subject to this rule. (July 1, 1890, ch. 646, 26 Stat. 209; Sept. 1, 1890, No. 43, 26 Stat. 679.)

<sup>1</sup> So in original. Probably should read "purposes."

<sup>2</sup> So in original. Probably should read "heretofore."

§ 100. Claim agent withholding discharge papers.

Any claim agent, attorney, or other person engaged in the collection of claims for pay, bounty, pension, or other allowances for any soldier, sailor, or marine, or for any commissioned officer of the military or naval forces, or who may have been a soldier, sailor, marine, or officer of the regular or volunteer forces of the United States, and honorably discharged, who shall retain, without the consent of the owner or owners thereof, or shall refuse to deliver or account for the same upon demand duly made by the owner or owners thereof, or by their agent or attorney, the discharge papers or land warrant of any such soldier, sailor, or marine, or commissioned officer, which may have been placed in his hands for the purpose of collecting said claims, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by fine not exceeding \$500, or by imprisonment not exceeding six months, or both, at the discretion of the court, and shall thereafter be debarred from prosecuting any such claim in any executive department of the Government. (May 21, 1872, ch. 178, 17 Stat. 137.)

§ 101. Evidence of honorable discharge returned to officers and enlisted men.

In all cases where it has become necessary for any officer or enlisted man of the Army to file his evidence of honorable discharge from the military service of the United States, to secure the settlement of his accounts, the accounting officer with whom it has been filed shall, upon application by said officer or enlisted man, deliver to him such evidence of honorable discharge; but his accounts shall first be duly settled, and the fact, date, and amount of such settlement shall be clearly written across the face

of such evidence of honorable discharge, and attested by the signature of the accounting officer before it is delivered. (R. S. § 282.)

#### DERIVATION

Res. May 4, 1870, No. 42, 16 Stat. 374.

§ 102. Payment of claims for pay and allowances.

In the settlement of claims of officers, soldiers, sailors, and marines, or their representatives, and all other claims for pay and allowances within the jurisdiction of the Auditor for the War Department or the Auditor for the Navy Department, presented and filed in which it was the practice on June 6, 1900, to make deductions of attorneys' fees from the amount found due, no deductions of fees for attorneys or agents shall be made, but the draft, check, or warrant for the full amount found due shall be delivered to the payee in person or sent to his bona fide post-office address (residence or place of business). (June 6, 1900, ch. 791, 31 Stat. 637.)

#### CROSS REFERENCE

Receipt and examination of accounts of salaries and incidental expenses of War and Navy Departments by the General Accounting Office, see section 72, paragraphs second and fourth, of this title.

§ 103. Accounts of Departments of War and the Navy.

The General Accounting Office shall keep all accounts of all debts due to the United States on moneys advanced relative to the War and Navy Departments; shall preserve the accounts which shall have been finally adjusted, with their vouchers and certificates, and record all requisitions drawn by the Secretaries of those departments. Said office shall annually, on the first Monday in November, report to the Secretary of the Treasury the application of the money appropriated for the Department of War and the Department of the Navy, and it shall make such reports concerning the accounts of those departments as the Secretaries of those departments may deem necessary and require. (R. S. § 283; July 31, 1894, ch. 174, §§ 4, 10, 28 Stat. 205, 208; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

#### DERIVATION

Act Mar. 3, 1817, ch. 45, §§ 5, 6, 3 Stat. 367.

§ 103a. Disbursing officers of Army, Navy, and Marine Corps; designation of deputies.

When, in the opinion of the Secretary of War or the Secretary of the Navy, the exigencies of the service so require, disbursing officers of the Army, Navy, and Marine Corps may, with the approval of the head of their executive department and the consent of their surety or sureties, if any, designate deputies for the purpose of having them make disbursements as their agents, sign checks drawn against their disbursing accounts with the Treasurer of the United States, and discharge all other duties required according to law or regulation to be performed by such disbursing officers, and the agent officer shall be subject, for his official misconduct, to all liabilities and penalties prescribed by law in like cases for the officer for whom he acts as deputy: *Provided*, That every deputy so designated for a disbursing officer who is bonded shall, if not already under bond, give bond as required

by the head of the department concerned. (July 3, 1926, ch. 775, 44 Stat. 888.)

#### TRANSFER OF FUNCTIONS

Function of disbursement of moneys of United States exercised by any agency has been transferred to Division of Disbursement in Treasury Department. Division of Disbursement has been consolidated in the Fiscal Service of the Treasury Department. See Ex. Ord. No. 6166, § 4, and Reorg. Plan No. III, § 1 (a) (1), eff. June 30, 1940, 5 Fed. Reg. 2107, 54 Stat. 1231.

#### § 104. Accounts of paymasters of lost or captured public vessels.

In every case of the loss or capture of a vessel belonging to the Navy of the United States, the Comptroller General as to money accounts and the Paymaster General of the Navy as to property accounts are authorized, in the settlement of the accounts of the paymaster of such vessel, to credit him with such portion of the amount of the provisions, clothing, small stores, and money, with which he stands charged on their books, as said officers shall be satisfied was inevitably lost by such capture or loss of a public vessel; and such paymaster shall be fully exonerated by such credit from all liability on account of the provisions, clothing, small stores, and money so proved to have been captured or lost. (R. S. § 284; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 317; July 31, 1894, ch. 174, § 4, 28 Stat. 205; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

#### DERIVATION

Act Mar. 3, 1847, ch. 48, § 6, 9 Stat. 173.

#### § 105. Relief of disbursing officers of Navy.

The General Accounting Office shall relieve any disbursing officer of the Navy charged with responsibility on account of loss or deficiency while in the line of his duty, of Government funds, vouchers, records, or papers, in his charge, where such loss or deficiency occurred without fault or negligence on the part of said officer: *Provided*, That the Secretary of the Navy shall have determined that the officer was in the line of his duty, and the loss or deficiency occurred without fault or negligence on his part. The determination by the Secretary of the Navy of the aforesaid questions shall be conclusive upon the General Accounting Office: *Provided further*, That all cases of relief granted under this authority during any fiscal year shall be reported in detail to the Congress by the Secretary of the Navy. (July 11, 1919, ch. 9, 41 Stat. 132.)

#### TRANSFER OF FUNCTIONS

Transfer of function of disbursement of public money from all other agencies to Fiscal Service, see note under section 103a of this title.

#### § 106. Disbursements by order of commanding officer of Navy.

Every disbursement of public moneys, or disposal of public stores, made by a disbursing officer pursuant to an order of any commanding officer of the Navy, shall be allowed by the General Accounting Office, in the settlement of the accounts of the officer, upon satisfactory evidence of the making of such order, and of the payment of money or disposal of stores in conformity with it; and the commanding officer by whose order such disbursement or disposal

was made, shall be held accountable for the same. (R. S. § 285; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

#### DERIVATION

Res. Mar. 3, 1849, No. 17, § 2, 9 Stat. 419.

#### TRANSFER OF FUNCTIONS

Function of disbursement of public money transferred from all other agencies to the Fiscal Service, see note under section 103a of this title.

#### § 107. Settlement of expenses of intercourse with foreign nations.

Whenever any sum of money has been or shall be issued, from the Treasury, for the purposes of intercourse or treaty with foreign nations, in pursuance of any law, the President is authorized to cause the same to be duly settled annually with the General Accounting Office, by causing the same to be accounted for, specifically, if the expenditure may, in his judgment, be made public; and by making or causing the Secretary of State to make a certificate of the amount of such expenditure, as he may think it advisable not to specify; and every such certificate shall be deemed a sufficient voucher for the sum therein expressed to have been expended. (R. S. § 291; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

#### DERIVATION

Act Feb. 9, 1793, ch. 4, § 2, 1 Stat. 300.

#### § 108. Accounting by Navy Department for appropriations for obtaining information from abroad and at home.

Expenditures by the Department of the Navy from the appropriation for obtaining information from abroad and at home shall be accounted for specifically, if, in the judgment of the Secretary of the Navy, they may be made public, and he shall make a certificate of the amount of such expenditures as he may think it advisable not to specify, and every such certificate shall be deemed a sufficient voucher for the sum therein expressed to have been expended. (Aug. 29, 1916, ch. 417, 39 Stat. 557.)

#### § 109. Collection of debts due Post Office Department.

The General Accounting Office shall superintend the collection of all debts due the Post Office Department, and all penalties and forfeitures imposed for any violation of the postal laws, and take all such other measures as may be authorized by law to enforce the payment of such debts and the recovery of such penalties and forfeitures. Such office shall also superintend the collection of all penalties and forfeitures arising under other statutes, where such penalties and forfeitures are the consequence of unlawful acts affecting the revenues or property of the Post Office Department. (R. S. § 292; Mar. 3, 1875, ch. 130, § 2, 18 Stat. 397; July 31, 1894, ch. 174, § 3, 28 Stat. 205; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

#### DERIVATION

Act June 8, 1872, ch. 335, § 21, 17 Stat. 287.

#### TRANSFER OF FUNCTIONS

Transfer to Department of Justice of function of prosecuting in the courts claims and demands by the Government of the United States, see Ex. Ord. No. 6166, § 5, set out as note following section 132 of title 5, Executive Departments and Government Officers and Employees.

**§ 110. Suits on postmasters' bonds.**

All fees for United States attorneys, marshals, clerks of courts and special counsel necessarily employed in prosecuting civil suits instituted by the General Accounting Office through the Attorney General against the sureties on the official bonds of late postmasters, as provided for by section 109 of this title, shall be paid from the appropriations for expenses of the United States courts. (Feb. 26, 1896, ch. 33, 29 Stat. 25; June 10, 1921, ch. 18, § 304, 42 Stat. 24; Ex. Ord. No. 6166, § 5, June 10, 1933.)

**TRANSFER OF FUNCTIONS**

Transfer to Department of Justice of function of prosecuting in the courts claims and demands by the Government of the United States, see Ex. Ord. No. 6166, § 5, set out as note following section 132 of Title 5, Executive Departments and Government Officers and Employees.

**CROSS REFERENCE**

No fees to be charged or collected from United States, see sections 557, 578 of Title 28, Judicial Code and Judiciary.

**§ 111. Accounts of money-order business.**

The bureau of accounts in the Post Office Department shall keep the accounts of the money-order business separately, and in such manner as to show the number and amount of money orders issued at each office, the number and amount paid, the amount of fees received, and all the expenses of the money-order business. (R. S. § 293; July 31, 1894, ch. 174, § 3, 28 Stat. 205; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

**DERIVATION**

Act June 8, 1872, ch. 335, § 120, 17 Stat. 299.

**§ 112. Accounts of expenses of postmasters.**

The Bureau of Accounts shall state and certify quarterly to the Postmaster General an account of the money paid by postmasters out of the receipts of their offices, and pursuant to appropriations, on account of the expenses of the postal service; designating the heads under which such payments were made. (R. S. § 294; July 31, 1894, ch. 174, § 3, 28 Stat. 205; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

**DERIVATION**

Act June 8, 1872, ch. 335, § 52, 17 Stat. 291.

**§ 113. Accounts of expenditures of Post Office Department under appropriations.**

The Bureau of Accounts in the Post Office Department shall keep the accounts relating to the Post Office Department so as to show the expenditures of the Post Office Department under each item of appropriation provided by law. (Mar. 3, 1875, ch. 128, § 4, 18 Stat. 343; July 31, 1894, ch. 174, § 3, 28 Stat. 205; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

**§ 114. Reports of financial condition of Post Office Department.**

The annual reports of the comptroller of the Bureau of Accounts in the Post Office Department shall show the financial condition of the Post Office Department at the close of each fiscal year, and be made a part of the Postmaster General's annual report to Congress for that fiscal year. (July 12, 1876, ch. 179, § 4, 19 Stat. 80; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

**§ 115. Compromise of judgments.**

Whenever a judgment is obtained for a debt or damages due the Post Office Department, and it satisfactorily appears that such judgment, or so much thereof as remains unpaid, cannot be collected by due process of law, the Department of Justice may compromise such judgment, and accept in satisfaction less than the full amount thereof. (R. S. § 295; July 31, 1894, ch. 174, § 3, 28 Stat. 205; June 10, 1921, ch. 18, § 304, 42 Stat. 24; Ex. Ord. No. 6166, § 5, June 10, 1933.)

**DERIVATION**

Act June 8, 1872, ch. 335, § 315, 17 Stat. 325.

**TRANSFER OF FUNCTIONS**

Transfer to Department of Justice of function of decision whether to compromise case referred to that Department for prosecution or defense, see Ex. Ord. No. 6166, § 5, set out as note following section 132 of Title 5, Executive Departments and Government Officers and Employees.

**§ 116. Papers in suits for delinquencies in Post Office Department.**

In case of delinquency of any postmaster, contractor, or other officer, agent, or employee of the Post Office Department, in which suit is brought, the General Accounting Office shall forward to the Department of Justice certified copies of all papers in said office tending to sustain the claim. (R. S. § 296; July 31, 1894, ch. 174, § 3, 28 Stat. 205; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

**DERIVATION**

Act June 8, 1872, ch. 335, § 311, 17 Stat. 324.

**§ 117. Officers authorized to administer oaths.**

The proper officers of the General Accounting Office are empowered to administer oaths to witnesses in any case in which they may deem it necessary for the due examination of the accounts with which they shall be charged. (R. S. § 297; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

**DERIVATION**

Act Mar. 3, 1817, ch. 45, § 12, 3 Stat. 368; act June 8, 1872, ch. 335, § 24, 17 Stat. 288.

**§ 118. Oaths in settlements of postal accounts.**

Any mayor of a city, justice of the peace, or judge of any court of record in the United States, may administer oaths, in relation to the examination and settlement of the accounts of the Post Office Department and Postal Service. (R. S. § 298; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

**DERIVATION**

Act June 8, 1872, ch. 335, § 24, 17 Stat. 288.

**§ 119. Allowance of lost checks.**

Whenever the disbursing officer or agent by whom was issued any original check which has been lost, destroyed, or stolen, is dead, or no longer in the service of the United States, the General Accounting Office shall state an account in favor of the owner of such original check for the amount thereof, and charge such amount to the account of such officer or agent: *Provided*, That in case a check drawn by any officer or agent of the Post Office Department is lost, stolen, or destroyed a duplicate thereof may be issued under regulations prescribed by the Postmaster Gen-

eral, as set forth in section 528 of this title. (R. S. §§ 300, 3647; May 27, 1908, ch. 206, 35 Stat. 415; Feb. 23, 1909, ch. 174, 35 Stat. 644; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

#### DERIVATION

R. S. § 300 was from act Feb. 2, 1872, ch. 12, §§ 1, 2, 17 Stat. 29.

R. S. § 3647 was from act Feb. 2, 1872, ch. 12, § 2, 17 Stat. 29.

§ 120. Checks issued by Bureau of Pensions, Bureau of War Risk Insurance, and United States Veterans' Bureau, and for payment of salaries and wages; destruction; claims on, barred.

Section, act Feb. 13, 1923, ch. 72, 42 Stat. 1231, is now covered by sections 121 and 122 of this title.

§ 121. Destruction of paid United States checks and warrants.

The Secretary of the Treasury and the Comptroller General of the United States, respectively, are hereby authorized and directed to cause to be destroyed all United States Government checks and warrants issued by the Secretary of the Treasury, the Postmaster General, the Treasurer and Assistant Treasurers of the United States, or by disbursing officers and agents of the United States, eight full fiscal years prior to the date of destruction, which checks and warrants have been paid and form the paid check files of the Treasury Department and of the General Accounting Office wherever stored under their respective control, after all unpaid checks and warrants have been listed as outstanding as now required by law: *Provided*, That such checks and warrants as, in their discretion, respectively, may be deemed necessary in the public interests or the legality of the negotiation of which has been questioned in any material respect by any party in interest may be preserved: *Provided further*, That such checks as may be of historic or sentimental interest may also be preserved. (June 22, 1926, ch. 650, § 1, 44 Stat. 761.)

§ 122. Claims on paid checks and warrants; limitations.

All claims on account of any check, checks, warrant, or warrants appearing to have been paid shall be barred if not presented to the General Accounting Office within six years after the date of issuance of the check, checks, warrant, or warrants involved. (June 22, 1926, ch. 650, § 2, 44 Stat. 761.)

§ 123. Regulation of delivery in foreign countries of checks against funds of United States; prohibition in absence of assurance that payee will receive and be able to negotiate check.

Hereafter no check or warrant drawn against funds of the United States, or any agency or instrumentality thereof, shall be sent from the United States (including its Territories and possessions and the Commonwealth of the Philippine Islands) for delivery in a foreign country in any case in which the Secretary of the Treasury determines that postal, transportation, or banking facilities in general, or local conditions in the country to which such check or warrant is to be delivered, are such that there is not a reasonable assurance that the payee will actually receive such check or warrant and be able to negotiate the same for full value. (Oct. 9, 1940, ch. 796, § 1, 54 Stat. 1086.)

§ 124. Same; withholding export-prohibited checks; release; procedure resulting in deposit in special account for withheld foreign checks.

Any check or warrant, the sending of which is prohibited under the provisions of section 123 of this title, shall be held by the drawer until the close of the calendar quarter next following its date, during which period such check or warrant may be released for delivery if the Secretary of the Treasury determines that conditions have so changed as to provide a reasonable assurance that the payee will actually receive the check or warrant and be able to negotiate it for full value. At the end of such quarter, unless the Secretary of the Treasury shall otherwise direct, the drawer shall transmit all checks and warrants withheld in accordance with the provisions of sections 123-128 of this title to the drawee thereof, and forward a report stating fully the name and address of the payee; the date, number, and amount of the check or warrant; and the account against which it was drawn, to the Bureau of Accounts of the Treasury Department. The amounts of such undelivered checks and warrants so transmitted shall thereupon be transferred by the drawee from the account of the drawer to a special deposit account with the Treasurer of the United States entitled "Secretary of the Treasury, Proceeds of Withheld Foreign Checks", at which time such checks and warrants shall be marked "Paid into Withheld Foreign Check Account". Thereafter the drawee shall deliver such checks and warrants, together with other paid checks and warrants, to the Comptroller General of the United States, who shall allow credit therefor in the accounts of the drawer and the drawee.

In the case of checks representing payments under laws administered by the Veterans' Administration, when the amount transferred to the special deposit account on behalf of any individual payee equals \$1,000, the amounts of any further checks, except checks under contracts of insurance, payable to such payee under such laws shall be covered into the Treasury as miscellaneous receipts. The deposit in the special deposit account or the covering into the Treasury as miscellaneous receipts, pursuant to the provisions of this section, of the amount of any check issued under laws administered by the Veterans' Administration shall be considered for all purposes, including determinations of rights under section 516 of Title 38, as amended, as payment to the person entitled thereto. (Oct. 9, 1940, ch. 796, § 2, 54 Stat. 1086.)

§ 125. Same; payments from special deposit account for withheld foreign checks.

Payment of the amounts which have been deposited in the special deposit account in accordance with section 124 of this title shall be made by checks drawn against such special deposit account by the Secretary of the Treasury, only after the claimant shall have established his right to the amount of the check or warrant to the satisfaction of the Secretary of the Treasury (or, in the case of claims based upon checks representing payments under laws administered by the Veterans' Administration, to the satisfaction of the Administrator of Veterans' Affairs) and the Secretary of the Treasury has determined



that there is a reasonable assurance that the claimant will actually receive such check in payment of his claim and be able to negotiate the same for full value.

In the case of the death of the payee of any check in payment of pension, compensation, or emergency officers' retirement pay accruing under laws administered by the Veterans' Administration, while the amount thereof remains in the special deposit account, such amount shall, subject to the other conditions of sections 123-128 of this title, be payable as follows: (a) Upon death of the veteran, first to the widow; if there is no widow, to his child or children under the age of eighteen at his death; (b) upon death of the widow, to her children under the age of eighteen years at her death; (c) upon the death, prior to disbursement of all or any part of the apportioned amount, of an apportionee of a part of the veteran's pension, compensation, or emergency officers' retirement pay, such apportioned amount not disbursed shall be payable to the veteran; (d) in all other cases no disbursement whatsoever of such pension, compensation, or emergency officers' retirement pay shall be made or allowed except so much as may be necessary to reimburse the person who bore the expense of burial: *Provided, however,* That no disbursement shall be made unless claim therefor be filed in the Veterans' Administration within one year from the date of the death of the person entitled and perfected by the submission of the necessary evidence within six months from the date of the request of the Veterans' Administration therefor. Such benefits shall include only amounts due and unpaid at the time of death under then existing ratings or decisions. (Oct. 9, 1940, ch. 796, § 3, 54 Stat. 1087.)

§ 126. Same; application of sections 124 and 125 to checks withheld pursuant to Executive Order of Administrative action.

The provisions of sections 124 and 125 of this title shall apply to all checks or warrants the delivery of which is now being, or may hereafter be, withheld pursuant to Executive Order Numbered 8389 of April 10, 1940, as amended, as well as to all checks or warrants the delivery of which is now being withheld pursuant to administrative action, which administrative action is hereby ratified and confirmed: *Provided,* That any check or warrant the delivery of which has already been withheld for more than one quarter prior to October 9, 1940, shall be immediately delivered to the drawee thereof for disposition in accordance with the provisions of sections 124 and 125 of this title: *Provided further,* That nothing in sections 123-128 of this title shall be construed to dispense with the necessity of obtaining a license to authorize the delivery and payment of checks in payment of claims under section 125 of this title in those cases where a license is now or hereafter may be required by law to authorize such delivery and payment. (Oct. 9, 1940, ch. 796, § 4, 54 Stat. 1087.)

#### REFERENCES IN TEXT

Ex. Ord. No. 8389, mentioned in text, added sections 9-12 to Ex. Ord. No. 6560, which is set out in note under section 95 of Title 12, Banks and Banking.

§ 127. Same; rules and regulations.

The Secretary of the Treasury is hereby authorized to prescribe such rules and regulations as he in his discretion may deem necessary or proper for the administration and execution of sections 123-128 of this title. (Oct. 9, 1940, ch. 796, § 5, 54 Stat. 1087.)

§ 128. Same; checks in payment of salaries or wages or for goods purchased by United States in foreign countries.

Nothing contained in sections 123-128 of this title shall be construed as affecting or applying to checks or warrants issued in payment of salaries or wages or for goods purchased by the Government of the United States in foreign countries. (Oct. 9, 1940, ch. 796, § 6, 54 Stat. 1086.)

### Chapter 3.—THE TREASURER

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§ 141. Treasurer.

There shall be in the Department of the Treasury a Treasurer of the United States, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to a salary of \$8,000 a year. (R. S. § 301; Mar. 4, 1909, ch. 314, § 7, 35 Stat. 1065.)

#### DERIVATION

Act Sept. 2, 1789, ch. 12, § 1, 1 Stat. 65; act July 23, 1866, ch. 208, § 2, 14 Stat. 206.

#### CONSOLIDATION OF AGENCIES

Office of the Treasurer of the United States and certain other offices and agencies and their functions were consolidated into Fiscal Service of Treasury Department, the function of said office to be administered by Treasurer of the United States, by Reorg. Plan No. III, § 1 (a), eff. June 30, 1940, 5 Fed. Reg. 2107, 54 Stat. 1231, set out in note under section 138t of Title 5, Executive Departments and Government Officers and Employees. See, also, sections 8 and 9 of said plan for provisions relating to transfer of records, property, personnel, and funds.

#### CROSS REFERENCE

Compensation schedules for professional, subprofessional, and scientific services, see section 673 of Title 5, Executive Departments and Government Officers and Employees.

§ 142. Same; bond.

The Treasurer shall, before entering upon the duties of his office, give bond, with sufficient sureties, to be approved by the Secretary of the Treasury, in

the sum of \$150,000, payable to the United States, with condition for the faithful performance of the duties of his office, and for the fidelity of the persons to be by him employed, which bond shall be transmitted to the Secretary of the Treasury for filing. (R. S. § 302; Mar. 2, 1895, ch. 177, § 5, 28 Stat. 807.)

## DERIVATION

Act Sept. 2, 1789, ch. 12, § 4, 1 Stat. 66.

## § 143. Assistant Treasurer.

There shall be in the Department of the Treasury an Assistant Treasurer of the United States, who shall be appointed by the President, by and with the advice and consent of the Senate. (R. S. § 303; Mar. 4, 1923, ch. 265, 42 Stat. 1488.)

## DERIVATION

Act Mar. 3, 1863, ch. 89, § 1, 12 Stat. 761; act June 25, 1864, ch. 147, § 2, 13 Stat. 159

## § 143a. Deputy Assistant Treasurer designated Assistant Treasurer.

The title Deputy Assistant Treasurer of the United States is changed and shall hereafter be designated as Assistant Treasurer of the United States. (Apr. 9, 1926, ch. 110, 44 Stat. 237.)

## § 144. Assistant Treasurer; when may act as Treasurer; Acting Treasurer; Special Assistant Treasurer.

The Treasurer may, in his discretion, and with the consent of the Secretary of the Treasury, authorize the Assistant Treasurer to act in the place and discharge any or all of the duties of the Treasurer of the United States; and the Secretary of the Treasury may appoint from among the personnel of the Treasurer's Office any person to be Acting Treasurer during the absence or illness of both the Treasurer and Assistant Treasurer; and the Secretary of the Treasury may at any time, on the recommendation of the Treasurer, appoint from among the clerks in the Treasurer's Office any one or more of said clerks to be a Special Assistant Treasurer, with authority to sign certificates of deposit, checks, letters, telegrams, and other official documents in connection with the business of the Treasurer's Office, and who shall serve in this capacity without additional salary: *Provided, however*, That no appointments shall be made under the provisions of this section until the official bond given by the Treasurer shall be made in terms to cover and apply to the acts and defaults of every person appointed hereunder. Each person so appointed shall, moreover, for the time being, be subject to all the liabilities and penalties prescribed by law for the official misconduct in like cases of the Treasurer. (R. S. § 304; Mar. 31, 1886, ch. 41, 24 Stat. 9; Apr. 24, 1936, ch. 245, 49 Stat. 1237.)

## DERIVATION

Act Mar. 3, 1863, ch. 89, § 1, 12 Stat. 761.

## § 145. Transfer and appointment of employees detailed to office of Treasurer.

Section, act July 16, 1914, ch. 141, § 1, 38 Stat. 471, authorized appointment of such employees in office of Treasurer of United States as were employed under details in said office on July 16, 1914.

## § 146. Divisions of Issue and of Redemption.

There shall be in the Treasury Department, as a part of the office of the Treasurer of the United States, divisions to be designated and known as the Division of Issue and the Division of Redemption, to which shall be assigned, respectively, under such regulations as the Secretary of the Treasury may approve, all records and accounts relating to the issue and redemption of United States notes, gold certificates, silver certificates, and currency certificates. There shall be transferred from the accounts of the general fund of the Treasury of the United States, and taken up on the books of said divisions, respectively, accounts relating to the reserve fund for the redemption of United States notes and Treasury notes, the gold coin held against outstanding gold certificates, the United States notes held against outstanding currency certificates, and the silver dollars held against outstanding silver certificates, and each of the funds represented by these accounts shall be used for the redemption of the notes and certificates for which they are respectively pledged, and shall be used for no other purpose, the same being held as trust funds. (Mar. 14, 1900, ch. 41, § 4, 31 Stat. 46.)

## § 147. Treasurer; duties.

The Treasurer shall receive and keep the moneys of the United States, and disburse the same upon warrants drawn by the Secretary of the Treasury, countersigned in the General Accounting Office, and not otherwise. He shall take receipts for all moneys paid by him, and shall give receipts for all moneys received by him; and all receipts for moneys received by him shall be indorsed upon warrants signed by the Secretary of the Treasury, without which warrant, so signed, no acknowledgment for money received into the public Treasury shall be valid. He shall render his accounts to the General Accounting Office quarterly, or oftener if required, and shall transmit a copy thereof, when settled, to the Secretary of the Treasury. He shall at all times submit to the Secretary of the Treasury and the General Accounting Office, or either of them, the inspection of the moneys in his hands. (R. S. § 305; July 31, 1894, ch. 174, §§ 4, 11, 28 Stat. 205, 209; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

## DERIVATION

Act Sept. 2, 1789, ch. 12, § 4, 1 Stat. 65.

## § 148. Same; payment of salaries of Senators, Members, and officers of Congress.

Whenever any appropriation made for the payment of the salaries of Senators, Members, and Delegates in Congress, or the officers and employees of both or either of the Houses thereof, or for the expenses of the same, or any committees thereof, cannot be lawfully disbursed by or through the officers specially charged with such disbursements, such disbursements may be made for the purposes named in said appropriations by the Treasurer of the United States, who shall take proper vouchers therefor and charge such disbursements against such appropriations; and the accounts therefor shall be audited and passed or rejected, as the law may require, in the same manner that similar accounts are or may be

required by law to be audited and passed or rejected. (June 22, 1882, ch. 236, 22 Stat. 108.)

#### CROSS REFERENCE

Senate Finance Clerk to be successor of Secretary of Senate as disbursing officer, in event of his death, resignation, or disability, see section 64a of Title 2, The Congress.

#### § 149. Liabilities outstanding three or more years.

At the termination of each fiscal year all amounts of moneys that are represented by certificates, drafts, or checks, issued by the Treasurer, or by any disbursing officer of any department of the Government, upon the Treasurer or designated depository of the United States, or upon any national bank designated as a depository of the United States, and which shall be represented on the books of either of such offices as standing to the credit of any disbursing officer, and which were issued to facilitate the payment of warrants, or for any other purpose in liquidation of a debt due from the United States, and which have for three years or more remained outstanding, unsatisfied, and unpaid, shall be deposited by the Treasurer, to be covered into the Treasury by warrant, and to be carried to the credit of the parties in whose favor such certificates, drafts, or checks were respectively issued, or to the persons who are entitled to receive pay therefor, and into an appropriation account to be denominated "outstanding liabilities." (R. S. § 306; May 29, 1920, ch. 214, § 1, 41 Stat. 654.)

#### DERIVATION

Act May 2, 1866, ch. 70, §§ 1, 4, 14 Stat. 41, 42.

#### CROSS REFERENCE

Provisions of Permanent Appropriation Repeal Act concerning unpaid checks, see section 725t of this title.

#### § 150. Vouchers for drafts remaining unpaid.

The certificate of the Secretary of the Treasury, stating that the amount of any draft issued by the Treasurer, to facilitate the payment of a warrant directed to him for payment, has remained outstanding and unpaid for three years or more, and has been deposited and covered into the Treasury in the manner prescribed by section 149 of this title, shall be, when attached to any such warrant, a sufficient voucher in satisfaction of any such warrant or part of any warrant, the same as if the drafts correctly indorsed and fully satisfied were attached to such warrant or part of warrant. And all such moneys mentioned in this and in section 149 of this title shall remain as a permanent appropriation for the redemption and payment of all such outstanding and unpaid certificates, drafts, and checks. (R. S. § 307; July 31, 1894, ch. 174, § 16, 28 Stat. 210.)

#### DERIVATION

Act May 2, 1866, ch. 70, § 2, 14 Stat. 41.

#### CROSS REFERENCE

Provisions of Permanent Appropriation Repeal Act concerning unpaid checks, see section 725t of this title.

#### § 151. Payment upon presentation of outstanding drafts.

The payee or the bona fide holder of any draft or check the amount of which has been deposited and covered into the Treasury pursuant to sections

149 and 150 of this title, shall, on presenting the same to the proper officer of the Treasury, be entitled to have it paid by the settlement of an account in the General Accounting Office and the issuing of a warrant in his favor, according to the practice in other cases of authorized and liquidated claims against the United States. (R. S. §§ 236, 308; June 10, 1921, ch. 18, § 305, 42 Stat. 24.)

#### DERIVATION

R. S. § 236 was from act Mar. 3, 1817, ch. 45, 2 Stat. 366.  
R. S. § 308 was from act May 2, 1866, ch. 70, § 3, 14 Stat. 42.

#### CODIFICATION

Section is from R. S. § 308, cited to text. Act June 10, 1921, amended R. S. § 236, both cited to text, to provide for the settlement and adjustment of all Government accounts in the General Accounting Office, and is authority for the insertion in this section of the words "in the General Accounting Office."

#### CROSS REFERENCE

Provisions of Permanent Appropriation Repeal Act concerning unpaid checks, see section 725t of this title.

#### § 152. Accounts of disbursing officers unchanged for three years.

The amounts, except such as are provided for in section 149 of this title, of the accounts of every kind of disbursing officer, which shall have remained unchanged, or which shall not have been increased by any new deposit thereto, nor decreased by drafts drawn thereon, for the space of three years, shall in like manner be covered into the Treasury, to the proper appropriation to which they belong; and the amounts thereof shall, on the certificate of the Treasurer that such amount has been deposited in the Treasury, be credited by the General Accounting Office on the books of the department or establishment, to the officer in whose name it had stood on the books of the General Accounting Office for such department or establishment, if it appears that he is entitled to such credit. (R. S. §§ 236, 309; June 10, 1921, ch. 18, §§ 305, 309, 42 Stat. 24, 25.)

#### DERIVATION

R. S. § 236 was from act Mar. 3, 1817, ch. 45, 2 Stat. 366.  
R. S. § 309 was from act May 2, 1866, ch. 70, § 5, 14 Stat. 42.

#### CODIFICATION

Section is from R. S. § 309, cited to text. Act June 10, 1921, section 305 of which amended R. S. § 236, all cited to text, contained provisions relating to the General Accounting Office, and is authority for the substitution in this section of the words "General Accounting Office" at their first occurrence for "proper accounting officer of the Department of the Treasury"; the substitution of the words "department or establishment" at their first occurrence for "Department"; and the substitution of "the General Accounting Office for such department or establishment" for "any agency of the Treasury."

#### § 153. Reports of Treasurer and depositaries.

The Treasurer, each designated depository of the United States, and the cashier of each of the national banks designated as such depositaries, shall, at the close of business on every 30th day of June, report to the Secretary of the Treasury the condition of every account standing, as in section 152 of this title specified, on the books of their respective offices, stating the name of each depositor, with his official designation, the total amount remaining on deposit to his credit, and the dates, respectively, of the last

credit and the last debit made to each account. (R. S. § 310; July 1, 1916, ch. 209, § 5, 39 Stat. 336; May 29, 1920, ch. 214, § 1, 41 Stat. 654.)

#### DERIVATION

Act May 2, 1866, ch. 70, § 6, 14 Stat. 42.

### § 154. Reports of unpaid checks by General Accounting Office.

At the termination of each fiscal year the General Accounting Office shall report to the Secretary of the Treasury all checks issued by any disbursing officer of the Government as shown by his accounts rendered to the General Accounting Office, which shall then have been outstanding and unpaid for three years or more, stating fully in such report the name of the payee, for what purpose each check was given, the office on which drawn, the number of the voucher received therefor, the date, the number, and the amount for which it was drawn, and, when known, the residence of the payee. (July 1, 1916, ch. 209, § 5, 39 Stat. 336; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

### § 155. Restrictions upon Treasurer.

No person appointed to the office of Treasurer shall directly or indirectly be concerned or interested in carrying on the business of trade or commerce, or be owner in whole or in part of any sea vessel, or purchase by himself, or another in trust for him, any public lands or other public property, or be concerned in the purchase or disposal of any public securities of any State, or of the United States, or take or apply to his own use any emolument or gain for negotiating or transacting any business in the Treasury Department, other than what shall be allowed by law; and every person who offends against any of the prohibitions of this section shall be deemed guilty of a high misdemeanor and forfeit to the United States the penalty of \$3,000, and shall upon conviction be removed from office, and forever thereafter be incapable of holding any office under the United States; and if any other person than a public prosecutor shall give information of any such offense, upon which a prosecution and conviction shall be had, one-half the aforesaid penalty of \$3,000, when recovered, shall be for the use of the person giving such information. (R. S. § 243; July 31, 1894, ch. 174, §§ 3, 4, 28 Stat. 205; June 10, 1921, ch. 18, §§ 301, 310, 42 Stat. 23, 25.)

#### DERIVATION

Act Sept. 2, 1789, ch. 12, § 8, 1 Stat. 67.

## Chapter 4.—THE REGISTER

Sec.

- 161. Register.
- 162. Same; duties.
- 163. Restrictions upon register.
- 164. Assistant register.
- 165. Same; duties.
- 166. Temporary acting assistant register.

### § 161. Register.

There shall be in the Bureau of the Public Debt of the Fiscal Service in the Department of the Treasury a Register of the Treasury, who shall be appointed by the President, by and with the advice and consent of the Senate. (R. S. § 312; Mar. 4, 1923, ch. 265, 42 Stat. 1488; Reorg. Plan No. III, § 1

(a) (1) (4), eff. June 30, 1940, 4 Fed. Reg. 2107, 54 Stat. 1231.)

#### DERIVATION

Act Sept. 2, 1789, ch. 12, § 1, 1 Stat. 65; act May 8, 1872, ch. 140, § 13, 17 Stat. 85.

### § 162. Same; duties.

The duties of the Register of the Treasury shall be such as are required of him in connection with the public debt and such further duties as may be prescribed by the Secretary of the Treasury. (July 31, 1894, ch. 174, § 10, 28 Stat. 208.)

### § 163. Restrictions upon register.

No person appointed to the office of Register of the Treasury shall directly or indirectly be concerned or interested in carrying on the business of trade or commerce, or be owner in whole or in part of any sea vessel, or purchase by himself, or another in trust for him, any public lands or other public property, or be concerned in the purchase or disposal of any public securities of any State, or of the United States, or take or apply to his own use any emolument or gain for negotiating or transacting any business in the Treasury Department, other than what shall be allowed by law; and every person who offends against any of the prohibitions of this section shall be deemed guilty of a high misdemeanor and forfeit to the United States the penalty of \$3,000, and shall upon conviction be removed from office, and forever thereafter be incapable of holding any office under the United States; and if any other person than a public prosecutor shall give information of any such offense, upon which a prosecution and conviction shall be had, one-half the aforesaid penalty of \$3,000, when recovered, shall be for the use of the person giving such information. (R. S. § 243; July 31, 1894, ch. 174, §§ 3, 4, 28 Stat. 205; June 10, 1921, ch. 18, §§ 301, 310, 42 Stat. 23, 25.)

#### DERIVATION

Act Sept. 2, 1789, ch. 12, § 8, 1 Stat. 67.

### § 164. Assistant register.

There shall be in the office of the Register of the Treasury an assistant register, who shall be appointed by the President, by and with the advice and consent of the Senate. (R. S. § 314; Mar. 4, 1923, ch. 265, 42 Stat. 1488.)

#### DERIVATION

Act Feb. 20, 1863, ch. 44, § 1, 12 Stat. 656; act Mar. 14, 1864, ch. 30, § 7, 13 Stat. 28.

### § 165. Same; duties.

The assistant register shall perform such duties as may be devolved on him by the register, and, in the absence of the register, shall act in his stead; and any official record, certificate, or other document, excepting warrants, bonds, and drafts, signed by the assistant register, shall have the same effect as if signed by the register. (R. S. § 315.)

#### DERIVATION

Act Feb. 20, 1863, ch. 44, § 2, 12 Stat. 656.

### § 166. Temporary acting assistant register.

During the absence of the Register of the Treasury, and while the assistant register is discharging, under

required by law to be audited and passed or rejected. (June 22, 1882, ch. 236, 22 Stat. 108.)

#### CROSS REFERENCE

Senate Finance Clerk to be successor of Secretary of Senate as disbursing officer, in event of his death, resignation, or disability, see section 64a of Title 2, The Congress.

#### § 149. Liabilities outstanding three or more years.

At the termination of each fiscal year all amounts of moneys that are represented by certificates, drafts, or checks, issued by the Treasurer, or by any disbursing officer of any department of the Government, upon the Treasurer or designated depository of the United States, or upon any national bank designated as a depository of the United States, and which shall be represented on the books of either of such offices as standing to the credit of any disbursing officer, and which were issued to facilitate the payment of warrants, or for any other purpose in liquidation of a debt due from the United States, and which have for three years or more remained outstanding, unsatisfied, and unpaid, shall be deposited by the Treasurer, to be covered into the Treasury by warrant, and to be carried to the credit of the parties in whose favor such certificates, drafts, or checks were respectively issued, or to the persons who are entitled to receive pay therefor, and into an appropriation account to be denominated "outstanding liabilities." (R. S. § 306; May 29, 1920, ch. 214, § 1, 41 Stat. 654.)

#### DERIVATION

Act May 2, 1866, ch. 70, §§ 1, 4, 14 Stat. 41, 42.

#### CROSS REFERENCE

Provisions of Permanent Appropriation Repeal Act concerning unpaid checks, see section 725t of this title.

#### § 150. Vouchers for drafts remaining unpaid.

The certificate of the Secretary of the Treasury, stating that the amount of any draft issued by the Treasurer, to facilitate the payment of a warrant directed to him for payment, has remained outstanding and unpaid for three years or more, and has been deposited and covered into the Treasury in the manner prescribed by section 149 of this title, shall be, when attached to any such warrant, a sufficient voucher in satisfaction of any such warrant or part of any warrant, the same as if the drafts correctly indorsed and fully satisfied were attached to such warrant or part of warrant. And all such moneys mentioned in this and in section 149 of this title shall remain as a permanent appropriation for the redemption and payment of all such outstanding and unpaid certificates, drafts, and checks. (R. S. § 307; July 31, 1894, ch. 174, § 16, 28 Stat. 210.)

#### DERIVATION

Act May 2, 1866, ch. 70, § 2, 14 Stat. 41.

#### CROSS REFERENCE

Provisions of Permanent Appropriation Repeal Act concerning unpaid checks, see section 725t of this title.

#### § 151. Payment upon presentation of outstanding drafts.

The payee or the bona fide holder of any draft or check the amount of which has been deposited and covered into the Treasury pursuant to sections

149 and 150 of this title, shall, on presenting the same to the proper officer of the Treasury, be entitled to have it paid by the settlement of an account in the General Accounting Office and the issuing of a warrant in his favor, according to the practice in other cases of authorized and liquidated claims against the United States. (R. S. §§ 236, 308; June 10, 1921, ch. 18, § 305, 42 Stat. 24.)

#### DERIVATION

R. S. § 236 was from act Mar. 3, 1817, ch. 45, 2 Stat. 366.  
R. S. § 308 was from act May 2, 1866, ch. 70, § 3, 14 Stat. 42.

#### CODIFICATION

Section is from R. S. § 308, cited to text. Act June 10, 1921, amended R. S. § 236, both cited to text, to provide for the settlement and adjustment of all Government accounts in the General Accounting Office, and is authority for the insertion in this section of the words "in the General Accounting Office."

#### CROSS REFERENCE

Provisions of Permanent Appropriation Repeal Act concerning unpaid checks, see section 725t of this title.

#### § 152. Accounts of disbursing officers unchanged for three years.

The amounts, except such as are provided for in section 149 of this title, of the accounts of every kind of disbursing officer, which shall have remained unchanged, or which shall not have been increased by any new deposit thereto, nor decreased by drafts drawn thereon, for the space of three years, shall in like manner be covered into the Treasury, to the proper appropriation to which they belong; and the amounts thereof shall, on the certificate of the Treasurer that such amount has been deposited in the Treasury, be credited by the General Accounting Office on the books of the department or establishment, to the officer in whose name it had stood on the books of the General Accounting Office for such department or establishment, if it appears that he is entitled to such credit. (R. S. §§ 236, 309; June 10, 1921, ch. 18, §§ 305, 309, 42 Stat. 24, 25.)

#### DERIVATION

R. S. § 236 was from act Mar. 3, 1817, ch. 45, 2 Stat. 366.  
R. S. § 309 was from act May 2, 1866, ch. 70, § 5, 14 Stat. 42.

#### CODIFICATION

Section is from R. S. § 309, cited to text. Act June 10, 1921, section 305 of which amended R. S. § 236, all cited to text, contained provisions relating to the General Accounting Office, and is authority for the substitution in this section of the words "General Accounting Office" at their first occurrence for "proper accounting officer of the Department of the Treasury"; the substitution of the words "department or establishment" at their first occurrence for "Department"; and the substitution of "the General Accounting Office for such department or establishment" for "any agency of the Treasury."

#### § 153. Reports of Treasurer and depositaries.

The Treasurer, each designated depository of the United States, and the cashier of each of the national banks designated as such depositaries, shall, at the close of business on every 30th day of June, report to the Secretary of the Treasury the condition of every account standing, as in section 152 of this title specified, on the books of their respective offices, stating the name of each depositor, with his official designation, the total amount remaining on deposit to his credit, and the dates, respectively, of the last

credit and the last debit made to each account. (R. S. § 310; July 1, 1916, ch. 209, § 5, 39 Stat. 336; May 29, 1920, ch. 214, § 1, 41 Stat. 654.)

#### DERIVATION

Act May 2, 1866, ch. 70, § 6, 14 Stat. 42.

### § 154. Reports of unpaid checks by General Accounting Office.

At the termination of each fiscal year the General Accounting Office shall report to the Secretary of the Treasury all checks issued by any disbursing officer of the Government as shown by his accounts rendered to the General Accounting Office, which shall then have been outstanding and unpaid for three years or more, stating fully in such report the name of the payee, for what purpose each check was given, the office on which drawn, the number of the voucher received therefor, the date, the number, and the amount for which it was drawn, and, when known, the residence of the payee. (July 1, 1916, ch. 209, § 5, 39 Stat. 336; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

### § 155. Restrictions upon Treasurer.

No person appointed to the office of Treasurer shall directly or indirectly be concerned or interested in carrying on the business of trade or commerce, or be owner in whole or in part of any sea vessel, or purchase by himself, or another in trust for him, any public lands or other public property, or be concerned in the purchase or disposal of any public securities of any State, or of the United States, or take or apply to his own use any emolument or gain for negotiating or transacting any business in the Treasury Department, other than what shall be allowed by law; and every person who offends against any of the prohibitions of this section shall be deemed guilty of a high misdemeanor and forfeit to the United States the penalty of \$3,000, and shall upon conviction be removed from office, and forever thereafter be incapable of holding any office under the United States; and if any other person than a public prosecutor shall give information of any such offense, upon which a prosecution and conviction shall be had, one-half the aforesaid penalty of \$3,000, when recovered, shall be for the use of the person giving such information. (R. S. § 243; July 31, 1894, ch. 174, §§ 3, 4, 28 Stat. 205; June 10, 1921, ch. 18, §§ 301, 310, 42 Stat. 23, 25.)

#### DERIVATION

Act Sept. 2, 1789, ch. 12, § 8, 1 Stat. 67.

## Chapter 4.—THE REGISTER

#### Sec.

- 161. Register.
- 162. Same; duties.
- 163. Restrictions upon register.
- 164. Assistant register.
- 165. Same; duties.
- 166. Temporary acting assistant register.

### § 161. Register.

There shall be in the Bureau of the Public Debt of the Fiscal Service in the Department of the Treasury a Register of the Treasury, who shall be appointed by the President, by and with the advice and consent of the Senate. (R. S. § 312; Mar. 4, 1923, ch. 265, 42 Stat. 1488; Reorg. Plan No. III, § 1

(a) (1) (4), eff. June 30, 1940, 4 Fed. Reg. 2107, 54 Stat. 1231.)

#### DERIVATION

Act Sept. 2, 1789, ch. 12, § 1, 1 Stat. 65; act May 8, 1872, ch. 140, § 13, 17 Stat. 85.

### § 162. Same; duties.

The duties of the Register of the Treasury shall be such as are required of him in connection with the public debt and such further duties as may be prescribed by the Secretary of the Treasury. (July 31, 1894, ch. 174, § 10, 28 Stat. 208.)

### § 163. Restrictions upon register.

No person appointed to the office of Register of the Treasury shall directly or indirectly be concerned or interested in carrying on the business of trade or commerce, or be owner in whole or in part of any sea vessel, or purchase by himself, or another in trust for him, any public lands or other public property, or be concerned in the purchase or disposal of any public securities of any State, or of the United States, or take or apply to his own use any emolument or gain for negotiating or transacting any business in the Treasury Department, other than what shall be allowed by law; and every person who offends against any of the prohibitions of this section shall be deemed guilty of a high misdemeanor and forfeit to the United States the penalty of \$3,000, and shall upon conviction be removed from office, and forever thereafter be incapable of holding any office under the United States; and if any other person than a public prosecutor shall give information of any such offense, upon which a prosecution and conviction shall be had, one-half the aforesaid penalty of \$3,000, when recovered, shall be for the use of the person giving such information. (R. S. § 243; July 31, 1894, ch. 174, §§ 3, 4, 28 Stat. 205; June 10, 1921, ch. 18, §§ 301, 310, 42 Stat. 23, 25.)

#### DERIVATION

Act Sept. 2, 1789, ch. 12, § 8, 1 Stat. 67.

### § 164. Assistant register.

There shall be in the office of the Register of the Treasury an assistant register, who shall be appointed by the President, by and with the advice and consent of the Senate. (R. S. § 314; Mar. 4, 1923, ch. 265, 42 Stat. 1488.)

#### DERIVATION

Act Feb. 20, 1863, ch. 44, § 1, 12 Stat. 656; act Mar. 14, 1864, ch. 30, § 7, 13 Stat. 28.

### § 165. Same; duties.

The assistant register shall perform such duties as may be devolved on him by the register, and, in the absence of the register, shall act in his stead; and any official record, certificate, or other document, excepting warrants, bonds, and drafts, signed by the assistant register, shall have the same effect as if signed by the register. (R. S. § 315.)

#### DERIVATION

Act Feb. 20, 1863, ch. 44, § 2, 12 Stat. 656.

### § 166. Temporary acting assistant register.

During the absence of the Register of the Treasury, and while the assistant register is discharging, under

the law, the duties of register during his said absence, the Secretary of the Treasury may, by appointment under his hand and seal, delegate authority to any chief of division or clerk in the office of register to act as assistant register during the said absence of the register. (Dec. 13, 1892, No. 1, 27 Stat. 752.)

#### Chapter 5.—THE BUREAU OF ENGRAVING AND PRINTING

##### Sec.

- 171. Powers of and reports by director.
- 172. Leaves of absence to employees.
- 173. Same.
- 174. Impressions of portraits.
- 175. Engraved plates of portraits of deceased Senators and Representatives.
- 176. Disposition of receipts for miscellaneous work.
- 177. Bonds, notes, and checks; printing on presses and power presses directed by Secretary of Treasury; internal revenue stamps.
- 178. Appropriations for Bureau of Engraving and Printing.
- 179. Limitation on expenditure of funds.

##### § 171. Powers of and reports by director.

All the business of the Bureau of Engraving and Printing shall be under the immediate control of the director of said bureau, subject to the direction of the Secretary of the Treasury, and the director of the said bureau shall report to and be responsible directly to the Secretary of the Treasury. (June 4, 1897, ch. 2, § 1, 30 Stat. 18.)

##### § 172. Leaves of absence to employees.

The employees of the Bureau of Engraving and Printing, including the pieceworkers, shall be allowed leave of absence with pay, not exceeding thirty days in any one year, under such regulations and at such time or times as the director of the bureau, with the approval of the Secretary of the Treasury, may prescribe and designate: *Provided*, That the length of the leave of absence of any employee of said bureau doing piecework, and the pay during such leave of absence, shall be determined by the average amount of work done by such person and the pay therefor during the several months of the year. (July 6, 1892, ch. 154, 27 Stat. 87; June 4, 1897, ch. 2, § 1, 30 Stat. 18.)

##### CROSS REFERENCE

Annual leave of Government employees generally, see sections 30 and 30b of Title 5, Executive Departments and Government Officers and Employees.

##### § 173. Same.

The compositors and pressmen employed in the wards division of the Bureau of Engraving and Printing shall be allowed leave of absence with pay not exceeding thirty days in any one year, or a pro rata portion thereof for a less time than one year, under such regulations and such time or times as the director of the bureau, with the approval of the Secretary of the Treasury, may prescribe and designate, and in conformity with section 172 of this title. (June 8, 1896, ch. 373, 29 Stat. 275; June 4, 1897, ch. 2, § 1, 30 Stat. 18.)

##### CROSS REFERENCE

Annual leave of Government employees generally, see sections 30 and 30b of Title 5, Executive Departments and Government Officers and Employees.

##### § 174. Impressions of portraits.

The Secretary of the Treasury, at the request of a Senator, Representative, or Delegate in Congress, the head of a department or bureau, art association, or library, may furnish impressions from any portrait or vignette which is now, or may be a part of the engraved stock of the Bureau of Engraving and Printing, at such rates and under such conditions as he may deem necessary to protect the public interests. (Dec. 22, 1879, ch. 2, 21 Stat. 59.)

##### § 175. Engraved plates of portraits of deceased Senators and Representatives.

The Secretary of the Treasury may deliver the engraved plates of portraits that have been or may be made of deceased Senators and Representatives in Congress, to their heirs or legal representatives on such terms and conditions as he may determine. (July 1, 1916, ch. 209, § 1, 39 Stat. 275.)

##### § 176. Disposition of receipts for miscellaneous work.

Receipts for miscellaneous work authorized by law to be performed by the Bureau of Engraving and Printing for the several departments of the Government, and the amounts properly chargeable to national banks for engraving their plates shall be deposited, and covered into the Treasury as miscellaneous receipts except as otherwise provided by law. (Aug. 4, 1886, ch. 902, § 1, 24 Stat. 227.)

##### § 177. Bonds, notes, and checks; printing on presses and power presses directed by Secretary of Treasury; internal revenue stamps.

Checks, the backs and tints of all United States bonds, the backs and tints of all United States paper money, and the backs and tints of bonds and paper money issued by any of the insular possessions of the United States, shall be printed from intaglio plates and on such plate printing presses as may be directed by the Secretary of the Treasury, said presses to be operated by plate printers, except that checks and tints may be printed by any desired process: *Provided*, That the Secretary of the Treasury is authorized to print from plates of more than four subjects each upon power presses the fronts and backs of any paper money, bonds, or other printed matter on or after January 3, 1923, authorized to be executed at the Bureau of Engraving and Printing: *Provided further*, That the Secretary of the Treasury may, in his discretion, apply motors to hand-roller presses that were on August 24, 1912, or thereafter operated in the Bureau of Engraving and Printing, but such presses, if equipped with motors, shall be regarded as hand-roller presses within the meaning of this section. (Aug. 24, 1912, ch. 355, § 1, 37 Stat. 430; Jan. 3, 1923, ch. 22, 42 Stat. 1099.)

##### § 178. Appropriations for Bureau of Engraving and Printing.

The appropriations made for all expenditures of the Bureau of Engraving and Printing shall be used in the manner in which appropriations for said bureau were used June 4, 1897, and no part of said appropriations shall be held to be contingent expenses of the Treasury Department, nor be subject to the provisions of sections 258 of Title 5 and 675 of this title. (June 4, 1897, ch. 2, § 1, 30 Stat. 18.)



### § 179. Limitation on expenditure of funds.

Section, act Mar. 3, 1921, ch. 124, § 1, 41 Stat. 1271, provided for the payment of salaries in the Bureau of Engraving under emergency conditions and related to appropriations authorized for the fiscal year of its enactment.

## Chapter 6.—DEBTS DUE BY, OR TO, THE UNITED STATES

- Sec.
- 191. Priority established.
  - 192. Liability of fiduciaries.
  - 193. Priority of sureties.
  - 194. Compromise
  - 195. Purchase on execution.
  - 196. Discharge of poor debtor; by Secretary of the Treasury.
  - 197. Same; by President.
  - 198. Debts to the United States; in what currency to be paid.
  - 199. Same; what coin receivable
  - 201. Debts of United States; national bank notes receivable for.
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  - 204. Oath by person prosecuting claims.
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  - 209. Payment for property lost while in military service.
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  - 212. Payment to guardian for horse lost by minor in military service.
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  - 215. Settlement of claims not exceeding \$1,000; certification of amounts found due to Congress; time for presentation.
  - 216. Same; definitions.
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  - 218. Settlement of claims for loss of property in military service.
  - 219. Same; extent of liability.
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  - 223. Settlement of claims for loss or damage to private property from operations, etc., of Army.
  - 224. Settlement of claims for damages from operation of aircraft.
  - 224a. Settlement of claims for personal injury or death in foreign countries.
  - 224b. Same; claims against officers and agents for damages.
  - 224c. Adjustment and settlement of certain claims for damages to person or property by Postmaster General.
  - 225. Judgments of Court of Claims; payment.
  - 226. Same; certified by Secretary of Treasury; interest.
  - 227. Offsets against judgments against United States.
  - 228. Payment of judgments against United States made on settlements by General Accounting Office.
  - 229. Private claims pending before Congress; taking of testimony.
  - 230. Same; subpoena for taking testimony; compensation of officers and witnesses; return of depositions.
  - 231. Liability of persons making false claims.
  - 232. Same; suits.
  - 233. Duty of district attorney as to such cases.
  - 234. Rights of persons presenting such suits.
  - 235. Limitation of suit.
  - 236. Meritorious claims against United States not subject to lawful adjustment; submission to Congress by Comptroller General.
  - 237. Same; limitation of time on claims and demands.

### § 191. Priority established.

Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed. (R. S. § 3466.)

#### DERIVATION

Act Mar. 3, 1797, ch. 20, § 5, 1 Stat. 515; act Mar. 2, 1799, ch. 22, § 65, 1 Stat. 676.

### § 192. Liability of fiduciaries.

Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid. (R. S. § 3467; May 10, 1934, 11:40 a. m., ch. 277, § 518 (a), 48 Stat. 760.)

#### DERIVATION

Act Mar. 2, 1799, ch. 22, § 65, 1 Stat. 676.

### § 193. Priority of sureties.

Whenever the principal in any bond given to the United States is insolvent, or whenever, such principal being deceased, his estate and effects which come to the hands of his executor, administrator, or assignee, are insufficient for the payment of his debts, and, in either of such cases, any surety on the bond, or the executor, administrator, or assignee of such surety pays to the United States the money due upon such bond, such surety, his executor, administrator, or assignee, shall have the like priority for the recovery and receipt of the moneys out of the estate and effects of such insolvent or deceased principal as is secured to the United States; and may bring and maintain a suit upon the bond, in law or equity, in his own name, for the recovery of all moneys paid thereon. (R. S. § 3468.)

#### DERIVATION

Act. Mar. 2, 1799, ch. 22, § 65, 1 Stat. 676.

### § 194. Compromise.

Upon a report by a district attorney, or any special attorney or agent having charge of any claim in favor of the United States, showing in detail the condition of such claim, and the terms upon which the same may be compromised, and recommending that it be compromised upon the terms so offered, the Department of Justice is authorized to compromise such claim accordingly. But the provisions of this section shall not apply to any claim arising under the postal laws. (R. S. § 3469; Ex. Ord. No. 6166, § 5, June 10, 1933.)

#### DERIVATION

Act Mar. 3, 1863, ch. 76, § 10, 12 Stat. 740.

## TRANSFER OF FUNCTIONS

Function of prosecuting claims and demands by, and offenses against, the United States, and of defending claims and demands against the United States, now exercised by any agency or officer was transferred to the Department of Justice by Ex. Ord. No. 6166, § 5, set out as note under section 132 of Title 5, Executive Departments and Government Officers and Employees.

## § 195. Purchase on execution.

At every sale, on execution, at the suit of the United States, of lands or tenements of a debtor, the United States may, by such agent as the General Counsel for the Department of the Treasury shall appoint, become the purchaser thereof; but in no case shall the agent bid in behalf of the United States a greater amount than that of the judgment for which such estate may be exposed to sale, and the costs. Whenever such purchase is made, the marshal of the district in which the sale is held shall make all needful conveyances, assignments, or transfers to the United States. (R. S. § 3470; May 10, 1934, 11:40 a. m., ch. 277, § 512, 48 Stat. 758.)

## DERIVATION

Act May 26, 1824, ch. 172, § 2, 4 Stat. 51.

## FEDERAL RULES OF CIVIL PROCEDURE

Execution, see Rule 69, following section 723c of Title 28, Judicial Code and Judiciary.

Effect of Rule 69 on this section, see note by Advisory Committee under said Rule 69.

## § 196. Discharge of poor debtor; by Secretary of the Treasury.

Any person imprisoned upon execution issuing from any court of the United States, for a debt due to the United States, which he is unable to pay, may, at any time after commitment, make application, in writing, to the Secretary of the Treasury, stating the circumstances of his case, and his inability to discharge the debt; and thereupon the Secretary may make, or require to be made, an examination and inquiry into the circumstances of the debtor, by the oath of the debtor, which the Secretary, or any other person by him specially appointed, is authorized to administer, or otherwise, as the Secretary shall deem necessary and expedient, to ascertain the truth; and upon proof made to his satisfaction, that the debtor is unable to pay the debt for which he is imprisoned, and that he has not concealed or made any conveyance of his estate, in trust, for himself, or with an intent to defraud the United States, or to deprive them of their legal priority, the Secretary is authorized to receive from such debtor any deed, assignment or conveyance of his real or personal estate, or any collateral security, to the use of the United States. Upon a compliance by the debtor with such terms and conditions as the Secretary may judge reasonable and proper, the Secretary must issue his order, under his hand, to the keeper of the prison, directing him to discharge the debtor from his imprisonment under such execution. The debtor shall not be liable to be imprisoned again for the debt; but the judgment shall remain in force, and may be satisfied out of any estate which may then, or at any time afterward, belong to the debtor. The benefit of this section shall not be extended to any person imprisoned for any fine, forfeiture, or pen-

alty, incurred by a breach of any law of the United States, or for moneys had and received by any officer, agent, or other person, for their use; nor shall its provisions extend to any claim arising under the postal laws. (R. S. § 3471.)

## DERIVATION

Act June 6, 1798, ch. 49, §§ 1, 3, 1 Stat. 561, 562.

## § 197. Same; by President.

Whenever any person is imprisoned upon execution for a debt due to the United States, which he is unable to pay, and his case is such as does not authorize his discharge by the Secretary of the Treasury, under section 196 of this title, he may make application to the President, who, upon proof made to his satisfaction that the debtor is unable to pay the debt, and upon a compliance by the debtor with such terms and conditions as the President shall deem proper, may order the discharge of such debtor, from his imprisonment. The debtor shall not be liable to be imprisoned again for the same debt; but the judgment shall remain in force, and may be satisfied out of any estate which may then, or at any time afterwards, belong to the debtor. (R. S. § 3472.)

## DERIVATION

Act Mar. 3, 1817, ch. 114, 3 Stat. 399.

## § 198. Debts to the United States; in what currency to be paid.

All taxes and all other debts and demands than duties on imports, accruing or becoming due to the United States, shall be paid in gold and silver coin, Treasury notes, United States notes, or notes of national banks. (R. S. § 3473; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 249.)

## DERIVATION

Act Aug. 6, 1846, ch. 90, § 18, 9 Stat. 64; act Dec. 23, 1857, ch. 1, § 6, 11 Stat. 258; act July 17, 1861, ch. 5, § 1, 12 Stat. 259; act Aug. 5, 1861, ch. 46, § 5, 12 Stat. 313; act Feb. 12, 1862, ch. 20, 12 Stat. 338; act Feb. 25 1862, ch. 33, §§ 1, 5, 12 Stat. 345, 346; act July 11, 1862, ch. 142, § 1, 12 Stat. 532; act Mar. 3, 1863, ch. 73, §§ 3, 5, 12 Stat. 710, 711; act June 3, 1864, ch. 106, § 23, 13 Stat. 106; act June 30, 1864, ch. 172, § 2, 13 Stat. 218.

Act June 3, 1864, ch. 106, 13 Stat. 99, from which section was in part derived, is part of the National Bank Act. See section 38 of Title 12, Banks and Banking.

## COINAGE OF GOLD

The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

## POSSESSION OF GOLD COINS AND BULLION

The possession of gold coins and bullion was prohibited except under Government license by Ex. Ord. No. 6260, Aug. 28, 1933, set out in note under section 95 of Title 12, Banks and Banking.

## CROSS REFERENCES

All coins and currency of the United States to be legal tender for payment of public debts, public charges, taxes, etc., see section 462 of this title.

Federal Reserve notes to be receivable for all taxes, customs, and other public dues, see section 411 of Title 12, Banks and Banking.

Provisions requiring payment of obligations in gold declared against public policy, see section 463 of this title.

### § 199. Same; what coin receivable.

No gold or silver other than coin of standard fineness of the United States shall be receivable in payment of dues to the United States, except as provided in section 374 of this title and section 692 of Title 43. (R. S. § 3474.)

#### DERIVATION

Act Aug. 31, 1852, ch. 108, § 2, 10 Stat. 97, 98; act Feb. 21, 1857, ch. 56, §§ 2, 3, 11 Stat. 163.

#### COINAGE OF GOLD

The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

#### POSSESSION OF GOLD COINS AND BULLION

The possession of gold coins and bullion was prohibited except under Government license by Ex. Ord. No. 6260, Aug. 28, 1933, set out in note under section 95 of Title 12, Banks and Banking.

#### CROSS REFERENCES

All coins and currency made legal tender for payment of public dues, except gold coins below standard weight made legal tender only at valuation in proportion to actual weight, see section 462 of this title.

Provisions for payment of obligations in gold declared against public policy, see section 463 of this title.

Silver coins coined under laws of Hawaii as receivable in payment of all dues of the United States, see section 513 of Title 48, Territories and Insular Possessions.

### § 201.<sup>1</sup> Debts of United States; national bank notes receivable for.

The notes of national banks shall be received at par for all debts and demands owing by the United States to any person within the United States, except interest on the public debt, or in redemption of the national currency. (R. S. § 3475.)

<sup>1</sup> Number 200 was not used for a section in the original United States Code.

#### DERIVATION

Act June 3, 1864, ch. 106, § 23, 13 Stat. 106, which was part of the National Bank Act. See section 38 of Title 12, Banks and Banking.

#### CROSS REFERENCE

Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations declared to be legal tender for public debts, see section 462 of this title.

### § 202. Same; Treasury notes payable for.

Treasury notes bearing interest may be paid to any creditor of the United States at their face value, excluding interest, or to any creditor willing to receive them at par, including interest. (R. S. § 3476.)

#### DERIVATION

Act Mar. 3, 1863, ch. 73, § 2, 12 Stat. 710; act June 30, 1864, ch. 172, § 2, 13 Stat. 218.

### § 203. Assignments of claims; set-off against assignee.

All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the

ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same. The provisions of this section shall not apply to payments for rent of post-office quarters made by postmasters to duly authorized agents of the lessors.

The provisions of the preceding paragraph shall not apply in any case in which the moneys due or to become due from the United States or from any agency or department thereof, under a contract providing for payments aggregating \$1,000 or more, are assigned to a bank, trust company, or other financing institution, including any Federal lending agency: *Provided*, 1. That in the case of any contract entered into prior to October 9, 1940, no claim shall be assigned without the consent of the head of the department or agency concerned; 2. That in the case of any contract entered into after October 9, 1940, no claim shall be assigned if it arises under a contract which forbids such assignment; 3. That unless otherwise expressly permitted by such contract any such assignment shall cover all amounts payable under such contract and not already paid, shall not be made to more than one party, and shall not be subject to further assignment, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing; 4. That in the event of any such assignment, the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of assignment with—(a) the General Accounting Office, (b) the contracting officer or the head of his department or agency, (c) the surety or sureties upon the bond or bonds, if any, in connection with such contract, and (d) the disbursing officer, if any, designated in such contract to make payment. Notwithstanding any law to the contrary governing the validity of assignments, any assignment pursuant to this paragraph and the following paragraph shall constitute a valid assignment for all purposes.

Any contract entered into by the War Department or the Navy Department may provide that payments to an assignee of any claim arising under such contract shall not be subject to reduction or set-off, and if it is so provided in such contract, such payments shall not be subject to reduction or set-off for any indebtedness of the assignor to the United States arising independently of such contract. (R. S. § 3477; May 27, 1908, ch. 206, 35 Stat. 411; Oct. 9, 1940, ch. 779, § 1, 54 Stat. 1029.)

#### DERIVATION

Act July 29, 1846, ch. 66, 9 Stat. 41; act Feb. 26, 1853, ch. 81, § 1, 10 Stat. 170.

#### CODIFICATION

Second paragraph was added to the Revised Statutes section cited to text by act October 9, 1940, also cited.

Third paragraph was from act October 9, 1940, cited to text.

## RENT OF POST OFFICE QUARTERS

Act May 27, 1908, ch. 206, 35 Stat. 411, contained the following provision: "Hereafter the provisions of section thirty-four hundred and seventy-seven of the Revised Statutes [section 203 of Title 31] shall not apply to payments for rent of post-office quarters made by postmasters to duly authorized agents of the lessors."

## CROSS REFERENCE

Assignment of public contracts by contractors authorized notwithstanding this section, see section 407 (a) of Title 40, Public Buildings, Property, and Works.

## § 204. Oath by person prosecuting claims.

Any person prosecuting claims, either as attorney or on his own account, before any of the departments or bureaus of the United States, shall be required to take the oath of allegiance, and to support the Constitution of the United States, as required of persons in the civil service. (R. S. § 3478.)

## DERIVATION

Act July 17, 1862, ch. 205, § 1, 12 Stat. 610.

## § 205. Same; who may administer.

The oath provided for in section 204 of this title may be taken before any justice of the peace, notary public, or other person who is legally authorized to administer an oath in the State or district where the same may be administered. (R. S. § 3479.)

## DERIVATION

Act July 17, 1862, ch. 205, § 2, 12 Stat. 610.

## § 206. Claims of disloyalists.

Section, R. S. § 3480; acts Mar. 11, 1898, ch. 57, 30 Stat. 274; July 6, 1914, ch. 136, 38 Stat. 454; Feb. 13, 1923, ch. 71, 42 Stat. 1226, forbade payment of any claim against United States accruing prior to April 13, 1861, in favor of any person who was disloyal to United States during the rebellion, and is now obsolete.

## § 207. Retention of money due States in default.

Whenever any State is in default in the payment of interest or principal on investments in stocks or bonds issued or guaranteed by such State and held by the United States in trust, the Secretary of the Treasury shall retain the whole, or so much thereof as may be necessary, of any moneys due on any account from the United States to such State, and apply the same to the payment of such principal and interest, or either, or to the reimbursement, with interest thereon, of moneys advanced by the United States on account of interest due on such stocks or bonds. (R. S. § 3481.)

## DERIVATION

Act Mar. 25, 1870, ch. 30, 16 Stat. 77.

## § 208. Repealed. Dec. 16, 1930, ch. 14, § 1, 46 Stat. 1028.

Section was from R. S. § 3482.

## § 209. Payment for property lost while in military service.

Every person who sustains damage by the capture or destruction by an enemy, or by the abandonment or destruction by the order of the commanding general, the commanding officer, or quartermaster, of any horse, mule, ox, wagon, cart, sleigh, harness, steamboat or other vessel, railroad engine or railroad car, while such property is in the military service, either by impressment or contract; or who sustains damage by the death or abandonment and loss

of any horse, mule, or ox, while in the service, in consequence of the failure on the part of the United States to furnish the same with sufficient forage, or whose horse, mule, ox, wagon, cart, boat, sleigh, harness, vessel, railroad engine, or railroad car is lost or destroyed by unavoidable accident while such property is in the service, shall be allowed and paid the value thereof at the time when such property was taken into the service, except in cases where the risk to which the property would be exposed was agreed to be incurred by the owner: *Provided*, It appears that such loss, capture, abandonment, destruction, or death was without any fault or negligence on the part of the owner of the property, and while the property was actually employed in the service of the United States. (R. S. § 3483.)

## DERIVATION

Act Mar. 3, 1849, ch. 129, § 2, 9 Stat. 415; act Mar. 3, 1863, ch. 78, § 5, 12 Stat. 743.

## § 210. Payment for horses lost by capture.

Section 209 of this title shall extend to all cases of the loss of horses by any officer, noncommissioned officer, or private in the military service of the United States, while in the line of his duty in such service, by capture by the enemy, whenever it shall appear that such officer, noncommissioned officer, or private was ordered by his superior officer to surrender to the enemy, and such capture was made in pursuance of such surrender. (R. S. § 3484.)

## DERIVATION

Act June 25, 1864, ch. 150, 13 Stat. 182.

## § 211. Payment for condemned horses and equipage.

Whenever any horse is condemned by a board of officers, on account of his unfitness for service, in consequence of the Government failing to supply forage, such horse and his equipage shall be allowed and paid for: *Provided*, It shall be proven, by satisfactory evidence, whether oral or written, that the condemned horse and the equipage were turned over to a quartermaster of the Army, whether any receipt therefor was given and produced, or not. (R. S. § 3485.)

## DERIVATION

Act Mar. 3, 1849, ch. 129, § 7, 9 Stat. 416.

## § 212. Payment to guardian for horse lost by minor in military service.

When any minor engaged in the military service of the United States, and provided with a horse or equipments, or with military accouterments, by his parent or guardian, dies, without paying for the property, and the same is lost, captured, destroyed, or abandoned in the manner before mentioned, such parent or guardian shall be allowed pay therefor, on making satisfactory proof, as in other cases, and the further proof that he is entitled thereto by having furnished the same. (R. S. § 3486.)

## DERIVATION

Act Mar. 3, 1849, ch. 129, § 5, 9 Stat. 415.

## § 213. Payment to owner for horse furnished and lost in military service.

When any person other than a minor, engaged in the military service, is provided with a horse or equip-

ments, or with military accouterments, by any person, being the owner thereof, who takes the risk of such horse, equipments, or military accouterments, on himself, and the same is lost, captured, destroyed, or abandoned, in the manner before mentioned, such owner shall be allowed pay therefor, on making satisfactory proof, as in other cases, and the further proof that he is entitled thereto, by having furnished the same, and having taken the risk on himself. (R. S. § 3487.)

## DERIVATION

Act Mar. 3, 1849, ch. 129, § 6, 9 Stat. 416.

## § 214. Taking testimony as to loss.

In executing so much of sections 209 and 213 of this title, as provides for payment for steamboats and other vessels, and railroad engines or cars, lost or destroyed while in the military service of the United States, the Comptroller General is authorized, in person, or in such manner as he may deem most compatible with the public interests, to take testimony, and make such investigations as he may deem necessary in adjudicating claims; and for such necessary expenses incurred therein, payment may be made upon proper vouchers, certified and approved by the General Accounting Office. (R. S. § 3488; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

## DERIVATION

Act June 25, 1864, ch. 147, § 6, 13 Stat. 160.

## § 215. Settlement of claims not exceeding \$1,000; certification of amounts found due to Congress; time for presentation.

The head of each department and establishment acting on behalf of the Government of the United States may consider, ascertain, adjust, and determine any claim accruing after April 6, 1917, on account of damages to or loss of privately owned property where the amount of the claim does not exceed \$1,000, caused by the negligence of any officer or employee of the Government acting within the scope of his employment. Such amount as may be found to be due to any claimant shall be certified to Congress as a legal claim for payment out of appropriations that may be made by Congress therefor, together with a brief statement of the character of each claim, the amount claimed, and the amount allowed: *Provided*, That no claim shall be considered by a department or other independent establishment unless presented to it within one year from the date of the accrual of said claim. (Dec. 28, 1922, ch. 17, § 2, 42 Stat. 1066.)

## § 216. Same; definitions.

When used in section 215 of this title the terms "department and establishment" and "department or establishment" mean any executive department or other independent establishment of the Government; the word "employee" shall include enlisted men in the Army, Navy, and Marine Corps. (Dec. 28, 1922, ch. 17, § 1, 42 Stat. 1066.)

## § 217. Same; effect of acceptance of amount found due.

Acceptance by any claimant of the amount determined under the provisions of sections 215 and 216 of this title shall be deemed to be in full settlement of

such claim against the Government of the United States. (Dec. 28, 1922, ch. 17, § 3, 42 Stat. 1066.)

## § 218. Settlement of claims for loss of property in military service.

Private property belonging to officers, enlisted men, and members of the Nurse Corps (female) of the Army, including all prescribed articles of equipment and clothing which they are required by law or regulations to own and use in the performance of their duties, and horses and equipment required by law or regulations to be provided by mounted officers, which since the 5th day of April, 1917, has been or shall hereafter be lost, damaged, or destroyed in the military service, shall be replaced, or the damage thereto, or its value recouped to the owner as hereinafter provided, when such loss, damage, or destruction has occurred or shall hereafter occur without fault or negligence on the part of the owner in any of the following circumstances:

First. When such private property so lost, damaged, or destroyed was shipped on board an unseaworthy vessel by order of an officer authorized to give such order or direct such shipment.

Second. When it appears that such private property was so lost, damaged, or destroyed in consequence of its owner having given his attention to the saving of human life or property belonging to the United States which was in danger at the same time and under similar circumstances, or while, at the time of such loss, damage, or destruction, the claimant was engaged in authorized military duties in connection therewith.

Third. When during travel under orders such private property, including the regulation allowance of baggage, transferred by a common carrier, or otherwise transported by the proper agent or agency of the United States Government, is lost, damaged, or destroyed; but replacement, recoupment, or commutation in these circumstances, where the property was or shall be transported by a common carrier, shall be limited to the extent of such loss, damage, or destruction over and above the amount recoverable from said carrier.

Fourth. When such private property is destroyed or captured by the enemy, or is destroyed to prevent its falling into the hands of the enemy, or is abandoned on account of lack of transportation or by reason of military emergency requiring its abandonment, or is otherwise lost in the field during campaign. (Mar. 3, 1885, ch. 335, § 1, 23 Stat. 350; July 9, 1918, ch. 143, subch. VI, 40 Stat. 880; Mar. 4, 1921, ch. 163, 41 Stat. 1436.)

## § 219. Same; extent of liability.

Except as to such property as by law or regulation is required to be possessed and used by officers, enlisted men, and members of the Army Nurse Corps (female), respectively, the liability of the Government under sections 218–222 of this title shall be limited to damage to or loss of such sums of money or such articles of personal property as the Secretary of War shall decide or declare to be reasonable, useful, necessary, and proper for officers, enlisted men, or members of the Army Nurse Corps (female), respectively, as the case may be, to have in their pos-

session while in quarters, or in the field, engaged in the public service in the line of duty. (Mar. 3, 1885, ch. 335, § 2, as added July 9, 1918, ch. 143, subch. VI, 40 Stat. 880, and amended Mar. 4, 1921, ch. 163, 41 Stat. 1437.)

**§ 220. Same; examination; payment; replacement.**

The Secretary of War is authorized and directed to examine into, ascertain, and determine the value of such property lost, destroyed, captured, or abandoned as specified in sections 218 and 219 of this title, or the amount of damage thereto, as the case may be; and the amount of such value or damage so ascertained and determined shall be paid by disbursing officers of the Army, or such property lost, destroyed, captured, or abandoned, or so damaged as to be unfit for service, may be replaced in kind from Government property on hand when the Secretary of War shall so direct. (Mar. 3, 1885, ch. 335, § 3, as added July 9, 1918, ch. 143, subch. VI, 40 Stat. 881, and amended Mar. 4, 1921, ch. 163, 41 Stat. 1437.)

**§ 221. Same; final determination.**

The tender of replacement or of commutation or the determination made by the Secretary of War upon a claim presented, as provided for in section 220 of this title, shall constitute a final determination of any claim cognizable under sections 218–222 of this title, and such claim shall not thereafter be reopened or considered. (Mar. 3, 1885, ch. 335, § 4, as added July 9, 1918, ch. 143, subch. VI, 40 Stat. 881, and amended Mar. 4, 1921, ch. 163, 41 Stat. 1437.)

**§ 222. Same; time for presentation.**

No claim arising under sections 218–222 of this title shall be considered unless made within two years from the time that it accrued, except that when a claim accrues in time of war, or when war intervenes within two years after its accrual, such claim may be presented within two years after peace is established. (Mar. 3, 1885, ch. 335, § 5, as added July 9, 1918, ch. 143, subch. VI, 40 Stat. 881, and amended Mar. 4, 1921, ch. 163, 41 Stat. 1437.)

**§ 223. Settlement of claims for loss or damage to private property from operations, etc., of Army.**

Settlement of claims, including claims of military and civilian personnel in and under the War Department, not exceeding \$500 each in amount for damages to or loss of private property incident to the training, practice, operation, or maintenance of the Army that have accrued, or may hereafter accrue, from time to time, shall be made by the General Accounting Office, upon the approval and recommendation of the Secretary of War, where the amount of damages has been ascertained by the War Department, and payment thereof will be accepted by the owners of the property in full satisfaction of such damages. (June 13, 1940, ch. 343, § 1, 54 Stat. 357.)

**SIMILAR PROVISIONS**

The text of this section was taken from Military Appropriation Act, 1941. Similar provisions were contained in the following acts:

1939—Apr. 26, 1939, ch. 88, 53 Stat. 599.  
1938—June 11, 1938, ch. 347, 52 Stat. 648.  
1937—July 1, 1937, ch. 423, 50 Stat. 448.

1936—May 15, 1936, ch. 404, title I, § 1, 49 Stat. 1284.  
1935—Apr. 9, 1935, ch. 54, title I, § 1, 49 Stat. 127.  
1934—Apr. 26, 1934, ch. 165, title I, 48 Stat. 620.  
1933—Mar. 4, 1933, ch. 281, title I, 47 Stat. 1576.  
1932—July 14, 1932, ch. 482, title I, 47 Stat. 669.  
1931—Feb. 23, 1931, ch. 279, title I, 46 Stat. 1282.  
1930—May 28, 1930, ch. 348, title I, 46 Stat. 436.  
1929—Feb. 28, 1929, ch. 366, title I, 45 Stat. 1354.  
1928—Mar. 23, 1928, ch. 232, title I, 45 Stat. 330.  
1927—Feb. 23, 1927, ch. 167, title I, 44 Stat. 1110, 1111.  
1926—Apr. 15, 1926, ch. 146, title I, 44 Stat. 259.  
1925—Feb. 12, 1925, ch. 225, title I, 43 Stat. 897.  
1924—June 7, 1924, ch. 291, title I, 43 Stat. 483.  
1923—Mar. 2, 1923, ch. 178, title I, 42 Stat. 1386.  
1922—June 30, 1922, ch. 253, title I, 42 Stat. 725.  
1921—June 30, 1921, ch. 33, § 1, 42 Stat. 84.  
1920—June 5, 1920, ch. 240, 41 Stat. 965.  
1919—July 11, 1919, ch. 8, 41 Stat. 119.  
1918—July 9, 1918, ch. 143, 40 Stat. 864.  
1917—Oct. 6, 1917, ch. 79, 40 Stat. 864.

**§ 224. Settlement of claims for damages from operation of aircraft.**

Claims (not exceeding \$250 each) for damage to persons and private property resulting from the operation of aircraft at home and abroad may be settled when each claim is substantiated by a survey report of a board of officers appointed by the commanding officer of the nearest aviation post and approved by the Chief of Air Corps and the Secretary of War. (June 13, 1940, ch. 343, § 1, 54 Stat. 365.)

**SIMILAR PROVISIONS**

The text of this section was taken from Military Appropriation Act, 1941. Similar provisions were contained in the following acts:

1939—Apr. 26, 1939, ch. 88, 53 Stat. 606.  
1938—June 11, 1938, ch. 347, 52 Stat. 655.  
1937—July 1, 1937, ch. 423, 50 Stat. 456.  
1936—May 15, 1936, ch. 404, title I, 49 Stat. 1291.  
1935—Apr. 9, 1935, ch. 54, title I, § 1, 49 Stat. 133.  
1934—Apr. 26, 1934, ch. 165, title I, 48 Stat. 627.  
1933—Mar. 4, 1933, ch. 281, title I, 47 Stat. 1583.  
1932—July 14, 1932, ch. 482, title I, 47 Stat. 677.  
1931—Feb. 23, 1931, ch. 279, title I, 46 Stat. 1290.  
1930—May 28, 1930, ch. 348, title I, 46 Stat. 445.  
1929—Feb. 28, 1929, ch. 366, title I, 45 Stat. 1362.  
1928—Mar. 23, 1928, ch. 232, title I, 45 Stat. 339.  
1927—Feb. 23, 1927, ch. 167, title I, 44 Stat. 1120.  
1926—July 2, 1926, ch. 721, § 1, 44 Stat. 780.  
Apr. 15, 1926, ch. 146, title I, 44 Stat. 269.  
1925—Feb. 12, 1925, ch. 225, title I, 43 Stat. 907.  
1924—June 7, 1924, ch. 291, title I, 43 Stat. 492.  
1923—Mar. 2, 1923, ch. 178, title I, 42 Stat. 1398.  
1922—June 30, 1922, ch. 253, title I, 42 Stat. 737.

**§ 224a. Settlement of claims for personal injury or death in foreign countries.**

When any act of omission of any officer, employee, or agent of the Government of the United States, including all officers, enlisted men, and employees of the Army, Navy, and Marine Corps, results in the personal injury or death of any person, not an American national, in any foreign country in which the United States exercises privileges of extraterritoriality, the Secretary of State may consider, adjust, and determine any claim, arising after February 13, 1936, for the damage occasioned by such injury or death in an amount not in excess of \$1,500, United States currency, in any one case, and such amount as may be found to be due to any claimant shall be certified to Congress as a legal claim for payment out of appropriations that may be made by Congress therefor, together with a brief statement of the character of each claim, the amount claimed, and the

amount allowed: *Provided*, That this authorization shall not apply to cases of persons in the employ of the United States: *Provided further*, That no claim shall be considered under this section by the Secretary of State unless presented to him within one year from the date of the accrual of said claim: *And provided further*, That acceptance by any claimant of the amount determined under the provisions of this section shall be deemed to be in full settlement of such claim against the Government of the United States. (Feb. 13, 1936, ch. 67, 49 Stat. 1138.)

**§ 224b. Same; claims against officers and agents for damages.**

The Attorney General of the United States may consider, adjust, and determine any claim accruing after January 1, 1934, on account of damages to any person or damages to or loss of privately owned property, caused by the Director, any Assistant Director, inspector, or special agent of the Federal Bureau of Investigation of the Department of Justice acting within the scope of his employment, and such amount as may be found due to any claimant, not exceeding \$500 in any one case, shall be certified to Congress as a legal claim for payment out of appropriations that may be made by Congress therefor, together with a brief statement of the character of each claim, the amount claimed, and the amount allowed: *Provided*, That this authorization shall not be construed to apply to cases of persons in the employ or service of the United States while acting within the scope of such employ or service: *Provided further*, That no claim shall be considered under this section unless presented to the Attorney General within one year from the date of the accrual of said claim; except that any claim accruing between January 1, 1934, and March 20, 1936, may be presented within three months after March 20, 1936: *And provided further*, That acceptance by any claimant of the amount determined to be due him under the provisions of this section shall be deemed to be in full and final settlement of such claim against the Government of the United States. (Mar. 20, 1936, ch. 159, 49 Stat. 1184.)

**CROSS REFERENCE**

Settlement of claims not exceeding \$1,000, see section 215 of this title.

**§ 224c. Adjustment and settlement of certain claims for damages to person or property by Postmaster General.**

When any damage is done to person or property by or through the operation of the Post Office Department in any branch of its service and such damage is found by the Postmaster General upon investigation to be a proper charge against the United States, the Postmaster General is invested with power to adjust and settle any claim for such damage when his award for such damage in any case does not exceed \$500, and this authority shall hereafter be construed as extending to cases caused by the negligence of any officer or employee of the Post Office Department or Postal Service acting within the scope of his employment. (June 16, 1921, ch. 23, § 4, 42 Stat. 63; June 22, 1934, ch. 717, 48 Stat. 1207.)

**CROSS REFERENCE**

Settlement of claims not exceeding \$1,000, see section 215 of this title.

**§ 225. Judgments of Court of Claims; payment.**

In all cases of final judgments by the Court of Claims, or, on review, by the Supreme Court, where the same are affirmed in favor of the claimant, the sum due thereby shall be paid out of any general appropriation made by law for the payment and satisfaction of private claims, on presentation to the General Accounting Office of a copy of said judgment, certified by the clerk of the Court of Claims, and signed by the chief justice, or, in his absence, by the presiding judge of said court. (R. S. §§ 236, 1089; June 10, 1921, ch. 18, § 305, 42 Stat. 24; Feb. 13, 1925, ch. 229, § 3 (c), 43 Stat. 939.)

**DERIVATION**

Act Mar. 3, 1863, ch. 92, § 7, 12 Stat. 766.

**CODIFICATION**

Section is from R. S. § 1089, cited to text. Act February 13, 1925, also cited, is authority for the substitution in this section of "review" for "appeal". Act June 10, 1921, amended R. S. § 236, both cited to text, to provide for the settlement and adjustment of all Government accounts in the General Accounting Office, and is authority for the substitution in this section of the words "General Accounting Office" for "Secretary of the Treasury".

**CROSS REFERENCE**

Judgments and awards against United States to be made on settlements by the General Accounting Office, see section 228 of this title.

**§ 226. Same; certified by Secretary of Treasury; interest.**

The Secretary of the Treasury shall certify to Congress for appropriation only such judgments of the Court of Claims as are not to be reviewed, or such cases as shall have been decided by the Supreme Court upon review as provided in section 288 of Title 28 to be due and payable. And on judgments in favor of claimants which have been reviewed upon petition of the United States and affirmed by the Supreme Court, interest, at the rate of 4 per centum per annum, shall be allowed and paid from the date of filing the transcript of judgment in the Treasury Department up to and including the date of the mandate of affirmance by the Supreme Court: *Provided*, That in no case shall interest be allowed after the term of the Supreme Court at which said judgment was affirmed. (Sept. 30, 1890, ch. 1126, § 1, 26 Stat. 537; Feb. 13, 1925, ch. 229, § 3 (c), 43 Stat. 939.)

This section is restated in accordance with an opinion of the Comptroller General of the United States.

**§ 227. Offsets against judgments against United States.**

When any final judgment recovered against the United States duly allowed by legal authority shall be presented to the Comptroller General of the United States for payment, and the plaintiff therein shall be indebted to the United States in any manner, whether as principal or surety, it shall be the duty of the Comptroller General of the United States to withhold payment of an amount of such judgment equal to the debt thus due to the United States; and if such plaintiff assents to such set-off, and discharges his



judgment or an amount thereof equal to said debt, the Comptroller General of the United States shall execute a discharge of the debt due from the plaintiff to the United States. But if such plaintiff denies his indebtedness to the United States, or refuses to consent to the set-off, then the Comptroller General of the United States shall withhold payment of such further amount of such judgment as in his opinion will be sufficient to cover all legal charges and costs in prosecuting the debt of the United States to final judgment. And if such debt is not already in suit, it shall be the duty of the Comptroller General of the United States to cause legal proceedings to be immediately commenced to enforce the same, and to cause the same to be prosecuted to final judgment with all reasonable dispatch. And if in such action judgment shall be rendered against the United States, or the amount recovered for debt and costs shall be less than the amount so withheld as before provided, the balance shall then be paid over to such plaintiff by such Comptroller General of the United States with 6 per centum interest thereon for the time it has been withheld from the plaintiff. (Mar. 3, 1875, ch. 149, 18 Stat. 481; Mar. 3, 1933, ch. 212, title II, § 13, 47 Stat. 1516.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Counterclaim and cross-claim, see Rule 13, following section 723c of Title 28, Judicial Code and Judiciary.

#### § 228. Payment of judgments against United States made on settlements by General Accounting Office.

After February 18, 1904, in all cases of final judgments and awards rendered against the United States by the Court of Claims, and of final judgments rendered against the United States by the district courts of the United States, payment thereof under appropriations made by Congress shall be made on settlements by the General Accounting Office. (Feb. 18, 1904, ch. 160, § 1, 33 Stat. 41; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

#### § 229. Private claims pending before Congress; taking of testimony.

Any committee of either House of Congress before which any private claim against the United States may at any time be pending, being first thereto authorized by the House appointing them, may order testimony to be taken, and books and papers to be examined, and copies thereof proved, before any standing master in chancery within the judicial district where such testimony or evidence is to be taken. Such master in chancery, upon receiving a copy of the order of such committee, signed by its chairman, setting forth the time and place when and where such examination is to be had, the questions to be investigated, and, so far as may be known to the committee, the names of the witnesses to be examined on the part of the United States, and the general nature of the books, papers, and documents to be proved, if known, shall proceed to give to such private parties reasonable notice of the time and place of such examination, unless such notice shall have been or shall be given by such committee or its chairman, or by the attorney or agent of the United

States, or waived by such private party. And such master shall issue subpoenas for such witnesses as may have been named in the order of such committee, and such others as the agent or other representative of the United States hereinafter mentioned shall request. And he shall also issue subpoenas at the request of such private party, or parties, for such witnesses within such judicial district as they may desire: *Provided*, That the United States shall not be liable for the fees of any officer for serving any subpoena for any private party, nor for the fees of any witness on behalf of such party. Said committee may inform the district attorney of the United States for the district where the testimony is to be taken of the time, place, and object of such examination, and request his attendance in behalf of the Government in conducting such examination, in which case it shall be his duty to attend in person, or by an assistant employed by him, to conduct such examination on the part of the United States, or such committee may, at its option, appoint an agent or attorney, or one of its own members, for that purpose, as they may deem best; and in that event, if the committee shall not be unanimous, the minority of the committee may also appoint such agent or attorney or member of such committee to attend and take part in such examination. (Feb. 3, 1879, ch. 40, § 1, 20 Stat. 278; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

#### § 230. Same; subpoena for taking testimony; compensation of officers and witnesses; return of depositions.

It shall be the duty of the marshal of the United States for the district in which the testimony is to be taken to serve, or cause to be served, all subpoenas issued in behalf of the United States under this section and section 229 of this title, in the same manner as if issued by the district court for his district; and he shall, upon being first paid his fees therefor, serve any subpoenas that may be issued at the instance of such private party or parties. And the said master may, in his discretion, appoint any other person to serve any subpoena. Such master shall have full power to administer oaths to witnesses, and the same power to issue attachments to compel the attendance of witnesses and the production of books, papers, and documents, as the district court of his district would have in a case pending before it; and it shall be his duty to report the conduct of contumacious witnesses before him to the House of Congress appointing such committee. The compensation of such master in chancery, and the fees of marshals and deputy marshals, and of any person appointed to serve papers, shall be the same as for like services in equity cases in the district court of the United States; and the compensation of witnesses shall be the same as for like attendance and travel of witnesses before such district courts; and all such fees and compensation of officers and witnesses on behalf of the United States, and other expenses of all investigations which may be had under the provisions of this section and section 229 of this title on the part of the United States, shall be paid out of the contingent fund of the branch of

Congress appointing such committee. Said master, when the examination is concluded, shall attach together all the depositions and exhibits, and attach thereto his certificate setting forth or referring to the authority by which they were taken, any notices he may have given, the names of the witnesses for whom subpoenas or attachments were issued, the names of witnesses who attended, with the time of attendance and mileage and fees of each witness on behalf of the United States, which he may require to be shown by affidavit, his own fees, the fees of the marshal, his deputies or other persons serving papers, giving the items, and such other facts in relation to the circumstances connected with the taking of the depositions as he may deem material. He shall then seal up such depositions and papers securely, direct them to the chairman of such committee at Washington, stating briefly on the outside the nature of the contents, and place the same in the post office, paying the postage thereon; and said package shall be opened only in the presence of such committee. The chairman of any committee ordering testimony to be taken under this section and section 229 of this title shall, at least ten days before the time fixed for such examination, and within two days after the adoption of such order, cause a copy thereof to be directed and delivered to the Attorney General of the United States, or sent to him by mail at the Department of Justice, to enable him to give such instructions as he may deem best to the district attorney of the district where such testimony is to be taken, who may, and, if required by the Attorney General, shall, though not requested by the committee, appear for the United States in person or by assistant, and take such part in such examination as the Attorney General shall direct. (Feb. 3, 1879, ch. 40, § 2, 20 Stat. 279; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

#### CROSS REFERENCE

No fees to be charged against or collected from the United States, see section 578 of Title 28, Judicial Code and Judiciary.

#### § 231. Liability of persons making false claims.

Any person not in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States, who shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, or who, having charge, possession, custody, or control of any money or other public

property used or to be used in the military or naval service, who, with intent to defraud the United States or willfully to conceal such money or other property, delivers or causes to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt, and every person authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, who makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, and every person who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service any arms, equipments, ammunition, clothes, military stores, or other public property, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, shall forfeit and pay to the United States the sum of \$2,000, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit. (R. S. §§ 3490, 5438.)

#### DERIVATION

R. S. § 3490 was from act Mar. 2, 1863, ch. 67, § 3, 12 Stat. 698.

R. S. § 5438 was from act Mar. 2, 1863, ch. 67, §§ 1, 3, 12 Stat. 696, 698.

#### § 232. Same; suits.

The several district courts of the United States, the district court of the United States for the District of Columbia, the several district courts of the Territories of the United States, within whose jurisdictional limits the person doing or committing such act shall be found, shall, wheresoever such act may have been done or committed, have full power and jurisdiction to hear, try, and determine such suit. Such suit may be brought and carried on by any person, as well for himself as for the United States; the same shall be at the sole cost and charge of such person, and shall be in the name of the United States, but shall not be withdrawn or discontinued without the consent, in writing, of the judge of the court and the district attorney, first filed in the case, setting forth their reasons for such consent. (R. S. § 3491; June 25, 1936, ch. 804, 49 Stat. 1921.)

#### DERIVATION

Act Mar. 2, 1863, ch. 67, § 4, 12 Stat. 698.

#### FEDERAL RULES OF CIVIL PROCEDURE

Dismissal of action, judgment and costs, see Rules 41, 54, following section 723c of Title 28, Judicial Code and Judiciary.

Preservation of section under rules, see notes by Advisory Committee under Rules 41 and 54.

#### § 233. Duty of district attorney as to such cases.

It shall be the duty of the several district attorneys of the United States for the respective districts, for the District of Columbia, and for the several Ter-

ritories, to be diligent in inquiring into any violation of the provisions of section 231 of this title by persons liable to such suit, and found within their respective districts or Territories, and to cause them to be proceeded against in due form of law for the recovery of such forfeiture and damages. And such person may be arrested and held to bail in such sum as the district judge may order, not exceeding the sum of \$2,000, and twice the amount of the damages sworn to in the affidavit of the person bringing the suit. (R. S. § 3492.)

DERIVATION

Act Mar. 2, 1863, ch. 67, § 5, 12 Stat. 698

§ 234. Rights of persons presenting such suits.

The person bringing said suit and prosecuting it to final judgment shall be entitled to receive one-half the amount of such forfeiture, as well as one-half the amount of the damages he shall recover and collect; and the other half thereof shall belong to and be paid over to the United States; and such person shall be entitled to receive to his own use all costs the court may award against the defendant, to be allowed and taxed according to any provision of law or rule of court in force, or that shall be in force in suits between private parties in said court: *Provided*, That such person shall be liable for all costs incurred by himself in the case, and shall have no claim therefor on the United States. (R. S. § 3493.)

DERIVATION

Act Mar. 2, 1863, ch. 67, § 6, 12 Stat. 698.

FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under Rule 54, see note by Advisory Committee under said Rule 54.

Judgment and costs, see Rule 54, following section 723c of Title 28, Judicial Code and Judiciary.

§ 235. Limitation of suit.

Every such suit shall be commenced within six years from the commission of the act, and not afterward. (R. S. § 3494.)

DERIVATION

Act Mar. 2, 1863, ch. 67, § 7, 12 Stat. 698.

§ 236. Meritorious claims against United States not subject to lawful adjustment; submission to Congress by Comptroller General.

When there is filed in the General Accounting Office a claim or demand against the United States that may not lawfully be adjusted by the use of an appropriation theretofore made, but which claim or demand in the judgment of the Comptroller General of the United States contains such elements of legal liability or equity as to be deserving of the consideration of the Congress, he shall submit the same to the Congress by a special report containing the material facts and his recommendation thereon. (Apr. 10, 1928, ch. 334, 45 Stat. 413.)

§ 237. Same; limitation of time on claims and demands.

(1) Every claim or demand (except a claim or demand by any State, Territory, possession or the District of Columbia) against the United States cognizable by the General Accounting Office under sections 71 and 236 of this title, shall be forever barred unless

such claim, bearing the signature and address of the claimant or of an authorized agent or attorney, shall be received in said office within ten full years after the date such claim first accrued: *Provided*, That when a claim of any person serving in the military or naval forces of the United States accrues in time of war, or when war intervenes within five years after its accrual, such claim may be presented within five years after peace is established.

(2) Whenever any claim barred by subsection (1) shall be received in the General Accounting Office, it shall be returned to the claimant, with a copy of this section, and such action shall be a complete response without further communication. (Oct. 9, 1940, ch. 788, §§ 1, 2, 54 Stat. 1061.)

CODIFICATION

Section is also set out as section 71a of this title.

Subsections (1) and (2) of this section are from sections 1 and 2, respectively, of act October 9, 1940, cited to text.

Chapter 7.—BUREAU OF THE MINT, MINTS, AND ASSAY OFFICES

THE BUREAU OF THE MINT

Sec.

- 251. Bureau established; director.
- 252. Director; salary and expenses.
- 253. Same; powers; reports.
- 254. Acting in absence of director.

MINTS AND ASSAY OFFICES

- 261. Mints and assay offices enumerated.
- 262. Denver mint; coinage of silver.
- 263. Officers of mints.
- 264. Superintendents of certain mints to perform duties of treasurer.
- 265. Salaries of officers of coinage mints.
- 266. Appointment of assistants and employees.
- 267. Duties of coiner and melter and refiner performed by superintendent.
- 268. Salaries of assistants, clerks, and laborers employed in the mints.
- 269. Oath of office of officers, assistants, and clerks.
- 270. Bonds of officers, assistants, and clerks.
- 271. Acting in absence of superintendent or other officer.
- 272. General duties of superintendents of mints.
- 273. Duties of superintendents as to coin and bullion
- 274. Duties as to melting and refining.
- 275. Duties as to coining.
- 276. Duties of engravers; dies for coins; new designs.
- 277. Duties of assayers.
- 278. Business of assay office at New York.
- 279. Officers at New York assay office; appointment.
- 280. Same; salaries.
- 281. Same; duties.
- 282. Salaries of assistants and employees.
- 283. Business of assay offices.
- 284. Appointment of officers at assay offices.
- 285. Powers and duties of assayers at assay offices.
- 286. Bond and oath of officers and clerks.
- 287. Laws relating to mints extended to assay offices.

THE BUREAU OF THE MINT

§ 251. Bureau established; director.

There shall be established in the Treasury Department a Bureau of the Mint, embracing in its organization and under its control all mints for the manufacture of coin, and all assay offices for the stamping of bars, which have been, or which may be, authorized by law. The chief officer of the said bureau shall be denominated the Director of the Mint, and shall be under the general direction of the Secretary of the Treasury. He shall be appointed by the

President, by and with the advice and consent of the Senate, and shall hold his office for the term of five years, unless sooner removed by the President, upon reasons to be communicated by him to the Senate. (R. S. § 343.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 1, 17 Stat. 424.

## § 252. Director; salary and expenses.

There shall be allowed to the Director of the Mint an annual salary payable monthly, and actual necessary traveling expenses in visiting the different mints and assay offices, for which vouchers shall be rendered. (R. S. § 344.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 12, 17 Stat. 426.

## CROSS REFERENCE

Per diem to civilian officers and employees of United States in lieu of actual expenses for subsistence, see section 823 of Title 5, Executive Departments and Government Officers and Employees.

## § 253. Same; powers; reports.

The Director of the Mint shall have the general supervision of all mints and assay offices, and shall make an annual report to the Secretary of the Treasury of their operations, at the close of each fiscal year, and from time to time such additional reports, setting forth the operations and condition of such institutions, as the Secretary of the Treasury shall require, and shall lay before him the annual estimates for their support. And the Secretary of the Treasury shall appoint the number of clerks, classified according to law, necessary to discharge the duties of said bureau. (R. S. § 345.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 2, 17 Stat. 424.

## § 254. Acting in absence of director.

In case of the temporary absence of the Director of the Mint, the Secretary of the Treasury may designate some one to act in his place. (R. S. § 3502.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 9, 17 Stat. 425.

## MINTS AND ASSAY OFFICES

## § 261. Mints and assay offices enumerated.

The different mints and assay offices shall be known as—

First. The mint of the United States at Philadelphia.

Second. The mint of the United States at San Francisco.

Third. The mint of the United States at New Orleans.

Fourth. The mint of the United States at Carson.

Fifth. The mint of the United States at Denver.

Sixth. The United States assay office at New York.  
Seventh. The United States assay office at Boise City, Idaho.

Eighth. The United States assay office at Helena, Montana.

Ninth. The United States assay office at Deadwood, South Dakota.

Tenth. The United States assay office at Seattle, Washington.

Eleventh. The United States assay office at Salt Lake City, Utah. (R. S. § 3495; May 12, 1874, ch. 168, § 1, 18 Stat. 45; June 20, 1874, ch. 328, § 1, 18 Stat. 97; Feb. 1, 1881, ch. 33, § 1, 21 Stat. 322; June 11, 1896, ch. 420, § 1, 29 Stat. 414; May 21, 1898, ch. 348, 30 Stat. 420; May 30, 1908, ch. 223, 35 Stat. 474.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 66, 17 Stat. 435.

## § 262. Denver mint; coinage of silver.

The coinage of silver and minor coins shall be carried on at the mint of the United States at Denver, in the State of Colorado. (Feb. 20, 1895, ch. 105, §§ 1, 3, 28 Stat. 673; Jan. 30, 1934, ch. 6, § 5, 48 Stat. 340.)

## CROSS REFERENCE

Coinage of gold coins was discontinued and existing gold coins were withdrawn from circulation by act Jan. 30, 1934, cited to text. See section 315b of this title.

## § 263. Officers of mints.

The officers of each coinage mint shall be a superintendent and an assayer; and, for the mint at Philadelphia, an engraver; all to be appointed by the President, by and with the advice and consent of the Senate. (R. S. § 3496; Feb. 20, 1895, ch. 105, § 2, 28 Stat. 673; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384; Jan. 3, 1923, ch. 22, 42 Stat. 1103.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 8, 17 Stat. 424.

## § 264. Superintendents of certain mints to perform duties of treasurer.

The superintendents of the mints at Philadelphia, San Francisco, and Denver shall be, and perform the duties of, treasurers of said mints respectively. (R. S. § 3497; Feb. 20, 1895, ch. 105, § 2, 28 Stat. 673; Jan. 3, 1923, ch. 22, 42 Stat. 1103.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 65, 17 Stat. 435.

## § 265. Salaries of officers of coinage mints.

The officers of the several coinage mints shall be entitled to salaries, to be paid monthly, in accordance with the provisions of section 677 of Title 5. (R. S. § 3498; June 20, 1874, ch. 328, § 1, 18 Stat. 96; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384; Apr. 4, 1924, ch. 84, 43 Stat. 78; Jan. 22, 1925, ch. 87, 43 Stat. 764; Mar. 5, 1928, ch. 126, § 2, 45 Stat. 193.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 12, 17 Stat. 426.

## CROSS REFERENCE

Compensation of certain civilian positions in the field service to be adjusted by the heads of the several executive departments and establishments, see sections 678, 678a of Title 5, Executive Departments and Government Officers and Employees.

## § 266. Appointment of assistants and employees.

All assistants and employees of the mints and assay offices of the United States shall be appointed by the Secretary of the Treasury. One of the clerks at each mint shall be designated "chief clerk." (R. S. § 3504; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 4, 17 Stat. 424.

**§ 267. Duties of coiner and melter and refiner, performed by superintendent.**

The duties and responsibilities formerly imposed by law on the coiner and the melter and refiner in each of the coinage mints and the assay office at New York shall devolve upon the superintendents of said institutions. (Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384.)

**§ 268. Salaries of assistants, clerks, and laborers employed in the mints.**

There shall be allowed to the assistants and clerks of the several mints annual salaries in accordance with section 677 of Title 5, and the workmen employed therein shall be allowed such wages as may be customary and reasonable according to their respective stations and occupations, to be determined by the superintendent, and approved by the Director of the Mint. The salaries provided for in this section and section 265 of this title, and the wages of workmen permanently engaged, shall be payable in monthly installments. (R. S. § 3499; June 20, 1874, ch. 328, § 1, 18 Stat. 96; Mar. 4, 1915, ch. 141, § 6, 38 Stat. 1049; Mar. 5, 1928, ch. 126, § 2, 45 Stat. 193.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 12, 17 Stat. 426.

## CROSS REFERENCE

Compensation of certain civilian positions in the field service to be adjusted by the heads of the several executive departments and establishments, see sections 678, 678a of Title 5, Executive Departments and Government Officers and Employees.

**9. Oath of office of officers, assistants, and clerks.**

Every officer, assistant, and clerk appointed for any mint shall, before he enters upon the execution of his office, take an oath before some judge of the United States, or judge of some court of record of the State in which such mint is located, faithfully and diligently to perform the duties thereof; in addition to other official oaths prescribed by law, such oath, duly certified, shall be transmitted to the Secretary of the Treasury. The superintendent of each mint may require such oath from any of the employees of the mint. (R. S. § 3500.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 10, 17 Stat. 425.

**§ 270. Bonds of officers, assistants, and clerks.**

The superintendent and the assayer, before entering upon the execution of their respective offices, shall become bound to the United States, with one or more sureties, approved by the Secretary of the Treasury, in the sum of not less than \$10,000 nor more than \$50,000, with condition for the faithful and diligent performance of the duties of his office. Similar bonds may be required of the assistants and clerks, in such sums as the superintendent shall determine, with the approbation of the Director of the Mint; but the same shall not be construed to relieve the superintendent or other officers from liability to the United States for acts, omissions, or negligence of their subordinates or employees; and the Secre-

tary of the Treasury may, at his discretion, increase the bonds of the superintendents. (R. S. § 3501; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 11, 17 Stat. 425.

**§ 271. Acting in absence of superintendent or other officer.**

Whenever any officer of a mint or assay office shall be temporarily absent, on account of sickness or any other cause, it shall be lawful for the superintendent, with the consent of such officer, to appoint some person attached to the mint to act in the place of such officer during his absence; but all such appointments shall be forthwith reported to the Director of the Mint for his approval; and in all cases whatsoever the principal shall be responsible for the acts of his representative. In case of the temporary absence of the superintendent, the chief clerk shall act in his place. (R. S. § 3502.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 9, 17 Stat. 425.

**§ 272. General duties of superintendents of mints.**

The superintendent of each mint shall have the control thereof, the superintendence of the officers and persons employed therein, and the supervision of the business thereof, subject to the approval of the Director of the Mint. He shall make reports to the Director of the Mint at such times and according to such forms as the director may prescribe; which shall exhibit in detail, and under appropriate heads, the deposits of bullion, the amount of gold, silver, and minor coinage, and the amount of unparted, standard, and refined bars issued, and such other statistics and information as may be required. He shall keep and render, quarter yearly, to the Director of the Mint, for the purpose of adjustment according to such forms as may be prescribed by the Secretary of the Treasury, regular and faithful accounts of his transactions with the other officers of the mint and the depositors; and shall also render to him a monthly statement of the ordinary expenses of the mint or assay office under his charge. (R. S. §§ 3503, 3504.)

## DERIVATION

R. S. §§ 3503, 3504 were from act Feb. 12, 1873, ch. 131, § 4, 17 Stat. 424.

**§ 273. Duties of superintendents as to coin and bullion.**

The superintendent of each mint shall receive and safely keep, until legally withdrawn, all moneys or bullion which shall be for the use or the expenses of the mint. He shall receive all bullion brought to the mint for assay or coinage; shall be the keeper of all bullion or coin in the mint, except while the same is legally in the hands of other officers; and shall deliver all coins struck at the mint to the persons to whom they shall be legally payable. From the report of the assayer and the weight of the bullion, he shall compute the value of each deposit, and also the amount of the charges or deductions, if any, of all which he shall give a detailed memorandum to the depositor; and he shall also give at the same time, under his hand, a certificate of the net amount of the

deposit, to be paid in coins or bars of the same species of bullion as that deposited, the correctness of which certificate shall be verified by the assayer, who shall countersign the same, and in all cases of transfer of coin or bullion, shall give and receive vouchers, stating the amount and character of such coin or bullion. (R. S. § 3506.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 4, 17 Stat. 424.

## EX. ORD. NO. 6558. RECEIPT OF GOLD ON CONSIGNMENT BY THE MINTS AND ASSAY OFFICES

By virtue of the authority vested in me by section 5 (b) of the act of October 6, 1917, as amended by section 2 of the act of March 9, 1933, entitled "An Act to Provide Relief in the Existing National Emergency in Banking and for other Purposes," I, Franklin D. Roosevelt, President of the United States of America, do declare that a period of national emergency exists, and by virtue of said authority and of all other authority vested in me, do hereby prescribe the following regulations for receiving gold on consignment for sale:

SECTION 1. The United States mints and assay offices are hereby authorized, subject to such regulations as may from time to time be prescribed by the Secretary of the Treasury, to receive on consignment gold which the mint or assay office concerned is satisfied has not been held in noncompliance with the Executive orders, or the orders of the Secretary of the Treasury, issued under sections 2 and 3 of the act of March 9, 1933, or in noncompliance with any regulations or rulings made thereunder or licenses issued pursuant thereto.

SEC. 2. The Secretary of the Treasury is hereby authorized and empowered to issue such regulations as he may deem necessary to carry out the purposes of this Executive order.

SEC. 3. This Executive order and any regulations issued hereunder may be modified or revoked at any time. Promulgated January 15, 1934

## § 274. Duties as to melting and refining.

The superintendent of melting and refining department shall execute all the operations which are necessary in order to form ingots of standard silver or gold, and alloys for minor coinage, suitable for the superintendent of coining department, from the metals legally delivered to him for that purpose; and shall also execute all the operations which are necessary in order to form bars conformable in all respects to the law, from the gold and silver bullion delivered to him for that purpose. He shall keep a careful record of all transactions with the superintendent, noting the weight and character of the bullion, and shall be responsible for all bullion delivered to him until the same is returned to the superintendent and the proper vouchers obtained. (R. S. § 3508; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384; Jan. 3, 1923, ch. 22, 42 Stat. 1103.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 6, 17 Stat. 425.

## COINAGE OF GOLD

The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

## POSSESSION OF GOLD COINS AND BULLION

The possession of gold coins and bullion was prohibited except under Government license by Ex. Ord. No. 6260, Aug. 28, 1933, set out in note under section 95 of Title 12, Banks and Banking.

## § 275. Duties as to coining.

The superintendent of coining department shall execute all the operations which are necessary in order to form coins, conformable in all respects to the law, from the standard gold and silver ingots, and alloys for minor coinage, legally delivered to him for that purpose; and shall be responsible for all bullion delivered to him, until the same is returned to the superintendent and the proper vouchers obtained. (R. S. § 3509; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384; Jan. 3, 1923, ch. 22, 42 Stat. 1103.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 7, 17 Stat. 425.

## COINAGE OF GOLD

The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

## POSSESSION OF GOLD COINS AND BULLION

The possession of gold coins and bullion was prohibited except under Government license by Ex. Ord. No. 6260, Aug. 28, 1933, set out in note under section 95 of Title 12, Banks and Banking.

## § 276. Duties of engravers; dies for coins; new designs.

The engraver shall prepare from the original dies already authorized all the working dies required for use in the coinage of the several mints, and, when new coins, emblems, devices, legends, or designs are authorized, shall, if required by the Director of the Mint, prepare the devices, models, hubs, or original dies for the same. The Director of the Mint shall have power, with the approval of the Secretary of the Treasury, to cause new designs or models of authorized emblems or devices to be prepared and adopted in the same manner as when new coins or devices are authorized. But no change in the design or die of any coin shall be made oftener than once in twenty-five years from and including the year of the first adoption of the design, model, die, or hub for the same coin: *Provided*, That no change be made in the diameter of any coin. But the Director of the Mint may nevertheless, with the approval of the Secretary of the Treasury, engage temporarily for this purpose the services of one or more artists, distinguished in their respective departments of art, who shall be paid for such service from the contingent appropriation for the mint at Philadelphia. (R. S. § 3510; Sept. 26, 1890, ch. 944, 26 Stat. 484.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 8, 17 Stat. 425.

## § 277. Duties of assayers.

The assayer shall assay all metals and bullion, whenever such assays are required in the operations of the mint; and shall make assays of coin or samples of bullion whenever required by the superintendent. (R. S. § 3507.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 5, 17 Stat. 425.

## § 278. Business of assay office at New York.

The business of the United States assay office at New York shall be in all respects similar to that of the mints, except that bars only and not coin, shall

be manufactured therein; and no metals shall be purchased for minor coinage. All bullion intended by the depositor to be converted into coins, of the United States, and silver bullion purchased for coinage, when assayed, parted, and refined, and its net value certified, shall be transferred to the mint at Philadelphia, under such directions as shall be made by the Secretary of the Treasury, at the expense of the contingent fund of the mint, and shall be there coined, and the proceeds returned to the assay office. And the Secretary of the Treasury is hereby authorized to make the necessary arrangements for the adjustment of the accounts upon such transfers between the respective offices. (R. S. § 3553.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 54, 17 Stat. 433.

## § 279. Officers at New York assay office; appointment.

The officers of the assay office at New York shall be a superintendent and an assayer; each of whom shall be appointed by the President, by and with the advice and consent of the Senate. (R. S. § 3554; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 54, 17 Stat. 433.

## § 280. Same; salaries.

The officers of the assay office at New York shall be entitled to salaries in accordance with the provisions of section 677 of Title 5. (R. S. § 3556; Apr. 4, 1924, ch. 84, 43 Stat. 78; Jan. 22, 1925, ch. 87, 43 Stat. 764; Mar. 5, 1928, ch. 126, § 2, 45 Stat. 193.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 56, 17 Stat. 433.

## CROSS REFERENCE

Compensation of certain civilian positions in the field service to be adjusted by the heads of the several executive departments and establishments, see sections 678, 678a of Title 5, Executive Departments and Government Officers and Employees.

## § 281. Same; duties.

The duties of the superintendent and the assayer of the assay office at New York shall correspond to those of superintendents and assayers of mints; and all the provisions of this title relating to mints and their officers, the duties and responsibilities of such officers, and others employed therein, the oaths to be taken, and the bonds and sureties to be given by them, shall extend, as far as the same may be applicable, to the assay office at New York, and to its officers, clerks, and employees. (R. S. § 3555; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 55, 17 Stat. 433.

## § 282. Salaries of assistants and employees.

The compensation of assistants, clerks, and workmen in the assay office at New York shall be regulated in the same manner as is prescribed in regard to mints. (R. S. § 3557; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 56, 17 Stat. 433.

## 3. Business of assay offices.

The business of the United States assay offices enumerated in section 261 of this title other than the assay office at New York, and that of any other assay offices which may be established, shall be confined to the receipt of gold and silver bullion, for melting and assaying. (R. S. § 3558; June 8, 1878, ch. 170, 20 Stat. 102; Feb. 20, 1895, ch. 105, §§ 1, 2, 28 Stat. 673.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 57, 17 Stat. 433.

## CROSS REFERENCE

Receipt of deposits of gold bullion by assay offices, see section 430 of this title.

## § 284. Appointment of officers at assay offices.

The officer of the assay offices embraced by section 283 of this title shall be an assayer in charge, who shall also perform the duties of melter, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall receive a salary in accordance with section 677 of Title 5. (R. S. § 3559; Feb. 20, 1895, ch. 105, § 2, 28 Stat. 673; Jan. 22, 1925, ch. 87, 43 Stat. 764; Mar. 5, 1928, ch. 126, § 2, 45 Stat. 193.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 57, 17 Stat. 433.

## CROSS REFERENCE

Duties of superintendent of melting and refining department of mint, see section 274 of this title.

## § 285. Powers and duties of assayers at assay offices.

The assayer at each of the assay offices embraced by section 283 of this title shall have general charge of the office; and shall discharge the duties of disbursing agent for the expenses of the office under his charge. (R. S. § 3560; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, §§ 57, 58, 17 Stat. 433.

## § 286. Bond and oath of officers and clerks.

Each officer and clerk appointed at either of the assay offices embraced by section 283 of this title shall, before entering upon the duties of his office, take an oath pursuant to the provisions of section 16 of Title 5, and shall give a bond to the United States, with one or more sureties, satisfactory to the Director of the Mint or to one of the judges of the supreme court of the State or Territory in which the office to which he is appointed is located, conditioned for the faithful performance of his duties. (R. S. § 3561; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 319; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 249.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 58, 17 Stat. 433.

## § 287. Laws relating to mints extended to assay offices.

All provisions of law for the regulation of mints, the government of officers and persons employed therein, and for the punishment of all offenses connected with mints or coinage, shall extend to all assay offices, as far as applicable. (R. S. § 3562.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 60, 17 Stat. 434.



## Chapter 8.—COINS, COINAGE, AND CURRENCY

## COINS AND COINAGE

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## COINS AND COINAGE

Gold Reserve Act of 1934, see sections 212, 411–415, 417, 467, of Title 12, Banks and Banking, and sections 315b, 408a, 408b, 440–446, 783, 734, 752, 753, 754a, 754b, 757a, 771, 821, 822a, 822b, and 824 of this title.

## § 311. Policy of United States as to bimetallism.

It is hereby declared to be the policy of the United States to continue the use of both gold and silver as standard money, and to coin both gold and silver into money of equal intrinsic and exchangeable value, such equality to be secured through international agreement, or by such safeguards of legislation as will insure the maintenance of the parity in value of the coins of the two metals, and the equal power of every dollar at all times in the markets and in the payment of debts. And it is hereby further declared that the efforts of the Government should be steadily directed to the establishment of such a safe system of bimetallism as will maintain at all times the equal power of every dollar coined or issued by the United States, in the markets and in the payment of debts. (Nov. 1, 1893, ch. 8, 28 Stat. 4.)

## COINAGE OF GOLD DISCONTINUED

The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

## POSSESSION OF GOLD COINS AND BULLION

The possession of gold coins and bullion was prohibited except under Government license by Ex. Ord. No. 6260, eff. Aug. 28, 1933, set out in note under section 95 of Title 12, Banks and Banking.

## § 311a. Policy of United States as to proportion of silver to gold.

It is declared to be the policy of the United States that the proportion of silver to gold in the monetary stocks of the United States should be increased, with the ultimate objective of having and maintaining one-fourth of the monetary value of such stocks in silver. (June 19, 1934, ch. 674, § 2, 48 Stat. 1178.)

## REPEAL

All laws inconsistent with the provisions of this section were repealed by section 448e of this title.

## § 312. International monetary conference commissioners.

Whenever the President of the United States shall determine that the United States should be represented at any international conference called by the United States or any other country with a view to securing by international agreement a fixity of relative value between gold and silver as money by means of a common ratio between these metals, with free mintage at such ratio, he may appoint five or more commissioners to such international conference; and for compensation of said commissioners, and for all reasonable expenses connected therewith, to be approved by the Secretary of State, including the pro-

portion to be paid by the United States of the joint expenses of any such conference, the sum of \$100,000 or so much thereof as may be necessary, is appropriated. (Mar. 3, 1897, ch. 376, § 1, 29 Stat. 624.)

## § 313. International bimetallism.

The provisions of sections 146, 313, 314, 320, 406, 408, 411, 429, 455, and 751 of this title and sections 51, 101, 178, and 542 of Title 12, are not intended to preclude the accomplishment of international bimetallism whenever conditions shall make it expedient and practicable to secure the same by concurrent action of the leading commercial nations of the world and at a ratio which shall insure permanence of relative value between gold and silver. (Mar. 14, 1900, ch. 41, § 14, 31 Stat. 49.)

## § 314. Standard unit of value.

The dollar of gold nine-tenths fine consisting of the weight determined under the provisions of section 821 of this title shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the Secretary of the Treasury to maintain such parity. (R. S. § 3511; Mar. 14, 1900, ch. 41, § 1, 31 Stat. 45; May 12, 1933, ch. 25, title III, § 43, 48 Stat. 51; June 5, 1933, ch. 48, § 2, 48 Stat. 113; Jan. 30, 1934, ch. 6, § 12, 48 Stat. 342; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704; Jan. 23, 1937, 2 p. m., ch. 5, § 2, 50 Stat. 4; July 6, 1939, ch. 260, § 3, 53 Stat. 998.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 14, 17 Stat. 426.

## CODIFICATION

Words "consisting of twenty-five and eight tenths grain", appearing in original enactment, have been omitted in view of provisions of section 821 of this title authorizing the President to fix the weight of the gold dollar within certain limitations, and words "consisting of the weight determined under the provisions of section 821 of this title" give effect to this provision.

## WEIGHT OF GOLD

Weight of gold dollar reduced to 15 $\frac{1}{2}$  grains nine-tenths fine, see Proclamation No. 2072 set out as note to section 821 of this title.

## § 315. Gold coins of United States.

Section, R. S. § 3511; act Sept. 26, 1890, ch. 945, § 1, 26 Stat. 485, provided for the types of gold coins of the United States and the respective weight of each. The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

## § 315a. Same; coinage of quarter-eagle discontinued.

Section, act Apr. 11, 1930, ch. 131, 46 Stat. 154, discontinued coinage of quarter-eagles. All gold coinage was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

## § 315b. Gold coinage discontinued; existing gold coins withdrawn from circulation; coins and gold to be formed into bars.

No gold shall after January 30, 1934, be coined, and no gold coin shall after January 30, 1934, be paid out or delivered by the United States: *Provided, how-*

ever, That coinage may continue to be executed by the mints of the United States for foreign countries in accordance with section 367 of this title. All gold coin of the United States shall be withdrawn from circulation, and, together with all other gold owned by the United States, shall be formed into bars of such weights and degrees of fineness as the Secretary of the Treasury may direct. (Jan. 30, 1934, ch. 6, § 5, 48 Stat. 340.)

#### REPEAL

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

#### § 316. Silver coins; weight.

The silver coins of the United States shall be a dollar; a half-dollar, or fifty-cent piece; a quarter-dollar, or twenty-five-cent piece; and a dime, or ten-cent piece. The weight of said coins shall be that determined by the President under the provisions of section 821 of this title. (R. S. § 3513; Feb. 28, 1878, ch. 20, § 1, 20 Stat. 25; May 12, 1933, ch. 25, title III, § 43, 48 Stat. 51; June 5, 1933, ch. 48, § 2, 48 Stat. 113; Jan. 30, 1934, ch. 6, § 12, 48 Stat. 342; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704; Jan. 23, 1937, 2 p. m., ch. 5, § 2, 50 Stat. 4; July 6, 1939, ch. 260, § 3, 53 Stat. 998.)

#### DERIVATION

Act Feb. 12, 1873, ch. 131, § 15, 17 Stat. 427.

#### CODIFICATION

Words "said coins" \* \* \* "that determined by the President under the provisions of section 821 of this title" have been substituted for words "four hundred and twelve and one-half grains troy of standard silver, the weight of the half-dollar shall be one hundred and ninety-two and nine-tenths grains; the quarter dollar and the dimes shall be respectively, one-half and one-fifth of the weight of said half-dollar," in view of authority of President to fix the weight of silver dollars and subsidiary coins within limitations under section 821 of this title.

#### CROSS REFERENCES

Authority to President to fix by proclamation the weight of silver dollars in grains nine-tenths fine, see section 821 (b) (2) of this title.

Stabilization of domestic prices of silver, see Proclamation No. 2067, as modified, set out as note under section 821 of this title.

#### § 316a. Acquisition and use of silver; payment therefor; expenses; penalties.

Whenever in the judgment of the President such action is necessary to effectuate the policy of sections 311a, 316a, 316b, 405a, 448-448e, 734a, and 734b of this title, he may by Executive order require the delivery to the United States mints of any or all silver by whomever owned or possessed. The silver so delivered shall be coined into standard silver dollars or otherwise added to the monetary stocks of the United States as the President may determine; and there shall be returned therefor in standard silver dollars, or any other coin or currency of the United States, the monetary value of the silver so delivered less such deductions for seigniorage, brassage, coinage, and other mint charges as the Secretary of the Treasury with the approval of the President shall have determined: *Provided*, That in no case shall the value of the amount returned therefor be less than the fair value at the time of such order of the silver required to be delivered as such value is determined by the

market price over a reasonable period terminating at the time of such order. The Secretary of the Treasury shall pay all necessary costs of the transportation of such silver and standard silver dollars, coin, or currency, including the cost of insurance, protection, and such other incidental costs as may be reasonably necessary. Any silver withheld in violation of any Executive order issued under this section or of any regulations issued pursuant thereto shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law; and, in addition, any person failing to comply with the provisions of any such Executive order or regulation shall be subject to a penalty equal to twice the monetary value of the silver in respect of which such failure occurred. (June 19, 1934, ch. 674, § 7, 48 Stat. 1179.)

#### REPEAL

All laws inconsistent with the provisions of this section were repealed by section 448e of this title.

#### EXECUTIVE ORDERS

Ex. Ord. No. 7877, April 28, 1938, 3 Fed. Reg. 842, revoked Ex. Ord. No. 6814, August 9, 1934, requiring delivery of silver to United States mints, and also revoked Ex. Ord. No. 6895-A, November 2, 1934, which revoked orders requiring the delivery of silver to the United States mints. The revoking order contained a saving clause.

#### CROSS REFERENCE

Stabilization of silver, see Proclamations No. 2067, Dec. 21, 1933; No. 2268, Dec. 30, 1937; No. 2317, Dec. 31, 1938; No. 2342, July 25, 1939, set out in the note under section 821 of this title.

#### § 316b. Same; means of regulation; penalties.

Whenever in his judgment such action is necessary to effectuate the policy of sections 311a, 316a, 316b, 405a, 448-448e, 734a, and 734b of this title, the Secretary of the Treasury is authorized, with the approval of the President, to investigate, regulate, or prohibit, by means of licenses or otherwise, the acquisition, importation, exportation, or transportation of silver and of contracts and other arrangements made with respect thereto; and to require the filing of reports deemed by him reasonably necessary in connection therewith. Whoever willfully violates the provisions of any license, order, rule, or regulation issued pursuant to the authorization contained in this section shall, upon conviction, be fined not more than \$10,000 or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. (June 18, 1934, ch. 674, § 6, 48 Stat. 1178.)

#### REPEAL

All laws inconsistent with the provisions of this section were repealed by section 448e of this title.

#### § 316c. Coinage of silver mined after July 1, 1939; seigniorage; regulations.

(a) Each United States coinage mint shall receive for coinage into standard silver dollars any silver which such mint, subject to regulations prescribed by the Secretary of the Treasury, is satisfied has been mined subsequently to July 1, 1939, from natural

deposits in the United States or any place subject to the jurisdiction thereof.

(b) The Director of such mint with the consent of the owner shall deduct and retain of such silver so received 45 per centum as seigniorage for services performed by the Government of the United States relative to the coinage and delivery of silver dollars. The balance of such silver so received, that is 55 per centum, shall be coined into standard silver dollars and the same or any equal number of other standard silver dollars shall be delivered to the owner or depositor of such silver, and no provisions of law taxing transfers of silver shall extend or apply to any delivery of silver to a United States mint under this section. The 45 per centum of such silver so deducted shall be retained as bullion by the Treasury or coined into standard silver dollars and held or disposed of in the same manner as other bullion or silver dollars held in or belonging to the Treasury.

(c) The Secretary of the Treasury is authorized to prescribe regulations to carry out the purposes of this section. Such regulations shall contain provisions substantially similar to the provisions contained in the regulations issued pursuant to the Act of Congress approved April 23, 1918 (40 Stat. L., p. 535), known as the Pittman Act, with such changes as he shall determine prescribing how silver tendered to such mints shall be identified as having been produced from natural deposits in the United States or any places subject to its jurisdiction subsequent to July 1, 1939. (July 6, 1939, ch. 260, § 4, 53 Stat. 998.)

#### PITTMAN ACT

The enacting clause of the Pittman Act, referred to in the text, Apr. 23, 1918, ch. 63, 40 Stat. 535, read as follows: "An Act To conserve the gold supply of the United States; to permit the settlement in silver of trade balances adverse to the United States; to provide silver for subsidiary coinage and for commercial use; to assist foreign governments at war with the enemies of the United States; and for the above purposes to stabilize the price and encourage the production of silver."

#### § 317. Minor coins; weight and alloy.

The minor coins of the United States shall be a five-cent piece, and a one-cent piece. The alloy for the five-cent pieces shall be of copper and nickel, to be composed of three-fourths copper and one-fourth nickel. The alloy of the one-cent piece shall be 95 per centum of copper and 5 per centum of tin and zinc, in such proportions as shall be determined by the Director of the Mint. The weight of the piece of 5 cents shall be seventy-seven and sixteen-hundredths grains troy, and of the one-cent piece, forty-eight grains. (R. S. § 3515; Sept. 26, 1890, ch. 945, § 1, 26 Stat. 485.)

#### DERIVATION

Act Feb. 12, 1873, ch. 131, § 16, 17 Stat. 427.

#### WEIGHT OF SUBSIDIARY COINS

Power of President to fix weight of subsidiary coins, see section 821 of this title.

#### § 318. Coins reduced in weight by abrasion.

Section, R. S. § 3505, provided for the surrender at their nominal value of gold coins reduced in weight by abrasion. The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

Acquisition and use of gold in violation of law to subject the gold to forfeiture and subject person to penalty equal to twice the value of the gold, see section 443 of this title.

Redemption of currency in gold forbidden, see section 408a of this title.

#### § 319. Recoinage of gold coins.

Section, R. S. § 3512, provided for recoinage of gold coins when reduced in weight from abrasion; however, gold coinage was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

#### § 320. Recoinage of uncurrent subsidiary silver coins.

The Secretary of the Treasury shall cause all worn and uncurrent subsidiary silver coin of the United States received in the Treasury to be recoined, and shall reimburse the Treasurer of the United States for the difference between the nominal or face value of such coin and the amount the same will produce in new coin from any moneys in the Treasury not otherwise appropriated. (Mar. 14, 1900, ch. 41, § 9, 31 Stat. 48.)

#### ANNUAL APPROPRIATION

Effective July 1, 1935, the permanent appropriation provided for in this section was repealed by act June 26, 1934, ch. 756, § 2, 48 Stat. 1226, such act authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury. See section 725a (b) of this title.

#### § 321. Standard for silver coins.

The standard for silver coins of the United States shall be such that of one thousand parts by weight nine hundred shall be of pure metal and one hundred of alloy. The alloy of the silver coins shall be of copper. (R. S. § 3514; Jan. 30, 1934, ch. 6, § 5, 48 Stat. 340.)

#### DERIVATION

Act Feb. 12, 1873, ch. 131, § 13, 17 Stat. 426.

#### CODIFICATION

The following words were omitted from the original enactment of this section upon the discontinuance of the coinage of gold under section 315b of this title: "both gold and" \* \* \* "The alloy of the gold coins shall be of copper, or of copper and silver; but the silver shall in no case exceed one-tenth of the whole alloy."

#### § 322. Coins prohibited.

Except as otherwise authorized by Congress, no coins, either of silver or minor coinage, shall be issued from the Mint other than those of the denominations, standards, and weights set forth in this chapter. (R. S. § 3516; Jan. 30, 1934, ch. 6, § 5, 48 Stat. 340.)

#### DERIVATION

Act Feb. 12, 1873, ch. 131, § 17, 17 Stat. 427.

#### CODIFICATION

Word "gold" appearing in original enactment of section has been omitted. The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

#### REFERENCES IN TEXT

Word "chapter" in text means Title 37 of Revised Statutes which is set out in sections 204 and 205 of Title 15, Commerce and Trade, sections 254, 261, 263-266, 268-287, 314, 315, 316, 317-319, 321, 322, 324, 325, 327-332, 334-336, 340, 341, 343-358, 360, 363-366, 368, 369, 371, and 373-375 of this title.

### § 323. Withdrawal of discontinued pieces and recoinage.

Section, act Sept. 26, 1890, ch. 945, § 2, 26 Stat. 485, provided for the withdrawal from circulation of \$3 and \$1 gold pieces, and 3-cent nickel pieces and their recoinage into other denominations of coins. The coinage of gold was discontinued and all existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

### § 324. Inscriptions on coins.

Upon the coins there shall be the following devices and legends: Upon one side there shall be an impression emblematic of liberty, with an inscription of the word "Liberty" and the year of the coinage, and upon the reverse shall be the figure or representation of an eagle, with the inscriptions "United States of America" and "E Pluribus Unum", and a designation of the value of the coin; but on the dime, 5-, and 1-cent piece, the figure of the eagle shall be omitted; and the motto "In God we trust" shall be inscribed on the denominations of silver coins on which it was inscribed prior to May 18, 1908. (R. S. § 3517; Sept. 26, 1890, ch. 945, § 1, 26 Stat. 485; May 18, 1908, ch. 173, § 1, 35 Stat. 164; Jan. 30, 1934, ch. 6, § 5, 48 Stat. 340.)

#### DERIVATION

Act Feb. 12, 1873, ch. 131, § 18, 17 Stat. 427.

#### CODIFICATION

Words "gold and" in last clause preceding words "silver coins" were omitted, inasmuch as the coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

### § 325. Gold and silver bars.

At the option of the owner gold or silver may be cast into bars of fine metal, or of standard fineness, or unparted, as he may prefer, with a stamp upon the same designating the weight and fineness, and with such devices impressed thereon as may be deemed expedient to prevent fraudulent imitation, and no such bars shall be issued of a less weight than five ounces. (R. S. § 3518.)

#### DERIVATION

Act Feb. 12, 1873, ch. 131, § 19, 17 Stat. 427.

#### POSSESSION OF GOLD COINS AND BULLION

The possession of gold coins and bullion was prohibited except under Government license by Ex. Ord. No. 6260, Aug. 28, 1933, set out in note under section 95 of Title 12, Banks and Banking.

### § 326. Exchange of gold coins for gold bars.

The superintendents of the coinage mints and of the United States assay office at New York may, with the approval of the Secretary of the Treasury, but not otherwise, receive United States gold coin from any holder thereof in sums of not less than \$5,000, and pay and deliver in exchange therefor gold bars in value equaling such coin so received. The Secretary of the Treasury may make, in his discretion, such exchange without charge, or may impose a charge therefor. (May 26, 1882, ch. 190, 22 Stat. 97; Mar. 3, 1891, ch. 541, § 3, 26 Stat. 948; Mar. 3, 1901, ch. 867, 31 Stat. 1446.)

#### COINAGE OF GOLD

The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

#### POSSESSION OF GOLD COINS AND BULLION

The possession of gold coins and bullion was prohibited except under Government license by Ex. Ord. No. 6260, eff. Aug. 28, 1933, set out in note under section 95 of Title 12, Banks and Banking.

### § 327. Barring gold bullion; refusal of deposits.

Any owner of gold bullion may deposit the same at any mint, to be formed into bars for his benefit. It shall be lawful, however, to refuse any deposit of less value than \$100, or any bullion so base as to be unsuitable for the operations of the Mint. In cases where gold and silver are combined, if either metal be in such small proportion that it cannot be separated advantageously, no allowance shall be made to the depositor for its value. (R. S. § 3519; Jan. 30, 1934, ch. 6, § 5, 48 Stat. 340.)

#### DERIVATION

Act Feb. 12, 1873, ch. 131, § 20, 17 Stat. 427.

#### CODIFICATION

Words "coin or" before word "bars" were omitted from original enactment inasmuch as the coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

#### POSSESSION OF GOLD COINS AND BULLION

The possession of gold coins and bullion was prohibited except under Government license by Ex. Ord. No. 6260, eff. Aug. 28, 1933, set out in note under section 95 of Title 12, Banks and Banking.

### § 328. Silver bullion for forming into bars.

Any owner of silver bullion may deposit the same at any mint, to be formed into bars, and no deposit of silver for other coinage shall be received. Silver bullion contained in gold deposits, and separated therefrom, may, however, be paid for in silver coin, at such valuation as may be, from time to time, established by the Director of the Mint. (R. S. § 3520; Mar. 3, 1887, ch. 396, § 3, 24 Stat. 635.)

#### DERIVATION

Act Feb. 12, 1873, ch. 131, § 21, 17 Stat. 427.

#### STABILIZATION OF SILVER

Proclamations stabilizing silver production, coinage, etc., are set out under section 821 of this title.

### § 329. Weighing and valuing bullion.

When bullion is deposited in any of the mints, it shall be weighed by the superintendent, and, when practicable, in the presence of the depositor, to whom a receipt shall be given, which shall state the description and weight of the bullion. When, however, the bullion is in such a state as to require melting, or the removal of base metals, before its value can be ascertained, the weight, after such operation, shall be considered as the true weight of the bullion deposited. The fitness of the bullion to be received shall be determined by the assayer, and the mode of melting by the superintendent of melting and refining department. (R. S. § 3521; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384; Jan. 3, 1923, ch. 22, 42 Stat. 1103.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 22, 17 Stat. 428.

## § 330. Assay of bullion.

From every parcel of bullion deposited for coinage or bars, the superintendent shall deliver to the assayer a sufficient portion for the purpose of being assayed. The bullion remaining from the operations of the assay shall be returned to the superintendent by the assayer. (R. S. § 3522.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 23, 17 Stat. 428.

## § 331. Report of quality of bullion assayed.

The assayer shall report to the superintendent the quality or fineness of the bullion assayed by him, and such information as will enable him to compute the amount of the charges hereinafter provided for, to be made to the depositor. (R. S. § 3523.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 24, 17 Stat. 428.

## § 332. Charges for converting bullion into coin and bars.

The charges for melting or refining bullion, for toughening when metals are contained in it which render it unfit for coinage, for copper used for alloy when the bullion is above standard, for separating the gold and silver when these metals exist together in the bullion, and for the preparation of bars, shall be fixed, from time to time, by the director, with the concurrence of the Secretary of the Treasury, so as to equal but not exceed, in their judgment, the actual average cost to each mint and assay office of the material, labor, wastage, and use of machinery employed in each of the cases aforementioned. (R. S. § 3524; Jan. 14, 1875, ch. 15, § 2, 18 Stat. 296; Mar. 1, 1881, ch. 95, 21 Stat. 374; Mar. 3, 1887, ch. 396, § 3, 24 Stat. 635.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 25, 17 Stat. 428.

## § 333. Same; standard gold bullion.

Section, act Jan. 14, 1875, ch. 15, § 2, 18 Stat. 296, prohibited charge for converting gold bullion into coin; however, the coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

## § 334. Verification of calculations of value of deposits; countersigning certificate.

The assayer shall verify all calculations made by the superintendent of the value of deposits, and, if satisfied of the correctness thereof, shall countersign the certificate required to be given by the superintendent to the depositor. (R. S. § 3525.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 26, 17 Stat. 428.

## § 335. Purchase of bullion for silver coinage; silver-profit fund.

In order to procure bullion for the silver coinage authorized by this chapter, other than the silver dollar, the superintendents, with the approval of the Director of the Mint, as to price, terms, and quantity, shall purchase such bullion with the bullion fund.

The gain arising from the coinage of such silver bullion into coin of a nominal value exceeding the cost thereof shall be credited to a special fund denominated the silver-profit fund. The balance to the credit of this fund shall be from time to time, and at least twice a year, paid into the Treasury of the United States. (R. S. § 3526; Mar. 2, 1889, ch. 411, 25 Stat. 955.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 27, 17 Stat. 428.

## REFERENCES IN TEXT

Word "chapter" in text means Title 37 of Revised Statutes which is set out in sections 204 and 205 of Title 15, Commerce and Trade, sections 254, 261, 263-266, 268-287, 314, 315, 316, 317-319, 321, 322, 324, 325, 327-332, 334, 336, 340, 341, 343-358, 360, 363-368, 369, 371, and 373-375 of this title.

## STABILIZATION OF SILVER

Proclamations stabilizing silver production, coinage, etc., are set out under section 821 of this title.

## § 336. Paying out silver coins for gold coins.

Section, R. S. § 3527; Mar. 3, 1887, ch. 396, § 3, 24 Stat. 635; May 29, 1920, ch. 214, § 1, 41 Stat. 654, provided for payment of silver coins for gold coins in sums not less than \$100 and the transportation of same; however, the coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

## § 337. Exchange of subsidiary silver coin for lawful money.

The holder of any of the silver coins of the United States of smaller denominations than \$1, may, on presentation of the same in sums of \$20, or any multiple thereof, at the office of the Treasurer or any designated depository of the United States, which the Secretary of the Treasury may direct for that purpose, receive therefor lawful money of the United States. (June 9, 1879, ch. 12, § 1, 21 Stat. 7; May 29, 1920, ch. 214, § 1, 41 Stat. 655.)

## § 338. Same; duty of Treasurer.

The Treasurer or any depository of the United States who may receive any coins under sections 337, 338, and 459 of this title shall exchange the same in sums of \$20, or any multiple thereof, for lawful money of the United States, on demand of any holder thereof. (June 9, 1879, ch. 12, § 2, 21 Stat. 8; May 29, 1920, ch. 214, § 1, 41 Stat. 655.)

## § 339. Free transportation of silver coin.

The Secretary of the Treasury is authorized and directed to transport free of charge silver coin when requested to do so: *Provided*, That an equal amount in coin or currency shall have been deposited in the Treasury by the applicant or applicants. (Aug. 7, 1882, ch. 433, § 1, 22 Stat. 312.)

## § 340. Purchase of metal for minor coinage; profit fund.

For the purchase of metal for the minor coinage, authorized by this chapter, a sum not exceeding \$600,000 in lawful money of the United States shall, upon the recommendation of the Director of the Mint and in such sums as he may designate, with the approval of the Secretary of the Treasury, be transferred to the credit of the superintendents of the

mints at Philadelphia, San Francisco, and Denver, at which establishments, until otherwise provided by law, such coinage shall be carried on. The superintendents, with the approval of the Director of the Mint as to price, terms, and quantity shall purchase the metal required for such coinage by public advertisement, and the lowest and best bid shall be accepted, the fineness of the metals to be determined on the mint assay. The gain arising from the coinage of such metals into coin of a nominal value, exceeding the cost thereof, shall be credited to the special fund denominated the minor coinage profit fund; and this fund shall be charged with the wastage incurred in such coinage, and with the cost of distributing said coins, as hereinafter provided. The balance remaining to the credit of this fund, and any balance of the profits accrued from minor coinage under former Acts, shall be, from time to time, and at least twice a year, covered into the Treasury of the United States. (R. S. § 3528; Apr. 24, 1906, ch. 1861, 34 Stat. 132; Dec. 2, 1918, ch. 1, 40 Stat. 1051; Aug. 14, 1937, ch. 631, 50 Stat. 647.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 29, 17 Stat. 429.

## REFERENCES IN TEXT

Word "chapter" in text means Title 37 of Revised Statutes which is set out in sections 204 and 205 of Title 15, Commerce and Trade, sections 254, 261, 263-266, 268-287, 314, 315, 316, 317-319, 321, 322, 324, 325, 327-332, 334-336, 341, 343-358, 360, 363-368, 369, 371, and 373-375 of this title

## § 341. Delivery of minor coins; redemption.

The minor coins authorized by this chapter may, at the discretion of the Director of the Mint, be delivered in any of the principal cities and the towns of the United States, at the cost of the mints, for transportation, and shall be exchangeable at par at the mints named, at the discretion of the superintendents, for any other coins of copper, bronze, or copper-nickel authorized, and it shall be lawful for the Treasury and depositaries of the United States to redeem, in lawful money, under such rules as may be prescribed by the Secretary of the Treasury, all copper, bronze, and copper-nickel coins authorized by law when presented in sums of not less than \$20; and whenever, under this authority, these coins are presented for redemption in such quantity as to show the amount outstanding to be redundant, the Secretary of the Treasury is authorized and required to direct that such coinage shall cease until otherwise authorized by him. (R. S. § 3529; Apr. 24, 1906, ch. 1861, 34 Stat. 132; May 29, 1920, ch. 214, § 1, 41 Stat. 654.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 30, 17 Stat. 429.

## REFERENCES IN TEXT

Word "chapter" in text means Title 37 of Revised Statutes which is set out in sections 204 and 205 of Title 15, Commerce and Trade, sections 254, 261, 263-266, 268-287, 314, 315, 316, 317-319, 321, 322, 324, 325, 327-332, 334-336, 340, 343-358, 360, 363-368, 369, 371, and 373-375 of this title.

## § 342. Cleaning, reissue, and recoinage of minor coins.

The Secretary of the Treasury may transfer to the United States mint at Philadelphia, for cleaning and reissue, any minor coins received at the offices of designated depositaries in excess of the require-

ment for the current business of said offices. (June 4, 1897, ch. 2, § 1, 30 Stat. 27; May 29, 1920, ch. 214, § 1, 41 Stat. 655.)

## § 343. Transfer of bullion for formation into ingots.

Parcels of bullion shall be, from time to time, transferred by the superintendent to the superintendent of melting and refining department. A careful record of these transfers, noting the weight and character of the bullion, shall be kept, and vouchers shall be taken for the delivery of the same, duly receipted by the superintendent of melting and refining department. The bullion thus placed in the hands of the superintendent of melting and refining department shall be subjected to the several processes which may be necessary to form it into ingots of the legal standard, and of a quality suitable for coinage. (R. S. § 3530; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384; Jan. 3, 1923, ch. 22, 42 Stat. 1103.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 31, 17 Stat. 429.

## § 344. Assay of ingots.

The ingots so prepared shall be assayed. If they prove to be within the limits allowed for deviation from the standard, the assayer shall certify the fact to the superintendent, who shall thereupon receipt for the same, and transfer them to the superintendent of coining department. (R. S. § 3531; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384; Jan. 3, 1923, ch. 22, 42 Stat. 1103.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 32, 17 Stat. 429

## § 345. Delivery of ingots for coinage.

The superintendent shall, from time to time, deliver to the superintendent of coining department ingots for the purpose of coinage. A careful record of these transfers, noting the weight and character of the bullion, shall be kept, and vouchers shall be taken for the delivery of the same, duly receipted by the superintendent of coining department. The ingots thus placed in the hands of the superintendent of coining department shall be subjected to the several processes necessary to make from them coins in all respects conformable to law. (R. S. § 3532; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384; Jan. 3, 1923, ch. 22, 42 Stat. 1103.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 35, 17 Stat. 429.

## § 346. Standard of ingots used for coinage.

No ingots shall be used for coinage which differ from the legal standard more than the following proportions, namely: In silver ingots, three-thousandths; in minor-coinage alloys, twenty-five thousandths, in the proportion of nickel. (R. S. § 3533.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 33, 17 Stat. 429.

## CODIFICATION

Words "In gold ingots, one-thousandth," appearing after colon in original enactment of section have been omitted, inasmuch as the coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.



**§ 347. Preparation and stamping of bars for payment of deposits.**

The superintendent of melting and refining department shall prepare all bars required for the payment of deposits; but the fineness thereof shall be ascertained and stamped thereon by the assayer. The superintendent of melting and refining department shall deliver such bars to the superintendent, who shall receipt for the same. (R. S. § 3534; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384; Jan. 3, 1923, ch. 22, 42 Stat. 1103.)

**DERIVATION**

Act Feb. 12, 1873, ch. 131, § 34, 17 Stat. 429.

**§ 348. Deviations allowed in adjusting weights of gold coins.**

Section, R. S. § 3535; Sept. 26, 1890, ch. 945, § 1, 26 Stat. 485; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384; Jan. 3, 1923, ch. 22, 42 Stat. 1103, related exclusively to gold coins; however, the coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

**§ 349. Deviations allowed in adjusting weights of silver coins.**

In adjusting the weight of the silver coins the following deviations shall not be exceeded in any single piece: In the dollar, the half and quarter dollar, and in the dime, one and one-half grains. (R. S. § 3536; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 249; Mar. 4, 1911, ch. 267, 36 Stat. 1354.)

**DERIVATION**

Act Feb. 12, 1873, ch. 131, § 37, 17 Stat. 430.

**§ 350. Same; minor coins.**

In adjusting the weight of the minor coins provided by this chapter, there shall be no greater deviation allowed than three grains for the 5-cent piece and two grains for the 1-cent piece. (R. S. § 3537; Sept. 26, 1890, ch. 945, § 1, 26 Stat. 485.)

**DERIVATION**

Act Feb. 12, 1873, ch. 131, § 38, 17 Stat. 430.

**REFERENCES IN TEXT**

Word "chapter" in text means Title 37 of Revised Statutes which is set out in sections 204 and 205 of Title 15, Commerce and Trade, sections 254, 261, 263-266, 268-287, 314, 315, 316, 317-319, 321, 322, 324, 325, 327-332, 334-336, 340, 341, 343-349, 351-358, 360, 363-368, 369, 371 and 373-375 of this title.

**§ 351. Delivery of coins to superintendent and trial of pieces.**

The superintendent of coining department shall, from time to time, as coins are prepared, deliver them to the superintendent, who shall receipt for the same, and who shall keep a careful record of their kind, number, and actual weight. In receiving coins it shall be the duty of the superintendent to ascertain, by the trial of a number of single pieces separately, whether the coins of that delivery are within the legal limits of the standard weight; and if his trials for this purpose shall not prove satisfactory, he shall cause all the coins of such delivery to be weighed separately, and such as are not of legal weight shall be defaced and delivered to the superintendent of melting and refining department as standard bullion, to be again formed into ingots

and recoined; or the whole delivery may, if more convenient, be remelted. (R. S. § 3538; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384; Jan. 3, 1923, ch. 22, 42 Stat. 1103.)

**DERIVATION**

Act Feb. 12, 1873, ch. 131, § 39, 17 Stat. 430.

**§ 352. Sealing and transmitting trial pieces.**

At every delivery of coins made by the superintendent of coining department to a superintendent, it shall be the duty of such superintendent, in the presence of the assayer, to take indiscriminately a certain number of pieces of each variety for the annual trial of coins, the number for silver coins being not less than one piece for each two thousand pieces or any fractional part of two thousand pieces delivered. The pieces so taken shall be carefully sealed up in an envelope, properly labeled, stating the date of the delivery, the number and denomination of the pieces inclosed, and the amount of the delivery from which they were taken. These sealed parcels containing the reserved pieces shall be deposited in a pyx, designated for the purpose at each mint, which shall be kept under the joint care of the superintendent and assayer, and be so secured that neither can have access to its contents without the presence of the other, and the reserved pieces in their sealed envelopes from the coinage of each mint shall be transmitted quarterly to the mint at Philadelphia. A record shall also be kept at the same time of the number and denomination of the pieces so taken for the annual trial of coins, and of the number and denomination of the pieces represented by them and so delivered, a copy of which record shall be transmitted quarterly to the Director of the Mint. Other pieces may at any time be taken for such tests as the Director of the Mint shall prescribe. (R. S. § 3539; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384; Jan. 3, 1923, ch. 22, 42 Stat. 1103; Jan. 30, 1934, ch. 6, § 5, 48 Stat. 340.)

**DERIVATION**

Act Feb. 12, 1873, ch. 131, § 40, 17 Stat. 430.

**CODIFICATION**

Words "being not less than" were inserted after words "silver coins" in lieu of words "gold coins being not less than one piece for each one thousand pieces or any fractional part of one thousand pieces delivered," inasmuch as the coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

**§ 353. Disposals of clippings.**

The superintendent of coining department shall, from time to time, deliver to the superintendent the clippings and other portions of bullion remaining after the process of coining; and the superintendent shall receipt for the same and keep a careful record of their weight and character. (R. S. § 3540; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384; Jan. 3, 1923, ch. 22, 42 Stat. 1103.)

**DERIVATION**

Act Feb. 12, 1873, ch. 131, § 41, 17 Stat. 430.

**§ 354. Yearly settlement of accounts.**

The superintendent shall debit the superintendent of coining department with the amount in weight of standard metal of all the bullion placed in his hands,

and credit him with the amount in weight of all the coins, clippings, and other bullion returned by him to the superintendent. Once at least in every year, and at such time as the Director of the Mint shall appoint, there shall be an accurate and full settlement of the accounts of the superintendent of coining department, and the superintendent of melting and refining department, at which time those officers shall deliver up to the superintendent all the coins, clippings, and other bullion in their possession, respectively, accompanied by statements of all the bullion delivered to them since the last annual settlement, and all the bullion returned by them during the same period, including the amount returned for the purpose of settlement. (R. S. § 3541; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384; Jan. 3, 1923, ch. 22, 42 Stat. 1103.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 42, 17 Stat. 431.

## § 355. Allowance for wastage.

When all the coins, clippings, and other bullion have been delivered to the superintendent, it shall be his duty to examine the accounts and statements rendered by the superintendent of coining department and the superintendent of melting and refining department. The difference between the amount charged and credited to each officer shall be allowed as necessary wastage, if the superintendent shall be satisfied that there has been a bona fide waste of the precious metals, and if the amount shall not exceed, in the case of the superintendent of melting and refining department, one-thousandth of the whole amount of gold, and one and one-half thousandths of the whole amount of silver delivered to him since the last annual settlement, and in the case of the superintendent of coining department, one-thousandth of the whole amount of silver, and one-half thousandth of the whole amount of gold that has been delivered to him by the superintendent. All copper used in the alloy of gold and silver bullion shall be separately charged to the superintendent of melting and refining department, and accounted for by him. (R. S. § 3542; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384; Jan. 3, 1923, ch. 22, 42 Stat. 1103.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 43, 17 Stat. 431.

## POSSESSION OF GOLD COINS AND BULLION

The possession of gold coins and bullion was prohibited except under Government license by Ex. Ord. No. 6260, eff. Aug. 28, 1933, set out in note under section 95 of Title 12, Banks and Banking.

## COINAGE OF GOLD DISCONTINUED

The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

## § 356. Statement of balance sheet forwarded to Director of Mint.

It shall also be the duty of the superintendent to forward a correct statement of his balance sheet, at the close of such settlement, to the Director of the Mint; who shall compare the total amount of gold and silver bullion and coin on hand with the total liabilities of the mint. At the same time a statement

of the ordinary expense account, and the moneys therein, shall also be made by the superintendent. (R. S. § 3543.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 44, 17 Stat. 431.

## GOLD COINS

Coinage of gold discontinued and possession forbidden, see notes under section 355 of this title.

## § 357. Delivery of coin or bars to depositor.

When the coins or bars which are the equivalent to any deposit of bullion are ready for delivery, they shall be paid to the depositor, or his order, by the superintendent; and the payments shall be made, if demanded, in the order in which the bullion shall have been brought to the mint. In cases, however, where there is delay in manipulating a refractory deposit, or for any other unavoidable cause, the payment of subsequent deposits, the value of which is known, shall not be delayed thereby. In the denominations of coin delivered, the superintendent shall comply with the wishes of the depositor, except when impracticable or inconvenient to do so. (R. S. § 3544.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 44, 17 Stat. 431.

## § 358. Payment in money to depositors when value ascertained.

For the purpose of enabling the several mints and assay offices of the United States to make returns to depositors with as little delay as possible, it shall be the duty of the Secretary of the Treasury to keep in such mints and assay offices, when the state of the Treasury will admit thereof, such an amount of public money, or bullion procured for the purpose, as he shall judge convenient and necessary, out of which those who bring bullion to the said mints and assay offices may, under such rules and regulations as may be prescribed by the said Secretary, be paid the value thereof, in coin or bars, as soon as practicable after the value has been ascertained. On payment thereof being made, the bullion so deposited shall become the property of the United States. The Secretary of the Treasury may, however, at any time withdraw the fund or any portion thereof. (R. S. § 3545; June 19, 1878, ch. 329, § 1, 20 Stat. 191.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 47, 17 Stat. 431.

## § 359. Payment for bullion in coin certificates.

The Secretary of the Treasury may use, as far as he may deem it proper and expedient, for payment to depositors of bullion at the several mints and the assay office in New York, under such rules and regulations as he may prescribe, coin certificates, representing coin in the Treasury, and issued under the provisions of section 428 of this title. (June 19, 1878, ch. 329, § 1, 20 Stat. 191; Mar. 3, 1879, ch. 182, § 1, 20 Stat. 383; Mar. 4, 1911, ch. 240, 36 Stat. 1292.)

## § 360. Exchange of unparted bullion for fine bars.

Unparted bullion may be exchanged at any of the mints for fine bars, on such terms and conditions as may be prescribed by the Director of the Mint, with the approval of the Secretary of the Treasury.

The fineness, weight, and value of the bullion received and given in exchange shall in all cases be determined by the mint assay. The charge to the depositor for refining or parting shall not exceed that allowed and deducted for the same operation in the exchange of unrefined for refined bullion. (R. S. § 3546.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 46, 17 Stat. 431.

## § 361. Refining and parting bullion.

Refining and parting of bullion shall be carried on at the coinage mints of the United States and at the assay office at New York, and it shall be lawful to apply the moneys arising from charges collected from depositors for these operations, and also the proceeds of sale of byproducts (spent acids arising from any surplus bullion recovered in parting and refining processes), pursuant to law, so far as may be necessary, to defraying in full the expenses thereof, including labor, material, wastage, and loss on sale of sweeps. But no part of the moneys appropriated for the support of the coinage mints and assay office at New York shall be used to defray the expenses of parting and refining bullion. (June 19, 1878, ch. 329, § 1, 20 Stat. 191; July 7, 1898, ch. 571, § 1, 30 Stat. 661.)

## REPEAL IN PART

Act Mar. 4, 1911, ch. 240, 36 Stat. 1292, repealed all laws and parts of laws to extent they made a permanent, indefinite appropriation for the expenses of parting and refining bullion, effective from and after June 30, 1912

## § 362. Same; exchange of unparted bullion for fine bars.

When the bullion received shall not, in the aggregate, be in such proportion of gold and silver as to admit of economical parting, or the necessary supplies of acids cannot be procured at reasonable rates, unparted bullion may be exchanged for fine bars, as provided in section 360 of this title. (June 19, 1878, ch. 329, § 1, 20 Stat. 191.)

## GOLD COINS

Coinage of gold discontinued and possession of it forbidden, see notes under section 355 of this title.

## § 363. Assay commissioners.

To secure a due conformity in the silver coins to their respective standards of fineness and weight, the judge of the District Court for the Eastern District of Pennsylvania, the Comptroller of the Currency, the assayer of the assay office at New York, and such other persons as the President shall, from time to time, designate, shall meet as assay commissioners, at the mint in Philadelphia, to examine and test, in the presence of the Director of the Mint, the fineness and weight of the coins reserved by the several mints for this purpose, on the second Wednesday in February, annually, and may continue their meetings by adjournment, if necessary. If a majority of the commissioners fail to attend at any time appointed for their meeting, the Director of the Mint shall call a meeting of the commissioners at such other time as he may deem convenient. If it appears by such examination and test that these coins do not differ from the standard fineness and weight by a greater quantity than is allowed by law, the trial shall be con-

sidered and reported as satisfactory. If, however, any greater deviation from the legal standard or weight appears, this fact shall be certified to the President; and if, on a view of the circumstances of the case, he shall so decide, the officers implicated in the error shall be thenceforward disqualified from holding their respective offices. (R. S. § 3547; Jan. 30, 1934, ch. 6, § 5, 48 Stat. 340.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 48, 17 Stat. 432.

## CODIFICATION

Words "gold and" preceding words "silver coins" were omitted from original enactment of this section, inasmuch as the coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

## § 364. Standard troy pound for regulation of coinage.

For the purpose of securing a due conformity in weight of the coins of the United States to the provisions of the laws relating to coinage, the standard troy pound of the Bureau of Standards of the United States shall be the standard troy pound of the mint of the United States, conformably to which the coinage thereof shall be regulated. (R. S. § 3548; Mar. 4, 1911, ch. 268, § 1, 36 Stat. 1354.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 49, 17 Stat. 432.

## § 365. Standard weights for mints and assay offices.

It shall be the duty of the Director of the Mint to procure for each mint and assay office, to be kept safely thereat, a series of standard weights corresponding to the standard troy pound of the Bureau of Standards of the United States, consisting of a one-pound weight and the requisite subdivisions and multiples thereof, from the hundredths part of a grain to twenty-five pounds. The troy weight ordinarily employed in the transactions of such mints and assay offices shall be regulated according to the above standards at least once in every year, under the inspection of the superintendent and assayer; and the accuracy of those used at the mint at Philadelphia shall be tested annually, in the presence of the assay commissioners, at the time of the annual examination and test of coins. (R. S. § 3549; Mar. 4, 1911, ch. 268, § 2, 36 Stat. 1354.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 50, 17 Stat. 432.

## § 366. Destruction of obverse working dies.

The obverse working dies at each mint shall, at the end of each calendar year, be defaced and destroyed by the superintendent of coining department in the presence of the superintendent and assayer. (R. S. § 3550; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384; Jan. 3, 1923, ch. 22, 42 Stat. 1103.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 51, 17 Stat. 432.

## § 367. Coinage for foreign countries.

It shall be lawful for coinage to be executed at the mints of the United States for any foreign country applying for the same, according to the legally pre-

scribed standards and devices of such country, under such regulations as the Secretary of the Treasury may prescribe; and the charge for the same shall be equal to the expenses thereof, including labor, materials, and use of machinery, to be fixed by the Director of the Mint, with the approval of the Secretary of the Treasury: *Provided*, That the manufacture of such coin shall not interfere with the required coinage of the United States. (Jan. 29, 1874, ch. 19, 18 Stat. 6.)

**§ 368. National and other medals struck at Philadelphia Mint.**

Dies of a national character may be executed by the engraver, and national and other medals struck by the superintendent of coining department of the mint at Philadelphia, under such regulations as the superintendent, with the approval of the Director of the Mint, may prescribe. Such work shall not, however, interfere with the regular coinage operations, and no private medal dies shall be prepared at any mint, or the machinery or apparatus thereof be used for that purpose. (R. S. § 3551; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 384; Jan. 3, 1923, ch. 22, 42 Stat. 1103.)

**DERIVATION**

Act Feb. 12, 1873, ch. 131, § 52, 17 Stat. 432.

**§ 369. Money arising from charges and deductions covered into Treasury.**

The moneys arising from all charges and deductions on and from gold and silver bullion and the manufacture of medals, and from all other sources, except as provided by this chapter, shall, from time to time, be covered into the Treasury, and no part of such deductions or medal charges, or profit on silver or minor coinage, shall be expended in salaries or wages. All expenditures of the mints and assay offices, not herein otherwise provided for, shall be paid from appropriations made by law on estimates furnished by the Secretary of the Treasury. (R. S. § 3552.)

**DERIVATION**

Act Feb. 12, 1873, ch. 131, § 53, 17 Stat. 432.

**REFERENCES IN TEXT**

Word "chapter" in text means Title 37 of Revised Statutes which is set out in sections 204 and 205 of Title 15, Commerce and Trade, sections 254, 261, 263-266, 268-287, 314, 315, 316, 317-319, 321, 322, 324, 325, 327-332, 334-336, 340, 341, 343-358, 360, 363-368, 371, and 373-375 of this title.

**GOLD BULLION**

Possession of gold bullion and coins forbidden, see notes under section 355 of this title.

**§ 370. Transfer of bars to depositary; redemption of coin certificates.**

The Secretary of the Treasury may, from time to time, transfer to the office of the United States depositary at New York from the bullion fund of the assay office at New York, refined gold bars bearing the United States stamp of fineness, weight and value, or bars from any melt of foreign gold coin or bullion of standard equal to or above that of the United States and may apply the same to the redemption of coin certificates at not less than par and not less than the market value subject to such regulations

as he may prescribe. (June 22, 1874, ch. 419, 18 Stat. 202; May 29, 1920, ch. 214, § 1, 41 Stat. 654, 655.)

**CODIFICATION**

Words "or in exchange for gold coins" were omitted, inasmuch as the coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

**§ 371. Decimal system established.**

The money of account of the United States shall be expressed in dollars or units, dimes or tenths, cents or hundredths, and mills or thousandths, a dime being the tenth part of a dollar, a cent the hundredth part of a dollar, a mill the thousandth part of a dollar; and all accounts in the public offices and all proceedings in the courts shall be kept and had in conformity to this regulation. (R. S. § 3563.)

**DERIVATION**

Act Apr. 2, 1792, ch. 16, § 20, 1 Stat. 250.

**§ 372. Conversion of currency—(a) Value of foreign coin proclaimed by Secretary of Treasury.**

The value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint and be proclaimed by the Secretary of the Treasury quarterly on the 1st day of January, April, July, and October in each year.

**(b) Proclaimed value basis of conversion.**

For the purpose of the assessment and collection of duties upon merchandise imported into the United States on or after June 17, 1930, wherever it is necessary to convert foreign currency into currency of the United States, such conversion, except as provided in subdivision (c), shall be made at the values proclaimed by the Secretary of the Treasury under the provisions of paragraph (a) of this section, for the quarter in which the merchandise was exported.

**(c) Market rate when no proclamation.**

If no such value has been proclaimed, or if the value so proclaimed varies by 5 per centum or more from a value measured by the buying rate in the New York market at noon on the day of exportation, conversion shall be made at a value measured by such buying rate. If the date of exportation falls upon a Sunday or holiday, then the buying rate at noon on the last preceding business day shall be used. For the purposes of this subdivision such buying rate shall be the buying rate for cable transfers payable in the foreign currency so to be converted; and shall be determined by the Federal Reserve Bank of New York and certified daily to the Secretary of the Treasury, who shall make it public at such times and to such extent as he deems necessary. In ascertaining such buying rate such Federal Reserve bank may in its discretion (1) take into consideration the last ascertainable transactions and quotations, whether direct or through exchange of other currencies, and (2) if there is no market buying rate for such cable transfers, calculate such rate from actual transactions and quotations in demand or time bills of exchange.

(Aug. 27, 1894, ch. 349, § 25, 28 Stat. 552; May 27, 1921, ch. 14, § 403, 42 Stat. 17; June 17, 1930, ch. 497, title IV, § 522, 46 Stat. 739.)

### § 373. Recoinage of foreign coins.

All foreign silver coins received in payment for moneys due to the United States shall, before being issued in circulation, be coined anew. (R. S. § 3566; Jan. 30, 1934, ch. 6, § 5, 48 Stat. 340.)

#### DERIVATION

Act Feb. 9, 1793, ch. 5, § 3, 1 Stat. 301; act Feb. 21, 1857, ch. 56, § 2, 11 Stat. 163.

#### CODIFICATION

Words "gold and" were omitted from original enactment of section inasmuch as the coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

### § 374. Spanish and Mexican coins.

The pieces commonly known as the quarter, eighth, and sixteenth of the Spanish pillar dollar, and of the Mexican dollar, shall be receivable at the Treasury of the United States, and its several offices, and at the several post offices and land offices, at the rates of valuation following: The fourth of a dollar, or piece of two reals, at 20 cents; the eighth of a dollar, or piece of one real, at 10 cents; and the sixteenth of a dollar, or half real, at 5 cents. (R. S. § 3567.)

#### DERIVATION

Act Feb. 21, 1857, ch. 56, § 1, 11 Stat. 163.

### § 375. Same; transmission for recoinage.

The Director of the Mint, with the approval of the Secretary of the Treasury, may prescribe such regulations as are necessary and proper, to secure the transmission of the coins mentioned in section 374 of this title to the mint for recoinage, and the return or distribution of the proceeds thereof, when deemed expedient, and may prescribe such forms of account as are appropriate and applicable to the circumstances. The expenses incident to such transmission or distribution, and of recoinage, shall be charged against the account of silver profit and loss, and the net profits, if any, shall be paid, from time to time, into the Treasury. (R. S. § 3568; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 249.)

#### DERIVATION

Act Feb. 21, 1857, ch. 56, § 2, 11 Stat. 163.

#### COINAGE OF GOLD

The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

### § 376. Commemorative coins; laws applicable.

Section 376, setting out existing laws applicable to coinage of certain enumerated commemorative coins, is now executed in view of section 376a of this title discontinuing coinage and issuance of commemorative coins authorized by acts prior to Mar. 1, 1939. Section was from Apr. 13, 1904, ch. 1253, § 6, 33 Stat. 178; June 1, 1918, ch. 91, §§ 1, 2, 40 Stat. 594; May 10, 1920, ch. 176, §§ 1, 2, 41 Stat. 595; May 10, 1920, ch. 177, §§ 1, 2, 41 Stat. 595; May 12, 1920, ch. 182, §§ 1, 2, 41 Stat. 597; Mar. 4, 1921, ch. 153, §§ 1, 2, 41 Stat. 1363; Feb. 2, 1922, ch. 45, 42 Stat. 362; Jan. 24, 1923, ch. 38, §§ 1-3, 42 Stat. 1172, 1173; Feb. 26, 1923, ch. 113, §§ 1-3, 42 Stat. 1287; Mar. 17, 1924, ch. 58, §§ 1-3, 43 Stat. 23; Jan. 14, 1925, ch. 79, §§ 5, 6, 43 Stat. 749; Feb. 24, 1925, ch. 302, §§ 1-4, 43 Stat. 966; Mar. 3, 1925, ch. 482, § 4, 43 Stat. 1254; May 17, 1926, ch. 307, § 3, 44 Stat. 560; Mar. 7, 1928, ch. 135, §§ 1, 3, 45 Stat. 198; June 15, 1933, ch. 82, §§ 1, 3, 48 Stat. 149; May 9, 1934, ch. 265, §§ 1-4, 48 Stat. 679; May 14, 1934, ch. 286, §§ 1-3, 48 Stat. 776; May 26, 1934, ch. 355, §§ 1-4, 48 Stat. 807; June 21, 1934, ch. 695, §§ 1-4, 48 Stat. 1200; May 2, 1935, ch. 88, §§ 1-5, 49 Stat. 165, 166; May 3, 1935, ch. 90, §§ 1-4, 49 Stat. 174; June 5, 1935, ch. 176, 49 Stat. 324; Mar. 18, 1936, ch. 149, §§ 1-5, 49 Stat. 1165; Mar. 31, 1936, ch. 164, §§ 1-3, 49 Stat. 1187; Apr. 13, 1936, ch. 212, §§ 1-3, 49 Stat. 1205; May 5, 1936, ch. 300, §§ 1-3, 49 Stat. 1257; May 5, 1936, ch. 304, §§ 1-3, 49 Stat. 1259; May 6, 1936, ch. 331, §§ 1-3, 49 Stat. 1262, 1263; May 15, 1936, ch. 399, §§ 1-3, 49 Stat. 1276; May 15, 1936, ch. 402, §§ 1-3, 49 Stat. 1277, 1278; May 15, 1936, ch. 406, §§ 1-3, 49 Stat. 1352, 1353; May 28, 1936, ch. 466, §§ 1-3, 49 Stat. 1387, 1388; June 16, 1936, ch. 583, §§ 1-3, 49 Stat. 1522; June 16, 1936, ch. 584, §§ 1-3, 49 Stat. 1523; June 16, 1936, ch. 586, §§ 1-3, 49 Stat. 1524; June 24, 1936, ch. 760, §§ 1-3, 49 Stat. 1911; June 26, 1936, ch. 835, §§ 1-3, 49 Stat. 1972; June 26, 1936, ch. 837, §§ 1-3, 49 Stat. 1973; June 24, 1937, ch. 377, §§ 1-3, 50 Stat. 306; June 28, 1937, ch. 384, §§ 1-3, 50 Stat. 322, 323.

Stat. 23; Jan. 14, 1925, ch. 79, §§ 5, 6, 43 Stat. 749; Feb. 24, 1925, ch. 302, §§ 2, 3, 4, 43 Stat. 965, 966; May 17, 1926, ch. 307, § 3, 44 Stat. 560; Mar. 7, 1928, ch. 135, §§ 1, 3, 45 Stat. 198; June 15, 1933, ch. 82, §§ 1, 3, 48 Stat. 149.

### § 376a. Prohibition against issuance of commemorative coins authorized under prior law.

Subsequent to the enactment of this section no commemorative coins shall be coined or issued pursuant to any Act of Congress, authorizing the coinage and issuance of commemorative coins, enacted prior to March 1, 1939. (Aug. 5, 1939, ch. 442, 53 Stat. 1209.)

### §§ 377-388o. Commemorative coins; coinage; issuance; laws applicable.

Sections 377-388o, related to coinage and issuance of certain enumerated commemorative coins. Section 376a of this title discontinued such coinage and issuance of all commemorative coins authorized by acts prior to Mar. 1, 1939. Sections were from Apr. 13, 1904, ch. 1253, § 6, 33 Stat. 178; June 1, 1918, ch. 91, §§ 1, 2, 40 Stat. 594; May 10, 1920, ch. 176, §§ 1, 2, 41 Stat. 595; May 10, 1920, ch. 177, §§ 1, 2, 41 Stat. 595; May 12, 1920, ch. 182, §§ 1, 2, 41 Stat. 597; Mar. 4, 1921, ch. 153, §§ 1, 2, 41 Stat. 1363; Feb. 2, 1922, ch. 45, 42 Stat. 362; Jan. 24, 1923, ch. 38, §§ 1-3, 42 Stat. 1172, 1173; Feb. 26, 1923, ch. 113, §§ 1-3, 42 Stat. 1287; Mar. 17, 1924, ch. 58, §§ 1-3, 43 Stat. 23; Jan. 14, 1925, ch. 79, §§ 5, 6, 43 Stat. 749; Feb. 24, 1925, ch. 302, §§ 1-4, 43 Stat. 966; Mar. 3, 1925, ch. 482, § 4, 43 Stat. 1254; May 17, 1926, ch. 307, § 3, 44 Stat. 560; Mar. 7, 1928, ch. 135, §§ 1, 3, 45 Stat. 198; June 15, 1933, ch. 82, §§ 1, 3, 48 Stat. 149; May 9, 1934, ch. 265, §§ 1-4, 48 Stat. 679; May 14, 1934, ch. 286, §§ 1-3, 48 Stat. 776; May 26, 1934, ch. 355, §§ 1-4, 48 Stat. 807; June 21, 1934, ch. 695, §§ 1-4, 48 Stat. 1200; May 2, 1935, ch. 88, §§ 1-5, 49 Stat. 165, 166; May 3, 1935, ch. 90, §§ 1-4, 49 Stat. 174; June 5, 1935, ch. 176, 49 Stat. 324; Mar. 18, 1936, ch. 149, §§ 1-5, 49 Stat. 1165; Mar. 31, 1936, ch. 164, §§ 1-3, 49 Stat. 1187; Apr. 13, 1936, ch. 212, §§ 1-3, 49 Stat. 1205; May 5, 1936, ch. 300, §§ 1-3, 49 Stat. 1257; May 5, 1936, ch. 304, §§ 1-3, 49 Stat. 1259; May 6, 1936, ch. 331, §§ 1-3, 49 Stat. 1262, 1263; May 15, 1936, ch. 399, §§ 1-3, 49 Stat. 1276; May 15, 1936, ch. 402, §§ 1-3, 49 Stat. 1277, 1278; May 15, 1936, ch. 406, §§ 1-3, 49 Stat. 1352, 1353; May 28, 1936, ch. 466, §§ 1-3, 49 Stat. 1387, 1388; June 16, 1936, ch. 583, §§ 1-3, 49 Stat. 1522; June 16, 1936, ch. 584, §§ 1-3, 49 Stat. 1523; June 16, 1936, ch. 586, §§ 1-3, 49 Stat. 1524; June 24, 1936, ch. 760, §§ 1-3, 49 Stat. 1911; June 26, 1936, ch. 835, §§ 1-3, 49 Stat. 1972; June 26, 1936, ch. 837, §§ 1-3, 49 Stat. 1973; June 24, 1937, ch. 377, §§ 1-3, 50 Stat. 306; June 28, 1937, ch. 384, §§ 1-3, 50 Stat. 322, 323.

### CURRENCY

### § 401. United States notes.

United States notes shall be of such denominations, not less than \$1, as the Secretary of the Treasury may prescribe, shall not bear interest, shall be payable to bearer, and shall be in such form as the Secretary may deem best. (R. S. § 3571.)

#### DERIVATION

Act Feb. 25, 1862, ch. 33, § 1, 12 Stat. 345; act July 11, 1862, ch. 142, § 1, 12 Stat. 532; Res. Jan. 17, 1863, No. 9, 12 Stat. 822; act Mar. 3, 1863, ch. 73, § 3, 12 Stat. 710.

### § 402. Limitation of amount of United States notes in circulation.

The amount of United States notes outstanding and to be used as a part of the circulating medium, shall not exceed the sum of \$300,000,000; which said sum shall appear in each monthly statement of the public debt, and no part thereof shall be held or used as a reserve. (June 20, 1874, ch. 343, § 6, 18 Stat. 124; Jan. 14, 1875, ch. 15, § 3, 18 Stat. 296.)

## INCREASE OF LIMITATION

Issuance of United States notes in an aggregate outstanding amount not exceeding \$3,000,000,000, see section 821 (b) (1) of this title.

## CROSS REFERENCE

Cancellation or retirement of legal-tender notes forbidden, see section 404 of this title.

**§ 403. Issue of United States notes of small denominations and retirement of notes of higher denominations.**

Whenever and so long as the outstanding silver certificates of the denominations of \$1, \$2, and \$5, issued under the provisions of section 406 of this title, shall be, in the opinion of the Secretary of the Treasury, insufficient to meet the public demand therefor, he may issue United States notes of the denominations of \$1, \$2, and \$5, and upon the issue of United States notes of such denominations an equal amount of United States notes of higher denominations shall be retired and canceled: *Provided, however,* That the aggregate amount of United States notes at any time outstanding shall remain as fixed by law: *And provided further,* That nothing in this section, or section 429 of this title or sections 90 and 178 of Title 12 shall be construed as affecting the right of any national bank to issue one-third in amount of its circulating notes of the denomination of \$5, as provided by law. (Mar. 4, 1907, ch. 2913, § 2, 34 Stat. 1289.)

## ISSUANCE OF ADDITIONAL NOTES

The President is authorized to direct the Secretary of the Treasury to issue United States notes for the purpose of meeting maturing Federal obligations, which shall be in the same denomination, size, etc. as Federal Reserve notes. See section 821 (b) (1) of this title.

## CROSS REFERENCE

Delivery of circulating notes to any national banking association upon deposit of United States bonds with the Treasurer, see section 101 of Title 12, Banks and Banking.

**§ 404. Further cancellation or retirement of legal-tender notes prohibited.**

Except as provided in sections 403, 406, and 821 of this title, it shall not be lawful for the Secretary of the Treasury or other officer under him to cancel or retire any more of the United States legal-tender notes. And when any of said notes may be redeemed or be received into the Treasury under any law from any source whatever and shall belong to the United States, they shall not be retired, canceled, or destroyed, but they shall be reissued and paid out again and kept in circulation: *Provided,* That nothing herein shall prohibit the cancellation and destruction of mutilated notes and the issue of other notes of like denomination in their stead, as provided by law. (May 31, 1878, ch. 146, 20 Stat. 87.)

**§ 405. Silver certificates; issuance for silver dollars.**

Any holder of silver dollars authorized under the Act of February 28, 1878, chapter 20 (Twentieth Statutes, page 26), may deposit the same with the Treasurer or any depository of the United States designated for that purpose, in sums not less than \$10, and receive therefor certificates of the denominations of one, two, five and ten dollars. The coin deposited for or representing certificates shall be retained in the Treasury for the payment of the same

on demand. Said certificates shall be receivable for customs, taxes, and all public dues, and, when so received, may be reissued. (Feb. 28, 1878, ch. 20, § 3, 20 Stat. 26; Mar. 3, 1887, ch. 362, 24 Stat. 515; May 29, 1920, ch. 214, § 1, 41 Stat. 655.)

**§ 405a. Same; issuance; circulation; security; legal tender; redemption; coinage of silver dollars.**

The Secretary of the Treasury is authorized and directed to issue silver certificates in such denominations as he may from time to time prescribe in a face amount not less than the cost of all silver purchased under the authority of section 734a of this title, and such certificates shall be placed in actual circulation. There shall be maintained in the Treasury as security for all silver certificates at the time outstanding an amount of silver in bullion and standard silver dollars of a monetary value equal to the face amount of such silver certificates. All silver certificates shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, and shall be redeemable on demand at the Treasury of the United States in standard silver dollars; and the Secretary of the Treasury is authorized to coin standard silver dollars for such redemption. (June 19, 1934, ch. 674, § 5, 48 Stat. 1178.)

## REPEAL

All laws inconsistent with the provisions of this section were repealed by section 448e of this title.

**§ 405b. Gold certificates; issuance authorized.**

The Secretary of the Treasury is authorized to issue gold certificates in such form and in such denominations as he may determine, against any gold held by the Treasurer of the United States, except the gold fund held as a reserve for any United States notes and Treasury notes of 1890. The amount of gold certificates issued and outstanding shall at no time exceed the value, at the legal standard, of the gold so held against gold certificates. (Jan. 30, 1934, ch. 6, § 14 (c), 48 Stat. 344.)

## REPEAL

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

**§ 406. Denominations of silver certificates.**

Silver certificates shall be issued only of denominations of \$10 and under, except that not exceeding in the aggregate 10 per centum of the total volume of said certificates, in the discretion of the Secretary of the Treasury, may be issued in denominations of \$20, \$50, and \$100; and silver certificates of higher denomination than \$10, except as herein provided, shall, whenever received at the Treasury or redeemed, be retired and canceled, and certificates of denominations of \$10 or less shall be substituted therefor, and after such substitution, in whole or in part, a like volume of United States notes of less denomination than \$10 shall from time to time be retired and canceled, and notes of denominations of \$10 and upward shall be reissued in substitution therefor, with like qualities and restrictions as those retired and canceled. (Mar. 14, 1900, ch. 41, § 7, 31 Stat. 47.)

## REPEAL

Repeal of laws inconsistent with section 821 of this title, see section 446 of this title.

## CROSS REFERENCE

President's authority to issue silver certificates in such denominations as he may prescribe, see section 821 of this title.

## § 407. Redemption of fractional currency.

Fractional currency presented for redemption shall be redeemed in any moneys in the Treasury not otherwise appropriated, and, when so redeemed, shall be destroyed. (July 22, 1876, No. 17, § 1, 19 Stat. 215; June 21, 1879, ch. 34, § 3, 21 Stat. 30.)

## § 408. Gold reserve; redemption of United States notes and Treasury notes; reissue of redeemed notes.

United States notes, and Treasury notes issued under the Act of July 14, 1890, ch. 708, 26 Stat. 289, when presented to the Treasury for redemption, shall be redeemed in gold coin of the standard fixed in section 314 of this title, and in order to secure the prompt and certain redemption of such notes as herein provided it shall be the duty of the Secretary of the Treasury to set apart in the Treasury a reserve fund of \$150,000,000 in gold coin and bullion, which fund shall be used for such redemption purposes only, and whenever and as often as any of said notes shall be redeemed from said fund it shall be the duty of the Secretary of the Treasury to use said notes so redeemed to restore and maintain such reserve fund in the manner following, to wit: First, by exchanging the notes so redeemed for any gold coin in the general fund of the Treasury; second, by accepting deposits of gold coin at the Treasury or at any designated depository in exchange for the United States notes so redeemed; third, by procuring gold coin by the use of said notes, in accordance with the provisions of section 734 of this title. If the Secretary of the Treasury is unable to restore and maintain the gold coin in the reserve fund by the foregoing methods, and the amount of such gold coin and bullion in said fund shall at any time fall below \$100,000,000, then it shall be his duty to restore the same to the maximum sum of \$150,000,000 by borrowing money on the credit of the United States, and for the debt thus incurred to issue and sell coupon or registered bonds of the United States, in such form as he may prescribe, in denominations of \$50 or any multiple thereof, bearing interest at the rate of not exceeding 3 per centum per annum, payable quarterly, such bonds to be payable at the pleasure of the United States after one year from the date of their issue, and to be payable, principal and interest, in gold coin of the present standard value, and to be exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority; and the gold coin received from the sale of said bonds shall first be covered into the general fund of the Treasury and then exchanged, in the manner hereinbefore provided, for an equal amount of the notes redeemed and held for exchange, and the Secretary of the Treasury may, in his discretion, use said notes in exchange for gold, or to purchase or redeem any bonds of the United States, or for any other lawful purpose the public interests may require, except that they shall not be used to meet deficiencies in the current revenues. United States notes when redeemed

in accordance with the provisions of this section shall be reissued, but shall be held in the reserve fund until exchanged for gold, as herein provided; and the gold coin and bullion in the reserve fund, together with the redeemed notes held for use as provided in this section, shall at no time exceed the maximum sum of \$150,000,000. (July 14, 1890, ch. 708, § 2, 26 Stat. 289; Mar. 14, 1900, ch. 41, § 2, 31 Stat. 45; May 29, 1920, ch. 214, § 1, 41 Stat. 655.)

## POSSESSION OF GOLD COINS AND BULLION

The possession of gold coins and bullion was prohibited except under Government license by Ex. Ord. No. 6260, eff. Aug. 28, 1933, set out in note under section 95 of Title 12, Banks and Banking.

## CROSS REFERENCES

Provision for payment of obligations in gold declared against public policy, see section 463 of this title.

Redemption of currency in gold forbidden, see section 408a of this title.

The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

## § 408a. Redemption of currency in gold forbidden; exceptions.

Except to the extent permitted in regulations which may be issued hereunder by the Secretary of the Treasury with the approval of the President, no currency of the United States shall be redeemed in gold: *Provided, however*, That gold certificates owned by the Federal Reserve banks shall be redeemed at such times and in such amounts as, in the judgment of the Secretary of the Treasury, are necessary to maintain the equal purchasing power of every kind of currency of the United States: *And provided further*, That the reserve for United States notes and for Treasury notes of 1890, and the security for gold certificates (including the gold certificates held in the Treasury for credits payable therein) shall be maintained in gold bullion equal to the dollar amounts required by law, and the reserve for Federal Reserve notes shall be maintained in gold certificates, or in credits payable in gold certificates maintained with the Treasurer of the United States under section 414 of Title 12.

No redemptions in gold shall be made except in gold bullion bearing the stamp of a United States mint or assay office in an amount equivalent at the time of redemption to the currency surrendered for such purpose. (Jan. 30, 1934, ch. 6, § 6, 48 Stat. 340.)

## REPEAL

Repeal of laws inconsistent with this section, see section 446 of this title.

## CROSS REFERENCES

Gold coinage discontinued and gold coins withdrawn from circulation, see section 315b of this title.

Provision for payment of obligations in gold declared against public policy, see section 463 of this title.

Transfer to United States of title to gold coin and bullion, see section 441 of this title.

## § 408b. Increase or decrease in weight of gold dollar; adjustment of reserve.

In the event that the weight of the gold dollar shall at any time be reduced, the resulting increase in value of the gold held by the United States (including the gold held as security for gold certificates



and as a reserve for any United States notes and for Treasury notes of 1890) shall be covered into the Treasury as a miscellaneous receipt; and, in the event that the weight of the gold dollar shall at any time be increased, the resulting decrease in value of the gold held as a reserve for any United States notes and for Treasury notes of 1890, and as security for gold certificates shall be compensated by transfers of gold bullion from the general fund, and there is hereby appropriated an amount sufficient to provide for such transfers and to cover the decrease in value of the gold in the general fund. (Jan. 30, 1934, ch. 6, § 7, 48 Stat. 341.)

#### REPEAL

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

#### § 409. Additional means for maintaining parity and strengthening gold reserve.

The Secretary of the Treasury may, for the purpose of maintaining the parity of all forms of money issued or coined by the United States in accordance with the provisions of section 314 of this title, and to strengthen the gold reserve, borrow gold on the security of United States bonds authorized by section 408 of this title, or for one-year gold notes bearing interest at a rate of not to exceed 3 per centum per annum, or sell the same if necessary to obtain gold. When the funds of the Treasury on hand justify, he may purchase and retire such outstanding bonds and notes. (Dec. 23, 1913, ch. 6, § 26, 38 Stat. 274.)

#### POSSESSION OF GOLD COINS AND BULLION

The possession of gold coins and bullion was prohibited except under Government license by Ex. Ord. No. 6260, eff. Aug. 28, 1933, set out in note under section 95 of Title 12, Banks and Banking.

#### CROSS REFERENCES

Prohibition of provision for payment of obligations in gold and repeal of laws authorizing such obligations, see section 463 of this title.

The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

#### § 410. Treasury notes as national bank reserve fund.

Treasury notes issued under the Act of July 14, 1890, ch. 708, 26 Stat. 289, when held by any national banking association, may be counted as a part of its lawful reserve. (July 14, 1890, ch. 708, § 2, 26 Stat. 289; Mar. 14, 1900, ch. 41, § 5, 31 Stat. 47.)

#### § 411. Cancellation of Treasury notes on coinage of silver dollars and issue of silver certificates.

Treasury notes whenever received into the Treasury, either by exchange in accordance with the provisions of section 408 of this title or in the ordinary course of business, shall be retired and canceled with standard silver dollars coined under the provisions of the Acts of July 14, 1890 (Twenty-sixth Statutes, page 289), and June 13, 1898 (Thirtieth Statutes, page 467), from bullion purchased under the Act of July 14, 1890 (Twenty-sixth Statutes, page 289), and upon the cancellation of Treasury notes silver certificates shall be issued against the silver dollars so coined. (Mar. 14, 1900, ch. 41, § 5, 31 Stat. 47.)

#### CROSS REFERENCE

Redemption of currency in gold prohibited, see section 408a of this title.

#### § 412. Redemption of Treasury notes with silver dollars.

Section, acts July 14, 1890, ch. 708, § 3, 26 Stat. 289; June 13, 1898, ch. 448, § 34, 30 Stat. 467, provided for redemption of Treasury notes issued under act July 14, 1890, with silver dollars coined in accordance with act June 13, 1898, ch. 448, § 34, 30 Stat. 467.

#### § 413. Portraits of living persons on bonds or notes.

No portrait shall be placed upon any of the bonds, securities, notes, fractional or postal currency of the United States, while the original of such portrait is living. (R. S. § 3576.)

#### DERIVATION

Act Apr. 7, 1866, ch. 28, § 12, 14 Stat. 25

#### § 414. Names inscribed under portraits.

The name of each person whose portrait shall be placed upon any of the plates for bonds, securities, notes, and silver certificates of the United States shall be inscribed below such portrait. (Mar. 2, 1889, ch. 411, § 1, 25 Stat. 945.)

#### § 415. Engraving and printing notes, bonds, and other securities.

The work of engraving and printing notes, bonds, and other securities shall be performed at the Treasury Department, provided it can be done there as cheaply, as perfectly, and as safely. (Mar. 3, 1877, ch. 105, 19 Stat. 353.)

#### § 416. Machinery, materials, and employees and officers.

The Secretary of the Treasury may purchase and provide all the machinery and materials, and employ such persons and appoint such officers as are necessary for the purpose of section 415 of this title. (R. S. § 3577.)

#### DERIVATION

Act July 11, 1862, ch. 142, § 2, 12 Stat. 532.

#### § 417. Expenses of issuing notes.

The necessary expenses of engraving, printing, preparing, and issuing the United States notes and Treasury notes shall be paid out of any money in the Treasury not otherwise appropriated; but no extra compensation for preparing, signing, or issuing such notes shall be allowed to any officer whose salary is fixed by law. (R. S. § 3578; Jan. 14, 1875, ch. 15, § 1, 18 Stat. 296; July 22, 1876, No. 17, § 1, 19 Stat. 215.)

#### DERIVATION

Act Mar. 3, 1803, ch. 73, § 6, 12 Stat. 711; act Dec. 23, 1857, ch. 1, § 11, 11 Stat. 259; act June 30, 1864, ch. 172, § 9, 13 Stat. 221.

#### § 418. Distinctive paper for United States securities; contracts for.

The Secretary of the Treasury is authorized, in his discretion, to enter into a contract for the manufacture of distinctive paper for United States securities for a period not to exceed four years. (July 1, 1916, ch. 209, § 1, 39 Stat. 277.)

#### § 419. Same; additional employees for mills.

During such period as it may be necessary to operate more than one mill for the manufacture of

distinctive paper, the Secretary of the Treasury is authorized to employ temporarily such employees as may be necessary at rates of pay corresponding to those of the regular employees, the compensation of such temporary employees to be a charge against the appropriation available for the distinctive paper then manufactured. (Apr. 4, 1924, ch. 84, title I, 43 Stat. 69.)

#### § 420. Replacing mutilated notes.

When any United States notes returned to the Treasury are so mutilated or otherwise injured as to be unfit for use, the Secretary of the Treasury is authorized to replace the same with others of the same character and amounts. (R. S. § 3580.)

##### DERIVATION

Act Mar. 17, 1862, ch. 45, § 4, 12 Stat. 370.

#### § 421. Destruction of notes.

Mutilated United States notes, when replaced according to law, and all other notes which by law are required to be taken up, and not reissued, when taken up, shall be destroyed in such manner and under such regulations as the Secretary of the Treasury may prescribe. (R. S. § 3581.)

##### DERIVATION

Act Mar. 17, 1862, ch. 45, § 4, 12 Stat. 370.

#### § 422. Destruction of notes by maceration.

All national bank notes, United States notes, and other obligations of the United States authorized to be destroyed may be destroyed by maceration instead of burning to ashes. The pulp from such macerated issue shall be disposed of only under the direction of the Secretary of the Treasury. (June 23, 1874, ch. 455, § 1, 18 Stat. 206.)

#### § 423. Laundering paper money.

The Secretary of the Treasury may employ such number of expert money sorters, feeders, and other employees, and expend such sums for contingent and miscellaneous items and for the purchase or construction and installation of paper-money laundering machines as may be necessary, in his judgment, to install, maintain, and operate laundering machines in the Treasury at Washington. (Aug. 26, 1912, ch. 408, § 1, 37 Stat. 595.)

#### § 424. Counterfeit notes to be marked.

All United States officers charged with the receipt or disbursement of public moneys, and all officers of national banks, shall stamp or write in plain letters the word "counterfeit", "altered", or "worthless" upon all fraudulent notes issued in the form of, and intended to circulate as money, which shall be presented at their places of business; and if such officers shall wrongfully stamp any genuine note of the United States, or of the national banks, they shall, upon presentation, redeem such notes at the face value thereof. (June 30, 1876, ch. 156, § 5, 19 Stat. 64.)

#### § 425. State taxation.

Circulating notes of national banking associations and United States legal tender notes and

other notes and certificates of the United States payable on demand and circulating or intended to circulate as currency and gold, silver, or other coin shall be subject to taxation as money on hand or on deposit under the laws of any State or Territory: *Provided*, That any such taxation shall be exercised in the same manner and at the same rate that any such State or Territory shall tax money or currency circulating as money within its jurisdiction. (Aug. 13, 1894, ch. 281, § 1, 28 Stat. 278.)

##### POSSESSION OF GOLD COINS AND BULLION

The possession of gold coins and bullion was prohibited except under Government license by Ex. Ord. No. 6260, eff. Aug. 28, 1933, set out in note under section 95 of Title 12, Banks and Banking.

##### CROSS REFERENCE

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

#### § 426. Same; national banks not affected.

The provisions of section 425 of this title shall not be deemed or held to change existing laws in respect of the taxation of national banking associations. (Aug. 13, 1894, ch. 281, § 2, 28 Stat. 278.)

#### § 427. Rules and regulations.

The Secretary of the Treasury shall make and issue from time to time such instructions and regulations to the several collectors, receivers, depositaries, officers, and others who may receive Treasury notes, United States notes, or other securities of the United States, or who may be in any way engaged or employed in the preparation and issue of the same, as he shall deem best calculated to promote the public convenience and security, and to protect the United States, as well as individuals, from fraud and loss. (R. S. § 251.)

##### DERIVATION

Act Feb. 10, 1820, ch. 11, §§ 14, 15, 3 Stat. 543; act Aug. 6, 1848, ch. 84, § 5, 9 Stat. 55; Res. May 14, 1856, No. 9, 11 Stat. 144; act June 30, 1864, ch. 172, § 8, 13 Stat. 221; act July 14, 1870, ch. 255, § 34, 16 Stat. 271.

#### § 428. Gold certificates in exchange for gold bullion.

The Secretary of the Treasury is authorized to receive deposits of gold bullion with the Treasurer or any agencies designated under section 476 of this title, in sums not less than \$20, and to issue certificates therefor, in denominations of not less than \$20 each, corresponding with the denominations of the United States notes. The bullion deposited for or representing the certificates of deposit shall be retained in the Treasury for the payment of the same on demand. And certificates representing coin in the Treasury may be issued in payment of interest on the public debt, which certificates, together with those issued for coin and bullion deposited, shall not at any time exceed 20 per centum beyond the amount of coin and bullion in the Treasury. (R. S. § 254; May 29, 1920, ch. 214, § 1, 41 Stat. 655.)

##### DERIVATION

Act Mar. 3, 1863, ch. 73, § 5, 12 Stat. 711.

##### POSSESSION OF GOLD COINS AND BULLION

The possession of gold coins and bullion was prohibited except under Government license by Ex. Ord. 6260, Aug. 28, 1933, set out in note under section 95 of Title 12, Banks and Banking.

## CROSS REFERENCES

Issuance of gold certificates in such denominations as the Secretary of the Treasury may determine, see section 405b of this title.

Restrictions on holding of gold coin, gold bullion, and gold certificates, see Executive Order No. 6260, § 5, note to section 95 of Title 12, Banks and Banking.

## § 429. Deposits of gold coin; gold certificates.

The Secretary of the Treasury is authorized and directed to receive deposits of gold coin with the Treasurer, or any of the agencies designated under section 476 of this title, in sums of not less than \$20, and to issue gold certificates therefor in denominations of not less than \$10, and the coin so deposited shall be retained in the Treasury and held for the payment of such certificates on demand, and used for no other purpose. Such certificates when received for customs, taxes, and all public dues may be reissued, and when held by any national banking association may be counted as a part of its lawful reserve: *Provided*, That whenever and so long as the gold coin and bullion held in the reserve fund in the Treasury for the redemption of United States notes and Treasury notes shall fall and remain below \$100,000,000 the authority to issue certificates as herein provided shall be suspended: *And provided further*, That whenever and so long as the aggregate amount of United States notes and silver certificates in the general fund of the Treasury shall exceed \$60,000,000 the Secretary of the Treasury may, in his discretion, suspend the issue of the certificates herein provided for: *And provided further*, That of the amount of such outstanding certificates one-fourth at least shall be in denominations of \$50 or less: *And provided further*, That the Secretary of the Treasury may, in his discretion, issue such certificates in denominations of \$10,000, payable to order: *And provided further*, That the Secretary of the Treasury may, in his discretion, receive, with the agencies designated under section 476 of this title, in New York and in San Francisco, deposits of foreign gold coin at their bullion value in amounts of not less than \$1,000 in value and issue gold certificates therefor of the description herein authorized: *And provided further*, That the Secretary of the Treasury may, in his discretion, receive, with the Treasurer or any agencies designated under section 476 of this title, deposits of gold bullion bearing the stamp of the coinage mints of the United States, or the assay office in New York, certifying their weight, fineness, and value, in amounts of not less than \$1,000 in value, and issue gold certificates therefor of the description herein authorized. But the amount of gold bullion and foreign coin so held shall not at any time exceed two-thirds of the total amount of gold certificates at such time outstanding. (R. S. § 254; July 12, 1882, ch. 290, § 12, 22 Stat. 165; Mar. 14, 1900, ch. 41, § 6, 31 Stat. 47; May 26, 1906, ch. 2558, 34 Stat. 202; Mar. 4, 1907, ch. 2913, § 1, 34 Stat. 1289; Mar. 2, 1911, ch. 190, 36 Stat. 964; June 12, 1916, ch. 142, 39 Stat. 225; May 29, 1920, ch. 214, § 1, 41 Stat. 654.)

## REPEAL

Repeal of laws inconsistent with sections 315b, 408a, 408b, 440-446, 752, 754a, 754b, 757a, 767, 821, 822a, 822b,

824 of this title and sections 213, 411-415, 417, 467 of Title 12, Banks and Banking, see section 446 of this title.

## DERIVATION

Act Mar. 3, 1863, ch. 73, § 5, 12 Stat. 711.

## CROSS REFERENCES

Gold coinage discontinued and gold coins withdrawn from circulation, see section 315b of this title.

Issuance of gold certificates in such denominations as the Secretary of the Treasury may determine, see section 757a of this title.

Provisions requiring payment of obligations in gold declared against public policy, see section 463 of this title.

Restrictions on holding of gold coin, gold bullion and gold certificates, see Ex. Ord. No. 6260, § 5, set out in note to section 95 of Title 12, Banks and Banking.

## § 430. Same; receiving by superintendents of mints or assayers of assay offices.

The Secretary of the Treasury is authorized to constitute any superintendent of mint or assayer of any assay office a depository to receive gold coin and bullion on deposit for the purposes provided for in sections 428 and 429 of this title. (June 8, 1878, ch. 170, 20 Stat. 102; May 29, 1920, ch. 214, § 1, 41 Stat. 654.)

See notes under sections 428 and 429 of this title.

## GOLD COIN AND GOLD BULLION

## § 440. Short title.

The short title of sections 315b, 408a, 408b, 441-446, 752, 754a, 754b, 757a, 767, 821, 822a, 822b, 824 of this title and sections 213, 411-415, 417, 467 of Title 12 shall be the "Gold Reserve Act of 1934." (Jan. 30, 1934, ch. 6, § 1, 48 Stat. 337.)

## § 441. Title to gold coin and bullion transferred to United States; payment therefor.

On January 30, 1934, all right, title, and interest, and every claim of the Board of Governors of the Federal Reserve System, of every Federal Reserve bank, and of every Federal Reserve agent, in and to any and all gold coin and gold bullion shall pass to and are hereby vested in the United States; and in payment therefor credits in equivalent amounts in dollars are hereby established in the Treasury in the accounts authorized under section 467 of Title 12. Balances in such accounts shall be payable in gold certificates, which shall be in such form and in such denominations as the Secretary of the Treasury may determine. All gold so transferred, not in the possession of the United States, shall be held in custody for the United States and delivered upon the order of the Secretary of the Treasury; and the Board of Governors of the Federal Reserve System, the Federal Reserve banks, and the Federal Reserve agents shall give such instructions and shall take such action as may be necessary to assure that such gold shall be so held and delivered. (Jan. 30, 1934, ch. 6, § 2 (a), 48 Stat. 337; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704.)

## REPEAL

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

## CHANGE OF NAME

Act of Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

**§ 442. Regulations for the acquisition and use of gold; exemption of gold held in Philippines or beyond continental United States.**

The Secretary of the Treasury shall, by regulations issued hereunder, with the approval of the President, prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked: (a) for industrial, professional, and artistic use; (b) by the Federal Reserve banks for the purpose of settling international balances; and (c) for such other purposes as in his judgment are not inconsistent with the purposes of section 441 and this section. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regulations. Such regulations may exempt from the provisions of this section, in whole or in part, gold situated in the Philippine Islands or other places beyond the limits of the continental United States. (Jan. 30, 1934, ch. 6, § 3, 48 Stat. 340.)

**REPEAL**

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

**§ 443. Acquisition and use of gold in violation of law; penalties.**

Any gold withheld, acquired, transported, melted or treated, imported, exported, or earmarked or held in custody, in violation of sections 441 and 442 of this title or of any regulations issued hereunder, or licenses issued pursuant thereto, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law; and in addition any person failing to comply with the provisions of said sections or of any such regulations or licenses, shall be subject to a penalty equal to twice the value of the gold in respect of which such failure occurred. (Jan. 30, 1934, ch. 6, § 4, 48 Stat. 340.)

**REPEAL**

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

**§ 444. Definitions.**

As used in sections 315b, 408a, 408b, 441-446, 752, 754a, 767, 821, 822a, 822b, of this title and sections 213, 411-415, 417, 467 of Title 12, the term "United States" means the Government of the United States; the term "the continental United States" means the States of the United States, the District of Columbia, and the Territory of Alaska; the term "currency of the United States" means currency which is legal tender in the United States, and includes United States notes, Treasury notes of 1890, gold certificates, silver certificates, Federal Reserve notes, and circulating notes of Federal Reserve banks and national banking associations; and the term "person" means any individual, partnership, association, or corporation, including the Board of Governors of the Federal Reserve System, Federal Reserve banks, and Federal Reserve agents. Wherever reference is made

in such sections to equivalents as between dollars or currency of the United States and gold, one dollar or one dollar face amount of any currency of the United States equals such a number of grains of gold, nine-tenths fine, as, at the time referred to, are contained in the standard unit of value, that is, so long as the President shall not have altered by proclamation the weight of the gold dollar under the authority of section 821 of this title, twenty-five and eight-tenths grains of gold, nine-tenths fine, and thereafter such a number of grains of gold, nine-tenths fine, as the President shall have fixed under such authority. (Jan. 30, 1934, ch. 6, § 15, 48 Stat. 344; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704.)

**REPEAL**

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

**CHANGE OF NAME**

Act of Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

**CROSS REFERENCES**

Authority to President to fix by proclamation the weight of the gold dollar, in grains nine-tenths fine, see section 821 (b) (2) of this title.

Weight of gold dollar reduced to 15 $\frac{1}{2}$  grains nine-tenths fine, see Proclamation No. 2072 set out as note to section 821 of this title.

**§ 445. Right to amend or repeal reserved; separability clause.**

The right to alter, amend, or repeal sections 315b, 408a, 408b, 441-446, 752, 754a, 754b, 757a, 767, 821, 822a, 822b, 824 of this title and sections 213, 411-415, 417, 467 of Title 12, is hereby expressly reserved. If any provision of said sections, or the application thereof to any person or circumstances, is held invalid, the remainder of said sections, and the application of such provision to other persons or circumstances, shall not be affected thereby. (Jan. 30, 1934, ch. 6, § 16, 48 Stat. 344.)

**REPEAL**

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

**§ 446. Laws repealed.**

All Acts and parts of Acts inconsistent with any of the provisions of sections 315b, 408a, 408b, 441-446, 752, 754a, 754b, 757a, 767, 821, 822a, 822b, 824 of this title and sections 213, 411-415, 417, 467 of Title 12 are hereby repealed. (Jan. 30, 1934, ch. 6, § 17, 48 Stat. 344.)

**SILVER PURCHASE**

**§ 448. Short title.**

The short title of sections 311a, 316a, 316b, 405a, 448-448e, 734a, and 734b of this title shall be the "Silver Purchase Act of 1934." (June 19, 1934, ch. 674, § 1, 48 Stat. 1178.)

**REPEAL**

All laws inconsistent with the provisions of this section were repealed by section 448e of this title.

**§ 448a. Rules and regulations.**

The Secretary of the Treasury is hereby authorized to issue, with the approval of the President, such

rules and regulations as the Secretary of the Treasury may deem necessary or proper to carry out the purposes of sections 311a, 316a, 316b, 405a, 448-448e, 734a, and 734b of this title, or of any order issued hereunder. (June 19, 1934, ch. 674, § 9, 48 Stat. 1181.)

#### REPEAL

All laws inconsistent with the provisions of this section were repealed by section 448e of this title.

#### § 448b. Definitions.

As used in sections 311a, 316a, 316b, 405a, 448-448e, 734a, and 734b of this title—

The term "person" means an individual, partnership, association, or corporation;

The term "the continental United States" means the States of the United States, the District of Columbia, and the Territory of Alaska;

The term "monetary value" means a value calculated on the basis of \$1 for an amount of silver or gold equal to the amount at the time contained in the standard silver dollar and the gold dollar, respectively;

The term "stocks of silver" means the total amount of silver at the time owned by the United States (whether or not held as security for outstanding currency of the United States) and of silver contained in coins of the United States at the time outstanding;

The term "stocks of gold" means the total amount of gold at the time owned by the United States, whether or not held as a reserve or as security for any outstanding currency of the United States. (June 19, 1934, ch. 674, § 10, 48 Stat. 1181.)

#### REPEAL

All laws inconsistent with the provisions of this section were repealed by section 448e of this title.

#### § 448c. Appropriation.

There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$500,000, which shall be available for expenditure under the direction of the President and in his discretion, for any purpose in connection with the carrying out of sections 311a, 316a, 316b, 405a, 448-448e, 734a, and 734b of this title; and there are hereby authorized to be appropriated annually such additional sums as may be necessary for such purposes. (June 19, 1934, ch. 674, § 11, 48 Stat. 1181.)

#### REPEAL

All laws inconsistent with the provisions of this section were repealed by section 448e of this title.

#### § 448d. Right to amend or repeal; separability clause.

The right to alter, amend, or repeal sections 311a, 316a, 316b, 405a, 448-448e, 734a, and 734b of this title is hereby expressly reserved. If any provision of said sections, or the application thereof to any person or circumstances, is held invalid, the remainder of said sections, and the application of such provision to other persons or circumstances, shall not be affected thereby. (June 19, 1934, ch. 674, § 12, 48 Stat. 1181.)

#### REPEAL

All laws inconsistent with the provisions of this section were repealed by section 448d of this title.

#### § 448e. Laws repealed.

All Acts and parts of Acts inconsistent with any of the provisions of sections 311a, 316a, 316b, 405a, 448-448e, 734a, and 734b of this title are hereby repealed, but the authority conferred in said sections upon the President and the Secretary of the Treasury is declared to be supplemental to the authority heretofore conferred. (June 19, 1934, ch. 674, § 13, 48 Stat. 1181.)

### Chapter 9.—LEGAL TENDER

#### Sec.

- 451. United States gold certificates.
- 452. United States notes.
- 453. Treasury notes.
- 454. Interest-bearing notes.
- 455. Legal-tender quality of money not affected by certain sections.
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#### § 451. United States gold certificates.

Gold certificates of the United States payable to bearer on demand shall be legal tender in payment of all debts and dues, public and private. (Dec. 24, 1919, ch. 15, § 1, 41 Stat. 370.)

#### CROSS REFERENCE

All coins and currencies of the United States to be legal tender, see sections 462 and 821 of this title.

#### § 452. United States notes.

United States notes shall be lawful money, and a legal tender in payment of all debts, public and private, within the United States, except for duties on imports and interest on the public debt. (R. S. § 3588.)

#### DERIVATION

Act Feb. 25, 1862, ch. 33, § 1, 12 Stat. 345; act July 11, 1862, ch. 142, § 1, 12 Stat. 532; Res. Jan. 17, 1863, No. 9, 12 Stat. 823; act Mar. 3, 1863, ch. 73, § 3, 12 Stat. 711.

#### CROSS REFERENCE

All coins and currencies of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 821 of this title.

#### § 453. Treasury notes.

Demand Treasury notes authorized by the Act of July 17, 1861, chapter 5, 12 Stat. 259, and the Act of February 12, 1862, chapter 20, 12 Stat. 338, shall be lawful money and a legal tender in like manner as United States notes. Treasury notes issued under the Act of July 14, 1890, chapter 708, 26 Stat. 289, shall be a legal tender in payment of all debts, public and private, except where otherwise expressly stipulated in the contract, and shall be receivable for customs, taxes, and all public dues. (R. S. § 3589; July 14, 1890, ch. 708, § 2, 26 Stat. 289.)

#### DERIVATION

Act July 17, 1861, ch. 5, § 1, 12 Stat. 259; act Feb. 12, 1862, ch. 20, § 1, 12 Stat. 338; act Feb. 25, 1862, ch. 33, § 1, 12 Stat. 345; act Mar. 17, 1862, ch. 45, § 2, 12 Stat. 370.

## CROSS REFERENCE

All coins and currencies of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 821 of this title.

## § 454. Interest-bearing notes.

Treasury notes issued under the authority of the Acts of March 3, 1863, chapter 73, 12 Stat. 710, and June 30, 1864, chapter 172, 13 Stat. 218-222, shall be legal tender to the same extent as United States notes, for their face value, excluding interest: *Provided*, That Treasury notes issued under the Act June 30, 1864, ch. 172, 13 Stat. 218-222 shall not be a legal tender in payment or redemption of any notes issued by any bank, banking association, or banker, calculated and intended to circulate as money. (R. S. § 3590.)

## DERIVATION

Act Mar. 3, 1863, ch. 73, § 2, 12 Stat. 710; act June 30, 1864, ch. 172, § 2, 13 Stat. 218.

## CROSS REFERENCE

All coins and currencies of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 821 of this title.

## § 455. Legal-tender quality of money not affected by certain sections.

Nothing contained in sections 146, 313, 314, 320, 406, 408, 410, 411, 429, and 751 of this title, and sections 51, 101, 177, 178, and 542 of Title 12 shall be construed to affect the legal-tender quality as now provided by law of the silver dollar, or of any other money coined or issued by the United States. (Mar. 14, 1900, ch. 41, § 3, 31 Stat. 46.)

## CROSS REFERENCE

All coins and currencies of the United States to be legal tender for all debts, see sections 462 and 821 of this title.

## § 456. Foreign coins.

No foreign gold or silver coins shall be a legal tender in payment of debts. (R. S. § 3584.)

## DERIVATION

Act Feb. 21, 1857, ch. 56, § 3, 11 Stat. 163.

## CROSS REFERENCE

All coins and currencies of the United States to be legal tender for all debts, see sections 462 and 821 of this title.

## § 457. Gold coins of United States.

The gold coins of the United States shall be a legal tender in all payments at their nominal value when not below the standard weight and limit of tolerance provided by law for the single piece, and, when reduced in weight below such standard and tolerance, shall be a legal tender at valuation in proportion to their actual weight. (R. S. § 3585.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 14, 17 Stat. 426.

## CROSS REFERENCES

Acquisition and use of gold in violation of law to subject the gold to forfeiture and subject person to penalty equal to twice the value of the gold, see section 443 of this title.

All coins and currencies of United States as legal tender, see sections 462 and 821 of this title.

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Provisions requiring obligations to be payable in gold declared against public policy, see section 463 of this title.

## § 458. Standard silver dollars; paid in silver.

Silver dollars coined under the Act of February 28, 1878, ch. 20, 20 Stat. 25, 26, together with all silver dollars coined by the United States, of like weight and fineness prior to the date of such Act, shall be a legal tender, at their nominal value, for all debts and dues public and private, except where otherwise expressly stipulated in the contract. But nothing in this section shall be construed to authorize the payment in silver of certificates of deposit issued under the provisions of sections 428 and 429 of this title. (Feb. 28, 1878, ch. 20, § 1, 20 Stat. 25.)

## CROSS REFERENCES

All coins and currencies of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 463 of this title.

Obligations payable in any coin or currency which at the time is a legal tender notwithstanding a provision for payment in a particular kind of coin or currency, see section 463 of this title.

## § 459. Subsidiary silver coins.

The silver coins of the United States in existence June 9, 1879, of smaller denominations than \$1 shall be a legal tender in all sums not exceeding \$10 in full payment of all dues public and private. (June 9, 1879, ch. 12, § 3, 21 Stat. 8.)

## CROSS REFERENCE

All coins and currencies of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 821 of this title.

## § 460. Minor coins.

The minor coins of the United States shall be a legal tender, at their nominal value for any amount not exceeding 25 cents in any one payment. (R. S. § 3587.)

## DERIVATION

Act Feb. 12, 1873, ch. 131, § 16, 17 Stat. 427.

## CROSS REFERENCE

All coins and currencies of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 821 of this title.

## § 461. Commemorative coins.

Section 461, making certain enumerated commemorative coins legal tender, is executed in view of section 378a of this title discontinuing coinage and issuance of commemorative coins under acts enacted prior to March 1, 1939.

Section was from acts Apr. 13, 1904, ch. 1253, § 6, 33 Stat. 178; June 1, 1918, ch. 91, § 1, 40 Stat. 594; May 10, 1920, ch. 176, § 1, 41 Stat. 595; May 10, 1920, ch. 177, § 1, 41 Stat. 595; May 12, 1920, ch. 182, § 1, 41 Stat. 597; Mar. 4, 1921, ch. 153, § 1, 41 Stat. 1363; Feb. 2, 1922, ch. 45, 42 Stat. 362; Jan. 24, 1923, ch. 38, § 1, 42 Stat. 1172; Feb. 26, 1923, ch. 113, § 1, 42 Stat. 1287; Mar. 17, 1924, ch. 58, § 1, 43 Stat. 23; Jan. 14, 1925, ch. 79, § 5, 43 Stat. 749; Feb. 24, 1925, ch. 302, §§ 1-3, 43 Stat. 965, 966; Mar. 3, 1925, ch. 482, § 4, 43 Stat. 1254; May 17, 1926, ch. 307, § 1, 44

Stat. 559; Mar. 7, 1928, ch. 185, § 1, 45 Stat. 198; June 15, 1933, ch. 82, § 1, 48 Stat. 149; May 9, 1934, ch. 265, §§ 1-4, 48 Stat. 679; May 14, 1934, ch. 286, §§ 1-3, 48 Stat. 776; May 26, 1934, ch. 355, §§ 1-4, 48 Stat. 807; June 21, 1934, ch. 695, §§ 1-4, 48 Stat. 1200; May 2, 1935, ch. 88, §§ 1-5, 49 Stat. 165, 166; May 3, 1935, ch. 90, §§ 1-4, 49 Stat. 174; June 5, 1935, ch. 176, 49 Stat. 324; Mar. 18, 1936, ch. 149, §§ 1-5, 49 Stat. 1165; Mar. 20, 1936, ch. 164, §§ 1-3, 49 Stat. 1187; Apr. 13, 1936, ch. 212, §§ 1-3, 49 Stat. 1205; May 5, 1936, ch. 300, §§ 1-3, 49 Stat. 1257; May 5, 1936, ch. 304, §§ 1-3, 49 Stat. 1259; May 6, 1936, ch. 331, §§ 1-3, 49 Stat. 1262, 1263; May 15, 1936, ch. 399, §§ 1-3, 49 Stat. 1276; May 15, 1936, ch. 402, §§ 1-3, 49 Stat. 1277, 1278; May 15, 1936, ch. 406, §§ 1-3, 49 Stat. 1352, 1353; May 28, 1936, ch. 466, §§ 1-3, 49 Stat. 1387, 1388; June 16, 1936, ch. 583, §§ 1-3, 49 Stat. 1522; June 16, 1936, ch. 584, §§ 1-3, 49 Stat. 1523; June 16, 1936, ch. 586, §§ 1-3, 49 Stat. 1524; June 24, 1936, ch. 760, §§ 1-3, 49 Stat. 1911; June 26, 1936, ch. 835, §§ 1-3, 49 Stat. 1972; June 26, 1936, ch. 837, §§ 1-3, 49 Stat. 1973; June 24, 1937, ch. 377, §§ 1-3, 50 Stat. 306; June 28, 1937, ch. 384, §§ 1-3, 50 Stat. 322, 323.

#### § 462. Coins and currencies.

All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight. (May 12, 1933, ch. 25, title III, § 43 (b) (1), 48 Stat. 52; June 5, 1933, ch. 48, § 2, 48 Stat. 113.)

#### CROSS REFERENCES

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Provisions for payment of obligations in gold declared against public policy, see section 463 of this title.

#### § 463. Provision for payment of obligations in gold prohibited; uniformity in value of coins and currencies.

(a) Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this section, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and na-

tional banking associations. (June 5, 1933, ch. 48, § 1, 48 Stat. 113.)

#### Chapter 10.—THE PUBLIC MONEYS

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**§ 471. Certain duties of Division of Public Moneys transferred to Bureau of Accounts of the Fiscal Service.**

The duties appertaining on June 10, 1921, to the Division of Public Moneys of the office of the Secretary of the Treasury, so far as they related to the covering of revenues and repayments into the Treasury, the issue of duplicate checks and warrants, and the certification of outstanding liabilities for payment, shall be performed by the Bureau of Accounts of the Fiscal Service of the Treasury Department. (June 10, 1921, ch. 18, § 308, 42 Stat. 25; Reorg. Plan No. III, § 1 (a) (1) (3), eff. June 30, 1940, 5 Fed. Reg. 2107, 54 Stat. 1231.)

## TRANSFER OF FUNCTIONS

Division of Bookkeeping and Warrants was transferred to Bureau of Accounts of the Fiscal Service of the Treasury Department by Reorganization Plan No. III, § 1 (a) (1) (3), cited to text, set out as note following 133t of Title 5, Executive Departments and Government Officers and Employees.

**§ 472. The Treasury of the United States.**

The rooms provided in the Treasury building at the seat of Government for the use of the Treasurer of the United States, his assistants, and clerks, and occupied by them, and the fireproof vaults and safes erected therein for the keeping of the public moneys in the possession and under the immediate control of the Treasurer, and such other apartments as are provided as places of deposit of the public money, shall be the Treasury of the United States. (R. S. § 3591.)

## DERIVATION

Act Aug. 6, 1846, ch. 90, § 1, 9 Stat. 59.

**§ 473. Same; foreign countries, the Territories, and the insular possessions.**

The Secretary of the Treasury may designate such depositaries of public moneys in foreign countries and in the Territories and insular possessions of the United States as may be necessary for the transaction of the Government's business, under such terms and conditions as to security and otherwise, as he may from time to time prescribe: *Provided*, That in designating such depositaries American financial institutions shall be given preference wherever, in the judgment of the Secretary of the Treasury, such institution is safe and able to render the service required. (June 19, 1922, ch. 228, 42 Stat. 662.)

**§ 474. Public moneys subject to draft of Treasurer.**

All public moneys paid into any depository shall be subject to the draft of the Treasurer of the United States, drawn agreeably to appropriations made by law. (R. S. § 3593.)

## DERIVATION

Act Aug. 6, 1846, ch. 90, § 1, 9 Stat. 59.

**§ 475. Same; bonds.**

All officers in any mint, or assay office, authorized by law to act as depositaries, shall, respectively, give bonds to the United States for the faithful discharge of the duties of their respective offices as depositaries according to law, and for such amounts as shall be directed by the Secretary of the Treasury, with sureties to the satisfaction of the General Counsel for the Department of the Treasury; and shall, from time to time, renew, strengthen, and increase their official bonds as the Secretary of the Treasury may direct. (R. S. § 3600; May 29, 1920, ch. 214, § 1, 41 Stat. 654; May 10, 1934, ch. 277, § 512, 48 Stat. 759.)

## DERIVATION

Act Aug. 6, 1846, ch. 90, §§ 5, 7, 9 Stat. 60; act Apr. 7, 1868, ch. 28, § 14, 14 Stat. 26; act June 15, 1870, ch. 12, § 1, 16 Stat. 152; act Feb. 12, 1873, ch. 131, § 65, 17 Stat. 435; act Mar. 3, 1873, ch. 229, § 5, 17 Stat. 543.

**§ 476. Transfer of duties of assistant treasurers to other officers, etc.**

The Secretary of the Treasury may, in his discretion, transfer any or all of the duties and functions

performed or authorized to be performed prior to May 29, 1920, by assistant treasurers at Boston, New York, Philadelphia, Baltimore, New Orleans, Saint Louis, San Francisco, Cincinnati, and Chicago, or their offices, to the Treasurer of the United States, or the mints or assay offices of the United States, under such rules and regulations as he may prescribe, or may utilize any of the Federal reserve banks acting as depositaries or fiscal agents of the United States, for the purpose of performing any or all of such duties and functions, notwithstanding the limitations of sections 391 and 392 of Title 12, or any other provisions of law. (May 29, 1920, ch. 214, § 1, 41 Stat. 655.)

**§ 477. Deposit of money or bullion with Federal reserve banks.**

If any moneys or bullion, constituting part of the trust funds or other special funds required by law prior to May 29, 1920, to be kept in Treasury offices, shall be deposited with any Federal reserve bank, then such moneys or bullion shall by such bank be kept separate and distinct from the assets, funds, and securities of the Federal reserve bank and be held in the joint custody of the Federal reserve agent and the Federal reserve bank. (May 29, 1920, ch. 214, § 1, 41 Stat. 655.)

**§ 478. Member banks as depositaries.**

Nothing in sections 476–479 of this title shall be construed to deny the right of the Secretary of the Treasury to use member banks of the Federal reserve system as depositaries as authorized by law. (May 29, 1920, ch. 214, § 1, 41 Stat. 655.)

**§ 479. Quarters occupied by subtreasuries; assignment to Federal reserve banks.**

The Secretary of the Treasury may assign any or all the rooms, vaults, equipment, and safes or space in the buildings used prior to May 29, 1920, by the subtreasuries to any Federal reserve bank acting as fiscal agent of the United States. (May 29, 1920, ch. 214, § 1, 41 Stat. 655.)

**§ 480. Deputies in case of sickness or absence.**

In case of the sickness or unavoidable absence of any depositary from his office, he may, with the approval of the Secretary of the Treasury, authorize the chief clerk, or some other clerk employed therein, to act in his place, and to discharge all the duties required by law of such depositary. The official bond given by the principal of the office shall be held to cover and apply to the acts of the person appointed to act in his place in such cases. Such acting officer shall moreover, for the time being, be subject to all the liabilities and penalties prescribed by law for the official misconduct, in like cases, of the depositary, respectively, for whom he acts. (R. S., § 3613; May 29, 1920, ch. 214, § 1, 41 Stat. 655.)

**DERIVATION**

Act Feb. 13, 1865, ch. 32, 13 Stat. 427.

**§ 481. Bond of special agents.**

Whenever it becomes necessary for the head of any department or office to employ special agents,

other than officers of the Army or Navy, who may be charged with the disbursement of public moneys, such agents shall, before entering upon duty, give bond in such form and with such security as the head of the department or office employing them may approve. (R. S., § 3614.)

**DERIVATION**

Act Aug. 4, 1854, ch. 242, § 14, 10 Stat. 573.

**§ 482. Collectors of public moneys to pay over.**

All collectors and receivers of public money of every description, within the District of Columbia, shall, as often as they may be directed by the Secretary of the Treasury or the Postmaster General so to do, pay over to the Treasurer of the United States, at the Treasury, all public moneys collected by them or in their hands. All such collectors and receivers of public moneys within the cities of New York, Boston, Philadelphia, New Orleans, San Francisco, Baltimore, Charleston, and Saint Louis shall, upon the same direction, pay over to the designated depositary in their respective cities, at such offices, respectively, all the public moneys collected by them, or in their hands; to be safely kept by the respective depositaries, until otherwise disposed of according to law. It shall be the duty of the Secretary and Postmaster General, respectively, to direct such payments by collectors and receivers, at least as often as once in each week, and as much oftener as they may think proper. (R. S. § 3615; May 29, 1920, ch. 214, § 1, 41 Stat. 654.)

**DERIVATION**

Act Aug. 6, 1846, ch. 90, § 9, 9 Stat. 61; act Feb. 12, 1873, ch. 131, § 65, 17 Stat. 435.

**§ 483. Marshals and district attorneys paying into Treasury.**

All marshals, district attorneys, and other persons than those mentioned in section 482 of this title, having public money to pay to the United States, may pay the same to any depositary constituted by or in pursuance of law, which may be designated by the Secretary of the Treasury. (R. S. § 3616.)

**DERIVATION**

Act Aug. 6, 1846, ch. 90, § 15, 9 Stat. 62; act July 8, 1870, ch. 230, § 111, 16 Stat. 216.

**§ 484. Deposit without deduction.**

The gross amount of all moneys received from whatever source for the use of the United States, except as otherwise provided in section 487 of this title, shall be paid by the officer or agent receiving the same into the Treasury, at as early a day as practicable, without any abatement or deduction on account of salary, fees, costs, charges, expenses, or claim of any description whatever. But nothing herein shall affect any provision relating to the revenues of the Post Office Department. (R. S. § 3617.)

**DERIVATION**

Act Mar. 3, 1849, ch. 110, § 1, 9 Stat. 398; act Sept. 28, 1850, ch. 78, § 3, 9 Stat. 507.

**CROSS REFERENCES**

Diplomatic missions, consular offices, and district accounting and disbursing offices of the foreign service, use of moneys received for salaries, allowances, see sections 23k and 23l of Title 22, Foreign Relations and Intercourse.

Proceeds of sale of materials, see section 487 of this title.

Rental of plant in connection with river and harbor works, deposit of proceeds, see section 559 of Title 33, Navigation and Navigable Waters.

**§ 485. Receipts from private messages sent over Government lines.**

All moneys received for the transmission of private dispatches over any and all telegraph lines owned or operated by the United States, shall be paid into the Treasury of the United States, as required by section 484 of this title. (Mar. 3, 1883, ch. 143, 22 Stat. 616.)

**§ 486. Private messages over telephone lines controlled by Treasury Department.**

Private messages may, with the consent and authority of the Secretary of the Treasury, be transmitted over any and all telephone lines controlled by the Treasury Department, whenever it does not interfere with Government business, at such rates and on such terms and conditions as may from time to time be fixed by the Secretary of the Treasury, the proceeds thereof to be accounted for and paid into the Treasury of the United States. (Apr. 28, 1904, ch. 1762, § 1, 33 Stat. 460.)

**§ 486a. Collections of Public Health Service for care of foreign seamen and other private patients.**

Hereafter all collections of the Public Health Service for the care and treatment of foreign seamen or other private pay patients shall be covered in the Treasury as miscellaneous receipts. (May 14, 1935, ch. 110, title I, § 1, 49 Stat. 229.)

**CROSS REFERENCE**

Public Health Service, creation, powers, and duties, see sections 1-68 of Title 42, The Public Health and Welfare.

**§ 487. Proceeds of sales of material.**

All proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, except the proceeds of the sale or leasing of marine hospitals, or of the sales of Coast Guard cutters, or of the sales of commissary stores to the officers and enlisted men of the Army, or of materials, stores, or supplies sold to officers and soldiers of the Army or of the sale of condemned Navy clothing, or of sales of materials, stores, or supplies to any exploring or surveying expedition authorized by law, shall be deposited and covered into the Treasury as miscellaneous receipts, on account of "proceeds of Government property", and shall not be withdrawn or applied, except in consequence of a subsequent appropriation made by law. Under such regulations as the Secretary of War may prescribe, the commanding officers of mounted units of the National Guard may sell all stable refuse and empty grain sacks and containers at public or private sale and apply the proceeds derived therefrom to the purchase of feed, supplementing the regular allowance and issue for the animals of the said units, and for the purchase of stable equipment, and horseshoers', saddlers', blacksmiths', and wagoners' tools not an article of issue to such organizations. (R. S. § 3618; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 249; Jan. 28, 1915, ch. 20, § 1, 38 Stat. 800; Oct. 14, 1940, ch. 875, § 4, 54 Stat. 1136.)

**DERIVATION**

Act Mar. 3, 1847, ch. 48, § 1, 9 Stat. 171; act Apr. 20, 1866, ch. 63, §§ 1, 2, 14 Stat. 40; act July 28, 1866, ch. 299, § 25, 14 Stat. 336; act May 3, 1872, ch. 140, § 5, 17 Stat. 83; act June 8, 1872, ch. 348, 17 Stat. 337.

**§ 488. Proceeds of sale of surplus cuttings.**

The proceeds derived from the sale of surplus cuttings of material for clothing manufactured by the Quartermaster Corps of the Army shall be deposited to the credit of that appropriation out of which the material was purchased. (Aug. 29, 1916, ch. 418, § 1, 39 Stat. 635.)

**CROSS REFERENCE**

Credit to be made to account for replacing clothing and equipage of only such amounts as represent sales of stores, materials, and supplies at actual cost to the War Department, see section 7251 of this title.

**§ 489. Payment of expenses of sales from proceeds.**

From the proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, before being deposited into the Treasury, either as miscellaneous receipts on account of "proceeds of Government property" or to the credit of the appropriations to which such proceeds are by law authorized to be made, there may be paid the expenses of such sales, as approved by the General Accounting Office, so as to require only the net proceeds of such sales to be deposited into the Treasury, either as miscellaneous receipts or to the credit of such appropriations, as the case may be. (June 8, 1896, ch. 373, § 1, 29 Stat. 268; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

**§ 490. Penalty for withholding money.**

Every officer or agent who neglects or refuses to comply with the provisions of section 484 of this title shall be subject to be removed from office, and to forfeit to the United States any share or part of the moneys withheld, to which he might otherwise be entitled. (R. S. § 3619.)

**DERIVATION**

Act July 18, 1866, ch. 201, § 40, 14 Stat. 187.

**§ 491. Fees, fines, etc., payable into Treasury to credit of United States and District of Columbia.**

All fees, fines, and other miscellaneous items of revenue required by law prior to July 1, 1921, to be paid into the Treasury of the United States to the credit of the United States and the District of Columbia in equal parts shall be paid for each fiscal year into the Treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia; and all collections on account of special assessments for public improvements for which assessments are levied according to the law shall be paid into the Treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as the appropriations used in paying for such assessment work are charged, respectively, against the revenues of the District of Columbia and the Treasury of the United States. (Feb. 22, 1921, ch. 70, § 7, 41 Stat. 1144.)

**§ 492. Duty of disbursing officers.**

Except as otherwise provided by law it shall be the duty of every disbursing officer having any public money intrusted to him for disbursement, to deposit the same with the Treasurer or with one of the depositories of the United States mentioned in section 476 of this title, and to draw for the same only as it may be required for payments to be made by him in pursuance of law and draw for the same only in favor of the persons to whom payment is made; and all transfers from the Treasurer of the United States to a disbursing officer shall be by draft or warrant on the Treasury. In places, however, where there is no treasurer or depository, the Secretary of the Treasury may, when he deems it essential to the public interest, specially authorize in writing the deposit of such public money in any other public depository, or, in writing, authorize the same to be kept in any other manner, and under such rules and regulations as he may deem most safe and effectual to facilitate the payments to public creditors. (R. S. § 3620; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 249; May 29, 1920, ch. 214, § 1, 41 Stat. 654, 655.)

**DERIVATION**

Act June 14, 1866, ch. 122, § 1, 14 Stat. 64.

**§ 493. Officers permitted to keep funds for subsistence of the Army for payments of small amounts.**

Officers intrusted with the disbursement of funds for the subsistence of the Army may keep, at their own risk, in their personal possession for disbursement, such restricted amounts of subsistence funds for facilitating payments of small amounts to public creditors as shall from time to time be authorized by the Secretary of War. (Mar. 2, 1907, ch. 2511, 34 Stat. 1166.)

**§ 493a. Army officers permitted to keep receipts from sales and other sources for current expenditures.**

Without deposit to the credit of the Treasurer of the United States and withdrawal on money requisitions, receipts of public moneys from sales or other sources by officers of the Army on disbursing duty and charged in their official accounts, except receipts to be credited to river and harbor and flood-control appropriations and retirement deductions, may be used by them as required for current expenditures, all necessary bookkeeping adjustments of appropriations, funds, and accounts to be made in the settlement of their disbursing accounts. (June 13, 1940, ch. 343, § 1, 54 Stat. 355.)

**SIMILAR PROVISIONS**

The text of this section was taken from Military Appropriation Act, 1941. Similar provisions were contained in the following acts:

- 1939—Apr. 26, 1939, ch. 88, § 1, 53 Stat. 597.
- 1938—June 11, 1938, ch. 347, § 1, 52 Stat. 646.
- 1937—July 1, 1937, ch. 423, § 1, 50 Stat. 446.

**§ 494. Acting disbursing officer in case of sickness or unavoidable absence of disbursing clerk or disbursing agent.**

In case of the sickness or unavoidable absence of any disbursing clerk or disbursing agent of any executive department, independent bureau, or office, in Washington, District of Columbia, he may, with

the approval of the head of the department, independent bureau, or office, in which said disbursing clerk or agent is employed, authorize the clerk of highest grade employed therein to act in his place, and to discharge all the duties by law or regulations of such disbursing clerk or agent. The official bond given by the principal of the office shall be held to cover and apply to the acts of the person appointed to act in his place in such cases. Such acting officer shall, moreover, for the time being, be subject to all the liabilities and penalties prescribed by law for the official misconduct in like cases, of the disbursing clerk or disbursing agent, respectively, for whom he acts, and such acting officer shall be required by the head of the department, independent bureau, or office, to give bond to and in such sum as the disbursing clerk or disbursing agent may require. (Mar. 4, 1909, ch. 299, § 8, 35 Stat. 1027.)

**§ 495. Deposit of moneys with public depository; receipts; postal revenues.**

Every person who shall have moneys of the United States in his hands or possession, and disbursing officers having moneys in their possession not required for current expenditure, shall pay the same to the Treasurer, or some public depository of the United States, without delay, and in all cases within thirty days of their receipt. And the Treasurer or the public depository shall issue duplicate receipts for the moneys so paid, transmitting forthwith the original to the Secretary of the Treasury, and delivering the duplicate to the depositor: *Provided*, That postal revenues and debts due to the Post Office Department shall be paid into the Treasury in the manner required by law. (R. S. § 3621; May 28, 1896, ch. 252, § 5, 29 Stat. 179; May 29, 1920, ch. 214, § 1, 41 Stat. 654, 655.)

**DERIVATION**

Act Mar. 3, 1857, ch. 114, § 3, 11 Stat. 249.

**§ 495a. Use by officers of Navy and Marine Corps of moneys for current expenditures.**

Without deposit to the credit of the Treasurer of the United States and withdrawal on money requisitions, receipts of public moneys from sales or other sources by officers of the Navy and Marine Corps on disbursing duty and charged in their official accounts may be used by them as required for current expenditures, all necessary bookkeeping adjustments of appropriations, funds, and accounts to be made in the settlement of their disbursing accounts. (June 11, 1940, ch. 313, title I, 54 Stat. 277.)

**SIMILAR PROVISIONS**

The text of this section was taken from Naval Appropriation Act, 1941. Similar provisions were contained in the following acts:

- 1939—May 26, 1939, ch. 149, § 1, 53 Stat. 769.
- 1938—Apr. 26, 1938, ch. 175, § 1, 52 Stat. 235.
- 1937—Apr. 27, 1937, ch. 140, 50 Stat. 107.
- 1936—June 3, 1936, ch. 484, 49 Stat. 1409.
- 1935—June 24, 1935, ch. 291, § 1, 49 Stat. 410.
- 1934—Mar. 15, 1934, ch. 69, § 1, 48 Stat. 414.
- 1933—Mar. 3, 1933, ch. 213, 47 Stat. 1532.
- 1932—June 30, 1932, ch. 318, 47 Stat. 433.

**§ 496. Accounts.**

Except as otherwise provided, every officer or agent of the United States who receives public money

which he is not authorized to retain as salary, pay, or emolument, shall render his accounts monthly. Such accounts, with the vouchers necessary to the correct and prompt settlement thereof, shall be sent by mail, or otherwise, to the bureau to which they pertain, within ten days after the expiration of each successive month, and, after examination there, shall be passed to the General Accounting Office for settlement. Disbursing officers of the Navy shall, however, render their accounts and vouchers direct to the General Accounting Office. In case of the nonreceipt at the General Accounting Office or proper bureau of any accounts within a reasonable and proper time thereafter, the officer whose accounts are in default shall be required to furnish satisfactory evidence of having complied with the provisions of this section. Nothing contained in this section shall, however, be construed to restrain the heads of any of the departments from requiring such other returns or reports from the officer or agent, subject to the control of such heads of departments, as the public interest may require. (R. S. § 3622; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 249; July 31, 1894, ch. 174, § 12, 28 Stat. 209; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

#### DERIVATION

Act July 17, 1862, ch. 199, § 1, 12 Stat. 593; Res. Mar. 2, 1867, No. 48, 14 Stat. 571; act July 15, 1870, ch. 295, § 15, 16 Stat. 334.

#### CROSS REFERENCE

District accounting and disbursing offices of Foreign Service, see section 23k of Title 22, Foreign Relations and Intercourse.

#### § 497. Same; disbursing officers.

All disbursing officers of the United States shall render their accounts quarterly; and the Secretary of the Senate shall render his accounts as otherwise provided; but the General Accounting Office may direct any or all such accounts to be rendered more frequently when in its judgment the public interests may require. (Aug. 30, 1890, ch. 837, § 4, 26 Stat. 413; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

#### § 498. Same; distinct accounts required.

All officers, agents, or other persons receiving public moneys shall render distinct accounts of the application thereof, according to the appropriation under which the same may have been advanced to them. (R. S., § 3623.)

#### DERIVATION

Act Mar. 3, 1809, ch. 28, § 1, 2 Stat. 535.

#### § 499. Same; disbursements under Army appropriation Acts.

All officers, agents, or other persons receiving public moneys appropriated by any Army appropriation Act shall account for the disbursement thereof according to the several and distinct items of appropriation expressed in such Act. (July 5, 1884, ch. 217, 23 Stat. 113.)

#### § 500. Payment of pressing obligations by certain disbursing officers.

Whenever pressing obligations are required to be paid by a disbursing officer of the Quartermaster Corps, the Ordnance Department, or the Engineer

Department and there is an insufficient balance to his official credit under the proper appropriation or appropriations for the purpose, he is authorized to make payment from the total available balance to his official credit, provided sufficient funds under the proper appropriation or appropriations have been apportioned for the expenditure by the Quartermaster General, the Chief of Ordnance, or of the Chief of Engineers, as the case may be. When such disbursements are made the accounts of the disbursing officer shall show the charging of the proper appropriations, the balances under which will be adjusted by the disbursing officer on receipt of funds or by the General Accounting Office. (Mar. 3, 1909, ch. 252, 35 Stat. 747, 750; Mar. 3, 1911, ch. 209, 36 Stat. 1056; Aug. 24, 1912, ch. 391, § 3, 37 Stat. 591; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

#### CROSS REFERENCE

Advances to disbursing officers and agents of Army on requisition of Secretary of War, see sections 536-538 of this title.

#### § 501. Payment by disbursing officers; settlement of transactions of Engineer Department.

In the settlement of transactions between appropriations under the Engineer Department, or between the Engineer Department and another office or bureau of the War Department, or of any other executive department of the Government, payment therefor shall be made by the proper disbursing officer. (Apr. 27, 1914, ch. 72, 38 Stat. 369; June 4, 1920, ch. 227, subch. I, § 9, 41 Stat. 766.)

#### CROSS REFERENCE

Chief of Finance charged with disbursement of funds of War Department, see section 172 of Title 10, Army.

#### § 502. Same; settlement of transactions of Signal Corps.

In the settlement of transactions between appropriations under the Signal Corps, or between the Signal Corps and another office or bureau of the War Department, or of any other executive department of the Government, payment therefor shall be made by the proper disbursing officer. (Aug. 29, 1916, ch. 418, § 1, 39 Stat. 622; June 4, 1920, ch. 227, subch. I, § 9, 41 Stat. 766.)

#### CROSS REFERENCE

Chief of Finance charged with disbursement of funds of War Department, see section 172 of Title 10, Army.

#### § 503. Same; Military Academy.

In settling transactions between appropriations for the support of the United States Military Academy and other bureaus of the War Department, or between the United States Military Academy and any other executive department of the Government, payment therefor shall be made by the disbursing officer. (Aug. 11, 1916, ch. 314, 39 Stat. 504; June 4, 1920, ch. 227, subch. I, § 9, 41 Stat. 766.)

#### CROSS REFERENCE

Chief of Finance charged with disbursement of funds of War Department, see section 172 of Title 10, Army.

#### § 504. Same; Medical Department.

In the settlement of accounts between the appropriations of the Medical Department and those of

any other branch of the Army service, or any bureau or office of the War Department, or any other executive department or establishment of the Government, payment thereof may be made by the proper disbursing officer. (Mar. 4, 1915, ch. 143, § 1, 38 Stat. 1080; June 4, 1920, ch. 227, subch. I, § 9, 41 Stat. 776.)

#### CROSS REFERENCE

Chief of Finance charged with disbursement of funds of War Department, see section 172 of Title 10, Army.

#### § 504a. Validation of payments to reserve officers promoted while on active duty.

Section, act May 15, 1936, ch. 396, 49 Stat. 1275, validated payments made prior to May 15, 1936, to reserve officers promoted while on active duty.

#### § 504b. Validation of payments to reserve officers on active duty for rental allowances.

All payments made to military personnel of the Army on account of rental allowances, where the Secretary of War, under the authority of section 718 of Title 10, has determined that no quarters are available for such personnel, are hereby ratified and validated, and the Comptroller General of the United States is hereby directed to credit the accounts of disbursing officers of the United States with such payments, and to accept as final and conclusive in the audit of such accounts the determinations made by the Secretary of War under that section. (May 15, 1936, ch. 395, 49 Stat. 1274.)

#### § 505. Suits to recover money from officers.

Whenever any person accountable for public money neglects or refuses to pay into the Treasury the sum or balance reported to be due to the United States, upon the adjustment of his account, the Department of Justice shall institute suit for the recovery of the same, adding to the sum stated to be due on such account, the commissions of the delinquent, which shall be forfeited in every instance where suit is commenced and judgment obtained thereon, and an interest of 6 per centum per annum, from the time of receiving the money until it shall be repaid into the Treasury. (R. S. § 3624; June 10, 1921, ch. 18, § 304, 42 Stat. 24; Ex. Ord. No. 6166, § 5, June 10, 1933.)

#### DERIVATION

Act Mar. 3, 1797, ch. 20, § 1, 1 Stat. 512.

#### TRANSFER OF FUNCTIONS

Function of prosecuting in the courts claims and demands by the Government of the United States transferred to Department of Justice, see Ex. Ord. No. 6166, § 5, note to section 132 of Title 5, Executive Departments and Government Officers and Employees.

#### § 506. Distress warrant.

Whenever any collector of the revenue, receiver of public money, or other officer who has received the public money before it is paid into the Treasury of the United States, fails to render his account, or pay over the same in the manner or within the time required by law, it shall be the duty of the General Accounting Office to cause to be stated the account of such officer, exhibiting truly the amount due to the United States, and to certify the same to the General Counsel for the Department of the Treasury, who shall issue a warrant of distress against the delin-

quent officer and his sureties, directed to the marshal of the district in which such officer and his sureties reside. Where the officer and his sureties reside in different districts, or where they, or either of them, reside in a district other than that in which the estate of either may be, which it is intended to take and sell, then such warrant shall be directed to the marshals of such districts, respectively. (R. S. § 3625; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 249; July 31, 1894, ch. 174, § 4, 28 Stat. 206; June 10, 1921, ch. 18, § 304, 42 Stat. 24; May 10, 1934, ch. 277, § 512, 48 Stat. 759.)

#### DERIVATION

Act May 15, 1820, ch. 107, § 2, 3 Stat. 592; act May 29, 1830, ch. 153, § 1, 4 Stat. 414.

#### REPEALED

Insofar as first clause of this section related exclusively to Internal Revenue it was repealed and incorporated in part as section 3975 of Title 26, Internal Revenue Code. See section 4 (a) of enacting sections of Internal Revenue Code preceding Subtitle A of Title 26.

#### § 507. Same; contents.

The warrant of distress shall specify the amount with which such delinquent is chargeable, and the sums, if any, which have been paid. (R. S. § 3626.)

#### DERIVATION

Act May 15, 1820, ch. 107, § 2, 3 Stat. 592; act May 29, 1830, ch. 153, § 1, 4 Stat. 414.

#### § 508. Same; execution against officer.

The marshal authorized to execute any warrant of distress shall, by himself or by his deputy, proceed to levy and collect the sum remaining due, by distress and sale of the goods and chattels of such delinquent officer; having given ten days' previous notice of such intended sale, by affixing an advertisement of the articles to be sold at two or more public places in the town and county where the goods or chattels were taken, or in the town or county where the owner of such goods or chattels may reside. If the goods and chattels be not sufficient to satisfy the warrant, the same may be levied upon the person of such officer, who may be committed to prison, there to remain until discharged by due course of law. (R. S. § 3627.)

#### DERIVATION

Act May 15, 1820, ch. 107, § 2, 3 Stat. 593.

#### § 509. Same; execution against surety.

If the delinquent officer absconds, or if goods and chattels belonging to him cannot be found sufficient to satisfy the warrant, the marshal or his deputy shall proceed, notwithstanding the commitment of the delinquent officer, to levy and collect the sum which remains due by such delinquent, by the distress and sale of the goods and chattels of his sureties; having given ten days' previous notice of such intended sale, by affixing an advertisement of the articles to be sold at two or more public places in the town or county where the goods or chattels were taken, or in the town or county where the owner resides. (R. S. § 3628.)

#### DERIVATION

Act May 15, 1820, ch. 107, § 2, 3 Stat. 593.

**§ 510. Levy to be lien.**

The amount due by any delinquent officer is declared to be a lien upon the lands, tenements, and hereditaments of such officer and his sureties, from the date of a levy in pursuance of the warrant of distress issued against him or them, and a record thereof made in the office of the clerk of the district court of the proper district, until the same is discharged according to law. (R. S. § 3629.)

## DERIVATION

Act May 15, 1820, ch. 107, § 2, 3 Stat. 593.

**§ 511. Sale of lands regulated.**

For want of goods and chattels of a delinquent officer, or his sureties, sufficient to satisfy any warrant of distress issued pursuant to sections 506–510 of this title, the lands, tenements, and hereditaments of such officer and his sureties, or so much thereof as may be necessary for that purpose, after being advertised for at least three weeks in not less than three public places in the county or district where such real estate is situate, before the time of sale, shall be sold by the marshal of such district or his deputy. (R. S. § 3630.)

## DERIVATION

Act May 15, 1820, ch. 107, § 2, 3 Stat. 593.

**§ 512. Conveyance of lands.**

For all lands, tenements, or hereditaments sold in pursuance of section 511 of this title, the conveyance of the marshal or his deputy, executed in due form of law, shall give a valid title against all persons claiming under such delinquent officer or his sureties. (R. S. § 3631.)

## DERIVATION

Act May 15, 1820, ch. 107, § 2, 3 Stat. 593.

**§ 513. Disposal of surplus.**

All moneys which may remain of the proceeds of sales, after satisfying the warrant of distress, and paying the reasonable costs and charges of the sale, shall be returned to such delinquent officer or surety, as the case may be. (R. S. § 3632.)

## DERIVATION

Act May 15, 1820, ch. 107, § 2, 3 Stat. 593.

**§ 514. Failure of disbursing officer to account.**

Whenever any officer employed in the civil, military, or naval service of the Government, to disburse the public money appropriated for those branches of the public service, respectively, fails to render his accounts, or to pay over, in the manner and in the times required by law, or by the regulations of the department to which he is accountable, any sum of money remaining in his hands, it shall be the duty of the General Accounting Office to cause to be stated and certified the account of such delinquent officer to the General Counsel of the Department of the Treasury, who is hereby authorized and required immediately to proceed against such delinquent officer, in the manner directed in sections 508–513 of this title. (R. S. § 3633; July 31, 1894, ch. 174, § 4, 28 Stat. 206; June 10, 1921, ch. 18, § 304, 42 Stat. 24; May 10, 1934, ch. 277, title III, § 512, 48 Stat. 758.)

## DERIVATION

Act May 15, 1820, ch. 107, § 3, 3 Stat. 594; act May 29, 1830, ch. 153, § 1, 4 Stat. 414.

**§ 516.<sup>1</sup> Extent of application of provision for distress warrants.**

All the provisions relating to the issuing of a warrant of distress against a delinquent officer shall extend to every officer of the Government charged with the disbursement of the public money, and to their sureties, in the same manner and to the same extent as if they were described and enumerated in sections 506–520 of this title. (R. S. § 3634.)

<sup>1</sup> Number 515 was not used for a section in the original United States Code.

## DERIVATION

Act May 15, 1820, ch. 107, § 3, 3 Stat. 594.

**§ 517. Postponement of proceedings for nonaccounting.**

With the approval of the Secretary of the Treasury, the institution of proceedings by a warrant of distress may be postponed, for a reasonable time, in cases where, in his opinion, the public interest will sustain no injury by such postponement. (R. S. § 3635.)

## DERIVATION

Act May 15, 1820, ch. 107, § 3, 3 Stat. 594.

**§ 518. Injunction to stay distress warrant.**

Any person who considers himself aggrieved by any warrant of distress issued under the provisions of sections 506–517 of this title may prefer a bill of complaint to any district judge of the United States, setting forth therein the nature and extent of the injury of which he complains; and thereupon the judge may grant an injunction to stay proceedings on such warrant altogether, or for so much thereof as the nature of the case requires. But no injunction shall issue till the party applying for it gives bond, with sufficient security, in a sum to be prescribed by the judge, for the performance of such judgment as may be awarded against him; nor shall the issuing of such injunction in any manner impair the lien produced by the issuing of the warrant. And the same proceedings shall be had on such injunction as in other cases, except that no answer shall be necessary on the part of the United States; and, if, upon dissolving the injunction, it appears to the satisfaction of the judge that the application for the injunction was merely for delay, the judge may add to the lawful interest assessed on all sums found due against the complainant such damages as, with such lawful interest, shall not exceed the rate of 10 per centum a year. Such injunction may be granted or dissolved by the district judge either in or out of court. (R. S. § 3636.)

## DERIVATION

Act May 15, 1820, ch. 107, §§ 4, 5, 3 Stat. 595.

**§ 519. Proceedings on distress.**

When the district judge refuses to grant an injunction to stay proceedings on a distress warrant, as aforesaid in section 518 of this title, or dissolves such injunction after it is granted, any person who considers himself aggrieved by the decision in the



premises may lay before the circuit justice, or circuit judge of the circuit within which such district lies, a copy of the proceeding had before the district judge; and thereupon the circuit justice or circuit judge may grant an injunction, or permit an appeal, as the case may be, if, in his opinion, the equity of the case requires it. (R. S. § 3637; Mar. 3, 1911, ch. 231, § 289, 36 Stat. 1167.)

## DERIVATION

Act May 15, 1820, ch. 107, §§ 4, 6, 3 Stat. 595; act Apr. 10, 1869, ch. 22, § 2, 16 Stat. 44.

## § 520. Rights of United States reserved.

Nothing contained in the provisions of sections 506–520 of this title relating to distress warrants shall be construed to take away or impair any right or remedy which the United States might have, by law, for the recovery of taxes, debts, or demands. (R. S. § 3638.)

## DERIVATION

Act May 15, 1820, ch. 107, § 9, 3 Stat. 596.

## § 521. Duties of officers as custodians of public moneys.

The Treasurer of the United States, all depositaries designated in accordance with section 476 of this title, and those performing the duties of assistant treasurer, all collectors of the customs, all surveyors of the customs, acting also as collectors, all receivers of public moneys at the several land offices, all postmasters, and all public officers of whatsoever character, are required to keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as specially allowed by law, all the public money collected by them, or otherwise at any time placed in their possession and custody, till the same is ordered, by the proper department or officer of the Government, to be transferred or paid out; and when such orders for transfer or payment are received, faithfully and promptly to make the same as directed, and to do and perform all other duties as fiscal agents of the Government which may be imposed by any law, or by any regulation of the Treasury Department made in conformity to law. The President is authorized, if in his opinion the interest of the United States requires the same, to regulate and increase the sums for which bonds are, or may be, required by law, of all district attorneys, collectors of customs, comptrollers of customs, and surveyors of customs, Navy agents, Quartermaster General, registers of public lands, paymasters in the Army, and by all other officers employed in the disbursement of the public moneys, under the direction of the War or Navy Departments. (R. S. § 3639; Aug. 24, 1912, ch. 391, § 3, 37 Stat. 591; Apr. 27, 1914, ch. 72, 38 Stat. 356; May 29, 1920, ch. 214, § 1, 41 Stat. 655; Sept. 21, 1922, ch. 356, title IV, § 523, 42 Stat. 974; June 17, 1930, ch. 497, title IV, § 523, 46 Stat. 740.)

## DERIVATION

Act Aug. 6, 1846, ch. 90, § 6, 9 Stat. 60; act July 3, 1852, ch. 54, § 7, 10 Stat. 12; act Mar. 3, 1857, ch. 114, § 2, 11 Stat. 249; act Apr. 21, 1862, ch. 59, § 5, 12 Stat. 382; act Mar. 3, 1863, ch. 96, § 5, 12 Stat. 770; act July 4, 1864, ch. 24, § 5, 13 Stat. 383; act Feb. 18, 1869, ch. 33, § 4, 15 Stat. 271.

## CROSS REFERENCES

Acceptance of government checks by naval stores located abroad, see section 552 of Title 34, Navy.

Offices of surveyors of customs and appraisers of merchandise abolished except in Port of New York, see section 5a of Title 19, Customs Duties.

## § 522. Transfer of moneys from depositaries to Treasury.

The Secretary of the Treasury may, except as provided in section 523 of this title, transfer the moneys in the hands of any depositary of public moneys to the Treasury of the United States to the credit of the Treasurer; and he may transfer moneys in the hands of one depositary to any other depositary, as the safety of the public moneys and the convenience of the public service shall seem to him to require. (R. S. § 3640.)

## DERIVATION

Act Aug. 6, 1846, ch. 90, § 10, 9 Stat. 61.

## § 523. Postal deposits; transfer.

The Postmaster General may transfer money belonging to the Postal Service between the Treasurer and designated depositaries, at his discretion, and as the safety of the public money and the convenience of the service may require. (R. S. § 3641; May 29, 1920, ch. 214, § 1, 41 Stat. 655.)

## DERIVATION

Act June 8, 1872, ch. 335, § 56, 17 Stat. 292.

## § 524. Same; accounts.

Every depositary shall keep his account of the money paid to or deposited with him, belonging to the Post Office Department, separate and distinct from the account kept by him of other public moneys so paid or deposited. (R. S. § 3642.)

## DERIVATION

Act Aug. 6, 1846, ch. 90, § 10, 9 Stat. 61.

## § 525. Entry of each deposit, transfer, and payment.

All persons charged by law with the safekeeping, transfer, and disbursement of the public moneys, other than those connected with the Post Office Department, are required to keep an accurate entry of each sum received and of each payment or transfer. (R. S. § 3643.)

## DERIVATION

Act Aug. 6, 1846, ch. 90, § 16, 9 Stat. 63.

## § 526. Public moneys in Treasury and depositaries subject to draft of Treasurer.

All moneys paid into the Treasury of the United States shall be subject to the draft of the Treasurer. And for the purpose of payments on the public account the Treasurer is authorized to draw upon any of the depositaries, as he may think most conducive to the public interest and to the convenience of the public creditors. Each depositary so drawn upon shall make returns to the Treasury and Post Office Departments of all moneys received and paid by him, at such times and in such forms as shall be directed by the Secretary of the Treasury or the Postmaster General. (R. S. § 3644.)

## DERIVATION

Act Aug. 6, 1846, ch. 90, § 10, 9 Stat. 61.

## § 527. Presentment of drafts.

It shall be the duty of the Secretary of the Treasury to issue and publish regulations to enforce the speedy presentation of all Government drafts, for payment, at the place where payable, and to prescribe the time, according to the different distances of the depositaries from the seat of Government, within which all drafts upon them, respectively, shall be presented for payment; and, in default of such presentation, to direct any other mode and place of payment which he may deem proper; but, in all these regulations and directions, it shall be his duty to guard, as far as may be, against those drafts being used or thrown into circulation as a paper currency or a medium of exchange. (R. S., § 3645.)

## DERIVATION

Act Aug. 6, 1846, ch. 90, § 31, 9 Stat. 65.

## § 528. Duplicates for lost, stolen, destroyed, mutilated or defaced checks—(a) Issuance of duplicate; bond of indemnity.

Except as hereinafter provided, whenever it is clearly proved to the satisfaction of the Secretary of the Treasury that any original check of the United States is lost, stolen, or wholly or partly destroyed, or is so mutilated or defaced as to impair its value to its owner or holder, persons authorized to issue such checks on behalf of the United States are authorized, before the close of the fiscal year following the fiscal year in which the original check was issued, to issue to the owner or holder thereof a substitute, marked "duplicate" and showing the number, date, and payee of the original check, upon the receipt and approval by the Secretary of the Treasury of a bond, to indemnify the United States, in such form and amount and with such surety, sureties, or security as the Secretary of the Treasury shall require; but no such substitute shall be payable if the original check shall first have been paid: *Provided, however*, That the authority herein conferred to issue substitute checks may, in the case of checks issued on account of public-debt obligations and transactions regarding the administration of banking and currency laws, be issued without limitation of time.

## (b) Exceptions.

A bond of indemnity shall not be required under subsection (a) of this section in any of the following classes of cases except as provided in this subsection: (1) If the Secretary of the Treasury is satisfied that the loss, theft, destruction, mutilation, or defacement, as the case may be, occurred without fault of the owner or holder and while the check was in the custody or control of the United States (including the Postal Service when carrying mail for any officer, employee, agent, or agency of the United States when performing services in connection with an official function of the United States, but not including the Postal Service when otherwise acting solely in its capacity as a public carrier of the mail), or of a person thereunto duly authorized as lawful agent of the United States, or while it was in the course of shipment effected pursuant to and in

accordance with the regulations issued under section 134 of Title 5; (2) if substantially the entire check is presented and surrendered by the owner or holder and the Secretary of the Treasury is satisfied as to the identity of the check presented and that any missing portions are not sufficient to form the basis of a valid claim against the United States; (3) if the Secretary of the Treasury is satisfied that the original check is not negotiable and cannot be made the basis of a valid claim against the United States; (4) if the amount of the check is less than \$50 and the Secretary of the Treasury is satisfied that the giving of a bond of indemnity would be an undue hardship to the owner or holder; (5) if the owner or holder is the United States or an officer or employee thereof in his official capacity, a State, the District of Columbia, a Territory or possession of the United States, including the Commonwealth of the Philippine Islands, a municipal corporation or political subdivision of any of the foregoing, a corporation the whole of whose capital is owned by the United States, a foreign government, or a Federal Reserve bank: *Provided, however*, That in any of the foregoing classes of cases the Secretary of the Treasury may require a bond of indemnity if he deems it essential to the public interest.

## (c) Rules and regulations.

The Secretary of the Treasury shall have the power to make such rules and regulations as he may deem necessary for the administration of the provisions of this section.

## (d) Post Office Department check.

Notwithstanding the provisions of subsections (a), (b), and (c) of this section, whenever any original check of the Post Office Department has been lost, stolen, or destroyed, the Postmaster General may authorize the issuance of a substitute, marked "duplicate" and showing the number, date, and payee of the original check, before the close of the fiscal year following the fiscal year in which the original check was issued, upon the execution by the owner thereof of such bond of indemnity as the Postmaster General may prescribe: *Provided*, That when such original check does not exceed in amount the sum of \$50 and the payee or owner is, at the date of the application, an officer or employee in the service of the Post Office Department, whether by contract, designation, or appointment, the Postmaster General may, in lieu of an indemnity bond, authorize the issuance of a substitute check or warrant upon such an affidavit as he may prescribe, to be made before any postmaster by the payee or owner of an original check.

## (e) Payment of substitute check.

Substitutes, marked as provided in this section, drawn on the Treasurer of the United States, shall, after the lapse of the period fixed by section 725t of this title, for the payment of the original checks, be payable only as the original checks would be payable thereunder.

## (f) Definitions.

The term "original check" wherever used in this section means any check, warrant, or other order for

the payment of money, payable upon demand and not bearing interest, drawn by a duly authorized officer or agent of the United States, the District of Columbia, or the District Unemployment Compensation Board, on their behalf against an account or funds of the United States, the District of Columbia, or the District Unemployment Compensation Board, including instruments issued by any corporation or other entity owned or controlled by the United States, the funds of which are deposited and covered into the Treasury of the United States or deposited with the Treasurer of the United States, but does not include money, coins, or currency of the United States; as used in subsection (d) of this section it means such an instrument drawn by a duly authorized officer or employee of the Post Office Department. (R. S. § 3646; Feb. 16, 1885, ch. 123, 23 Stat. 306; Mar. 23, 1906, ch. 1129, 34 Stat. 84; June 19, 1906, ch. 3434, 34 Stat. 301; May 27, 1908, ch. 206, 35 Stat. 415; Feb. 23, 1909, ch. 174, 35 Stat. 643; Mar. 21, 1916, ch. 52, 39 Stat. 37; July 8, 1937, ch. 444, § 9, 50 Stat. 482; Aug. 10, 1939, ch. 665, §§ 5-7, 53 Stat. 1359.)

## DERIVATION

Act Feb. 2, 1872, ch. 12, § 1, 17 Stat. 29.

## CROSS REFERENCES

Allowance of lost checks where issuing agent is dead or no longer in service of United States, see section 119 of this title.

Lost, destroyed, etc., interest-bearing security, see section 738a of this title.

## § 529. Advances of public moneys; prohibition against.

No advance of public money shall be made in any case. And in all cases of contracts for the performance of any service, or the delivery of articles of any description, for the use of the United States, payment shall not exceed the value of the service rendered, or of the articles delivered previously to such payment. It shall, however, be lawful, under the special direction of the President, to make such advances to the disbursing officers of the Government as may be necessary to the faithful and prompt discharge of their respective duties, and to the fulfillment of the public engagements. The President may also direct such advances as he may deem necessary and proper, to persons in the military and naval service employed on distant stations, where the discharge of the pay and emoluments to which they may be entitled cannot be regularly effected. (R. S. § 3648.)

## DERIVATION

Act Jan. 31, 1823, ch. 9, § 1, 3 Stat. 723.

## CROSS REFERENCES

Advances to Bureau of Customs in foreign countries permitted notwithstanding this section, see section 529b of this title.

Advance payments for rent of offices in foreign countries by Bureau of Foreign and Domestic Commerce permitted notwithstanding this section, see section 531 of this title.

Advances of public money to various agencies of the Government, see sections 532, 533, 534, 535, 536, 539, 542, 550 of this title.

Department of Agriculture employees stationed abroad, payment of official expenses in advance, see section 543b of Title 5, Executive Departments and Government Officers and Employees.

Flood control work, payment in advance to cooperating public agencies for services, see section 701b-2 of Title 33, Navigation and Navigable Waters.

Post-office inspectors, advance payments to for expenses, see section 787 of Title 39, The Postal Service.

## § 529a. Same; enforcement of narcotic drug provisions.

The Commissioner of Narcotics, with the approval of the Secretary of the Treasury, is authorized to direct the advance of funds by the Fiscal Service, Treasury Department, in connection with the enforcement of act Dec. 17, 1914, ch. 1, 38 Stat. 785, sections 171-173, 174-185 of Title 21, and act Aug. 2, 1937, ch. 553, 50 Stat. 551. (Mar. 28, 1928, ch. 266, § 1, 45 Stat. 374; Aug. 7, 1939, ch. 566, § 1, 53 Stat. 1262; Reorg. Plan. No. III, § 1 (a) (1), eff. June 30, 1940, 5 Fed. Reg. 2107, 54 Stat. 1231.)

## REFERENCES IN TEXT

Act Dec. 17, 1914, ch. 1, 38 Stat. 785, cited in body of text, is the source of sections 2550-2561, 2563, 2564, 3220-3222, 3224, 3226-3228, 3797 (a) (1) of Title 26, Internal Revenue Code.

Act Aug. 2, 1937, ch. 553, 50 Stat. 551, cited in body of text, is the source of sections 2590-2603, 3230-3234, 3236-3238 of Title 26, Internal Revenue Code.

## TRANSFER OF FUNCTIONS

Division of Disbursements consolidated in Fiscal Service of Treasury Department, see Reorg. Plan No. III, § 1 (a) (1), cited to text, set out as note following 183t of Title 5, Executive Departments and Government Officers and Employees.

## § 529b. Advances for Bureau of Customs in foreign countries.

Section 529 shall not apply to payments made for the Bureau of Customs in foreign countries. (May 6, 1939, ch. 115, § 1, title I, 53 Stat. 660.)

## SIMILAR PROVISIONS

The text of this section was taken from Treasury Department Appropriation Act, 1940. Similar provisions were contained in the following acts:

1938—Mar. 23, 1938, ch. 55, § 1, 52 Stat. 126.

1937—May 14, 1937, ch. 180, title I, 50 Stat. 142.

1936—June 23, 1936, ch. 725, § 1, 49 Stat. 1832.

1935—May 14, 1935, ch. 110, § 1, 49 Stat. 222.

## § 529c. Same; enforcement of customs provisions.

The Commissioner of Customs, with the approval of the Secretary of the Treasury, is authorized to direct the advance of funds by the Fiscal Service, Treasury Department, in connection with the enforcement of the customs laws. (Mar. 28, 1928, ch. 266, § 2, as added Aug. 7, 1939, ch. 566, § 1, 53 Stat. 1263, and amended Reorg. Plan No. III, § 1 (a) (1), eff. June 30, 1940, 5 Fed. Reg. 2107, 54 Stat. 1231.)

## TRANSFER OF FUNCTIONS

Division of Disbursement consolidated into Fiscal Service, see note under section 529a of this title.

## § 529d. Certification of reason for advance.

A certificate by the Commissioner of Customs or the Commissioner of Narcotics, as the case may be, stating the amount of an expenditure made from funds advanced and certifying that the confidential nature of the transaction involved renders it inadvisable to specify the details thereof or impracticable to furnish the payee's receipt shall be a sufficient voucher for the sum expressed to have been ex-

pended. (Mar. 28, 1928, ch. 266, § 3, as added Aug. 7, 1939, ch. 566, § 1, 53 Stat. 1263.)

e. Same; payments for Bureau of Customs in foreign countries; claims for reimbursement.

The provisions of sections 529a, and 529c-529g of this title shall not affect payments made for the Bureau of Customs in foreign countries, nor the right of any customs or narcotics officer or employee to claim reimbursement for personal funds expended in connection with the enforcement of the customs or narcotics laws. (Mar. 28, 1928, ch. 266, § 4, as added Aug. 7, 1939, ch. 566, § 1, 53 Stat. 1263.)

§ 529f. Same; advances from available appropriations; rules and regulations.

Advances pursuant to sections 529a and 529c-529g of this title in connection with the enforcement of the customs or narcotics laws may be made, notwithstanding the provisions of section 529 of this title, from the appropriations available for the enforcement of such laws. The Secretary of the Treasury is authorized to prescribe such rules and regulations concerning advances made pursuant to sections 529a, 529c-529g of this title as are necessary or appropriate for the protection of the interests of the United States. (Mar. 28, 1928, ch. 266, § 5, as added Aug. 7, 1939, ch. 566, § 1, 53 Stat. 1263.)

§ 529g. "Narcotic laws" defined.

When used in sections 529a and 529c-529f of this title, the term "narcotics laws" includes Act of August 2, 1937, ch. 553, 50 Stat. 551. (Mar. 28, 1928, ch. 266, § 6, as added Aug. 7, 1939, ch. 566, § 1, 53 Stat. 1263.)

#### REFERENCES IN TEXT

Act Aug. 2, 1937, ch. 553, 50 Stat. 551, cited in body of text, was the "Marihuana Tax Act," and is now covered in sections 2590-2603, 3230-3234, 3236-3238 of Title 26, Internal Revenue Code.

§ 530. Same; payment in advance for periodicals.

The annual subscriptions for publications for use in the immigration service at large; subscriptions for publications for the Department of Agriculture, to be paid for by the Secretary of Agriculture; subscriptions to newspapers, magazines, periodicals, and other publications, purchased from funds of the Quartermaster Corps; subscriptions for publications for the Veterans' Administration, to be paid for by the director; subscriptions for newspapers and periodicals for the naval service; subscriptions to periodicals, which have been certified in writing by the respective heads of the executive departments or other Government establishments to be required for official use, to be paid from appropriations available therefor; subscription charges for newspapers, magazines, and other periodicals for official use of any office under the Government of the United States or the municipal government of the District of Columbia, to be paid from appropriations available therefor, may be paid in advance. (Mar. 3, 1905, ch. 1483, § 1, 33 Stat. 1182; Mar. 4, 1909, ch. 301, 35 Stat. 1054; Apr. 27, 1914, ch. 72, 38 Stat. 362; Mar. 3, 1915, ch. 83, 38 Stat. 929; Mar. 4, 1915, ch.

141, § 5, 38 Stat. 1049; June 7, 1924, ch. 292, § 1, 43 Stat. 533; June 12, 1930, ch. 470, 46 Stat. 580; July 3, 1930, ch. 863, § 1, 46 Stat. 1016.)

§ 531. Same; payments for rent of offices in foreign countries.

Section 529 of this title shall not apply to advance payments for rent of offices in foreign countries by the Bureau of Foreign and Domestic Commerce. (Mar. 4, 1925, ch. 556, § 1, 43 Stat. 1327.)

§ 532. Same; by United States marshals.

Appropriations for salaries, fees, and expenses of marshals shall be available for advances to be made by United States marshals when authorized or approved by the Attorney General. (Dec. 5, 1924, ch. 4, § 1, 43 Stat. 687.)

#### TRANSFER OF FUNCTIONS

Functions relating to disbursement by United States marshals which would otherwise have become functions of Treasury Department on July 1, 1940, by virtue of Ex. Ord. No. 6166, as amended, set out in note under section 192 of Title 5, were transferred to and vested in Department of Justice to be exercised by United States marshals under supervision of Attorney General in accordance with existing statutes pertaining to such functions, by Reorg. Plan No. IV, § 3, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1234, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See, also, sections 13-15 of said plan for provisions relating to transfer of functions of department heads, records, property, personnel, and funds.

§ 533. Same; Department of Agriculture.

Advances of public money from the appropriations for the Department of Agriculture shall, except as provided in section 534 of this title, be made by the Secretary of Agriculture only to such chiefs of field parties, agricultural explorers, special agents, and others as shall have given bonds in such sums as the Secretary of Agriculture shall direct. (June 3, 1902, ch. 985, 32 Stat. 303.)

§ 534. Same; Forest Service for fighting forest fires in emergency cases.

Advances of money under any appropriation for the Forest Service may be made to the Forest Service and by authority of the Secretary of Agriculture to chiefs of field parties for fighting forest fires in emergency cases, who shall give bond under such rules and regulations and in such sum as the Secretary of Agriculture may direct, and detailed accounts arising under such advances shall be rendered through and by the Department of Agriculture to the General Accounting Office. (May 23, 1908, ch. 192, 35 Stat. 259; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

§ 535. Advances from appropriation "Boundary Line, Alaska and Canada, and the United States and Canada."

Advances of money under the appropriation "Boundary line, Alaska and Canada, and the United States and Canada", may be made to the commissioner on the part of the United States and by his authority to chiefs of parties, who shall give bond under such rules and regulations and in such sum as the Secretary of State may direct, and accounts arising under advances shall be rendered through and by the commissioner on the part of the United States to

the General Accounting Office as under advances made to chiefs of parties prior to March 2, 1921: *Provided*, That the commissioner shall be allowed his traveling expenses in accordance with the provisions of sections 821-823, 824-833 of title 5. (Apr. 15, 1918, ch. 52, 40 Stat. 523; Mar. 2, 1921, ch. 113, § 1, 41 Stat. 1210; June 10, 1921, ch. 18, § 304, 42 Stat. 24; Apr. 29, 1926, ch. 195, title I, 44 Stat. 336; Feb. 24, 1927, ch. 189, title I, 44 Stat. 1185; Feb. 15, 1928, ch. 57, title I, 45 Stat. 70; Jan. 25, 1929, ch. 102, title I, 45 Stat. 1101; Apr. 18, 1930, ch. 184, title I, 46 Stat. 180.)

**§ 536. Advances to disbursing officers and agents under "Army accounts of advances"; amounts; use of.**

The Secretary of War may issue his requisitions for advances to disbursing officers and agents of the Army, under an "Army account of advances", not to exceed the total appropriation for the Army, the amount so advanced to be exclusively used to pay, upon proper vouchers, obligations lawfully payable under the respective appropriations. (June 5, 1920, ch. 240, 41 Stat. 975.)

**§ 537. Same; charge to proper appropriations.**

The amount so advanced shall be charged to the proper appropriations and returned to "Army account of advances" by pay and counterwarrant. The said charge, however, to particular appropriations shall be limited to the amount appropriated to each. (June 5, 1920, ch. 240, 41 Stat. 975.)

**§ 538. Same; adjustment of liabilities with account.**

The General Accounting Office shall declare the sums due from the several special appropriations upon complete vouchers, as prior to June 5, 1920, according to law; and said office shall adjust the said liabilities with the "Army account of advances." (June 5, 1920, ch. 240, 41 Stat. 975; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

**§ 539. Requisitions of Secretary of Navy for advances.**

The Secretary of the Navy may issue his requisitions for advances to disbursing officers and agents of the Navy under a "General account of advances", not to exceed the total appropriation for the Navy, the amount so advanced to be exclusively used to pay current obligations upon proper vouchers and "Pay of the Navy" shall be used only for its legitimate purpose, as provided by law. (June 19, 1878, ch. 312, § 1, 20 Stat. 167.)

**§ 540. Same; how charged.**

The amount so advanced shall be charged to the proper appropriations, and returned to "General account of advances" by pay and counterwarrant; the said charge, however, to particular appropriations, shall be limited to the amount appropriated to each. (June 19, 1878, ch. 312, § 2, 20 Stat. 167.)

**§ 541. Same; settlement of accounts.**

The General Accounting Office shall declare the sums due from the several special appropriations upon complete vouchers according to law; and shall adjust the said liabilities with the "General account of advances." (June 19, 1878, ch. 312, § 3, 20 Stat. 168; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

**§ 542. Partial payments on vessels for Treasury Department; lien.**

The Secretary of the Treasury may make partial payments, from time to time, upon all contracts made after or existing May 5, 1894, for the construction of vessels for the Treasury Department, but not in excess of 75 per centum of the amount of the value of the work already done; and contracts made after said date shall provide for a lien upon such vessels for all advances so made: *Provided*, That nothing in this section shall be construed to authorize any partial payments, except on contracts stipulating for the same and then only in accordance with such contract stipulation. (May 5, 1894, No. 24, 28 Stat. 582.)

**§ 543. Exchange of funds restricted.**

No exchange of funds shall be made by any disbursing officer or agent of the Government, of any grade or denomination whatsoever, or connected with any branch of the public service, other than an exchange for gold, silver, United States notes, and national-bank notes; and every such disbursing officer, when the means for his disbursements are furnished to him in gold, silver, United States notes, or national-bank notes, shall make his payments in the moneys so furnished; or when they are furnished to him in drafts, shall cause those drafts to be presented at their place of payment, and properly paid according to law, and shall make his payments in the money so received for the drafts furnished, unless, in either case, he can exchange the means in his hands for gold and silver at par. And it shall be the duty of the head of the proper department immediately to suspend from duty any disbursing officer or agent who violates the provisions of this section, and forthwith to report the name of the officer or agent to the President, with the fact of the violation, and all the circumstances accompanying the same, and within the knowledge of the Secretary, to the end that such officer or agent may be promptly removed from office, or restored to his trust and the performance of his duties, as the President may deem just and proper. (R. S. § 3651.)

**REPEAL**

Repeal of laws inconsistent with sections 315b, 408a, 408b, 441-446, 821, and 822a of this title, see section 446 of this title.

**DERIVATION**

Act Feb. 22, 1862, ch. 33, § 1, 12 Stat. 345; act July 11, 1862, ch. 142, § 1, 12 Stat. 532; act Mar. 3, 1863, ch. 73, § 3, 12 Stat. 710; act June 3, 1864, ch. 106, § 23, 13 Stat. 106; act Aug. 6, 1846, ch. 90, § 20, 9 Stat. 64.

**NATIONAL BANK ACT**

This section, which was derived from act June 3, 1864, ch. 106, 13 Stat. 99, is part of the National Bank Act. See section 38 of Title 12, Banks and Banking.

**TRANSFER OF FUNCTIONS**

Function of disbursement of moneys of the United States exercised by any agency has been transferred to the Division of Disbursement, which division was consolidated into the Fiscal Service of the Treasury Department. See Ex. Ord. No. 6166, § 4, and Reorg. Plan No. III, § 1 (a) (1), eff. June 30, 1940, 5 Fed. Reg. 2107, 54 Stat. 1231, set out as notes under sections 132 and 133t, respectively, of Title 5, Executive Departments and Government Officers and Employees.

## CROSS REFERENCES

Acceptance of Government checks by naval stores located abroad, see section 552 of Title 34, Navy.

Traveler's checks in national parks or national monuments, see section 17d of Title 16, Conservation.

Withdrawal of gold coins from circulation, see section 315b of this title.

#### § 544. Premium on sales of public moneys to be accounted for.

No officer of the United States shall either directly or indirectly, sell or dispose of to any person, for a premium, any Treasury note, draft, warrant, or other public security, not his private property, or sell or dispose of the avails or proceeds of such note, draft, warrant, or security, in his hands for disbursement, without making return of such premium, and accounting therefor by charging the same in his accounts to the credit of the United States; and any officer violating this section shall be forthwith dismissed from office. (R. S. § 3652.)

## DERIVATION

Act Aug. 6, 1846, ch. 90, § 21, 9 Stat. 65.

#### § 545. Expenses of fiscal agents.

The officers, respectively, whose duty it is made by sections 119, 472, 474, 475, 480-484, 487, 490, 492, 495, 496, 498, 505-529, 543-545, 547a, 548, 549 of this title to receive, keep, or disburse the public moneys, as the fiscal agents of the Government, may be allowed any necessary additional expenses for fireproof chests or vaults, or other necessary expenses of collecting, safe-keeping, transferring, or disbursing the moneys; but all such expenses of every character shall be first expressly authorized by the Secretary of the Treasury, whose directions upon all the above subjects, by way of regulation and otherwise, so far as authorized by law, shall be strictly followed by all the officers. But no part of the money appropriated for the purposes above mentioned shall be expended for clerical services or payment of employees of any nature or grade. (R. S. § 3653; Aug. 7, 1882, ch. 433, 22 Stat. 312; Jan. 22, 1925, ch. 87, 43 Stat. 767.)

## DERIVATION

Act. Aug. 6, 1846, ch. 90, § 13, 9 Stat. 62.

#### § 546. Appropriations for construction of public buildings; disbursement.

All disbursements of money appropriated for the construction of public buildings under the control of the Treasury Department shall be made by the Treasury Department at Washington, District of Columbia, except in cases of public buildings located so remote from the seat of government as to occasion hardship by undue delay in making payments to contractors. In every such exceptional case the Secretary of the Treasury may, in his discretion, require the collector of customs at or nearest the place where such building is being constructed to make the disbursement, as provided in section 70 of Title 5, but in such exceptional cases no additional compensation shall be paid to any collector of customs for disbursements made under this section; and no compensation or commissions shall be allowed for the disbursement of any appropriation for the construction, extension, enlargement, remodeling, or re-

pairs of any public building under the control of the Treasury Department, except to disbursing agents appointed before March 4, 1911, and who have qualified by giving bonds. (Mar. 4, 1911, ch. 285, § 1, 36 Stat. 1387.)

## TRANSFER OF FUNCTIONS

Functions relating to disbursement of moneys of United States, exercised by any agency, transferred to Fiscal Service of Treasury Department, see note under section 543 of this title.

Transfer of Public Buildings Branch of Procurement Division in the Treasury Department to the Federal Works Agency and to the Public Buildings Administration, see Reorg. Plan No. 1, §§ 301, 303, eff. July 1, 1939, 4 Fed. Reg. 2729, 53 Stat. 1426, 1427, set out as note under section 138t of Title 5, Executive Departments and Government Officers and Employees.

#### § 547. Disposition of trust funds received from foreign governments for citizens of United States.

All moneys received by the Secretary of State from foreign governments and other sources, in trust for citizens of the United States or others, shall be deposited and covered into the Treasury.

The Secretary of State shall determine the amounts due claimants, respectively, from each of such trust funds, and certify the same to the Secretary of the Treasury, who shall, upon the presentation of the certificates of the Secretary of State, pay the amounts so found to be due.

Each of the trust funds covered into the Treasury as aforesaid is hereby appropriated for the payment to the ascertained beneficiaries thereof of the certificates provided for in this section. (Feb. 27, 1896, ch. 34, 29 Stat. 32.)

## CROSS REFERENCE

Funds to be classified on books of Treasury as trust funds, see section 725s of this title.

#### § 547a. Investment of trust funds.

All funds held in trust by the United States, and the annual interest accruing thereon, when not otherwise required by treaty, shall be invested in stocks of the United States, bearing a rate of interest not less than 5 per centum per annum. (R. S. § 3659.)

## DERIVATION

Act Sept. 11, 1841, ch. 25, § 2, 5 Stat. 465.

## CROSS REFERENCES

Classification, appropriation and disbursement of trust funds, see section 725s of this title.

Moneys received from foreign governments and other sources, in trust for citizens of United States or others, to be deposited and covered into the Treasury, see section 547 of this title.

#### § 548. Examination of depositaries.

The Secretary of the Treasury is authorized to cause examinations to be made of the books, accounts, and money on hand, of the several depositaries; and for that purpose to appoint special agents, as occasion may require, with such compensation, not exceeding \$6 per day and traveling expenses, as he may think reasonable, to be fixed and declared at the time of each appointment. The agent selected to make these examinations shall be instructed to examine as well the books, accounts, and returns of the officer, as the money on hand,

and the manner of its being kept, to the end that uniformity and accuracy in the accounts, as well as safety to the public moneys, may be secured thereby. (R. S. § 3649.)

## DERIVATION

Act Aug. 6, 1846, ch. 90, § 11, 9 Stat. 62.

**§ 549. Examination of accounts of custodians of public moneys.**

In addition to the examinations provided for in section 548 of this title it shall be the duty of each comptroller of customs and surveyor, as a check upon the designated depositaries or the collector of the customs, of their respective districts; of each register of a land office, as a check upon the receiver of his land office; and of the superintendent of each mint and branch mint, as a check upon the treasurers, respectively, of the mints, or the persons acting as such, at the close of each quarter of the year, and as much oftener as they are directed by the Secretary of the Treasury to do so, to examine the books, accounts, returns, and money on hand, of said depositaries, collectors, treasurers of the mint and each branch mint, and persons acting as such, and to make a full, accurate, and faithful return of their condition to the Secretary of the Treasury. (R. S. § 3650; May 29, 1920, ch. 214, § 1, 41 Stat. 655; Sept. 21, 1922, ch. 356, title IV, § 523, 42 Stat. 974; June 17, 1930, ch. 497, title IV, § 523, 46 Stat. 740.)

## DERIVATION

Act Aug. 6, 1846, ch. 90, § 12, 9 Stat. 62.

## CROSS REFERENCES

Offices of surveyors of customs and appraisers of merchandise abolished except in Port of New York, see section 5a of Title 19, Customs Duties.

**§ 550. Same; Coast and Geodetic Survey.**

Advances of money from available appropriations may be made to the Coast and Geodetic Survey and by authority of the Director thereof to chiefs of parties, who shall give bond under such rules and regulations and in such sum as the Secretary of Commerce may direct, and accounts arising under such advances shall be rendered through and by the disbursing officer of the Coast and Geodetic Survey to the General Accounting Office as under advances made to chiefs of parties prior to July 1, 1918. (July 1, 1918, ch. 113, § 1, 40 Stat. 688; June 5, 1920, ch. 235, § 1, 41 Stat. 929; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

**§ 551. Use of public moneys for expenses of conventions or other assemblages.**

Unless specifically provided by law, no moneys from funds appropriated for any purpose shall be used for the purpose of lodging, feeding, conveying, or furnishing transportation to, any conventions or other form of assemblage or gathering to be held in the District of Columbia or elsewhere. This section shall not be construed to prohibit the payment of expenses of any officer or employee of the Government in the discharge of his official duties. (Feb. 2, 1935, ch. 4, 49 Stat. 19.)

## CROSS REFERENCE

4-H Boys and Girls Clubs to be allowed necessary expenses for assemblages notwithstanding this section, see section 552 of this title.

**§ 552. Same; 4-H Boys and Girls Clubs.**

Nothing contained in section 551 of this title shall be construed to prohibit the Secretary of Agriculture from paying the necessary expenses for assemblages of the 4-H Boys and Girls Clubs, called by the Secretary of Agriculture in the District of Columbia or elsewhere, in the furtherance of the cooperative extension work of the Department. (June 17, 1935, ch. 271, 49 Stat. 387.)

## Chapter 11.—APPROPRIATIONS

## GENERAL PROVISIONS

## Sec.

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 686. Purchase or manufacture of stores or materials or performance of services by bureau or department for another bureau or department.  
 686a. Materials or services ordered from Navy; payment.  
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 689. Appropriations under control of Architect of Capitol; availability for expenses of advertising.

#### PERMANENT ANNUAL APPROPRIATIONS

711. Permanent indefinite appropriations.

##### TREASURY DEPARTMENT

- (1) Consular receipts
- (2) Interest on public debt.
- (3) Refunding moneys erroneously received and covered.
- (4)-(6) Repealed.
- (7) Repayment of excess of deposits for unas-  
certained duties (customs).
- (8) Repealed.
- (9) Public Health Service.
- (10), (11) Repealed.

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- (12) Soldiers' Home.
- (13) Horses and other property lost in military service.

##### NAVY DEPARTMENT

- (14) Indemnity for lost clothing.
- (15) Prize money.

##### INTERIOR DEPARTMENT

- (16) Deposits for surveying public lands.
- (17) Five per centum fund to States.
- (18) Indemnity for swamp lands for States.
- (19) Refunding money for lands erroneously sold.
- (20) Payment of interest to North Carolina Cherokees.

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- (21) Smithsonian Institution.

712. Balances of appropriations; expenditure.  
 713. Same; carried to surplus fund.  
 713a. Same; entries on books for settlement of accounts of disbursing officers.  
 714. Same; reports to Congress as to claims.  
 715. Same; certification as to pending claims.  
 716. Same; for pay of Navy or Marine Corps.  
 717. Same; reappropriation to other purpose construed as new appropriation.  
 718. Appropriations in annual appropriation acts not permanent.  
 719. Unexpended balances for National Home for Disabled Volunteer Soldiers.  
 720. Proceeds of sales of material.  
 721. Payments of appropriations for charitable purposes.  
 722. Term of service of Members of Congress as trustees or directors of corporations or institutions appropriated for.

#### PERMANENT APPROPRIATIONS REPEAL

725. Permanent Appropriations Repeal Act; appropriations repealed.  
 725a-725o. Same.  
 725p. Same; trust funds.  
 725q. Same; appropriation accounts abolished.  
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 725s. Same; trust funds.  
 725t. Checks drawn on Treasurer of United States; when payable; deposit of amount of unpaid checks.  
 725u. Provision authorizing advancement of money for township surveys repealed.  
 725v. Moneys in registry of United States Court; disposition.  
 725w. Survey of inactive and permanent appropriations by Comptroller General; report.  
 725x. Existing authorizations unaffected.  
 725y. Repeal of inconsistent provisions.  
 725z. Citation.

#### TRANSFER OF FUNCTIONS

Functions relating to procurement, warehousing, and distribution of property, stores, supplies, etc., exercised by any agency, transferred to Procurement Division, see Ex. Ord. No. 6166, § 1, set out in note under section 132 of Title 5, Executive Departments and Government Officers and Employees.

#### GENERAL PROVISIONS

§ 581. Contents of estimates of appropriations and statements of expenditures and estimated expenditures; statements accompanying lump-sum appropriations.

(a) Except as otherwise provided in sections 11, 13-24, 581, 582, 585-588, 593-596, 600, 604, 609, 612, 614, 617, 618, 622-624, 683 of this title, the contents, order, and arrangement of the estimates of appropriations and the statements of expenditures and estimated expenditures contained in the Budget or transmitted under section 14 of this title, and the notes and other data submitted therewith, shall conform to the requirements of existing law.

(b) Estimates for lump-sum appropriations contained in the Budget or transmitted under section 14 of this title shall be accompanied by statements showing, in such detail and form as may be necessary to inform Congress, the manner of expenditure of such appropriations and of the corresponding appropriations for the fiscal year in progress and the last completed fiscal year. Such statements shall be in lieu of statements of like character otherwise required by law. (June 10, 1921, ch. 18, § 204, 42 Stat. 21.)

§ 582. Statements required with estimates for lump-sum appropriations.

There shall be submitted in the annual Budget following every estimate for a general or lump-sum appropriation, except public buildings or other public works constructed under contract, a statement showing in parallel columns:

First, the number of persons, if any, intended to be employed and the rates of compensation to each, and the amounts contemplated to be expended for each of any other objects or classes of expenditures specified or contemplated in the estimate, including a statement of estimated unit cost of any construction work proposed to be done; and

Second, the number of persons, if any, employed and the rate of compensation paid each, and the amounts expended for each other object or class of expenditure, and the actual unit cost of any construction work done, out of the appropriation corresponding to the estimate so submitted, during the completed fiscal year next preceding the period for which the estimate is submitted.

Other notes shall not be submitted following any estimate embraced in the annual Budget other than such as shall suggest changes in form or order of arrangement of estimates and appropriations and reasons for such changes. (Aug. 24, 1912, ch. 355, § 6, 37 Stat. 487; Aug. 1, 1914, ch. 223, § 10, 38 Stat. 680; June 10, 1921, ch. 18, § 204, 42 Stat. 21.)

#### CROSS REFERENCE

Estimates of expenditures and appropriations in Budget to conform to classifications of civilian employees, see section 674 of Title 5, Executive Departments and Government Officers and Employees.

#### § 583. Enumeration of estimates required.

There shall be submitted annually in addition to any other estimates required by law to be submitted:

##### (1) Expenses of national loan.

Detailed estimates of appropriations required for expenses of the national loan. (June 20, 1874, ch. 328, § 4, 18 Stat. 109.)

##### (2) Payment of judgments.

Estimates for the payment of all judgments against the United States, including judgments in Indian depredation claims and of United States courts. (Apr. 27, 1904, ch. 1630, § 1, 33 Stat. 422.)

##### (3) Customs Service.

A statement specifying in detail the number and class of officers and employees of every grade and nature, with the rate of compensation to each, that may be necessary to properly conduct the business of collecting the revenue at each port of entry in the United States, together with an estimate of the amounts required for contingent expenses at each of said ports, and for such additional expenses of the service as cannot be otherwise specifically provided for. (Aug. 5, 1882, ch. 389, § 5, 22 Stat. 256.)

##### (4) Parting and refining bullion.

Detailed estimates for the expenses of parting and refining bullion. (Mar. 4, 1911, ch. 240, 36 Stat. 1292.)

##### (5) Laundering paper money.

Estimates in detail of the expense of laundering paper money. (Aug. 26, 1912, ch. 408, § 1, 37 Stat. 595.)

##### (6) Public Health Service.

Detailed estimates of the expenses of maintaining the Public Health Service. (Mar. 3, 1905, ch. 1484, § 1, 33 Stat. 1217; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309.)

##### (7) Farm Credit Administration and Federal Farm Loan Bureau.

Detailed estimates for appropriations for the Farm Credit Administration and the Federal Farm Loan Bureau. (Sept. 8, 1916, ch. 464, § 1, 39 Stat. 803; Mar. 3, 1917, ch. 163, § 1, 39 Stat. 1084; Mar. 27, 1933, Ex. Ord. No. 6084.)

##### (8) River and harbor improvements.

Estimates in detail for river and harbor improvements required for the ensuing fiscal year. (June 4, 1897, ch. 2, § 1, 30 Stat. 48.)

##### (9) Trusses for soldiers.

Estimates of sufficient sums for the purchase of trusses for soldiers under section 249 of Title 38. (May 27, 1908, ch. 200, § 1, 35 Stat. 367.)

##### (10) Fortifications and other works of defense.

Estimates of appropriations for fortifications and other works of defense, for the armament thereof, and for the procurement of heavy ordnance for trial and service upon an annual basis. (Mar. 3, 1919, ch. 99, § 6, 40 Stat. 1309.)

##### (11) Extension of cable or telegraph lines in Alaska.

Detailed estimates for any further extension of the cable or telegraph lines in the district of Alaska. (Mar. 2, 1907, ch. 2511, 34 Stat. 1159.)

##### (12) Repealed. May 29, 1928, ch. 901, § 1, 45 Stat. 990.

##### (13) Postal free delivery service.

Estimates in detail as far as practicable for expenses of the free delivery service. (Mar. 3, 1897, ch. 385, 29 Stat. 648.)

##### (14) Personal services in Bureau of Mines.

Estimates submitted specifically for all personal services required permanently and entirely in the Bureau of Mines at Washington, District of Columbia, and paid prior to March 3, 1915, from lump-sum or general appropriations. (Mar. 3, 1915, ch. 75, § 1, 38 Stat. 858.)

##### (15) Clerk hire in office of disbursing clerk for payment of pensions.

Estimates in detail for clerks and others employed in the office of the disbursing clerk for the payment of pensions and the amounts to be paid to each. (Aug. 17, 1912, ch. 301, § 1, 37 Stat. 312.)

##### (16) Department of Commerce.

Estimates in detail for all personal services and for all general and miscellaneous expenses for the Department of Commerce. (Mar. 3, 1903, ch. 1006, § 8, 32 Stat. 1082; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

##### (17) Bureau of Navigation and Steamboat Inspection Service.

Detailed estimates for salaries and contingent expenses of the Bureau of Marine Inspection and Navigation. (June 25, 1910, ch. 384, § 8, 36 Stat. 773; June 30, 1932, ch. 314, § 501, 47 Stat. 415; May 27, 1936, ch. 436, § 1, 49 Stat. 1380.)

##### (18) Alaskan fish hatcheries.

Estimates to cover the cost of the establishment and maintenance of fish hatcheries in Alaska, the salaries and actual traveling expenses of officials necessary to the proper investigation, inspection, and regulation of the Alaskan fisheries and hatcheries, and such other expenditures as may be necessary to carry out the provisions of sections 230-239, 241, 242 of Title 48. (June 26, 1906, ch. 3547, § 12, 34 Stat. 480.)

##### (19) Shipping commissioners and clerks.

Detailed estimates for compensation of shipping commissioners and clerks of shipping commissioners, for services under section 331 of Title 46, estimates therefor to be submitted to the Bureau of the Budget by the Secretary of Commerce. (June 25, 1910,

ch. 384, § 7, 36 Stat. 773; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; June 10, 1921, ch. 18, 42 Stat. 20.)

(20) Census Office.

Estimates in detail for the expenses of the permanent Census Office. (June 28, 1902, ch. 1301, § 1, 32 Stat. 456.)

(21) Federal Trade Commission.

Estimates in detail for all expenditures under the Federal Trade Commission. (Mar. 3, 1915, ch. 75, § 1, 38 Stat. 841.)

(22) Expenses of Department of Labor.

Estimates in detail for all personal services and for all general and miscellaneous expenses for the Department of Labor. (May 1, 1913, ch. 1, § 1, 38 Stat. 2.)

(23) Immigration and Naturalization Service; division of information.

Detailed estimates for appropriations required for additional assistants, clerical and otherwise, necessary to maintain a division of information in the Immigration and Naturalization Service, Department of Justice. (Mar. 4, 1907, ch. 2918, § 1, 34 Stat. 1329; Mar. 3, 1933, ch. 212, title II, § 16, 47 Stat. 1518; June 10, 1933, Ex. Ord. No. 6166, § 14; Reorg. Plan No. V, eff. June 14, 1940, 5 Fed. Reg. 2223, 54 Stat. 1238.)

(24) Repealed. May 29, 1928, ch. 901, § 1, 45 Stat. 986, 987.

(25) United States Penitentiary, McNeils Island, Wash.

Estimates in detail for all expenses of maintaining the United States Penitentiary at McNeils Island, Washington, including salaries of all necessary officers and employees therefor, the estimates to be submitted to the Bureau of the Budget by the Attorney General. (May 27, 1908, ch. 200, § 1, 35 Stat. 374.)

(26) Personal services in Indian Office.

Estimates in detail for all personal services required in the Indian Office. (Aug. 23, 1912, ch. 350, § 1, 37 Stat. 396.)

(27) United States Employees' Compensation Commission; miscellaneous expenses.

Estimates in detail shall be annually submitted. (Sept. 8, 1916, ch. 464, § 1, 39 Stat. 821.)

REPEAL

Paragraph 12, which referred to Navy pension fund, was derived from R. S. § 3667.

Paragraph 24, which referred to expenses of collecting internal revenue, was derived from R. S. § 3671.

CHANGE OF NAME

Bureau of Navigation and Steamboat Inspection changed to Bureau of Marine Inspection and Navigation, see section 597a-1 of Title 5, Executive Departments and Government Officers and Employees.

TRANSFER OF FUNCTIONS

Function of disbursement, exercised by any other agency transferred to Division of Disbursement, later consolidated in Fiscal Service, Treasury Department, see Executive Order No. 6166, set out in note under section 132 of Title 5, and Reorg. Plan No. III, § 1 (a) (1), eff. June 30, 1940, 5 Fed. Reg. 2107, 54 Stat. 1231, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

Immigration and Naturalization Service of Department of Labor (including Office of Commissioner of Immigration and Naturalization) and its functions were transferred to

Department of Justice, to be administered under direction and supervision of Attorney General; and functions and powers of Secretary of Labor relating to administration of said service and its functions or to administration of immigration and naturalization laws were transferred to Attorney General, by Reorg. Plan No. V, eff. June 14, 1940, 5 Fed. Reg. 2223, 54 Stat. 1231, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

CROSS REFERENCE

Estimate for personal services in Indian Office, see section 61 of Title 25, Indians.

§ 584. Expenses of Liberty Loans.

Estimates of appropriations shall be submitted to Congress in the manner prescribed by law for expenses arising in connection with the loans authorized by the various Liberty Bond Acts and the Victory Liberty Loan Act. (May 29, 1920, ch. 214, § 1, 41 Stat. 646.)

REFERENCES IN TEXT

Words "Liberty Bond Acts" and "Victory Liberty Loan Act" mentioned in text refer to sections 745-747, 749, 750, 752-755a, 757-760, 763-769, 771-774, 801-804 of this title and sections 84, 95a, 462a of Title 12, Banks and Banking.

§ 585. Manner of communicating estimates.

Estimates of expenditures and appropriations communicated to the Bureau of the Budget shall specify, as nearly as may be convenient, the sources from which such estimates are derived, and the calculations upon which they are founded, and shall discriminate between such estimates as are conjectural in their character and such as are framed upon actual information and applications from disbursing officers. They shall also give references to any law or treaty by which the proposed expenditures are, respectively, authorized, specifying the date of each, and the volume and page of the Statutes at Large, or of this Code, as the case may be, and the section of the Act in which the authority is to be found. (R. S. § 3660; June 10, 1921, ch. 18, § 215, 42 Stat. 23.)

DERIVATION

Act Aug. 26, 1842, ch. 202, § 14, 5 Stat. 525.

CROSS REFERENCES

Contents of estimates of appropriations and statements of expenditures and estimated expenditures, see section 581 of this title.

Departmental and supplemental and deficiency estimates submitted to Bureau of the Budget to be prepared and submitted in such form, manner, and detail as President may prescribe, see section 24 of this title.

§ 586. Order and arrangement of estimates and general appropriation bills.

The estimates for expenses of the Government, and supplemental or deficiency estimates, except those for sundry civil expenses, shall be prepared and submitted each year according to the order and arrangement of the appropriation Acts for the year preceding. And any changes in such order and arrangement, and transfers of salaries from one office or bureau to another office or bureau, or the consolidation of offices or bureaus desired by the head of any executive department may be submitted by note in the estimates. The committees of Congress in reporting general appropriation bills shall, as far as may be practicable, follow the general order and arrangement of the respective appropriation Acts

for the year preceding. (June 22, 1906, ch. 3514, § 4, 34 Stat. 448; Sept. 8, 1916, ch. 464, § 4, 39 Stat. 830; June 10, 1921, ch. 18, §§ 203, 204, 42 Stat. 21.)

§ 587. Estimates not conforming to requirements rearranged.

When estimates hereafter transmitted to the Bureau of the Budget for submission to Congress do not in form and arrangement comply with the provisions of section 586 of this title, they shall be rearranged so as to comply with said requirements of law. (Mar. 4, 1909, ch. 297, § 4, 35 Stat. 907; June 10, 1921, ch. 18, §§ 204, 215, 42 Stat. 21, 23.)

§ 588. Estimates for printing and binding; only appropriations made for printing and binding used therefor.

There shall be submitted in the regular annual estimates under and as a part of the expenses for "printing and binding", estimates for all printing and binding required by each of the executive departments, their bureaus and offices, and other Government establishments at Washington, District of Columbia, for each fiscal year; and no appropriations other than those made specifically and solely for printing and binding shall be used for such purposes in any executive department or other Government establishment in the District of Columbia: *Provided*, That nothing in this section shall apply to stamped envelopes, or envelopes and articles of stationery other than letterheads and noteheads, printed in the course of manufacture, or to so much of the printing and binding as is necessary to expedite the work of that branch of The Adjutant General's Office that was formerly known as the Record and Pension Office of the War Department. (June 30, 1906, ch. 3914, § 2, 34 Stat. 762; Mar. 2, 1907, ch. 2511, 34 Stat. 1158; Mar. 4, 1907, ch. 2918, § 1, 34 Stat. 1367; June 10, 1921, ch. 18, § 215, 42 Stat. 23.)

9. Same; other officers.

The annual estimate for appropriations for every public officer who is authorized to have printing and binding done at the Government Printing Office for the use of his public office, shall include such sum or sums as may seem necessary "for printing and binding, to be executed under the direction of the Public Printer." (R. S. § 3661; July 31, 1876, ch. 246, 19 Stat. 105; Jan. 12, 1895, ch. 23, § 17, 28 Stat. 603.)

#### DERIVATION

Act May 8, 1872, ch. 140, § 2, 17 Stat. 82.

§ 590. Same; Geological Survey, Coast and Geodetic Survey, Hydrographic Office, and Signal Service.

All printing and engraving for the Geological Survey, the Coast and Geodetic Survey, the Hydrographic Office of the Navy Department, and the Signal Service shall be estimated for separately and in detail, and appropriated for separately for each of said bureaus. (Aug. 4, 1886, ch. 902, § 1, 24 Stat. 255.)

§ 591. Estimates; for salaries.

All estimates for the compensation of officers authorized by law to be employed shall be founded upon the express provisions of law, and not upon the authority of executive distribution. (R. S. § 3662.)

#### DERIVATION

Act Mar. 3, 1855, ch. 175, § 8, 10 Stat. 670.

§§ 592, 593. Repealed. May 29, 1928, ch. 901, § 1, 45 Stat. 986, 987.

Section 592 was from act July 11, 1890, ch. 667, § 2, 26 Stat. 268.

Section 593 was from act Mar. 2, 1895, ch. 177, § 7, 28 Stat. 808.

§ 594. Requisites of estimates for appropriations for public works.

Whenever any estimate submitted to the Bureau of the Budget asks an appropriation for any new specific expenditure, such as the erection of a public building, or the construction of any public work, requiring a plan before the building or work can be properly completed, such estimate shall be accompanied by full plans and detailed estimates of the cost of the whole work. All subsequent estimates for any such work shall state the original estimated cost, the aggregate amount theretofore appropriated for the same, and the amount actually expended thereupon, as well as the amount asked for the current year for which such estimate is made. And if the amount asked is in excess of the original estimate, the full reasons for the excess, and the extent of the anticipated excess, shall be also stated. (R. S. § 3663; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 249; June 10, 1921, ch. 18, § 215, 42 Stat. 23.)

#### DERIVATION

Act June 17, 1844, ch. 105, § 2, 5 Stat. 693; act Mar. 3, 1855, ch. 175, § 8, 10 Stat. 670.

#### CROSS REFERENCES

Contents of estimates of appropriations and statements of expenditures and estimated expenditures, see section 581 of this title.

Departmental and supplemental and deficiency estimates submitted to Bureau of the Budget to be prepared and submitted in such form, manner, and detail as President may prescribe, see section 24 of this title.

§§ 595, 596. Repealed. May 29, 1928, ch. 901, § 1, 45 Stat. 986.

Section 595 was from act Mar. 3, 1883, ch. 128, § 1, 22 Stat. 552; act July 16, 1892, ch. 196, § 1, 27 Stat. 199; act May 1, 1913, ch. 1, § 3, 38 Stat. 3; act May 29, 1920, ch. 214, § 7, 41 Stat. 691.

Section 596 was from act June 5, 1920, ch. 235, § 3, 41 Stat. 945.

§ 597. Same; additional explanations.

Whenever, in the annual estimates of expenditures required for the coming year for any department, the usual items of such estimates vary materially in amount from the appropriation ordinarily asked for the object named, and especially from the appropriation granted for the same objects for the preceding year, and whenever new items not theretofore usual are introduced into such estimates for any year, the estimates shall be accompanied by minute and full explanations of all such variations and new items, showing the reasons and grounds upon which the amounts are required, and the different items added. (R. S. § 3664.)

#### DERIVATION

Act June 17, 1844, ch. 105, § 2, 5 Stat. 693; act Mar. 3, 1855, ch. 175, § 8, 10 Stat. 670.

**8. Same; amount of outstanding appropriations designated.**

Estimates of expenditures required in any department during the year then approaching, shall designate not only the amount required to be appropriated for the next fiscal year, but also the amount of the outstanding appropriation, if there be any, which will probably be required for each particular item of expenditure. (R. S. § 3665.)

**DERIVATION**

Act June 2, 1858, ch. 82, § 2, 11 Stat. 308.

**§ 599. Same; statement of persons employed at mints and assay offices.**

The Secretary of the Treasury shall report to Congress each year in the annual estimates the number of persons employed, other than workmen and adjusters, and the compensation paid to each, at each mint and assay office, out of appropriations made for wages of workmen, adjusters, and other employees. (Feb. 3, 1905, ch. 297, § 1, 33 Stat. 657.)

**CROSS REFERENCE**

Preparation of estimates and Budget and transmission to Congress by Bureau of the Budget, see chapter 1 of this title.

**§ 600. Same; for Coast Guard.**

Estimates for the Coast Guard shall be submitted, in detail, showing separately, the amount required for pay of officers, rations for officers, pay of crews, rations of crews, fuel, repairs and outfits, ship chandlery, and for traveling and contingent expenses. There shall also be included in the annual Budget a statement showing the authorized number of officers and cadets in the Coast Guard, their rank and pay; also the number of men constituting the crews of vessels in said service. (Mar. 2, 1889, ch. 410, § 1, 25 Stat. 907; Jan. 28, 1915, ch. 20, § 1, 38 Stat. 800; June 10, 1921, ch. 18, § 204, 42 Stat. 21.)

**CROSS REFERENCE**

Departmental and supplemental and deficiency estimates submitted to Bureau of the Budget to be prepared and submitted in such form, manner, and detail as President may prescribe, see section 24 of this title.

**§ 601. Same; reports of persons employed on public buildings and expenditures for repairs.**

The Secretary of the Treasury shall for each fiscal year in the annual estimates, report to Congress the number of persons employed outside of the District of Columbia, as superintendents, clerks, watchmen and otherwise, and paid from appropriations for the construction of public buildings showing where said persons are employed, in what capacity, the length of time and at what rate of compensation, and a statement of the expenditure of the appropriation for "repairs and preservation of public buildings" which shall show the amount expended on each public building and the number of persons employed and paid salaries from such appropriation. (Mar. 3, 1887, ch. 362, 24 Stat. 512; Aug. 30, 1890, ch. 837, § 1, 26 Stat. 374; June 10, 1921, ch. 18, § 215, 42 Stat. 23.)

**CROSS REFERENCE**

Annual estimates, see chapter 1 of this title.

**§ 602. Same; appropriations to refund illegally assessed or collected revenue taxes.**

The Secretary of the Treasury shall submit annually an estimate of appropriations to refund and pay back duties or taxes erroneously or illegally assessed or collected under the internal-revenue laws, and to pay judgments, including interest and costs, rendered for taxes or penalties erroneously or illegally assessed or collected under the internal-revenue laws. (Nov. 23, 1921, ch. 136, § 1317, 42 Stat. 314.)

**§ 603. Same; for Foreign Service.**

Except as hereinafter otherwise provided, estimates for the annual expenditures of the expenses of the Foreign Service shall state the entire amount required for its support, including all officers, whether paid by fees or otherwise, specifying the compensation to be allowed or deemed advisable in each individual case, but estimates for rent of consular offices, and, under contingent expenses, the amount required annually to be expended at consular offices for purposes within the discretion of the department shall be segregated and submitted separately. (July 1, 1882, ch. 262, 22 Stat. 133; Mar. 3, 1905, ch. 1484, § 1, 33 Stat. 1214; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100; May 24, 1924, ch. 182, § 1, as redesignated § 8 and amended by Feb. 23, 1931, ch. 276, § 7, 46 Stat. 1207.)

**§ 604. Same; for river and harbor improvements.**

The Secretary of War shall annually submit estimates in detail for river and harbor improvements required for the ensuing fiscal year to the Bureau of the Budget to be included in, and carried into the sum total of, the Budget. (June 4, 1897, ch. 2, § 1, 30 Stat. 48; June 10, 1921, ch. 18, § 215, 42 Stat. 23.)

**CROSS REFERENCE**

Departmental and supplemental and deficiency estimates submitted to Bureau of the Budget to be prepared and submitted in such form, manner, and detail as President may prescribe, see section 24 of this title.

**§ 605. Same; for construction or modernization of batteries.**

Estimates shall not be submitted to Congress for appropriations for construction of gun and mortar batteries, modernizing older emplacements, and other construction under the Engineer Department, in connection with fortifications, until after plans and estimates of cost shall have been prepared therefor. (Feb. 13, 1913, ch. 51, 37 Stat. 671.)

**§ 606. Same; for fortifications for insular possessions.**

All estimates for fortifications for insular possessions of the United States shall be made and submitted to Congress showing amount proposed to be expended at each harbor in each insular possession. (Mar. 3, 1905, ch. 1402, 33 Stat. 847.)

**§ 607. Same; Army and Navy Hospital service.**

The estimates for the Army and Navy Hospital service shall be submitted as a part of the military establishment. (Aug. 4, 1886, ch. 902, § 1, 24 Stat. 245, 246.)

§ 609.<sup>1</sup> Same; statements in detail of number and salaries of persons employed under appropriations for increase of Navy.

It shall be the duty of the Secretary of the Navy to submit in the estimates, under the respective bureaus and offices of the Navy Department, a statement in detail, showing the number of persons employed during the previous fiscal year and the rate of compensation of each under appropriations for "Increase of the Navy" or other general appropriations. (Apr. 17, 1900, ch. 192, § 1, 31 Stat. 117; June 10, 1921, ch. 18, § 204, 42 Stat. 21.)

<sup>1</sup> Number 608 was not used for a section in the original United States Code.

#### § 609a. Estimates for Pay of the Navy.

The estimates for the support of the Navy shall show, under the head of Pay of the Navy, the sums allowed for pay of officers belonging to the line, to the several departments of the staff, and to the retired list; the estimates to show under each head the amount allowed for pay proper, for increases due to longevity and foreign service, and for pay at sea rates to officers employed on shore; together with the total number of warrant and petty officers and seamen of the several grades and designations, including as to each class the amount allowed for pay proper and for longevity or service increases. The estimates shall include a list giving the rates of pay for all petty officers and other enlisted men of the Navy. (Mar. 3, 1909, ch. 255, 35 Stat. 754.)

#### § 610. Same; for Post Office Department.

There shall be submitted to Congress at each annual session an estimate of the amount that will be required by the Post Office Department for the ensuing fiscal year, under each of the following heads:

First. Transportation of the mails.

Second. Compensation of postmasters.

Third. Compensation of clerks in post offices.

Fourth. Compensation of letter carriers.

Fifth. Compensation of blank agents and assistants.

Sixth. Mail depredations and special agents.

Seventh. Postage stamps and envelopes.

Eighth. Ship, steamboat, and way letters.

Ninth. Dead letters.

Tenth. Mail bags.

Eleventh. Mail locks, keys, and stamps.

Twelfth. Wrapping paper.

Thirteenth. Office furniture

Fourteenth. Advertising.

Fifteenth. Balances to foreign countries.

Sixteenth. Rent, light, and fuel for post offices.

Seventeenth. Stationery.

Eighteenth. Miscellaneous.

Such estimates shall show the sums paid under each head, and the names of the persons to whom payments are made out of the miscellaneous fund; but the names of persons employed in detecting depredations on the mail, and of other confidential agents, need not be disclosed. (R. S. § 3668.)

#### DERIVATION

Act June 8, 1872, ch. 335, § 9, 17 Stat. 286.

#### CROSS REFERENCE

Departmental and supplemental and deficiency estimates submitted to Bureau of the Budget to be prepared and submitted in such form, manner, and detail as President may prescribe, see section 24 of this title.

#### § 610a. Same; postal service; money-order branch.

The Postmaster General shall for the fiscal year eighteen hundred and ninety-eight, and annually thereafter, submit in the annual estimates to Congress estimates in detail for all expenses of the money-order branch of the postal service. (June 9, 1896, ch. 386, 29 Stat. 316.)

#### CROSS REFERENCE

Departmental and supplemental and deficiency estimates submitted to Bureau of the Budget to be prepared and submitted in such form, manner, and detail as President may prescribe, see section 24 of this title.

#### § 611. Same; for Railway Mail Service.

In making estimates for Railway Mail Service, the estimate for postal-car service shall be separated from the general estimates; and in case any increase or diminution of service by postal cars shall be made by the Postmaster General, the reasons therefor shall be given in his annual report next succeeding such increase or diminution. (Mar. 3, 1879, ch. 180, § 1, 20 Stat. 357.)

#### § 612. Same; Geological Survey.

The estimates for the Geological Survey shall be itemized, and there shall be submitted in the annual Budget, under each item of appropriation under "General expenses of the Geological Survey", notes showing the number of persons employed and the rate of compensation paid to each from each of said appropriations during the fiscal year next preceding the fiscal year for which estimates are submitted. (Mar. 3, 1887, ch. 362, 24 Stat. 527; June 28, 1902, ch. 1301, § 1, 32 Stat. 455; June 10, 1921, ch. 18, § 204, 42 Stat. 21.)

#### § 613. Same; for Indian appropriations.

The estimates for appropriations for the Indian Service shall be presented in such form as to show the amounts required for each of the agencies in the several States or Territories, and for said States and Territories, respectively, and shall be accompanied by a detailed statement, classified in the manner prescribed in section 688 of this title, showing the purposes for which the appropriations are required. (Aug. 15, 1876, ch. 289, § 4, 19 Stat. 200; June 30, 1913, ch. 4, § 26, 38 Stat. 103.)

#### § 614. Same; for national parks.

The Secretary of the Interior shall submit in the annual estimates, following the estimates for each of the national parks, a classified statement of the receipts and expenditures for the complete fiscal year next preceding the fiscal year for which estimates of appropriations are submitted. (Mar. 4, 1911, ch. 285, § 1, 36 Stat. 1421; June 10, 1921, ch. 18, § 204, 42 Stat. 21.)



§ 615. Same; for expenses of insular and territorial affairs within jurisdiction of Department of Justice.

Estimates for appropriations for defraying the necessary expenses incurred in the conduct of insular and other territorial matters and affairs within the jurisdiction of the Department of Justice, including the payment of necessary employees at the seat of government or elsewhere, shall be submitted in detail under legislative, executive, and judicial expenses. (Mar. 3, 1905, ch. 1483, § 1, 33 Stat. 1206.)

§ 616. Same; for expenses of government in Territories.

Estimates for expenses of government in the Territories shall be submitted through and be subject to revision by the Department of the Interior. (July 16, 1914, ch. 141, § 1, 38 Stat. 479.)

§ 617. Same; estimates for Department of Agriculture.

The Secretary of Agriculture shall transmit to Congress in the annual estimates detailed estimates for all executive officers, clerks, and employees below the grade of clerk, indicating the salary or compensation of each, necessary to be employed by the various bureaus, offices, and divisions of the Department of Agriculture, and a statement showing what proportion of the appropriation for rent of buildings and parts of buildings in the District of Columbia is paid for the quarters occupied by the various branches of the department. (June 3, 1902, ch. 985, 32 Stat. 303; Mar. 4, 1915, ch. 144, 38 Stat. 1108; Aug. 11, 1916, ch. 313, 39 Stat. 492; June 10, 1921, ch. 18, § 204, 42 Stat. 21; May 29, 1928, ch. 901, § 1 (89), 45 Stat. 992.)

#### CROSS REFERENCES

Heads of departments to revise departmental estimates and submit them to Bureau of the Budget before September 15 of each year, see section 23 of this title.

President to transmit Budget containing estimates of expenditures and appropriations necessary in his judgment for support of the Government to Congress, see section 11 of this title.

§ 618. Same; for Bureau of Lighthouses.

There shall be submitted in the annual Budget, under each item of appropriation under the head of "Bureau of Lighthouses", notes showing the number of persons employed and the rate of compensation paid to each from each of said appropriations during the fiscal year next preceding the fiscal year for which estimates are submitted. (June 28, 1902, ch. 1301, § 1, 32 Stat. 433; June 17, 1910, ch. 301, § 4, 36 Stat. 537; June 10, 1921, ch. 18, § 204, 42 Stat. 21; May 29, 1928, ch. 901, § 1 (106), 45 Stat. 994.)

#### TRANSFER OF FUNCTIONS

Bureau of Lighthouses and its functions transferred to, and consolidated with, and administered as part of, the Coast Guard in the Department of the Treasury, see Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

§ 619. Same; for officers and employees for Bureau of Fisheries.

The Director of the Fish and Wildlife Service shall embrace in the estimates of appropriations for the Fish and Wildlife Service for each fiscal year esti-

mates for all officers, clerks, and other employees whose services are permanent and continuous in their character and deemed to be necessary for an efficient and economical execution of the appropriations for the Fish and Wildlife Service. (Aug. 5, 1892, ch. 380, § 1, 27 Stat. 362; Reorg. Plan No. II, § 4 (e), (f), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1433; Reorg. Plan No. III, § 3, eff. June 30, 1940, 5 Fed. Reg. 2108, 54 Stat. 1232.)

#### TRANSFER OF FUNCTIONS

Bureau of Fisheries was consolidated with Bureau of Biological Survey into Fish and Wildlife Service in Department of Interior, and offices of Commissioner and Deputy Commissioner of Fisheries were abolished by Reorg. Plan No. III, § 3, cited to text, set out in note under section 133t of Title 5. See, also, sections 8 and 9 of said plan for provisions relating to transfer of records, property, personnel, and funds. The Bureau had been previously transferred to Department of Interior by Reorg. Plan No. II, § 4 (e), cited to text, also set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

§ 620. Same; for expenses of regulating immigration.

There shall be submitted, following the estimates under appropriation for expenses of regulating immigration, statements showing the amount required for each object of expenditure mentioned in said estimates, together with a statement of the expenditures under each of such objects for the fiscal year terminated next preceding the period of submitting said estimates. (June 25, 1910, ch. 384, § 1, 36 Stat. 764.)

§ 621. Same; for Panama Canal.

The estimates of appropriations for the Panama Canal shall be submitted annually in detail, showing the amounts required for personal services and the amounts required for material including all supplies, under the heads of construction, maintenance, operation, sanitation, and civil government, and following each there shall be submitted notes giving in parallel columns information which will show the number, by grade or classes, of officers, employees, and skilled and unskilled laborers proposed to be paid under each of said appropriations for the ensuing fiscal year and those paid at the close of the fiscal year next preceding the period when said estimates are prepared and submitted; also, in connection with each item for material and miscellaneous purposes other than salaries or pay for personal services, the amounts actually expended or obligated, quantities purchased, and prices paid for material or supplies during the entire fiscal year next preceding the preparation and submission of said estimates.

There shall also be submitted in connection with the foregoing information, statements of actual unit cost of all construction work done, and of estimated unit cost of work proposed to be done, for the fiscal years included in the notes so required to be submitted with the annual estimates. (Aug. 1, 1914, ch. 223, § 6, 38 Stat. 679.)

#### CROSS REFERENCE

Departmental and supplemental and deficiency estimates submitted to Bureau of the Budget to be prepared and submitted in such form, manner, and detail as President may prescribe, see section 24 of this title.

**§ 622. Same; compiling and printing.**

Estimates of appropriations contained in the Budget or transmitted under section 14 of this title, shall be properly classified, compiled, indexed, and printed, by the Bureau of the Budget. (July 7, 1884, ch. 334, § 1, 23 Stat. 254; June 10, 1921, ch. 18, §§ 204, 211, 42 Stat. 21, 22.)

**§ 623. Same; elimination of unnecessary words.**

The Bureau of the Budget shall, as nearly as may be practicable, eliminate from all estimates unnecessary words and make uniform the language commonly used in expressing purposes or conditions of appropriations. (June 23, 1913, ch. 3, § 3, 38 Stat. 75; June 10, 1921, ch. 18, §§ 204, 207, 42 Stat. 21, 22.)

**§ 624. Same; statements accompanying.**

The Bureau of the Budget shall annex to the annual estimates of the appropriations required for the public service, a statement of the appropriations for the service of the year, which may have been made by former Acts, and submit, as a part of the appendix to the estimates, such extracts from the annual reports of the several heads of departments and bureaus as relate to estimates for appropriations, and the necessities therefor. (R. S. § 3670; Mar. 3, 1875, ch. 129, § 3, 18 Stat. 370; June 10, 1921, ch. 18, §§ 204, 207, 42 Stat. 21, 22.)

**DERIVATION**

Act May 1, 1920, ch. 52, § 8, 3 Stat. 568; act June 20, 1874, ch. 328, 18 Stat. 96.

**§ 625. Repealed.** May 29, 1928, ch. 901, § 1, 45 Stat. 987.

Section was from R. S. § 3672; act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 249; act June 25, 1910, ch. 384, § 6, 36 Stat. 773.

**§ 626. Statements of money received from proceeds of public property or other sources, and of payments therefrom.**

The Secretary of the Treasury shall require, and it shall be the duty of the head of each executive department, or other Government establishment to furnish him, within thirty days after the close of each fiscal year, a statement of all money arising from proceeds of public property of any kind or from any source other than the Postal Service, received by said head of department or other Government establishment during the previous fiscal year for or on account of the public service, or in any other manner in the discharge of his official duties other than as salary or compensation, which was not paid into the general Treasury of the United States, together with a detailed account of all payments, if any, made from such funds during such year: *Provided, however*, That this shall not apply to the Quartermaster Corps, as successor to the Subsistence Department. All such statements, together with a similar statement applying to the Treasury Department, shall be transmitted by the Secretary of the Treasury to Congress at the beginning of each regular session. (June 30, 1906, ch. 3914, § 5, 34 Stat. 763; Aug. 24, 1912, ch. 391, §§ 1, 3, 37 Stat. 579, 591.)

**§ 627. Construction of appropriation Acts.**

No Act of Congress passed after June 30, 1906, shall be construed to make an appropriation out of

the Treasury of the United States, or to authorize the execution of a contract involving the payment of money in excess of appropriations made by law, unless such Act shall in specific terms declare an appropriation to be made or that a contract may be executed. (June 30, 1906, ch. 3914, § 9, 34 Stat. 764.)

**CROSS REFERENCE**

Contracts authorized to limit of cost fixed by Congress though appropriation is made in part only, see section 261 of Title 40, Public Buildings, Property, and Works.

**§ 628. Application of moneys appropriated.**

Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others. (R. S. § 3678.)

**DERIVATION**

Act Mar. 3, 1809, ch. 28, § 1, 2 Stat. 535; act Feb. 12, 1868, ch. 8, § 2, 15 Stat. 36.

**§ 629. Lump-sum appropriations; not available for increased salaries.**

Except as otherwise provided by law, no part of any money appropriated in lump sum shall be available for the payment of personal services at a rate of compensation in excess of that paid for the same or similar services during the preceding fiscal year; nor shall any person employed at a specific salary be transferred and paid from a lump-sum appropriation a rate of compensation greater than such specific salary, and the heads of departments shall cause this provision to be enforced: *Provided*, That this section shall not apply to mechanics, artisans, their helpers and assistants, laborers, or any other employees whose duties are of similar character and required in carrying on the various manufacturing or constructing operations of the Government. (Aug. 26, 1912, ch. 408, § 7, 37 Stat. 626; Mar. 4, 1913, ch. 142, § 4, 37 Stat. 790.)

**§ 630. Same; salaries of scientific and technical employees of Department of Agriculture.**

Section 629 of this title shall not apply to the payment, out of moneys appropriated in lump sum for the Department of Agriculture, for personal services of employees engaged in strictly scientific or technical work: *Provided*, That nothing contained herein shall be construed to authorize the transfer of any person employed at a specific salary and the payment of compensation from lump-sum appropriations at a rate greater than said specific salary. (Mar. 4, 1913, ch. 145, 37 Stat. 854.)

**§ 631. Drafts for War and Navy Departments.**

All moneys appropriated for the use of the War and Navy Departments shall be drawn from the Treasury, by warrants of the Secretary of the Treasury, upon the requisitions of the Secretaries of those departments, respectively, countersigned in the General Accounting Office, and registered. (R. S. § 3673; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

**DERIVATION**

Act Mar. 3, 1817, ch. 45, §§ 5, 9, 3 Stat. 367; act May 7, 1822, ch. 90, § 3, 3 Stat. 689.

## CROSS REFERENCE

Requisitions for advances of money not to be countersigned in General Accounting Office, see section 76 of this title.

**§ 632. Restriction on payments on account of Postal Service.**

Payments of money out of the Treasury on account of the Postal Service shall be in pursuance of appropriations made by law, by warrants of the Postmaster General, registered and countersigned in the General Accounting Office, and expressing on their face the appropriation to which they should be charged. (R. S. § 3674; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

## DERIVATION

Act June 8, 1872, ch. 355, § 47, 17 Stat. 291.

## TRANSFER OF FUNCTIONS

Functions relating to disbursement of postal revenues and all other funds under jurisdiction of Post Office Department, Postmaster General, and Board of Trustees of Postal Savings System which would otherwise have become functions of Treasury Department on July 1, 1940, by virtue of Ex. Ord. No. 6166, as amended, set out in note under section 132 of Title 5, were transferred to and vested in (a) said Board of Trustees as to postal savings disbursements, and (b) Post Office Department as to all other disbursements involved, such functions to be exercised by postmasters and other authorized disbursing agents of Post Office Department and of Postal Savings System in accordance with existing statutes pertaining to such functions, by Reorg. Plan No. IV, § 4, eff. June 30, 1940, 5 Fed. Reg. 2421, 54 Stat. 1234, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See, also, sections 13-15 of said plan for provisions relating to transfer of functions of department heads, records, property, personnel, and funds.

**§ 633. Charge against fund "Transportation and recruiting," for transportation of men discharged.**

The transportation to their homes, if residents of the United States, of enlisted men and apprentices of the Navy discharged on medical survey; and the transportation to the place of enlistment, if residents of the United States, of such enlisted men and apprentices discharged on account of expiration of enlistment, shall be chargeable to the appropriation "Transportation and recruiting." (Mar. 3, 1901, ch. 831, § 1, 31 Stat. 1030; Feb. 11, 1925, ch. 209, 43 Stat. 864.)

**§ 634. Appropriations for Navy controlled by Secretary; for bureaus kept separately.**

All appropriations for specific, general, and contingent expenses of the Navy Department shall be under the control and expended by the direction of the Secretary of the Navy, and the appropriation for each bureau shall be kept separate in the Treasury. (R. S. § 3676.)

## DERIVATION

Act July 5, 1862, ch. 134, § 5, 12 Stat. 511.

**§ 635. Appropriations for Bureau of Yards and Docks available until expended.**

Appropriations made under the Bureau of Yards and Docks for public works, exclusive of repairs and preservation, shall remain available until expended. (July 12, 1921, ch. 44, § 3, 42 Stat. 139.)

**§ 636. Restrictions upon use of appropriations for "Increase of Navy" under Bureau of Ordnance.**

No part of appropriations made for "Increase of the Navy" under the Bureau of Ordnance and no part of allotments of appropriations made to said bureau shall be available for the payment for services or materials used in the construction of any shop, building, living quarters, or other structures, except such temporary structures costing not in excess of \$5,000 each as may be incident to current work of said bureau, or for additions and betterments to any existing shore station facilities unless the appropriation shall in terms specifically authorize such construction or additions and betterments. (July 12, 1921, ch. 44, § 1, 42 Stat. 128.)

**§ 637. Contingent expenses not payable from appropriations for Naval Establishment.**

It shall not be lawful to expend, for any of the offices or bureaus of the Navy Department at Washington, any sum out of appropriations made for the Naval Establishment for stationery, furniture, newspapers, plans, drawings, drawing material, horses and wagons to be used only for official purposes, including rental of stable, purchase, maintenance, repair, operation or exchange of horse-drawn passenger-carrying vehicles, automobile mail wagon, including exchange of same, street car tickets, freight, expressage, postage, typewriters, computing machines, and other absolutely necessary expenses of the Navy Department and its various bureaus and offices. (June 22, 1906, ch. 3514, § 1, 34 Stat. 427; Mar. 3, 1917, ch. 163, § 1, 39 Stat. 1102.)

**§ 638. Restrictions upon appropriations for ordnance or ordnance material or material purchased therewith.**

No money appropriated for ordnance or ordnance material or material purchased therewith for the Navy shall be used for any other purpose than that for which the appropriation was made, except that this provision shall not prohibit the transfer to other bureaus or departments of used or obsolescent material which is no longer needed for the purpose for which originally acquired: *Provided*, That nothing in this section shall be construed as preventing the allocation of armor, armament, ammunition, ordnance material, equipment, and accessories to ships according to the requirements of the naval service. (July 1, 1918, ch. 114, 40 Stat. 721; July 12, 1921, ch. 44, § 1, 42 Stat. 128; Feb. 20, 1929, ch. 274, 45 Stat. 1249.)

**§ 639. Repealed. June 26, 1934, ch. 756, § 16, 48 Stat. 1230.**

Section was from act Mar. 3, 1893, ch. 212, 27 Stat. 716.

**§ 640. Clothing and small-stores fund.**

The value of issues of clothing and small stores by the Bureau of Supplies and Accounts in the Department of the Navy shall be credited to a consolidated fund to be designated as the "Clothing and small-stores fund", in the same manner as the value of the issues of clothing was credited to the "clothing fund" prior to February 14, 1879, and as the value of issues of small stores was credited to the "small-stores fund" prior to June 30, 1890; the resources of

the fund to be used in the purchase of supplies of clothing and small stores for issue. (Feb. 14, 1879, ch. 68, 20 Stat. 288; June 30, 1890, ch. 640, 26 Stat. 197; July 19, 1892, ch. 206, § 1, 27 Stat. 243; Mar. 3, 1903, ch. 1010, 32 Stat. 1191; Mar. 20, 1922, ch. 104, § 1, 42 Stat. 451.)

§ 640a. Same; credited with proceeds of sales.

The clothing and small-stores fund shall be credited with the net proceeds of all sales (including sales of surplus materials) of clothing and small stores. (May 21, 1926, ch. 355, 44 Stat. 605.)

§ 640b. Same; charges for Naval Reserve.

The clothing and small-stores fund shall be charged with the value of all issues of clothing and small stores made to aviation cadets and enlisted men of the Naval Reserve and the uniform gratuity paid to officers and aviation cadets of the Naval Reserve. (April 27, 1937, ch. 140, § 1, 50 Stat. 107; April 26, 1938, ch. 175, § 1, 52 Stat. 235; May 25, 1939, ch. 149, § 1, 53 Stat. 769.)

#### SIMILAR PROVISIONS

See prior annual appropriation acts.

§ 641. Naval supplies; purchase, and classification and issue, for Navy, and not for bureaus.

All supplies purchased with moneys appropriated for any branch of the Naval Establishment shall be deemed purchased for the Navy and not for any bureau thereof, and shall be arranged, classified, catalogued, and issued for consumption or use, under such regulations as the Secretary may prescribe, without regard to the bureau for which they were purchased. (June 30, 1890, ch. 640, 26 Stat. 205; Mar. 2, 1891, ch. 494, 26 Stat. 807.)

§ 642. "Naval Supply Account"; purchases charged to; payments from "General Account of Advances", returned.

The Naval Supply Account for the Naval Establishment, under the Bureau of Supplies and Accounts, shall govern the charging, crediting, receipt, purchase, transfer, manufacture, repair, issue, and consumption of all stores for the Naval Establishment, excepting such material as provisions, clothing and small stores, medical stores, and such other materials as the Secretary of the Navy may designate, and which may be purchased by specific appropriations or transferred to specific appropriations before such materials are issued for use or consumption; the said charge, however, to any particular appropriation shall be limited to the amount appropriated therefor. The appraised value of all stores, equipment, and supplies turned in from ships, and ships' equipment turned in from yards or stations (except salvage), shall be credited to the current appropriations concerned, and the amounts so credited shall be available for expenditures for the same purposes as the appropriations credited. (June 25, 1910, ch. 385, § 1, 36 Stat. 792; Mar. 4, 1911, ch. 239, 36 Stat. 1279; June 30, 1914, ch. 130, 38 Stat. 405.)

§ 643. Permanent special working fund; charges against and credits to.

The permanent special working fund of the Navy shall be charged with the net proceeds of all sales

of surplus and condemned stores; with refunds to bidders at sales and to special depositors; and with all labor, overhead, material, and services incident to work done not chargeable to naval appropriations; and shall be credited with all funds received as payment or advances for surplus stores, for condemned stores, and for all expenses incident to work not chargeable to naval appropriations. (May 28, 1924, ch. 203, 43 Stat. 195.)

§ 644. Naval Supply Account fund; charges against.

There shall be a naval supply account fund, which shall be charged with the cost of all stores procured for and credited with the value of all issues or sales made from the naval supply account. Deficiencies under appropriations for the Naval Establishment for the fiscal year 1920 and prior years shall be charged to this fund, to which shall be transferred the unexpended balances of annual appropriations for the Naval Establishment for the fiscal years 1919 and 1920. (Mar. 1, 1921, ch. 89, § 1, 41 Stat. 1169.)

§ 644a. Same; printing stock catalogue.

The cost of printing a Federal standard stock catalogue, and changes therein, when compiled and adopted by such Federal agency as may be designated by the President, shall be charged to the "Naval Supply Account Fund", and this fund shall be reimbursed, when copies are issued to the several departments and establishments, from the appropriations available for the procurement of supplies. (Mar. 2, 1929, ch. 483, 45 Stat. 1461.)

§ 645. Prices of material expended from naval supply account; issue of certain material at reduced prices.

The prices at which material is to be expended from the naval supply account shall be fixed by the Paymaster General of the Navy, subject to the approval of the Secretary of the Navy, and materials purchased during the war shall be issued at reduced prices in all cases appropriate, such differences in values and losses to be charged to the respective funds; and no charges on this account shall be made to naval appropriations. (Mar. 1, 1921, ch. 89, § 1, 41 Stat. 1170.)

§ 646. Overhead charges charged against appropriations.

There shall be charged against the several appropriations for the support of the Naval Establishment the overhead charges incident to upkeep and to industrial work at navy yards and stations. The total sum so charged shall be distributed in accordance with the work done in the various yards and stations in order that the cost of work may be determined. (June 30, 1914, ch. 130, 38 Stat. 413.)

§ 647. Direct and indirect charges included in cost of work under naval appropriations.

In fixing the cost of work under the various naval appropriations, the direct and indirect charges incident thereto shall be included in such cost. The Bureau of Supplies and Accounts shall keep the money accounts of the Naval Establishment in such manner as to show such charges, and shall report

the same annually for the information of Congress. (Mar. 4, 1911, ch. 239, 36 Stat. 1267.)

**§ 648. Equipment outfits charged against appropriation "Increase of the Navy, construction and machinery."**

Equipment outfits for the Navy shall be charged to appropriation "Increase of the Navy, construction and machinery." (Mar. 3, 1915, ch. 83, 38 Stat. 952.)

**§ 649. Expenses of certain naval auxiliaries charged against appropriation "Fuel and transportation."**

When the lowest obtainable cost of transportation of fuel between the Atlantic and Pacific coasts of the United States by merchant carriers is considered excessive, the appropriation "Fuel and transportation" may be charged with the expense of pay, transportation, shipping, and subsistence of civilian officers and crews, and such other incidental expenses as cannot be paid from other appropriations, of naval auxiliaries engaged in the transportation of fuel: *Provided*, That the appropriation "Maintenance of naval auxiliaries" is insufficient therefor. (Mar. 3, 1915, ch. 83, 38 Stat. 944.)

**§ 650. Charge against fund "Pay of the Army" of detained pay.**

Sums known as "detained pay," which have already been or may hereafter be withheld from the monthly pay of enlisted men of the Army in obedience to court-martial sentences, shall, when repaid, become a charge against the fund "Pay of the Army" for the year in which said enlisted men have been or may be discharged. (Aug. 6, 1894, ch. 228, 28 Stat. 236.)

**§ 650a. Appropriations for travel of Military Establishment and War Department personnel; charged with expenses of personnel relieved from duty while traveling under orders.**

Appropriations available for travel of personnel of the Military Establishment or employees under the War Department which are current at the date of relief from duty station of such personnel traveling under orders shall be charged with all expenses properly chargeable to such appropriations in connection with the travel enjoined, including travel of dependents and transportation of authorized baggage and household effects of such personnel, regardless of the dates of arrival at destination of the persons so traveling. (June 13, 1940, ch. 343, § 1, 54 Stat. 356.)

**SIMILAR PROVISIONS**

The text of this section was taken from Military Appropriation Act, 1941. Similar provisions were contained in the following acts:

1939—Apr. 26, 1939, ch. 88, § 1, 53 Stat. 598.

1938—June 11, 1938, ch. 347, § 1, 52 Stat. 647.

1937—July 1, 1937, ch. 423, § 1, 50 Stat. 448.

**§ 651. Disbursements; for Signal Corps.**

Section, act Aug. 30, 1890, ch. 837, § 1, 26 Stat. 399; act Feb. 24, 1891, ch. 284, 26 Stat. 779, is now covered by sections 586, 587, and 588 of this title.

**§ 652. Appropriations for Quartermaster Corps; no payment of extra-duty pay at West Point.**

Section, act Mar. 2, 1907, ch. 2511, 34 Stat. 1167; act Aug. 24, 1912, ch. 391, § 3, 37 Stat. 591, is now covered by

act June 4, 1920, ch. 227, § 4, 41 Stat. 761, which supplanted all laws and parts of laws providing for extra duty pay for enlisted men.

**§ 653. Appropriations for horses; expenditures from.**

No part of any appropriation shall be expended for defraying expenses of Army officers, enlisted men, or horses in attending or taking part in horse shows or horse races; but nothing in this section shall be held to apply to the officers, enlisted men, and horses of any troop, battery, or company which shall, by order or permission of the Secretary of War, and within the limits of the United States, attend any horse show or any State, county, or municipal fair, celebration, or exhibition. (Apr. 27, 1914, ch. 72, 38 Stat. 363.)

**§ 654. Appropriations for support of Army; use for supplies for subsequent years.**

Funds appropriated for support of the army may be used for the procurement of supplies to be held in store for issue to the Army during subsequent fiscal years. (Mar. 4, 1915, ch. 143, § 1, 38 Stat. 1078.)

**§ 655. Appropriations for ordnance-stores ammunition, available for two years.**

The appropriations "Ordnance-stores ammunition", "Small-arms target practice", and "Ordnance stores and supplies" shall be available for two years to procure the stores authorized by them. (Mar. 2, 1907, ch. 2511, 34 Stat. 1175.)

**§ 656. Cost of transportation of material charged to appropriations for work in connection with which transportation charges required.**

The cost of transportation of material in connection with the manufacturing and purchasing activities of the Signal Corps, Ordnance Department, Chemical Warfare Service, Air Corps, Medical Department, Engineer Department, and the Coast Artillery Corps, and in connection with the construction and installation of fire-control projects at seacoast fortifications by the Coast Artillery Corps may be charged to the appropriations for the work in connection with which such transportation charges are required; and the Budget estimates for each of such appropriations shall hereafter carry separately the amounts required for such transportation costs. (Mar. 2, 1923, ch. 178, title I, 42 Stat. 1391; July 2, 1926, ch. 721, § 1, 44 Stat. 780.)

**§ 657. Appropriations for Ordnance Department; no expenditure for freight charges.**

No part of the appropriations made for the Ordnance Department shall be used in payment of freight charges on ordnance or ordnance stores issued by said department. (June 30, 1902, ch. 1328, 32 Stat. 520.)

**§ 658. Expenses of manufacturing operations by Chief of Ordnance charged against appropriations therefor.**

The Chief of Ordnance, in conducting manufacturing or similar operations, may charge any indirect or general expense for labor or material therefor against any of the appropriations authorizing these operations in such manner as is most economical and

efficient, provided that the methods adopted shall show that each of such appropriations bears its ratable share of the total amount of these expenses. (Mar. 2, 1907, ch. 2507, 34 Stat. 1062.)

**§ 659. Use of material procured under any appropriation by Chief of Ordnance.**

The Chief of Ordnance, in conducting manufacturing or similar operations under any particular appropriation may use material procured under any appropriation and replace the same in kind or otherwise: *Provided*, That in doing so the methods shall be such that each appropriation will be charged with the full value of the material used in carrying out its object. (Mar. 4, 1911, ch. 242, 36 Stat. 1344.)

**§ 660. Expenses of Ordnance Department in procuring stores for other departments or bureaus.**

Whenever the Ordnance Department, under existing regulations, procures stores for other executive departments or bureaus, including the Philippine government, its appropriations shall be applicable to defray the necessary expenses in connection with the procurement, subject to reimbursement from time to time, or on completion of the work, from the department or bureau for which the stores were procured. (June 12, 1906, ch. 3078, 34 Stat. 258.)

**§ 661. Appropriation for Coast and Geodetic Survey; purchases from.**

The Secretary of Commerce is authorized to purchase, from the appropriation for the United States Coast and Geodetic Survey, provisions, clothing, and small stores for the enlisted men, and food supplies for field parties working in remote localities, such provisions, clothing, small stores, and food supplies to be sold to the employees of said survey and the appropriation reimbursed. (Mar. 3, 1901, ch. 853, § 1, 31 Stat. 1144; Feb. 14, 1903, ch. 552, § 4, 32 Stat. 826.)

**§ 662. Appropriations for Fish and Wildlife Service; purchases from.**

The Secretary of Interior may purchase, to the extent of not to exceed \$5,000, from the appropriations for the Fish and Wildlife Service, clothing and small stores for the crews of vessels, to be sold to the employees of said service and the appropriations reimbursed. (July 1, 1918, ch. 113, § 1, 40 Stat. 694; Reorg. Plan No. II, § 4 (e) (f), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1433; Reorg. Plan No. III, § 3, June 30, 1940, 5 Fed. Reg. 2108, 54 Stat. 1232.)

**TRANSFER OF FUNCTIONS**

Bureau of Fisheries was consolidated with Bureau of Biological Survey into Fish and Wildlife Service in Department of Interior, and offices of Commissioner and Deputy Commissioner of Fisheries were abolished by Reorg. Plan No. III, § 3, cited to text, set out in note under section 133t of Title 5. See, also, sections 8 and 9 of said plan for provisions relating to transfer of records, property, personnel, and funds. The Bureau had been previously transferred to Department of Interior by Reorg. Plan No. II, § 4 (e), cited to text, also set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

**§ 663. Expenditures for supplies for courts and judicial officers.**

Money appropriated for supplies for the United States courts and judicial officers, shall be expended

in payment for such supplies only as shall be purchased, in the discretion of the Attorney General, for delivery at the Department of Justice for distribution. (June 28, 1902, ch. 1301, § 1, 32 Stat. 476.)

**CROSS REFERENCE**

Director of the Administrative Office of the United States courts to have charge of the disbursement of moneys appropriated for the maintenance, support and operation of the courts, see section 446 of Title 28, Judicial Code and Judiciary.

**§ 664. Appropriation for furniture, and repairs for public buildings; certain expenditures prohibited.**

Expenditures for traveling expenses and subsistence of persons detailed to assist the inspector and assistant inspector of furniture shall not be made from the appropriation for "Furniture and repairs of same, for public buildings." (June 25, 1910, ch. 384, § 1, 36 Stat. 710.)

**§ 665. Expenditures in excess of appropriations; voluntary service forbidden; apportionment of appropriations for contingent expenses or other general purposes.**

No executive department or other Government establishment of the United States shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract or other obligation for the future payment of money in excess of such appropriations unless such contract or obligation is authorized by law. Nor shall any department or any officer of the Government accept voluntary service for the Government or employ personal service in excess of that authorized by law, except in cases of sudden emergency involving the loss of human life or the destruction of property. All appropriations made for contingent expenses or other general purposes, except appropriations made in fulfillment of contract obligations expressly authorized by law, or for objects required or authorized by law without reference to the amounts annually appropriated therefor, shall, on or before the beginning of each fiscal year, be so apportioned by monthly or other allotments as to prevent expenditures in one portion of the year which may necessitate deficiency or additional appropriations to complete the service of the fiscal year for which said appropriations are made; and all such apportionments shall be adhered to and shall not be waived or modified except upon the happening of some extraordinary emergency or unusual circumstance which could not be anticipated at the time of making such apportionment, but this provision shall not apply to the contingent appropriations of the Senate or House of Representatives; and in case said apportionments are waived or modified as herein provided, the same shall be waived or modified in writing by the head of such executive department or other Government establishment having control of the expenditure, and the reasons therefor shall be fully set forth in each particular case and communicated to Congress in connection with estimates for any additional appropriations required on account thereof. Any person violating any provision of this section shall be summarily removed from office and may also be punished by a fine of not less

than \$100 or by imprisonment for not less than one month. (R. S. § 3679; Mar. 3, 1905, ch. 1484, § 4, 33 Stat. 1257; Feb. 27, 1906, ch. 510, § 3, 34 Stat. 48.)

#### DERIVATION

Act July 12, 1870, ch. 251, § 7, 16 Stat. 251.

#### TRANSFER OF FUNCTIONS

Functions of making, waiving, and modifying apportionments of appropriations as transferred to Director of the Bureau of the Budget, see Ex. Ord. No. 6166, § 16, set out as note under section 132 of Title 5, Executive Departments and Government Officers and Employees.

#### CROSS REFERENCES

Administrator of Rural Electrification Administration empowered to accept and utilize voluntary and uncompensated services of Federal, State, and local officers and employees in carrying out his program, see section 911 of Title 7, Agriculture.

Removal of persons in classified civil service to be only for cause, see section 652 of Title 5, Executive Departments and Government Officers and Employees.

Unexpended balances of funds appropriated for other agencies to be available for expenditure by Maritime Commission without regard to requirement of apportionment under this section, see section 1119 of Title 46, Shipping.

#### § 666. Gratuitous services of members of Officers' Reserve Corps.

Section 665 of this title shall not be construed to prohibit the Secretary of War from accepting the gratuitous services of members of the Officers' Reserve Corps of the Army in the furtherance of the enrollment, organization, and training of the Officers' Reserve Corps, the Reserve Officers' Training Corps, or the Enlisted Reserve Corps of the Army or in consultation upon matters relating to the military service. (May 12, 1917, ch. 12, 40 Stat. 72.)

#### § 667. Contracts for fuel for public buildings in advance of appropriations.

The Secretary of the Treasury is authorized to contract for the purchase of fuel for public buildings under the control of the Treasury Department in advance of the availability of the appropriation for the payment thereof. Such contracts, however, shall not exceed the necessities of the current fiscal year. (Feb. 17, 1922, ch. 55, 42 Stat. 388; Jan. 3, 1923, ch. 22, 42 Stat. 1109; Apr. 4, 1924, ch. 84, title I, 43 Stat. 83; Jan. 22, 1925, ch. 87, title I, 43 Stat. 781; Mar. 2, 1926, ch. 43, title I, 44 Stat. 154; Jan. 26, 1927, ch. 58, title I, 44 Stat. 1045; Mar. 5, 1928, ch. 126, title I, § 1, 45 Stat. 186.)

#### TRANSFER OF FUNCTIONS

Functions relating to procurement of supplies, etc., exercised by any other agency, transferred to Procurement Division, see Ex. Ord. No. 6166, § 1, eff. June 10, 1933, set out in note under section 132 of Title 5, Executive Departments and Government Officers and Employees.

Public Buildings Branch of Procurement Division transferred to Public Buildings Administration within Federal Works Agency, see Reorg. Plan No. I, §§ 301, 303, 4 Fed. Reg. 2729, 53 Stat. 1426, 1427, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

#### § 668. Contracts for fuel by Secretary of War without regard to current fiscal year.

When, in the opinion of the Secretary of War, it is in the interest of the United States so to do, he is authorized to enter into contracts and to incur obligations for fuel in sufficient quantities to meet the

requirements for one year without regard to the current fiscal year, and payments for supplies delivered under such contracts may be made from funds appropriated for the fiscal year in which the contract is made, or from funds appropriated or which may be appropriated for such supplies for the ensuing fiscal year. (June 30, 1921, ch. 33, § 1, 42 Stat. 78.)

#### TRANSFER OF FUNCTIONS

Functions relating to procurement of supplies, etc., exercised by any other agency, transferred to Procurement Division, see Executive Order June 10, 1933, No. 6166, § 1, set out in note under section 132 of Title 5, Executive Departments and Government Officers and Employees.

Public Buildings Branch of Procurement Division transferred to Public Buildings Administration within Federal Works Agency, see Reorg. Plan No. I, §§ 301, 303, 4 Fed. Reg. 2729, 53 Stat. 1426, 1427, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

#### § 668a. Metered services extending beyond fiscal year, appropriation chargeable.

Hereafter, in making payments for commodities or services the quantity of which is determined by metered readings, such as gas, electricity, water, steam, and the like, and for telephone services, where the period covered by the charge begins in one fiscal year or allotment period and ends in another, the entire amount of the payment may be regarded as a charge against the appropriation or allotment current at the end of such period. (April 27, 1937, ch. 143, 50 Stat. 119; April 26, 1939, ch. 103, 53 Stat. 624.)

#### § 669. Apportionment of contingent fund of departments to offices and bureaus.

In addition to the apportionment required by section 665 of this title, the head of each executive department shall, on or before the beginning of each fiscal year, apportion to each office or bureau of his department the maximum amount to be expended therefor during the fiscal year out of the contingent fund or funds appropriated for the entire year for the department, and the amounts so apportioned shall not be increased or diminished during the year for which made except upon the written direction of the head of the department, in which there shall be fully expressed his reasons therefor; and there shall not be purchased out of any other fund any article for use in any office or bureau of any executive department in Washington, District of Columbia, which could be purchased out of the appropriations made for the regular contingent funds of such department or of its offices or bureaus. (Aug. 23, 1912, ch. 350, § 6, 37 Stat. 414.)

#### TRANSFER OF FUNCTIONS

Functions of making, waiving, and modifying apportionments of appropriations transferred to Director of the Bureau of the Budget, see Ex. Ord. No. 6166, § 16, set out as note under section 132 of Title 5, Executive Departments and Government Officers and Employees.

#### § 670. Footing of paragraphs to determine amount appropriated.

The total amount appropriated in the various paragraphs of an appropriation Act shall be determined by the correct footing up of the specific sums or rates appropriated in each paragraph contained therein unless otherwise expressly provided. (May 28, 1896, ch. 252, § 1, 29 Stat. 148.)



**§ 671. Appropriations for contingent expenses of Congress; restrictions.**

Appropriations made for contingent expenses of the House of Representatives or the Senate shall not be used for the payment of personal services except upon the express and specific authorization of the House or Senate in whose behalf such services are rendered. Nor shall such appropriations be used for any expenses not intimately and directly connected with the routine legislative business of either House of Congress, and the General Accounting Office shall apply the provisions of this section in the settlement of the accounts of expenditures from said appropriations incurred for services or materials. (Feb. 14, 1902, ch. 17, § 1, 32 Stat. 26; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

**§ 671a. Same; restrictions on use of Senate contingent appropriations for personal expenses.**

No part of any appropriation made for the contingent expenses of the Senate shall be used to defray the expenses of any person except the members of any congressional committee, the Sergeant at Arms of the Senate or a representative of his office, and except the widow or minor children or both of the deceased, to attend the funeral rites and burial of any person who at the time of his or her death was a Senator of the United States. (Oct. 9, 1940, ch. 780, title I, 54 Stat. 1031.)

**§ 672. Expenses of commissions and inquiries.**

No accounting or disbursing officer of the Government shall allow or pay any account or charge whatever, growing out of, or in any way connected with, any commission or inquiry, except courts-martial or courts of inquiry in the military or naval service of the United States, until special appropriations shall have been made by law to pay such accounts and charges. This section, however, shall not extend to the contingent fund connected with the foreign intercourse of the Government, placed at the disposal of the President. (R. S. § 3681.)

**DERIVATION**

Act Aug. 26, 1842, ch. 202, § 25, 5 Stat. 533.

**§ 673. Use of public moneys or appropriations for compensation or expenses of commission; details from executive departments to such commission prohibited.**

No part of the public moneys, or of any appropriation made by Congress, shall be used for the payment of compensation or expenses of any commission, council, board, or other similar body, or any members thereof, or for expenses in connection with any work or the results of any work or action of any commission, council, board, or other similar body, unless the creation of the same shall be or shall have been authorized by law; nor shall there be employed by detail, hereafter or heretofore made, or otherwise personal services from any executive department or other Government establishment in connection with any such commission, council, board, or other similar body. (Mar. 4, 1909, ch. 299, § 9, 35 Stat. 1027.)

**§ 674. Restrictions on contingent appropriations.**

No moneys appropriated for contingent, incidental, or miscellaneous purposes shall be expended or

paid for official or clerical compensation. (R. S. § 3682.)

**DERIVATION**

Act July 12, 1870, ch. 251, § 3, 16 Stat. 250.

**§ 675. Purchases from contingent funds.**

Except as otherwise provided no part of the contingent fund appropriated to any department, bureau, or office, shall be applied to the purchase of any articles except such as the head of the department shall deem necessary and proper to carry on the business of the department, bureau, or office, and shall, by written order, direct to be procured. (R. S. § 3683.)

**DERIVATION**

Act Aug. 26, 1842, ch. 202, § 19, 5 Stat. 527.

**§ 676. Purchases by Department of Commerce.**

Section 675 of this title shall not apply to any purchase made by the Department of Commerce when the aggregate amount involved does not exceed the sum of \$25. (Mar. 3, 1921, ch. 124, § 1, 41 Stat. 1303.)

**§ 677. Expenditure of appropriations for contingent expenses of Post Office Department.**

The appropriations for the contingent expenses of the Post Office Department shall be expended as specially directed in the law, and according to the appropriations for the items specifically named, and no moneys appropriated for the specific purposes named under the head of "For contingent expenses of the Post Office Department" shall be diverted from one purpose to another; and all moneys unexpended for one or more specific purposes shall be turned into the Treasury, and not expended, by the superintendent and disbursing officer, for any object or purpose whatsoever other than the specific ones named in the appropriation for the "Contingent expenses of the Post Office Department." (June 19, 1878, ch. 329, § 1, 20 Stat. 203.)

**§ 678. Purchases of books from appropriations for contingent expenses.**

Law books, books of reference, and periodicals for use of any executive department, or other Government establishment not under an executive department, at the seat of Government, shall not be purchased or paid for from any appropriation made for contingent expenses or for any specific or general purpose unless such purchase is authorized and payment therefor specifically provided in the law granting the appropriation. (Mar. 15, 1898, ch. 68, § 3, 30 Stat. 316.)

**§ 679. Expenditure from appropriations for private telephone service.**

Except as otherwise provided by law, no money appropriated by any Act shall be expended for telephone service installed in any private residence or private apartment or for tolls or other charges for telephone service from private residences or private apartments, except for long-distance telephone tolls required strictly for the public business, and so shown by vouchers duly sworn to and approved by the head of the department, division, bureau, or office in which the official using such telephone or incurring the expense of such tolls shall be employed: *Provided*,

That the cost of installation and use of telephones in residences leased or owned by the Government of the United States in foreign countries for the use of the Foreign Service may be allowed from Government funds, under such regulations as may be prescribed by the Secretary of State, except that the restrictions in this section relating to long-distance tolls shall also apply to telephones installed in such official residences. (Aug. 23, 1912, ch. 350, § 7, 37 Stat. 414; Apr. 30, 1940, ch. 175, § 4 Stat. 175.)

**§ 680. Same; Chief of Engineers; locks and dams.**

The provisions of section 679 of this title, or any other law, prohibiting the expenditure of public money for telephone services installed in private residences, shall not be construed to apply to or forbid the installation and use of such telephones as the Chief of Engineers may certify to be necessary for the prosecution of Government business and as the Secretary of War may authorize in connection with the construction and operation of locks and dams in the navigable waters of the United States. (Sept. 22, 1922, ch. 427, § 7, 42 Stat. 1042.)

**§ 680a. Long distance telephone tolls; payment from appropriations.**

Hereafter no part of any appropriation for any executive department, establishment, or agency shall be used for the payment of long-distance telephone tolls except for the transaction of public business which the interests of the Government require to be so transacted; and all such payments shall be supported by a certificate by the head of the department, establishment, or agency concerned, or such subordinate as he may specially designate, to the effect that the use of the telephone in such instances was necessary in the interest of the Government. (May 10, 1939, ch. 119, § 4, 53 Stat. 738.)

**§ 681. Buildings under control of Treasury Department.**

All appropriations for public buildings under the control of the Treasury Department shall be available immediately upon the approval of the Act containing such appropriations. (R. S. § 3684.)

**DERIVATION**

Act June 10, 1872, ch. 415, § 1, 17 Stat. 352.

**TRANSFER OF FUNCTIONS**

Transfer of Public Buildings Branch of Procurement Division to Public Buildings Administration within Federal Works Agency, see Reorg. Plan No. I, §§ 301, 303, 4 Fed. Reg. 2729, 53 Stat. 1426, 1427, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

**CROSS REFERENCE**

Functions of Procurement Division respecting public buildings, see Ex. Ord. No. §166, § 1, note to section 132 of Title 5, Executive Departments and Government Officers and Employees.

**§ 682. Appropriations for public buildings available until completion of work.**

All moneys appropriated for the construction of public buildings shall remain available until the completion of the work for which they are, or may be, appropriated; and upon the final completion of each or any of said buildings, and the payment of all out-

standing liabilities therefor, the balance or balances remaining shall be immediately covered into the Treasury. (June 23, 1874, ch. 476, § 1, 18 Stat. 275.)

**§ 683. Appropriations for public buildings available only for purposes specifically enumerated; separate estimates for administrative work; appointments.**

The appropriations made to carry into effect the provisions of legislation authorizing the acquisition of land for sites for public buildings or the enlargement thereof, or for the construction, enlargement, extension, remodeling, or special repairs of public buildings under the control of the Treasury Department, shall be deemed to be available only for the purposes specifically enumerated in said legislation, and the Secretary of the Treasury shall submit to Congress annually detailed estimates of appropriations necessary for defraying all expenses, both in the office of the Supervising Architect and in the field, of every kind and character incident to, or requisite for, the administrative work of carrying into effect the provisions of public-building Acts, so far as the same relate to public buildings under the control of the Treasury Department, such estimates to be in addition to and separate and apart from the estimates of appropriations providing specifically for the salaries of certain officers and employees in the office of the Supervising Architect. The appropriations for said administrative work, when made, shall be immediately available for such personal services and all other expenses and supplies, both for office and field work, as the Secretary of the Treasury may deem necessary and specially order or approve to carry into effect the provisions of Acts relating to the acquisition of land for sites or the enlargement thereof, or for the construction, enlargement, extension, remodeling, or special repairs of public buildings under the control of the Treasury Department, including the annual appropriations under the control of the Supervising Architect: *Provided*, That such persons as may be regularly appointed and paid from such appropriations shall be subject, in all respects, to the laws, rules, and regulations respecting entrance into or separation from the classified civil service of the United States, and shall be employed only in the office of the Supervising Architect or in field work of construction and repair under his supervision and control, and the Secretary of the Treasury shall annually submit to Congress in the estimates a statement, showing the names of all persons whose salaries or compensation are paid from said appropriations, their duties, and the rate of compensation and the amount paid to each of them, respectively: *And provided further*, That this section shall not be construed as rendering unavailable for the employment of personal services in the office of the Supervising Architect, or for any other purpose now authorized by law, any of the annual appropriations under the control of the Supervising Architect. All appropriations made for extension of the limits of cost of public buildings or sites, or for the acquisition of land for sites, or the enlargement thereof, or for the erection, enlargement, extension, remodeling, or special repairs of public buildings under the control of the Treasury Department, or for any annual ap-

propriation under the control of the Supervising Architect, shall be subject to the provisions hereof. (May 30, 1908, ch. 228, § 6, 35 Stat. 537; June 10, 1921, ch. 18, § 204, 42 Stat. 21.)

#### TRANSFER OF FUNCTIONS

The Office of the Supervising Architect of the Treasury Department was transferred to the Public Buildings Branch of the Procurement Division of the Treasury Department under Ex. Ord. No. 6166, § 1, set out in note to section 132 of Title 5, Executive Departments and Government Officers and Employees. By Reorg. Plan No. 1, cited to text, and set out in note to section 133t of Title 5, the Public Buildings Branch of the Procurement Division of the Treasury Department was transferred to the Public Buildings Administration, Federal Works Agency, and all functions of the Secretary of the Treasury relating to the Public Buildings Branch of the Procurement Division and to the selection of location and sites for public buildings were transferred to the Federal Works Administrator.

Functions of making, waiving, and modifying appropriations of appropriations as transferred to Director of the Bureau of the Budget, see Ex. Ord. No. 6166, § 16, set out as note under section 132 of Title 5, Executive Departments and Government Officers and Employees.

#### CROSS REFERENCE

Detailed estimates, see sections 24 and 581 of this title.

#### § 684. Pay of assistant custodians and janitors.

No fund appropriated, other than that for pay of assistant custodians and janitors and personal services in connection with the care of public buildings under control of the Treasury Department outside the District of Columbia, shall be used for this service. (Mar. 3, 1901, ch. 853, § 1, 31 Stat. 1153.)

#### TRANSFER OF FUNCTIONS

Functions of Procurement Division respecting public buildings, see Ex. Ord. No. 6166, § 1, set out as note to section 132 of Title 5, Executive Departments and Government Officers and Employees.

Transfer of Public Buildings Branch of Procurement Division to Public Buildings Administration within Federal Works Agency, see Reorg. Plan No. 1, §§ 301, 303, 4 Fed. Reg. 2729, 58 Stat. 1426, 1427, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

#### § 685. Lighthouses.

Appropriations for establishing lighthouses shall be available for expenditure for two years after acts of State legislatures ceding jurisdiction over sites take effect. This section shall not, however, apply to general appropriations for lighthouse purposes. In no case shall any special appropriation be available for more than two years without further provision of law. (R. S. § 3685.)

#### DERIVATION

Act June 10, 1872, ch. 415, § 1, 17 Stat. 355.

#### CROSS REFERENCE

Appropriations for lighthouses to continue available until otherwise ordered by Congress, see section 713 of this title.

#### § 686. Purchase or manufacture of stores or materials or performance of services by bureau or department for another bureau or department.

(a) Any executive department or independent establishment of the Government, or any bureau or office thereof, if funds are available therefor and if it is determined by the head of such executive department, establishment, bureau, or office to be in

the interest of the Government so to do, may place orders with any other such department, establishment, bureau, or office for materials, supplies, equipment, work, or services, of any kind that such requisitioned Federal agency may be in a position to supply or equipped to render, and shall pay promptly by check to such Federal agency as may be requisitioned, upon its written request, either in advance or upon the furnishing or performance thereof, all or part of the estimated or actual cost thereof as determined by such department, establishment, bureau, or office as may be requisitioned; but proper adjustments on the basis of the actual cost of the materials, supplies, or equipment furnished, or work or services performed, paid for in advance, shall be made as may be agreed upon by the departments, establishments, bureaus, or offices concerned: *Provided, however*, That if such work or services can be as conveniently or more cheaply performed by private agencies such work shall be let by competitive bids to such private agencies. Bills rendered, or requests for advance payments made, pursuant to any such order, shall not be subject to audit or certification in advance of payment.

(b) Amounts paid as provided in subsection (a) shall be credited, (1) in the case of advance payments, to special working funds, or (2) in the case of payments other than advance payments, to the appropriations or funds against which charges have been made pursuant to any such order, except as hereinafter provided. The Secretary of the Treasury shall establish such special working funds as may be necessary to carry out the provisions of this subsection. Such amounts paid shall be available for expenditure in furnishing the materials, supplies, or equipment, or in performing the work or services, or for the objects specified in such appropriations or funds. Where materials, supplies, or equipment are furnished from stocks on hand, the amounts received in payment therefor shall be credited to appropriations or funds, as may be authorized by other law, or, if not so authorized, so as to be available to replace the materials, supplies, or equipment, except that where the head of any such department, establishment, bureau, or office determines that such replacement is not necessary the amounts paid shall be covered into the Treasury as miscellaneous receipts.

(c) Orders placed as provided in subsection (a) shall be considered as obligations upon appropriations in the same manner as orders or contracts placed with private contractors. When the stores being procured by one bureau of the War or Navy Departments for another bureau of such departments are for current issue during the year stores of equal value may be issued from stock on hand in place of any of those aforesaid. (Mar. 4, 1915, ch. 143, § 1, 38 Stat. 1084; May 21, 1920, ch. 194, § 7, 41 Stat. 613; June 30, 1932, ch. 314, § 601, 47 Stat. 417; June 22, 1936, ch. 689, title IV, § 8, 49 Stat. 1648.)

#### TRANSFER OF FUNCTIONS

Functions relating to procurement of stores, supplies, etc., exercised by any other agency, transferred to Procurement Division, see Ex. Ord. No. 6166, § 1, set out as note under section 132 of Title 5, Executive Departments and Government Officers and Employees.

## CROSS REFERENCE

Availability of advance payments, see section 686c of this title.

**§ 686a. Materials or services ordered from Navy; payment.**

Any executive department or independent establishment of the Government ordering materials or services from the Navy shall pay promptly by check upon written request from the Paymaster General of the Navy, either in advance or upon completion of the work, all or part of the estimated or actual cost thereof, as the case may be, and bills rendered in accordance herewith shall not be subject to audit or certification in advance of payment: *Provided*, That proper adjustments on the basis of the actual cost of delivery of work paid for in advance shall be made. (May 21, 1926, ch. 355, 44 Stat. 605.)

**§ 686b. Former section 686 effective as to funds transferred prior to amendment; convict labor; new provisions as additions to laws relating to working funds.**

(a) Notwithstanding the provisions of this section and amendment of section 686 of this title, said section 686, as in force prior to June 30, 1932, shall remain in force with respect to the disposition of funds transferred thereunder prior to such date.

(b) Nothing in this section or section 686 shall be construed to authorize any Government department or independent establishment, or any bureau or office thereof, to place any orders for material, supplies, equipment, work, or services to be furnished or performed by convict labor, except as otherwise provided by existing law.

(c) The provisions of this section and section 686 are in addition to and not in substitution for the provisions of any other law relating to working funds. (June 30, 1932, ch. 314, § 602, 47 Stat. 418.)

## CROSS REFERENCE

Availability of advance payments, see section 686c of this title.

**§ 686c. Availability of advance payments under section 686.**

After June 30, 1936, advance payments under section 686 of this title shall have no longer period of availability for obligation than the appropriation from which such advance payments are made. (June 22, 1936, ch. 689, title IV, § 8, 49 Stat. 1648.)

**§ 687. Appropriations for Court of Customs and Patent Appeals; detailed statement of expenditure.**

A detailed statement of the expenditure of the appropriations for the United States Court of Customs and Patent Appeals shall be submitted to Congress at the beginning of each regular session thereof. (Mar. 4, 1911, ch. 237, § 1, 36 Stat. 1234; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475.)

**8. System of bookkeeping in Bureau of Indian Affairs; allotment of appropriations; classified statement to accompany estimates.**

A system of bookkeeping shall be used in the Bureau of Indian Affairs, which will afford a ready analysis of expenditures by appropriations and allotments and by units of the service, showing for each

class of work or activity carried on, the expenditures for the operation of the service, for repairs and preservation of property, for new and additional property, salaries and wages of employees, and for other expenditures. Provision shall be made by the Secretary of the Interior for further analysis of each of the foregoing classes of expenditures, if, in his judgment, he shall deem it advisable.

Annually a detailed statement of expenditures, as hereinbefore described, shall be incorporated in the annual report of the Commissioner of Indian Affairs and transmitted by the Secretary of the Interior to Congress on or before the first Monday in December.

Before any appropriation for the Indian Service is obligated or expended, the Secretary of the Interior shall make allotments thereof in conformity with the intent and purpose of this section, and such allotments shall not be altered or modified except with his approval. (June 30, 1913, ch. 4, § 26, 38 Stat. 103.)

## TRANSFER OF FUNCTIONS

Functions of making, waiving, and modifying apportionments of appropriations transferred to the Director of the Bureau of the Budget, see Ex. Ord. No. 6166, § 16, set out as note to section 132 of Title 5, Executive Departments and Government Officers and Employees.

**§ 689. Appropriations under control of Architect of Capitol; availability for expenses of advertising.**

Appropriations under the control of the Architect of the Capitol shall be available for expenses of advertising and personal and other services. (Feb. 28, 1929, ch. 367, § 1, 45 Stat. 1395; June 6, 1930, ch. 407, § 1, 46 Stat. 513.)

## PERMANENT ANNUAL APPROPRIATIONS

**§ 711. Permanent indefinite appropriations.**

There are appropriated, out of any moneys in the Treasury not otherwise appropriated, for the purposes hereinafter specified, such sums as may be necessary for the same, respectively; and such appropriations shall be deemed permanent annual appropriations.

## TREASURY DEPARTMENT

**(1) Consular receipts.**

For payment of the proceeds of the personal estates of American citizens who die abroad, to the legal representatives of the said deceased party upon proper demand and proof.

**(2) Interest on public debt.**

For payment of interest on the public debt, under the several Acts authorizing the same.

**(3) Refunding moneys erroneously received and covered.**

To refund moneys received and covered into the Treasury before the payment of legal and just charges against the same.

**(4)-(6) Repealed. June 26, 1934, ch. 756, §§ 1, 2, 48 Stat. 1225.**

**(7) Repayment of excess of deposits for unascertained duties (customs).**

To repay to importers the excess of deposits for unascertained customs duties, or duties or other moneys paid under protest.

(8) Repealed. June 26, 1934, ch. 756, § 2, 48 Stat. 1226.

(9) Public Health Service.

The proceeds of leases and sales of marine-hospital buildings, and lands appertaining thereto, for the Public Health Service, except allotments and reimbursements on account of patients of the Veterans' Administration shall be covered into the Treasury as miscellaneous receipts.

(10), (11) Repealed. June 26, 1934, ch. 756, § 2, 48 Stat. 1226.

#### WAR DEPARTMENT

(12) Soldiers' Home.

For the support of the Soldiers' Home the following funds are set apart and appropriated: All stoppages or fines adjudged against soldiers by sentence of courts martial over and above any amount that may be due for the reimbursement of Government or of individuals; all forfeitures on account of desertion; and all moneys belonging to the estates of deceased soldiers, which are or may be unclaimed for the period of three years subsequent to the death of said soldier or soldiers, to be repaid by the commissioners of the institution, upon the demand of the heirs or legal representatives of the deceased.

(13) Horses and other property lost in military service.

To pay for horses, mules, oxen, wagons, carts, sleighs, harness, steamboats, and other vessels, railroad engines and railroad cars, killed, lost, captured, destroyed, or abandoned while in the military service under the provisions of sections 191-199, 201-214, 231-235 of this title.

#### NAVY DEPARTMENT

(14) Indemnity for lost clothing.

To allow and pay to each person, not an officer, employed on a vessel of the United States, sunk or otherwise destroyed, and whose personal effects have been lost, a sum not exceeding \$60. In the event of the death of the person, this sum is to be paid to his proper legal representatives.

(15) Prize money.

For the proceeds of derelict and salvage cases adjudged by the courts of the United States to salvors.

#### INTERIOR DEPARTMENT

(16) Deposits for surveying public lands.

Of the amount deposited by individuals under the provisions of Title 43, to pay the cost and expenses incident to the survey of lands, not mineral or reserved, upon which they have settled, any excess of the sums so deposited, over and above the actual cost of surveys, comprising all expenses incident thereto, for which they were severally deposited, to be repaid to the depositors, respectively.

(17) Five per centum fund to States.

To pay to the States of Missouri, Michigan, Florida, Iowa, Wisconsin, Minnesota, Oregon, and Nevada, 5 per centum of the net proceeds of sales of all public lands lying within their limits, for the purpose of education or of making public roads and improvements, in pursuance of the Acts of March 6, 1820,

chapter 22 (Third Statutes, page 547); of June 23, 1836, chapter 121 (Fifth Statutes, page 60); of March 3, 1845, chapter 75 (Fifth Statutes, page 788); of March 3, 1845, chapter 76 (Fifth Statutes, page 790); of August 6, 1846, chapter 53 (Ninth Statutes, pages 58, 179); of February 26, 1857, chapter 60 (Eleventh Statutes, page 167); of February 14, 1859, chapter 33 (Eleventh Statutes, page 384); of February 28, 1859, chapter 65 (Eleventh Statutes, page 388); and of March 21, 1864, chapter 36 (Thirteenth Statutes, page 32).

(18) Indemnity for swamp lands for States.

To pay to the States the proceeds of swamp lands within their limits which may have been erroneously sold by the United States.

(19) Refunding money for lands erroneously sold.

To pay to the purchaser or purchasers the sum or sums of money received for lands erroneously sold by the United States.

(20) Payment of interest to North Carolina Cherokees.

To pay each member of every family of the Cherokee Nation of Indians that remained in the State of North Carolina at the time of the treaty of New Echota, May 23, 1836, interest at the rate of 6 per centum per annum on a sum equal to \$53.33 for each individual member, ascertained as provided in the Act of July 29, 1848, chapter 118, section 4 (9 Stat. 264).

#### MISCELLANEOUS

(21) Smithsonian Institution.

To pay for the erection of buildings and expenses of the Smithsonian Institution, being 6 per centum on the fund derived from the bequest of James Smithsonian. (R. S. §§ 3048, 3689; June 20, 1874, ch. 328, § 4, 18 Stat. 109; Mar. 3, 1875, ch. 129, § 1, 18 Stat. 359; June 19, 1878, ch. 329, § 1, 20 Stat. 205; May 26, 1908, ch. 198, § 1, 35 Stat. 295; June 25, 1910, ch. 384, § 8, 36 Stat. 773; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309; July 3, 1930, ch. 863, § 1, 46 Stat. 1016.)

#### DERIVATION

R. S. § 3048 was from act Mar. 3, 1849, ch. 110, § 2, 9 Stat. 398.

Portions of R. S. § 3689, carried into the different paragraphs of this section were derived from the acts indicated below.

Paragraph 1: Act April 14, 1792, ch. 24, § 2, 1 Stat. 255.

Paragraph 2: Act Feb. 9, 1847, ch. 7, 9 Stat. 123.

Paragraph 3: Act July 23, 1866, ch. 208, § 12, 14 Stat. 208.

Paragraph 4: Act June 30, 1864, ch. 173, § 161, 13 Stat. 294; act June 6, 1872, ch. 315, § 41, 17 Stat. 257.

Paragraph 5: Act Oct. 16, 1837, ch. 10, § 2, 5 Stat. 207.

Paragraph 6: Act March 3, 1849, ch. 110, § 2, 9 Stat. 398.

Paragraph 7: Act June 30, 1864, ch. 171, § 16, 13 Stat. 215.

Paragraph 8: Act March 28, 1854, ch. 30, § 8, 10 Stat. 273; act March 3, 1865, ch. 80, § 13, 13 Stat. 495.

Paragraph 9: Act April 20, 1866, ch. 63, § 1, 14 Stat. 40.

Paragraph 10: Act April 2, 1844, ch. 8, § 2, 5 Stat. 653.

Paragraph 11: Act March 2, 1799, ch. 22, § 56, 1 Stat. 670.

Paragraph 12: Act March 3, 1851, ch. 25, § 7, 9 Stat. 598; act July 5, 1862, ch. 133, § 2, 12 Stat. 508.

Paragraph 13: Act March 3, 1849, ch. 129, §§ 2, 6, 9 Stat. 415, 416; act March 3, 1863, ch. 78, § 5, 12 Stat. 743.

Paragraph 14: Act July 4, 1864, ch. 248, §§ 2, 3, 13 Stat. 390.

Paragraph 15: Act June 30, 1864, ch. 174, § 16, 13 Stat. 311.

Paragraph 16: Act May 30, 1862, ch. 86, § 10, 12 Stat. 410; Res. July 1, 1864, No. 60, 13 Stat. 414.

Paragraph 17: Act March 6, 1820, ch. 22, § 6, 3 Stat. 547. Act June 23, 1836, ch. 121, § 5, 5 Stat. 60. Act March 3, 1845, ch. 75, § 1, 5 Stat. 788. Act March 3, 1845, ch. 76, § 6, 5 Stat. 790. Act Aug. 6, 1846, ch. 89, § 7, 9 Stat. 58. Act March 3, 1847, ch. 53, § 3, 9 Stat. 179. Act Feb. 26, 1857, ch. 60, § 5, 11 Stat. 167. Act Feb. 14, 1859, ch. 33, § 4, 11 Stat. 384. Act Feb. 28, 1859, ch. 65, § 1, 11 Stat. 388. Act March 21, 1864, ch. 36, § 10, 13 Stat. 32.

Paragraph 18: Act March 2, 1855, ch. 147, § 2, 10 Stat. 634.

Paragraph 19: Act Jan. 12, 1825, ch. 5, 4 Stat. 80; act Feb. 25, 1825, ch. 13, § 3, 4 Stat. 91; act Feb. 28, 1859, ch. 64, § 1, 11 Stat. 387.

Paragraph 20: Act July 29, 1848, ch. 118, § 4, 9 Stat. 264.

Paragraph 21: Act Aug. 10, 1846, ch. 178, § 2, 9 Stat. 102.

#### PARAGRAPH 3

Effective July 1, 1935, the appropriation provided for in this paragraph was affected by act June 26, 1934, ch. 756, § 18, 48 Stat. 1231. See section 725q (b) of this title, abolishing certain appropriation accounts, repealing appropriations to which expenditures under such accounts had been chargeable, and authorizing appropriations of sums necessary to meet such expenditures.

#### PARAGRAPH 4

Effective July 1, 1935, the permanent appropriation for redemption of Internal Revenue stamps in this paragraph was repealed by act authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury. See section 725a (b) (7) of this title.

#### PARAGRAPH 5

Paragraph (5), relating to debentures and other charges, was repealed effective July 1, 1935. See section 725 (b) (4) of this title.

#### PARAGRAPH 6

Effective July 1, 1935, the permanent appropriation for debentures and drawbacks in this paragraph was repealed by act authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury. See section 725a (b) (10) of this title.

#### PARAGRAPH 8

Effective July 1, 1935, the permanent appropriation for refund of customs duties on goods destroyed in this paragraph was repealed by act authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury. See section 725a (b) (20) of this title.

#### PARAGRAPH 10

Effective July 1, 1935, the permanent appropriation for refund of proceeds of goods seized and sold in this paragraph was repealed by act authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury. See section 725a (b) (26) of this title.

#### PARAGRAPH 11

Effective July 1, 1935, the permanent appropriation for refunding proceeds of unclaimed merchandise in this paragraph was repealed by act authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury. See section 725a (b) (25) of this title.

#### PARAGRAPH 12

Effective July 1, 1935, this paragraph was affected by section 725s (a) of this title, providing that expenditures from the trust fund "Soldiers' Home, Permanent Fund" shall be made only in pursuance of annual appropriations

#### PARAGRAPH 16

The permanent or continuing appropriation for "Surveying within land grants (reimbursable)" was repealed by act June 26, 1934, ch. 756, § 1, 48 Stat. 1224, section 725 of this title.

#### PARAGRAPH 17

Effective July 1, 1935, the appropriation provided for in this paragraph was affected by section 725c (b) (34) of this title repealing appropriations to which expenditures under the appropriation account "Five Percent Funds to States" have been chargeable.

#### PARAGRAPH 18

Effective July 1, 1935, the permanent appropriation provided for in this paragraph was affected by section 725b (b) (8) of this title abolishing the permanent or continuing appropriation account "Indemnity for swamp land to States."

#### PARAGRAPH 19

Effective July 1, 1935, the appropriation provided for in this paragraph was affected by section 725q (b) (14) of this title abolishing the appropriation account "Repayment for lands erroneously sold."

#### PARAGRAPH 21

This paragraph was affected by section 725s (c) of this title, relative to the classification, appropriation and disbursement of trust fund accounts.

#### CROSS REFERENCES

Appropriations for survey within railroad grants, see section 886 of Title 43, Public Lands.

Consolidation of National Home for Disabled Volunteer Soldiers with other bureaus, agencies or offices into Veterans' Administration, see sections 11–11f of Title 38, Pensions, Bonuses, and Veterans' Relief.

Deposits by railroad companies for surveying, see section 908 of Title 43, Public Lands.

Other appropriations for Eastern Bands of Cherokees, expenditure and interest, see acts Mar. 3, 1875, ch. 132, 18 Stat. 447; Aug. 15, 1876, ch. 289, 19 Stat. 197; Mar. 3, 1877, ch. 101, 19 Stat. 291.

Reimbursement of officers and men of Navy and Marine Corps for personal property lost, destroyed, or damaged by operations of war, see section 981 et seq. of Title 34, Navy.

#### § 712. Balances of appropriations; expenditure.

Except as otherwise provided by law, all balances of appropriations contained in the annual appropriation bills and made specifically for the service of any fiscal year, and remaining unexpended at the expiration of such fiscal year, shall only be applied to the payment of expenses properly incurred during that year, or to the fulfillment of contracts properly made within that year; and balances not needed for such purposes shall be carried to the surplus fund. This section, however, shall not apply to appropriations known as permanent or indefinite appropriations. (R. S. § 3690.)

#### DERIVATION

Act July 12, 1870, ch. 251, § 5, 16 Stat. 251.

#### § 713. Same; carried to surplus fund.

After the 1st day of July, in each year, the Secretary of the Treasury shall cause all unexpended balances of appropriations which shall have remained upon the books of the Treasury for two fiscal years to be carried to the surplus fund and covered into the Treasury: *Provided*, That this provision shall not apply to permanent specific appropriations, appropriations for rivers and harbors, lighthouses, or public buildings, or the pay of the Navy and Marine Corps; but the appropriations named in this proviso shall continue available until otherwise ordered by Congress. (June 20, 1874, ch. 328, § 5, 18 Stat. 110; July 26, 1886, ch. 781, § 2, 24 Stat. 157; Mar. 3, 1919, ch. 99, § 6, 40 Stat. 1309.)

#### CROSS REFERENCE

Balances of moneys appropriated for pay of Navy or Marine Corps existing after accounts for the year have been settled to be covered into the Treasury, see section 716 of this title.

§ 713a. Same; entries on books for settlement of accounts of disbursing officers.

Whenever it may be necessary in the settlement of the accounts of disbursing officers of the Government for expenditures already made in pursuance of law, to use appropriations carried to the surplus fund under section 713 of this title the Secretary of the Treasury is hereby authorized to make the necessary entries on the books of the Department to effect such settlements, *Provided*, That such entries shall not involve the expenditure of any moneys from the Treasury. (Mar. 3, 1875, ch. 131, § 5, 18 Stat. 418.)

§ 714. Same; reports to Congress as to claims.

It shall be the duty of the General Accounting Office to continue to receive, examine, and consider the justice and validity of all claims under appropriations the balances of which have been exhausted or carried to the surplus fund under the provisions of section 713 of this title that may be brought before them within a period of five years. The Secretary of the Treasury shall, at the commencement of each session of Congress, report the amount due each claimant whose claim has been allowed in whole or in part to the Speaker of the House of Representatives and the presiding officer of the Senate, who shall lay the same before their respective Houses for consideration: *Provided*, That nothing in this section shall be construed to authorize the reexamination and payment of any claim or account which has been once examined and rejected, unless reopened in accordance with existing law. (June 14, 1878, ch. 191, § 4, 20 Stat. 130; July 7, 1884, ch. 334, § 1, 23 Stat. 254; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

CROSS REFERENCE

Secretary of Treasury, at commencement of each session of Congress, to report amount due claimants whose claims have been allowed to Congress for consideration, see section 266 of Title 5, Executive Departments and Government Officers and Employees.

§ 715. Same; certification as to pending claims.

All balances of appropriations which shall have remained on the books of the Treasury, without being drawn against in the settlement of accounts, for two years from the date of the last appropriation made by law, shall be reported by the Secretary of the Treasury to the General Accounting Office, the proper officer of which shall examine the books of such office, and certify to the Secretary whether such balances will be required in the settlement of any accounts pending in such office; and if it appears that such balances will not be required for this purpose, then the Secretary may include such balances in his surplus-fund warrant, whether the head of the proper department shall have certified that it may be carried into the general Treasury or not. But no appropriation for the payment of the interest or principal of the public debt, or to which a longer duration is given by law, shall be thus treated. (R. S. § 3691; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

DERIVATION

Act July 12, 1870, ch. 251, § 6, 16 Stat. 251.

§ 716. Same; for pay of Navy or Marine Corps.

All balances of moneys appropriated for the pay of the Navy or pay of the Marine Corps for any year existing after the accounts for said year shall have been settled shall be covered into the Treasury. (July 26, 1886, ch. 781, § 2, 24 Stat. 157.)

CROSS REFERENCE

Pay of Navy and Marine Corps excepted from provision that appropriations shall not be available without reference to fiscal year, see section 718 of this title.

§ 717. Same; reappropriation to other purpose construed as new appropriation.

The reappropriation and diversion of the unexpended balance of any appropriation to a purpose other than that for which it was originally made shall be construed and accounted as a new appropriation and the unexpended balance shall be reduced by the sum proposed to be so diverted. (Mar 4, 1915, ch. 147, § 4, 38 Stat. 1161.)

§ 718. Appropriations in annual appropriation acts not permanent.

No specific or indefinite appropriation made subsequent to August 24, 1912, in any regular annual appropriation Act shall be construed to be permanent or available continuously without reference to a fiscal year unless it belongs to one of the following four classes: "Rivers and harbors," "lighthouses," "public buildings," and "pay of the Navy and Marine Corps," last specifically named in and excepted from the operation of the provisions of section 713 of this title, or unless it is made in terms expressly providing that it shall continue available beyond the fiscal year for which the appropriation Act in which it is contained makes provision. (Aug. 24, 1912, ch. 355, § 7, 37 Stat. 487; Mar. 3, 1919, ch. 99, § 6, 40 Stat. 1309.)

§ 719. Unexpended balances for National Home for Disabled Volunteer Soldiers.

The provisions of sections 712 and 715 of this title shall apply to all appropriations made for the maintenance of the Veterans' Administration: *Provided*, That it shall be the duty of the Administrator of Veterans' Affairs, on or before the 1st day of October in each year, to furnish to the Secretary of War estimates, in detail, for the support of said home for the fiscal year commencing on the 1st day of July thereafter, and the Secretary of War shall annually include such estimates in his estimates for his Department. (Oct. 2, 1888, ch. 1069, 25 Stat. 543; July 3, 1930, ch. 863, § 2, 46 Stat. 1016.)

CONSOLIDATION OF AGENCIES

Consolidation of National Home for Disabled Volunteer Soldiers with other bureaus, agencies or offices as Veterans' Administration, see sections 11 and 11d of Title 38, Pensions, Bonuses, and Veterans' Relief.

CROSS REFERENCES

Budget officer with duty to prepare departmental estimates to be designated in each department, see section 22 of this title.

Department head to revise estimates and submit them to the Bureau of the Budget on or before September 15 of each year, see section 23 of this title.



**§ 720. Proceeds of sales of material.**

All moneys received from the leasing or sale of marine hospitals, or the sale of Coast Guard cutters, or from the sale of commissary stores to the officers and enlisted men of the Army, or from the sale of materials, stores, or supplies sold to officers and soldiers of the Army, or from sales of condemned clothing of the Navy, or from sales of materials, stores, or supplies to any exploring or surveying expedition authorized by law, shall respectively revert to that appropriation out of which they were originally expended, and shall be applied to the purposes for which they are appropriated by law. (R. S. § 3692; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 249; Jan. 28, 1915, ch. 20, § 1, 38 Stat. 800.)

**DERIVATION**

R. S. § 3692 was from act May 8, 1872, ch. 140, § 5, 17 Stat. 83; act Mar. 3, 1847, ch. 48, § 1, 9 Stat. 171; act Apr. 20, 1866, ch. 63, §§ 1, 2, 14 Stat. 40; act July 28, 1866, ch. 299, § 25, 14 Stat. 338; act June 8, 1872, ch. 348, 17 Stat. 337.

**CROSS REFERENCES**

Expenses of sale to be paid before proceeds are deposited in Treasury, see section 489 of this title.

Proceeds from sale of ordnance material to be deposited into Treasury as miscellaneous receipts and equal amounts appropriated annually from general fund of Treasury for same purpose, see section 725c (10) of this title.

Replacement accounts to be credited with only such amounts as represent sales of stores, materials, and supplies at actual cost to War Department, see section 725i of this title.

Sale of unfit Coast Guard cutters, see section 69 of Title 14, Coast Guard.

**§ 721. Payments of appropriations for charitable purposes.**

All moneys appropriated for the aid, use, support, or benefit of any charitable, industrial, or other association, institution, or corporation, shall be placed to the credit of the proper fiscal officer of such association, institution, or corporation, by warrant of the Secretary of the Treasury, on the books of the Treasurer of the United States, or a designated depository of the United States other than a national bank, and shall be paid out only on the checks of such fiscal officer, drawn payable to the order of the person to whom payment is to be made, for services, materials, or any other purpose, and stating in writing thereon the specific object or purpose to which the avails thereof are to be applied: *Provided*, That when payments are to be made under § 20, such fiscal officer may check in his own name, but shall state in writing on the check that the avails thereof are to be applied to the payment of small claims, and shall furnish, to the Treasurer, or designated depository on whom the check is drawn, a certified list of such claims, which list shall set forth the amount and nature of each claim and the name of each claimant. (June 23, 1874, ch. 455, § 1, 18 Stat. 216; May 29, 1920, ch. 214, 41 Stat. 654.)

**§ 722. Term of service of Members of Congress as trustees or directors of corporations or institutions appropriated for.**

In all cases where Members of Congress or Senators are appointed to represent Congress on any board of trustees or board of directors of any corporation or institution to which Congress makes any

appropriation, the term of said Members or Senators, as such trustee or director, shall continue until the expiration of two months after the first meeting of the Congress chosen next after their appointment. (Mar. 3, 1893, ch. 199, § 1, 27 Stat. 553.)

**PERMANENT APPROPRIATIONS REPEAL****§ 725. Permanent Appropriations Repeal Act; appropriations repealed.**

(a) Effective July 1, 1935, such portions of any Acts as provide permanent or continuing appropriations from the general fund of the Treasury to be disbursed under the appropriation accounts appearing on the books of the Government, and listed in subsection (b) of this section, are hereby repealed, and any unobligated balances under such accounts as of June 30, 1935, shall be covered into the surplus fund of the Treasury.

(b) (1) Preparation, custody, and delivery of farm-loan bonds, reimbursable (2x152).

(2) Preparation, custody, and delivery of Federal intermediate credit bank securities, reimbursable (2x153).

(3) Preparation and issue of Federal Reserve notes, reimbursable (2x151).

(4) Debentures and other charges (customs).

(5) Payment for lands sold for direct taxes (2x435).

(6) Refunding corporation- and income-tax penalties (Internal Revenue) (2x425).

(7) Refunding stamp tax on export bills of lading (2x427).

(8) Refunding stamp tax on foreign bills of exchange (2x433).

(9) Refunding tax on contingent beneficial interests (2x428).

(10) Refunding tax on certain legacies (2x426).

(11) Surplus proceeds, property sold for internal-revenue taxes (2x441).

(12) Payment of Cape Cod Canal bonds (2x087).

(13) Surveying within land grants (reimbursable) (4x164).

(14) Fees on certain Indian allotments (4x025).

(15) Distribution of United States Code, Revised Statutes, and so forth (4x019).

(16) Transportation of Volunteers, War with Spain (8x175).

(17) Powder and projectiles, proceeds of sales (8x423). (June 26, 1934, ch. 756, § 1, 48 Stat. 1224.)

**§ 725a. Same.**

(a) Effective July 1, 1935, the permanent appropriations under the appropriation titles listed in subsection (b) of this section are repealed, and such portions of any Acts as make permanent appropriations to be expended under such accounts are amended so as to authorize, in lieu thereof, annual appropriations from the general fund of the Treasury in identical terms and in such amounts as now provided by the laws providing such permanent appropriations, except that any appropriation for "Adjusted losses and contingencies, postal fund", is authorized to be made from the postal revenues. Any unobligated balances remaining in the permanent appropriations under these accounts on June 30, 1935,

shall be covered into the surplus fund of the Treasury: *Provided*, That in addition to amounts in lieu of the permanent appropriation "Meat Inspection, Bureau of Animal Industry (fiscal year)" there is authorized to be appropriated such other sums as may be necessary in the enforcement of sections 71-96 of Title 21.

- (b) (1) Interest on Indian trust funds.
- (2) Civilization of the Sioux (4x950).
- (3) Meat inspection, Bureau of Animal Industry (fiscal year) (3-114).
- (4) National Forest Reservation Commission (fiscal year) (3-494).
- (5) Pay of consular agents for services to American vessels and seamen (1x561).
- (6) Allowance or drawback (Internal Revenue) (2x438).
- (7) Redemption of stamps (Internal Revenue) (2x432).
- (8) Refunding legacy taxes, Act March 30, 1928 (2x430).
- (9) Refund of excessive duties (Customs) (2x324).
- (10) Debentures or drawbacks, bounties, or allowances (Customs) (2x321).
- (11) Allowance or drawback (Industrial Alcohol) (2x440).
- (12) Permanent International Commission of Congresses of Navigation (fiscal year) (8-887).
- (13) Operating and care of canals and other works of navigation (8x881).
- (14) Removing sunken vessels or craft obstructing or endangering navigation (8x888).
- (15) Removing obstructions in Mississippi, Atchafalaya, and Old Rivers (fiscal year) (8-961.58).
- (16) Maintenance of channel, South Pass, Mississippi River (fiscal year) (8-961.55).
- (17) Gauging waters of the Mississippi and its tributaries (fiscal year) (8-961.54).
- (18) Examinations and surveys at South Pass, Mississippi River (fiscal year) (8-961.53).
- (19) Recoinage of silver coins (2x106).
- (20) Refunding duties on goods destroyed (Customs) (2x330).
- (21) Refunding to national banking associations excess of duty (2x228).
- (22) Salaries and expenses, Federal Board for Vocational Education (fiscal year) (0-801).
- (23) Repayment of taxes on distilled spirits destroyed by casualty (2x431).
- (24) Adjusted losses and contingencies, postal fund (9x256).
- (25) Refunding proceeds of unclaimed merchandise (Customs) (2x326).
- (26) Proceeds of goods seized and sold (Customs) (2x322).
- (27) Operating snag and dredge boats on upper Mississippi, Illinois, and Minnesota Rivers (fiscal year) (8-962.60).
- (28) Operating snag boats on the Ohio River (fiscal year) (8-962.51). (June 26, 1934, ch. 756, § 2, 48 Stat. 1225.)

§ 725b. Same.

(a) Effective July 1, 1935, the permanent or continuing appropriation accounts appearing on the

books of the Government and listed in subsection (b) of this section are hereby abolished, and any unobligated balances under such accounts as of June 30, 1935, shall be covered into the surplus fund of the Treasury. Any appropriations to which expenditures under such accounts have been chargeable prior to July 1, 1935, are hereby repealed. Any claims accruing on and after July 1, 1935, which, but for this section properly would have been charged to these appropriation titles, shall, upon proper audit, be certified to Congress for appropriation from the general fund of the Treasury, which is hereby authorized.

- (b) (1) Extra pay to Regular Army, War with Spain (8x172).
- (2) Extra pay to Volunteers, War with Spain (8x173).
- (3) Claims of officers and men of the Army for destruction of private property (8x123).
- (4) Bounty to Fifteenth and Sixteenth Missouri Cavalry Volunteers (8x164).
- (5) Judgments in admiralty suits under sections 741-752 of Title 46, War Department (8x143).
- (6) Reimbursement for bringing home remains of officers and others (Navy) (7x816).
- (7) Reimbursement for bringing home remains of officers and others (War) (8x765).
- (8) Indemnity for swamp land to States (4x160).
- (9) Proceeds of mineral or reserved lands, Tanana Valley, Alaska, special fund (4x167).
- (10) Proceeds of town sites for schools in Oklahoma (4x464).
- (11) Indemnity to seamen and marines for lost clothing (7x977).
- (12) Reimbursement to certain persons for loss of private funds while patients at United States Naval Hospital, Naval Operating Base, Hampton Roads, Virginia (7x973).
- (13) Judgments, bounty for destruction of enemies' vessels (7x956).
- (14) Judgment, owners, and so forth, barkentine Mabel I. Meyers, under Act of August 21, 1916 (7x959).
- (15) Relief of claimants, explosion at Naval Ammunition Depot, Lake Denmark, New Jersey (7x975).
- (16) Guaranty to carriers after termination of Federal control (0x961).
- (17) Reimbursement to carriers of deficits during Government control (0x963).
- (18) Guaranty to American Railway Express Company during guaranty period (0x965).
- (19) Judgments in admiralty suits under sections 741-752 of Title 46, United States Shipping Board (0x556).
- (20) Judgments of courts (Revised Statutes, section 3754 (section 309 of title 40)) (7x965).
- (21) Bounty for destruction of enemies' vessels (7x961).
- (22) Claims arising from operations under Wheat Price Guarantee Act of March 4, 1919 (0x482).
- (23) Proceeds sale of town lots, Lawton, Oklahoma (4x174).
- (24) Proceeds of certain lands in township 8-North, Nebraska (4x176). (June 26, 1934, ch. 756, § 3, 48 Stat. 1226.)

## § 725c. Same.

(a) Effective July 1, 1935, all receipts of the character theretofore credited to the appropriation accounts appearing on the books of the Government and listed in subsection (b) of this section shall be deposited into the Treasury as miscellaneous receipts, and amounts equal thereto are authorized to be appropriated annually from the general fund of the Treasury for the same purposes for which such receipts are now appropriated. Appropriations to which expenditures under such accounts have been chargeable theretofore are hereby repealed, effective on such date: *Provided*, That if the total of receipts for any one fiscal year for any of the foregoing purposes under this authority is greater than the amounts appropriated for such purpose, such excess is authorized to be appropriated for the following fiscal year.

(b) (1) Wagon roads, bridges, and trails, Alaska fund (4s524).

(2) Public schools, Alaska fund (4s366).

(3) Coos Bay Wagon Road Grant fund (4s168).

(4) Payment to Oklahoma from royalties, oil and gas, south half of Red River (4s028).

(5) Five per centum fund of net proceeds of sales of agricultural lands in Colorado (4s183).

(6) Annette Islands reserve, Alaska, fund from leases (5s740).

(7) Relief of the indigent, Alaska fund (2s108).

(8) Naturalization fees, publishing citizenship textbooks, Bureau of Naturalization (6-836).

(9) Additional income tax on railroads in Alaska (2s442).

(10) Ordnance material, proceeds of sales (War), (8s422).

(11) Maintenance and operation of dams and other improvements of navigable waters (8s876).

(12) Construction, irrigation system, Wapato Project, Washington, Act February 14, 1920 (5s781).

(13) Maintenance, irrigation system (name of project), Act August 1, 1914.

(14) Maintenance, irrigation system (name of project), Act May 18, 1916.

(15) Maintenance, power system, Flathead Reservation, Montana, Act May 10, 1926 (5s796).

(16) Power plant, Coolidge Dam, Arizona, electric-current fund, Act March 7, 1928 (5s804.9).

(17) The Oregon and California Land Grant fund (4s169).

(18) Redistribution, funds for indigent, Alaska fund (2s109).

(19) Building or purchase of vessels for the Coast Guard from proceeds of sales (2s373).

(20) Rebuilding and improving Coast Guard stations from proceeds of sales (2s363).

(21) Military post construction fund (8s250).

(22) National Guard, section 87, National Defense Act (fiscal year) (8-715).

(23) Indian-school improvements, Act April 21, 1904 (4x794).

(24) Purchase of lands for landless Indians in California, Act March 3, 1925 (4x812).

(25) Yuma Auxiliary Irrigation Project, Arizona (4s507).

(26) Alaskan reindeer fund (4s365).

(27) United States Naval prison activities fund (7s925).

(28) Injury claims assigned, Veterans' Administration (0s878).

(29) After June 30, 1936, migratory bird conservation fund (3s362).

(30) Losses on war-risk insurance of American vessels, their cargoes, and so forth, special fund (0s865).

(31) Gas production, helium plants, Bureau of Mines (6s685).

(32) Perry's Victory Memorial (0s727).

(33) Inland and Coastwise Waterways Service Fund (8x875).

(34) Five Percent Funds to States (4s166). (June 26, 1934, ch. 756, § 4, 48 Stat. 1227.)

## CONSOLIDATION OF AGENCIES

Bureaus of Naturalization and Immigration were consolidated as Immigration and Naturalization Service by Ex. Ord. No. 6166, § 14, June 10, 1933, set out in note under section 132 of Title 5, Executive Departments and Government Officers and Employees.

## § 725d. Same.

(a) Effective July 1, 1935, the appropriation accounts appearing on the books of the Government and listed in subsection (b) of this section are abolished, and any unobligated balances under such accounts as of that date shall be covered into the surplus fund of the Treasury. Any appropriations to which expenditures under such accounts have been chargeable theretofore are hereby repealed, effective on such date. To the extent that the annual appropriations, which are hereby authorized to be made from the general fund of the Treasury for the same purposes for which expenditures are now made from said accounts, are insufficient, there are hereby authorized to be appropriated from the general fund of the Treasury such additional amounts as may be necessary, to the extent that the amounts of such receipts are in excess of the amounts appropriated.

(b) (1) Expenses, Cotton Standards Act (3s535).

(2) Classification of cotton, revolving fund (3s320).

(3) Extra compensation for overtime, Immigration Service (6s803). (June 26, 1934, ch. 756, § 5, 48 Stat. 1228.)

## § 725e. Same.

(a) Effective July 1, 1935, receipts theretofore authorized to be credited to the appropriation accounts appearing on the books of the Government and listed in subsection (b) of this section shall be deposited into the Treasury of the United States as miscellaneous receipts, and there are hereby authorized to be appropriated from the general fund of the Treasury such amounts as may be necessary for the Patent Office: *Provided*, That this paragraph shall be subject to section 725q of this title insofar as such section is applicable to Patent Office fees.

(b) (1) Salaries and expenses, Patent Office (6s289). (June 26, 1934, ch. 756, § 6, 48 Stat. 1228.)

## § 725f. Same.

(a) Effective July 1, 1935, any balances credited to the following appropriation accounts on the books of the Government and listed in subsection (b) of

this section shall be covered into the surplus fund of the Treasury, and any appropriations to which expenditures under such accounts have been chargeable theretofore are hereby repealed. Claims or payments chargeable to said accounts, upon proper audit, shall be certified to Congress for appropriation from the general fund of the Treasury, which is hereby authorized.

- (b) (1) Prize money to captors (7T987).
- (2) Prize money to captors, Spanish War (7T988).
- (3) Prize money, Battle of Manila Bay (7T986).
- (4) Spanish Indemnity, Interest (2T082).
- (5) Spanish Indemnity, Principal (2T082.1).
- (6) Trust-fund Interest for Support of Free Schools in South Carolina (2T084). (June 26, 1934, ch. 756, § 7, 48 Stat. 1228.)

#### § 725g. Same.

Effective July 1, 1935, the appropriation account on the books of the Government entitled "Recreation Fund, Army" (8T078), is abolished and the balance thereof shall be covered into the surplus fund of the Treasury: *Provided*, That an amount equal to the amount so covered into the surplus fund of the Treasury is hereby authorized to be appropriated from the general fund of the Treasury in the event of war, for the recreation, amusement, comfort, contentment, and health of the enlisted personnel of the Military Establishment. (June 26, 1934, ch. 756, § 8, 48 Stat. 1229.)

#### § 725h. Same.

Effective July 1, 1935, (a) the Naval Pension Fund (7t982) is abolished, any unobligated balance therein, as of that date, shall be covered into the surplus fund of the Treasury, and interest on such fund shall cease; (b) moneys theretofore required by law to be paid into such fund shall be deposited into the Treasury of the United States as miscellaneous receipts; and (c) commencing with the fiscal year 1936 annual appropriations in such amounts as may be necessary are authorized from the general fund of the Treasury for the maintenance, operation, and improvement of the Naval Home. (June 26, 1934, ch. 756, § 9, 48 Stat. 1229.)

#### § 725i. Same.

(a) Effective July 1, 1935, credit shall be made to the replacement accounts appearing in subsection (b) of this section of only such amounts as represent sales of stores, materials, and supplies at actual cost to the War Department.

- (b) (1) Replacing Army transportation (fiscal year) (8-228).
- (2) Replacing clothing and equipage (fiscal year) (8-231).
- (3) Replacing subsistence of the Army (8s666).
- (4) Replacing regular supplies of the Army (fiscal year) (8-234).
- (5) Replacing Signal Corps supplies and equipment (fiscal year) (8-545).
- (6) Replacing medical supplies (fiscal year) (8-511).
- (7) Replacing engineer equipment of troops (fiscal year) (8-315).

(8) Replacing engineer operations in the field (fiscal year) (8-316).

(9) Replacing engineer depots (fiscal year) (8-317).

(10) Replacing ordnance and ordnance stores (fiscal year) (8-425).

(11) Replacing barracks and quarters (fiscal year) (8-209).

(12) Replacing water and sewers at military posts (fiscal year) (8-233). (June 26, 1934, ch. 756, § 10, 48 Stat. 1229.)

#### § 725j. Same.

Effective July 1, 1935, the amounts received from assessments authorized to be made against the Federal home-loan banks for salaries and expenses of the Federal Home Loan Bank Board shall be covered into the Treasury as miscellaneous receipts. Commencing with the fiscal year 1936 there are authorized to be appropriated annually, from the general fund of the Treasury, such sums as may be necessary to defray the cost of such activities. (June 26, 1934, ch. 756, § 11, 48 Stat. 1229.)

#### § 725k. Same.

Effective July 1, 1935, the appropriation account "Unpaid Money Orders More Than One Year Old", carried on the books of the Government, is hereby abolished, and the balance therein shall be covered into the postal revenues, and any appropriations to which expenditures under such accounts have been chargeable theretofore are hereby repealed. There is hereby authorized to be appropriated from postal revenues such sums as may be necessary to make any expenditures which, but for its abolition, would be chargeable to this account. (June 26, 1934, ch. 756, § 12, 48 Stat. 1229.)

#### § 725l. Same.

Section, act June 26, 1934, ch. 756, § 13, 48 Stat. 1230, related to the District of Columbia and has been omitted.

#### § 725m. Same.

Section, act June 26, 1934, ch. 756, § 14, 48 Stat. 1230, related to the District of Columbia and has been omitted.

#### § 725n. Same.

Section, act June 26, 1934, ch. 756, § 15, 48 Stat. 1230, which repealed section 530 of Title 34, is executed.

#### § 725o. Same.

All receipts for interest on the account of the Navy Department with the London fiscal agents, premiums arising from the sales of bills of exchange, and from any depreciation in the value of foreign coin shall be covered into the Treasury as miscellaneous receipts. (June 26, 1934, ch. 756, § 16, 48 Stat. 1230.)

#### § 725p. Same; trust funds.

(a) Effective July 1, 1935, the appropriation accounts appearing on the books of the Government and listed in subsection (b) of this section, as well as appropriation accounts bearing similar titles on the books of the Government, are abolished, and any unobligated balances under such accounts as of June 30, 1935, shall be covered into a trust fund receipt account in the Treasury to be designated "Unclaimed

Moneys of Individuals Whose Whereabouts Are Unknown." Any appropriations to which expenditures under such accounts have been chargeable theretofore are hereby repealed. There are authorized to be appropriated, annually, from such account such sums as may be necessary to meet any expenditures of the character now chargeable to the appropriation accounts abolished by this section. The Secretary of the Treasury or the Commissioners of the District of Columbia, as the case may be, shall submit with their annual estimates of appropriations an amount necessary to meet expenditures properly chargeable to this account.

(b) (1) Unclaimed moneys, Food Administration (0t548).

(2) Unclaimed moneys of individuals whose whereabouts are unknown (Veterans' Administration) (0t881).

(3) Unclaimed moneys of former patients, Veterans' Administration hospital (0t879).

(4) Unclaimed moneys of individuals whose whereabouts are unknown (relief of American citizens in Europe) (0t542).

(5) Unclaimed moneys of individuals whose whereabouts are unknown (Interior, civil) (4t033).

(6) Unclaimed moneys of individuals whose whereabouts are unknown (Justice) (1t755).

(7) Unclaimed moneys of individuals whose whereabouts are unknown (Labor) (6t750).

(8) Unclaimed moneys of individuals whose whereabouts are unknown (Navy) (7t978).

(9) Unclaimed moneys of individuals whose whereabouts are unknown (State) (1t554).

(10) Unclaimed moneys of individuals whose whereabouts are unknown (Treasury) (2t080).

(11) Unclaimed moneys of individuals whose whereabouts are unknown (War) (8t117).

(12) Unclaimed individual Indian moneys (5t009).

(13) Unclaimed funds of discharged patients, Saint Elizabeths Hospital (4t548).

(14) Return of unclaimed money deposited by clerks of courts (1x792).

(15) Outstanding liabilities, lands (4t184).

(16) Return of subscriptions to Liberty Bond issues placed through American consulates (1t631).

(17) Return of subscriptions to Liberty Bond issues by civilian employees of Naval Establishment (7t979).

(18) Refund to depositors, excess licenses, under section 10 (c), Trading with the Enemy Act (0t523).

(19) Return of subscriptions to Liberty Bond issues placed through the postmaster at Philadelphia, Pennsylvania (9t340).

(20) Unclaimed funds of Federal prisoners (1t952).

(21) Rosa Goldman—cash bail exacted (6T472).

(22) Unclaimed funds of Jei Bei Ota, deceased Japanese alien (6T473). (June 26, 1934, ch. 756, § 17, 48 Stat. 1230.)

§ 725q. Same; appropriation accounts abolished.

(a) Effective July 1, 1935, the appropriation accounts appearing on the books of the Government and listed in subsection (b) of this section, as well as appropriation accounts bearing similar titles on the books of the Government, are abolished, and any un-

obligated balances under such accounts as of June 30, 1935, shall be covered into the surplus fund of the Treasury. Any appropriations, to which expenditures under such accounts have been chargeable theretofore, are repealed. On July 1, 1935, there shall be established on the books of the Government an account to be designated "Refund of Moneys Erroneously Received and Covered", and there is authorized to be appropriated such sums as may be necessary to meet any expenditures of the character now chargeable to the appropriation accounts herein abolished and other collections erroneously received and covered which are not properly chargeable to any other appropriation. The Secretary of the Treasury shall submit with his annual estimates of appropriations an amount necessary to meet expenditures properly chargeable to this account: *Provided*, That this authority shall not be deemed to apply to any refunds which, under existing law, may be charged to any accounts for which separate provision is made in sections 725–725z of this title.

(b) (1) Refunding moneys erroneously received and covered (Navy) (7x972).

(2) Refunding moneys erroneously received and covered (Industrial Alcohol) (2x445).

(3) Refunding moneys erroneously received and covered (War) (8x191).

(4) Refunding moneys erroneously received and covered (State) (1x552).

(5) Refunding moneys erroneously received and covered (Customs) (2x323).

(6) Refunding moneys erroneously received and covered (Treasury) (2x088).

(7) Refunding moneys erroneously received and covered (Justice) (1x791).

(8) Refunding moneys erroneously received and covered (Commerce) (6x050).

(9) Refunding moneys erroneously received and covered (Agriculture) (3x010).

(10) Refunding moneys erroneously received and covered (Labor) (6x741).

(11) Refunding moneys erroneously received and covered (Interior) (4x032).

(12) Refund of tonnage taxes and light dues to citizens of Philippine Islands (6x053).

(13) Refunding passport fees (1x551).

(14) Repayment for lands erroneously sold (4x161).

(15) Refunding penalties or charges erroneously exacted (Customs) (2x325).

(16) Refunding penalties or charges erroneously exacted (State) (1x552).

(17) Refunding penalties or charges erroneously exacted (Commerce) (6x052).

(18) Refund to depositors, excess of deposits, national-forests fund (3x208).

(19) Refunding moneys erroneously received and covered (Internal Revenue) (2x434). (June 26, 1934, ch. 756, § 18, 48 Stat. 1231.)

§ 725r. Fees deposited in Treasury.

Effective July 1, 1935, moneys received as Patent Office fees; unearned moneys, lands (Interior Department); reentry permit fees (Justice Department); naturalization fees (Justice Department);

and registry fees (Justice Department); and held in the official checking accounts of disbursing officers, shall be deposited in the Treasury of the United States to appropriately designated trust-fund receipt accounts and shall be available for refunds, and for transfer of the earned portions thereof into appropriate receipt fund titles on the books of the Government: *Provided*, That donations, quasi-public and unearned moneys carried in official checking accounts of disbursing officers and of others required to account to the Comptroller General (including clerks and marshals of the United States District Courts), administered by officers of the United States by virtue of their official capacity, shall be deposited similarly into the Treasury as trust funds and are hereby appropriated and made available for disbursement under the terms of the trust. (June 26, 1934, ch. 756, § 19, 48 Stat. 1232; Reorg. Plan No. V, eff. June 14, 1940, 5 Fed. Reg. 2223, 54 Stat. 1238.)

#### TRANSFER OF FUNCTIONS

Immigration and Naturalization Service of Department of Labor (including Office of Commissioner of Immigration and Naturalization) and its functions were transferred to Department of Justice, to be administered under direction and supervision of Attorney General; and functions and powers of Secretary of Labor relating to administration of said service and its functions or to administration of immigration and naturalization laws were transferred to Attorney General, by Reorg. Plan No. V, cited to text set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

#### § 725s. Same; trust funds.

(a) The funds appearing on the books of the Government and listed in subsections (b)<sup>1</sup> and (c) of this section shall be classified on the books of the Treasury as trust funds. All moneys accruing to these funds are hereby appropriated and shall be disbursed in compliance with the terms of the trust. Hereafter moneys received by the Government as trustee analogous to the funds named in subsections (b) and (c) of this section, not otherwise herein provided for, except moneys received by the Comptroller of the Currency or the Federal Deposit Insurance Corporation, shall likewise be deposited into the Treasury as trust funds with appropriate title, and all amounts credited to such trust-fund accounts are hereby appropriated and shall be disbursed in compliance with the terms of the trust: *Provided*, That, effective July 1, 1935, expenditures from the trust fund "Soldiers' Home, Permanent Fund" (8t184) shall be made only in pursuance of appropriations annually made by Congress, and such appropriations are hereby authorized: *Provided further*, That personal funds of deceased inmates, Naval Home, now deposited with the pay officer of the Naval Home, shall be deposited in the Treasury to the credit of the trust fund account "Personal Funds of Deceased Inmates, Naval Home" (7t989): *Provided further*, That on June 30 of each year there shall be transferred to the trust fund receipt account directed to be established in section 725p of this title, such portion of the balances in any trust-fund account hereinbefore or hereafter listed or established, except the balances in the accounts listed in subsection (c) of this section, which have been in any such fund for more than one year and

represent moneys belonging to individuals whose whereabouts are unknown, and subsequent claims therefor shall be disbursed from the trust fund receipt account "Unclaimed Moneys of Individuals Whose Whereabouts are Unknown", directed to be established in section 725p of this title.

(1) Philippine special fund (Customs duties) (2s332).

(2) Philippine special fund (Internal Revenue) (2s443).

(3) Unclaimed condemnation awards, Treasury Department (2t921).

(4) Naval reservation, Olangapo civil fund (7s967).

(5) Personal funds of deceased inmates, Naval Home (7t989).

(6) Return to deported aliens of passage money collected from steamship companies (6t749).

(7) Vocational rehabilitation, special fund (0c980).

(8) Library of Congress gift fund (0c260).

(9) Library of Congress trust fund, investment account (0c249).

(10) Library of Congress trust fund, income from investment account (0c246).

(11) Library of Congress trust fund, permanent loan (0c248).

(12) Relief and rehabilitation, Longshoremen's and Harbor Workers' Compensation Act (0t476).

(13) Cooperative work, Forest Service (3c209).

(14) Wages and effects of American seamen, Department of Commerce (6t055).

(15) Pension money, Saint Elizabeths Hospital (4t545).

(16) Personal funds of patients, Saint Elizabeths Hospital (4t546).

(17) National Park Service, donations (4c470).

(18) Purchase of lands, national parks, donations (4c408).

(19) Extension of winter-feed facilities of game animals of Yellowstone National Park, donations (4c410).

(20) Indian moneys, proceeds of labor, agencies, schools, and so forth (5t301).

(21) Funds of Federal prisoners (1t951).

(22) Commissary funds, Federal prisons (1t953).

(23) Pay of the Navy, deposit fund (7t980).

(24) Pay of Marine Corps, deposit funds (7t981).

(25) Pay of the Army, deposit fund (8t183).

(26) Preservation birthplace of Abraham Lincoln (4c395).

(27) Funds contributed for flood control, Mississippi River, its outlets and tributaries (8c961.86).

(28) Funds contributed for flood control, Sacramento River, California (8c946.54).

(29) Effects of deceased employees, Treasury Department (2t089).

(30) Money and effects of deceased patients, Public Health Service (2t607).

(31) Effects of deceased employees, Department of Commerce (6t054).

(32) Topographic survey of the United States, contributions (6c303).

(33) National Institute of Health, gift fund (2c616).

(34) National Institute of Health, conditional gift fund (2c617).

(35) Patients' deposits, United States Marine Hospital, Carville, Louisiana (2t623).

(36) Estates of deceased personnel, War Department (8t180).

(37) Effects of deceased employees, Department of Interior (4t029).

(38) Fredericksburg and Spotsylvania County Battlefields memorial fund (8c813).

(39) Petersburg National Military Park fund (8c814).

(40) Gorgas memorial laboratory quotas (1c304).

(41) Contributions to International Boundary Commission, United States and Mexico (1c398).

(42) Salvage proceeds, American vessels (1t581).

(43) Wages due American seamen (1t630).

(44) Federal Industrial Institution for Women, contributions for chapel (1c948).

(45) General post fund, National Homes, Veterans' Administration (0t930).

(46) Repatriation of American seamen (1s555).

(47) Expenses, public survey work, general (4s172).

(48) Expenses, public survey work, Alaska (4s173).

(49) Funds contributed for improvement of roads, bridges, and trails, Alaska (4c528).

(50) Protective works and measures, Lake of the Woods and Rainy River, Minnesota (8s863).

(51) Washington redemption fund (DCt622).

(52) Permit fund, District of Columbia (DCt615).

(53) Unclaimed condemnation awards, National Capital Park and Planning Commission, District of Columbia (DCt629).

(54) Unclaimed condemnation awards, Rock Creek and Potomac Parkway Commission, District of Columbia (DCt620).

(55) Miscellaneous trust-fund deposits, District of Columbia (DCt613).

(56) Surplus fund, District of Columbia (DCt621).

(57) Relief and rehabilitation, District of Columbia Workmen's Compensation Act (DCt604).

(58) Inmates' fund, workhouse and reformatory, District of Columbia (DCt605).

(59) Soldiers' Home, permanent fund (8t184).

(60) Chamber Music Auditorium, Library of Congress (0s259).

(61) Bequest of Gertrude Hubbard (0t256).

(62) Puerto Rico special fund (Internal Revenue).

(63) Miscellaneous trust funds, Department of State.

(64) Funds contributed for improvement of (name of river or harbor).

(65) Funds advanced for improvement of (name of river or harbor).

(66) Funds contributed for Indian projects.

(67) Miscellaneous trust funds of Indian tribes.

(68) Ship's stores profits, Navy (7s985).

(69) Completing Surveys within Railroad Land Grants (4t186).

(70) Memorial to Women of World War, Contributions (0c075).

(71) Funds contributed for Memorial to John Ericsson (0s163).

(72) American National Red Cross Building, Contributions (0c426).

(73) Estates of Decedents, Department of State, Trust Fund (1t580).

(74) Funds due Incompetent Beneficiaries, Veterans' Administration (0t852).

(75) To promote the Education of the Blind (principal) (2t092).

(76) Paving Government Road across Fort Sill Military Reservation, Okla. (8c664).

(77) Bequest of William F. Edgar, Museum and Library, office of Surgeon General of the Army (8c504).

(78) Funds Contributed for Flood Control (name of river, harbor, or project).

(79) Matured obligations of the District of Columbia (2t070).

(80) Naval hospital fund (7s815).

(81) Navy fines and forfeitures (7s984).

(82) To promote the education of the blind (interest) (2x093).

(83) Soldiers' Home, interest account (8x185).

(c) (1) United States Government life insurance fund, Veterans' Administration (0t875).

(2) Estates of deceased soldiers, United States Army (8t189).

(3) Teachers Retirement Fund Deductions, District of Columbia (DCt624).

(4) Teachers Retirement Fund, Government Reserves, District of Columbia (DCt627).

(5) Expenses of Smithsonian Institution Trust Fund (principal) (0t596).

(6) Civil Service Retirement and Disability Fund (0t843).

(7) Canal Zone Retirement and Disability Fund (0t850).

(8) Foreign Service Retirement and Disability Fund (1t560). (June 26, 1934, ch. 756, § 20, 48 Stat. 1233).

<sup>1</sup> The designation (b) does not appear in this section.

#### TRUST FUNDS FOR INDIVIDUAL INDIANS

This section was modified by act June 25, 1936, ch. 814, 49 Stat. 1928, providing that it shall not be applicable to funds held in trust for individual Indians, associations of individual Indians, or for Indian corporations chartered under sections 461, 462, 463, 464-478, 479 of Title 25, Indians.

#### CROSS REFERENCES

Expenditure, notwithstanding this section, of money accruing from commutation of rations and provisions in connection with light vessels and tenders, see section 770 of Title 33, Navigation and Navigable Waters.

Office of Naval Records and Library Fund, see section 419b of Title 5, Executive Departments and Government Officers and Employees.

§ 725t. Checks drawn on Treasurer of United States; when payable; deposit of amount of unpaid checks.

Hereafter all checks drawn on the Treasurer of the United States, except those issued on account of public-debt obligations and transactions regarding the administration of banking and currency laws, shall be payable only until the close of the fiscal year next following the fiscal year in which such checks were issued, and the amounts of all such checks properly due and payable which have not been presented for payment within such period shall be deposited into the Treasury to the credit of a trust fund account entitled "Outstanding Liabilities



(fiscal year)", designated by fiscal years in which the checks were issued. The balances in the outstanding liabilities account carried on the books of the Government on June 26, 1934, representing the amounts of unclaimed checks, shall be transferred to the account "Outstanding Liabilities, 1934", and any balances remaining therein, or in any succeeding fiscal year account, unclaimed for two fiscal years after the deposit therein shall be covered into the surplus fund of the Treasury: *Provided*, That the balances to the credit of the outstanding liabilities account of any fiscal year which has not been covered into the surplus fund of the Treasury shall be available to pay claims on account of any check, the amount of which has been included in any balance so covered into the surplus fund. (June 26, 1934, ch. 756, § 21, 48 Stat. 1235.)

**§ 725u. Provision authorizing advancement of money for township surveys repealed.**

Section, act June 26, 1934, ch. 756, § 22, 48 Stat. 1236, repealed so much of section 843 of Title 43 as authorized Governors of States therein named to advance money for survey of certain townships.

**§ 725v. Moneys in registry of United States Court; disposition.**

Moneys in, or payable into, the registry of any United States court, in the discretion of the court, may be deposited in official checking accounts with the Treasurer of the United States, subject to disbursement on order approved by the court. (June 26, 1934, ch. 756, § 23, 48 Stat. 1236.)

**FEDERAL RULES OF CIVIL PROCEDURE**

Deposit in court, see Rule 67, following section 725c of Title 28, Judicial Code and Judiciary.

**§ 725w. Survey of inactive and permanent appropriations by Comptroller General; report.**

The Comptroller General of the United States shall cause a survey to be made of all inactive and permanent appropriations and/or funds on the books of the Government and also funds in the official custody of officers and employees of the United States, in which the Government is financially concerned, for which no accounting is rendered to the General Accounting Office; and he shall submit to the Congress annually, in a special report, his recommendations for such changes in existing law relating thereto as, in his judgment, may be in the public interest. (June 26, 1934, ch. 756, § 24, 48 Stat. 1236.)

**§ 725x. Existing authorizations unaffected.**

The provisions of sections 725–725z of this title shall not be construed to alter or amend any existing authorization for an appropriation. (June 26, 1934, ch. 756, § 25, 48 Stat. 1236.)

**§ 725y. Repeal of inconsistent provisions.**

All Acts and/or parts of Acts inconsistent or in conflict with the provisions of sections 725–725z of this title are hereby repealed to the extent of such inconsistency or conflict. (June 26, 1934, ch. 756, § 26, 48 Stat. 1236.)

**§ 725z. Citation.**

The short title of sections 725–725z of this title shall be the "Permanent Appropriation Repeal Act, 1934." (June 26, 1934, ch. 756, § 27, 48 Stat. 1236.)

**Chapter 12.—THE PUBLIC DEBT**

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- 731. Payment in coin.
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- 733. Same; anticipation.
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768. Bonds and certificates of indebtedness payable in legal tender coin or currency.
769. Certificates of indebtedness; taxation; expense of issue.
770. Certain bonds not receivable as security for national bank circulating notes.
771. Deposit of proceeds of sales of Liberty bonds, certificates of indebtedness, and war-savings certificates.
772. Fiscal agents.
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## OBLIGATIONS OF FOREIGN GOVERNMENTS

801. Conversion into obligations bearing higher interest rate; sale of obligations; redemption of United States bonds.
802. Conversion of short-time obligations of foreign governments into long-time obligations; interest; payment of obligations.
803. Maturity of obligations of foreign governments.
804. Payment before maturity or sale of obligations of foreign governments.
- 804a. Financial transactions with foreign governments in default to United States prohibited.
- 805-809. World War Foreign Debt Commission.

## CROSS REFERENCES

Bonds bearing circulation privilege, see Title 12, Banks and Banking.

Postal-savings bonds, see Chapter 20 of Title 39, The Postal Service.

## § 731. Payment in coin.

The faith of the United States is solemnly pledged to the payment in coin or its equivalent of all the

obligations of the United States not bearing interest, known as United States notes, and of all the interest-bearing obligations of the United States, except in cases where the law authorizing the issue of any such obligations has expressly provided that the same may be paid in lawful money or other currency than gold and silver. But none of the interest-bearing obligations not already due shall be redeemed or paid before maturity, unless at such time United States notes are convertible into coin at the option of the holder, or unless at such time bonds of the United States bearing a lower rate of interest than the bonds to be redeemed can be sold at par in coin. (R. S. § 3693.)

## DERIVATION

Act Mar. 18, 1869, ch. 1, 16 Stat. 1.

## CROSS REFERENCES

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Provisions for payment of obligations in gold declared against public policy, see section 463 of this title.

Redemption of currency in gold forbidden, see section 408a of this title.

Title to all gold and bullion transferred to United States, see section 441 of this title.

## § 732. Interest; payment.

The Secretary of the Treasury shall cause to be paid, out of any money in the Treasury not otherwise appropriated, any interest falling due, or accruing, on any portion of the public debt authorized by law. (R. S. § 3698).

## DERIVATION

Act Feb. 9, 1847, ch. 7, 9 Stat. 123.

## § 733. Same; anticipation.

The Secretary of the Treasury may anticipate the payment of interest on the public debt, by a period not exceeding one year, from time to time, either with or without a rebate of interest upon the coupons, as to him may seem expedient; and he may sell gold in any amounts, at home or abroad, in such manner and at such rates and upon such terms and conditions as he may deem most advantageous to the public interest, and the proceeds of any gold so sold shall be covered into the general fund of the Treasury: *Provided, however*, That the Secretary of the Treasury may sell the gold which is required to be maintained as a reserve or as security for currency issued by the United States, only to the extent necessary to maintain such currency at a parity with the gold dollar. (R. S. § 3699; Jan. 30, 1934, ch. 6, § 9, 48 Stat. 341.)

## REPEAL

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

## DERIVATION

Res. Mar. 17, 1864, No. 20, 13 Stat. 404.

## § 734. Purchase of gold.

With the approval of the President, the Secretary of the Treasury may purchase gold in any amounts, at home or abroad, with any direct obligations, coin, or currency of the United States, authorized by law, or with any funds in the Treasury not otherwise appropriated, at such rates and upon such terms and conditions as he may deem most advantageous to the public interest; any provision of law relating to

the maintenance of parity, or limiting the purposes for which any of such obligations, coin, or currency, may be issued, or requiring any such obligations to be offered as a popular loan or on a competitive basis, or to be offered or issued at not less than par, to the contrary notwithstanding. All gold so purchased shall be included as an asset of the general fund of the Treasury. (R. S. § 3700; Jan. 30, 1934, ch. 6, § 8, 48 Stat. 341.)

#### REPEAL

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

#### DERIVATION

Act Mar. 17, 1862, ch. 45, § 1, 12 Stat. 370.

#### CROSS REFERENCES

Regulations for acquisition and use of gold, see sections 442, 443 of this title.

#### § 734a. Purchase of silver.

Whenever and so long as the proportion of silver in the stocks of gold and silver of the United States is less than one-fourth of the monetary value of such stocks, the Secretary of the Treasury is authorized and directed to purchase silver, at home or abroad, for present or future delivery with any direct obligations, coin, or currency of the United States, authorized by law, or with any funds in the Treasury not otherwise appropriated, at such rates, at such times, and upon such terms and conditions as he may deem reasonable and most advantageous to the public interest: *Provided*, That no purchase of silver shall be made hereunder at a price in excess of the monetary value thereof: *And provided further*, That no purchases of silver situated in the continental United States on May 1, 1934, shall be made hereunder at a price in excess of 50 cents a fine ounce. (June 19, 1934, ch. 674, § 3, 48 Stat. 1178.)

#### REPEAL

All laws inconsistent with the provisions of this section were repealed by section 734a of this title.

#### CROSS REFERENCE

Acquisition and use of silver, see sections 316a, 316b, 316c of this title.

#### § 734b. Sale of silver.

Whenever and so long as the market price of silver exceeds its monetary value or the monetary value of the stocks of silver is greater than 25 per centum of the monetary value of the stocks of gold and silver, the Secretary of the Treasury may, with the approval of the President and subject to the provisions of section 405a of this title, sell any silver acquired under the authority of sections 311a, 316a, 316b, 405a, 448-448e, 734a, and 734b of this title, at home or abroad, for present or future delivery, at such rates, at such times, and upon such terms and conditions as he may deem reasonable and most advantageous to the public interest. (June 19, 1934, ch. 674, § 4, 48 Stat. 1178.)

#### REPEAL

All laws inconsistent with the provisions of this section were repealed by section 448e of this title.

§§ 735-738. Repealed. July 8, 1937, ch. 444, § 8 (e), 50 Stat. 482, eff. July 1, 1937.

Sections were from R. S. §§ 8702-8705; act April 9, 1904, ch. 105, 48 Stat. 571.

#### CROSS REFERENCE

Destruction, etc., of interest-bearing security, see section 738a of this title.

§ 738a. Interest-bearing security destroyed, mutilated, defaced, lost or stolen—(a) Issuance of duplicate; redemption of matured security.

Whenever it is clearly proved to the satisfaction of the Secretary of the Treasury—

(1) That any interest-bearing security of the United States, identified by number and description, payable to bearer or so assigned as to become, in effect, payable to bearer, has been wholly or partly destroyed, or so mutilated or defaced as to impair its value to the owner, or has been lost or stolen under such circumstances, and such a period of time having elapsed after it has matured or has become redeemable pursuant to a call for redemption, as in the judgment of the Secretary would indicate that it has been destroyed or irretrievably lost, is not held by any person as his own property and will never become the basis of a valid claim against the United States; or

(2) That any interest-bearing security of the United States, identified by number and description, which is not payable to bearer and which has not been so assigned as to become, in effect, payable to bearer, has been lost or stolen, so that it is not held by any person as his own property, or has been wholly or partly destroyed, or so mutilated or defaced as to impair its value to the owner;

the Secretary, upon receipt and approval by him of a bond of indemnity, if and as required by subsection (b) hereof, shall, in the case of a security which has not matured or become redeemable pursuant to a call for redemption, issue a substitute marked "duplicate" and showing the serial number of the original security; or shall, in the case of a security which has matured or become redeemable pursuant to a call for redemption, make payment thereof to the owner, with such interest only as would have been paid had the security been presented when it became due and payable: *Provided*, That in the case of an interim certificate relief may be given by the issue of a definitive security, whether before or after maturity, rather than by the issue of a substitute or by payment: *And provided further*, That no payment shall be made on account of interest coupons claimed to have been attached to such original security unless the Secretary is satisfied that such coupons have not been paid, and are in fact destroyed or can never become the basis of a valid claim against the United States.

(b) Bond of indemnity; exceptions.

Except as provided in paragraphs (1) to (4) of this subsection, the owner of such lost, stolen, destroyed, mutilated, or defaced security shall file with the Secretary of the Treasury a bond, to indemnify the United States, in such form and amount and with such surety, sureties, or security as the Secretary of the Treasury shall require: *Provided*, That in case of securities payable to bearer or so assigned as to become, in effect, payable to bearer, the destruction of which has not been proved, a corporate surety, qualified under sections 6-13 of Title 6, shall

be required on such bond of indemnity: *And provided further*, That a bond of indemnity shall not be required in any of the following classes of cases, except as provided in paragraph (4) of this subsection:

(1) If the Secretary of the Treasury is satisfied that the loss, theft, destruction, mutilation, or defacement, as the case may be, occurred without fault of the owner and while the security was in the custody or the control of the United States (not including the Postal Service when acting solely in its capacity as the public carrier of the mails), or of a person thereunto duly authorized as lawful agent of the United States, or while it was in the course of shipment effected pursuant to and in accordance with the regulations issued under section 134 of Title 5;

(2) If substantially the entire security is presented and surrendered by the owner and the Secretary of the Treasury is satisfied as to the identity of the security presented and that any missing portions are not sufficient to form the basis of a valid claim against the United States;

(3) If the lost, stolen, destroyed, mutilated, or defaced security is one which by the provisions of law or by the terms of its issue is transferable only by operation of law;

(4) If the owner or holder is the United States or an officer or employee thereof in his official capacity, a State, the District of Columbia, a Territory or possession of the United States, including the Commonwealth of the Philippine Islands, a municipal corporation or political subdivision of any of the foregoing, a corporation the whole of whose capital is owned by the United States, a foreign government, or a Federal Reserve bank:

*Provided, however*, That in any of the foregoing classes of cases the Secretary of the Treasury may require a bond of indemnity if he deems it essential to the public interest.

(c) Definitions.

The term "interest-bearing security of the United States" or "security", wherever used in this section, means any direct obligation of the United States issued pursuant to law for valuable consideration and which by its terms bears interest, or is issued on a discount basis, and includes (but is not limited to) bonds, notes, certificates of indebtedness, and Treasury bills, and interim certificates issued for any such security.

(d) Rules and regulations.

The Secretary of the Treasury shall have the power to make such rules and regulations as he may deem necessary for the administration of this section. (July 8, 1937, ch. 444, § 8, 50 Stat. 481; Aug. 10, 1939, ch. 665, § 4, 53 Stat. 1359.)

§ 739. Exchange of coupon for registered bonds.

The Secretary of the Treasury is hereby authorized to issue, upon such terms and under such regulations as he may from time to time prescribe, registered bonds in exchange for and in lieu of any coupon bonds which have been or may be lawfully issued; such registered bonds to be similar in all respects

to the registered bonds issued under the Acts authorizing the issue of the coupon bonds offered for exchange. (R. S. § 3706.)

DERIVATION

Act June 30, 1864, ch. 172, § 7, 13 Stat. 220.

§ 740. Credit to officers for stolen notes.

When any officer or agent duly authorized to receive, redeem, or cancel any Treasury notes issued by authority of law, shall receive, or pay, any Treasury note which has been previously received or redeemed by any officer or agent having authority to receive or redeem such note, and which has subsequently thereto been purloined and put into circulation, the Secretary of the Treasury, upon full and satisfactory proof that the same has been received or paid in good faith, and in the exercise of ordinary prudence, may allow a credit for the amount of such note, to the officer or agent so receiving or paying the same. (R. S. § 3707.)

DERIVATION

Act Aug. 10, 1846, ch. 180, § 2, 9 Stat. 107.

§ 741. Purchase or redemption of bonds.

The Secretary of the Treasury may at any time apply the surplus money in the Treasury not otherwise appropriated, or so much thereof as he may consider proper, to the purchase or redemption of the United States bonds: *Provided*, That the bonds so purchased or redeemed shall constitute no part of the sinking fund, but shall be canceled. (Mar. 3, 1881, ch. 133, § 2, 21 Stat. 457.)

§ 742. Exemption from taxation.

Except as otherwise provided by law, all stocks, bonds, Treasury notes, and other obligations of the United States, shall be exempt from taxation by or under State or municipal or local authority. (R. S. § 3701.)

DERIVATION

Act Feb. 25, 1862, ch. 33, § 2, 12 Stat. 346; act Mar. 3, 1863, ch. 73, § 1, 12 Stat. 710; act Mar. 3, 1864, ch. 17, § 1, 13 Stat. 13; act June 30, 1864, ch. 172, § 1, 13 Stat. 218; act Jan. 28, 1865, ch. 22, § 1, 13 Stat. 425; act Mar. 3, 1865, ch. 77, § 2, 13 Stat. 469; act July 14, 1870, ch. 256, § 1, 16 Stat. 272.

§ 743. Panama Canal bonds to have rights and privileges of other bonds.

The 2-percent bonds of the United States authorized by section 8 of the Act of June 28, 1902, chapter 1302, 32 Stat. 484, shall have all the rights and privileges accorded by law to other 2-percent bonds of the United States. (Dec. 21, 1905, ch. 3, § 1, 34 Stat. 5.)

REPEAL

Acts and parts of acts inconsistent with sections 315b, 408b, 441-446, 821, and 822a of this title as repealed, see section 446 of this title.

CROSS REFERENCES

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Provisions for payment of obligations in gold declared against public policy, see section 463 of this title.

**§ 744. Redemption, payment, and exemption from taxes of Panama Canal bonds.**

Bonds issued under authority of section 8 of the Act of June 28, 1902 (chapter 1302, Thirty-second Statutes, page 484), shall be redeemable in gold coin at the pleasure of the United States after 10 years from the date of their issue, and payable 30 years from such date, and bear interest payable quarterly in legal tender coin or currency at the rate of 2 per centum per annum; and such bonds shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority. (June 28, 1902, ch. 1302, § 8, 32 Stat. 484; June 5, 1933, ch. 48, § 1, 48 Stat. 113.)

**REPEAL**

Acts and parts of acts inconsistent with sections 315b, 408b, 441-446, 821, and 822a of this title as repealed, see section 446 of this title.

**CODIFICATION**

"Legal tender coin or currency" has been substituted for "gold coin" in this section on authority of section 463 of this title which prohibits payment of obligations in gold.

**CROSS REFERENCES**

Compensation of certain civilian positions in the field service to be adjusted by the heads of the several executive departments and establishments, see sections 678, 678a of Title 5, Executive Departments and Government Officers and Employees.

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Provisions for payment of obligations in gold declared against public policy, see section 463 of this title.

**§ 745. Payment, interest, and exemption from taxes of Panama Canal bonds.**

Bonds issued under authority of section 39 of the Act of August 5, 1909 (chapter 6, Thirty-sixth Statutes, page 117), shall be payable at such times within fifty years after the date of issue as the Secretary of the Treasury, in his discretion, may deem advisable, and bear interest payable quarterly in legal tender coin or currency at a rate not exceeding 3 per centum per annum; and such bonds shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority. (Aug. 5, 1909, ch. 6, § 39, 36 Stat. 117; June 3, 1916, ch. 134, § 124, 39 Stat. 215; Sept. 7, 1916, ch. 451, § 13, 39 Stat. 732; Mar. 3, 1917, ch. 159, § 400, 39 Stat. 1002; Apr. 24, 1917, ch. 4, § 4, 40 Stat. 36; Sept. 24, 1917, ch. 56, § 11, 40 Stat. 292; June 5, 1933, ch. 48, § 1, 48 Stat. 113.)

**REPEAL**

Acts and parts of acts inconsistent with sections 315b, 408b, 441-446, 821 and 822a of this title, as repealed, see section 446 of this title.

**CODIFICATION**

"Legal tender coin or currency" has been substituted for "gold coin" in this section on authority of section 463 of this title which prohibits payment of obligations in gold.

**CROSS REFERENCES**

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Provisions for payment of obligations in gold declared against public policy, see section 463 of this title.

**§ 746. Payment, interest, exemptions from taxes, etc., of First Liberty bonds.**

Bonds issued under section 1 of the First Liberty Bond Act (Act of April 24, 1917, chapter 4, section 1, Fortieth Statutes, page 35), shall be subject to the terms and conditions of issue, conversion, redemption, maturities, payment, and rate and time of payment of interest, not exceeding 3½ per centum per annum, as the Secretary of the Treasury has prescribed. The principal and interest thereof shall be payable in United States legal tender coin or currency of the present standard of value and shall be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States, or its possessions, or by any State or local taxing authority; but such bonds shall not bear the circulation privilege. (Apr. 24, 1917, ch. 4, § 1, 40 Stat. 35; June 5, 1933, ch. 48, § 1, 48 Stat. 113.)

**REPEAL**

Acts and parts of acts inconsistent with sections 315b, 408b, 441-446, 821 and 821a of this title, as repealed, see section 446 of this title.

**CODIFICATION**

"Legal tender coin or currency" was substituted for "gold coin" in this section on authority of section 463 of this title which prohibits payment of obligations in gold.

**CROSS REFERENCES**

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Provisions for payment of obligations in gold declared against public policy, see section 463 of this title.

**§ 747. Tax exemptions; second and subsequent Liberty loans.**

All bonds and certificates authorized by sections 752, 754, and 757 of this title shall be exempt, both as to principal and interest from all taxation imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except (a) estate or inheritance taxes, and (b) graduated additional income taxes, commonly known as surtaxes, and excess profits and war-profits taxes, imposed by the United States, upon the income or profits of individuals, partnerships, associations, or corporations. The interest on an amount of such bonds and certificates the principal of which does not exceed in the aggregate, \$5,000, owned by any individual, partnership, association, or corporation, shall be exempt from the taxes provided for in subdivision (b) of this section. (Sept. 24, 1917, ch. 56, § 7, 40 Stat. 291.)

**§ 748. Repealed. Feb. 26, 1926, ch. 27, § 1200 (a), 44 Stat. 125.**

Section was derived from act June 2, 1924, ch. 234, § 1028, 43 Stat. 349.

**§ 748a. Consolidation of Liberty bond tax exemptions.**

Section, act Feb. 26, 1926, ch. 27, § 1125, 44 Stat. 122, exempted Liberty bonds from certain taxes for from two to five years from January 1, 1921.

**§ 749. First, second, third, and fourth Liberty loans; bonds; exemption from taxation.**

Section, act Mar. 3, 1919, ch. 100, § 2, 40 Stat. 1310, exempted interest on Liberty bonds from surtaxes for five years from July 2, 1921.

**§ 750. Bonds and certificates of indebtedness beneficially owned by nonresident aliens not engaged in business in United States exempt from taxation.**

Notwithstanding the provisions of sections 745, 747, 752-754b, 757, 757b, 757c, 758, 760, 764-766, 769, 771, 773, 774, and 801 of this title, or of any other law, bonds, notes, and certificates of indebtedness of the United States and bonds of the War Finance Corporation shall, while beneficially owned by a nonresident alien individual, or a foreign corporation, partnership, or association, not engaged in business in the United States, be exempt both as to principal and interest from any and all taxation imposed on July 9, 1918, or thereafter by the United States, any State, or any of the possessions of the United States, or by any local taxing authority. (July 9, 1918, ch. 142, § 3, 40 Stat. 845; Mar. 3, 1919, ch. 100, § 4, 40 Stat. 1311.)

**REFERENCES IN TEXT**

Section formerly referred to the War Finance Corporation Act. This reference has been deleted because the War Finance Corporation has been dissolved rendering that act obsolete.

**§ 751. Consols of 1930, interest, payment, exemption from taxes.**

The bonds of the United States bearing interest at 5 per centum per annum, payable February 1, 1904, and any bonds of the United States bearing interest at 4 per centum per annum, payable July 1, 1907, and any bonds of the United States bearing interest at 3 per centum per annum, payable August 1, 1908, exchanged for an equal amount of coupon or registered bonds of the United States in the form prescribed by the Secretary of the Treasury, in denominations of \$50 or any multiple thereof, bearing interest at the rate of 2 per centum per annum, payable quarterly, shall be payable at the pleasure of the United States after thirty years from the date of their issue, and said bonds to be payable, principal and interest, in gold coin of the standard value on March 14, 1900, and be exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority. (Mar. 14, 1900, ch. 41, § 11, 31 Stat. 48.)

**REPEAL**

Acts and parts of acts inconsistent with sections 315b, 408b, 441-446, 821, and 822a of this title as repealed, see section 446 of this title.

**CROSS REFERENCES**

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Provisions for payment of obligations in gold declared against public policy, see section 463 of this title.

**§ 752. Second, third, and fourth Liberty loans; amount; bonds.**

The Secretary of the Treasury, with the approval of the President, is hereby authorized to borrow, from time to time, on the credit of the United States for the purposes of sections 745, 747, 752-754b, 757, 757b, 757c, 758, 760, 764-766, 769, 771, 773, 774 and 801 of this title, to provide for the purchase, redemption, or refunding, at or before maturity, of any outstanding bonds, notes, certificates of indebtedness, or Treasury bills of the United States, and to meet expenditures authorized for the national

security and defense and other public purposes authorized by law, such sum or sums as in his judgment may be necessary, and to issue therefor bonds of the United States.

The bonds authorized in this section shall be in such form or forms and denomination or denominations and subject to such terms and conditions of issue, conversion, redemption, maturities, payment, and rate or rates of interest, not exceeding 4¼ per centum per annum, and time or times of payment of interest, as the Secretary of the Treasury from time to time at or before the issue thereof may prescribe. The principal and interest thereof shall be payable in United States legal tender coin or currency of the present standard of value.

The bonds authorized in this section shall from time to time first be offered at not less than par as a popular loan, under such regulations, prescribed by the Secretary of the Treasury from time to time, as will in his opinion give the people of the United States as nearly as may be an equal opportunity to participate therein, but he may make allotment in full upon applications for smaller amounts of bonds in advance of any date which he may set for the closing of subscriptions and may reject or reduce allotments upon later applications and applications for larger amounts, and may reject or reduce allotments upon applications from incorporated banks and trust companies for their own account and make allotment in full or larger allotments to others, and may establish a graduated scale of allotments, and may from time to time adopt any or all of said methods, should any such action be deemed by him to be in the public interest: *Provided*, That such reduction or increase of allotments of such bonds shall be made under general rules to be prescribed by said Secretary and shall apply to all subscribers similarly situated. And any portion of the bonds so offered and not taken may be otherwise disposed of by the Secretary of the Treasury in such manner and at such price or prices, not less than par, as he may determine. The Secretary may make special arrangements for subscriptions at not less than par from persons in the military or naval forces of the United States, but any bonds issued to such persons shall be in all respects the same as other bonds of the same issue.

Notwithstanding the provisions of the foregoing paragraph, the Secretary of the Treasury may from time to time, when he deems it to be in the public interest, offer such bonds otherwise than as a popular loan and he may make allotments in full, or reject or reduce allotments upon any applications whether or not the offering was made as a popular loan. (Sept. 24, 1917, ch. 56, § 1, 40 Stat. 288; Apr. 4, 1918, ch. 44, § 1, 40 Stat. 502; July 9, 1918, ch. 142, § 1, 40 Stat. 844; Mar. 3, 1931, ch. 433, 46 Stat. 1506; June 5, 1933, ch. 48, § 1, 48 Stat. 113; Jan. 30, 1934, ch. 6, § 14 (a) (1), 48 Stat. 343; Feb. 4, 1935, ch. 5, § 1, 49 Stat. 20; May 26, 1938, ch. 285, § 1, 52 Stat. 447.)

**REPEAL**

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

## COMIFICATION

"Legal tender coin or currency" has been substituted for "gold coin" in this section on authority of section 463 of this title which prohibits payment of obligations in gold.

## CROSS REFERENCES

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Issuance under the Second Liberty Bond Act of special obligations exclusively to the "Federal Old-Age and Survivors Insurance Trust Fund," see section 401 (c) of Title 42, The Public Health and Welfare.

Issuance under this section of special obligations directly to Unemployment Trust Fund, see section 1104 (b) of Title 42, The Public Health and Welfare.

Provisions for payment of obligations in gold declared against public policy, see section 463 of this title.

Purposes for which securities may be issued under this section extended to include purchases by Secretary of the Treasury of bonds of Home Owners' Loan Corporation, see section 1463 (c) of Title 12, Banks and Banking.

**§ 752a. Same; convertible; privileges of holders; applicable provisions.**

In connection with the issue of any series of bonds under the authority of section 752 of this title the Secretary of the Treasury may determine that the bonds of such series shall be convertible as provided in or pursuant to this section, and, in any such case, he may make appropriate provision to that end in offering for subscription the bonds of such series (hereinafter called convertible bonds). In any case of the issue of a series of convertible bonds, if a subsequent series of bonds (not including United States certificates of indebtedness, war-savings certificates, and other obligations maturing not more than five years from the issue of such obligations, respectively) bearing interest at a higher rate shall under the authority of sections 745, 747, 752, 752a, 753, 754, 754a, 754b, 757, 757b, 757c, 758, 760, 764-766, 769, 771, 773, 774, and 801 of this title, or any other Act, be issued by the United States before the termination of the war between the United States and the Imperial German Government, then the holders of such convertible bonds shall have the privilege, at the option of the several holders, at any time within such period, after the public offering of bonds of such subsequent series, and under such rules and regulations as the Secretary of the Treasury shall have prescribed, of converting their bonds, at par, into bonds bearing such higher rate of interest at such price not less than par as the Secretary of the Treasury shall have prescribed. The bonds to be issued upon such conversion under sections 745, 747, 752-754b, 757, 757b, 757c, 758, 760, 764-766, 769, 771, 773, 774, and 801 of this title shall be substantially the same in form and terms as shall be prescribed by or pursuant to law with respect to the bonds of such subsequent series, not only as to interest rate but also as to convertibility (if future bonds be issued at a still higher rate of interest) or nonconvertibility, and as to exemption from taxation, if any, and in all other respects, except that the bonds issued upon such conversion shall have the same dates of maturity, of principal, and of interest, and be subject to the same terms of redemption before maturity, as the bonds converted; and such bonds shall be issued from time to time if and when and to the extent that the privilege of conversion so conferred shall arise and shall be ex-

ercised. If the privilege of conversion so conferred under the aforesaid sections of this title shall once arise, and shall not be exercised with respect to any convertible bonds within the period so prescribed by the Secretary of the Treasury, then such privilege shall terminate as to such bonds and shall not arise again, though again thereafter bonds be issued bearing interest at a higher rate or rates.

Holders of bonds bearing interest at a higher rate than four per centum per annum, whether issued (a) under section 752 of this title, or (b) upon conversion of four per centum bonds issued under said section, or (c) upon conversion of three and one-half per centum bonds issued under sections 745, 746, 755, 759, 764, 771, 774, and 804 of this title, or (d) upon conversion of four per centum bonds issued upon conversion of such three and one-half per centum bonds, shall not be entitled to any privilege of conversion under or pursuant to this section or otherwise. The provisions of sections 747 and 758 of this title shall extend to all such bonds.

If bonds bearing interest at a higher rate than four per centum per annum shall be issued before July first, nineteen hundred and eighteen, then any bonds bearing interest at the rate of four per centum per annum which shall, after July first, nineteen hundred and eighteen, and before the expiration of the six months' conversion period prescribed by the Secretary of the Treasury, be presented for conversion into bonds bearing interest at such higher rate, shall, for the purpose of computing the amount of interest payable, be deemed to have been converted on the dates for the payment of the semiannual interest on the respective bonds so presented for conversion, last preceding the date of such presentation. (Sept. 24, 1917, ch. 56, § 4, 40 Stat. 290; Apr. 4, 1918, ch. 44, § 3, 40 Stat. 504.)

**§ 753. United States notes—(a) Authority to issue; amount; forms and denominations; interest; payment and redemption.**

In addition to the bonds and certificates of indebtedness and war-savings certificates authorized by sections 745, 747, 752, 752a, 753, 754, 754a, 754b, 757, 757b, 757c, 758, 760, 764-766, 769, 771, 773, 774 and 801 of this title, the Secretary of the Treasury, with the approval of the President, is authorized, subject to the limitation imposed by section 757b of this title, to borrow from time to time on the credit of the United States for the purposes of said sections, to provide for the purchase, redemption, or refunding, at or before maturity, of any outstanding bonds, notes, certificates of indebtedness, or Treasury bills of the United States, and to meet public expenditures authorized by law, such sum or sums as in his judgment may be necessary and to issue therefor notes of the United States at not less than par (except as provided in section 754b of this title) in such form or forms and denomination or denominations, containing such terms and conditions, and at such rate or rates of interest, as the Secretary of the Treasury may prescribe, and each series of notes so issued shall be payable at such time not less than one year nor more than five years from the date of its issue as he may prescribe, and may be redeemable before maturity (at the option of the United States) in



whole or in part, upon not more than one year's nor less than four months' notice, and under such rules and regulations and during such period as he may prescribe.

(b) Series; exemptions.

The notes authorized in this section may be issued in any one or more of the following series as the Secretary of the Treasury may prescribe in connection with the issue thereof:

(1) Exempt, both as to principal and interest, from all taxation (except estate or inheritance taxes) imposed on September 14, 1917, or thereafter by the United States, any State, or any of the possessions of the United States, or by any local taxing authority;

(2) Exempt, both as to principal and interest, from all taxation imposed on September 14, 1917, or thereafter by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except (a) estate or inheritance taxes, and (b) graduated additional income taxes, commonly known as surtaxes, and excess-profits and war-profits taxes, imposed on September 14, 1917, or thereafter by the United States, upon the income or profits of individuals, partnerships, associations, or corporations;

(3) Exempt, both as to principal and interest, as provided in paragraph (2); and with an additional exemption from the taxes referred to in clause (b) of such paragraph, of the interest on an amount of such notes the principal of which does not exceed \$30,000, owned by any individual, partnership, association, or corporation; or

(4) Exempt, both as to principal and interest, from all taxation imposed on September 14, 1917, or thereafter by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except (a) estate or inheritance taxes, and (b) all income, excess-profits, and war profits taxes, imposed on September 14, 1917, or thereafter by the United States, upon the income or profits of individuals, partnerships, associations, or corporations.

(c) Conversion into other series.

If the notes authorized under this section are offered in more than one series bearing the same date of issue, the holder of notes of any such series shall (under such rules and regulations as may be prescribed by the Secretary of the Treasury) have the option of having such notes held by him converted at par into notes of any other such series offered bearing the same date of issue.

(d) No circulation privileges; payment in currency and coin; "bond" or "bonds" defined.

None of the notes authorized by this section shall bear the circulation privilege. The principal and interest thereof shall be payable in United States legal tender coin or currency of the present standard of value. The word "bond" or "bonds" where it appears in sections 760, 765, 771 and 773 of this title and section 84 of Title 12, but in such sections only, shall be deemed to include notes issued under this section. (Sept. 24, 1917, ch. 56, § 18, as added, Mar. 3, 1919, ch. 100, § 1, 40 Stat. 1309, and amended Nov. 23, 1921, ch. 136, § 1401, 42 Stat. 321; June 5, 1933,

ch. 48, § 1, 48 Stat. 113; Jan. 30, 1934, ch. 6, § 14 (a), 48 Stat. 343; Feb. 4, 1935, ch. 5, § 4, 49 Stat. 20; July 8, 1937, ch. 444, § 8 (e), 50 Stat. 482.)

REPEAL

Acts and parts of acts inconsistent with this section repealed, see section 446 of this title.

CODIFICATION

Words "legal tender coin or currency" have been substituted for "gold coin" in subsection (d) on authority of section 463 of this title which prohibits payment of obligations in gold.

Sections 735-738 of this title have been deleted from subd. (d) of this section because repealed by act July 8, 1937, ch. 444, § 8 (e), 50 Stat. 482.

CROSS REFERENCE

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

§ 754. Second and third Liberty loans; certificates of indebtedness and Treasury bills—(a) Authority to issue additional amount; terms and conditions; payment and redemption; acceptance for foreign obligations.

In addition to the bonds and notes authorized by sections 752, 753 and 757c of this title the Secretary of the Treasury is authorized, subject to the limitation imposed by section 757b of this title, to borrow from time to time, on the credit of the United States, for the purposes of sections 752, 752a, 753, 754, 754a, 754b, 757, 757b, 757c, 758, 760, 764-766, 769, 771, 773, 774 and 801 of this title, to provide for the purchase, redemption, or refunding, at or before maturity, of any outstanding bonds, notes, certificates of indebtedness or Treasury bills of the United States, and to meet public expenditures authorized by law, such sum or sums as in his judgment may be necessary, and to issue therefor (1) certificates of indebtedness of the United States at not less than par (except as provided in section 754b of this title) and at such rate or rates of interest, payable at such time or times as he may prescribe; or, (2) Treasury bills on a discount basis and payable at maturity without interest. Treasury bills to be issued hereunder shall be offered for sale on a competitive basis, under such regulations and upon such terms and conditions as the Secretary of the Treasury may prescribe, and the decisions of the Secretary in respect of any issue shall be final. Certificates of indebtedness and Treasury bills issued hereunder shall be in such form or forms and subject to such terms and conditions, shall be payable at such time not exceeding one year from the date of issue, and may be redeemable before maturity upon such terms and conditions as the Secretary of the Treasury may prescribe. Treasury bills issued hereunder shall not be acceptable before maturity in payment of interest or of principal on account of obligations of foreign governments held by the United States of America.

(b) Exemption from taxation.

All certificates of indebtedness and Treasury bills issued hereunder (after the date upon which this subdivision becomes law) shall be exempt, both as to principal and interest, from all taxation (except estate and inheritance taxes) now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority; and the amount of discount at

which Treasury bills are originally sold by the United States shall be considered to be interest within the meaning of this subdivision.

- (c) "Bonds and notes" in Federal Reserve Act as including certificates of indebtedness and Treasury bills.

Wherever the words "bonds and notes of the United States", or bonds and notes of the Government of the United States, or "bonds or notes of the United States" are used in the Federal Reserve Act,<sup>1</sup> they shall be held to include certificates of indebtedness and Treasury bills issued hereunder.

- (d) Gain from sale of Treasury bills; exemption from taxation; loss from sale as tax deduction.

Any gain from the sale or other disposition of Treasury bills issued hereunder (after the date upon which this subdivision becomes law) shall be exempt from all taxation (except estate or inheritance taxes) now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority; and no loss from the sale or other disposition of such Treasury bills shall be allowed as a deduction, or otherwise recognized, for the purposes of any tax now or hereafter imposed by the United States or any of its possessions. (Sept. 24, 1917, ch. 56, § 5, 40 Stat. 290; Apr. 4, 1918, ch. 44, § 4, 40 Stat. 504; Mar. 3, 1919, ch. 100, § 3, 40 Stat. 1311; June 17, 1929, ch. 26, 46 Stat. 19; June 17, 1930, ch. 512, 46 Stat. 775; Feb. 4, 1935, ch. 5, §§ 2, 3, 49 Stat. 20.)

<sup>1</sup>Distribution of Federal Reserve Act in the Code, see note under section 226 of Title 12, Banks and Banking.

**§ 754a. Issuance of obligations for purchase or refunding of public indebtedness.**

Notwithstanding any other provisions of law, any obligations authorized by sections 745, 747, 752, 752a, 753, 754, 754a, 754b, 757, 757b, 757c, 758, 760, 764-766, 769, 771, 773, 774 and 801 of this title may be issued for the purchase, redemption, or refunding, at or before maturity, of any outstanding bonds, notes, certificates of indebtedness, or Treasury bills, of the United States, or to obtain funds for such purchase, redemption, or refunding, under such rules, regulations, terms, and conditions as the Secretary of the Treasury may prescribe. (Sept. 24, 1917, ch. 56, § 19, as added, Jan. 30, 1934, ch. 6, § 14 (a) (4), 48 Stat. 343.)

**REPEAL**

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

**§ 754b. Issuance of obligations on discount or competitive basis.**

The Secretary of the Treasury may issue any obligations authorized by sections 745, 747, 752-754b, 757, 757b, 757c, 758, 760, 764-766, 769, 771, 773, 774, and 801 of this title and maturing not more than one year from the date of their issue on a discount basis and payable at maturity without interest. Any such obligations may also be offered for sale on a competitive basis under such regulations and upon such terms and conditions as the Secretary of the Treasury may prescribe, and the decisions of the Secretary in respect of any issue shall be final. (Sept. 24,

1917, ch. 56, § 20, as added, Jan. 30, 1934, ch. 6, § 14 (a) (4), 48 Stat. 343.)

**REPEAL**

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

**§ 755. First Liberty loan; certificates of indebtedness.**

In addition to the bonds authorized by sections 1 and 4 of the Act of April 24, 1917 (chapter 4, Fortieth Statutes, page 36), the Secretary of the Treasury is authorized to borrow from time to time, on the credit of the United States, to meet public expenditures authorized by law, such sum or sums as, in his judgment, may be necessary, and to issue therefor certificates of indebtedness at not less than par in such form and subject to such terms and conditions and at such rate of interest, not exceeding  $3\frac{1}{2}$  per centum per annum, as he may prescribe; and each certificate so issued shall be payable, with the interest accrued thereon, at such time, not exceeding one year from the date of its issue, as the Secretary of the Treasury may prescribe. Certificates of indebtedness authorized in this section shall not bear the circulation privilege, and the sum of such certificates outstanding shall at no time exceed in the aggregate \$2,000,000,000, and such certificates shall be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States, or its possessions, or by any State or local taxing authority. (Apr. 24, 1917, ch. 4, § 6, 40 Stat. 36.)

**REFERENCES IN TEXT**

Act of April 24, 1917, mentioned in text, was the First Liberty Bond Act. See Section 774 of this title.

**§ 755a. Same; deposit of proceeds of sales of bonds and certificates of indebtedness; limit.**

The Secretary of the Treasury, in his discretion, is authorized to deposit in such banks and trust companies as he may designate the proceeds, or any part thereof, arising from the sale of the bonds and certificates of indebtedness authorized by the First Liberty Bond Act (Act of April 24, 1917, chapter 4, Fortieth Statutes, page 35), or the bonds previously authorized as described in section 4 of said Act, and such deposits may bear such rate of interest and be subject to such terms and conditions as the Secretary of the Treasury may prescribe: *Provided*, That the amount so deposited shall not in any case exceed the amount withdrawn from any such bank or trust company and invested in such bonds or certificates of indebtedness plus the amount so invested by such bank or trust company, and such deposits shall be secured in the manner required for other deposits by section 90 of Title 12. (Apr. 24, 1917, ch. 4, § 7, 40 Stat. 37.)

**CODIFICATION**

Second proviso formerly set out in this section is now covered by section 462a-1 of Title 12, Banks and Banking.

**§ 756. Loans to meet public expenditures; certificates of indebtedness; limitation; counterfeiting.**

The Secretary of the Treasury is authorized to borrow, from time to time, at a rate of interest not exceeding 3 per centum per annum, such sum or sums as in his judgment may be necessary to meet

public expenditures, and to issue therefor certificates of indebtedness in such form and in such denominations as he may prescribe; and each certificate so issued shall be payable, with the interest accrued thereon, at such time, not exceeding one year from the date of its issue, as the Secretary of the Treasury may prescribe: *Provided*, That the sum of such certificates outstanding shall at no time exceed \$300,000,000, and the provisions of existing law respecting counterfeiting and other fraudulent practices are extended to the certificates of indebtedness authorized by this section. (June 13, 1898, ch. 448, § 32, 30 Stat. 466; Aug. 5, 1909, ch. 6, § 40, 36 Stat. 117; Mar. 3, 1917, ch. 159, § 401, 39 Stat. 1003.)

**§ 757. Second and third Liberty loans; additional loans; war-savings certificates.**

In addition to the bonds authorized by section 752 of this title and the certificates of indebtedness authorized by section 754 of this title, the Secretary of the Treasury is authorized to borrow from time to time, on the credit of the United States, for the purposes of sections 745, 747, 752, 752a, 753, 754, 754a, 754b, 757, 757b, 757c, 758, 760, 764-766, 769, 771, 773, 774, and 801 of this title and to meet public expenditures authorized by law, such sum or sums as in his judgment may be necessary, and to issue therefor, at such price or prices and upon such terms and conditions as he may determine, war-savings certificates of the United States on which interest to maturity may be discounted in advance at such rate or rates and computed in such manner as he may prescribe. Such war-savings certificate shall be in such form or forms and subject to such terms and conditions, and may have such provisions for payment thereof before maturity, as the Secretary of the Treasury may prescribe. Each war-savings certificate so issued shall be payable at such time, not exceeding five years from the date of its issue, and may be redeemable before maturity, upon such terms and conditions as the Secretary of the Treasury may prescribe. The sum of such war-savings certificates outstanding shall not at any one time exceed in the aggregate \$4,000,000,000. It shall not be lawful for any one person at any one time to hold war-savings certificates of any one series to an aggregate amount exceeding \$5,000. The Secretary of the Treasury may, under such regulations and upon such terms and conditions as he may prescribe, issue, or cause to be issued, stamps to evidence payments for or on account of such certificates. (Sept. 24, 1917, ch. 56, § 6, 40 Stat. 291; Sept. 24, 1918, ch. 176, § 2, 40 Stat. 966; Nov. 23, 1921, ch. 136, § 1402, 42 Stat. 321.)

**CROSS REFERENCE**

Limitation of total amount of obligations issued under the act of 1917, see section 757b of this title.

**§ 757a. Gold certificates; issuance authorized.**

Section, act Jan. 30, 1934, ch. 6, § 14 (c), 48 Stat. 344, is now covered by section 405b of this title.

**§ 757b. Limitation on obligations issued under second Liberty loan; additional National Defense obligations.**

(a) The face amount of bonds, certificates of indebtedness, Treasury bills, and notes issued under

the authority of sections 745, 747, 752-754b, 757, 757b, 757c, 758, 760, 764-766, 769, 771, 773, 774 and 801 of this title, and certificates of indebtedness issued under the authority of section 755 of this title, shall not exceed in the aggregate \$45,000,000,000 outstanding at any one time.

(b) In addition to the amount authorized by paragraph (a) of this section, any obligations authorized by sections 754 and 753 of this title, not to exceed in the aggregate \$4,000,000,000 outstanding at any one time, less any retirements made from the special fund made available under section 301 of the Revenue Act of 1940,<sup>1</sup> may be issued under said sections to provide the Treasury with funds to meet any expenditures made, after June 30, 1940, for the national defense, or to reimburse the general fund of the Treasury therefor. Any such obligations so issued shall be designated "National Defense Series". (Sept. 24, 1917, ch. 56, § 21, as added Feb. 4, 1935, ch. 5, § 5, 49 Stat. 21, and amended May 26, 1938, ch. 285, § 2, 52 Stat. 447; July 20, 1939, ch. 336, 53 Stat. 1071; June 25, 1940, 11:45 a. m., E. S. T., ch. 419, title III, § 302, 54 Stat. 526.)

<sup>1</sup> Set out as note under this section.

Section 301 of act June 25, 1940, cited to text, provided as follows: "The Secretary of the Treasury shall, as soon as practicable after the end of each quarter, determine the additional amount of taxes collected attributable to the increases in taxes made, and to the floor stocks taxes imposed, by the amendments to the Internal Revenue Code in title II of this Act (sections 15, 143, 500, 600, 1200, 951, 1001, 1250, 1801, 1802, 3403 (f) (1), 3452, 3460 (a), 3465, 3481 (b), 3482, 1650, 1700, 2004, 2005, 2800, 2887, 3190, 3191, 1807, 3403 of Internal Revenue Code) (not including the amount of taxes attributable solely to section 209 [sections 1801, 1802, 3403 (f) (1), 3452, 3460 (a), 3465, 3481 (b), 3482 of Internal Revenue Code] and not including any amount collected under section 1700 (a) (1) of the Internal Revenue Code attributable to a basic admission charge of more than 40 cents), and the amounts so determined shall be set aside as a special fund which shall be available only for the retirement of any of the obligations issued pursuant to the authority contained in section 21 (b) of the Second Liberty Bond Act, as amended (section 757b (b) of this title). If at any time the amounts in the fund are not sufficient for such purpose, the Secretary of the Treasury is authorized and directed to transfer to the fund moneys out of the general fund of the Treasury. Any amounts in the special fund not necessary for the retirement of such obligations shall be deposited in the general fund of the Treasury."

**§ 757c. United States savings bonds—(a) Authority to issue; use of proceeds.**

The Secretary of the Treasury, with the approval of the President, is authorized to issue, from time to time, through the Postal Service, or otherwise, bonds of the United States to be known as "United States Savings Bonds." The proceeds of the Savings Bonds shall be available to meet any public expenditures authorized by law and to retire any outstanding obligations of the United States bearing interest or issued on a discount basis. The various issues and series of the Savings Bonds shall be in such forms, shall be offered in such amounts within the limits of section 752 of this title and shall be issued in such manner and subject to such terms and conditions consistent with subsections (b) and (c) hereof, and including any restriction on their

transfer, as the Secretary of the Treasury may from time to time prescribe.

(b) Issuance on discount basis; terms and conditions; limitation on amount held by one person.

Each Savings Bond shall be issued on a discount basis to mature not less than ten nor more than twenty years from the date as of which the bond is issued, and provision may be made for redemption before maturity upon such terms and conditions as the Secretary of the Treasury may prescribe: *Provided*, That the issue price of Savings Bonds and the terms upon which they may be redeemed prior to maturity shall be such as to afford an investment yield not in excess of three per centum per annum, compounded semiannually. The denominations of Savings Bonds shall be in terms of their maturity value and shall not be less than \$25. It shall not be lawful for any one person at any one time to hold Savings Bonds issued during any one calendar year in an aggregate amount exceeding \$10,000 (maturity value).

(c) Exemption from taxation; circulation privilege.

The provisions of section 747 of this title (relating to the exemptions from taxation both as to principal and as to interest of bonds issued under authority of section 752 of this title, as amended), shall apply as well to the Savings Bonds; and, for the purposes of determining taxes and tax exemptions, the increment in value represented by the difference between the price paid and the redemption value received (whether at or before maturity) shall be considered as interest. The Savings Bonds shall not bear the circulation privilege.

(d) Appropriation for expenses.

The appropriation for expenses provided by sections 760 and 761 of this title, shall be available for all necessary expenses under this section; and the Secretary of the Treasury is authorized to advance, from time to time, to the Postmaster General from such appropriation such sums as are shown to be required for the expenses of the Post Office Department, in connection with the handling of the bonds issued under this section.

(e) Withdrawal of postal savings for purchase of savings bonds.

The board of trustees of the Postal Savings System is authorized to permit, subject to such regulations as it may from time to time prescribe, the withdrawal of deposits on less than sixty days' notice for the purpose of acquiring Savings Bonds which may be offered by the Secretary of the Treasury; and in such cases to make payment of interest to the date of withdrawal whether or not a regular interest payment date. No further original issue of bonds authorized by section 760 of Title 39, shall be made after July 1, 1935.

(f) Postal employees as fiscal agents for issuance, etc., of bonds.

At the request of the Secretary of the Treasury the Postmaster General, under such regulations as he may prescribe, shall require the employees of the Post Office Department and of the Postal Service to perform, without extra compensation, such fiscal agency services as may be desirable and practicable

in connection with the issue, delivery, safe-keeping, redemption, and payment of the Savings Bonds. (Sept. 24, 1917, ch. 56, § 22, as added Feb. 4, 1935, ch. 5, § 6, 49 Stat. 21.)

§ 758. Bonds and certificates not to bear circulation privilege.

None of the bonds authorized by section 752 of this title nor of the certificates authorized by sections 754 and 757 of this title shall bear the circulation privilege. (Sept. 24, 1917, ch. 56, § 7, 40 Stat. 291.)

§ 759. First Liberty loan; appropriation to pay expenses.

In order to pay all necessary expenses, including rent, connected with any operations under sections 745, 746, 755, 755a, 759, 764, and 804 of this title, a sum not exceeding one-tenth of 1 per centum of the amount of certificates of indebtedness therein authorized is hereby appropriated, or as much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, to be expended as the Secretary of the Treasury may direct. (Apr. 24, 1917, ch. 4, § 8, 40 Stat. 37; May 29, 1928, ch. 901, § 1 (20), 45 Stat. 987.)

§ 760. Second and third Liberty loans; appropriation to pay expenses of issue of bonds; report of expenditures.

In order to pay all necessary expenses, including rent, connected with any operations under sections 745, 747, 752, 752a, 753, 754, 754a, 754b, 757, 757b, 757c, 758, 760, 764-766, 769, 771, 773, and 801 of this title, a sum not exceeding one-fifth of 1 per centum of the amount of bonds and war-saving certificates and one-tenth of 1 per centum of the amount of certificates of indebtedness therein authorized is hereby appropriated, or as much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, to be expended as the Secretary of the Treasury may direct. (Sept. 24, 1917, ch. 56, § 10, 40 Stat. 292; May 29, 1928, ch. 901, § 1 (20), 45 Stat. 987.)

CROSS REFERENCE

Appropriation provided by this section available for necessary expenses of United States in issuing savings bonds, see section 757c of this title.

§ 761. Appropriations for expense available for subsequent public debt issues.

The appropriations contained in sections 759 and 760 of this title, are hereby made applicable to any operations arising in connection with any public-debt issues made subsequently to June 30, 1921, pursuant to the authority contained in sections 745, 746, 747, 752, 752a, 753, 754a, 754b, 755, 755a, 757, 757b, 757c, 758-760, 764-766, 769, 771, 773, 774, 801, and 804 of this title, and section 84 of Title 12, as amended and supplemented: *Provided*, That with respect to operations on account of any such issue made after June 16, 1921, such appropriations shall be available only until the close of the fiscal year next following the fiscal year in which such issue was made. (May 29, 1920, ch. 214, § 1, 41 Stat. 646; June 16, 1921, ch. 23, § 1, 42 Stat. 36.)

## CROSS REFERENCES

Appropriations provided by this section available for necessary expenses of United States savings bonds, see section 757c of this title.

Limitations of this section inapplicable to certain savings bond transactions, see section 761a of this title.

§ 761a. Limitations of section 761 as inapplicable to certain savings bond transactions.

The proviso in section 761, limiting the availability of the appropriation for expenses of operations on account of any public debt issue to the close of the fiscal year next following the fiscal year in which such issue was made, shall not apply to savings bond transactions handled by the Federal Reserve banks for account of the Secretary of the Treasury. (Mar. 25, 1940, ch. 71, title I, 54 Stat. 59.)

§ 762. Expenses of sale and distribution of war-savings and thrift stamps.

The Secretary of the Treasury is authorized and directed to advance to the Postmaster General from the appropriation for expenses of preparation and issuance of war-savings stamps such sums as may be necessary to meet the expenses of the Post Office Department for clerical service and other necessary expenditures in connection with the distribution, sale, and keeping of accounts of war-savings and thrift stamps. (Nov. 4, 1918, ch. 201, § 1, 40 Stat. 1035.)

§ 763. First and second Liberty loans; bonds; conversion into bonds bearing higher interest rate; extension of time for.

The privilege of converting 4 per centum bonds of the first Liberty loan converted and 4 per centum bonds of the second Liberty loan into  $4\frac{1}{4}$  per centum bonds, which privilege arose on May 9, 1918, and expired on November 9, 1918, may be extended by the Secretary of the Treasury for such period, upon such terms and conditions and subject to such rules and regulations as he may prescribe. For the purpose of computing the amount of interest payable, bonds presented for conversion under any such extension shall be deemed to be converted on the dates for the payment of the semiannual interest on the respective bonds so presented for conversion next succeeding the date of such presentation. (Mar. 3, 1919, ch. 100, § 5, 40 Stat. 1311.)

§ 764. Use of proceeds; exchange of bonds.

Bonds shall be issued from time to time upon the interchange of bonds of different denominations and of coupon and registered bonds and upon the transfer of registered bonds issued under sections 1 and 4 of the Act of April 24, 1917 (chapter 4, Fortieth Statutes, page 36), under such rules and regulations as the Secretary of the Treasury shall prescribe, and, if and to the extent that the privilege of conversion provided for in such bonds shall arise and shall be exercised, in accordance with such provision for such conversion. The proceeds of the bonds authorized by section 752 of this title may be used for the purpose of defraying expenditures, and to reimburse the Treasury for expenditures not covered by previous issues of bonds, on account of the Panama Canal; to raise the money necessary to carry into effect the provisions of section 79 of Title 50, relative to the

production of nitrates; to meet expenditures and reimburse the Treasury for expenditures on account of the Mexican situation, the construction of the armor-plate plant, the construction of the Alaskan railway, and the purchase of the Danish West Indies; to meet emergency expenditures directed by the President for naval construction or the expediting thereof; and to redeem the 3 per centum loan of 1908 to 1918, maturing August 1, 1918. (Apr. 24, 1917, ch. 4, § 1, 40 Stat. 36; Sept. 24, 1917, ch. 56, § 11, 40 Stat. 292.)

## REFERENCES IN TEXT

Act April 24, 1917, mentioned in text, was the First Liberty Bond Act. See section 774 of this title.

§ 765. Bonds receivable in payment of estate or inheritance taxes.

Any bonds of the United States bearing interest at a higher rate than 4 per centum per annum (whether issued under section 752 of this title or upon conversion of bonds issued under that section or under the Act of April 24, 1917, chapter 4, Fortieth Statutes, page 35), which have been owned by any person continuously for at least six months prior to the date of his death, and which upon such date constitute part of his estate, shall, under rules and regulations prescribed by the Secretary of the Treasury, be receivable by the United States at par and accrued interest in payment of any estate or inheritance taxes imposed by the United States, under or by virtue of any present or future law upon such estate or the inheritance thereof. (Sept. 24, 1917, ch. 56, § 14, as added Apr. 4, 1918, ch. 44, § 6, 40 Stat. 505.)

§ 766. Bonds or certificates payable in foreign money.

Any of the bonds or certificates of indebtedness authorized by sections 745, 747, 752, 752a, 753, 754, 754a, 754b, 757, 757b, 757c, 758, 760, 764-766, 769, 771, 773, 774, and 801 of this title may be issued by the Secretary of the Treasury payable, principal and interest, in any foreign money or foreign moneys, as expressed in such bonds or certificates, but not also in United States gold coin, and he may dispose of such bonds or certificates in such manner and at such prices, not less than par, as he may determine, without compliance with the provisions of the third paragraph of section 752 of this title. In determining the amount of bonds and certificates issuable under said sections the dollar equivalent of the amount of any bonds or certificates payable in foreign money or foreign moneys shall be determined by the par of exchange at the date of issue thereof, as estimated by the Director of the Mint, and proclaimed by the Secretary of the Treasury, in pursuance of the provisions of section 372 of this title. The Secretary of the Treasury may designate depositaries in foreign countries, with which may be deposited as he may determine all or any part of the proceeds of any bonds or certificates authorized by said sections payable in foreign money or foreign moneys. (Sept. 24, 1917, ch. 56, § 16, as added Apr. 4, 1918, ch. 44, § 6, 40 Stat. 505.)

**§ 767. Sinking fund for retirement of Liberty bonds and notes.**

There is created in the Treasury a cumulative sinking fund for the retirement of bonds and notes issued under sections 752-755 and 757 of this title and the First Liberty Bond Act (April 24, 1917, chapter 4, Fortieth Statutes, page 35), and outstanding on July 1, 1920, and of bonds and notes thereafter issued, under any of such sections. The sinking fund and all additions thereto are hereby appropriated for the payment of such bonds and notes at maturity, or for the redemption or purchase thereof before maturity by the Secretary of the Treasury at such prices and upon such terms and conditions as he shall prescribe, and shall be available until all such bonds and notes are retired. The average cost of the bonds and notes purchased shall not exceed par and accrued interest. Bonds and notes purchased, redeemed, or paid out of the sinking fund shall be canceled and retired and shall not be reissued. For each fiscal year, until all such bonds and notes are retired there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the purposes of such sinking fund, an amount equal to the sum of (1)  $2\frac{1}{2}$  per centum of the aggregate amount of such bonds and notes outstanding on July 1, 1920, less an amount equal to the par amount of any obligations of foreign governments held by the United States on July 1, 1920, and (2) the interest which would have been payable during the fiscal year for which the appropriation is made on the bonds and notes purchased, redeemed, or paid out of the sinking fund during such year or in previous years. (Mar. 3, 1919, ch. 100, § 6, 40 Stat. 1311; Mar. 2, 1923, ch. 179, 42 Stat. 1427; May 29, 1928, ch. 901, § 1 (21), 45 Stat. 987; Jan. 30, 1934, ch. 6, § 14 (b), 48 Stat. 344.)

**REPEAL**

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

**§ 767a. Same; additional appropriation.**

For each fiscal year beginning with the fiscal year 1934 there is authorized to be appropriated, for the purposes of the sinking fund provided in section 767 of this title, as amended, in addition to amounts otherwise appropriated, an amount equal to  $2\frac{1}{2}$  per centum of the aggregate amount of the expenditures made, out of appropriations made or authorized in the Emergency Relief and Construction Act of July 21, 1932, chapter 520, Title III, 47 Statutes 716, on or after July 21, 1932, and on or before the last day of the fiscal year for which the appropriation is made. (July 21, 1932, ch. 520, § 308, 47 Stat. 724.)

**§ 767b. Same; further appropriation.**

To carry into effect the provisions of section 767a of this title, there is appropriated for each fiscal year beginning with the fiscal year 1935, out of any money in the Treasury not otherwise appropriated, for the purposes of the cumulative sinking fund provided in section 767 of this title, in addition to amounts otherwise appropriated, a sum equal to  $2\frac{1}{2}$  per centum of the aggregate of the expenditures on or after June 30, 1933, from appropriations made

or authorized in the Emergency Relief and Construction Act of 1932, July 21, 1932, chapter 520, Title III, sections 301, 302, 47 Statutes 716, 720. (Mar. 3, 1933, ch. 212, title I, § 1, 47 Stat. 1492; Mar. 15, 1934, ch. 70, title I, § 1, 48 Stat. 428.)

**§ 768. Bonds and certificates of indebtedness payable in legal tender coin or currency.**

Any bonds and certificates of indebtedness of the United States issued after February 4, 1910, shall be payable, principal and interest, in United States legal tender coin or currency of the standard of value on February 4, 1910; and such bonds may be issued in such denomination as may be prescribed by the Secretary of the Treasury. (Feb. 4, 1910, ch. 25, § 1, 36 Stat. 192; Mar. 3, 1917, ch. 159, § 400, 39 Stat. 1002; Mar. 4, 1917, ch. 191, 39 Stat. 1201; Apr. 24, 1917, ch. 4, § 1, 40 Stat. 35; June 5, 1933, ch. 48, § 1, 48 Stat. 113.)

**REPEAL**

Acts and parts of acts inconsistent with this section repealed, see section 446 of this title.

**CODIFICATION**

Words "legal tender coin or currency" were substituted for "gold coin" in this section on authority of section 463 of this title which prohibits payment of obligations in gold.

**CROSS REFERENCES**

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Provisions for payment of obligations in gold declared against public policy, see section 463 of this title.

**§ 769. Certificates of indebtedness; taxation; expense of issue.**

Any certificates of indebtedness issued after February 4, 1910, shall be exempt from all taxes or duties of the United States (but, in the case of certificates issued after September 1, 1917, only if and to the extent provided in connection with the issue thereof), as well as from taxation in any form by or under State, municipal, or local authority; and a sum not exceeding one-tenth of 1 per centum of the amount of any certificates of indebtedness issued is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay the expenses of preparing, advertising, and issuing the same. (Feb. 4, 1910, ch. 25, § 2, 36 Stat. 192; Sept. 24, 1917, ch. 56, § 11, 40 Stat. 292.)

**§ 770. Certain bonds not receivable as security for national bank circulating notes.**

The bonds issued under section 39 of the Act of August 5, 1909 (chapter 6, Thirty-sixth Statutes, page 117), which carry a provision that such bonds shall not be receivable by the Treasurer of the United States as security for the issue of circulating notes to national banks shall not be receivable for that purpose. (Mar. 2, 1911, ch. 195, 36 Stat. 1013.)

**§ 771. Deposit of proceeds of sales of Liberty bonds, certificates of indebtedness, and war-savings certificates.**

The Secretary of the Treasury, in his discretion, is authorized to deposit, in such incorporated banks and trust companies as he may designate, the proceeds, or any part thereof, arising from the sale of the bonds and certificates of indebtedness, Treasury bills,

and war-savings certificates authorized by this section and sections 745, 747, 752, 752a, 753, 754, 754a, 754b, 757, 757b, 757c, 758, 760, 764-766, 769, 773, 774, and 801 of this title, and arising from the payment of income and excess-profits taxes, and such deposits shall bear such rate or rates of interest, and shall be secured in such manner, and shall be made upon and subject to such terms and conditions as the Secretary of the Treasury may from time to time prescribe. (Sept. 24, 1917, ch. 56, § 8, 40 Stat. 291; Apr. 4, 1918, ch. 44, § 5, 40 Stat. 504; Jan. 30, 1934, ch. 6, § 14 (a) (2), 48 Stat. 343.)

#### CODIFICATION

Proviso formerly set out in this section is now covered by section 462a-1 of Title 12, Banks and Banking.

#### § 772. Fiscal agents.

Any incorporated bank or trust company designated as a depository by the Secretary of the Treasury under the authority conferred by section 771 of this title, which gives security for such deposits as, and to amounts, by him prescribed, may, upon and subject to such terms and conditions as the Secretary of the Treasury may prescribe, act as a fiscal agent of the United States in connection with the operations of selling and delivering any bonds, certificates of indebtedness, or war-savings certificates of the United States. (July 9, 1918, ch. 142, § 4, 40 Stat. 845.)

#### § 773. Performance of services by postal employees in connection with bonds, etc.

In connection with the operations of advertising, selling, and delivering any bonds, certificates of indebtedness, or war-savings certificates of the United States provided for in this section and sections 745, 747, 752, 752a, 753, 754, 754a, 754b, 757, 757b, 757c, 758, 760, 764-766, 769, 771, 774, and 801 of this title, the Postmaster General, under such regulations as he may prescribe, shall require, at the request of the Secretary of the Treasury, the employees of the Post Office Department and of the Postal Service to perform such services as may be necessary, desirable, or practicable, without extra compensation. (Sept. 24, 1917, ch. 56, § 9, 40 Stat. 292.)

#### § 773a. Gold clause securities; payment; exchange of coins or currencies.

The lawful holders of the coins or currencies of the United States shall be entitled to exchange them, dollar for dollar, for other coins or currencies which may be lawfully acquired and are legal tender for public and private debts. The Secretary of the Treasury is authorized and directed to make such exchanges and payments upon presentation hereunder in the manner provided in regulations prescribed by him. (Aug. 27, 1935, 6:00 p. m., ch. 780, § 1, 49 Stat. 938.)

#### EXPIRATION

Provision of this section entitling holders of gold-clause securities to receive payment of the stated dollar amounts prior to maturity expired by its own limitations on July 1, 1936.

#### § 773b. Same; withdrawal of consent to sue United States; exceptions.

Any consent which the United States may have given to the assertion against it of any right, privi-

lege, or power whether by way of suit, counterclaim, set-off, recoupment, or other affirmative action or defense in its own name or in the name of any of its officers, agents, agencies, or instrumentalities in any proceeding of any nature whatsoever (1) upon any gold-clause securities of the United States or for interest thereon, or (2) upon any coin or currency of the United States, or (3) upon any claim or demand arising out of any surrender, requisition, seizure, or acquisition of any such coin or currency or of any gold or silver and involving the effect or validity of any change in the metallic content of the dollar or other regulation of the value of money, is withdrawn: *Provided*, That this section shall not apply to any suit commenced prior to August 27, 1935, or which may be commenced by January 1, 1936, or to any proceeding referred to in this section in which no claim is made for payment or credit in an amount in excess of the face or nominal value in dollars of the securities, coins, or currencies of the United States involved in such proceeding. (Aug. 27, 1935, 6:00 p. m., ch. 780, § 2, 49 Stat. 939.)

#### § 773c. Same; manner of payment.

Except in cases with respect to which consent is not withdrawn under section 773b of this title, no sums, whether heretofore or hereafter appropriated or authorized to be expended, shall be available for, or expended in, payment upon securities, coins, or currencies of the United States except on an equal and uniform dollar for dollar basis. (Aug. 27, 1935, 6:00 p. m., ch. 780, § 3, 49 Stat. 939.)

#### § 773d. Same; definitions of "gold clause" and "securities of the United States."

As used in 773a-773c of this title the phrase "gold clause" means a provision contained in or made with respect to an obligation which purports to give the obligee a right to require payment in gold, or in a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, declared to be against public policy by section 463 of this title; and the phrase "securities of the United States" means the domestic public debt obligations of the United States, including bonds, notes, certificates of indebtedness, and Treasury bills, and other obligations for the repayment of money, or for interest thereon, made, issued, or guaranteed by the United States. (Aug. 27, 1935, 6:00 p. m., ch. 780, § 4, 49 Stat. 939.)

#### § 774. Short titles of Acts.

The short titles of the following Acts referred to or included, wholly or partly, in this chapter shall be as follows: (1) The short title of the Act of April 24, 1917 (chapter 4, Fortieth Statutes, page 35), sections 745, 746, 755, 755a, 759, 764, 768, 774, 804 of this title, shall be "First Liberty Bond Act."

(2) The short title of the Act of September 24, 1917 (chapter 56, Fortieth Statutes, page 288), sections 745, 747, 752-754b, 757, 757b, 757c, 758, 760, 764-766, 769, 771, 773, 774, 801 of this title, shall be "Second Liberty Bond Act."

(3) The short title of the Act of April 4, 1918 (chapter 44, Fortieth Statutes, page 502), sections



752, 752a, 754, 765, 766, 771, 774 of this title, shall be "Third Liberty Bond Act."

(4) The short title of the Act of July 9, 1918 (chapter 142, Fortieth Statutes, page 844), sections 750, 752, 772, 774 of this title, shall be "Fourth Liberty Bond Act."

(5) The short title of the Act of September 24, 1918 (chapter 176, Fortieth Statutes, page 965), sections 757, 774 of this title, shall be "Supplement to Second Liberty Bond Act."

(6) The short title of the Act of March 3, 1919 (chapter 100, Fortieth Statutes, page 1309), sections 749, 750, 753, 754, 763, 767, 774, 802 of this title, shall be "Victory Liberty Loan Act." (Apr. 24, 1917, ch. 4, § 9; Sept. 24, 1917, ch. 56, § 17, as added, Apr. 4, 1918, ch. 44, §§ 6-8, 40 Stat. 506, and amended July 9, 1918, ch. 142, § 5, 40 Stat. 845; Sept. 24, 1918, ch. 176, § 7, 40 Stat. 967; Mar. 3, 1919, ch. 100, § 11, 40 Stat. 1314.)

#### OBLIGATIONS OF FOREIGN GOVERNMENTS

§ 801. Conversion into obligations bearing higher interest rate; sale of obligations; redemption of United States bonds.

The Secretary of the Treasury is authorized, from time to time, to exercise in respect to any obligations of foreign governments acquired under authority of sections 745, 746, 747, 752-755a, 757, 758, 759, 760, 764-766, 768, 769, 771, 773, 774, 801, and 804 of this title, any privilege of conversion into obligations bearing interest at a higher rate provided for in or pursuant to such sections, and to convert any short-time obligations of foreign governments which may have been purchased under the authority of such sections into long-term obligations of such foreign governments, respectively, maturing not later than the bonds of the United States then last issued under the authority of such sections, and in such form and terms as the Secretary of the Treasury may prescribe; but the rate or rates of interest borne by any such long-time obligations at the time of their acquisition shall not be less than the rate borne by the short-time obligations so converted into such long-time obligations; and, under such terms and conditions as he may from time to time prescribe, to receive payment, on or before maturity, of any obligations of such foreign governments acquired on behalf of the United States under authority of such sections, and, with the approval of the President, to sell any of such obligations (but not at less than the purchase price with accrued interest unless otherwise hereafter provided by law), and to apply the proceeds thereof, and any payments so received from foreign governments on account of the principal of their said obligations, to the redemption or purchase, at not more than par and accrued interest, of any bonds of the United States issued under authority of such sections; and if such bonds cannot be so redeemed or purchased the Secretary of the Treasury shall redeem or purchase any other outstanding interest-bearing obligations of the United States which may at such time be subject to redemption or which can be purchased at not more than par and accrued interest. (Sept. 24, 1917, ch. 56, § 3, 40 Stat. 289.)

§ 802. Conversion of short-time obligations of foreign governments into long-time obligations; interest; payment of obligations.

The Secretary of the Treasury is authorized from time to time to convert any short-time obligations of foreign governments which may be received under the authority of paragraph (a) of section 7 of the Act of March 3, 1919 (chapter 100, Fortieth Statutes, page 1312), into long-time obligations of such foreign governments, respectively, maturing not later than October 15, 1938, and in such form and terms as the Secretary of the Treasury may prescribe; but the rate or rates of interest borne by any such long-time obligations at the time of their acquisition shall not be less than the rate borne by the short-time obligations so converted into such long-time obligations; and, under such terms and conditions as he may from time to time prescribe, to receive payment, on or before maturity, of any obligations of such foreign governments acquired on behalf of the United States under authority of this section, and said paragraph "a" of section 7 of the Act of March 3, 1919 (chapter 100, Fortieth Statutes, page 1312), and, with the approval of the President, to sell any of such obligations (but not at less than par with accrued interest unless otherwise hereafter provided by law), and to apply the proceeds thereof, and any payments so received from foreign governments on account of the principal of such obligations, to the redemption or purchase, at not more than par and accrued interest, of any bonds of the United States issued under the authority of the First Liberty Bond Act (Apr. 24, 1917, ch. 4, 40 Stat. 35) or section 752 of this title, and if such bonds cannot be so redeemed or purchased, the Secretary of the Treasury shall redeem or purchase any other outstanding interest-bearing obligations of the United States which may at such time be subject to redemption or which can be purchased at not more than par and accrued interest. (Mar. 3, 1919, ch. 100, § 7, 40 Stat. 1312.)

§ 803. Maturity of obligations of foreign governments.

The obligations of foreign governments acquired by the Secretary of the Treasury by virtue of the provisions of sections 745, 746, 747, 752-755a, 757-760, 764-766, 768, 769, 771, 773, 774, 801, and 804 of this title, shall mature at such dates as shall be determined by the Secretary of the Treasury: *Provided*, That such obligations acquired by virtue of the provisions of sections 745, 746, 755, 759, 764, 768, 774, and 804 of this title, or through the conversion of short-time obligations acquired under such sections, shall mature not later than June 15, 1947, and all other such obligations of foreign governments shall mature not later than October 15, 1938. (Mar. 3, 1919, ch. 100, § 8, 40 Stat. 1313.)

§ 804. Payment before maturity or sale of obligations of foreign governments.

The Secretary of the Treasury, under such terms and conditions as he may prescribe, is authorized to receive on or before maturity payment for any obligations of foreign governments purchased on behalf of the United States, under the First Liberty Bond Act (April 24, 1917, chapter 4, Fortieth Statutes, page 35), and to sell at not less than the pur-

chase price any of such obligations and to apply the proceeds thereof, and any payments made by foreign governments on account of their said obligations to the redemption or purchase at not more than par and accrued interest of any bonds of the United States issued under authority of such Act; and if such bonds are not available for this purpose the Secretary of the Treasury shall redeem or purchase any other outstanding interest-bearing obligations of the United States which may at such time be subject to call or which may be purchased at not more than par and accrued interest. (Apr. 24, 1917, ch. 4, § 3, 40 Stat. 35.)

**§ 804a. Financial transactions with foreign governments in default to United States prohibited.**

It shall be unlawful within the United States or any place subject to the jurisdiction of the United States for any person to purchase or sell the bonds, securities, or other obligations of, any foreign government or political subdivision thereof or any organization or association acting for or on behalf of a foreign government or political subdivision thereof, issued after April 13, 1934, or to make any loan to such foreign government, political subdivision, organization, or association, except a renewal or adjustment of existing indebtedness while such government, political subdivision, organization, or association, is in default in the payment of its obligations, or any part thereof, to the Government of the United States. Any person violating the provisions of this section shall upon conviction thereof be fined not more than \$10,000 or imprisoned for not more than five years, or both.

As used in this section the term "person" includes individual, partnership, corporation, or association other than a public corporation created by or pursuant to special authorization of Congress, or a corporation in which the Government of the United States has or exercises a controlling interest through stock ownership or otherwise. (Apr. 13, 1934, ch. 112, §§ 1, 2, 48 Stat. 574.)

**REPEAL AND MODIFICATION**

Section not to be deemed repealed or modified in any manner by Res. May 7, 1940, ch. 185, 54 Stat. 179, according to section 3 thereof, which resolution amended section 5 (b) of the Trading With the Enemy Act, set out as section 95a of Title 12 and section 5 (b) of appendix to Title 50, and which resolution approved and confirmed Ex. Ord. No. 8389, amending Ex. Ord. No. 6560, set out in note under section 95 of Title 12, and regulations and general rulings issued by Secretary of Treasury under said Ex. Ord. No. 8389.

**§§ 805-809. World War Foreign Debt Commission.**

Sections, act Feb. 9, 1922, ch. 47, §§ 1-5, 42 Stat. 363; act Feb. 28, 1923, ch. 146, §§ 1, 2, 42 Stat. 1325, 1326; act Jan. 21, 1925, ch. 86, 43 Stat. 763, set up a World War Foreign Debt Commission, the authority of which expired Feb. 9, 1927.

**Chapter 13.—CREDIT AND CURRENCY EXPANSION**

**Sec.**

- 821.** Purchase of Treasury bills and other obligations of United States; issuance of United States notes to repay money borrowed and purchase Government bonds; retirement of notes; legal tender; regulation of value of gold and silver coins.
- 822.** Rules and regulations.

**Sec.**

- 822a.** Stabilization of exchange value of dollar; stabilization fund; duration of section.
- 822b.** Rules and regulations.
- 823.** Acceptance of silver in payment of foreign debts; issuance of silver certificates; coinage of silver for redemption of certificates; redemption and reissuance of certificates; rules and regulations.
- 824.** Ratification of acts of President and Secretary of Treasury.

**§ 821. Purchase of Treasury bills and other obligations of United States; issuance of United States notes to repay money borrowed and purchase Government bonds; retirement of notes; legal tender; regulation of value of gold and silver coins.**

Whenever the President finds, upon investigation, that (1) the foreign commerce of the United States is adversely affected by reason of the depreciation in the value of the currency of any other government or governments in relation to the present standard value of gold, or (2) action under this section is necessary in order to regulate and maintain the parity of currency issues of the United States, or (3) an economic emergency requires an expansion of credit, or (4) an expansion of credit is necessary to secure by international agreement a stabilization at proper levels of the currencies of various governments, the President is authorized, in his discretion—

(a) To direct the Secretary of the Treasury to enter into agreements with the several Federal Reserve banks and with the Board of Governors of the Federal Reserve System whereby the Board of Governors of the Federal Reserve System will, and it is hereby authorized to, notwithstanding any provisions of law or rules and regulations to the contrary, permit such reserve banks to agree that they will, (1) conduct, pursuant to existing law, throughout specified periods, open market operations in obligations of the United States Government or corporations in which the United States is the majority stockholder, and (2) purchase directly and hold in portfolio for an agreed period or periods of time Treasury bills or other obligations of the United States Government in an aggregate sum of \$3,000,000,000 in addition to those they may then hold, unless prior to the termination of such period or periods the Secretary shall consent to their sale. No suspension of reserve requirements of the Federal Reserve banks, under the terms of section 248 (c) of Title 12, necessitated by reason of operations under this section, shall require the imposition of the graduated tax upon any deficiency in reserves as provided in said section 248 (c). Nor shall it require any automatic increase in the rates of interest or discount charged by any Federal Reserve bank, as otherwise specified in that section. The Board of Governors of the Federal Reserve System, with the approval of the Secretary of the Treasury, may require the Federal Reserve banks to take such action as may be necessary, in the judgment of the Board and of the Secretary of the Treasury, to prevent undue credit expansion.

(b) If the Secretary, when directed by the President, is unable to secure the assent of the several Federal Reserve banks and the Board of Governors of the Federal Reserve System to the agreements authorized in this section, or if operations under

the above provisions prove to be inadequate to meet the purposes of this section, or if for any other reason additional measures are required in the judgment of the President to meet such purposes, then the President is authorized—

(1) To direct the Secretary of the Treasury to cause to be issued in such amount or amounts as he may from time to time order, United States notes, as provided in section 401 of this title, in the same size and of similar color to the Federal Reserve notes heretofore issued and in denominations of \$1, \$5, \$10, \$20, \$50, \$100, \$500, \$1,000, and \$10,000; but notes issued under this subsection shall be issued only for the purpose of meeting maturing Federal obligations to repay sums borrowed by the United States and for purchasing United States bonds and other interest-bearing obligations of the United States: *Provided*, That when any such notes are used for such purpose the bond or other obligation so acquired or taken up shall be retired and canceled. Such notes shall be issued at such times and in such amounts as the President may approve but the aggregate amount of such notes outstanding at any time shall not exceed \$3,000,000,000. There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, an amount sufficient to enable the Secretary of the Treasury to retire and cancel 4 per centum annually of such outstanding notes, and the Secretary of the Treasury is hereby directed to retire and cancel annually 4 per centum of such outstanding notes.

All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight.

(2) By proclamation to fix the weight of the gold dollar in grains nine tenths fine, and also to fix the weight of the silver dollar in grains nine tenths fine at a definite fixed ratio in relation to the gold dollar at such amounts as he finds necessary from his investigation to stabilize domestic prices or to protect the foreign commerce against the adverse effect of depreciated foreign currencies, and to provide for the unlimited coinage of such gold and silver at the ratio so fixed, or in case the Government of the United States enters into an agreement with any government or governments under the terms of which the ratio between the value of gold and other currency issued by the United States and by any such government or governments is established, the President may fix the weight of the gold dollar in accordance with the ratio so agreed upon, and such gold dollar, the weight of which is so fixed, shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity with this standard and it shall be the duty of the Secretary of the Treasury to maintain such parity, but in no event shall the weight of the gold dollar be fixed so as to reduce its present weight by more than 50 per centum. Nor shall the weight of

the gold dollar be fixed in any event at more than 60 per centum of its present weight. The powers of the President specified in this paragraph shall be deemed to be separate, distinct, and continuing powers, and may be exercised by him, from time to time, severally or together, whenever and as the expressed objects of this section in his judgment may require; except that such powers shall expire June 30, 1941, unless the President shall sooner declare the existing emergency ended.

The President, in addition to the authority to provide for the unlimited coinage of silver at the ratio so fixed, under such terms and conditions as he may prescribe, is further authorized to cause to be issued and delivered to the tenderer of silver for coinage, silver certificates in lieu of the standard silver dollars to which the tenderer would be entitled and in an amount in dollars equal to the number of coined standard silver dollars that the tenderer of such silver for coinage would receive in standard silver dollars.

The President is further authorized to issue silver certificates in such denominations as he may prescribe against any silver bullion, silver, or standard silver dollars in the Treasury not then held for redemption of any outstanding silver certificates, and to coin standard silver dollars or subsidiary currency for the redemption of such silver certificates.

The President is authorized, in his discretion, to prescribe different terms and conditions and to make different charges, or to collect different seigniorage, for the coinage of silver of foreign production than for the coinage of silver produced in the United States or its dependencies. The silver certificates herein referred to shall be issued, delivered, and circulated substantially in conformity with the law now governing existing silver certificates, except as may herein be expressly provided to the contrary, and shall have and possess all of the privileges and the legal tender characteristics of existing silver certificates now in the Treasury of the United States, or in circulation.

The President is authorized, in addition to other powers, to reduce the weight of the standard silver dollar in the same percentage that he reduces the weight of the gold dollar.

The President is further authorized to reduce and fix the weight of subsidiary coins so as to maintain the parity of such coins with the standard silver dollar and with the gold dollar. (May 12, 1933, ch. 25, title III, § 43, 48 Stat. 51; June 5, 1933, ch. 48, § 2, 48 Stat. 113; Jan. 30, 1934, ch. 6, § 12, 48 Stat. 342; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704; Jan. 23, 1937, 2 p. m., ch. 5, § 2, 50 Stat. 4; July 6, 1939, ch. 260, § 3, 53 Stat. 998.)

#### REPEAL

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

#### CHANGE OF NAME

Act Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

[Coinage of Silver]

BY THE PRESIDENT OF THE UNITED STATES  
OF AMERICA

## A PROCLAMATION

[Proc. No. 2067, Dec. 21, 1933, 48 Stat. 1723]

Whereas, by paragraph (3) of section 43, title III, of the act of Congress, approved May 12, 1933 (Public. No. 10), the President is authorized "By proclamation to fix the weight of the gold dollar in grains nine-tenths fine and also to fix the weight of the silver dollar in grains nine-tenths fine at a definite fixed ratio in relation to the gold dollar at such amounts as he finds necessary from his investigation to stabilize domestic prices or to protect the foreign commerce against the adverse effect of depreciated foreign currencies, and to provide for the unlimited coinage of such gold and silver at the ratio so fixed, \* \* \*"; and

Whereas, from investigations made by me, I find it necessary, in aid of the stabilization of domestic prices and in accordance with the policy and program authorized by Congress which are now being administered, and to protect our foreign commerce against the adverse effect of depreciated foreign currencies, that the price of silver be enhanced and stabilized; and

Whereas a resolution presented by the delegation of the United States of America was unanimously adopted at the World Economic and Monetary Conference in London on July 20, 1933, by the representatives of 66 Governments, which in substance provided that said Governments will abandon the policy and practice of melting up or debasing silver coins; that low-valued silver currency be replaced with silver coins and that no legislation should be enacted that will depreciate the value of silver; and

Whereas, a separate and supplemental agreement was entered into, at the instance of the representatives of the United States, between China, India, and Spain, the holders and users of large quantities of silver, on the one hand, and Australia, Canada, Mexico, Peru, and the United States on the other hand, as the chief producers of silver, wherein China agreed not to dispose of any silver derived from the melting up or debasement of silver coins, and India agreed not to dispose of over 35,000,000 ounces of silver per annum during a period of 4 years commencing January 1, 1934, and Spain agreed not to dispose of over 5,000,000 ounces of silver annually during said period, and both of said Governments agreed that at the end of said period of 4 years they would then subject themselves to the general resolution adopted at the London Conference, and in consideration of such limitation it was agreed that the Governments of the five producing countries would each absorb from the mines in their respective countries a certain amount of silver, the total amount to be absorbed by said producing countries being 35,000,000 ounces per annum during the 4 years commencing the 1st day of January 1934; that such silver so absorbed would be retained in each of said respective countries for said period of 4 years, to be used for coinage purposes or as reserves for currency, or to otherwise be retained and kept off the world market during such period of time, it being understood that of the 35,000,000 ounces the United States was to absorb annually at least 24,421,410 ounces of the silver produced in the United States during such period of time.

Now, therefore, finding it proper to cooperate with other Governments and necessary to assist in increasing and stabilizing domestic prices, to augment the purchasing power of peoples in silver-using countries, to protect our foreign commerce against the adverse effect of depreciated foreign currencies, and to carry out the understanding between the 66 Governments that adopted the resolution hereinbefore referred to; by virtue of the power in me vested by the act of Congress above cited, the other legislation designated for national recovery, and by virtue of all other authority in me vested:

I, Franklin D. Roosevelt, President of the United States of America, do proclaim and direct that each United States coinage mint shall receive for coinage into standard silver dollars any silver which such mint, subject to regulations prescribed hereunder by the Secretary of the Treasury, is satisfied has been mined, subsequently to

the date of this proclamation, from natural deposits in the United States or any place subject to the jurisdiction thereof. The Director of the Mint, with the voluntary consent of the owner, shall deduct and retain of such silver so received 50 percent as seigniorage and for services performed by the Government of the United States relative to the coinage and delivery of silver dollars. The balance of such silver so received, that is, 50 percent thereof, shall be coined into standard silver dollars and the same, or an equal number of other standard silver dollars, shall be delivered to the owner or depositor of such silver. The 50 percent of such silver so deducted shall be retained as bullion by the Treasury and shall not be disposed of prior to the thirty-first day of December 1937, except for coining into United States coins.

The Secretary of the Treasury is authorized to prescribe regulations to carry out the purposes of this proclamation. Such regulations shall contain provisions substantially similar to the provisions contained in the regulations made pursuant to the act of Congress, approved April 23, 1918 (40 Stat. L., p. 535), known as the Pittman Act, with such changes as he shall determine prescribing how silver mined, subsequently to the date of this proclamation from natural deposits in the United States or any place subject to the jurisdiction thereof, shall be identified.

This proclamation shall remain in force and effect until the 31st day of December 1937, unless repealed or modified by act of Congress or by subsequent proclamation.

The present ratio in weight and fineness of the silver dollar to the gold dollar shall, for the purposes of this proclamation, be maintained until changed by further order or proclamation.

Notice is hereby given that I reserve the right by virtue of the authority vested in me to revoke or modify this proclamation as the interest of the United States may seem to require.

In Witness Whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this twenty-first day of December, in the year of our Lord nineteen hundred and thirty-three, and of the Independence of the United States of America the one hundred and fifty-eighth.

[SEAL]

FRANKLIN D. ROOSEVELT.

By the President:

WILLIAM PHILLIPS,

Acting Secretary of State.

[Weight of Gold Dollar Reduced]

BY THE PRESIDENT OF THE UNITED STATES  
OF AMERICA

## A PROCLAMATION

[Proc. No. 2072, Jan. 31, 1934, 48 Stat. 1730]

Whereas, by virtue of section 1 of the act of Congress approved March 14, 1900 (31 Stat. L. 45), the present weight of the gold dollar is fixed at 25.8 grains of gold nine-tenths fine; and

Whereas, by section 43, title III of the act approved May 12, 1933 (Public. No. 10, 73d Cong.), as amended by section 12 of the Gold Reserve Act of 1934, it is provided in part as follows:

"Whenever the President finds, upon investigation, that (1) the foreign commerce of the United States is adversely affected by reason of the depreciation in the value of the currency of any other government or governments in relation to the present standard value of gold, or (2) action under this section is necessary in order to regulate and maintain the parity of currency issues of the United States, or (3) an economic emergency requires an expansion of credit, or (4) an expansion of credit is necessary to secure by international agreement a stabilization at proper levels of the currencies of various governments, the President is authorized, in his discretion—

"(a) To direct the Secretary of the Treasury to enter into agreements with the several Federal Reserve banks and with the Federal Reserve Board whereby the Federal Reserve Board will, and it is hereby authorized to, notwithstanding any provisions of law or rules and regulations to the contrary, permit such reserve banks to agree that they will, (1) conduct, pursuant to existing law, throughout specified periods, open market operations in obliga-

tions of the United States Government or corporations in which the United States is the majority stockholder, and (2) purchase directly and hold in portfolio for an agreed period or periods of time Treasury bills or other obligations of the United States Government in an aggregate sum of \$3,000,000,000 in addition to those they may then hold, unless prior to the termination of such period or periods the Secretary shall consent to their sale. No suspension of reserve requirements of the Federal Reserve banks, under the terms of section 11 (c) of the Federal Reserve Act, necessitated by reason of operations under this section, shall require the imposition of the graduated tax upon any deficiency in reserves as provided in said section 11 (c). Nor shall it require any automatic increase in the rates of interest or discount charged by any Federal Reserve bank, as otherwise specified in that section. The Federal Reserve Board, with the approval of the Secretary of the Treasury, may require the Federal Reserve banks to take such action as may be necessary, in the judgment of the Board and of the Secretary of the Treasury, to prevent undue credit expansion.

"(b) If the Secretary, when directed by the President, is unable to secure the assent of the several Federal Reserve banks and the Federal Reserve Board to the agreements authorized in this section, or if operations under the above provisions prove to be inadequate to meet the purposes of this section, or if for any other reason additional measures are required in the judgment of the President to meet such purposes then the President is authorized—

"(2) By proclamation to fix the weight of the gold dollar in grains nine-tenths fine and also to fix the weight of the silver dollar in grains nine-tenths fine at a definite fixed ratio in relation to the gold dollar at such amounts as he finds necessary from his investigation to stabilize domestic prices or to protect the foreign commerce against the adverse effect of depreciated foreign currencies, and to provide for the unlimited coinage of such gold and silver at the ratio so fixed, or in case the Government of the United States enters into an agreement with any government or governments under the terms of which the ratio between the value of gold and other currency issued by the United States and by any such government or governments is established, the President may fix the weight of the gold dollar in accordance with the ratio so agreed upon, and such gold dollar, the weight of which is so fixed, shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity with this standard and it shall be the duty of the Secretary of the Treasury to maintain such parity, but in no event shall the weight of the gold dollar be fixed so as to reduce its present weight by more than 50 per centum. Nor shall the weight of the gold dollar be fixed in any event at more than 60 per centum of its present weight. The powers of the President specified in this paragraph shall be deemed to be separate, distinct, and continuing powers, and may be exercised by him, from time to time, severally or together, whenever and as the expressed objects of this section in his judgment may require; except that such powers shall expire two years after the date of enactment of the Gold Reserve Act of 1934 unless the President shall sooner declare the existing emergency ended, but the President may extend such period for not more than one additional year after such date by proclamation recognizing the continuance of such emergency"; and

Whereas, I find, upon investigation, that the foreign commerce of the United States is adversely affected by reason of the depreciation in the value of the currencies of other governments in relation to the present standard value of gold, and that an economic emergency requires an expansion of credit; and

Whereas, in my judgment, measures additional to those provided by subsection (a) of said section 43 are required to meet the purposes of such section; and

Whereas, I find, from my investigation, that, in order to stabilize domestic prices and to protect the foreign commerce against the adverse effect of depreciated foreign currencies, it is necessary to fix the weight of the gold dollar at 15½ grains nine-tenths fine.

Now, therefore, be it known that I, Franklin D. Roosevelt, President of the United States, by virtue of the authority vested in me by section 43, Title III of said act of May 12, 1933, as amended, and by virtue of all other authority vested in me, do hereby proclaim, order, direct, declare, and fix the weight of the gold dollar to be 15½ grains nine-tenths fine, from and after the date and hour of this proclamation. The weight of the silver dollar is not altered or affected in any manner by reason of this proclamation.

This proclamation shall remain in force and effect until and unless repealed or modified by act of Congress or by subsequent proclamation; and notice is hereby given that I reserve the right by virtue of the authority vested in me to alter or modify this proclamation as the interest of the United States may seem to require.

In witness whereof I have hereunto set my hand and have caused the seal of the United States to be affixed.

Done in the City of Washington at 3:10 o'clock in the afternoon, eastern standard time, this 31st day of January, in the year of our Lord one thousand nine hundred and thirty-four, and of the Independence of the United States the one hundred and fifty-eighth.

[SEAL]

FRANKLIN D. ROOSEVELT.

By the President:

CORDELL HULL,

Secretary of State.

#### CROSS REFERENCE

Increase or decrease of reserve balances of Federal Reserve banks to meet credit expansion, see section 462a of Title 12, Banks and Banking.

[Coinage of Silver]

#### BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

#### A PROCLAMATION [2092]

[Revoked in Part]

I, Franklin D. Roosevelt, President of the United States of America, do proclaim and direct that each United States mint shall receive for coinage or for addition to the monetary stocks of the United States, as hereinafter determined, any silver which such mint, subject to regulations prescribed hereunder by the Secretary of the Treasury, is satisfied was situated on the effective date hereof in the continental United States, including the Territory of Alaska.

The silver so delivered shall be added to the monetary stocks of the United States and shall be coined from time to time into standard silver dollars in such amounts as are required to carry out the provisions of this proclamation and to provide for the redemption of silver certificates; and there shall be returned therefor in standard silver dollars, silver certificates, or any other coin or currency of the United States, the monetary value of the silver so delivered (that is, \$1.2929+ a fine troy ounce), less a deduction of 61½ percent thereof for seigniorage, brassage, coinage, and other mint charges, such deduction having been determined by the Secretary of the Treasury with my approval.

The provisions hereof are supplemental to the provisions of the proclamation of the 21st day of December 1933, and the United States coinage mints shall continue to receive for coinage in accordance with the provisions of such proclamation silver which such mint, subject to regulations prescribed thereunder by the Secretary of the Treasury, is satisfied has been mined subsequently to the date of such proclamation, from natural deposits in the United States or any place subject to the jurisdiction thereof; *Provided, however*, That the Director of the Mint shall, at the option of the tenderer of such silver, deliver silver certificates in lieu of the standard silver dollars to which the tenderer of such silver for coinage would be entitled and in an amount in dollars equal to the coined standard silver dollars that the tenderer of such silver for coinage would receive in standard silver dollars.

The Secretary of the Treasury is authorized to prescribe regulations to carry out the purposes of this proclamation.

Notice is hereby given that I reserve the right by virtue of the authority vested in me to revoke or modify this

proclamation as the interest of the United States may seem to require.

August 9, 1934.

Proc. No. 2282, April 28, 1938, 3 Fed. Reg. 997, 52 Stat. 1543, revoked Proc. No. 2092 of August 9, 1934, "except as to the provisions thereof relating to settlement for silver received by the United States coinage mints pursuant to Proc. No. 2067 of December 21, 1933, 48 Stat. 1723, which provisions shall not be affected by this proclamation."

**BY THE PRESIDENT OF THE UNITED STATES OF AMERICA**

**A PROCLAMATION [2124]**

I, Franklin D. Roosevelt, President of the United States of America, do proclaim and direct that, with respect to all silver received by a United States coinage mint under the provisions of the Proclamation of the twenty-first day of December, 1933 which such mint, subject to regulations prescribed hereunder by the Secretary of the Treasury, is satisfied has been mined on or after April 10, 1935, from natural deposits in the United States or any place subject to the jurisdiction thereof, the deduction for seigniorage and services performed by the Government shall be 45 per cent and there shall be returned therefor in standard silver dollars, silver certificates, or any other coin or currency of the United States the monetary value of the silver so received (that is, \$1.2929+ a fine ounce), less such deduction of 45 per cent.

Notice is hereby given that I reserve the right by virtue of the authority vested in me to revoke or modify this proclamation as the interest of the United States may seem to require.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed. (Promulgated, Proc. No. 2124, April 10, 1935, 49 Stat. 3445.)

**BY THE PRESIDENT OF THE UNITED STATES OF AMERICA**

**A PROCLAMATION [2125]**

[Proc. No. 2125, April 24, 1935, 49 Stat. 3445]

I, Franklin D. Roosevelt, President of the United States of America, do proclaim and direct that, with respect to all silver received by a United States coinage mint under the provisions of the Proclamation of the twenty-first day of December, 1933, which such mint, subject to regulations prescribed hereunder by the Secretary of the Treasury, is satisfied has been mined on or after April 24, 1935, from natural deposits in the United States or any place subject to the jurisdiction thereof, the deduction for seigniorage and services performed by the Government shall be 40 per cent and there shall be returned therefor in standard silver dollars, silver certificates, or any other coin or currency of the United States, the monetary value of the silver so received (that is, \$1.2929+ a fine ounce), less such deduction of 40 per cent.

Notice is hereby given that I reserve the right by virtue of the authority vested in me to revoke or modify this proclamation as the interest of the United States may seem to require.

Proc. No. 2153, Jan. 10, 1936, 49 Stat. 3489, extended the powers conferred by this section for one additional year from January 30, 1936.

[Coinage of Silver]

**BY THE PRESIDENT OF THE UNITED STATES OF AMERICA**

**A PROCLAMATION**

[Proc. No. 2268, Dec. 30, 1937, 52 Stat. 1530]

Whereas, by Proclamation of the twenty-first day of December, 1933, as modified by Proclamations of the ninth day of August, 1934, and the tenth and twenty-fourth days of April, 1935, the United States coinage mints are directed to receive for coinage and addition to the monetary stocks of the United States silver mined subsequent to December 21, 1933, from natural deposits in the United States or any place subject to the jurisdiction thereof; and

Whereas, such Proclamation as so modified states in part that:

"This proclamation shall remain in force and effect until the thirty-first day of December, 1937, unless repealed or modified by Act of Congress or by subsequent proclamation." and that

"Notice is hereby given that I reserve the right by virtue of the authority vested in me to revoke or modify this proclamation as the interest of the United States may seem to require."

Now, therefore, finding that the interests of the United States require further modification of said Proclamation of the twenty-first day of December, 1933, as so modified: by virtue of the power in me vested by the Act of Congress cited in said Proclamation, and other legislation designated for national recovery, and by virtue of all other authority in me vested;

I, Franklin D. Roosevelt, President of the United States of America, do hereby further modify the said Proclamation of the twenty-first day of December, 1933, so that the same shall remain in force and effect until the 31st day of December, 1938, and so that the amount of deduction for seigniorage, brassage, coinage and other mint charges from the monetary value of silver delivered thereunder which has been mined on or after January 1, 1938, shall be 50% of such monetary value; and I do proclaim and direct that, with respect to all silver received by a United States coinage mint under the provisions of the said Proclamation of the twenty-first day of December, 1933, which such mint, subject to regulations prescribed hereunder by the Secretary of the Treasury; is satisfied has been mined on or after January 1, 1938, from natural deposits in the United States or any place subject to the jurisdiction thereof, the deduction for seigniorage and services performed by the Government shall be 50% and there shall be returned therefor, in standard silver dollars, silver certificates, or any other coin or currency of the United States, the monetary value of the silver so received (that is, \$1.2929+ per fine ounce), less such deduction of 50%, and that the said Proclamation of the twenty-first day of December, 1933, as heretofore and hereby modified shall remain in force and effect until the 31st day of December, 1938, unless repealed or further modified by Act of Congress or by subsequent Proclamation.

Notice is hereby given that I reserve the right by virtue of the authority vested in me to revoke or modify this Proclamation as the interests of the United States may seem to require.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 30th day of December, in the year of our Lord nineteen hundred and [SEAL] thirty-seven, and of the Independence of the United States of America the one hundred and sixty-second.

FRANKLIN D. ROOSEVELT.

By the President:  
CORDELL HULL,  
Secretary of State.

Proc. No. 2282 of April 28, 1938, 3 Fed. Reg. 997, 52 Stat. 1543, revoked Proclamation No. 2092 of August 9, 1934, "except as to the provisions thereof relating to settlement for silver received by the United States coinage mints pursuant to Proc. No. 2067 of December 21, 1933, 48 Stat. 1723, which provisions shall not be affected by this proclamation."

[Coinage of Silver]

**BY THE PRESIDENT OF THE UNITED STATES OF AMERICA**

**A PROCLAMATION**

[Proc. No. 2317, Dec. 31, 1938, 4 Fed. Reg. 1, 53 Stat. 2517]

I, Franklin D. Roosevelt, President of the United States of America, do hereby further modify the said Proclamation of the twenty-first day of December, 1933, so that the same shall remain in force and effect until the 30th day of



June, 1939; and I do proclaim and direct that, unless repealed or further modified by Act of Congress or by subsequent Proclamation, the said Proclamation of the twenty-first day of December, 1933, as heretofore and hereby modified shall remain in force and effect until the 30th day of June, 1939.

[Proviso requiring delivery to a United States coinage mint not later than June 30, 1939 was rescinded by Proc. No. 2342, 4 Fed. Reg. 143.]

Notice is hereby given that I reserve the right by virtue of the authority vested in me to revoke or modify this Proclamation as the interests of the United States may seem to require.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 31st day of December, in the year of our Lord nineteen hundred and [SEAL] thirty-eight, and of the Independence of the United States of America the one hundred and sixty-third.

FRANKLIN D. ROOSEVELT.

By the President:  
SUMNER WELLES,  
*Acting Secretary of State.*

BY THE PRESIDENT OF THE UNITED STATES OF  
AMERICA

#### A PROCLAMATION

[Proc. No. 2342, July 25, 1939, 4 Fed. Reg. 143, 53 Stat. 2547]

I, Franklin D. Roosevelt, President of the United States of America, do hereby proclaim and direct that, unless repealed or further modified by Act of Congress or by subsequent Proclamation, the said Proclamation of the twenty-first day of December, 1933, as heretofore and hereby modified, shall remain in force and effect until the thirty-first day of December, 1939, with respect to silver mined subsequently to December 21, 1933, and on or before July 1, 1939, from natural deposits in the United States or any place subject to the jurisdiction thereof; and I do further proclaim and direct that the proviso:

"that silver to be eligible for receipt under the said Proclamation of the twenty-first day of December, 1933, as heretofore and hereby modified must be delivered to a United States coinage mint not later than June 30, 1939."

stated in the said Proclamation of the thirty-first day of December, 1938, is hereby rescinded.

Notice is hereby given that I reserve the right by virtue of the authority vested in me to revoke or modify this Proclamation as the interests of the United States may seem to require.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 25th day of July, in the year of our Lord nineteen hundred and [SEAL] thirty-nine, and of the Independence of the United States of America the one hundred and sixty-fourth.

FRANKLIN D. ROOSEVELT.

By the President:  
CORDELL HULL,  
*Secretary of State.*

#### CROSS REFERENCES

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Ratification of acts of President and Secretary of the Treasury under this section, see section 218 of Title 12, Banks and Banking.

#### § 822. Rules and regulations.

The Secretary of the Treasury, with the approval of the President, is hereby authorized to make and promulgate rules and regulations covering any action taken or to be taken by the President under subsec-

tion (a) or (b) of section 821 of this title. (May 12, 1933, ch. 25, title III, § 44, 48 Stat. 53.)

#### § 822a. Stabilization of exchange value of dollar; stabilization fund; duration of section.

(a) For the purpose of stabilizing the exchange value of the dollar, the Secretary of the Treasury, with the approval of the President, directly or through such agencies as he may designate, is authorized, for the account of the fund established in this section, to deal in gold and foreign exchange and such other instruments of credit and securities as he may deem necessary to carry out the purpose of this section. An annual audit of such fund shall be made and a report thereof submitted to the President and to the Congress.

(b) To enable the Secretary of the Treasury to carry out the provisions of this section there is hereby appropriated, out of the receipts which are directed to be covered into the Treasury under section 408b of this title, the sum of \$2,000,000,000, which sum when available shall be deposited with the Treasurer of the United States in a stabilization fund (hereinafter called the "fund") under the exclusive control of the Secretary of the Treasury, with the approval of the President, whose decisions shall be final and not be subject to review by any other officer of the United States. The fund shall be available for expenditure, under the direction of the Secretary of the Treasury and in his discretion, for any purpose in connection with carrying out the provisions of this section, including the investment and reinvestment in direct obligations of the United States of any portions of the fund which the Secretary of the Treasury, with the approval of the President, may from time to time determine are not currently required for stabilizing the exchange value of the dollar. The proceeds of all sales and investments and all earnings and interest accruing under the operations of this section shall be paid into the fund and shall be available for the purposes of the fund.

(c) All the powers conferred by this section shall expire June 30, 1941, unless the President shall sooner declare the existing emergency ended and the operation of the stabilization fund terminated. (Jan. 30, 1934, ch. 6, § 10, 48 Stat. 341; Jan. 23, 1937, 2 p. m., ch. 5, § 1, 50 Stat. 4; July 6, 1939, ch. 260, §§ 1, 2, 53 Stat. 998.)

#### REPEAL

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

#### § 822b. Rules and regulations.

The Secretary of the Treasury is hereby authorized to issue, with the approval of the President, such rules and regulations as the Secretary may deem necessary or proper to carry out the purposes of sections 315b, 408a, 408b, 440-446, 752, 754a, 754b, 757a, 767, 821, 822a, and 824 of this title and sections 213, 411-415, 417, and 467 of Title 12. (Jan. 30, 1934, ch. 6, § 11, 48 Stat. 342.)

#### REPEAL

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.



**§ 823. Acceptance of silver in payment of foreign debts; issuance of silver certificates; coinage of silver for redemption of certificates; redemption and reissuance of certificates; rules and regulations.**

(a) The President is authorized, for a period of six months from May 12, 1933, to accept silver in payment of the whole or any part of the principal or interest now due, or to become due within six months after such date, from any foreign government or governments on account of any indebtedness to the United States, such silver to be accepted at not to exceed the price of 50 cents an ounce in United States currency. The aggregate value of the silver accepted under this section shall not exceed \$200,000,000.

(b) The silver bullion accepted and received under the provisions of this section shall be subject to the requirements of existing law and the regulations of the mint service governing the methods of determining the amount of pure silver contained, and the amount of the charges or deductions, if any, to be made; but such silver bullion shall not be counted as part of the silver bullion authorized or required to be purchased and coined under the provisions of existing law.

(c) The silver accepted and received under the provisions of this section shall be deposited in the Treasury of the United States, to be held, used, and disposed of as in this section provided.

(d) The Secretary of the Treasury shall cause silver certificates to be issued in such denominations as he deems advisable to the total number of dollars for which such silver was accepted in payment of debts. Such silver certificates shall be used by the Treasurer of the United States in payment of any obligations of the United States.

(e) The silver so accepted and received under this section shall be coined into standard silver dollars and subsidiary coins sufficient, in the opinion of the Secretary of the Treasury, to meet any demands for redemption of such silver certificates issued under the provisions of this section, and such coins shall be retained in the Treasury for the payment of such certificates on demand. The silver so accepted and

received under this section, except so much thereof as is coined under the provisions of this section, shall be held in the Treasury for the sole purpose of aiding in maintaining the parity of such certificates as provided in existing law. Any such certificates or reissued certificates, when presented at the Treasury, shall be redeemed in standard silver dollars, or in subsidiary silver coin, at the option of the holder of the certificates: *Provided*, That in the redemption of such silver certificates issued under this section, not to exceed one-third of the coin required for such redemption may in the judgment of the Secretary of the Treasury be made in subsidiary coins, the balance to be made in standard silver dollars.

(f) When any silver certificates issued under the provisions of this section are redeemed or received into the Treasury from any source whatsoever, and belong to the United States, they shall not be retired, canceled, or destroyed, but shall be reissued and paid out again and kept in circulation; but nothing herein shall prevent the cancellation and destruction of mutilated certificates and the issue of other certificates of like denomination in their stead, as provided by law.

(g) The Secretary of the Treasury is authorized to make rules and regulations for carrying out the provisions of this section. (May 12, 1933, ch. 25, title III, § 45, 48 Stat. 53.)

**CROSS REFERENCE**

Ratification of Acts of President and Secretary of the Treasury under this section, see section 213 of Title 12, Banks and Banking.

**§ 824. Ratification of acts of President and Secretary of Treasury.**

All actions, regulations, rules, orders, and proclamations heretofore taken, promulgated, made, or issued by the President of the United States or the Secretary of the Treasury, under sections 201–211 of Title 12, or under section 821 or 823 of this title, are hereby approved, ratified, and confirmed. (Jan. 30, 1934, ch. 6, § 13, 48 Stat. 343.)

**REPEAL**

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.



## TITLE 32.—NATIONAL GUARD

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### Chapter 1.—COMPOSITION, ORGANIZATION, AND CONTROL GENERALLY

Sec.	
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#### CROSS REFERENCE

Reserve forces ordered into active service under Army Reserve and Retired Personnel Service Law of 1940, see section 401 et seq. of Appendix to Title 50, War.

#### § 1. Composition and classes of militia.

The militia of the United States shall consist of all able-bodied male citizens of the United States and all other able-bodied males who have or shall have declared their intention to become citizens of

the United States, who shall be more than eighteen years of age and, except as hereinafter provided, not more than forty-five years of age, and said militia shall be divided into three classes, the National Guard, the Naval Militia, and the Unorganized Militia. (June 3, 1916, ch. 134, § 57, 39 Stat. 197.)

#### § 2. Militia exclusively a land force.

The provisions of this title in respect to the militia shall be applicable only to militia organized as a land force. (May 27, 1908, ch. 204, § 1, 35 Stat. 399; June 3, 1916, ch. 134, § 117, 39 Stat. 212; Feb. 28, 1925, ch. 374, § 3, 43 Stat. 1081.)

#### REFERENCES IN TEXT

In original "title" read "Act" meaning the National Defense Act of 1916, act June 3, 1916, ch. 134, 39 Stat. 166. This act was incorporated in this title as sections 1-4c, 5-8, 10, 12, 13, 15-22, 24, 25, 31, 33, 35, 39, 40, 42, 45-47, 49, 61-70, 72, 75, 81, 81c, 82, 83, 91-97, 111-113a, 114, 115, 121, 123-125, 131-134, 142a, 143, 144-148, 154, 156, 158, 160, 171-176, 183, 186, 192, and 194. For distribution of National Defense Act of 1916 into other titles of this Code see the tables.

#### § 3. Exemptions from militia duty.

The Vice President of the United States; the officers, judicial and executive, of the Government of the United States and of the several States and Territories; persons in the military or naval service of the United States; customhouse clerks; persons employed by the United States in the transmission of the mail; artificers and workmen employed in the armories, arsenals, and navy yards of the United States; pilots; mariners actually employed in the sea service of any citizen or merchant within the United States, shall be exempt from militia duty without regard to age, and all persons who because of religious belief shall claim exemption from military service, if the conscientious holding of such belief by such person shall be established under such regulations as the President shall prescribe, shall be exempted from militia service in a combatant capacity; but no person so exempted shall be exempt from militia service in any capacity that the President shall declare to be noncombatant. (June 3, 1916, ch. 134, § 59, 39 Stat. 197.)

#### CROSS REFERENCE

Exemptions and deferments under Selective Training and Service Act of 1940, see section 305 of Appendix to Title 50, War.

#### § 4. National Guard of the States, Territories, and District of Columbia; composition.

The National Guard of each State, Territory, and the District of Columbia shall consist of members of the militia voluntarily enlisted therein, who upon original enlistment shall be not less than eighteen nor more than forty-five years of age, or who in

subsequent enlistment shall be not more than sixty-four years of age, organized, armed, equipped, and federally recognized as hereinafter provided, and of commissioned officers and warrant officers who are citizens of the United States between the ages of twenty-one and sixty-four years: *Provided*, That former members of the Regular Army, Navy, or Marine Corps under sixty-four years of age may enlist in said National Guard. (June 3, 1916, ch. 134, § 58, 39 Stat. 197; Feb. 28, 1925, ch. 371, § 1, 43 Stat. 1075; June 15, 1933, ch. 87, § 5, 48 Stat. 155.)

**§ 4a. National Guard of United States; establishment; composition.**

The National Guard of the United States is hereby established. It shall be a reserve component of the Army of the United States and shall consist of those federally recognized National Guard units, and organizations, and of the officers, warrant officers, and enlisted members of the National Guard of the several States, Territories, and the District of Columbia, who shall have been appointed, enlisted and appointed, or enlisted, as the case may be, in the National Guard of the United States, as hereinafter provided, and of such other officers and warrant officers as may be appointed therein as provided in section 81 of this title: *Provided*, That the members of the National Guard of the United States shall not be in the active service of the United States except when ordered thereto in accordance with law, and, in time of peace, they shall be administered, armed, uniformed, equipped, and trained in their status as the National Guard of the several States, Territories, and the District of Columbia, as provided in this title: *And provided further*, That under such regulations as the Secretary of War shall prescribe, noncommissioned officers, first-class privates, and enlisted specialists of the National Guard may be appointed in corresponding grades, ratings, and branches of the National Guard of the United States, without vacating their respective grades and ratings in the National Guard: *And provided further*, That in the grades of first lieutenant and second lieutenant the number shall be unlimited. (June 3, 1916, ch. 134, § 58, as amended June 15, 1933, ch. 87, § 5, 48 Stat. 155; June 19, 1935, ch. 277, § 2, 49 Stat. 391.)

**REFERENCES IN TEXT**

In original "title" read "Act" meaning the National Defense Act of 1916, act June 3, 1916, ch. 134, 39 Stat. 166. For distribution of this act into this title see note under section 2 of this title.

**§ 4b. National Guard and National Guard of the United States defined.**

In this title, unless the context or subject matter otherwise requires—

(a) "National Guard" or "National Guard of the several States, Territories, and the District of Columbia" means that portion of the Organized Militia of the several States, Territories, and the District of Columbia, active and inactive, federally recognized as provided in this title and organized, armed, and equipped in whole or in part at Federal expense and officered and trained under paragraph 16, section 8, article I of the Constitution.

(b) "National Guard of the United States" means a reserve component of the Army of the United States composed of those federally recognized units and organizations and persons duly appointed and commissioned in the active and inactive National Guard of the several States, Territories, and the District of Columbia, who have taken and subscribed to the oath of office prescribed in section 112 of this title, and who have been duly appointed by the President in the National Guard of the United States, as provided in this title, and of those officers and warrant officers appointed as prescribed in sections 81 and 113 of this title, and of those persons duly enlisted in the National Guard of the United States and of the several States, Territories, and the District of Columbia who have taken and subscribed to the oath of enlistment prescribed in section 123 of this title. (June 3, 1916, ch. 134, § 71, as added June 15, 1933, ch. 87, § 9, 48 Stat. 157.)

**REFERENCES IN TEXT**

In original "title" read "Act" meaning the National Defense Act of 1916, act June 3, 1916, ch. 134, 39 Stat. 166. For distribution of this act into this title see note under section 2 of this title.

**§ 4c. Territory defined.**

The word Territory as used in this title and in all laws relating to the land militia and National Guard shall include and apply to Hawaii, Alaska, Puerto Rico, and the Canal Zone, and the militia of the Canal Zone shall be organized under such rules and regulations, not in conflict with the provisions of this title, as the President may prescribe. (June 3, 1916, ch. 134, § 62, 39 Stat. 198; May 17, 1932, ch. 190, 47 Stat. 158.)

**REFERENCES IN TEXT**

In original "title" read "Act" meaning the National Defense Act of 1916, act June 3, 1916, ch. 134, 39 Stat. 166. For distribution of this act into this title see note under section 2 of this title.

**§ 5. Organization of tactical units.**

Except as otherwise specifically provided herein, the organization of the National Guard, including the composition of all units thereof, shall be the same as that which is or may hereafter be prescribed for the Regular Army, subject in time of peace to such general exceptions as may be authorized by the Secretary of War. And the President may prescribe the particular unit or units, as to branch or arm of service, to be maintained in each State, Territory, or the District of Columbia in order to secure a force which, when combined, shall form complete higher tactical units: *Provided*, That no change in allotment, branch, or arm of units or organizations wholly within a single State will be made without the approval of the governor of the State concerned. (June 3, 1916, ch. 134, § 60, 39 Stat. 197; June 4, 1920, ch. 227, subch. I, § 36, 41 Stat. 780; June 15, 1933, ch. 87, § 6, 48 Stat. 156.)

**§ 6. Location of units and headquarters.**

The States and Territories shall have the right to determine and fix the location of the units and headquarters of the National Guard within their respective borders. (June 3, 1916, ch. 134, § 68, 39 Stat. 200.)

**§ 7. Location and designation of units comprised entirely within State or Territory.**

Subject to general regulations approved by the Secretary of War, the location and designation of units of the National Guard entirely comprised within the limits of any State or Territory shall be determined by a board, a majority of whom shall be reserve officers, including reserve officers who hold or have held commissions in the National Guard and recommended for this duty by the governor of the State or Territory concerned. (June 3, 1916, ch. 134, § 3a, as amended June 4, 1920, ch. 227, subch. I, § 3, 41 Stat. 760.)

**§ 8. Assignment of National Guard to divisions, brigades, etc.; commanding officers.**

For the purpose of maintaining appropriate organization and to assist in instruction and training, the President may assign the National Guard of the several States and Territories and the District of Columbia to divisions, brigades, and other tactical units, and may detail officers either from the National Guard or the Regular Army to command such units: *Provided*, That where complete units are organized within a State, Territory, or the District of Columbia the commanding officers thereof shall not be displaced under the provisions of this section. (June 3, 1916, ch. 134, § 64, 39 Stat. 198.)

**§ 9. Authorized officers and men of staff corps and departments.**

The National Guard of any State, Territory, or the District of Columbia shall include such officers and enlisted men of the staff corps and departments, corresponding to those of the Regular Army, as may be authorized by the Secretary of War. (July 9, 1918, ch. 143, 40 Stat. 875.)

**§ 10. Chiefs of staff of divisions.**

The President may detail one officer of the Regular Army as chief of staff and one officer of the Regular Army or the National Guard as assistant to the chief of staff of any division of the National Guard in the service of the United States as a National Guard organization: *Provided*, That, in order to insure the prompt mobilization of the National Guard in time of war or other emergency, the President may, in time of peace, detail an officer of the Regular Army to perform the duties of chief of staff for each fully organized tactical division of the National Guard. (June 3, 1916, ch. 134, § 65, 39 Stat. 199.)

**§ 11. Adjutant general for each State, Territory, and District of Columbia.**

There shall be appointed in each State, Territory, and the District of Columbia an adjutant general, who shall perform such duties as may be prescribed by the laws of such State, Territory, and District, respectively. (Jan. 21, 1903, ch. 196, § 12, 32 Stat. 776.)

**§ 12. Appointment of adjutant generals for Territories and District of Columbia.**

The adjutant generals of the Territories and of the District of Columbia shall be appointed by the Presi-

dent, with such rank and qualifications as he may prescribe, and each adjutant general for a Territory shall be a citizen of the Territory for which he is appointed. (June 3, 1916, ch. 134, § 66, 39 Stat. 199.)

**§ 13. Annual reports by adjutant generals of States, etc.**

The adjutant generals of the States, Territories, and the District of Columbia, and the officers of the National Guard, shall make such returns and reports to the Secretary of War, or to such officers as he may designate, at such times and in such form as the Secretary of War may from time to time prescribe. (June 3, 1916, ch. 134, § 66, 39 Stat. 199.)

**§ 14. Annual report of Secretary of War to contain abstract of reports of adjutant generals.**

The Secretary of War shall, with his annual report of each year, transmit to Congress an abstract of the returns and reports of the adjutant generals of the States, Territories, and the District of Columbia, with such observations thereon as he may deem necessary for the information of Congress. (Jan. 21, 1903, ch. 196, § 12, 32 Stat. 776.)

**§ 15. Inspections of National Guard.**

The Secretary of War shall cause an inspection to be made at least once each year by inspector generals, and if necessary by other officers, of the Regular Army, detailed by him for that purpose, to determine whether the amount and condition of the property in the hands of the National Guard is satisfactory; whether the National Guard is organized as hereinbefore prescribed; whether the officers and enlisted men possess the physical and other qualifications prescribed; whether the organization and the officers and enlisted men thereof are sufficiently armed, uniformed, equipped, and being trained and instructed for active duty in the field or coast defense, and whether the records are being kept in accordance with the requirements of this title. The reports of such inspections shall serve as the basis for deciding as to the issue to and retention by the National Guard of the military property provided for by this title, and for determining what organizations and individuals shall be considered as constituting parts of the National Guard within the meaning of this title. (June 3, 1916, ch. 134, § 93, 39 Stat. 206.)

**REFERENCES IN TEXT**

In original "title" read "Act" meaning the National Defense Act of 1916, act June 3, 1916, ch. 134, 39 Stat. 166. For distribution of this act into this title see note under section 2 of this title.

**§ 16. Disbanding or reduction of strength.**

No organization of the National Guard, members of which shall be entitled to and shall have received compensation under the provisions of this title, shall be disbanded without the consent of the President, nor, without such consent, shall the commissioned or enlisted strength of any such organization be reduced below the minimum that shall be prescribed therefor by the President. (June 3, 1916, ch. 134, § 68, 39 Stat. 200.)

REFERENCES IN TEXT

In original "title" read "Act" meaning the National Defense Act of 1916, act June 3, 1916, ch. 134, 39 Stat. 196. For distribution of this act into this title see note under section 2 of this title.

§ 17. Rules and regulations.

The President shall make all necessary rules and regulations and issue such orders as may be necessary for the thorough organization, discipline, and government of the militia provided for in this title. (June 3, 1916, ch. 134, § 118, 39 Stat. 213.)

REFERENCES IN TEXT

In original "title" read "Act" meaning the National Defense Act of 1916, act June 3, 1916, ch. 134, 39 Stat. 196. For distribution of this act into this title see note under section 2 of this title.

§ 18. Appointment of officers in National Guard of United States.

Appointments in the National Guard of the United States in grades below that of brigadier general shall be made by the President alone, and general officers by and with the advice and consent of the Senate. (June 3, 1916, ch. 134, § 38, as amended June 15, 1933, ch. 87, § 4, 48 Stat. 155.)

§ 18a. Form of commission; officers in National Guard.

All persons appointed officers in the National Guard of the United States are reserve officers and shall be commissioned in the Army of the United States. (June 3, 1916, ch. 134, § 38; June 6, 1924, ch. 275, § 3, 43 Stat. 470; June 15, 1933, ch. 87, § 4, 48 Stat. 155.)

§ 19. Period of service by officer in National Guard of United States commissioned as reserve officer.

Officers in the National Guard of the United States shall be appointed for the period during which they are federally recognized in the same grade and branch in the National Guard: *Provided*, That an appointment in force at the outbreak of war shall continue in force until six months after its termination: *And provided further*, That such officer shall be entitled to be relieved from active Federal service within six months after its termination if he makes application therefor. (June 3, 1916, ch. 134, § 38, as amended June 15, 1933, ch. 87, § 4, 48 Stat. 155.)

§ 20. Officers in National Guard of United States as Government officers or employees.

Officers of the National Guard of the United States, while not on active duty, shall not, by reason solely of their appointments, oaths, commissions, or status as such, or any duties or functions performed or pay or allowances received as such, be held or deemed to be officers or employees of the United States, or persons holding any office of trust or profit or discharging any official function under or in connection with any department of the Government of the United States. (June 3, 1916, ch. 134, § 38, 39 Stat. 190; June 15, 1933, ch. 87, § 4, 48 Stat. 155.)

Chapter 2.—FUNDS FOR SUPPORT OF NATIONAL GUARD

Sec.

21. Annual appropriation.
22. Apportionment and disbursement of appropriation.
23. Repealed.
24. Forfeiture of right to allotment of appropriation.
25. Annual estimates of expenses.
26. Reduction of certain units to meet appropriation.

§ 21. Annual appropriation.

A sum of money shall be appropriated annually, to be paid out of any money in the Treasury not otherwise appropriated, for the support of the National Guard, including the expense of providing arms, ordnance stores, quartermaster stores, and camp equipage, and all other military supplies for issue to the National Guard, and such other expenses pertaining to said guard as are or may be authorized by law. (June 3, 1916, ch. 134, § 87, 39 Stat. 199.)

§ 22. Apportionment and disbursement of appropriation.

The appropriation provided for in section 21 of this title shall be apportioned among the several States and Territories under just and equitable procedure to be prescribed by the Secretary of War and in direct ratio to the number of enlisted men in active service in the National Guard existing in such States and Territories at the date of apportionment of said appropriation, and to the District of Columbia, under such regulations as the President may prescribe: *Provided*, That the sum so apportioned among the several States, Territories, and the District of Columbia shall be available under such rules as may be prescribed by the Secretary of War for the actual and necessary expenses incurred by officers and enlisted men of the Regular Army when traveling on duty in connection with the National Guard; for actual and necessary expenses incurred by officers of the Regular Army, and Reserve Officers holding commissions in the National Guard on active duty in the National Guard Bureau or the War Department General Staff, while traveling in attending the annual conventions of the National Guard Association of the United States and The Adjutants General Association; for the transportation of supplies furnished to the National Guard for the permanent equipment thereof; for office rent and necessary office expenses of officers of the Regular Army on duty with the National Guard; for the expenses of the National Guard Bureau, including clerical services; for expenses of enlisted men of the Regular Army on duty with the National Guard, including an allowance for quarters and subsistence provided in section 19 of Title 37, medicine, and medical attendance; and such expenses shall constitute a charge against the whole sum annually appropriated for the support of the National Guard, and shall be paid therefrom and not from the allotment duly apportioned to any particular State, Territory, or the District of Columbia; for the promotion of rifle practice, including the acquisition, construction, maintenance, and equipment of shooting galleries, and suitable target ranges; for the hiring of horses and draft animals for use of mounted

troops, batteries, and wagons for forage for the same; and for such other incidental expenses in connection with lawfully authorized encampments, maneuvers, and field instruction as the Secretary of War may deem necessary, and for such other expenses pertaining to the National Guard as are or may be authorized by law. (June 3, 1916, ch. 134, § 87, 39 Stat. 199; Sept. 22, 1922, ch. 423, § 3, 42 Stat. 1034; Apr. 6, 1928, ch. 321, 45 Stat. 406; June 15, 1933, ch. 87, § 16, 48 Stat. 159.)

## CROSS REFERENCE

Replacement issues as subject to apportionment, see section 47-1 of this title

§ 23. Repealed. Feb. 20, 1931, ch. 235, 46 Stat. 1191.

Section, act May 12, 1917, ch. 12, 40 Stat. 87, provided for the sale of disused target ranges by the Secretary of War. Real estate cannot be sold by the War Department now without authority of Congress. See section 1354 of Title 10, Army.

§ 24. Forfeiture of right to allotment of appropriation.

Whenever any State shall, within a limit of time to be fixed by the President, have failed or refused to comply with or enforce any requirement of this title, or any regulation promulgated thereunder and in aid thereof by the President or the Secretary of War, the National Guard of such State shall be debarred, wholly or in part, as the President may direct, from receiving from the United States any pecuniary or other aid, benefit, or privilege authorized or provided by this title or any other law. (June 3, 1916, ch. 134, § 116, 39 Stat. 212.)

## REFERENCES IN TEXT

In original "title" read "Act" meaning the National Defense Act of 1916, act June 3, 1916, ch. 134, 39 Stat. 166. For distribution of this act into this title see note under section 2 of this title.

§ 25. Annual estimates of expenses.

The Secretary of War shall cause to be estimated annually the amount necessary for carrying out the provisions of law relating to the militia, and no money shall be expended under said provisions except as shall from time to time be appropriated for carrying them out. (June 3, 1916, ch. 134, § 119, 39 Stat. 213.)

§ 26. Reduction of certain units to meet appropriation.

Section, act Feb. 12, 1925, ch. 225, title I, 43 Stat. 921, provided for the reduction of certain units of the National Guard to the point where the appropriation made to the National Guard for the fiscal year 1926 would cover the entire cost of maintenance of such units.

## Chapter 3.—ARMAMENT, EQUIPMENT, AND SUPPLIES

- Sec.
- 31. Type of arms, equipment, and uniforms.
  - 32. Repealed.
  - 33. Issue of arms, equipment, material, uniforms, etc., to National Guard.
  - 34. Issue of new types of small arms.
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  - 36. Issue of automatic pistols.
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  - 38. Supplying and exchanging Infantry equipment; requisitions.
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- Sec.
- 39a. Cash sales of Government articles for use of militia; authority to receive articles back on credit basis.
  - 40. Purchase of animals with National Guard funds.
  - 42. Care of animals; armament, etc.
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  - 47. Military property lost, destroyed, damaged, or becoming unserviceable.
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  - 48. Bond to account for travel ration fund not required.
  - 49. Property and disbursing officers.
  - 50. Agents of disbursing officers.
  - 51. Specifications for motor vehicles for field service.

§ 31. Type of arms, equipment, and uniforms.

The National Guard shall, as far as practicable, be uniformed, armed, and equipped with the same type of uniforms, arms, and equipments as are or shall be provided for the Regular Army. (June 3, 1916, ch. 134, § 82, 39 Stat. 203; June 15, 1933, ch. 87, § 17, 48 Stat. 160.)

§ 32. Repealed. Dec. 16, 1930, ch. 14, § 1, 46 Stat. 1023.

Section, acts Feb. 12, 1887, ch. 129, § 3, 24 Stat. 402; June 22, 1906, ch. 3515, § 3, 34 Stat. 450, related to purchase of and accountability for arms and equipment.

§ 33. Issue of arms, equipment, material, uniforms, etc., to National Guard.

The Secretary of War is hereby authorized to procure, under such regulations as the President may prescribe, by purchase or manufacture, within the limits of available appropriations made by Congress, and to issue from time to time to the National Guard, upon requisition of the governors of the several States and Territories or the commanding general of the National Guard of the District of Columbia, such number of United States service arms, with all accessories, Field Artillery matériel, Engineer, Coast Artillery, Signal, and Sanitary matériel, accouterments, field uniforms, clothing, equipage, publications, and military stores of all kinds, including public animals, as are necessary to arm, uniform, and equip for field service the National Guard in the several States, Territories, and the District of Columbia: *Provided*, That as a condition precedent to the issue of any property as provided for by this title, the State, Territory, or the District of Columbia desiring such issue shall make adequate provision, to the satisfaction of the Secretary of War, for the protection and care of such property: *Provided further*, That whenever it shall be shown to the satisfaction of the Secretary of War that the National Guard of any State, Territory, or the District of Columbia, is properly organized, armed, and equipped for field service, funds allotted to that State, Territory, or District for the support of its National Guard may be used for the purchase, from the War Department, of any article issued by any



of the supply departments of the Army. (June 3, 1916, ch. 134, § 83, 39 Stat. 203.)

#### REFERENCES IN TEXT

In original "title" read "Act" meaning the National Defense Act of 1916, act June 3, 1916, ch. 134, 39 Stat. 166. For distribution of this act into this title see note under section 2 of this title.

#### § 34. Issue of new types of small arms.

Section, act Mar. 2, 1907, ch. 2511, 34 Stat. 1174, provided for the issuance of new types of small arms to the Organized Militia. Its provisions are considered as covered in section 35 of this title by the Judge Advocate General's Division. See J. A. G. 010.3, December 12, 1929, p. 14.

#### § 35. Cost of supplying new types of arms and equipment.

Under such regulations as the President may prescribe, whenever a new type of equipment, small arm, or field gun shall have been issued to the National Guard of the several States, Territories, and the District of Columbia, such equipment, small arms, and field guns, including all accessories, shall be furnished without charging the cost or value thereof or any expense connected therewith against the appropriations provided for the support of the National Guard. (June 3, 1916, ch. 134, § 84, 39 Stat. 204.)

#### § 36. Issue of automatic pistols.

Section, act Mar. 3, 1911, ch. 209, 36 Stat. 1057, provided for the issuance of automatic pistols to the Organized Militia. Its provisions are considered as covered in sections 22, 33, and 49 of this title by the Judge Advocate General's Division. See J. A. G. 010.3, December 12, 1929, p. 15.

#### § 37. Issue of Field Artillery matériel.

Section, act June 5, 1920, ch. 240, 41 Stat. 973, is not considered as permanent legislation by the Militia Bureau. See J. A. G. 010.3, December 12, 1929, p. 16.

#### § 38. Supplying and exchanging Infantry equipment; requisitions.

Whenever in the opinion of the Secretary of War a sufficient number of Infantry equipment, model of 1910, shall have been procured and shall be available for the purpose the Secretary of War is hereby authorized to issue on the requisition of the governors of the several States and Territories or the commanding general of the District of Columbia National Guard, such numbers thereof as are required for equipping the National Guard in said States, Territories, and the District of Columbia, without charging the cost or value thereof or any expenses connected therewith, against any allotments to said States, Territories, or the District of Columbia: *Provided*, That the equipment thus issued shall be receipted for and shall remain the property of the United States and be annually accounted for in the manner prescribed by section 49 of this title, and that each State, Territory, and the District of Columbia shall, upon receipt of new equipment, turn in to the Ordnance Department of the United States Army, without receiving any money credit therefor and without expense for transportation of Infantry equipment now in its possession, the property of the United States, and replaced by articles of the model of 1910 equipment. (May 12, 1917, ch. 12, 40 Stat. 68.)

#### § 39. Purchase of supplies, etc., from War Department; requisition by Government after purchase.

Any State, Territory, or the District of Columbia may, with the approval of the Secretary of War, purchase for cash from the War Department for the use of the National Guard, including the officers thereof, any stores, supplies, matériel of war, and military publications furnished to the Army, in addition to those issued under the provisions of this title, at the price at which they shall be listed to the Army, with cost of transportation added. The funds received from such sale shall be credited to the appropriation to which they shall belong, shall not be covered into the Treasury, and shall be available until expended to replace therewith the supplies sold to the States in the manner herein authorized: *Provided*, That stores, supplies, and matériel of war so purchased by a State, Territory, or the District of Columbia may, in time of actual or threatened war, be requisitioned by the United States for use in the military service thereof, and when so requisitioned by the United States and delivered credit for the ultimate return of such property in kind shall be allowed to such State, Territory, or the District of Columbia. (June 3, 1916, ch. 134, § 86, 39 Stat. 204.)

#### REFERENCES IN TEXT

In original "title" read "Act" meaning the National Defense Act of 1916, act June 3, 1916, ch. 134, 39 Stat. 166. For distribution of this act into this title see note under section 2 of this title.

#### CROSS REFERENCE

Credit to be made to replacement accounts on only such amounts as represent sales of stores, materials, and supplies at actual cost to War Department, see section 7251 of Title 31, Money and Finance.

#### § 39a. Cash sales of Government articles for use of militia; authority to receive articles back on credit basis.

Whenever articles of Government property are sold for cash to any State, Territory, or to the District of Columbia, for the use of the organized militia, thereby ceasing to be the property of the United States, none of the articles so sold shall be received back by any department of the Government upon the basis of allowing any credit therefor, except when such articles form part of the equipment of troops mustered into the service of the United States in time of war. (June 23, 1910, ch. 370, § 3, 36 Stat. 603.)

#### CROSS REFERENCE

Requisition by United States in time of war of stores, supplies, and material of war sold by War Department to National Guard, and giving of credit for ultimate return of the property in kind to the States, see section 39 of this title.

#### § 40. Purchase of animals with National Guard funds.

Funds allotted by the Secretary of War for the support of the National Guard shall be available for the purchase, under such regulations as the Secretary of War may prescribe, of animals conforming to the Regular Army standards for the training of the National Guard, said animals to remain the property of the United States and to be used solely for military purposes. The number of animals so issued shall not exceed thirty-two for each battery of field artillery or troop of cavalry, and a propor-

tionate number for other mounted organizations, under such regulations as the Secretary of War may prescribe; and the Secretary of War is further authorized to issue, in lieu of purchase, for the training of such organizations, condemned Army animals which are no longer fit for service, but which may be suitable for the purposes of instruction, such animals to be sold as provided by law when said purposes shall have been served. (June 3, 1916, ch. 134, § 89, 39 Stat. 205; June 4, 1920, ch. 227, subch. I, § 45, 41 Stat. 783.)

Section number 41 has not been used in the Code.

#### § 42. Care of animals; armament, etc.

Funds allotted by the Secretary of War for the support of the National Guard shall be available for the purchase and issue of forage, bedding, shoeing, and veterinary services, and supplies for the Government animals issued to any organization, and for animals owned or hired by any State, Territory, District of Columbia, or National Guard organization, not exceeding the number of animals authorized by Federal law for such organization and used solely for military purposes, and for the compensation of competent help for the care of material, animals, armament, and equipment of organizations of all kinds, under such regulations as the Secretary of War may prescribe.

The compensation paid to caretakers who belong to the National Guard, as herein authorized, shall be in addition to any compensation authorized for members of the National Guard under any of the provisions of this title.

Under such regulations as the Secretary of War shall prescribe, the material, animals, armament, and equipment, or any part thereof, of the National Guard of any State, Territory, or the District of Columbia, or organizations thereof, may be put into a common pool for care, maintenance, and storage; and the employment of caretakers therefor, not to exceed fifteen for any one pool, is hereby authorized.

Commissioned officers of the National Guard shall not be employed as caretakers except that, under such regulations as the Secretary of War shall prescribe, one such officer not above the grade of captain for each heavier-than-air squadron, and one such officer not above the grade of captain for each pool, may be employed. Either enlisted men or civilians may be employed as caretakers, but if there are as many as two caretakers in any unit, one of them shall be an enlisted man.

Funds hereafter appropriated under the provisions of this title, as amended, for the support of the National Guard of the several States, Territories, and the District of Columbia, shall be supplemental to moneys appropriated by the several States, Territories, and the District of Columbia, for the support of the National Guard, and shall be available for the hire of caretakers and clerks: *Provided*, That the Secretary of War shall, by regulations, fix the salaries of all caretakers and clerks hereby authorized to be employed, and shall also designate by whom they shall be employed. (June 3, 1916, ch. 134, § 90, 39 Stat. 205; June 4, 1920, ch. 227, subch. I, § 46, 41 Stat. 783; Mar. 1, 1922, ch. 90, 42 Stat. 401; June 6, 1924,

ch. 275, § 5, 43 Stat. 471; May 28, 1926, ch. 417, § 1, 44 Stat. 673; Apr. 21, 1928, ch. 397, 45 Stat. 440; June 19, 1935, ch. 277, § 6, 49 Stat. 392; June 13, 1940, ch. 343, § 1, 54 Stat. 371; Oct. 14, 1940, ch. 875, § 1, 54 Stat. 1134.)

#### REFERENCES IN TEXT

In original "title" read "National Defense Act" meaning the National Defense Act of 1916, Act June 3, 1916, ch. 134, 39 Stat. 166. For distribution of this act into this title see note under section 2 of this title.

#### AMENDMENT

Section was "repealed and reenacted to read as follows" by act Oct. 14, 1940, cited to text.

#### § 42a. Same; hire of caretakers for clerical work.

Moneys hereafter appropriated under the provisions of this title, as amended, for compensation of help for care of material, animals, armament, and equipment in the hands of the National Guard of the several States, Territories, and the District of Columbia shall be available for the hire of caretakers who may also perform clerical duties incidental to their employment, and such moneys may be used as supplemental to money appropriated by the several States, Territories, and the District of Columbia for the support of the National Guard: *Provided*, That nothing herein contained shall be construed to prevent the utilization of the services of such caretakers on duties other than those indicated above, if such additional services do not interfere with the complete performance of the duties for which they are employed under the provisions of this section: *Provided further*, That payments heretofore made for said help which now stand disallowed or would hereafter be disallowed but for this section are hereby ratified and validated as to the disbursing officers making the same in such amounts only as are approved by the Secretary of War, whose determination shall be final and conclusive, and the Comptroller General of the United States is hereby directed to allow credit in the accounts of said disbursing officers for and on account of such payments in said amounts: *And provided further*, That nothing herein shall be construed to prevent the collection from the personnel concerned of any amounts determined by the Secretary of War to be due the United States. (June 25, 1938, ch. 688, 52 Stat. 1173.)

#### REFERENCES IN TEXT

In original "title" read "National Defense Act" meaning the National Defense Act of 1916, act June 3, 1916, ch. 134, 39 Stat. 166. For distribution of this act into this title see note under section 2 of this title.

#### § 43. Withdrawal of Coast Artillery equipment in emergency.

In time of war, or threatened war, material, equipment, books of instruction, range finders, and fire-control equipment purchased for the instruction and use of State Coast Artillery organizations may, in the discretion of the Secretary of War, be withdrawn from armories or other places where it is in use by the State Coast Artillery organizations, and may be used in the fortifications of the United States. (Mar. 23, 1910, ch. 115, 36 Stat. 261.)

#### § 44. Issue of clothing, equipment, etc.

The Secretary of War is hereby authorized to issue from surplus stores and material on hand and

purchased for the United States Army such articles of clothing and equipment and field artillery, engineer, and signal material and ammunition as may be needed by the National Guard organized under the provisions of this title. This issue shall be made without charge against National Guard appropriations except for actual expenses incident to such issue. (June 13, 1940, ch. 343, § 1, 54 Stat. 372.)

#### SIMILAR PROVISIONS

The text of this section was taken from the Military Appropriation Act, 1941. Similar provisions were contained in the following acts:

1934—Apr. 26, 1934, ch. 165, title I, 48 Stat. 633.  
 1933—Mar. 4, 1933, ch. 281, title I, 47 Stat. 1590.  
 1932—July 14, 1932, ch. 482, title I, 47 Stat. 684.  
 1931—Feb. 23, 1931, ch. 279, title I, 46 Stat. 1296.  
 1930—May 28, 1930, ch. 348, title I, 46 Stat. 452.  
 1929—Feb. 28, 1929, ch. 366, title I, 45 Stat. 1369.  
 1928—Mar. 23, 1928, ch. 232, title I, 45 Stat. 347.  
 1927—Feb. 23, 1927, ch. 167, title I, 44 Stat. 1132.  
 1926—Apr. 15, 1926, ch. 146, title I, 44 Stat. 282.  
 1925—Feb. 12, 1925, ch. 225, title I, 43 Stat. 921.

#### REFERENCES IN TEXT

In original "title" read "the Act" meaning the National Defense Act of 1916, act June 3, 1916, ch. 134, 39 Stat. 166. For distribution of this act into this title see note under section 2 of this title.

#### § 45. Proceeds of sales of condemned stores.

The net proceeds of the sale of condemned stores issued to the National Guard and not charged to State allotments shall be covered into the Treasury of the United States, as shall also stoppages against officers and enlisted men, and the net proceeds of collections made from any person to reimburse the Government for the loss, damage, or destruction of said property not charged against the State allotment issued for the use of the National Guard. (June 3, 1916, ch. 134, § 88, 39 Stat. 205.)

#### § 46. Return of property replaced as obsolete or condemned.

Each State, Territory, and the District of Columbia shall, on the receipt of new property issued to replace obsolete or condemned prior issues, turn in to the War Department or otherwise dispose of, in accordance with the directions of the Secretary of War, all property so replaced or condemned, and shall not receive any money credit therefor. (June 3, 1916, ch. 134, § 85, 39 Stat. 204.)

#### § 47. Military property lost, destroyed, damaged, or becoming unserviceable.

All military property issued to the National Guard as herein provided shall remain the property of the United States. Whenever any such property issued to the National Guard in any State or Territory or the District of Columbia shall have been lost, damaged, or destroyed, or become unserviceable or unsuitable by use in service or from any other cause, it shall be examined by a disinterested surveying officer of the Regular Army or the National Guard, detailed by the Secretary of War, and the report of such surveying officer shall be forwarded to the Secretary of War, or to such officer as he shall designate to receive such reports; and if it shall appear to the Secretary of War from the record of survey that the property was lost, damaged, or destroyed through un-

avoidable causes, he is hereby authorized to relieve the State or Territory or the District of Columbia from further accountability therefor. If it shall appear that the loss, damage, or destruction of property was due to carelessness or neglect, or that its loss, damage, or destruction could have been avoided by the exercise of reasonable care, the money value of such property shall be charged to the accountable State, Territory, or District of Columbia to be paid from State, Territory, or District funds, or any funds other than Federal. If the articles so surveyed are found to be unserviceable or unsuitable, the Secretary of War shall direct what disposition by sale or otherwise shall be made of them; and if sold, the proceeds of such sale, as well as stoppages against officers and enlisted men, and the net proceeds of collections made from any person or from any State, Territory, or District to reimburse the Government for the loss, damage, or destruction of any property, shall be deposited in the Treasury of the United States as a credit to said State, Territory, or the District of Columbia, accountable for said property, and shall remain available throughout the then current fiscal year and throughout the fiscal year following that in which the sales, stoppages, and collections were effected, for the purposes provided for in that portion of its allotment set aside for the purchase of similar supplies, stores, or material of war: *Provided*, That if any State, Territory, or the District of Columbia shall neglect or refuse to pay, or to cause to be paid, the money equivalent of any loss, damage, or destruction of property charged against such State, Territory, or the District of Columbia by the Secretary of War after survey by a disinterested officer appointed as hereinbefore provided, the Secretary of War is hereby authorized to debar such State, Territory, or the District of Columbia from further participation in any and all appropriations for the National Guard until such payment shall have been made: *Provided further*, That property issued to the National Guard and which has become unserviceable through fair wear and tear in service, may, after inspection thereof and finding to that effect made by an officer of the Regular Army designated by the Secretary of War, be sold or otherwise disposed of, and the State, Territory, or District of Columbia accountable shall be relieved from further accountability therefor; such inspection, and sale or other disposition, to be made under regulations prescribed by the Secretary of War, and to constitute as to such property a discretionary substitute for the examination, report, and disposition provided for elsewhere in this section. (June 3, 1916, ch. 134, § 87, 39 Stat. 204; June 3, 1924, ch. 244, § 1, 43 Stat. 363; Feb. 28, 1925, ch. 371, § 4, 43 Stat. 1077.)

#### CROSS REFERENCE

Effective July 1, 1935, the appropriation provided for in the last sentence of this section was affected by act June 26, 1934, ch. 756, § 4, 48 Stat. 1227. See section 725c (b) of Title 31, Money and Finance.

#### § 47-1. Same; charging replacement issues to appropriations; limitation on issues.

The value of issues of military equipment and stores of all kinds and reserve supply thereof made to any State, Territory, or the District of Columbia

to replace property surveyed in accordance with section 47 of this title, shall not be charged to the apportionments required by sections 21, 22, 49 of this title, but no such replacement issue shall be made in excess of receipts theretofore collected and covered into the Treasury as miscellaneous receipts pursuant to section 47 of this title and section 725c (a) and (b) (22) of Title 31. (June 13, 1940, ch. 343, § 1, 54 Stat. 372.)

#### SIMILAR PROVISIONS

The text of this section was taken from the Military Appropriation Act, 1941. Similar provisions were contained in earlier appropriation acts.

#### § 47a. State-owned property brought into Federal service; credit; set-off.

The Secretary of War is hereby authorized to give any State credit for the money value of property listed on approved surveys of military property and equipment charged to an accountable State under section 47 of this title, said credit to be allowed as a set-off against the credit in favor of such accountable State, which has heretofore been or may hereafter be set up on the books of the National Guard Bureau in favor of such State for State-owned military property, supplies, and equipment brought into the Federal service by any such State during or at the time of the National Guard mobilization of 1917. (June 28, 1930, ch. 711, § 1, 46 Stat. 828; June 15, 1933, ch. 87, § 16, 48 Stat. 159.)

#### § 47b. Military property and supplies furnished States; ratification of requisitions; necessity that States account for property.

All requisitions for military property and supplies which were filled before June 28, 1930, by the War Department in favor of those States which were given a credit balance on the books of the National Guard Bureau for State-owned property brought into the Federal service in 1917 and which have been charged against said credit balance are hereby ratified and approved, and the States to which such property was issued shall not be required to account to the Secretary of War for said property. (June 28, 1930, ch. 711, § 2, 46 Stat. 829; June 15, 1933, ch. 87, § 16, 48 Stat. 159.)

#### § 48. Bond to account for travel ration fund not required.

Officers of the Organized Militia who may after May 11, 1908, be furnished, under proper authority, with funds for the purchase of coffee, or other components of the travel ration for the use of their respective commands, shall not be required to furnish bonds for the safe-keeping and disbursement of the same. (May 11, 1908, ch. 163, 35 Stat. 117.)

#### § 49. Property and disbursing officers.

The governor of each State and Territory and the commanding general of the National Guard of the District of Columbia shall appoint, designate, or detail, subject to the approval of the Secretary of War, the Adjutant General, or an officer of the National Guard of the State, Territory, or District of Columbia, who shall be regarded as property and disbursing officer of the United States. He shall receipt and account for all funds and property belonging to the

United States in possession of the National Guard of his State, Territory, or District and shall make such returns and reports concerning the same as may be required by the Secretary of War. The Secretary of War is authorized, on the requisition of the governor of a State or Territory or the commanding general of the National Guard of the District of Columbia, to pay to the property and disbursing officer thereof so much of its allotment out of the annual appropriation for the support of the National Guard as shall, in the judgment of the Secretary of War, be necessary for the purposes enumerated therein. He shall render, through the War Department, such accounts of Federal funds intrusted to him for disbursement as may be required by the General Accounting Office. Before entering upon the performance of his duties as property and disbursing officer he shall be required to give good and sufficient bond to the United States, the amount thereof to be determined by the Secretary of War, for the faithful performance of his duties and for the safe-keeping and proper disposition of the Federal property and funds intrusted to his care. He shall, after having qualified as property and disbursing officer, receive pay for his services at a rate to be fixed by the Secretary of War, and such compensation shall be a charge against the whole sum annually appropriated for the support of the National Guard: *Provided*, That when traveling in the performance of his official duties under orders issued by the proper authorities he shall be reimbursed for his actual necessary traveling expenses, the sum to be made a charge against the allotment of the State, Territory, or District of Columbia: *Provided further*, That the Secretary of War shall cause an inspection of the accounts and records of the property and disbursing officer to be made by an inspector general of the Army at least once each year: *And provided further*, That the Secretary of War is empowered to make all rules and regulations necessary to carry into effect the provisions of this section. (R. S. § 236, June 3, 1916, ch. 134, § 67, 39 Stat. 200; July 9, 1918, ch. 143, subch. III, 40 Stat. 878; June 10, 1921, ch. 18, § 305, 42 Stat. 24.)

#### CODIFICATION

Section is from act June 3, 1916, cited to text. It was amended by act July 9, 1918, also cited, by inserting "The Adjutant General or" in the first sentence. Act June 10, 1921, amended R. S. § 236, both cited to text, to provide for the settlement and adjustment of all Government accounts in the General Accounting office, and is authority for the substitution in this section of the words "General Accounting Office" for "Treasury Department".

#### § 50. Agents of disbursing officers.

Under such regulations as may be prescribed by the Secretary of War, property and disbursing officers of the National Guard accountable for public moneys may intrust money to other officers of the National Guard for the purpose of having them make disbursements as their agents, and the officers to whom the money is intrusted, as well as the officer intrusting the same to him, shall be held pecuniarily responsible therefor to the United States, and the agent officer shall be subject for his official misconduct to all the liabilities and penalties prescribed

by law in like cases for the officer for whom he acts as agent. (June 3, 1924, ch. 244, § 5, 43 Stat. 365.)

#### § 51. Specifications for motor vehicles for field service.

Specifications for motor vehicles for field service of the National Guard of the several States, Territories, and the District of Columbia, which shall be so drawn as to admit of competition, shall to the extent otherwise practicable conform with the requirements of the National Guard. (June 13, 1940, ch. 343, § 1, 54 Stat. 372.)

#### SIMILAR PROVISIONS

The text of this section was taken from the Military Appropriation Act, 1941. Similar provisions were contained in earlier appropriation acts.

### Chapter 4.—INSTRUCTION, TRAINING, AND DISCIPLINE

#### Sec.

61. System of discipline.
62. Company drill and participation in maneuvers, etc.; annual amount required.
63. Encampments or maneuvers for field or coast-defense instruction.
64. Assemblages for instruction of officers and enlisted men.
65. Officers or enlisted men selected to attend service schools or to receive practical routine instruction during field exercises.
66. Assignment of officers and men of Regular Army for instruction of National Guard.
67. Detail of officers and men of Regular Army to attend encampments, etc., of National Guard.
68. Detail of officers and men of Regular Army to duty with National Guard.
69. Acceptance by Regular Army officers of commissions in National Guard.
70. Repealed.
71. Instruction in firing; supply of ammunition.
72. Right of command during joint encampments, etc., with Regular Army.
73. Reduced rates for transportation to and from encampments, etc.
74. Offices for inspector instructors.
75. Government employees in National Guard; leaves of absence for training periods.

#### § 61. System of discipline.

The discipline (which includes training) of the National Guard shall conform to the system which is or may be prescribed for the Regular Army, and the training shall be carried out by the several States, Territories, and the District of Columbia so as to conform to the provisions of this title. (June 3, 1916, ch. 134, § 91, 39 Stat. 206.)

#### REFERENCES IN TEXT

In original "title" read "Act" meaning the National Defense Act of 1916, act June 3, 1916, ch. 134, 39 Stat. 166. For distribution of this act into this title see note under section 2 of this title.

#### § 62. Company drill and participation in maneuvers, etc.; annual amount required.

Under such regulations as the Secretary of War shall prescribe, each company, troop, battery, and detachment in the National Guard shall assemble for drill and instruction, including indoor target practice, not less than forty-eight times each year, and shall, in addition thereto, participate in encampments, maneuvers, or other exercises, including outdoor target practice, at least fifteen days in training each year, including target practice, unless such

company, troop, battery, or detachment shall have been excused from participation in any part thereof by the Secretary of War: *Provided*, That an assembly for drill and instruction may consist of a single duly ordered formation of a company, troop, battery, or detachment, or, when so authorized by the Secretary of War, of a series of duly ordered formations of subdivisions or parts thereof, but in the latter case the series of formations of subdivisions or groups must comprehend and include the entire organization, and must be included within the time limit of seven consecutive days within a calendar month. The sum total of the attendance at all the separate consecutive formations announced as constituting that assembly shall be counted as the attendance at the actual military assembly for the required period of time; but no officer, warrant officer, or enlisted man shall be counted more than once, nor receive credit for more than one required period of actual military attendance even though he may have attended more than one of the formations which constitute the assembly for the required period of time: *Provided further*, That credit for an assembly for drill or for indoor target practice shall not be given unless the number of officers and enlisted men present for duty at such assembly shall equal or exceed a minimum to be prescribed by the President, nor unless the period of actual military duty and instruction participated in by each officer and enlisted man at each assembly at which he shall be credited as having been present shall be of at least one and one-half hours' duration and the character of training such as may be prescribed by the Secretary of War: *Provided further*, That any flight ordered by competent authority and performed by an appropriately rated Air Corps officer or enlisted man of the National Guard assigned to an Air Corps unit thereof, or so performed by an officer or enlisted man of the Medical Department of the said National Guard regularly attached to an Air Corps unit of the National Guard by appropriate authority, may be credited for the same purpose and to the same extent as attendance at drill: *Provided further*, That in performing the flight so ordered the officer or enlisted man is prevented, by the making of such flight, from attending a regularly scheduled drill formation of his unit or the unit with which the said officer or enlisted man is required to drill. (June 3, 1916, ch. 134, § 92, 39 Stat. 206; June 3, 1924, ch. 244, § 2, 43 Stat. 363; Oct. 14, 1940, ch. 875, § 2, 54 Stat. 1135.)

#### AMENDMENT

Section was "repealed and reenacted to read as follows" by act Oct. 14, 1940, cited to text.

#### § 63. Encampments or maneuvers for field or coast-defense instruction.

Under such regulations as the President may prescribe the Secretary of War is authorized to provide for the participation of the whole or any part of the National Guard in encampments, maneuvers, or other exercises, including outdoor target practice, for field or coast-defense instruction, either independently or in conjunction with any part of the Regular Army, and there may be set aside from the funds appropriated for that purpose and allotted to any State, Territory, or the District of Columbia,

such portion of said funds as may be necessary for the payment, subsistence, transportation, and other proper expenses of such portion of the National Guard of such State, Territory, or the District of Columbia as shall participate in such encampments, maneuvers, or other exercises, including outdoor target practice, for field and coast-defense instruction. (June 3, 1916, ch. 134, § 94, 39 Stat. 206.)

**§ 64. Assemblages for instruction of officers and enlisted men.**

Under such regulations as the President may prescribe the Secretary of War may provide for assemblages of officers, warrant officers, and enlisted men of the National Guard for the purpose of attending schools to be conducted by officers of the Regular Army detailed by the Secretary of War for that purpose, or for the purpose of participating in small arms competitions. Such assemblages may be held either within or without the State, Territory, or District of Columbia, to which the members of the National Guard designated to attend them shall belong. (June 3, 1916, ch. 134, § 97, 39 Stat. 207; May 28, 1926, ch. 417, § 2, 44 Stat. 674.)

**§ 65. Officers or enlisted men selected to attend service schools or to receive practical routine instruction during field exercises.**

Under such regulations as the President may prescribe, the Secretary of War may, upon the recommendation of the governor of any State or Territory, or the commanding general of the National Guard of the District of Columbia, authorize a limited number of selected officers, warrant officers, or enlisted men of the National Guard to attend and pursue a regular course of study at any military-service school of the United States, except the United States Military Academy, or to be attached to an organization of the same arm, corps, or department to which such officer or enlisted man shall belong, for routine practical instruction at or near an Army post during a period of field training or other outdoor exercises. (June 3, 1916, ch. 134, § 99, 39 Stat. 207; Sept. 22, 1922, ch. 423, § 5, 42 Stat. 1035; May 28, 1926, ch. 417, § 3, 44 Stat. 674.)

**§ 66. Assignment of officers and men of Regular Army for instruction of National Guard.**

For instruction of the National Guard, the President shall assign such number of officers of the Regular Army as he may deem necessary; also such number of enlisted men of the Regular Army for duty in the instruction of the National Guard. (June 3, 1916, ch. 134, § 81, 39 Stat. 203; June 4, 1920, ch. 227, subch. I, § 44, 41 Stat. 782; Sept. 22, 1922, ch. 423, § 4, 42 Stat. 1034; Feb. 28, 1925, ch. 371, § 3, 43 Stat. 1077; June 15, 1933, ch. 87, § 16, 48 Stat. 160.)

**§ 67. Detail of officers and men of Regular Army to attend encampments, etc., of National Guard.**

The Secretary of War may detail one or more officers and enlisted men of the Regular Army to attend any encampment, maneuver, or other exercise for field or coast-defense instruction of the National Guard, who shall give such instruction and information to the officers and men assembled for

such encampment, maneuver, or other exercise as may be directed by the Secretary of War or requested by the governor or by the commanding officer of the National Guard there on duty. (June 3, 1916, ch. 134, § 96, 39 Stat. 207.)

**§ 68. Detail of officers and men of Regular Army to duty with National Guard.**

The Secretary of War shall detail officers of the active list of the Army to duty with the National Guard in each State, Territory, or District of Columbia. The Secretary of War may detail one or more enlisted men of the Regular Army with each State, Territory, or District of Columbia for duty in connection with the National Guard. But nothing in this section shall be so construed as to prevent the detail of retired officers as provided by law. (June 3, 1916, ch. 134, § 100, 39 Stat. 208.)

**§ 69. Acceptance by Regular Army officers of commissions in National Guard.**

The officers detailed under section 68 of this title may accept commissions in the National Guard, with the permission of the President and terminable in his discretion, without vacating their commissions in the Regular Army or being prejudiced in their relative or lineal standing therein. (June 3, 1916, ch. 134, § 100, 39 Stat. 208.)

**§ 70. Repealed. June 15, 1933, ch. 87, § 16, 48 Stat. 159.**

Section, acts June 3, 1916, ch. 134, § 81, 39 Stat. 203; June 4, 1920, ch. 227, subch. I, § 44, 41 Stat. 782; Sept. 22, 1922, ch. 423, § 4, 42 Stat. 1034; Feb. 28, 1925, ch. 371, § 3, 43 Stat. 1077, related to assignment of National Guard officers to duty with the Army and their pay and allowances.

**§ 71. Instruction in firing; supply of ammunition.**

The troops of the militia encamped at any military post or camp of the United States may be furnished such amounts of ammunition for instruction in firing and target practice as may be prescribed by the Secretary of War, and such instruction in firing shall be carried on under the direction of an officer selected for that purpose by the proper military commander. (Jan. 21, 1903, ch. 196, § 21, 32 Stat. 779.)

**CROSS REFERENCE**

Secretary of War to provide for National Guard participation in encampments, maneuvers, or other exercises, including outdoor target practice, for field or coast-defense instruction, see section 63 of this title.

**§ 72. Right of command during joint encampments, etc., with Regular Army.**

When any part of the National Guard participates in encampments, maneuvers, or other exercises, including outdoor target practice, for field or coast-defense instruction at a United States military post, or reservation, or elsewhere, if in conjunction with troops of the United States, the command of such military post or reservation and of the officers and troops of the United States on duty there or elsewhere shall remain with the commander of the United States troops without regard to the rank of the commanding or other officer of the National Guard temporarily engaged in the encampments,

maneuvers, or other exercises. (June 3, 1916, ch. 134, § 95, 39 Stat. 207.)

§ 73. Reduced rates for transportation to and from encampments, etc.

Nothing in the Act of February fourth, eighteen hundred and eighty-seven shall be construed to prohibit any common carrier from giving reduced rates for members of National Guard organizations traveling to and from joint encampments with the Regular Army. (Aug. 29, 1916, ch. 418, § 1, 39 Stat. 646.)

#### REFERENCE IN TEXT

Act of February fourth, eighteen hundred and eighty-seven, mentioned in text, is the Interstate Commerce Act which is now incorporated in the Code as chapters 1, 8, 12 of Title 49, Transportation. For specific references to sections of the act see the Tables.

#### CROSS REFERENCE

Special rates and rebates prohibited, see section 2 of Title 49, Transportation.

§ 74. Offices for inspector instructors.

Whenever practicable inspector instructors shall use the State armories or other public buildings for offices. (May 12, 1917, ch. 12, 40 Stat. 68.)

§ 75. Government employees in National Guard; leaves of absence for training periods.

All officers and employees of the United States and of the District of Columbia who shall be members of the National Guard shall be entitled to leave of absence from their respective duties, without loss of pay, time, or efficiency rating on all days during which they shall be engaged in field or coast-defense training ordered or authorized under the provisions of this title. (June 3, 1916, ch. 134, § 80, 39 Stat. 203.)

#### REFERENCES IN TEXT

In original "title" read "Act" meaning the National Defense Act of 1916, act June 3, 1916, ch. 134, 39 Stat. 166. For distribution of this act into this title see note under section 2 of this title.

### Chapter 5.—CALL OR DRAFT INTO FEDERAL SERVICE

Sec.

81. Authority of President; draft.

81a. Authority to call forth militia.

81b. Calling forth militia; period of service; apportionment.

81c. Ordering officers to active duty in emergency.

82. Law governing National Guard called into Federal service.

83. Physical examination.

84. Drafting Philippine Militia into Federal service.

#### CROSS REFERENCES

Insurrection, Federal aid in time of, see section 201 et seq. of Title 50, War.

Ordering National Guard to active Federal service when necessary, see section 301 of Appendix to Title 50, War.

Ordering reserve forces and retired personnel of Regular Army to one year of active duty, see section 401 et seq. of the Appendix to Title 50, War.

§ 81. Authority of President; draft.

When Congress shall have declared a national emergency and shall have authorized the use of armed land forces of the United States for any purpose requiring the use of troops in excess of those of the Regular Army, the President may, under such

regulations, including such physical examination as he may prescribe, order into the active military service of the United States, to serve therein for the period of the war or emergency, unless sooner relieved, any or all units and members of the National Guard of the United States. All persons so ordered into the active military service of the United States shall from the date of such order stand relieved from duty in the National Guard of their respective States, Territories, and the District of Columbia so long as they shall remain in the active military service of the United States, and during such time shall be subject to such laws and regulations for the government of the Army of the United States as may be applicable to members of the Army whose permanent retention in active military service is not contemplated by law. The organization of said units existing at the date of the order into active Federal service shall be maintained intact insofar as practicable.

Commissioned officers and warrant officers appointed in the National Guard of the United States and commissioned or holding warrants in the Army of the United States, ordered into Federal service as herein provided, shall be ordered to active duty under such appointments and commissions or warrants: *Provided*, That those officers and warrant officers of the National Guard who do not hold appointments in the National Guard of the United States and commissions or warrants in the Army of the United States may be appointed and commissioned or tendered warrants therein by the President, in the same grade and branch they hold in the National Guard.

Officers and enlisted men while in the service of the United States under the terms of this section shall receive the pay and allowances provided by law for officers and enlisted men of the reserve forces when ordered to active duty, except brigadier generals and major generals, who shall receive the same pay and allowances as provided by law for brigadier generals and major generals of the Regular Army, respectively. Upon being relieved from active duty in the military service of the United States all individuals and units shall thereupon revert to their National Guard status.

In the initial mobilization of the National Guard of the United States, war-strength officer personnel shall be taken from the National Guard as far as practicable, and for the purpose of this expansion warrant officers and enlisted men of the National Guard may, in time of peace, be appointed officers in the National Guard of the United States and commissioned in the Army of the United States. (June 3, 1916, ch. 134, § 111, 39 Stat. 211; June 4, 1920, ch. 227, subch. I, § 49, 41 Stat. 784; June 15, 1933, ch. 87, § 18, 48 Stat. 160; June 19, 1935, ch. 277, § 7, 49 Stat. 392.)

#### CROSS REFERENCES

Ordering National Guard to active Federal service when necessary, see section 301 of Appendix to Title 50, War.

Ordering Reserve forces and retired personnel of Regular Army to one year of active duty, see section 401 et seq. of the Appendix to Title 50, War.



**§ 81a. Authority to call forth militia.**

Whenever the United States is invaded or in danger of invasion from any foreign nation, or of rebellion against the authority of the Government of the United States, or the President is unable, with the regular forces at his command to execute the laws of the Union, it shall be lawful for the President to call forth such number of the militia of the State or of the States or Territories or of the District of Columbia as he may deem necessary to repel such invasion, suppress such rebellion, or to enable him to execute such laws, and to issue his orders for that purpose through the governor of the respective State or Territory, or through the commanding general of the Militia of the District of Columbia, from which State, Territory, or District such troops may be called, to such officers of the militia as he may think proper. (Jan. 21, 1903, ch. 196, § 4, 32 Stat. 776; May 27, 1908, ch. 204, § 3, 35 Stat. 400.)

**§ 81b. Calling forth militia; period of service; apportionment.**

Whenever the President calls forth the organized militia (including the National Guard) of any State, Territory, or the District of Columbia, to be employed in the service of the United States, he may specify in his call the period for which such service is required, and the militia so called shall continue to serve during the term so specified, either within or without the territory of the United States, unless sooner relieved by the President: *Provided*, That no commissioned officer or enlisted man shall be held to service beyond the term of his existing commission or enlistment, except as provided in section 81 of this title. When the militia of more than one State is called into the actual service of the United States by the President he may, in his discretion, apportion them among such States or Territories or to the District of Columbia according to representative population. (Jan. 21, 1903, ch. 196, §§ 5, 6, 32 Stat. 776; May 27, 1908, ch. 204, § 4, 35 Stat. 400.)

**§ 81c. Ordering officers to active duty in emergency.**

To the extent provided for from time to time by appropriations for this specific purpose, the President may order officers of the National Guard of the United States to active duty in an emergency at any time and for the period thereof: *Provided*, That, except in time of a national emergency expressly declared by Congress, no officer of the National Guard of the United States shall be employed on active duty for more than fifteen days in any calendar year without his own consent. When on such active duty an officer of the National Guard of the United States shall receive the same pay and allowances as an officer of the Regular Army of the same grade and length of active service, and mileage from his home to his first station and from his last station to his home, but shall not be entitled to retirement or retired pay. (June 3, 1916, ch. 134, § 38, as added June 19, 1935, ch. 277, § 1, 49 Stat. 391.)

**CROSS REFERENCES**

Ordering National Guard to active Federal service when necessary, see section 801 of Appendix to Title 50, War.

Ordering Reserve forces and retired personnel of Regular Army to one year of active duty, see section 401 et seq. of the Appendix to Title 50, War.

**§ 82. Law governing National Guard called into Federal service.**

The National Guard when called as such into the service of the United States shall, from the time they are required by the terms of the call to respond thereto, be subject to the laws and regulations governing the Regular Army, so far as such laws and regulations are applicable to officers and enlisted men whose permanent retention in the military service, either on the active list or on the retired list, is not contemplated by existing law. (June 3, 1916, ch. 134, § 101, 39 Stat. 208.)

**CROSS REFERENCE**

Laws and regulations governing National Guard personnel ordered to year's active service, see section 402 of the Appendix to Title 50, War.

**§ 83. Physical examination.**

Every officer and enlisted man of the National Guard who shall be called into the service of the United States as such shall be examined as to his physical fitness under such regulations as the President may prescribe without further commission or enlistment: *Provided*, That immediately preceding the muster out of an officer or enlisted man called into the active service of the United States he shall be physically examined under rules prescribed by the President of the United States, and the record thereof shall be filed and kept in the War Department. (June 3, 1916, ch. 134, § 115, 39 Stat. 212.)

**§ 84. Drafting Philippine Militia into Federal service.**

The militia and other locally created armed forces in the Philippine Islands may be called into the service of the United States, and all members thereof may be drafted into said service and organized in such manner as is or may be provided by law for calling or drafting the National Guard into said service, and shall in all respects while therein be upon the same footing with members of the National Guard so called or drafted: *Provided*, That the pay and allowances of officers and men of the Philippine Militia and other locally created armed forces in the Philippine Islands called into the service of the United States under the provisions of this section when serving in the Philippine Islands shall in no case exceed the pay and allowances for corresponding grades of Philippine Scouts. (Jan. 26, 1918, ch. 11, 40 Stat. 432.)

**Chapter 6.—COURTS-MARTIAL****Sec.**

91. System of courts-martial for National Guard.
92. General courts-martial.
93. Special courts-martial.
94. Summary courts.
95. Sentence to imprisonment in lieu of fine.
96. Approval of sentence of dismissal from service.
97. Issuance of warrants of arrest; execution of sentences.

**§ 91. System of courts-martial for National Guard.**

Except in organizations in the service of the United States, court-martial in the National Guard shall be of three kinds, namely, general courts-

martial, special courts-martial, and summary courts-martial. They shall be constituted like, and have cognizance of the same subjects, and possess like powers, except as to punishments, as similar courts provided for by the laws and regulations governing the Army of the United States, and the proceedings of courts-martial of the National Guard shall follow the forms and modes of procedure prescribed for said similar courts. (June 3, 1916, ch. 134, § 102, 39 Stat. 208.)

#### CROSS REFERENCE

Courts martial of the Army, see section 1474 et seq. of Title 10, Army.

#### § 92. General courts-martial.

General courts-martial of the National Guard not in the service of the United States may be convened by orders of the President, or of the governors of the respective States and Territories, or by the commanding general of the National Guard of the District of Columbia, and such courts shall have the power to impose fines not exceeding \$200; to sentence to forfeiture of pay and allowances; to a reprimand; to dismissal or dishonorable discharge from the service; to reduction of noncommissioned officers to the ranks; or any two or more of such punishments may be combined in the sentences imposed by such courts. (June 3, 1916, ch. 134, § 103, 39 Stat. 208.)

#### § 93. Special courts-martial.

In the National Guard, not in the service of the United States, the commanding officer of each garrison, fort, post, camp, or other place, brigade, regiment, detached battalion, or other detached command, may appoint special courts-martial for his command; but such special courts-martial may in any case be appointed by superior authority when by the latter deemed desirable. Special courts-martial shall have power to try any person subject to military law, except a commissioned officer, for any crime or offense made punishable by the military laws of the United States, and such special courts-martial shall have the same powers of punishment as do general courts-martial, except that fines imposed by such courts shall not exceed \$100. (June 3, 1916, ch. 134, § 104, 39 Stat. 208.)

#### § 94. Summary courts.

In the National Guard, not in the service of the United States, the commanding officer of each garrison, fort, post, or other place, regiment, or corps, detached battalion, company, or other detachment of the National Guard may appoint for such place or command a summary court to consist of one officer, who shall have power to administer oaths and to try the enlisted men of such place or command for breaches of discipline and violations of laws governing such organizations; and said court, when satisfied of the guilt of such soldier, may impose fines not exceeding \$25 for any single offense; may sentence noncommissioned officer to reduction to the ranks; may sentence to forfeiture of pay and allowances. The proceedings of such court shall be informal, and the min-

utes thereof shall be the same as prescribed for summary courts of the Army of the United States. (June 3, 1916, ch. 134, § 105, 39 Stat. 208.)

#### § 95. Sentence to imprisonment in lieu of fine.

All courts-martial of the National Guard, not in the service of the United States, including summary courts, shall have power to sentence to confinement in lieu of fines authorized to be imposed: *Provided*, That such sentences of confinement shall not exceed one day for each dollar of fine authorized. (June 3, 1916, ch. 134, § 106, 39 Stat. 209.)

#### § 96. Approval of sentence of dismissal from service.

No sentence of dismissal from the service or dishonorable discharge, imposed by a National Guard court-martial, not in the service of the United States, shall be executed until approved by the governor of the State or Territory concerned, or by the commanding general of the National Guard of the District of Columbia. (June 3, 1916, ch. 134, § 107, 39 Stat. 209.)

#### § 97. Issuance of warrants of arrest; execution of sentences.

In the National Guard, not in the service of the United States, presidents of courts-martial and summary court officers shall have power to issue warrants to arrest accused persons and to bring them before the court for trial whenever such persons shall have disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, and to issue subpoenas and subpoenas duces tecum and to enforce by attachment attendance of witnesses and the production of books and papers, and to sentence for a refusal to be sworn or to answer as provided in actions before civil courts.

All processes and sentences of said courts shall be executed by such civil officers as may be prescribed by the laws of the several States and Territories, and in any State where no provision shall have been made for such action, and in the Territories and the District of Columbia, such processes and sentences shall be executed by a United States marshal or his duly appointed deputy, and it shall be the duty of any United States marshal to execute all such processes and sentences and make return thereof to the officer issuing or imposing the same. (June 3, 1916, ch. 134, § 108, 39 Stat. 209.)

### Chapter 7.—COMMISSIONED OFFICERS

#### Sec.

111. Qualifications for officers.
112. Federal oath for officers.
113. Examinations for commissions.
- 113a. Appointment of National Guard officers in National Guard of United States.
114. Elimination and disposition of officers of the National Guard of the United States.
115. Withdrawal of Federal recognition.

#### § 111. Qualifications for officers.

Persons commissioned as officers of the National Guard after June 4, 1920, shall not be recognized

as such under any of the provisions of this title unless they shall have been selected from the following classes, and shall have taken and subscribed to the oath of office prescribed in section 112 of this title; officers or enlisted men of the National Guard; officers, active or retired, reserve officers, and former officers of the Army, Navy, or Marine Corps, enlisted men and former enlisted men of the Army, Navy, or Marine Corps who have received an honorable discharge therefrom; graduates of the United States Military and Naval Academies; and graduates of schools, colleges, universities, and officers' training camps, where they have received military instruction under the supervision of an officer of the Regular Army who certified their fitness for appointment as commissioned officers; and for the technical branches or Staff Corps and departments, such other civilians as may be specially qualified for duty therein. (June 3, 1916, ch. 134, § 74, 39 Stat. 201; June 4, 1920, ch. 227, subch. I, § 41, 41 Stat. 781.)

#### REFERENCES IN TEXT

In original "title" read "Act" meaning the National Defense Act of 1916, act June 3, 1916, ch. 134, 39 Stat. 166. For distribution of this act into this title see note under section 2 of this title.

#### § 112. Federal oath for officers.

Commissioned officers and warrant officers of the National Guard of the several States, Territories, and the District of Columbia and in the National Guard of the United States shall take and subscribe to the following oath of office:

I, ———, do solemnly swear that I will support and defend the Constitution of the United States and the constitution of the State of ——— against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the President of the United States and of the Governor of the State of ———; that I make this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office of ——— in the National Guard of the United States and of the State of ——— upon which I am about to enter, so help me God. (June 3, 1916, ch. 134, § 73, 39 Stat. 201; June 15, 1933, ch. 87, § 11, 48 Stat. 157.)

#### § 113. Examinations for commissions.

The provisions of this title shall not apply to any person hereafter appointed as an officer of the National Guard unless he first shall have successfully passed such tests as to his physical, moral, and professional fitness as the President shall prescribe. The examination to determine such qualifications for appointment shall be conducted by a board of three commissioned officers appointed by the Secretary of War from the Regular Army or the National Guard of the United States, or both. The examination herein provided for may be held prior to the original appointment or promotion of any individual as an officer or warrant officer, and if the applicant has been found qualified he may be issued a certificate of eligibility by the Chief of the National Guard Bureau, which certifi-

cate, in the event of appointment or promotion within two years to the office for which he was found qualified, shall entitle the holder to Federal recognition without further examination, except as to his physical condition.

Upon being federally recognized such officers and warrant officers may be appointed in the National Guard of the United States. (June 3, 1916, ch. 134, § 75, 39 Stat. 202; June 15, 1933, ch. 87, § 12, 48 Stat. 158.)

#### REFERENCES IN TEXT

In original "title" read "Act" meaning the National Defense Act of 1916, Act June 3, 1916, ch. 134, 39 Stat. 166. For distribution of this act into this title see note under section 2 of this title.

#### § 113a. Appointment of National Guard officers in National Guard of United States.

The President is authorized to appoint in the same grade and branch in the National Guard of the United States any person who is an officer or warrant officer in the National Guard of any State, Territory, or the District of Columbia and who is federally recognized in that grade and branch: *Provided*, That acceptance of appointment in the same grade and branch in the National Guard of the United States, by an officer of the National Guard of a State, Territory, or the District of Columbia, shall not operate to vacate his State, Territory, or District of Columbia National Guard office.

Officers or warrant officers of the National Guard who are in a federally recognized status on June 15, 1933, shall take the oath of office prescribed in section 112 and shall be appointed in the National Guard of the United States in the same grade and branch without further examination, other than physical, within a time limit to be fixed by the President, and shall in the meantime continue to enjoy all the rights, benefits, and privileges conferred by this title. (June 3, 1916, ch. 134, § 73, 39 Stat. 201; June 15, 1933, ch. 87, § 11, 48 Stat. 157.)

#### REFERENCES IN TEXT

In original "title" read "Act" meaning the National Defense Act of 1916, act June 3, 1916, ch. 134, 39 Stat. 166. For distribution of this act into this title see note under section 2 of this title.

#### § 114. Elimination and disposition of officers of the National Guard of the United States.

The appointments of officers and warrant officers of the National Guard may be terminated or vacated in such manner as the several States, Territories, and the District of Columbia shall provide by law. Whenever the appointment of an officer or warrant officer of the National Guard of a State, Territory, or the District of Columbia has been vacated or terminated or upon reaching the age of sixty-four, the Federal recognition of such officer shall be withdrawn and he shall be discharged from the National Guard of the United States: *Provided*, That under such regulations as the Secretary of War may prescribe, upon termination of service in the active National Guard, an officer of the National Guard of the United States may, if he makes application therefor, transfer to the inactive National Guard and remain in the National Guard of the United States in the same or lower grade. When Federal

recognition is withdrawn from any officer or warrant officer of the National Guard of any State, Territory, or the District of Columbia, as provided in section 115 of this title or upon reaching the age of sixty-four years, he shall thereupon cease to be a member thereof and shall be given a discharge certificate therefrom by the official authorized to appoint such officer. (June 3, 1916, ch. 134, § 77, 39 Stat. 202; June 15, 1933, ch. 87, § 14, 48 Stat. 159; June 19, 1935, ch. 277, § 4, 49 Stat. 391.)

#### § 115. Withdrawal of Federal recognition.

Under such regulations as the President shall prescribe the capacity and general fitness of any officer or warrant officer of the National Guard of the several States, Territories, and the District of Columbia for continued Federal recognition may at any time be investigated by an efficiency board of officers senior in rank to the officer under investigation, appointed by the Secretary of War from the Regular Army or the National Guard of the United States, or both. If the findings of said board be unfavorable to the officer under investigation and be approved by the President, Federal recognition shall be withdrawn and he shall be discharged from the National Guard of the United States. Federal recognition may be withdrawn by the Secretary of War and his appointment in the National Guard of the United States may be terminated when an officer or warrant officer of the National Guard of any State, Territory, or the District of Columbia has been absent without leave for three months. (June 3, 1916, ch. 134, § 76, 39 Stat. 202; June 15, 1933, ch. 87, § 13, 48 Stat. 158.)

### Chapter 8.—ENLISTED FORCE

#### Sec.

- 121. Enlisted strength of National Guard.
- 122. Compliance with section 121.
- 123. Contract and oath of enlistment.
- 124. Periods of enlistment in National Guard and National Guard of United States.
- 125. Discharge of enlisted men.

#### § 121. Enlisted strength of National Guard.

The number of enlisted men of the National Guard to be organized under this title within one year from June 3, 1916, shall be for each State in the proportion of two hundred such men for each Senator and Representative in Congress from such State, and a number to be determined by the President for each Territory and the District of Columbia, and shall be increased each year thereafter in the proportion of not less than 50 per centum until a total peace strength of not less than eight hundred enlisted men for each Senator and Representative in Congress shall have been reached: *Provided*, That in States which have but one Representative in Congress such increase shall be at the discretion of the President: *Provided further*, That this shall not be construed to prevent any State, Territory, or the District of Columbia from organizing the full number of troops required under this section in less time than is specified in this section, or from maintaining existing organizations if they shall conform to such rules and regulations regarding organization, strength, and armament as the Presi-

dent may prescribe: *And provided further*, That nothing in this title shall be construed to prevent any State with but one Representative in Congress from organizing one or more regiments of troops, with such auxiliary troops as the President may prescribe; such organizations and members of such organizations to receive all the benefits accruing under this title under the conditions set forth herein. (June 3, 1916, ch. 134, § 62, 39 Stat. 198.)

#### REFERENCES IN TEXT

In original "title" read "Act" meaning the National Defense Act of 1916, act June 3, 1916, ch. 134, 39 Stat. 166. For distribution of this act into this title see note under section 2 of this title.

#### § 122. Compliance with section 121.

Section, act July 11, 1919, ch. 8, 41 Stat. 127, provided that provisions of section 121 of this title should be considered fulfilled if strengths mentioned therein were attained by June 30, 1920, and successive years.

#### § 123. Contract and oath of enlistment.

Men enlisting in the National Guard of the several States, Territories, and the District of Columbia, and in the National Guard of the United States, shall sign an enlistment contract and subscribe to the following oath or affirmation:

"I do hereby acknowledge to have voluntarily enlisted this — day of —, 19—, as a soldier in the National Guard of the United States and of the State of —, for the period of three (or one) year—, under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of America and to the State of —, and that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the President of the United States and of the Governor of the State of —, and of the officers appointed over me according to law and the rules and Articles of War."

The oath of enlistment prescribed in this section may be taken before any officer of the National Guard authorized to administer oaths of enlistment in the National Guard of the several States, Territories, and the District of Columbia, by respective laws thereof. All oaths of enlistment heretofore administered by the officers described above are hereby validated. (June 3, 1916, ch. 134, § 70, 39 Stat. 201; June 4, 1920, ch. 227, subch. I, § 38, 41 Stat. 781; June 15, 1933, ch. 87, § 8, 48 Stat. 156; June 19, 1935, ch. 277, § 3, 49 Stat. 391.)

#### § 124. Periods of enlistment in National Guard and National Guard of United States.

Original enlistments in the National Guard and in the National Guard of the United States shall be for a period of three years, and subsequent enlistments for periods of one or three years each: *Provided*, That all enlisted men of the National Guard on June 15, 1933, may, under such regulations as may be prescribed by the Secretary of War, be enlisted in grade, rating, and branch in the National Guard of the United States for the remaining unexpired portions of their enlistments in the National Guard: *And provided further*, That in the event of

an emergency declared by Congress the period of any enlistment which otherwise would expire may by Presidential proclamation be extended for a period of six months after the termination of the emergency. (June 3, 1916, ch. 134, § 69, 39 Stat. 200; July 11, 1919, ch. 8, 41 Stat. 127; June 4, 1920, ch. 227, subch. I, § 37, 41 Stat. 781; June 6, 1924, ch. 275, § 4, 43 Stat. 470; June 15, 1933, ch. 87, § 7, 48 Stat. 156.)

#### § 125. Discharge of enlisted men.

An enlisted man discharged from service in the National Guard and the National Guard of the United States shall receive a discharge in writing in such form and with such classification as is or shall be prescribed for the Regular Army, and in time of peace discharges may be given prior to the expiration of terms of enlistment under such regulations as the Secretary of War may prescribe. (June 3, 1916, ch. 134, § 72, 39 Stat. 201; June 4, 1920, ch. 227, subch. I, § 40, 41 Stat. 781; June 15, 1933, ch. 87, § 10, 48 Stat. 157.)

### Chapter 9.—INACTIVE NATIONAL GUARD

Sec.

- 131. Repealed.
- 132. Enlistments in inactive National Guard.
- 133. Transfer from active to inactive National Guard and vice versa.
- 134. Pay and allowances when on active duty.

#### § 131. Repealed. June 15, 1933, ch. 87, 48 Stat. 159.

Section. acts June 3, 1916, ch. 134, § 78, 39 Stat. 202; June 4, 1920, ch. 227, subch. I, § 42, 41 Stat. 782, related to establishment and organization of National Guard Reserve.

#### § 132. Enlistments in inactive National Guard.

Men duly qualified for enlistment in the active National Guard may enlist for one term only in the inactive National Guard and in the National Guard of the United States for a period of one or three years, under such regulations as the Secretary of War shall prescribe, and on so enlisting they shall sign an enlistment contract and subscribe to the oath or affirmation in section 123 of this title. (June 3, 1916, ch. 134, § 78, 39 Stat. 202; June 4, 1920, ch. 227, subch. I, § 42, 41 Stat. 782; Feb. 28, 1925, ch. 371, § 2, 43 Stat. 1076; June 15, 1933, ch. 87, § 15, 48 Stat. 159.)

#### § 133. Transfer from active to inactive National Guard and vice versa.

Under such regulations as the Secretary of War may prescribe, enlisted men of the active National Guard, not formerly enlisted in the inactive National Guard or the National Guard of the United States, may be transferred to the inactive National Guard; likewise enlisted men hereafter enlisted in or transferred to the inactive National Guard may be transferred to the active National Guard: *Provided*, That in time of peace no enlisted man shall be required to serve under any enlistment for a longer time than the period for which he enlisted in the active or inactive National Guard, as the case may be. (June 3, 1916, ch. 134, § 78, 39 Stat. 202; June 4, 1920, ch. 227, subch. I, § 42, 41 Stat. 782; Feb.

28, 1925, ch. 371, § 2, 43 Stat. 1076; June 15, 1933, ch. 87, § 15, 48 Stat. 159.)

#### § 134. Pay and allowances when on active duty.

Members of said inactive National Guard, when engaged in field or coast-defense training with the active National Guard, shall receive the same Federal pay and allowances as those occupying like grades on the active list of said National Guard when likewise engaged. (June 3, 1916, ch. 134, § 78, 39 Stat. 202; June 4, 1920, ch. 227, subch. I, § 42, 41 Stat. 782; Feb. 28, 1925, ch. 371, § 2, 43 Stat. 1076; June 15, 1933, ch. 87, § 15, 48 Stat. 159.)

### Chapter 10.—PAY AND ALLOWANCES

Sec.

- 141. Pay periods for officers entitled to Federal pay.
- 142. Longevity pay of officers.
- 142a. Pay and allowances of officers in National Guard of United States on active duty.
- 143. Pay of officers and warrant officers for armory drills.
- 143a. Armory drill pay; basis of computation.
- 144. Pay and allowances for attending encampments, etc., for field or coast-defense instruction.
- 145. Pay and allowances for attending instruction assemblages.
- 146. Pay and allowances for attendance at service schools.
- 147. Pay and allowances for duty with Regular Army.
- 148. Administrative function pay of officers.
- 149. Pay of warrant officers; further provisions.
- 150. Additional pay for flying duty; travel allowance.
- 151. Quarters and subsistence for officers and warrant officers during instruction and training.
- 152. Armory drill pay of enlisted men of sixth and seventh grades.
- 153. Pay of specialist rating in sixth and seventh grades.
- 154. Pay of enlisted men of grades other than sixth and seventh.
- 155. Payment of men enlisted by State authorities.
- 156. Uniforms, accouterments, and equipment furnished to officers at cost.
- 157. Pay and allowances of militia called into actual service.
- 158. Time of payment for attending encampments, etc.
- 159. Payment of arrears.
- 160. Pensions for death or disability in Federal service.
- 161–164. Repealed.
- 164a. Pay and allowances during hospital treatment for injury or disease contracted in line of duty; transportation or discharge.
- 164b. Hospital treatment, pay, etc., in case of injury while engaged in flying.
- 164c. Burial expenses of persons dying in hospital or while training.
- 164d. Required hospitalization and medical treatment.

#### § 141. Pay periods for officers entitled to Federal pay.

See section 7 of Title 37, Pay and Allowances.

#### § 142. Longevity pay of officers.

See section 7 of Title 37, Pay and Allowances.

#### § 142a. Pay and allowances of officers in National Guard of United States on active duty.

In time of peace the President may order to active duty, with their consent, officers of the National Guard of the United States for the purposes set forth in sections 22, 23–26, 30–32, 33, 34–36, 38 of Title 10, and sections 66, 70, 147, 171–176 of this title. When on such active duty an officer of the National Guard of the United States shall receive the same pay and allowances as an officer of the Regular Army of the

same grade and length of active service and mileage from his home to his first station and from his last station to his home, but shall not be entitled to retirement or retired pay: *Provided*, That such officers ordered to such active duty shall be paid out of the funds appropriated for the pay of the National Guard. (June 3, 1916, ch. 134, § 38, as amended June 15, 1933, ch. 87, § 4, 48 Stat. 155.)

## CROSS REFERENCE

Injuries in line of duty in active military service, see section 456 of Title 10, Army.

#### § 143. Pay of officers and warrant officers for armory drills.

Under such regulations as the Secretary of War may prescribe, officers and warrant officers of the National Guard, except general officers, shall receive compensation at the rate of one-thirtieth of the monthly base pay prescribed for them in sections 7 and 13 of Title 37, for each regular drill, period of appropriate duty, or other equivalent period of training, authorized by the Secretary of War, not exceeding eight in any one calendar month and not exceeding sixty in any one fiscal year, at which they shall have been engaged for the entire period of not less than one and one-half hours: *Provided*, That such pay shall be in addition to compensation for attendance at field- or coast-defense instruction or maneuvers, and that nothing in this section and sections 42, 62, 143, 148, 156, 164d of this title, section 455e of Title 10, and section 487 of Title 31 shall operate to reduce the present pay of majors and lieutenant colonels. General officers shall receive \$500 a year in addition to compensation for attendance at field or coast-defense instruction or maneuvers, for satisfactory performance of their appropriate duties. Pay under the provisions of this section shall not accrue to any officer during a period when he shall be entitled under any provision of law to the full rate of his base pay prescribed in section 7 or section 13, as the case may be, of Title 37. (June 3, 1916, ch. 134, § 109, 39 Stat. 209; June 4, 1920, ch. 227, subch. I, § 47, 41 Stat. 783; June 3, 1924, ch. 244, § 3, 43 Stat. 364; Oct. 14, 1940, ch. 875, § 3, 54 Stat. 1136.)

## AMENDMENT

Section was "repealed and reenacted to read as follows" by act Oct. 14, 1940, cited to text.

## CROSS REFERENCE

Armory drill pay to be computed on fiscal year basis instead of calendar year, see section 143a of this title.

#### § 143a. Armory drill pay; basis of computation.

Armory drill pay shall be computed upon a fiscal year basis instead of calendar year. (Apr. 15, 1926, ch. 146, title I, 44 Stat. 282.)

#### § 144. Pay and allowances for attending encampments, etc., for field or coast-defense instruction.

The officers and enlisted men of the National Guard while engaged in encampments, maneuvers, or other exercises, including outdoor target practice, for field or coast-defense instruction, shall be entitled to the same pay, subsistence, and transportation as officers and enlisted men of corresponding grades of the Regular Army are or may be en-

titled by law. (June 3, 1916, ch. 134, § 94, 39 Stat. 206.)

#### § 145. Pay and allowances for attending instruction assemblages.

Officers and warrant officers of the National Guard attending assemblages provided for in section 64 of this title shall be entitled to pay, allowances, and transportation, and enlisted men to pay, transportation, and subsistence at the same rates as for encampments or maneuvers for field or coast-defense instruction. (June 3, 1916, ch. 134, § 97, 39 Stat. 207; May 28, 1926, ch. 417, § 2, 44 Stat. 674.)

#### § 146. Pay and allowances for attendance at service schools.

When any National Guard officer, warrant officer, or enlisted man is selected to attend and pursue a regular course of study at any military service school of the United States, except the United States Military Academy, or to be attached to an organization of the same arm, corps, or department to which such officer or enlisted man shall belong, for routine practical instruction at or near an Army post during a period of field training or other outdoor exercises, as provided for in section 65 of this title, such officer, or warrant officer, shall receive out of any National Guard allotment of funds available for the purpose, the pay and allowances provided in sections 1-3, 4-8, 9, 10, 11-20, 21, 22-26, 27-29, 30, 31 of Title 37, for officers and warrant officers of the National Guard when authorized by law to receive Federal pay and the travel allowances provided in section 20 of Title 37, and any such enlisted man shall receive therefrom, except as otherwise provided in section 23 of Title 37, the same pay and allowances, including allowances for quarters, subsistence, and travel to which an enlisted man of the Regular Army of like grade would be entitled for attending such school, college, or practical course of instruction under orders from proper military authority, while in actual attendance at such school, college, or practical course of instruction, and for the necessary period of travel from and to his home station: *Provided*, That all pay and allowances accruing to any officer, warrant officer, or enlisted man, including that for the period of travel to home stations, may be paid prior to departure from the post or other place at which such service is performed. (June 3, 1916, ch. 134, § 99, 39 Stat. 207; Sept. 22, 1922, ch. 423, § 5, 42 Stat. 1035; May 28, 1926, ch. 417, § 3, 44 Stat. 674.)

#### § 147. Pay and allowances for duty with Regular Army.

Section, act June 3, 1916, ch. 134, § 81, 39 Stat. 203; act June 4, 1920, ch. 227, subch. I, § 44, 41 Stat. 782; act Sept. 22, 1922, ch. 423, § 4, 42 Stat. 1034; act Feb. 28, 1925, ch. 371, § 3, 43 Stat. 1077, provided National Guard officers assigned to duty with the Regular Army should receive the pay and allowances authorized in section 175 of this title.

#### § 148. Administrative function pay of officers.

In addition to pay provided in section 143 of this title officers commanding organizations less than a brigade and having administrative functions connected therewith shall, whether or not such

officers belong to such organizations, receive not more than \$240 a year for the faithful performance of such administrative functions under such regulations as the Secretary of War may prescribe; and for the purpose of determining how much shall be paid to such officers so performing such functions, the Secretary of War may, from time to time, divide them into classes and fix the amount payable to the officers in each class. Pay under the provisions of this section shall not accrue to any officer during a period when he shall be entitled under any provision of law to the full rate of his base pay prescribed in section 7 of Title 37. (June 3, 1916, ch. 134, § 109, 39 Stat. 209; June 4, 1920, ch. 227, subch. I, § 47, 41 Stat. 783; June 3, 1924, ch. 244, § 3, 43 Stat. 364; Oct. 14, 1940, ch. 875, § 3, 54 Stat. 1136.)

#### AMENDMENT

Section was "repealed and reenacted to read as follows" by act Oct. 14, 1940, cited to text.

#### § 149. Pay of warrant officers; further provisions.

See section 23 of Title 37, Pay and Allowances.

#### § 150. Additional pay for flying duty; travel allowance.

See section 29 of Title 37, Pay and Allowances.

#### § 151. Quarters and subsistence for officers and warrant officers during instruction and training.

See section 23 of Title 37, Pay and Allowances.

#### § 152. Armory drill pay of enlisted men of sixth and seventh grades.

See section 23 of Title 37, Pay and Allowances.

#### § 153. Pay of specialist rating in sixth and seventh grades.

Enlisted men of the sixth and seventh grades of the National Guard holding specialists' ratings under the provisions of section 605 of Title 10, shall, in addition to the pay provided in section 23 of Title 37, be entitled to one-thirtieth of the specialists' pay provided in section 13 of Title 37 for each day of participation in exercises provided for by sections 63, 64, and 65 of this title: *Provided*, That payments made prior to June 3, 1924, to enlisted men of the sixth and seventh grades of the National Guard holding specialists' ratings of one-thirtieth of the specialists' pay provided in said section 13 of Title 37 for each day spent in participating in exercises or performing the duties provided for by sections 63, 64, 65, and 154 of this title are hereby validated. (June 3, 1924, ch. 244, § 6, 43 Stat. 365.)

#### § 154. Pay of enlisted men of grades other than sixth and seventh.

Each enlisted man belonging to an organization of the National Guard, other than enlisted men of the sixth and seventh grades, shall receive compensation at the rate of one-thirtieth of the initial monthly pay of his grade in the Regular Army, and each of those of the sixth and seventh grades shall receive compensation as is provided in section 23 of Title 37, for each drill ordered for his organization where he is officially present and in which he participates for not less than one and one-half hours, not exceeding eight in any one calendar

month and not exceeding sixty drills in one year: *Provided*, That the proviso contained in section 62 of this title shall not operate to prevent the payment of enlisted men actually present at any duly ordered drill or other exercise: *Provided further*, That periods of any actual military duty equivalent to the drills herein prescribed (except those periods of service provided for in sections 63, 64, 65, and 82 of this title, as amended) may be accepted as service in lieu of such drills when so provided by the Secretary of War: *And provided further*, That any enlisted man shall, under such regulations as the Secretary of War may prescribe, receive compensation under the provisions of this section for any drill had in accordance with such provisions where he is officially present and in which he participates for not less than one and one-half hours with a National Guard organization within the same State at a station other than his own, upon presentation of a certificate in form prescribed in said regulations from the organization commander to the commanding officer of the organization of which he is a member showing such drill participation.

All amounts appropriated for the purpose of this section and sections 143 and 148 of this title shall be disbursed and accounted for by the officers and agents of the Finance Department of the Army, and effective as soon as practicable after July 1, 1928, all disbursements under the foregoing provisions of this section shall be made for such three-months' periods for the various units of the National Guard as shall be prescribed in regulations issued by the Secretary of War and on pay rolls prepared and authenticated in the manner prescribed in said regulations: *Provided*, That for the period necessary to put into operation the payment plan herein provided for, the Secretary of War is authorized to fix initial pay periods of less than three months for such number of units as he may deem necessary: *And provided further*, That stoppages may be made against the compensation payable to any officer or enlisted man hereunder to cover the cost of public property lost or destroyed by, and chargeable to, such officer or enlisted man.

Except as otherwise specifically provided herein no money appropriated under the provisions of this section or sections 143, 148 of this title shall be paid to any person not on the active list, nor to any person over sixty-four years of age, nor to any person who shall fail to qualify as to fitness for military service under such regulations as the Secretary of War shall prescribe. (June 3, 1916, ch. 134, § 110, 39 Stat. 209; June 4, 1920, ch. 227, subch. I, § 48, 41 Stat. 784; Sept. 22, 1922, ch. 423, § 6, 42 Stat. 1035; June 6, 1924, ch. 275, § 7, 43 Stat. 471; Apr. 6, 1928, ch. 322, 45 Stat. 407; May 12, 1928, ch. 529, 45 Stat. 500.)

#### § 155. Payment of men enlisted by State authorities.

Section, act Aug. 29, 1916, ch. 418, § 1, 39 Stat. 624, related to appropriations made for the fiscal year 1917 and prior thereto and is considered executed by the Judge Advocate General's Division. See J. A. G. 0103, December 12, 1929, p. 28.



**§ 156. Uniforms, accouterments, and equipment furnished to officers at cost.**

Sections 904 and 1106 of Title 10 shall also apply to the purchase of uniforms, accouterments, and equipment for cash by officers of the active and inactive National Guard, whether in State or Federal service, on proper identification and under such rules and regulations as the Secretary of War may prescribe. (June 3, 1916, ch. 134, § 109, 39 Stat. 209; June 4, 1920, ch. 227, subch. I, § 47, 41 Stat. 783; June 3, 1924, ch. 244, § 3, 43 Stat. 364; June 15, 1933, ch. 87, § 15, 48 Stat. 159; Oct. 14, 1940, ch. 875, § 3, 54 Stat. 1136.)

**AMENDMENT**

Section was "repealed and reenacted to read as follows" by act Oct. 14, 1940, cited to text.

**§ 157. Pay and allowances of militia called into actual service.**

The militia, when called into the actual service of the United States shall, during their time of service, be entitled to the same pay and allowances as are or may be provided by law for the Regular Army. When the militia is called into the actual service of the United States, or any portion of the militia is called forth under the provisions of section 81a of this title, their pay shall commence from the day of their appearing at the place of company rendezvous, but this provision shall not be construed to authorize any species of expenditure previous to arriving at such places of rendezvous which is not provided by existing laws to be paid after their arrival at such places of rendezvous. (Jan. 21, 1903, ch. 196, §§ 10, 11, 32 Stat. 776; May 27, 1908, ch. 204, § 7, 35 Stat. 401.)

**§ 158. Time of payment for attending encampments, etc.**

When any portion of the National Guard shall participate in encampments, maneuvers, or other exercises, including outdoor target practice, for field or coast-defense instruction, under the provisions of this title, it may, after being duly mustered, be paid at any time after such muster for the period from the date of leaving the home rendezvous to date of return thereto as determined in advance, both dates inclusive; and such payment, if otherwise correct, shall pass to the credit of the disbursing officer making the same. (June 3, 1916, ch. 134, § 98, 39 Stat. 207.)

**REFERENCES IN TEXT**

In original "title" read "Act" meaning the National Defense Act of 1916, act June 3, 1916, ch. 134, 39 Stat. 166. For distribution of this act into this title see note under section 2, ante.

**§ 159. Payment of arrears.**

Members of the National Guard who have or shall become entitled for a continuous period of less than one month to Federal pay at the rates fixed for the Regular Army, whether by virtue of a call by the President, of attendance at school or maneuver, or of any other cause, and whose accounts have not yet been settled, shall receive such pay for each day of such period, and the thirty-first day of a calendar month shall not be excluded from the computation. Such payments may include the entire

amount lawfully accruing to such officers as pay, allowances, and mileage on account of such service, and, including pay and mileage for their return home, may be paid to the officers during said period and prior to their departure from the camp or other place at which such service is performed. (June 30, 1922, ch. 253, title I, 42 Stat. 749; Sept. 14, 1922, ch. 307, § 3, 42 Stat. 841; Mar. 4, 1923, ch. 281, § 3, 42 Stat. 1508; May 11, 1926, ch. 288, 44 Stat. 531.)

**CROSS REFERENCE**

Section is also set out as section 362a of Title 10, Army.

**§ 160. Pensions for death or disability in Federal service.**

When any officer, warrant officer, or enlisted man of the National Guard or the National Guard of the United States called or ordered into the active service of the United States is disabled by reason of wounds or disability received or incurred while in the active service of the United States, he shall be entitled to all the benefits of the pension laws existing at the time of his active service; and in case such officer or enlisted man dies in the active service of the United States or in returning to his place of residence after being mustered out of active service, or at any other time in consequence of wounds or disabilities received in such active service, his widow and children, if any, shall be entitled to all the benefits of such pension laws. (Jan. 21, 1903, ch. 196, § 22, 32 Stat. 779; June 3, 1916, ch. 134, § 112, 39 Stat. 211; June 15, 1933, ch. 87, § 19, 48 Stat. 161.)

**CROSS REFERENCE**

Section is also set out as section 457 of Title 10, Army

**§§ 161–164. Repealed. June 15, 1936, ch. 547, 49 Stat. 1508.**

Sections 161–164 of this title, acts Mar. 4, 1923, ch. 281, § 6, 42 Stat. 1508; June 3, 1924, ch. 244, § 4, 43 Stat. 364; Apr. 26, 1928, ch. 436, 45 Stat. 462, provided for hospitalization and burial expenses.

The provision repealing this section and sections 162, 163 and 164 provided as follows: "That any person who, on the date of the approval of this Act, is receiving or entitled to receive the benefits provided by said section 6 of the Act of March 4, 1923, as amended, shall be entitled to the benefits of this Act in lieu thereof, and existing appropriations for carrying out the provisions of section 6 of said Act of March 4, 1923, as amended, shall be available for expenditures authorized by this Act."

**§ 164a. Pay and allowances during hospital treatment for injury or disease contracted in line of duty; transportation or discharge.**

Officers, warrant officers, and enlisted men of the National Guard who suffer personal injury or contract disease in line of duty while en route to or from or during their attendance at encampments, maneuvers, or other exercises, or at service schools, under the provisions of sections 63, 64 and 65 of this title; and persons hereinbefore described who may now be undergoing hospital treatment at Government expense for injuries so sustained; shall, under such regulations as the President may prescribe, be entitled, at Government expense, to such hospitalization, rehospitalization, medical and surgical care, in hospital and at their homes, as is necessary for the appropriate treatment of such injury or disease, until the disability resulting from such injury or disease cannot be materially improved by further hospitalization or treatment, and during the period

of such hospitalization or rehospitalization, but not for more than an aggregate of six months after the termination of the prescribed tour of active duty or training in any case to the pay and allowances, whether in money or in kind, that they were entitled to receive at the time such injury was suffered or disease contracted, and to the necessary transportation incident to such hospitalization and rehospitalization and return to their homes when discharged from hospital; and for any period of hospitalization or rehospitalization when they are not entitled to pay and allowances under the preceding provision, they shall be entitled to subsistence at Government expense. (June 15, 1936, ch. 547, 49 Stat. 1507.)

## CROSS REFERENCE

Required hospitalization and medical treatment, see section 164d of this title.

**§ 164b. Hospital treatment, pay, etc., in case of injury while engaged in flying.**

Officers, warrant officers, and enlisted men of the National Guard who suffer personal injury (as distinguished from disease) in line of duty when participating in aerial flights prescribed under the provisions of section 62 of this title shall, under regulations prescribed under section 164a of this title, be entitled to the same hospitalization, rehospitalization, medical and surgical care, pay and allowances, and transportation, as if such injury had been suffered while in line of duty during their attendance at encampments, maneuvers, or other exercises, or service schools, under the aforementioned sections 63, 64 and 65 of this title. (June 15, 1936, ch. 547, 49 Stat. 1507.)

## CROSS REFERENCE

Required hospitalization and medical treatment, see section 164d of this title.

**§ 164c. Burial expenses of persons dying in hospital or while training.**

If the death of any person mentioned in sections 164a and 164b of this title occurs while he is on active duty, or undergoing training or hospital treatment contemplated by this section, the United States shall, under regulations prescribed under section 164a of this title, pay the necessary expenses for recovery of the body, its preparation for burial, including the use of such of the uniform and articles of clothing issued to him as may be required, interment (or cremation if requested by his relatives), and transportation of his remains, including round-trip transportation and subsistence of an escort, to his home or the place where he received orders for the period of training upon which engaged at the time of his death, or to such other place as his relatives may designate provided the distance to such other place be not greater than the distance to his home: *Provided*, That when the expenses of the recovery, preparation, and disposition of remains herein authorized, or any part thereof, are paid by individuals, such individuals may be reimbursed therefor at an amount not exceeding that allowed by the Government for such services. (June 15, 1936, ch. 547, 49 Stat. 1508.)

## CROSS REFERENCE

Required hospitalization and medical treatment, see section 164d of this title.

**§ 164d. Required hospitalization and medical treatment.**

Neither of the provisions of sections 455a-455d of Title 10 and 164a-164c of this title, nor any other law of the United States shall be construed as limiting the power and authority of the Secretary of War, under such regulations as he may prescribe, to require the hospitalization, medical, and surgical treatment and domiciliary care so long as any or all are necessary of persons in the active military service or on active duty, or in training, under the provisions of sections 62-65, 144-146, 183, and 186 of this title, as amended, and to incur obligations with respect thereto, without reference to their line-of-duty status: *Provided*, That this section shall not include those individuals who are on an armory-drill status except officers, warrant officers, and enlisted men of the National Guard who suffer personal injury (as distinguished from disease) when participating in aerial flights prescribed under the provisions of section 62 of this title: *And provided further*, That this section shall not apply to officers and enlisted men who are treated in private hospitals or by civilian physicians while on furloughs or leaves of absence in excess of twenty-four hours. (July 15, 1939, ch. 282, 53 Stat. 1042; Oct. 14, 1940, ch. 875, § 5, 54 Stat. 1137.)

## AMENDMENT

Section was "repealed and reenacted to read as follows" by act Oct. 14, 1940, cited to text.

## CROSS REFERENCE

Section is also set out as section 455e of Title 10, Army.

## Chapter 11.—NATIONAL GUARD BUREAU

## Sec.

- 171. National Guard Bureau; creation.
- 172. Appointment and term of office of Chief of Bureau; rank, pay, and allowances; retirement.
- 173. Vacancy in office of chief or disability of incumbent; acting chief.
- 174. Assignment of officers of Regular Army to National Guard Bureau.
- 175. Assignment of National Guard officers to National Guard Bureau; pay and allowances.
- 176. Fund for payment of Chief of the National Guard Bureau, etc.

**§ 171. National Guard Bureau; creation.**

The Militia Bureau of the War Department shall hereafter be known as the National Guard Bureau. (June 3, 1916, ch. 134, § 81, 39 Stat. 203; June 4, 1920, ch. 227, subch. I, § 44, 41 Stat. 782; Sept. 22, 1922, ch. 423, § 4, 42 Stat. 1934; Feb. 28, 1925, ch. 371, § 3, 43 Stat. 1076; June 15, 1933, ch. 87, § 16, 48 Stat. 159.)

**§ 172. Appointment and term of office of chief of Bureau; rank, pay, and allowances; retirement.**

The Chief of the National Guard Bureau shall be appointed by the President, by and with the advice and consent of the Senate, by selection from lists of officers of the National Guard of the United States recommended as suitable for such appointment by their respective governors, and who have had ten

or more years' commissioned service in the active National Guard, at least five of which have been in the line, and who have attained at least the grade of colonel. The Chief of the National Guard Bureau shall hold office for four years unless sooner removed for cause, and shall be eligible to succeed himself, and when sixty-four years of age shall cease to hold such office. Upon accepting his office, the Chief of the National Guard Bureau shall be appointed a major general in the National Guard of the United States, and commissioned in the Army of the United States, and while so serving he shall have the rank, pay, and allowances of a major general, provided by law, but shall not be entitled to retirement or retired pay. (June 3, 1916, ch. 134, § 81, 39 Stat. 203; June 4, 1920, ch. 227, subch. I, § 44, 41 Stat. 782; Sept. 22, 1922, ch. 423, § 4, 42 Stat. 1034; Feb. 28, 1925, ch. 371, § 3, 43 Stat. 1076; June 15, 1933, ch. 87, § 16, 48 Stat. 159; June 19, 1935, ch. 277, § 5, 49 Stat. 392.)

**§ 173. Vacancy in office of chief or disability of incumbent; acting chief.**

In case the office of the Chief of the National Guard Bureau becomes vacant or the incumbent because of disability is unable to discharge the powers and duties of the office, the senior officer on duty in the National Guard Bureau, appointed from the National Guard of the United States, shall act as chief of said bureau until the incumbent is able to resume his duties or the vacancy in the office is regularly filled. (June 3, 1916, ch. 134, § 81, 39 Stat. 203; June 4, 1920, ch. 227, subch. I, § 44, 41 Stat. 782; Sept. 22, 1922, ch. 423, § 4, 42 Stat. 1034; Feb. 28, 1925, ch. 371, § 3, 43 Stat. 1077; June 15, 1933, ch. 87, § 16, 48 Stat. 160.)

**§ 174. Assignment of officers of Regular Army to National Guard Bureau.**

For duty in the National Guard Bureau the President shall assign such number of officers of the Regular Army as he may deem necessary. (June 3, 1916, ch. 134, § 81, 39 Stat. 203; June 4, 1920, ch. 227, subch. I, § 44, 41 Stat. 782; Sept. 22, 1922, ch. 423, § 4, 42 Stat. 1034; Feb. 28, 1925, ch. 371, § 3, 43 Stat. 1077; June 15, 1933, ch. 87, § 16, 48 Stat. 160.)

**§ 175. Assignment of National Guard officers to National Guard Bureau; pay and allowances.**

The President may order, with their consent, to active duty in the National Guard Bureau, not more than four officers who at the time of their initial assignments hold appointments in the National Guard of the United States, and any such officers while so assigned shall receive the pay and allowances provided by law. (June 3, 1916, ch. 134, § 81, 39 Stat. 203; June 4, 1920, ch. 227, subch. I, § 44, 41 Stat. 782; Sept. 22, 1922, ch. 423, § 4, 42 Stat. 1034; Feb. 28, 1925, ch. 371, § 3, 43 Stat. 1077; June 15, 1933, ch. 87, § 16, 48 Stat. 160.)

**§ 176. Fund for payment of Chief of the National Guard Bureau, etc.**

The pay and allowances provided in sections 147, 172, and 175 of this title, for the Chief of the Na-

tional Guard Bureau and for the officers ordered to active duty from the National Guard of the United States shall be paid out of the funds appropriated for the pay of the National Guard. (June 3, 1916, ch. 134, § 81, 39 Stat. 203; June 4, 1920, ch. 227, subch. I, § 44, 41 Stat. 782; Sept. 22, 1922, ch. 423, § 4, 42 Stat. 1034; Feb. 28, 1925, ch. 371, § 3, 43 Stat. 1077; June 15, 1933, ch. 87, § 16, 48 Stat. 160.)

**Chapter 12.—RIFLE INSTRUCTION AND PRACTICE FOR CIVILIANS**

**Sec.**

- 181. Rifle ranges and equipment for instruction and practice.
- 181a. Promotion of rifle practice; national matches; small-arms firing school.
- 181b. Same; rifle and pistol matches open to Army, Navy, Marine Corps, Coast Guard, National Guard, Militia, civilians, etc.; expenses; appropriation.
- 181c. Same; further expenses; appropriation.
- 182. Director of civilian marksmanship.
- 183. Detail of officers and enlisted men for duty at rifle ranges.
- 184. Detail of enlisted men to instruct rifle clubs.
- 185. Commutation of travelling expenses to members of civilian rifle teams.
- 186. Recommendations to Congress respecting rifle ranges.

**§ 181. Rifle ranges and equipment for instruction and practice.**

The Secretary of War shall, within the limits of appropriations made from time to time by Congress and in accordance with reasonable rules and regulations approved by him upon the recommendation of the National Board for the Promotion of Rifle Practice, authorize and provide for—

(a) Construction, equipment, maintenance, and operation of indoor and outdoor rifle ranges and their accessories and appliances;

(b) Instruction of able-bodied citizens of the United States in marksmanship and, in connection therewith, the employment of necessary instructors;

(c) Promotion of practice in the use of rifled arms, the maintenance and management of matches or competitions in the use of such arms, and the issuance in connection therewith of the necessary arms, ammunition, targets, and other necessary supplies and appliances, and the award to competitors of trophies, prizes, badges, and other insignia;

(d) Sale to members of the National Rifle Association, at cost to the Government, and issue to clubs organized, for practice with rifled arms, under the direction of the National Board for the Promotion of Rifle Practice, of arms, ammunition, targets, and other supplies and appliances necessary for target practice;

(e) Maintenance of the National Board for the Promotion of Rifle Practice, including provision for the necessary expenses thereof and of its members;

(f) Procurement of necessary materials, supplies, appliances, trophies, prizes, badges, and other insignia, clerical and other services, and labor;

(g) Transportation of employees, instructors, and civilians to give or undergo instruction or to assist or engage in practice in the use of rifled arms, and the transportation and subsistence, or commutations in lieu of subsistence, of members of teams especially authorized by the Secretary of War to

participate in matches or competitions in the use of rifled arms, making a full report of all things done hereunder annually to Congress. (June 7, 1924, ch. 291, title I, 43 Stat. 510.)

**§ 181a. Promotion of rifle practice; national matches; small-arms firing school.**

There shall be held an annual competition, known as the national matches, for the purpose of competing for a national trophy, medals, and other prizes to be provided, together with a small-arms firing school, which competition and school shall be held annually under such regulations as may be prescribed by the Secretary of War. (Feb. 14, 1927, ch. 130, 44 Stat. 1095; May 28, 1928, ch. 816, § 1, 45 Stat. 786.)

**§ 181b. Same; rifle and pistol matches open to Army, Navy, Marine Corps, Coast Guard, National Guard, Militia, civilians, etc.; expenses; appropriation.**

The national matches contemplated in section 181a of this title shall consist of rifle and pistol matches for the national trophy, medals, and other prizes mentioned in said section, to be open to the Army, Navy, Marine Corps, Coast Guard, National Guard, or Organized Militia of the several States, Territories, and District of Columbia, the Reserve Officers' Training Corps, and the citizens' military training camps, rifle clubs, and civilians, together with a small-arms firing school to be connected therewith and competitions for which trophies and medals are provided by the National Rifle Association of America; and for the cost and expenditures required for and incident to the conduct of the same, including the personal expenses of the members of the National Board for the Promotion of Rifle Practice, the sum necessary for the above-named purposes is hereby authorized to be appropriated annually as a part of the total sum appropriated for national defense: *Provided*, That no competitor shall be entitled to commutation of rations in excess of \$1.50 per day, and when meals are furnished no greater expenses than that sum per man per day for the period the contest is in progress: *Provided further*, That in lieu of traveling expenses and commutation of rations while traveling the sum of 5 cents per mile may be paid to civilian competitors, and such travel pay for the return trip may be paid in advance of the performance of the travel. (May 28, 1928, ch. 816, § 2, 45 Stat. 786; Apr. 11, 1936, ch. 207, 49 Stat. 1202.)

**§ 181c. Same; further expenses; appropriation.**

For the incidental expenses of the National Board for the Promotion of Rifle Practice, including books, pamphlets, badges, trophies, prizes, and medals to be expended for such purposes, the sum of not more than \$7,500 is hereby authorized to be appropriated annually. (May 28, 1928, ch. 816, § 3, 45 Stat. 786.)

**§ 182. Director of civilian marksmanship.**

The President is authorized, in his discretion, to appoint, as director of civilian marksmanship, under the direction of the Secretary of War, an officer of the Army or of the Marine Corps. (Aug. 29, 1916, ch. 418, § 1, 39 Stat. 648.)

**§ 183. Detail of officers and enlisted men for duty at rifle ranges.**

The President may detail capable officers and non-commissioned officers of the Regular Army and National Guard to duty at rifle ranges as instructors for the purpose of training the citizenry in the use of the military arm. (June 3, 1916, ch. 134, § 113, 39 Stat. 211.)

**§ 184. Detail of enlisted men to instruct rifle clubs.**

The Secretary of War, in his discretion, and under such regulations as he may prescribe, may authorize the detail of enlisted men of the Army as temporary instructors in rifle practice to organized rifle clubs requesting such instruction. (May 12, 1917, ch. 12, 40 Stat. 64.)

**§ 185. Commutation of traveling expenses to members of civilian rifle teams.**

Provisions of this section, act June 5, 1920, ch. 240, 41 Stat. 966, are now covered by section 181b of this title.

**§ 186. Recommendations to Congress respecting rifle ranges.**

The Secretary of War shall annually submit to Congress recommendations and estimates for the establishment and maintenance of indoor and outdoor rifle ranges, under such a comprehensive plan as will ultimately result in providing adequate facilities for rifle practice in all sections of the country. And that all ranges so established and all ranges which have already been constructed, in whole or in part, with funds provided by Congress shall be open for use by those in any branch of the military or naval service of the United States and by all able-bodied males capable of bearing arms, under reasonable regulations to be prescribed by the controlling authorities and approved by the Secretary of War. (June 3, 1916, ch. 134, § 113, 39 Stat. 211.)

**Chapter 13.—MISCELLANEOUS PROVISIONS**

**Sec.**

191. Preservation of names, numbers, flags, etc., of units serving in World War.
192. Certain corps permitted to retain ancient privileges.
193. Ancient privileges of First Corps Cadets, Massachusetts.
194. Maintenance of other troops by States and Territories; issue of arms and equipment by Secretary of War.
195. Funds in trust for World War units of National Guard; transfer to States.

**§ 191. Preservation of names, numbers, flags, etc., of units serving in World War.**

In the reorganization of the National Guard, the names, numbers and other designations, flags, and records of the divisions and subordinate units thereof that served in the World War between April 6, 1917, and November 11, 1918, shall be preserved as such as far as practicable. (June 3, 1916, ch. 134, § 3a, as added, June 4, 1920, ch. 227, subch. I, § 3, 41 Stat. 760.)

**§ 192. Certain corps permitted to retain ancient privileges.**

Any corps of Artillery, Cavalry, or Infantry existing in any of the States on May 8, 1792, which by the laws, customs, or usages of said States has been

in continuous existence since said day under the provisions of the laws of the United States, relating to the militia, shall be allowed to retain its ancient privileges, subject, nevertheless, to all duties required by law of militia: *Provided*, That said organizations may be a part of the National Guard and entitled to all the privileges of this title, and shall conform in all respects to the organization, discipline, and training of the National Guard in time of war: *Provided further*, That for purposes of training and when on active duty in the service of the United States they may be assigned to higher units, as the President may direct, and shall be subject to the orders of officers under whom they shall be serving. (June 3, 1916, ch. 134, § 63, 39 Stat. 198.)

## REFERENCES IN TEXT

In original "title" read "Act" meaning the National Defense Act of 1916, Act June 3, 1916, ch. 134, 39 Stat. 166. For distribution of this act into this title see note under section 2 of this title.

## § 193. Ancient privileges of First Corps Cadets, Massachusetts.

Pursuant to section 192 of this title, the First Corps Cadets, antedating, and continuously existing in the State of Massachusetts since May 8, 1792, now designated as the Second Battalion, Two hundred and eleventh Artillery, Antiaircraft, Coast Artillery Corps, First Corps Cadets, Massachusetts National Guard, hereby declared to be such a corps as is defined in said section 192 for all the purposes thereof and now incorporated in the Organized Militia and a part of the National Guard of Massachusetts, shall be allowed to retain its ancient privileges and organization. Said First Corps Cadets is hereby further declared to be entitled to a lieutenant colonel in command, and a major second in command; and said officers, when federally recognized, shall receive, in accordance with the provisions of this title and sections 1-3, 4-8, 9, 10, 11-20, 21, 22-26, 27-29, 30, 31 of Title 37, the pay of their respective grades: *Provided*, That nothing in this section or other provisions of law shall be deemed to be in derogation of any other ancient privileges to which said First Corps Cadets is entitled under the laws, customs, or usages of the State of Massachusetts. (June 6, 1924, ch. 275, § 6, 43 Stat. 471.)

## REFERENCES IN TEXT

In original "title" read "National Defense Act" meaning the National Defense Act of 1916, act June 3, 1916, ch. 134, 39 Stat. 166. For distribution of this act into this title see note under section 2 of this title.

## § 194. Maintenance of other troops by States and Territories; issue of arms and equipment by Secretary of War.

No State shall maintain troops in time of peace other than as authorized in accordance with the organization prescribed under this title: *Provided*, That nothing contained in this title shall be construed as limiting the rights of the States and Territories in the use of the National Guard within their respective borders in time of peace: *Provided further*, That nothing contained in this title shall prevent the organization and maintenance of State police or constabulary: *Provided further*, That under such regulations as the Secretary of War may prescribe for discipline in training, the organization by and maintenance within any State of such military forces other than National Guard as may be provided by the laws of such State is hereby authorized while any part of the National Guard of the State concerned is in active Federal service: *Provided further*, That such forces shall not be called, ordered, or in any manner drafted, as such, into the military services of the United States; however, no person shall, by reason of his membership in any such unit, be exempted from military service under any Federal law: *And provided further*, That the Secretary of War in his discretion and under regulations determined by him, is authorized to issue, from time to time, for the use of such military units, to any State, upon requisition of the Governor thereof, such arms and equipment as may be in possession of and can be spared by the War Department. (June 3, 1916, ch. 134, § 61, 39 Stat. 198; Oct. 21, 1940, ch. 904, 54 Stat. 1206.)

## REFERENCES IN TEXT

In original "title" read "Act" meaning the National Defense Act of 1916, act June 3, 1916, ch. 134, 39 Stat. 166. For distribution of this act into this title see note under section 2 of this title.

## § 195. Funds in trust for World War units of National Guard; transfer to States.

Section, act Mar. 3, 1927, ch. 383, 44 Stat. 1404, directed Secretary of War to transfer funds held in trust for World War units of National Guard on Mar. 3, 1927, to Governors of the respective States and Territories and the commanding general of the District of Columbia.

## CROSS REFERENCE

For latest amendments and historical notes to Articles of War, see chapter 36 of Title 10, Army.

## TITLE 33.—NAVIGATION AND NAVIGABLE WATERS

Chap.	Sec.	Sec.	
1. Navigable waters generally.....	1	25. Cache River, Arkansas.	
2. International rules for navigation at sea.....	61	26. Calumet River, Cook County, Illinois, old channel.	
3. Navigation rules for harbors, rivers, and inland waters generally.....	151	26a. Same; old channel.	
4. Navigation rules for Great Lakes and their connecting and tributary waters.....	241	26b. Same; Chicago.	
5. Navigation rules for Red River of the North and rivers emptying into Gulf of Mexico and tributaries.....	301	27. Chicago River at Chicago, Illinois.	
6. General duties of ship officers and owners after collision or other accident.....	361	27a. Same.	
7. Regulations for the suppression of piracy....	381	28. Crum River; old channel at mouth, Delaware Bay.	
8. Summary trials for certain offenses against navigation laws.....	391	29. Culvre River, Missouri.	
9. Protection of navigable waters and of harbor and river improvements generally.....	401	29a. East River, Wisconsin.	
10. Anchorage grounds and harbor regulations generally.....	471	30. Grand River, Missouri, above Brunswick.	
11. Bridges over navigable waters.....	491	31. Iowa River, Iowa, above Toolsboro.	
12. River and harbor improvements generally....	541	32. Lake George, Mississippi.	
13. Mississippi River Commission.....	641	33. Little River, Arkansas, from Big Lake to Marked Tree.	
14. California Débris Commission.....	661	34. Mill Slough, Oregon.	
15. Flood control.....	701	35. Mississippi River, West Channel, opposite La Crosse, Wisconsin.	
16. Lighthouses.....	711	36. Mosquito Creek, South Carolina.	
17. Coast and Geodetic Survey.....	851	37. Nodaway River, Missouri.	
18. Longshoremen's and harbor workers' compensation act.....	901	38. Oklawaha River, Florida; Kyle and Young Canal and "Morrison Landing extension" substituted.	
<b>CROSS REFERENCE</b>		39. Ollala Slough, Oregon.	
Bureau of Marine Inspection and Navigation, see Title 46, Shipping.		40. One Hundred and Two River, Missouri.	
		41. Osage River, Missouri.	
		42. Platte River, Missouri.	
		43. Saint Marys River, Ohio and Indiana.	
		44. Sturgeon Bay, Illinois.	
		45. Swan Creek, Toledo, Ohio.	
		46. Tchula Lake, Mississippi.	
		47. Eagle Lake, Louisiana-Mississippi.	
		48. Norubee River, Mississippi.	
		49. Bayou Saint John in New Orleans.	
		50. Turtle Bay and Turtle Bayou, Texas.	
		51. Scajaquada Creek, New York.	
		52. Park River, Connecticut.	
		53. Benton Harbor Canal, Michigan.	
		54. Burr Creek, Bridgeport, Connecticut.	
		55. Bayou Savage (or Chantilly) in New Orleans.	

### Chapter 1.—NAVIGABLE WATERS GENERALLY

#### GENERAL PROVISIONS

Sec.	
1.	Regulations by Secretary of War for navigation of waters generally.
2.	Regulations for navigation of South and Southwest Passes of Mississippi River; penalties.
3.	Regulations to prevent injuries from target practice.
4.	Water gauges on Mississippi River and tributaries.
5.	Abolition of tolls on Government canals, canalised rivers, etc.; expense of operation, repairs to and reconstruction of canals, etc.; Panama Canal excepted.
6.	Free passage to harbor of Michigan City, Indiana.
7.	Use of Government iron pier in Delaware Bay.
8.	Toll-free rivers in Alabama.
9.	Des Moines River as toll-free.
10.	Waters in Louisiana Purchase as public highways.
11.	Authority for compact between Middle Northwest States as to jurisdiction of offenses committed on boundary waters.
12.	Port Arthur Ship Canal.

#### WATERS DECLARED NONNAVIGABLE; CHANGE OF NAME

21.	Bayou Cocodrie, Louisiana.
22.	Bayou Meto, Arkansas.
23.	Bear Creek, Mississippi.
24.	Big Tarkio River, Missouri.

### GENERAL PROVISIONS

#### § 1. Regulations by Secretary of War for navigation of waters generally.

It shall be the duty of the Secretary of War to prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States as in his judgment the public necessity may require for the protection of life and property, or of operations of the United States in channel improvement, covering all matters not specifically delegated by law to some other executive department. Such regulations shall be posted, in conspicuous and appropriate places, for the information of the public; and every person and every corporation which shall violate such regulations shall be deemed guilty of a misdemeanor and, on conviction thereof in any district court of the United States within whose territorial jurisdiction such offense may have been committed, shall be punished by a fine not exceeding \$500, or by imprisonment (in the case of a natural person) not exceeding six months, in the discretion of the court.

Any regulations prescribed by the Secretary of War in pursuance of this section may be enforced as pro-

vided in section 413 of this title, the provisions whereof are hereby made applicable to the said regulations. (Aug. 18, 1894, ch. 299, § 4, 28 Stat. 362; June 13, 1902, ch. 1079, §§ 6, 11, 32 Stat. 374; Aug. 8, 1917, ch. 49, § 7, 40 Stat. 266.)

**§ 2. Regulations for navigation of South and Southwest Passes of Mississippi River; penalties.**

The Secretary of War is authorized to make such rules and regulations for the navigation of the South and Southwest Passes of the Mississippi River as to him shall seem necessary or expedient for the purpose of preventing any obstruction to the channels through said South and Southwest Passes and any injury to the works therein constructed. The term "South and Southwest Passes", as employed in this section, shall be construed as embracing the entire extent of channel in each case, between the upper ends of the works at the head of the pass and the outer or sea ends of the jetties at the entrance from the Gulf of Mexico; and any willful violation of any rule or regulation made by the Secretary of War in pursuance of this section shall be deemed a misdemeanor, for which the owner or owners, agent or agents, master or pilot of the vessel so offending shall be separately or collectively responsible, and on conviction thereof shall be punished by a fine of not less than \$100, nor exceeding \$500, or by imprisonment for not exceeding three months, or by both fine and imprisonment, at the discretion of the court. (Mar. 3, 1909, ch. 264, § 5, 35 Stat. 818.)

**§ 3. Regulations to prevent injuries from target practice.**

Authority to adopt regulations.—In the interest of the national defense, and for the better protection of life and property on the navigable waters of the United States, the Secretary of War is authorized and empowered to prescribe such regulations as he may deem best for the use and navigation of any portion or area of the navigable waters of the United States or waters under the jurisdiction of the United States endangered or likely to be endangered by Coast Artillery fire in target practice or otherwise, or by the proving operations of the Government ordnance proving grounds at Sandy Hook, New Jersey, or at any Government ordnance proving ground that may be established elsewhere on or near such waters, and of any portion or area of said waters occupied by submarine mines, mine fields, submarine cables, or other material and accessories pertaining to sea-coast fortifications, or by any plant or facility engaged in the execution of any public project of river and harbor improvement; and the said Secretary shall have like power to regulate the transportation of explosives upon any of said waters: *Provided*, That the authority hereby conferred shall be so exercised as not unreasonably to interfere with or restrict the food fishing industry, and the regulations prescribed in pursuance hereof shall provide for the use of such waters by food fishermen operating under permits granted by the War Department.

Detail of vessels to enforce regulations.—To enforce the regulations prescribed pursuant to this section, the Secretary of War may detail any public vessel in the service of the War Department, or, upon

the request of the Secretary of War, the head of any other department may enforce, and the head of any such department is hereby authorized to enforce, such regulations by means of any public vessel of such department.

Posting and violation of regulations.—The regulations made by the Secretary of War pursuant to this section shall be posted in conspicuous and appropriate places, designated by him, for the information of the public; and every person who and every corporation which shall willfully violate any regulations made by the said Secretary pursuant to this section shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine not exceeding \$500, or by imprisonment (in the case of a natural person) not exceeding six months, in the discretion of the court.

Venue and jurisdiction of offenses; procedure.—Offenses against the provisions of this section, or any regulation made pursuant thereto, committed in any Territory or other place subject to the jurisdiction of the United States where there is no court having general jurisdiction of crimes against the United States, shall be cognizable in any court of such place or Territory having original jurisdiction of criminal cases in the place or Territory in which the offense has been committed, with the same right of appeal in all cases as is given in other criminal cases where imprisonment not exceeding six months forms a part of the penalty, and jurisdiction is hereby conferred upon such courts and such courts shall exercise the same for such purposes; and in case any such offense be committed beyond the territorial jurisdiction of any court having jurisdiction thereof, the offense shall be deemed and held to have been committed within the jurisdiction in which the offender may be found or into which he is first brought, and shall be tried by the court having jurisdiction thereof. (July 9, 1918, ch. 143, subch. XIX, §§ 1-4, 40 Stat. 892, 893.)

**§ 4. Water gauges on Mississippi River and tributaries.**

The Secretary of War is hereby authorized and directed to have water gauges established, and daily observations made of the rise and fall of the Mississippi River and its tributaries.

For the purpose of securing the uninterrupted gauging of the waters of the Mississippi River and its tributaries, as provided for in this section, upon the application of the Chief of Engineers, the Secretary of War is hereby authorized to draw his warrant or requisition, from time to time, upon the Secretary of the Treasury for such sums as may be necessary to do such work, not to exceed in the aggregate for each year the sum of \$9,600: *Provided, however*, That an itemized statement of said expenses shall accompany the annual report of the Chief of Engineers. (R. S. § 5252; Aug. 11, 1888, ch. 860, § 6, 25 Stat. 424; June 13, 1902, ch. 1079, § 9, 32 Stat. 374.)

**DERIVATION**

Res. Feb. 21, 1871, No. 40, 16 Stat. 598.

**REPEAL OF APPROPRIATION**

Effective July 1, 1935, the permanent appropriation provided for in this section was repealed by section 725a of



Title 31, Money and Finance, authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury.

**§ 5. Abolition of tolls on Government canals, canalized rivers, etc.; expense of operation, repairs to and reconstruction of canals, etc.; Panama Canal excepted.**

No tolls or operating charges whatever shall be levied upon or collected from any vessel, dredge, or other water craft for passing through any lock, canal, canalized river, or other work for the use and benefit of navigation, now belonging to the United States or that may be hereafter acquired or constructed; and for the purpose of preserving and continuing the use and navigation of said canals and other public works without interruption, the Secretary of War, upon the recommendation of the Chief of Engineers, United States Army, is hereby authorized to draw his warrant or requisition, from time to time, upon the Secretary of the Treasury to pay the actual expenses of operating, maintaining, and keeping said works in repair, which warrants or requisitions shall be paid by the Secretary of the Treasury out of any money in the Treasury not otherwise appropriated: *Provided*, That whenever, in the judgment of the Secretary of War, the condition of any of the aforesaid works is such that its entire reconstruction is absolutely essential to its efficient and economical maintenance and operation as herein provided for, the reconstruction thereof may include such modifications in plan and location as may be necessary to provide adequate facilities for existing navigation: *Provided further*, That the modifications are necessary to make the reconstructed work conform to similar works previously authorized by Congress and forming a part of the same improvement, and that such modifications shall be considered and approved by the Board of Engineers for Rivers and Harbors and be recommended by the Chief of Engineers before the work of reconstruction is commenced: *Provided further, also*, That an itemized statement of said expenses shall accompany the annual report of the Chief of Engineers: *And provided further*, That nothing contained in this section shall be held to apply to the Panama Canal. (July 5, 1884, ch. 229, § 4, 23 Stat. 147; Mar. 3, 1909, ch. 264, § 6, 35 Stat. 818.)

**REPEAL OF PERMANENT APPROPRIATION**

Effective July 1, 1935, the permanent appropriation provided for in this section was repealed by section 725a of Title 31, Money and Finance, authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury.

**§ 6. Free passage to harbor of Michigan City, Indiana.**

The passage of vessels to and from the harbor of Michigan City, in Indiana, shall be free and not subject to toll or charge. (R. S. § 5247.)

**DERIVATION**

Acts June 23, 1866, ch. 138, § 1, 14 Stat. 73; Mar. 2, 1867, ch. 144, § 2, 14 Stat. 421.

**§ 7. Use of Government iron pier in Delaware Bay.**

The Government iron pier in Delaware Bay near Lewes, Delaware, shall be open to public use under regulations to be prescribed by the Secretary of War. (July 27, 1916, ch. 260, § 1, 39 Stat. 394.)

**§ 8. Toll-free rivers in Alabama.**

The Tennessee, Coosa, Cahawba, and Black Warrior Rivers, within the State of Alabama, shall be forever free from toll for all property belonging to the United States, and for all persons in their service, and for all citizens of the United States, except as to such tolls as may be allowed by Act of Congress. (R. S. § 5244.)

**DERIVATION**

Act May 23, 1828, ch. 75, § 7, 4 Stat. 290.

**§ 9. Des Moines River as toll-free.**

The Des Moines River shall forever remain free from any toll, or other charge whatever, for any property of the United States, or persons in their service, passing along the same. (R. S. § 5246.)

**DERIVATION**

Acts Aug. 8, 1846, ch. 103, § 3, 9 Stat. 78; Jan. 20, 1870, ch. 7, 16 Stat. 61.

**§ 10. Waters in Louisiana Purchase as public highways.**

All the navigable rivers and waters in the former Territories of Orleans and Louisiana shall be and forever remain public highways. (R. S. § 5251.)

**DERIVATION**

Act Mar. 3, 1811, ch. 46, § 12, 2 Stat. 606.

**CROSS REFERENCE**

Bayou Cocodrie declared nonnavigable, see section 21 of this title.

**§ 11. Authority for compact between Middle Northwest States as to jurisdiction of offenses committed on boundary waters.**

The consent of the Congress is hereby given to the States of North Dakota, South Dakota, Minnesota, Wisconsin, Iowa, and Nebraska, or any two or more of them, by such agreement or compact as they may deem desirable or necessary, or as may be evidenced by legislative acts enacted by any two or more of said States, not in conflict with the Constitution of the United States or any law thereof, to determine and settle the jurisdiction to be exercised by said States, respectively, over offenses arising out of the violation of the laws of any of said States upon any of the waters forming the boundary lines between any two or more of said States, or waters through which such boundary line extends, and that the consent of the Congress be, and the same is hereby, given to the concurrent jurisdiction agreed to by the States of Minnesota and South Dakota, as evidenced by the act of the Legislature of the State of Minnesota approved April 20, 1917, and the act of the Legislature of the State of South Dakota approved February 13, 1917. (Mar. 4, 1921, ch. 176, 41 Stat. 1447.)

**§ 12. Port Arthur Ship Canal.**

After there shall be conveyed to the United States, free of cost, a valid title to the line of water communication between Taylors Bayou and Sabine Pass, in the State of Texas, known as the Port Arthur Ship Canal, together with a valid title to the turning basin as existing June 19, 1906, and to the artificial slip on which the lumber dock of the Port Arthur Canal and Dock Company is built, the said

waterways shall thereupon become free public waters of the United States, and be subject to the laws enacted by Congress for the maintenance, preservation, protection, and regulation of navigable waters: *Provided*, That the company or corporation conveying title to said canal as aforesaid shall also convey to the United States, free of cost, the fee to a strip of land one hundred and fifty feet wide along the westerly margin of the canal, except that where the right of way of the Southern Pacific Railroad Company prevents the transfer of such strip of land along the westerly margin of said canal there shall be conveyed such strip on the easterly margin thereof as may be necessary to make up such one hundred and fifty feet of width, with the reservation that until Congress shall have authorized and provided for the enlargement and widening of said canal the said company or corporation, its successors or assigns, shall have the right to control, occupy, and use the said strip of land and every part thereof in the same manner and to the same extent as before the execution and delivery of the conveyance, and also the right to transfer, lease, sell, quitclaim, or otherwise dispose of said property and every part thereof, subject to the grant made to the United States. The charges for the use of said docks and wharves shall be just and reasonable and shall not be greater than charges for similar services at other ports of the United States on the Gulf of Mexico. (June 19, 1906, ch. 3436, § 1, 34 Stat. 302.)

**WATERS DECLARED NONNAVIGABLE; CHANGE OF NAME**

**§ 21. Bayou Cocodrie, Louisiana.**

Bayou Cocodrie, from its source to its junction with Bayou Chicot, in the State of Louisiana, is declared to be not a navigable water of the United States within the meaning of the laws enacted by the Congress for the preservation and protection of such waters. The right to alter, amend, or repeal this section is hereby expressly reserved. (Feb. 25, 1921, ch. 71, §§ 1-2, 41 Stat. 1145.)

**§ 22. Bayou Meto, Arkansas.**

The Bayou Meto, in the State of Arkansas, is declared to be a nonnavigable stream within the meaning of the Constitution and laws of the United States. (Aug. 8, 1917, ch. 49, § 16, 40 Stat. 268.)

**§ 23. Bear Creek, Mississippi.**

Bear Creek in Humphreys, Leflore, and Sunflower Counties, in the State of Mississippi, is declared to be a nonnavigable stream within the meaning of the Constitution and the laws of the United States. The right of Congress to alter, amend, or repeal this section is hereby expressly reserved. (Mar. 3, 1923, ch. 229, §§ 1-2, 42 Stat. 1442.)

**§ 24. Big Tarkio River, Missouri.**

The Big Tarkio River, in the counties of Holt and Atchison, in the State of Missouri, is declared to be not a navigable water of the United States within the meaning of the laws enacted by Congress for the preservation and protection of such waters. The right to alter, amend, or repeal this section is hereby

expressly reserved. (Feb. 15, 1910, ch. 33, §§ 1, 2, 36 Stat. 194.)

**§ 25. Cache River, Arkansas.**

The Cache River in the State of Arkansas is declared to be a nonnavigable stream within the meaning of the Constitution and laws of the United States. This provision shall become void after one year from July 27, 1916, unless within said period the Legislature of Arkansas shall pass an act expressly approving this declaration. The right of the Congress to alter, amend, or repeal this section is hereby expressly reserved. (July 27, 1916, ch. 260, § 1, 39 Stat. 899.)

**§ 26. Calumet River, Cook County, Illinois, old channel.**

The portion of the old channel of the Calumet River in the north quarter of fractional section 7, township 37 north, range 15 east, of the third principal meridian, south of the Indian boundary line, in Cook County, Illinois, which lies outside of the new channel lines as established by the United States and shown on "map of the Calumet River, Illinois, from Lake Michigan to Calumet Lake, to accompany report of W. G. Ewing, United States attorney, to the Attorney General, respecting cession of right of way for improvement of said river, under Act of Congress approved July 5, 1884", is abandoned as navigable water. (July 5, 1884, ch. 229, 23 Stat. 143; Apr. 21, 1904, ch. 1409, 33 Stat. 239, 240; Feb. 27, 1915, ch. 68, 38 Stat. 817.)

**§ 26a. Same; old channel.**

The portion of the old channel of the Calumet River in sections eighteen and nineteen, township thirty-seven north, range fifteen east, of the third principal meridian, in Cook County, Illinois, which lies outside of the new channel lines established by the United States and shown on the map referred to in section 26 of this title, and which lies outside of the exterior limits of the turning basin to be established on said Calumet River in said sections, is abandoned as navigable water of the United States from and after the time when the United States shall have secured title to the land necessary for the establishment of the turning basin at some point, to be approved by the Chief of Engineers, between One hundred and thirteenth Street and One hundred and seventeenth Street in the city of Chicago. (Mar. 4, 1913, ch. 144, 37 Stat. 816.)

**§ 26b. Same; Chicago.**

The portion of the Calumet River, in the city of Chicago, County of Cook, State of Illinois, lying between the intersections of this river with the two lines described below, is a nonnavigable stream within the meaning of the Constitution and laws of the United States:

Beginning at a point on the south line of the north half of section 36, township 37 north, range 14 east, of the third principal meridian, one thousand eight hundred and seventy-three and seven-hundredths feet west of the east line of said section; thence northwesterly on a straight line to a point three thousand two hundred and eighty feet west

of the east line and seven hundred and eighty-five feet south of the north line of said section; and

Beginning at a point five hundred and eighty-five feet east of the west line and seven hundred and thirty-two feet north of the south line of section 31, township 37 north, range 15 east, of the third principal meridian; thence north forty-six degrees and thirty minutes east along a straight line to the easterly water's edge of said river.

The right to alter, amend, or repeal this section is hereby expressly reserved. (June 14, 1937, ch. 338, §§ 2, 3, 50 Stat. 258, 259.)

#### § 27. Chicago River at Chicago, Illinois.

All of that portion of the West Fork of the South Branch of the Chicago River in the county of Cook and State of Illinois, extending west from the west line of the collateral channel of the sanitary district of Chicago, in the northwest quarter of section 36, township 39 north, range 13 east, of the third principal meridian, is declared to be a nonnavigable stream within the meaning of the Constitution and laws of the United States. The right of Congress to alter, amend, or repeal this provision is hereby expressly reserved.

The provisions of sections 401 and 403 of this title shall not apply to that portion of the west arm of the South Fork of the South Branch of the Chicago River, lying between the east line of Ashland Avenue and the north line of Thirty-ninth Street, in the city of Chicago, Illinois, as the same now exists or may hereafter be extended. All rights, authority, or control over that part of the Chicago River possessed or assumed by the United States are hereby relinquished and abandoned, and all rights, authority, or control over the same that were possessed by the State of Illinois are fully restored to said State.

As soon as the city of Chicago, or any other governmental agency or any corporation thereunto duly authorized by the Secretary of War, shall have constructed, after June 7, 1924, a new channel for the South Branch of the Chicago River between West Polk Street and West Nineteenth Street in said city of Chicago, then, and in that event, so much of the channel of the South Branch of the Chicago River as shall be superseded and replaced by said new channel in accordance with the permit of the Secretary of War shall be discontinued and abandoned. (Jan. 24, 1923, ch. 33, §§ 1-2, 42 Stat. 1171; Feb. 27, 1923, ch. 142, 42 Stat. 1323; June 7, 1924, ch. 337, 43 Stat. 646.)

#### § 27a. Same.

That portion of the West Fork of the South Branch of the Chicago River in Cook County, Illinois, lying between the west line (produced north) of the Collateral Channel of the Sanitary District of Chicago, in the northwest quarter of section 36, township 39 north, range 13 east, third principal meridian, and a line one thousand three hundred feet east of and parallel to the west line of section 30 (section line in South Western Avenue), township 39 north, range 13 east, third principal meridian, in the city of Chicago, Illinois, as the same now exists or may

hereafter be extended, is hereby declared to be a nonnavigable stream within the meaning of the Constitution and laws of the United States.

The right to alter, amend, or repeal this section is hereby expressly reserved. (Aug. 30, 1935, ch. 831, § 10, 49 Stat. 1048.)

#### § 28. Crum River; old channel at mouth, Delaware Bay.

After the channel of the Crum River where the same empties into the Delaware River has been changed, diverted, and straightened under the authority given to Alba B. Johnson and Samuel M. Vauclain and the Baldwin Locomotive Works by Act July 27, 1916, chapter 260, the said Crum River, as so straightened, shall be a public navigable stream, and the course and channel of the said river, as it existed July 27, 1916, from the right-of-way of the Philadelphia and Reading Railway Company to the low-water line in the Delaware River shall be abandoned and vacated when the above-mentioned new channel shall have been completed to a depth of four feet at mean low water, with a bottom width of sixty-two feet and width of one hundred feet at mean low-water level: *Provided*, That the Government shall have such right, title, and interest in and to the bed of said new channel as will assure the public the right to the perpetual use of said channel for all the purposes of navigation and commerce. (July 27, 1916, ch. 260, § 1, 39 Stat. 393.)

#### § 29. Cuivre River, Missouri.

Cuivre River, in the counties of Lincoln and Saint Charles, in the State of Missouri, being the dividing line, is hereby declared not to be a navigable stream, and shall be so treated by the Secretary of War and all other authorities. (Mar. 23, 1900, ch. 88, 31 Stat. 50.)

#### § 29a. East River, Wisconsin.

All of that portion of the East River, in the county of Brown, State of Wisconsin, extending from Baird Street, in the city of Green Bay, east and south is hereby declared to be a nonnavigable stream within the meaning of the Constitution and Laws of the United States of America. The right of Congress to alter, amend, or repeal this section is hereby expressly reserved. (Aug. 30, 1935, ch. 831, § 9, 49 Stat. 1048.)

#### § 30. Grand River, Missouri, above Brunswick.

Grand River in the State of Missouri above the city of Brunswick, in the county of Chariton in said State, is declared to be not a navigable stream and shall be so treated by the Secretary of War and by all other authorities. (Feb. 15, 1905, ch. 574, 33 Stat. 715.)

#### § 31. Iowa River, Iowa, above Toolaboro.

So much of the Iowa River within the State of Iowa, as lies north of the town of Wapello, and so much of the said river within the State of Iowa, as lies between the town of Toolaboro and the town of Wapello, in the county of Louisa, shall not be deemed a navigable river or public highway, but dams and

bridges may be constructed across it. (R. S. § 5248; Aug. 18, 1894, ch. 299, § 1, 28 Stat. 356.)

#### DERIVATION

Res. July 13, 1868, No. 55, 15 Stat. 257; act May 6, 1870, ch. 92, 16 Stat. 121.

#### § 32. Lake George, Mississippi.

Lake George, in Yazoo County, in the State of Mississippi, is declared to be not a navigable water of the United States within the meaning of the laws enacted by the Congress for the preservation and protection of such waters. The right of Congress to alter, amend, or repeal this section is hereby expressly reserved. (May 24, 1922, ch. 198, §§ 1-2, 42 Stat. 552.)

#### § 33. Little River, Arkansas, from Big Lake to Marked Tree.

Little River, from Big Lake in Mississippi County to Marked Tree in Poinsett County, Arkansas, is declared to be not a navigable waterway of the United States within the meaning of the laws enacted by Congress for the protection of such waterways. (Mar. 2, 1919, ch. 95, § 4, 40 Stat. 1287.)

#### § 34. Mill Slough, Oregon.

Mill Slough, a tidal tributary of Coos Bay, lying within the limits of the city of Marshfield, State of Oregon, is declared to be not a navigable waterway of the United States, within the meaning of the laws enacted by Congress for the preservation and protection of such waterways, and the consent of Congress is given to the filling in of said slough by the said city of Marshfield. (Oct. 23, 1913, ch. 33, 38 Stat. 233.)

#### § 35. Mississippi River, West Channel, opposite La Crosse, Wisconsin.

The branch of the Mississippi River flowing between Grand Island and the mainland opposite the city of La Crosse, State of Wisconsin, and known as the West Channel, is declared unnavigable, and the said city of La Crosse is relieved of the necessity of maintaining a draw or pontoon bridge over said West Channel. (Feb. 23, 1901, ch. 470, 31 Stat. 804.)

#### § 36. Mosquito Creek, South Carolina.

Mosquito Creek, in Colleton County, South Carolina, is declared to be a nonnavigable stream within the meaning of the Constitution and laws of the United States. (Aug. 8, 1917, ch. 49, § 15, 40 Stat. 268.)

#### § 37. Nodaway River, Missouri.

Nodaway River, in the counties of Andrew, Holt, and Nodaway, in the State of Missouri, is declared to be not a navigable water of the United States within the meaning of the laws enacted by Congress for the preservation and protection of such waters. The right to alter, amend, or repeal this section is hereby expressly reserved. (Feb. 15, 1910, ch. 32, §§ 1-2, 36 Stat. 194.)

#### § 38. Oklawaha River, Florida; Kyle and Young Canal and "Morrison Landing extension" substituted.

Upon the conveyance to the United States, free of cost, title to the land occupied by what is known as

the "Kyle and Young Canal" and the "Morrison Landing extension" of the same, on the Oklawaha River, in the State of Florida, together with title to a strip of land on the east side of said canal of such width as in the judgment of the Secretary of War may be required for the future widening of said canal and extension by the United States, the said canal and extension shall become a free public waterway of the United States in place of the natural bed of the river. (July 27, 1916, ch. 260, § 1, 39 Stat. 396.)

#### § 39. Ollala Slough, Oregon.

All of that portion of Ollala Slough in Lincoln County, Oregon, above a point where a line that is one hundred and twenty rods south and running east and west and parallel with the section line between sections 8 and 17 in township 11 south, range 10 west of the Willamette meridian, crosses said stream, is declared to be a nonnavigable stream. (Feb. 26, 1917, ch. 119, 39 Stat. 937.)

#### § 40. One Hundred and Two River, Missouri.

One Hundred and Two River south of the north boundary line of Andrew County, Missouri, as now located, be, and the same is declared to be not a navigable water of the United States within the meaning of the laws enacted by Congress for the preservation and protection of such waters. The right to alter, amend, or repeal this section is hereby expressly reserved. (Feb. 15, 1910, ch. 31, §§ 1, 2, 36 Stat. 194.)

#### § 41. Osage River, Missouri.

The Osage River in the State of Missouri above the point where the south line of sections 15 and 16 in township 40 north, of range 22 west, of the fifth principal meridian, and in the county of Benton, State of Missouri, crosses said river, is declared not to be a navigable stream, and shall be so treated by the Secretary of War and by all other authorities. (Mar. 4, 1904, ch. 393, 33 Stat. 58.)

#### § 42. Platte River, Missouri.

The Platte River in the State of Missouri is declared to be a nonnavigable stream within the meaning of the Constitution and laws of the United States, and jurisdiction over said river is hereby declared to be vested in the State of Missouri. The right of Congress to alter, amend, or repeal this section is hereby expressly reserved. (Feb. 16, 1921, ch. 62, §§ 1, 2, 41 Stat. 1105.)

#### § 43. Saint Marys River, Ohio and Indiana.

Saint Marys River, Ohio and Indiana, is declared to be a nonnavigable stream within the meaning of the Constitution and laws of the United States. (Aug. 8, 1917, ch. 49, § 17, 40 Stat. 268.)

#### § 44. Sturgeon Bay, Illinois.

So much of the west fork of Sturgeon Bay within the county of Mercer and State of Illinois as lies west of the line between the east half and the west half of the east half of section 25, in township 14 north, range 6 west of the fourth principal meridian,

and so much of the east fork of said Sturgeon Bay as lies north of the north line of section 30, in township 14 north, range 5 west of the fourth principal meridian, shall not be deemed navigable waters of the United States. (Feb. 7, 1907, No. 13, 34 Stat. 1421.)

**§ 45. Swan Creek, Toledo, Ohio.**

Swan Creek, a stream lying within the limits of the city of Toledo, State of Ohio, is declared to be not a navigable waterway of the United States within the meaning of the laws enacted by Congress for the preservation and protection of such waterways, and the consent of Congress is hereby given for the filling in of said creek by the local authorities. (Mar. 4, 1915, ch. 142, § 13, 38 Stat. 1055.)

**§ 46. Tchula Lake, Mississippi.**

Tchula Lake, in Holmes County, in the State of Mississippi, is declared to be a nonnavigable stream within the meaning of the Constitution and laws of the United States. The right of Congress to alter, amend, or repeal this section is hereby expressly reserved. (July 1, 1922, ch. 266, §§ 1, 2, 42 Stat. 816.)

**§ 47. Eagle Lake, Louisiana-Mississippi.**

Eagle Lake, which lies partly within the limits of the State of Mississippi, in Warren County, and partly within the limits of the State of Louisiana, in Madison Parish, is hereby declared to be a non-navigable stream within the meaning of the Constitution and laws of the United States. The right to alter, amend, or repeal this section is hereby expressly reserved. (June 2, 1926, ch. 445, §§ 1, 2, 44 Stat. 681.)

**§ 48. Noxubee River, Mississippi.**

That portion of the Noxubee River in Noxubee County, in the State of Mississippi is declared to be a nonnavigable stream within the meaning of the Constitution and laws of the United States. The right of Congress to amend or repeal this section is hereby expressly reserved. (Feb. 24, 1934, ch. 25, §§ 1, 2, 48 Stat. 356.)

**§ 49. Bayou Saint John in New Orleans.**

Bayou Saint John, in the city of New Orleans, Louisiana, is hereby declared to be not a navigable water of the United States within the meaning of the laws enacted by Congress for the preservation and protection of such waters.

The right to alter, amend, or repeal this section is hereby expressly reserved. (June 5, 1936, ch. 530, §§ 1, 2, 49 Stat. 1484.)

**§ 50. Turtle Bay and Turtle Bayou, Texas.**

Turtle Bay and Turtle Bayou, in Chambers County, in the State of Texas, be, and the same are hereby, declared to be nonnavigable waterways within the meaning of the Constitution and laws of the United States of America.

The existing project for Turtle Bayou, Texas, authorized by the Rivers and Harbors Act approved June 25, 1910 (Act June 25, 1910, ch. 382, 36 Stat. 630), be, and the same is hereby, abandoned.

The right of Congress to alter, amend, or repeal this section is hereby expressly reserved. (Mar. 10, 1937, ch. 36, §§ 1-3, 50 Stat. 28.)

**§ 51. Scajaquada Creek, New York.**

Scajaquada Creek, Erie County, New York, is hereby declared to be non-navigable east of a line one hundred and thirty feet west of the west line of Niagara Street, city of Buffalo, county of Erie, New York, within the meaning of the Constitution and laws of the United States.

The right to alter, amend, or repeal this section is hereby expressly reserved. (May 14, 1937, ch. 183, §§ 1, 2, 50 Stat. 165.)

**§ 52. Park River, Connecticut.**

The Park River, a minor tributary of the Connecticut River, located in Hartford County, Connecticut, is hereby declared to be a nonnavigable waterway within the meaning of the Constitution and laws of the United States of America.

The right of Congress to alter, amend, or repeal this section is hereby expressly reserved. (May 24, 1937, ch. 246, §§ 1, 2, 50 Stat. 201.)

**§ 53. Benton Harbor Canal, Michigan.**

The Benton Harbor Canal at and above the west line of Ninth Street, in the city of Benton Harbor and State of Michigan, is hereby declared to be not a navigable water of the United States within the meaning of the Constitution and laws of the United States. The right to alter, amend, or repeal this section is hereby expressly reserved. (June 2, 1937, ch. 288, §§ 1-3, 50 Stat. 243.)

**§ 54. Burr Creek, Bridgeport, Connecticut.**

That portion of Burr Creek in the city of Bridgeport, Connecticut, lying north of a line across the creek beginning at the point of intersection of the south side of Yacht Street extended and the west harbor line of the harbor lines established by the Secretary of War December 9, 1924, thence south eighty-five degrees forty-six minutes seventeen seconds east to the east harbor line of said creek, is hereby declared to be not a navigable water of the United States within the meaning of the Constitution and laws of the United States.

Any project heretofore authorized by any Act of Congress, insofar as such project relates to the above described portion of Burr Creek in the city of Bridgeport, Connecticut, is hereby abandoned.

The right to alter, amend, or repeal this section is hereby expressly reserved. (Aug. 12, 1937, ch. 607, §§ 1-3, 50 Stat. 632.)

**§ 55. Bayou Savage (or Chantilly) in New Orleans.**

Bayou Savage, also styled Bayou Chantilly, in the city of New Orleans, Louisiana, is hereby declared to be a nonnavigable waterway within the meaning of the Constitution and laws of the United States.

The right to alter, amend, or repeal this section is hereby expressly reserved. (Aug. 16, 1937, ch. 650, §§ 1, 2, 50 Stat. 649.)

## Chapter 2.—INTERNATIONAL RULES FOR NAVIGATION AT SEA

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- 63. "Visible" as applied to lights defined.

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- 75. Lights of sailing vessel under way and of vessel in tow.
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- 78. Lights of pilot vessel on and off duty; steam pilot vessel.
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- 141. Distress signals in daytime and at night.

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- 142. Orders to helmsmen.

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Lights and sound signal devices on motor boats, and sailing and steering rules relating thereto, see sections 513, 514, and 520, of Title 46, Shipping.

### PRELIMINARY

- § 61. Adoption of rules for navigation on high seas.

The following regulations for preventing collisions at sea shall be followed by all public and private vessels of the United States upon the high seas and in all waters connected therewith, navigable by sea-going vessels: *Provided*, That such regulations shall not apply to the harbors, rivers and inland waters of

the United States, nor to the Great Lakes and their connecting and tributary waters as far east as Montreal, nor to the Red River of the North and rivers emptying into the Gulf of Mexico and their tributaries, in so far as special rules are adopted in pursuance of article 30. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 320; Feb. 19, 1895, ch. 102, 28 Stat. 672; June 7, 1897, ch. 4, § 1, 30 Stat. 96.)

- § 62. "Sailing vessel," "steam vessel," and "under way" defined.

In the following rules every steam vessel which is under sail and not under steam is to be considered a sailing vessel, and every vessel under steam, whether under sail or not, is to be considered a steam vessel.

The word "steam vessel" shall include any vessel propelled by machinery.

A vessel is "under way" within the meaning of these rules when she is not at anchor, or made fast to the shore, or aground. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 320.)

- § 63. "Visible" as applied to lights defined.

The word "visible" in these rules when applied to lights shall mean visible on a dark night with a clear atmosphere. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 321.)

### RULES CONCERNING LIGHTS, ETC.

- § 71. Time for lights; prescribed lights exclusive (article 1).

The rules concerning lights shall be complied with in all weathers from sunset to sunrise, and during such time no other lights which may be mistaken for the prescribed lights shall be exhibited. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 321.)

- § 72. Lights of steam vessel under way (article 2).

A steam vessel when under way shall carry—(a) On or in front of the foremast, or if a vessel without a foremast, then in the fore part of the vessel, at a height above the hull of not less than twenty feet, and if the breadth of the vessel exceeds twenty feet, then at a height above the hull not less than such breadth, so, however, that the light need not be carried at a greater height above the hull than forty feet, a bright white light, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side, and of such a character as to be visible at a distance of at least five miles.

(b) On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least two miles.

(c) On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side, and of such a character as to be visible at a distance of at least two miles.

(d) The said green and red side lights shall be fitted with inboard screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

(e) A steam vessel when under way may carry an additional white light similar in construction to the light mentioned in subdivision (a). These two lights shall be so placed in line with the keel that one shall be at least fifteen feet higher than the other, and in such a position with reference to each other that the lower light shall be forward of the upper one. The vertical distance between these lights shall be less than the horizontal distance. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 321.)

**§ 73. Lights of vessel towing another vessel or vessels (article 3).**

A steam vessel when towing another vessel shall, in addition to her side lights, carry two bright white lights in a vertical line one over the other, not less than six feet apart, and when towing more than one vessel shall carry an additional bright white light six feet above or below such light, if the length of the tow measuring from the stern of the towing vessel to the stern of the last vessel towed exceeds six hundred feet. Each of these lights shall be of the same construction and character, and shall be carried in the same position as the white light mentioned in article 2 (a) of this chapter, excepting the additional light, which may be carried at a height of not less than fourteen feet above the hull.

Such steam vessel may carry a small white light abaft the funnel or aftermast for the vessel towed to steer by, but such light shall not be visible forward of the beam. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 321.)

**§ 74. Lights and day signals of vessel not under control and of telegraph cable vessel (article 4).**

(a) A vessel which from any accident is not under command shall carry at the same height as a white light mentioned in article 2 (a) of this chapter, where they can best be seen, and if a steam vessel in lieu of that light, two red lights, in a vertical line one over the other, not less than six feet apart, and of such a character as to be visible all around the horizon at a distance of at least two miles; and shall by day carry in a vertical line one over the other, not less than six feet apart, where they can best be seen, two black balls or shapes, each two feet in diameter.

(b) A vessel employed in laying or in picking up a telegraph cable shall carry in the same position as the white light mentioned in article 2 (a) of this chapter, and if a steam vessel in lieu of that light, three lights in a vertical line one over the other not less than six feet apart. The highest and lowest of these lights shall be red, and the middle light shall be white, and they shall be of such a character as to be visible all around the horizon, at a distance of at least two miles. By day she shall carry in a vertical line, one over the other, not less than six feet apart, where they can best be seen, three shapes not less than two feet in diameter, of which the highest and lowest shall be glob-

ular in shape and red in color, and the middle one diamond in shape and white.

(c) The vessels referred to in this article, when not making way through the water, shall not carry the side lights, but when making way shall carry them.

(d) The lights and shapes required to be shown by this article are to be taken by other vessels as signals that the vessel showing them is not under command and cannot therefore get out of the way.

These signals are not signals of vessels in distress and requiring assistance. Such signals are contained in article 31 of this chapter. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 322.)

**§ 75. Lights of sailing vessel under way and of vessel in tow (article 5).**

A sailing vessel under way and any vessel being towed shall carry the same lights as are prescribed by article 2 of this chapter for a steam vessel under way, with the exception of the white lights mentioned therein, which they shall never carry. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 322.)

**§ 76. Lights of small vessel under way in bad weather (article 6).**

Whenever, as in the case of small vessels under way during bad weather, the green and red side lights cannot be fixed, these lights shall be kept at hand, lighted and ready for use; and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side nor the red light on the starboard side, nor, if practicable, more than two points abaft the beam on their respective sides.

To make the use of these portable lights more certain and easy the lanterns containing them shall each be painted outside with the color of the light they respectively contain and shall be provided with proper screens. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 322.)

**§ 77. Substitute lights for small vessel and rowing boats (article 7).**

Steam vessels of less than forty, and vessels under oars or sails of less than twenty tons gross tonnage, respectively, and rowing boats, when under way, shall not be required to carry the lights mentioned in article 2 (a), (b), and (c) of this chapter, but if they do not carry them they shall be provided with the following lights:

First, Steam vessels of less than forty tons shall carry—

(a) In the fore part of the vessel, or on or in front of the funnel, where it can best be seen, and at a height above the gunwale of not less than nine feet, a bright white light constructed and fixed as prescribed in article 2 (a) of this chapter, and of such a character as to be visible at a distance of at least two miles.

(b) Green and red side lights constructed and fixed as prescribed in article 2 (b) and (c) of this chapter, and of such a character as to be visible at a distance of at least one mile, or a combined lantern



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the United States, nor to the Great Lakes and their connecting and tributary waters as far east as Montreal, nor to the Red River of the North and rivers emptying into the Gulf of Mexico and their tributaries, in so far as special rules are adopted in pursuance of article 30. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 320; Feb. 19, 1895, ch. 102, 28 Stat. 672; June 7, 1897, ch. 4, § 1, 30 Stat. 96.)

- § 62. "Sailing vessel," "steam vessel," and "under way" defined.

In the following rules every steam vessel which is under sail and not under steam is to be considered a sailing vessel, and every vessel under steam, whether under sail or not, is to be considered a steam vessel.

The word "steam vessel" shall include any vessel propelled by machinery.

A vessel is "under way" within the meaning of these rules when she is not at anchor, or made fast to the shore, or aground. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 320.)

- § 63. "Visible" as applied to lights defined.

The word "visible" in these rules when applied to lights shall mean visible on a dark night with a clear atmosphere. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 321.)

### RULES CONCERNING LIGHTS, ETC.

- § 71. Time for lights; prescribed lights exclusive (article 1).

The rules concerning lights shall be complied with in all weathers from sunset to sunrise, and during such time no other lights which may be mistaken for the prescribed lights shall be exhibited. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 321.)

- § 72. Lights of steam vessel under way (article 2).

A steam vessel when under way shall carry—(a) On or in front of the foremast, or if a vessel without a foremast, then in the fore part of the vessel, at a height above the hull of not less than twenty feet, and if the breadth of the vessel exceeds twenty feet, then at a height above the hull not less than such breadth, so, however, that the light need not be carried at a greater height above the hull than forty feet, a bright white light, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side, and of such a character as to be visible at a distance of at least five miles.

(b) On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least two miles.

(c) On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side, and of such a character as to be visible at a distance of at least two miles.

(d) The said green and red side lights shall be fitted with inboard screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

(e) A steam vessel when under way may carry an additional white light similar in construction to the light mentioned in subdivision (a). These two lights shall be so placed in line with the keel that one shall be at least fifteen feet higher than the other, and in such a position with reference to each other that the lower light shall be forward of the upper one. The vertical distance between these lights shall be less than the horizontal distance. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 321.)

**§ 73. Lights of vessel towing another vessel or vessels (article 3).**

A steam vessel when towing another vessel shall, in addition to her side lights, carry two bright white lights in a vertical line one over the other, not less than six feet apart, and when towing more than one vessel shall carry an additional bright white light six feet above or below such light, if the length of the tow measuring from the stern of the towing vessel to the stern of the last vessel towed exceeds six hundred feet. Each of these lights shall be of the same construction and character, and shall be carried in the same position as the white light mentioned in article 2 (a) of this chapter, excepting the additional light, which may be carried at a height of not less than fourteen feet above the hull.

Such steam vessel may carry a small white light abaft the funnel or aftermast for the vessel towed to steer by, but such light shall not be visible forward of the beam. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 321.)

**§ 74. Lights and day signals of vessel not under control and of telegraph cable vessel (article 4).**

(a) A vessel which from any accident is not under command shall carry at the same height as a white light mentioned in article 2 (a) of this chapter, where they can best be seen, and if a steam vessel in lieu of that light, two red lights, in a vertical line one over the other, not less than six feet apart, and of such a character as to be visible all around the horizon at a distance of at least two miles; and shall by day carry in a vertical line one over the other, not less than six feet apart, where they can best be seen, two black balls or shapes, each two feet in diameter.

(b) A vessel employed in laying or in picking up a telegraph cable shall carry in the same position as the white light mentioned in article 2 (a) of this chapter, and if a steam vessel in lieu of that light, three lights in a vertical line one over the other not less than six feet apart. The highest and lowest of these lights shall be red, and the middle light shall be white, and they shall be of such a character as to be visible all around the horizon, at a distance of at least two miles. By day she shall carry in a vertical line, one over the other, not less than six feet apart, where they can best be seen, three shapes not less than two feet in diameter, of which the highest and lowest shall be globular

in shape and red in color, and the middle one diamond in shape and white.

(c) The vessels referred to in this article, when not making way through the water, shall not carry the side lights, but when making way shall carry them.

(d) The lights and shapes required to be shown by this article are to be taken by other vessels as signals that the vessel showing them is not under command and cannot therefore get out of the way.

These signals are not signals of vessels in distress and requiring assistance. Such signals are contained in article 31 of this chapter. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 322.)

**§ 75. Lights of sailing vessel under way and of vessel in tow (article 5).**

A sailing vessel under way and any vessel being towed shall carry the same lights as are prescribed by article 2 of this chapter for a steam vessel under way, with the exception of the white lights mentioned therein, which they shall never carry. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 322.)

**§ 76. Lights of small vessel under way in bad weather (article 6).**

Whenever, as in the case of small vessels under way during bad weather, the green and red side lights cannot be fixed, these lights shall be kept at hand, lighted and ready for use; and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side nor the red light on the starboard side, nor, if practicable, more than two points abaft the beam on their respective sides.

To make the use of these portable lights more certain and easy the lanterns containing them shall each be painted outside with the color of the light they respectively contain and shall be provided with proper screens. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 322.)

**§ 77. Substitute lights for small vessel and rowing boats (article 7).**

Steam vessels of less than forty, and vessels under oars or sails of less than twenty tons gross tonnage, respectively, and rowing boats, when under way, shall not be required to carry the lights mentioned in article 2 (a), (b), and (c) of this chapter, but if they do not carry them they shall be provided with the following lights:

First. Steam vessels of less than forty tons shall carry—

(a) In the fore part of the vessel, or on or in front of the funnel, where it can best be seen, and at a height above the gunwale of not less than nine feet, a bright white light constructed and fixed as prescribed in article 2 (a) of this chapter, and of such a character as to be visible at a distance of at least two miles.

(b) Green and red side lights constructed and fixed as prescribed in article 2 (b) and (c) of this chapter, and of such a character as to be visible at a distance of at least one mile, or a combined lantern

showing a green light and a red light from right ahead to two points abaft the beam on their respective sides. Such lanterns shall be carried not less than three feet below the white light.

Second. Small steamboats, such as are carried by seagoing vessels, may carry the white light at a less height than nine feet above the gunwale, but it shall be carried above the combined lantern mentioned in subdivision 1 (b).

Third. Vessels under oars or sails of less than twenty tons shall have ready at hand a lantern with a green glass on one side and a red glass on the other, which, on the approach of or to other vessels, shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side nor the red light on the starboard side.

Fourth. Rowing boats, whether under oars or sail, shall have ready at hand a lantern showing a white light which shall be temporarily exhibited in sufficient time to prevent collision.

The vessels referred to in this article shall not be obliged to carry the lights prescribed by article 4 (a) of this chapter and article 11, of this chapter, last paragraph. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 322; May 28, 1894, ch. 83, 28 Stat. 82.)

**§ 78. Lights of pilot vessel on and off duty; steam pilot vessel (article 8).**

Pilot vessels when engaged on their station on pilotage duty shall not show the lights required for other vessels, but shall carry a white light at the masthead, visible all around the horizon, and shall also exhibit a flare-up light or flare-up lights at short intervals, which shall never exceed fifteen minutes.

On the near approach of or to other vessels they shall have their side lights lighted, ready for use, and shall flash or show them at short intervals, to indicate the direction in which they are heading, but the green light shall not be shown on the port side, nor the red light on the starboard side.

A pilot vessel of such a class as to be obliged to go alongside of a vessel to put a pilot on board may show the white light instead of carrying it at the masthead, and may, instead of the colored lights above mentioned, have at hand, ready for use, a lantern with a green glass on the one side and a red glass on the other, to be used as prescribed above.

Pilot vessels when not engaged on their station on pilotage duty shall carry lights similar to those of other vessels of their tonnage.

A steam pilot vessel, when engaged on her station on pilotage duty and in waters of the United States, and not at anchor, shall, in addition to the lights required for all pilot boats, carry at a distance of eight feet below her white masthead light a red light, visible all around the horizon and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles, and also the colored side lights required to be carried by vessels when under way.

When engaged on her station on pilotage duty and in waters of the United States, and at anchor, she shall carry in addition to the lights required for all pilot boats the red light above mentioned, but not the colored side lights.

When not engaged on her station on pilotage duty, she shall carry the same lights as other steam vessels. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 323; Feb. 19, 1900, ch. 22, § 1, 31 Stat. 30.)

**§ 79. Lights and day signals of fishing vessels and boats (article 9).**

Fishing vessels and fishing boats, when under way and when not required by this article to carry or show the lights hereinafter specified, shall carry or show the lights prescribed for vessels of their tonnage under way.

(a) Open boats, by which is to be understood boats not protected from the entry of sea water by means of a continuous deck, when engaged in any fishing at night, with outlying tackle extending not more than one hundred and fifty feet horizontally from the boat into the seaway, shall carry one all-round white light.

Open boats, when fishing at night, with outlying tackle extending more than one hundred and fifty feet horizontally from the boat into the seaway, shall carry one all-round white light, and in addition, on approaching or being approached by other vessels, shall show a second white light at least three feet below the first light and at a horizontal distance of at least five feet away from it in the direction in which the outlying tackle is attached.

(b) Vessels and boats, except open boats as defined in subdivision (a), when fishing with drift nets, shall, so long as the nets are wholly or partly in the water, carry two white lights where they can best be seen. Such lights shall be placed so that the vertical distance between them shall be not less than six feet and not more than fifteen feet, and so that the horizontal distance between them, measured in a line with the keel, shall be not less than five feet and not more than ten feet. The lower of these two lights shall be in the direction of the nets, and both of them shall be of such a character as to show all around the horizon, and to be visible at a distance of not less than three miles.

Within the Mediterranean Sea and in the seas bordering the coasts of Japan and Korea sailing fishing vessels of less than twenty tons gross tonnage shall not be obliged to carry the lower of these two lights. Should they, however, not carry it, they shall show in the same position (in the direction of the net or gear) a white light, visible at a distance of not less than one sea mile, on the approach of or to other vessels.

(c) Vessels and boats, except open boats as defined in subdivision (a), when line fishing with their lines out and attached to or hauling their lines, and when not at anchor or stationary within the meaning of subdivision (h), shall carry the same lights as vessels fishing with drift nets. When shooting lines, or fishing with towing lines, they shall carry the lights prescribed for a steam or sailing vessel under way, respectively.

Within the Mediterranean Sea and in the seas bordering the coasts of Japan and Korea sailing fishing vessels of less than twenty tons gross tonnage shall not be obliged to carry the lower of these two lights. Should they, however, not carry it, they shall show

in the same position (in the direction of the lines) a white light, visible at a distance of not less than one sea mile on the approach of or to other vessels.

(d) Vessels when engaged in trawling, by which is meant the dragging of an apparatus along the bottom of the sea—

First. If steam vessels, shall carry in the same position as the white light mentioned in article two (a) a tri-colored lantern so constructed and fixed as to show a white light from right ahead to two points on each bow, and a green light and a red light over an arc of the horizon from two points on each bow to two points abaft the beam on the starboard and port sides, respectively; and not less than six nor more than twelve feet below the tri-colored lantern a white light in a lantern, so constructed as to show a clear, uniform, and unbroken light all around the horizon.

Second. If sailing vessels, shall carry a white light in a lantern, so constructed as to show a clear, uniform, and unbroken light all around the horizon, and shall also, on the approach of or to other vessels, show where it can best be seen a white flare-up light or torch in sufficient time to prevent collision.

All lights mentioned in subdivision (d) first and second shall be visible at a distance of at least two miles.

(e) Oyster dredgers and other vessels fishing with dredge nets shall carry and show the same lights as trawlers.

(f) Fishing vessels and fishing boats may at any time use a flare-up light in addition to the lights which they are by this article required to carry and show, and they may also use working lights.

(g) Every fishing vessel and every fishing boat under one hundred and fifty feet in length, when at anchor, shall exhibit a white light visible all around the horizon at a distance of at least one mile.

Every fishing vessel of one hundred and fifty feet in length or upward, when at anchor, shall exhibit a white light visible all around the horizon at a distance of at least one mile, and shall exhibit a second light as provided for vessels of such length by article eleven.

Should any such vessel, whether under one hundred and fifty feet in length or of one hundred and fifty feet in length or upward, be attached to a net or other fishing gear, she shall on the approach of other vessels show an additional white light at least three feet below the anchor light, and at a horizontal distance of at least five feet away from it in the direction of the net or gear.

(h) If a vessel or boat when fishing becomes stationary in consequence of her gear getting fast to a rock or other obstruction, she shall in daytime haul down the day signal required by subdivision (k); at night show the light or lights prescribed for a vessel at anchor; and during fog, mist, falling snow, or heavy rain storms make the signal prescribed for a vessel at anchor. (See subdivision (d) and the last paragraph of article fifteen.)

(i) In fog, mist, falling snow, or heavy rain storms, drift-net vessels attached to their nets, and vessels when trawling, dredging, or fishing with any kind of drag net, and vessels line fishing with

their lines out, shall, if of twenty tons gross tonnage or upward, respectively, at intervals of not more than one minute make a blast; if steam vessels, with the whistle or siren, and if sailing vessels, with the foghorn, each blast to be followed by ringing the bell. Fishing vessels and boats of less than twenty tons gross tonnage shall not be obliged to give the above-mentioned signals; but if they do not, they shall make some other efficient sound signal at intervals of not more than one minute.

(k)<sup>1</sup> All vessels or boats fishing with nets or lines or trawls, when under way, shall in daytime indicate their occupation to an approaching vessel by displaying a basket or other efficient signal where it can best be seen. If vessels or boats at anchor have their gear out, they shall, on the approach of other vessels, show the same signal on the side on which those vessels can pass.

The vessels required by this article to carry or show the lights hereinbefore specified shall not be obliged to carry the lights prescribed by article four (a) of this chapter and the last paragraph of article eleven, of this chapter. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 323; May 28, 1894, ch. 83, 28 Stat. 82; Jan. 19, 1907, ch. 300, § 1, 34 Stat. 850.)

<sup>1</sup> So in original. There is no subsection (j).

#### § 80. Lights on overtaken vessel (article 10).

A vessel which is being overtaken by another shall show from her stern to such last-mentioned vessel a white light or a flare-up light.

The white light required to be shown by this article may be fixed and carried in a lantern, but in such case the lantern shall be so constructed, fitted, and screened that it shall throw an unbroken light over an arc of the horizon of twelve points of the compass, namely, for six points from right aft on each side of the vessel, so as to be visible at a distance of at least one mile. Such light shall be carried as nearly as practicable on the same level as the side lights. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 324.)

#### § 81. Lights on vessel at anchor or aground (article 11).

A vessel under one hundred and fifty feet in length, when at anchor, shall carry forward, where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light in a lantern so constructed as to show a clear, uniform, and unbroken light visible all around the horizon at a distance of at least one mile.

A vessel of one hundred and fifty feet or upwards in length, when at anchor, shall carry in the forward part of the vessel, at a height of not less than twenty and not exceeding forty feet above the hull, one such light, and at or near the stern of the vessel, and at such a height that it shall be not less than fifteen feet lower than the forward light, another such light.

The length of a vessel shall be deemed to be the length appearing in her certificate of registry.

A vessel aground in or near a fair-way shall carry the above light or lights and the two red lights prescribed by article four (a) of this chapter. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 324.)

§ 82. Additional lights and signals when necessary authorized (article 12).

Every vessel may, if necessary in order to attract attention, in addition to the lights which she is by these rules required to carry, show a flare-up light or use any detonating signal that can not be mistaken for a distress signal. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 325.)

§ 83. Special lights for ship of war and convoy; recognition signals adopted by shipowners (article 13).

Nothing in these rules shall interfere with the operation of any special rules made by the Government of any nation with respect to additional station and signal-lights for two or more ships of war or for vessels sailing under convoy, or with the exhibition of recognition signals adopted by shipowners, which have been authorized by their respective Governments and duly registered and published. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 325.)

§ 84. Day signal of steam vessel under sail (article 14).

A steam vessel proceeding under sail only but having her funnel up, shall carry in daytime, forward, where it can best be seen, one black ball or shape two feet in diameter. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 325.)

#### SOUND SIGNALS FOR FOG, ETC.; SPEED

§ 91. Sound signals for fog, etc., generally (article 15).

All signals prescribed by this article for vessels under way shall be given:

- First. By "steam vessels" on the whistle or siren.
- Second. By "sailing vessels" and "vessels towed" on the fog horn.

The words "prolonged blast" used in this article shall mean a blast of from four to six seconds duration.

A steam vessel shall be provided with an efficient whistle or siren, sounded by steam or by some substitute for steam, so placed that the sound may not be intercepted by any obstruction, and with an efficient fog horn, to be sounded by mechanical means, and also with an efficient bell. (In all cases where the rules require a bell to be used a drum may be substituted on board Turkish vessels, or a gong where such articles are used on board small seagoing vessels.)

A sailing vessel of twenty tons gross tonnage or upward shall be provided with a similar fog horn and bell.

In fog, mist, falling snow, or heavy rainstorms, whether by day or night, the signals described in this article shall be used as follows, namely:

(a) A steam vessel having way upon her shall sound, at intervals of not more than two minutes, a prolonged blast:

(b) A steam vessel under way, but stopped, and having no way upon her, shall sound, at intervals of not more than two minutes, two prolonged blasts, with an interval of about one second between.

(c) A sailing vessel under way shall sound, at intervals of not more than one minute, when on the starboard tack, one blast; when on the port tack, two blasts in succession, and when with the wind abaft the beam, three blasts in succession.

(d) A vessel when at anchor shall, at intervals of not more than one minute, ring the bell rapidly for about five seconds.

(e) A vessel when towing, a vessel employed in laying or in picking up a telegraph cable, and a vessel under way, which is unable to get out of the way of an approaching vessel through being not under command, or unable to maneuver as required by the rules, shall, instead of the signals prescribed in subdivisions (a) and (c) of this article, at intervals of not more than two minutes, sound three blasts in succession, namely: One prolonged blast followed by two short blasts. A vessel towed may give this signal and she shall not give any other.

Sailing vessels and boats of less than twenty tons gross tonnage shall not be obliged to give the above-mentioned signals, but, if they do not, they shall make some other efficient sound signal at intervals of not more than one minute. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 325; June 10, 1896, ch. 401, § 1, 29 Stat. 381.)

§ 92. Speed in fog, etc. (article 16).

Every vessel shall, in a fog, mist, falling snow, or heavy rainstorms, go at a moderate speed, having careful regard to the existing circumstances and conditions.

A steam vessel hearing, apparently forward of her beam, the fog signal of a vessel the position of which is not ascertained shall, so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 326.)

#### STEERING AND SAILING RULES

§ 101. Suggestion for ascertainment of risk of collision.

Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 326.)

§ 102. Sailing vessels approaching one another (article 17).

When two sailing vessels are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other, as follows, namely:

(a) A vessel which is running free shall keep out of the way of a vessel which is close-hauled.

(b) A vessel which is close-hauled on the port tack shall keep out of the way of a vessel which is close-hauled on the starboard tack.

(c) When both are running free, with the wind on different sides, the vessel which has the wind on the port side shall keep out of the way of the other.

(d) When both are running free, with the wind on the same side, the vessel which is to the windward shall keep out of the way of the vessel which is to leeward.

(e) A vessel which has the wind aft shall keep out of the way of the other vessel. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 326.)

**§ 103. Steam vessels meeting end on (article 18).**

When two steam vessels are meeting end on, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other.

This article only applies to cases where vessels are meeting end on, or nearly end on, in such a manner as to involve risk of collision, and does not apply to two vessels which must, if both keep on their respective courses, pass clear of each other.

The only cases to which it does apply are when each of the two vessels is end on, or nearly end on, to the other; in other words, to cases in which, by day, each vessel sees the masts of the other in a line, or nearly in a line, with her own; and by night, to cases in which each vessel is in such a position as to see both the side lights of the other.

It does not apply by day to cases in which a vessel sees another ahead crossing her own course; or by night, to cases where the red light of one vessel is opposed to the red light of the other, or where the green light of one vessel is opposed to the green light of the other or where a red light without a green light, or a green light without a red light, is seen ahead, or where both green and red lights are seen anywhere but ahead. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 326.)

**§ 104. Steam vessels crossing (article 19).**

When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 327.)

**§ 105. Steam and sailing vessels meeting (article 20).**

When a steam vessel and a sailing vessel are proceeding in such directions as to involve risk of collision, the steam vessel shall keep out of the way of the sailing vessel. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 327.)

**§ 106. Vessel having right-of-way to keep course (article 21).**

Where, by any of these rules, one of two vessels is to keep out of the way, the other shall keep her course and speed.

NOTE.—When, in consequence of thick weather or other causes, such vessel finds herself so close that collision cannot be avoided by the action of the giving-way vessel alone, she also shall take such action as will best aid to avert collision. (See articles 27 and 29 of this chapter.) (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 327; May 28, 1894, ch. 83, 28 Stat. 83.)

**§ 107. Crossing ahead of vessel having right-of-way (article 22).**

Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 327.)

**§ 108. Duty of steam vessel to slacken speed (article 23).**

Every steam vessel which is directed by these rules to keep out of the way of another vessel shall, on

approaching her, if necessary, slacken her speed or stop or reverse. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 327.)

**§ 109. Overtaking vessel to keep out of the way; definition of "overtaking vessel" (article 24).**

Notwithstanding anything contained in these rules every vessel, overtaking any other, shall keep out of the way of the overtaken vessel.

Every vessel coming up with another vessel from any direction more than two points abaft her beam, that is, in such a position, with reference to the vessel which she is overtaking that at night she would be unable to see either of that vessel's side lights, shall be deemed to be an overtaking vessel; and no subsequent alteration of the bearing between the two vessels shall make the overtaking vessel a crossing vessel within the meaning of these rules, or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

As by day the overtaking vessel can not always know with certainty whether she is forward of or abaft this direction from the other vessel she should, if in doubt, assume that she is an overtaking vessel and keep out of the way. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 327.)

**§ 110. Steam vessel in narrow channel (article 25).**

In narrow channels every steam vessel shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 327.)

**§ 111. Right-of-way of fishing vessels or boats; obstruction of fairway (article 26).**

Sailing vessels under way shall keep out of the way of sailing vessels or boats fishing with nets, or lines, or trawls. This rule shall not give to any vessel or boat engaged in fishing the right of obstructing a fairway used by vessels other than fishing vessels or boats. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 327.)

**§ 112. Special circumstances requiring departure from rules (article 27).**

In obeying and construing these rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 327.)

**§ 113. Sound signals of steam vessel indicating course (article 28).**

The words "short blast" used in this article shall mean a blast of about one second's duration.

When vessels are in sight of one another, a steam vessel under way, in taking any course authorized or required by these rules, shall indicate that course by the following signals on her whistle or siren, namely:

One short blast to mean, "I am directing my course to starboard."

Two short blasts to mean, "I am directing my course to port."

Three short blasts to mean, "My engines are going at full speed astern." (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 328.)

#### NO VESSEL, UNDER ANY CIRCUMSTANCES, TO NEGLECT PROPER PRECAUTIONS

##### § 121. Additional precautions required generally (article 29).

Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 328.)

#### RESERVATION OF RULES FOR HARBORS AND INLAND NAVIGATION

##### § 131. Local rules for harbors and inland waters (article 30).

Nothing in these rules shall interfere with the operation of a special rule, duly made by local authority, relative to the navigation of any harbor, river, or inland waters. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 328.)

#### DISTRESS SIGNALS

##### § 141. Distress signals in daytime and at night (article 31).

When a vessel is in distress and requires assistance from other vessels or from the shore the following shall be the signals to be used or displayed by her, either together or separately, namely:

In the day time—

First. A gun or other explosive signal fired at intervals of about a minute.

Second. The international code signal of distress indicated by N. C.

Third. The distance signal, consisting of a square flag, having either above or below it a ball or anything resembling a ball.

Fourth. A continuous sounding with any fog-signal apparatus.

At night—

First. A gun or other explosive signal fired at intervals of about a minute.

Second. Flames on the vessel (as from a burning tar barrel, oil barrel, and so forth.)

Third. Rockets or shells throwing stars of any color or description, fired one at a time, at short intervals.

Fourth. A continuous sounding with any fog-signal apparatus. (Aug. 19, 1890, ch. 802, § 1, 26 Stat. 328; May 28, 1894, ch. 83, 28 Stat. 83.)

#### CROSS REFERENCE

Radio distress signals, see section 321 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

#### ORDERS

##### § 142. Orders to helmsmen (article 32).

All orders to helmsmen shall be given as follows: "Right Rudder" to mean "Direct the vessel's head to starboard."

"Left Rudder" to mean "Direct the vessel's head to port." (Aug. 19, 1890, ch. 802, § 1, Art. 32, as added Aug. 21, 1935, ch. 595, § 1, 49 Stat. 668.)

#### EFFECTIVE DATE

Section 5 of act August 21, 1935, cited to text, provided that the act "shall become fully effective for all ocean and coastwise vessels on January 1, 1936, and for all on the Great Lakes, bays, sounds, harbors, rivers, and lakes other than the Great Lakes of the United States on January 1, 1937."

#### Chapter 3.—NAVIGATION RULES FOR HARBORS, RIVERS, AND INLAND WATERS GENERALLY

##### PRELIMINARY

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221. Usual additional precautions required generally.
222. Lights on war and Coast Guard vessels; exhibition suspended.

##### DISTRESS SIGNALS

231. Distress signals in daytime and at night.

232. Orders to helmsmen.



## PRELIMINARY

## § 151. Demarcation of high seas lines.

The Secretary of Commerce is hereby authorized, empowered, and directed from time to time to designate and define by suitable bearings or ranges with lighthouses, light vessels, buoys, or coast objects, the lines dividing the high seas from rivers, harbors, and inland waters. (Feb. 19, 1895, ch. 102, § 2, 28 Stat. 672; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

## § 152. Regulation of length of towlines.

The Commandant of the Coast Guard and the Director of the Bureau of Marine Inspection and Navigation shall convene as a board at such times as the Secretary of Commerce shall prescribe to prepare regulations limiting the length of hawsers between towing vessels and seagoing barges in tow and the length of such tows within any of the inland waters of the United States designated and defined from time to time pursuant to section 151 of this title, and such regulations when approved by the Secretary of Commerce shall have the force of law. (May 28, 1908, ch. 212, § 14, 35 Stat. 428; June 17, 1910, ch. 301, § 4, 36 Stat. 537; June 30, 1932, ch. 314, §§ 501, 502, 47 Stat. 415; May 27, 1936, ch. 463, § 1, 49 Stat. 1380; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

## TRANSFER OF FUNCTIONS

Reorg. Plan No. II, § 2 (a), cited to text, transferred the Bureau of Lighthouses to the Coast Guard, and provided that it should be consolidated with and administered as part of the Coast Guard.

## BUREAU OF MARINE INSPECTION AND NAVIGATION

The act of May 27, 1936, cited to text, changed the name of "Bureau of Navigation and Steamboat Inspection" to "Bureau of Marine Inspection and Navigation".

## § 153. Penalty for use of unlawful towline.

The master of the towing vessel shall be liable to the suspension or revocation of his license for any willful violation of regulations issued pursuant to section 152 of this title in the manner prescribed for incompetency, misconduct, or unskillfulness. (May 28, 1908, ch. 212, § 15, 35 Stat. 429.)

## § 154. Adoption of rules for navigation of harbors, rivers, and inland waters.

The following regulations for preventing collision shall be followed by all vessels navigating all harbors, rivers, and inland waters of the United States, except the Great Lakes and their connecting and tributary waters as far east as Montreal and the Red River of the North and rivers emptying into the Gulf of Mexico and their tributaries, and are hereby declared special rules duly made by local authority. (June 7, 1897, ch. 4, § 1, 30 Stat. 96.)

## CROSS REFERENCE

Motorboats exempt from carrying copies of pilot rules, see section 522 of Title 46, Shipping.

## § 155. "Sailing vessel," "steam vessel," and "under way" defined.

In the following rules every steam vessel which is under sail and not under steam is to be consid-

ered a sailing vessel, and every vessel under steam, whether under sail or not, is to be considered a steam vessel.

The word "steam vessel" shall include any vessel propelled by machinery.

A vessel is "under way", within the meaning of these rules, when she is not at anchor, or made fast to the shore, or aground. (June 7, 1897, ch. 4, § 1, 30 Stat. 96.)

## § 156. "Visible" as applied to lights defined.

The word "visible" in these rules, when applied to lights, shall mean visible on a dark night with a clear atmosphere. (June 7, 1897, ch. 4, § 1, 30 Stat. 96.)

## § 157. Special rules by inspectors, etc., of steam vessels authorized.

The supervising inspectors of steam vessels and the Director of the Bureau of Marine Inspection and Navigation shall establish such rules to be observed by steam vessels in passing each other and as to the lights to be carried by ferryboats and by barges and canal boats when in tow of steam vessels, and as to the lights and day signals to be carried by vessels, dredges of all types, and vessels working on wrecks or other obstruction to navigation or moored for submarine operations, or made fast to a sunken object which may drift with the tide or be towed, not inconsistent with the provisions of sections 154-159, 171-183, 191, 192, 201-213, 221, 222, 231, 232 and 301 of this title, as they from time to time may deem necessary for safety, which rules when approved by the Secretary of Commerce are declared special rules duly made by local authority, as provided for in section 131 of this title. Two printed copies of such rules shall be furnished to such ferryboats, barges, dredges, canal boats, vessels working on wrecks, and steam vessels, which rules shall be kept posted up in conspicuous places in such vessels, barges, dredges, and boats. (June 7, 1897, ch. 4, § 2, 30 Stat. 102; May 25, 1914, ch. 98, 38 Stat. 381; June 30, 1932, ch. 314, § 501, 47 Stat. 415; May 27, 1936, ch. 463, § 1, 49 Stat. 1380.)

## CHANGE OF NAME

Act May 27, 1936, cited to text, changed the name of the "Bureau of Navigation and Steamboat Inspection" to "Bureau of Marine Inspection and Navigation."

## § 158. Penalty for violations by pilot, engineer, mate, or master.

Every pilot, engineer, mate, or master of any steam vessel, and every master or mate of any barge or canal boat, who neglects or refuses to observe the provisions of sections 154-159, 171-183, 191, 192, 201-213, 221, 222, 231, 232, and 301 of this title, or the regulations established in pursuance of section 157 of this title, shall be liable to a penalty of \$50, and for all damages sustained by any passenger in his person or baggage by such neglect or refusal: *Provided*, That nothing herein shall relieve any vessel, owner, or corporation from any liability incurred by reason of such neglect or refusal. (June 7, 1897, ch. 4, § 3, 30 Stat. 102.)

**§ 159. Penalty for violations by vessel.**

Every vessel that shall be navigated without complying with the provisions of sections 154-159, 171-183, 191, 192, 201-213, 221, 222, 231, 232, and 301 of this title, shall be liable to a penalty of \$200, one-half to go to the informer, for which sum the vessel so navigated shall be liable and may be seized and proceeded against by action in any district court of the United States having jurisdiction of the offense. (June 7, 1897, ch. 4, § 4, 30 Stat. 103.)

**RULES CONCERNING LIGHTS, ETC.****§ 171. Time for lights; prescribed lights exclusive (article 1).**

The rules concerning lights shall be complied with in all weathers from sunset to sunrise, and during such time no other lights which may be mistaken for the prescribed lights shall be exhibited. (June 7, 1897, ch. 4, § 1, 30 Stat. 96.)

**§ 172. Lights of steam vessel under way (article 2).**

A steam vessel when under way shall carry—

(a) On or in front of the foremast, or, if a vessel without a foremast, then in the fore part of the vessel, a bright white light so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side, and of such a character as to be visible at a distance of at least five miles.

(b) On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least two miles.

(c) On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side, and of such a character as to be visible at a distance of at least two miles.

(d) The said green and red side lights shall be fitted with inboard screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

(e) A seagoing steam vessel when under way may carry an additional white light similar in construction to the light mentioned in subdivision (a).

These two lights shall be so placed in line with the keel that one shall be at least fifteen feet higher than the other, and in such a position with reference to each other that the lower light shall be forward of the upper one. The vertical distance between these lights shall be less than the horizontal distance.

(f) All steam vessels (except seagoing vessels and ferryboats) shall carry, in addition to green and red lights required by article 2 (b), (c) of this chapter, and screens as required by article 2 (d) of this chapter, a central range of two white lights, the afterlight being carried at an elevation at least fifteen feet above the light at the head of the vessel. The head-light shall be so constructed as to show an unbroken

light through twenty points of the compass, namely, from right ahead to two points abaft the beam on either side of the vessel, and the afterlight so as to show all around the horizon. (June 7, 1897, ch. 4, § 1, 30 Stat. 96.)

**§ 173. Lights of vessel towing another vessel or vessels (article 3).**

A steam vessel when towing another vessel or vessels alongside shall, in addition to her side lights, carry two bright white lights in a vertical line, one over the other, not less than three feet apart, and when towing one or more vessels astern, regardless of the length of the tow, shall carry an additional bright white light three feet above or below such lights: *Provided*, That on the Red River of the North and the rivers emptying into the Gulf of Mexico and their tributaries, this article shall not affect the signal lights used on towing vessels which propel the tow by pushing at the rear of the tow. Each of these lights shall be of the same construction and character, and shall be carried in the same position as the white light mentioned in article 2 (a) of this chapter or the after range light mentioned in article 2 (f) of this chapter.

Such steam vessel may carry a small white light abaft the funnel or aftermast for the vessel towed to steer by, but such light shall not be visible forward of the beam. (June 7, 1897, ch. 4, § 1, 30 Stat. 97; May 20, 1936, ch. 433, 49 Stat. 1367.)

**§ 174. Lights of sailing vessel under way or in tow (article 5).**

A sailing vessel under way and any vessel being towed, except barges, canal boats, scows, and other vessels of nondescript type, when in tow of steam vessels, shall carry the same lights as are prescribed by article 2 of this chapter for a steam vessel under way, with the exception of the white lights mentioned therein, which they shall never carry. (June 7, 1897, ch. 4, § 1, 30 Stat. 97; Mar. 1, 1933, ch. 157, 47 Stat. 1417.)

**§ 175. Lights of small vessel under way in bad weather (article 6).**

Whenever, as in the case of vessels of less than ten gross tons under way during bad weather, the green and red side lights cannot be fixed, these lights shall be kept at hand, lighted and ready for use, and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible and so that the green light shall not be seen on the port side nor the red light on the starboard side, nor, if practicable, more than two points abaft the beam on their respective sides. To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the color of the light they respectively contain and shall be provided with proper screens. (June 7, 1897, ch. 4, § 1, 30 Stat. 97.)

**§ 176. Lights of rowboats (article 7).**

Rowing boats, whether under oars or sail, shall have ready at hand a lantern showing a white light which shall be temporarily exhibited in sufficient

time to prevent collision. (June 7, 1897, ch. 4, § 1, 30 Stat. 98.)

**§ 177. Lights of pilot vessel on and off duty; steam pilot vessel (article 8).**

Pilot vessels when engaged on their station on pilotage duty shall not show the lights required for other vessels but shall carry a white light at the masthead, visible all around the horizon, and shall also exhibit a flare-up light or flare-up lights at short intervals, which shall never exceed fifteen minutes.

On the near approach of or to other vessels they shall have their side lights lighted, ready for use, and shall flash or show them at short intervals, to indicate the direction in which they are heading, but the green light shall not be shown on the port side nor the red light on the starboard side.

A pilot vessel of such a class as to be obliged to go alongside of a vessel to put a pilot on board may show the white light instead of carrying it at the masthead, and may, instead of the colored lights above mentioned, have at hand, ready for use, a lantern with a green glass on the one side and a red glass on the other, to be used as prescribed above.

Pilot vessels, when not engaged on their station on pilotage duty, shall carry lights similar to those of other vessels of their tonnage.

A steam pilot vessel, when engaged on her station on pilotage duty and in waters of the United States, and not at anchor, shall, in addition to the lights required for all pilot boats, carry at a distance of eight feet below her white masthead light a red light, visible all around the horizon and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles, and also the colored side lights required to be carried by vessels when under way.

When engaged on her station on pilotage duty and in waters of the United States, and at anchor, she shall carry in addition to the lights required for all pilot boats the red light above mentioned, but not the colored side lights.

When not engaged on her station on pilotage duty, she shall carry the same lights as other steam vessels. (June 7, 1897, ch. 4, § 1, 30 Stat. 98; Feb. 19, 1900, ch. 22, § 1, 31 Stat. 30.)

**§ 178. Lights of fishing vessels; rafts and unspecified craft (article 9).**

(a) Fishing vessels of less than ten gross tons, when under way and when not having their nets, trawls, dredges, or lines in the water, shall not be required to carry the colored side lights; but every such vessel shall, in lieu thereof, have ready at hand a lantern with a green glass on one side and a red glass on the other side, and on approaching to or being approached by another vessel such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side nor the red light on the starboard side.

(b) All fishing vessels and fishing boats of ten gross tons or upward, when under way and when not having their nets, trawls, dredges, or lines in the water, shall carry and show the same lights as other vessels under way.

(c) All vessels, when trawling, dredging, or fishing with any kind of dragnets or lines, shall exhibit, from some part of the vessel where they can be best seen, two lights. One of these lights shall be red and the other shall be white. The red light shall be above the white light, and shall be at a vertical distance from it of not less than six feet and not more than twelve feet; and the horizontal distance between them, if any, shall not be more than ten feet. These two lights shall be of such a character and contained in lanterns of such construction as to be visible all round the horizon, the white light a distance of not less than three miles and the red light of not less than two miles.

(d) Rafts, or other water craft not herein provided for, navigating by hand power, horse power, or by the current of the river, shall carry one or more good white lights, which shall be placed in such manner as shall be prescribed by the Board of Supervising Inspectors of Steam Vessels. (June 7, 1897, ch. 4, § 1, 30 Stat. 98.)

**§ 179. Lights on overtaken vessel (article 10).**

A vessel which is being overtaken by another, except a steam vessel with an after range light showing all around the horizon, shall show from her stern to such last-mentioned vessel a white light or a flare-up light. (June 7, 1897, ch. 4, § 1, 30 Stat. 98.)

**§ 180. Lights on vessel at anchor (article 11).**

A vessel under one hundred and fifty feet in length when at anchor shall carry forward, where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light in a lantern so constructed as to show a clear, uniform, and unbroken light visible all around the horizon at a distance of at least one mile: *Provided*, That the Secretary of War may, after investigation, by rule, regulation, or order, designate such areas as he may deem proper as "special anchorage areas"; such special anchorage areas may from time to time be changed, or abolished, if after investigation the Secretary of War shall deem such change or abolition in the interest of navigation: *Provided further*, That vessels not more than sixty-five feet in length when at anchor in any such special anchorage area shall not be required to carry or exhibit the white light required by this article.

A vessel of one hundred and fifty feet or upward in length, when at anchor, shall carry in the forward part of the vessel, at a height of not less than twenty and not exceeding forty feet above the hull, one such light, and at or near the stern of the vessel, and at such a height that it shall be not less than fifteen feet lower than the forward light, another such light.

The length of a vessel shall be deemed to be the length appearing in her certificate of registry. (June 7, 1897, ch. 4, § 1, 30 Stat. 98; Apr. 22, 1940, ch. 128, § 1, 54 Stat. 150.)

**§ 181. Additional lights when necessary authorized (article 12).**

Every vessel may, if necessary, in order to attract attention, in addition to the lights which she is by these rules required to carry, show a flare-up light

or use any detonating signal that cannot be mistaken for a distress signal. (June 7, 1897, ch. 4, § 1, 30 Stat. 99.)

**§ 182. Special lights for ship of war and convoy; recognition signals adopted by shipowners (article 13).**

Nothing in these rules shall interfere with the operation of any special rules made by the government of any nation with respect to additional station and signal lights for two or more ships of war or for vessels sailing under convoy, or with the exhibition of recognition signals adopted by shipowners, which have been authorized by their respective governments and duly registered and published. (June 7, 1897, ch. 4, § 1, 30 Stat. 99.)

**§ 183. Day signal of steam vessel under sail (article 14).**

A steam vessel proceeding under sail only, but having her funnel up, may carry in daytime, forward, where it can best be seen, one black ball or shape two feet in diameter. (June 7, 1897, ch. 4, § 1, 30 Stat. 99.)

**SOUND SIGNALS FOR FOG, ETC.; SPEED**

**§ 191. Sound signals for fog, etc., generally (article 15).**

All signals prescribed by this article for vessels under way shall be given—

1. By "steam vessels" on the whistle or siren.
2. By "sailing vessels" and "vessels towed" on the foghorn.

The words "prolonged blast" used in this article shall mean a blast of from four to six seconds duration.

A steam vessel shall be provided with an efficient whistle or siren, sounded by steam or by some substitute for steam, so placed that the sound may not be intercepted by any obstruction, and with an efficient foghorn; also with an efficient bell.

A sailing vessel of twenty tons gross tonnage or upward shall be provided with a similar foghorn and bell.

In fog, mist, falling snow, or heavy rainstorms, whether by day or night, the signals described in this article shall be used as follows, namely:

(a) A steam vessel under way shall sound, at intervals of not more than one minute, a prolonged blast.

(c)<sup>1</sup> A sailing vessel under way shall sound, at intervals of not more than one minute, when on the starboard tack, one blast; when on the port tack, two blasts in succession; and when with the wind abaft the beam, three blasts in succession.

(d) A vessel when at anchor shall, at intervals, of not more than one minute, ring the bell rapidly for about five seconds.

(e) A steam vessel when towing, shall, instead of the signals prescribed in subdivision (a) of this article, at intervals of not more than one minute, sound three blasts in succession, namely, one prolonged blast followed by two short blasts.

A vessel towed may give this signal and she shall not give any other.

(f) All rafts or other water craft, not herein provided for, navigating by hand power, horse power, or by the current of the river, shall sound a blast of the foghorn, or equivalent signal, at intervals of not more than one minute. (June 7, 1897, ch. 4, § 1, 30 Stat. 99.)

<sup>1</sup> So in original. There is no subsection (b).

**§ 192. Speed in fog, etc. (article 16).**

Every vessel shall, in a fog, mist, falling snow, or heavy rainstorms, go at a moderate speed, having careful regard to the existing circumstances and conditions.

A steam vessel hearing, apparently forward of her beam, the fog signal of a vessel the position of which is not ascertained shall, so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over. (June 7, 1897, ch. 4, § 1, 30 Stat. 99.)

**STEERING AND SAILING RULES AND SIGNALS**

**§ 201. Suggestion for ascertainment of risk of collision.**

Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist. (June 7, 1897, ch. 4, § 1, 30 Stat. 100.)

**§ 202. Sailing vessels approaching one another (article 17).**

When two sailing vessels are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other as follows, namely:

(a) A vessel which is running free shall keep out of the way of a vessel which is close-hauled.

(b) A vessel which is close-hauled on the port tack shall keep out of the way of a vessel which is close-hauled on the starboard tack.

(c) When both are running free, with the wind on different sides, the vessel which has the wind on the port side shall keep out of the way of the other.

(d) When both are running free, with the wind on the same side, the vessel which is to the windward shall keep out of the way of the vessel which is to the leeward.

(e) A vessel which has the wind aft shall keep out of the way of the other vessel. (June 7, 1897, ch. 4, § 1, 30 Stat. 100.)

**§ 203. Steam vessels approaching, meeting, or passing one another; banks obstructing view; leaving dock (article 18).**

Rule I. When steam vessels are approaching each other head and head, that is, end on, or nearly so, it shall be the duty of each to pass on the port side of the other; and either vessel shall give, as a signal of her intention, one short and distinct blast of her whistle, which the other vessel shall answer promptly by a similar blast of her whistle, and thereupon such vessels shall pass on the port side of each other.

But if the courses of such vessels are so far on the starboard of each other as not to be considered as meeting head and head, either vessel shall immediately give two short and distinct blasts of her whistle, which the other vessel shall answer promptly by two similar blasts of her whistle, and they shall pass on the starboard side of each other.

The foregoing only applies to cases where vessels are meeting end on or nearly end on, in such a manner as to involve risk of collision; in other words, to cases in which, by day, each vessel sees the masts of the other in a line, or nearly in a line, with her own and by night to cases in which each vessel is in such a position as to see both the sidelights of the other.

It does not apply by day to cases in which a vessel sees another ahead crossing her own course, or by night to cases where the red light of one vessel is opposed to the red light of the other, or where the green light of one vessel is opposed to the green light of the other, or where a red light without a green light or a green light without a red light, is seen ahead, or where both green and red lights are seen anywhere but ahead.

Rule III. If, when steam vessels are approaching each other, either vessel fails to understand the course or intention of the other, from any cause, the vessel so in doubt shall immediately signify the same by giving several short and rapid blasts, not less than four, of the steam whistle.

Rule V. Whenever a steam vessel is nearing a short bend or curve in the channel, where, from the height of the banks or other cause, a steam vessel approaching from the opposite direction cannot be seen for a distance of half a mile, such steam vessel, when she shall have arrived within half a mile of such curve or bend, shall give a signal by one long blast of the steam whistle, which signal shall be answered by a similar blast, given by any approaching steam vessel that may be within hearing. Should such signal be so answered by a steam vessel upon the farther side of such bend, then the usual signals for meeting and passing shall immediately be given and answered; but, if the first alarm signal of such vessel be not answered, she is to consider the channel clear and govern herself accordingly.

When steam vessels are moved from their docks or berths, and other boats are liable to pass from any direction toward them, they shall give the same signal as in the case of vessels meeting at a bend, but immediately after clearing the berths so as to be fully in sight they shall be governed by the steering and sailing rules.

Rule VIII. When steam vessels are running in the same direction, and the vessel which is astern shall desire to pass on the right or starboard hand of the vessel ahead, she shall give one short blast of the steam whistle, as a signal of such desire, and if the vessel ahead answers with one blast, she shall direct her course to starboard; or if she shall desire to pass on the left or port side of the vessel ahead, she shall give two short blasts of the steam whistle as a signal of such desire, and if the vessel ahead answers with two blasts, shall direct her course to port; or if the vessel ahead does not think it safe

for the vessel astern to attempt to pass at that point, she shall immediately signify the same by giving several short and rapid blasts of the steam whistle, not less than four, and under no circumstances shall the vessel astern attempt to pass the vessel ahead until such time as they have reached a point where it can be safely done, when said vessel ahead shall signify her willingness by blowing the proper signals.

The vessel ahead shall in no case attempt to cross the bow or crowd upon the course of the passing vessel.

Rule IX. The whistle signals provided in the rules under this article, for steam vessels meeting, passing, or overtaking, are never to be used except when steamers are in sight of each other, and the course and position of each can be determined in the daytime by a sight of the vessel itself, or by night by seeing its signal lights.

In fog, mist, falling snow or heavy rainstorms, when vessels cannot so see each other, fog signals only must be given. (June 7, 1897, ch. 4, § 1, 30 Stat. 100; Aug. 21, 1935, ch. 595, § 2, 49 Stat. 669.)

#### EFFECTIVE DATE

Section 5 of act August 21, 1935, cited to text, provided that the act "shall become fully effective for all ocean and coastwise vessels on January 1, 1936, and for all on the Great Lakes, bays, sounds, harbors, rivers, and lakes other than the Great Lakes of the United States on January 1, 1937."

#### § 204. Steam vessels crossing (article 19).

When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other. (June 7, 1897, ch. 4, § 1, 30 Stat. 101.)

#### § 205. Steam and sailing vessels meeting (article 20).

When a steam vessel and a sailing vessel are proceeding in such directions as to involve risk of collision, the steam vessel shall keep out of the way of the sailing vessel. (June 7, 1897, ch. 4, § 1, 30 Stat. 101.)

#### § 206. Vessel having right-of-way to keep course (article 21).

Where, by any of these rules, one of the two vessels is to keep out of the way, the other shall keep her course and speed. (June 7, 1897, ch. 4, § 1, 30 Stat. 101.)

#### § 207. Crossing ahead of vessel having right-of-way (article 22).

Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other. (June 7, 1897, ch. 4, § 1, 30 Stat. 101.)

#### § 208. Duty of steam vessel to slacken speed (article 23).

Every steam vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse. (June 7, 1897, ch. 4, § 1, 30 Stat. 101.)

**§ 209. Overtaking vessel to keep out of the way; definition of "overtaking vessel" (article 24).**

Notwithstanding anything contained in these rules every vessel, overtaking any other, shall keep out of the way of the overtaken vessel.

Every vessel coming up with another vessel from any direction more than two points abaft her beam, that is, in such a position with reference to the vessel which she is overtaking that at night she would be unable to see either of that vessel's side lights, shall be deemed to be an overtaking vessel; and no subsequent alteration of the bearing between the two vessels shall make the overtaking vessel a crossing vessel within the meaning of these rules, or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

As by day the overtaking vessel cannot always know with certainty whether she is forward of or abaft this direction from the other vessel she should, if in doubt, assume that she is an overtaking vessel and keep out of the way. (June 7, 1897, ch. 4, § 1, 30 Stat. 101.)

**§ 210. Steam vessel in narrow channel (article 25).**

In narrow channels every steam vessel shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel. (June 7, 1897, ch. 4, § 1, 30 Stat. 101.)

**§ 211. Right-of-way of fishing vessel or boats; obstruction of fairway (article 26).**

Sailing vessels under way shall keep out of the way of sailing vessels or boats fishing with nets, or lines, or trawls. This rule shall not give to any vessel or boat engaged in fishing the right of obstructing a fairway used by vessels other than fishing vessels or boats. (June 7, 1897, ch. 4, § 1, 30 Stat. 102.)

**§ 212. Special circumstances requiring departure from rules (article 27).**

In obeying and construing these rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger. (June 7, 1897, ch. 4, § 1, 30 Stat. 102.)

**§ 213. Signal of full speed of engines astern (article 28).**

When vessels are in sight of one another a steam vessel under way whose engines are going at full speed astern shall indicate that fact by three short blasts on the whistle. (June 7, 1897, ch. 4, § 1, 30 Stat. 102.)

**NO VESSEL UNDER ANY CIRCUMSTANCES TO NEGLECT PROPER PRECAUTIONS**

**§ 221. Usual additional precautions required generally (article 29).**

Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or

by the special circumstances of the case. (June 7, 1897, ch. 4, § 1, 30 Stat. 102.)

**§ 222. Lights on war and Coast Guard vessels; exhibition suspended (article 30).**

The exhibition of any light on board of a vessel of war of the United States or a Coast Guard vessel may be suspended whenever, in the opinion of the Secretary of the Navy, the commander in chief of a squadron, or the commander of a vessel acting singly, the special character of the service may require it. (June 7, 1897, ch. 4, § 1, 30 Stat. 102; Jan. 28, 1915, ch. 20, § 1, 38 Stat. 800.)

**DISTRESS SIGNALS**

**§ 231. Distress signals in daytime and at night (article 31).**

When a vessel is in distress and requires assistance from other vessels or from the shore the following shall be the signals to be used or displayed by her, either together or separately, namely:

**IN THE DAYTIME.**—A continuous sounding with any fog-signal apparatus, or firing a gun.

**AT NIGHT.**—First, Flames on the vessel as from a burning tar barrel, oil barrel, and so forth.

Second. A continuous sounding with any fog-signal apparatus, or firing a gun. (June 7, 1897, ch. 4, § 1, 30 Stat. 102.)

**CROSS REFERENCE**

Radio distress signals, see section 321 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

**ORDERS**

**§ 232. Orders to helmsmen (article 32).**

All orders to helmsmen shall be given as follows: "Right Rudder" to mean "Direct the vessel's head to starboard."

"Left Rudder" to mean "Direct the vessel's head to port." (June 7, 1897, ch. 4, § 1, Art. 32, as added Aug. 21, 1935, ch. 595, § 2, 49 Stat. 669.)

**EFFECTIVE DATE**

Section 5 of act August 21, 1935, cited to the text, provided that the act "shall become fully effective for all ocean and coastwise vessels on January 1, 1936, and for all on the Great Lakes, bays, sounds, harbors, rivers, and lakes other than the Great Lakes of the United States on January 1, 1937."

**Chapter 4.—NAVIGATION RULES FOR GREAT LAKES AND THEIR CONNECTING AND TRIBUTARY WATERS**

**PRELIMINARY**

**Sec.**

241. Adoption of rules for navigation of Great Lakes, etc.

242. "Sailing vessel", "steam vessel", and "under way" defined.

243. Special regulation by Secretary of Commerce and by Board of Supervising Inspectors.

244. Penalty for violation of provisions.

**RULES CONCERNING LIGHTS, ETC.**

251. Time for lights; prescribed lights exclusive; visible defined.

252. Lights of steam vessel under way.

253. Lights of steam vessel having a tow other than raft.

254. Lights of steam vessel having raft in tow.

255. Lights of sailing vessel under way and vessel in tow.

- Sec.  
 256. Lights of small tugs, boats on River St. Lawrence, ferryboats, rafts, and canal boats; regulations by Board of Supervising Inspectors.  
 257. Lights of small vessels under way in bad weather.  
 258. Lights of vessel at anchor.  
 259. Lights of produce boats, canal boats, etc., navigating by hand or horsepower or by sail or by current, or at anchor.  
 260. Lights of open boat.  
 261. Use of torch by sailing vessel on approach of steamer.  
 262. Suspension of lights by vessel of war or Coast Guard vessels.

#### SOUND SIGNALS FOR FOG, ETC.; SPEED

271. Sound signals in fog, etc., of steam and sailing vessels under way, at anchor or aground.  
 272. Speed in fog, etc.

#### STEERING AND SAILING RULES

281. Sailing vessels approaching one another.  
 282. Steam vessels meeting end on.  
 283. Steam vessels crossing.  
 284. Steam and sailing vessels meeting.  
 285. Vessel having right of way to keep course.  
 286. Duty of steam vessel to slacken speed.  
 287. Overtaking vessel to keep out of the way.  
 288. Whistle signals of steam vessel to indicate course.  
 289. Steam vessels meeting in narrow channels having current and certain rivers; right of way.  
 290. Steam vessels passing in narrow channels; slackening speed.  
 291. Dissent to or misunderstanding of signal given; duty to reduce speed.  
 292. Departure from rules to avert immediate danger.  
 293. Usual additional precautions required generally.

#### ORDERS

294. Orders to helmsman.

#### CROSS REFERENCE

Light and sounding signal devices on motor boats, and sailing and steering rules, relating thereto, see sections 513, 514, and 520 of Title 46, Shipping.

#### PRELIMINARY

- § 241. Adoption of rules for navigation of Great Lakes, etc.

The following rules for preventing collisions shall be followed in the navigation of all public and private vessels of the United States upon the Great Lakes and their connecting and tributary waters as far east as Montreal. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 645.)

#### CROSS REFERENCE

Motorboats exempt from carrying copies of pilot rules, see section 522 of Title 46, Shipping.

- § 242. "Sailing vessel," "steam vessel," and "under way" defined (Rule 1).

Every steam vessel which is under sail and not under steam, shall be considered a sail vessel; and every steam vessel which is under steam, whether under sail or not, shall be considered a steam vessel. The words "steam vessel" shall include any vessel propelled by machinery. A vessel is under way within the meaning of these rules when she is not at anchor or made fast to the shore or aground. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 645.)

- § 243. Special regulation by Secretary of Commerce and by Board of Supervising Inspectors.

The Secretary of Commerce of the United States shall have authority to establish all necessary regulations, not inconsistent with the provisions of sec-

tions 241-244, 251-262, 271, 272, 281-293, and 301 of this title, required to carry the same into effect.

The Board of Supervising Inspectors of the United States shall have authority to establish such regulations to be observed by all steam vessels in passing each other, not inconsistent with the provisions of such sections, as they shall from time to time deem necessary; and all regulations adopted by the said Board of Supervising Inspectors under the authority of such sections, when approved by the Secretary of Commerce, shall have the force of law. Two printed copies of any such regulations for passing, signed by them, shall be furnished to each steam vessel, and shall at all times be kept posted up in conspicuous places on board. (Feb. 8, 1895, ch. 64, § 3, 28 Stat. 649; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

- § 244. Penalty for violation of provisions.

A fine, not exceeding \$200, may be imposed for the violation of any of the provisions of sections 241-244, 251-262, 271, 272, 281-293, and 301 of this title. The vessel shall be liable for the said penalty, and may be seized and proceeded against, by way of libel, in the district court of the United States for any district within which such vessel may be found. (Feb. 8, 1895, ch. 64, § 2, 28 Stat. 649.)

#### RULES CONCERNING LIGHTS, ETC.

- § 251. Time for lights; prescribed lights exclusive; visible defined (Rule 2).

The lights mentioned in the following rules, and no others which may be mistaken for the prescribed lights, shall be exhibited in all weathers from sunset to sunrise. The word "visible" in these rules, when applied to lights, shall mean visible on a dark night with a clear atmosphere. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 645; May 17, 1928, ch. 600, 45 Stat. 592.)

- § 252. Lights of steam vessel under way (Rule 3).

Except in the cases hereinafter expressly provided for, a steam vessel when under way shall carry:

(a) On or in front of the foremast, or if a vessel without a foremast, then in the fore part of the vessel, at a height above the hull of not less than twenty feet, and if the beam of the vessel exceeds twenty feet, then at a height above the hull not less than such beam, so, however, that such height need not exceed forty feet, a bright white light so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side, and of such character as to be visible at a distance of at least five miles: *Provided, however*, That such vessels built to navigate the New York State Barge Canal or other similar canals where the bridges prevent them from carrying the headlight at the height prescribed herein, shall carry such headlight not less than twenty feet above the hull.

(b) On the starboard side, a green light, so constructed as to throw an unbroken light over an arc of the horizon of ten points of the compass, so fixed



as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least two miles.

(c) On the port side, a red light, so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side, and of such a character as to be visible at a distance of at least two miles.

(d) The said green and red lights shall be fitted with inboard screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

(e) A steamer of over one hundred and fifty feet register length shall carry also, when under way, a bright white light so fixed as to throw the light all around the horizon, and of such character as to be visible at a distance of at least three miles. Such light shall be placed in line with the keel at least fifteen feet higher from the deck and more than seventy-five feet abaft the light mentioned in subdivision (a); or in lieu thereof two such lights of the same character and height as herein described placed not over thirty inches apart horizontally, one on either side of the keel, and so arranged that one or the other or both shall be visible from any angle of approach. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 645; May 17, 1928, ch. 600, 45 Stat. 592; Feb. 28, 1929, ch. 370, 45 Stat. 1405; May 9, 1932, ch. 175, § 1, 47 Stat. 152.)

#### § 253. Lights of steam vessel having a tow other than raft (Rule 4).

A steam vessel having a tow other than a raft shall in addition to the forward bright light mentioned in subdivision (a) of rule 3 carry in a vertical line not less than six feet above or below that light a second bright light of the same construction and character and fixed and carried in the same manner as the forward bright light mentioned in said subdivision (a) of rule 3 of this chapter. Such steamer shall also carry a small bright light abaft the funnel or after mast for the tow to steer by, but such light shall not be visible forward of the beam. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 646.)

#### § 254. Lights of steam vessel having raft in tow (Rule 5).

A steam vessel having a raft in tow shall, instead of the forward lights mentioned in rule 4, carry on or in front of the foremast, or if a vessel without a foremast then in the fore part of the vessel, at a height above the hull of not less than twenty feet, and if the beam of the vessel exceeds twenty feet, then at a height above the hull not less than such beam, so however that such height need not exceed forty feet, two bright lights in a horizontal line athwartships and not less than eight feet apart, each so fixed as to throw the light all around the horizon and of such character as to be visible at a distance of at least five miles. Such steamer shall also carry the small bright steering light aft, of the character and fixed as required in rule 4 of this chapter. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 646.)

#### § 255. Lights of sailing vessel under way and vessel in tow (Rule 6).

A sailing vessel under way and any vessel being towed shall carry the side lights mentioned in rule 3 of this chapter.

A vessel in tow shall also carry a small bright light aft, but such light shall not be visible forward of the beam. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 646.)

#### § 256. Lights of small tugs, boats on River St. Lawrence, ferryboats, rafts, and canal boats; regulations by Board of Supervising Inspectors (Rule 7).

The lights for tugs under one hundred tons register (net), whose principal business is harbor towing, and for boats navigating only on the River Saint Lawrence, also ferryboats, rafts, and canal boats, shall be regulated by rules which have been or may hereafter be prescribed by the Board of Supervising Inspectors of Steam Vessels. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 646; May 17, 1928, ch. 601, §§ 1, 2, 45 Stat. 593.)

#### § 257. Lights of small vessels under way in bad weather (Rule 8).

Whenever, as in the case of small vessels under way during bad weather, the green and red side lights cannot be fixed, these lights shall be kept at hand lighted and ready for use, and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side, nor the red light on the starboard side, nor, if practicable, more than two points abaft the beam on their respective sides. To make the use of these portable lights more certain and easy, they shall each be painted outside with the color of the light they respectively contain, and shall be provided with suitable screens. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 646.)

#### § 258. Lights of vessel at anchor (Rule 9).

A vessel under one hundred and fifty feet register length, when at anchor, shall carry forward, where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light constructed so as to show a clear, uniform, and unbroken light visible all around the horizon at a distance of at least one mile: *Provided*, That the Secretary of War may, after investigation, by rule, regulation, or order designate such areas as he may deem proper as "special anchorage areas"; such special anchorage areas may from time to time be changed, or abolished, if after investigation the Secretary of War shall deem such change or abolition in the interest of navigation: *Provided further*, That vessels not more than sixty-five feet in length, when at anchor, in any such special anchorage area shall not be required to carry or exhibit the white light required by this article.

A vessel of one hundred and fifty feet or upward in register length, when at anchor, shall carry in the forward part of the vessel, two white lights at the same height of not less than twenty and not exceeding forty feet above the hull and not less than ten feet apart horizontally and athwartships, except that each need not be visible all around the horizon but so arranged that one or the other, or both, shall show

a clear, uniform, and unbroken light and be visible from any angle of approach at a distance of at least one mile; and at or near the stern of the vessel two similar lights, similarly arranged and at such a height that they shall not be less than fifteen feet lower than the forward lights. In addition the four anchor lights above specified, at least one white deck light shall be displayed in every interval of one hundred feet along the deck measuring from the forward lights, said deck lights to be not less than two feet above the deck and arranged, so far as intervening structures will permit, so as to be visible from any angle of approach. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 647; May 17, 1928, ch. 600, 45 Stat. 592; Apr. 22, 1940, ch. 128, § 2, 54 Stat. 150.)

<sup>1</sup> So in original. Probably should read "may".

§ 259. Lights of produce boats, canal boats, etc., navigating by hand or horsepower or by sail or by current, or at anchor (Rule 10).

Produce boats, canal boats, fishing boats, rafts, or other water craft navigating any bay, harbor, or river by hand power, horsepower, sail, or by the current of the river, or which shall be anchored or moored in or near the channel or fairway of any bay, harbor, or river, and not otherwise provided for in these rules, shall carry one or more good white lights, which shall be placed in such manner as shall be prescribed by the Board of Supervising Inspectors of Steam Vessels. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 647.)

§ 260. Lights of open boat (Rule 11).

Open boats shall not be obliged to carry the side lights required for other vessels, but shall, if they do not carry such lights, carry a lantern having a green slide on one side and a red slide on the other side; and on the approach of or to other vessels, such lantern shall be exhibited in sufficient time to prevent collision, and in such a manner that the green light shall not be seen on the port side, nor the red light on the starboard side. Open boats, when at anchor or stationary, shall exhibit a bright white light. They shall not, however, be prevented from using a flare-up in addition if considered expedient. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 647.)

§ 261. Use of torch by sailing vessel on approach of steamer (Rule 12).

Sailing vessels shall at all times, on the approach of any steamer during the nighttime, show a lighted torch upon that point or quarter to which such steamer shall be approaching. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 647.)

§ 262. Suspension of lights by vessel of war or Coast Guard vessels (Rule 13).

The exhibition of any light on board of a vessel of war or Coast Guard vessel of the United States may be suspended whenever, in the opinion of the Secretary of the Navy, the commander in chief of a squadron, or the commander of a vessel acting singly, the special character of the service may require it. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 647; Jan. 28, 1915, ch. 20, § 1, 38 Stat. 800.)

## SOUND SIGNALS FOR FOG, ETC.; SPEED

§ 271. Sound signals in fog, etc., of steam and sailing vessels under way, at anchor or aground (Rule 14).

A steam vessel shall be provided with an efficient whistle, sounded by steam or by some substitute for steam, placed before the funnel not less than eight feet from the deck, or in such other place as the local inspectors of steam vessels shall determine, and of such character as to be heard in ordinary weather at a distance of at least two miles, and with an efficient bell, and it is hereby made the duty of the United States local inspectors of steam vessels when inspecting the same to require each steamer to be furnished with such whistle and bell. A sailing vessel shall be provided with an efficient fog horn and with an efficient bell.

Whenever there is thick weather by reason of fog, mist, falling snow, heavy rainstorms, or other causes, whether by day or by night, fog signals shall be used as follows:

(a) A steam vessel under way, excepting only a steam vessel with raft in tow, shall sound at intervals of not more than one minute three distinct blasts of her whistle.

(b) Every vessel in tow of another vessel shall, at intervals of one minute, sound four bells on a good and efficient and properly placed bell as follows: By striking the bell twice in quick succession, followed by a little longer interval, and then again striking twice in quick succession (in the manner in which four bells is struck in indicating time).

(c) A steamer with a raft in tow shall sound at intervals of not more than one minute a screeching or Modoc whistle for from three to five seconds.

(d) A sailing vessel under way and not in tow shall sound at intervals of not more than one minute—

If on the starboard tack with wind forward of abeam, one blast of her fog horn;

If on the port tack with wind forward of the beam, two blasts of her fog horn;

If she has the wind abaft the beam on either side, three blasts of her fog horn.

(e) Any vessel at anchor and any vessel aground in or near a channel or fairway shall at intervals of not more than two minutes ring the bell rapidly for three to five seconds.

(f) Vessels of less than ten tons registered tonnage, not being steam vessels, shall not be obliged to give the above-mentioned signals, but if they do not they shall make some other efficient sound signal at intervals of not more than one minute.

(g) Produce boats, fishing boats, rafts, or other water craft navigating by hand power or by the current of the river, or anchored or moored in or near the channel or fairway and not in any port, and not otherwise provided for in these rules, shall sound a fog horn or equivalent signal, at intervals of not more than one minute. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 647.)

§ 272. Speed in fog, etc. (Rule 15).

Every vessel shall, in thick weather, by reason of fog, mist, falling snow, heavy rain storms, or other causes, go at moderate speed. A steam vessel hearing, apparently not more than four points from

right ahead, the fog signal of another vessel shall at once reduce her speed to bare steerageway, and navigate with caution until the vessels shall have passed each other. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 648.)

#### STEERING AND SAILING RULES

##### § 281. Sailing vessels approaching one another (Rule 16).

When two sailing vessels are approaching one another so as to involve risk of collision one of them shall keep out of the way of the other, as follows, namely:

(a) A vessel which is running free shall keep out of the way of a vessel which is close-hauled.

(b) A vessel which is close-hauled on the port tack shall keep out of the way of a vessel which is close-hauled on the starboard tack.

(c) When both are running free, with the wind on different sides, the vessel which has the wind on the port side shall keep out of the way of the other.

(d) When they are running free, with the wind on the same side, the vessel which is to windward shall keep out of the way of the vessel which is to leeward. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 648.)

##### § 282. Steam vessels meeting end on (Rule 17).

When two steam vessels are meeting end on, or nearly end on, so as to involve risk of collision each shall alter her course to starboard, so that each shall pass on the port side of the other. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 648.)

##### § 283. Steam vessels crossing (Rule 18).

When two steam vessels are crossing so as to involve risk of collision the vessel which has the other on her own starboard side shall keep out of the way of the other. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 648.)

##### § 284. Steam and sailing vessels meeting (Rule 19).

When a steam vessel and a sailing vessel are proceeding in such directions as to involve risk of collision the steam vessel shall keep out of the way of the sailing vessel. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 648.)

##### § 285. Vessel having right-of-way to keep course (Rule 20).

Where, by any of the rules in sections 241-244, 251-262, 271, 272, 281-293, and 301 of this title prescribed, one of two vessels shall keep out of the way, the other shall keep her course and speed. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 649.)

##### § 286. Duty of steam vessel to slacken speed (Rule 21).

Every steam vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 649.)

##### § 287. Overtaking vessel to keep out of the way (Rule 22).

Notwithstanding anything contained in these rules every vessel overtaking any other shall keep out

of the way of the overtaken vessel. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 649.)

##### § 288. Whistle signals of steam vessels to indicate course (Rule 23).

In all weathers every steam vessel under way in taking any course authorized or required by these rules shall indicate that course by the following signals on her whistle, to be accompanied whenever required by corresponding alteration of her helm; and every steam vessel receiving a signal from another shall promptly respond with the same signal or, as provided in rule 26 of this chapter:

One blast to mean, "I am directing my course to starboard."

Two blasts to mean, "I am directing my course to port." But the giving or answering signals by a vessel required to keep her course shall not vary the duties and obligations of the respective vessels. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 649.)

##### § 289. Steam vessels meeting in narrow channels having current and certain rivers; right-of-way (Rule 24).

In all narrow channels where there is a current, and in the rivers Saint Mary, Saint Clair, Detroit, Niagara, and Saint Lawrence, when two steamers are meeting, the descending steamer shall have the right-of-way, and shall, before the vessels shall have arrived within the distance of one-half mile of each other, give the signal necessary to indicate which side she elects to take. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 649.)

##### § 290. Steam vessels passing in narrow channels; slackening speed (Rule 25).

In all channels less than five hundred feet in width, no steam vessel shall pass another going in the same direction unless the steam vessel ahead be disabled or signify her willingness that the steam vessel astern shall pass, when the steam vessel astern may pass, subject, however, to the other rules applicable to such a situation. And when steam vessels proceeding in opposite directions are about to meet in such channels, both such vessels shall be slowed down to a moderate speed, according to the circumstances. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 649.)

##### § 291. Dissent to or misunderstanding of signal given; duty to reduce speed (Rule 26).

If the pilot of a steam vessel to which a passing signal is sounded deems it unsafe to accept and assent to said signal, he shall not sound a cross signal; but in that case, and in every case where the pilot of one steamer fails to understand the course or intention of an approaching steamer, whether from signals being given or answered erroneously, or from other causes, the pilot of such steamer so receiving the first passing signal, or the pilot so in doubt, shall sound several short and rapid blasts of the whistle; and if the vessels shall have approached within half a mile of each other both shall reduce their speed to bare steerageway, and, if necessary, stop and reverse. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 649.)

### § 292. Departure from rules to avert immediate danger (Rule 27).

In obeying and construing these rules due regard shall be had to all dangers of navigation and collision and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 649.)

### § 293. Usual additional precautions required generally (Rule 28).

Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of a neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case. (Feb. 8, 1895, ch. 64, § 1, 28 Stat. 649.)

## ORDERS

### § 294. Orders to helmsmen (Rule 29).

All orders to helmsmen shall be given as follows: "Right Rudder" to mean "Direct the vessel's head to starboard."

"Left Rudder" to mean "Direct the vessel's head to port." (Feb. 8, 1895, ch. 64, § 1, rule 29, as added Aug. 21, 1935, ch. 595, § 3, 49 Stat. 669.)

#### EFFECTIVE DATE

Section 5 of act August 21, 1935, cited to text, provided that the act "shall become fully effective for all ocean and coastwise vessels on January 1, 1936, and for all on the Great Lakes, bays, sounds, harbors, rivers, and lakes other than the Great Lakes of the United States on January 1, 1937."

## Chapter 5.—NAVIGATION RULES FOR RED RIVER OF THE NORTH AND RIVERS EMPTYING INTO GULF OF MEXICO AND TRIBUTARIES

### PRELIMINARY

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301. Adoption of rules.  
302. "Sail vessel" and "steam vessel" defined.  
303. Penalty for violation by vessel.

#### RULES CONCERNING LIGHTS

311. Time for lights; prescribed lights exclusive.  
312. Lights of ocean-going steamers and steamers carrying sail, when under way.  
313. Lights of steam vessels towing other vessels.  
314. Lights of steam vessels other than ocean-going steamers and steamers carrying sail.  
315. Lights of river steamers on waters flowing into Gulf of Mexico.  
316. Lights of steam vessels not otherwise provided for; ferryboats, barges, and canal boats.  
317. Lights of sailing vessels under way or in tow.  
318. Lights of small vessels in bad weather.  
319. Lights of vessels at anchor.  
320. Lights of sailing and steam pilot vessels.  
321. Lights of coal boats, produce boats, etc., navigating by hand power, horse power, or by current of river.  
322. Lights of open boats.  
323. Vessel of war or Coast Guard vessel; suspension of exhibition of lights.

#### SOUND SIGNALS FOR FOG, ETC.

331. Sound signals for fog, etc.; steamers, sailing vessels, and other water craft, at anchor or under way.

#### STEERING AND SAILING RULES

341. Suggestion for ascertainment of risk of collision.  
342. Sailing vessels approaching one another.

#### Sec.

343. Steam vessels meeting end on.  
344. Steam vessels crossing.  
345. Steam and sailing vessels meeting.  
346. Duty of steam vessel to slacken speed; fog.  
347. Overtaking vessel to keep out of the way.  
348. Vessel having right of way to keep course.  
349. Special circumstance requiring departure from rules.  
350. Overtaken sailing vessel to show light.  
351. Usual additional precautions required.

#### ORDERS

352. Orders to helmsmen.

#### CROSS REFERENCE

Lights and sound signal devices for motorboats, see sections 513 and 514 of Title 46, Shipping.

#### PRELIMINARY

### § 301. Adoption of rules.

The following rules for preventing collisions on the water, shall be followed in the navigation of vessels of the Navy and of the mercantile marine of the United States upon the Red River of the North and rivers emptying into the Gulf of Mexico and their tributaries.

Such rules and regulations pursuant to the provisions of sections 302, 311-323, 331, 341-351 of this title and section 381 of Title 46 are hereby declared special rules duly made by local authority relative to the navigation of harbors, rivers, and inland waters as provided for in section 131 of this title. (R. S. § 4233; Aug. 19, 1890, ch. 802, 26 Stat. 320; Feb. 8, 1895, ch. 64, 28 Stat. 645; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672; June 7, 1897, ch. 4, 30 Stat. 96.)

#### DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

#### CROSS REFERENCE

Motorboats exempt from carrying copies of pilot rules, see section 522 of Title 46, Shipping.

### § 302. "Sail vessel" and "steam vessel" defined (Rule 1).

Every steam vessel which is under sail and not under steam shall be considered a sail vessel; and every steam vessel which is under steam, whether under sail or not, shall be considered a steam vessel. The words steam vessel shall include any vessel propelled by machinery. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672; Mar. 3, 1905, ch. 1457, § 10, 33 Stat. 1032.)

#### DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

### § 303. Penalty for violation by vessel.

Collectors or other chief officers of the customs shall require all sail vessels navigating the Red River of the North and rivers emptying into the Gulf of Mexico, and their tributaries to be furnished with proper signal lights.

Every such vessel that shall be navigated without complying with the Statutes of the United States, or the regulations that may be lawfully made thereunder, shall be liable to a penalty of \$200, one-half to go to the informer; for which sum the vessel so navigated shall be liable, and may be seized and proceeded against by way of libel in any district court of the United States having jurisdiction of the offense. (Feb. 19, 1895, ch. 102, § 3, 28 Stat. 672.)

## RULES CONCERNING LIGHTS

## § 311. Time for lights; prescribed lights exclusive (Rule 2).

The lights mentioned in the following rules, and no others, shall be carried in all weathers, between sunset and sunrise. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## § 312. Lights of ocean-going steamers and steamers carrying sail, when under way (Rule 3).

All ocean-going steamers, and steamers carrying sail, shall, when under way, carry—

(a) At the foremast head, a bright white light, of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of twenty points of the compass, and so fixed as to throw the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side.

(b) On the starboard side, a green light, of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side.

(c) On the port side, a red light, of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the port side.

The green and red lights shall be fitted with in-board screens, projecting at least three feet forward from the lights, so as to prevent them from being seen across the bow. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## § 313. Lights of steam vessels towing other vessels (Rule 4).

Steam vessels, when towing other vessels, shall carry two bright white masthead lights vertically, in addition to their side lights, so as to distinguish them from other steam vessels. Each of these masthead lights shall be of the same character and construction as the masthead lights prescribed by Rule 3. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## § 314. Lights of steam vessels other than ocean-going steamers and steamers carrying sail (Rule 5).

All steam vessels, other than ocean-going steamers and steamers carrying sail, shall, when under way, carry on the starboard and port sides lights of the

same character and construction and in the same position as are prescribed for side lights by Rule 3, except in the case provided in Rule 6 of this chapter. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## § 315. Lights of river steamers on waters flowing into Gulf of Mexico (Rule 6).

River steamers navigating waters flowing into the Gulf of Mexico, and their tributaries, shall carry the following lights, namely: One red light on the outboard side of the port smoke pipe, and one green light on the outboard side of the starboard smoke pipe. Such lights shall show both forward and abeam on their respective sides. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## § 316. Lights of steam vessels not otherwise provided for; ferryboats, barges, and canal boats (Rule 7).

All steam vessels other than ferryboats and vessels otherwise expressly provided for, except those mentioned in Rule 6, section 315 of this title, shall carry the red and green lights, as prescribed for ocean-going steamers; and, in addition thereto, a central range of two white lights; the afterlight being carried at an elevation of at least fifteen feet above the light at the head of the vessel. The headlight shall be so constructed as to show a good light through twenty points of the compass, namely: from right ahead to two points abaft the beam on either side of the vessel; and the afterlight so as to show all around the horizon. The lights for ferryboats, barges, and canal boats when in tow of steam vessels, shall be regulated by such rules as the board of supervising inspectors of steam vessels shall prescribe. (R. S. § 4233; Mar. 3, 1893, ch. 202, 27 Stat. 557; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## § 317. Lights of sailing vessels under way or in tow (Rule 8).

Sail vessels, under way or being towed, shall carry the same lights as steam vessels under way, with the exception of the white masthead lights, which they shall never carry. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## § 318. Lights of small vessels in bad weather (Rule 9).

Whenever, as in case of small vessels during bad weather, the green and red lights can not be fixed, these lights shall be kept on deck, on their respective sides of the vessel, ready for instant exhibition, and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side, nor the red light on the starboard side. To make the use of these portable lights more certain and easy, they shall each be painted outside with the color of the light they respectively

contain, and shall be provided with suitable screens. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## § 319. Lights of vessels at anchor (Rule 10).

All vessels, whether steam vessels or sail vessels, when at anchor in roadsteads or fairways, shall, between sunset and sunrise, exhibit where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light in a globular lantern of eight inches in diameter, and so constructed as to show a clear, uniform, and unbroken light, visible all around the horizon, and at a distance of at least one mile: *Provided*, That the Secretary of War may, after investigation, rule, regulation, or order, designate such areas as he may deem proper as "special anchorage areas"; such special anchorage areas may from time to time be changed, or abolished, if after investigation the Secretary of War shall deem such change or abolition in the interest of navigation: *Provided further*, That vessels not more than sixty-five feet in length when at anchor in any such special anchorage area shall not be required to carry or exhibit the white light required by this article.<sup>1</sup> (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672; Apr. 22, 1940, ch. 128, § 3, 54 Stat. 151.)

<sup>1</sup> So in original. Probably should read "rule." R. S. § 4233 captioned as "rules" those divisions of act Apr. 29, 1864, ch. 69, 13 Stat. 58, originally entitled "articles".

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## § 320. Lights of sailing and steam pilot vessels (Rule 11).

Sailing pilot vessels shall not carry the lights required for other sailing vessels, but shall carry a white light at the masthead, visible all around the horizon, and shall also exhibit a flare-up light every fifteen minutes.

Steam pilot boats shall, in addition to the masthead light and green and red side lights required for ocean steam vessels, carry a red light hung vertically from three to five feet above the foremost headlight, for the purpose of distinguishing such steam pilot boats from other steam vessels. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672; Mar. 3, 1897, ch. 389, § 5, 29 Stat. 689.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## § 321. Lights of coal boats, produce boats, etc., navigating by hand power, horsepower, or by current of river (Rule 12).

Coal boats, trading boats, produce boats, canal boats, oyster boats, fishing boats, rafts, or other water craft, navigating any bay, harbor, or river, by hand power, horsepower, sail, or by the current of the river, or which shall be anchored or moored in or near the channel or fairway of any bay, harbor, or river, shall carry one or more good white lights, which shall be placed in such manner as shall be prescribed by the board of supervising inspectors of steam vessels. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## § 322. Lights of open boats (Rule 13).

Open boats shall not be required to carry the side lights required for other vessels, but shall, if they do not carry such lights, carry a lantern having a green slide on one side and a red slide on the other side; and, on the approach of or to other vessels, such lantern shall be exhibited in sufficient time to prevent collision, and in such a manner that the green light shall not be seen on the port side, nor the red light on the starboard side. Open boats, when at anchor or stationary, shall exhibit a bright white light. They shall not, however, be prevented from using a flare-up, in addition, if considered expedient. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## § 323. Vessel of war or Coast Guard vessel; suspension of exhibition of lights (Rule 14).

The exhibition of any light on board of a vessel of war of the United States may be suspended whenever, in the opinion of the Secretary of the Navy, the commander in chief of a squadron, or the commander of a vessel acting singly, the special character of the service may require it. The exhibition of any light on board of a Coast Guard vessel of the United States may be suspended whenever, in the opinion of the commander of the vessel, the special character of the service may require it. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672; Mar. 3, 1897, ch. 389, § 12, 29 Stat. 690.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## SOUND SIGNALS FOR FOG, ETC.

## § 331. Sound signals for fog, etc.; steamers, sailing vessels, and other water craft, at anchor or under way (Rule 15).

Whenever there is a fog, or thick weather, whether by day or night, fog signals shall be used as follows: (a) Steam vessels under way shall sound a steam whistle placed before the funnel, not less than eight feet from the deck, at intervals of not more than one minute. Steam vessels, when towing, shall sound three blasts of quick succession repeated at intervals of not more than one minute.

(b) Sail vessels under way shall sound a foghorn at intervals of not more than one minute.

(c) Steam vessels and sail vessels, when not under way, shall sound a bell at intervals of not more than two minutes.

(d) Coal boats, trading boats, produce boats, canal boats, oyster boats, fishing boats, rafts, or other water craft, navigating any bay, harbor, or river, by hand power, horsepower, sail, or by the current of the river, or anchored or moored in or near the channel or fairway of any bay, harbor, or river, and not in any port, shall sound a foghorn, or equivalent signal, which shall make a sound equal to a steam whistle, at intervals of not more than two minutes. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672; Mar. 3, 1897, ch. 389, § 12, 29 Stat. 690.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## STEERING AND SAILING RULES

## § 341. Suggestion for ascertainment of risk of collision (Rule 16).

Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change such risk should be deemed to exist. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672; Mar. 3, 1897, ch. 389, § 12, 29 Stat. 690.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## § 342. Sailing vessels approaching one another (Rule 17).

When two sailing vessels are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other, as follows, namely:

(a) A vessel which is running free shall keep out of the way of a vessel which is close-hauled.

(b) A vessel which is close-hauled on the port tack shall keep out of the way of a vessel which is close-hauled on the starboard tack.

(c) When both are running free, with the wind on different sides, the vessel which has the wind on the port side shall keep out of the way of the other.

(d) When both vessels are running free, with the wind on the same side, the vessel which is to the windward shall keep out of the way of the vessel which is to the leeward.

(e) A vessel which has the wind aft shall keep out of the way of the other vessel. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672; Mar. 3, 1897, ch. 389, § 12, 29 Stat. 690.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## § 343. Steam vessels meeting end on (Rule 18).

If two vessels under steam are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## § 344. Steam vessels crossing (Rule 19).

If two vessels under steam are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## § 345. Steam and sailing vessels meeting (Rule 20).

If two vessels, one of which is a sail vessel and the other a steam vessel, are proceeding in such directions as to involve risk of collision, the steam vessel shall keep out of the way of the sail vessel. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## § 346. Duty of steam vessel to slacken speed; fog (Rule 21).

Every steam vessel, when approaching another vessel, so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steam vessel shall, when in a fog, go at a moderate speed. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## § 347. Overtaking vessel to keep out of the way (Rule 22).

Every vessel overtaking any other vessel shall keep out of the way of the last-mentioned vessel. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## § 348. Vessel having right-of-way to keep course (Rule 23).

Where, by Rules 17, 19, 20, and 22 of this chapter, one of two vessels shall keep out of the way, the other shall keep her course, subject to the qualifications of rule 24. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## § 349. Special circumstance requiring departure from rules (Rule 24).

In construing and obeying these rules, due regard must be had to all dangers of navigation, and to any special circumstances which may exist in any particular case rendering a departure from them necessary in order to avoid immediate danger. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## § 350. Overtaken sailing vessel to show light (Rule 25).

A sail vessel which is being overtaken by another vessel during the night shall show from her stern to such last-mentioned vessel a torch or a flare-up light. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672; Mar. 3, 1897, ch. 389, § 13, 29 Stat. 690.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## § 351. Usual additional precautions required (Rule 26).

Nothing in these rules shall exonerate any ship, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen or by the special circumstances of the case. (R. S. § 4233; Feb. 19, 1895, ch. 102, § 1, 28 Stat. 672; Mar. 3, 1897, ch. 389, § 13, 29 Stat. 690.)

## DERIVATION

Act Apr. 29, 1864, ch. 69, 13 Stat. 58.

## ORDERS

## § 352. Orders to helmsmen (Rule 27).

All orders to helmsmen shall be given as follows: "Right Rudder" to mean "Direct the vessel's head to starboard."



"Left Rudder" to mean "Direct the vessel's head to port." (Feb. 19, 1895, ch. 102, § 1, Rule 27, as added Aug. 21, 1935, ch. 595, § 4, 49 Stat. 669.)

#### EFFECTIVE DATE

Section 5 of act August 21, 1935, cited to the text, provided that the act "shall become fully effective for all ocean and coastwise vessels on January 1, 1936, and for all on the Great Lakes, bays, sounds, harbors, rivers, and lakes other than the Great Lakes of the United States on January 1, 1937."

### Chapter 6.—GENERAL DUTIES OF SHIP OFFICERS AND OWNERS AFTER COLLISION OR OTHER ACCIDENT

#### Sec.

- 361. Reports of accidents generally; penalty.
- 362. Report of probable loss of vessel; penalty.
- 363. Transmission by collectors of customs of reports to Secretary of Commerce.
- 364. Remission and recovery of penalties.
- 365. Reports by owners, etc., of barges in tow.
- 366. Reports by Secretary of Commerce to Congress.
- 367. Duty of master of vessel in collision to give aid, name of his vessel, etc.
- 368. Penalty for failure to give aid, etc.

#### § 361. Reports of accidents generally; penalty.

Whenever any vessel of the United States has sustained or caused any accident involving the loss of life, the material loss of property, or any serious injury to any person, or has received any material damage affecting her seaworthiness or her efficiency, the managing owner, agent, or master of such vessel, shall within five days after the happening of such accident or damage, or as soon thereafter as possible, send, by letter to the collector of customs of the district wherein such vessel belongs or of that within which such accident or damage occurred, a report thereof, signed by such owner, agent, or master, stating the name and official number (if any) of the vessel, the port to which she belongs, the place where she was, the nature and probable occasion of the casualty, the number and names of those lost, and the estimated amount of loss or damage to the vessel or cargo; and shall furnish, upon the request of either of such collectors of customs, such other information concerning the vessel, her cargo, and the casualty as may be called for; and if he neglect or refuse to comply with the foregoing requirements after a reasonable time, he shall incur a penalty of \$100. (June 20, 1874, ch. 344, § 10, 18 Stat. 128.)

#### § 362. Report of probable loss of vessel; penalty.

Whenever the managing owner or agent of any vessel of the United States has reason, owing to the nonappearance of such vessel, or to any other circumstance, to apprehend that such vessel has been lost, he shall, as soon as conveniently may be, send notice, in writing, to the collector of customs of the port to which said vessel belonged, of such loss, and the probable occasion thereof stating the name and the official number (if any) of the vessel, and the names of all persons on board, so far as the same can be ascertained, and shall furnish, upon request of the collector of such port, such additional information as he may be able; and if he neglect to comply with the above requirements within a reasonable time, he shall incur a penalty of \$100. (June 20, 1874, ch. 344, § 11, 18 Stat. 128.)

#### Transmission by collectors of customs of reports to Secretary of Commerce.

It shall be the duty of the collectors of customs to immediately transmit to the Secretary of Commerce such reports and information as they may receive under the provisions of the two preceding sections, and they shall also report to the Secretary of Commerce any neglect or refusal on the part of the managing owner, agent, or master of any vessel of the United States to comply with the requirements thereof. (June 20, 1874, ch. 344, § 12, 18 Stat. 128; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829.)

#### 4. Remission and recovery of penalties.

The Secretary of Commerce may, upon application therefor, remit or mitigate any penalty provided for in section 361 of this title, or discontinue any prosecution to recover the same, upon such terms as he, in his discretion, shall think proper, and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as he may think proper. All penalties provided in section 361 of this title may be sued for, prosecuted, recovered, and disposed of in the manner prescribed by section 396 of this title. (June 20, 1874, ch. 344, § 13, 18 Stat. 128; Mar. 3, 1897, ch. 389, § 11, 29 Stat. 690; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

#### § 365. Reports by owners, etc., of barges in tow.

The owner, agent, or master of every barge which, while in tow through the open sea, has sustained or caused any accident, shall be subject in all respects to the provisions of sections 361, 362, 363 and 364 of this title, and the reports therein prescribed shall be transmitted by collectors of customs to the Secretary of Commerce. (Mar. 4, 1915, ch. 153, § 15, 38 Stat. 1184.)

#### § 366. Reports by Secretary of Commerce to Congress.

The Secretary of Commerce shall transmit annually to Congress a summary of the reports, transmitted to him by the collectors of customs as required in sections 361-365 of this title during the previous fiscal year, together with a brief statement of the action of the department in respect to such accidents. (Mar. 4, 1915, ch. 153, § 15, 38 Stat. 1184.)

#### § 367. Duty of master of vessel in collision to give aid, name of his vessel, etc.

In every case of collision between two vessels it shall be the duty of the master or person in charge of each vessel, if and so far as he can do so without serious danger to his own vessel, crew, and passengers (if any), to stay by the other vessel until he has ascertained that she has no need of further assistance, and to render to the other vessel, her master, crew, and passengers (if any) such assistance as may be practicable and as may be necessary in order to save them from any danger caused by the collision, and also to give to the master or person in charge of the other vessel the name of his own vessel and her port of registry, or the port or place to which she belongs, and also the name of the ports and places from which and to which she is bound. If he fails so to do, and no reasonable cause for such

failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default. (Sept. 4, 1890, ch. 875, § 1, 26 Stat. 425.)

#### § 368. Penalty for failure to give aid, etc.

Every master or person in charge of a United States vessel who fails, without reasonable cause, to render such assistance or give such information as required in the preceding section shall be deemed guilty of a misdemeanor, and shall be liable to a penalty of \$1,000, or imprisonment for a term not exceeding two years; and for the above sum the vessel shall be liable and may be seized and proceeded against by process in any district court of the United States by any person; one-half such sum to be payable to the informer and the other half to the United States. (Sept. 4, 1890, ch. 875, § 2, 26 Stat. 425.)

#### CROSS REFERENCE

Offense punishable by imprisonment for term in excess of one year deemed a felony, see section 541 of Title 18, Criminal Code and Criminal Procedure.

### Chapter 7.—REGULATIONS FOR THE SUPPRESSION OF PIRACY

#### Sec.

- 381. Use of public vessels to suppress piracy.
- 382. Seizure of piratical vessels generally.
- 383. Resistance of pirates by merchant vessels.
- 384. Condemnation of piratical vessels.
- 385. Seizure and condemnation of vessels fitted out for piracy.
- 386. Commissioning private vessels for seizure of piratical vessels.
- 387. Duties of officers of customs and marshals as to seizure.

#### CROSS REFERENCE

Piracy and other offenses on the high seas, see section 481, et seq., of Title 18, Criminal Code and Criminal Procedure.

#### § 381. Use of public vessels to suppress piracy.

The President is authorized to employ so many of the public armed vessels as in his judgment the service may require, with suitable instructions to the commanders thereof, in protecting the merchant vessels of the United States and their crews from piratical aggressions and depredations. (R. S. § 4293.)

#### DERIVATION

Acts Mar. 3, 1819, ch. 77, § 1, 3 Stat. 510; Jan. 30, 1823, ch. 7, 3 Stat. 721.

#### § 382. Seizure of piratical vessels generally.

The President is authorized to instruct the commanders of the public armed vessels of the United States to subdue, seize, take, and send into any port of the United States, any armed vessel or boat, or any vessel or boat, the crew whereof shall be armed, and which shall have attempted or committed any piratical aggression, search, restraint, depredation, or seizure, upon any vessel of the United States, or of the citizens thereof, or upon any other vessel; and also to retake any vessel of the United States, or its citizens, which may have been unlawfully captured upon the high seas. (R. S. § 4294.)

#### DERIVATION

Acts Mar. 3, 1819, ch. 77, § 2, 3 Stat. 512; Jan. 30, 1823, ch. 7, 3 Stat. 721.

#### § 383. Resistance of pirates by merchant vessels.

The commander and crew of any merchant vessel of the United States, owned wholly, or in part, by a citizen thereof, may oppose and defend against any aggression, search, restraint, depredation, or seizure, which shall be attempted upon such vessel, or upon any other vessel so owned, by the commander or crew of any armed vessel whatsoever, not being a public armed vessel of some nation in amity with the United States, and may subdue and capture the same; and may also retake any vessel so owned which may have been captured by the commander or crew of any such armed vessel, and send the same into any port of the United States. (R. S. § 4295.)

#### DERIVATION

Acts Mar. 3, 1819, ch. 77, § 3, 3 Stat. 513; Jan. 30, 1823, ch. 7, 3 Stat. 721.

#### § 384. Condemnation of piratical vessels.

Whenever any vessel, which shall have been built, purchased, fitted out in whole or in part, or held for the purpose of being employed in the commission of any piratical aggression, search, restraint, depredation, or seizure, or in the commission of any other act of piracy as defined by the law of nations, or from which any piratical aggression, search, restraint, depredation, or seizure shall have been first attempted or made, is captured and brought into or captured in any port of the United States, the same shall be adjudged and condemned to their use, and that of the captors after due process and trial in any court having admiralty jurisdiction, and which shall be holden for the district into which such captured vessel shall be brought; and the same court shall thereupon order a sale and distribution thereof accordingly, and at its discretion. (R. S. § 4296.)

#### DERIVATION

Acts Mar. 3, 1819, ch. 77, § 4, 3 Stat. 513; Jan. 30, 1823, ch. 7, 3 Stat. 721; Aug. 5, 1861, ch. 48, § 1, 12 Stat. 314.

#### § 385. Seizure and condemnation of vessels fitted out for piracy.

Any vessel built, purchased, fitted out in whole or in part, or held for the purpose of being employed in the commission of any piratical aggression, search, restraint, depredation, or seizure, or in the commission of any other act of piracy, as defined by the law of nations, shall be liable to be captured and brought into any port of the United States if found upon the high seas, or to be seized if found in any port or place within the United States, whether the same shall have actually sailed upon any piratical expedition or not, and whether any act of piracy shall have been committed or attempted upon or from such vessel or not; and any such vessel may be adjudged and condemned, if captured by a vessel authorized as in the following section mentioned, to the use of the United States, and to that of the captors, and if seized by a collector, surveyor, or marshal, then to the use of the United States. (R. S. § 4297.)

#### DERIVATION

Act Aug. 5, 1861, ch. 48, § 1, 12 Stat. 314.

**§ 386. Commissioning private vessels for seizure of piratical vessels.**

The President is authorized to instruct the commanders of the public-armed vessels of the United States, and to authorize the commanders of any other armed vessels sailing under the authority of any letters of marque and reprisal granted by Congress, or the commanders of any other suitable vessels, to subdue, seize, take, and, if on the high seas, to send into any port of the United States, any vessel or boat built, purchased, fitted out, or held as mentioned in section 385 of this title. (R. S. § 4298.)

**DERIVATION**

Act Aug. 5, 1861, ch. 48, § 2, 12 Stat. 315.

**§ 387. Duties of officers of customs and marshals as to seizure.**

The collectors of the several ports of entry, the surveyors of the several ports of delivery, and the marshals of the several judicial districts within the United States, shall seize any vessel or boat built, purchased, fitted out, or held as mentioned in section 385 of this title, which may be found within their respective ports or districts, and to cause the same to be proceeded against and disposed of as provided by that section. (R. S. § 4299.)

**DERIVATION**

Act Aug. 5, 1861, ch. 48, § 3, 12 Stat. 315.

**CROSS REFERENCES**

Offices of surveyors of customs abolished except in port of New York, see section 5a of Title 19, Customs Duties.

Reorganization of customs service, see section 1 of Title 19, Customs Duties.

**Chapter 8.—SUMMARY TRIALS FOR CERTAIN OFFENSES AGAINST NAVIGATION LAWS**

**Sec.**

- 391. Summary trials authorized.
- 392. Complaint and answer; jury trial.
- 393. Amendments of complaint and adjournments.
- 394. Challenge to jurors.
- 395. Limit of sentence.
- 396. Recovery of penalties and forfeitures generally.

**§ 391. Summary trials authorized.**

Whenever a complaint shall be made against any master, officer, or seaman of any vessel belonging, in whole or in part, to any citizen of the United States, of the commission of any offense, not capital or otherwise infamous, against any law of the United States made for the protection of persons or property engaged in commerce or navigation, it shall be the duty of the district attorney to investigate the same, and the general nature thereof, and if, in his opinion, the case is such as should be summarily tried, he shall report the same to the district judge, and the judge shall forthwith, or as soon as the ordinary business of the court will permit, proceed to try the cause, and for that purpose may, if necessary, hold a special session of the court, either in term time or vacation. (R. S. § 4300.)

**DERIVATION**

Act June 11, 1864, ch. 121, § 2, 13 Stat. 124.

**§ 392. Complaint and answer; jury trial.**

At the summary trial of offenses against the laws for the protection of persons or property engaged in commerce or navigation, it shall not be necessary

that the accused shall have been previously indicted, but a statement of complaint, verified by oath in writing, shall be presented to the court, setting out the offense in such manner as clearly to apprise the accused of the character of the offense complained of, and to enable him to answer the complaint. The complaint or statement shall be read to the accused, who may plead to or answer the same, or make a counterstatement. The trial shall thereupon be proceeded with in a summary manner, and the case shall be decided by the court, unless, at the time for pleading or answering, the accused shall demand a jury, in which case the trial shall be upon the complaint and plea of not guilty. (R. S. § 4301.)

**DERIVATION**

Act June 11, 1864, ch. 121, §§ 3, 4, 13 Stat. 125.

**§ 393. Amendments of complaint and adjournments.**

It shall be lawful for the court to allow the district attorney to amend his statement of complaint at any stage of the proceedings, before verdict, if, in the opinion of the court, such amendment will work no injustice to the accused; and if it appears to the court that the accused is unprepared to meet the charge as amended, and that an adjournment of the cause will promote the ends of justice, such adjournment shall be made, until a further day, to be fixed by the court. (R. S. § 4302.)

**DERIVATION**

Act June 11, 1864, ch. 121, § 6, 13 Stat. 125.

**§ 394. Challenge to jurors.**

At the trial in summary cases, if by jury, the United States and the accused shall each be entitled to three peremptory challenges. Challenges for cause, in such cases, shall be tried by the court without the aid of triers. (R. S. § 4303.)

**DERIVATION**

Act June 11, 1864, ch. 121, § 7, 13 Stat. 125.

**§ 395. Limit of sentence.**

It shall not be lawful for the court to sentence any person convicted in such trial to any greater punishment than imprisonment in jail for one year, or to a fine exceeding \$500, or both, in its discretion, in those cases where the laws of the United States authorize such imprisonment and fine. (R. S. § 4304.)

**DERIVATION**

Act June 11, 1864, ch. 121, § 5, 13 Stat. 125.

**§ 396. Recovery of penalties and forfeitures generally.**

All the penalties and forfeitures which may be incurred for offenses against this title<sup>1</sup> may be sued for, prosecuted, and recovered in such court, and be disposed of in such manner, as any penalties and forfeitures which may be incurred for offenses against the laws relating to the collection of duties, except when otherwise expressly prescribed. (R. S. § 4305.)

<sup>1</sup> Sections 302, 311-323, 331, 341-351, 381-387, 391-396 of this title and sections 11, 14-17, 19-46, 50, 54-62, 71, 72, 74-77, 81, 91-94, 96-103, 105, 106, 109, 113, 121, 122, 125, 126, 128, 129, 135, 141, 172-175, 181-188, 201-203, 211-213, 227 of Title 46, Shipping.

**DERIVATION**

Act Dec. 31, 1792, ch. 1, § 29, 1 Stat. 298.

## Chapter 9.—PROTECTION OF NAVIGABLE WATERS AND OF HARBOR AND RIVER IMPROVEMENTS GENERALLY

### IN GENERAL

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### NEW YORK HARBOR AND ADJACENT WATERS

441. Deposit of refuse in New York Harbor and adjacent waters prohibited; penalty.  
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 443. Permit for dumping; penalty for taking or towing boat or scow without permit.  
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 454. Consent of Congress to obstruction of waters by New York City.

### POTOMAC RIVER AND TRIBUTARIES IN DISTRICT OF COLUMBIA

- 461-464. District of Columbia waters.

### NAVIGABLE WATERS OF MARYLAND

465. Authority to dredge; riparian rights of United States.

### IN GENERAL

- § 401. Construction of bridges, causeways, dams or dikes generally.

It shall not be lawful to construct or commence the construction of any bridge, dam, dike, or causeway over or in any port, roadstead, haven, harbor, canal, navigable river, or other navigable water of the United States until the consent of Congress to the building of such structures shall have been obtained and until the plans for the same shall have been submitted to and approved by the Chief of Engineers and by the Secretary of War: *Provided*, That such structures may be built under authority of the legislature of a State across rivers and other waterways the navigable portions of which lie wholly within the limits of a single State, provided the location and plans thereof are submitted to and approved by the Chief of Engineers and by the Secretary of War before construction is commenced: *And provided further*, That when plans for any bridge or other structure have been approved by the Chief of Engineers and by the Secretary of War, it shall not be lawful to deviate from such plans either before or after completion of the structure unless the modification of said plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War. (Mar. 3, 1899, ch. 425, § 9, 30 Stat. 1151.)

### CROSS REFERENCES

Portion of west arm of South Fork of the South Branch of Chicago River in city of Chicago not to be subject to this section, see section 27 of this title.

Virgin Islands, application of this section to, see section 1399 of Title 48, Territories and Insular Possessions.

- § 402. Construction of bridges, etc., over Illinois and Mississippi Canal.

The provisions of section 401 of this title are hereby made applicable alike to the completed and uncom-

pleted portions of the Illinois and Mississippi Canal. Whenever the Secretary of War shall approve plans for a bridge to be built across said canal he may, in his discretion, and subject to such terms and conditions as in his judgment are equitable, expedient, and just to the public, grant to the person or corporation building and owning such bridge a right of way across the lands of the United States on either side of and adjacent to the said canal; also the privilege of occupying so much of said lands as may be necessary for the piers, abutments, and other portions of the bridge structure and approaches. (June 13, 1902, ch. 1079, § 10, 32 Stat. 374.)

**§ 403. Obstruction of navigable waters generally; wharves; piers, etc.; excavations and filling in.**

The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is hereby prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of War; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same. (Mar. 3, 1899, ch. 425, § 10, 30 Stat. 1151.)

**CROSS REFERENCE**

Virgin Islands, application of this section to, see section 1399 of Title 48, Territories and Insular Possessions.

**§ 404. Establishment of harbor lines; conditions to grants for extension of piers, etc.**

Where it is made manifest to the Secretary of War that the establishment of harbor lines is essential to the preservation and protection of harbors he may, and is hereby, authorized to cause such lines to be established, beyond which no piers, wharves, bulkheads, or other works shall be extended or deposits made, except under such regulations as may be prescribed from time to time by him: *Provided*, That whenever the Secretary of War grants to any person or persons permission to extend piers, wharves, bulkheads, or other works, or to make deposits in any tidal harbor or river of the United States beyond any harbor lines established under authority of the United States, he shall cause to be ascertained the amount of tidewater displaced by any such structure or by any such deposits, and he shall, if he deem it necessary, require the parties to whom the permission is given to make compensation for such displacement either by excavating in some part of the harbor, including tidewater channels between high and low water mark, to such an extent as to create a basin for as much tidewater as may be displaced by such structure or by such deposits, or in any other mode

that may be satisfactory to him. (Mar. 3, 1899, ch. 425, § 11, 30 Stat. 1151.)

**CROSS REFERENCE**

Virgin Islands, application of this section to, see section 1399 of Title 48, Territories and Insular Possessions.

**§ 405. Establishment and modification of harbor lines on Potomac and Anacostia Rivers.**

The provisions of section 404 of this title are made applicable to the Potomac and Anacostia Rivers, and after July 25, 1912, harbor lines in the District of Columbia, or elsewhere on said rivers, shall be established or modified as therein provided. (July 25, 1912, ch. 253, § 1, 37 Stat. 206.)

**§ 406. Penalty for wrongful construction of bridges, piers, etc.; removal of structures.**

Every person and every corporation that shall violate any of the provisions of sections 401, 403, and 404 of this title or any rule or regulation made by the Secretary of War in pursuance of the provisions of said section 404, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding \$2,500 nor less than \$500, or by imprisonment (in the case of a natural person) not exceeding one year, or by both such punishments, in the discretion of the court. And further, the removal of any structures or parts of structures erected in violation of the provisions of the said sections may be enforced by the injunction of any district court exercising jurisdiction in any district in which such structures may exist, and proper proceedings to this end may be instituted under the direction of the Attorney General of the United States. (Mar. 3, 1899, ch. 425, § 12, 30 Stat. 1151; Feb. 20, 1900, ch. 23, § 2, 31 Stat. 32; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

**CROSS REFERENCE**

Virgin Islands, application of this section to, see section 1399 of Title 48, Territories and Insular Possessions.

**§ 407. Deposit of refuse in navigable waters generally.**

It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water; and it shall not be lawful to deposit, or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water, or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed: *Provided*, That nothing herein contained shall extend to, apply to, or prohibit the operations in connection with the improvement of navigable waters or construction of public works, considered necessary and proper by the United States officers

supervising such improvement or public work: *And provided further*, That the Secretary of War, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material; and whenever any permit is so granted the conditions thereof shall be strictly complied with, and any violation thereof shall be unlawful. (Mar. 3, 1899, ch. 425, § 13, 30 Stat. 1152.)

CROSS REFERENCES

Regulation of transportation and dumping of dredgings, earth, garbage and other refuse material, see section 419 of this title.

Virgin Islands, application of this section to, see section 1399 of Title 48, Territories and Insular Possessions.

§ 407a. Deposit of debris of mines and stamp works.

In places where harbor-lines have not been established, and where deposits of debris of mines or stamp works can be made without injury to navigation, within lines to be established by the Secretary of War, said officer may, and is hereby authorized to, cause such lines to be established; and within such lines such deposits may be made, under regulations to be from time to time prescribed by him. (Aug. 5, 1886, ch. 929, § 2, 24 Stat. 329.)

CROSS REFERENCE

Permission by Secretary of War for deposit of refuse matter within limits to be defined and under conditions to be prescribed by him, see section 407 of this title.

§ 408. Taking possession of, use of, or injury to harbor or river improvements.

It shall not be lawful for any person or persons to take possession of or make use of for any purpose, or build upon, alter, deface, destroy, move, injure, obstruct by fastening vessels thereto or otherwise, or in any manner whatever impair the usefulness of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States, or any piece of plant, floating or otherwise, used in the construction of such work under the control of the United States, in whole or in part, for the preservation and improvement of any of its navigable waters or to prevent floods, or as boundary marks, tide gauges, surveying stations, buoys, or other established marks, nor remove for ballast or other purposes any stone or other material composing such works: *Provided*, That the Secretary of War may, on the recommendation of the Chief of Engineers, grant permission for the temporary occupation or use of any of the aforementioned public works when in his judgment such occupation or use will not be injurious to the public interest. (Mar. 3, 1899, ch. 425, § 14, 30 Stat. 1152.)

CROSS REFERENCE

Virgin Islands, application of this section to, see section 1399 of Title 48, Territories and Insular Possessions.

§ 409. Obstruction of navigable waters by vessels; floating timber; marking and removal of sunken vessels.

It shall not be lawful to tie up or anchor vessels or other craft in navigable channels in such a man-

ner as to prevent or obstruct the passage of other vessels or craft; or to voluntarily or carelessly sink, or permit or cause to be sunk, vessels or other craft in navigable channels; or to float loose timber and logs, or to float what is known as "sack rafts of timber and logs" in streams or channels actually navigated by steamboats in such manner as to obstruct, impede, or endanger navigation. And whenever a vessel, raft, or other craft is wrecked and sunk in a navigable channel, accidentally or otherwise, it shall be the duty of the owner of such sunken craft to immediately mark it with a buoy or beacon during the day and a lighted lantern at night, and to maintain such marks until the sunken craft is removed or abandoned, and the neglect or failure of the said owner so to do shall be unlawful; and it shall be the duty of the owner of such sunken craft to commence the immediate removal of the same, and prosecute such removal diligently, and failure to do so shall be considered as an abandonment of such craft, and subject the same to removal by the United States as provided for in sections 411-416, 418, and 502 of this title. (Mar. 3, 1899, ch. 425, § 15, 30 Stat. 1152.)

CROSS REFERENCE

Virgin Islands, application of this section to, see section 1399 of Title 48, Territories and Insular Possessions.

§ 410. Exception as to floating loose timber, sack rafts, etc.; violation of regulations; penalty.

The prohibition contained in section 409 of this title against floating loose timber and logs, or sack rafts, so called, of timber and logs in streams or channels actually navigated by steamboats, shall not apply to any navigable river or waterway of the United States or any part thereof whereon the floating of loose timber and logs and sack rafts of timber and logs is the principal method of navigation. But such method of navigation on such river or waterway or part thereof shall be subject to the rules and regulations prescribed by the Secretary of War as hereinafter in this section provided.

The Secretary of War shall have power, and he is hereby authorized and directed to prescribe rules and regulations, which he may at any time modify, to govern and regulate the floating of loose timber and logs, and sack rafts, (so called) of timber and logs and other methods of navigation on the streams and waterways, or any thereof, of the character, as to navigation, heretofore in this section described. The said rules and regulations shall be so framed as to equitably adjust conflicting interests between the different methods or forms of navigation; and the said rules and regulations shall be published at least once in such newspaper or newspapers of general circulation as in the opinion of the Secretary of War shall be best adapted to give notice of said rules and regulations to persons affected thereby and locally interested therein. And all modifications of said rules and regulations shall be similarly published. And such rules and regulations when so prescribed and published as to any such stream or waterway shall have the force of law, and any violation thereof shall be a misdemeanor, and every person convicted of such violation shall be punished by a fine of not exceeding \$2,500 nor less than \$500, or by imprisonment (in case of a natural person)

for not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court: *Provided*, That the proper action to enforce the provisions of this section may be commenced before any commissioner, judge, or court of the United States, and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in the case of crimes or misdemeanors committed against the United States.

The right to alter, amend, or repeal this section at any time is hereby reserved. (May 9, 1900, ch. 387, §§ 1-3, 31 Stat. 172.)

**§ 411. Penalty for wrongful deposit of refuse; use of or injury to harbor improvements, and obstruction of navigable waters generally.**

Every person and every corporation that shall violate, or that shall knowingly aid, abet, authorize, or instigate a violation of the provisions of sections 407, 408, and 409 of this title shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding \$2,500 nor less than \$500, or by imprisonment (in the case of a natural person) for not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction. (Mar. 3, 1899, ch. 425, § 16, 30 Stat. 1153.)

**CROSS REFERENCE**

Virgin Islands, application of this section to, see section 1399 of Title 48, Territories and Insular Possessions.

**§ 412. Liability of masters, pilots, and so forth, and of vessels engaged in violations.**

Any and every master, pilot, and engineer, or person or persons acting in such capacity, respectively, on board of any boat or vessel who shall knowingly engage in towing any scow, boat, or vessel loaded with any material specified in section 407 of this title to any point or place of deposit or discharge in any harbor or navigable water, elsewhere than within the limits defined and permitted by the Secretary of War, or who shall willfully injure or destroy any work of the United States contemplated in section 408 of this title, or who shall willfully obstruct the channel of any waterway in the manner contemplated in section 409 of this title, shall be deemed guilty of a violation of sections 401, 403, 404, 406-409, 411-416, 418, 502, 549, 686, 687 of this title, and shall upon conviction be punished as provided in section 411 of this title, and shall also have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted. And any boat, vessel, scow, raft, or other craft used or employed in violating any of the provisions of sections 407, 408, and 409 of this title shall be liable for the pecuniary penalties specified in section 411 of this title, and in addition thereto for the amount of the damages done by said boat, vessel, scow, raft, or other craft, which latter sum shall be placed to the credit of the appropriation for the improvement of the harbor or waterway in which the damage occurred, and said boat, vessel, scow, raft, or other craft may be proceeded against summarily by way

of libel in any district court of the United States having jurisdiction thereof. (Mar. 3, 1899, ch. 425, § 16, 30 Stat. 1153.)

**CROSS REFERENCE**

Virgin Islands, application of this section to, see section 1399 of Title 48, Territories and Insular Possessions.

**§ 413. Duty of district attorneys and other Federal officers in enforcement of provisions; arrest of offenders.**

The Department of Justice shall conduct the legal proceedings necessary to enforce the provisions of sections 401, 403, 404, 406-409, 411, 549, 686, and 687 of this title; and it shall be the duty of district attorneys of the United States to vigorously prosecute all offenders against the same whenever requested to do so by the Secretary of War or by any of the officials hereinafter designated, and it shall furthermore be the duty of said district attorneys to report to the Attorney General of the United States the action taken by him against offenders so reported, and a transcript of such reports shall be transmitted to the Secretary of War by the Attorney General; and for the better enforcement of the said provisions and to facilitate the detection and bringing to punishment of such offenders, the officers and agents of the United States in charge of river and harbor improvements, and the assistant engineers and inspectors employed under them by authority of the Secretary of War, and the United States collectors of customs and other revenue officers shall have power and authority to swear out process, and to arrest and take into custody, with or without process, any person or persons who may commit any of the acts or offenses prohibited by the aforesaid sections, or who may violate any of the provisions of the same: *Provided*, That no person shall be arrested without process for any offense not committed in the presence of some one of the aforesaid officials: *And provided further*, That whenever any arrest is made under such sections, the person so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States. (Mar. 3, 1899, ch. 425, § 17, 30 Stat. 1153.)

**ENFORCEMENT OF ACT SEPT. 19, 1890**

Act Sept. 19, 1890, ch. 907, § 11, 26 Stat. 455, was probably omitted from the code as superseded by this section, or as rendered obsolete by act March 3, 1899, cited to text, different sections of which superseded provisions of the act of 1890, the enforcement of which was provided for by section 11. It read as follows: "It shall be the duty of officers and agents having the supervision, on the part of the United States, of the works in progress for the preservation and improvement of said navigable waters, and, in their absence, of the United States collectors of customs and other revenue officers to enforce the provisions of this act by giving information to the district attorney of the United States for the district in which any violation of any provision of this act shall have been committed: *Provided*, That the provisions of this act shall not apply to Torch Lake, Houghton County, Michigan."

**CROSS REFERENCE**

Virgin Islands, application of this section to, see section 1399 of Title 48, Territories and Insular Possessions.



**§ 414. Removal by Secretary of War of sunken water craft generally.**

Whenever the navigation of any river, lake, harbor, sound, bay, canal, or other navigable waters of the United States shall be obstructed or endangered by any sunken vessel, boat, water craft, raft, or other similar obstruction, and such obstruction has existed for a longer period than thirty days, or whenever the abandonment of such obstruction can be legally established in a less space of time, the sunken vessel, boat, water craft, raft, or other obstruction shall be subject to be broken up, removed, sold, or otherwise disposed of by the Secretary of War at his discretion, without liability for any damage to the owners of the same: *Provided*, That in his discretion, the Secretary of War may cause reasonable notice of such obstruction of not less than thirty days, unless the legal abandonment of the obstruction can be established in a less time, to be given by publication, addressed "To whom it may concern," in a newspaper published nearest to the locality of the obstruction, requiring the removal thereof: *And provided also*, That the Secretary of War may, in his discretion, at or after the time of giving such notice, cause sealed proposals to be solicited by public advertisement, giving reasonable notice of not less than ten days, for the removal of such obstruction as soon as possible after the expiration of the above specified thirty days' notice, in case it has not in the meantime been so removed, these proposals and contracts, at his discretion, to be conditioned that such vessel, boat, water craft, raft, or other obstruction, and all cargo and property contained therein, shall become the property of the contractor, and the contract shall be awarded to the bidder making the proposition most advantageous to the United States: *Provided*, That such bidder shall give satisfactory security to execute the work: *Provided further*, That any money received from the sale of any such wreck, or from any contractor for the removal of wrecks, under this paragraph shall be covered into the Treasury of the United States. (Mar. 3, 1899, ch. 425, § 19, 30 Stat. 1154.)

**CROSS REFERENCE**

Virgin Islands, application of this section to, see section 1399 of Title 48, Territories and Insular Possessions.

**§ 415. Summary removal of water craft obstructing navigation.**

Under emergency, in the case of any vessel, boat, water craft, or raft, or other similar obstruction, sinking or grounding, or being unnecessarily delayed in any Government canal or lock, or in any navigable waters mentioned in section 414 of this title, in such manner as to stop, seriously interfere with, or specially endanger navigation, in the opinion of the Secretary of War, or any agent of the United States to whom the Secretary may delegate proper authority, the Secretary of War or any such agent shall have the right to take immediate possession of such boat, vessel, or other water craft, or raft, so far as to remove or to destroy it and to clear immediately the canal, lock, or navigable waters aforesaid of the obstruction thereby caused, using his best judgment to prevent any unnecessary injury; and no one shall interfere with or prevent such removal or de-

struction: *Provided*, That the officer or agent charged with the removal or destruction of an obstruction under this section may in his discretion give notice in writing to the owners of any such obstruction requiring them to remove it: *And provided further*, That the expense of removing any such obstruction as aforesaid shall be a charge against such craft and cargo; and if the owners thereof fail or refuse to reimburse the United States for such expense within thirty days after notification, then the officer or agent aforesaid may sell the craft or cargo, or any part thereof that may not have been destroyed in removal, and the proceeds of such sale shall be covered into the Treasury of the United States. (Mar. 3, 1899, ch. 425, § 20, 30 Stat. 1154.)

**CROSS REFERENCE**

Virgin Islands, application of this section to, see section 1399 of Title 48, Territories and Insular Possessions.

**§ 416. Appropriation for removal of sunken water craft.**

Such sum of money as may be necessary to execute sections 414 and 415 of this title is hereby appropriated out of any money in the Treasury not otherwise appropriated, to be paid out on the requisition of the Secretary of War. (Mar. 3, 1899, ch. 425, § 20, 30 Stat. 1155.)

**REPEAL**

Effective July 1, 1935, the permanent appropriation provided for in this section was repealed by Act June 26, 1934, ch. 756, § 2, 48 Stat. 1225, incorporated in section 725a of Title 31, Money and Finance, authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury.

**CROSS REFERENCE**

Virgin Islands, application of this section to, see section 1399 of Title 48, Territories and Insular Possessions.

**§ 417. Expenses of investigations by War Department.**

Expenses incurred by the Engineer Department of the War Department in all investigations, inspections, hearings, reports, service of notice, or other action incidental to examination of plans or sites of bridges or other structures built or proposed to be built in or over navigable waters, or to examinations into alleged violations of laws for the protection and preservation of navigable waters, or to the establishment or marking of harbor lines, shall be payable from any funds which may be available for the improvement, maintenance, operation, or care of the waterways or harbors affected, or if such funds are not available in sums judged by the Chief of Engineers to be adequate, then from any funds available for examinations, surveys, and contingencies of rivers and harbors. (Mar. 3, 1905, ch. 1482, § 6, 33 Stat. 1148.)

**§ 418. Provisions for protection of New York Harbor unaffected.**

Nothing contained in sections 401, 403, 404, 406, 407, 408, 409, 411–416, 502, 549, 686, and 687 of this title shall be construed as repealing, modifying, or in any manner affecting the provisions of sections 441–451 of this title. (Mar. 3, 1899, ch. 425, § 20, 30 Stat. 1154; Feb. 20, 1900, ch. 23, § 3, 31 Stat. 32; June 13, 1902, ch. 1079, § 12, 32 Stat. 375.)

§ 419. Regulation by Secretary governing transportation and dumping of dredgings, refuse, etc., into navigable waters; oyster lands; appropriations.

The Secretary of War is authorized and empowered to prescribe regulations to govern the transportation and dumping into any navigable water, or waters adjacent thereto, of dredgings, earth, garbage, and other refuse materials of every kind or description, whenever in his judgment such regulations are required in the interest of navigation. Such regulations shall be posted in conspicuous and appropriate places for the information of the public; and every person or corporation which shall violate the said regulations, or any of them, shall be deemed guilty of a misdemeanor and shall be subject to the penalties prescribed in sections 411 and 412 of this title, for violation of the provisions of section 407 of this title: *Provided*, That any regulations made in pursuance hereof may be enforced as provided in section 413 of this title, the provisions whereof are hereby made applicable to the said regulations: *Provided further*, That this section shall not apply to any waters within the jurisdictional boundaries of any State which are now or may hereafter be used for the cultivation of oysters under the laws of such State, except navigable channels which have been or may hereafter be improved by the United States, or to be designated as navigable channels by competent authority, and in making such improvements of channels, the material dredged shall not be deposited upon any ground in use in accordance with the laws of such State for the cultivation of oysters, except in compliance with said laws: *And provided further*, That any expense necessary in executing this section may be paid from funds available for the improvement of the harbor or waterway, for which regulations may be prescribed, and in case no such funds are available the said expense may be paid from appropriations made by Congress for examinations, surveys, and contingencies of rivers and harbors. (Mar. 3, 1905, ch. 1482, § 4, 33 Stat. 1147.)

§ 420. Piers and cribs on Mississippi and St. Croix Rivers.

The owners of sawmills on the Mississippi River and the Saint Croix River in the States of Wisconsin and Minnesota are authorized and empowered under the direction of the Secretary of War, to construct piers or cribs in front of their mill property on the banks of the river, for the protection of their mills and rafts against damage by floods and ice: *Provided, however*, That the piers or cribs so constructed shall not interfere with or obstruct the navigation of the river. And in case any pier or crib constructed under authority of this section shall at any time, and for any cause, be found to obstruct the navigation of the river, the Government expressly reserves the right to remove or direct the removal of it, at the cost and expense of the owners thereof. (R. S. § 5254; May 1, 1882, ch. 112, 22 Stat. 52.)

#### DERIVATION

Act Mar. 3, 1873, ch. 278, 17 Stat. 606.

§ 421. Deposit of refuse, etc., in Lake Michigan near Chicago.

It shall not be lawful to throw, discharge, dump, or deposit, or cause, suffer, or procure, to be thrown, discharged, dumped, or deposited, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state into Lake Michigan, at any point opposite or in front of the county of Cook, in the State of Illinois, or the county of Lake in the State of Indiana, within eight miles from the shore of said lake, unless said material shall be placed inside of a breakwater so arranged as not to permit the escape of such refuse material into the body of the lake and cause contamination thereof; and no officer of the Government shall dump or cause or authorize to be dumped any material contrary to the provisions of this section: *Provided, however*, That the provisions of this section shall not apply to work in connection with the construction, repair, and protection of breakwaters and other structures built in aid of navigation, or for the purpose of obtaining water supply. Any person violating any provision of this section shall be guilty of a misdemeanor, and on conviction thereof shall be fined for each offense not exceeding \$1,000. (June 23, 1910, ch. 359, 36 Stat. 593.)

§ 422. Modification and extension of harbor lines at Chicago.

The Secretary of War is authorized, in his discretion, to modify and extend harbor lines in front of the city of Chicago in such manner as to permit park extension work which may be desired by the municipal authorities, including the changing and widening of the southern entrance to the Chicago Harbor. (Aug. 26, 1912, ch. 408, § 5, 37 Stat. 626.)

§ 423. Establishment of pierhead and bulkhead lines in Wilmington Harbor, California.

The Secretary of War is authorized to fix and establish pierhead and bulkhead lines, either or both, in the inner harbor of San Pedro, otherwise known as Wilmington Harbor, California, beyond which no piers, wharves, bulkheads, or other works shall be extended or deposits made except under such regulations as shall be prescribed from time to time by the Secretary of War. (Mar. 26, 1908, No. 14, 35 Stat. 569.)

§ 424. Establishment of pierhead or bulkhead lines in Newport Harbor, California.

The Secretary of War is authorized and directed to fix and establish pierhead and bulkhead lines, either or both, at Newport Harbor, California, in accordance with plan dated United States Engineer Office, Los Angeles, California, March 25, 1913, and entitled "Newport Bay, California", showing harbor lines, beyond which no piers, wharfs, bulkheads, or other works shall be extended or deposit made, except under such regulations as shall be prescribed from time to time by the Secretary of War. (July 27, 1916, ch. 260, § 3, 39 Stat. 411.)

§ 424a. Modification of harbor lines in Newport Harbor, California.

The Secretary of War is hereby authorized to modify, from time to time, the harbor lines at Newport

Harbor, California, established in pursuance of section 424 of this title: *Provided*, That in his opinion such modification will not injuriously affect the interests of navigation. (Mar. 3, 1925, ch. 467, § 10, 43 Stat. 1197.)

**§ 425. Investigations by Secretary of War as to pollution of navigable waters.**

Section, act June 7, 1924, ch. 316, § 9, 43 Stat. 606, directed Secretary of War to investigate depositing of polluting substances into navigable streams and report the results to Congress not later than two years from June 7, 1924.

**§ 426. Investigations concerning erosion of shores of coastal and lake waters; cooperation with States; personnel conducting investigations; salaries and expenses.**

The Chief of Engineers of the United States Army, under the direction of the Secretary of War, is authorized and directed to cause investigations and studies to be made in cooperation with the appropriate agencies of various States on the Atlantic, Pacific, and Gulf coasts and on the Great Lakes, and the Territories, with a view to devising effective means of preventing erosion of the shores of coastal and lake waters by waves and currents; and any expenses incident and necessary thereto may be paid from funds appropriated for examinations, Surveys the Contingencies for Rivers and Harbors: *Provided*, That the War Department may release to the appropriate State agencies information obtained by these investigations and studies prior to the formal transmission of reports to Congress: *Provided further*, That no money shall be expended under authority of this section in any State which does not provide for cooperation with the agents of the United States and contribute to the project such funds and/or services as the Secretary of War may deem appropriate and require; that there shall be organized under the Chief of Engineers, United States Army, by detail from time to time from the Corps of Engineers and from the engineers of State agencies charged with beach erosion and shore protection, a board of seven members, of whom four shall be officers of the Corps of Engineers and three shall be selected with regard to their special fitness by the Chief of Engineers from among the State agencies cooperating with the War Department. The board will furnish such technical assistance as may be directed by the Chief of Engineers in the conduct of such studies as may be undertaken and will review the reports of the investigations made. In the consideration of such studies as may be referred to the board by the Chief of Engineers, the board shall, when it considers it necessary and with the sanction of the Chief of Engineers, make, as a board or through its members, personal examinations of localities under investigation: *Provided further*, That the salary of the civilian members shall be paid by their respective States, but the traveling and other necessary expenses connected with their duties on the board shall be paid in accordance with the law and regulations governing the payment of such expenses to civilian employees of the Engineer Department. (July 3, 1930, ch. 847, § 2, 46 Stat. 945.)

**§ 427. Improvement and protection of beaches; beaches defined.**

It is hereby declared to be the policy of the United States to assist in the construction where Federal interests are involved, but not the maintenance, of works for the improvement and protection of the beaches along the shores of the United States, and to prevent erosion due to the action of waves, tides, and currents, with the purpose of preventing damage to property along the shores of the United States, and promoting and encouraging the healthful recreation of the people. As used in this section and section 428 of this title, the word "beaches" includes all those situated on the coasts of the Atlantic and Pacific Oceans, the Gulf of Mexico, and the shores of the Great Lakes, and all estuaries and bays directly connected therewith. (June 26, 1936, ch. 849, § 1, 49 Stat. 1982.)

**§ 428. Same; investigations by Beach Erosion Board; duties of Board.**

(a) It shall be the duty of the Secretary of War, through the Beach Erosion Board, organized under the provisions of section 426 of this title, to make investigations with a view to determining the most suitable methods of beach protection and restoration of beaches in different localities; to advise the States, counties, municipalities, or individuals of the appropriate locations for recreational facilities; and to publish from time to time such useful data and information concerning the protection of beaches as the Board may deem to be of value to the people of the United States: *Provided*, That not more than 75 per centum of the cost of any specific investigation shall be borne by the United States.

(b) All provisions of existing law relating to examinations and surveys and to works of improvement of rivers and harbors shall apply, insofar as practicable, to examinations and surveys and to works of improvement relating to shore protection; except that all projects having to do with shore protection shall be referred for consideration and recommendation to the Beach Erosion Board instead of to the Board of Engineers for Rivers and Harbors. (June 26, 1936, ch. 849, § 2, 49 Stat. 1982.)

**CROSS REFERENCE**

Board of Engineers for Rivers and Harbors, powers and duties generally, see section 541 of this title.

**§ 429. Same; report of Beach Erosion Board.**

The Beach Erosion Board, in making its report on any work or project relating to shore protection shall, in addition to any other matters upon which it may be required to report, state its opinion as to (a) the advisability of adopting the project, (b) what Federal interest, if any, is involved in the proposed improvement, and (c) what share of the expense, if any, should be borne by the United States. (June 26, 1936, ch. 849, § 3, 49 Stat. 1983.)

**§ 430. Same; payment of expenses.**

Any expenses incident and necessary in the undertaking of the investigations and studies authorized in section 428 of this title may be paid from funds hitherto or hereafter appropriated for exam-

inations, surveys, and contingencies for rivers and harbors. (June 26, 1936, ch. 849, § 4, 49 Stat. 1983.)

#### OIL POLLUTION OF COASTAL WATERS

##### § 431. Short title; "Oil Pollution Act."

Sections 431–437 of this title may be cited as the "Oil Pollution Act, 1924." (June 7, 1924, ch. 316, § 1, 43 Stat. 604.)

##### § 432. Definitions; "oil"; "person"; "coastal navigable waters"; "Secretary."

When used in sections 431–437 of this title, unless the context otherwise requires—

(a) The term "oil" means oil of any kind or in any form, including fuel oil, oil sludge, and oil refuse;

(b) The term "person" means an individual, partnership, corporation, or association; any owner, master, officer or employee of a vessel; and any officer, agent, or employee of the United States;

(c) The term "coastal navigable waters of the United States" means all portions of the sea within the territorial jurisdiction of the United States, and all inland waters navigable in fact in which the tide ebbs and flows;

(d) The term "Secretary" means the Secretary of War. (June 7, 1924, ch. 316, § 2, 43 Stat. 604.)

##### § 433. Prohibition against discharge of oil generally.

Except in case of emergency imperiling life or property, or unavoidable accident, collision, or stranding, and except as otherwise permitted by regulations prescribed by the Secretary as in sections 434–437 of this title authorized, it shall be unlawful for any person to discharge, or suffer, or permit the discharge of oil by any method, means, or manner into or upon the coastal navigable waters of the United States from any vessel using oil as fuel for the generation of propulsion power, or any vessel carrying or having oil thereon in excess of that necessary for its lubricating requirements and such as may be required under the laws of the United States and the rules and regulations prescribed thereunder. The Secretary is authorized and empowered to prescribe regulations permitting the discharge of oil from vessels in such quantities, under such conditions, and at such times and places as in his opinion will not be deleterious to health or sea food, or a menace to navigation, or dangerous to persons or property engaged in commerce on such waters, and for the loading, handling, and unloading of oil. (June 7, 1924, ch. 316, § 3, 43 Stat. 605.)

##### § 434. Penalties for violations; liability of vessel.

Any person who violates section 433 of this title or any regulation prescribed in pursuance thereof, is guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding \$2,500 nor less than \$500, or by imprisonment not exceeding one year nor less than thirty days, or by both such fine and imprisonment, for each offense. And any vessel (other than a vessel owned and operated by the United States) from which oil is discharged in violation of the preceding section, or any regulation prescribed in pursuance thereof, shall be liable for the pecuniary penalty specified in this section, and clear-

ance of such vessel from a port of the United States may be withheld until the penalty is paid, and said penalty shall constitute a lien on such vessel which may be recovered in proceedings by libel in rem in the district court of the United States for any district within which the vessel may be. (June 7, 1924, ch. 316, § 4, 43 Stat. 605.)

##### § 435. Revocation or suspension of license of officers of offending vessels.

A board of local inspectors of vessels may, subject to the provisions of section 239 of Title 46, Shipping, and of sections 431–434 of Title 46, Shipping, suspend or revoke a license issued by any such board to the master or other licensed officer of any vessel found violating the provisions of section 433 of this title. (June 7, 1924, ch. 316, § 5, 43 Stat. 605.)

##### § 436. Personnel for enforcement of provisions; arrest of offenders and procedure.

In the administration of sections 431–437 of this title, the Secretary may make use of the organization, equipment, and agencies, including engineering, clerical, and other personnel, employed under his direction in the improvement of rivers and harbors, and in the enforcement of laws for the preservation and protection of navigable waters. And for the better enforcement of the provisions of the said sections, the officers and agents of the United States in charge of river and harbor improvements, and the assistant engineers and inspectors employed under them by authority of the Secretary, and officers of the Customs and Coast Guard of the United States, shall have power and authority and it shall be their duty to swear out process and to arrest and take into custody, with or without process, any person who may violate any of said provisions: *Provided*, That no person shall be arrested without process for a violation not committed in the presence of some one of the aforesaid officials: *And provided further*, That whenever any arrest is made under the provisions of the said sections the person so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in cases of crimes against the United States. (June 7, 1924, ch. 316, § 7, 43 Stat. 605.)

##### § 437. Other statutes for preservation and protection of navigable waters unaffected.

Sections 431–436 of this title shall be in addition to the laws existing prior to June 7, 1924, for the preservation and protection of navigable waters and shall not be construed as repealing, modifying, or in any manner affecting the provisions of those laws. (June 7, 1924, ch. 316, § 8, 43 Stat. 606.)

#### NEW YORK HARBOR AND ADJACENT WATERS

##### § 441. Deposit of refuse in New York Harbor and adjacent waters prohibited; penalty.

The placing, discharging, or depositing, by any process or in any manner, of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind, other than that flowing from

streets, sewers, and passing therefrom in a liquid state, in the tidal waters of the harbor of New York, or its adjacent or tributary waters, or in those of Long Island Sound, within the limits which shall be prescribed by the supervisor of the harbor, is hereby strictly forbidden, and every such act is made a misdemeanor, and every person engaged in or who shall aid, abet, authorize, or instigate a violation of this section, shall, upon conviction, be punishable by fine or imprisonment, or both, such fine to be not less than \$250 nor more than \$2,500, and the imprisonment to be not less than thirty days nor more than one year, either or both united, as the judge before whom conviction is obtained shall decide, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction of this misdemeanor. (June 29, 1888, ch. 496, § 1, 25 Stat. 209.)

**§ 442. Liability of officers of towing vessel.**

Any and every master and engineer, or person or persons acting in such capacity, respectively, on board of any boat or vessel, who shall knowingly engage in towing any scow, boat, or vessel loaded with any such prohibited matter to any point or place of deposit, or discharge in the waters of the harbor of New York, or in its adjacent, or tributary waters, or in those of Long Island Sound, or to any point or place elsewhere than within the limits defined and permitted by the supervisor of the harbor mentioned in section 451 of this title, shall be deemed guilty of a violation of section 441 of this title, and shall, upon conviction, be punishable as provided for offenses in violation of section 441 of this title, and shall also have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted. (June 29, 1888, ch. 496, § 2, 25 Stat. 209.)

**§ 443. Permit for dumping; penalty for taking or towing boat or scow without permit.**

In all cases of receiving on board of any scows or boats such forbidden matter or substance as described in section 441 of this title, the owner or master, or person acting in such capacity on board of such scows or boats, before proceeding to take or tow the same to the place of deposit, shall apply for and obtain from the supervisor of the harbor appointed, as provided in section 451 of this title, a permit defining the precise limits within which the discharge of such scows or boats may be made; and it shall not be lawful for the owner or master, or person acting in such capacity, of any tug or towboat to tow or move any scow or boat so loaded with such forbidden matter until such permit shall have been obtained; and every person violating the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than \$1,000 nor less than \$500, and in addition thereto the master of any tug or towboat so offending shall have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted. (June 29, 1888, ch. 496, § 3, 25 Stat. 209; Aug. 18, 1894, ch. 299, § 3, 28 Stat. 360; May 28, 1908, ch. 212, § 8, 35 Stat. 426.)

**§ 444. Dumping at other place than designated dumping grounds; penalty; person liable; excuses for deviation.**

Any deviation from such dumping or discharging place specified in such permit shall be a misdemeanor, and the owner and master, or person acting in the capacity of master, of any scows or boats dumping or discharging such forbidden matter in any place other than that specified in such permit shall be liable to punishment therefor as provided in section 441 of this title; and the owner and master, or person acting in the capacity of master, of any tug or towboat towing such scows or boats shall be liable to equal punishment with the owner and master, or person acting in the capacity of master, of the scows or boats; and, further, every scowman or other employee on board of both scows and towboats shall be deemed to have knowledge of the place of dumping specified in such permit, and the owners and masters, or persons acting in the capacity of masters, shall be liable to punishment, as aforesaid, for any unlawful dumping, within the meaning of sections 441-449 of this title, which may be caused by the negligence or ignorance of such scowman or other employee; and, further, neither defect in machinery nor avoidable accidents to scows or towboats, nor unfavorable weather, nor improper handling or moving of scows or boats of any kind whatsoever shall operate to release the owners and master and employees of scows and towboats from the penalties mentioned in section 441 of this title. (June 29, 1888, ch. 496, § 3, 25 Stat. 209; Aug. 18, 1894, ch. 299, § 3, 28 Stat. 360; May 28, 1908, ch. 212, § 8, 35 Stat. 426.)

**§ 445. Equipment and marking of boats or scows.**

Every scow or boat engaged in the transportation of dredgings, earth, sand, mud, cellar dirt, garbage, or other offensive material of any description shall have its name or number and owner's name painted in letters and numbers at least fourteen inches long on both sides of the scow or boat; these names and numbers shall be kept distinctly legible at all times, and no scow or boat not so marked shall be used to transport or dump any such material. Each such scow or boat shall be equipped at all times with a life line or rope extending at least the length of and three feet above the deck thereof, such rope to be attached to the coaming thereof, also with a life preserver and a life buoy for each person on board thereof, also with anchor to weigh not less than two hundred and seventy-five pounds, and at least one hundred feet of cable attached thereto; a list of the names of all men employed on any such scow or boat shall be kept by the owner or master thereof and the said list shall be open to the inspection of all parties. Failure to comply with any of the foregoing provisions shall render the owner of such scow or boat liable upon conviction thereof to a penalty of not more than \$500: *Provided*, That the requirements in regard to life line or rope contained in this section shall not apply to any scow or boat the deck outside the coaming or rail of which shall not exceed one foot in width: *And provided further*, That on any such scow or boat its name or number and owner's name painted in letters and numbers, at least fourteen inches long on both ends of such scow or

boat, shall be a compliance with the provisions of this section in regard to name, number, and owner's name. (June 29, 1888, ch. 496, § 3, 25 Stat. 209; Aug. 18, 1894, ch. 299, § 3, 28 Stat. 360; May 28, 1908, ch. 212, § 8, 35 Stat. 426; Feb. 16, 1909, ch. 132, 35 Stat. 623.)

**§ 446. Inspectors; appointment, powers, and duties.**

The supervisor of the harbor of New York, designated as provided in section 451 of this title, is authorized and directed to appoint inspectors and deputy inspectors, and, for the purpose of enforcing the provisions of sections 1, 31, 441-449, 452 of this title, and of detecting and bringing to punishment offenders against the same, the said supervisor of the harbor, and the inspectors and deputy inspectors so appointed by him, shall have power and authority:

First. To arrest and take into custody, with or without process, any person or persons who may commit any of the acts or offenses prohibited by sections 441-449 of this title, or who may violate any of the provisions of the same: *Provided*, That no person shall be arrested without process for any offense not committed in the presence of the supervisor or his inspectors or deputy inspectors, or either of them: *And provided further*, That whenever any such arrest is made the person or persons so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States.

Second. To go on board of any scow or towboat engaged in unlawful dumping of prohibited material, or in moving the same without a permit, as required in section 443 of this title, or otherwise violating any of the provisions of sections 443-445 of this title, and to seize and hold said boats until they are discharged by action of the commissioner, judge, or court of the United States before whom the offending persons are brought.

Third. To arrest and take into custody any witness or witnesses to such unlawful dumping of prohibited material, the said witnesses to be released under proper bonds.

Fourth. To go on board of any towboat having in tow scows or boats loaded with such prohibited material, and accompany the same to the place of dumping, whenever such action appears to be necessary to secure compliance with the requirements of sections 1, 31, 441-453 of this title.

Fifth. To enter gas and oil works and all other manufacturing works for the purpose of discovering the disposition made of sludge, acid, or other injurious material, whenever there is good reason to believe that such sludge, acid, or other injurious material is allowed to run into tidal waters of the harbor in violation of section 441 of this chapter. (June 29, 1888, ch. 496, § 3, 25 Stat. 209; Aug. 18, 1894, ch. 299, § 3, 28 Stat. 360; May 28, 1908, ch. 212, § 8, 35 Stat. 426.)

**§ 447. Bribery of inspector; penalty.**

Every person who, directly or indirectly, gives any sum of money or other bribe, present, or reward, or

makes any offer of the same to any inspector, deputy inspector, or other employee of the office of the supervisor of the harbor with intent to influence such inspector, deputy inspector, or other employee to permit or overlook any violation of the provisions of sections 441-449 of this title, shall, on conviction thereof, be fined not less than \$500 nor more than \$1,000, and be imprisoned not less than six months nor more than one year. (June 29, 1888, ch. 496, § 3, 25 Stat. 209; Aug. 18, 1894, ch. 299, § 3, 28 Stat. 360; May 28, 1908, ch. 212, § 8, 35 Stat. 426.)

**§ 448. Return of permit; penalty for failure to return.**

Every permit issued in accordance with the provisions of section 443 of this title, which may not be taken up by an inspector or deputy inspector, shall be returned within four days after issuance to the office of the supervisor of the harbor; such permit shall bear an indorsement by the master of the towboat, or the person acting in such capacity, stating whether the permit has been used, and, if so, the time and place of dumping. Any person violating the provisions of sections 443-448 of this title shall be liable to a fine of not more than \$500 nor less than \$100. (June 29, 1888, ch. 496, § 3, 25 Stat. 209; Aug. 18, 1894, ch. 299, § 3, 28 Stat. 360; May 28, 1908, ch. 212, § 8, 35 Stat. 426.)

**§ 449. Disposition of dredged matter; persons liable; penalty.**

All mud, dirt, sand, dredgings, and material of every kind and description whatever taken, dredged, or excavated from any slip, basin, or shoal in the harbor of New York, or the waters adjacent or tributary thereto, and placed on any boat, scow, or vessel for the purpose of being taken or towed upon the waters of the harbor of New York to a place of deposit, shall be deposited and discharged at such place or within such limits as shall be defined and specified by the supervisor of the harbor, as in section 443 of this title prescribed, and not otherwise. Every person, firm, or corporation being the owner of any slip, basin, or shoal, from which such mud, dirt, sand, dredgings, and material shall be taken, dredged, or excavated, and every person, firm, or corporation in any manner engaged in the work of dredging or excavating any such slip, basin, or shoal, or of removing such mud, dirt, sand, or dredgings therefrom, shall severally be responsible for the deposit and discharge of all such mud, dirt, sand, or dredgings at such place or within such limits so defined and prescribed by said supervisor of the harbor; and for every violation of the provisions of this section the person offending shall be guilty of an offense, and shall be punished by a fine equal to the sum of \$5 for every cubic yard of mud, dirt, sand, dredgings, or material not deposited or discharged as required by this section. (June 29, 1888, ch. 496, § 4, 25 Stat. 210.)

**§ 450. Liability of vessel.**

Any boat or vessel used or employed in violating any provision of sections 441-449 of this title, shall be liable to the pecuniary penalties imposed thereby, and may be proceeded against, summarily by way of

libel in any district court of the United States having jurisdiction thereof. (June 29, 1888, ch. 496, § 4, 25 Stat. 210.)

#### § 451. Supervisor of harbor; appointment and duties.

A line officer of the Navy shall be designated by the President of the United States as supervisor of the harbor, to act under the direction of the Secretary of War in enforcing the foregoing provisions of sections 441-449 of this title, and in detecting offenders against the same. This officer shall have personal charge and supervision under the Secretary of War, and shall direct the patrol boats and other means to detect and bring to punishment offenders, against the provisions of said sections. (June 29, 1888, ch. 496, § 5, 25 Stat. 210.)

#### § 452. Taking shellfish or otherwise interfering with navigation in New York Harbor channels; penalty; arrest and procedure.

It shall be unlawful for any person or persons to engage in fishing or dredging for shellfish in any of the channels leading to and from the harbor of New York, or to interfere in any way with the safe navigation of those channels by ocean steamships and ships of deep draft.

Any person or persons violating the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine or imprisonment, or both, such fine to be not more than \$250 nor less than \$50, and the imprisonment to be not more than six months nor less than thirty days, either or both united, as the judge before whom conviction is obtained shall decide.

It shall be the duty of the United States supervisor of the harbor to enforce this section, and the deputy inspectors of the said supervisor shall have authority to arrest and take into custody, with or without process, any person or persons, who may commit any of the acts or offenses prohibited by this section: *Provided*, That no person shall be arrested without process for any offense not committed in the presence of the supervisor or his inspector or deputy inspectors, or either of them: *And provided further*, That whenever any such arrest is made the person or persons so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge or court shall proceed in respect thereto as authorized by law in case of crimes against the United States. (Aug. 18, 1894, ch. 299, § 2, 28 Stat. 360.)

#### § 453. Regulations for navigation of Ambrose Channel; exclusion of tows and sailing vessels.

The Secretary of War is authorized to make such rules and regulations for the navigation of Ambrose Channel as he may deem necessary or expedient to insure its safe use in all kinds of weather, night and day, for all vessels under control and running under their own power, and to this end he may, in his discretion, forbid its use to tows of every description and to sailing vessels. (Mar. 4, 1913, ch. 144, § 1, 37 Stat. 803.)

#### § 454. Consent of Congress to obstruction of waters by New York City.

The consent of Congress is hereby given to the city of New York, in the State of New York, to obstruct navigation of any river or other waterway which does not form a connecting link between other navigable waters of the United States, and lying wholly within the limits of said city, by closing all or any portion of the same or by building structures in or over the same when the said city shall be lawfully authorized to do so by the State of New York: *Provided, however*, That any such obstruction shall be unlawful unless the location and plans for the proposed work or works before the commencement thereof shall have been filed with and approved by the Secretary of War and Chief of Engineers; and when the plans for any such obstruction have been approved by the Chief of Engineers and by the Secretary of War it shall not be lawful to deviate from such plans either before or after the completion of such obstruction, unless the modification of such plans has previously been submitted to and received the approval of the Chief of Engineers and the Secretary of War: *And provided further*, That the city of New York shall be liable for any damage that may be inflicted upon private property by reason of any of the provisions of this section.

The right to alter, amend, or repeal this section is expressly reserved, and the United States shall incur no liability for the alteration, amendment, or repeal thereof to the city of New York, or to the owner or owners, or any other persons interested in any obstruction which shall have been constructed under its provisions. (June 25, 1910, ch. 436, §§ 1, 2, 36 Stat. 866, 867.)

### POTOMAC RIVER AND TRIBUTARIES IN DISTRICT OF COLUMBIA

#### §§ 461-464. District of Columbia waters.

Sections, act May 19, 1896, ch. 208, §§ 1-4, 29 Stat. 126, 127, relate to the District of Columbia. See District of Columbia Code, § 22-1702.

### NAVIGABLE WATERS OF MARYLAND

#### § 465. Authority to dredge; riparian rights of United States.

Subject to the provisions of section 403 of this title authority is granted to dredge, without cost to the United States, in the navigable waters of the United States included within the State of Maryland and outside the limits of projects for improvement of navigation facilities approved by Congress, regardless of rights accruing to the United States as riparian owner under the laws of the State of Maryland: *Provided*, That in the opinion of the Chief of Engineers such dredging will improve facilities for navigation. (July 3, 1930, ch. 847, § 12, 46 Stat. 949.)

### Chapter 10.—ANCHORAGE GROUNDS AND HARBOR REGULATIONS GENERALLY

#### Sec.

471. Establishment by Secretary of War of anchorage grounds and regulations generally.

472. Marking anchorage grounds by Commissioner of Lighthouses.

473. Anchorage and harbor regulations for Potomac River at Washington.



Sec.

474. Anchorage and general regulations for Saint Marys River.

475. Regulations for Pearl Harbor, Hawaii.

§ 471. Establishment by Secretary of War of anchorage grounds and regulations generally.

The Secretary of War is authorized, empowered, and directed to define and establish anchorage grounds for vessels in all harbors, rivers, bays, and other navigable waters of the United States whenever it is manifest to the said Secretary that the maritime or commercial interests of the United States require such anchorage grounds for safe navigation and the establishment of such anchorage grounds shall have been recommended by the Chief of Engineers, and to adopt suitable rules and regulations in relation thereto; and such rules and regulations shall be enforced by the Coast Guard under the direction of the Secretary of the Treasury: *Provided*, That at ports or places where there is no Coast Guard vessel available such rules and regulations may be enforced by the Chief of Engineers under the direction of the Secretary of War. In the event of the violation of any such rules and regulations by the owner, master, or person in charge of any vessel such owner, master, or person in charge of such vessel shall be liable to a penalty of \$100; and the said vessel may be holden for the payment of such penalty, and may be seized and proceeded against summarily by libel for the recovery of the same in any United States district court for the district within which such vessel may be and in the name of the officer designated by the Secretary of War. (Jan. 28, 1915, ch. 20, § 1, 38 Stat. 800; Mar. 4, 1915, ch. 142, § 7, 38 Stat. 1053.)

#### CROSS REFERENCE

Regulations for Saint Marys River by Secretary of Commerce, see section 474 of this title.

§ 472. Marking anchorage grounds by Commissioner of Lighthouses.

The Commandant of the Coast Guard shall provide, establish, and maintain, out of the annual appropriations for the Coast Guard, buoys or other suitable marks for marking anchorage grounds for vessels in waters of the United States, when such anchorage grounds have been defined and established by proper authority in accordance with the laws of the United States. (Sept. 15, 1922, ch. 313, 42 Stat. 844; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### TRANSFER OF FUNCTIONS

Reorganization Plan No. II, § 2 (a), cited to text, transferred the Bureau of Lighthouses in the Department of Commerce and its functions to the Coast Guard in the Department of the Treasury and provided that it should be consolidated with, and administered as part of, the Coast Guard.

§ 473. Anchorage and harbor regulations for Potomac River at Washington.

Section, act Mar. 2, 1895, ch. 172, §§ 1, 2, 28 Stat. 740, is set out in section 22-1701 of the District of Columbia Code.

§ 474. Anchorage and general regulations for Saint Marys River.

The Secretary of Commerce is authorized and directed to adopt and prescribe suitable rules and regu-

lations governing the movements and anchorage of vessels and rafts in Saint Marys River from Point Iroquois, on Lake Superior, to Point Detour, on Lake Huron, and for the purpose of enforcing the observance of such regulations the Secretary of the Treasury is hereby authorized to detail one or more Coast Guard cutters for duty upon the request of the Secretary of Commerce on said river.

All officers of the Coast Guard who are directed to enforce the regulations prescribed by the above rules are hereby empowered and directed, in case of necessity, or when a proper notice has been disregarded, to use the force at their command to remove from channels or stop any vessel found violating the prescribed rules.

In the event of the violation of any such regulations or rules of the Secretary of Commerce by the owners, master, or person in charge of such vessel, such owners, master, or person in charge shall be liable to a penalty not exceeding \$200: *Provided*, That the Secretary of Commerce may remit said fine on such terms as he may prescribe: *Provided also*, That nothing in this section shall be construed to amend or repeal chapter 4 of this title regulating navigation on the Great Lakes and their connecting and tributary waters as far east as Montreal. (Mar. 6, 1896, ch. 49, §§ 1-3, 29 Stat. 54-55; Apr. 26, 1906, ch. 1874, §§ 1, 2, 34 Stat. 136; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; Jan. 28, 1915, ch. 20, § 1, 38 Stat. 800.)

#### CROSS REFERENCE

Anchorage grounds and regulations generally, see section 471 of this title.

§ 475. Regulations for Pearl Harbor, Hawaii.

For the proper control, protection, and defense of the naval station, harbor, and entrance channel at Pearl Harbor, Territory of Hawaii, the Secretary of the Navy is authorized, empowered, and directed to adopt and prescribe suitable rules and regulations governing the navigation, movement, and anchorage of vessels of whatsoever character in the waters of Pearl Harbor, island of Oahu, Hawaiian Islands, and in the entrance channel to said harbor, and to take all necessary measures for the proper enforcement of such rules and regulations. (Aug. 22, 1912, ch. 335, 37 Stat. 341.)

### Chapter 11.—BRIDGES OVER NAVIGABLE WATERS

Sec.

491. Approval of and deviation from plans.

492. Bridge as post route; limitation as to charges against Government; telegraph and telephone lines.

Use of railroad bridges by other railroad companies.

494. Obstruction of navigation; alterations and removals; lights and signals; draws; tolls.

495. Failure to comply with regulations; penalty; removal of bridge.

496. Time for commencement and completion of bridge.

497. "Persons" defined.

498. Reservation of right to alter or repeal.

498a. Application of sections 491-497 to bridges authorized prior to June 10, 1930.

498b. Application of sections 491-497 to bridges authorized prior to March 23, 1906.

499. Regulations for drawbridges; penalties for violation; enforcement.

500. Deflection of current; liability to riparian owners.

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- Sec.  
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#### ALTERATION OF BRIDGES

511. Definitions.  
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#### § 491. Approval of and deviation from plans.

When, after March 23, 1906, authority is granted by Congress to any persons to construct and maintain a bridge across or over any of the navigable waters of the United States, such bridge shall not be built or commenced until the plans and specifications for its construction, together with such drawings of the proposed construction and such map of the proposed location as may be required for a full understanding of the subject, have been submitted to the Secretary of War and Chief of Engineers for their approval, nor until they shall have approved such plans and specifications and the location of such bridge and accessory works; and when the plans for any bridge to be constructed under the provisions of sections 491-498 of this title, have been approved by the Chief of Engineers and by the Secretary of War it shall not be lawful to deviate from such plans, either before or after completion of the structure, unless the modification of such plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War. (Mar. 23, 1906, ch. 1130, § 1, 34 Stat. 84.)

#### § 492. Bridge as post route; limitation as to charges against Government; telegraph and telephone lines.

Any bridge built in accordance with the provisions of sections 491-498 of this title, shall be a lawful structure and shall be recognized and known as a post route, upon which no higher charge shall be made for the transmission over the same of the mails, the troops, and the munitions of war of the United States than the rate per mile paid for the transportation over any railroad, street railway, or public highway leading to said bridge; and the United States shall have the right to construct, maintain, and repair, without any charge therefor, telegraph and telephone lines across and upon said bridge and its approaches; and equal privileges in

the use of said bridge and its approaches shall be granted to all telegraph and telephone companies. (Mar. 23, 1906, ch. 1130, § 2, 34 Stat. 85.)

#### § 493. Use of railroad bridges by other railroad companies.

All railroad companies desiring the use of any railroad bridge built in accordance with the provisions of sections 491-498 of this title, shall be entitled to equal rights and privileges relative to the passage of railway trains or cars over the same and over the approaches thereto upon payment of a reasonable compensation for such use; and in case of any disagreement between the parties in regard to the terms of such use or the sums to be paid all matters at issue shall be determined by the Secretary of War upon hearing the allegations and proofs submitted to him. (Mar. 23, 1906, ch. 1130, § 3, 34 Stat. 85.)

#### § 494. Obstruction of navigation; alterations and removals; lights and signals; draws; tolls.

No bridge erected or maintained under the provisions of sections 491-498 of this title, shall at any time unreasonably obstruct the free navigation of the waters over which it is constructed, and if any bridge erected in accordance with the provisions of sections 491-498 of this title, shall, in the opinion of the Secretary of War, at any time unreasonably obstruct such navigation, either on account of insufficient height, width of span, or otherwise, or if there be difficulty in passing the draw opening or the drawspan of such bridge by rafts, steamboats, or other water craft, it shall be the duty of the Secretary of War, after giving the parties interested reasonable opportunity to be heard, to notify the persons owning or controlling such bridge to so alter the same as to render navigation through or under it reasonably free, easy, and unobstructed, stating in such notice the changes required to be made, and prescribing in each case a reasonable time in which to make such changes, and if at the end of the time so specified the changes so required have not been made, the persons owning or controlling such bridge shall be deemed guilty of a violation of sections 491-498 of this title; and all such alterations shall be made and all such obstructions shall be removed at the expense of the persons owning or operating said bridge. The persons owning or operating any such bridge shall maintain, at their own expense, such lights and other signals thereon as the Secretary of Commerce shall prescribe. If the bridge shall be constructed with a draw, then the draw shall be opened promptly by the persons owning or operating such bridge upon reasonable signal for the passage of boats and other water craft. If tolls shall be charged for the transit over any bridge constructed under the provisions of sections 491-498 of this title, of engines, cars, street cars, wagons, carriages, vehicles, animals, foot passengers, or other passengers, such tolls shall be reasonable and just, and the Secretary of War may, at any time, and from time to time, prescribe the reasonable rates of toll for such transit over such bridge, and the rates so prescribed shall be the legal rates and shall be the rates demanded and received for

such transit. (Mar. 23, 1906, ch. 1130, § 4, 34 Stat. 85; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

#### LIGHTS ON BRIDGES

Act of Aug. 7, 1882, ch. 433, § 1, 22 Stat. 309, read as follows: All parties owning, occupying, or operating bridges over any navigable river shall maintain at their own expense, from sunset to sunrise, throughout the year, such lights on their bridges as may be required by the Light-House Board for the security of navigation; and in addition thereto all persons owning, occupying, or operating any bridge over any navigable river shall, in any event, maintain all lights on their bridge that may be necessary for the security of navigation.

#### BUREAU OF LIGHTHOUSES

Reorganization Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1431, transferred the Bureau of Lighthouses in the Department of Commerce and its functions to the Coast Guard in the Department of the Treasury and provided that it should be consolidated with, and administered as part of, the Coast Guard.

#### CROSS REFERENCE

Section inapplicable to any bridge to which provisions of sections 511-523 of this title are applicable, see section 522 (a) of this title.

#### § 495. Failure to comply with regulations; penalty; removal of bridge.

Any persons who shall fail or refuse to comply with the lawful order of the Secretary of War or the Chief of Engineers, made in accordance with the provisions of sections 491-498 of this title, shall be deemed guilty of a violation of sections 491-498 of this title, and any persons who shall be guilty of a violation of sections 491-498 of this title, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished in any court of competent jurisdiction by a fine not exceeding \$5,000, and every month such persons shall remain in default shall be deemed a new offense and subject such persons to additional penalties therefor; and in addition to the penalties above described the Secretary of War and the Chief of Engineers may, upon refusal of the persons owning or controlling any such bridge and accessory works to comply with any lawful order issued by the Secretary of War or Chief of Engineers in regard thereto, cause the removal of such bridge and accessory works at the expense of the persons owning or controlling such bridge, and suit for such expense may be brought in the name of the United States against such persons, and recovery had for such expense in any court of competent jurisdiction; and the removal of any structures erected or maintained in violation of the provisions of sections 491-498 of this title, or the order or direction of the Secretary of War or Chief of Engineers made in pursuance thereof may be enforced by injunction, mandamus, or other summary process, upon application to the district court in the district in which such structure may, in whole or in part, exist, and proper proceedings to this end may be instituted under the direction of the Attorney General of the United States at the request of the Secretary of War; and in case of any litigation arising from any obstruction or alleged obstruction to navigation created by the construction of any bridge under sections 491-498 of this title, the cause or question arising may be tried before the district court of the United States in any district which any portion of said obstruc-

tion or bridge touches. (Mar. 23, 1906, ch. 1130, § 5, 34 Stat. 85; Mar. 3, 1911, ch. 231, §§ 289, 291, 36 Stat. 1167.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Abolition of writ of mandamus, see Rule 81, following section 723c of Title 28, Judicial Code and Judiciary.

#### § 496. Time for commencement and completion of bridge.

Whenever Congress shall by law authorize the construction of any bridge over or across any of the navigable waters of the United States, and no time for the commencement and completion of such bridge is named in said Act, the authority thereby granted shall cease and be null and void unless the actual construction of the bridge authorized in such Act be commenced within one year and completed within three years from the date of the passage of such Act. (Mar. 23, 1906, ch. 1130, § 6, 34 Stat. 86.)

#### § 497. "Persons" defined.

The word "persons" as used in sections 491-498 of this title, shall be construed to import both the singular and the plural, as the case demands, and shall include municipalities, quasi-municipal corporations, corporations, companies, and associations. (Mar. 23, 1906, ch. 1130, § 7, 34 Stat. 86.)

#### § 498. Reservation of right to alter or repeal.

The right to alter, amend, or repeal sections 491-498 of this title, is expressly reserved as to any and all bridges which may be built in accordance with the provisions of the said sections of this chapter, and the United States shall incur no liability for the alteration, amendment, or repeal thereof to the owner or owners or any other persons interested in any bridge which shall have been constructed in accordance with its provisions. (Mar. 23, 1906, ch. 1130, § 8, 34 Stat. 86.)

#### § 498a. Application of sections 491-497 to bridges authorized prior to June 10, 1930.

In the case of bridges authorized, prior to June 10, 1930, by Acts of Congress specifically reserving to Congress the right to subsequently regulate tolls on such bridges, such bridges shall, in respect of the regulation of all tolls, be subject to the provisions of sections 491-497 of this title. (June 10, 1930, ch. 441, § 17, 46 Stat. 552.)

#### § 498b. Application of sections 491-497 to bridges authorized prior to March 23, 1906.

Any bridge authorized, prior to March 23, 1906, by Act of Congress specifically reserving to Congress the right to alter, amend, or repeal such Act, shall, in respect of the regulation of all tolls, be subject to the provisions of sections 491-497 of this title. (June 27, 1930, ch. 640, § 1, 46 Stat. 821.)

#### § 499. Regulations for drawbridges; penalties for violation; enforcement.

It shall be the duty of all persons owning, operating, and tending the drawbridges built prior to August 18, 1894, or which may thereafter be built across the navigable rivers and other waters of the United States, to open, or cause to be opened, the

draws of such bridges under such rules and regulations as in the opinion of the Secretary of War the public interests require to govern the opening of drawbridges for the passage of vessels and other water crafts, and such rules and regulations, when so made and published, shall have the force of law. Every such person who shall willfully fail or refuse to open, or cause to be opened, the draw of any such bridge for the passage of a boat or boats, or who shall unreasonably delay the opening of said draw after reasonable signal shall have been given, as provided in such regulations, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than \$2,000 nor less than \$1,000, or by imprisonment (in the case of a natural person) for not exceeding one year, or by both such fine and imprisonment, in the discretion of the court: *Provided*, That the proper action to enforce the provisions of this section may be commenced before any commissioner, judge, or court of the United States, and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States: *Provided further*, That whenever, in the opinion of the Secretary of War, the public interests require it, he may make rules and regulations to govern the opening of drawbridges for the passage of vessels and other water crafts, and such rules and regulations, when so made and published, shall have the force of law, and any violation thereof shall be punished as hereinbefore provided: *Provided further*, That any regulations made in pursuance of this section may be enforced as provided in section 413 of this title, the provisions whereof are made applicable to the said regulations. (Aug. 18, 1894, ch. 299, § 5, 28 Stat. 362; June 13, 1902, ch. 1079, § 6, 32 Stat. 374.)

#### § 500. Deflection of current; liability to riparian owners.

Whenever complaint shall be made to the Secretary of War that by reason of the placing in any navigable waters of the United States of any bridge pier or abutment, the current of such waters has been so deflected from its natural course as to cause by producing caving of banks or otherwise serious damage or danger to property, it shall be his duty to make inquiry, and if it shall be ascertained that the complaint is well founded, he shall cause the owners or persons operating such bridge to repair such damage or prevent such danger to property by such means as he shall indicate and within such time as he may name, and in default thereof the owners or persons operating such bridge shall be liable in any court of competent jurisdiction to the persons injured in a sum double the amount of said injury: *Provided, however*, That nothing herein contained shall be construed so as to affect any rights of action which may have existed prior to August 11, 1888. (Aug. 11, 1888, ch. 860, § 2, 25 Stat. 423.)

#### § 501. Consent to bridges over Maquoketa River, Iowa.

Section, R. S. § 5250, gave assent of Congress to construction of bridges across the Maquoketa River in State of Iowa.

#### § 502. Criminal liability for failure to alter bridge obstructing navigation.

Whenever the Secretary of War shall have good reason to believe that any railroad or other bridge over any of the navigable waterways of the United States is an unreasonable obstruction to the free navigation of such waters on account of insufficient height, width of span, or otherwise, or where there is difficulty in passing the draw opening or the draw span of such bridge by rafts, steamboats, or other water craft, it shall be the duty of the said Secretary, first giving the parties reasonable opportunity to be heard, to give notice to the persons or corporations owning or controlling such bridge so to alter the same as to render navigation through or under it reasonably free, easy, and unobstructed; and in giving such notice he shall specify the changes recommended by the Chief of Engineers that are required to be made, and shall prescribe in each case a reasonable time in which to make them. If at the end of such time the alteration has not been made, the Secretary of War shall forthwith notify the United States district attorney for the district in which such bridge is situated, to the end that the criminal proceedings hereinafter in this section mentioned may be taken. If the persons, corporation, or association owning or controlling any railroad or other bridge shall, after receiving notice to that effect, as hereinbefore required, from the Secretary of War, and within the time prescribed by him willfully fail or refuse to remove the same or to comply with the lawful order of the Secretary of War in the premises, such persons, corporation, or association shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding \$5,000, and every month such persons, corporation, or association shall remain in default in respect to the removal or alteration of such bridge shall be deemed a new offense, and subject the persons, corporation, or association so offending to the penalties above prescribed: *Provided*, That in any case arising under the provisions of this section an appeal may be taken from the district courts direct to the Supreme Court either by the United States or by the defendants. (Mar. 3, 1899, ch. 425, § 18, 30 Stat. 1153; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

#### CROSS REFERENCES

Direct review by Supreme Court of final decisions of district courts, where so provided in certain enumerated cases and not otherwise, see section 345 of Title 28, Judicial Code and Judiciary.

Obstruction of navigation by means of a bridge prohibited, see sections 494, 495 of this title.

Review by Circuit Court of Appeals of final decisions of district courts see section 225 of Title 28, Judicial Code and Judiciary.

Section inapplicable to any bridge to which provisions of sections 511-523 of this title are applicable, see section 522 (a) of this title.

Virgin Islands, application of this section to, see section 1399 of Title 48, Territories and Insular Possessions.

#### § 503. Tolls; reasonableness; bridges to which provisions not applicable.

Tolls for passage or transit over any bridge over any of the navigable waters of the United States, if

such bridge is used for purposes of travel or transportation in interstate or foreign commerce, shall be just and reasonable; but the provisions of this section and sections 504–507 of this title shall not apply to any bridge subject to the provisions of sections 491–498 of this title, nor to any bridge built under the authority of the legislature of the State across rivers or other waterways the navigable portions of which lie wholly within the limits of a single State, nor to any bridge on which the tolls are prescribed by a contract entered into by or with any State or political subdivision thereof, or any municipality. (Aug. 21, 1935, ch. 597, § 1, 49 Stat. 670.)

§ 504. Same; determination of reasonableness by Secretary of War; effect of order prescribing toll.

The Secretary of War is authorized, either upon complaint or upon his own initiative, to conduct an inquiry at any time for the purpose of determining whether any toll charged for passage or transit over any bridge to which sections 503–507 of this title apply is in violation of the provisions of section 503 of this title, and if he finds, after full opportunity for hearing, that such toll is in violation of such provisions he is authorized and empowered to determine and by order to prescribe what will be the just and reasonable toll to be thereafter charged, and after such order takes effect it shall be unlawful to collect a toll for such passage or transit in excess of that so prescribed. Any such order shall take effect upon the expiration of thirty days after its issuance. (Aug. 21, 1935, ch. 597, § 2, 49 Stat. 671.)

§ 505. Same; review of order.

Any order issued under section 504 of this title may be reviewed by the Court of Appeals of the District of Columbia, or the circuit court of appeals for any judicial circuit in which the bridge in question is wholly or partly located, if a petition for such review is filed within three months after the date such order was issued. The judgment of any such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in section 347 of Title 28. The review by such courts shall be limited to questions of law, and the findings of fact by the Secretary of War, if supported by substantial evidence, shall be conclusive. Upon such review, such courts shall have power to affirm or, if the order is not in accordance with law, to modify or to reverse the order, with or without remanding the case for a rehearing as justice may require. (Aug. 21, 1935, ch. 597, § 3, 49 Stat. 671.)

<sup>1</sup> So in original. Probably should read "is."

#### CHANGE OF NAME

Court of Appeals of the District of Columbia was changed to United States Court of Appeals for the District of Columbia by act June 7, 1934, ch. 426, 48 Stat. 926.

§ 506. Same; hearings to determine reasonableness; attendance of witnesses; punishment for failure to attend.

In the execution of his functions under sections 504 and 505 of this title and this section the Secretary of War, or any officer or employee designated by him, is authorized to hold hearings, examine witnesses, and receive evidence at any place designated

by him, and to administer oaths and affirmations, and require by subpoena the attendance and testimony of witnesses and the production of books, papers, and documents from any place in the United States. In any case<sup>1</sup> disobedience to any such subpoena the Secretary of War may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents. No person shall be excused from attending and testifying or from producing books, papers, and documents in any inquiry under this section and section 504 of this title, or in obedience to any such subpoena, or in any cause or proceeding, criminal or otherwise, based upon or arising under said sections, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, or documents, if in his power to do so, in obedience to a subpoena or lawful requirement under this section, shall, upon conviction thereof, be punished by a fine of not to exceed \$1,000 or by imprisonment for not more than one year, or by both such fine and imprisonment. (Aug. 21, 1935, ch. 597, § 4, 49 Stat. 671.)

<sup>1</sup> So in original. Probably should read "In any case of disobedience."

#### FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see Rule 45, following section 723c of Title 28, Judicial Code and Judiciary.

§ 507. Same; failure to obey order prescribing toll; punishment.

In any case where there is in effect a toll prescribed by an order issued under section 504 of this title, for passage or transit over any bridge to which this section and sections 503–506 of this title apply, any person who demands or collects a toll for such passage or transit in excess of that so prescribed shall, upon conviction thereof, be punished by a fine of not to exceed \$1,000 or by imprisonment for not more than one year, or by both such fine and imprisonment. (Aug. 21, 1935, ch. 597, § 5, 49 Stat. 672.)

#### ALTERATION OF BRIDGES

Act of June 21, 1940, set out in sections 511–523 of this title, was returned by the President with his objections but was passed by a vote of two-thirds of both the House of Representatives and the Senate.

§ 511. Definitions.

When used in sections 511–523 of this title, unless the context indicates otherwise—

The term "alteration" includes changes of any kind, reconstruction, or removal in whole or in part.

The term "bridge" means a lawful bridge over navigable waters of the United States, including approaches, fenders and appurtenances thereto, used and operated for the purpose of carrying railroad traffic, or both railroad and highway traffic.

The term "bridge owner" means any corporation, association, partnership, or individual owning any bridge, and, when any bridge shall be in the possession or under the control of any trustee, receiver, trustee in bankruptcy, or lessee, said term shall include both the owner of the legal title and the person or entity in possession or control of such bridge.

The term "bridge owner" shall also mean and include all joint owners, particularly States, counties, municipalities, or other participants in ownership of bridges for both railroad and highway traffic.

The term "Secretary" means the Secretary of War acting directly or through the Chief of Engineers.

The term "United States", when used in a geographical sense, includes the Territories and possessions of the United States. (June 21, 1940, ch. 409, § 1, 54 Stat. 497.)

#### § 512. Obstruction of navigation.

No bridge shall at any time unreasonably obstruct the free navigation of any navigable waters of the United States. (June 21, 1940, ch. 409, § 2, 54 Stat. 498.)

#### § 513. Notice, hearings, and findings.

Whenever any bridge shall, in the opinion of the Secretary, at any time unreasonably obstruct such navigation, it shall be the duty of the Secretary, after notice to interested parties, to hold a hearing at which the bridge owner, those interested in water navigation thereunder or therethrough, those interested in either railroad or highway traffic thereover, and any other party or parties in interest shall have full opportunity to offer evidence and be heard as to whether any alteration of such bridge is needed, and if so what alterations are needed, having due regard to the necessity of free and unobstructed water navigation and to the necessities of the rail or highway traffic. If, upon such hearing, the Secretary determines that any alterations of such bridge are necessary in order to render navigation through or under it reasonably free, easy, and unobstructed, having due regard also for the necessities of rail or highway traffic thereover, he shall so find and shall issue and cause to be served upon interested parties an order requiring such alterations of such bridge as he finds to be reasonably necessary for the purposes of navigation. (June 21, 1940, ch. 409, § 3, 54 Stat. 498.)

#### § 514. Submission and approval of general plans and specifications.

It shall be the duty of the bridge owner to prepare and submit to the Secretary, within ninety days after service of his order, general plans and specifications to provide for the alteration of such bridge in accordance with such order, and for such additional alteration of such bridge as the bridge owner may desire to meet the necessities of railroad or highway traffic, or both. The Secretary may approve or reject such

general plans and specifications, in whole or in part, and may require the submission of new or additional plans and specifications, but when the Secretary shall have approved general plans and specifications, they shall be final and binding upon all parties unless changes therein be afterward approved by the Secretary and the bridge owner. (June 21, 1940, ch. 409, § 4, 54 Stat. 498.)

#### § 515. Contracts for project; guaranty of cost.

After approval of such general plans and specifications by the Secretary, and within ninety days after notification of such approval, the bridge owner shall, in such manner as the Secretary may prescribe, take bids for the alteration of such bridge in accordance with such general plans and specifications. All bids, including any bid for all or part of the project submitted by the bridge owner, shall be submitted to the Secretary, together with a recommendation by the bridge owner as to the most competent bid or bids, and at the same time the bridge owner shall submit to the Secretary a written guaranty that the total cost of the project, including the cost of such work as is to be performed by the bridge owner and not included in the work to be performed by contract, shall not exceed the sum stated in said guaranty. The Secretary may direct the bridge owner to reject all bids and to take new bids, or may authorize the bridge owner to proceed with the project, by contract, or partly by contract and partly by the bridge owner, or wholly by the bridge owner. Upon such authorization and fixing of the proportionate shares of the cost as provided in section 516 of this title, the bridge owner shall, within a reasonable time to be prescribed by the Secretary, proceed with the work of alteration; and the cost thereof shall be borne by the United States and by the bridge owner, as provided in sections 516, 517 of this title. (June 21, 1940, ch. 409, § 5, 54 Stat. 498.)

#### § 516. Apportionment of cost.

At the time the Secretary shall authorize the bridge owner to proceed with the project, as provided in section 515 of this title, and after an opportunity to the bridge owner to be heard thereon, the Secretary shall determine and issue an order specifying the proportionate shares of the total cost of the project to be borne by the United States and by the bridge owner. Such apportionment shall be made on the following basis: The bridge owner shall bear such part of the cost as is attributable to the direct and special benefits which will accrue to the bridge owner as a result of the alteration, including the expectable savings in repair or maintenance costs; and that part of the cost attributable to the requirements of traffic by railroad or highway, or both, including any expenditure for increased carrying capacity of the bridge, and including such proportion of the actual capital cost of the old bridge or of such part of the old bridge as may be altered or changed or rebuilt, as the used service life of the whole or a part, as the case may be, bears to the total estimated service life of the whole or such part: *Provided*, That the part of the cost of alteration of any bridge for both highway and railroad

traffic, attributable to the requirements of traffic by highway, shall be borne by the proprietor of the highway: *Provided further*, That in the event the alteration or relocation of any bridge may be desirable for the reason that the bridge unreasonably obstructs navigation, but also for some other reason, the Secretary may require equitable contribution from any interested person, firm, association, corporation, municipality, county, or State desiring such alteration or relocation for such other reason, as a condition precedent to the making of an order for such alteration or relocation. The United States shall bear the balance of the cost, including that part attributable to the necessities of navigation. (June 21, 1940, ch. 409, § 6, 54 Stat. 499.)

#### § 517. Payment of share of United States.

When the Secretary shall have approved the general plans and specifications for the alteration of such bridge and the guaranty with respect to the cost thereof, and shall have fixed the proportionate shares thereof as between the United States and the bridge owner, he shall furnish to the Secretary of the Treasury a certified copy of his approval of such plans and specifications and guaranty, and of his order fixing the proportionate shares of the United States and of the bridge owner, and the Secretary of the Treasury shall thereupon set aside, out of any appropriation available for such purpose, the share of the United States payable under sections 511-523 of this title on account of the project. When the Secretary finds that such project has been completed in accordance with his order, he shall cause to be paid to the bridge owner, out of the funds so set aside, the proportionate share of the total cost of the project allocated to the United States; or he may, in his discretion, from time to time, cause payments to be made on such construction costs as the work progresses. The total payments out of Federal funds shall not exceed the proportionate share of the United States of the total cost of the project paid or incurred by the bridge owner, and, if such total cost exceeds the cost guaranteed by the bridge owner, shall not exceed the proportionate share of the United States of such guaranteed cost, except that if the cost of the work exceeds the guaranteed cost by reason of emergencies, conditions beyond the control of the owner, or unforeseen or undetermined conditions, the Secretary may, after full review of all the circumstances, provide for additional payments by the United States to help defray such excess cost to the extent he deems to be reasonable and proper, and shall certify such additional payments to the Secretary of the Treasury for payment. All payments to any bridge owner herein provided for shall be made by the Secretary of the Treasury through the Fiscal Service upon certifications of the Secretary of War. (June 21, 1940, ch. 409, § 7, 54 Stat. 499; Reorg. Plan No. III, § 1 (a) (1), eff. June 30, 1940, 5 Fed. Reg. 2107, 54 Stat. 1231.)

#### TRANSFER OF FUNCTIONS

Reorganization Plan No. III, § 1 (a) (1), cited to text, consolidated the Division of Disbursement in the Treasury Department, and various other offices and divisions, and

their functions, into one agency of the Treasury Department to be known as the Fiscal Service.

#### § 518. Appropriation.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 511-523 of this title. (June 21, 1940, ch. 409, § 8, 54 Stat. 500.)

#### § 519. Noncompliance with orders; penalties; removal of bridge.

Any bridge owner who shall willfully fail or refuse to comply with any lawful order of the Secretary, made in accordance with the provisions of sections 511-523 of this title, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished in any court of competent jurisdiction by a fine not exceeding \$5,000, and every month such bridge owner shall remain in default shall be deemed a new offense and subject such bridge owner to additional penalties therefor. In addition to the penalties above prescribed the Secretary may, upon the failure or refusal of any bridge owner to comply with any lawful order issued by the Secretary in regard thereto, cause the removal of any such bridge and accessory works at the expense of the bridge owner; and suit for such expense may be brought in the name of the United States against such bridge owner and recovery had for such expense in any court of competent jurisdiction. The removal of any bridge erected or maintained in violation of the provisions of such sections or the order or direction of the Secretary made in pursuance thereof, and compliance with any order of the Secretary made with respect to any bridge in accordance with the provisions of such sections, may be enforced by injunction, mandamus, or other summary process upon application to the district court of any district in which such bridge may, in whole or in part, exist, and proper proceedings to this end may be instituted under the direction of the Attorney General of the United States at the request of the Secretary. (June 21, 1940, ch. 409, § 9, 54 Stat. 500.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Writ of mandamus abolished, see Rule 81 (b), following section 723c of Title 28, Judicial Code and Judiciary.

#### 0. Review of findings and orders.

Any order made or issued under section 516 of this title may be reviewed by the circuit court of appeals for any judicial circuit in which the bridge in question is wholly or partly located, if a petition for such review is filed within three months after the date such order is issued. The judgment of any such court shall be final except that it shall be subject to review by the Supreme Court of the United States upon certification or certiorari, in the manner provided in sections 346 and 347 of Title 28, as amended. The review by such Court shall be limited to questions of law, and the findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive. Upon such review, such Court shall have power to affirm or, if the order is not in accordance with law, to modify or to reverse the order, with or without remanding the case for a rehearing as justice may require. Proceedings under this section shall not



operate as a stay of any order of the Secretary issued under provisions of sections 511-523 of this title other than section 516 of this title, or relieve any bridge owner of any liability or penalty under such provisions. (June 21, 1940, ch. 409, § 10, 54 Stat. 501.)

#### § 521. Regulations and orders.

The Secretary is authorized to prescribe such rules and regulations, and to make and issue such orders, as may be necessary or appropriate for carrying out the provisions of sections 511-523 of this title. (June 21, 1940, ch. 409, § 11, 54 Stat. 501.)

#### § 522. Existing provisions of law.

(a) The first sentence of section 494 of this title, and section 502 of this title, shall be inapplicable with respect to any bridge to which the provisions of sections 511-523 of this title are applicable, except to the extent provided in this section.

(b) Any bridge, the construction, reconstruction, or alteration of which was required by an order of the Secretary issued prior to July 1, 1939, and was not completed on such date, and in the case of which no penalties have accrued at the time of the enactment of such sections, shall be constructed, reconstructed, or altered as required by such order, and not in accordance with the provisions of such sections. In the case of any such bridge, however, the Secretary shall apportion the cost of the project between the bridge owner and the United States, and payment of the share of the United States shall be made, in the same manner as if the provisions of sections 511-523 of this title applied to such construction, reconstruction, or alteration, subject to the following limitations:

(1) In case such construction, reconstruction, or alteration has not begun on or before April 1, 1940, such apportionment of cost shall be made only if (A) the construction, reconstruction, or alteration is carried out in accordance with plans and specifications, and pursuant to bids, approved by the Secretary, and (B) the bridge owner has submitted to the Secretary a written guaranty of cost as provided for in section 515 of this title.

(2) The Secretary's determination as to such apportionment, and as to such plans and specifications and bids, shall be final.

(3) Such apportionment shall not be made if such construction, reconstruction, or alteration is not completed within the time fixed in such order of the Secretary or within such additional time as the Secretary, for good cause shown, may allow.

(c) Any bridge (except a bridge to which subsection (b) applies) the construction, reconstruction, or alteration of which was required by an order of the Secretary issued prior to July 1, 1939, and was not begun before such date, shall be subject to the provisions of sections 511-523 of this title as though such order had not been issued, and compliance with the provisions of such sections and with such orders as may be issued thereunder shall be considered to constitute compliance with such order issued prior to July 1, 1939, and with the provisions of law under which it was issued. (June 21, 1940, ch. 409, § 12, 54 Stat. 501.)

#### § 523. Relocation of bridges.

If the owner of any bridge used for railroad traffic and the Secretary shall agree that in order to remove an obstruction to navigation, or for any other purpose, a relocation of such bridge or the construction of a new bridge upon a new location would be preferable to an alteration of the existing bridge, such relocation or new construction may be carried out at such new site and upon such terms as may be acceptable to the bridge owner and the Secretary, and the cost of such relocation or new construction, including also any expense of changes in and additions to rights-of-way, stations, tracks, spurs, sidings, switches, signals, and other railroad facilities and property, and relocation of shippers required for railroad connection with the bridge at the new site, shall be apportioned as between the bridge owner and the United States in the manner which is provided for in section 516 of this title in the case of an alteration and the share of the United States paid from the appropriation authorized in section 518 of this title: *Provided*, That nothing in this section shall be construed as requiring the United States to pay any part of the expense of building any bridge across a navigable stream which the Secretary of War shall not find to be, in fact, a relocation of an existing bridge. (June 21, 1940, ch. 409, § 13, 54 Stat. 502.)

### Chapter 12.—RIVER AND HARBOR IMPROVEMENTS GENERALLY

#### GENERAL PROVISIONS

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#### GENERAL PROVISIONS

§ 540. Investigations and improvements; control by War Department; wildlife conservation.

Hereafter Federal investigations and improvements of rivers, harbors, and other waterways shall be under the jurisdiction of and shall be prosecuted by the War Department under the direction of the Secretary of War and the supervision of the Chief of Engineers, except as otherwise specifically provided by Act of Congress, which said investigations and improvements shall include a due regard for wildlife conservation. (June 20, 1938, ch. 535, § 1, 52 Stat. 802.)

#### SIMILAR PROVISIONS

Acts Aug. 30, 1935, ch. 831, 49 Stat. 1028 and Aug. 26, 1937, ch. 832, 50 Stat. 844, contained similar provisions.

#### NICARAGUA CANAL

Act Mar. 2, 1929, ch. 584, §§ 2-5, 45 Stat. 1539-1540, provided as follows: "Sec. 2. The President is hereby authorized to cause to be made under the direction of the Secretary of War and the supervision of the Chief of Engineers, and with the aid of such civilian engineers as the President shall deem advisable, a full and complete investigation and survey for the purpose of revising and bringing down to date the reports of the Isthmian Canal Commission transmitted to Congress, with respect to the practicability and advantages and approximate cost of constructing a canal across Nicaragua, and for the purpose of obtaining all additional available information respecting (1) the most practical route for an interoceanic ship canal across the Republic of Nicaragua by way of the San Juan River and the Great Lake of Nicaragua, or by way of any other route over Nicaraguan territory, including suitable locations for harbors at each of the terminal thereof; (2) the practicability and approximate cost of constructing and maintaining such canal; and (3) the approximate cost of acquiring all private rights, properties, privileges, and franchises, if any, included in or necessarily affected by such canal route.

"Sec. 3. The Chief of Engineers, under the direction of the Secretary of War, may establish and maintain, during the investigations and surveys authorized by this resolution, such stations as he may deem necessary for ascertaining the water supply available for the operation of a canal across Nicaragua or elsewhere and for the operation of the additional locks and other facilities at the Panama Canal.

"Sec. 4. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$150,000, to be expended by the Secretary of War for the purposes of this resolution and to remain available until expended.

"Sec. 5. The President is hereby requested to report to the Congress not later than two years from the approval of this resolution the results of the investigations and surveys hereby authorized, together with such recommendations in connection therewith as he may deem advisable."

Act June 20, 1938, ch. 535, § 12, 52 Stat. 806, provided as follows: "The Secretary of War is hereby authorized to continue the gathering of hydrological data, concerning the proposed Nicaragua Canal, by personnel operating continuously in Nicaragua under the supervision of the Chief of Engineers, as recommended in House Document Numbered 139, 72d Congress, 1st Session; the cost of this

work, and such incidental expenses as may be necessary in connection therewith, to be paid from appropriations hereafter made for examinations, surveys and contingencies of Rivers and Harbors."

Act Mar. 4, 1928, ch. 707, 45 Stat. 1667, made appropriation for determining the practicability, necessity, and cost of a Nicaragua Canal.

#### CROSS REFERENCE

Flood control projects, supervision of, see section 701b of this title.

#### § 541. Board of Engineers for Rivers and Harbors; establishment; duties and powers generally.

There shall be organized in the office of the Chief of Engineers, United States Army, by detail from time to time from the Corps of Engineers, a board of seven engineer officers, a majority of whom shall be of rank not less than lieutenant colonel, whose duties shall be fixed by the Chief of Engineers, and to whom shall be referred for consideration and recommendation, in addition to any other duties assigned, so far as in the opinion of the Chief of Engineers may be necessary, all reports upon examinations and surveys provided for by Congress, and all projects or changes in projects for works of river and harbor improvement prior to June 13, 1902, or thereafter provided for. And the board shall submit to the Chief of Engineers recommendations as to the desirability of commencing or continuing any and all improvements upon which reports are required. And in the consideration of such works and projects the board shall have in view the amount and character of commerce existing or reasonably prospective which will be benefited by the improvement, and the relation of the ultimate cost of such work, both as to cost of construction and maintenance, to the public commercial interests involved, and the public necessity for the work and propriety of its construction, continuance, or maintenance at the expense of the United States. And such consideration shall be given as time permits to such works as have, prior to June 13, 1902, been provided for by Congress, the same as in the case of new works proposed. The board shall, when it considers the same necessary, and with the sanction and under orders from the Chief of Engineers, make, as a board or through its members, personal examinations of localities. And all facts, information, and arguments which are presented to the board for its consideration in connection with any matter referred to it by the Chief of Engineers shall be reduced to and submitted in writing, and made a part of the records of the office of the Chief of Engineers. It shall further be the duty of said board, upon a request transmitted to the Chief of Engineers by the Committee on Rivers and Harbors of the House of Representatives, or the Committee on Commerce of the Senate, in the same manner to examine and report through the Chief of Engineers upon any projects adopted, prior to June 13, 1902, by the Government or upon which appropriations have been made, and report upon the desirability of continuing the same or upon any modifications thereof which may be deemed desirable. As used in this section the term "commerce" shall include the use of waterways by seasonal passenger craft, yachts, house

boats, fishing boats, motor boats, and other similar water craft, whether or not operated for hire.

The board shall have authority, with the approval of the Chief of Engineers, to rent quarters, if necessary, for the proper transaction of its business, and to employ such civil employees as may, in the opinion of the Chief of Engineers, be required for properly transacting the business assigned to it, and the necessary expenses of the board shall be paid from allotments made by the Chief of Engineers from any appropriations made by Congress for the work or works to which the duties of the board pertain. (June 13, 1902, ch. 1079, § 3, 32 Stat. 372; Mar. 4, 1913, ch. 144, § 4, 37 Stat. 826; Feb. 10, 1932, ch. 26, 47 Stat. 42.)

#### CROSS REFERENCE

Projects having to do with shore protection to be referred for consideration and recommendation to the Beach Erosion Board instead of the Board of Engineers for Rivers and Harbors, see section 428 (b) of this title.

#### § 542. Review by Board of Engineers of reports on examinations and surveys and special reports.

All reports on examinations and surveys authorized by law shall be reviewed by the Board of Engineers for Rivers and Harbors as provided for in section 541 of this title, and all special reports ordered by Congress shall, in the discretion of the Chief of Engineers, be reviewed in like manner by said board; and the said board shall also, on request by resolution of the Committee on Commerce of the Senate or the Committee on Rivers and Harbors of the House of Representatives, submitted to the Chief of Engineers, examine and review the report of any examination or survey made pursuant to any Act or resolution of Congress, and report thereon through the Chief of Engineers, United States Army, who shall submit his conclusions thereon as in other cases: *Provided*, That in no case shall the board, in its report thus called for by committee resolution, extend the scope of the project contemplated in the original report upon which its examination and review has been requested, or in the provision of law authorizing the original examination or survey. (Mar. 4, 1913, ch. 144, § 4, 37 Stat. 826.)

#### § 543. Employment of civil engineers on western and northwestern rivers.

The Chief of Engineers may, with the approval of the Secretary of War, employ such civil engineers, not exceeding five in number, for the purpose of executing the surveys and improvements of western and northwestern rivers, ordered by Congress, as may be necessary to the proper and diligent prosecution of the same; and the persons so employed may be allowed a reasonable compensation for their services, not to exceed the sum of \$3,000 a year. (R. S. § 5253.)

#### DERIVATION

Res. Mar. 29, 1867, No. 27, 15 Stat. 28.

#### § 544. Employment of retired officers of Army or Navy.

Section 62 of Title 5, shall not be so construed as to prevent the employment of any retired officer of the Army or Navy to do work under the direction of the Chief of Engineers of the United States Army in connection with the improvement of rivers and har-

bors of the United States, or the payment by the proper officer of the Treasury of any amounts agreed upon as compensation for such employment. (June 3, 1896, ch. 314, § 7, 29 Stat. 235.)

#### CROSS REFERENCE

Limitation on amount of retired pay of officers of Army or Navy holding civilian office or position under the Government, see section 59a of Title 5, Executive Departments and Government Officers and Employees.

#### § 544a. Employment of retired civil service employees.

The provisions of sections 715 and 715a of Title 5 shall not be so construed as to prevent the employment by the Chief of Engineers under agreement as authorized by sections 569a, 584a, and 607a of this title, of any retired civilian employee whose expert assistance may be needed in connection with the prosecution of river and harbor or flood control works: *Provided*, That during the period of such employment a sum equal to the retired pay of the employee shall be deducted from the compensation agreed upon. (June 20, 1938, ch. 535, § 5, 52 Stat. 805.)

#### CROSS REFERENCE

Section is also set out as section 701f of this title.

#### § 545. Preliminary examinations and reports; surveys; contents of report to Congress generally.

In all cases where preliminary examinations and surveys are authorized a preliminary examination of the river, harbor, or other proposed improvement mentioned shall first be made and a report as to the advisability of its improvement shall be submitted unless a survey or estimate is expressly directed. If upon such preliminary examination the proposed improvement is not deemed advisable, no further action shall be taken thereon without the further direction of Congress; but in case the report shall be favorable to such proposed improvement, or that a survey and estimate should be made to determine the advisability of improvement, the Secretary of War is authorized, in his discretion, to cause surveys to be made, and the cost and advisability to be reported to Congress. And such reports containing plans and estimates shall also contain a statement as to the rate at which the work should be prosecuted: *Provided*, That every report submitted to Congress, in addition to full information regarding the present and prospective commercial importance of the project covered by the report and the benefit to commerce likely to result from any proposed plan of improvement, shall also contain such data as it may be practicable to secure in regard to the following subjects:

(a) The existence and establishment of both private and public terminal and transfer facilities contiguous to the navigable water proposed to be improved, and, if water terminals have been constructed, the general location, description, and use made of the same, with an opinion as to their adequacy and efficiency, whether private or public. If no public terminals have been constructed, or if they are inadequate in number, there shall be included in the report an opinion in general terms as to the necessity, number, and appropriate location of the same, and also the necessary relations of such proposed terminals to the development of commerce.

(b) The development and utilization of water power for industrial and commercial purposes.

(c) Such other subjects as may be properly connected with such project: *Provided*, That in the investigation and study of these questions consideration shall be given only to their bearing upon the improvement of navigation, to the possibility and desirability of their being coordinated in a logical and proper manner with improvements for navigation to lessen the cost of such improvements and to compensate the Government for expenditures made in the interest of navigation, and to their relation to the development and regulation of commerce: *Provided further*, That the investigation and study of these questions may, upon review by the Board of Engineers for Rivers and Harbors when called for as provided by law, be extended to any work of improvement under way and to any locality the examination and survey of which has heretofore been, or may hereafter be, authorized by Congress. (Mar. 4, 1913, ch. 144, § 3, 37 Stat. 825.)

#### § 546. Investigation of stream flow and watersheds; surveys in connection with dams.

The surveys of navigable streams shall include such stream-flow measurements and other investigations of the watersheds as may be necessary for preparation of plans of improvement and a proper consideration of all uses of the stream affecting navigation, and whenever necessary similar investigations may be made in connection with all navigable streams under improvement. Whenever permission for the construction of dams in navigable streams is granted, or is under consideration by Congress, such surveys and investigations of the sections of the streams affected may be made as are necessary to secure conformity with rational plans for the improvement of the streams for navigation. (June 25, 1910, ch. 382, § 3, 36 Stat. 669.)

#### § 546a. Same; information as to configuration of shore line.

Every report submitted to Congress in pursuance of any provision of law for preliminary examination and survey looking to the improvement of the entrance at the mouth of any river or at any inlet, in addition to other information which the Congress has directed shall be given, shall contain information concerning the configuration of the shore line and the probable effect thereon that may be expected to result from the improvement having particular reference to erosion and/or accretion for a distance of not less than ten miles on either side of the said entrance. (Aug. 30, 1935, ch. 831, § 5, 49 Stat. 1048.)

#### § 547. Reports as to local benefits of improvement and recommendations as to local cooperation.

Every report submitted to Congress in pursuance of any provision of law for a survey, in addition to other information which the Congress has directed shall be given, shall contain a statement of special or local benefit which will accrue to localities affected by such improvement and a statement of general or national benefits, with recommendations as to what local cooperation should be required, if any,

on account of such special or local benefit. (June 5, 1920, ch. 252, § 2, 41 Stat. 1010.)

**§ 548. Reports on discontinuance or curtailment of projects.**

Section, act Mar. 3, 1925, ch. 467, § 7, 43 Stat. 1191, required a report on projects adopted prior to March 3, 1925.

**§ 549. Report of deterioration in improvements.**

The Secretary of War shall cause the Chief of Engineers of the United States Army, in submitting his annual reports to Congress with regard to works of river and harbor improvement under his charge, to state what deterioration, if any, has taken place by destruction, decay, obstructions, or otherwise, in connection with any of such works, together with an estimate of the cost of rebuilding or repairing such works, or removing such obstructions; and he shall also cause the said Chief of Engineers to recommend, with his reasons therefor, the discontinuance of appropriations for any river and harbor work which he may deem unworthy of further improvement. (Mar. 3, 1899, ch. 425, § 7, 30 Stat. 1150.)

**§ 550. Report on water terminal and transfer facilities.**

The Chief of Engineers, United States Army, shall indicate in his annual reports the character of the terminal and transfer facilities existing on every harbor or waterway under maintenance or improvement by the United States, and state whether they are considered adequate for existing commerce. He shall also submit one or more special reports on this subject, as soon as possible after January 18, 1918, including, among other things, the following:

(a) A brief description of such water terminals, including location and the suitability of such terminals to the existing traffic conditions, and whether such terminals are publicly or privately owned, and the terms and conditions under which they may be subjected to public use.

(b) Whether such water terminals are connected by a belt or spur line of railroad with all the railroads serving the same territory or municipality, and whether such connecting railroad is owned by the public and the conditions upon which the same may be used, and also whether there is an interchange of traffic between the water carriers and the railroad or railroads as to such traffic which is carried partly by rail and partly by water to its destination, and also whether improved and adequate highways have been constructed connecting such water terminal with the other lines of highways.

(c) If no water terminals have been constructed by the municipality or other existing public agency there shall be included in his report an expression of opinion in general terms as to the necessity, number, and appropriate location of such a terminal or terminals.

(d) An investigation of the general subject of water terminals, with descriptions and general plans of terminals of appropriate types and construction for the harbors and waterways of the United States suitable for various commercial purposes and adapted to the varying conditions of tides, floods, and other physical characteristics. (July 18, 1918, ch. 155, § 7, 40 Stat. 911.)

**§ 551. Policy of Government as to terminal facilities for new projects.**

It is hereby declared to be the policy of the Congress that water terminals are essential at all cities and towns located upon harbors or navigable waterways and that at least one public terminal should exist, constructed, owned, and regulated by the municipality or other public agency of the State and open to the use of all on equal terms. The Secretary of War, through the Chief of Engineers, shall give full publicity, as far as may be practicable, to this provision. (Mar. 2, 1919, ch. 95, § 1, 40 Stat. 1286.)

**§ 552. Repealed.** May 29, 1928, ch. 901, § 1 (28), 45 Stat. 988.

Section, act Aug. 5, 1886, ch. 929, § 8, 24 Stat. 335, required reports to Congress concerning civilian engineers employed in improving rivers and harbors.

**§ 553. Freight statistics.**

In the collection of statistics relating to traffic, the Corps of Engineers is directed to adopt a uniform system of classification for freight, and upon rivers or inland waterways to collate ton-mileage statistics as far as practicable. (July 25, 1912, ch. 253, § 1, 37 Stat. 223.)

**§ 554. Duty of shipowners and officers to furnish information to person in local charge of improvement; penalty.**

Owners, agents, masters, and clerks of vessels arriving at or departing from localities where works of river and harbor improvement are carried on shall furnish, on application of the persons in local charge of the works, a comprehensive statement of vessels, passengers, freight, and tonnage.

Every person or persons offending against the provisions of this section shall, for each and every offense, be liable to a fine of \$100, or imprisonment not exceeding two months, to be enforced in any district court in the United States within whose territorial jurisdiction such offense may have been committed. (Feb. 21, 1891, ch. 252, §§ 1, 2, 26 Stat. 766.)

**§ 555. Duty of shipowners and officers to furnish information required by Secretary of War.**

Owners, agents, masters, and clerks of vessels and other craft plying upon the navigable waters of the United States, and all individuals and corporations engaged in transporting their own goods upon the navigable waters of the United States, shall furnish such statements relative to vessels, passengers, freight, and tonnage as may be required by the Secretary of War: *Provided*, That this provision shall not apply to those rafting logs except upon a direct request upon the owner to furnish specific information.

Every person or persons offending against the provisions of this section shall, for each and every offense, be liable to a fine of \$100, or imprisonment not exceeding two months, to be enforced in any district court in the United States within whose territorial jurisdiction such offense may have been committed. (Sept. 22, 1922, ch. 427, § 11, 42 Stat. 1043.)

**§ 556. Printing reports generally.**

The Secretary of War shall cause the manuscript of the annual report of the Chief of Engineers and subordinate engineers, relating to the improvement of rivers and harbors, and the report of the Mississippi River Commission to be placed in the hands of the Public Printer on or before the 15th day of October in each year, and the Public Printer shall cause said reports to be printed with an accurate and comprehensive index thereof, on or before the first Monday in December in each year, for the use of Congress.

All reports on examinations and surveys which may be prepared during the recess of Congress shall, in the discretion of the Secretary of War, be printed by the Public Printer as documents of the following session of Congress. (Aug. 11, 1888, ch. 860, § 8, 25 Stat. 424; June 13, 1902, ch. 1079, 32 Stat. 367; Mar. 4, 1913, ch. 144, § 3, 37 Stat. 825.)

**CROSS REFERENCE**

Time of furnishing manuscript and proofs of annual reports and accompanying documents to Public Printer, see section 108 of Title 5, Executive Departments and Government Officers and Employees.

**§ 557. Payment of costs of printing.**

The printing of matter relating to river and harbor works, including all reports, compilations, regulations, and so forth, whose preparation is allowable under War Department regulations, shall be done and paid for out of regular annual appropriations for printing and binding for the War Department. (July 25, 1912, ch. 253, § 13, 37 Stat. 234; July 1, 1916, ch. 209, § 1, 39 Stat. 330.)

**§ 558. Sale of property acquired for improvement.**

When any property which has been heretofore or may be hereafter purchased or acquired for the improvement of rivers and harbors is no longer needed, or is no longer serviceable, it may be sold in such manner as the Secretary of War may direct, and the proceeds credited to the appropriation for the work for which it was purchased or acquired; and the Secretary of War may direct the transfer of any property employed in river and harbor works, and in such event the property so transferred shall be valued and credited to the project upon which it was theretofore used and charged to the project to which it shall be transferred. (June 13, 1902, ch. 1079, § 5, 32 Stat. 373; Feb. 20, 1931, ch. 235, 46 Stat. 1191.)

**CODIFICATION**

Section originally read, "When any land or other property . . . etc." The words, "land or other", were deleted on the basis of act February 20, 1931, cited to text, which provided, "that hereafter no real estate of the War Department shall be sold or disposed of without authority of Congress, and all existing Acts or parts thereof in conflict with this proviso, other than special Acts for the sale of stated tracts of land, are hereby repealed."

**§ 558a. Same; canals, rivers, and harbors.**

When any land which has been heretofore or may be hereafter purchased or acquired for the improvement of canals, rivers and harbors is no longer needed, or is no longer serviceable, it may be sold in such manner as the Secretary of War may direct, and any moneys received from such sale shall be

deposited in the Treasury to the credit of miscellaneous receipts. (Aug. 30, 1935, ch. 831, § 7, 49 Stat. 1048.)

**§ 558b. Exchange of land or property.**

In any case in which it may be necessary or advisable in the execution of an authorized work of river and harbor improvement to exchange land or other property of the Government for private lands or property required for such project, the Secretary of War may, upon the recommendation of the Chief of Engineers, authorize such exchange upon terms and conditions deemed appropriate by him, and any conveyance of Government land or interests therein necessary to effect such exchange may be executed by the Secretary of War: *Provided further*, That the authority hereby granted to the Secretary of War shall not extend to or include lands held or acquired by the Tennessee Valley Authority pursuant to the terms of sections 831-831dd of Title 16. This section shall apply to any exchanges heretofore deemed advisable in connection with the construction of the Bonneville Dam in the Columbia River. (June 20, 1938, ch. 535, § 2, 52 Stat. 804.)

**CROSS REFERENCES**

Bonneville Project, see sections 832-832l of Title 16, Conservation.

Flood control, applicability of this section to works of, see section 558b-1 of this title.

**§ 558b-1. Same; application to authorized works of flood control.**

Section 558b of this title is hereby made applicable to authorized works of flood control. (Aug. 11, 1939, ch. 699, § 3, 53 Stat. 1414.)

**§ 558c. Rights-of-way over United States land.**

The Secretary of War is hereby authorized and empowered, under such terms and conditions as are deemed advisable by him, to grant easements for rights-of-way for public roads and streets on and across lands acquired by the United States for river and harbor and flood control improvements including, whenever necessary, the privilege of occupying so much of said lands as may be necessary for the piers, abutments, and other portions of a bridge structure: *Provided*, That such rights-of-way shall be granted only upon a finding by the Secretary of War that the same will be in the public interest and will not substantially injure the interest of the United States in the property affected thereby: *Provided further*, That all or any part of such rights-of-way may be annulled and forfeited by the Secretary of War for failure to comply with the terms or conditions of any grant hereunder or for nonuse or for abandonment of rights granted under the authority hereof: *Provided further*, That the authority hereby granted to the Secretary of War shall not extend to or include lands held or acquired by the Tennessee Valley Authority pursuant to the terms of Sections 831-831dd of Title 16. (June 20, 1938, ch. 535, § 10, 52 Stat. 808.)

**§ 559. Disposition of rentals for Government plants.**

Amounts paid by private parties or other agencies for rental of plant owned by the Government in connection with the prosecution of river and harbor

works shall be deposited in each case to the credit of the appropriation to which the plant belongs. (Aug. 8, 1917, ch. 49, § 13, 40 Stat. 268.)

**§ 560. Contributions from private parties; return of excess.**

The Secretary of War is authorized to receive from private parties such funds as may be contributed by them to be expended in connection with funds appropriated by the United States for any authorized work of public improvement of rivers and harbors whenever such work and expenditure may be considered by the Chief of Engineers as advantageous to the interests of navigation: *Provided*, That when contributions heretofore or hereafter made by local interests for river and harbor improvements, in accordance with specific requirements or under general authority of Congress, are in excess of the actual cost of the work contemplated and properly chargeable to such contributions, such excess contributions may, with the approval of the Secretary of War, be returned to the proper representatives of the contributing interests, unless the provision of law under which the contribution is made requires that the entire contribution be retained by the United States. (Mar. 4, 1915, ch. 142, § 4, 38 Stat. 1053.)

**CROSS REFERENCE**

Classification as trust funds, appropriation and disbursement of funds contributed for improvement of rivers and harbors, see section 725a (84) of Title 31, Money and Finance.

**§ 561. Advances by private parties; repayment.**

Whenever local interests shall offer to advance funds for the prosecution of a work of river and harbor improvement duly adopted and authorized by law the Secretary of War may, in his discretion, receive such funds and expend the same in the immediate prosecution of such work. The Secretary of War is authorized and directed to repay without interest, from appropriations which may be provided by Congress for river and harbor improvements, the moneys so contributed and expended: *Provided*, That no repayment of funds which may be contributed for the purpose of meeting any conditions of local cooperation imposed by Congress, nor under the authority of section 560 of this title shall be made. (Mar. 3, 1925, ch. 467, § 11, 43 Stat. 1197.)

**CROSS REFERENCE**

Classification as trust funds, appropriation and disbursement of funds advanced for improvement of rivers and harbors, see section 725a (65) of Title 31, Money and Finance.

**§ 561a. Contributions from local interests; reduction to meet lowered cost.**

When the authorization of a project of river and harbor improvement requires that local interests shall contribute a specific sum of money toward its cost, the Secretary of War, upon the recommendation of the Chief of Engineers, may reduce the sum to be contributed to an amount which shall be in the same ratio to the amount of the required contribution as the actual cost of the work to which said contribution is applicable bears to its original estimated cost as set forth in the project document: *Provided*, That the reduction hereby authorized

shall not extend to contributions made prior to March 3, 1933. (Mar. 3, 1933, ch. 216, 47 Stat. 1545.)

**§ 562. Channel depths and dimensions defined.**

In the preparation of projects under River and Harbor Acts, unless otherwise expressed, the channel depths referred to shall be understood to signify the depth at mean low water in tidal waters tributary to the Atlantic and Gulf coasts and at mean lower low water in tidal waters tributary to the Pacific coast and the mean depth for a continuous period of fifteen days of the lowest water in the navigation season of any year in rivers and nontidal channels, and the channel dimensions specified shall be understood to admit of such increase at the entrances, bends, sidings, and turning places as may be necessary to allow of the free movement of boats. (Mar. 4, 1915, ch. 142, § 5, 38 Stat. 1053.)

**§ 563. Use of unexpended sums for preservation, etc., of existing works and for new projects.**

Section, act Sept. 22, 1922, ch. 427, § 6, 42 Stat. 1042, made unexpended funds, appropriated prior to Sept. 22, 1922, for river and harbor improvements, available for preservation and maintenance of existing river and harbor works and prosecution of desirable new projects.

**§ 564. Settlement of claims for injuries to or loss of private property.**

Whenever any vessel belonging to or employed by the United States engaged upon river and harbor works collides with and damages another vessel, pier, or other legal structure belonging to any person or corporation, and whenever, in the prosecution of river and harbor works, an accident occurs, damaging or destroying property belonging to any person or corporation, and whenever personal property of employees of the United States, who are employed on or in connection with river and harbor works, is damaged or destroyed in connection with the loss, threatened loss, or damage to United States property, or through efforts to save life or to preserve United States property, the Chief of Engineers shall cause an immediate examination to be made, and if, in his judgment, the facts and circumstances are such as to make the whole or any part of the damages or destruction a proper charge against the United States, the Chief of Engineers, subject to the approval of the Secretary of War, shall have authority to adjust and settle all claims for damages or destruction caused by the above designated collisions, accidents, and so forth, in cases where the damage or expense does not exceed \$500, and pay the same from the appropriation directly involved, and to report such as exceed \$500 to Congress for its consideration. (June 25, 1910, ch. 382, § 4, 36 Stat. 676; June 5, 1920, ch. 252, § 9, 41 Stat. 1015.)

**§ 565. River and harbor improvement by private or municipal enterprise.**

Any person or persons, corporations, municipal or private, who desire to improve any navigable river, or any part thereof, at their or its own expense and risk may do so upon the approval of the plans and specifications of said proposed improvement by the Secretary of War and Chief of Engineers of the Army. The plan of said improvement must conform with the general plan of the Government improve-



ments, must not impede navigation, and no toll shall be imposed on account thereof, and said improvement shall at all times be under the control and supervision of the Secretary of War and Chief of Engineers. (June 13, 1902, ch. 1079, § 1, 32 Stat. 371.)

**§ 566. Improvement by or under authority of State of New Jersey.**

Authority is given to the State of New Jersey, or, through it, to any commission, individual, corporation, or municipality, singly or collectively, designated by the legislature of said State, or by a commission appointed or authorized by said legislature, to improve the channels on the New Jersey seacoast, or any portion of said coast, or the waters adjacent thereto, lying between thirty-eight degrees fifty-six minutes and forty degrees twenty minutes north latitude, by dredging, or by the construction of piers, jetties, or breakwaters, or other river and harbor work of any description or nature adapted to attain the ends now pursued by the United States Government for the advantage of said coast or the relief of commerce: *Provided*, That such operations shall not encroach upon those portions of said coast, or the channels adjacent thereto, for which the United States Government may undertake similar work according to its own plans: *And provided*, That the plans for said work shall be placed on file with the Chief of Engineers of the War Department for thirty days, during which time he is authorized to disapprove said plans and forbid such work if, in his judgment, the improvements when completed will interfere with navigation or with any works of the United States Government commenced or proposed to be made: *Provided further*, That no tolls or other charges upon commerce shall be imposed by those making such improvements: *And provided further*, That this section shall not be construed as affecting in any way the jurisdiction and control of the Federal Government over any waters that may be improved in pursuance of the provisions thereof, nor as exempting such waters from the operation of the laws heretofore or hereafter enacted by Congress for the preservation and protection of navigable waters. The right to alter, amend, or repeal this section is hereby expressly reserved. (June 30, 1906, ch. 3923, §§ 1, 2, 34 Stat. 800.)

**§ 567. Navigation and flood control improvements by Minnesota, North Dakota, and South Dakota.**

Congress hereby consents that the States of Minnesota, North Dakota, and South Dakota, or any two of them, may enter into any agreement or agreements with each other to aid in improving navigation and to prevent and control floods on boundary waters of said States and the waters tributary thereto. And said States, or any two of them, may agree with each other upon any project or projects for the purpose of making such improvements, and upon the amount of money to be contributed by each to carry out such projects. The Secretary of War is authorized and directed to make a survey of any project proposed, as aforesaid, by said States, or any two of them, to determine the feasibility and practicability thereof and the expenses of carrying the same into effect and

what share of such expenses should be borne by the respective States, local interests, or by the National Government. If the Secretary of War approves any such projects, he may authorize the States to make such improvements at their own expense, but under his supervision. (Aug. 8, 1917, ch. 49, § 5, 40 Stat. 266.)

**§ 567a. Flood and pollution control compacts between certain States.**

The consent of the Congress of the United States is hereby given to the States of Maine, New York, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, Pennsylvania, West Virginia, Kentucky, Indiana, Illinois, Tennessee, and Ohio, or any two or more of them, to negotiate and enter into agreements or compacts for conserving and regulating the flow, lessening flood damage, removing sources of pollution of the waters thereof, or making other public improvements on any rivers or streams whose drainage basins lie within any two or more of the said States.

No such compact or agreement shall be binding or obligatory upon any State a party thereto unless and until it has been approved by the legislatures of each of the States whose assent is contemplated by the terms of the compact or agreement and by the Congress. (June 8, 1936, ch. 542, §§ 1, 2, 49 Stat. 1490.)

**APPROVAL OF COMPACT BY CONGRESS**

Act July 11, 1940, ch. 581, 54 Stat. 752, provided, in part, as follows:

"The consent and approval of Congress is hereby given to an interstate compact relating to the control and reduction of the pollution of the streams of the Ohio River drainage basin negotiated and entered into or to be entered into under authority of Public Resolution Numbered 104, Seventy-fourth Congress, approved June 8, 1936, [this section] and now ratified by the States of New York, Illinois, Kentucky, and Indiana, and by the State of Ohio (whose ratification is to go into effect at the time at which the States of New York, Pennsylvania, and West Virginia enter into said compact as parties and signatory States), also by the State of West Virginia (whose ratification is to go into effect at the time at which the States of New York, Ohio, Virginia, and Pennsylvania enter into said compact as parties and signatory States) \* \* \*."

"Sec. 2. Without further submission of said compact, the consent of Congress is hereby given to the State of Virginia or any other State with waters in the Ohio River drainage basin, entering into said compact as a signatory State and party in addition to the States therein named or any of them.

"Sec. 3. The commissioners to represent the United States, as provided in article IV of said compact, shall be appointed by the President.

"Sec. 4. Nothing contained in this Act or in the compact herein approved shall be construed as impairing or affecting the sovereignty of the United States or any of its rights or jurisdiction in and over the area or waters which are the subject of such compact.

"Sec. 5. The right to alter, amend, or repeal the provisions of section 1 is hereby expressly reserved."

**§ 567b. Pollution of Potomac drainage basin; control by State compacts.**

The consent of Congress is hereby given to the States of Maryland and West Virginia and the Commonwealths of Virginia and Pennsylvania and the District of Columbia to enter into the compact to create a Potomac Valley Conservancy District and to establish an Interstate Commission on the

Potomac River Basin: *Provided*, That nothing contained in such compact shall be construed as impairing or in any manner affecting any right or jurisdiction of the United States in and over the region which forms the subject of this compact. (July 11, 1940, ch. 579, 54 Stat. 748.)

**§ 568. Limitation on power of committee of Congress to consider projects.**

No project shall be considered by any committee of Congress with a view to its adoption, except with a view to a survey, if five years have elapsed since a report upon a survey of such project has been submitted to Congress pursuant to law. (Sept. 22, 1922, ch. 427, § 9, 42 Stat. 1043.)

**§ 569. Personal equipment for employees; use of funds for purpose.**

Funds heretofore or hereafter appropriated for rivers and harbors to be expended under the supervision of the Secretary of War shall be available for expenditure in the purchase of such personal equipment for employees as in the opinion of the Chief of Engineers are essential for the efficient prosecution of the works. (Jan. 21, 1927, ch. 47, § 5 (b), 44 Stat. 1021.)

**§ 569a. Public hearings; expert assistance; stenographic assistance; authority of Chief of Engineers.**

The Chief of Engineers is authorized to engage under agreement, when deemed necessary, expert assistance in the various arts and sciences, including expert stenographic assistance for reporting the proceedings of public hearings held in connection with preliminary examinations, surveys, or improvements of rivers and harbors, upon terms and rates of compensation for services and incidental expenses in excess of the maximum of the salaries authorized by sections 661-663, 664-673, and 674 of Title 5; and all agreements entered into for such purposes prior to July 3, 1930, are validated to the amount of the current rates charged for such services. (July 3, 1930, ch. 847, § 6, 46 Stat. 948.)

**§ 570. Default in contract; disposition of amounts collected.**

Any amounts collected from defaulting contractors or their sureties under contracts entered into in connection with river and harbor or flood-control work prosecuted by the Engineer Department, whether collected in cash or by deduction from amounts otherwise due such contractors, hereafter shall be credited in each case to the appropriation under which the contract was made. (Aug. 30, 1935, ch. 831, § 8, 49 Stat. 1048.)

**§ 571. Crediting reimbursements for lost, stolen, or damaged property.**

Any amounts collected from any person, persons, or corporations as a reimbursement for lost, stolen, or damaged property, purchased in connection with river and harbor or flood control work prosecuted under the direction of the Secretary of War and the supervision of the Chief of Engineers, whether collected in cash or by deduction from amounts otherwise due such person, persons, or corporations, hereafter shall be credited in each case to the appro-

priation that bore the cost of purchase, repair, or replacement of the lost, stolen, or damaged property. (June 20, 1938, ch. 535, § 4, 52 Stat. 805.)

**TRAVELING EXPENSES AND SUBSISTENCE**

**§ 581. Hiring special means of transportation.**

In their execution and inspection of river and harbor improvement work, at points beyond easy reach of ordinary regular transportation lines, Engineer officers are authorized to hire and use such transportation as they may consider desirable and advantageous to the progress of work. (July 25, 1912, ch. 253, § 9, 37 Stat. 233.)

**§ 582. Subsistence allowance to persons engaged in field work.**

When the expenses of persons engaged in field work or traveling on official business outside of the District of Columbia and away from their designated posts of duty are chargeable to appropriations of the Engineer Department, a per diem of not exceeding \$4 may be allowed in lieu of subsistence when not otherwise fixed by law. (July 18, 1918, ch. 155, § 9, 40 Stat. 912.)

**CROSS REFERENCE**

Per diem in lieu of expenses allowed Government officers and employees away on official business, see section 823 of Title 5, Executive Departments and Government Officers and Employees.

**§ 583. Payment of allowances, etc., incident to change of station of Engineer officers from appropriation for improvements.**

When in the opinion of the Secretary of War the changes of a station of an officer of the Corps of Engineers is primarily in the interest of river and harbor improvement, the mileage and other allowances to which he may be entitled incident to such change of station may be paid from appropriations for such improvements. (Mar. 3, 1925, ch. 467, § 5, 43 Stat. 1191.)

**§ 584. Expenses incident to transportation of household effects of civilian employees.**

Actual expenses heretofore and hereafter incurred by civilian employees on river and harbor works for packing, crating, hauling, and transporting household effects, within the weight limits as prescribed in Army Regulations, when making permanent change of station under competent orders, may, on approval of the Chief of Engineers, be paid or reimbursed from funds pertaining to river and harbor works. (Jan. 21, 1927, ch. 47, § 5 (d), 44 Stat. 1021.)

**§ 584a. Travel expenses of civilian employees on river and harbor works; available funds for payment.**

Actual expenses incurred by civilian employees on river and harbor works for travel when making permanent change of station under competent orders, may, on approval of the Chief of Engineers, be paid or reimbursed from funds pertaining to river and harbor works. (July 3, 1930, ch. 847, § 6, 46 Stat. 948.)

**ACQUISITION OF LAND AND MATERIALS**

**§ 591. Condemnation, purchase, and donation of land and materials.**

The Secretary of War may cause proceedings to be instituted, in the name of the United States, in any

court having jurisdiction of such proceedings, for the acquirement by condemnation of any land, right-of-way, or material needed to enable him to maintain, operate, or prosecute works for the improvement of rivers and harbors for which provision has been made by law; such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted: *Provided, however,* That when the owner of such land, right-of-way, or material shall fix a price for the same, which in the opinion of the Secretary of War, shall be reasonable, he may purchase the same at such price without further delay: *And provided further,* That the Secretary of War is hereby authorized to accept donations of lands or materials required for the maintenance or prosecution of such works. (Apr. 24, 1888, ch. 194, 25 Stat. 94.)

**§ 592. Condemnation of land in aid of person, company, corporation, municipal or private.**

Whenever any person, company, or corporation, municipal or private, shall undertake to secure any land or easement therein needed in connection with a work of river and harbor improvement duly authorized by Congress, for the purpose of conveying the same to the United States free of cost, or for the purpose of constructing, maintaining, and operating locks, dry docks, or other works to be conveyed to the United States free of cost, and of constructing, maintaining and operating dams for use in connection therewith, and shall be unable for any reason to obtain the same by purchase and acquire a valid title thereto, the Secretary of War may, in his discretion, cause proceedings to be instituted in the name of the United States for the acquirement by condemnation of said land or easement, and it shall be the duty of the Attorney General of the United States to institute and conduct such proceedings upon the request of the Secretary of War: *Provided,* That all expenses of said proceedings and any award that may be made thereunder shall be paid by the said person, company, or corporation, to secure which payment the Secretary of War may require the said person, company, or corporation to execute a proper bond in such amount as he may deem necessary before said proceedings are commenced. (May 16, 1906, ch. 2465, 34 Stat. 196; June 29, 1906, ch. 3628, 34 Stat. 632.)

**§ 593. Condemnation of land in aid of State or State agency.**

Whenever any State, or any reclamation, flood control or drainage district, or other public agency created by any State, shall undertake to secure any land or easement therein, needed in connection with a work of river and harbor improvement duly authorized by Congress, for the purpose of conveying the same to the United States free of cost, and shall be unable for any reason to obtain the same by purchase and acquire a valid title thereto, the Secretary of War may, in his discretion, cause proceedings to be instituted in the name of the United States for the acquirement by condemnation of said land or easement, and it shall be the duty of the Attorney General of the United States to institute and con-

duct such proceedings upon the request of the Secretary of War: *Provided,* That all expenses of said proceedings and any award that may be made thereunder shall be paid by such State, or reclamation, flood control or drainage district, or other public agency as aforesaid, to secure which payment the Secretary of War may require such State, or reclamation, flood control or drainage district, or other public agency as aforesaid, to execute a proper bond in such amount as he may deem necessary before said proceedings are commenced. (Aug. 8, 1917, ch. 49, § 9, 40 Stat. 267.)

**§ 594. When immediate possession of land may be taken.**

Whenever the Secretary of War, in pursuance of authority conferred on him by law, causes proceedings to be instituted in the name of the United States for the acquirement by condemnation of any lands, easements, or rights of way needed for a work of river and harbor improvements duly authorized by Congress, the United States, upon the filing of the petition in any such proceedings, shall have the right to take immediate possession of said lands, easements, or rights-of-way, to the extent of the interest to be acquired, and proceed with such public works thereon as have been authorized by Congress: *Provided,* That certain and adequate provision shall have been made for the payment of just compensation to the party or parties entitled thereto, either by previous appropriation by the United States or by the deposit of moneys or other form of security in such amount and form as shall be approved by the court in which such proceedings shall be instituted. The respondent or respondents may move at any time in the court to increase or change the amounts or securities, and the court shall make such order as shall be just in the premises and as shall adequately protect the respondents. In every case the proceedings in condemnation shall be diligently prosecuted on the part of the United States in order that such compensation may be promptly ascertained and paid. (July 18, 1918, ch. 155, § 5, 40 Stat. 911.)

**§ 595. Consideration of benefits in assessing compensation.**

In all cases where private property shall be taken by the United States for the public use in connection with any improvement of rivers, harbors, canals, or waterways of the United States, and in all condemnation proceedings by the United States to acquire lands or easements for such improvements, where a part only of any such parcel, lot, or tract of land shall be taken, the jury or other tribunal awarding the just compensation or assessing the damages to the owner, whether for the value of the part taken or for any injury to the part not taken, shall take into consideration by way of reducing the amount of compensation or damages any special and direct benefits to the remainder arising from the improvement, and shall render their award or verdict accordingly. (July 18, 1918, ch. 155, § 6, 40 Stat. 911.)

## PARTICULAR WORK OR IMPROVEMENTS

## § 601. Mississippi River; regulation of reservoirs at headwaters.

It shall be the duty of the Secretary of War to prescribe such rules and regulations in respect to the use and administration of the reservoirs at the headwaters of the Mississippi River as in his judgment the public interest and necessity may require; which rules and regulations shall be posted in some conspicuous place or places for the information of the public. And any person knowingly and willfully violating such rules and regulations shall be liable to a fine not exceeding \$500, or imprisonment, not exceeding six months, the same to be enforced by prosecution in any district court of the United States within whose territorial jurisdiction such offense may have been committed. And the Secretary of War shall cause such gaugings to be made at or near Saint Paul during the annual operation of said reservoirs as shall determine accurately the discharge at that point, the cost of same to be paid out of the annual appropriation for gauging the waters of the Mississippi River and its tributaries. (Aug. 11, 1888, ch. 860, § 1, 25 Stat. 419.)

## § 602. Maintenance of channel of South Pass of Mississippi River.

Upon the termination of the contract entered into with the late James B. Eads for the maintenance of the channel through the South Pass of the Mississippi River, the Secretary of War is directed to take charge of said channel, including the jetties, and all auxiliary works connected therewith, and thereafter to maintain with the utmost efficiency said South Pass Channel; and for that purpose he is authorized to draw his warrants from time to time on the Treasurer of the United States, until otherwise provided for by law, for such sums of money as may be necessary, not to exceed in the aggregate for any one year \$100,000. For that purpose any available Government dredge may be used.

For the purpose of securing the uninterrupted examinations and surveys of the South Pass of the Mississippi River, the Secretary of War, upon the application of the Chief of Engineers, is authorized to draw his warrant or requisition from time to time upon the Secretary of the Treasury for such sums as may be necessary to do such work, not to exceed in the aggregate for each year the sum of \$10,000: *Provided, however*, That an itemized statement of said expenditures shall accompany the annual report of the Chief of Engineers. (Aug. 11, 1888, ch. 860, §§ 1, 4, 25 Stat. 422, 424; June 6, 1900, ch. 790, § 3, 31 Stat. 584; June 13, 1902, ch. 1079, § 1, 32 Stat. 340.)

## REPEAL

Effective July 1, 1935, the permanent appropriations provided for in the first and second paragraphs of this section were repealed by act June 26, 1934, ch. 756, § 2, 48 Stat. 1225, 1226, such act authorizing, in lieu thereof, annual appropriations from the general fund of the Treasury. See section 725a (b) of Title 31, Money and Finance.

## § 603. Removal of snags, etc., from tributaries; minor improvements in navigable waters.

The Chief of Engineers, in his discretion, and after approval by the Secretary of War, is hereby authorized to make preliminary examinations and minor surveys preliminary thereto and to remove snags and other temporary or readily removable obstructions from tributaries of waterways already under Federal improvement or in general use by navigation, or to make such minor improvements in any of the navigable waters of the United States as he may deem advisable in the interest of national defense, the cost thereof to be paid from funds appropriated for the maintenance and improvement of rivers and harbors: *Provided*, That the cost of such work in any single year shall not exceed \$3,000 per tributary. (July 25, 1912, ch. 253, § 1, 37 Stat. 222; July 3, 1930, ch. 847, § 3, 46 Stat. 946; Oct. 17, 1940, ch. 895, § 3, 54 Stat. 1200.)

## § 604. Removal of snags, etc., from Mississippi River.

For the purpose of removing snags, wrecks, and other obstructions in the Mississippi River, the Atchafalaya and Old Rivers from the junction with the Mississippi and Red Rivers down the Atchafalaya River as far down as Melville, Louisiana, the Secretary of War, upon the application of the Chief of Engineers, is hereby authorized to draw his warrant or requisition from time to time upon the Secretary of the Treasury for such sums as may be necessary to do such work, not to exceed in the aggregate for each year the sum of \$100,000: *Provided, however*, That an itemized statement of said expenses shall accompany the annual report of the Chief of Engineers. (Aug. 11, 1888, ch. 860, §§ 1, 7, 25 Stat. 421, 424; Mar. 3, 1909, ch. 264, § 3, 35 Stat. 817.)

## REPEAL

Effective July 1, 1935, the permanent appropriation provided for in this section was repealed by act June 26, 1934, ch. 756, § 2, 48 Stat. 1225, incorporated in section 725a of Title 31, Money and Finance, authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury.

## § 605. Operation of snag boats on Upper Mississippi River.

For the purpose of securing the uninterrupted work of operating snag boats on the Upper Mississippi River, the Illinois River from its mouth to Copperas Creek, and the Minnesota River and other tributaries of the Upper Mississippi River improved by the United States, the Secretary of War, upon the application of the Chief of Engineers, is hereby authorized to draw his warrant or requisition from time to time upon the Secretary of the Treasury for such sums as may be necessary to do such work, not to exceed in the aggregate for each year the sum of \$25,000: *Provided, however*, That an itemized statement of said expenses shall accompany the annual report of the Chief of Engineers. (Aug. 11, 1888, ch. 860, §§ 1, 7, 25 Stat. 420, 421, 424; Mar. 2, 1907, ch. 2509, § 1, 34 Stat. 1102; Mar. 3, 1909, ch. 264, § 3, 35 Stat. 817.)

## REPEAL

Effective July 1, 1935, the permanent appropriation provided for in this section was repealed by act June 26,

1934, ch. 756, § 2, 48 Stat. 1225, incorporated in section 725a of Title 31, Money and Finance, authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury.

**§ 606. Removal of snags, and so forth, from Ohio River.**

For the purpose of securing the uninterrupted work of operating snag boats on the Ohio River and removing snags, wrecks, and other obstructions in said river, the Secretary of War, upon the application of the Chief of Engineers, is hereby authorized to draw his warrant or requisition from time to time upon the Secretary of the Treasury for such sums as may be necessary to do such work, not to exceed in the aggregate for each year the sum of \$50,000: *Provided, however,* That an itemized statement of said expenses shall accompany the annual report of the Chief of Engineers. (Sept. 19, 1890, ch. 907, § 13, 26 Stat. 455; June 3, 1896, ch. 314, § 3, 29 Stat. 234.)

**REPEAL**

Effective July 1, 1935, the permanent appropriation provided for in this section was repealed by act June 26, 1934, ch. 756, § 2, 48 Stat. 1225, incorporated in section 725a of Title 31, Money and Finance, authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury.

**§ 607. Removal of drift from New York Harbor.**

So much as may be necessary of any appropriations made for specific portions of New York Harbor and its immediate tributaries may be allotted by the Secretary of War for the maintenance of these waterways by the collection and removal of drift. (Aug. 8, 1917, ch. 49, § 1, 40 Stat. 252.)

**CROSS REFERENCE**

Separate project, with direct allotments from appropriation for maintaining rivers and harbors, to be made of work of removing drift from New York Harbor, see section 607a of this title.

**§ 607a. Same; appropriations; separate project.**

Direct allotments from appropriations for maintenance and improvement of existing river and harbor works or other available appropriation may be made by the Secretary of War for the collection and removal of drift in New York Harbor and its tributary waters, and this work shall be carried as a separate and distinct project. (July 3, 1930, ch. 847, § 6, 46 Stat. 947.)

**§ 608. Construction of fishways.**

Whenever river and harbor improvements shall be found to operate (whether by lock and dam or otherwise), as obstructions to the passage of fish, the Secretary of War may, in his discretion, direct and cause to be constructed practical and sufficient fishways, to be paid for out of the general appropriations for the streams on which such fishways may be constructed. (Aug. 11, 1888, ch. 860, § 11, 25 Stat. 425.)

**§ 609. Sluices and other work in dams for development of water power.**

In order to make possible the economical future development of water power, the Secretary of War, upon recommendation of the Chief of Engineers, is hereby authorized, in his discretion, to provide in the permanent parts of any dam authorized at any time

by Congress for the improvement of navigation such foundations, sluices, and other works, as may be considered desirable for the future development of its water power. (July 25, 1912, ch. 253, § 12, 37 Stat. 233.)

**PROSECUTION OF WORK GENERALLY**

**§ 621. By what methods river and harbor work may be authorized to be prosecuted.**

Any public work on canals, rivers, and harbors adopted by Congress may be prosecuted by direct appropriations, by continuing contracts, or by both direct appropriations and continuing contracts. (Sept. 22, 1922, ch. 427, § 10, 42 Stat. 1043.)

**§ 622. Method of doing work generally.**

It shall be the duty of the Secretary of War to apply the money appropriated for improvements of rivers and harbors, other than surveys, estimates and gaugings, in carrying on the various works, by contract or otherwise, as may be most economical and advantageous to the Government. And all works of improvement authorized to be prosecuted or completed under contracts may, in the discretion of the Secretary of War, be carried on by contract or otherwise, as may be most economical or advantageous to the United States. In all cases where the project for a work of river or harbor improvement provides for the construction or use of Government dredging plant, the Secretary of War may, in his discretion, have the work done by contract if reasonable prices can be obtained. (Aug. 11, 1888, ch. 860, § 3, 25 Stat. 423; July 25, 1912, ch. 253, § 1, 37 Stat. 222; Mar. 2, 1919, ch. 95, § 3, 40 Stat. 1287.)

**CROSS REFERENCE**

No work to be done on private contract at cost of more than 25 per centum in excess of estimated cost of doing the work by Government plant, see section 624 of this title.

**§ 623. Letting contract to lowest responsible bidder.**

Where works for river and harbor improvements are done by contract, such contract shall be made after sufficient public advertisement for proposals, in such manner and form as the Secretary of War shall prescribe; and such contracts shall be made with the lowest responsible bidders, accompanied by such securities as the Secretary of War shall require, conditioned for the faithful prosecution and completion of the work according to such contract. (Aug. 11, 1888, ch. 860, § 3, 25 Stat. 423.)

**CROSS REFERENCE**

Section not to be construed as prohibiting cumulation of two or more works in the same proposal and contract when in same region and of same kind, see section 626 of this title.

**§ 624. Limitation on power to let contract based on estimation of cost.**

No part of the funds appropriated for works of river and harbor improvement shall be used to pay for any work done by private contract if the contract price is more than 25 per centum in excess of the estimated cost of doing the work by Government plant: *Provided,* That in estimating the cost of doing the work by Government plant, including the cost

of labor and materials, there shall also be taken into account proper charges for depreciation of plant and all supervising and overhead expenses and interest on the capital invested in the Government plant, but the rate of interest shall not exceed the maximum prevailing rate being paid by the United States on current issues of bonds or other evidences of indebtedness. (Mar. 2, 1919, ch. 95, § 8, 40 Stat. 1290.)

#### § 625. Combining several projects in one contract.

Whenever the appropriations made by Congress for river and harbor works can be more advantageously expended by combining in one contract two or more works, such combinations shall be made, and nothing contained in section 9 of Title 41, nor in section 623 of this title, shall be so construed as to prohibit or prevent the cumulation of two or more works of river and harbor improvement in the same proposal and contract, where such works are situated in the same region and of the same kind or character. (Sept. 19, 1890, ch. 907, § 2, 26 Stat. 452; July 25, 1912, ch. 253, § 8, 37 Stat. 233.)

#### § 626. Prosecution of work when appropriation insufficient.

Whenever the appropriations made, or authorized to be made, for the completion of any river and harbor work shall prove insufficient therefor, the Secretary of War may, in his discretion, on the recommendation of the Chief of Engineers, apply the funds so appropriated or authorized to the prosecution of such work. (July 25, 1912, ch. 253, § 8, 37 Stat. 233.)

#### § 627. Application of appropriation when separate works are included therein.

Where separate works or items are consolidated in River and Harbor Acts and an aggregate amount is appropriated therefor, any balances remaining to the credit of the separate works or items may be transferred to the credit of the corresponding aggregate amounts appropriated for the consolidated items, and the amounts appropriated or transferred shall, unless otherwise expressed, be expended in securing maintenance and improvement according to the respective projects adopted by Congress, after giving due regard to the respective needs of traffic. The allotments to the respective works consolidated shall be made by the Secretary of War upon recommendations by the Chief of Engineers. In case such works or items are consolidated and separate amounts are given with each project, the amounts so named shall be expended upon such separate projects unless, in the discretion of the Secretary of War, another allotment or division should be made of the same. Any balances remaining to the credit of the consolidated items shall be carried to the credit of the respective aggregate amounts appropriated for the consolidated items. (Mar. 4, 1915, ch. 142, § 3, 38 Stat. 1052.)

#### § 628. Expenditure for dredging within harbor lines.

No money appropriated for the improvement of rivers and harbors shall be expended for dredging inside of harbor lines duly established. (July 13, 1892, ch. 158, § 5, 27 Stat. 111.)

#### § 629. Contract for hire of dredging plant.

Whenever it shall become, in the opinion of the Secretary of War, necessary or desirable to hire a dredging plant or plants for the performance of any of the public work carried on under his direction the said Secretary may, in his discretion, agree for the same, either in the manner customary on March 2, 1907, or on the basis of an equitable reimbursement for deterioration of plant when in use by the Government, and a reasonable percentage of the total cost of the work. (Mar. 2, 1907, ch. 2509, § 5, 34 Stat. 1119.)

#### § 630. Limitation on expenditure for purchase of dredges.

No money authorized to be expended for the acquirement of any dredge or dredges shall be so expended for the purchase of any dredge or dredges from private contractors, which at the time of the proposed purchase can be manufactured at any navy yard or other Government-owned factory for a sum less than it can be purchased for from such private contractor. (Sept. 22, 1922, ch. 427, § 5, 42 Stat. 1042.)

#### § 631. Transfer of property between projects.

The Secretary of War may direct a temporary transfer of any property employed in the improvement of rivers and harbors whenever, in his judgment, such transfer would secure efficient or economical results, and such adjustment in the way of charges and credits shall be made between the projects affected as may be equitable. (June 13, 1902, ch. 1079, § 5, 32 Stat. 373.)

#### § 632. Written contracts; application to contracts relating to river and harbor improvements.

The requirements of section 16 of Title 41 shall not apply to the lease of lands, or easements therein, or of buildings, rooms, wharves, or rights of wharfage or dockage, or to the hire of vessels, boats, and other floating craft, for use in connection with river and harbor improvements, where the period of any such lease or hire is not to exceed three months. (June 25, 1910, ch. 382, § 5, 36 Stat. 676.)

### Chapter 13.—MISSISSIPPI RIVER COMMISSION

- Sec.  
 641. Creation of Mississippi River Commission.  
 642. Appointment of commissioners; vacancies; chairman; tenure of office.  
 643. Compensation of commissioners.  
 644. Secretary of commission.  
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 646. Headquarters and meetings of commission.  
 647. Mississippi River survey; detail of assistants; vessels and instruments.  
 648. Arkansas River; levee and bank protection.  
 649. Vicksburg Harbor and Ohio River below Cache River.  
 650. Mississippi River below Rock Island; levee and bank protection.  
 651. Tributaries of Mississippi River below Cairo; levee and bank protection.

#### § 641. Creation of Mississippi River Commission.

A commission is created to be called "The Mississippi River Commission", to consist of seven members. (June 28, 1879, ch. 43, § 1, 21 Stat. 37.)

**§ 642. Appointment of commissioners; vacancies; chairman; tenure of office.**

The President of the United States shall, by and with the advice and consent of the Senate, appoint seven commissioners, three of whom shall be selected from the Engineer Corps of the Army, one from the Coast and Geodetic Survey, and three from civil life, two of whom shall be civil engineers. And any vacancy which may occur in the commission shall in like manner be filled by the President of the United States; and he shall designate one of the commissioners appointed from the Engineer Corps of the Army to be president of the commission. The commissioners appointed under sections 641-644, 646, 647 of this title shall remain in office subject to removal by the President of the United States. (June 28, 1879, ch. 43, § 2, 21 Stat. 37.)

**CROSS REFERENCE**

President of commission as executive officer, qualifications, rank, etc., see section 702h of this title.

**§ 643. Compensation of commissioners.**

Section, acts June 28, 1879, ch. 43, § 2, 21 Stat. 37; June 25, 1910, ch. 382, § 1, 36 Stat. 658; Mar. 1, 1917, ch. 144, § 4, 39 Stat. 951, is now covered by section 702h of this title.

**§ 644. Secretary of commission.**

The Secretary of War may detail from the Engineer Corps of the Army of the United States an officer to act as secretary of said commission. (June 28, 1879, ch. 43, § 6, 21 Stat. 38.)

**§ 645. Traveling expenses of civilian members of commission and of Assistant Engineer of Board of Engineers for Rivers and Harbors.**

The traveling expenses of the civilian members of the Mississippi River Commission, and of the Assistant Engineer of the Board of Engineers for Rivers and Harbors, when on duty, shall be computed and paid in the same way as the traveling expenses of the Army members of said commission and of said board. (July 25, 1912, ch. 253, § 1, 37 Stat. 218.)

**CROSS REFERENCE**

Per diem in lieu of expenses allowed government officers and employees away on official business, see section 823 of Title 5, Executive Departments, and Government Officers and Employees.

**§ 646. Headquarters and meetings of commission.**

The headquarters and general offices of said commission shall be located at some city or town on the Mississippi River, to be designated by the Secretary of War, and the meetings of the commission except such as are held on Government boats during the time of the semiannual inspection trips of the commission shall be held at said headquarters and general offices, the times of said meetings to be fixed by the president of the commission, who shall cause due notice of such meetings to be given members of the commission and the public. (June 28, 1879, ch. 43, § 8; Feb. 18, 1901, ch. 377, 31 Stat. 793.)

**§ 647. Mississippi River survey; detail of assistants; vessels and instruments.**

It shall be the duty of the Mississippi River Commission to direct and complete such surveys of the Mississippi River, between the Head of the Passes

near its mouth to its headwaters as may have been in progress June 28, 1879, and to make such additional surveys, examinations, and investigations, topographical, hydrographical, and hydrometrical, of said river and its tributaries, as may be deemed necessary by said commission to carry out the objects of this chapter. And to enable said commission to complete such surveys, examinations, and investigations, the Secretary of War shall, when requested by said commission, detail from the Engineer Corps of the Army such officers and men as may be necessary, and shall place in the charge and for the use of said commission such vessel or vessels and such machinery and instruments as may be under his control and may be deemed necessary. And the Secretary of Commerce shall, when requested by said commission in like manner detail from the Coast and Geodetic Survey such officers and men as may be necessary, and shall place in the charge and for the use of said commission such vessel or vessels and such machinery and instruments as may be under his control and may be deemed necessary. And the said commission may, with the approval of the Secretary of War, employ such additional force and assistants, and provide, by purchase or otherwise, such vessels or boats and such instruments and means as may be deemed necessary.

**Plans; report.**—It shall be the duty of said commission to take into consideration and mature such plan or plans and estimates as will correct, permanently locate, and deepen the channel and protect the banks of the Mississippi River; improve and give safety and ease to the navigation thereof; prevent destructive floods; promote and facilitate commerce, trade, and the postal service; and when so prepared and matured, to submit to the Secretary of War a full and detailed report of their proceedings and actions, and of such plans, with estimates of the cost thereof, for the purposes aforesaid, to be by him transmitted to Congress: *Provided*, That the commission shall report in full upon the practicability, feasibility, and probable cost of the various plans known as the jetty system, the levee system, and the outlet system, as well as upon such others as they deem necessary.

**Plans for immediate works.**—The said commission may, prior to the completion of all the surveys and examinations contemplated by this chapter, prepare and submit to the Secretary of War, plans, specifications, and estimates of costs for such immediate works as, in the judgment of said commission, may constitute a part of the general system of works herein contemplated, to be by him transmitted to Congress. (June 28, 1879, ch. 43, §§ 3-5, 21 Stat. 37, 38; Feb. 14, 1903, ch. 552, § 4, 32 Stat. 826.)

**TRIBUTARIES**

Act Mar. 3, 1881, ch. 136, 21 Stat. 474, provided in part as follows: "It shall be the duty of said commission to take into consideration, and of the Secretary of War to extend operations, under their supervision, to tributaries of the Mississippi River to the extent, and not further, that may be necessary in the judgment of said commission to the perfection of the general and permanent improvement of said Mississippi River."

**CROSS REFERENCE**

Flood control work for Mississippi River, see section 702 of this title.



§ 648. Arkansas River; levee and bank protection.

The jurisdiction of the Mississippi River Commission is extended so as to include that part of the Arkansas River between its mouth and the intersection thereof with the division line between Lincoln and Jefferson Counties, and any funds which are appropriated by Congress for improving the Mississippi River between Head of Passes and the mouth of the Ohio River, and which may be allotted to levees and bank revetment, may be expended within the limits of said extended jurisdiction under the direction of the Secretary of War, in accordance with the plans, specifications, and recommendations of the Mississippi River Commission, as approved by the Chief of Engineers, and upon like terms and conditions for levees and bank revetment upon any part of the Mississippi River now under the jurisdiction of said commission, and in such manner as will best promote and accomplish the purposes for which commission was created, in so far as the territory hereby added to its said jurisdiction may be involved. (July 27, 1916, ch. 260, § 1, 39 Stat. 402.)

§ 649. Vicksburg Harbor and Ohio River below Cache River.

The harbor at Vicksburg, Mississippi, and the Ohio River from its mouth to the mouth of the Cache River, are transferred to and placed under the control and jurisdiction of the Mississippi River Commission: *Provided*, That no part of the improvement of the Ohio River, with a view to the construction of locks and dams, shall be considered as transferred to or placed under the control and jurisdiction of the Mississippi River Commission. (July 27, 1916, ch. 260, § 1, 39 Stat. 402.)

§ 650. Mississippi River below Rock Island; levee and bank protection.

Any funds which are appropriated by Congress for improving the Mississippi River between Head of Passes and the mouth of the Ohio River, and which may be allotted to levees, may be expended, under the direction of the Secretary of War, in accordance with the plans, specifications, and recommendations of the Mississippi River Commission, as approved by the Chief of Engineers, for levees upon any part of said river between Head of Passes and Rock Island, Illinois, in such manner as, in their opinion, shall best improve navigation and promote the interest of commerce at all stages of the river. (July 27, 1916, ch. 260, § 1, 39 Stat. 402.)

§ 651. Tributaries of Mississippi River below Cairo; levee and bank protection.

The jurisdiction of the Mississippi River Commission is extended, for the purposes of levee protection and bank protection, to the tributaries and outlets of the Mississippi River between Cairo, Illinois, and the Head of the Passes, in so far as these tributaries and outlets are affected by the flood waters of the Mississippi River. (Sept. 22, 1922, ch. 427, § 13, 42 Stat. 1047.)

Chapter 14.—CALIFORNIA DÉBRIS COMMISSION

Sec.

661. Creation of commission; appointment of members; vacancies; powers generally.
662. Organization; compensation of members; rules and regulations of procedure; traveling expenses.
663. Territorial jurisdiction over hydraulic mining; hydraulic mining injurious to navigation prohibited.
664. General duties as to plans for protection of navigation.
665. Survey for débris reservoirs; study of methods of mines and mining.
666. Noting conditions of navigable channels.
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668. "Hydraulic mining" and "mining by hydraulic process" defined.
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677. Limitation as to quantity of débris washed away.
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679. Violation of permit to mine; penalty.
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682. Malicious injury to works; injury to navigable waters by hydraulic mining; penalty.
683. Tax on gross proceeds of hydraulic mines; "débris fund"; advances by mine owners.
684. Cooperation by commission with State authorities.
685. Construction by commission of restraining works, etc.; use of débris fund.
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687. Use of State dredge and appliances in river and harbor improvements

§ 661. Creation of commission; appointment of members; vacancies; powers generally.

A commission is created, to be known as the California Débris Commission, consisting of three members. The President of the United States shall, by and with the advice and consent of the Senate, appoint the commission from officers of the Corps of Engineers, United States Army. Vacancies occurring therein shall be filled in like manner. It shall have the authority, and exercise the powers set forth in sections 662–685 of this title, under the supervision of the Chief of Engineers and direction of the Secretary of War. (Mar. 1, 1893, ch. 183, § 1, 27 Stat. 507.)

§ 662. Organization; compensation of members; rules and regulations of procedure; traveling expenses.

Said commission shall organize by the selection of such officers as may be required in the performance of its duties the same to be selected from the members thereof. The members of said commission shall receive no greater compensation than is now allowed by law to each, respectively, as an officer of said Corps of Engineers. It shall also adopt rules and regulations, not inconsistent with law, to govern its deliberations and prescribe the method of proce-

dure under the provisions of this chapter. While traveling on duty the officers of the commission shall receive the mileage allowed by law. (Mar. 1, 1893, ch. 183, § 2, 27 Stat. 507; June 6, 1900, ch. 791, § 1, 31 Stat. 631.)

**§ 663. Territorial jurisdiction over hydraulic mining; hydraulic mining injurious to navigation prohibited.**

The jurisdiction of said commission, in so far as the same affects mining carried on by the hydraulic process, shall extend to all such mining in the territory drained by the Sacramento and San Joaquin River systems in the State of California. Hydraulic mining, as defined in section 668 of this title, directly or indirectly injuring the navigability of said river systems, carried on in said territory other than as permitted under the provisions of sections 661–685 of this title is hereby prohibited and declared unlawful. (Mar. 1, 1893, ch. 183, § 3, 27 Stat. 507.)

**§ 664. General duties as to plans for protection of navigation.**

It shall be the duty of said commission to mature and adopt such plan or plans, from examinations and surveys made prior to March 1, 1893, and from such additional examinations and surveys as it may deem necessary, as will improve the navigability of all the rivers comprising said systems, deepen their channels, and protect their banks. Such plan or plans shall be matured with a view of making the same effective as against the encroachment of and damage from débris resulting from mining operations, natural erosion, or other causes, with a view of restoring, as near as practicable and the necessities of commerce and navigation demand, the navigability of said rivers to the condition existing in 1860, and permitting mining by the hydraulic process, as the term is understood in said State, to be carried on, provided the same can be accomplished, without injury to the navigability of said rivers or the lands adjacent thereto. (Mar. 1, 1893, ch. 183, § 4, 27 Stat. 507.)

**§ 665. Survey for débris reservoirs; study of methods of mines and mining.**

It shall further examine, survey, and determine the utility and practicability, for the purposes hereinafter indicated, of storage sites in the tributaries of said rivers and in the respective branches of said tributaries, or in the plains, basins, sloughs, and tule and swamp lands adjacent to or along the course of said rivers, for the storage of débris or water or as settling reservoirs, with the object of using the same by either or all of these methods to aid in the improvement and protection of said navigable rivers by preventing deposits therein of débris resulting from mining operations, natural erosion, or other causes, or for affording relief thereto in flood time and providing sufficient water to maintain scouring force therein in the summer season; and in connection therewith to investigate such hydraulic and other mines as are or may have been worked by methods intended to restrain the débris and material moved in operating such mines by impounding dams, settling reservoirs, or otherwise, and in general to make

such study of and researches in the hydraulic mining industry as science, experience, and engineering skill may suggest as practicable and useful in devising a method or methods whereby such mining may be carried on as aforesaid. (Mar. 1, 1893, ch. 183, § 5, 27 Stat. 507.)

**§ 666. Noting conditions of navigable channels.**

The said commission shall from time to time note the conditions of the navigable channels of said river systems, by cross-section surveys or otherwise, in order to ascertain the effect therein of such hydraulic mining operations as may be permitted by its orders and such as is caused by erosion, natural or otherwise. (Mar. 1, 1893, ch. 183, § 6, 27 Stat. 508.)

**§ 667. Annual reports.**

Said commission shall submit to the Chief of Engineers, for the information of the Secretary of War, on or before the 15th day of November of each year, a report of its labors and transactions, with plans for the construction, completion, and preservation of the public works outlined in sections 661–685 of this title, together with estimates of the cost thereof, stating what amounts can be profitably expended thereon each year. The Secretary of War shall thereupon submit same to Congress on or before the meeting thereof. (Mar. 1, 1893, ch. 183, § 7, 27 Stat. 508.)

**§ 668. "Hydraulic mining" and "mining by hydraulic process" defined.**

For the purposes of sections 661–685 of this title "hydraulic mining" and "mining by the hydraulic process" are hereby declared to have the meaning and application given to said terms in the State of California. (Mar. 1, 1893, ch. 183, § 8, 27 Stat. 508.)

**§ 669. Petition by hydraulic miners.**

The individual proprietor or proprietors, or in case of a corporation, its manager or agent appointed for that purpose, owning mining ground in the territory in the State of California mentioned in section 663 of this title, which it is desired to work by the hydraulic process, must file with said commission a verified petition, setting forth such facts as will comply with law and the rules prescribed by said commission. (Mar. 1, 1893, ch. 183, § 9, 27 Stat. 508.)

**§ 670. Surrender to United States of right to regulate débris of mine.**

Said petition shall be accompanied by an instrument duly executed and acknowledged, as required by the law of the said State, whereby the owner or owners of such mine or mines surrender to the United States the right and privilege to regulate by law, as provided in this chapter, or any law that may be enacted after March 1, 1893, or by such rules and regulations as may be prescribed by virtue thereof, the manner and method in which the débris resulting from the working of said mine or mines shall be restrained, and what amount shall be produced therefrom; it being understood that the surrender aforesaid shall not be construed as in any way

affecting the right of such owner or owners to operate said mine or mines by any other process or method in use in said State on March 1, 1893: *Provided*, That they shall not interfere with the navigability of the aforesaid rivers. (Mar. 1, 1893, ch. 183, § 10, 27 Stat. 508.)

**§ 671. Petition for common dumping ground, etc.**

The owners of several mining claims situated so as to require a common dumping ground or dam or other restraining works for the débris issuing therefrom in one or more sites may file a joint petition setting forth such facts in addition to the requirements of section 669 of this title; and where the owner of a hydraulic mine or owners of several such mines have and use common dumping sites for impounding débris or as settling reservoirs, which sites are located below the mine of an applicant not entitled to use same, such fact shall also be stated in said petition. Thereupon the same proceedings shall be had as provided for in sections 661–685 of this title. (Mar. 1, 1893, ch. 183, § 11, 27 Stat. 508.)

**§ 672. Notice of petition for dumping grounds, etc.; hearing.**

A notice specifying briefly the contents of said petition and fixing a time previous to which all proofs are to be submitted shall be published by said commission in some newspaper or newspapers of general circulation in the communities interested in the matter set forth therein. If published in a daily paper such publication shall continue for at least ten days; if in a weekly paper in at least three issues of the same. Pending publication thereof said commission, or a committee thereof, shall examine the mine and premises described in such petition. On or before the time so fixed all parties interested, either as petitioners or contestants, whether miners or agriculturists, may file affidavits, plans, and maps in support of their respective claims. Further hearings, upon notice to all parties of record, may be granted by the commission when necessary. (Mar. 1, 1893, ch. 183, § 12, 27 Stat. 508.)

**§ 673. Order by commission directing method of mining, etc.; expenses of complying with order; exemption from mining taxes.**

In case a majority of the members of said commission, within thirty days after the time so fixed, concur in the decision in favor of the petitioner or petitioners, the said commission shall thereupon make an order directing the methods and specifying in detail the manner in which operations shall proceed in such mine or mines; what restraining or impounding works, if any, if facilities therefor can be found, shall be built and maintained; how and of what material; where to be located; and in general set forth such further requirements and safeguards as will protect the public interests and prevent injury to the said navigable rivers and the lands adjacent thereto, with such further conditions and limitations as will observe all the provisions of sections 661–685 of this title in relation to the working thereof and the payment of taxes on the gross proceeds of the same: *Provided*, That all expense incurred in complying with said order shall be borne

by the owner or owners of such mine or mines: *And provided further*, That where it shall appear to said commission that hydraulic mining may be carried on without injury to the navigation of said navigable rivers and the lands adjacent thereto, an order may be made authorizing such mining to be carried on without requiring the construction of any restraining or impounding works or any settling reservoirs: *And provided also*, That where such an order is made a license to mine, no taxes provided for in this chapter on the gross proceeds of such mining operations shall be collected. (Mar. 1, 1893, ch. 183, § 13, 27 Stat. 508; Feb. 27, 1907, ch. 2077, 34 Stat. 1001.)

**§ 674. Plans for and supervision of work required by order; permit to commence mining.**

Such petitioner or petitioners must within a reasonable time present plans and specifications of all works required to be built in pursuance of said order for examination, correction, and approval by said commission; and thereupon work may immediately commence thereon under the supervision of said commission or representative thereof attached thereto from said Corps of Engineers, who shall inspect same from time to time. Upon completion thereof, if found in every respect to meet the requirements of the said order and said approved plans and specifications, permission shall thereupon be granted to the owner or owners of such mine or mines to commence mining operations, subject to the conditions of said order and the provisions of sections 661–685 of this title. (Mar. 1, 1893, ch. 183, § 14, 27 Stat. 509.)

**§ 675. Conditions precedent for commencement of mining operations.**

No permission granted to a mine owner or owners under sections 661–685 of this title shall take effect, so far as regards the working of a mine, until all impounding dams or other restraining works, if any are prescribed by the order granting such permission, have been completed and until the impounding dams or other restraining works or settling reservoirs provided by said commission have reached such a stage as, in the opinion of said commission, it is safe to use the same: *Provided, however*, That if said commission shall be of the opinion that the restraining and other works already constructed at the mine or mines shall be sufficient to protect the navigable rivers of said systems and the work of said commission, then the owner or owners of such mine or mines may be permitted to commence operations. (Mar. 1, 1893, ch. 183, § 15, 27 Stat. 509.)

**§ 676. Allotment of expenses for common dumping grounds; location of impounding works.**

In case the joint petition referred to in section 671 of this title is granted, the commission shall fix the respective amounts to be paid by each owner of such mines toward providing and building necessary impounding dams or other restraining works. In the event of a petition being filed after the entry of such order, or in case the impounding dam or dams or other restraining works have already been constructed and accepted by said commission, the commission shall fix such amount as may be reasonable

for the privilege of dumping therein, which amount shall be divided between the original owners of such impounding dams or other restraining works in proportion to the amount respectively paid by each party owning same. The expense of maintaining and protecting such joint dam or works shall be divided among mine owners using the same in such proportion as the commission shall determine. In all cases where it is practicable, restraining and impounding works are to be provided, constructed, and maintained by mine owners near or below the mine or mines before reaching the main tributaries of said navigable waters. (Mar. 1, 1893, ch. 183, § 16, 27 Stat. 509.)

**§ 677. Limitation as to quantity of débris washed away.**

At no time shall any more débris be permitted to be washed away from any hydraulic mine or mines situated on the tributaries of said rivers and the respective branches of each, worked under the provisions of sections 661–685 of this title, than can be impounded within the restraining works erected. (Mar. 1, 1893, ch. 183, § 17, 27 Stat. 509.)

**§ 678. Modification and revocation of permit to mine.**

The said commission may, at any time when the condition of the navigable rivers or when the capacities of all impounding and settling facilities erected by mine owners or such as may be provided by Government authority require same, modify the order granting the privilege to mine by the hydraulic mining process so as to reduce the amount thereof to meet the capacities of the facilities then in use; or, if actually required in order to protect the navigable rivers from damage or in case of failure to pay the tax prescribed by section 683 of this title within thirty days after same becomes due, may revoke same until the further notice of the commission. (Mar. 1, 1893, ch. 183, § 18, 27 Stat. 509; June 19, 1934, ch. 661, § 1, 48 Stat. 1118.)

**§ 679. Violation of permit to mine; penalty.**

An intentional violation on the part of a mine owner or owners, company, or corporation, or the agents or employees of either, of the conditions of the order granted pursuant to section 673 of this title, or such modifications thereof as may have been made by said commission, shall work a forfeiture of the privileges thereby conferred, and upon notice being served by the order of said commission upon such owner or owners, company, or corporation, or agent in charge, work shall immediately cease. Said commission shall take necessary steps to enforce its orders in case of the failure, neglect, or refusal of such owner or owners, company, or corporation, or agents thereof, to comply therewith, or in the event of any person or persons, company, or corporation working by said process in said territory contrary to law. (Mar. 1, 1893, ch. 183, § 19, 27 Stat. 510.)

**§ 680. Examination of mines; reports.**

Said commission, or a committee therefrom, or officer of said corps assigned to duty under its orders, shall, whenever deemed necessary, visit said territory and all mines operating under the provi-

sions of sections 661–685 of this title. A report of such examination shall be placed on file. (Mar. 1, 1893, ch. 183, § 20, 27 Stat. 510.)

**§ 681. Use of public lands and materials; withdrawal of lands required from sale or entry.**

The said commission is hereby granted the right to use any of the public lands of the United States, or any rock, stone, timber, trees, brush, or material thereon or therein, for any of the purposes of sections 661–685 of this title; and the Secretary of the Interior is hereby authorized and requested, after notice has been filed with the Commissioner of the General Land Office by said commission, setting forth what public lands are required by it under the authority of this section, that such land or lands shall be withdrawn from sale and entry under the laws of the United States. (Mar. 1, 1893, ch. 183, § 21, 27 Stat. 510.)

**§ 682. Malicious injury to works; injury to navigable waters by hydraulic mining; penalty.**

Any person or persons who willfully or maliciously injure, damage, or destroy, or attempt to injure, damage, or destroy, any dam or other work erected under the provisions of sections 661–685 of this title for restraining, impounding, or settling purposes, or for use in connection therewith, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed the sum of \$5,000 or be imprisoned not to exceed five years, or by both such fine and imprisonment, in the discretion of the court. And any person or persons, company or corporation, their agents or employees, who shall mine by the hydraulic process directly or indirectly injuring the navigable waters of the United States, in violation of the provisions of sections 661–685 of this title shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court. (Mar. 1, 1893, ch. 183, § 22, 27 Stat. 510.)

**CROSS REFERENCE**

Offense punishable by imprisonment for term in excess of one year declared a felony, see section 541 of Title 18. Criminal Code and Criminal Procedure.

**§ 683. Tax on gross proceeds of hydraulic mines; "débris fund"; advances by mine owners.**

Upon the construction by the said commission of dams or other works for the detention of débris from hydraulic mines and the issuing of the order provided for by sections 661–685 of this title to any individual, company, or corporation to work any mine or mines by hydraulic process, the individual, company, or corporation operating thereunder working any mine or mines by hydraulic process, the débris from which flows into or is in whole or in part restrained by such dams or other works erected by said commission, shall pay for each cubic yard mined from the natural bank a tax equal to the total capital cost of the dam, reservoir, and rights-of-way divided by the total capacity of the reservoir for the restraint of débris, as determined in each case by the California Débris Commission, which tax shall be paid annually on a date fixed by said commission

and in accordance with regulations to be adopted by the Secretary of the Treasury, and the Treasurer of the United States is hereby authorized to receive the same. All sums of money paid into the Treasury under this section shall be set apart and credited to a fund to be known as the "débris fund", and shall be expended by said commission under the supervision of the Chief of Engineers and direction of the Secretary of War, for repayment of any funds advanced by the Federal Government or other agency for the construction of restraining works and settling reservoirs, and for maintenance: *Provided*, That said commission is hereby authorized to receive and pay into the Treasury from the owner or owners of mines worked by the hydraulic process, to whom permission may have been granted so to work under the provisions thereof, such money advances as may be offered to aid in the construction of such impounding dams, or other restraining works, or settling reservoirs, or sites therefor, as may be deemed necessary by said commission to protect the navigable channels of said river systems, on condition that all moneys so advanced shall be refunded as the said tax is paid into the said débris fund: *And provided further*, That in no event shall the Government of the United States be held liable to refund same except as directed by this section. The Secretary of War is authorized to enter into contracts to supply storage for water and use of outlet facilities from débris storage reservoirs, for domestic and irrigation purposes and power development upon such conditions of delivery, use, and payment as he may approve: *Provided*, That the moneys received from such contracts shall be deposited to the credit of the reservoir project from which the water is supplied, and the total capital cost of said reservoir, which is to be repaid by tax on mining operations as provided in this section, shall be reduced in the amount so received. (Mar. 1, 1893, ch. 183, § 23, 27 Stat. 510; June 19, 1934, ch. 661, § 2, 48 Stat. 1118; June 25, 1938, ch. 653, 52 Stat. 1040.)

**§ 684. Cooperation by commission with State authorities.**

For the purpose of securing harmony of action and economy in expenditures in the work to be done by the United States and the State of California, respectively, the former in its plans for the improvement and protection of the navigable streams and to prevent the depositing of mining débris or other materials within the same, and the latter in its plans authorized by law for the reclamation, drainage, and protection of its lands, or relating to the working of hydraulic mines, the said commission is empowered to consult thereon with a commission of engineers of said State, if authorized by said State for said purpose, the result of such conference to be reported to the Chief of Engineers of the United States Army, and if by him approved shall be followed by said commission. (Mar. 1, 1893, ch. 183, § 24, 27 Stat. 511.)

**§ 685. Construction by commission of restraining works, etc.; use of débris fund.**

Said commission, in order that such material as is now or may hereafter be lodged in the tributaries

of the Sacramento and San Joaquin River systems resulting from mining operations, natural erosion, or other causes, shall be prevented from injuring the said navigable rivers or such of the tributaries of either as may be navigable and the land adjacent thereto, is hereby directed and empowered, when appropriations are made therefor by law, or sufficient money is deposited for that purpose in said débris fund, to build at such points above the head of navigation in said rivers and on the main tributaries thereof, or branches of such tributaries, or any place adjacent to the same, which in the judgment of said commission, will effect said object (the same to be of such material as will insure safety and permanency), such restraining or impounding dams and settling reservoirs, with such canals, locks, or other works adapted and required to complete same. The recommendations contained in Executive Document Numbered 267, Fifty-first Congress, second session, and Executive Document Numbered 98, Forty-seventh Congress, first session, as far as they refer to impounding dams, or other restraining works, are hereby adopted, and the same are directed to be made the basis of operations. (Mar. 1, 1893, ch. 183, § 25, 27 Stat. 511.)

**§ 686. Construction of restraining works in conjunction with State.**

The Secretary of War, in expending appropriations in the preparation for and construction of works for the restraining or impounding of mining débris in the State of California, is authorized to enter into an agreement that the contractor shall look solely to the State of California for one-half of such expense, to be paid out of said State's appropriation, and the United States shall in nowise be liable for said one-half.

The Secretary of War, in carrying out the provisions of any Act of Congress, providing for the restraining or impounding of mining débris in California, may, in his discretion, when in his judgment the aggregate of appropriations already made by said State and Congress and available therefor are sufficient to complete the same, undertake the works necessary thereto by hired labor and by purchase of supplies and materials therefor, and may accept payments on account thereof as the work progresses under and according to the provisions of the acts of the legislature of said State for such purposes. (July 1, 1898, ch. 546, 30 Stat. 631; Mar. 3, 1899, ch. 425, § 1, 30 Stat. 1148.)

**§ 687. Use of State dredge and appliances in river and harbor improvements.**

The Secretary of War is authorized to accept from the State of California the use of any dredger, or appliances owned or controlled by said State, conformably to any offer thereof by the said State; and the Secretary of War is authorized to use any such dredger or appliances in any river or harbor improvement that may be prosecuted therein by the United States, either on the part of the United States alone or conjointly with said State: *Provided*, That nothing shall be paid to the State of California for the use of said dredger, and that nothing herein

contained shall create any liability against the United States. (Mar. 3, 1899, ch. 425, § 1, 30 Stat. 1148.)

### Chapter 15.—FLOOD CONTROL

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### § 701. Flood control generally.

*Laws applicable to works of improvement relating to flood control.*—All the provisions of existing law relating to examinations and surveys and to works of improvement of rivers and harbors shall apply, so far as applicable to examinations and surveys and to works of improvement relating to flood control. And all expenditures of funds appropriated for works and projects relating to flood control shall be made in accordance with and subject to the law governing the disbursement and expenditure of funds appropriated for the improvement of rivers and harbors.

*Examinations and surveys; details from Government departments; reports.*—All examinations and surveys of projects relating to flood control shall include a comprehensive study of the watershed or watersheds, and the report thereon in addition to any other matter upon which a report is required shall give such data as it may be practicable to secure in regard to (a) the extent and character of the area to be affected by the proposed improvement; (b) the probable effect upon any navigable water or waterway; (c) the possible economical development and utilization of water power; and (d) such other uses as may be properly related to or coordinated with the project. And the heads of the several departments of the Government may, in their discretion, and shall upon the request of the Secretary of War, detail representatives from their respective departments to assist the Engineers of the Army in the study and examination of such watersheds, to the end that duplication of work may be avoided and the various services of the Government economically

coordinated therein: *Provided*, That all reports on preliminary examinations hereafter authorized, together with the report of the Board of Engineers for Rivers and Harbors thereon and the separate report of the representative of any other department, shall be submitted to the Secretary of War by the Chief of Engineers, with his recommendations, and shall be transmitted by the Secretary of War to the House of Representatives, and are hereby ordered to be printed when so made.

*Reports by Board of Engineers for Rivers and Harbors.*—In the consideration of all works and projects relating to flood control which may be submitted to the Board of Engineers for Rivers and Harbors for consideration and recommendation, said board shall, in addition to any other matters upon which it may be required to report, state its opinion as to (a) what Federal interest, if any, is involved in the proposed improvement; (b) what share of the expense, if any, should be borne by the United States; and (c) the advisability of adopting the project.

*Aiding Committee on Flood Control.*—All examinations and reports which may now be made by the Board of Engineers for Rivers and Harbors upon request of the Committee on Rivers and Harbors relating to works or projects of navigation shall in like manner be made upon request of the Committee on Flood Control on all works and projects relating to flood control. (Mar. 1, 1917, ch. 144, § 3, 39 Stat. 950.)

#### § 701a. Same; declaration of policy.

It is hereby recognized that destructive floods upon the rivers of the United States, upsetting orderly processes and causing loss of life and property, including the erosion of lands, and impairing and obstructing navigation, highways, railroads, and other channels of commerce between the States, constitute a menace to national welfare; that it is the sense of Congress that flood control on navigable waters or their tributaries is a proper activity of the Federal Government in cooperation with States, their political subdivisions, and localities thereof; that investigations and improvements of rivers and other waterways, including watersheds thereof, for flood-control purposes are in the interest of the general welfare; that the Federal Government should improve or participate in the improvement of navigable waters or their tributaries, including watersheds thereof, for flood-control purposes if the benefits to whomsoever they may accrue are in excess of the estimated costs, and if the lives and social security of people are otherwise adversely affected. (June 22, 1936, ch. 688, § 1, 49 Stat. 1570.)

#### § 701b. Same; supervision of Secretary of War and Secretary of Agriculture; reclamation projects unaffected.

Hereafter Federal investigations and improvements of rivers and other waterways for flood control and allied purposes shall be under the jurisdiction of and shall be prosecuted by the War Department under the direction of the Secretary of War and supervision of the Chief of Engineers, and Federal investigations of watersheds and measures for run-off and waterflow retardation and soil erosion pre-

vention on watersheds shall be under the jurisdiction of and shall be prosecuted by the Department of Agriculture under the direction of the Secretary of Agriculture, except as otherwise provided by Act of Congress; and that in their reports upon examinations and surveys, the Secretary of War and the Secretary of Agriculture shall be guided as to flood-control measures by the principles set forth in section 701a of this title in the determination of the Federal interests involved: *Provided*, That the foregoing grants of authority shall not interfere with investigations and river improvements incident to reclamation projects that may now be in progress or may be hereafter undertaken by the Bureau of Reclamation of the Interior Department pursuant to any general or specific authorization of law. (June 22, 1936, ch. 688, § 2, 49 Stat. 1570; June 28, 1938, ch. 795, § 1, 52 Stat. 1215.)

#### PRELIMINARY EXAMINATIONS AND SURVEYS

Act August 28, 1937, ch. 877, § 3, 50 Stat. 877, authorized Secretary of Agriculture to cause preliminary examinations and surveys to be made for run-off and water-flow retardation and soil erosion prevention on watersheds.

#### CROSS REFERENCE

River, harbor, and other waterways, supervision of, see section 540 of this title.

#### § 701b-1. Transfer of jurisdiction in certain cases to Department of Agriculture.

In order to effectuate the policy declared in sections 701a and 701b of this title, and to correlate the program for the improvement of rivers and other waterways by the Department of War with the program for the improvement of watersheds by the Department of Agriculture, works of improvement for measures of run-off and water-flow retardation and soil-erosion prevention on the watersheds of waterways, for which works of improvement for the benefit of navigation and the control of destructive floodwaters and other provisions have been adopted and authorized to be prosecuted under the direction of the Secretary of War and supervision of the Chief of Engineers, are hereby authorized to be prosecuted by the Department of Agriculture under the direction of the Secretary of Agriculture and in accordance with plans approved by him. For prosecuting said work and measures there is hereby authorized to be appropriated the sum of \$10,000,000 to be expended at the rate of \$2,000,000 per annum during the five-year period ending June 30, 1944: *Provided*, That such works and measures which are herein authorized to be prosecuted by the Department of Agriculture may be carried out on the watersheds of the Rio Grande and Pecos Rivers subject to the proviso in section 701b of this title. (June 28, 1938, ch. 795, § 7, 52 Stat. 1225.)

#### § 701b-2. Same; cooperation by Secretaries of War and Agriculture; expenditures.

In carrying out the purposes of sections 701b, 701b-1, 701b-2, 701c-1, 701f-1, 701i, 701j, 702a-1½, 702a-11, and 706 of this title, the Secretary of War and the Secretary of Agriculture are hereby authorized to cooperate with institutions, organizations, and individuals, and to utilize the services of Federal, State, and other public agencies, and to pay by check



to the cooperating public agency, either in advance or upon the furnishing or performance of said services, all or part of the estimated or actual cost thereof; and to make expenditures for personal services and rent in the District of Columbia and elsewhere, for purchase of reference and law books and periodicals, for printing and binding, for the purchase, exchange, operation, and maintenance of motor-propelled passenger-carrying vehicles and motorboats for official use, and for other necessary expenses. (June 28, 1938, ch. 795, § 5, 52 Stat. 1223.)

**§ 701b-3. Examinations and surveys; availability of appropriations.**

Funds heretofore or hereafter appropriated for construction and maintenance of flood-control works by the War Department shall be available for expenditure by the War Department in making examinations and surveys for flood control heretofore or hereafter authorized, or in preparing reports in review thereof as authorized by law, in addition to funds heretofore authorized to be expended for such purposes by the War Department. (Aug. 11, 1939, ch. 699, § 2, 53 Stat. 1414.)

**§ 701b-4. Same; administration of surveys; number authorized; reports.**

The surveys authorized to be performed under the direction of the Secretary of War as well as all duties performed by the Chief of Engineers under the direction of the Secretary of War shall be functions of the Engineer Corps, United States Army, and its head, to be administered under the direction of the Secretary of War and the supervision of the Chief of Engineers except as otherwise specifically provided by Congress: *Provided*, That the power and authority conferred by sections 701b, 701b-1, 701b-2, 701c-1, 701f-1, 701i, 701j, 702a-1½, 702a-11, and 706 of this title, and previously conferred, upon the Federal Power Commission shall remain in full force and effect: *Provided*, That no preliminary examination, survey, project, or estimate for new works other than those designated in sections 558b-1, 701b-3, 701b-4, 701c-1, 701g, and 707 of this title or some prior Act or joint resolution shall be made: *Provided further*, That after the regular or formal reports made as required by law on any examination, survey, project, or work under way or proposed, are submitted, no supplemental or additional report or estimate shall be made unless authorized by law. (Aug. 11, 1939, ch. 699, § 6, 53 Stat. 1415.)

**§ 701c. Same; rights-of-way, easements, etc.; acquisition by local authorities; maintenance and operation; protection of United States from liability for damages; requisites to run-off and water-flow retardation and soil erosion prevention assistance.**

After June 22, 1936, no money appropriated under authority of section 701f of this title shall be expended on the construction of any project until States, political subdivisions thereof, or other responsible local agencies have given assurances satisfactory to the Secretary of War that they will (a) provide without cost to the United States all lands, easements, and rights-of-way necessary for the construction of the project, except as otherwise provided herein; (b) hold and save the United States

free from damages due to the construction works; (c) maintain and operate all the works after completion in accordance with regulations prescribed by the Secretary of War: *Provided*, That the construction of any dam authorized by section 5 of the Act of June 22, 1936, ch. 688, 49 Stat. 1572, may be undertaken without delay when the dam site has been acquired and the assurances prescribed herein have been furnished, without awaiting the acquisition of the easements and rights-of-way required for the reservoir area: *And provided further*, That whenever expenditures for lands, easements, and rights-of-way by States, political subdivisions thereof, or responsible local agencies for any individual project or useful part thereof shall have exceeded the present estimated construction cost therefor, the local agency concerned may be reimbursed one-half of its excess expenditures over said estimated construction cost: *And provided further*, That when benefits of any project or useful part thereof accrue to lands and property outside of the State in which said project or part thereof is located, the Secretary of War with the consent of the State wherein the same are located may acquire the necessary lands, easements, and rights-of-way for said project or part thereof after he has received from the States, political subdivisions thereof, or responsible local agencies benefited the present estimated cost of said lands, easements, and rights-of-way, less one-half the amount by which the estimated cost of these lands, easements, and rights-of-way exceeds the estimated construction cost corresponding thereto: *And provided further*, That the Secretary of War shall determine the proportion of the present estimated cost of said lands, easements, and rights-of-way that each State, political subdivision thereof, or responsible local agency should contribute in consideration for the benefits to be received by such agencies: *And provided further*, That whenever not less than 75 per centum of the benefits as estimated by the Secretary of War of any project or useful part thereof accrue to lands and property outside of the State in which said project or part thereof is located, provision (c) of this section shall not apply thereto; nothing herein shall impair or abridge the powers now existing in the Department of War with respect to navigable streams: *And provided further*, That nothing herein shall be construed to interfere with the completion of any reservoir or flood control work authorized by the Congress and now under way; (d) as a condition to the extending of any benefits, in prosecuting measures for run-off and water-flow retardation and soil erosion prevention authorized by Act of Congress pursuant to the policy declared in section 701a of this title, to any lands not owned or controlled by the United States or any of its agencies, the Secretary of Agriculture may, insofar as he may deem necessary for the purposes of such Acts, require—

(1) The enactment and reasonable safeguards for the enforcement of State and local laws imposing suitable permanent restrictions on the use of such lands and otherwise providing for run-off and water-flow retardation and soil-erosion prevention:

(2) Agreements or covenants as to the permanent use of such lands; and

(3) Contributions in money, services, materials, or otherwise to any operations conferring such benefits. (June 22, 1936, ch. 688, § 3, 49 Stat. 1571; Aug. 28, 1937, ch. 877, § 4, 50 Stat. 877.)

ACT JUNE 22, 1936, § 5

Section 5 of act June 22, 1936, referred to in the first proviso in the text, set out in part in section 701h of this title, also enumerated the improvement projects adopted and authorized to be prosecuted for the benefit of navigation and the control of flood waters.

APPLICATION OF STATUTE

Act June 28, 1938, ch. 795, § 2, 52 Stat. 1215, provided that this section, as theretofore amended and therein further modified, should apply to all flood control projects, except as otherwise specifically provided by law.

MUSKINGUM RIVER VALLEY

Provisions of act June 28, 1938, ch. 795, § 2, 52 Stat. 1215, referred to above, were extended to the Muskingum River Valley dams and reservoirs by section 4 of act Aug. 11, 1939, ch. 699, 53 Stat. 1414.

§ 701c-1. Same; acquirement of titles for certain projects and to lands, easements, rights-of-way; reimbursement of local agencies.

In case of any dam and reservoir project, or channel improvement or channel rectification project for flood control, authorized in sections 701b, 701b-1, 701b-2, 701c-1, 701f-1, 701i, 701j, 702a-1½, 702a-11, and 706 of this title or by sections 701a, 701b, 701c, 701d, 701e, 701f, and 701h of this title, and sections 702a, 702a-1, 702a-2 to 702a-11, 702b-702d, 702e-702m, and 704 of this title, title to all lands, easements, and rights-of-way for such project shall be acquired by the United States or by States, political subdivisions thereof or other responsible local agencies and conveyed to the United States, and provisions (a), (b), and (c) of section 701c of this title shall not apply thereto. Notwithstanding any restrictions, limitations, or requirement of prior consent provided by any other Act, the Secretary of War is hereby authorized and directed to acquire in the name of the United States title to all lands, easements, and rights-of-way necessary for any dam and reservoir project or channel improvement or channel rectification project for flood control, with funds heretofore or hereafter appropriated or made available for such projects, and States, political subdivisions thereof, or other responsible local agencies, shall be granted and reimbursed, from such funds, sums equivalent to actual expenditures deemed reasonable by the Secretary of War and the Chief of Engineers and made by them in acquiring lands, easements, and rights-of-way for any dam and reservoir project, or any channel improvement or channel rectification project for flood control heretofore or herein authorized: *Provided*, That no reimbursement shall be made for any indirect or speculative damages: *Provided further*, That lands, easements, and rights-of-way shall include lands on which dams, reservoirs, channel improvements, and channel rectifications are located; lands or flowage rights in reservoirs and highway, railway, and utility relocation: *Provided further*, That in all cases of the acquisition hereunder by the United States from the Los Angeles County Flood Control District or the Muskingum Watershed Conservancy District of lands, easements, or rights-of-way,

wherein the written opinion of the Attorney General in favor of the validity of the title to such lands, easements, or rights-of-way is or may be required or authorized by law, the Attorney General may, in his discretion, base such opinion upon a certificate of title of the district from which said lands, easements, or rights-of-way are to be acquired accompanied by an agreement, duly executed by the district in conformity with the constitutions and laws of the State where the district in question is situated to indemnify the United States against all claims, liabilities, loss, expenses, and attorneys' fees of whatsoever kind or nature, resulting from or arising out of any defect or defects whatsoever in the title to any such lands, easements, or rights-of-way so conveyed to the United States, including all just compensation, costs, and expenses which may be incurred in any condemnation proceeding deemed necessary and instituted by the United States in order to perfect title to any such lands, easements, or rights-of-way. (June 28, 1938, ch. 795, § 2, 52 Stat. 1215; Aug. 11, 1939, ch. 699, § 5, 53 Stat. 1415.)

§ 701d. Same; compacts between States; consent of Congress.

The consent of Congress is hereby given to any two or more States to enter into compacts or agreements in connection with any project or operation authorized by sections 5, 6 and 7 of the Act of June 22, 1936, ch. 688, 49 Stat. 1572-1596, for flood control or the prevention of damage to life or property by reason of floods upon any stream or streams and their tributaries which lie in two or more such States, for the purpose of providing, in such manner and such proportion as may be agreed upon by such States and approved by the Secretary of War, funds for construction and maintenance, for the payment of damages, and for the purchase of rights-of-way, lands, and easements in connection with such project or operation. No such compact or agreement shall become effective without the further consent or ratification of Congress, except a compact or agreement which provides that all money to be expended pursuant thereto and all work to be performed thereunder shall be expended and performed by the Department of War, with the exception of such reasonable sums as may be reserved by the States entering into the compact or agreement for the purpose of collecting taxes and maintaining the necessary State organizations for carrying out the compact or agreement. (June 22, 1936, ch. 688, § 4, 49 Stat. 1571.)

REFERENCES IN TEXT

Sections 5, 6, and 7 of the act of June 22, 1936, referred to in the first sentence of the text, enumerated the improvement projects adopted and authorized to be prosecuted for the benefit of navigation and the control of flood waters, authorized preliminary examinations and surveys for flood control at named localities, and authorized surveys of flood control operations at named localities with opportunities for power development. See, also, notes to section 701f of this title.

CODIFICATION

The part of section 5 of act June 22, 1936, added by act July 19, 1937, ch. 511, § 1, 50 Stat. 518, is set out as section 701h of this title.

§ 701e. Same; effect of act June 22, 1936, on provisions for Mississippi River and other projects.

Nothing in sections 701a-701f of this title and sections 5, 6, and 7 of the Act of June 22, 1936, ch. 688, 49 Stat. 1572-1596, shall be construed as repealing or amending any provision of sections 702a-702m of this title. The authority conferred by sections 701a-701f of this title and sections 5, 6, and 7 of Act June 22, 1936, ch. 688, 49 Stat. 1572-1596, and any funds appropriated pursuant thereto for expenditure are supplemental to all other authority and appropriations relating to the departments or agencies concerned, and nothing in sections 701a-701f of this title and sections 5, 6, and 7 of Act June 22, 1936, ch. 688, 49 Stat. 1572-1596 shall be construed to limit or retard any department or agency in carrying out similar and related activities heretofore or hereafter authorized, or to limit the exercise of powers conferred on any department or agency by other provisions of law is<sup>1</sup> carrying out similar and related activities. (June 22, 1936, ch. 688, § 8, 49 Stat. 1596.)

<sup>1</sup> So in original. Probably should read "in".

§ 701f. Same; appropriation; payment of employees from funds of Works Progress Administration.

The sum of \$310,000,000 is authorized to be appropriated for carrying out the improvements authorized by section 5 of the Act of June 22, 1936, ch. 688, 49 Stat. 1572, and the sum of \$10,000,000 is authorized to be appropriated and expended in equal amounts by the Departments of War and Agriculture for carrying out any examinations and surveys provided for in sections 6 and 7 of the said Act and other Acts of Congress: *Provided*, That not more than \$50,000,000 of such sum shall be expended during the fiscal year ending June 30, 1937: *Provided further*, That for the relief of unemployment, in addition to the regular appropriation, persons may be employed on such works of improvement and the compensation of said persons when so employed shall be paid from the funds available to the Works Progress Administration for the continuance of relief and work relief on useful projects. (June 22, 1936, ch. 688, § 9, 49 Stat. 1596.)

#### ADOPTION OF IMPROVEMENTS

Works of improvement adopted and authorized to be prosecuted are listed in section 5 of act June 22, 1936, ch. 688, 49 Stat. 1596, referred to in this section, as amended or supplemented by act Aug. 28, 1937, ch. 877, § 1, 50 Stat. 876, section 4 of act June 28, 1938, ch. 795, 52 Stat. 1216, and section 4 of act Aug. 11, 1939, ch. 699, 53 Stat. 1414.

#### AUTHORIZATION OF EXAMINATIONS AND SURVEYS.

Localities at which preliminary examinations and surveys are authorized to be made are listed in acts June 22, 1936, ch. 688, § 6, 49 Stat. 1592; Aug. 28, 1937, ch. 877, § 5, 50 Stat. 877; and June 28, 1938, ch. 795, § 6, 52 Stat. 1223.

#### CONTINUANCE OF EXAMINATIONS AND SURVEYS

Localities at which the continuance of examinations and surveys already undertaken is authorized are listed in act June 22, 1936, ch. 688, § 7, 49 Stat. 1596.

§ 701f-1. Same; appropriation.

The sum of \$375,000,000 is hereby authorized to be appropriated for carrying out the improvements

in sections 701b, 701b-1, 701b-2, 701c-1, 701f-1, 701i, 701j, 702a-1½, 702a-11, and 706 of this title over the five-year period ending June 30, 1944, and the sum of \$10,000,000 additional is authorized to be appropriated and expended in equal amounts by the Departments of War and Agriculture for carrying out any examinations and surveys provided for in said sections and any other Acts of Congress, to be prosecuted by said Departments. The sum of \$1,500,000 additional is authorized to be appropriated and expended by the Federal Power Commission for carrying out any examinations and surveys provided for in said sections or any other Acts of Congress, to be prosecuted by the said Federal Power Commission. (June 28, 1938, ch. 795, § 9, 52 Stat. 1226.)

§ 701g. Same; removal of obstructions; clearing channels.

The Secretary of War is hereby authorized to allot not to exceed \$300,000 from any appropriations heretofore or hereafter made for any one fiscal year for flood control, for removing accumulated snags and other debris and clearing channels in navigable streams and tributaries thereof when in the opinion of the Chief of Engineers such work is advisable in the interest of flood control: *Provided*, That not more than \$25,000 shall be allotted for this purpose for any single tributary from the appropriations for any one fiscal year. (Aug. 28, 1937, ch. 877, § 2, 50 Stat. 877; Aug. 11, 1939, ch. 699, § 1, 53 Stat. 1414.)

§ 701h. Same; contributions by States and political subdivisions.

The Secretary of War is authorized to receive from States and political subdivisions thereof, such funds as may be contributed by them to be expended in connection with funds appropriated by the United States for any authorized flood control work whenever such work and expenditure may be considered by the Secretary of War, on recommendation of the Chief of Engineers, as advantageous in the public interest, and the plans for any reservoir project may, in the discretion of the Secretary of War, on recommendation of the Chief of Engineers, be modified to provide additional storage capacity for domestic water supply or other conservation storage, on condition that the cost of such increased storage capacity is contributed by local agencies and that the local agencies agree to utilize such additional storage capacity in a manner consistent with Federal uses and purposes: *Provided*, That when contributions made by States and political subdivisions thereof, are in excess of the actual cost of the work contemplated and properly chargeable to such contributions, such excess contributions may, with the approval of the Secretary of War, be returned to the proper representatives of the contributing interests. (June 22, 1936, ch. 688, § 5, as added July 19, 1937, ch. 511, § 1, 50 Stat. 518.)

§ 701h-1. Same; contributions by States and political subdivisions for immediate use on authorized flood-control work; repayment.

Whenever any State or political subdivision thereof shall offer to advance funds for a flood-control

project duly adopted and authorized by law the Secretary of War may in his discretion, receive such funds and expend the same in the immediate prosecution of such work. The Secretary of War is authorized and directed to repay without interest, from appropriations which may be provided by Congress for flood-control work, the moneys so contributed and expended: *Provided, however,* That no repayment of funds which may be contributed for the purpose of meeting any conditions of local cooperation imposed by Congress, or under the authority of section 701h of this title, as amended, shall be made. (Oct. 15, 1940, ch. 884, 54 Stat. 1176.)

§ 701i. Same; elimination from protection of areas subject to evacuation.

In any case where the construction cost of levees or flood walls included in any authorized project can be substantially reduced by the evacuation of a portion or all of the area proposed to be protected and by the elimination of that portion or all of the area from the protection to be afforded by the project, the Chief of Engineers may modify the plan of said project so as to eliminate said portion or all of the area: *Provided,* That a sum not substantially exceeding the amount thus saved in construction cost may be expended by the Chief of Engineers, or in his discretion may be transferred to any other appropriate Federal agency for expenditure, toward the evacuation of the locality eliminated from protection and the rehabilitation of the persons so evacuated: *And provided further,* That the Chief of Engineers may, if he so desires, enter into agreement with States, local agencies, or the individuals concerned for the accomplishment by them, of such evacuation and rehabilitation and for their reimbursement from said sum for expenditures actually incurred by them for this purpose. (June 28, 1938, ch. 795, § 3, 52 Stat. 1216.)

§ 701j. Same; installation in dams of facilities for future development of hydro-electric power.

Penstocks or other similar facilities adapted to possible future use in the development of hydro-electric power shall be installed in any dam authorized in sections 701b, 701b-1, 701b-2, 701c-1, 701f-1, 701i, 701j, 702a-1½, 702a-11, and 706 of this title when approved by the Secretary of War upon the recommendation of the Chief of Engineers and of the Federal Power Commission. (June 28, 1938, ch. 795, § 4, 52 Stat. 1216.)

§ 701k. Crediting reimbursements for lost, stolen, or damaged property.

Any amounts collected from any person, persons, or corporations as a reimbursement for lost, stolen, or damaged property, purchased in connection with river and harbor or flood control work prosecuted under the direction of the Secretary of War and the supervision of the Chief of Engineers, whether collected in cash or by deduction from amounts otherwise due such person, persons, or corporations, hereafter shall be credited in each case to the appropriation that bore the cost of purchase, repair, or replacement of the lost, stolen, or damaged property. (June 20, 1938, ch. 535, § 4, 52 Stat. 805.)

§ 701l. Employment of retired civil service employees.

The provisions of sections 715 and 715a of Title 5 shall not be so construed as to prevent the employment by the Chief of Engineers under agreement as authorized by sections 569a, 584a and 607a of this title, of any retired civilian employee whose expert assistance may be needed in connection with the prosecution of river and harbor or flood control works: *Provided,* That during the period of such employment a sum equal to the retired pay of the employee shall be deducted from the compensation agreed upon. (June 20, 1938, ch. 535, § 5, 52 Stat. 805.)

#### CROSS REFERENCE

Section is also set out as section 544a of this title.

§ 702. Mississippi River.

*Authorization of flood-control work.*—For controlling the floods of the Mississippi River and continuing its improvement from the Head of the Passes to the mouth of the Ohio River the Secretary of War is hereby empowered, authorized, and directed to carry on continuously, by hired labor or otherwise, the plans of the Mississippi River Commission, prior to March 3, 1923, or thereafter adopted, to be paid for as appropriations may from time to time be made by law.

*Allotments for improvement of watercourses connected with Mississippi River.*—The watercourses connected with the Mississippi River to such extent as may be necessary to exclude the flood waters from the upper limits of any delta basin, together with the Ohio River from its mouth to the mouth of the Cache River, may, in the discretion of said commission, receive allotments for improvements under way March 1, 1917, or thereafter to be undertaken.

*Maintenance of levees constructed for flood control.*—Upon the completion of any levee constructed for flood control under authority of this section, said levee shall be turned over to the levee district protected thereby for maintenance thereafter; but for all other purposes the United States shall retain such control over the same as it may have the right to exercise upon such completion. (Mar. 1, 1917, ch. 144, § 1, 39 Stat. 948; Mar. 4, 1923, ch. 277, 42 Stat. 1505.)

#### CODIFICATION

Last clause of first paragraph and subsections (a)-(d) providing for improvements on watercourses connected with Mississippi River were limited to appropriations made for a period of six years beginning July 1, 1924.

#### CROSS REFERENCE

Classification as trust funds, appropriation and disbursement of funds contributed for flood control, see section 725a (78) of Title 31, Money and Finance.

§ 702a. Same; adoption of 1927 project; execution; creation of board; scope of authority; appropriation.

The project for the flood control of the Mississippi River in its alluvial valley and for its improvement from the Head of Passes to Cape Girardeau, Missouri, in accordance with the engineering plan set forth and recommended in the report submitted by the Chief of Engineers to the Secretary of War dated December 1, 1927, and printed in House Docu-

ment Numbered 90, Seventieth Congress, first session, is hereby adopted and authorized to be prosecuted under the direction of the Secretary of War and the supervision of the Chief of Engineers: *Provided*, That a board to consist of the Chief of Engineers, the president of the Mississippi River Commission, and a civil engineer chosen from civil life to be appointed by the President, by and with the advice and consent of the Senate, whose compensation shall be fixed by the President and be paid out of the appropriations made to carry on this project, is hereby created; and such board is authorized and directed to consider the engineering differences between the adopted project and the plans recommended by the Mississippi River Commission in its special report dated November 28, 1927, and after such study and such further surveys as may be necessary, to recommend to the President such action as it may deem necessary to be taken in respect to such engineering differences and the decision of the President upon all recommendations or questions submitted to him by such board shall be followed in carrying out the project herein adopted. The board shall not have any power or authority in respect to such project except as hereinbefore provided. Such project and the changes therein, if any, shall be executed in accordance with the provisions of section 702h of this title. Such surveys shall be made between Baton Rouge, Louisiana, and Cape Girardeau, Missouri, as the board may deem necessary to enable it to ascertain and determine the best method of securing flood relief in addition to levees, before any flood-control works other than levees and revetments are undertaken on that portion of the river: *Provided*, That all diversion works and outlets constructed under the provisions of sections 702a, 702b-702d, 702e-702g, 702h-702j, 702k, 702l, 702m, or 704 of this title shall be built in a manner and of a character which will fully and amply protect the adjacent lands: *Provided further*, That pending completion of any floodway, spillway, or diversion channel, the areas within the same shall be given the same degree of protection as is afforded by levees on the west side of the river contiguous to the levee at the head of said floodway, but nothing herein shall prevent, postpone, delay, or in anywise interfere with the execution of that part of the project on the east side of the river, including raising, strengthening, and enlarging the levees on the east side of the river. The sum of \$325,000,000 is hereby authorized to be appropriated for this purpose.

All unexpended balances of appropriations prior to May 15, 1928, made for prosecuting work of flood control on the Mississippi River in accordance with the provisions of section 702 of this title, are hereby made available for expenditure under the provisions of sections 702a, 702b-702d, 702e-702g, 702h-702j, 702k, 702l, 702m, of this title. (May 15, 1928, ch. 569, § 1, 45 Stat. 534.)

#### CROSS REFERENCES

Modification of project of 1927 and adoption as modified, see section 702a-1 of this title.

Further modification of project, see section 702a-1½ of this title.

§ 702a-1. Same; modification of project of 1927; adoption.

The project for the control of floods of the Mississippi River and its tributaries, adopted by section 702a of this title, is hereby modified in accordance with the recommendations of section 43 of the report submitted by the Chief of Engineers to the Chairman of the Committee on Flood Control, dated February 12, 1935, and printed in House Committee on Flood Control Document Numbered 1, Seventy-fourth Congress, first session, as, in sections 702a-2 to 702a-11, 702g-1, 702j-1 (a), 702j-2, 702k-1, 702k-2 of this title, further modified and amended; and as so modified is hereby adopted and authorized and directed to be prosecuted under the direction of the Secretary of War and the supervision of the Chief of Engineers. (June 15, 1936, ch. 548, § 1, 49 Stat. 1508.)

#### CROSS REFERENCE

Further modification of project, see section 702a-1½ of this title.

§ 702a-1½. Same; further modification of 1927 project; adoption; appropriation.

In accordance with the recommendations of the Chief of Engineers, as set forth in his report of April 6, 1937, and published as Flood Control Committee Document Numbered 1, Seventy-fifth Congress, first session, paragraph 38 (b), except subparagraph (1), the project for flood control of the Lower Mississippi River adopted by sections 702a, 702a-1, 702a-2 to 702a-11, 702b-702d, 702e-702g, 702g-1, 702h-702j, 702j-1, 702j-2, 702k, 702k-1, 702k-2, 702l, 702m, and 704 of this title, is hereby modified and, as modified, is hereby adopted, and there is hereby authorized to be appropriated in addition to the sums previously authorized \$40,000,000 to be applied for the purposes set forth in said document covering the said recommendations, with the exceptions mentioned, subject to the provisions made in section 702a-11 of this title. (June 28, 1938, ch. 795, § 4, 52 Stat. 1220.)

§ 702a-2. Same; abandonment of Boeuf Floodway.

The Boeuf Floodway, authorized by the provisions adopted in section 702a of this title, shall be abandoned as soon as the Eudora Floodway, provided for in Flood Control Committee Document Numbered 1, Seventy-fourth Congress, first session, is in operative condition and the back-protection levee recommended in said document, extending north from the head of the Eudora Floodway, shall have been constructed. (June 15, 1936, ch. 548, § 2, 49 Stat. 1509.)

§ 702a-3. Same; levees; raising and enlarging.

The levees along the Mississippi River from the head of the Morganza Floodway to the head of the Atchafalaya River and down the east bank of the Atchafalaya River to intersection with the west protection levee of said Morganza Floodway shall be raised and enlarged to 1928 grade and section. (June 15, 1936, ch. 548, § 3, 49 Stat. 1509.)

§ 702a-4. Same; fuse-plug levees.

After the Eudora Floodway shall have been constructed and is ready for operation, the fuse-plug

levees now at the head of the Boeuf and Tensas Basins shall be constructed to the 1914 grade and the 1928 section. The fuse-plug levees at the head of the Atchafalaya Basin on the west side shall be constructed to the 1914 grade and the 1928 section. The fuse-plug levees at the head of the Atchafalaya Basin on the east side of the Atchafalaya River shall be constructed to the 1914 grade and 1928 section, and, after the Morganza Floodway has been completed, shall be raised to the 1928 grade as provided in section 702a-3 of this title. Thereafter those stretches of said levees which are left as fuse-plug levees shall be reconstructed and maintained as herein provided, subject to the provisions of section 702a-3 of this title. Any funds appropriated under authority of 702k-1 of this title may be expended for this purpose. (June 15, 1936, ch. 548, § 10, 49 Stat. 1511.)

**§ 702a-5. Same; back levee north of Eudora Floodway.**

The back-protection levee north of the Eudora Floodway shall be constructed to the same grade and section as the levees opposite on the east side of the Mississippi River: *Provided*, That this levee extending from the head of the Eudora Floodway north to the Arkansas River shall be so located as to afford adequate space for the passage of flood waters without endangering the levees opposite on the east side of the river and shall be constructed contemporaneously with the construction of the Eudora Floodway; except that, until the Eudora Floodway is in operative condition, there shall be left in this back levee north of the head of the Eudora Floodway openings which shall be sufficient, in the discretion of the Chief of Engineers, to permit the passage of all flood waters to be reasonably contemplated in the event of any break in the riverside fuse-plug levee prior to the time the Eudora Floodway shall be in operative condition. (June 15, 1936, ch. 548, § 11, 49 Stat. 1511.)

**§ 702a-6. Same; drainage necessitated by floodway levees.**

The United States shall provide the drainage made necessary by the construction of floodway levees included in the modified project. (June 15, 1936, ch. 548, § 6, 49 Stat. 1510.)

**§ 702a-7. Same; railroad and highway crossings over floodways.**

The United States shall construct, at its own cost, one railroad and one highway crossing over the Eudora Floodway and not to exceed three railway and two highway crossings over the Morganza Floodway, and not to exceed one railway crossing (together with suitable physical connections therewith) and one highway crossing over the floodway west of the Atchafalaya River provided for in the modified project: *Provided*, That equitable agreements can be made with the railroad and highway authorities concerned and that the appropriate railroad or highway agencies agree to accept and maintain and operate these crossings without cost to the United States: *Provided further*, That the railroads crossing the Morganza and West Atchafalaya Floodways agree in consideration for the crossings constructed to

waive all claims against the Government for any damages that may occur by reason of overflows in the Morganza and West Atchafalaya Floodways: *And provided further*, That other railway and highway damages shall be adjusted as provided for in section 702a-10 of this title. (June 15, 1936, ch. 548, § 7, 49 Stat. 1510.)

**§ 702a-8. Same; additional roads; construction by United States.**

In addition to the construction by the United States of roads in connection with floodways as heretofore provided, the Federal Government may, in the discretion of the Chief of Engineers, and within the limits of available funds, construct additional roads to afford access to those portions of the levee lines not otherwise accessible. (June 15, 1936, ch. 548, § 8, 49 Stat. 1510.)

**§ 702a-9. Same; lands, easements, and rights-of-way; acquisition by local authorities; reimbursement; protection of United States from liability for damages.**

No money appropriated under section 702k-1 of this title shall be expended on the construction of any reservoir project herein authorized until States, political subdivisions thereof, or other responsible local agencies have given assurances satisfactory to the Secretary of War that they will (a) provide without cost to the United States all lands, easements, and rights-of-way necessary for the construction of the project, except as otherwise provided herein; (b) hold and save the United States free from damages due to the construction works; (c) maintain and operate all the works after completion in accordance with regulations prescribed by the Secretary of War: *And provided*, That the construction of any dam authorized herein may be undertaken without delay when the dam site has been acquired and the assurances prescribed herein have been furnished, without awaiting the acquisition of the easements and rights-of-way required for the reservoir area: *And provided further*, That whenever expenditures for lands, easements, and rights-of-way by States, political subdivisions thereof, or responsible local agencies for any individual project or useful part thereof shall have exceeded the present estimated construction cost therefor, the local agency concerned may be reimbursed one-half of its excess expenditures over said estimated construction cost: *And provided further*, That when benefits of any project or useful part thereof accrue to lands and property outside of the State in which said project or part thereof is located, the Secretary of War may acquire the necessary lands, easements, and rights-of-way for said project or part thereof after he has received from the States, political subdivisions thereof, or responsible local agencies benefited the present estimated cost of said lands, easements, and rights-of-way, less one-half the amount by which the estimated cost of these lands, easements, and rights-of-way exceeds the estimated construction cost corresponding thereto: *And provided further*, That the Secretary of War shall determine the proportion of the present estimated cost of said lands, easements, and



rights-of-way that each State, political subdivision thereof, or responsible local agency should contribute in consideration for the benefits to be received by such agencies: *And provided further*, That whenever not less than 75 per centum of the benefits as estimated by the Secretary of War of any project or useful part thereof accrue to lands and property outside of the State in which said project or part thereof is located, provision (c) of this section shall not apply thereto; nothing herein shall impair or abridge the powers now existing in the Department of War with respect to navigable streams: *And provided further*, That nothing herein shall be construed to interfere with the completion of any reservoir or flood control work authorized by the Congress and under way on June 15, 1936. (June 15, 1936, ch. 548, § 8a, 49 Stat. 1510.)

§ 702a-10. Same; flowage rights and rights-of-way; reimbursement of local authorities; highway crossings; use of properties for national forests or wildlife refuges.

In order to facilitate the United States in the acquisition of flowage rights and rights-of-way for levee foundations, the Secretary of War is authorized to enter into agreements with the States or with local levee districts, boards, commissions, or other agencies for the acquisition and transfer to the United States of such flowage rights and levee rights-of-way, and for the reimbursement of such States or local levee districts, boards, commissions, or other agencies, for the cost thereof at prices previously agreed upon between the Secretary of War and the governing authority of such agencies, within the maximum limitations hereinafter prescribed: *Provided*, That no money appropriated under the authority of section 702k-1 of this title shall be expended upon the construction of the Eudora Floodway, the Morganza Floodway, the back protection levee extending north from the Eudora Floodway, or the levees extending from the head of the Morganza Floodway to the head of and down the east bank of the Atchafalaya River to the intersection of said Morganza Floodway until 75 per centum of the value of the flowage rights and rights-of-way for levee foundations, as estimated by the Chief of Engineers, shall have been acquired or options or assurances satisfactory to the Chief of Engineers shall have been obtained for the Eudora Floodway, the Morganza Floodway, and the area lying between said back protection levee and the present front line levees: *Provided further*, That easements required in said areas in connection with roads and other public utilities owned by States or political subdivisions thereof shall be provided without cost to the United States upon the condition that the United States shall provide suitable crossings, including surfacing of like character, over floodway guide-line levees in said areas for all improved roads now constituting a part of the State highway system, and shall repair all damage done to said highways within the said floodways by the actual use of such floodways for diversion: *Provided further*, That when such portion of said rights as to all of said areas shall have been acquired or obtained and when said easements required in connection with roads and other

public utilities owned by States or political subdivisions thereof have been provided as hereinabove set forth, construction of said flood-control works in said areas shall be undertaken according to the engineering recommendations of the Report of the Chief of Engineers dated February 12, 1935 (House Committee on Flood Control Document Numbered 1, Seventy-fourth Congress, first session), and the Secretary of War shall cause proceedings to be instituted for the condemnation of the remainder of said rights and easements, as are needed and cannot be secured by agreement, in accordance with section 702d of this title: *Provided further*, That in no event and under no circumstances shall any of the additional money appropriated under the authority of this Act be expended for the acquisition of said 75 per centum of the flowage rights and rights-of-way hereinabove contemplated in excess of \$20,000,000: *Provided further*, That the Chief of Engineers is authorized, out of the funds authorized to be appropriated by section 702k-1 of this title to purchase flowage easements over lands and properties in the floodway west of the Atchafalaya River and lying above the approximate latitude of Krotz Springs: *Provided further*, That none of such easements in said West Atchafalaya Floodway shall be purchased until options covering at least 75 per centum of the total value of such easements as estimated by the Chief of Engineers shall have been obtained at prices deemed reasonable by the Chief of Engineers and not exceeding in the aggregate \$2,250,000 for said 75 per centum of said easements with respect to the floodway west of the Atchafalaya River: *Provided further*, That easements required in said West Atchafalaya Floodway in connection with roads and other public utilities owned by States or other political subdivisions shall be provided without cost to the United States upon condition that the United States shall provide suitable crossings, including surfacing of like character, over floodway guide-line levees for all improved roads in said West Atchafalaya Floodway now constituting a part of the State highway system and shall repair all damage done to said highways within said West Atchafalaya Floodway by the actual use of such floodway for diversion: *Provided further*, That no flowage easements shall be paid for by the United States over properties subject to frequent overflow in the Atchafalaya Basin below the approximate latitude of Krotz Springs: *Provided further*, That payment for rights-of-way, easements, and flowage rights acquired under this section, or reimbursement to the States or local interests furnishing them, shall be made as soon as the Chief of Engineers is satisfied that such rights-of-way, easements, or flowage rights have been acquired in conformity with local custom or legal procedure in such matters; and, thereafter, no liability of any kind shall attach to or rest upon the United States for any further damage by reason of diversions or flood waters: *And provided further*, That if the Secretary of Agriculture shall determine to acquire any of the properties within the floodways herein referred to, for national forests, wildlife refuges, or other purposes of his Department, the Secretary of War may, upon recommendation by the Chief of Engineers, in



lieu of acquiring flowage rights, advance to or reimburse the said Secretary of Agriculture sums equal to those that would otherwise be used for the purchase of easements desired by the War Department and the Secretary of Agriculture is authorized to use these sums for the purpose of acquiring properties in the floodways in question. (June 15, 1936, ch. 548, § 12, 49 Stat. 1512.)

**§ 702a-11. Same; Morganza floodway; Eudora floodway.**

The United States may, within the discretion of the Chief of Engineers, irrespective of other provisions of law, proceed to acquire all easements needed and of the character considered advisable in the Morganza floodway and to construct said Morganza floodway. Said Morganza floodway may, within the discretion of the Chief of Engineers, be modified as to its design and inflow.

The said Morganza floodway may be initiated and constructed without delay; and the United States may, within the discretion of the Chief of Engineers, irrespective of other provisions of law, proceed to the acquisition of flowage rights and flowage easements in the Eudora floodway, and to its construction as authorized by existing law: *Provided*, That the intakes of such Eudora floodway shall include an automatic masonry weir with its sill at such an elevation that it will not be overtopped by stages other than those capable of producing a stage of fifty-one feet or over on the Vicksburg gage: *Provided further*, That a fuseplug levee loop may be constructed behind said sill to prevent flow into the floodway until the predicted flood exceeds the safe capacity of the main river leveed channel, with a free-board of at least three feet, but said fuseplug levee may be artificially breached when in the opinion of the Chief of Engineers such breaching is advisable to insure the safety of the main river controlling levee line: *Provided further*, That the authority to acquire lands, flowage rights, and easements for floodways shall be confined to the floodways proper and to the northward extension of Eudora: *Provided further*, That within the discretion of the Chief of Engineers, the guide line levees of the Eudora floodway may be extended south toward Old River: *Provided further*, That the Chief of Engineers is hereby authorized to construct the said Eudora floodway at such location as he may determine, in the vicinity of Eudora. The United States may, within the discretion of the Chief of Engineers irrespective of other provisions of law, proceed to acquire flowage rights and flowage easements in the northward extension of the Eudora floodway, as authorized by existing law, provided that pending the completion of such northward extension all the Riverside fuseplug levee extending south from the vicinity of Yancopin to the vicinity of Vau Cluse, Arkansas, and so as to connect with the existing levee of 1928 grade and section, shall be reconstructed to the 1914 grade and 1928 section: *Provided further*, That if the back protection levee is constructed prior to the construction of Eudora floodway, it shall be connected with the main Mississippi River levee and subsequently connected with the Eudora floodway when constructed: *Provided further*, That the Chief of Engineers is authorized,

in his discretion, to negotiate options, make agreements and offers with respect to lands, flowage rights, easements, and rights-of-way involved, as provided by law, at prices deemed reasonable by him.

The United States, irrespective of other provisions of law, may, within the discretion of the Chief of Engineers, acquire flowage easements over all lands not subject to frequent overflow in the Atchafalaya Basin below the latitude of Krotz Springs.

Said Morganza floodway shall not be operated until the Wax Lake outlet has been put into operative condition.

The fuseplug levees at the head of the Atchafalaya Basin on the east side of the Atchafalaya River shall be reconstructed to the 1928 grade and section.

The United States may, in the discretion of the Chief of Engineers, acquire all flowage rights, flowage easements, rights-of-way for levee foundations, and titles in fee simple as herein provided, either by voluntary acquisition or in accordance with the condemnation proceedings by the Secretary of War as provided for in section 702d of this title.

In the event the United States acquires or owns title to any lands in fee simple under the provisions of sections 702a, 702b-702d, 702e-702g, 702h-702j, 702k, 702l, 702m, and 704 of this title, as amended and supplemented, the United States may retain the ownership thereof, or any part thereof instead of turning over such lands to the ownership of States or local interests as provided in section 702d of this title, and may lease such lands: *Provided*, That 25 per centum of all moneys received and deposited in the Treasury of the United States during any fiscal year on account of such leases shall be paid, at the end of such year, by the Secretary of the Treasury to the State in which such property is situated, to be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such property is situated: *Provided further*, That when such property is situated in more than one State or county the distributive share to each from the proceeds of such property shall be proportional to its area therein: *Provided further*, That no part of the appropriations heretofore authorized in sections 702a-1, 702a-2 to 702a-10, 702g-1, 702j-1, 702j-2, 702k-1, and 702k-2 of this title for said Morganza and Eudora floodways and extension shall be used for any other purpose. (June 15, 1936, ch. 548, as added June 28, 1938, ch. 795, § 4, 52 Stat. 1220.)

**EFFECT OF AMENDMENT**

Act June 28, 1938, cited to text, provided that, except as amended therein, the act of May 15, 1928, as amended by the act of June 15, 1936, as amended, should remain in full force and effect.

**§ 702b. Same; local contribution toward cost of flood-control work.**

It is hereby declared to be the sense of Congress that the principle of local contribution toward the cost of flood-control work, which has been incorporated in all previous national legislation on the subject, is sound, as recognizing the special interest of the local population in its own protection, and as a means of preventing inordinate requests for unjustified items of work having no material na-

tional interest. As a full compliance with this principle in view of the great expenditure estimated at approximately \$292,000,000, prior to May 15, 1928, made by the local interests in the alluvial valley of the Mississippi River for protection against the floods of that river; in view of the extent of national concern in the control of these floods in the interests of national prosperity, the flow of interstate commerce, and the movement of the United States mails; and, in view of the gigantic scale of the project, involving flood waters of a volume and flowing from a drainage area largely outside the States most affected, and far exceeding those of any other river in the United States, no local contribution to the project herein adopted is required. (May 15, 1928, ch. 569, § 2, 45 Stat. 535.)

**§ 702c. Same; expenditures for construction work; conditions precedent; liability for damage from flood waters; condemnation proceedings; floodage rights.**

Except when authorized by the Secretary of War upon the recommendation of the Chief of Engineers, no money appropriated under authority of sections 702a, 702b-702d, 702e-702g, 702h-702j, 702k, 702l, 702m of this title shall be expended on the construction of any item of the project until the States or levee districts have given assurances satisfactory to the Secretary of War that they will (a) maintain all flood-control works after their completion, except controlling and regulating spillway structures, including special relief levees; maintenance includes normally such matters as cutting grass, removal of weeds, local drainage, and minor repairs of main river levees; (b) agree to accept land turned over to them under the provisions of section 702d; (c) provide without cost to the United States, all rights-of-way for levee foundations and levees on the main stem of the Mississippi River between Cape Girardeau, Missouri, and the Head of Passes.

No liability of any kind shall attach to or rest upon the United States for any damage from or by floods or flood waters at any place: *Provided, however,* That if in carrying out the purposes of sections 702a, 702b-702d, 702e-702g, 702h-702j, 702k, 702l, 702m of this title it shall be found that upon any stretch of the banks of the Mississippi River it is impracticable to construct levees, either because such construction is not economically justified or because such construction would unreasonably restrict the flood channel, and lands in such stretch of the river are subjected to overflow and damage which are not now overflowed or damaged by reason of the construction of levees on the opposite banks of the river it shall be the duty of the Secretary of War and the Chief of Engineers to institute proceedings on behalf of the United States Government to acquire either the absolute ownership of the lands so subjected to overflow and damage or floodage rights over such lands. (May 15, 1928, ch. 569, § 3, 45 Stat. 535.)

#### CROSS REFERENCE

Payment or reimbursement by Secretary of War for levee rights-of-way or easements, see section 702n of this title.

**§ 702d. Same; flowage rights; condemnation proceedings; benefits to property.**

The United States shall provide flowage rights for additional destructive flood waters that will pass by reason of diversions from the main channel of the Mississippi River: *Provided,* That in all cases where the execution of the flood-control plan herein adopted results in benefits to property such benefits shall be taken into consideration by way of reducing the amount of compensation to be paid.

The Secretary of War may cause proceedings to be instituted for the acquirement by condemnation of any lands, easements, or rights of way, which, in the opinion of the Secretary of War and the Chief of Engineers, are needed in carrying out this project, the said proceedings, to be instituted in the United States district court for the district in which the land, easement, or right of way is located. In all such proceedings the court, for the purpose of ascertaining the value of the property and assessing the compensation to be paid, shall appoint three commissioners, whose award, when confirmed by the court, shall be final. When the owner of any land, easement, or right-of-way shall fix a price for the same which, in the opinion of the Secretary of War is reasonable, he may purchase the same at such price; and the Secretary of War is also authorized to accept donations of lands, easements, and rights of way required for this project. The provisions of sections 594 and 595 of this title are hereby made applicable to the acquisition of lands, easements, or rights of way needed for works of flood control: *Provided,* That any land acquired under the provisions of this section shall be turned over without cost to the ownership of States or local interests. (May 15, 1928, ch. 569, § 4, 45 Stat. 536.)

#### CROSS REFERENCE

Lands acquired for construction of Bonnet Carre Spillway and Floodway not to be subject to this section, see section 702d-1 of this title.

**§ 702d-1. Same; Bonnet Carre Spillway and Floodway; rights-of-way, etc., over lands.**

The last proviso in section 702d of this title shall not apply to the lands heretofore acquired or that may be hereafter acquired in connection with the construction, maintenance, or operation of the Bonnet Carre Spillway and Floodway. The Secretary of War is hereby authorized to grant to any citizen, association, railroad, or other corporation, State or public agency thereof, rights-of-way, easements, and permits, over, across, in, and upon said lands for railway, highway, telephone, telegraph, and pipe-line crossings, and other purposes. The grants issued in pursuance of this authority shall be under such terms and conditions as the Secretary of War may deem advisable for the protection of the public interests, and may be perpetual or temporary in his discretion. (Feb. 15, 1933, ch. 76, 47 Stat. 810.)

**§ 702e. Same; maps for project; preparation.**

Subject to the approval of the heads of the several executive departments concerned, the Secretary of War, on the recommendation of the Chief of Engineers, may engage the services and assistance of the Coast and Geodetic Survey, the Geological Sur-

vey, or other mapping agencies of the Government, in the preparation of maps required in furtherance of this project, and funds to pay for such services may be allotted from appropriations made under authority of section 702a or 702g of this title. (May 15, 1928, ch. 569, § 5, 45 Stat. 536.)

**§ 702f. Same; expenditures for earlier projects.**

Funds appropriated under authority of section 702a of this title may be expended for the prosecution of such works for the control of the floods of the Mississippi River as have, prior to May 15, 1928, been authorized and are not included in the present project, including levee work on the Mississippi River between Rock Island, Illinois, and Cape Girardeau, Missouri, and on the outlets and tributaries of the Mississippi River between Rock Island and Head of Passes insofar as such outlets or tributaries are affected by the backwaters of the Mississippi: *Provided*, That for such work on the Mississippi River between Rock Island, Illinois, and Cape Girardeau, Missouri, and on such tributaries, the States or levee districts shall provide rights-of-way without cost to the United States, contribute 33½ per centum of the costs of the works, and maintain them after completion: *And provided further*, That not more than \$10,000,000 of the sums authorized in section 702a of this title, shall be expended under the provisions of this section.

In an emergency, funds appropriated under authority of section 702a of this title may be expended for the maintenance of any levee when it is demonstrated to the satisfaction of the Secretary of War that the levee cannot be adequately maintained by the State or levee district. (May 15, 1928, ch. 569, § 6, 45 Stat. 536.)

**§ 702g. Same; appropriation for emergency fund.**

The sum of \$5,000,000 is authorized to be appropriated as an emergency fund to be allotted by the Secretary of War on the recommendation of the Chief of Engineers, in rescue work or in the repair or maintenance of any flood-control work on any tributaries of the Mississippi River threatened or destroyed by flood including the flood of 1927: *Provided*, That the unexpended and unallotted balance of said sum, or so much thereof as may be necessary, may be allotted by the Secretary of War on the recommendation of the Chief of Engineers in the reimbursement of levee districts or others for expenditures heretofore incurred or made for the construction, repair, or maintenance of any flood-control work on any tributaries or outlets of the Mississippi River that may be threatened, impaired, or destroyed by the flood of 1927 or subsequent flood or that have been impaired, damaged, or destroyed by flood; and also in the construction, repair, or maintenance, and in the reimbursement of levee districts or others for the construction, repair, or maintenance of any flood-control work on any of the tributaries or outlets of the Mississippi River that have been impaired, damaged, or destroyed by caving banks or that may be threatened or impaired by caving banks of such tributaries, whether or not such caving has taken place during a flood stage:

*Provided further*, That if the Chief of Engineers finds that it has been or will be necessary or advisable to change the location of any such flood-control work in order to provide the protection contemplated by this section, such change may be approved and/or authorized. (May 15, 1928, ch. 569, § 7, 45 Stat. 537; June 19, 1930, ch. 542, 46 Stat. 787.)

**§ 702g-1. Same; additional appropriation for emergency fund.**

The sum of \$15,000,000 is authorized to be appropriated as an emergency fund to be allocated by the Secretary of War on the recommendation of the Chief of Engineers in rescue work or in the repair or maintenance of any flood-control work on any tributary of the Mississippi River threatened or destroyed by flood heretofore or hereafter occurring: *Provided*, That the unexpended and unallotted balance of said sum, or so much thereof as may be necessary, may be allotted by the Secretary of War, on the recommendation of the Chief of Engineers, in the reimbursement of levee districts or others for expenditures incurred or made prior to June 15, 1936 for the construction, repair, or maintenance of any flood-control work on any tributaries or outlets of the Mississippi River that may be threatened, impaired, or destroyed by the flood of 1927 or subsequent flood; and also in the construction, repair, or maintenance, and in the reimbursement of levee districts or others for the construction, repair, or maintenance of any flood-control work on any of the tributaries or outlets of the Mississippi River that may have been impaired, damaged, or destroyed by caving banks or that may be threatened or impaired by caving banks, of such tributaries, whether or not such caving has taken place during a flood stage: *Provided further*, That if the Chief of Engineers finds that it has been or will be necessary or advisable to change the location of any such flood-control work in order to provide the protection contemplated by this section, such change may be approved and authorized. (June 15, 1936, ch. 548, § 9, 49 Stat. 1511.)

**§ 702h. Same; prosecution of project by Mississippi River Commission; president of commission; salaries.**

The project authorized shall be prosecuted by the Mississippi River Commission under the direction of the Secretary of War and supervision of the Chief of Engineers and subject to the provisions of sections 702a, 702b-702d, 702e-702g, 702h-702j, 702k, 702l, 702m of this title. It shall perform such functions and through such agencies as they shall designate after consultation and discussion with the president of the commission. For all other purposes the existing laws governing the constitution and activities of the commission shall remain unchanged. The commission shall make inspection trips of such frequency and duration as will enable it to acquire first-hand information as to conditions and problems germane to the matter of flood control within the area of its jurisdiction; and on such trips of inspection ample opportunity for hearings and suggestions shall be afforded persons affected by or interested in such problems. The president of the

commission shall be the executive officer thereof and shall have the qualifications prescribed by law on May 15, 1928, for the Assistant Chief of Engineers, shall have the title brigadier general, Corps of Engineers, and shall have the rank, pay, and allowances of a brigadier general while actually assigned to such duty: *Provided*, That the incumbent of the office on May 15, 1928, may be appointed a brigadier general of the Army, retired, and shall be eligible for the position of president of the commission if recalled to active service by the President under the provisions of existing law.

The salary of the president of the Mississippi River Commission shall after May 15, 1928, be \$10,000 per annum, and the salary of the other members of the commission shall after May 15, 1928, be \$7,500 per annum. The official salary of any officer of the United States Army or other branch of the Government appointed or employed under sections 702a, 702b-702d, 702e-702g, 702h-702j, 702k, 702l, 702m of this title shall be deducted from the amount of salary or compensation provided by, or which shall be fixed under, the terms of such sections. (May 15, 1928, ch. 569, § 8, 45 Stat. 537.)

§ 702i. Certain sections applicable to property and rights acquired or constructed.

The provisions of sections 407, 408, 411, 412, and 413 of this title are hereby made applicable to all lands, waters, easements, and other property and rights acquired or constructed under the provisions of sections 702a, 702b-702d, 702e-702g, 702h-702j, 702k, 702l, 702m of this title. (May 15, 1928, ch. 569, § 9, 45 Stat. 537.)

§ 702j. Same; projects relating to tributary streams; report to Congress; appropriation.

It is the sense of Congress that the survey of the Mississippi River and its tributaries, authorized pursuant to the Act of January 21, 1927 [ch. 47, 44 Stat. 1010], and House Document Numbered 308, Sixty-ninth Congress, first session, be prosecuted as speedily as practicable, and the Secretary of War, through the Corps of Engineers, United States Army, is directed to prepare and submit to Congress at the earliest practicable date projects for flood control on all tributary streams of the Mississippi River system subject to destructive floods which projects shall include: The Red River and tributaries, the Yazoo River and tributaries, the White River and tributaries, the Saint Francis River and tributaries, the Arkansas River and tributaries, the Ohio River and tributaries, the Missouri River and tributaries, and the Illinois River and tributaries; and the reports thereon, in addition to the surveys provided by said House Document 308, Sixty-ninth Congress, first session, shall include the effect on the subject of further flood control of the lower Mississippi River to be attained through the control of the flood waters in the drainage basins of the tributaries by the establishment of a reservoir system; the benefits that will accrue to navigation and agriculture from the prevention of erosion and siltage entering the stream; a determination of the capacity of the soils of the district to receive and hold waters from such reservoirs; the prospective income from the dis-

posal of reservoir waters; the extent to which reservoir waters may be made available for public and private uses; and inquiry as to the return flow of waters placed in the soils from reservoirs, and as to their stabilizing effect on stream flow as a means of preventing erosion, siltage, and improving navigation: *Provided*, That before transmitting such reports to Congress the same shall be presented to the Mississippi River Commission, and its conclusions and recommendations thereon shall be transmitted to Congress by the Secretary of War with his report.

The sum of \$5,000,000 is hereby authorized to be used out of the appropriation authorized in section 702a of this title, in addition to amounts authorized in the River and Harbor Act of January 21, 1927 [ch. 47, 44 Stat. 1010], to be expended under the direction of the Secretary of War and the supervision of the Chief of Engineers for the preparation of the flood-control projects authorized to be submitted to Congress under this section: *Provided further*, That the flood surveys herein provided for shall be made simultaneously with the flood-control work on the Mississippi River provided for in sections 702a, 702b-702d, 702e-702g, 702h-702j, 702k, 702l, 702m of this title: *And provided further*, That the President shall proceed to ascertain through the Secretary of Agriculture and such other agencies as he may deem proper, the extent to and manner in which the floods in the Mississippi Valley may be controlled by proper forestry practice. (May 15, 1928, ch. 569, § 10, 45 Stat. 538.)

§ 702j-1. Same; Saint Francis and Yazoo Rivers; lands and easements; alteration of highways; cooperation of States.

(a) Neither of the projects for the flood control of the Saint Francis River or the Yazoo River, authorized by sections 702a-1, 702a-2 to 702a-11, 702g-1, 702j-1, 702j-2, 702k-1, and 702k-2 of this title, shall be undertaken until the States, or other qualified agencies, shall have furnished satisfactory assurances that they will undertake, without cost to the United States, all alterations of highways made necessary because of the construction of the authorized reservoirs, and meet all damages because of such highway alterations, and have agreed also to furnish without cost to the United States all lands and easements necessary to the construction of levees and drainage ditches constructed under this project: *Provided*, That the reservoirs for control of headwater flow of the Yazoo River system may be located by the Chief of Engineers, in his discretion: *And provided further*, That the Chief of Engineers may, in his discretion, substitute levees, floodways, or auxiliary channels, or any or all of them, for any or all of the seven detention reservoirs recommended in his report of February 12, 1935, for the control of floods of the Yazoo River: *And provided further*, That the Chief of Engineers, with the approval of the Secretary of War, may modify the project for the flood control of the Saint Francis River as recommended in said report, to include therein the construction of a detention reservoir for the reduction of floods, and the acquisition at the cost of the United States of all lands and flowage necessary to the construction of said reservoir except flowage of

highways: *Provided further*, That the estimated cost to the United States of the project is not increased by reason of such detention reservoir.

(b) The Chief of Engineers may, in his discretion, modify the project for the control of floods on the Yazoo River, as authorized by subsection (a), to substitute therefor a combined reservoir floodway and levee plan: *Provided*, That the total cost thereof does not exceed the present authorization as estimated in House Committee on Flood Control Document Numbered 1, Seventy-fourth Congress, first session: *Provided further*, That the modified project shall be subject to the following conditions of local cooperation:

No work shall be undertaken until the States or other qualified agencies have furnished satisfactory assurances that they will—

(1) undertake, without cost to the United States, all alterations of highways made necessary because of the construction of reservoirs and meet all damages because of such highway alterations; and

(2) furnish, without cost to the United States, all lands and easements necessary to the construction of levees and drainage ditches. (June 15, 1936, ch. 548, § 4, 49 Stat. 1509; Aug. 28, 1937, ch. 877, § 6, 50 Stat. 880.)

§ 702j-2. Same; White River Levee District; rights-of-way, drainage facilities; flowage rights; acquisition by local authorities; protection of United States from liability for damages.

The Chief of Engineers, under the supervision of the Secretary of War, shall at the expense of the United States Government construct a system of levees substantially in accordance with general plan shown on map designated as sheet numbered 1 entitled "Tributary Levee Location Survey—White River Levee District—Proposed Levee Location" accompanying report dated April 2, 1925, and filed in office of First and Second Mississippi River Commission Districts, Memphis, Tennessee. The Chief of Engineers shall have the right to alter, change, or modify said plan as to the grades and levee sections: *Provided, however*, That no work shall be commenced on the above-mentioned project until the State, levee boards, or other responsible local interests have given assurances satisfactory to the Secretary of War that they will (a) provide without cost to the United States all rights-of-way necessary for the construction of said project; (b) provide drainage facilities made necessary by construction of levees; (c) acquire and provide without cost to the United States all flowage and storage rights and easements over, upon, and across the lands and properties within the protected area in the event it becomes necessary in the judgment and discretion of the Secretary of War or the Chief of Engineers to use said area, or any part thereof, for an emergency reservoir; (d) hold and save the United States free from liability for damages on account of the use of said area for reservoir purposes during said emergency. (June 15, 1936, ch. 548, § 5, 49 Stat. 1509.)

§ 702k. Same; surveys below Cape Girardeau, Missouri; resurvey of levee in Tennessee.

The Secretary of War shall cause the Mississippi River Commission to make an examination and sur-

vey of the Mississippi River below Cape Girardeau, Missouri, (a) at places where levees have prior to May 15, 1928, been constructed on one side of the river and the lands on the opposite side have been thereby subjected to greater overflow, and where, without unreasonably restricting the flood channel, levees can be constructed to reduce the extent of this overflow, and where the construction of such levees is economically justified, and report thereon to the Congress as soon as practicable with such recommendations as the commission may deem advisable; (b) with a view to determining the estimated effects, if any, upon lands lying between the river and adjacent hills by reason of overflow of such lands caused by the construction of levees at other points along the Mississippi River, and determining the equities of the owners of such lands and the value of the same, and the commission shall report thereon to the Congress as soon as practicable with such recommendation as it may deem advisable: *Provided*, That inasmuch as the Mississippi River Commission made a report on the 26th day of October 1912, recommending a levee to be built from Tiptonville, Tennessee, to the Obion River in Tennessee, the said Mississippi River Commission is authorized to make a resurvey of said proposed levee and a relocation of the same if necessary, and if such levee is found feasible, and is approved by the board created in section 702a of this title, and by the President the same shall be built out of appropriations made after May 15, 1928. (May 15, 1928, ch. 569, § 11, 45 Stat. 538.)

§ 702k-1. Same; appropriation.

\$272,000,000 is hereby authorized to be appropriated for the carrying out of the modified adopted project, and all unexpended balances of appropriations heretofore made for the prosecution of said flood-control project are hereby made available for the purposes of sections 702a-1, 702a-2 to 702a-10, 702g-1, 702j-1 and 702j-2 of this title. (June 15, 1936, ch. 548, § 13, 49 Stat. 1513.)

§ 702k-2. Same; separability clause.

If any provision of sections 702a-1, 702a-2 to 702a-10, 702g-1, 702j-1, 702j-2, and 702k-1 of this title, or the application thereof, to any person or circumstances, is held invalid, the remainder of the said sections, and the application of such provisions to other persons or circumstances, shall not be affected thereby. (June 15, 1936, ch. 548, § 14, 49 Stat. 1513.)

§ 702l. Same; repeal of inconsistent laws.

All laws or parts of laws inconsistent with sections 702a, 702b-702d, 702e-702g, 702h-702j, 702k, of this title, are hereby repealed. (May 15, 1928, ch. 569, § 12, 45 Stat. 539.)

§ 702m. Same; interest of Members of Congress in contracts for acquisition of land.

In every contract or agreement to be made or entered into for the acquisition of land either by private sale or condemnation as in sections 702a, 702b-702d, 702e-702g, 702h-702j, 702k, 702l, 702m of this title provided the provisions contained in section 22 of Title 41 shall be applicable. (May 15, 1928, ch. 569, § 14, 45 Stat. 539.)

**§ 702n. Levee rights-of-way; payment or reimbursement for.**

The Secretary of War is authorized, out of any money available for carrying out the provisions of sections 702a, 702b-702d, 702e-702g, 702h-702j, 702k, 702l, 702m of this title, to purchase from, or to reimburse States or local levee districts for the cost of, any levee rights-of-way or easements for the building of levees in the Mississippi Valley for which the United States was or is under obligation to pay under the provisions of said sections regardless of whether said States or local levee districts have furnished such rights-of-way in the past and regardless of the conditions under which such levee rights of way were furnished, or may be furnished in the future: *Provided*, That after careful investigation the prices are found to be reasonable: *And provided further*, That payments or reimbursements for levee rights-of-way or easements conveying the privilege of building levees may be made as soon as they have been acquired in conformity with local custom or legal procedure in such matters and to the satisfaction of the Chief of Engineers. (Apr. 23, 1934, ch. 159, 48 Stat. 607.)

**§ 703. Sacramento River, California.**

*Flood-control works authorized.*—For controlling the floods, removing the debris, and continuing the improvement of the Sacramento River, California, in accordance with the plans of the California Débris Commission, the Secretary of War is authorized and directed to carry on continuously, by hired labor or otherwise, the plan of said commission contained in its report submitted August 10, 1910, and printed in House Document Numbered 81, Sixty-second Congress, first session, as modified by the report of said commission submitted February 8, 1913, approved by the Chief of Engineers of the United States Army and the Board of Engineers for Rivers and Harbors, and printed in Rivers and Harbors Committee Document Numbered 5, Sixty-third Congress, first session, insofar as said plan provides for the rectification and enlargement of river channels and the construction of weirs, to be paid for as appropriations may from time to time be made by law, not to exceed in the aggregate \$5,600,000: *Provided*, That not more than \$1,000,000 shall be expended therefor during any one fiscal year.

*Limitation on expenditure of appropriations generally.*—(a) All money appropriated under authority of this section shall be expended under the direction of the Secretary of War, in accordance with the plans, specifications, and recommendations of the California Débris Commission, as approved by the Chief of Engineers, for the control of floods, removal of debris, and the general improvement of the Sacramento River: *Provided*, That no money shall be expended under authority of this section until assurances have been given satisfactory to the Secretary of War (a) that the State of California will contribute annually for such work a sum equal to such sum as may be expended annually therefor by the United States under authority of this section; (b) that such equal contributions by the State of California will continue annually until the full equal

share of the cost of such work shall have been contributed by said State; and (c) that the river levees contemplated in the report of the California Débris Commission, dated August 10, 1910, will be constructed to such grade and section and within such time as may be required by said commission: *Provided further*, That said State shall not be required to expend for such work, for any one year, a sum larger than that expended thereon by the United States during the same year: *And provided further*, That the total contributions so required of the State of California shall not exceed in the aggregate \$5,600,000.

*Expenditure of contributions by State of California; acquisition of sites, easements, etc.*—(b) All money contributed by the State of California, as herein provided, shall be expended under the direction of the California Débris Commission and in such manner as it may require or approve, and no money appropriated under authority of this section shall be expended in the purchase of or payment for any right-of-way, easement, or land acquired for the purposes of this improvement, but all such rights-of-way, easements, and lands shall be provided free of cost to the United States: *Provided*, That no money paid or expense incurred therefor shall be computed as a part of the contribution of the State of California toward the work of improvement herein provided for within the meaning of paragraph (a) of this section.

*Maintenance of works for flood control by State of California.*—(c) Upon the completion of all works for flood control herein authorized the said works shall be turned over to the State of California for maintenance thereafter; but for all other purposes the United States shall retain such control over the same as it may have the right to exercise upon such completion. (Mar. 1, 1917, ch. 144, § 2, 39 Stat. 949.)

**CROSS REFERENCES**

Classification as trust funds, appropriation and disbursement of funds contributed for rivers and harbors, and funds contributed for flood control, see section 723a (64, 78) of Title 31, Money and Finance.

Modification of Sacramento River project, see section 704 of this title.

**§ 704. Same; modification of project.**

The project for the control of floods in the Sacramento River, California, adopted by section 703 of this title, is hereby modified in accordance with the report of the California Débris Commission submitted in Senate Document Numbered 23, Sixty-ninth Congress, first session: *Provided*, That the total amounts contributed by the Federal Government, including the amounts heretofore contributed by it, shall in no event exceed in the aggregate \$17,600,000. (May 15, 1928, ch. 569, § 13, 45 Stat. 539.)

**§ 705. Salmon River, Alaska; flood-control work authorized.**

The project of prevention and control of floods in the Salmon River, Alaska, recommended in the report of the Chief of Engineers, United States Army, in House Document Numbered 228, Seventy-second Congress, is hereby adopted and authorized and shall be prosecuted under the direction of the Secretary of War and the supervision of the Chief



of Engineers in accordance with the plan recommended in such report and subject to the conditions set forth therein. (June 18, 1934, ch. 581, 48 Stat. 991.)

**§ 706. Weather Bureau; current information; appropriation.**

There is hereby authorized an expenditure of not to exceed \$375,000 per annum, from any appropriations heretofore or hereafter made for flood control by the United States, for the establishment, operation, and maintenance by the Weather Bureau of a current information service on precipitation, flood forecasts, and flood warnings, whenever in the opinion of the Chief of Engineers and the Chief of the Weather Bureau such service is advisable in connection with either preliminary examinations and surveys or works of improvement authorized by the law for flood-control purposes, and the Secretary of War upon the recommendation of the Chief of Engineers is authorized to allot the Weather Bureau funds for said expenditure. (June 28, 1938, ch. 795, § 8, 52 Stat. 1226.)

**§ 707. Alamogordo Dam and Reservoir; declaration of purpose; report to Congress; appropriation.**

The Alamogordo Dam and Reservoir on the Pecos River, New Mexico, is hereby authorized and declared to be for the purposes of controlling floods, regulating the flow of the Pecos River, providing for storage and for delivery of stored waters, for the reclamation of lands, and other beneficial uses, and said dam and reservoir shall be used, first, for irrigation; second, for flood control and river regulation; and third, for other purposes. The Chief of Engineers and the Secretary of War are directed to report to the Congress the amount of the total cost of said Alamogordo Dam and Reservoir which is properly allocable to flood control. The appropriation and transfer of such amount from the general fund of the Treasury to the reclamation fund, for credit by reduction of the maximum obligation of the Carlsbad Irrigation District to repay the total cost thereof, is hereby authorized. (Aug. 11, 1939, ch. 699, § 7, 53 Stat. 1417.)

**Chapter 16.—LIGHTHOUSES**

Sec.

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**§§ 711-715. Bureau of Lighthouses in Department of Commerce; establishment; personnel.**

These sections related to the establishment of the Bureau of Lighthouses in the Department of Commerce. The Bureau of Lighthouses and its functions were transferred to and consolidated with the Coast Guard in the Department of the Treasury to be administered as a part thereof by Reorganization Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432, set out in note to section 183t of Title 5, Executive Departments and Government Officers and Employees. Further provision to perfect the consolidation of the Lighthouse Service with the Coast Guard by authorizing the commissioning, appointment, and enlistment in the Coast Guard, of certain officers and employees of the Lighthouse Service, was made by act Aug. 5, 1939, ch. 477, 53 Stat. 1216.

Section 711 was based upon act June 17, 1910, ch. 301, § 4, 36 Stat. 537 as amended by acts Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; June 5, 1920, ch. 264, § 2, 41 Stat. 1059; July 3, 1930, ch. 850, 46 Stat. 1003; Aug. 16, 1937, ch. 665, § 4, 50 Stat. 667.

Section 712 was based upon act July 27, 1912, ch. 255, § 2, 37 Stat. 239 as amended by act Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.

Section 713 was based upon act June 17, 1910, ch. 301, § 10, 36 Stat. 538 as amended by act Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.

Section 714 was based upon act June 17, 1910, ch. 301, § 6, 36 Stat. 538, as amended by act Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.

Section 715 was based upon act June 17, 1910, ch. 301, § 5, 36 Stat. 537.

**§ 716. Employment of temporary draftsmen.**

The Commandant of the Coast Guard is authorized to employ temporarily at the seat of government, draftsmen and engineers for the preparation of plans and specifications for vessels, lighthouses, aids to navigation, and other works for the Coast Guard that may be authorized or appropriated for by Congress, to be paid from the appropriations applicable to such works. (June 17, 1910, ch. 301, § 9, 36 Stat. 538; July 27, 1939, ch. 388, § 1, 53 Stat. 1130.)

**§ 717. Detail of Army engineers as construction aids.**

The President may detail officers of the Engineer Corps of the United States Army for consultation or to superintend the construction or repair of any aid to navigation authorized by Congress. (June 17, 1910, ch. 301, § 11, 36 Stat. 539.)

**§ 717a. Detail of superintendents and engineers to duty at Washington.**

Section, act Feb. 25, 1929, ch. 313, § 5, 45 Stat. 1262, provided that the Secretary of Commerce might detail superintendents of lighthouses and engineers in the Lighthouse Service to duty at the Bureau of Lighthouses at Washington without change of status. Services and duties of the former Bureau of Lighthouses are now performed by the Coast Guard, its officers and personnel. See note to sections 711-715 of this title.

**§ 718. Traveling expenses of Army and Navy officers.**

Subject matter of this section, act Feb. 26, 1907, ch. 1638, § 6, 34 Stat. 997, is now covered by sections 20 and 20a of Title 37, Pay and Allowances.

**§ 719. Additional compensation to civil, military, or naval officers prohibited.**

Section, R. S. § 4679, provided that no additional salary should be allowed to any civil, military, or naval officer on account of his being employed in the Light-House Board, or being in any manner attached to the light-house service. The functions of the Light-House Board and all employees of or in the Light-House Board or the Light-House Establishment, except army and navy officers, were transferred to the Bureau of Lighthouses by act June 17, 1910, ch. 301, §§ 5, 6, 36 Stat. 537. The Bureau of Lighthouses was transferred to and consolidated in the Coast Guard by Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2732, 53 Stat. 1431. act Aug. 5, 1939, ch. 477, 53 Stat. 1216, provided for the commissioning or enlistment in the Coast Guard of former employees of the Bureau of Lighthouses.

**§ 720. General control by Commandant of Coast Guard.**

The Commandant of the Coast Guard shall, under the direction and control of the Secretary of the Treasury, have charge and control of the construction, maintenance, repair, illumination, inspection, and superintendence of lighthouse depots, supply stations, light and signal stations, lighthouses, light vessels, lighthouse tenders, fog signals, submarine signals, beacons, buoys, day marks, post-lantern lights, and seamarks and their appendages; and the charge and custody of all the archives, books, documents, drawings, models, returns, apparatus, and other things appertaining to the former Lighthouse Service. (June 17, 1910, ch. 301, § 7, 36 Stat. 538; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

**TRANSFER OF FUNCTIONS**

Transfer of Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under section 711 of this title.

**§ 720a. Same; establishment and maintenance of aids to navigation in certain waters.**

The Commandant of the Coast Guard, subject to the approval of the Secretary of the Treasury, is authorized in his discretion to establish and maintain aids to navigation to mark rivers, waterways, or channels, connected by navigable waters with the sea or the Great Lakes, which have been improved for navigation by the United States under proper authority, and appropriations made for the support of the Coast Guard are made available for the expenses of establishing and maintaining such aids to navigation. (Aug. 16, 1937, ch. 665, § 3, 50 Stat. 667; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

**TRANSFER OF FUNCTIONS**

Transfer of Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under section 711 of this title.

**§ 721. Power of Commissioner to settle claims for damages.**

This section, act June 17, 1910, ch. 301, § 4, 36 Stat. 537 as amended by acts Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736, and Aug. 16, 1937, ch. 665, § 4, 50 Stat. 667, provided as follows: "The Commissioner of Lighthouses, subject to the approval of the Secretary of Commerce, is authorized to consider, ascertain, adjust, and determine all claims for damages, where the amount of the claim does not exceed the sum of \$500, occasioned by collisions, for which collisions vessels of the Lighthouse Service shall be found to be responsible, and report the amounts

so ascertained and determined to be due to the claimants to Congress at each session thereof through the Treasury Department for payment as legal claims out of appropriations that may be made by Congress therefor."

The Lighthouse Service was transferred to the Coast Guard by Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432. See note to sections 711-715 of this title. Pursuant to a Treasury order the duties and functions of the Commissioner of Lighthouses were taken over by the Commandant of the Coast Guard.

#### § 721a. Deposit of damage payments; disbursement.

The Coast Guard is authorized, whenever an aid to navigation or other property belonging to the Lighthouse Service is damaged or destroyed by a private person, and such private person or his agent shall pay to the satisfaction of the proper official of the Coast Guard for the cost of repair or replacement of such property, to accept and deposit such payments, through proper officers of the Fiscal Service, Treasury Department, in special deposit accounts in the Treasury, for payment therefrom to the person or persons repairing or replacing the damaged property and refundment of amounts collected in excess of the cost of the repairs or replacements concerned. (Aug. 16, 1937, ch. 665, § 2, 50 Stat. 867; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432; Reorg. Plan No. III, § 1 (a) (1), eff. June 30, 1940, 5 Fed. Reg. 2107, 54 Stat. 1231.)

#### TRANSFER OF FUNCTIONS

Reorganization Plan No. III, § 1 (a) (1), cited to text, consolidated the Division of Disbursement and various other divisions and offices and their functions into one agency of the Treasury Department to be known as the Fiscal Service.

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

#### § 722. Necessity for contract for expenditure of appropriations.

It shall be the duty of the Commandant of the Coast Guard to apply the money appropriated, other than for surveys, as far as can be without detriment to the interests of the Government, by contract. (July 7, 1884, ch. 332, 23 Stat. 198; June 17, 1910, ch. 301, § 6, 36 Stat. 538; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### TRANSFER OF FUNCTIONS

"Commandant of the Coast Guard" formerly read "Commissioner of Lighthouses." For transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

#### § 723. Proposals for repair of vessels; specifications.

Any and all proposals for bids for any new machinery or other new equipment necessary in the repair of any vessel in the Lighthouse Service shall be on specifications prepared and submitted that will secure competition in the bids for furnishing such machinery or equipment. (Mar. 4, 1909, ch. 299, § 1, 35 Stat. 973.)

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

#### § 724. Contracts for materials; necessity for public letting.

All materials for construction, maintenance, repair, and operation shall be procured by public contracts, under such regulations as may from time to time be prescribed by the Commandant of the Coast Guard, subject to the approval of the Secretary of the Treasury, and no contract shall be made except after public advertisement for proposals in such form and manner as to secure general notice thereof, and the same shall only be made with the lowest and best bidder therefor, upon security deemed sufficient in the judgment of the Commandant of the Coast Guard, but all bids may at any time be rejected by commandant: *Provided, however,* That the Commandant of the Coast Guard may purchase illuminating oil, wicks, and chimneys for lights, and ground tackle for light vessels and buoys, and to an amount not exceeding \$500 at any one time, other materials and supplies when immediate delivery is required by an exigency, by private contract or in the open market, if he deems it for the best interests of the service so to do; but such purchases shall be set forth in the annual report of the commandant with the reasons for purchasing other than upon bids after public advertisement. (June 17, 1910, ch. 301, § 8, 36 Stat. 538; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### TRANSFER OF FUNCTIONS

Transfer of Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

#### § 725. Prohibition against officers and employees being interested in contracts for materials, etc.

No member of the Coast Guard, Commandant of the Coast Guard, light keeper, or other person in any manner connected with the light-house service, shall be interested, either directly or indirectly, in any contract for labor, materials, or supplies for the Lighthouse Service, or in any patent, plan, or mode of construction or illumination, or in any article of supply for the light-house service. (R. S. § 4680; June 17, 1910, ch. 301, § 6, 36 Stat. 538; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### DERIVATION

Act Aug. 31, 1852, ch. 112, § 17, 10 Stat. 120.

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

#### § 726. Supplies and equipment for special works of Lighthouse Service.

Section, act Mar. 4, 1913, ch. 168, 37 Stat. 1018, related to the procurement of supplies and equipment for special works of the former Lighthouse Service. The Lighthouse Service was transferred to and consolidated with the Coast Guard by Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432, set out in note to section 1338 of Title 5, Executive Departments and Government Officers and Employees.

#### § 727. Lighthouse and other sites; necessity for cession by State of jurisdiction.

No lighthouse, beacon, public piers, or landmark, shall be built or erected on any site until cession

of jurisdiction over the same has been made to the United States. (R. S. § 4661.)

#### DERIVATION

Act Mar. 3, 1821, ch. 52, § 3, 3 Stat. 644.

#### CROSS REFERENCE

Acceptance of cession of jurisdiction, exclusive or partial, see section 733 of this title.

### § 728. Sufficiency of cession by State; service of State process in lands ceded.

A cession by a State of jurisdiction over a place selected as the site of a lighthouse, or other structure or work, shall be deemed sufficient within section 727, notwithstanding it contains a reservation that process issued under authority of such State may continue to be served within such place. And notwithstanding any such cession of jurisdiction contains no such reservation, all process may be served and executed within the place ceded, in the same manner as if no cession had been made. (R. S. § 4662.)

#### DERIVATION

Act Mar. 2, 1795, ch. 40, §§ 1, 2, 1 Stat. 426.

### § 729. Purchase by Commandant of sites for lighthouses.

The Commandant of the Coast Guard, under the direction of the Secretary of the Treasury, is authorized, whenever an appropriation is made by Congress for a new lighthouse, the proper site for which does not belong to the United States, to purchase the necessary land for such site, provided the purchase money be paid from the amount appropriated for such lighthouse without exceeding the limit of cost, if any, fixed in such case. (June 17, 1910, ch. 301, § 9, 36 Stat. 538; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

### § 730. Purchase of additional land for lighthouses and depots.

The purchase of necessary additional land for light stations and depots from the appropriation "General Expenses, Coast Guard" is authorized under rules prescribed by the Secretary of the Treasury: *Provided*, That no single acquisition of such additional land shall cost in excess of \$500 and the total sum to be expended for this service shall not exceed \$3,000 in any one fiscal year. (Mar. 4, 1913, ch. 168, 37 Stat. 1018; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; Oct. 22, 1913, ch. 32, 38 Stat. 225; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

### § 730a. Sites for pierhead beacons.

The Secretary of the Treasury is hereby authorized whenever he shall deem it advisable, to acquire, by donation or purchase in behalf of the United States, the right to use and occupy sites for pier-

head beacons the establishment of which has been, or shall hereafter be, authorized by Congress. (Mar. 3, 1875, ch. 130, § 1, 18 Stat. 372; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

### § 731. Lease of sites for temporary lights.

The Commandant of the Coast Guard is authorized to lease the necessary ground for all such lights and beacons as are for temporary use or are used to point out changeable channels, and which in consequence can not be made permanent. (Mar. 4, 1909, ch. 299, § 1, 35 Stat. 972; June 17, 1910, ch. 301, § 6, 36 Stat. 538; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

### § 732. Exchange of right-of-way pertaining to Lighthouse Service.

The Secretary of the Treasury is authorized, whenever he shall deem it advisable, to exchange any right of way of the United States in connection with lands pertaining to the Lighthouse Service for such other right of way as may be advantageous to the service, under such terms and conditions as he may deem to be for the best interests of the Government; and in case any expenses, not exceeding the sum of \$500, are incurred by the United States in making such exchange, the same shall be payable from the appropriation, "General Expenses, Coast Guard," for the fiscal year during which such exchange shall be effected. (Aug. 28, 1916, ch. 414, § 2, 39 Stat. 538; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### TRANSFER OF FUNCTIONS

Transfer of Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

### § 733. Approval by Attorney General of title to site before expenditure of moneys; acquisition by United States of jurisdiction over lands.

No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy yard, customhouse, lighthouse, or other public building of any kind whatever, until the written opinion of the Attorney General shall be had in favor of the validity of the title.

Notwithstanding the provisions of this or any other law, whenever the average value of any lands or interests in land to be acquired by or on behalf of the United States under a single option or contract of sale does not exceed \$10 per acre (hereinafter referred to as "low-value lands"), the title may be accepted subject to such infirmities as, in the opinion of the Attorney General, may, without jeopardizing the interests of the United States, be left for removal by condemnation or other appropri-

ate proceedings, if and when necessary: *Provided*, That the total value of any lands or interests to be acquired under a single option or contract of sale subject to an infirmity does not exceed \$3,500. No public money shall hereafter be expended for the acquisition of such low-value lands or interests in land by or on behalf of the United States for any purpose until the written opinion of the Attorney General has been had approving the title subject, if expedient, to infirmities as herein provided. However, no money in excess of \$2,500 shall be expended for the construction of buildings, works, or other improvements (except roads, trails, and fire-protection improvements) on any site, tract, or parcel of land the title to which is subject to infirmities, until the written opinion of the Attorney General in favor of the validity of the title has been had as in the case of other lands. For the purpose of this section, values of lands and interests in land shall be determined by the consideration paid or to be paid.

The Attorney General is hereby authorized to approve the title to easements or<sup>1</sup> rights-of-way to be acquired by or on behalf of the United States, subject to such infirmities as, in his opinion, will not jeopardize the interests of the United States.

Nothing in this section shall be construed to limit the authority now or hereafter delegated to any officer in exercising the power of eminent domain for or on behalf of the United States, to take title to or possession of or to expend money for or upon any land or interest in land, or to expend money as security for an ultimate award in advance of final judgment in any proceedings to determine just compensation; nor shall this section be construed to preclude any acquiring agency from expending money for the erection of any preliminary and temporary structure upon any land.

The head or other authorized officer of any department, independent establishment, or agency, shall procure any evidence of title which the Attorney General may deem necessary, and the expenses of procurement, except where otherwise authorized by law or provided by contract, may be paid out of the appropriations for the acquisition of land or out of the appropriations made for the contingencies of the acquiring department, independent establishment, or agency.

The Attorney General may, in his discretion, base any opinion as to title required either by this section or any other law upon either or both of the following: Certificates of title of title companies or such evidence of title as he may deem satisfactory.

The foregoing provisions of this section shall not be construed to affect in any manner any existing provisions of law which are applicable to the acquisition of lands or interests in land by the Tennessee Valley Authority; and nothing in this section shall be construed to affect in any manner any authority which the Secretary of War, the Chief of Engineers, or the Secretary of the Interior have under the provisions of law in force on October 9, 1940, with respect to the approval by them of title to land or interests in land acquired by the War Department or the Department of the Interior, as the case may be. Nor shall the foregoing provisions of this sec-

tion, or the provisions of any other law, be construed to require any opinion of the Attorney General in connection with the acquisition or improvement of easements and rights-of-way for military or naval purposes; or for the acquisition or improvement of easements and rights-of-way by the Department of Agriculture for forest and other conservation purposes where the cost of any such easement of right-of-way acquired under a single instrument of conveyance and the cost of any improvement thereon does not exceed \$2,500; and the Attorney General may, in his discretion, waive the requirement for his opinion in connection with the acquisition or improvement of easements and rights-of-way for other purposes when, in his opinion, such waiver will not jeopardize the interests of the United States.

Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted. (R. S. § 355; June 28, 1930, ch. 710, 46 Stat. 828; Feb. 1, 1940, ch. 18, 54 Stat. 19; Oct. 9, 1940, ch. 793, 54 Stat. 1083.)

<sup>1</sup> So in original.

#### DERIVATION

Res. Sept. 11, 1841, No. 6, 5 Stat. 468.

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

#### CROSS REFERENCES

Acquisition of land and interests for purposes of Farm Tenant Act without regard to this section, see section 1015 (f) of Title 7, Agriculture.

Section is also set out as section 520 of Title 34, Navy; section 255 of Title 40, Public Buildings, Property, and Works; and section 175 of Title 50, War.

#### § 734. Coloring and numbering buoys.

All buoys along the coast, or in bays, harbors, sounds, or channels, shall be colored and numbered, so that passing up the coast or sound, or entering the bay, harbor, or channel, red buoys with even numbers shall be passed on the starboard hand, black buoys with uneven numbers on the port hand, and buoys with red and black stripes on either hand. Buoys in channel ways shall be colored with alter-

nate white and black perpendicular stripes. (R. S. § 4678.)

#### DERIVATION

Act Sept. 28, 1850, ch. 77, § 6, 9 Stat. 504.

### § 735. Marking pierheads in certain lakes.

The Commandant of the Coast Guard shall properly mark all pierheads belonging to the United States situated on the northern and northwestern lakes, whenever he is duly notified by the department charged with the construction or repair of pierheads that the construction or repair of any such pierheads has been completed. (R. S. § 4677; June 17, 1910, ch. 301, § 6, 36 Stat. 538; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### DERIVATION

Act July 15, 1870, ch. 292, § 3, 16 Stat. 309.

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

### § 736. Placement of markers over sunken crafts and other obstructions.

Whenever the owner of any sunken vessel, boat, watercraft, raft, or other similar obstruction existing on any river, lake, harbor, sound, bay, or canal or other navigable waters of the United States has failed to mark, or in the judgment of the Commandant of the Coast Guard has failed suitably to mark, the same in accordance with the provisions of section 409 of this title, the Commandant of the Coast Guard is authorized to suitably mark the same for the protection of navigation. Until such time as abandonment of any such obstruction has been established in accordance with the provisions of section 414 of this title, the owner thereof shall pay to the Commandant of the Coast Guard the cost of such marking. As soon as abandonment of any such obstruction has been so established, it shall be the duty of the Secretary of War to keep the same so marked pending removal thereof in accordance with the provisions of section 414 of this title, but the Commandant of the Coast Guard may at the request of the Department of War continue the suitable marking of any such obstruction for and on behalf of that Department. The cost of continuing any such marking shall be borne by the Department of War. All moneys received by the Commandant of the Coast Guard from the owners of obstructions, in accordance with the provisions of this section, shall be covered into the Treasury of the United States as miscellaneous receipts. No provision of this section shall be construed so as to relieve the owner of any such obstruction from the duty and responsibility suitably to mark the same in accordance with the provisions of section 409 of this title. (R. S. § 4676; June 17, 1910, ch. 301, § 6, 36 Stat. 538; Aug. 16, 1937, ch. 665, § 1, 50 Stat. 666; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### DERIVATION

Res. Mar. 2, 1868, No. 16, § 1, 15 Stat. 249.

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

### § 737. Maintenance of anchorage buoys in New York and Philadelphia Harbors.

Subject matter of this section, act May 14, 1908, ch. 168, § 4, 35 Stat. 162, as affected by act June 17, 1910, ch. 301, § 6, 36 Stat. § 38, is now covered by section 472 of this title.

### § 738. Cooperation with Coast Guard in marking anchorage grounds in New York and Hampton Roads Harbors.

Section, act June 5, 1920, ch. 235, § 1, 41 Stat. 880, provided that the Lighthouse Service should cooperate with the Coast Guard in marking certain anchorage grounds. The Lighthouse Service was consolidated in the Coast Guard by Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.

### § 739. Substitution of lighthouses for lightships.

Whenever any of the light vessels occupying positions which are adapted to the erection of lighthouses upon pile foundations require to be rebuilt, or require such extensive repairs as to render the substitution of such lighthouses advisable and practicable, such permanent structures may be erected in place of any such light vessels; but the expense arising from all such changes and erections shall be defrayed from the general annual appropriations for repairs, and so forth, of light vessels, except when a special appropriation is made for such change. (R. S. § 4668.)

#### DERIVATION

Act Mar. 3, 1859, ch. 81, § 2, 11 Stat. 424.

### § 740. Post-lantern lights, etc., on particular waters authorized.

Post-lantern lights and other aids to navigation may be established and maintained, in the discretion of the Commandant of the Coast Guard, out of the annual appropriations for the Coast Guard, on Lakes Okechobee and Hicpochee and connecting waterways across the State of Florida and on the Apalachicola River and Chipola cut-off; on the Mobile, Tombigbee, Warrior, and Black Warrior Rivers, Alabama, and Lake Tahoe, California and Nevada; on Lakes Union and Washington, in the State of Washington; and on the Yukon River and its tributaries, Alaska. (Mar. 3, 1915, ch. 81, § 5, 38 Stat. 927; Aug. 28, 1916, ch. 414, § 3, 39 Stat. 538; June 20, 1918, ch. 103, § 5, 40 Stat. 608; June 5, 1920, ch. 235, § 1, 41 Stat. 927; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

### § 740a. Post-lantern lights on Allegheny and Rock Rivers.

Post-lantern lights and other aids to navigation may be established and maintained, in the discretion of the Commandant of the Coast Guard, out of the annual appropriations to be made for the Coast Guard, on the Allegheny River, in the State of Pennsylvania, and on the Rock River, in the State

of Illinois. (May 22, 1926, ch. 371, § 6, 44 Stat. 626; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

#### § 740b. Lights and buoys on Mississippi, Ohio, and Missouri Rivers.

The jurisdiction of the Commandant of the Coast Guard is hereby extended over the Mississippi, Ohio, and Missouri Rivers, for the establishment of such beacon-lights, day-beacons, and buoys as may be necessary for the use of vessels navigating those streams; and for this purpose the Coast Guard is required to divide the designated rivers into one or two additional lighthouse districts, to be in all respects similar to the already existing lighthouse districts; and is hereby authorized to lease the necessary ground for all such lights and beacons as are used to point out changeable channels, and which in consequence cannot be made permanent. (June 23, 1874, ch. 455, § 1, 18 Stat. 220; June 17, 1910, ch. 301, § 6, 36 Stat. 538; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

#### § 741. Repealed. June 6, 1940, ch. 257, § 6, 54 Stat. 247.

Section, acts May 14, 1908, ch. 168, § 7, 35 Stat. 162; June 17, 1910, ch. 301, § 6, 36 Stat. 538; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736, related to reports of aids to navigation which might be discontinued.

#### § 742. Repealed. June 6, 1940, ch. 257, § 5, 54 Stat. 247.

Section, R. S. § 4674; acts Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; June 17, 1910, ch. 301, § 6, 36 Stat. 538; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736, related to the discontinuance and reestablishment of lights.

Provisions of section 742 were substantially incorporated into section 93 of Title 14, Coast Guard, by section 4 of the repealing act.

#### § 743. Lighthouse districts.

The ocean, gulf, and lake coasts and the rivers of the United States, Puerto Rico, and the naval station in Cuba shall be arranged into not exceeding nineteen lighthouse districts. (June 17, 1910, ch. 301, § 11, 36 Stat. 538; May 17, 1932, ch. 190, 47 Stat. 158.)

#### §§ 744, 745. Superintendents and keepers of lighthouses; salaries.

Section 744, act June 20, 1918, ch. 103, § 7, 40 Stat. 608, provided for salaries of superintendents of lighthouses.

Section 745, R. S. § 4673 as amended by act June 20, 1918, ch. 103, § 8, 40 Stat. 609, provided for salaries of keepers of lighthouses.

The Lighthouse Service and its functions were transferred to and consolidated with the Coast Guard to be administered as a part thereof by Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1431. Lighthouse personnel was consolidated with Coast Guard personnel by Treasury order and by act Aug. 5, 1939, ch. 477, 53 Stat. 1216.

#### CROSS REFERENCES

Annual compensation and allowances of former members of Lighthouse Service commissioned, appointed, or

enlisted in Coast Guard pursuant to act Aug. 5, 1939, ch. 477, 53 Stat. 1216. See section 181 of Title 14, Coast Guard.

Pay and allowances of Coast Guard, see Title 37, Pay and Allowances.

#### § 745a. Traveling expenses of new appointees to isolated posts outside United States.

In all appropriations hereafter made for "General expenses, Coast Guard," there is authorized to be made available not exceeding \$1,500 in any fiscal year, under rules prescribed by the Secretary of the Treasury, for paying the actual and necessary traveling expenses of new appointees from ports of embarkation in the United States to first post of duty at isolated light stations, in districts outside the continental limits of the United States. (May 13, 1938, ch. 215, § 1, 52 Stat. 353; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under section 711 of this title.

#### §§ 747, 747a. Medical relief to Lighthouse Service.

Section 747, act Aug. 28, 1916, ch. 414, § 5, 39 Stat. 538, and section 747a, act May 22, 1926, ch. 371, § 3, 44 Stat. 626, related to medical aid to the Lighthouse Service personnel by the Public Health Service.

The Lighthouse Service and its functions were transferred to and consolidated with the Coast Guard to be administered as a part thereof by Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1431. Lighthouse personnel was consolidated with Coast Guard personnel by Treasury order and by act Aug. 5, 1939, ch. 477, 53 Stat. 1216.

For provision relating to medical aid to the Coast Guard personnel, see section 8 of Title 24, Hospitals, Asylums, and Cemeteries.

#### § 747b. Lighthouse keepers; traveling expenses incurred in obtaining medical attention.

The appropriation, "General expenses, Coast Guard," shall be available, under rules prescribed by the Secretary of the Treasury, for paying the actual and necessary traveling expenses of lighthouse keepers at isolated stations incurred in obtaining medical attention. (Feb. 25, 1929, ch. 313, § 1, 45 Stat. 1261; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

#### § 748. Teachers for children of lighthouse keepers.

The appropriation, "General expenses, Coast Guard," shall be available, under regulations prescribed by the Secretary of the Treasury, for the payment of traveling and subsistence expenses of teachers while actually employed by States or private persons to instruct the children of keepers of lighthouses. (June 20, 1918, ch. 103, § 2, 40 Stat. 608; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

**§ 748a. Transportation expenses for school children.**

In all appropriations hereafter made for "General Expenses, Coast Guard" there is authorized to be made available not exceeding \$2,500 in any fiscal year, for the transportation, under regulations prescribed by the Secretary of the Treasury, of the children of lighthouse keepers at isolated light stations where necessary to enable such children to attend school. (May 13, 1938, ch. 215, § 2, 52 Stat. 353; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

**TRANSFER OF FUNCTIONS**

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

**§ 749. Reimbursement of lighthouse keepers, and so forth, for clothing, etc., furnished shipwrecked persons.**

Reimbursement, under rules prescribed by the Secretary of the Treasury, is authorized to keepers of light stations and masters of light vessels and of lighthouse tenders for rations and provisions and clothing furnished shipwrecked persons who may be temporarily provided for by them, not exceeding in all \$5,000 in any fiscal year. (July 27, 1912, ch. 255, § 2, 37 Stat. 239; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

**TRANSFER OF FUNCTIONS**

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

**§§ 750, 751. Leave of absence to employees of Lighthouse Service.**

Subject matter of these sections is now covered by section 30b of Title 5, Executive Departments and Government Officers and Employees.

Section 750 was based upon act Aug. 1, 1914, ch. 223, § 1, 38 Stat. 658.

Section 751 was based upon act Mar. 3, 1915, ch. 81, § 4, 38 Stat. 927, as affected by act June 20, 1918, ch. 103, § 7, 40 Stat. 608.

**§ 752. Sale of condemned supplies, etc., and land not needed; disposition of moneys.**

When any condemned supplies, materials, equipment, or land can not be profitably used in the work of the Lighthouse Service the same shall be appraised and sold, either by sealed proposals for the purchase of the same or by public auction after advertisement of the sale for such time as in the judgment of the Secretary of the Treasury the public interests require, the proceeds of such sales, after the payment therefrom of the expenses of making the sales, to be deposited and covered into the Treasury as miscellaneous receipts as, on March 4, 1913, provided for by law in like cases. (Mar. 4, 1913, ch. 168, 37 Stat. 1019; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

**TRANSFER OF FUNCTIONS**

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

**§ 752a. Sale of equipment; disposition of receipts.**

The Commandant of the Coast Guard is authorized, under regulations approved by the Secretary of the Treasury, to sell apparatus or equipment manufactured by or in use in the Lighthouse Service, which is not readily procurable in the open market. The money received from any such sale shall be deposited in the Treasury to the credit of the current appropriation for general expenses, Coast Guard. (May 22, 1926, ch. 371, § 5, 44 Stat. 626; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

**TRANSFER OF FUNCTIONS**

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

**§ 752b. Disposal of material to Boy Scouts of America.**

Subject matter of this section, act June 15, 1938, ch. 398, 52 Stat. 692, is now covered by section 43a of Title 14, Coast Guard.

**§ 753. Sale of publications of Lighthouse Service.**

Subject matter of this section, act June 20, 1918, ch. 103, § 4, 40 Stat. 608, is now covered by sections 72 and 72a of Title 44, Public Printing and Documents.

**§ 754. Sale of clothing to employees.**

The Secretary of the Treasury is authorized to purchase, from the appropriations for the Coast Guard, clothing for the crews of vessels, to be sold to the employees of said service and the appropriations reimbursed. (July 27, 1912, ch. 255, § 2, 37 Stat. 239; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

**TRANSFER OF FUNCTIONS**

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

**§ 754a. Purchase of commissary and quartermaster supplies.**

Officers and crews of vessels of the Lighthouse Service and light keepers and depot keepers of the Lighthouse Service shall be permitted to purchase commissary and quartermaster supplies from the Army, Navy, or Marine Corps at the price charged officers and enlisted men of the Army, Navy, or Marine Corps. (May 22, 1926, ch. 371, § 4, 44 Stat. 626.)

**TRANSFER OF FUNCTIONS**

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

**§ 755. Police powers of masters of lighthouse tenders.**

Masters of lighthouse tenders shall have police powers in matters pertaining to Government property and smuggling. (June 16, 1880, ch. 235, 21 Stat. 263.)

**§ 756. Use of appropriations for cooperation with Forest Service.**

The annual appropriations for the Coast Guard shall be available for defraying the expenses of cooperation between the Coast Guard and the Forest Service in the management of forest land on light-



house reservations. (Mar. 3, 1915, ch. 81, § 6, 38 Stat. 928; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

§ 757. Cooperation with War and Navy Departments in time of or in preparation for war.

The Secretary of the Navy, the Secretary of War, and the Secretary of the Treasury shall jointly prescribe regulations governing the duties to be performed by the Lighthouse Service in time of war, and for the cooperation of that service with the Navy and War Departments in time of peace in preparation for its duties in war, and this may include arrangements for a direct line of communication between the officers or bureaus of the Navy and War Departments and the Coast Guard to provide for immediate action on all communications from these departments. (Aug. 29, 1916, ch. 417, 39 Stat. 602; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

§ 758. Transfer of vessels, equipment, etc., to Navy or War Department in case of national emergency.

Section, act Aug. 29, 1916, ch. 417, 39 Stat. 602, authorized the President, whenever in his judgment a sufficient national emergency should exist, to transfer to the service and jurisdiction of the Navy Department, or of the War Department, such vessels, equipment, stations, and personnel of the Lighthouse Service as he might deem to be the best interest of the country. The Lighthouse Service and its functions were transferred to and consolidated in the Coast Guard by Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432. The Coast Guard constitutes a part of the military forces of the United States, operating under the Treasury Department in time of peace and operating as a part of the Navy in time of war or when the President shall so direct. See section 1 of Title 14, Coast Guard.

§ 759. Unauthorized establishment of lights, etc.; penalty.

After the 1st day of January 1907 it shall be unlawful for any person, company, corporation, or municipality not under the control of the Commandant of the Coast Guard, to establish, erect, or maintain in the navigable waters of the United States any light as an aid to navigation, or any other aid to navigation similar to any of those maintained by the United States under the control and direction of the Commandant of the Coast Guard, without first obtaining permission so to do from the Commandant of the Coast Guard, in accordance with rules and regulations to be established by the Secretary of the Treasury; and any person violating the provisions of this section or any of the rules and regulations established by the Secretary of the Treasury in accordance herewith shall be deemed guilty of a misdemeanor and be subject to a fine not exceeding the sum of \$100 for each offense, and each day during which such violation shall continue shall be considered as a new offense. (June 20, 1906, ch. 3447, § 3, 34 Stat. 324; June 17, 1910, ch.

301, § 6, 36 Stat. 538; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

§ 760. Failure to maintain, etc., lights on bridges; penalty.

Any person, firm, company, or corporation required by law to maintain a light or lights upon any bridge or abutments over or in any navigable waters, who shall fail or refuse to maintain such light or lights, or to obey any of the lawful rules and regulations relating to the same, shall be deemed guilty of a misdemeanor and be subject to a fine not exceeding the sum of \$100 for each offense, and each day during which such violation shall continue shall be considered as a new offense. (May 14, 1908, ch. 168, § 5, 35 Stat. 162.)

§ 761. Wrongful interference with Government aids to navigation; penalty.

It shall be unlawful for any person to obstruct or interfere with any aid to navigation established or maintained in the Coast Guard under the Commandant of the Coast Guard, or to anchor any vessel in any of the navigable waters of the United States so as to obstruct or interfere with range lights maintained therein, and any person violating the provisions of this section shall be deemed guilty of a misdemeanor and be subject to a fine not exceeding the sum of \$500 for each offense, and each day during which such violation shall continue shall be considered as a new offense. (May 14, 1908, ch. 168, § 6, 35 Stat. 162; June 17, 1910, ch. 301, § 6, 36 Stat. 538; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

§ 762. Wrongful interference with private aids to navigation; penalty.

The penalties provided in the preceding section for obstruction to or interference with any aid to navigation maintained by the Coast Guard shall apply with equal force and effect to any private aid to navigation lawfully maintained under the authority granted the Secretary of the Treasury and the Commandant of the Coast Guard by section 759 of this chapter. (Mar. 3, 1915, ch. 81, § 8, 38 Stat. 928; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

§ 763. Retirement for age of officers and employees generally.

All officers and employees engaged in the field service or on vessels of the Lighthouse Service, except persons continuously employed in district offices or shops, who shall have reached the age of

sixty-five years, after having been thirty years in the active service of the Government, may at their option be retired from further performance of duty; and all such officers and employees who shall have reached the age of seventy years shall be compulsorily retired from further performance of duty: *Provided*, That the annual compensation of persons so retired shall be a sum equal to one-fortieth of the average annual pay received for the last five years of service for each year of active service in the Lighthouse Service, or in a department or branch of the Government having a retirement system, not to exceed in any case thirty-fortieths of such average annual pay received: *Provided further*, That such retirement pay shall not include any amount on account of subsistence or other allowance: *Provided further*, That the retirement provisions and pay shall not apply to persons in the field service of the Lighthouse Service whose duties do not require substantially all their time. (June 20, 1918, ch. 103, § 6, 40 Stat. 608; Nov. 4, 1918, ch. 201, § 1, 40 Stat. 1036.)

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

#### CROSS REFERENCES

Computation of length of service for retirement purposes of Lighthouse Service personnel commissioned in Coast Guard, see sections 180, 181 of Title 14, Coast Guard.

Exceptions as to age and period of service, see section 763a-1 of this title.

Personnel of Lighthouse Service, commission in line of Coast Guard, see sections 10f and 20b of Title 14, Coast Guard.

Retirement of Coast Guard personnel, see sections 161-185e of Title 14, Coast Guard.

#### § 763a. Retirement of officers and employees.

The provisions of section 763 of this title shall apply to the Commissioner of Lighthouses, the Deputy Commissioner of Lighthouses, the Chief Constructing Engineer, and the Superintendent of Naval Construction of the Lighthouse Service. (May 22, 1926, ch. 371, § 7, 44 Stat. 626.)

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

#### CROSS REFERENCES

Retirement of Coast Guard personnel, see sections 161-185e of Title 14, Coast Guard.

Retirement of persons of Coast Guard other than officers and employees of the former Lighthouse Service, see section 763a-2 of this title.

#### § 763a-1. Retirement, exceptions for age and period of service.

Any officer or employee of the Lighthouse Service who, on June 30, 1939, meets the requirements (except those relating to age and period of service) of section 763 of this title, as amended or supplemented, and who shall (1) reach the age of sixty-four years prior to July 1, 1940, or (2) be the occupant of an office or position abolished prior to July 1, 1940, may in the discretion of the head of his executive department be retired with annual compensation as provided in said section 763: *Provided, however*, That no such officer or employee shall be

retired hereunder unless he shall have been in the service of the Government not less than thirty years at the time of retirement. Any officer or employee to whom this section applies who is not retired hereunder prior to reaching the age of sixty-five years shall, upon reaching such age, become eligible for retirement in accordance with the provisions of said section 763 of this title, and may not be retired under the provisions of this section. Nothing contained in this section shall be construed to affect the application of said section 763 to any officer or employee of the Lighthouse Service to whom this section does not apply. (Aug. 10, 1939, ch. 642, 53 Stat. 1343.)

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

#### CROSS REFERENCE

Retirement of Coast Guard personnel, see sections 161-185e of Title 14, Coast Guard.

#### § 763a-2. Same; application to persons of Coast Guard.

The provisions of sections 763 and 763a-1 of this title shall not apply to persons of the Coast Guard other than officers and employees of the former Lighthouse Service who, on June 30, 1939, met the requirements for retirement (except those relating to age and period of service) of said section. (June 6, 1940, ch. 257, § 7, 54 Stat. 247.)

#### § 763b. Hospital facilities for retired officers and employees.

Hospital and out-patient facilities of the Public Health Service shall be available at the same cost applicable to retired officers and men in other branches of the Government service, under joint regulations to be prescribed by Federal Security Administrator and the Secretary of the Treasury, to light keepers and assistant light keepers (who during their active service were entitled to medical relief at hospitals and other stations of the Public Health Service), and officers and crews of vessels of the Lighthouse Service, who have been or who may hereafter be retired under the provisions of section 763 of this title, notwithstanding any other provision of law. (June 24, 1930, ch. 597, 46 Stat. 807; Reorg. Plan No. I, §§ 201, 205, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### BUREAU OF LIGHTHOUSES

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

#### PUBLIC HEALTH SERVICE

Reorganization Plan No. I, §§ 201, 205, cited to text, transferred the Public Health Service and its functions and personnel to Federal Security Agency, and functions of Secretary of Treasury to administrator of said agency.

#### § 764. Privilege of employee to continue service after retirement age.

Section, act Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1417, was limited to a period of ten years after March 4, 1921.

#### § 765. Retirement for disability.

Any officer or employee to whom section 763 of this title applies, who has been in the active service

of the Government fifteen years or more and who is found, after examination by a medical officer of the United States, to be disabled for useful and efficient service by reason of disease or injury not due to vicious habits, intemperance, or willful misconduct on his part, shall be retired under rules to be prescribed by the Secretary of the Treasury on an annuity computed in the manner provided in said section 763. (Mar. 4, 1925, ch. 523, § 1, 43 Stat. 1261; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

#### § 766. Restoration to active duty after retirement for disability.

Any officer or employee retired under section 765 of this title may, upon recovery, be restored to active duty, and shall from time to time, before reaching the age at which he may be retired under section 763 of this title be reexamined by a medical officer of the United States upon the request of the Secretary of the Treasury. (Mar. 4, 1925, ch. 523, § 2, 43 Stat. 1262; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

#### § 767. Oaths of office of employees; power to administer.

Section, act Mar. 3, 1915, ch. 81, § 7, 38 Stat. 928, as amended by act June 20, 1918, ch. 103, § 7, 40 Stat. 608, provided for the administration of oaths to employees of the Lighthouse Service.

The Lighthouse Service and its functions were transferred to and consolidated with the Coast Guard to be administered as a part thereof by Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1431. Lighthouse personnel was consolidated with Coast Guard personnel by Treasury order and by act Aug. 5, 1939, ch. 477, 53 Stat. 1216.

#### § 768. Oaths to expense accounts.

Section, act Aug. 24, 1912, ch. 355, § 8, 37 Stat. 487, as amended by acts Mar. 3, 1915, ch. 81, § 7, 38 Stat. 928; June 20, 1918, ch. 103, § 7, 40 Stat. 608; and June 6, 1939, ch. 185, 53 Stat. 810, provided that section 97 of Title 5, Executive Departments and Government Officers and Employees, should extend to chief clerks in the offices of lighthouse inspectors or other employees in the Lighthouse Service. See note to former section 767 of this title.

#### § 769. Aids to navigation in Panama.

The Secretary of the Treasury is authorized, subject to the consent of the Republic of Panama and suitable diplomatic arrangements for protecting the interests of the United States, to establish and maintain aids to navigation, including the purchase of sites, if necessary, on Jicarita Island and on Morro Puercos in the approaches to the Panama Canal from the Pacific Ocean, said sites belonging to the Republic of Panama. (Feb. 25, 1929, ch. 313, § 3, 45 Stat. 1262; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

#### § 770. Regulations for expenditure of moneys accruing from commutation of rations and provisions.

Money accruing from commutation of rations and provisions for working parties in the field, officers and crews of light vessels and tenders, and officials and other authorized persons on board of such tenders or vessels, after payment on proper vouchers to the officer in charge of the mess of such vessel or party, as provided by law, may be expended and accounted for pursuant to regulations prescribed by the Secretary of the Treasury, notwithstanding the provisions of section 725s of Title 31. (May 13, 1938, ch. 215, § 3, 52 Stat. 353; Reorg. Plan No. II, § 2 (a), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1432.)

#### TRANSFER OF FUNCTIONS

Transfer of the Bureau of Lighthouses and its functions and consolidation with the Coast Guard, see note under sections 711-715 of this title.

### Chapter 17.—COAST AND GEODETIC SURVEY

#### GENERAL PROVISIONS

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#### SURVEYS

- |      |   |
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#### GENERAL PROVISIONS

##### § 851. Commissioned personnel; relative rank with Navy; retired officers; assistant director.

There are in the Coast and Geodetic Survey, commissioned officers as follows: One director with relative rank of captain in the Navy; two hydrographic and geodetic engineers with relative rank of captain in the Navy; seven hydrographic and geodetic engineers with relative rank of commander in the Navy; nine hydrographic and geodetic engineers with relative rank of lieutenant commander in the Navy; thirty-eight hydrographic and geodetic engineers with relative rank of lieutenant in the Navy; fifty-five junior hydrographic and geodetic engineers with relative rank of lieutenant (junior grade) in the Navy; twenty-nine aids with relative rank of ensign in the Navy, and officers retired in accordance with law: *Provided*, That the Secretary of Commerce may designate one of the hydrographic and geodetic engineers to act as assistant director. (Feb. 27, 1925, ch. 364, title III, 43 Stat. 1046; May 14, 1940, ch. 189, title II, 54 Stat. 198.)

#### SIMILAR PROVISIONS

The text of proviso of this section was taken from Department of Commerce Appropriation Act, 1941. Similar provisions were contained in the following acts:  
 1939—June 29, 1939, ch. 248, title III, 53 Stat. 916.  
 1938—Apr. 27, 1938, ch. 180, title III, § 1, 52 Stat. 281.  
 1937—June 16, 1937, ch. 359 § 1, title III, 50 Stat. 294.  
 1936—May 15, 1936, ch. 405, § 1, 49 Stat. 1341.  
 1935—Mar. 22, 1935, ch. 39, § 1, 49 Stat. 96.

##### § 852. Director; appointment.

The title of "Superintendent" of the United States Coast and Geodetic Survey, existing prior to June 5, 1920, is as of that date changed to "Director." The Director of the Coast and Geodetic Survey shall have the relative rank of a captain in the Navy, and he shall be appointed by the President, by and with the advice and consent of the Senate, from the list of commissioned officers of the Coast and Geodetic Survey not below the rank of commander for a term of four years, and may be reappointed for further periods of four years each. (June 4, 1920, ch. 228, § 1, 41 Stat. 825; June 5, 1920, ch. 235, § 1, 41 Stat. 929; Feb. 16, 1929, ch. 221, § 5, 45 Stat. 1187.)

#### CROSS REFERENCE

Appointment, rank, pay, and allowances of Director, see section 852a of this title.

##### § 852a. Same; appointment; vacancy; rank; pay and allowances.

The Director of the Coast and Geodetic Survey shall be appointed and hold office as now authorized by law; his appointment shall not create a vacancy,

and while holding said office he shall have the rank, pay, and allowances of a Chief of Bureau of the Navy Department. (Feb. 16, 1929, ch. 221, § 5, 45 Stat. 1187; Mar. 18, 1936, ch. 147, 49 Stat. 1164.)

#### CROSS REFERENCE

Appointment and rank of captain in the Navy, see section 852 of this title.

##### § 853. Power of director to settle claims.

The Director of the Coast and Geodetic Survey, subject to the approval of the Secretary of Commerce, is hereby authorized to consider, ascertain, adjust, and determine all claims for damages, where the amount of the claim does not exceed \$500, occasioned, subsequent to June 5, 1920, by acts for which the Coast and Geodetic Survey shall be found to be responsible, and report the amounts so ascertained and determined to be due the claimants to Congress at each session thereof through the Treasury Department for payment as legal claims out of appropriations that may be made by Congress therefor. (June 5, 1920, ch. 235, § 1, 41 Stat. 929; June 5, 1920, ch. 256, 41 Stat. 1054.)

##### § 854. Qualification of officers for appointment or promotion generally.

No person shall be appointed aid or shall be promoted from aid to junior hydrographic and geodetic engineer or from junior hydrographic and geodetic engineer to hydrographic and geodetic engineer until after passing a satisfactory mental and physical examination conducted in accordance with regulations prescribed by the Secretary of Commerce. (May 22, 1917, ch. 20, § 16, 40 Stat. 88.)

##### § 855. Cooperation with and transfer to Army or Navy generally.

The President is authorized, whenever in his judgment a sufficient national emergency exists, to transfer to the service and jurisdiction of the War Department, or of the Navy Department, such vessels, equipment, stations, and personnel of the Coast and Geodetic Survey as he may deem to the best interest of the country, and after such transfer all expenses connected therewith shall be defrayed out of the appropriations for the department to which transfer is made: *Provided*, That such vessels, equipment, stations, and personnel shall be returned to the Coast and Geodetic Survey when such national emergency ceases, in the opinion of the President, and nothing in this section shall be construed as transferring the Coast and Geodetic Survey or any of its functions from the Department of Commerce except in time of national emergency and to the extent herein provided: *Provided further*, That any of the personnel of the Coast and Geodetic Survey who may be transferred as provided in this section, shall, while under the jurisdiction of the War Department or Navy Department, have proper military status and shall be subject to the laws, regulations, and orders for the government of the Army or Navy, as the case may be, insofar as the same may be applicable to persons whose retention permanently in the military service of the United States is not contemplated by law. (May 22, 1917, ch. 20, § 16, 40 Stat. 87.)

**§ 856. Relative rank of officers when serving with Army or Navy.**

When serving with the Army or Navy the relative rank of officers of the Coast and Geodetic Survey shall be as follows:

Hydrographic and geodetic engineers with rank of captain in the Navy shall rank with and after colonels in the Army and captains in the Navy.

Hydrographic and geodetic engineers with rank of commander in the Navy shall rank with and after lieutenant colonels in the Army and commanders in the Navy.

Hydrographic and geodetic engineers with rank of lieutenant commander in the Navy shall rank with and after majors in the Army and lieutenant commanders in the Navy.

Hydrographic and geodetic engineers with rank of lieutenant in the Navy shall rank with and after captains in the Army and lieutenants in the Navy.

Junior hydrographic and geodetic engineers shall rank with and after first lieutenants in the Army and lieutenants (junior grade) in the Navy.

Aides shall rank with and after second lieutenants in the Army and ensigns in the Navy.

And nothing in this section shall be construed to affect or alter their rates of pay and allowances when not assigned to military duty as mentioned in this section and section 855 of this title. (May 22, 1917, ch. 20, § 16, 40 Stat. 88.)

**§ 857. Disability, etc., benefits when cooperating with Army or Navy.**

While actually employed in active service under direct orders of the War Department or of the Navy Department members of the Coast and Geodetic Survey shall receive the benefit of all provisions of law relating to disability incurred in line of duty or loss of life. (May 22, 1917, ch. 20, § 16, 40 Stat. 88.)

**§ 858. Rules and regulations when cooperating with Army or Navy.**

The Secretary of War, the Secretary of the Navy, and the Secretary of Commerce shall jointly prescribe regulations governing the duties to be performed by the Coast and Geodetic Survey in time of war, and for the cooperation of that service with the War and Navy Departments in time of peace in preparations for its duties in war, which regulations shall not be effective unless approved by each of the said Secretaries, and included therein may be rules and regulations for making reports and communications between the officers or bureaus of the War and Navy Departments and the Coast and Geodetic Survey. (May 22, 1917, ch. 20, § 16, 40 Stat. 88.)

**§ 859. Pay and allowances of commissioned officers generally.**

The commissioned officers of the Coast and Geodetic Survey are entitled to pay and allowances as provided in Title 37. (June 10, 1922, ch. 212, 42 Stat. 625-633.)

**CROSS REFERENCES**

Pay and allowances of Director, see section 852a of this title.

Service to be counted in computing longevity pay of officers in Coast and Geodetic Survey, see section 4a of Title 37, Pay and Allowances.

**§ 860. Pay and allowances of naval officers made applicable to Coast and Geodetic Survey generally.**

Commissioned officers of the Coast and Geodetic Survey shall receive the same pay and allowances as are or hereafter may be prescribed for officers of the Navy with whom they hold relative rank, including longevity. (May 18, 1920, ch. 190, § 11, 41 Stat. 603.)

**CROSS REFERENCE**

Pay periods for commissioned officers of Coast and Geodetic Survey, see section 1 of Title 37, Pay and Allowances.

**§ 861. Expenses when traveling on Government-owned vessels.**

Officers of the Coast and Geodetic Survey performing travel by Government-owned vessels for which no transportation fare is charged shall only be entitled to reimbursement of actual and necessary expenses incurred. (Feb. 27, 1925, ch. 364, title III, 43 Stat. 1046; Apr. 29, 1926, ch. 195, title III, 44 Stat. 362.)

**§ 861a. Transportation to families of officers and enlisted men on permanent change of station; transportation of household effects.**

When any commissioned officer, noncommissioned officer of the grade of color sergeant and above, having a wife or dependent child or children, is ordered to make a permanent change of station, the United States shall furnish transportation in kind from funds appropriated for the transportation of the Coast and Geodetic Survey to his new station for the wife and dependent child or children: *Provided*, That if the cost of such transportation exceeds that for transportation from the old to the new station the excess cost shall be paid to the United States by the officer concerned: *Provided further*, That transportation supplied the wife or dependent child or children of such officer, to or from stations beyond the continental limits of the United States, shall not be other than by Government transport, if such transportation is available. (May 18, 1920, ch. 190, § 12, 41 Stat. 604.)

**CROSS REFERENCES**

Money allowance in lieu of transportation in kind authorized by this section for dependents of commissioned and enlisted personnel, see section 21 of Title 37, Pay and Allowances.

Section is also set out as sections 756 of Title 10, Army, 896 of Title 34, Navy, and 64 of Title 42, The Public Health and Welfare.

**§ 861b. "Child" and "children" defined.**

The words "child" and "children" as used in section 861a of this title, shall be held to include legitimate children, stepchildren, and adopted children, where such legitimate children, stepchildren, or adopted children are in fact dependent upon the person claiming dependency allowance. (Feb. 21, 1929, ch. 288, 45 Stat. 1254.)

**CROSS REFERENCE**

Section is also set out as section 756a of Title 10, Army, section 130 of Title 14, Coast Guard, section 896a of Title 34, Navy, and section 64a of Title 42, The Public Health and Welfare.

**§ 861c. "Permanent change of station" in section 861a defined.**

The words "permanent change of station" as used in section 861a of this title, shall be held to include the home of an officer or man to which he is ordered in connection with retirement. (June 24, 1935, ch. 291, § 3, 49 Stat. 421.)

**CROSS REFERENCE**

Section is also set out as section 756b of Title 10, Army, section 130a of Title 14, Coast Guard, section 896b of Title 34, Navy, and section 64b of Title 42, The Public Health and Welfare.

**§ 862. Assignments of pay.**

Scientific and other employees of the United States Coast and Geodetic Survey, while employed outside of the District of Columbia, are hereby authorized to make assignments of their pay, under such regulations as the Secretary of Commerce may prescribe. (Mar. 4, 1907, ch. 2918, § 1, 34 Stat. 1322; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

**§ 862a. Heat or light in kind to persons receiving allowance for rental of quarters.**

Nothing contained in any existing laws, or regulations or orders promulgated in pursuance of law, shall authorize the issue of heat or light in kind to any person in the Coast and Geodetic Survey while such person is receiving an allowance for rental of quarters under the provisions of sections 1-3, 5-8, 9, 10, 11-13, 14, 15-20, 21, 22-26, 27-29, 30, and 31 of Title 37. (Mar. 2, 1923, ch. 178, title I, 42 Stat. 1385.)

**CODIFICATION**

Section is also set out as section 717 of Title 10, Army, section 912 of Title 34, Navy, and section 65 of Title 42, The Public Health and Welfare.

**§ 863. Leave of absence; accrued leave while on duty in Philippines.**

The Secretary of Commerce, at his discretion, may grant to officers of the field force of the Coast and Geodetic Survey on duty in the Philippine Islands, at one time the whole or any portion of the annual leave accrued and unused during a period of three years. (Mar. 4, 1909, ch. 299, § 1, 35 Stat. 974; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

**§ 864. Retirement of officers generally.**

All laws relating to the retirement of commissioned officers of the Navy shall, after May 18, 1920, apply to commissioned officers of the Coast and Geodetic Survey. (May 18, 1920, ch. 190, § 11, 41 Stat. 603.)

**§ 864a. Service credits generally in computing longevity pay of officers.**

Except as otherwise provided by law, longevity pay for officers in the Coast and Geodetic Survey shall be based on the total of all service in the Army, Navy, Marine Corps, Coast Guard, Public Health Service, and Coast and Geodetic Survey and in any or all of them. Nothing contained in this section shall operate to reduce the pay or allowances of any officer on the active or retired list. (May 18, 1920, ch. 190, §§ 11, 14, 41 Stat. 604.)

**§ 865. Computation of length of service of officers; service at Naval or Military Academy.**

In computing for any purpose the length of service of any officer of the Coast and Geodetic Survey who was appointed to the United States Naval Academy or to the United States Military Academy after March 4, 1913, the time spent at either academy shall not be counted. (May 28, 1924, ch. 203, 43 Stat. 194; Feb. 11, 1925, ch. 209, 43 Stat. 872; May 21, 1926, ch. 355, 44 Stat. 604.)

**CROSS REFERENCE**

Section is also set out as section 2a of Title 14, Coast Guard, section 230 of Title 34, Navy, and section 63 of Title 42, The Public Health and Welfare.

**§ 866. Seismological investigations.**

The Coast and Geodetic Survey is hereby authorized to make investigations and reports in seismology, including such investigations as have been, prior to January 31, 1925, performed by the Weather Bureau. (Jan. 31, 1925, ch. 121, 43 Stat. 802.)

**§ 867. Transfer of instruments to institutions.**

The Secretary of Commerce is authorized to transfer, under such rules and regulations as he may deem advisable, to educational institutions and to museums, such instruments of the United States Coast and Geodetic Survey as, in his judgment, are of historical value but of no further use in the work of that survey, except such historical instruments as may be needed by the Smithsonian Institution for exhibit at the National Museum. (June 5, 1920, ch. 235, § 1, 41 Stat. 930.)

**§ 868. Purchase of supplies or procurement of services in field.**

The purchase by the Coast and Geodetic Survey of supplies or the procurement of services outside the District of Columbia may be made in the open market in the manner common among business men when the aggregate amount of the purchase does not exceed \$50. (July 1, 1918, ch. 113, § 1, 40 Stat. 688.)

**§ 869. Medical, dental, etc., treatment of personnel and families.**

Under such regulations as may be prescribed by the President, upon the recommendation of the Surgeon General with the approval of the Federal Security Administrator and the Secretary of Commerce, all commissioned officers, ships' officers and members of the crews of the vessels of the United States Coast and Geodetic Survey, including those on shore duty and those on detached duty, whether on active duty or retired, and all dependent members of families of such personnel shall be entitled to medical, surgical, and dental treatment and hospitalization by the United States Public Health Service in the same manner and to the same extent as are now or may hereafter be provided by law and regulations for officers and enlisted men of the United States Coast Guard and their dependents. Collections of the Public Health Service for the hospitalization of such dependent members of families shall be credited to the applicable appropriation for the operation of marine hospitals and relief stations.

(Apr. 26, 1939, ch. 92, § 2, 53 Stat. 620; Reorg. Plan No. I, §§ 201, 205, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

#### TRANSFER OF FUNCTIONS

Reorg. Plan No. I, §§ 201, 205, cited to text, transferred the Public Health Service and its functions and personnel to the Federal Security Agency, and the functions of the Secretary of the Treasury, other than those relating to acceptance and investment of gifts, to the Federal Security Administrator.

#### SURVEYS

##### § 881. Authority of President to order surveys of coast.

The President is authorized to cause a survey to be taken of the coasts of the United States, in which shall be designated the islands and shoals, with the roads or places of anchorage, within twenty leagues of any part of the shores of the United States; and also the respective courses and distances between the principal capes or headlands, together with such other matters as he may deem proper for completing an accurate chart of every part of the coasts. (R. S. § 4681.)

#### DERIVATION

Acts Feb. 10, 1807, ch. 8, § 1, 2 Stat. 413; July 10, 1832, ch. 191, § 1, 4 Stat. 570.

##### § 882. Additional authority to order surveys beyond twenty-league limit.

The President may also cause such examinations and observations to be made with respect to Saint George's Bank, and to any other bank, or shoal, and the soundings and currents, although beyond the distance of twenty leagues from the shore to the Gulf Stream, as he may deem especially subservient to the commercial interests of the United States. (R. S. § 4682.)

#### DERIVATION

Act Feb. 10, 1807, ch. 8, § 2, 2 Stat. 413.

##### § 883. Mode of conducting surveys generally.

All appropriations made for the work of surveying the coast of the United States shall, unless otherwise provided by law, be expended in accordance with the plan of reorganizing the mode of executing the survey which has been submitted to the President by a board of officers organized under the Act of March 3, 1843, chapter 100.

The President shall carry into effect the plan of the board, as agreed upon by a majority of its members; and shall cause to be employed as many officers of the Army and Navy of the United States as will be compatible with the successful prosecution of the work; the officers of the Navy to be employed on the hydrographical parts, and the officers of the Army on the topographical parts of the work; and no officer of the Army or Navy shall receive any extra pay out of any appropriations for surveys. (R. S. §§ 4683, 4684.)

#### DERIVATION

Act Mar. 3, 1843, ch. 100, § 1, 5 Stat. 640.

##### § 884. Power to use books, maps, etc., and to employ persons.

The President is authorized, in executing the provisions of sections 881–883 of this title relating to the coast survey, to use all maps, charts, books, instru-

ments, and apparatus belonging to the United States, and to direct where the same shall be deposited, and to employ all persons in the land or naval service of the United States, and such astronomers and other persons as he shall deem proper. (R. S. § 4685.)

#### DERIVATION

Act July 10, 1832, ch. 191, § 2, 4 Stat. 571.

##### § 885. Power to use public vessels.

The President is authorized, for any of the purposes of surveying the coast of the United States, to cause to be employed such of the public vessels in actual service as he deems it expedient to employ, and to give such instructions for regulating their conduct as he deems proper, according to the tenor of sections 881–888 of this title. (R. S. § 4686.)

#### DERIVATION

Acts Feb. 10, 1807, ch. 8, § 3, 2 Stat. 414; Apr. 14, 1818, ch. 58, § 1, 3 Stat. 425.

##### § 886. Manner of employment of officers of Army or Navy.

Officers of the Army and Navy shall, as far as practicable, be employed in the work of surveying the coast of the United States, whenever and in the manner required by the department having charge thereof. (R. S. § 4687.)

#### DERIVATION

Act June 17, 1844, ch. 105, § 1, 5 Stat. 681, 691.

##### § 887. Allowance for subsistence to officers of Army or Navy.

The Secretary of the Treasury may make such allowances to the officers and men of the Army and Navy, while employed on coast survey service, for subsistence, in addition to their compensation, as he may deem necessary, not exceeding the sum authorized by the Treasury regulation of the 11th day of May 1844: *Provided*, That there shall be no allowance for subsistence to officers of the Navy attached to the Coast and Geodetic Survey, except that when officers are detached to do work away from their vessels under circumstances involving them in extra expenditures, the Director may allow to any such officer subsistence at a rate not exceeding \$1 per day for the period actually covered by such duty away from such vessel. (R. S. § 4688; Aug. 30, 1890, ch. 837, § 1, 26 Stat. 382; June 5, 1920, ch. 235, § 1, 41 Stat. 929.)

#### DERIVATION

Act June 12, 1858, ch. 154, § 1, 11 Stat. 319, 320.

#### CROSS REFERENCE

Subsistence allowance to commissioned officers below grade of brigadier general or equivalent, see section 9 of Title 37, Pay and Allowances.

##### § 888. Report to Congress on coast surveys.

The Secretary of Commerce shall report to Congress annually a full statement of all expenditures, other than the amount of compensation paid persons employed during the last preceding fiscal year upon the coast survey and business connected therewith, made under the direction of the Director of the Coast and Geodetic Survey.

The coast survey report shall be submitted to Congress during the month of December in each year, and shall be accompanied by a general chart of the



whole coasts of the United States, on as large a scale as convenient and practicable, showing, as near as practicable, the configuration of the coasts, and showing, by lines, the probable limits of the Gulf Stream, and showing, by lines, the probable limit to which the soundings off the coast will extend, and showing, by the use of colors and explanations, the exact portions of our coasts, of which complete charts have been published by the coast survey; also, showing such other parts of the coasts of which the triangulation, the topography, and the soundings have been completed, but not published, and, also, such parts of the coasts of which the triangulation and topography, or the triangulation only, have been completed. (R. S. §§ 264, 4690; Feb. 14, 1903, ch. 552, §§ 4, 10, 32 Stat. 826, 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; June 5, 1920, ch. 235, § 1, 41 Stat. 929; May 29, 1928, ch. 901, § 1 (104), 45 Stat. 994.)

**§ 859. Cooperation with North Carolina State Fish Commission in survey of waters of State.**

The Secretary of Commerce and the Secretary of the Interior are authorized and directed, upon the request of the Governor of the State of North Carolina, to designate such officers, experts, and employees of the Coast and Geodetic Survey and of the Fish and Wildlife Service as may be necessary to cooperate with the North Carolina State fish commissioner in making a survey of and marking in a prominent manner all those areas of the waters of the sounds and their tributaries of the State in which the use of any or all fishing appliances are prohibited by law; and the Secretary of Commerce is hereby authorized and directed to furnish to the officers, experts, and employees of said services so detailed as aforesaid such instruments, appliances, and steam launches as may be necessary to make the survey aforesaid; and the Secretary of Commerce is hereby authorized to have made in the Coast and Geodetic Survey all the plats necessary to show the results of the aforesaid survey, and to furnish to the fish commissioner of the State of North Carolina such copies as may be necessary for his use, and for this purpose to employ in the District of Columbia and elsewhere such technically qualified persons as may be necessary to carry out the purposes of this section. (Mar. 4, 1909, ch. 313, § 1, 35 Stat. 1064; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; Reorg. Plan No. II, § 4 (e), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1433; Reorg. Plan No. III, § 3, eff. June 30, 1940, 5 Fed. Reg. 2108, 54 Stat. 1232.)

**TRANSFER OF FUNCTIONS**

Reorg. Plan No. II, § 4 (e), cited to text, transferred the Bureau of Fisheries and its functions to the Department of the Interior to be administered under direction and supervision of the Secretary of the Interior.

**CONSOLIDATION OF BUREAUS**

Reorg. Plan No. III, § 3, cited to text, consolidated the Bureau of Fisheries with the Bureau of Biological Survey into Fish and Wildlife Service in the Department of the Interior, and abolished the offices of Commissioner and Deputy Commissioner of Fisheries.

**§ 890. Marking triangulation points of North Carolina survey.**

The Secretary of Commerce is further authorized to have erected or constructed by the officers de-

tailed as provided in section 889 of this title, while making said survey, such structures as may be necessary to mark in a prominent and satisfactory manner the points of triangulation so that the same may be used for such future work of the Coast and Geodetic Survey as the said Coast and Geodetic Survey may be hereafter required to perform in prosecuting the Government coast survey of the navigable waters of the United States located within the State of North Carolina. (Mar. 4, 1909, ch. 313, § 2, 35 Stat. 1065; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

**Chapter 18.—LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT**

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**§ 901. Short title.**

This chapter may be cited as "Longshoremen's and Harbor Workers' Compensation Act." (Mar. 4, 1927, ch. 509, § 1, 44 Stat. 1424.)

## § 902. Definitions.

When used in this chapter—

(1) The term "person" means individual, partnership, corporation, or association.

(2) The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.

(3) The term "employee" does not include a master or member of a crew of any vessel, nor any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.

(4) The term "employer" means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any dry dock).

(5) The term "carrier" means any person or fund authorized under section 932 of this title to insure under this chapter and includes self-insurers.

(6) The term "commission" means the United States Employees' Compensation Commission.

(7) The term "deputy commissioner" means the deputy commissioner having jurisdiction in respect of an injury or death.

(8) The term "State" includes a Territory and the District of Columbia.

(9) The term "United States" when used in a geographical sense means the several States and Territories and the District of Columbia, including the territorial waters thereof.

(10) "Disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.

(11) "Death" as a basis for a right to compensation means only death resulting from an injury.

(12) "Compensation" means the money allowance payable to an employee or to his dependents as provided for in this chapter, and includes funeral benefits provided therein.

(13) "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer, and gratuities received in the course of employment from others than the employer.

(14) "Child" shall include a posthumous child, a child legally adopted prior to the injury of the employee, a child in relation to whom the deceased employee stood in loco parentis for at least one year prior to the time of injury, and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent on him. "Grandchild" means a child as above defined or a child as above defined. "Brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly

dependent on the employee. "Child", "grandchild", "brother", and "sister" include only persons who are under eighteen years of age, and also persons who, though eighteen years of age or over, are wholly dependent upon the deceased employee and incapable of self-support by reason of mental or physical disability.

(15) The term "parent" includes step-parents and parents by adoption, parents-in-law, and any person who for more than three years prior to the death of the deceased employee stood in the place of a parent to him, if dependent on the injured employee.

(16) The term "widow" includes only the decedent's wife living with or dependent for support upon him at the time of his death; or living apart for justifiable cause or by reason of his desertion at such time.

(17) The term "widower" includes only the decedent's husband who at the time of her death lived with her and was dependent for support upon her.

(18) The terms "adoption" or "adopted" mean legal adoption prior to the time of the injury.

(19) The singular includes the plural and the masculine includes the feminine and neuter. (Mar. 4, 1927, ch. 509, § 2, 44 Stat. 1424; June 25, 1938, ch. 685, § 1, 52 Stat. 1164.)

## § 903. Coverage.

(a) Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law. No compensation shall be payable in respect of the disability or death of—

(1) A master or member of a crew of any vessel, nor any person engaged by the master to load or unload or repair any small vessel under eighteen tons net; or

(2) An officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof.

(b) No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another. (Mar. 4, 1927, ch. 509, § 3, 44 Stat. 1426.)

## § 904. Liability for compensation.

(a) Every employer shall be liable for and shall secure the payment to his employees of the compensation payable under sections 907, 908, and 909 of this title. In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure the payment of such compensation to employees of the subcontractor unless the subcontractor has secured such payment.

(b) Compensation shall be payable irrespective of fault as a cause for the injury. (Mar. 4, 1927, ch. 509, § 4, 44 Stat. 1426.)

**§ 905. Exclusiveness of liability.**

The liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under this chapter, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee. (Mar. 4, 1927, ch. 509, § 5, 44 Stat. 1426.)

**§ 906. Time for commencement of compensation.**

(a) No compensation shall be allowed for the first seven days of the disability, except the benefits provided for in section 907 of this title: *Provided, however*, That in case the injury results in disability of more than forty-nine days, the compensation shall be allowed from the date of the disability.

(b) Compensation for disability shall not exceed \$25 per week nor be less than \$8 per week: *Provided, however*, That if the employee's wages at the time of injury are less than \$8 per week he shall receive his full weekly wages. (Mar. 4, 1927, ch. 509, § 6, 44 Stat. 1426.)

**§ 907. Medical services and supplies.**

(a) The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for such period as the nature of the injury or the process of recovery may require. If the employer fails to provide the same, after request by the injured employee, such injured employee may do so at the expense of the employer. The employee shall not be entitled to recover any amount expended by him for such treatment or services unless he shall have requested the employer to furnish the same and the employer shall have refused or neglected to do so, or unless the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide the same; nor shall any claim for medical or surgical treatment be valid and enforceable, as against such employer, unless within twenty days following the first treatment the physician giving such treatment furnish to the employer and the deputy commissioner a report of such injury and treatment, on a form prescribed by the Commission. The deputy commissioner may, however, excuse the failure to furnish such report within twenty days when he finds it to be in the interest of justice to do so, and he may, upon application by a party in interest, make an award for the reasonable value

of such medical or surgical treatment so obtained by the employee. If at any time during such period the employee unreasonably refuses to submit to medical or surgical treatment, the deputy commissioner may, by order, suspend the payment of further compensation during such time as such refusal continues, and no compensation shall be paid at any time during the period of such suspension, unless the circumstances justified the refusal.

(b) Whenever in the opinion of the deputy commissioner a physician has not impartially estimated the degree of permanent disability or the extent of temporary disability of any injured employee, the deputy commissioner shall have the power to cause such employee to be examined by a physician selected by the deputy commissioner and to obtain from such physician a report containing his estimate of such disabilities. If the report of such physician shows that the estimate of the physician has not been impartial from the standpoint of such employee, the deputy commissioner shall have the power in his discretion to charge the cost of such examination to the employer, if he is a self-insurer, or to the insurance company which is carrying the risk.

(c) All fees and other charges for such treatment or service shall be limited to such charges as prevail in the same community for similar treatment of injured persons of like standard of living, and shall be subject to regulation by the deputy commissioner.

(d) The liability of an employer for medical treatment as provided in this section shall not be affected by the fact that his employee was injured through the fault or negligence of a third party, not in the same employ, unless and until notice of election to sue has been given as required by section 933 (a) or suit has been brought against such third party without the giving of such notice. The employer shall, however, have a cause of action against such third party to recover any amounts paid by him for such medical treatment in like manner as provided in section 933 (b) of this chapter. (Mar. 4, 1927, ch. 509, § 7, 44 Stat. 1427; May 26, 1934, ch. 354, § 1, 48 Stat. 806; June 25, 1938, ch. 685, §§ 2, 3, 52 Stat. 1165.)

**§ 908. Compensation for disability.**

Compensation for disability shall be paid to the employee as follows:

(a) **Permanent total disability:** In case of total disability adjudged to be permanent 66⅔ per centum of the average weekly wages shall be paid to the employee during the continuance of such total disability. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

(b) **Temporary total disability:** In case of disability total in character but temporary in quality 66⅔ per centum of the average weekly wages shall be paid to the employee during the continuance thereof.

(c) **Permanent partial disability:** In case of disability partial in character but permanent in quality, the compensation shall be 66⅔ per centum of

the average weekly wages, which shall be in addition to compensation for temporary total disability paid in accordance with subdivision (b) of this section, and shall be paid to the employee, as follows:

(1) Arm lost, two hundred and eighty weeks' compensation.

(2) Leg lost, two hundred and forty-eight weeks' compensation.

(3) Hand lost, two hundred and twelve weeks' compensation.

(4) Foot lost, one hundred and seventy-three weeks' compensation.

(5) Eye lost, one hundred and forty weeks' compensation.

(6) Thumb lost, fifty-one weeks' compensation.

(7) First finger lost, twenty-eight weeks' compensation.

(8) Great toe lost, twenty-six weeks' compensation.

(9) Second finger lost, eighteen weeks' compensation.

(10) Third finger lost, seventeen weeks' compensation.

(11) Toe other than great toe lost, eight weeks' compensation.

(12) Fourth finger lost, seven weeks' compensation.

(13) Loss of hearing: Compensation for loss of hearing of one ear, fifty-two weeks. Compensation for loss of hearing of both ears, two hundred weeks.

(14) Phalanges: Compensation for loss of more than one phalange of a digit shall be the same as for loss of the entire digit. Compensation for loss of the first phalange shall be one-half of the compensation for loss of the entire digit.

(15) Amputated arm or leg: Compensation for an arm or a leg, if amputated at or above the elbow or the knee, shall be the same as for a loss of the arm or leg; but, if amputated between the elbow and the wrist or the knee and the ankle, shall be the same as for loss of a hand or foot.

(16) Binocular vision or per centum of vision: Compensation for loss of binocular vision or for 80 per centum or more of the vision of an eye shall be the same as for loss of the eye.

(17) Two or more digits: Compensation for loss of two or more digits, or one or more phalanges of two or more digits, of a hand or foot may be proportioned to the loss of use of the hand or foot occasioned thereby, but shall not exceed the compensation for loss of a hand or foot.

(18) Total loss of use: Compensation for permanent total loss of use of a member shall be the same as for loss of the member.

(19) Partial loss or partial loss of use: Compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member.

(20) Disfigurement: The deputy commissioner shall award proper and equitable compensation for serious facial or head disfigurement, not to exceed \$3,500.

(21) Other cases: In all other cases in this class of disability the compensation shall be 66⅔ per centum of the difference between his average weekly

wages and his wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but subject to reconsideration of the degree of such impairment by the deputy commissioner on his own motion or upon application of any party in interest.

(22) In any case in which there shall be a loss of, or loss of use of, more than one member or parts of more than one member set forth in paragraphs (1) to (19) of this subdivision, not amounting to permanent total disability, the award of compensation shall be for the loss of, or loss of use of, each such member or part thereof, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, paragraph (17) of this subdivision shall apply.

(d) Any compensation to which any claimant would be entitled under subdivision (c) excepting subdivision (c-21) shall, notwithstanding death arising from causes other than the injury, be payable to and for the benefit of the persons following:

(1) If there be a surviving wife or dependent husband and no child of the deceased under the age of eighteen years, to such wife or dependent husband.

(2) If there be a surviving wife or dependent husband and surviving child or children of the deceased under the age of eighteen years, one-half shall be payable to the surviving wife or dependent husband and the other half to the surviving child or children.

(3) The deputy commissioner may in his discretion require the appointment of a guardian for the purpose of receiving the compensation of the minor child. In the absence of such a requirement the appointment for such a purpose shall not be necessary.

(4) If there be a surviving child or children of the deceased under the age of eighteen years, but no surviving wife or dependent husband, then to such child or children.

(5) An award for disability may be made after the death of the injured employee.

(e) Temporary partial disability: In case of temporary partial disability resulting in decrease of earning capacity the compensation shall be two-thirds of the difference between the injured employee's average weekly wages before the injury and his wage-earning capacity after the injury in the same or another employment, to be paid during the continuance of such disability, but shall not be paid for a period exceeding five years.

(f) Injury increasing disability: (1) If an employee receive an injury which of itself would only cause permanent partial disability but which, combined with a previous disability, does in fact cause permanent total disability, the employer shall provide compensation only for the disability caused by the subsequent injury: *Provided, however,* That in addition to compensation for such permanent partial disability, and after the cessation of the payments for the prescribed period of weeks, the employee shall be paid the remainder of the compensation that would be due for permanent total disability. Such additional compensation shall be paid out of the special fund established in section 944 of this title.

(2) In all other cases in which, following a previous disability, an employee receives an injury which is not covered by (1) of this subdivision, the employer shall provide compensation only for the disability caused by the subsequent injury. In determining compensation for the subsequent injury or for death resulting therefrom, the average weekly wages shall be such sum as will reasonably represent the earning capacity of the employee at the time of the subsequent injury.

(g) Maintenance for employees undergoing vocational rehabilitation: An employee who as a result of injury is or may be expected to be totally or partially incapacitated for a remunerative occupation and who, under the direction of the commission as provided by section 939 (c) of this title, is being rendered fit to engage in a remunerative occupation, shall receive additional compensation necessary for his maintenance, but such additional compensation shall not exceed \$10 a week. The expense shall be paid out of the special fund established in section 944 of this title.

(h) The wage-earning capacity of an injured employee in cases of partial disability under subdivision (c) (21) of this section or under subdivision (e) of this section shall be determined by his actual earnings if such actual earnings fairly and reasonably represent his wage-earning capacity: *Provided, however, That if the employee has no actual earnings or his actual earnings do not fairly and reasonably represent his wage-earning capacity, the deputy commissioner may, in the interest of justice, fix such wage-earning capacity as shall be reasonable, having due regard to the nature of his injury, the degree of physical impairment, his usual employment, and any other factors or circumstances in the case which may affect his capacity to earn wages in his disabled condition, including the effect of disability as it may naturally extend into the future.*

(i) In cases under subdivision (c) (21) and subdivision (e) of this section, whenever the deputy commissioner determines that it is for the best interests of an injured employee entitled to compensation, he may, with the approval of the Commission, approve agreed settlements of the interested parties, discharging the liability of the employer for such compensation, notwithstanding the provisions of section 915 (b) and section 916 of this title: *Provided, That the sum so agreed upon shall be payable in installments as provided in section 914 (b) of this title, which installments shall be subject to commutation under section 914 (j) of this title: And provided further, That if the employee should die from causes other than the injury after the Commission has approved an agreed settlement as provided for in this chapter, the sum so approved shall be payable, in the manner prescribed in this subdivision, to and for the benefit of the persons enumerated in subdivision (d) of this section. (Mar. 4, 1927, ch. 509, § 8, 44 Stat. 1427; May 26, 1934, ch. 354, §§ 2, 3, 48 Stat. 806; June 25, 1938, ch. 685, §§ 4, 5, 52 Stat. 1165.)*

#### § 909. Compensation for death.

If the injury causes death, the compensation shall be known as a death benefit and shall be payable

in the amount and to or for the benefit of the persons following:

(a) Reasonable funeral expenses not exceeding \$200.

(b) If there be a surviving wife or dependent husband and no child of the deceased, to such wife or dependent husband 35 per centum of the average wages of the deceased, during widowhood, or dependent widowerhood, with two years' compensation in one sum upon remarriage; and if there be a surviving child or children of the deceased, the additional amount of 10 per centum of such wages for each such child; in case of the death or remarriage of such surviving wife or dependent husband, any surviving child of the deceased employee shall have his compensation increased to 15 per centum of such wages: *Provided, That the total amount payable shall in no case exceed 66⅔ per centum of such wages. The deputy commissioner having jurisdiction over the claim may, in his discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement the appointment of a guardian for such purposes shall not be necessary.*

(c) If there be a surviving child or children of the deceased, but no surviving wife or dependent husband, then for the support of each such child 15 per centum of the wages of the deceased: *Provided, That the aggregate shall in no case exceed 66⅔ per centum of such wages.*

(d) If there be no surviving wife or dependent husband or child or if the amount payable to a surviving wife or dependent husband and to children shall be less in the aggregate than 66⅔ per centum of the average wages of the deceased; then for the support of grandchildren or brothers and sisters, if dependent upon the deceased at the time of the injury, 15 per centum of such wages for the support of each such person and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of the injury, 25 per centum of such wages during such dependency. But in no case shall the aggregate amount payable under this subdivision exceed the difference between 66⅔ per centum of such wages and the amount payable as hereinbefore provided to surviving wife or dependent husband and for the support of surviving child or children.

(e) In computing death benefits the average weekly wages of the deceased shall be considered to have been not more than \$37.50 nor less than \$12, but the total weekly compensation shall not exceed the weekly wages of the deceased.

(f) All questions of dependency shall be determined as of the time of the injury.

(g) Aliens: Compensation under this chapter to aliens not residents (or about to become nonresidents) of the United States or Canada shall be the same in amount as provided for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children, or if there be no surviving wife or child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for the period of

one year prior to the date of the injury, and except that the commission may, at its option or upon the application of the insurance carrier shall, commute all future installments of compensation to be paid to such aliens by paying or causing to be paid to them one-half of the commuted amount of such future installments of compensation as determined by the commission. (Mar. 4, 1927, ch. 509, § 9, 44 Stat. 1429; June 25, 1938, ch. 685, § 6, 52 Stat. 1166.)

#### § 910. Determination of pay.

Except as otherwise provided in this chapter, the average weekly wage of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation and shall be determined as follows:

(a) If the injured employee shall have worked in the employment in which he was working at the time of the injury, whether for the same or another employer, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he shall have earned in such employment during the days when so employed.

(b) If the injured employee shall not have worked in such employment during substantially the whole of such year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employee of the same class working substantially the whole of such immediately preceding year in the same or in similar employment in the same or a neighboring place shall have earned in such employment during the days when so employed.

(c) If either of the foregoing methods of arriving at the annual average earnings of an injured employee cannot reasonably and fairly be applied, such annual earnings shall be such sum as, having regard to the previous earnings of the injured employee and of other employees of the same or most similar class, working in the same or most similar employment in the same or neighboring locality, shall reasonably represent the annual earning capacity of the injured employee in the employment in which he was working at the time of the injury.

(d) The average weekly wages of an employee shall be one fifty-second part of his average annual earnings.

(e) If it be established that the injured employee was a minor when injured, and that under normal conditions his wages should be expected to increase during the period of disability the fact may be considered in arriving at his average weekly wages. (Mar. 4, 1927, ch. 509, § 10, 44 Stat. 1431.)

#### § 911. Guardian for minor or incompetent.

The deputy commissioner may require the appointment by a court of competent jurisdiction, for any person who is mentally incompetent or a minor, of a guardian or other representative to receive compensation payable to such person under this chapter and to exercise the powers granted to or to perform the duties required of such person under this chapter. (Mar. 4, 1927, ch. 509, § 11, 44 Stat. 1431.)

#### § 912. Notice of injury or death.

(a) Notice of an injury or death in respect of which compensation is payable under this chapter shall be given within thirty days after the date of such injury or death (1) to the deputy commissioner in the compensation district in which such injury occurred and (2) to the employer.

(b) Such notice shall be in writing, shall contain the name and address of the employee and a statement of the time, place, nature, and cause of the injury or death, and shall be signed by the employee or by some person on his behalf, or in case of death, by any person claiming to be entitled to compensation for such death or by a person on his behalf.

(c) Notice shall be given to the deputy commissioner by delivering it to him or sending it by mail addressed to his office, and to the employer by delivering it to him or by sending it by mail addressed to him at his last known place of business. If the employer is a partnership, such notice may be given to any partner, or if a corporation, such notice may be given to any agent or officer thereof upon whom legal process may be served or who is in charge of the business in the place where the injury occurred.

(d) Failure to give such notice shall not bar any claim under this chapter (1) if the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier had knowledge of the injury or death and the deputy commissioner determines that the employer or carrier has not been prejudiced by failure to give such notice, or (2) if the deputy commissioner excuses such failure on the ground that for some satisfactory reason such notice could not be given; nor unless objection to such failure is raised before the deputy commissioner at the first hearing of a claim for compensation in respect of such injury or death. (Mar. 4, 1927, ch. 509, § 12, 44 Stat. 1431.)

#### CROSS REFERENCE

Report of injury or death to commission, see section 930 of this title.

#### § 913. Time for filing of claims.

(a) The right to compensation for disability under this chapter shall be barred unless a claim therefor is filed within one year after the injury, and the right to compensation for death shall be barred unless a claim therefor is filed within one year after the death, except that if payment of compensation has been made without an award on account of such injury or death a claim may be filed within one year after the date of the last payment. Such claim shall be filed with the deputy commissioner in the compensation district in which such injury or such death occurred.

(b) Notwithstanding the provisions of subdivision (a) failure to file a claim within the period prescribed in such subdivision shall not be a bar to such right unless objection to such failure is made at the first hearing of such claim in which all parties in interest are given reasonable notice and opportunity to be heard.

(c) If a person who is entitled to compensation under this chapter is mentally incompetent or a minor, the provisions of subdivision (a) shall not be applicable so long as such person has no guardian

or other authorized representative, but shall be applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of such guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes of age, from the date he becomes of age.

(d) Where recovery is denied to any person, in a suit brought at law or in admiralty to recover damages in respect of injury or death, on the ground that such person was an employee and that the defendant was an employer within the meaning of this chapter and that such employer had secured compensation to such employee under this chapter, the limitation of time prescribed in subdivision (a) shall begin to run only from the date of termination of such suit. (Mar. 4, 1927, ch. 509, § 13, 44 Stat. 1432.)

#### CROSS REFERENCE

Report of injury or death to Commission, see section 930 of this title.

#### § 914. Payment of compensation.

(a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled thereto, without an award, except where liability to pay compensation is controverted by the employer.

(b) The first installment of compensation shall become due on the fourteenth day after the employer has knowledge of the injury or death, on which date all compensation then due shall be paid. Thereafter compensation shall be paid in installments, semimonthly, except where the deputy commissioner determines that payment in installments should be made monthly or at some other period.

(c) Upon making the first payment, and upon suspension of payment for any cause, the employer shall immediately notify the deputy commissioner, in accordance with a form prescribed by the commission, that payment of compensation has begun or has been suspended, as the case may be.

(d) If the employer controverts the right to compensation he shall file with the deputy commissioner on or before the fourteenth day after he has knowledge of the alleged injury or death, a notice, in accordance with a form prescribed by the commission, stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted.

(e) If any installment of compensation payable without an award is not paid within fourteen days after it becomes due, as provided in subdivision (b) of this section, there shall be added to such unpaid installment an amount equal to 10 per centum thereof, which shall be paid at the same time as, but in addition to, such installment, unless notice is filed under subdivision (d) of this section, or unless such nonpayment is excused by the deputy commissioner after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(f) If any compensation, payable under the terms of an award, is not paid within ten days after it

becomes due, there shall be added to such unpaid compensation an amount equal to 20 per centum thereof, which shall be paid at the same time as, but in addition to, such compensation, unless review of the compensation order making such award is had as provided in section 921 of this title and an interlocutory injunction staying payments is allowed by the court as provided therein.

(g) Within sixteen days after final payment of compensation has been made, the employer shall send to the deputy commissioner a notice, in accordance with a form prescribed by the commission, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer fails to so notify the deputy commissioner within such time the commission shall assess against such employer a civil penalty in the amount of \$100.

(h) The deputy commissioner (1) may upon his own initiative at any time in a case in which payments are being made without an award, and (2) shall in any case where right to compensation is controverted, or where payments of compensation have been stopped or suspended, upon receipt of notice from any person entitled to compensation, or from the employer, that the right to compensation is controverted, or that payments of compensation have been stopped or suspended, make such investigations, cause such medical examinations to be made, or hold such hearings, and take such further action as he considers will properly protect the rights of all parties.

(i) Whenever the deputy commissioner deems it advisable he may require any employer to make a deposit with the Treasurer of the United States to secure the prompt and convenient payment of such compensation, and payments therefrom upon any awards shall be made upon order of the deputy commissioner.

(j) Whenever the deputy commissioner determines that it is in the interest of justice, the liability of the employer for compensation, or any part thereof as determined by the deputy commissioner with the approval of the Commission, may be discharged by the payment of a lump sum equal to the present value of future compensation payments commuted, computed at 4 per centum true discount compounded annually. The probability of the death of the injured employee or other person entitled to compensation before the expiration of the period during which he is entitled to compensation shall be determined in accordance with the American Experience Table of Mortality, and the probability of the remarriage of the surviving wife shall be determined in accordance with the remarriage tables of the Dutch Royal Insurance Institution. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded.

(k) If the employer has made advance payments of compensation, he shall be entitled to be reim-



bursed out of any unpaid installment or installments of compensation due.

(l) An injured employee, or in case of death his dependents or personal representative, shall give receipts for payment of compensation to the employer paying the same and such employer shall produce the same for inspection by the deputy commissioner, whenever required.

(m) The total compensation payable under this chapter for injury or death shall in no event exceed the sum of \$7,500. (Mar. 4, 1927, ch. 509, § 14, 44 Stat. 1432; May 26, 1934, ch. 354, § 4, 48 Stat. 807; June 25, 1938, ch. 685, § 7, 52 Stat. 1167.)

#### § 915. Invalid agreements.

(a) No agreement by an employee to pay any portion of premium paid by his employer to a carrier or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this chapter shall be valid, and any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$1,000.

(b) No agreement by an employee to waive his right to compensation under this chapter shall be valid. (Mar. 4, 1927, ch. 509, § 15, 44 Stat. 1434.)

#### CROSS REFERENCE

Settlement of claim, where deputy commissioner determines it is for best interest of injured employee, notwithstanding provision of subsection (b) of this section, see section 908 (i) of this title.

#### § 916. Assignment and exemption from claims of creditors.

No assignment, release, or commutation of compensation or benefits due or payable under this chapter, except as provided by this chapter, shall be valid, and such compensation and benefits shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived. (Mar. 4, 1927, ch. 509, § 16, 44 Stat. 1434.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under Rule 69, see note by Advisory Committee under said Rule 69.

Execution, see Rule 69, following section 723c of Title 28, Judicial Code and Judiciary.

#### CROSS REFERENCE

Settlement of claim, where deputy commissioner determines it is for best interest of injured employee, notwithstanding provisions of this section, see section 908 (i) of this title.

#### § 917. Compensation a lien against assets.

Any person entitled to compensation under the provisions of this chapter shall have a lien against the assets of the carrier or employer for such compensation without limit of amount, and shall, upon insolvency, bankruptcy, or reorganization in bankruptcy proceedings of the carrier or employer, or both, be entitled to preference and priority in the distribution of the assets of such carrier or employer, or both. (Mar. 4, 1927, ch. 509, § 17, 44 Stat. 1434; June 25, 1938, ch. 685, § 8, 52 Stat. 1167.)

#### § 918. Collection of defaulted payments.

In case of default by the employer in the payment of compensation due under any award of compensation for a period of thirty days after the compensation is due and payable, the person to whom such compensation is payable may, within one year after such default, make application to the deputy commissioner making the compensation order or a supplementary order declaring the amount of the default. After investigation, notice, and hearing, as provided in section 919 of this title, the deputy commissioner shall make a supplementary order, declaring the amount of the default, which shall be filed in the same manner as the compensation order. In case the payment in default is an installment of the award, the deputy commissioner may, in his discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary order with the clerk of the Federal district court for the judicial district in which the employer has his principal place of business or maintains an office, or for the judicial district in which the injury occurred. In case such principal place of business or office or place where the injury occurred is in the District of Columbia, a copy of such supplementary order may be filed with the clerk of the district court of the United States for the District of Columbia. Such supplementary order of the deputy commissioner shall be final, and the court shall, upon the filing of the copy, enter judgment for the amount declared in default by the supplementary order if such supplementary order is in accordance with law. Review of the judgment so entered may be had as in civil suits for damages at common law. Final proceedings to execute the judgment may be had by writ of execution in the form used by the court in suits at common law in actions of assumpsit. No fee shall be required for filing the supplementary order nor for entry of judgment thereon, and the applicant shall not be liable for costs in a proceeding for review of the judgment unless the court shall otherwise direct. The court shall modify such judgment to conform to any later compensation order upon presentation of a certified copy thereof to the court. (Mar. 4, 1927, ch. 509, § 18, 44 Stat. 1434; June 25, 1936, ch. 804, 49 Stat. 1921.)

#### CHANGE OF NAME

Act June 25, 1936, cited to text, redesignated the Supreme Court of the District of Columbia "District Court of the United States for the District of Columbia".

#### FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under Rule 69, see note by Advisory Committee under said Rule 69.

Execution, see Rule 69, following section 723c of Title 28, Judicial Code and Judiciary.

#### § 919. Procedure in respect of claims.

(a) Subject to the provisions of section 913 of this title a claim for compensation may be filed with the deputy commissioner in accordance with regulations prescribed by the commission at any time after the first seven days of disability following any injury, or at any time after death, and the deputy commissioner shall have full power and authority

to hear and determine all questions in respect of such claim.

(b) Within ten days after such claim is filed the deputy commissioner, in accordance with regulations prescribed by the commission, shall notify the employer and any other person (other than the claimant), whom the deputy commissioner considers an interested party, that a claim has been filed. Such notice may be served personally upon the employer or other person, or sent to such employer or person by registered mail.

(c) The deputy commissioner shall make or cause to be made such investigations as he considers necessary in respect of the claim, and upon application of any interested party shall order a hearing thereon. If a hearing on such claim is ordered the deputy commissioner shall give the claimant and other interested parties at least ten days' notice of such hearing, served personally upon the claimant and other interested parties or sent to such claimant and other interested parties by registered mail, and shall within twenty days after such hearing is had, by order, reject the claim or make an award in respect of the claim. If no hearing is ordered within twenty days after notice is given as provided in subdivision (b), the deputy commissioner shall, by order, reject the claim or make an award in respect of the claim.

(d) At such hearing the claimant and the employer may each present evidence in respect of such claim and may be represented by any person authorized in writing for such purpose.

(e) The order rejecting the claim or making the award (referred to in this chapter as a compensation order) shall be filed in the office of the deputy commissioner, and a copy thereof shall be sent by registered mail to the claimant and to the employer at the last known address of each.

(f) An award of compensation for disability may be made after the death of an injured employee.

(g) At any time after a claim has been filed with him, the deputy commissioner may, with the approval of the Commission, transfer such case to any other deputy commissioner for the purpose of making investigation, taking testimony, making physical examinations or taking such other necessary action therein as may be directed.

(h) An injured employee claiming or entitled to compensation shall submit to such physical examination by a medical officer of the United States or by a duly qualified physician designated or approved by the commission as the deputy commissioner may require. The place or places shall be reasonably convenient for the employee. Such physician or physicians as the employee, employer, or carrier may select and pay for may participate in an examination if the employee, employer, or carrier so requests. Proceedings shall be suspended and no compensation be payable for any period during which the employee may refuse to submit to examination. (Mar. 4, 1927, ch. 509, § 19, 44 Stat. 1435; June 25, 1938, ch. 685, § 9, 52 Stat. 1167.)

#### § 920. Presumptions.

In any proceeding for the enforcement of a claim for compensation under this chapter it shall be

presumed, in the absence of substantial evidence to the contrary—

(a) That the claim comes within the provisions of this chapter.

(b) That sufficient notice of such claim has been given.

(c) That the injury was not occasioned solely by the intoxication of the injured employee.

(d) That the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another. (Mar. 4, 1927, ch. 509, § 20, 44 Stat. 1436.)

#### § 921. Review of compensation orders.

(a) A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 919 of this title, and, unless proceedings for the suspension or setting aside of such order are instituted as provided in subdivision (b) of this section, shall become final at the expiration of the thirtieth day thereafter.

(b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court for the judicial district in which the injury occurred (or in the district court of the United States for the District of Columbia if the injury occurred in the District). The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless upon application for an interlocutory injunction the court, on hearing, after not less than three days' notice to the parties in interest and the deputy commissioner, allows the stay of such payments, in whole or in part, where irreparable damage would otherwise ensue to the employer. The order of the court allowing any such stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that such irreparable damage would result to the employer, and specifying the nature of the damage.

(c) If any employer or his officers or agents fails to comply with a compensation order making an award, that has become final, any beneficiary of such award or the deputy commissioner making the order, may apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the district court of the United States for the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such employer or his officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

(d) Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and section 918 of this title. (Mar. 4, 1927, ch. 509, § 21, 44 Stat. 1436; June 25, 1936, ch. 804, 49 Stat. 1921.)

#### CHANGE OF NAME

Redesignation of Supreme Court of the District of Columbia, see note to section 918 of this title.

#### FEDERAL RULES OF CIVIL PROCEDURE

Application, see Rule 81, following section 723c of Title 28, Judicial Code and Judiciary.

### § 921a. Appearance of United States district attorney for Commission or deputy commissioner.

In any court proceedings under section 921 of this title or other provisions of this chapter, it shall be the duty of the district attorney of the United States in the judicial district in which the case is pending to appear as attorney or counsel on behalf of the United States Employees' Compensation Commission or its deputy commissioner when either is a party to the case or interested, and to represent such commission or deputy in any court in which such case may be carried on appeal. (May 4, 1928, ch. 502, 45 Stat. 490.)

### § 922. Modification of awards.

Upon his own initiative, or upon the application of any party in interest, on the ground of a change in conditions or because of a mistake in a determination of fact by the deputy commissioner, the deputy commissioner may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim, review a compensation case in accordance with the procedure prescribed in respect of claims in section 919 of this title, and in accordance with such section issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury, and if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation, in such manner and by such method as may be determined by the deputy commissioner with the approval of the Commission. (Mar. 4, 1927, ch. 509, § 22, 44 Stat. 1437; May 26, 1934, ch. 354, § 5, 48 Stat. 807; June 25, 1938, ch. 685, § 10, 52 Stat. 1167.)

### § 923. Procedure before the deputy commissioner.

(a) In making an investigation or inquiry or conducting a hearing the deputy commissioner shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter; but may make such investigation or inquiry or conduct such hearing in such manner as to best ascertain the

rights of the parties. Declarations of a deceased employee concerning the injury in respect of which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the injury.

(b) Hearings before a deputy commissioner shall be open to the public and shall be stenographically reported, and the deputy commissioners, subject to the approval of the commission, are authorized to contract for the reporting of such hearings. The commission shall by regulation provide for the preparation of a record of the hearings and other proceedings before the deputy commissioners. (Mar. 4, 1927, ch. 509, § 23, 44 Stat. 1437.)

### § 924. Witnesses.

No person shall be required to attend as a witness in any proceeding before a deputy commissioner at a place outside of the State of his residence and more than one hundred miles from his place of residence, unless his lawful mileage and fee for one day's attendance shall be first paid or tendered to him; but the testimony of any witness may be taken by deposition or interrogatories according to the rules of practice of the Federal district court for the judicial district in which the case is pending (or of the district court of the United States for the District of Columbia if the case is pending in the District). (Mar. 4, 1927, ch. 509, § 24, 44 Stat. 1437; June 25, 1936, ch. 804, 49 Stat. 1921.)

#### CHANGE OF NAME

Redesignation of Supreme Court of the District of Columbia, see note to section 918 of this title.

### § 925. Witness fees.

Witnesses summoned in a proceeding before a deputy commissioner or whose depositions are taken shall receive the same fees and mileage as witnesses in courts of the United States. (Mar. 4, 1927, ch. 509, § 25, 44 Stat. 1437.)

### § 926. Costs in proceedings brought without reasonable grounds.

If the court having jurisdiction of proceedings in respect of any claim or compensation order determines that the proceedings in respect of such claim or order have been instituted or continued without reasonable ground, the costs of such proceedings shall be assessed against the party who has so instituted or continued such proceedings. (Mar. 4, 1927, ch. 509, § 26, 44 Stat. 1438.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under Rule 54, see note by Advisory Committee under said Rule 54.

Judgment and costs, see Rule 54, following section 723c of Title 28, Judicial Code and Judiciary.

### § 927. Powers of deputy commissioners.

(a) The deputy commissioner shall have power to preserve and enforce order during any such proceedings; to issue subpoenas for, to administer oaths to, and to compel the attendance and testimony of witnesses, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent

to administer oaths; to examine witnesses; and to do all things conformable to law which may be necessary to enable him effectively<sup>1</sup> to discharge the duties of his office.

(b) If any person in proceedings before a deputy commissioner disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the deputy commissioner shall certify the facts to the district court having jurisdiction in the place in which he is sitting (or to the district court of the United States for the District of Columbia if he is sitting in such District) which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court. (Mar. 4, 1927, ch. 509, § 27, 44 Stat. 1438; June 25, 1936, ch. 804, 49 Stat. 1921.)

<sup>1</sup> So in original. Probably should read "effectively."

#### CHANGE IN NAME

Change of name of Supreme Court of the District of Columbia see note to section 918 of this title.

#### § 928. Fees for services.

(a) No claim for legal services or for any other services rendered in respect of a claim or award for compensation, to or on account of any person, shall be valid unless approved by the deputy commissioner, or if proceedings for review of the order of the deputy commissioner in respect of such claim or award are had before any court, unless approved by such court. Any claim so approved shall, in the manner and to the extent fixed by the deputy commissioner or such court, be a lien upon such compensation.

(b) Any person (1) who receives any fee, other consideration, or any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the deputy commissioner or such court, or (2) who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation, shall be guilty of a misdemeanor, and upon conviction thereof, shall, for each offense, be punished by a fine of not more than \$1,000 or by imprisonment not to exceed one year, or by both such fine and imprisonment. (Mar. 4, 1927, ch. 509, § 28, 44 Stat. 1438.)

#### § 929. Record of injury or death.

Every employer shall keep a record in respect of any injury to an employee. Such record shall contain such information of disease, other disability, or death in respect of such injury as the commission may by regulation require, and shall be available to inspection by the commission or by any State au-

thority at such times and under such conditions as the commission may by regulation prescribe. (Mar. 4, 1927, ch. 509, § 29, 44 Stat. 1438.)

#### 0. Reports.

(a) Within ten days from the date of any injury or death or from the date that the employer has knowledge of a disease or infection in respect of such injury, the employer shall send to the commission a report setting forth (1) the name, address, and business of the employer; (2) the name, address, and occupation of the employee; (3) the cause and nature of the injury or death; (4) the year, month, day, and hour when and the particular locality where the injury or death occurred; and (5) such other information as the commission may require. A copy of such report shall be sent at the same time to the deputy commissioner in the compensation district in which the injury occurred.

(b) Additional reports in respect of such injury and of the condition of such employee shall be sent by the employer to the commission and to such deputy commissioner at such times and in such manner as the commission may prescribe.

(c) Any report provided for in subdivision (a) or (b) shall not be evidence of any fact stated in such report in any proceeding in respect of such injury or death on account of which the report is made.

(d) The mailing of any such report and copy in a stamped envelope, within the time prescribed in subdivisions (a) or (b), to the commission and deputy commissioner, respectively, shall be a compliance with this section.

(e) Any employer who fails or refuses to send any report required of him by this section shall be subject to a civil penalty not to exceed \$500 for each such failure or refusal.

(f) Where the employer or the carrier has been given notice, or the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier has knowledge, of any injury or death of an employee and fails, neglects, or refuses to file report thereof as required by the provisions of subdivision (a) of this section, the limitations in subdivision (a) of section 913 of this title shall not begin to run against the claim of the injured employee or his dependents entitled to compensation, or in favor of either the employer or the carrier, until such report shall have been furnished as required by the provisions of subdivision (a) of this section. (Mar. 4, 1927, ch. 509, § 30, 44 Stat. 1439; June 25, 1938, ch. 685, § 11, 52 Stat. 1167.)

#### CROSS REFERENCES

Notice of injury or death to deputy commissioner, see section 912 of this title.

Time for filing claims for compensation, see section 913 of this title.

#### § 931. Penalty for misrepresentation.

Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this chapter shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of

not to exceed \$1,000 or by imprisonment of not to exceed one year, or by both such fine and imprisonment. (Mar. 4, 1927, ch. 509, § 31, 44 Stat. 1439.)

**§ 932. Security for compensation.**

(a) Every employer shall secure the payment of compensation under this chapter—

(1) By insuring and keeping insured the payment of such compensation with any stock company or mutual company or association, or with any other person or fund, while such person or fund is authorized (A) under the laws of the United States or of any State, to insure workmen's compensation, and (B) by the commission, to insure payment of compensation under this chapter; or

(2) By furnishing satisfactory proof to the commission of his financial ability to pay such compensation and receiving an authorization from the commission to pay such compensation directly. The commission may, as a condition to such authorization, require such employer to deposit in a depository designated by the commission either an indemnity bond or securities (at the option of the employer) of a kind and in an amount determined by the commission, and subject to such conditions as the commission may prescribe, which shall include authorization to the commission in case of default to sell any such securities sufficient to pay compensation awards or to bring suit upon such bonds, to procure prompt payment of compensation under this chapter. Any employer securing compensation in accordance with the provisions of this paragraph shall be known as a self-insurer.

(b) In granting authorization to any carrier to insure payment of compensation under this chapter the commission may take into consideration the recommendation of any State authority having supervision over carriers or over workmen's compensation, and may authorize any carrier to insure the payment of compensation under this chapter in a limited territory. Any marine protection and indemnity mutual insurance corporation or association, authorized to write insurance against liability for loss or damage from personal injury and death, and for other losses and damages, incidental to or in respect of the ownership, operation, or chartering of vessels on a mutual assessment plan, shall be deemed a qualified carrier to insure compensation under this chapter. The commission may suspend or revoke any such authorization for good cause shown after a hearing at which the carrier shall be entitled to be heard in person or by counsel and to present evidence. No suspension or revocation shall affect the liability of any carrier already incurred. (Mar. 4, 1927, ch. 509, § 32, 44 Stat. 1439.)

**§ 933. Compensation for injuries where third persons are liable.**

(a) If on account of a disability or death for which compensation is payable under this chapter the person entitled to such compensation determines that some person other than the employer is liable in damages, he may elect, by giving notice to the deputy commissioner in such manner as the commission may provide, to receive such compensation or to recover damages against such third person.

(b) Acceptance of such compensation under an award in a compensation order filed by the deputy commissioner shall operate as an assignment to the employer of all right of the person entitled to compensation to recover damages against such third person.

(c) The payment of such compensation into the fund established in section 944 of this title shall operate as an assignment to the employer of all right of the legal representative of the deceased (hereinafter referred to as "representative") to recover damages against such third person, whether or not the representative has notified the deputy commissioner of his election.

(d) Such employer on account of such assignment may either institute proceedings for the recovery of such damages or may compromise with such third person either without or after instituting such proceeding.

(e) Any amount recovered by such employer on account of such assignment, whether or not as the result of a compromise, shall be distributed as follows:

(1) The employer shall retain an amount equal to—

(A) the expenses incurred by him in respect to such proceedings or compromise (including a reasonable attorney's fee as determined by the deputy commissioner);

(B) the cost of all benefits actually furnished by him to the employee under section 907 of this title;

(C) all amounts paid as compensation;

(D) the present value of all amounts thereafter payable as compensation, such present value to be computed in accordance with a schedule prepared by the Commission, and the present value of the cost of all benefits thereafter to be furnished under section 907 of this title, to be estimated by the deputy commissioner, and the amounts so computed and estimated to be retained by the employer as a trust fund to pay such compensation and the cost of such benefits as they become due, and to pay any sum finally remaining in excess thereof to the person entitled to compensation or to the representative; and

(2) The employer shall pay any excess to the person entitled to compensation or to the representative.

(f) If the person entitled to compensation or the representative elects to recover damages against such third person and notifies the commission of his election and institutes proceedings within the period prescribed in section 913 of this title, the employer shall be required to pay as compensation under this chapter a sum equal to the excess of the amount which the commission determines is payable on account of such injury or death over the amount recovered against such third person.

(g) If a compromise with such third person is made by the person entitled to compensation or such representative of an amount less than the compensation to which such person or representative would be entitled to under this chapter, the employer shall be liable for compensation as determined in subdivi-

sion (e) only if such compromise is made with his written approval.

(h) The deputy commissioner may, if the person entitled to compensation under this chapter is a minor, make any election required under subdivision (a) of this section, or may authorize the parent or guardian of the minor to make such election.

(i) Where the employer is insured and the insurance carrier has assumed the payment of the compensation, the insurance carrier shall be subrogated to all the rights of the employer under this section. (Mar. 4, 1927, ch. 509, § 33, 44 Stat. 1440; June 25, 1938, ch. 685, §§ 12, 13, 52 Stat. 1168.)

#### § 934. Compensation notice.

Every employer who has secured compensation under the provisions of this chapter shall keep posted in a conspicuous place or places in and about his place or places of business typewritten or printed notices, in accordance with a form prescribed by the commission, stating that such employer has secured the payment of compensation in accordance with the provisions of this chapter. Such notices shall contain the name and address of the carrier, if any, with whom the employer has secured payment of compensation and the date of the expiration of the policy. (Mar. 4, 1927, ch. 509, § 34, 44 Stat. 1441.)

#### § 935. Substitution of carrier for employer.

In any case where the employer is not a self-insurer, in order that the liability for compensation imposed by this chapter may be most effectively discharged by the employer, and in order that the administration of this chapter in respect of such liability may be facilitated, the commission shall by regulation provide for the discharge, by the carrier for such employer, of such obligations and duties of the employer in respect of such liability, imposed by this chapter upon the employer, as it considers proper in order to effectuate the provisions of this chapter. For such purposes (1) notice to or knowledge of an employer of the occurrence of the injury shall be notice to or knowledge of the carrier, (2) jurisdiction of the employer by a deputy commissioner, the commission, or any court under this chapter shall be jurisdiction of the carrier, and (3) any requirement by a deputy commissioner, the commission, or any court under any compensation order, finding, or decision shall be binding upon the carrier in the same manner and to the same extent as upon the employer. (Mar. 4, 1927, ch. 509, § 35, 44 Stat. 1441.)

#### § 936. Insurance policies.

(a) Every policy or contract of insurance issued under authority of this chapter shall contain (1) a provision to carry out the provisions of section 935 of this title, and (2) a provision that insolvency or bankruptcy of the employer and/or discharge therein shall not relieve the carrier from payment of compensation for disability or death sustained by an employee during the life of such policy or contract.

(b) No contract or policy of insurance issued by a carrier under this chapter shall be canceled prior

to the date specified in such contract or policy for its expiration until at least thirty days have elapsed after a notice of cancellation has been sent to the deputy commissioner and to the employer in accordance with the provisions of subdivision (c) of section 912 of this title. (Mar. 4, 1927, ch. 509, § 36, 44 Stat. 1441.)

#### § 937. Certificate of compliance with chapter.

No stevedoring firm shall be employed in any compensation district by a vessel or by hull owners until it presents to such vessel or hull owners a certificate issued by a deputy commissioner assigned to such district that it has complied with the provisions of this chapter requiring the securing of compensation to its employees. Any person violating the provisions of this section shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both such fine and imprisonment. (Mar. 4, 1927, ch. 509, § 37, 44 Stat. 1442.)

#### § 938. Penalty for failure to secure payment of compensation.

(a) Any employer required to secure the payment of compensation under this chapter who fails to secure such compensation shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such fine or imprisonment as herein provided for the failure of such corporation to secure the payment of compensation; and such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any compensation or other benefit which may accrue under the said chapter in respect to any injury which may occur to any employee of such corporation while it shall so fail to secure the payment of compensation as required by section 932 of this title.

(b) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property belonging to such employer, after one of his employees has been injured within the purview of this chapter, and with intent to avoid the payment of compensation under this chapter to such employee or his dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such penalty of imprisonment as well as jointly liable with such corporation for such fine.

(c) This section shall not affect any other liability of the employer under this chapter. (Mar. 4, 1927, ch. 509, § 38, 44 Stat. 1442; June 25, 1938, ch. 685, § 14, 52 Stat. 1168.)

**§ 939. Administration.**

(a) Except as otherwise specifically provided, the United States Employees' Compensation Commission shall administer the provisions of this chapter, and for such purpose the commission is authorized (1) to make such rules and regulations; (2) to appoint and fix the compensation of such temporary technical assistants and medical advisers, and, subject to the provisions of the civil-service laws, to appoint, and, in accordance with sections 661-663, 664-673 and 674 of Title 5, to fix the compensation of such deputy commissioners (except deputy commissioners appointed under subdivision (a) of section 940 of this chapter) and other officers and employees; and (3) to make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere, for law books, books of reference, periodicals, and for printing and binding) as may be necessary in the administration of this chapter. All expenditures of the commission in the administration of this chapter shall be allowed and paid as provided in section 945 of this title upon the presentation of itemized vouchers therefor approved by the commission.

(b) The commission shall establish compensation districts, to include the high seas and the areas within the United States to which this chapter applies, and shall assign to each such district one or more deputy commissioners, as the commission deems advisable. Judicial proceedings under sections 918 and 921 of this title in respect of any injury or death occurring on the high seas shall be instituted in the district court within whose territorial jurisdiction is located the office of the deputy commissioner having jurisdiction in respect of such injury or death (or in the district court of the United States for the District of Columbia if such office is located in such District).

(c) The commission shall direct the vocational rehabilitation of permanently disabled employees and shall arrange with the appropriate public or private agencies in States or Territories, possessions, or the District of Columbia for such education. The Federal Security Agency shall cooperate with the commission in such educational work. The commission may in its discretion furnish such prosthetic appliances or other apparatus made necessary by an injury upon which an award has been made under this chapter to render a disabled employee fit to engage in a remunerative occupation. If any surplus is left in any fiscal year in the fund provided for in section 944 of this title, such surplus may be used in subsequent fiscal years for the purposes of this section except for the purposes of administration and investigation. (Mar. 4, 1927, ch. 509, § 39, 44 Stat. 1442; June 25, 1936, ch. 804, 49 Stat. 1921; Ex. Ord. No. 6166, § 15, June 10, 1933; Reorg. Plan No. I, §§ 201, 204, eff. July 1, 1939, 4 Fed. Reg. 2728, 53 Stat. 1424.)

**CHANGES IN NAME**

Change of name of Supreme Court of the District of Columbia, see note to section 918 of this title.

**TRANSFER OF FUNCTIONS**

Executive Order No. 6166, § 15, cited to text, transferred the functions of the Federal Board for Vocational Education to the Department of the Interior.

Reorganization Plan No. I, §§ 201, 204, cited to text, consolidated the Office of Education in the Department of the Interior and its functions, including vocational education, with other agencies under the Federal Security Agency, and provided that the Office of Education and its functions should be administered by the Commissioner of Education under the direction and supervision of the Federal Security Administrator. It was further provided that all the functions of the Secretary of the Interior relating to the administration of the Office of Education should be transferred to, and be exercised by, the Federal Security Administrator.

**§ 940. Deputy commissioners.**

(a) The commission may appoint as deputy commissioners any member of any board, commission, or other agency of a State to act as deputy commissioner for any compensation district or part thereof in such State, and may make arrangements with such board, commission, or other agency for the use of the personnel and facilities thereof in the administration of this chapter. The commission may make such arrangements as may be deemed advisable by it for the payment of expenses of such board, commission, or other agency, incurred in the administration of this chapter pursuant to this section, and for the payment of salaries to such board, commission, or other agency, or the members thereof, and may pay any amounts agreed upon to the proper officers of the State, upon vouchers approved by the commission.

(b) In any Territory of the United States or in the District of Columbia a person holding an office under the United States may be appointed deputy commissioner and for services rendered as deputy commissioner may be paid compensation, in addition to that he is receiving from the United States, in an amount fixed by the commission in accordance with sections 661-663, 664-673, and 674 of Title 5.

(c) Deputy commissioners (except deputy commissioners appointed under subdivision (a) of this section) may be transferred from one compensation district to another and may be temporarily detailed from one compensation district for service in another in the discretion of the commission.

(d) Each deputy commissioner shall maintain and keep open during reasonable business hours an office, at a place designated by the commission, for the transaction of business under this chapter, at which office he shall keep his official records and papers. Such office shall be furnished and equipped by the commission, who shall also furnish the deputy commissioner with all necessary clerical and other assistants, records, books, blanks, and supplies. Wherever practicable such office shall be located in a building owned or leased by the United States; otherwise the commission shall rent suitable quarters.

(e) If any deputy commissioner is removed from office, or for any reason ceases to act as such deputy commissioner, all of his official records and papers and office equipment shall be transferred to his successor in office or, if there be no successor, then to the commission or to a deputy commissioner designated by the commission.

(f) Neither a deputy commissioner nor any business associate of a deputy commissioner shall appear as attorney in any proceeding under this chapter,



and no deputy commissioner shall act in any such case in which he is interested, or when he is employed by any party in interest or related to any party in interest by consanguinity or affinity within the third degree, as determined by the common law. (Mar. 4, 1927, ch. 509, § 40, 44 Stat. 1443.)

#### § 941. Investigations by the Commission.

(a) The commission shall make studies and investigations with respect to safety provisions and the causes of injuries in employments covered by this chapter, and shall from time to time make to Congress and to employers and carriers such recommendations as it may deem proper as to the best means of preventing such injuries.

(b) In making such studies and investigations the commission is authorized (1) to cooperate with any agency of the United States charged with the duty of enforcing any law securing safety against injury in any employment covered by this chapter, or with any State agency, engaged in enforcing any laws to assure safety for employees, and (2) to permit any such agency to have access to the records of the commission. In carrying out the provisions of this section the commission or any officer or employee of the commission is authorized to enter at any reasonable time upon any premises, tracks, wharf, dock, or other landing place, or upon any vessel, or to enter any building, where an employment covered by this chapter is being carried on, and to examine any tool, appliance, or machinery used in such employment. (Mar. 4, 1927, ch. 509, § 41, 44 Stat. 1444.)

#### § 942. Traveling expenses.

The commissioners, deputy commissioners, and other employees of the commission shall be entitled to receive their necessary traveling expenses and expenses actually incurred for subsistence while traveling on official business and away from their designated stations, as provided by sections 821–823, 824–833 of Title 5. (Mar. 4, 1927, ch. 509, § 42, 44 Stat. 1444.)

#### § 943. Annual report.

The commission shall make to Congress at the beginning of each regular session a report of the administration of this chapter for the preceding fiscal year, including a detailed statement of receipts of and expenditures from the funds established in sections 944 and 945 of this title, together with such recommendations as the commission deems advisable. (Mar. 4, 1927, ch. 509, § 43, 44 Stat. 1444.)

#### § 944. Special fund.

(a) There is hereby established in the Treasury of the United States a special fund for the purpose of making payments in accordance with the provisions of subsections (f) and (g) of section 908 of this title. Such fund shall be administered by the commission. The Treasurer of the United States shall be the custodian of such fund, and all moneys and securities in such fund shall be held in trust by such Treasurer and shall not be money or property of the United States.

(b) The Treasurer is authorized to disburse moneys from such fund only upon order of the commission.

He shall be required to give bond in an amount to be fixed and with securities to be approved by the Secretary of the Treasury and the Comptroller General of the United States conditioned upon the faithful performance of his duty as custodian of such fund.

(c) Payments into such fund shall be made as follows:

(1) Each employer shall pay \$1,000 as compensation for the death of an employee of such employer resulting from injury where the deputy commissioner determines that there is no person entitled under this chapter to compensation for such death. Fifty per centum of each such payment shall be available for the payments under subdivision (f) of section 908 of this title, and 50 per centum shall be available for payments under subdivision (g) of said section.

(2) All amounts collected as fines and penalties under the provisions of this chapter shall be paid into such fund.

(d) The Treasurer of the United States shall deposit any moneys paid into such fund into such depository banks as the commission may designate and may invest any portion of the funds which, in the opinion of the commission, is not needed for current requirements, in bonds or notes of the United States or of any Federal land bank.

(e) Neither the United States nor the commission shall be liable in respect of payments authorized under section 908 of this title in an amount greater than the money or property deposited in or belonging to such fund.

(f) The Comptroller General of the United States shall audit the account for such fund, but the action of the commission in making payments from such fund shall be final and not subject to review, and the Comptroller General is authorized and directed to allow credit in the accounts of any disbursing officer of the commission for payments made from such fund authorized by the commission.

(g) All civil penalties provided for in this chapter shall be collected by civil suit brought by the commission. (Mar. 4, 1927, ch. 509, § 44, 44 Stat. 1444.)

#### CROSS REFERENCE

Classification as trust funds, appropriation and disbursement of fund for "Relief and rehabilitation, Longshoremen's and Harbor Workers' Compensation Act," see section 725s (12) of Title 31, Money and Finance.

#### § 945. Administration fund.

(a) There is hereby established in the Treasury of the United States a special fund for the purpose of providing for the payment of all expenses in respect of the administration of this chapter. Such fund shall be administered by the commission. The Treasurer of the United States shall be the custodian of such fund, and all moneys and securities in such fund shall be held in trust by such Treasurer and shall not be the money or property of the United States.

(b) The provisions of subdivisions (b), (d), and (f) of section 944 of this title shall be applicable to the fund hereby established. (Mar. 4, 1927, ch. 509, § 45, 44 Stat. 1445.)

**§ 946. Appropriation.**

Section, act Mar. 4, 1927, ch. 509, § 46, 44 Stat. 1445, appropriated \$250,000 to be available for expenses of administration of this chapter for fiscal years ending June 30, 1927, and June 30, 1928.

**§ 947. Availability of appropriations.**

The expenses incurred for salaries and contingent expenses by the United States Employees' Compensation Commission in the administration (1) of sections 751-791 and 793 of Title 5, and (2) of this chapter, may be paid from the appropriations for salaries and contingent expenses for the administration of said sections 751-791 and 793 of Title 5, and from the fund established in section 945 of this title, in such proportion as the commission, with the approval of the Director of the Bureau of the Budget, determines to be fairly attributable to the cost of administration of the respective chapters, but the total amount paid from such appropriation and such fund in any fiscal year on account of the administration of said sections 751-791 and 793 of Title 5, shall not exceed the amounts appropriated for salaries and contingent expenses for the administration of said sections for such year. (Mar. 4, 1927, ch. 509, § 47, 44 Stat. 1445.)

**§ 948. Laws inapplicable.**

Nothing in sections 183, 184-186, 188, or 189, of Title 46, shall be held to limit the amount for which

recovery may be had (1) in any suit at law or in admiralty where an employer has failed to secure compensation as required by this chapter, or (2) in any proceeding for compensation, any addition to compensation, or any civil penalty. (Mar. 4, 1927, ch. 509, § 48, 44 Stat. 1446.)

**§ 949. Effect of unconstitutionality.**

If any part of this chapter is adjudged unconstitutional by the courts, and such adjudication has the effect of invalidating any payment of compensation under this chapter, the period intervening between the time the injury was sustained and the time of such adjudication shall not be computed as a part of the time prescribed by law for the commencement of any action against the employer in respect of such injury; but the amount of any compensation paid under this chapter on account of such injury shall be deducted from the amount of damages awarded in such action in respect of such injury. (Mar. 4, 1927, ch. 509, § 49, 44 Stat. 1446.)

**§ 950. Separability provision.**

If any provision of this chapter is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of the chapter and the applicability of such provision to other persons and circumstances shall not be affected thereby. (Mar. 4, 1927, ch. 509, § 50, 44 Stat. 1446.)













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